



## The Implications of Digital Britain for Localness Regulation

### 1. Executive Summary

- 1.1. UTV Media (GB) is part of UTV Media plc, a leading converged UK and Irish media business with television, radio, internet and publishing interests. Following recent market activity, UTV plc is the UK's only publicly listed commercial radio operator.
- 1.2. Against a backdrop of high listener satisfaction with radio, UTV Media (GB) has concluded that striving to switch off AM and FM signals for large radio stations in 2015 is not in the overall interests of listeners. Instead of committing radio to the vision outlined in the government's 'Digital Britain' White Paper, UTV Media (GB) believes that the medium's future success depends on embracing a multi-platform ecology which includes DAB but delivers radio output to listeners on their terms.
- 1.3. In this context, UTV agrees that local commercial radio is in need of further regulatory relief but proposes that this should be assessed independently of the proposed 'digital upgrade' and associated legislative change. We propose that the priority for localness deregulation should be to deliver maximum operating flexibility for smaller stations. This is in light of the challenging profitability and sustainability issues facing these services.
- 1.4. As well as reforming regulation, we believe that Ofcom and government should set out longer-term radio licensing plans for existing local and national services and so enable licensees to plan and invest for the future. In relation to the three 'INR' licences, currently held by talkSPORT, Classic FM and Absolute Radio, we do not support their extension in the context of an AM and FM switch-off for large radio stations in 2015. We therefore urge Ofcom to make and consult on plans to auction these licences under the provisions of existing legislation.
- 1.5. Our responses to Ofcom's consultation questions support and develop Ofcom's proposals in line with this approach, calling for regulatory and licensing reform to be decoupled from the legislative process to deliver switch-off. Our answers emphasise the enduring importance of local commercial radio stations and urge Ofcom to prioritise their future development and viability, rather than allowing them to be sidelined in the context of a digital migration plan which focuses on larger stations.

## 2. About UTV Media (GB)

2.1. UTV Media (GB) is part of UTV Media plc, a leading converged UK and Irish media business with television, radio, internet and publishing interests. Our growing operations in Great Britain consist of:

- 14 local radio stations
- An award-winning national speech station (talkSPORT)
- The UK's second largest men's magazine (Sport)
- An innovative digital magazine (talkSPORT Magazine)
- Substantial shareholdings in seven local and regional DAB multiplexes
- A multi-platform national sales house (UTV Pitch)
- A 50% shareholding in the national radio sales house First Radio Sales, which currently represents 118 local and digital radio stations

2.2. UTV's broad UK radio interests give us a unique range of perspectives on the implications of Digital Britain for Ofcom's licensing and localness regime. We are able to speak for small stations like The Wolf in Wolverhampton, large national services like talkSPORT and as an operator of both regional and local DAB multiplexes. Almost uniquely amongst UK radio operators, our licences cover all four nations of the UK – Scotland, Wales, England and Northern Ireland. This submission incorporates the views of U105, which is operated by our parent company in Belfast.

## 3. Background – Digital Britain

### 3.1. Radio listeners have never had it so good

3.1.1. Despite the significant economic strain which UK commercial media are currently subject to, radio listeners have never been so well served by the combined efforts of the BBC and commercial radio.

- Radio listening is at an all time high with 90% of the population tuning in every week<sup>1</sup>
- Listeners have a record amount of choice at their fingertips with an average of 14 stations available to each listener, of which the average listener regularly tunes into just one or two favoured services<sup>2</sup>
- 91% of people in the UK declare themselves to be satisfied with the choice of radio stations available in their area – with just 3% unsatisfied<sup>3</sup>

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<sup>1</sup> RAJAR Q2 09. See [http://www.rajar.co.uk/docs/news/data\\_release\\_2009\\_Q2.pdf](http://www.rajar.co.uk/docs/news/data_release_2009_Q2.pdf)

<sup>2</sup> Ofcom, Communications Market Report: Nations and Regions, 2008, <http://www.ofcom.org.uk/research/cm/cmnr08/radio/>

<sup>3</sup> Ofcom, Communications Market Report 2009, page 193

- The growth of new platforms such as the internet, television and mobile phones gives the consumer an increased number of modes of listening
- The UK is one of the better performing international markets in terms of listening hours per head of the population<sup>4</sup>

3.1.2. Such data points towards a market which has attained a high state of maturity in terms of both competition and consumer choice.

### **3.2. The government's proposed 'digital upgrade' is not driven by consumers**

3.2.1. Despite this evidence that radio listeners are currently well served by the medium, the rapidly changing media landscape and current recession have placed significant pressure on commercial radio's cost base. This development, which is well documented both in Ofcom's latest consultation document and the government's Digital Britain report, is a key driver behind efforts to deregulate commercial radio and simplify its future distribution strategy.

3.2.2. UTV Media (GB) is a significant supporter of efforts to return the commercial radio sector to revenue growth. As one of the UK's most financially successful radio groups, we are able to invest heavily in both programming and platforms. Aside from these internal interests, we have been committed participants in industry forums such as the Digital Radio Working Group, RadioCentre and Digital Radio Development Bureau, and have engaged closely with projects such as Ofcom's Future of Radio review and the government's Digital Britain work.

3.2.3. It was in this context of close industry alignment that we used our June 2007 submission to Ofcom's 'Future of Radio' consultation to call for work to establish "whether, when and how the radio industry should become fully or mainly digitized". As well as outlining our digital platform investment, our submission identified a number of obstacles to AM or FM switch off, including the absence of a "clear and viable digital migration path" for many local stations, the enduring popularity of AM, and the importance of both AM and FM to in-car listening. Our submission contained detailed analysis of growth in in-car DAB penetration which led us to conclude that "contemplating a 'switch off' of analogue in 2015 will not be in the interests of the consumer, or of the commercial radio industry"<sup>5</sup>.

