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### Better Media - Ofcom Programme of Work Consultation Submission

This submission is on behalf of Better Media, which is a members-based organisation, advocating for openness and transparency in media policy, pluralism in media ownership, and access to media platforms as a civic right. <https://bettermedia.uk/>

Among the many economic and technical regulatory issues that Ofcom has proposed to manage in the workplan for 2022/23, there are four areas of concern which Better Media wishes to comment on. Our submission is done with the intention of ensuring that Ofcom broadens the scope of its activity, ensuring that the work programme is informed by a rigorous interpretation and commitment to meet Ofcom's obligations under the Equalities Act 2010.

We are concerned that Ofcom is not planning for, or implementing, reasonable and purposeful adjustments for improved equality of access and opportunity, as mandated in the 2010 Equalities Act, and that Ofcom's working practices, as outlined in the work plan, such as Ofcom's ability to improve provision for people from protected characteristic groups, their equal opportunities and civic engagement through the provision of media services, does little to support enhanced public access to information, deliberation and civic engagement. Better Media contends that Ofcom is deficient, therefore, in both the intent and the way it seeks to meet its equalities obligations, policies and practices.

Our submission is therefore themed on the basis that:

- Ofcom must be more active in meeting its obligations to promote equality across the whole of the media economy in the UK, as specified in the 2010 Equalities Act.
- Ofcom's work must be informed by socially inclusive research and policy development practices.
- Ofcom must be able to demonstrate that its policy implementation and working practices promote and support regulatory action that is inclusive and responsive to the needs of the most vulnerable, those who are most likely to face discrimination, and those who are too often overlooked in media regulation and practice.

- Ofcom must be able to demonstrate that it undertakes its policy development, work planning and regulatory decisions in a transparent and open manner, thereby facilitating access to a full range of evidence of any informing data, research and discussion that is of concern to all stakeholders and the public in general.

## 1. Affordability of SSDAB for Low-Income Groups

In Ofcom's response to the Freedom of Information Request 1347245, the following is stated:

"We must have regard as relevant to the desirability of encouraging investment and innovation, the different needs and interests of all persons who may wish to make use of [broadcast] spectrum, the needs of persons with disabilities, of the elderly and of those on low incomes; the opinions of consumers in relevant markets and of members of the public generally; and the different interests of persons in the different parts of the UK, of the different ethnic communities within the UK and of persons living in rural and in urban areas."

And

"We consider that it is currently in the interests of UK audiences, including deprived audiences (noting that groups protected by the Equality Act 2010 are more likely to be impoverished than other communities) for us usually to prioritise work on the roll out of SSDAB, even accepting that this will result in delays to potential new FM services. This is because SSDAB will ultimately offer audiences more stations, more efficiently, and in more locations, than FM ever can."

Better Media urges Ofcom to undertake an immediate review of the economic affordability of broadcast radio services across the UK, especially those that affect the most economically precarious people (groups D&E). The work plan for 2022/3, as published, specifies that Ofcom will continue to review the 'affordability of communications services', particularly in relation to broadband. However, in prioritising the affordability of internet access, Better Media believes that Ofcom is failing in its duty and stated aim to consider the affordability of all information and media services for different groups of protected status, and the omission of a rigorous assessment of established and legacy broadcast systems is unacceptable.

Ofcom's research about the affordability of media services across the whole economic spectrum, as in the case of SSDAB for example, has been aggregated and only considered as a whole within the consumer market, rather than from the experience of citizens and consumers. We assert, therefore, that Ofcom must move to a practice of using disaggregated and localised data, so that Ofcom can correctly take account of service availability and economic differentials and disparities, as they affect diverse social groups in different places across the UK.

Better Media calls on Ofcom, therefore, to amend the scope of the proposed review of the affordability of communication services, so that it includes, and has regard for, analogue broadcast radio services. Ofcom must revise and update its research relating to the capacity of people in low-income groups to access and receive all broadcast media services.

This review should also consider the capacity of low-income groups to access and participate in the production and development of those services, as specified in the legislative principals of community radio. Better Media contends that this review must now consider the 'cost of living crisis' as an immediate priority, and must demonstrate how people on low incomes, who are dependent on these established broadcast information services, can continue to access them at a low cost.

