

Vanessa Brand  
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Broadcasting Policy Division  
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27 July 2001

Dear Ms Brand

**BBC proposed new services**

Further to your letter of 6<sup>th</sup> July I enclose Consumers' Association's response to the BBC's proposals to launch new digital television and radio services.

Consumers' Association (CA) is an independent, not-for-profit consumer organisation with around 700,000 members. It is the largest consumer organisation in Europe. Entirely independent of government and industry, we are funded through the sale of our *Which?* range of consumer magazines and books.

This response may be made public. Please do not hesitate to contact me or my colleague Peter Jenkins if you have any further queries.

Yours sincerely,

Allan Williams  
Senior Policy Officer, Communications.

# PROPOSED NEW SERVICES FROM THE BBC

Consumers' Association comments to the Department of Culture Media and Sport on licence-funded digital television and radio services.

## Summary of key points

- 1 The BBC's proposed new services should be assessed in relation to a number of clearly defined criteria, of which their impact on the market is only one, rather than in relation to other policy goals such as digital switch-over. CA welcomes the new Secretary of State's confirmation of the criteria set out by her predecessor for assessing the BBC's proposals.
- 2 The existence of competing commercial services alone should not prevent the BBC from launching services which have a clear public service objective. However, there needs to be a clear understanding of the value of these types of service additionally being offered by the BBC on a free-to-air basis, as well as guarantees that they will consistently deliver distinctiveness and high quality.
- 3 The BBC's proposals should only be approved where individual services substantially contribute to fulfilling and expanding the BBC's existing remit. The BBC's unique funding mechanism means that it should provide services for consumers who are not well served by the market, as well as providing popular mixed-schedule programming.
- 4 The value of the BBC's existing output lies in providing a diversity of programming. CA does not consider that the move towards narrower "genre/audience" channels necessarily represents the best way to achieve this, since such services are more likely to affect the diversity of existing or future commercial channels and negatively impact on existing BBC services through "digital drift".
- 5 It is impossible to assess the BBC's proposals without considering the overall ecology of public service broadcasting. Even if this can be done, it makes little sense to only consider this when new channels are launched, with no external mechanism for monitoring whether this remit is delivered and maintained. Bringing the regulation of the BBC within OFCOM would allow the remit of the BBC to be transparently and coherently evaluated on an ongoing basis.
- 6 CA believes that the future of the BBC and its unique funding mechanism may come under threat unless its public accountability is improved. If its legitimacy and editorial independence are to be safeguarded, it is vital that the BBC's governance is reformed, separating delivery from the agreement and monitoring of its remit.

## Introduction

Consumers' Association (CA) welcomes the opportunity to comment on the BBC's submission regarding licence-funded digital television and radio services. We are pleased that DCMS has decided to call for comments under the new guidelines for assessing BBC public service proposals. CA has previously commented on the BBC's digital strategy in our submissions to the Davies Panel, to the DCMS consultation on the BBC Funding Review and, most recently, to the Government's Communications White Paper.

CA has not previously responded to this consultation due to resource restrictions, and the sheer difficulty of assessing the impact of the BBC's proposed channels on the broadcasting market. While we do not usually comment on matters of programme content or channel remit, CA considers it important that all consumers should have access to a choice of varied and high quality programming on both television and radio. Public service broadcasting plays an important role in this through competing to raise quality across the sector, addressing needs and groups which are not well served by the market, and through providing the sort of balanced mixed-schedule programming which is central to consumers' expectations of broadcasting

We have intervened at this stage because CA is concerned by the blurring of the approvals process with broader questions relating to public service broadcasting. The Corporation itself has exploited and contributed to this elision: implying that its role in providing public service broadcasting is uncontested; that it consistently delivers the quality of programming upon which its reputation and funding depends; that its proposals should be approved in order to achieve other public policy goals related to digital television; and that the future of public service broadcasting depends upon leaving the BBC alone and simply trusting it to deliver. The BBC has a key place in the ecology of PSB, but its role in providing leadership and addressing market failure must be guaranteed through ongoing external scrutiny and balanced with attention to the purpose and legitimacy of the license fee.

CA welcomed the tone of Tessa Jowell's first speech on broadcasting as Secretary of State for Culture Media and Sport, in which she suggested that 'BBC stations are often very good, but that is because they have to be'.<sup>1</sup> Her comments demonstrated an awareness that "raising the game" of the public service broadcasters is not a one-way process. Clearly commercial broadcasters have an role in innovation and standards-setting which is no longer distinct from the BBC's traditional role in "benchmarking" standards for public service broadcasting. Her speech makes it clear that the BBC can no longer be considered in isolation from the rest of the broadcast market, or as the sole guardian of the public service ethic.