3.2.4. Building on this submission, and on the work of the Digital Radio Working Group, our March 2009 response to the government's Interim Digital Britain report outlined our support for "industry-wide moves to develop a body which will plan and deliver a 'Drive to Digital' ". However, we declined to suggest a specific migration date, confining our discussion to a proposal that AM services should be treated in the same way as equivalent FM services and that migration should not occur until takeup and coverage issues had been resolved.

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<sup>4</sup> Ofcom, Communications Market Report: International, 2008, page 245  
<http://www.ofcom.org.uk/research/cm/icmr08/radio.pdf>

<sup>5</sup> UTV Radio, 'Response to Ofcom's 'Future of Radio' consultation', June 2007

- 3.2.5. Our exposure to subsequent efforts to initiate the 'Drive to Digital' has led us to conclude that switching off AM and FM signals for large radio stations in 2015 would not be in the interests of listeners. We believe that committing to switch off FM and AM signals will disenfranchise listeners, reduce choice and force the general public to invest in expensive replacement of their existing radio sets, as well as other negative effects. At the same time, the radio industry risks distracting attention and resources from efforts to extend the viability and appeal of its current service offering. Our irreconcilable disagreement with industry colleagues over this issue prompted us to resign our membership of RadioCentre with effect from 1 October 2009.
- 3.2.6. In addition, we note that the public support offered over the last year by other radio groups for a 2015 AM/FM switch-off has not been reflected in a willingness to develop new services or technical solutions to transform the DAB experience for radio listeners. This undermines the credibility of the proposed migration timetable and suggests that the intention of these groups has been to curry political favour or secure regulatory or licensing concessions. Such motives constitute an inappropriate basis for government policy and indicate that it is unlikely to serve the best interests of radio listeners.
- 3.2.7. Instead of committing the industry to a fixed AM / FM switch-off plan, UTV Media (GB) believes that radio's future success depends on embracing a multi-platform ecology which provides radio output to listeners on their terms, rather than on those of the operator. The business model for radio remains relatively straightforward. It is at heart, listener-led, with success arising for those stations which are able to identify a brand, format and platform which appeals to listeners and in turn advertisers. Fostering an environment for this model to flourish requires continued industry investment in multiple platforms, allied with appropriately 'light touch' licensing and regulatory policies from the regulator.
- 3.2.8. DAB has a significant role to play within this multi-platform ecology, and we anticipate that its importance will continue to grow over the coming years. As such, UTV Media (GB) remains absolutely committed to DAB as a platform and will continue to explore opportunities to grow its DAB interests. Despite the threats of some other operators, we believe that contractual and licence commitments will ensure that DAB survives as a platform beyond the end of the current economic downturn, at which point it should be well placed to accelerate its current growth in popularity amongst listeners.
- 3.2.9. In time, continued industry investment in multi-platform listening will allow broadcasters to take market-led decisions to reduce investment in individual platforms in favour of better-performing alternatives, so minimising their 'dual transmission' costs. However in the absence of any external demands for radio platform capacity (such as spectrum scarcity considerations), we believe that state-led promotion of one platform in favour of another is not appropriate; platform selection should be consumer led at both the listener and strategic industry level.

### **3.3. Securing the provision of local content whilst reflecting the economic realities of local media markets**

- 3.3.1. Although UTV opposes switching off of AM and FM signals for large local and national radio stations in 2015, we agree with government, Ofcom and the radio industry that commercial radio is in need of further regulatory relief. Such reform would enable the sector to maintain the quality of its offering against a backdrop of falling revenues. We actively seek and desire the support of both government and Ofcom for this work.
- 3.3.2. Whilst calling for regulatory change, we believe that it can and must be considered separately to the question of FM and AM switch-off. We recognise that this requires a policy shift from government and urge Ofcom to support this change in approach. Indeed we believe that Ofcom has been overly cautious in linking its proposed changes to legislative changes in support of the 'digital upgrade'. Legal advice previously obtained by commercial radio in the context of Ofcom's 'Future of Radio' review reveals that the regulator already has significant discretion to deregulate local radio whilst discharging its duties under Section 314 of the existing Communications Act ('Local content and character of local sound broadcasting services')<sup>6</sup>.
- 3.3.3. As well as being separated from the proposed 'digital upgrade' and new legislation, we believe that deregulatory efforts should focus on delivering maximum operating flexibility for smaller stations. We believe that this approach would be consistent with the findings of both government and Ofcom concerning the acute challenges facing such smaller stations. We devote further attention to the position of 'small-scale radio' stations in subsection 6.1 of our response. Our detailed discussion of Ofcom's proposals to deregulate local radio can be found in section 5.

### **3.4. Other deregulatory priorities for radio**

- 3.4.1. Aside from deregulating with a view to safeguarding the future of smaller local radio stations, we believe that deregulation of commercial radio should focus on just two areas which lie outside the scope of this particular review but are receiving separate focused attention from Ofcom and Government.
- 3.4.2. This call for a focused approach to deregulation is deliberate. With commercial radio's development at stage of maturity or even market saturation, Ofcom has reached a juncture where it will need to proceed with caution in the face of calls for changes which may adversely affect the industry's competitive dynamics. This is in light of the differing strategies becoming apparent across the commercial radio industry, which may lead to pressure for Ofcom to allow certain groups of services to expand and / or reposition their output at the expense of others. We highlight examples in subsequent sections of our response of regulatory changes which would

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<sup>6</sup> RadioCentre, 'Shaping Commercial Radio's Future: Appendix C', June 2007 (submitted confidentially to Ofcom)

contract the diversity of commercial radio's offering to listeners and advertisers and damage the overall health of the industry.

