



Radio Multiplex Licence Renewals

Statement

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Section 1

Summary

- 1.1 The Broadcasting Act 1996 sets out the statutory framework for the renewal of radio multiplex licences, including the timetable within which the holder of a radio multiplex licence is able to apply for renewal, and the circumstances in which a renewal can be granted.
- 1.2 This statement follows on from the public consultation we published on 2 July 2010 entitled *Radio Multiplex Licence Renewals*. The consultation set out our proposals on the decisions we are required to make when renewing radio multiplex licences, and asked stakeholders for their views. We received 13 responses to the consultation, three of which were confidential.
- 1.3 This statement sets out the proposals we made in the consultation, the responses we received, and the decisions we have made taking these responses into account. It concludes by setting out details of the radio multiplex licence renewal application process, and the next steps we intend to take in the process.
- 1.4 Having taken into account all the responses, and for the reasons set out in the consultation document, we can now confirm that we will not set any additional coverage obligations that the holder of the national radio multiplex licence, Digital One, must meet as part of the licence renewal process beyond the level of coverage it currently provides. However, we will require Digital One to submit a new technical plan which shows how its current levels of coverage are provided and will continue to be provided throughout the period of the renewed licence at the provisionally-agreed new field strengths. We will then amend Digital One's licence to make clear that at least the current levels of coverage must continue to be provided throughout the period of the renewed licence.
- 1.5 We have also decided that we will not impose any new obligations on Digital One regarding the promotion of DAB take-up as part of the licence renewal process, and that we will not require Digital One to pay a percentage of multiplex revenue (PMR).
- 1.6 In respect of local radio multiplex licences, we have decided that in general we will not set any additional coverage obligations for local radio multiplex licensees as part of the licence renewal process. However, in line with our decision in respect of the national radio multiplex licence, as part of the licence renewal process we will require each local radio multiplex licensee to submit a new technical plan which shows how its current levels of coverage are provided at the provisionally-agreed new field strengths, and, if relevant, how it will enhance coverage in line with any commitments made in its original application or, with any subsequent plans we are aware of (e.g. in respect of the three Greater London multiplexes). We will then amend each local radio multiplex licence to make clear that at least the current levels of coverage (or more, if relevant) must continue to be provided throughout the period of the renewed licence.
- 1.7 Finally, we set out our position on some other issues raised by respondents (such as our policy on AIP, and the timing of licence renewals), and explain the radio multiplex licence renewal process.

Section 2

Background to the statement

Statutory requirements

- 2.1 Under section 58 of the Broadcasting Act 1996 (“the Act”), a radio multiplex licence which was granted before 1 October 2006 may be renewed on one occasion for a period of eight or twelve years (the period of renewal for any given licence depends on exactly when the licence was granted), beginning with the date on which it would otherwise expire. All radio multiplex licences were granted for a twelve-year period.
- 2.2 All 47 (one national, 46 local) of the radio multiplex licences currently in issue are eligible to be renewed in accordance with the above statutory provisions. 29 of these licences (including the only national one) may be renewed for a further twelve-year period; the remaining 18 licences (all local) may be renewed for a further eight-year period. The ‘cut-off’ date of 1 October 2006 means that none of the 13 local radio multiplex licences which have been awarded by Ofcom are eligible to be renewed (none of these licences has yet been granted, as their holders have not yet commenced broadcasting their radio multiplex services).
- 2.3 A licensee who wishes to apply for renewal must do so within a specified ‘window’, set out in the statute. This ‘window’ commences four years before the licence is due to expire, and ends three months before what is called the ‘relevant date’. This is the date by which we consider we would need to start a formal re-advertisement process for a fresh licence if, for any reason, the current licence was not renewed. We have set the ‘relevant date’ for each of the radio multiplex licences in issue, and have commenced the process of notifying licensees in accordance with the requirements of the statute.
- 2.4 The Act also sets out things that Ofcom may require licensees to do as a condition of having their licences renewed, and specifies the grounds on which an application for renewal could be refused. For both national and local licences, the renewal process gives Ofcom an opportunity to alter the coverage requirements which are included in a licence (i.e. the technical arrangements to ensure that consumers are able to receive the services provided under the licence). For the national licence only, the Act provides for additional requirements to be set. First, it says that we can require the licensee to submit new proposals for promoting the take-up of DAB receiving equipment (and then write these proposals into the licence as requirements). Second, it enables us to require the licensee to make certain payments to the Treasury in addition to the administrative licence fee it pays to Ofcom for holding the licence. These payments are determined by what is called a percentage of multiplex revenue (PMR), and the consent of the Secretary of State (for Culture, Media and Sport) is required if such payments are to be set.
- 2.5 We can only refuse to renew a radio multiplex licence if:
 - 2.5.1 The licensee has failed to comply with the conditions in its existing licence, or we think that it will not be able to comply with the conditions in the licence if it is renewed; or
 - 2.5.2 We have notified the licensee of new requirements it must meet, and its proposals fail to meet these requirements.