## 2. Availability of SSDAB Capacity

In the Freedom of Information Request 1347245, Ofcom stated in that

“One frequency for SSDAB will provide between 10-20 services for listeners in an area, whereas a frequency attributed to FM will only offer one service. SSDAB will therefore provide the opportunity for many more new radio services, including very locally-focused services, to be available to consumers than would further commercial or community analogue licensing. Relating this back to our relevant statutory duties, we consider that DAB provides a more efficient use of spectrum, which all other things being equal is likely to be optimal. It is also likely to generate a larger number of different services, which all other things being equal is likely better to secure the provision of a wide range of services calculated to appeal to a variety of tastes and interests. We have had regard to the affordability of DAB devices in making this judgment.”

Better Media urges Ofcom to revise this policy statement and principal, and to de-prioritise it, as it is unsubstantiated. Better Media contends that the roll-out SSDAB in its present form is doing little to improve access, innovation or capacity. When weighted with other options that demonstrate the efficient use of broadcast spectrum, such as renewed investment in AM and FM frequencies, Ofcom’s belief that SSDAB will bring about *unlimited* capacity improvements is misleading, inaccurate and unfounded.

These claims, that DAB is the future of radio broadcasting, Better Media contends, only serves the interests of a small number of providers of platform services, and does not accord with the wishes or expectations of the public, or the content providers of relevant local services. When compared with the potential of additional service provision that could be enabled readily on existing analogue spectrum, including local Low-Powered AM services, and local Narrow-Bandwidth FM services, SSDAB should be managed by Ofcom as one option among many. SSDAB is not a suitable option for getting *on air* for many content producers.

Better Media contends, therefore, that Ofcom’s SSDAB prioritisation is actively and unnecessarily restraining trade and innovation in radio services. By choosing to only licence one form of radio broadcasting in the UK while other options are available and viable, is an unnecessary restrictive practice. With Ofcom prioritising SSDAB, it is as if Ofcom is acting as a ‘trade body’ and not an independent regulator balancing the needs and interests of all stakeholders and citizens.

## 3. Community Radio Licences Provision

Furthermore, Analysis by Better Media of the SSDAB Licencing Round One shows that only fifty percent of awarded CDSP licences are new services, with the rest being simulcasts of existing services. Better Media contends that this is an unnecessary duplication of existing services, which results in an additional cost burden on those providing those existing radio services. Effectively the introduction of SSDAB is doubling provider costs while simultaneously reducing their independent control over the broadcast process.

In Round Two, moreover, only four new CDSP licences have yet been awarded by Ofcom to date. This suggests that the viability of SSDAB as an accessible and affordable platform for local, innovative and community-focussed content is not manifesting as anticipated by Ofcom. When coupled with the lessened licence requirements of the CDSP licences, removing the statutory provision for training and access, will result in a lowering of standards of community radio operation, and will cannibalise

and devalue the status of community radio licence holders commitment to support verifiable social gain undertakings.

Better Media contends that SSDAB is a sub-optimal platform for local and community-focussed radio, and that in prioritising SSDAB, Ofcom is failing to account for the needs and interests of locally identifiable groups, their access requirements, their capability to manage and run their own broadcast service, and their ability to manage protracted contracts with third parties. Better Media contends, therefore, that Ofcom has failed to appreciate the limitations of SSDAB, particularly as they effect economically and socially vulnerable people.

There is considerable scope for Ofcom to make available additional spectrum on existing analogue frequencies, which would easily demonstrate a more efficient use of that spectrum, without introducing an increasingly complex, costly, and multilayers broadcast licencing system, especially one that goes beyond the capacity of low-income and vulnerable groups to manage and sustain for themselves.

Better Media urges Ofcom, therefore, to revise the work plan in such a way that the exclusive priority given to SSDAB is removed, and that Ofcom returns to a system of mixed and on-demand licencing for all broadcast radio services, where spectrum is available, and where local needs and support are clearly identified. Ofcom can make these changes to its workload planning without recourse to legislative or policy changes, simply by revised the scope of future licencing rounds for SSDAB to also include analogue licenced services as a demand-led process.

#### 4. Access to Services

Better Media contends, moreover, that Ofcom is effectively foisting more complex and expensive access requirement for small-scale and local broadcast services and platforms in the UK, without clear evidence of demand for these services, and without clear evidence of the capacity that local providers have to develop and provide those services.

