

Responses to the Communications White Paper

Executive Summary

March 2001

**David Graham & Associates
33-39 Bridge Street
Taunton
TA1 1TP**

**Tel: +44 1823 322829, Fax: +44 1823 323093
email: consultancy@dganet.co.uk
web: www.dganet.co.uk**

Contents

Contents	2
Introduction.....	3
Summary of Responses to the White Paper.....	6
Chapter One—The Government’s Vision and Objectives	6
Chapter Two—Creating a Dynamic Market	7
Chapter Three—Ensuring Universal Access	10
Chapter Four—Maintaining Diversity and Plurality.....	11
Chapter Five—Securing Quality.....	15
Chapter Six—Safeguarding the Interests of Citizens	17
Chapter Seven—Protecting the Interests of Consumers	19
Chapter Eight—The New Organisational Framework	20
Chapter Nine—The Process for Implementation	24
APPENDIX ONE	25
Statistical Tables	25
APPENDIX TWO.....	29
Respondents to the White Paper.....	30

Introduction

- ◆ The Communications White Paper *A New Future for Communications* was published by the *DTI* and *DCMS* in December 2000. Comments were invited from interested parties, with a closing date for responses set for 12 February 2001.
- ◆ At the time of writing, 252 organisations and individuals (listed in Appendix Two) have submitted responses to the White Paper, and more than 6,000 letters and e-mail messages have been received as part of a campaign in support of Christian broadcasting. Overall, the general thrust of the White Paper was received warmly by almost all respondents, with the overwhelming majority expressing support for the establishment of *OFCOM*.
- ◆ This report offers a short-form summary of the issues addressed in the responses, along with a brief statistical overview of the pattern of response. Given the degree of compression involved, readers are encouraged to refer to the long-form summary report and copies of the responses themselves available on the Communications White Paper website:

www.communicationswhitepaper.gov.uk.

- ◆ Furthermore, references to individual responses included in footnotes should be seen as being indicative rather than exhaustive; as, in many cases, the inclusion of all the overlapping references would have made the document unwieldy. Some references have also been omitted to protect the identity of confidential respondents.
- ◆ In preparing the Executive Summary, we have broken down the key elements of each response into discrete summary paragraphs and linked each paragraph to the specific section(s) of the White Paper to which it refers. The charts (on page 5 and in Appendix One) summarise the types of respondents and their foci of interest.¹ The first chart (Figure 1, on page 5) offers a schematic view of the main points addressed by the submissions from the different types of respondents. The numbers on the grid in Figure 1 represent the total count of paragraphs linked to each section of the White Paper (shown along the top row of the grid). The colours provide a visual guide to the intensity of response to each section from each category of respondent (identified in the left hand column), with a blue to red scale indicating an increasing intensity of interest.
- ◆ Thus, for example, respondents grouped together in the broadcasting category addressed a relatively high number of comments to Section 5.06—on the *First Tier* of regulation—and a relatively low number to Section 7.3—*Action on Service Delivery*. The colours also highlight variations in interest between different types of respondent—as illustrated, for example, in the contrasting intensities of response to Chapter Four from the broadcasting and telecommunications groups.
- ◆ Figure 2 (in Appendix One) shows the numbers of responding organisations in each respondent category, with broadcasting organisations (including TV and

¹ For ease of presentation, an illustrative selection of fifty of the individual responses in support of Christian broadcasting have been included in the analysis shown here.

Radio) the most frequent type of respondent, followed by individuals, trade associations and religious organisations.

- ◆ Figure 3 and Figure 4 (in Appendix One) chart the overall distribution of comments by White Paper chapter and section. They reveal that Chapters Four (*Maintaining Diversity and Plurality*), Eight (*The New Organisational Framework*) and Five (*Securing Quality*) and Sections 5.6 (*First Tier*), 4.5 (*Community Broadcasting*), 4.9 (*Amending Ownership Disqualifications*), 4.4 (*Meeting the Needs of Different Communities*), 3.3 (*Universal Availability of Public Service Television Channels Before and After Digital Switchover*) and 8.3 (*The New Regulator*) attracted the highest levels of comment.

Summary of Responses to the White Paper

Chapter One—The Government’s Vision and Objectives

1. The vast majority of respondents indicated broad agreement with the Government’s desire to make the UK home to the most dynamic and competitive communications and media market in the world, to ensure universal access to a choice of diverse services of the highest quality and to ensure that citizens and consumers are safeguarded.
2. However, *MCI Worldcom* highlighted tension between the first and third objectives, observing that the short-term consumer protection initiatives have the potential to undermine the longer-term competition goals and thereby risk damaging long-term consumer interests. Several proposals to counter this were put forward, including clarifying that the third objective addresses the long-term interests of consumers.² *Kingston Communications* suggested stating explicitly that **consumer interests** should be safeguarded primarily through the pursuit and achievement of genuinely **competitive markets**. The problems experienced with local loop unbundling were cited as an example of what can happen when regulatory attention slips from the promotion of competition and long-term consumer interests.³
3. Some felt that the **vision** embodied in the White Paper was too conservative and insufficiently deregulatory,⁴ arguing that it failed to take due account of the likely pace of change over the next 3–5 years⁵ and the probable decline in the importance of traditional broadcasting.⁶ Several respondents argued that the White Paper was broadcast-centric, favouring the short-term commercial and institutional interests of existing broadcasters at the expense of the telecommunications industry, network operators, internet service providers [ISPs], the facilities industry and print-based companies.⁷ The *British Internet Publishers Alliance* argued that it obscured the essential differences between publishing and broadcasting, and side-stepped discussion of the open architectural nature of the internet. Content creators also registered concern at the lack of attention paid to protecting intellectual property rights and incentivising their creators.⁸
4. In a different vein, other respondents criticised the White Paper for promoting industrial policy goals ahead of the social goals of access, diversity and

² *The Operators’ Group, Marconi, Viatel.*

³ *Video Networks, Kingston Communications.*

⁴ *BT Cellnet, One 2 One, Associated Newspapers, Capital Radio, Marconi, Trinity Mirror, SMG.*

⁵ *AOL UK, The Operators’ Group, Blencathra Productions.*

⁶ *ICL, Telewest.*

⁷ *BT Cellnet, NTL, Trinity Mirror, Reuters, Welsh Advisory Committee on Telecommunications.*

⁸ *British Music Rights, PACT, The Federation of Entertainment Unions, British Phonographic Industry, Musicians’ Union.*

plurality⁹. *The Evangelical Alliance* believed that the White Paper takes too sanguine a view about the social cohesiveness of new technology.

Chapter Two—Creating a Dynamic Market

5. Most respondents welcomed the proposal to give *OFCOM* **concurrent powers** with the *OFT* to exercise Competition Act powers for the communications sector. The *OFT* suggested a possible split of responsibilities on concurrency issues along the following broad lines:

a. ***OFCOM***:

- i. Telecoms network and services (including apparatus) and their substitutes and the services required to provide such.
- ii. Commercial broadcast programme issues to include independent productions, provision of channels and programming e.g. *BSkyB* at wholesale and retail level.
- iii. Conditional access, electronic programme guides [EPGs], and other gateways to broadcast content.

b. ***OFT***:

- i. Computer software and services (e.g. hosting).
- ii. Consumer facing content which may be in the same market as “old economy” services and goods (e.g. business to consumer [B2C] and business to business [B2B] e-commerce portals).
- iii. Rights ownership, such as sports rights—i.e. not the programming itself but the deals that involve ownership rights that may cover a range of activities, some of which may ultimately lead to programming.

6. However, a substantial minority argued that **economic regulation** should be devolved solely to the *OFT*.¹⁰ Doubts were expressed about whether *OFCOM* would be able to operate efficiently as a competition authority given that 1) *OFTEL* has struggled to employ its concurrent powers effectively and tended to fall back on its sector-specific powers as an easier and lower-cost option and 2) that *OFCOM* was likely to find its decision-making powers clouded by other duties or political pressures.¹¹ *Vodafone* suggested that, if *OFCOM* is given concurrent powers, the *OFT* should remain the senior partner and should ensure that *OFCOM*'s approach to competition matters remains consistent with the approach used for other sectors. Furthermore, it suggested that as competitive forces strengthen within the communications sector, responsibility for economic regulation should progressively shift from *OFCOM* to the *OFT* leaving only residual sectoral responsibilities within the ambit of *OFCOM*.