Consultation

- 2.6 We presented our proposals for how we might deal with the various issues set out above in a consultation, *Radio Multiplex Licence Renewals*¹, which commenced on 2 July 2010 and closed on 30 July 2010.
- 2.7 We received 13 responses to the consultation, three of which were confidential. The non-confidential responses can be viewed on our website at <http://stakeholders.ofcom.org.uk/consultations/radiomux/?showResponses=true>.
- 2.8 This statement sets out the proposals we made in the consultation, the responses we received, and the decisions we have made taking these responses into account. It concludes by setting out details of the radio multiplex licence renewal application process, and the next steps we intend to take in the process.

¹ <http://stakeholders.ofcom.org.uk/consultations/radiomux/>

Section 3

National radio multiplex licence

3.1 In the consultation document, we set out proposals relating to the renewal of the national radio multiplex licence in three main areas:

- coverage requirements
- promotion of DAB receiver take-up
- percentage of multiplex revenue (PMR)

Coverage requirements

Proposals in the consultation

3.2 As noted previously in this statement, as part of the radio multiplex licence renewal process Ofcom can require a licensee to submit a new technical plan which sets out details of current and planned coverage, and can notify the licensee of any requirements which must be met by this new plan.

3.3 In the consultation document, we explained how the coverage of DAB networks is currently measured, and highlighted the work which is ongoing in this area. We also set out details of the existing coverage requirements upon the holder of the national radio multiplex licence (Digital One), and how it has gone well beyond the coverage levels proposed in the original technical plan which was submitted with its application for the licence in 1998².

3.4 Given the ongoing work on DAB coverage planning, we proposed not to set any additional coverage obligations that Digital One must meet as part of the licence renewal process. However, to ensure that Digital One continues to provide the current levels of coverage which consumers rely on, we also proposed that Digital One should be required to submit a new technical plan which shows how the current levels of coverage are provided and would continue to be provided throughout the period of the renewed licence at the provisionally-agreed new field strengths. Digital One's licence would then be amended to make clear that at least the current levels of coverage must continue to be provided throughout the period of the renewed licence.

3.5 We asked for responses to the following specific question:

Question 1: Do you agree that Ofcom should not impose any new coverage obligations on Digital One as part of the licence renewal process?

Responses to the consultation

3.6 The responses we received to this particular question were broadly in agreement with our proposal not to impose any new coverage obligations on Digital One beyond what it currently provides. One confidential respondent agreed with us that "it would not be sensible to place any further specific coverage obligations [on Digital One] while an ad-hoc working group is currently trying to determine appropriate field strengths for assessing coverage", although the same confidential respondent also

² See paragraphs 3.3 – 3.13 of the consultation document.

proposed that we should consider how Digital One could be enabled to extend its coverage to Northern Ireland. All other respondents to this question agreed with our proposal that Digital One should be required to submit a new technical plan which shows how the current levels of coverage are provided at the provisionally-agreed new field strengths, but should not be required to extend its coverage further.

- 3.7 In particular, Digital One itself also agreed that given that the work on DAB coverage planning has only recently started, it would not be appropriate to define any additional coverage obligations. Digital One considers that the future opportunity for a further renewal would be the right stage to consider setting further transmission and coverage obligations.
- 3.8 Digital One also expressed a desire for Ofcom to ensure appropriate flexibility in the implementation of its proposals. It noted that at times, changes to transmitter sites might be necessary (for example due to decisions taken by third party landlords, planning authorities, etc.). Digital One therefore requested "a mechanism for [it] to argue for some change to the network other than the direct replacement of a site on a like-for-like basis (i.e. providing the same or similar signal strength in the same area)".