- 3.4.3. The first area of deregulation which we believe Ofcom should prioritise relates to the media ownership regime, where we largely support the draft proposals outlined by Ofcom in its current review for the Government, subject to certain specific observations. Further detail can be found in our September 2009 response to Ofcom's Media Ownership review.
- 3.4.4. The second priority area is being addressed in Ofcom's review of the Broadcasting Code. As outlined in our consultation response, we believe that Ofcom's current proposals to reform the Code miss an opportunity to remove unnecessary restrictions on sponsorship and promotions activity (S&P). Since then, new Ofcom research has revealed that the percentage of UK adults concerned about the content of radio programming has fallen to 9% - comfortably the lowest of any medium surveyed<sup>7</sup>.
- 3.4.5. The potential value of Broadcasting Code relaxations are further highlighted in the Change Agency research report commissioned by Ofcom as part of this review. The report reveals a range of views on the causes of the current challenges facing commercial radio. However, the one area on where there appears to be unanimity is the impact of content restrictions on commercial radio's attractiveness to advertisers:
- "The scale of regulation on radio is disproportionate to any other medium you want to compare it with and is constipating, holding up, commercial radio development and has a knock-on effect on their ability to deliver content"<sup>8</sup>
  - "Creatively, we can't make it work. Too much time is taken up with all the detailed terms and conditions which we have to put into every ad"<sup>9</sup>
  - "I think there are opportunities to increase revenues by lightening the restrictions around sponsorship and promotions, around creative, terms and conditions"<sup>10</sup>
- 3.4.6. The timetable for Ofcom's Broadcasting Code Review has now been extended into 2010, following fresh pronouncements from government in relation to product placement. We urge Ofcom to use the additional time this has made available to ensure that it delivers the wholesale reform the radio industry needs in relation to sponsorship and promotions activity.

### **3.5. Delivering long-term certainty for INR and ILR licensees**

- 3.5.1. As well as implementing this targeted regulatory reform, we believe that Ofcom and government should set out longer-term radio licensing plans and so enable licensees to plan and invest for the future. The licensing

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<sup>7</sup> [http://www.ofcom.org.uk/advice/media\\_literacy/medlitpub/medlitpubrss/uk\\_adults\\_ml/adult\\_ml.pdf](http://www.ofcom.org.uk/advice/media_literacy/medlitpub/medlitpubrss/uk_adults_ml/adult_ml.pdf)

<sup>8</sup> Ofcom, 'The Implications of Digital Britain for localness regulation', July 2009, page 23

<sup>9</sup> Ofcom, 'The Implications of Digital Britain for localness regulation', July 2009, page 23

<sup>10</sup> Ofcom, 'The Implications of Digital Britain for localness regulation', July 2009, page 24

proposals outlined in the Final Digital Britain Report are designed to align analogue licensing with the proposed 2015 'digital upgrade'. However, this and the proposed termination clause will produce short licences and foster uncertainty and instability. In light of our opposition to the 'digital upgrade' plan, we believe that all categories of licences should be extended or readvertised for much longer periods, ideally 12 years.

- 3.5.2. In relation to the 'INR' licences currently held by talkSPORT, Classic FM and Absolute Radio, the Government has proposed that their re-auctioning under current legislation should be suspended in the context of the mooted 'Drive to Digital'. Whilst we remain committed to securing a long-term future for talkSPORT, we do not support a limited extension of the INR licences in the context of a 2015 AM and FM switch-off, and therefore urge Ofcom to make plans to auction these licences under the provisions of existing legislation.
- 3.5.3. With the deadline for Ofcom to have awarded the first INR licence (currently held by Classic FM) less than a year away, and those for the other two licences following in the subsequent fifteen months, current and prospective INR licence holders need clarity about the timetable and process which Ofcom will follow in re-licensing these services. Stakeholders such as ourselves also need an opportunity to provide input into the design of this process. We urge Ofcom to consult urgently over this issue. Ahead of this consultation, we reiterate here our view that such an auction should be designed in such a way as delivers two clear objectives.
- 3.5.4. Firstly, it would represent a missed opportunity if funds used to bid for licences were lost to the radio industry, given current challenges relating to its business and distribution models. Given that one of the major issues in tackling the barriers to DAB growth is the cost of new investment, we encourage Ofcom to discuss with Government the possibility of using the proceeds from auctioning the three INR licences as part of efforts to expand DAB coverage and take-up, to the benefit of commercial radio and radio listeners as a whole.
- 3.5.5. Secondly, we believe that the auction process should be designed in such a way as to dissuade and discount commercially unrealistic bids. This will require Ofcom to take a rigorous approach to evaluating the financial robustness of individual bids. Not only does legislation require such an approach, but this would also ensure that the redeployment of the licences occurs in such a way as does not discredit the radio industry or fail to serve the interests of listeners.

## UTV Media (GB) response to Ofcom's proposals

### 4. Encouraging new UK-wide services

*Proposal 1 – regional stations allowed to share programming to become national stations*

*Proposal 2 – creation of a new national multiplex from existing regional multiplexes*

#### **4.1. Repurposing existing licences to meet the needs of listeners**

4.1.1. As outlined at the outset of this response, radio listeners have never been so well served, due in no small part to the investment in content and platforms provided by operators such as UTV. Evidence shows that local services are meeting the interest in local content, with regional and national services meeting the interest for different music or editorial formats. If there is a weakness in the current licensing framework, it is that the oversupply of large local and regional stations with mainstream formats (many of which have been licensed in the last decade) has restricted the viability of smaller local services without making a significant contribution to format diversity or localness. As Ofcom has shown, only 9% of people believe that the best area for their local radio station to cover is a region<sup>11</sup>.

4.1.2. As such, we support Proposals 1 and 2, which will give the market appropriate flexibility to redeploy its existing brands, formats, platforms and licences to meet the needs of listeners and advertisers by refocusing on local and national services. We believe that requiring such licensees to provide services on national DAB will similarly improve the sector's offering to listeners and support this proposal, as well as the associated proposal to create a new national DAB multiplex from existing regional multiplexes

#### **4.2. The limited scope for further national commercial radio stations**

4.2.1. However, Ofcom also devotes a significant portion of its consultation document to outlining a broader case for "encouraging the development of more choice and competition by licensing new analogue and digital services"<sup>12</sup>. Although the regulator has not made additional proposals at this stage, we do not believe that the market is able to support the introduction of new stations, and believe that Ofcom should exercise a 'hands off' approach towards intervention.

