

Adam Baxter
Ofcom Standards Team
5th Floor
Riverside House
2A Southwark Bridge Road
London
SE1 9HA

By email: adam.baxter@ofcom.org.uk

11th January 2013

Dear Adam

A review of the Ofcom Rules on Party Political and Referendum Broadcasts and Proposed Ofcom Guidance for broadcast coverage of elections

Thank you for the opportunity to comment on Ofcom's proposed revisions to the rules on Party Political and Referendum Broadcasts (PPRBs) and Broadcasting Code guidance on coverage of elections.

I enclose a copy of UTV Media (GB)'s recent submission to the DCMS Communications Review seminar on 'Supporting growth in the radio (audio) sector'. This submission cites the requirements for Party Political and Referendum Broadcasts on national analogue commercial radio stations (talkSPORT, Classic FM and Absolute Radio) as an example of unnecessary regulation which should be removed.

National networks comprised of local radio licences (such as Heart, Smooth and Capital FM) are not subject to these requirements. In addition, the poor quality of broadcasts supplied to us by many parties and referendum organisations, and lack of a response from listeners, indicates that radio broadcasts are an unsuitable tool for delivering electoral and referendum communications objectives. Yet the requirements place a considerable regulatory burden on the broadcasters in question.

We also note that BBC Radio broadcast no Party Election Broadcasts during the 2010 General Election (which it has the discretion to elect to do). This is despite its licence fee funding, strong public service remit and large audience. Not only was this decision met without protest, it does not appear to have been acknowledged by participants or observers in the electoral process. It follows that there is little risk that the health of British democracy will be damaged if commercial radio is allowed to follow the BBC's lead.

Government's support for a transition to digital radio removes the continuing justification for singling out Independent National Radio licensees, and necessitates a reconsideration of the current rules. We suggest that they should simply be removed.

Whilst this decision is a matter for Government, we nevertheless urge Ofcom to use this review to provide Government with its assessment of the case for removing these requirements in its proposed 2014 Communications Bill.

Until such time as Government is able to remove the current legislative requirements, we make two substantive comments in relation to the proposed revision of Ofcom's rules.

1. **We oppose Option E2, which proposes aligning the maximum lengths of radio and TV broadcasts at 2'40"**. This proposal has apparently been informed by a submission from a political party that this would "avoid the need to edit PEBs for different formats". This in itself reflects a strong argument for removing the requirements for radio broadcasts, since it suggests that the party in question places a sufficiently low value on radio broadcasts as to be unable to justify producing a radio-specific production. In practice many parties repurpose the audio track from their TV broadcasts for radio, resulting in creative of low quality and impact. **We propose a third option, reducing the maximum length to 1'30" to more accurately reflect the attention span and expectations of commercial radio listeners.** This reflects the guidance given to parties by commercial radio stations during the 2010 General Election and to campaign organisations during the 2011 Referendum on Electoral Reform.
2. **We propose varying the scheduling restrictions for PPRBs for all parties and organisations including major parties to allow these to be broadcast at any time between 6am – 11pm,** rather than the current requirement for major party broadcasts to be carried between 5 – 9 pm. The current requirement for these to be broadcast during evening output is misaligned with the periods of peak listening to radio. In the case of talkSPORT, the requirements raise additional logistical issues, due to the presence of live football coverage during evening output. We note that the Radio Authority placed no permanent requirements on the scheduling of PEBs, instead adopting a more flexible, case-by-case approach (see News and Current Affairs and Programme Code, January 2002). As a result, talkSPORT, and its predecessor, Talk Radio, previously broadcast Party Election Broadcasts after 10pm. This was for editorial reasons and it is a reversion to this approach in place of the current TV-influenced approach that we now seek.

Please do not hesitate to contact me if you have any questions about the above.

Yours sincerely

A handwritten signature in cursive script, appearing to read 'J Buckland', is positioned below the 'Yours sincerely' text.

Jimmy Buckland
Director of Strategy
UTV Media (GB) Limited

DCMS Communications Review team,
2-4 Cockspur Street,
London
SW1Y 5DH

By email: communications.review@culture.gsi.gov.uk

28th September 2012

Dear Sir / Madam,

Communications Review: Supporting growth in the radio (audio) sector

Thank you for the opportunity to submit views in relation to the regulation and statutory framework for the radio and audio sector, as part of DCMS's Communications Review seminar series.

Overview

Our parent company UTV Media plc is the UK's third largest owner of commercial radio licences by revenue, operating talkSPORT and fourteen local radio stations and holding interests in eight DAB digital radio multiplexes¹. In April 2012, UTV signed an agreement with the Premier League to become its Global Audio Partner, following which we are embarked on a project to develop talkSPORT as the world's leading sports audio brand.