Ofcom's Response and Decision

- 3.9 We note the broad support for our proposal.
- 3.10 In response to Digital One's request for further flexibility in circumstances where transmitter changes may be unavoidable, we consider that we already have a flexible approach to such matters, having previously used the licence variation process to allow radio multiplex licensees to make changes to their transmitter networks when such changes have been considered necessary and/or desirable.
- 3.11 Digital One's licence does not currently allow for coverage of Northern Ireland – this is because there was no suitable spectrum available to facilitate such coverage when the licence was originally advertised (the only frequency which was available at that time for DAB in Northern Ireland was used instead for a local radio multiplex licence for Northern Ireland). However, under section 54A of the Broadcasting Act 1996 (which has been inserted by the Digital Economy Act 2010), we are now able to extend the licensed area of the national radio multiplex service, if we receive an application from the licensee to do so and there is a suitable frequency available.
- 3.12 Having taken into account all the responses, for the above reasons, and for the reasons set out in the consultation document, we can now confirm that we will not set any additional coverage obligations that Digital One must meet as part of the licence renewal process beyond the level of coverage it currently provides. However, we will require Digital One to submit a new technical plan which shows how its current levels of coverage are provided and will continue to be provided throughout the period of the renewed licence at the provisionally-agreed new field strengths. We will then amend Digital One's licence to make clear that at least the current levels of coverage must continue to be provided throughout the period of the renewed licence.

Promotion of DAB receiver take-up

Proposals in the consultation

- 3.13 In the consultation document, we proposed not to impose any new obligations on Digital One regarding the promotion of DAB take-up as part of the licence renewal process.
- 3.14 We explained how the DAB market has developed since Digital One launched its radio multiplex service in 1999, and set out some of the arguments for and against requiring the national radio multiplex licensee to promote the DAB platform. We said that, on balance, we did not think there was a strong case for ongoing regulatory intervention in this area.
- 3.15 We asked for responses to the following specific question:

Question 2: Do you agree that Ofcom should not impose any new obligations on Digital One regarding the promotion of DAB take-up as part of the licence renewal process?

Responses to the consultation

- 3.16 The response to this aspect of the consultation was slightly more mixed than was the case with regards to Digital One's coverage obligations. Although the majority of respondents agreed with our proposal, some alternative views were proffered.
- 3.17 Passion for the Planet said that "D1 should be obligated to promote DAB", although they also said that "whether they have an obligation or not imposed by Ofcom it is likely they will continue to promote DAB", while the BBC suggested that we should make the renewal of Digital One's licence "conditional on Digital One taking a shareholding in Digital Radio UK (DRUK)".
- 3.18 RadioCentre agreed that the market context had changed significantly since 1999, but said it was "not convinced that [these developments in digital radio] remove the need for ongoing regulatory intervention completely". It went on to say that "there is still much to be done to drive digital radio in future", and that it "may be appropriate to consider new obligations on Digital One that are more appropriate for the current environment". The commercial radio trade body suggested that such obligations may involve "a requirement to demonstrate a clear and significant level of commitment and activity to support digital take-up".
- 3.19 Digital One listed in detail a range of activities it has undertaken during its current licence period, and noted that "the costs borne by Digital One's shareholders and the multiplex's customers have been a significant regulatory burden". It goes on to state that "over time, and as the digital radio market has grown, the broader radio industry... have developed marketing activities. As this has happened, the arguments for regulatory intervention diminish. For example, we have highlighted that radio stations tend to deliver promotional airtime for digital radio significantly above their contracted obligations with Digital One." Finally, Digital One stated that "When Digital One's initial licence is renewed, we will continue to market and promote DAB digital radio as part of our normal business, driven by standard business motivations. This will include working to accelerate that take up of DAB digital radio as this underpins our ability to sell capacity".

Ofcom's Response and Decision

- 3.20 We recognise that it will be important for Digital One to continue to market and promote the DAB platform should its licence be renewed, and accept that there is still much to be done to drive digital radio in the future. However, we also accept Digital One's contention that it will be in its own business interests to promote the platform upon which it provides its service, and agree with Digital One that the increased role of the broader radio industry in marketing DAB reduces the need for regulatory intervention.
- 3.21 As to the point made by the BBC about Digital One's involvement in DRUK, we consider that this is very much a matter for industry and not for Ofcom. We do not consider that it would be appropriate for Ofcom to require that Digital One purchase a shareholding in Digital Radio UK, if that is even possible, as a condition of licence renewal. We note that in any event, Arqiva, the owner of Digital One, is currently a member of DRUK.
- 3.22 Having taken into account all the responses, for the above reasons, and for the reasons set out in the consultation document and in particular in line with our statutory duty to act proportionately and targeted only at cases in which action is needed, we will not impose any new obligations on Digital One regarding the promotion of DAB take-up as part of the licence renewal process.