⁹ *Sheffield Hallam University, AHRB Centre for British Film and Television Studies, Campaign for Press and Broadcasting Freedom, Catholic Bishops' Conference of England and Wales.*

¹⁰ *Reuters, Energis, The Operators' Group.*

¹¹ *The Operators' Group, Viatel, NTL.*

7. The proposals to give *OFCOM* additional **sector specific powers** were widely applauded, with most respondents concluding that the need for *ex ante* regulation of incumbents remains strong.¹² Several emphasised the need for *OFCOM*'s powers to embrace Article 81 infringements as well as significant market power [SMP], and the *Satellite and Cable Broadcasters' Group* argued that the definition of SMP should encompass the *BBC*. The *BBC* urged the Government to work to ensure that European legislation leaves *OFCOM* free to intervene in cases where vertically-integrated firms enjoy a degree of market power and benefit from significant consumer switching costs, with the *ITC* suggesting that *OFCOM* should be given a statutory duty to reduce barriers to entry and consumer switching costs. *Carlton Communications* argued that sector specific regulation should be progressively reduced as competition increases.
8. The majority of companies emphasised the need for the sector specific powers to be counterbalanced by **forbearance** and a **lighter regulatory touch**,¹³ and welcomed the commitments to regulatory impact assessments, periodical reviews and the introduction of sunset clauses.¹⁴ The importance of maintaining technology/platform neutrality was also stressed—with *Kingston Communications* noting by way of example that the *BSkyB* ratecard does not apply to Digital Subscriber Line [DSL]/ Digital Terrestrial Television [DTT]. *BT Cellnet* believed that *OFCOM* should not be granted powers to levy fines in respect of regulatory breaches, as fines could already be levied via action under the Competition Act.
9. *Vodafone* suggested that meaningful international **benchmarks** should be developed covering the impact of regulation and the performance of the market and that these should be reviewed periodically. It believes that it would be possible to create an "index of regulatory burden" comparing key regulatory facts such as: time since the market deregulated; attractiveness of country and industry for investment purposes; cost of regulatory activities on industry and consumers; consumer experience (service take-up, price trends, quality of service); and an index of market concentration.
10. The commercial public service broadcasters welcomed the application of *OFCOM*'s powers to the regulation of **electronic programme guides**.¹⁵ The *ITV Network* asserted that EPGs should be incorporated in European legislation as regulated gateways, and that *OFCOM* should be given the ability to regulate the technical aspects of the gateway for personal video recorders [PVRs] (e.g. algorithms and hard disc space) to ensure fair, reasonable access. *Channel 4* proposed that consideration should be given to new genre headings including, for example, a separate category for new channels during their first twelve months of operation and adequate signposting for channels with a particular public service value such as education. However, *Associated Newspapers* expressed concern about the extension of the EPG rules to similar new systems and *NTL* challenged the Government to produce evidence that there are competition problems associated with the EPGs—as opposed to the Government using EPG's to further "due prominence" for the public service broadcasters [PSBs]. *Intelfax* suggested that

¹² *Association of Communication Service Providers, Kingston Communications, PACT.*

¹³ *BT, Granada.*

¹⁴ *BT Cellnet, Channel 4.*

¹⁵ *BBC, Channel 4, ITV Network, Granada, Channel 5, S4C, Teletext.*

the Government should consider establishing a franchise for the independent design, production, delivery and management of a cross platform EPG to ensure an impartial approach.

11. The White Paper proposals for **spectrum management** were generally welcomed, though typically with requests for further clarification and consultation. Amongst the opposing views, the *Broadband Wireless Association* thought that market based spectrum management will fail because the market can only work on existing knowledge and revenue streams, and the *Campaign for Press and Broadcasting Freedom* pressed the case for a spectrum licensing system shaped by broader public interests. *Channel 4* responded warmly to the suggestion that its existing remits and licence payments would be taken into account in valuation of the spectrum, while other public service broadcasters warned that any additional payments would result in funds being diverted away from programming and other services.¹⁶ In a similar vein, the *Commercial Radio Companies Association* emphasised the value of service format promises and the diversity of choice they offer to listeners. *BT Cellnet* argued that the spectrum release strategy needs to be integrated more into the international context. *The Spectrum Management Advisory Group* believed that safeguards for maximizing the optimal use of UK spectrum should be put in place, that private users of spectrum need to be considered, and that content and infrastructure industries should be dealt with separately.
12. Mixed views were expressed about the allocation of **spectrum to community media** in the run up to digital switchover and beyond. Many groups expressed strong support for this, although *Granada* and *ONdigital* cautioned that this should not disrupt plans for DTT roll-out. Others pressed the Government to set out clearer plans for the transition to **digital switchover**.¹⁷ Two respondents sought assurances that satellite spectrum would be brought within the framework;¹⁸ although one respondent asserted that it would not be possible to introduce spectrum trading for pan-European, transborder services. The *Federation of the Electronics Industry* expressed concern that the new organisational arrangements should not lead to any diminution in the UK's influence in the international spectrum policy negotiations and that this responsibility should remain at ministerial level.
13. The White Paper commitments to **health** and **environmental issues** were generally supported, although a number of companies qualified this with concern that public fears were beginning to impact on roll-out of mobile telecommunications masts and cable networks.¹⁹ *Crown Castle International* suggested the establishment of a new health and safety certification body for telecommunications operators and infrastructure providers to educate the public and instil greater public confidence in communications developments.

¹⁶ *BBC, S4C.*

¹⁷ *ITV Network, ONdigital, Digital 3 And 4, SDN.*

¹⁸ *ITV, ONdigital.*

¹⁹ *BT Cellnet, Vodafone, NTL, Crown Castle International, The Operators' Group.*

Chapter Three—Ensuring Universal Access

14. The proposal to ensure that the **public service TV** channels are available to everyone free at the point of consumption, both before and after the switchover to digital television, received almost universal assent. However, various concerns percolated through this.
15. Several respondents commented on the lack of detail in the White Paper regarding the **switchover to digital** and urged the Government to set out a more precise timescale for the switchover. Two respondents warned of conflict between the objective of switchover by 2006-2010 and the current rate of progress towards this and suggested that the 2002 Communications Act should have a clear goal to facilitate and promote the switchover to competitive digital services.²⁰ *BREMA* called for the appointment of a digital Czar to drive forward the deployment of digital television and pressed the Government to ensure that every reasonable attempt should be made to extend DTT coverage to guarantee platform neutrality at time of switchover. It also stated that its members need clarification of the Government's approach to digital switchover to ensure the right products are available to meet the envisaged timescale. *Carlton Communications* called for the introduction of a kite-marking scheme for digital television sets, and the DTT operators asked for Government commitment to extend DTT coverage and capacity using the additional spectrum that will be released on switchover. *Dr Windsor Holden* worried that insufficient attention had been paid to elderly members of the public in plans for digital switchover.
16. Although the proposal to ensure the **carriage of public service channels** over cable and satellite was broadly welcomed, the public service broadcasters [PSBs] worried about the manner in which this was to be achieved. *Channel 4*, *Channel 5*, *Carlton Communications* and *Granada* expressed concern that universal carriage was to be secured by further obligations imposed on PSBs rather than corresponding obligations on platform operators. In particular, it was argued, that imposing a "must offer" obligation for PSBs, without making a "must carry" obligation for satellite platform operators would undermine the ability of the PSBs to negotiate carriage on satellite at fair and reasonable terms and leave them unprotected against unilateral increases in conditional access charges. The *BBC* also worried that the obligation on conditional access operators to offer fair, reasonable and non-discriminatory access would not be sufficient to ensure that PSBs would be offered all the facilities they require to meet their obligation to reach their customers. *Carlton Communications* argued that conditional access to satellite for the PSBs should be charged at cost.
17. Several respondents believed the assertion of **due prominence** for PSB channels would be distortive and anti-competitive.²¹ *Turner Broadcasting System Europe* also indicated concerns that new "must carry" public service channels might threaten to swamp available television platform capacity. *Reuters* believes that a review is needed to ensure that traditional news access rights are maintained and strengthened.

²⁰ *ITV, ONdigital.*

²¹ *Satellite and Cable Broadcasters' Group, Telewest.*

18. *SMG* felt that the principle of **widest access to commercial radio** presents a case for candidates to be evaluated when spare spectrum is identified on the FM band. The *Commercial Radio Companies Association* hoped the Government would ensure sufficient spectrum is made available to enable commercial stations to provide services via digital terrestrial transmission.
19. The **universal service fund** proposal was welcomed by many respondents. However, one respondent argued against this, believing it would act as a disincentive to entering and operating in the UK communications market. *Kingston Communications* suggested all telephony should be taken into account when assessing penetration, and thought that it should be able to exclude those with mobile phones from universal service obligations. It also argued that designated operators should only be obliged to provide services to those without bad debt.
20. The proposal of ensuring **universal access to the internet** by 2005 was generally welcomed, but many respondents felt that the term “universal access” was too vague. Consumer groups also expressed concern that cost of access could prove a barrier to internet usage rather than physical availability. Several respondents advocated the use of set-top boxes and Web TV to provide economical internet access,²² but *ICL* saw such devices as a poor substitute for a PC connection.
21. Respondents generally supported the **promotion of higher bandwidth services**. However, some argued that competitive market forces are making steady progress towards delivering affordable broadband services, and saw no need for regulatory intervention. Against this, the *CSSA* identified a risk that the goal of universal access to high bandwidth connectivity could be lost amid regulatory flux, and called for the introduction of a Broadband Universal Service Obligation if the pace of change fell below an acceptable level.