CA's concerns relate to the extent to which new services fulfil and expand the BBC's remit, their effect on the wider broadcasting market, and the way in which the overall ecology of public service broadcasting is delivered and monitored. The BBC needs to demonstrate a renewed vision of publicly-funded broadcasting which gives purpose and legitimacy to its funding through the license fee (which CA supports) in a multi-channel age. This requires:

Assessment of the BBC's proposals on public service broadcasting in relation to its own services and the market as a whole.

Reforms to provide coherent and accountable control of the BBC within the overall ecology of public service broadcasting.

Balanced consideration of other policy objectives relating to public service broadcasting

CA believes that these objectives can only be achieved through bringing the regulation of the BBC within OFCOM. Far from undermining the BBC, CA believes that this is the only way to maintain its distinctive remit and funding.

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<sup>1</sup> Tessa Jowell speech 10<sup>th</sup> July 2001

## Assessing the BBC's proposals

CA welcomes the Secretary of State's confirmation of terms of reference for the approval of new services. CA argues that significant weight should be given to the performance of each proposed service against appropriate criteria, including:

- Whether or not the service has an public service objective
- Whether it contributes to the overall remit of the BBC
- What effect it would have on other services in the market
- Whether or not the service is already available in the market
- Whether it will maintain or improve quality
- Whether it will increase diversity, plurality and consumer choice
- Whether it will appeal to consumers to whom it is targeted

The purpose of these criteria is to provide a framework for scrutiny of the BBC's proposals. The approval process must be grounded in answers to these criteria rather than an assessment of the plausibility of the BBC's consultation process.

CA is not persuaded that the sole purpose of public service broadcasting by the BBC should be to address a very narrow definition of market failure. Market failure can be said to exist where there is no existing provision, but also where existing provision is not universally accessible and/or of high quality. Therefore just because a particular type of programming is provided elsewhere in the market, this alone should not prevent the BBC from launching services which have a clear public service objective. It has to be recognised, however, that the BBC has a significant effect on the broadcast market, so there needs to be a clear understanding of the public service objective for such services being offered by the BBC. CA is concerned that the BBC's proposals have failed to grapple with the question of where there is a public interest in duplication of market existing offerings on a free-to-air basis.

As CA has previously argued, 'we have to recognise that part of the reason why the BBC is given license fee income is so that it can actually pursue a different agenda from the other broadcasters. So, in a sense, although it will face (commercial) pressures, it does have a dedicated source of income that should safeguard it from those pressures'.<sup>2</sup> Tessa Jowell has herself suggested that 'there may be services where the target audience does not have the spending power to drive advertising revenues, or where the programming will be risk-taking in a way that the private sector wouldn't chance', which CA believes the BBC should provide.<sup>3</sup>

CA has argued on many occasions that any new BBC services should go beyond consistency with the current remit to deliver added value for consumers. This means that new services should avoid: duplication of existing BBC programming; dilution of the BBC's public service remit; or a decline in investment in existing terrestrial public service programming. We are also concerned by the possibility of "digital drift" particular elements of public service broadcasting may in future disappear from BBC1/BBC2 and/or prime scheduling - Panorama to BBC4 for instance - further impoverishing mixed-schedule broadcasting after analogue switch-off. While the BBC has undertaken not to move programmes in the short term, duplication and repeat showings are likely, and in the longer term it would make little sense not to move programmes to genre channels. Agreement on new services

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<sup>2</sup> CA evidence to Davies review 1999

<sup>3</sup> Tessa Jowell speech 10<sup>th</sup> July 2001

should be conditional on balancing detailed individual remits for all of the channels with delivery of the overall remit of the BBC, both of which should be binding.

## Regulating the BBC

The length of this consultation process alone has proved the impossibility of assessing BBC issues in isolation from the rest of the broadcasting sector. As we have previously argued, it must be recognised that viewers do not exclusively watch one channel, so broadcasting needs to be viewed holistically with all channels falling under the remit of an independent regulator.<sup>4</sup> Since the BBC itself suggests that its proposals do not simply duplicate existing offerings, there is a need to be adequate guarantees that the BBC will consistently deliver a quality of programming (and other factors such as domestic production) which the market does not. It is no longer sufficient to simply trust the BBC to both determine and deliver a coherent vision of public service broadcasting in a multi-channel age.