Better Media notes that in the Freedom of Information Request, 1347233, Ofcom states that

“In Ofcom’s 2021 “tech tracker” research, 36.5% of those in socio-economic group E gave the response that they have at least one active DAB radio set at home, compared to 41% of all adults. Ofcom does not hold robust data on the number of people in the socio-economic group E that are planning to buy a DAB radio set in the next 12 months. Although we did ask this question in the 2021 “tech tracker” research, the number of respondents in socio-economic group E who answered this question was less than 100, a sample size which, in the context of a UK-wide survey, we would not regard as being statistically robust.”

Better Media urges Ofcom to reconsider this statement, and revise the proposed workplan accordingly. Less than forty percent of people in socio-economic group E have indicated that they have access to a DAB radio at home. Furthermore, access to DAB sets at home is actually critically low in the population – despite the continuing commercial hype - and shows no immediate sign of improvement in the future.

Better Media contends, therefore, that Ofcom should continue to maintain and seek to expand its planning and management resources that support analogue broadcast services across the UK. Analogue radio is a tried and tested system that retains majority support of the public. Ofcom’s own data demonstrates that approximately sixty percent of the population are not DAB users, so for Ofcom to ignore the interests of this sizable majority shows that Ofcom is failing to meet its core responsibilities.

Clearly Ofcom’s research on the economic viability of SSDAB is inadequate, and can’t be used as a justification of the policy of SSDAB only radio licencing. Ofcom’s recent statement, for example, that

listeners in the North-East of England are the “first to benefit from this revolution in local radio as a host of new services took to the airwaves” is misleading, and goes beyond demonstrable and measurable facts which indicate that DAB is a partial and minor solution to the broader problem of radio broadcasting spectrum capacity. Better Media contends that Ofcom is intent on forcing through a sub-optimal broadcast system that does not meet the needs of the UK public and is effectively acting as a promoter for one particular platform, rather than acting as an independent economic or civic-service regulator.

## 5. Media Diversity

In the Freedom of Information Request Response 00968027 Ofcom states that

“The information you require is available within the material we provide on our Diversity Hub, where we publish, among other things: reports on the diversity of our broadcast licensees, which contain information we collect from broadcasters on the makeup of their employees (and is compared to national statistics); guidance for broadcasters on promoting diversity and inclusion; and an outline of our statutory duties in this area.”

Better Media contends that Ofcom needs to do more to make information relating to media activities accessible and analysable on its website, by improving the manner in which data is collated and presented. Ofcom does not present monitoring data in a ‘tracker’ format, but instead only provides data on a monthly ‘update’ format relating to specific licence decisions. This suggests that Ofcom is not monitoring data as it manifests over time, and as cumulative decisions are made.

The availability of ‘live’ or ‘as-live’ data is provided as standard by the Office for National Statistics and other government agencies. Better Media therefore calls on Ofcom to update its data reporting systems to allow better understanding and engagement by the public, especially non-experts, with the shifts and changes in the social and economic datasets that Ofcom is working with and using to inform its planning policy, resources and working schedules.

The inaccessibility of Ofcom’s data is further compounded by the almost immediate archiving of decisions and records after a two-year period to the UK National Archive service. As indicated in FOI response 946580 - Stations by Ethnicity, inquiries are directed to the limited information that is available on the Ofcom website, which requires the inquirer to ‘extract’ this information themselves. In the FOI Ofcom stated that

“This information is already available on our website and can be found as follows:

For Commercial Radio stations: Under ‘Commercial radio’, you can look up the details of a commercial radio station broadcasting in AM/FM. On the page for each radio station, select ‘view station format’ to view the ‘Character of Service’ i.e. the audience or community targeted by each station. For example, Asian Sound Radio’s Character of Service indicates that this station is for Asian listeners in East Lancashire.

For Community Radio stations: Please see our list of Community Radio stations and select ‘Key Commitments’ on the page for each community radio station. Under ‘Description of character of service’, you will find information on the audience or community targeted by each station. For example, Akash Radio Leeds’ Description indicates that it is for the Punjabi-speaking communities living in the inner-city areas of Leeds.”

Better Media contends that this is an inadequate way to collate data for the purpose of public accountability, and the Ofcom is limiting the examination of its activities by restricting access to data

in this manner. The net effect is that stakeholders and civic society groups who wish to engage with Ofcom's public policy development process, in relation to media and broadcast services in the UK, have to find alternative datasets that are not aligned with Ofcom's official datasets. This places an unnecessary burden on minority civic society groups and advocacy bodies, who may not have the expert resources to examine and review this complicated and multifaceted data resource.