Chapter Four—Maintaining Diversity and Plurality

22. While the majority of respondents were in favour of retaining the **independent production quota** in some form, most of them agreed that certain aspects of the current definitions were becoming impractical. *Granada* proposed that production companies should be classed as independents for commissions for broadcasters with whom they have no links, a concept mirrored in responses from *RTL Group*, *Carlton Communications* and the *ITV Network*. *ITV* argued that, at the very least, independent status should be attached to programmes at the point of commission instead of the point of production. *SMG* believed the definition of independent should be expanded to include companies with minority stakes in broadcasters. *PACT* agreed that the quota should be seen as a short-term measure, but noted that while quotas have led to more price and creative competition, they have not led to the establishment of secure and well-capitalised independent production companies. It believes that specific competition regulation of the programme supply market would achieve this. *PACT* offered qualified support to the majority of proposals from the *Out of the*

²² *Microsoft, ONdigital, Kingston Communications.*

*Box*²³ report but rejected the proposition that broadcasters should be free to choose for the independent production quota to be applied globally across their fully owned channels and doubted whether the proposal to increase the maximum permissible investment by a broadcaster in an independent company to 49% would have a significant impact on the sector.

23. There was strong support for the commitment to meeting the **needs of different communities** and cultural interests and for **regional production**. *Harold Wilson* argued that the achievement of cultural diversity goals depends heavily on greater access to commissioning and production—a view echoed by the *Access Media Alliance*. The proposal to require *OFCOM* to carry out (and publish) a review of the regional obligations in each *ITV* licence whenever its ownership changes, and allow it to amend licence conditions to meet any concerns arising, was questioned by *ITV* and *Granada*. *ITV* argued that it was inconsistent with the proposals for existing quantitative licence conditions to be replaced by new Tier Three arrangements, and *Granada* challenged the implication that consolidation of the *ITV* companies would undermine the quality of the regional service. Seven respondents called for the provision of a Gaelic language television channel,²⁴ and *Scottish Screen* proposed that the new *BBC4* channel, along with one of the daytime children’s channels should be run and commissioned from Scotland. The latter also suggested that *BBC Online* should be transferred to Scotland.
24. The *Radio Authority* confirmed its support for the establishment of a separate sector of **Access Radio**, on the grounds that such a move would best serve the objectives of enhanced diversity of format, plurality of voice, greater public participation and closer identification of non-established radio with schemes for social inclusion and regeneration. This view was echoed by the *Community Media Association [CMA]*, which argued that the new licence category of community radio should operate on public service principles and be *de facto* and *de jure* non-profit distributing. The *CMA* also recommended that the remaining frequencies in the FM and AM bands should be reserved primarily for community radio services with sufficient power to cover editorially recognisable communities, ensuring community radio guaranteed an affordable access to a digital sound broadcasting platform on digital audio broadcasting [DAB] or digital AM [DRM].
25. While the majority of respondents were generally supportive of measures to promote community broadcasting, the question of **funding** was more controversial. The *CMA* argued that community media should be able to raise funds from a variety of sources including advertising and sponsorship and urged the Government to establish a *Community Media Fund* to support development of this sector. These sentiments were echoed by various respondents,²⁵ but the

²³ *A report for the Department for Culture Media and Sport by David Graham & Associates, December 2000.*

²⁴ *Comhairle Nan Eilean Siar, Comunn na Gaidhlig, Gaelic Broadcasting Committee, Sabhal Mor Ostaig Board of Trustees, SDN, Scottish Subcommittee for the European Bureau for Lesser Used Languages, Alasdair MacCaluim.*

²⁵ *Community Media Association, CTVC, Churches Advisory Council for Local Broadcasting, Revival, Martin Spencer, Solo.net, Essex Campaign for Local Radio.*

commercial radio operators, while acknowledging basic support for the concept of Access Radio, emphasised that their support was conditional on the sector genuinely adding to diversity of choice and not drawing on commercial funding of any sort.²⁶ The *Radio Authority* emphasised that Access Radio should not be set up as a potential competitor to Independent Local Radio, indicating that it favoured a combination of commercial support—though from local sponsorship not spot advertising—and public funding via the Radio Fund—which would draw revenue from a variety of sources, including Lottery, Charitable and European funds and the cash bids and the percentage of qualifying revenue paid by independent national radio licensees. The *Radio Authority* also cautioned against allowing local authorities to fund local broadcasting in an unmediated way because of the ever-present risks of undue political influence and interference. *The Media Trust* urged the Government to establish a Digital Diversity Fund to ensure social investment in new forms of public service media, and asked that part of UK owned spectrum be set aside to help new public service initiatives take root.

26. The *Local Broadcasting Group* contended that the White Paper fails to resolve the shortcomings of the existing system of **frequency allocation for Restricted Service Licences** [RSLs], and asked the Government to reconsider its spectrum planning to afford a higher priority to RSL frequencies. *Channel M* urged the extension of RSL analogue licences to eight years, or until digital switchover is complete. Several respondents²⁷ also believed that the introduction of local channels could supplement regional *ITV* limitations and, if properly supported, could provide an alternative to regional opt-outs from the *BBC* and *ITV*. However, *Granada* and *ITV* argued that DTT's priority over RSLs needs to be asserted, and that the further development of RSLs should not be allowed to hinder progress towards digital switchover. The creation of longer term RSLs for “very” local radio stations was also advocated.²⁸
27. Most respondents welcomed the correction of the anomaly regarding **ownership of radio licences by religious bodies**, but the issue of ownership of a national licence produced strong divisions. Numerous respondents favoured a relaxation of the ban on **national Christian broadcasting**,²⁹ and over 6,000 people submitted letters and e-mail messages in support of the campaign for change. Another group of respondents, including the *Church of England* and the *Church of Ireland*, argued that the ban should be maintained,³⁰ while others saw no objections to a genuinely multi-faith national licence.³¹ *Julian Shellard* regretted the lack of risk and cost-benefit analysis on the issues associated with the relaxation of the ban. The majority of respondents commenting on this section of the White Paper agreed, though, that the question of religious ownership and

²⁶ *Commercial Radio Companies Association, Capital Radio, Emap Performance.*

²⁷ *Channel M, Guardian Media Group, Local Broadcasting Group.*

²⁸ *Michael Wallbank.*

²⁹ *Cross Rhythms Radio, United Christian Broadcasters, Rt Hon David Trimble MP MLA, Revival, The Christian Institute, CARE, Church of Scotland, World Association of Christian Radio Amateurs and Listeners, Three Angels Broadcasting Network, The Evangelization Society.*

³⁰ *Church of England, Church of Ireland, General Synod Broadcasting Committee, Scottish Episcopal Church.*

³¹ *The Radio Authority, Society of Friends.*

channel take up should not affect the presence of religious material within the main public service remit, and considerable concern was expressed about the decline in religious programming on mainstream television and radio.³²

28. Some respondents supported share of voice measures in assessing **cross-media ownership**³³ while others believed them to be flawed³⁴ and *Dr Petros Iosifidis* suggested combining them with revenue-based units. Several respondents proposed a relaxation of local ownership rules, with one suggesting that, in any local market, listeners should have access to at least three different sources of local news and information. Formulae with sliding scales for the number of stations that could be owned by one operator were also proposed.³⁵ *Lord Gordon of Strathblane* observed that plurality of ownership of local radio stations may in fact reduce diversity of output, whereas the *Essex Campaign for Local Radio* argued that consolidation of ownership increases network and automation resulting in a loss of localness in programming. Several respondents contrasted the maintenance of the rules for radio with the apparent relaxation of rules on consolidation of *ITV*, arguing that restrictions on the ownership of analogue radio services and digital multiplex licences were best left to general competition law.³⁶ The *Consumers' Association* suggested that *OFCOM* should require proposals for media mergers or takeovers to demonstrate how plurality and diversity will be maintained, and *David Hutchison* of *Glasgow Caledonian University* argued that the parties involved should be required to demonstrate how consolidation would enhance the public interest.
29. Some respondents indicated support for maintaining the current rules restricting **ownership of terrestrial broadcast outlets by newspaper interests** with 20% or greater of the national newspaper marketplace.³⁷ Others thought that newspaper mergers should be treated in the same way as all other mergers and not be subject to mandatory reference, and argued that the abolition of a requirement for written prior consent from the Secretary of State disadvantages trade purchasers in auction sales.³⁸ Several respondents believed that the 20% ownership limit level on the **ITV nominated news provider** should be removed.³⁹
30. *Carlton Communications* and *Granada* welcomed plans to allow further consolidation on *ITV*, urging the Government to remove the licensing and advertising sales restrictions that prevent the integration of *GMTV* within *ITV*. However, *Channel 5* expressed doubt about the plan to revoke the rule preventing a single body holding both **London ITV licences** on the grounds that this would lead to the erosion of fair competition in the market for commercial airtime, while *Channel 4* was concerned that limits on shares of advertising markets were not being given sufficient attention in plans to allow consolidation in *ITV*. *Channel 5* also recommended the imposition of a 50% limit

³² *Bishop of Wakefield, Jerusalem Productions, Church of England Diocese of Carlisle, Church of Scotland, Nigel Holmes.*

³³ *Broadcasting Standards Commission, Capital Radio, Associated Newspapers, DMGT.*

³⁴ *Professor Steven Barnett, Carlton Communications.*

³⁵ *Radio Authority, GWR Group, Voice FM.*

³⁶ *Capital Radio, GWR Group, DMGT.*

³⁷ *BBC, BECTU.*

³⁸ *Associated Newspapers, Newspaper Society, SMG, Trinity Mirror.*

³⁹ *Carlton Communications, Granada, Teletext.*

on net advertising revenue [NAR] for any one sales house in the UK market and that there should not be joint sale of the two London *ITV* franchises. Some respondents felt that cross-media ownership restrictions should pay close attention to share of advertising revenue to ensure fair and effective competition in the market for advertising time and space, and should take regional analysis into consideration as well.