It makes little sense for the overall remit of the BBC to be subject to external – and ultimately political – scrutiny, if the remits of individual channels remain solely under the control of the Corporation itself. This is inconsistent both logically and practically, since the BBC's own proposals recognise that a move towards "genre/audience" channels will affect the remits of the existing channels, and that 'these new services will evolve over time' without further consultation or external agreement (unless required by the Secretary of State under section 1.6 of the terms of approval).<sup>5</sup>

This "digital drift" is likely to increase in the future, and the possibility of new services failing or significantly changing in character, makes it essential that new and existing service remits are agreed for individual channels as well as for the Corporation as a whole, in the light of the overall ecology of public service broadcasting. It is vital that rules relating to the measurable elements of content provision (e.g. news in primetime, regional production quotas) cover the BBC as well as commercial broadcasters. The precise obligations will differ between providers and over time, a principle which has already been established in the White Paper in relation to Channel 5 and ITV. The BBC therefore has little to fear from greater external scrutiny of these aspects of content regulation.

The statements process - whereby the less measurable elements of content provision such as plurality and quality are largely self-regulated - is a risk-free opportunity for the BBC to come under OFCOM's remit. This would allow the BBC to produce statements of programme policy – similar to the existing statement of promises – and report on its own performance. This would improve the coherence of regulatory oversight and the transparency of the process without undermining the independence or responsibilities of the governors to deliver on these good intentions.

While CA supports a distinctive and independent BBC, we are not convinced that the BBC's editorial independence depends upon, or is even a function of, the opaque and unaccountable way in which it is governed. The BBC governors are not required to independently scrutinise the Corporation's proposals in the wider interests of choice and diversity. CA has long held the view that the BBC should, along with all the other broadcasters, be answerable to an independent regulatory body.<sup>6</sup> The best guarantee of the future independence, distinctiveness and legitimacy of its funding is therefore to ensure adequate oversight within OFCOM. This would guarantee independence from political interference, a unique role within the overall PSB ecology and a guarantee of effective consumer representation.

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<sup>4</sup> Response to BBC charter debate 1996

<sup>5</sup> BBC additional information supplied to DCMS January 2001

<sup>6</sup> CA response to BBC statement of promises 1996

CA has previously expressed concern about the consultation procedures adopted by the Corporation, which have struck a rather unhappy compromise between a consultation and a questionnaire, designed to give a mandate to BBC proposals rather than exploring patterns of consumer demand.<sup>7</sup> As a shadow for OFCOM and a consumer representative on issues of economic regulation, the consumer panel needs to scrutinise the competition implications of content issues, including choice, access and pluralism. It should also have a remit to identify and address issues of market failure in public service broadcasting, which will be particularly important in identifying needs for future digital services. Its remit therefore has to include the BBC under OFCOM.

## Other public policy objectives

There is a need to rethink the BBC's role in achieving a wide range of public policy goals. The legitimacy of the BBC cannot be "shored-up" simply by linking the BBC's proposals to other objectives such as achieving analogue switch-off. We therefore do not support the link made by the BBC and other broadcasters between the proposed new services and the adoption of digital television. While research conducted by CA suggests that new free-to-air services are likely to attract consumers to adopt digital television, approval on these grounds would effectively be a "blank cheque" for any new digital BBC service.<sup>8</sup>

We therefore argue that the BBC's proposals should be considered on their own merits alone, according to the principles above and those set out by the previous Secretary of State. The BBC's proposals should not be agreed "on the nod" merely because they may appear to support an entirely separate policy objective, nor should the proposals be assessed on the basis of whether they are 'likely to drive digital take up, particularly by appealing to those sections of the audience reluctant to adopt digital television'.<sup>9</sup>

Related to this, we have previously argued that since the BBC received a generous license fee settlement to fund digital services, all new BBC channels that are allowed to proceed should be "must carry" channels on all platforms. This underscores the importance of a rigorous and transparent consideration of the merits of the channels, and their impact on the overall ecology of broadcasting. It also highlights the importance of the requirement that new digital services should not adversely effect investment or scheduling of analogue services, since CA research suggests that as many as 50% of consumers will not have access to digital equipment when the new services are launched<sup>10</sup>.

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<sup>7</sup> CA evidence to Davies review 1999

<sup>8</sup> CA research on consumer attitudes to digital television "Turn on, tune in, switch off" March 2001

<sup>9</sup> ITV network response to BBC proposals March 2001

<sup>10</sup> CA research on consumer attitudes to digital television "Turn on, tune in, switch off" March 2001