4.2.2. Firstly, evidence shows that listeners are satisfied with the current radio offering. As outlined above, only 3% of people in the UK are dissatisfied with the choice of radio stations available in their area<sup>13</sup>, with total weekly adult listening currently at record levels. This points towards a market which has attained a high state of maturity in terms of both competition and consumer choice.

<sup>11</sup> Ofcom, 'The Implications of Digital Britain for localness regulation', July 2009, page 23

<sup>12</sup> Ofcom, 'The Implications of Digital Britain for localness regulation', July 2009, page 37

<sup>13</sup> Ofcom, Communications Market Report 2009, page 193



4.2.3. Secondly, the research commissioned by Ofcom from Change Agency reveals that the advertising market is currently unable to support further station launches. In particular, the research demonstrates a desire amongst advertisers for a small number of readily accessible sales points which deliver a range of large audiences simply and efficiently, rather than an array of sales points delivering fragmented audiences. This finding reflects the findings of John Myers, Value Partners and others, referenced in section 5 of this response, concerning the effect of historical analogue licensing on the structure and profitability of the UK radio sector. Insofar as there may be scope for new services, we believe that this will be met by the market as the economy recovers and DAB maintains its current incremental growth.

4.2.4. One of the key features of the Change Agency research is the lack of evidence that new services would attract new listeners to radio. As the report identifies, "most [advertisers and agencies] are agnostic and some are sceptical about the likelihood of attracting additional listening hours [via new national services]. Most find it difficult to see the business opportunity for national digital-only stations, especially on the basis of current penetration"<sup>14</sup>. Excerpts from the research which support this conclusion include the following:

- "Given the choice that people have already, I'm not convinced that there is an opportunity [for a new national station] out there and waiting. You more or less get national coverage with the networked stations like Heart."<sup>15</sup>
- "I just want radio to deliver me the audience. Whether it's on a national level or a local level. I really don't care."<sup>16</sup>
- "We don't need more national radio per se, but to get more people to listen... So the question is simply what are listeners looking for that isn't yet being delivered?"<sup>17</sup>
- "As to genres, I think it's well catered at present."<sup>18</sup>
- "It would depend on what audiences they deliver but, on a national level, there are no gaps that spring to mind"

4.2.5. The likely inability of the radio market to support new services is underlined by the lack of credible suggestions from advertisers and agencies as to potentially successful new formats. Instead, the ideas posited consist largely of formats which already exist or have failed to find success:

- "I'm a big fan of XFM. I'm a bit disappointed it didn't work out in the North. A younger alternative station would do well nationally" (*both XFM and Kerrang are available nationally on digital platforms but have yet to take off commercially*)

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<sup>14</sup> Change Agency, 'Future of UK Commercial Radio: Advertiser and Agency Research', March 2009, page 6

<sup>15</sup> Ofcom, 'The Implications of Digital Britain for localness regulation', July 2009, page 36

<sup>16</sup> Ofcom, 'The Implications of Digital Britain for localness regulation', July 2009, page 37

<sup>17</sup> Ofcom, 'The Implications of Digital Britain for localness regulation', July 2009, page 37

<sup>18</sup> Change Agency, 'Future of UK Commercial Radio: Advertiser and Agency Research', March 2009, page 40

- “Saga nationally would do well if targeted to 55+s” (*Saga failed commercially through a failure to attract sufficient advertising revenue and was sold to GMG Radio and later rebranded*)
- “a decent Channel 4 version of R4” (*Channel 4 Radio was axed by the Channel 4 board following a review of the commercial viability of its digital radio plans*)
- “It would be fantastic for commercial radio to have a really strong speech station. TalkSPORT and LBC have done a great job”. (*This interviewee answers their own proposition by pointing to existing market provision against this format*)
- “Documentaries.” (*Expensive pre-produced speech content, such as that which was previously offered by Oneword, has typically proven unsustainable for the commercial sector, in view of the high production costs and publicly-funded competition*)
- “Asian stations” (*These already exist in areas with large Asian populations on analogue and digital platforms, and are available nationally via digital platforms*)<sup>19</sup>

4.2.6. This evidence highlights the maturity of the current commercial radio lineup in the UK, as well as the likelihood that new services would erode audiences for existing services, making them less attractive propositions to advertisers, and damaging the medium as a whole. In particular, and speaking from our own experience as the operator of talkSPORT, it is worth emphasising the difficulties which would be faced by a new speech radio entrant in the current market. We believe that there is a limit to the number of national speech services that the market can sustain and are concerned that additional stations would undermine existing services to the detriment of radio listeners rather than attracting new revenue or audiences to radio.

4.2.7. It is in this context that we support the repurposing of regional licences but believe that Ofcom should not seek further subsequent opportunities to encourage either new analogue or new digital national services. In particular:

- The application of its current proposal should remain restricted to the regional FM services listed by Ofcom in its consultation document. For instance, we oppose any efforts to extend the definition of regional licences to include local licences serving Greater London. Licences for services such as LBC 97.3 were awarded on the basis that they would serve local audiences with local content, and it is this which continues to drive their value to audiences.
- We are actively investigating the commercial basis on which a national multiplex could be formed from the regional multiplex layer, and agree that it is appropriate for the Government and regulator to help create the conditions in which DAB-enabled national services

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<sup>19</sup> Change Agency, ‘Future of UK Commercial Radio: Advertiser and Agency Research’, March 2009, page 38

can flourish, in part by enabling them to accept regional advertising. However, we oppose the introduction of any further incentives for DAB service delivery, due to the risk of market distortion.

- 4.2.8. Finally, we note that the primary obstacle to the growth of national commercial radio is the established strength of the BBC's national networks. Should there be a future reduction in the scope of the BBC's presence within national radio, it could become appropriate for Ofcom to actively create new opportunities for national commercial radio stations, subject to careful economic analysis and listener research.

