

Julia Richards  
Ofcom  
Content and Standards  
Riverside House  
2A Southwark Bridge Road  
London SE1 9HA

16<sup>th</sup> September 2010

Dear Julia,

**Broadcasting Code Review: Commercial Communications in Radio Programming**

Thank you for the opportunity to comment on Ofcom's proposed reforms to the rules governing commercial communications in radio programming.

In our view, Option C best fulfils regulatory objectives in this area. We urge Ofcom to implement it as soon as possible, ideally straight away, and certainly no later than the December 2010 deadline indicated in the consultation document. It is now two and a half years since the commercial radio industry first requested reform in this area, and the revised approach which Option C would deliver is now long overdue. The time for meeting with broadcasters and commissioning research is passed; the opportunity to improve regulation is clear and should be seized decisively.

In our response to Ofcom's previous Broadcasting Code review consultation, we set out a view that the revised approach to the regulation of commercial communications in radio programming should strive to achieve the following:

- 1) Align regulation with the basic requirements of legislation;
- 2) Improve editorial content;
- 3) Deliver appropriate consumer protection;
- 4) Make the rules simpler to understand and implement; and
- 5) Increase the appeal of commercial radio to advertisers;

Option C delivers on each of these objectives, which were echoed in submissions from across the commercial radio sector. Ofcom has devised an effective solution, which is focused on clearly defined objectives, and exhibits a welcome awareness of the barriers that complex regulation presents to effective operational compliance.

We understand that Option C has the support of other commercial radio groups, and hope that this will aid its swift implementation.

We are also aware that some commercial radio groups are now arguing that Ofcom should not exclude news programming from the scope of its liberalisations. These groups argue that impartiality would not be undermined by the presence of sponsor branding. Implementation would require a simple redrafting of Ofcom's proposed rule 10.3 (i.e. deletion of the words 'or around').

Whilst we consider that permitting the sponsorship of news bulletins could be consistent with the objectives set out above, we consider the greater value for commercial radio to lie in implementing Option C as swiftly as possible. We therefore propose that Ofcom should only consider permitting news sponsorship insofar as it does not delay implementation of its overall package of reforms. Consideration of this issue must not be allowed to undermine Ofcom's December 2010 implementation deadline.

Insofar as other issues may have been raised in response to this consultation (besides the sponsorship of news bulletins), we consider that these are likely to be of marginal significance compared with the opportunity available in quickly realising the changes set out under Option C.

Whilst emphasising our whole-hearted support for Option C, we have some minor observations on the proposed draft rules and guidance, as well as on the mooted two year review. These are set out in the annex below, which constitutes our formal response to Ofcom's consultation questions.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'J Buckland', is positioned below the closing text.

**Jimmy Buckland**  
Business Development Manager  
UTV Media (GB) Limited

## Annex: Response to Consultation Questions

### Option A: 'Do nothing' and maintain the principle of separation

#### Question 1

a) Do you consider that Option A should be adopted by Ofcom?

No.

c) If not, please explain why. You may wish to respond to this under Question 2 below under 'Alternative approaches'.

This approach delivers none of the five benefits we have identified in relation to Option C. It misses an obvious opportunity to align regulation with the basic requirements of legislation, improve editorial content, deliver appropriate consumer protection, make the rules simpler to understand and implement and increase the appeal of commercial radio to advertisers.

### Alternative approaches

#### Question 2

a) Do you wish to suggest an alternative approach in relation to the regulation of commercial communications on radio?

No.

### Option B: Maintains the principle of separation but provides a defined set of exemptions

#### Question 3

a) Do you consider that Option B should be adopted by Ofcom?

No.

c) If not, please explain why. Again, if you responded to the 2009 Code Consultation you may wish to refer Ofcom to your 2009 response.

We refer Ofcom to our 2009 response. In short, this approach delivers none of the five benefits we have identified in relation to Option C.

### Option C: Allows the integration of commercial communications and programming (except in relation to spot ads)

#### Question 4

a) Do you consider that Option C should be adopted by Ofcom?

Yes. We consider that this approach will align regulation with the requirements of legislation, improve editorial content, deliver appropriate consumer protection, make

the rules simpler to understand and implement and increase the appeal of commercial radio to advertisers.

**c) Do you agree with our approach to the issue of additional prohibitions or restrictions? Do you agree with our approach to a proposed review period? In particular do you wish to comment on the criteria which could govern a future review?**

We agree with Ofcom's approach to the issue of additional prohibitions and restrictions.

In relation to Ofcom's proposed review of its revised rules, we do not wish to comment on the review criteria at this stage but would welcome an opportunity to do so nearer the time.

We propose that the timing of this review should be determined in part by whether there are any outstanding issues following implementation of Option C. If issues of contention remain, or if any issues subsequently uncovered, the review should be brought forward to allow them to be considered. Such issues could include the sponsorship of news bulletins.

**d) Do you agree with our proposed approach prohibiting commercial references in programming primarily aimed at children and the related guidance we propose.**

We support Ofcom's proposal to prohibit commercial references in programming primarily aimed at children. This is because we believe that permitting such commercial references could draw significant political and public opposition to this project at a time when Ofcom's objective should be to implement Option C as swiftly as possible. We also agree with Ofcom's analysis of the importance of media literacy to audience tolerance of integrated commercial communications.