Chapter Five—Securing Quality

31. Few voices disagreed with the central proposition that there remains a key role for **public service broadcasting** in ensuring universal access to high quality services for some time to come, and most welcomed the general approach to this role set out in the White Paper. The *Voice of the Listener and Viewer* suspected that the regulatory framework of the type proposed is open to abuse by both *OFCOM* and the broadcasters and suggested that the **second** and **third tiers** should be merged to bolster the broadcasters' qualitative public service obligations—a view shared broadly by the *Campaign for Press and Broadcasting Freedom*. The *National Consumer Council* indicated that the White Paper is overly optimistic about the extent to which diversity will be provided in the future. *Public Voice* believed that, in the absence of a clear definition of public service broadcasting enshrined in legislation, the loose regulatory regime would undermine public interest objectives. The *Consumers' Association* argued that tier one provisions should be extended to include consumer redress, complaint handling and the monitoring of tariffs. With reference to the third tier, the *National Union of Journalists* observed that no clear explanation had been offered as to why substituting a system of self-regulation based on statements of intent will deliver a better outcome than formal licence requirements.
32. *ONdigital* suggested that broadcasters and content providers should be able to appeal against the **tier of regulation** into which they fall, and *Digital 3 And 4* noted that the tier structure sits more sensibly at channel rather than broadcaster level—and at the service level in the case of tiers two and three. *Granada* argued that any reduction in *Channel 5's* licence requirements should be mirrored in those of *ITV* and that there was a good case for increasing *Channel 5's* PSB obligations. It also expressed concern that *OFCOM's* backstop powers could allow the new regulatory regime to become more rather than less intrusive. Several respondents asked the Government to clarify whether it intends to strengthen or relax *Channel 5's* PSB obligations.⁴⁰
33. There was widespread support for the proposal against the **privatisation of Channel 4**⁴¹ and also for making *Channel 4's* remit more positive.⁴² However, *Sheffield Hallam University* suggested that the intention and effect would be to dilute the channel's PSB requirements. *Professor Porter* believed that the quantifiable and qualitative issues would be harder to separate in practice than anticipated and that clear definitions of independent, original and regional productions would be needed. *Public Voice* argued that **tier two** must include

⁴⁰ *NCC, Professor Porter, Sheffield Hallam University.*

⁴¹ *BECTU, FEU, NUJ, Religious Society of Friends, Professor Porter, Lois Singer, Cabinet of the National Assembly of Wales, Musicians' Union.*

⁴² *ITC, NCC, BECTU, Granada, ITC, Telewest.*

specific requirements for independent productions and original productions, allocation of resources for regional productions and provision of news at peak time on all free-to-air mainstream channels. *NTL* doubted whether the “pick and mix” approach proposed for obligations in the second and third tiers is legally permissible in a framework that is intended to be transparent and non-discriminatory. The *Federation of Electronic Industries* worried that too many obligations placed on industry might stunt its growth.

34. Many respondents⁴³ considered that the White Paper was ambivalent as to whether the internet should, or should not, be regulated. Several respondents warned of a risk of discrimination against broadcasters developing services in this area,⁴⁴ and felt that the distinction between **tier one** and **tier zero** was artificial. The *Federation of the Electronics Industry* expressed concern that unnecessary **regulation of the internet** could hinder British trading. *Microsoft* warned that over-zealous regulation could result in the development of off-shore internet services, thereby damaging the objective of making the UK home to the most dynamic and competitive communications market in the world.
35. There was strong cross-sector support for the argument that **OFCOM’s powers should fully embrace the BBC**,⁴⁵ though there were a few dissenting voices.⁴⁶ *Associated Newspapers* felt that, if this was not possible now, the Government should indicate its intention to reconsider this issue as part of the Charter review in 2006. Similarly, *Granada* argued that if the *BBC* Governors were to retain their regulatory function, *OFCOM* should act as their independent secretariat. *Barry Cox* suggested that *OFCOM* should be put on the same footing with regard to the Secretary of State’s backstop powers over the *BBC* Governors and *BBC*’s delivery of its remit, noting that formal comment by *OFCOM* would be less open to the charge of unwarranted political influence.
36. Several positive comments were made with regard to the **lightening of format controls** and the maintenance of the **local nature of independent radio**. However, some respondents expressed concern about changes in format controls and would have preferred a clearer statement of intent.⁴⁷ The *NUJ* worried that the provision of news services might be weakened as a result of these changes. The *Federation of Entertainment Unions* believed there should be no further relaxation of regulation in commercial radio.
37. The *BBC* welcomed moves to raise **training standards** but sought clarification as to whether these would apply to them. *PACT* felt that requirements for training should be more stringent in proportion to the level of PSB obligations, and the *Broadband Wireless Association* emphasised that training will be vital during digital switchover. *Turner Broadcasting Systems Europe* argued that the training

⁴³ *Associated Newspapers, BBFC, the Campaign for Press and Broadcasting Freedom and the Satellite and Cable Broadcasters Group.*

⁴⁴ *Channel 4, Satellite and Cable Broadcasters Group.*

⁴⁵ *Broadcasting Standards Commission, BIPA, Capital Radio, Carlton Communications, Channel 4, Consumers’ Association, Emap Performance, ITV Network, Satellite and Cable Broadcasters Group, IPC Media, CTVC, The Wireless Group, Teletext, Third World & Environment Broadcasting Project, Granada, IPA, NCC, CRCA, SMG Radio, Jerusalem Productions.*

⁴⁶ *Voice of the Listener and Viewer, Professor Steven Barnett, George Trefgarne, Musicians’ Union.*

⁴⁷ *British Federation of Women Graduates, BECTU.*

obligations and the levels of subtitling, sign language and audio description proposed were out of synch with the White Paper's commitment to a minimum level of regulation.

Chapter Six—Safeguarding the Interests of Citizens

38. Proposals relating to the establishment of high level principles and objectives for the **regulation of broadcasting content** received widespread support—with many respondents from religious groups suggesting that there has been a general decline in broadcasting taste and decency standards. However, a few qualifications were registered. The *Broadcasting Standards Commission* believed that accuracy and impartiality are essential rather than desirable. There was also felt to be a need for clarification regarding “generally accepted community standards”, with a sense that these may vary depending on the community addressed.⁴⁸
39. Strong concerns were expressed that *OFCOM's* regulation of all electronic media would represent a significant **expansion of the current regulatory regime**, posing a threat to freedom of expression.⁴⁹ While acknowledging references to self-regulatory frameworks for internet content, most of the respondents who commented on this area strongly opposed bringing internet and broadcasting under the same overall regulatory umbrella, because the current mix of reliance on law and self-regulation is working satisfactorily without the existence of a Government content agency and because the move would open up the possibility of regulatory creep.⁵⁰ The *Periodical Publishers' Association* argued that regulation of the internet should follow the “print model” style of self-regulation. *News International* concurred that the current system of self-regulation should be maintained, and *BIPA* contended that it would be wrong in principle to give *OFCOM* powers of regulation in respect of material published online that would not be so regulated offline. *The Newspaper Society* noted that no new statutory controls were required as the existing law is sufficient to regulate the internet. *UKIV* offered a counter view, arguing that all viewable material should be brought into line with current UK TV broadcasting standards. *Kingston Communications* called for clarification to the industry on the operation of “notice and take down” procedures.
40. There were no strong disagreements with the proposed approaches to **commissioning independent research** and setting up of bodies to reflect the **public interest**. The *Campaign for Press and Broadcasting Freedom* recommended the establishment of an independent *Communications Research Institute* to promote research that progresses public interest in mass communications. *Public Voice* suggested the introduction of an independent citizenship advisory panel working with *OFCOM* to monitor both content and service delivery in the public interest. The *Satellite and Cable Broadcasters Group* thought that research would require significant resource and *OFCOM* should be obliged to conduct research on a transparent and public basis in contrast to the current *ITC* approach. The *BBFC*

⁴⁸ *BSC, Mediamarch, Flame FM and Channel 4.*

⁴⁹ *News International, George Trefgarne, Professor Porter, Reuters.*

⁵⁰ *AOL UK, ISPA, Reuters.*

would welcome an appeals body that would arbitrate on unresolved public complaints and suggested that rating and filtering systems will need to be built into the research requirement. *Broadcasting Support Services* argued that programme support is a key element of public service broadcasting and a force for social inclusion and needs to be protected.