Percentage of multiplex revenue (PMR)

Proposals in the consultation

- 3.23 In the consultation document we explained what multiplex revenue is³, and how the legislation allows for Ofcom to require that Digital One pays a percentage of this revenue annually as a condition of holding the national radio multiplex licence. We also explained that the consent of the Secretary of State for Culture, Media and Sport is required should we wish to set a PMR, and that PMR payments are collected by Ofcom but then passed on to the Treasury.
- 3.24 As part of our analysis of whether to set a PMR rate, we highlighted our intention to introduce pricing for the spectrum used for digital terrestrial radio broadcasting from the end of 2014, using Administered Incentive Pricing (AIP)⁴.
- 3.25 We set out four options, three of which involved applying a PMR rate and all of which included AIP as an additional or sole pricing mechanism. We proposed that Option 1 was our preferred approach. This involved setting a zero PMR rate for the entire duration of the renewed licence period, and using AIP as the sole pricing mechanism from the end of 2014 onwards. We also made clear that the decision as to whether or not to set a PMR rate rests ultimately with the Secretary of State.
- 3.26 We asked for responses to the following specific question:

Question 3: Do you agree with our preference not to set a PMR rate for the renewed period of the national radio multiplex licence?

³ See paragraph 3.29 of the consultation document.

⁴ See *Future Pricing of spectrum used for terrestrial broadcasting – A Statement*, Ofcom, June 2007 (<http://stakeholders.ofcom.org.uk/consultations/futurepricing/>)

Responses to the consultation

- 3.27 There was unanimous support for our proposed approach to set a zero rate of PMR, although Passion for the Planet suggested that a rate could be set once the radio industry is “solid and making lots of money”. Digital Radio UK said “we do not want extra costs to have a detrimental effect on digital take-up”, while RadioCentre expressed the view that “to do otherwise [than set a zero PMR rate] would introduce an inflexible and undesirable cost, at a time when Ofcom and Government should be seeking to support and incentivise investment in coverage and the best possible standards of service as we move towards digital radio switchover”.
- 3.28 However, some respondents commented on our intention to introduce AIP from the end of 2014. RadioCentre and Folder Media expressed concerns that this policy is based on a four year old consultation and a policy which came out of a review in 2002 – and added their view that market expectations as to digital listening have not been met. Both, together with a confidential respondent, said that we should state now that AIP will not be introduced until after any digital switchover process is complete. Both RadioCentre and Folder Media added their view that the introduction of AIP would have a negative impact on investment, and could also affect the commercial viability of multiplex operations as well as service providers.
- 3.29 UTV Media (GB) Limited said that AIP “should not be applied to multiplex licensees that are committed to achieving the government’s objective of radio DSO” but that, instead, it should be used as an incentive to encourage multiplex licensees who do not intend to extend their coverage to meet any DSO requirements set by the Government.

Ofcom's Response and Decision

- 3.30 In light of the unanimous support for our proposal on PMR, we sought the views of the Secretary of State for Culture, Olympics, Media and Sport on our proposal to set a zero PMR rate for the renewed period of the national radio multiplex licence. We also sought confirmation from the Secretary of State as to whether he intended to require Ofcom to set a particular rate, or make an order specifying that no rate is set.
- 3.31 We have not yet received a response from the Government on these matters. We cannot therefore confirm, at this stage, whether there will be a positive PMR rate for the national radio multiplex licence. As soon as the position of the Government is clear, we will communicate this directly to Digital One and publish it on our website.
- 3.32 With regards to our policy on AIP, while we recognise that the enactment of the Digital Economy Act 2010 and the subsequent publication by the Government of its Digital Radio Action Plan represent significant statements of the Government’s commitment to a digital radio upgrade, we do not yet know the exact timetable for any such upgrade, nor how it will directly affect multiplex licensees’ use of spectrum.
- 3.33 As we said at the time of announcing the policy, and again more recently in our consultation *SRSP: The revised Framework for Spectrum Pricing*⁵, we will consult again before we introduce AIP for radio multiplex licences, and this consultation will take into account all relevant aspects of the proposed digital radio upgrade which may affect the timing of any proposed fee changes for radio multiplex licences.
- 3.34 We may review this policy earlier if a deadline for digital radio upgrade is set.

⁵ <http://stakeholders.ofcom.org.uk/consultations/srsp/>

Section 4

Local radio multiplex licences

- 4.1 In the consultation document, we set out proposals relating to the coverage of local radio multiplex services, in the context of the renewal of local radio multiplex licences.

