



Consultation on proposals for the reorganisation of the DTT
LCN listing and on changes to DMOL's LCN policy

Interim Statement on LCNs for local PSB services

Published: Friday 6 July

Contents

1	Executive Summary.....	3
2	The LCN Consultation Proposals on local PSB services.....	3
3	Responses to DMOL’s proposals on LCNs for local PSB services.....	4
3.1	Responses from those with an interest in local television in Scotland and Wales	4
3.2	Responses from TG4 viewers and others with an interest in TG4 in Northern Ireland	5
4	DMOL’s decision on the LCNs for local PSB services.....	6
4.1	The LCN for the new local PSB in Scotland and Wales	6
4.2	The LCN for TG4 in Northern Ireland.....	8
4.3	DMOL’s conclusion on LCNs for local PSB services.....	9

1 Executive Summary

DMOL is confirming the reservation of the following Logical Channel numbers (LCNs) for local PSB services that will be listed under s.310 of the Communications Act (2003):

- In England and Northern Ireland: LCN 8
- In Scotland and Wales: LCN 45

These each represent the lowest available LCN in their respective areas of the UK.

We are also confirming that the new DMOL LCN Policy will allow for the reservation of LCNs for local public service channels in this way, and that public service channels at higher LCNs (i.e. lower EPG positions) will be given first refusal on any lower LCNs (i.e. higher EPG positions) that become available within the relevant genre. As such we are confirming that section 5 and clause 8.2(i) of the draft new DMOL LCN Policy (V5) attached to the 24 May 2012 consultation will be ratified in the final version of the DMOL LCN Policy.

We are providing early confirmation of the LCNs for local PSB services at the request of Ofcom and in order to give potential local TV bidders under the new DCMS Local TV Framework certainty of their channel numbers as early as possible within the licensing window.

At this time we are confirming the LCNs for local PSB services and the relevant clauses of the DMOL LCN Policy only. DMOL's full consultation statement and full final DMOL LCN Policy will be published later in July 2012.

2 The LCN Consultation Proposals on local PSB services

DMOL's proposals for the listing of local PSB services appeared in two parts of the DMOL LCN Consultation document:

- i. We proposed to reserve the lowest available LCN for local PSB services:
 - LCN 8 in Northern Ireland and England; and
 - LCN 45 in Scotland and Wales.
- ii. Our suggested changes to the LCN Policy included the proposal that should an LCN become available, the next public service channel below that LCN (i.e. at a higher number) would be given first refusal on that LCN, thus providing a mechanism for PSB services to move up the channel listing over time.

3 Responses to DMOL's proposals on LCNs for local PSB services

Most organisations responding who commented on this issue supported the proposals outlined above. Some added either that they felt the proposals met the 'appropriate prominence' requirement that is contained in the Ofcom EPG Code, or that it was appropriate to allocate the lowest vacant LCN but not one that was already occupied.

The notable exceptions were:

- i. the responses from those with an interest in local television in Scotland and Wales;
and
- ii. TG4 viewers and others with an interest in TG4 in Northern Ireland.

3.1 Responses from those with an interest in local television in Scotland and Wales

Three organisations that we understand to be prospective bidders for the local PSB licences in Scotland and Wales said that they did not support the proposal.

Two said that the allocation of LCN 45 in Scotland and Wales would make local services commercially unviable. One also said that they drew a distinction between commercial PSBs for whom maximising viewing is critical for their commercial viability, and the BBC's PSB channels, for whom viewing levels are just a measure of audience interest. Some said that the allocation of LCN 45 in Scotland and Wales would deter them – or others - for applying for a licence in Scotland or Wales, and felt that the local PSB services in Scotland and Wales would be less successful as a result of the allocation of LCN 45.

Two of the organisations felt that the local PSB in Scotland and Wales should benefit from the same degree of prominence afforded to those services in England and Northern Ireland.

One suggested that the appropriate LCN for local PSB services in all parts of the UK was LCN 6 (currently occupied by ITV2), and said that there was no sound basis for only allocating vacant LCNs to PSBs. The respondent also suggested that the DMOL research shows that resulting changes to the channel listings would not be a problem for consumers; and felt that the creation of more space within the General Entertainment genre would allow for the necessary changes to channels' LCNs. It suggested that ITV2 be moved to LCN 8 in England and Northern Ireland, and LCN 10 in Scotland and Wales, then requiring ITV3 (currently at LCN 10) to be moved and so on through the ITV channels.