41. Numerous respondents commented, and sought further clarification, on the **handling of complaints**. Many supported the proposal that complaints should be made directly to *OFCOM*. *CARE* argued for the retention of a body independent of service providers to whom consumers can turn. *Channel 5* stressed that care must be taken to ensure true representation and would like clarification as to how *OFCOM* would handle complaints, together with an outline of the action *OFCOM* will take when a broadcaster deals with a complaint quickly but not to the satisfaction of the complainant. The *Communications Management Association* emphasised that *OFCOM*'s interface with external bodies such as the *ASA* must be both seamless and effective. *GOD Digital* thought that in the first instance, complaints should be taken to the broadcaster concerned, and that *OFCOM* should have the right to approve and monitor the **complaints procedures** used by broadcasters and others. The *ITC* believed that *OFCOM* should have powers to set reasonable deadlines for the processing of complaints by broadcasters, and to review the structures broadcasters use for dealing with complaints. The *BBC* saw no rationale for treating complaints relating to invasion of privacy differently than other tier one matters on which *OFCOM* is considered a court of appeal. The *BBC* also argued that there should be a consistent approach across all tier one basic content complaints, and that at the very least, privacy complainants should not be discouraged from taking their concerns to broadcasters first. *Telewest* noted that complaint handling is more effective at a regional rather than national level.
42. The retention of the **ban on political broadcasting** is generally supported. However, *Eric Wiltsher* thought that political issues in broadcasting should be within the remit of an all-party group of politicians, and not within the remit of *OFCOM*. *Nokia* asked for further clarification about whether this implies that political advertising will be allowed on the phone/internet broadcast services. Others argued that publishing and broadcasting have very different regulatory traditions, and observed that, in print, democracy is served by freedom of opinion and expression, subject to general laws of defamation, obscenity etc, whereas in broadcasting there has been a state of licensed activity with specific regulations covering impartiality and matters of taste and decency.⁵¹
43. The majority of respondents were in favour of the **BBFC** remaining a separate body,⁵² although *Video Networks* argued against this. However, *CTVC* believed that the *BBFC* should be integrated with *OFCOM*. The *Campaign for Press and Broadcasting Freedom* recommended a review of the *BBFC*'s functions, and that its mechanisms for appointing members should be made more democratic. *CARE* thought that the body that takes on this role should be clearly accountable to Parliament.

⁵¹ *BIPA, Associated Newspapers, News International.*

⁵² *BBFC, Broadcasting Standards Commission, Channel 4, Channel 5, Voice of the Listener and Viewer.*

44. Various respondents argued against the proposal to give *OFCOM* principal responsibility for regulating advertising in the broadcast media, suggesting that broadcasting advertising should be moved into the **self-regulatory** arena.⁵³ Statutory regulation, it was said, would struggle to keep up with the pace of technological change and, while the separation of advertising content from programme content in licensed services was recognised as a proper concern for *OFCOM*, this need not entail the extension of its powers to the regulation of advertising content itself. The self-regulation of non-broadcast advertising was widely adjudged to have been a success, and the *Advertising Standards Authority* itself believed that a single regime of self-regulation for all advertising would be preferable.
45. The retention of controls on **religious advertising and programmes** was generally welcomed. However, *GOD Digital* thought that current controls should be reviewed, not retained, and *Three Angels Broadcasting Network* was disappointed at the proposal to keep the current controls. *WACRAL* suggested that a *Religious Broadcasting Authority* should be set up to examine all licence applications and establish a monitoring service.

Chapter Seven—Protecting the Interests of Consumers

46. The proposal to establish the **consumer panel** to advise *OFCOM* on service delivery, access for the disabled, crime prevention and other consumer service issues attracted widespread support, with numerous respondents making the case for statutory provision for representations from Nations and other interest groups on the members panel.⁵⁴ The *Advertising Association* commented that the panel should be composed of consumers and not consumerists, and *Vodafone* opposed the formation of the panel outright, arguing that it would add a layer of complexity to an area that could more simply and effectively be covered by *OFCOM*'s primary duty. The *Satellite and Cable Broadcasters' Group* saw no need for the panel as it would do the same job as existent consumer organisations.
47. Some respondents felt that **consumer interests** and the **promotion of competition** were conflicting objectives and should be separated.⁵⁵ *ITV* argued that *OFCOM*'s primary duty should be the promotion of competition, rather than the protection of consumer interests. Referring to the challenge, in the White Paper, to the industry to come forward with effective codes of practice and means of redress, *Energis* expressed a concern that self and co-regulatory measures to deal with consumer issues would continue to be dominated by larger players. *Centrica* did not see self and co-regulatory initiatives as an adequate replacement for formal regulation aimed at creating conditions for effective competition, and felt that the implementation of self and co-regulatory schemes would be difficult and time consuming in the absence of legislative backing. The *Consumers' Association* echoed this, noting that codes of practice and self-regulatory schemes fail to involve "rogue" industry members and calling

⁵³ *IPA, Advertising Standards Authority, Internet Services Providers Association.*

⁵⁴ *Cabinet of the National Assembly of Wales, Commission for Racial Equality, Advisory Committee on Telecommunications for Disabled and Elderly People [DIEL], Gaelic Broadcasting Committee, Hearing Concern, Internet Watch Foundation, Public Utilities Access Forum, TAG.*

⁵⁵ *BT, Communications Workers Union, George Trefgarne, ISPA, ITV.*

for OFCOM to have the power to set time limits for industry co-operation and retain backstop powers. *Marconi* felt that proposals for **consumer protection** would be unpopular if they forced financial burdens on industry, and that OFCOM's actions might present conflicts when considering what constitutes appropriate pricing, quality and value for money. *Vodafone* argued that consumer interests lie in value for money, not cheapness alone. Others feared that the panel would not be seen as independent of OFCOM,⁵⁶ with the *Consumers' Association* stressing the importance of operational independence and arguing that, at a minimum, the panel's budget and systems of appointment should be independent of the regulator. The *Chairmen of the Advisory Committees on Telecommunications* noted that the remit of the consumer panel may be too narrow if citizen issues—notably access—are excluded, and the *Welsh Advisory Committee on Telecommunications* argued that the scope of the panel should extend to the concerns of small businesses as well as individual consumers.

48. *Associated Newspapers* expressed concern that the Panel should not be allowed to impose its decisions on **content matters**, and worried that since consumer protection has the potential to affect content, content regulation will occur on the grounds of consumer protection.
49. Several respondents commented on the extension of the provisions for **signing and audio description** for people who are deaf or hard of hearing to cable and satellite platforms. *ONdigital* believed this should be done as soon as possible and that no increases should be imposed on any platform until the legislation is in effect. The *Satellite and Cable Broadcasters' Group* opposed this, and suggested that in view of the lack of marketable technology for closed signing and audio description this investment by satellite and cable broadcasters services was currently unjustifiable. *Channel 4* noted that bandwidth efficient technology for the delivery of closed signing is still many months away and that consequently there is a risk that a very bandwidth inefficient system will have to be adopted—leaving *Digital 3 And 4* multiplex with insufficient bandwidth for simultaneous signing on all its programmes and unable to meet future requirements as they grow. *Turner Broadcasting Systems Europe* argued that some element of financial support should be available for the introduction of ancillary services.
50. *Vodafone* observed with regard to the proposals on **crime enforcement**, that telephone operators are not law enforcers and should not be required to subsidize law enforcement functions, and another respondent felt that the Government should be realistic and ensure its aims do not impose unnecessary financial burdens.

Chapter Eight—The New Organisational Framework

51. Amid widespread support, there was a general feeling that OFCOM will serve to simplify the complicated web of regulators and remove elements of **regulatory overlap** and **double jeopardy**. *AOL* believed that the independence of OFCOM from the Government would be vital. *Carlton Communications* cautioned that OFCOM's powers would need to be carefully constrained to ensure that the

⁵⁶ *Kingston Communications, ONdigital.*

benefits of a single regulator were not outweighed by the concentration of authority within one regulatory body, and the *Campaign for Press and Broadcasting Freedom* felt that a single regulator might lead to unchallenged industry control. The *Church Of England* worried that the breadth of perspective and checks and balances present when a number of bodies exercise different remits would be lost through the creation of a single body.

52. *Energis* questioned whether it would be appropriate for *OFCOM* to manage economic regulation and social policy in addition to content regulation. *ISPA* felt that politically sensitive issues like content regulation might overshadow competition issues, and the *Musicians' Union* argued the case for two distinct regulators, one for delivery and one for content.