Coverage requirements

Proposals in the consultation

- 4.2 As noted previously in this statement, as part of the radio multiplex licence renewal process Ofcom can require a licensee to submit a new technical plan which sets out details of current and planned coverage, and can notify the licensee of any requirements which must be met by this new plan.
- 4.3 In the consultation document, we explained how the coverage of DAB networks is currently measured, and highlighted the work which is ongoing in this area. We also detailed how the coverage obligations of local radio multiplex licensees are currently reflected by the requirement on each licensee to implement the transmitter assignments contained in its licence. These transmission arrangements formed part of the licensee's original application for the licence, although they may have been modified during the course of the licence period to reflect the addition of new transmitters, or changes to existing transmitters.
- 4.4 We highlighted how two sets of statutory provisions in the Digital Economy Act 2010 could have an impact on local radio multiplex licensees. These provisions – which have inserted new sections 54A and 58A into the Broadcasting Act 1990 – give, respectively, Ofcom the power to change the area covered by and frequency used by a local radio multiplex service (following application from the licence holder), and the Secretary of State the power to amend the existing statutory provisions relating to radio multiplex licence renewal.
- 4.5 Given the ongoing work on DAB coverage planning as described in the consultation document, and the uncertainty created by these new statutory provisions, we proposed that in general, and until such time as the work on DAB re-planning is completed and the Government has decided whether it wishes to amend the statutory framework, we would not set any additional coverage obligations for local radio multiplex licensees as part of the licence renewal process.
- 4.6 However, to ensure that local radio multiplex licensees continue to provide the current levels of coverage which consumers rely on, we also proposed that each local radio multiplex licensee should be required to submit a new technical plan which shows how their current levels of coverage are, and will continue to be provided at the provisionally-agreed new field strengths. Each local radio multiplex licence would then be amended to make clear that at least the current levels of coverage must continue to be provided throughout the period of the renewed licence.
- 4.7 We also proposed two exceptions to the general approach outlined in paragraph 4.5 above. These were where a local radio multiplex licensee has either:
- 4.7.1 promised in its original licence application to launch certain transmitters but has not yet done so; or

- 4.7.2 already announced plans to extend its coverage, either as part of its original licence application or subsequently.
- 4.8 In either circumstance, we proposed that as part of the licence renewal process, a local radio multiplex licensee would need to include as part of its new technical plan details of the new transmitters.
- 4.9 We asked for responses to the following specific question:

Question 4: Do you agree that, unless or until the Government makes a decision to the contrary, Ofcom should not impose any additional coverage obligations on local radio multiplex licensees as part of the licence renewal process, other than any already proposed by the licensees themselves (either as part of their original licence applications or subsequently)?

Responses to the consultation

- 4.10 The responses we received to this particular question were unanimously in agreement with our proposed general approach that we should not impose any additional coverage obligations on local radio multiplex licensees as part of the licence renewal process, although UTV Media (GB) Limited did not agree with our proposal that we should review this general approach as and when the work on DAB re-planning is completed and the Government has decided whether it wishes to amend the statutory framework relating to the licensing and regulation of local radio multiplex services. UTV felt that “to hit local DAB licensees with tough new obligations once the planning work is complete would be inconsistent and unfairly prejudicial to those local licence holders who cannot apply for renewals before the work is finalised”.
- 4.11 However, there was some opposition to our suggestion that relevant local radio multiplex licensees should be required, in submitting a new technical plan as part of the licence renewal process, to propose plans for implementing any new transmitters which they proposed as part of their original applications but have not yet implemented. While UTV Media (GB) Limited, Digital One and Arqiva agreed with the general principle, each asked that we show flexibility and take account of present day commercial realities when considering additional transmitter commitments which, in some cases, were made up to 10 years ago.
- 4.12 RadioCentre, by contrast, was strongly opposed to our suggestion. It said: “It ... seems unreasonable and inappropriate to treat ... statements, which were made in applications written over ten years ago, as binding conditions within the new local multiplex licences, when so much has changed in the interim”. It added that “unless the transmission commitments were included in the original *licence* (rather than in statements made in the original application) the multiplex operator should not ordinarily be required to include these in their future licence”.
- 4.13 There was also opposition to our other suggested exception to our general approach – that is, where a licensee or licensees have announced plans to extend coverage which were not part of its or their original application(s), but has not yet implemented any such enhancements. This opposition appears to stem primarily from the fact that in the consultation document we cited a press release issued on 3 February 2010 by Digital Radio UK announcing plans to enhance DAB coverage in London.
- 4.14 Folder Media said that, as a service provider on the Greater London III local radio multiplex service, it was unaware of the plan set out in the press release until it was

published, and as such does not know of the potential financial implications that the initiative may have on its business. It added that Ofcom should disregard the press release in respect of the Greater London III multiplex. This position was supported by UTV Media (GB) Limited, who said that the plans contained in the press release were not approved by the board of DRG (London) Limited, the holder of the Greater London III local radio multiplex licence.

