

## A4. Consultation question

A4.1 Ofcom is seeking views on this Format change request. Ofcom may consent to a departure from the character of the licensed service if Ofcom is satisfied that at least one of the criteria in Section 106 (1A) of the Broadcast Act 1990 (as amended) is satisfied in relation to each request. These criteria are set out on page 4 of this consultation document.

A4.2 In light of the considerations set out in Section 3 of this document, we are minded to consent to a departure from the character of the service on the basis that criterion (d) in Section 106(1A) of the Broadcasting Act 1990 (as amended) is satisfied in respect of the Format change request, and that there are no policy grounds on which to refuse the request.

### Question 1:

**Respondents are invited to comment on whether they agree with Ofcom’s preliminary view and to frame their views and responses with reference to, or in the context of, the statutory criteria in section 106(1A) of the Broadcasting Act 1990 (as amended), and in particular, statutory criterion (d).**

We do not believe that Ofcom should grant this request under Section 106 (d).

Ofcom has stated that this request would not be granted under any of the other relevant sections of the Act, therefore we believe the bar to have a request granted under Section (d) should be extremely high and not open to challenge.

In this instance, we do not believe the bar has been set high enough by Ofcom and we believe the research, data submissions and arguments submitted by Bauer are questionable.

We further contend that, even if the request could be granted under Section 106(d), the provisions of Sections 106 (a) to (c) provide the policy grounds by which the change should not be granted under Ofcom’s discretion.

We also believe there are further policy grounds for Ofcom to consider in relation to this request, based on stakeholder submissions and the basis on which this licence award was originally made.

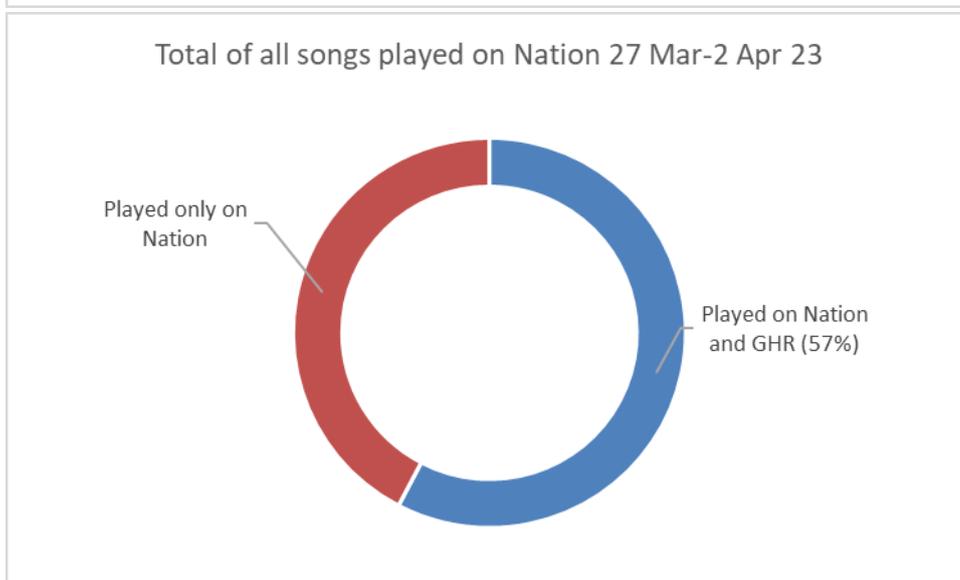
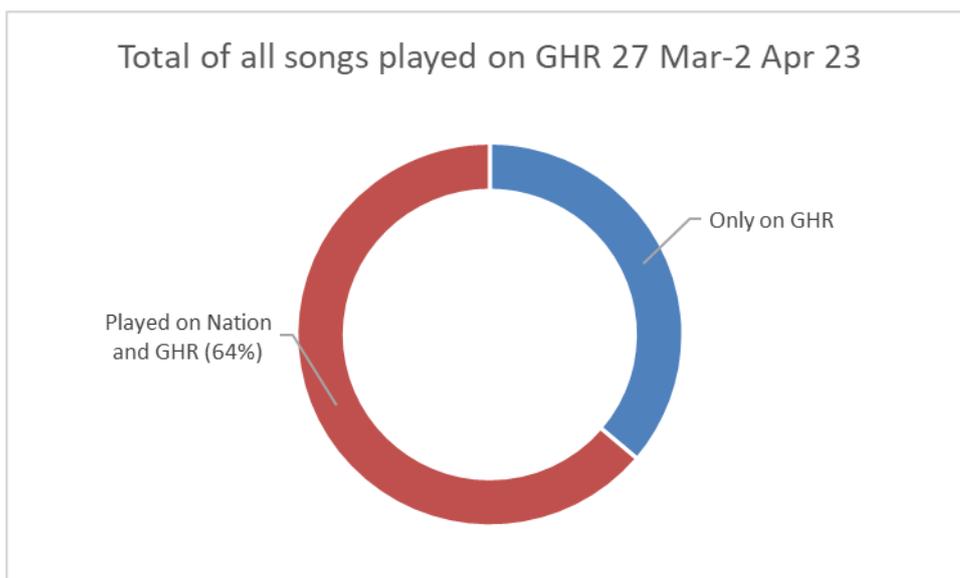
- As one of the most radical format change requests ever submitted – the threshold for success under 106(d) must be significant.
- Under the current framework, consideration must be given to other relevant analogue services. We submit that Ofcom has not considered either the output crossover of these services nor the impact of the proposed reduction in services available on FM to listeners in the area.
- Legislation states that a change may be granted (at Ofcom’s discretion after consultation) under 106(d) if “there is evidence that, amongst persons living in that area or locality, there is a significant demand for, or significant support for, the change that would result from the departure.” Bauer’s submission provides neither evidence of “significant demand” nor “significant support” for this departure. The submission looks to be an attempt by Bauer to meet its own strategic plans rather than anything significantly demanded or supported by listeners in the East of England.