Similarly, in a Freedom of Information Request, dated 10<sup>th</sup> December 2021 - Expectations of Minority Ethnic Audiences Report, Ofcom responded that

“In the case of this research, we focused on communities in the UK that make up the largest audiences of Ofcom licensed services aimed at specific minority ethnic communities. We found that ethnic minority communities in the UK with the most Ofcom licensed television and radio services aimed at their minority ethnic communities were: Indian, Pakistani, Bangladeshi, Black African, and Arabic-speaking backgrounds.”

Better Media contends that this is an inadequate response to the challenge of effective equalities provision, and demonstrates that Ofcom is failing in its duties to make adequate provision for all proscribed minority groups as laid out in the 2010 Equalities Act. It is not for Ofcom to pick and choose which minority groups it consults based on expediency and Ofcom's supposedly available resources. Rather, it is Ofcom's duty to investigate, as fully as possible, those who are underrepresented in the provision of broadcast and media services. If people of Caribbean heritage, for example, and those of identified in other protected groups, are not represented in Ofcom's data, then action must be taken to rectify this deficiency. It is therefore welcome to note that in the FOI of the 10<sup>th</sup> December 2021, that Ofcom agrees that it is “subject to the Equality Act 2010 in all our decision making.”

Better Media therefore renews our call in the 2021/2 work plan consultation for Ofcom to undertake further work in its Diversity and Equality of Opportunity monitoring, to specifically include research into the role and capacity of community media, as this is the key sector of the broadcast media economy that is able to demonstrate that people from ethnic minority groups, disabled people, and other people identified by a protected characteristic, as defined in the 2010 Equalities Act, are able to engage with, and access, forms of media beyond the BBC and commercial organisation. The omission of community media as a recognised category for monitoring and investigation in Ofcom's diversity reporting, Better Media contends, is an unacceptable omission that further marginalises people who are already often overlooked in public policy development and practice, and needs to be addressed with urgency.

## 6. Community Radio Licence Scoring

Better Media also calls on Ofcom to review its record keeping and decision-making processes relating to the award of community radio licences. In the Freedom of Information Request 01385244 - Community Radio Applications Scoring Criteria, Ofcom state that

“We do not hold this information. We assess each application against the statutory criteria, after which the decision-makers take the formal decision on whether the application(s) is/are successful or not. Our assessment process for applications is set out in each invitation to apply and the reasons for our decisions are recorded in the feedback letters sent to each applicant.”

Better Media contends that this is a failure of accountable administration on the part of Ofcom, and should be rectified as soon as possible. Our analysis of the submissions for CDSP licences for SSDAB suggests there is a wide disparity in the standard of submissions, and it is unclear if applicants have been required to meet a minimum threshold of evidence that demonstrate that they all meet the

statutory requirements to hold a licence. Is it further unclear if the decision-making process is enacted consistently or on a piecemeal basis, as suits the whims of each panel and licensing round?

Better Media therefore calls on Ofcom to urgently publish a process-map and scoring metric that is to be followed by all licencing panels considering broadcast radio licensing decisions, and that a minimum scoring threshold is identified that would ensure that each applicant has demonstrated that their licence application meets this minimum threshold, and that those that do not meet this minimum threshold are being appropriately rejected.

In addition, Better Media calls on Ofcom to urgently review previous licence rounds for CDSPs, SSDAB Multiplexes, and Community Radio analogue licencing, so that Ofcom can demonstrate that its decision-making is consistent and transparent. The number of all future rejections of CR, CDSP and Multiplex applications and rejections should then be publish, as a matter of course, and tracked in a cumulative manner on the Ofcom website.

## 7. Summary

This programme of works consultation must be considered separately from the consultation framework associated with each of these individual areas of work. We would remind Ofcom that it has an obligation to meaningfully consult, not only on the issues specified, but on the resources and priorities that are allocated to the programme of work that subsequently affect their implementation and operation. Denying adequate resources to any one element of the work plan will have a detrimental effect, thereby shutting down discussion on these issues in practice. By arguing that there are insufficient operational resources in any these areas, Ofcom may effectively exclude marginalised and easy to ignore members of our communities, who themselves may offer significant insight and potential for innovation in media provision in the future.