## 5. Regulating for localness within a sustainable, universal local tier

### 5.1. Co-location, programme sharing and multiplex mergers within defined areas

*Proposal 3 – co-location within a new set of defined areas*

*Proposal 4 – programme sharing within the newly defined areas*

*Proposal 5 – mergers of local multiplexes*

- 5.1.1. UTV Media (GB) shares Ofcom's vision of a local tier of radio which is "sustainable and universal". We also welcome the government's commitment to work with Ofcom to "devise a regulatory regime which secures the provision of local content but that equally reflects the economic realities of local media markets"<sup>20</sup>.
- 5.1.2. Given these significant policy statements by both Ofcom and government, we believe that local radio reform should proceed irrespective of efforts to amend legislation in the support of the government's 'digital upgrade' plan. Indeed, as outlined in paragraph 3.3.2, Ofcom already has powers to introduce changes to the current regulatory framework, given the flexibility available under Section 314 of the Communications Act.
- 5.1.3. This section of our response proposes that in the long-term, localness regulation should focus on 'outputs', and on securing the viability of smaller licences. We do not believe that reference to 'defined areas' offers the optimal means of delivering these objectives. Nevertheless, we recognise that such an approach may offer the best prospect for further deregulation in the short term, and therefore use the latter part of this section of our response to suggest how regulation based on 'defined areas' could be made to work.
- 5.1.4. **A move from 'input' to 'output' regulation:** Delivering a sustainable, universal local tier in the long-term will require a shift in regulatory focus from the 'inputs' to the 'outputs' delivered by a licensed station. Stipulating

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<sup>20</sup> BIS / DCMS, 'Digital Britain Final Report', June 2009, page 100-102

'inputs' such as studio locations and programming-merger opportunities prevents operators from implementing the most efficient infrastructure for the services they have been licensed to deliver. Although current legislation requires Ofcom to secure "a suitable proportion" of "locally-made programmes" within the "local material" broadcast by a station, Ofcom has significant discretion in determining what constitutes "a suitable proportion"<sup>21</sup>. In our view, this allows for regulation to focus solely on 'output' issues such as the number of hours of 'locally-relevant' material, or on the frequency of local news bulletins.

- 5.1.5. UTV Media (GB) has first hand experience of the negative impact of 'input' regulation. Earlier this year, we closed Valleys Radio in the face of continuing losses and our inability to re-house it at a facility just outside its MCA. As it was the only local radio station for its area, this disrupted the 'universal' provision of local radio sought by Ofcom. We experienced similar disappointment following Ofcom's decision to reject a co-location request for Stockport's Imagine FM. Ofcom's proposed map of 'defined areas' would allow this station to be rehoused with licences we hold for Warrington, Wigan and Bolton, but the station's long-term commercial struggles forced us to sell the station to an independent owner in 2008 for a nominal sum.
- 5.1.6. A wholesale move to output-based regulation would complete the work begun by Ofcom's Future of Radio review in shifting the focus of regulation to what listeners hear. Commercial radio stations now have significantly more flexibility in how much local material they deliver, but remain overly restricted in terms of where it comes from. For example, UTV's listener-orientated strategy means that we broadcast more local output than is required under Ofcom guidelines, because we judge that our listeners demand it. But to guarantee the sustainability of this approach, UTV's smaller stations will need the freedom to devise more efficient infrastructure and working arrangements.
- 5.1.7. **A focus on securing the viability of smaller licences:** As well as concentrating on 'outputs', we believe that the regulation of local radio should focus on extending regulatory relief to smaller licences, with data highlighting the acute difficulty for such services in remaining viable, contrasted with the secure positions enjoyed by larger stations. The April 2009 'Independent Review of the Rules Governing Local Content on Commercial Radio' conducted by John Myers for DCMS revealed that 80% of stations with MCAs of 700,000 and below are loss-making or generate annual profits of less than £100,000<sup>22</sup>. The group comprises 183 FM stations, or 75% of the total number of local and regional FM licences. This finding is reinforced by analysis subsequently obtained by Ofcom from Value Partners, which reveals that many smaller services are either unprofitable or

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<sup>21</sup> Communications Act 2003, 314 (1) (b)

<sup>22</sup> John Myers, 'Independent Review of the Rules Governing Local Content on Commercial Radio', April 2009, page 34

operating at the margins of viability, with the recession having intensified competition for revenue between stations<sup>23</sup>.

- 5.1.8. Our call for regulation to focus on 'outputs' and on ensuring the viability of smaller licences reflects John Myers' proposal that stations with MCAs of less than 700,000 should be subjected to a more relaxed regulatory approach than larger stations<sup>24</sup>. Both Valleys Radio and Imagine FM, discussed in paragraph 5.1.5, would fit into Myers' proposed category of smaller licences.
- 5.1.9. In response, Ofcom is advocating a blanket deregulatory approach for all licences, regardless of size or profitability, and in so doing is proposing less relaxation than is needed to deliver viability for smaller stations, as we demonstrate below. For instance, the same approach is applied to a station like Stockport's Imagine FM as to London's Capital FM. Applying a blanket approach to all licences not only contradicts Ofcom's own financial analysis on the profitability of differently sized licences – it is inconsistent with separate efforts to differentiate between 'small' and 'large' stations in the context of the 'digital upgrade' plan (discussed further in sub-section 6.1).
- 5.1.10. Applying a blanket approach also overlooks the different commercial incentives associated with local content delivery at differently-sized stations. Ofcom's emphasis on studio location reflects an apparent concern that licensees might otherwise broadcast output lacking in local relevance. Yet for networks which lack national scale, commercial incentives remain geared towards the delivery of local content, suggesting that this outcome is unlikely to arise amongst smaller or medium-sized groups operating smaller licences.
- 5.1.11. **Regulating through 'defined areas':** Whilst we welcome Ofcom's and Government's desire to deliver greater flexibility for co-location, programme-sharing and multiplex mergers, the introduction of Ofcom's proposed 'defined areas' does not constitute the optimal means of delivering regulatory objectives. In our view, the proposed areas are small, inflexible, and unnecessarily linked to the potential future coverage of local DAB services – despite the fact that the most deserving beneficiaries of a liberalised co-location regime would be smaller local services which may never migrate to DAB.
- 5.1.12. Given the Government's stated support for the introduction of 'defined areas', we do recognise that they provide a short-term opportunity for commercial radio to access greater operational flexibility. We have therefore suggested ways below in which an approach based on 'defined areas' could deliver beneficial regulatory outcomes. This approach is

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<sup>23</sup> Ofcom / Value Partners, 'UK Radio: Impact of regulatory relaxations', May 2009

<sup>24</sup> John Myers, 'An Independent Review of the Rules Governing Local Content on Commercial Radio', April 2009, p. 72

underpinned and preceded by analysis of the effect of Ofcom's proposals on areas in which UTV Media (GB) operates local radio stations.