- The request to retain Kiss in Norwich undermines much of Bauer's own research and risks creating a confusing "Frankenstein's monster" of a regional licence, split into four parts, creating confusion for listeners, advertisers and regulators. This is not what regional licences, or their various, valuable FM frequencies, were intended for. Regional licences/frequencies were differentiated by Ofcom (and its regulatory predecessors) on policy award grounds to deliver a single programme service to a large, single, regional area.
- The rationale for maintaining Kiss on FM in Norwich / Norfolk is said to be evidence based. The actual rationale is more simply explained by the current locations where Bauer has existing FM coverage for Greatest Hits Radio in the East. Bauer's proposal would see Norwich remaining as Kiss, effectively becoming a small, local licence but with none of the local programming obligations that are associated with running a local (as opposed to a regional) service.
- We are unaware of any successful previous requests under this section of the legislation from which to draw comparison, however the research survey sample size is substantially lower than 1% of the Ofcom Measured Coverage Area and less than 10% of the number of RAJAR diaries in the TSA. Such a low number cannot reasonably meet the threshold to demonstrate 'significant' support or demand, particularly in the light of Ofcom's noted concerns around the research submission.
- Ofcom highlights its concerns about the Format descriptions used in the research. We suggest these concerns should, in fact, have invalidated the submission.
- The Format description of Greatest Hits Radio, as researched by Bauer, and claiming a target demographic of adults aged 25-54 does not match the surveyed audience performance of station or even, it seems, Bauer's own description of the same service for the purpose of DAB licensing. The service description of the Greatest Hits Radio service on DAB published by Ofcom in the latest (March 23) Broadcast licensing monthly update, presumably extracted from Bauer's DSP licence which would have been written by Bauer, is "A classic hits service aimed primarily at the over 40s".
- Current RAJAR figures show Greatest Hits Radio (UK Survey AM/FM platform Q4, 2022) achieve a majority - 52% of the audience and 58% of listening hours - from listeners outside the defined 25-54 target age group in the research.
- The research presented by Bauer demonstrates only that one music format might be more popular against the other – there is no context given to respondents and it does not demonstrate any demand at all for the change being requested either from the potential beneficiaries of it or those likely to be disenfranchised.
- No effort has been made to declare that the choice is binary and that by picking the Greatest Hits Radio format, listeners would, consequently lose the Kiss format on FM. This is a material point. Why would respondents pick the Kiss format when – in their minds – it is already available in the market?

- Based on the number of words in each station description in the research, Bauer has worded the descriptions in their research to obtain the outcome they desired, by giving a more detailed description of Greatest Hits Radio and conflating presenters with music genres. Simon Mayo may not be on the Greatest Hits Radio service at a future point in yet his name appears in the description of the service given to respondents.
- In the research both Bauer – and Ofcom in its review of the same research – fail to recognise the impact and presence of other, similarly formatted, radio services already available in a significant part of the TSA – namely Suffolk and Cambridgeshire – where Nation Radio and Star Radio already broadcast on FM with services aimed at 35+ audience. In their respective areas the stations have a high proportion of FM listening and very high concentration of audience and listening from adults aged 25-54 (the stated target audience of Greatest Hits Radio) already on FM.