- 4.15 Digital Radio UK itself, which published the press release, said that the plans it announced had not been finalised, and added that it “seems unreasonable ... that this general intent, which made no reference to coverage or transmitters, should be written into the Multiplex Operator licences as a coverage obligation”. The RadioCentre had the same view. It said that “it is simply not appropriate for selective public statements and press releases issued by trade bodies, multiplex owners or service providers to be used in this way by Ofcom as a means of securing licence conditions.” It also said that as “the members of Digital Radio UK only have a controlling interest in [the Greater London I multiplex], it is difficult to see how any condition could be enforced more widely than on this multiplex alone.”
- 4.16 The BBC offered an alternative view. It said that it broadly supported our intention to set additional coverage obligations where multiplex operators have announced plans to extend their coverage, and hoped that the London multiplex operators would be in a position to enhance their coverage in the capital by mid-2011, which would match the BBC’s plans for improving the coverage in London of its own (UK-wide) multiplex.

Ofcom's Response and Decision

- 4.17 Given the broad support for our general approach, having taken the responses into account, for the above reasons, and for the reasons set out in the consultation document, we can now confirm that in general we will not set any additional coverage obligations for local radio multiplex licensees as part of the licence renewal process.
- 4.18 While we recognise the concerns expressed by UTV Media (GB) Limited regarding our proposal to review this general approach if the relevant circumstances change, we believe it is appropriate for Ofcom to take full account of whatever is the policy context which pertains at the time when considering the issues relating to a specific licence renewal. The fact that some local radio multiplex licences expire later than others is simply a function of the fact that licences were advertised over a number of years, and of the statutory framework which allows for differing renewal periods depending on when licences were first granted.
- 4.19 With regards to the first proposed exception to our general approach – that relevant local radio multiplex licensees should be required, in submitting a new technical plan as part of the licence renewal process, to include plans for implementing any new transmitters which they proposed as part of their original applications but have not yet implemented – we can confirm that in applying this policy, we will take a flexible approach where appropriate, and take full account of any relevant developments since the commitments were first made. However, we do not agree with RadioCentre that we should not take account of these commitments unless they were included in the original licence.
- 4.20 In practice, this policy will apply to only a very small number of local radio multiplex licensees, and we will consider each one on a case-by-case basis. Before finalising the requirements of the supplementary technical plan in these cases, we will indicate to the applicant where we consider they have made commitments in their original licence application which have not been implemented, and that we expect to see

those implemented in the new supplementary technical plan. We will then have discussions with the applicant to consider whether and how to set any such requirements. In general, we would expect an applicant in this position to include any such commitments in its new supplementary technical plan. However, we will take a flexible approach where appropriate (for example, in relation to trigger levels, proposed alternative sites or timetable for implementation) and we will take full account of the additional coverage of relevant local services that the proposed requirements would deliver, balanced against the cost to the licensee of implementation. We will then ask the applicant to submit its supplemental technical plan.

- 4.21 It is important to note that we are not asking the relevant applicants to implement these commitments immediately, or even in accordance with the same 'trigger levels' which formed part of the original commitment. We are simply asking the relevant applicants, as part of the process of licence renewal, to include in their new technical plans details of any new transmitters (or suitable alternatives) to which they have previously committed, and a timetable for their implementation, which we consider it is appropriate to require them to include.
- 4.22 As for the other suggested exception to our general approach – that is, where a licensee or licensees have firm proposals to extend coverage which were not part of its or their original application(s), but have not yet implemented any such enhancements – we have listened carefully to the comments from respondents, particularly with regard to the Digital Radio UK press release which we cited in the consultation document as an example of such an announcement.
- 4.23 We recognise that the Digital Radio UK press release lacked detailed information about the exact nature of the proposed coverage improvements in Greater London, and we did not intend for it to form the basis for the extension of coverage obligations. Rather, in each case it will be for the individual licensees concerned to propose exactly how they intend to deliver enhanced coverage in their area. However, when set in the context of a general policy approach not to set any additional coverage obligations (despite the legislation providing Ofcom with explicit power to set such obligations), we consider that the general principle of expecting a local radio multiplex licensee to include in a new technical plan details of coverage enhancements which have already been finalised is not unreasonable.
- 4.24 From our discussions with multiplex operators and Arqiva, we are aware that plans to improve the coverage within the M25 of all three Greater London multiplexes are already being implemented, with power increases at many sites, including major improvements and power increases for all three multiplexes at Wrotham in Kent, and a new transmitter in central London to improve robust coverage there markedly. We know that the operators of all three multiplexes are working to deliver these plans within the existing licence period, and so we would expect to see them included as commitments in all three technical plans from the start of the new licence periods.
- 4.25 We therefore can now confirm that, in line with our decision in respect of the national radio multiplex licence, as part of the licence renewal process we will require each local radio multiplex licensee to submit a new technical plan which shows how its current levels of coverage are provided at the provisionally-agreed new field strengths, and, if relevant, how it will enhance coverage in line with any commitments made in its original application (following discussion with Ofcom) or any firm proposals subsequently made. We will then amend each local radio multiplex licence to make clear that at least the current levels of coverage (or more, if relevant) must continue to be provided throughout the period of the renewed licence.