5.1.13. We believe that the introduction of 'defined areas' on the terms proposed below could be an acceptable stepping stone towards introducing a regulatory regime based on 'outputs', and that this approach could offer significant benefits to smaller stations struggling for long-term viability. We therefore urge Ofcom to pursue its current work regardless of the passage of new legislation.

5.1.14. **The effect of Ofcom's approach on Central Lancashire and Cheshire:** UTV Media (GB) is committed to its operation of smaller licences in the North West of England. There are 12 stations licensed to serve a single town or city near to Liverpool and Manchester, of which we currently operate 5<sup>25</sup>. Each of these stations is easily accessible from the M6 or its artillery motorways and dual carriageways. Indeed the maximum distance to any of their MCAs from our studio complex in Orrell, Lancashire, is under 30 miles, with journey times of between 15 and 45 minutes to the principal town or city they are licensed to serve. Our strategic focus on this group of stations is already proving successful, with our licences for Blackpool, Preston, Wigan, Warrington and Bolton enjoying the benefit of shared facilities, news resource and / or management expertise.

5.1.15. The 'defined areas' proposed by Ofcom would give significant flexibility to certain stations within this group of 12 licences to relocate or merge their operations with stations in other regions, but would hinder attempts by UTV or another operator to expand the strength and viability of stations by developing clusters within Central Lancashire and Cheshire. Although each of the 12 stations we list above is in the counties of Lancashire or Cheshire, and lies within an area smaller than almost all of Ofcom's proposed 'defined areas', Ofcom is proposing to site them in four separate 'defined areas': Stoke-on-Trent, Liverpool, Manchester and Lancashire & Cumbria.

5.1.16. The result is that Ofcom's approach would deprive these stations the full benefits of deregulation, whilst simultaneously signalling the potential acceptability of long-distance co-location moves. For instance, Ofcom's suggested approach would allow Carlisle to become home to stations as far away as Burnley's 2BR FM (100 miles / 2 hours by car), Preston's Central Radio (89 miles / 97 minutes) and Blackpool's Radio Wave (89 miles / 107 minutes). It is incongruous for regulation to allow co-location and programme-mergers over these distances and yet deny any of these stations the alternative of relocating to our complex in Orrell (36, 28 and 47 minutes away respectively) or another similar location.

5.1.17. **The effect of Ofcom's approach on South Yorkshire and East Midlands:** Our analysis of the effect of Ofcom's 'defined areas' approach on Central Lancashire and Cheshire highlights its weakness for smaller stations which lie

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<sup>25</sup> Blackpool – Radio Wave, Preston – Central Radio, Blackburn – The Bee, Burnley and Bury – 2BR, Bolton – Tower FM, Oldham – The Revolution, Southport – Dune FM, Wigan and St Helens – Wish FM, Warrington – Wire FM, Stockport – Imagine FM, Chester – Dee FM, Macclesfield – Silk FM

at the fringes of a region or metropolitan area. Further examples of this are available in South Yorkshire and the East Midlands.

- 5.1.18. Following the initial publication of Ofcom's proposed 'defined areas', we identified that despite lying in the county of Derbyshire, our licence for Chesterfield (Peak FM) had been provisionally classified as lying inside the border of the South Yorkshire 'defined area'. The subsequent publication in September 2009 of more detailed maps of each area has revealed that Peak FM could exist in an area of overlap between 'East Midlands' and 'South Yorkshire', allowing it co-locate or merge its output with stations in both regions<sup>26</sup>. We urge Ofcom to spell out its policy on overlaps between 'defined areas' in light of this apparent inconsistency.
- 5.1.19. Without embracing overlaps between adjacent 'defined areas', their introduction as a regulatory tool would have allowed Peak FM to co-locate with Barnsley's Dearne FM, based 38 miles up the M1, whilst preventing it from doing likewise with Mansfield FM, based just 13 miles away. The inconsistency of this outcome would be compounded by the fact that Peak FM is part of the proposed lineup for the Derbyshire local DAB multiplex, along with other East Midlands stations such as Ram FM.
- 5.1.20. The likely impact of Ofcom's approach for another UTV station, The Pulse – even considering the overlapping maps published by Ofcom midway through this consultation – is to limit its potential role as a partner for other nearby stations to improve their viability by sharing resources. Smaller neighbouring stations such as Stray FM and 2BR FM are respectively based 20 and 30 miles from Bradford in Harrogate and Burnley but are classified as lying in adjacent defined areas. Ofcom's published detailed maps do not include any significant overlaps between 'North Yorkshire', 'West Yorkshire', and 'Lancashire and Cumbria'.
- 5.1.21. **The effect of Ofcom's approach on the West Midlands:** A similar pattern of inconsistency is evident in Ofcom's proposed treatment of the West Midlands. Ofcom is proposing to group stations in Coventry and Warwickshire with Birmingham stations. This would create a 'defined area' which is home to ten different stations, 2.6m listeners and offers significant potential for shared operations. However, Ofcom was initially proposing to confine other West Midlands stations to much smaller and more inflexible 'defined areas'. Most pertinently to UTV, Wolf FM, a small station experiencing challenging trading conditions in the face of intense regional competition, would have gained limited options to improve its viability. Despite Ofcom's proposals enabling it to relocate its operations in Ludlow (58 miles and well over an hour's journey time away by car), Wolf would have been unable to share output or operations with stations in Tamworth (25 miles) or central Birmingham (17 miles).
- 5.1.22. Ofcom's subsequent publication of enlarged 'defined area' maps which overlap has mitigated some of these inconsistencies, but has nevertheless maintained a number of regulatory anomalies in the West Midlands region.