53. Specific suggestions and observations relating to *OFCOM* included:

- ◆ The *ITC* believed *OFCOM* should be given guidance on the face of the Bill on the relative priorities to be attached to its high level duties and how conflicts between them should be resolved.
- ◆ *OFCOM* will need to be properly resourced⁵⁷—*Centrica* highlighted the difficulties presented by the high level of staff turnover at *OFTEL*.
- ◆ *Concert* called for the availability of annual public accounts, and *Carlton Communications* argued that *OFCOM* should be subject to review by the *Public Accounts Committee*.
- ◆ *Energis* felt that costs should not fall only to large operators.
- ◆ *OFCOM* should be set deregulatory targets to ensure the lighter touch policy is carried through.
- ◆ *OFCOM* should have an explicit commitment to ensuring proper provision to meet the needs of people with disabilities, the elderly, those on low incomes and people living in rural areas.⁵⁸ *Fiona Branson* noted, with specific reference to people with disabilities, that this commitment should encompass their needs as “content producers” as well as consumers.
- ◆ The *Communications Workers Union* suggested the governing body of *OFCOM* should have a two-tier structure comprising an “inner cabinet” of 3–5 meeting monthly and a larger commission of perhaps 15–20 meeting quarterly.
- ◆ The *NUJ* believed that equal opportunities should be one of the central objectives.
- ◆ *Reuters* argued that efficiency and innovation should be given the status of full objectives.
- ◆ The *Communications Management Association* suggested that *OFCOM* should have a statutory duty to promote competition, while *Centrica* suggested a duty to secure open and competitive markets.

⁵⁷ *BREMA, Cable & Wireless, Centrica.*

⁵⁸ *Welsh Advisory Committee on Telecommunications.*

- ◆ *CARE* felt that *OFCOM* should have a regulatory duty to ensure that content reflects standards of good taste and decency.
- ◆ Numerous respondents believed membership of *OFCOM* and advisory panels should reflect the cultural diversity of nations, regions and communities.⁵⁹ Several respondents argued that *OFCOM* should maintain local offices in the nations and regions of the UK and regulatory functions should be devolved to such offices as far as possible.⁶⁰
- ◆ *The Community Media Association* suggested that *OFCOM* should have a properly staffed Community Media division.
- ◆ *The Chairmen of the Advisory Committees on Telecommunications* suggested that *OFCOM* should be given powers to require the disclosure of information to consumers to facilitate, for example, the provision of comparable tariff information and mobile telephone geographical coverage.
- ◆ *Michael Parkins* argued that technological research should be given a higher profile in the structure of *OFCOM* than currently indicated.
- ◆ *OFCOM* should ensure that the *ITC* library is maintained and extended to encompass all converging electronic media.⁶¹

54. Numerous organisations put forward their own suggestions for the **organisational structure**.⁶² On staffing and structure, most comments placed emphasis on the need for skill and experience on the board.⁶³ Several respondents comment on the need for adequate resources to secure high calibre staff.⁶⁴ *BT* noted that the appointment process should be open, transparent and practicable, while *FEU* called for *OFCOM* to have a separate department to work on radio. *The Operators' Group* felt that the proposed corporate structure was too unwieldy to take effective decisions on economic regulation cases.

55. *Microsoft* was concerned that *OFCOM* will have to report to two different Government departments, each with a different agenda. Several respondents suggested the formation of a **single communications department**, or of an interdepartmental body, to whom *OFCOM* should report.⁶⁵ *Cable and Wireless* believed that, unless all divisions of *OFCOM* report to one group of decision-makers, *OFCOM* might move at too slow a pace to reflect the market. Others argued strongly for the two departments to be retained to ensure a proper balance between economic and content issues.⁶⁶

⁵⁹ *Access Media Alliance, BECTU, Broadband Wireless Association, Cultural Diversity Advisory Group to the Media, Scottish Advisory Committee on Telecommunications, National Assembly of Wales, RNID, S4C, Scottish Consumer Council.*

⁶⁰ *Community Media Association, PACT, SMG, Welsh Language Board, Welsh Advisory Committee on Telecommunications.*

⁶¹ *British Film Institute.*

⁶² *Vodafone, MCI Worldcom.*

⁶³ *BBC, BREMA, FEU, Vodafone.*

⁶⁴ *ACSP, Centrica, Kingston Communications, ONDigital, Viatel.*

⁶⁵ *Satellite and Cable Broadcasters Group, SMG.*

⁶⁶ *Campaign for Press and Broadcasting Freedom, Energis, Musicians' Union.*

56. The *Radio Authority* stressed the importance of ensuring that the interests of **radio industry** were not submerged by those of the television and telecommunications industries within the new regulatory organisation. It also proposed that the detailed administration of Access Radio should be carried out within a separate Radio Broadcasting Division of *OFCOM*—but that the Government should seek to find an external body to take on responsibility for the Radio Fund and require *OFCOM* to put in place proper co-ordinating arrangements to ensure consistency.
57. Whilst the transfer of the **Radiocommunications Agency's** [RA] responsibilities to *OFCOM* was largely unchallenged, several respondents praised its performance to date and argued for its role to be protected within the new organisation. *Vodafone*, in particular, noted that it saw no immediate justification for moving the RA-function to *OFCOM* and argued that if the move goes ahead the function should continue to exist as dedicated unit and should take the lead role in management of all UK spectrum, including that used by other elements of the UK Government.
58. *Barry Cox* noted that **Channel 3 licences** are out of synch and could become more so if they fall due for renewal before digital switchover occurs. He suggested extending any analogue licenses with an early renewal date as they fall due to bring all the licenses into line, and that none of the terrestrial licenses or their digital successors should be renewed indefinitely, lest traditional broadcasting should decline dramatically. Instead, there should be a clear timetable for review and renewal, with the option of termination if it is concluded that the spectrum would be better suited to new purposes. *Carlton Communications*, on the other hand, argued that, so long as licence conditions are fulfilled, broadcast licences should be granted in perpetuity and urged the Government to introduce a new licensing regime before the switchover to digital takes place.
59. Several respondents argued that the current **appeals procedure** is inadequate and needs updating,⁶⁷ and that proper procedures for appeal and compliance with Article 6 of the Human Rights Act will be crucial.⁶⁸ *BT* felt there should be the ability to consider and review all relevant aspects of the original decision and to have these reviewed by an independent third party, not just in terms of the facts of the case but also on the merits of a case for decisions made under *OFCOM's* sectoral powers as well as concurrent Competition Act powers.
60. On enforcement, there was concern at the proposal to introduce **finer for licence breaches**. Several respondents felt that financial penalty powers represent an unjustified extension of regulatory power inconsistent with 'light touch' regulation.⁶⁹ *George Trefgarne* noted that if powers are introduced for the regulator to impose financial penalties or fines in respect of regulatory breaches, the existing right of appeal may well be inadequate to comply with the Human Rights Act. Moreover, *OFCOM* was unlikely to be regarded as an

⁶⁷ *BT, Blencathra Productions, Cable & Wireless, Cellnet, Diocese of Carlisle, The Operators' Group, Viatel, Vodafone, Confederation of British Industry.*

⁶⁸ *Channel 5, Concert.*

⁶⁹ *BT Cellnet, Vodafone.*

“independent and impartial tribunal” for the purposes of the European Convention on Human Rights, and a full right to a *de novo* hearing on the merits will be a requisite for compliance with the Convention.⁷⁰ In addition to this, the Government should be careful to ensure that fines that might be appropriate in one part of *OFCOM*’s remit (e.g. taste and decency for broadcasters) are not carried over into other parts of the remit (e.g. telecommunications) where breaches of licence are already addressed by other penalties and mechanisms.

Chapter Nine—The Process for Implementation

61. The need for the existing regulatory structure to operate smoothly during the **transition period** was emphasised by *Microsoft*. The *Computing Services and Software Association* worried that there could be a climate of regulatory weakness in the period between now and the formation of *OFCOM*, during which the existing regulators might come to be regarded as lame ducks or become inwardly focused on the creation of their own fiefdoms. *Kingston Communications* suggested that the Government might draw on the example of the *Financial Services Authority [FSA]*, in which the bodies subsequently merged to form the *FSA* were brought together beforehand in a “shadow *FSA*”. The *Digital TV Group* also saw a strong case for the establishment of a “shadow” regulator, but noted that a long transition with a shadow body could itself lead to a period of regulatory paralysis.
62. In the interim, until *OFCOM* is established, the *Communications Workers Union* suggested that the Government might like to create a “**one stop shop**” for problems of on-line content. It envisaged that such a body would not itself advise on or intervene on all problems of on-line content but would provide a single point of references for customers and suppliers, make an initial determination of the problem and of the agency best suited to handle this and then refer the problem to this agency.

⁷⁰ *BT, BECTU*.