Our overarching comment is that the commercial radio licensing and regulatory framework is suitable for current industry needs, supporting the successful delivery of both citizen and consumer outcomes in an environment where the bulk of listening remains on AM and FM. However a future digital radio switchover for large local and national analogue services and the continuing growth in internet-based digital audio services present future challenges to this framework, which will need to be anticipated in the proposed Communications Bill.

In addition, there are a number of potential reforms which lie outside the core commercial radio licensing and regulatory framework and which should be considered within an all-encompassing review of the impact of current legislation on the radio sector.

We identify nine key objectives for the Communications Review:

1. **Localness regulation:** Aligning regulation between DAB and analogue services in such a way as provides appropriate rewards and incentives for the operation of locally orientated commercial radio services as digital radio listening increases

¹ All but one of our analogue and digital radio licences is controlled by UTV Media (GB), with Belfast's U105 operated by our parent company UTV Media plc.

2. **Community radio:** Protecting locally orientated commercial stations from unwarranted revisions to the licensing and regulatory framework for community radio
3. **Future for local radio on FM:** Improving access to the DAB platform for local radio stations for which the platform offers unsuitable coverage, excessive carriage costs or insufficient available capacity, as well as delivering guaranteed prominence for any stations remaining on FM
4. **Party Political and Referendum Broadcasts:** Removing the requirements for Party Political and Referendum Broadcasts on national analogue commercial radio
5. **Advertiser discrimination requirements:** Removing the current restrictions on discriminating between advertisers, which restricts commercial radio's ability to guarantee sectoral exclusivity within timeslots and so maximise commercial revenue
6. **Political advertising:** Relaxing the current restrictions on political advertising, enabling greater opportunities for campaign groups or public bodies to undertake radio advertising
7. **Impartiality:** Removing the inconsistency in the special impartiality restrictions governing local and national commercial radio
8. **Public notices:** Reforming the framework for statutory public notices, removing the outdated legislative bias towards press publicity and providing incentives for public body advertising on local commercial radio
9. **Radio advertising 'small print':** Simplifying statutory requirements for 'health warnings' in radio advertising

This submission does not give detailed attention to the question of whether a Government-led switch off of the AM and FM signals of larger commercial radio services is desirable. Our view is that it is not, however this position has been outlined in detail elsewhere.

In addition, we take this opportunity to note our view that the most significant step which the Government could take to aid the growth of the UK commercial radio market would be to force the BBC to sharpen the distinctiveness and public value associated with its radio output. This is particularly acute within the speech radio market, which the BBC dominates as no other sector in which it has a presence.

Listeners consistently rate BBC Radio 5 Live as the BBC's least distinctive major radio network², and we look forward to the next Charter Review providing opportunities to strengthen BBC radio's provision of news and broad sports coverage, and so reversing its current efforts to dominate the sports radio market by securing a majority of the most attractive radio sports rights on an exclusive basis on behalf of a service which is principally licensed as a news service.

² See

http://downloads.bbc.co.uk/aboutthebbc/insidethebbc/howwework/accountability/pdf/audience_information_april_june_2012.pdf

Questions posed by DCMS

Radio licensing regime

We support the continuation of the beauty parade regime for awarding licences, on the basis that we believe it remains appropriate for local commercial radio licences to include requirements for local news and programming and diverse music formats.

We note that a digital radio switchover will effectively do away with these arrangements for any services which cease to broadcast on AM or FM, but recommend that they should continue in relation to other services.

Music formats

We note a concern aired by Global Radio and other commercial radio groups that current music format requirements are creating a barrier to future growth of the sector.

We strongly disagree with any attempt to remove or substantially revise 'character of service' descriptions in radio licences since these ensure that commercial radio delivers a diverse mix of services to cater for a range of demographics and listener interests.

Locally orientated commercial radio services, including smaller scale local services such as our own Wish FM in Wigan and St Helens, typically carry more mainstream music formats, allowing them to attract the largest possible audience to their provision of local content. Such services often operate close to the margins of profitability, and we believe that they would cease to be sustainable if larger local and regional services with specialist formats or more niche demographic targeting requirements were allowed to move towards the centre ground. The result, we believe, would be a reduction in listener choice and shrinkage in the overall size of the commercial radio market.

Localness

We note the interest amongst some of our industry colleagues for a removal of the requirement in local FM licences for certain local programming to be 'locally made'. This view was widely articulated at the DCMS seminar on radio held in September 2012.

UTV Media (GB) operates its local radio stations with a 'Proud to be Local' trade marketing positioning, with our commercial imperative to be locally relevant providing us with strong incentives to retain a local presence as well as local news and programming. The 2010 revision to legislation which allowed stations to co-locate and share programming with Ofcom 'approved areas' has, we believe, brought in an appropriate degree of flexibility. In our view Ofcom's 'approved areas' are needlessly inflexible, and should include greater overlaps between adjacent approved areas, however we understand that this could be addressed without legislative change.