Note on AIP

- 4.26 We noted in the consultation document our intention, from the end of 2014, to commence charging local radio multiplex licensees for their use of spectrum through administered incentive pricing (AIP). Our position on this issue is set out in paragraphs 3.32-3.34 of this statement.

Other issues raised by respondents

- 4.27 RadioCentre said that our consultation did not take full and appropriate consideration of the "significant degree of uncertainty" regarding the digital switchover process. We do not agree. Our proposals in the consultation take full account of this uncertainty, most notably our proposals not to impose any new coverage obligations upon licensees as part of the licence renewal process. However, the timetable for renewing radio multiplex licences is, to a large extent, set by statute, and thus we must proceed with the renewals process at this time. Similarly, the timing of any decision on digital radio switchover is a matter for Government, not Ofcom.
- 4.28 In our view, the financial impact of digital switchover is a matter of commercial assessment of risk for licence holders. We note that elsewhere in its submission, RadioCentre recognises that the passage of the Digital Economy Act 2010 and the Government's publication of its Digital Radio Action Plan "helps to provide greater certainty" and "greater clarity for listeners and industry". We would also note that a radio multiplex licensee is not *required* to apply for licence renewal – this is a commercial decision for the licensee. Licence renewal is a statutory benefit available to all existing radio multiplex licensees, but should any licensee choose not to apply, Ofcom would be able to advertise the licence again, and we are already aware of potential interest in any licences which are not renewed.
- 4.29 Several respondents raised the issue of the timing of licence renewals. We said in the consultation document that in order to be consistent with the intention of the statute, we would seek to complete the licence renewal process in respect of any given radio multiplex licence as close as possible to the 'relevant date' of the licence in question. In the vast majority of cases, this equates to 18 months prior to the expiry date of the current licence. We also said that "there is arguably greater certainty for licensees in knowing whether their application for renewal has been successful as early as possible".
- 4.30 However, some respondents expressed concern at what they perceived as a lack of clarity in the consultation document regarding the point at which a radio multiplex licensee is required to commit to operate the multiplex service in a second licence period.
- 4.31 Digital Radio UK said "it is unreasonable to ask Multiplex licensees to enter into 12 year local digital multiplex commitments at this time, given the fundamental uncertainty that exists today. It added "it would be preferable for Ofcom to explore whether, within the statutory requirements, the flexibility exists to either delay the licence renewal process or to delay the point of renewal confirmation", and further suggested that a delay until at least June 2011 would be helpful.
- 4.32 RadioCentre asked for clarification as to "what level of commitment is being required (or is implied) by any application from a licensee received by the closing-date", and also as to "when multiplex licences and the terms within them are considered to have been finally determined by Ofcom".

- 4.33 As we set out in the consultation document, the process of radio multiplex licence renewal is, by and large, set out in statute (section 58 of the Broadcasting Act 1996). The legislation says that Ofcom must set a 'relevant date' in respect of a licence which allows sufficient time, should the existing licensee not wish to renew, for the licence to be re-advertised, awarded and launched without a break in service between the existing and the new multiplex service provider. Based on our experience of licensing 13 new local radio multiplex services, and in particular the average time period between the licences being advertised and the launch dates proposed by the successful applicant, we have set for the majority of licences the 'relevant date' as 18 months prior to the expiry of the existing licence. For the first four local radio multiplex licences which were granted, the 'relevant date' for each has been set at 17½ months before the expiry of the current licence.
- 4.34 It is important to note that the statute requires that an application for licence renewal must be submitted no later than three months before the 'relevant date' – this is not a deadline set by Ofcom. However, the statute also says that Ofcom may postpone consideration of an application for renewal for as long as it considers appropriate.
- 4.35 If we were to postpone consideration of an application for renewal in accordance with the statute, we consider it important that we do not postpone for too long such that it is no longer possible for the licence to be re-advertised and awarded and a putative new licensee ready to launch its service by the time the current licence expires. However, given the feedback from some radio multiplex licensees that they wish to delay renewal for as long as possible, we consider that we could postpone consideration of an application for licence renewal until no later than twelve months prior to the expiry of the existing licence. This would allow only a very short period of time (six months) between a putative new multiplex licensee being awarded the licence and the existing licence expiring (and thus, in order to maintain continuity of service for listeners, the new licensee would need to launch its service no later than six months after being awarded the licence). As such, it is not our preferred approach. However, we are prepared to consider postponing consideration of an application for renewal for up to six months, upon request from a licensee.
- 4.36 This means that, for those licensees who wish to have consideration of their application for licence renewal postponed, assuming that the relevant statutory considerations are satisfied and the licence renewal granted, the date from which Ofcom would regard them as being committed to operating the licence during a renewed period would be from when the renewal was granted – around one year prior to the expiry of the existing licence.
- 4.37 The next Section of this statement provides information about the licence renewal application process.