We do however propose that the draft guidance should be revised to ensure that Ofcom does not place unintended restrictions on programming which is primarily directed at adults but may include participation by under sixteen year olds. Ofcom is currently proposing to define children's programming as any programming that "is primarily listened to by persons under the age of sixteen" or which "actively solicits the participation of persons under the age of sixteen". We consider that the second definition draws the scope of the proposed restriction too widely, and should therefore be dropped to leave only the former definition.

**e) Do you agree with our proposed approach to consumer affairs; news and political and controversial matters; and religious programming?**

We agree that commercial references should not appear within news programming, noting that sports, weather, travel and finance news would be excluded from the proposed restrictions in this area.

We have some sympathy with the argument that continued restrictions of commercial references within news programming does not necessitate a prohibition on sponsorship of such bulletins, as this sponsorship could be confined to branding around news content, rather than editorial references within that content.

However, we propose that consideration should only be given to this issue insofar as it does not result in a delay to the implementation of a revised approach based on Option C. Ofcom's December 2010 deadline should take precedence. In practice we consider

that this issue may be better addressed in the context of Ofcom's proposed two year review.

**f) Do you agree with our approach to the issue of not-for-profit funders? In particular do you wish to comment on the range of safeguards which would be in place?**

We do, and believe that Ofcom's proposed approach would ensure adequate safeguards.

**g) Do you agree with our approach to the issue of the selection or rotation of music? In particular do you wish to comment on our proposed approach in relation to the Public File guidelines; and our proposed approach to related Code Guidance, including the issue of appropriate intervals for, and content of, broadcast messages directing listeners to the Public File on stations' websites? You are also welcome to provide comments in relation to the selection or rotation of music in programming primarily aimed at children.**

We agree with Ofcom's analysis of the issues around music selection, although this is inevitably an issue which will require an evolving view as the market develops.

We oppose any proposal to introduce Public Files for INR licensees (which are not currently subject to Public File requirements). However we note that such a proposal is not explicit in Ofcom's consultation document, and that transparency over music scheduling arrangements could be still be delivered online by the INR music stations Absolute Radio and Classic FM, without the need for public files to be introduced.

**h) Do you have any comments on the rule set for Option C (above)? If so, please refer to any individual rules by reference to the proposed rule numbers set out above.**

We welcome Ofcom's desire to deliver a slim set of rules. This will greatly improve the Code's usability within commercial radio programming and sales departments and is likely to aid overall compliance.

To aid the delivery of this objective, we propose that Ofcom simplifies the way in which the BCAP Code is collectively applied by rules 10.4 – 10.7. Our interpretation of Ofcom intentions in proposing these four rules is as follows:

- 10.4 extends the prohibitions for certain advertisers set out in Section 10 ('Prohibited Categories') and elsewhere of the BCAP Code
- 10.5 applies the scheduling restrictions set out in Section 32 ('Scheduling') of the BCAP Code to material which involves a commercial relationship
- 10.6 applies Section 32 ('Scheduling') of the BCAP Code to material which includes commercial references, and also makes these subject to all rules relating to advertising content found throughout the BCAP Code
- 10.7 requires central clearance for integrated commercial references if the material in question require substantiation or confirmation. However, central clearance is not required in any other circumstances.

We suggest a number of steps to simplify and improve the clarity of these four rules:

- In relation to rule 10.7, guidance should spell out that the central clearance requirements for integrated commercial references are not the same as for spot advertising. For instance, commercial references to gambling or alcohol products, services or brands are only subject to central clearance requirements if

- they require substantiation or confirmation – i.e. BCAP’s ‘special category’ approach does not apply.
- We propose the deletion of draft rule 10.5, which we consider to be unnecessary in light of the presence of draft rule 10.6. Each rule sets out requirements in relation to the scheduling of commercial references, or of material which is subject to a commercial arrangement. Draft rule 10.1 would ensure that all material that was subject to a commercial arrangement included commercial references, whilst Ofcom defines commercial references in relation to whether a commercial arrangement is present. Therefore a single rule could be used, based on the wording of draft rule 10.6.
  - There is currently ambiguity over what Ofcom means by the term ‘advertising content ... rules’ as it appears in draft rule 10.6. Whilst ‘advertising ... scheduling rules’ presumably refers to Section 32 of the BCAP Code, the term ‘content rules’ does not appear in the BCAP Code. As such, it is unclear which BCAP Code rules are applied by rule 10.6, and in what circumstances. We suggest that Ofcom should define the term ‘advertising content rules’.

**i) Do you have any comments on the discussion on guidance for Option C (above)?**

We propose that the guidance accompanying Option C should be short, practical and non-prescriptive – which broadly reflects Ofcom’s suggested approach as set out in the consultation document. This will ensure that the guidance does not undermine Ofcom’s attempts to deliver a slim and workable set of rules.

As recognised in paragraph 6.107, Ofcom must not develop its own prescriptive approach in relation to promotions for premium rate phone numbers, since these are covered in PhonepayPlus’s separate Code of Practice. Ofcom should avoid setting out specific recommendations in relation to the frequency and format of cost information, but should allow broadcasters to find an approach which is most appropriate to their audiences, based on guidance supplied by PhonepayPlus.

We have set out a view on guidance for rule 10.3 in answer to question 4 (d).

**Option D: Allows the integration of commercial communications and programming (including in relation to spot ads)**

**Question 5**

**a) Do you consider that Option D should be adopted by Ofcom?**

No

**b) If not, please explain why.**

Whilst this approach has a certain intellectual logic, implementation raises practical and logistical issues. We suggest that Ofcom should reconsider the desirability and feasibility this option as part of its proposed review of the revised rules.