Two of the prospective local TV bidders implied that LCN 45 did not or might not meet the 'appropriate prominence' requirement of the Ofcom EPG Code. One went further and suggested that not allocating LCN 6 (where ITV2, a commercial non-PSB channel

currently sits) to the local PSB is prohibited by the Ofcom EPG Code, which it felt prevented an EPG operator from giving one of its own channels undue prominence over a PSB. Some suggested that Ofcom should enforce the EPG Code in such a way as to require DMOL to provide a lower LCN for the local PSB in Scotland and Wales. Some went further to suggest that either Ofcom should amend the EPG Code to prescribe LCNs for PSBs or commercial PSBs, or that new primary legislation is required to impose specific listings for PSBs.

We also received a representation from the Scottish Government, which noted the Communications Act and Ofcom EPG Code 'appropriate prominence' requirement. The response said that it appreciated that it is not as simple as saying that all PSB channels should occupy the lowest LCN numbers, and saw some merit in DMOL's policy of not changing already allocated numbers, all other things being equal. However the response asked DMOL explicitly to consider whether the disparity between LCN 8 in England and Northern Ireland and LCN 45 in Scotland and Wales can be justified, considering the statutory requirements of the Communications Act. It concluded by suggesting that a top 20 listing might be appropriate.

3.2 Responses from TG4 viewers and others with an interest in TG4 in Northern Ireland

We received responses from nearly 80 viewers of TG4 in Northern Ireland, and two organisations with an interest in TG4. Responses were also submitted by three Northern Ireland Assembly Members.

TG4, the Irish language public service of the Republic of Ireland, will be made available across much of Northern Ireland from switchover on 24 October 2012. The availability of TG4 in digital form in Northern Ireland is being part-funded by the UK Government.

All consultation responses on this topic made the case that TG4 is effectively the Irish language public service TV channel for Northern Ireland, and that in this it corresponds closely to S4C in Wales and BBC Alba in Scotland – both of which sit at LCN 8 in their respective nations. The responses thus said that it would be consistent, logical and appropriate for DMOL to also allocate TG4 a single digit LCN in Northern Ireland.

4 DMOL's decision on the LCNs for local PSB services

We have carefully considered the responses from those with an interest in local television in Scotland and Wales, and those with an interest in TG4 in Northern Ireland, and have reviewed the points they put forward.

4.1 The LCN for the new local PSB in Scotland and Wales

Some respondents felt that LCN 45 would affect the commercial viability and subsequent success of the local PSB service in Scotland and Wales, and that distinction should be drawn between the BBC PSB services and commercial PSBs. DMOL does not recognise any distinction between commercial and BBC public service channels, and is not required to by any legislation or regulation on this matter. With regards to the comments about the commercial viability of the local PSB in Scotland and Wales we cannot assess the claim made as no data was provided to substantiate this argument. More than 120 commercial services operate on the platform, but we recognise that there is likely to be commercial advantage associated with a lower LCN.

Some respondents felt that there was no sound basis for DMOL only allocating vacant LCNs to the new local PSB services. One suggested LCN 6 be made available (moving ITV2 and subsequent ITV channels); another suggested a space be made within the top 20 channels.

Neither our current nor proposed new DMOL LCN Policy permit us to take an LCN allocated to another channel already established on the platform away from that channel in order to offer it to a service entitled to appropriate prominence. This is a position which is consistent with the policies of the other major UK TV platforms and the Ofcom EPG Code.

Notwithstanding the importance of a clear application of the pre-existing LCN policy DMOL has considered the implications of moving an incumbent channel to make way for the new local PSB service. We note that the historic application of the DMOL LCN Policy – which generally places new services at the next available LCN at the bottom of their genre – has resulted in those channels which joined the platform very early in its life being assigned low LCN numbers. Beyond channels one to five the list of the top 20 LCNs includes the BBC's PSB digital channel and a mix of commercial channels from a range of different channel providers including ITV, Sky, Channel 4, QVC and UKTV.

We do not consider it fair and reasonable that ITV alone – by virtue of its early investment in Freeview and its allocation of LCN 6 for ITV2 – should absorb the full impact of any channel moves. Although this is not the basis of our decision, we also note that it would be extremely confusing for viewers if a channel available on a nationwide basis was found at different LCN numbers in different parts of the country.

An alternative way of creating space would be to ‘shuffle down’ each of the 39 channels from LCNs 6 to 45, maintaining their existing order in relation to one another, which we feel would entail very considerable change and disruption to both viewers and channel providers. We note that one respondent felt that DMOL’s research suggested that viewers would find no problem with such extensive changes to the channel listing. We do not agree that this is the conclusion the research draws. While Kantar demonstrated that *most* would adapt easily to changes, this is not true of *all* (we would expect older and more vulnerable people to cope less well with such large scale changes), and we did not test this mass movement of the most popular channels in our research.