More pressing in our view is the question of what local programming requirements should remain in a switchover environment. In particular, we are concerned that services such as Swansea's 96.4 The Wave will be unable to sustain their current local format and investment in local programming if they face competition from non-local services for local advertising revenue. In a switchover scenario, this highly popular local radio station will experience increased competition from other local digital sound programming

services on the Swansea local DAB multiplex which – under the current framework – would have no requirement for local programming and yet would be competing for the same scarce listeners and advertisers.

The business model for locally orientated local commercial radio would be undermined in this scenario, perhaps terminally, and we therefore propose giving consideration to a regime which offers reduced licence payments for locally orientated services, or which limits access to local advertising markets for services without local content.

Our view on this issue is not settled and we propose that further analysis should be undertaken by DCMS in tandem with its work on digital radio switchover.

Community Radio

We do not believe that substantial revisions to the framework for community radio should be considered at this time.

Our experience of community radio is of a sector which in many instances is struggling for financial sustainability, but also of one whose outputs are sometimes hard to measure against social policy objectives, or whose primary contribution to listener choice (where its stations are sufficiently professional to appeal to non-participants), is to add further mainstream-formatted listening points in already fragmented radio markets.

We believe that community radio stations should be allowed to survive or fail based on whether they are serving their target community sufficiently well as to motivate public, private and commercial funding sources to provide them with the requisite level of financial backing. Community radio should retain its social gain function, not-for-profit status and restrictions on commercial income, since removing any of these characteristics would irretrievably undermine what defines a community radio service. In general, we disagree that community stations should receive funding from central government, proposing a community-led funding model.

We do not bear any ill-will towards community radio, and we welcome the enthusiasm for radio which it engenders in its participants. However by competing for listeners' attention, community radio reduces the available audience for nearby commercial stations, creating market fragmentation and impacting on their commercial viability. In markets where there is a popular locally orientated commercial radio stations operating close to the margins of profitability (such as Tower FM in Bolton and Bury), then the presence of a mainstream-formatted community station (such as Bolton FM), can cause material commercial impacts, owing to competition for scarce local advertising revenue.

This suggests that Government should resist any calls for substantial revisions to community radio's operating framework.

Future of local FM radio

The call for evidence seeks views on whether to apply the measure of no station with an MCA of 40 per cent or greater of an overlapping local multiplex(s) remaining on FM after a radio switchover.

We do not believe that it should be for Government or Ofcom to determine which services should remain on FM in the event of a future switchover programme. This reflects our view that any future switchover should not be Government-led; rather transmission and platform decisions should be the responsibility of broadcasters, who are best placed to determine the most appropriate means by which to serve their audiences.

In 2009, we calculated that in excess of 100 local radio stations could be left without digital migration pathways as part of a “secondary, ultra-local tier” of radio. During Digital Economy Bill scrutiny, the lack of any assessment of the impact of switchover on such stations was a recurring theme in Parliamentary questioning³.

In our view, switchover will carry an additional negative cost to local radio and to its listeners, with a degradation in the viability of services following as a natural consequence of their lack of access to the UK’s primary commercial radio listening platform, and by active Government efforts to promote the migration of listening away from the FM platform. We consider it likely that national advertisers will transfer all national advertising spend away from the platform, as RAJAR audience measurement and radio advertising plans restructured around the coverage areas of local, regional and national DAB multiplexes. Based on our own experience as local radio operators, the likely result will be a reduction in profitability of such stations, owing to a loss of advertising revenue, and ultimately station closures and job losses.

Government previously acknowledged these risks in giving its support to an Integrated Station List (ISL). In January 2010, then Communications Minister Sion Simon MP told MPs that *‘Future sets will simply have a list of station names. The listener will not distinguish between FM and digital stations, but will simply select the station by name’*. The proposition was supported in the House of Lords by Government Spokesman Lord Young of Norwood in February 2010, and enthusiastic terms by Digital Radio UK Chief Executive Ford Ennals in March 2010. In June 2010, Ed Vaizey MP stated that *“A working prototype of an integrated station guide has been developed. While further refinement of the guide is required, we will work with manufacturers to encourage its inclusion in future devices as and when appropriate”*.

Since then, little if no progress has apparently been made.

Government and Ofcom should focus attention on improving access to the DAB platform for those local radio stations for which the platform offers unsuitable coverage, excessive carriage costs or insufficient available capacity.

³ For example see Parliamentary question from Danny Alexander MP to Sion Simon MP, then Communications Minister, answered 05/02/2010

In tandem with this measure, we urge the Government to reopen discussions with industry about introducing an Integrated Station List on all approved DAB devices sold in the UK.

Government should also seek to improve its understanding of the likely negative impact of its proposed digital radio switchover programme on local FM radio, including in the context of its cost benefit analysis work.