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<sup>26</sup> <http://www.ofcom.org.uk/consult/condocs/radio/maps.pdf>

For instance, despite Wolf FM being allowed to co-locate with Quidem's Touch Radio network of licences in Honiley (35 miles), or Ludlow (58 miles), it would be unable to share operations with the licence for Kidderminster (16 miles). Indeed, the nearest UTV Media (GB) station, Signal Radio, is only 37 miles away via a less congested section of the M6 motorway than that which connects it with Honiley. We believe that each of the latter options should be available in considering the future of this licence. As it stands, we cannot identify a coherent reason as to why radio listeners in Wolverhampton should be denied the full range of options for the future of their local station which Ofcom's proposals imply would be acceptable to them.

5.1.23. **Proposed solutions:** We propose four potential measures, which, taken as a whole, would resolve the inconsistencies and drawbacks we identify above. In proposing modifications to Ofcom's suggested approach, we have strived to identify solutions with a wider application than just those markets in which we have an interest.

- **Adopt BBC regions:** Rather than being assessed against the potential coverage of future DAB services, we believe that co-location requests should be regulated on a basis of whether they would improve a station's viability whilst still enabling it to remain locally relevant. This will require much larger regions than is currently proposed, which would be an important step away from 'input' regulation and towards a focus on 'outputs'. We believe that this would be best achieved by basing the finalised 'defined areas' on the coverage of BBC regions. These reflect established regional affinities which are understood by consumers and are likely to be accepted in the context of enabling commercial radio co-location. This approach was endorsed for stations with MCAs of less than 700,000 as part of the Myers Review.
- **Allow defined areas to overlap:** Ofcom's consultation document briefly implies that 'defined areas' could be overlapping rather than contiguous, with this idea developed further in the detailed maps published in September 2009. We therefore propose that there should be a generously sized overlapping zone at the boundary of each defined area. At present, and without providing explanation, Ofcom is only proposing to allow areas of overlaps at certain 'defined area' boundaries. For instance, Ofcom's detailed maps suggest that 'Manchester' should overlap with 'Liverpool' but not 'Lancashire and Cumbria'. Similarly, 'Wolverhampton and Shropshire' is proposed to overlap with 'Birmingham and Warwickshire' but not 'South West Midlands'.
- We propose that there should be generously sized overlapping zones at the boundary of each defined area, and that any stations in an overlapping zone should be classed as being in all relevant areas. We note that BBC transmission network design considerations mean that its regions also overlap, providing further support for this approach. One outcome of introducing overlaps should be to allow stations in Stoke-



on-Trent, Tamworth, Telford and Wolverhampton to share a common 'defined area'. A second should be to allow stations in Central Lancashire to share operations with stations such as Wish and Wire FM.

- **Restrict large stations to a single defined area:** We acknowledge that Ofcom may be more willing for smaller licences to have flexibility to co-locate or merge within multiple overlapping areas than large stations, in light of economic factors. With this in mind, we suggest that Ofcom confines larger licences to a single 'defined area', rather than allowing them to be classified as being within an overlapping zone. Ofcom's 'defined area' approach already excludes regional licences, despite these having the same licensing status to local licences in legal terms. This creates a clear precedent for treating some licences differently to others, dependent on their size. We give further thought to the definition of 'smaller' licences in sub-section 6.1 of our response.
- **Introduce additional 'defined areas':** If it is accepted that 'defined areas' may overlap, but Ofcom ultimately identifies barriers to adopting BBC Regions, we propose the introduction of additional overlapping 'defined areas'. In particular, we suggest the creation of a new overlapping defined area for Central Lancashire and Cheshire, covering each of the 12 smaller licences outlined above.
- The introduction of additional overlapping 'defined areas' would reflect Ofcom's proposed treatment of smaller stations in and around Greater London, such as Hertbeat FM, kmfm Medway and Delta FM, which are placed in separate 'defined areas' which more fully meet their needs, despite fully overlapping with stations covering the wider metropolitan area. (It is worth noting that a by-product of Ofcom's proposed approach around Greater London would be to allow Hertbeat FM and kmfm Medway to share operations, despite the significant journey required taking in the M25 and Dartford Crossing. This constitutes a significantly more relaxed approach than that which Ofcom is proposing to apply in and around Manchester and Liverpool.)
- **Allow co-location in other 'exceptional circumstances':** Our reservations about the introduction of 'defined areas' reflect our concern that prescriptive 'input'-based regulatory approaches inevitably lack the flexibility to account for all eventualities. With this in mind, we propose that Ofcom should retain powers to grant co-location requests which would not be permissible under the approach outlined above, but which are nevertheless demonstrated by the circumstances of the request to be in the interest of listeners.

## 5.2. Reduction in local programming hours for local FM stations

### *Proposal 6 – an enhanced news option for local FM stations*

- 5.2.1. In line with our proposed focus on securing the viability of smaller local stations, we welcome Ofcom’s willingness to look at other options for deregulating local radio. We therefore support its proposal to introduce an enhanced news option for local FM stations, believing that this would provide valuable additional flexibility.
- 5.2.2. In updating its localness guidelines, we propose that Ofcom also review its requirement for professional journalistic cover to be provided within the licence area on days when local news provision is a Format obligation. At smaller stations, we believe it would be acceptable in some circumstances for no journalist to be working on a Saturday or Sunday. For instance, local news could be produced on Friday for broadcast across the weekend, weekend presenters could be briefed on how to respond to major breaking national news, and professional journalists could be placed on call to respond to breaking major local news.