Section 5

The licence renewal process

Application process

- 5.1 As noted previously in this statement, the statutory deadline for a radio multiplex licensee to apply for licence renewal is three months prior to the 'relevant date' of the licence in question.
- 5.2 The holder of the national radio multiplex licence, Digital One, has already applied for licence renewal by its required closing-date (which was in February). The next closing-date is 15 September 2010 – this date applies to the local radio multiplex licences for each of Birmingham, Manchester, Greater London I and Glasgow. The holders of these licences have been notified of this deadline. All other local radio multiplex licensees will be notified of their 'relevant date', and accordingly their closing-date for applying for licence renewal, at least one year in advance of the 'relevant date', in accordance with the statute.
- 5.3 An application for renewal of a local radio multiplex licence should be submitted, in writing, and signed and dated in the following format⁶:
- "I, [insert name], on behalf of [insert name of licensee], hereby confirm that [insert name of licensee] wishes to apply for a renewal of the local radio multiplex licence for [insert area covered by licence]([insert licence number])(the "Licence"), in accordance with Condition 10 of the Licence and section 58 of the Broadcasting Act 1996 ("the Act").*
- The applicant is aware that Ofcom, in exercise of its powers under section 58(4) of the Act and Condition X of the Licence, will require [insert name of licensee] to furnish a technical plan which supplements that submitted by it under section 50(4)(b) of the Act, and will notify [insert name of licensee] of requirements which must be met by that supplementary technical plan.*
- I also confirm that to date, [insert name of licensee] has complied with the conditions of the Licence."*
- 5.4 An application for renewal is not binding at this stage, in that an applicant may withdraw his application for renewal up until the point the decision is made by Ofcom as to whether to renew the licence.
- 5.5 Upon receipt of an application for renewal, Ofcom will then write to the applicant asking it to submit a new technical plan as described in this statement, and to confirm that it will be able to comply with the conditions of the renewed licence, including the requirements of the supplementary technical plan throughout the period of the renewed licence. If the applicant is one of the small number which committed in its original application to provide further coverage but has not implemented that further coverage, Ofcom will first notify that applicant of the commitment that it would expect to see included in the supplemental technical plan as set out in paragraph 4.20 above, and have a discussion with these licensees, before finalising these requirements. In general, we would expect to receive this technical plan no later than the 'relevant date' (although we recognise that this is no longer feasible in relation to the national radio multiplex licence). We may request further information from a

⁶ This does not apply to the multiplex licences for each of Birmingham, Manchester, Greater London I and Glasgow, which have been dealt with separately, given their deadline of 15 September 2010.

licensee, as required, to ensure that we fully understand the technical plan, and to help us process the application for renewal.

- 5.6 By the 'relevant date' (or no later than 12 months prior to the expiry date of the existing licence, if an applicant has requested that we postpone consideration of its application), we will make a decision as to whether to grant the application for renewal. Immediately prior to making this decision, we will ask the applicant to re-confirm that it has complied with the conditions of its licence to date, and that it will be able to comply with the conditions of the renewed licence, including the requirements of the supplementary technical plan, throughout the period of the renewed licence. The grounds on which we can refuse an application for renewal are set out in paragraph 2.5 of this statement.
- 5.7 As noted in paragraph 4.36, this is the point from which we will regard a licensee as being committed to the renewal (assuming the application for renewal has been granted, of course). If an applicant decides before this date that it wishes to withdraw its application for renewal, it may do so by giving notice in writing to Ofcom.

Next steps

- 5.8 We will write to Digital One asking it to submit a new technical plan which shows how its current levels of coverage are provided and will continue to be provided at the provisionally-agreed new field strengths throughout the duration of the licence. We will aim to reach a decision on Digital One's application for renewal of its national radio multiplex licence as soon as possible. We note that Digital One's licence expires on 14 November 2011.
- 5.9 Assuming we receive applications for renewal from the holders of the local radio multiplex licences for each of Birmingham, Manchester, Greater London I and Glasgow by the required deadline of 15 September 2010, we will commence the renewal process in respect of these four licences as described in this statement.
- 5.10 We will continue to notify local radio multiplex licensees of their timetable for applying for renewal, as their licences approach their expiry date.