Our conclusion is that moving incumbent channels to make way for a new local PSB would precipitate significant change and disruption for both a large number of channels (who invest in promoting their channel number) and probably all DTT viewers, given the viewing share of the channels that would be moved. As such DMOL does not believe that it would be proportionate to propose such a change which would be contrary to the clear and long established provisions of the policy.

Some responses also questioned the basis and resulting impact of assigning a different LCN in Scotland and Wales to that assigned in Northern Ireland and England. Given the practical challenge of differing LCN availability in different parts of the UK DMOL has considered whether it is more important to:

- i. Achieve parity between the nations (i.e. assign identical LCNs in all of Scotland, Wales, Northern Ireland and England); versus
- ii. Ensure that the lowest LCN is assigned in each area.

DMOL's view is that we will go further to meet the ‘appropriate prominence’ requirements of the Ofcom EPG Code – and it would be better for the future of local television - for the lowest LCN to be assigned in each area; accepting that this might mean that different LCNs are used in different areas. We also note that local services are by definition only available in a part of the country, and we see no particular value in ensuring that all local services have the same LCN.

A final consideration is whether such change and disruption would be necessary given the requirements of s.310 of the Communications Act (2003) and the Ofcom EPG Code. A number of the responses suggested that that DMOL’s proposals did not afford the new local PSB in Scotland and Wales the ‘appropriate prominence’ required for PSBs under the Ofcom EPG Code for all s.310 CA listed services. One appeared to go further and suggested that not allocating LCN 6 to the new local PSB would be in breach of the EPG Code.

DMOL believes its LCN Policy is consistent with the Ofcom EPG Code, and does not agree that not allocating LCN 6 in any way contravenes the Ofcom EPG Code. The Code is quite clear that ‘appropriate prominence’ “permits a measure of discrimination in favour of PSB channels” – i.e. does not require absolute discrimination in favour of PSB channels such as the proposal to assign LCN 6 or a position in the top 20 channels – and “does not propose to be prescriptive about what appropriate

prominence means” so long as the approach is “objectively justifiable” and meets Ofcom’s guidelines contained in clauses 3a-c. DMOL has provided a clear and objectively justifiable explanation of how ‘appropriate prominence’ will be granted in its draft new DMOL LCN Policy (V5).

DMOL considers that its proposal that any public service channel at the next highest LCN (i.e. lower EPG position) should be offered first refusal on any lower LCN that become available - providing a mechanism for the elevation of public service channels over time - explicitly meets the suggestion made in section 4 of the Ofcom EPG Code that the principle of EPG prominence “*might...justify giving public service channels first refusal on vacant listings higher in the category that they were placed*”.

4.2 The LCN for TG4 in Northern Ireland

We understand the importance that many in Northern Ireland attach to TG4 as an Irish language channel, and know that the UK Government is committed to working with RTÉ and TG4 to increase the availability of TG4 on digital terrestrial TV (DTT) in Northern Ireland at switchover.

However TG4 is not listed as a UK public service broadcaster (PSB) under the provisions of section 310 of the Communications Act (2003), and is not therefore entitled to ‘appropriate prominence’ on the EPG under the Ofcom EPG Code.

S4C in Wales and BBC Alba in Scotland are currently listed at LCNs 4 and 8 respectively. Both of those channels are listed under the provisions of s.310 of the Communications Act and are therefore eligible for ‘appropriate prominence’ on the EPG in a way that TG4 is not. Without the benefit of s.310 listing DMOL must treat TG4 as we would any other service launching on the platform in order to maintain our obligations to treat channels in a fair, reasonable and non-discriminatory (FRND) fashion – as also required by the Ofcom EPG Code.

Reflecting the above, the implication of the wider LCN Consultation proposals (on which we will publish our conclusions later in July) suggest that TG4, RTÉ One and RTÉ Two – all of which will be carried on the new Northern Ireland multiplex - would be allocated LCNs in the first available slots at the end of the relevant genre – as and when they apply for those LCNs at any time from three months prior to their intended launch date.

4.3 DMOL's conclusion on LCNs for local PSB services

DMOL is therefore confirming the reservation of the following Logical Channel numbers (LCNs) for local PSB services that will be listed under s.310 of the Communications Act (2003):

- In England and Northern Ireland: LCN 8
- In Scotland and Wales: LCN 45

These each represent the lowest available LCN in their respective areas of the UK.

We are also confirming that the new DMOL LCN Policy will allow for the reservation of LCNs for local public service channels in this way, and that public service channels at higher LCNs (i.e. lower EPG positions) will be given first refusal on any lower LCNs (i.e. higher EPG positions) that become available within the relevant genre. As such we are confirming that section 5 and clause 8.2(i) of the draft new DMOL LCN Policy (V5) attached to the 24 May 2012 consultation will be ratified in the final version of the DMOL LCN Policy.