APPENDIX ONE

Statistical Tables

Figure 2: Number of Respondents in Each Primary Respondent Type—Source: DGA

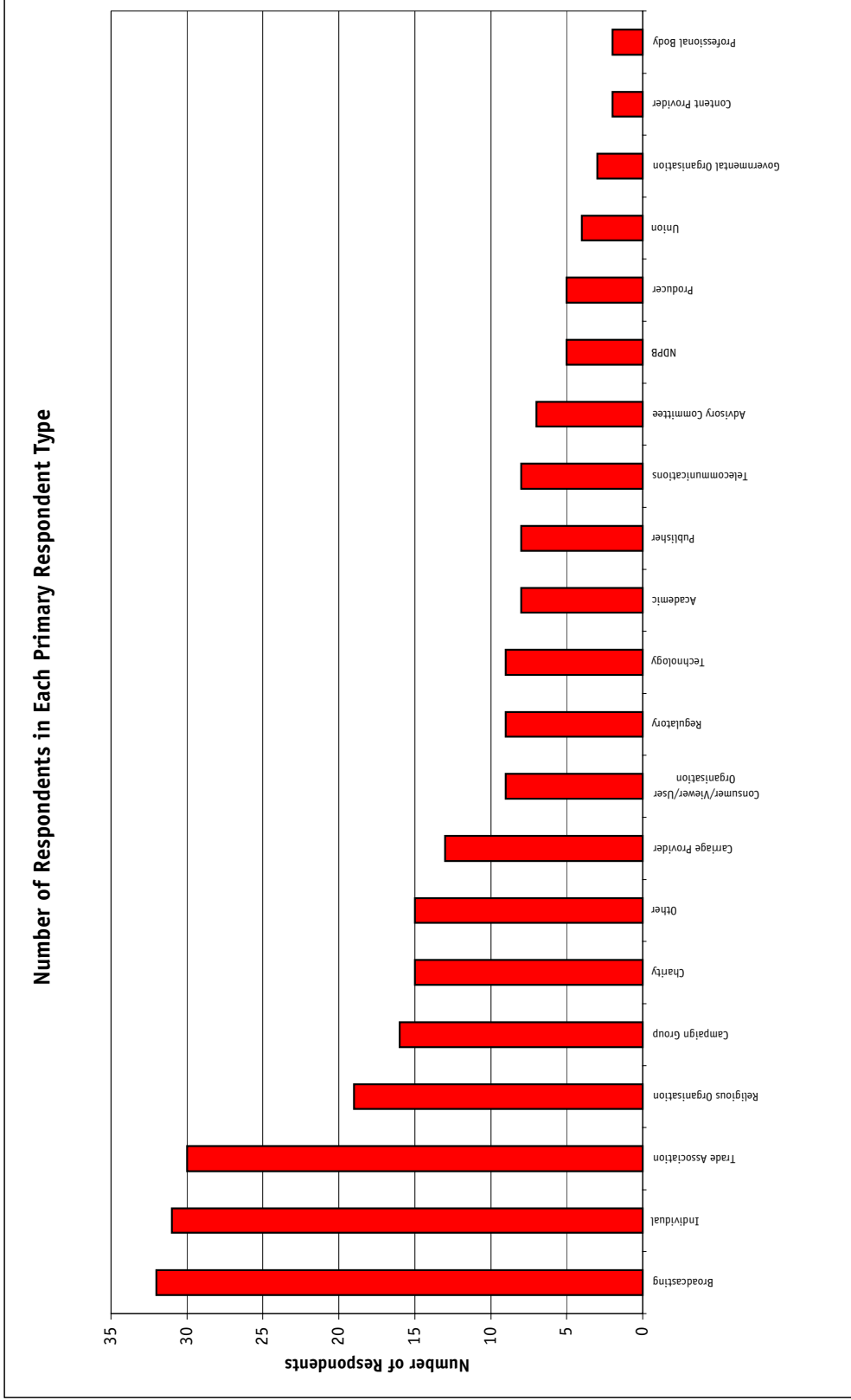


Figure 3: Number of Summary Comments by White Paper Chapter—Source: DGA

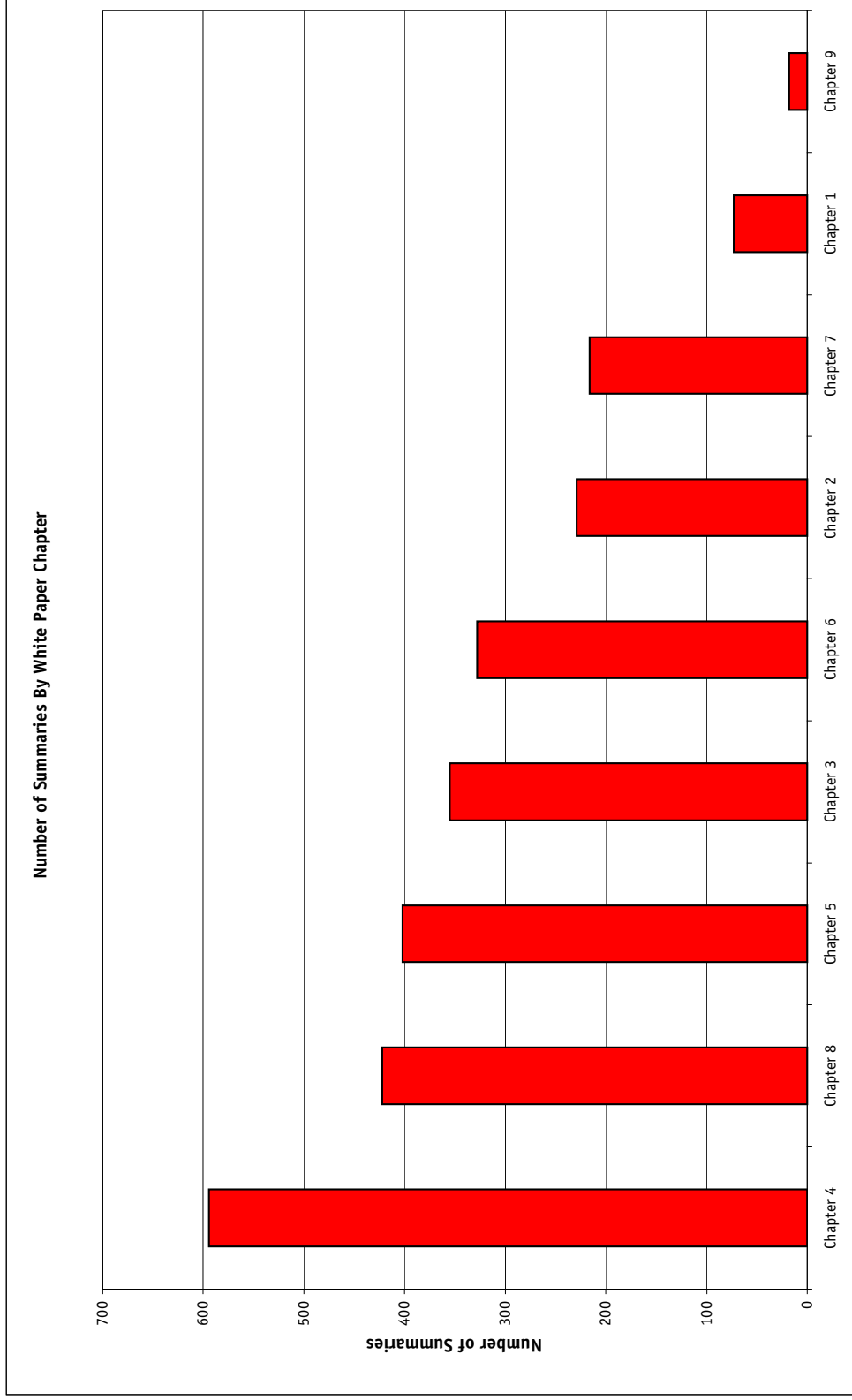
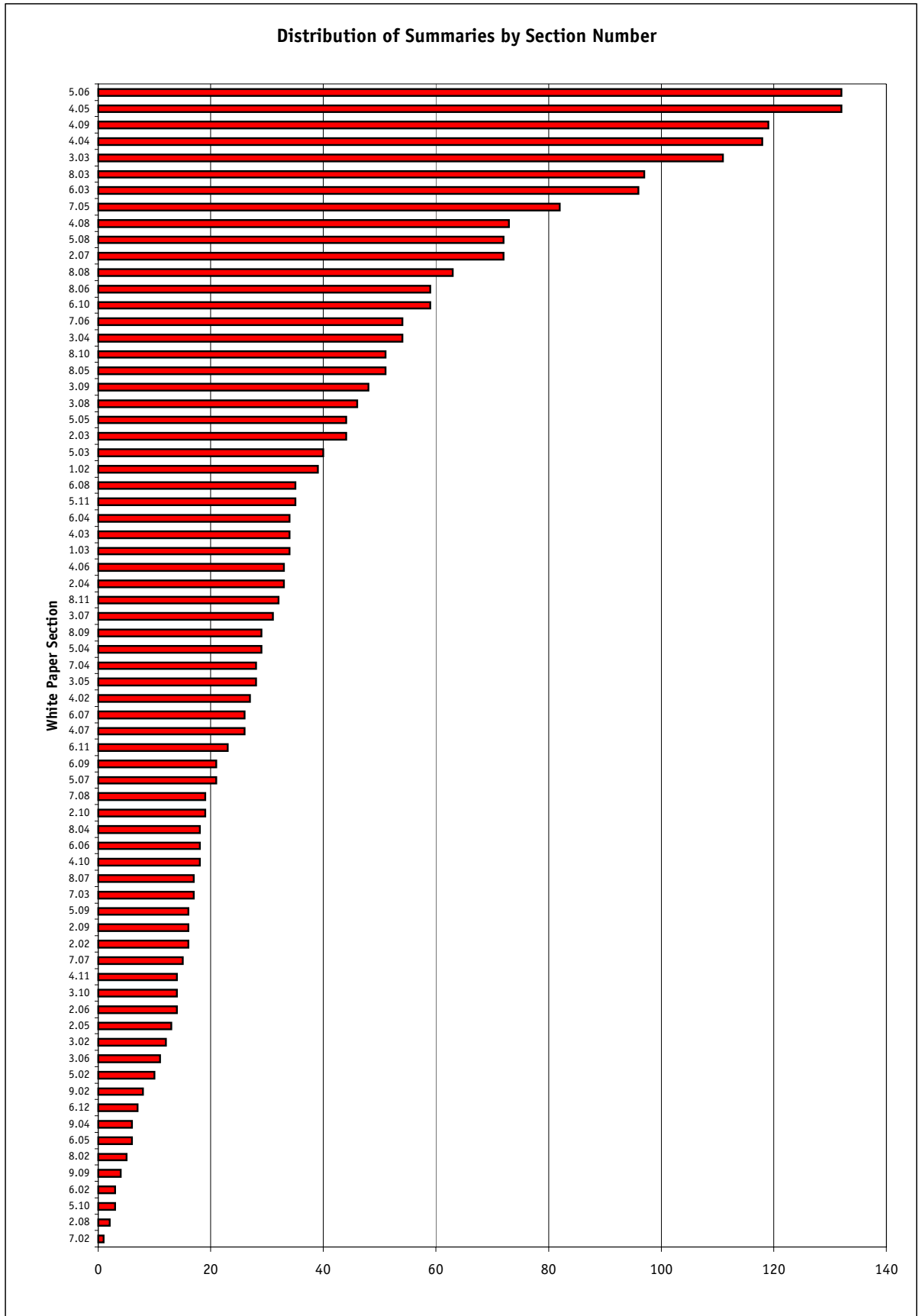