	Nation Radio	Star Radio
Proportion of audience reach on FM	52.5%	77.7%
Proportion of audience hours on FM	45.3%	64.7%
Proportion of FM reach 25-54 yr old	47.9%	49.0%
Proportion of FM hours 25-54 yr old	59.8%	66.8%

- Bauer’s submits “by making Greatest Hits Radio available on FM across the whole of Suffolk and in Cambridgeshire and Peterborough the evidence suggests the audience would increase significantly” as it is not already on FM in these areas. We disagree since the playlists of Greatest Hits Radio and existing services, such as Nation, significantly overlap.
- Bauer’s own evidence states that in Suffolk, Greatest Hits Radio reach is 11%. It however fails to mention that a service with a similar format to Greatest Hits Radio - Nation Radio Suffolk – and playing predominantly the same music, as outlined below, took over the 102FM frequency in September 2022. Listeners will – clearly – not have additional choice if they are hearing the same songs from different operators in the same market.
- Music Analysis from 27 March – 2 April 2023 shows 64% of overall airplay of Greatest Hits Radio was shared by Nation and 57% of the overall airplay of Nation was shared by Greatest Hits Radio.



- Offering the same songs on another service in the same area will neither broaden listener choice, nor help Bauer achieve its desired audience projections for Greatest Hits Radio. By contrast, there is virtually no music overlap between Kiss and Greatest Hits Radio or Kiss and Nation. The broadening of music choice, rather than the popularity of one format against another, was likely to have been a key policy consideration when the regional licence was originally awarded.
- The significant crossover in music output between Nation and Greatest Hits Radio in the Ipswich area is not even acknowledged in Bauer’s submission. The statement made by Bauer that Greatest Hits Radio will “reach the same levels already achieved in Norfolk of around 14% reach” is therefore highly questionable and cannot be verified or substantiated, particularly given the existence of Nation in Ipswich/Suffolk and Star in Cambridge/Cambridgeshire.

- Similar arguments are likely to apply in other areas of the East, with existing services targeting older audiences with Smooth Radio licensed on AM for Bury St Edmunds and Ipswich and on FM in Peterborough.
- Bauer contends that Kiss East Anglia is waning in popularity, yet reach on the service on FM has increased in each of the last four published audience surveys (RAJAR to Q4, 2022). The current Kiss East audience reaches 8% of its TSA, some 189,000 people. 59,000 of these are listening just on FM. This is a sizeable number to become disenfranchised as there is NO younger targeted music service in the East of England.
- In support of its request, Bauer submits that Kiss is currently more popular in Norfolk and the North than the rest of the region. Contrary to this submission, the most recent audience data (RAJAR Q4 2022) shows that in the North (Heart East Anglia - Norfolk TSA) Kiss East on FM achieves the same outright audience reach as it does in the South (Heart East Anglia - Suffolk TSA), whilst reach on a % basis and audience hours and therefore market share are greater in the South.

In summary, we argue that this flawed submission should not have been accepted as meeting the requirements of Section 106(d).

Further, even if Section 106(d) remains satisfied, we believe there are other relevant policy reasons to refuse the request under Ofcom's discretion following this consultation:

- In its analysis in 3.3 to 3.7 in the consultation document Ofcom has made it clear that granting this request:
  - Significantly alters the character of the service (Section 106a)
  - Narrows the range of services available (Section 106b)
- Section 3 of the Communications Act 2003 states one of Ofcom's General Duties is "the availability throughout the United Kingdom of a wide range of television and radio services which (taken as a whole) are both of high quality and calculated to appeal to a variety of tastes and interests". We do not believe that the request furthers this general duty as it would remove the only licensed commercial service in this area serving a younger audience.
- Younger listeners in East Anglia will lose out significantly were this format change to go ahead. With no young focused service across the entire region – there is no Capital or other youth-targeted service anywhere on FM available to listeners in the East of England.
- In relation to the original licence award a further policy consideration, the East of England regional is the only region in England that was granted just a single regional licence. For this scarce resource to be used primarily for a music service that will replicate the music output of existing services available across most of its MCA would be an undeniably poor use of this public resource.
- At the time of the licence award there was clearly a proven and accepted demand for a youth targeted music service. It was decided that a youth targeted service would broaden

listener choice of FM across the East. The proposed change, except in Norwich, would result in ALL licences in the East serving audiences aged 25+.

- Ofcom should also assess the commercial impact of this proposed change on existing services and how this might materially impact the local advertising market, given that a larger regional licence would be split into separately marketable areas and services. These are relevant considerations under Section 106(c).
- Although it seems no licence statement was made in relation to this award, we believe that arguments relevant to what has now become Section 106(d) would have carried relatively little weight in the award process as the regional licences were intended to expand the range of formats available in the area.

We understand Ofcom has a statutory duty under the consultation process to take views of stakeholders fully into account and that the views of stakeholders are also grounds for Ofcom to refuse this request.

For all the reasons stated we do not believe that the request should be granted under the legislation as it currently stands.