Other issues

Whilst we believe that many of the areas of commercial radio regulation and licensing highlighted by DCMS do not require substantial change, there are a number of other beneficial changes which DCMS's call for evidence does not consider.

There are a large number of separate regulations whose public policy justification is – we believe – dubious at best. Their effect is to subject commercial radio to an unfair regulatory burden, inhibiting innovation and investment in programming and placing the industry at a competitive disadvantage. We provide the following examples and urge the Government to seize this once-a-decade opportunity to amend these areas of legislation.

Party Political and Referendum Broadcasts (Communications Act section 333)

In our view, the requirements for Party Political and Referendum Broadcasts on national analogue commercial radio (talkSPORT, Classic FM and Absolute Radio) are unnecessary. We note that national networks comprised of local radio licences (such as Heart, Smooth and Capital FM) are not subject to these requirements. In addition, the poor quality of broadcasts supplied to us by many parties and referendum organisations, and poor response from listeners, indicates that these radio broadcasts are perceived to have negligible value. Yet the requirements place a considerable regulatory burden on the broadcasters in question.

In a switchover context, the current rules will surely require reconsideration. We suggest that they should simply be removed.

Restrictions on discriminating between advertisers (Communications Act section 319 (k))

This regulation restricts our ability to guarantee sectoral exclusivity within timeslots and so maximise our commercial revenue. The purpose of this restriction is uncertain and yet its removal would have a material positive impact on radio's commercial vitality.

Restrictions on political advertising (Communications Act sections 319 and 321)

We propose that the current restrictions on political advertising ban should be relaxed in certain instances, for example enabling greater opportunities for campaign groups or public bodies to undertake radio advertising whilst maintaining restrictions on advertising by registered political parties. This is in light of the demonstrable demand from such organisations for opportunities to advertise on local commercial radio.

Inconsistency in the special impartiality restrictions governing local and national commercial radio (Communications Act section 320)

At present, local and national commercial radio stations are subject to different impartiality requirements. The regulations governing national commercial radio oblige talkSPORT to achieve editorial balance within individual programmes or programming strands (320 4(a)), whereas local stations such as LBC are simply obliged to achieve a balance over all their output as a whole (320 4(b)).

This has a significant impact on talkSPORT's editorial approach, discouraging us from engaging opinionated presenters or attempting more challenging current affairs coverage. It also acts as a disincentive for operators to launch new national talk radio stations – for instance on DAB. The illogicality of this approach is underlined by the fact that LBC – which as a local station is subject to less onerous requirements – has effectively obtained a quasi-national broadcast footprint via carriage on local DAB multiplexes outside London.

We see no rationale for such a disparity and suspect that there would be support across the political divide for amending legislation to align the impartiality rules for local and national commercial radio.

Statutory public notices – outdated legislative bias towards press publicity

Government institutions such as local councils are currently required by legislation to publicise proposals and developments in the local or national press. This bias towards press publicity creates significant inefficiency in public spending.

We propose a new media-neutral approach to Government publicity, with Communications legislation used to amend the existing provisions governing statutory public notices. This will release local and central Government departments to select the most effective media outlet(s) to meet their objectives, taking account of factors such as likely audience, creative execution and cost. As well as delivering increased effectiveness, UTV Media has previously estimated that this could unlock annual savings of up to £22.5m (50% of statutory public notices spend in 2009).

The majority of current statutory public notices requirements were set out in the 1980s and early 1990s, in legislation such as the Town and Country Planning (General Development Procedure) Order 1995 and Road Traffic Regulation Act 1984, since when local newspapers have lost ground to other local media outlets across the UK. In many areas, local commercial radio is now the best way for local authorities to inform residents about issues such as planning applications and road works.

'Health warnings' and 'small print' in radio advertising

Commercial radio has an unmatched record in adhering to applicable advertising codes, but most evidence suggests that radio is not an effective medium for disseminating detailed information about products and services. When presented with complex or detailed information, listeners simply 'tune out' or disengage. Despite this, a range of different European and UK regulations and directives place significant 'small print' or 'health warning' requirements on radio advertisements. Examples include additional

terms and conditions which could be spelt out on a website, or unwieldy 'representative examples' to accompany consumer credit offers.

This practice causes significant damage to radio advertising which is out of all proportion with any benefit conferred on consumers by providing the information. In our experience, consumers view the small print as being designed to protect an advertiser from any future legal claim, rather than to protect consumers. In most cases, these messages would be best replaced with clear messages directing listeners to websites or other sources where detailed terms and conditions may be accessed.

We urge Government to use new Communications legislation to implement a less onerous and more harmonised approach across the relevant areas of consumer protection and advertising policy, as it applies to radio.

Yours sincerely,

A handwritten signature in cursive script, appearing to read 'J Buckland', is positioned below the 'Yours sincerely,' text.

Jimmy Buckland
Director of Strategy