Figure 4: Distribution of Summaries by White Paper Section Number—Source: *DGA*



APPENDIX TWO

List of Respondents

Respondents to the White Paper

Access Media Alliance
Advertising Association
Advertising Standards Authority
AOL UK
Associated Newspapers
Association of Communication Services Providers
Professor Steven Barnett, University of Westminster
BBC
BBFC
BECTU
BIPA
Blencathra Productions
Bloomsbury Central Baptist Church
Fiona Branson
BREMA
British Deaf Association
British Federation of Women Graduates
British Film Institute
British Music Rights
British Phonographic Industry Limited
Broadband Wireless Association
Broadcasting Standards Commission
BSS
BT
BT Cellnet
Cabinet of the National Assembly for Wales
Cable & Wireless
Camelot Group
Campaign Against Censorship
Campaign for Press and Broadcasting Freedom
Campaign for Quality Television
Capital Radio
CARE
Carlton Communications
John Carr
Catholic Bishops' Conference of England and Wales
Centre For Christian Communication
Centrica
Chairmen of the Advisory Committees on Telecommunications
R.J. Chamberlain
Channel 4
Channel 5
Channel M
Childnet International
Children 2000
Children's Charities Coalition for Internet Safety
Christian Broadcasting: Selection of Responses from Individuals.
Christian Institute
Churches Advisory Council for Local Broadcasting
Church of England, Bishop of Wakefield
Church of England, Diocese of Carlisle
Church of England, Diocese of Leicester
Church of Ireland
Church of Scotland
Citizens Advice Bureaux
Citizens Online
Cityspace
Comhairle Nan Eilean Siar
Commercial Radio Companies Association
Commission for Racial Equality
Communication Workers Union
Communications Management Association
Community Media Association
Computing Services and Software Association
Comunn na Gaidhlig
Concert
Confederation of British Industry
Consumer Communications for England
Consumers' Association
Barry Cox
Creative Vision
Cross Rhythms Radio Station
Crown Castle UK
CTVC
Cultural Diversity Advisory Group to the Media
Martin Curry
Deaf Broadcasting Council
Advisory Committee on Telecommunications for Disabled and Elderly People [DIEL]
Digital 3 And 4
The Digital Network
Digital TV Group
Discovery Networks Europe
DMGT
Emap Performance
Energis
ESK FM
Essex Campaign for Local Radio
EUTELSAT

Evangelical Alliance
The Evangelisation Society
Federation of Entertainment Unions
Federation of the Electronics Industry
Fellowship of Independent Evangelical Churches
Flame FM On the Wirral
Forest Of Dean Community Radio
Gaelic Broadcasting Committee
Simon Gardner
General Consumer Council
Bernard Gill
Gnash Communications
GOD Digital
Lord Gordon of Strathblane CBE
Granada
GRF Christian Radio
M. Grant
Guardian Media Group
GWR Group
Hearing Concern
The Highland Council
Nigel Holmes
Hughes Network Systems
Dr Windsor Holden
David Hutchison, Glasgow Caledonian University
ICL
Incorporated Society of British Advertisers
ICSTIS
Inspiration FM
Institute of Electrical Engineers
Institute of Practitioners in Advertising
Intelfax
Internet Content Rating Association
Internet Watch Federation
IPC Media
Dr. Petros Iosifidis, City University
ISPA
ITC
ITN
ITV
Jerusalem Productions
Joint Radio Company
Dr Stan Jones OBE, FEng
Kingston Communications
Tim Leach
Level 3 Communications
Liberty Radio
Lincs FM
Local Broadcasting Group
Lucent
Alasdair MacCaluim
Donald Mack

Manchester City Music Network
Maranatha Community
Marconi
MCI Worldcom
Mediamarch
The Media Trust
Mencap
Methodist Church
Microsoft
Mondex International
Motion Picture Association
Motorola
MTV Networks Europe
Musicians' Union
David Myers, Ruth Myers, Ross Trotter
National Board of Catholic Women
National Consumer Council
National Deaf Children's Society
National Federation of the Blind of the United Kingdom
National Institute of Adult Continuing Education
National Secular Society
National Union of Journalists
National Viewers' and Listeners' Association
News International
Newspaper & Magazine Industry
Newspaper Publishers Association
Newspaper Society
Newsquest Media Group
Nokia
Norfolk Media Convergence Group
Northern Ireland Advisory Committee on Telecommunications
NTL
Office of Fair Trading
Olswang
ONdigital
One 2 One
Operators' Group
Orange
PACT
Panavision
Michael Parkins
Periodical Publishers Association
Philips
Professor Vincent Porter, Westminster University
Post Office
Public Service Broadcasting
Public Utilities Access Forum
Public Voice
Radio Authority
Reuters

Revival
Richard Price Television Associates
Royal Association for Deaf People
Royal National Institute for Deaf People
RTL Group
S4C
Sabhal Mòr Ostaig
Sandford St Martin Trust
Satellite & Cable Broadcasters' Group
Satellite Action Plan
Scottish Advisory Committee on
Telecommunications
Scottish Consumer Council
Scottish Episcopal Church
Scottish Radio Holdings
Scottish Screen
Scottish Subcommittee of the European
Bureau for Lesser Used Languages
SDN
Sense
Colin Shaw
Sheffield Hallam University, AHRB Centre
for British Film and Television Studies
Julian Shellard
Signals Media Arts
Lois Singer
Skillset
SMG
Roy and Margaret Smith
Society of Friends
SOLO.NET
Spectrum Management Advisory Group
Martin Spencer
Studio Alba
TAC
Telecommunications Action Group
Telephone Helplines Association
Teletext
Telewest
Terella Associates
TG4
Third World & Environment Broadcasting
Project
Three Angels Broadcasting Network
George Trefgarne, Centre for Policy Studies
Rt Hon David Trimble MP MLA
Trinity Mirror
Harold Turner
Turner Broadcasting
UCB
Ufi
UKIV
Viatel
Video Networks

Vodafone
Voice FM
Voice Of The Listener And Viewer
Michael Wallbank
Welsh Advisory Committee on
Telecommunications
Welsh Language Board
Jim Wilkinson
Harold Wilson
Eric N Wiltsher
Wireless Group
World Association of Christian Radio
Amateurs and Listeners
World Online UK