## 5.3. Regulation of local AM stations

### *Proposal 7 – AM stations need no longer produce locally made programming*

- 5.3.1. We urge Ofcom to exercise caution in allowing AM stations to drop all current locally made programming requirements.
- 5.3.2. We agree that this policy may be applicable for music radio stations, but note a number of other stations whose formats and output point to an important role in the delivery of local programming, news and information. Such stations include local services such as Fresh Radio in Yorkshire, but notably also LBC News 1152, which performs an important role in providing real-time news and information to listeners in London. The continued success of such services contradicts Ofcom’s suggestion that “it might plausibly be suggested that listeners do not listen to such stations, primarily, for localness”<sup>27</sup>.
- 5.3.3. Ofcom’s proposal also belies the continuing popularity and viability of AM as a platform for both national and local radio stations. AM is currently home to 33 BBC and 76 commercial radio stations. In our response to the Government’s Digital Britain Interim Report, we highlighted the continuing value of AM licences – both from a listener and commercial perspective. At a national level, AM accounts for over 75% of the collective listening hours to talkSPORT and BBC Radio Five Live<sup>28</sup>, amounting to over 45million listening hours a week to just these two stations.

<sup>27</sup> Ofcom, ‘The Implications of Digital Britain for localness regulation’, July 2009, page 63

<sup>28</sup> RAJAR, Q2 2009

- 5.3.4. As a consequence, we encourage Ofcom to apply this proposal selectively, considering requests for AM stations to drop their local programming commitments on a case by case basis, and in accordance with clearly defined policy objectives.
- 5.3.5. In particular, the London AM services perform an important role in the delivery of location-specific content to audiences as those in Scotland, Wales and Northern Ireland, given the thriving metropolitan media marketplace. These stations also provide important competition with similar BBC services. We therefore propose that London-wide AM services be treated in the same way as services based within a home nation, retaining equivalent requirements for local programming. In making this proposal, we have in mind services such as LBC News 1152 AM.

## 6. Small-scale radio

*"In this consultation we do not seek to define which stations are small and which are large, but we do seek to start the debate", page 67*

### 6.1. The ongoing importance of local radio

- 6.1.1. Local radio remains a powerful force in communities across the UK, a role which has been reinforced as the licensing of recent years has brought new stations to areas like Preston, Leyland and Chorley. This is reinforced by a report on the local impact of UTV station Radio Wave over the last twelve months compiled especially for this submission. It demonstrates Radio Wave's vital importance to its local community, arising as a result of both its on-air and off-air activity. The report is enclosed in Annex 1.
- 6.1.2. Radio Wave is by no means a special case amongst stations operated either by UTV or the industry as a whole. Further evidence of local radio's social, cultural and economic role is provided in RadioCentre's 2008 report 'Action Stations! The Output and Impact of Commercial Radio'. This highlighted the particular importance of stations with close ties to their communities – with smaller stations prominently featured alongside larger stations<sup>29</sup>.

### 6.2. The future position of smaller local commercial radio stations

- 6.2.1. Evidence of this kind demonstrates that smaller stations are amongst the most valued of all commercial radio stations amongst local communities. Stations covering regions or conurbations are generally one of a number of media outlets providing content specific to that area, but smaller radio stations are often unique lifelines to the communities they support.
- 6.2.2. This calls into question attempts by Ofcom and Government to apportion different roles to 'large' and 'small' commercial radio stations, with the

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<sup>29</sup> RadioCentre, 'Action Stations! The Output and Impact of Commercial Radio', July 2008, [http://www.radiocentre.org/rc2008/documents/RC\\_CRCAPSBReportWEB.pdf](http://www.radiocentre.org/rc2008/documents/RC_CRCAPSBReportWEB.pdf)

latter being grouped with community radio stations as part of a new 'ultra-local tier'. UTV Media (GB) believes that this proposal has been driven by an absence of DAB solutions for smaller commercial stations, rather intrinsic difference between them and 'large' stations. The differing legal and regulatory frameworks applying to the commercial and community radio sectors mean that all but the very smallest volunteer-run commercial radio stations have significantly more in common with 'large' commercial radio stations than with community radio.

- 6.2.3. For UTV Media (GB), the lack of a clear future for smaller local stations is one of the key flaws with the government's proposed 'digital upgrade' plan. The government's proposals arguably create more questions than they answer about the future distribution, licensing and regulation of such smaller services. Despite their obvious importance to listeners, smaller stations would be left on FM, with the migration of larger stations to DAB inevitably downgrading the analogue platform's relevance over time<sup>30</sup>.
- 6.2.4. Rather being confined to a separate broadcast platform, we believe that smaller local commercial radio stations should receive equal consumer prominence to larger stations, with clear proposals for their long-term licensing and regulation.

### **6.3. Creating digital pathways for smaller stations**

- 6.3.1. Rather than consigning smaller stations to a secondary broadcast platform, we restate here our view that smaller local commercial radio stations should gain the opportunity to be broadcast on DAB once consumer uptake allows it. The reality is that regardless of their classification under 'large' and 'small' criteria, a significant number of commercial radio stations currently lack credible opportunities for DAB broadcast. This is due to the absence of a DAB multiplex providing coverage equivalent to their existing MCA. Affected stations include Wire in Warrington, Runcorn and Widnes, Wish in Wigan and St. Helens, Tower in Bolton and Bury and Peak in Chesterfield. Other services which do have existing multiplexes corresponding to their MCAs are currently unable to gain access to them due to capacity constraints. These include Belfast's U105.
- 6.3.2. In our submission to the Digital Britain Interim Report, UTV Media (GB) proposed that the Government work with Ofcom to find digital solutions for services that would like them. In practice, this would require multiplexes to be reconfigured or for additional multiplexes to be licensed as the digital listening expands. The serious downturn which has afflicted all sectors of the UK economy during 2009 has made progress in this area difficult in the short to medium term. Nevertheless we continue to believe that further licensing of DAB multiplexes is likely to be necessary if the continued growth of DAB, which we support, is not to be prejudicial to smaller stations.

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<sup>30</sup> BIS / DCMS, 'Digital Britain Final Report', June 2009, page 101

## **6.4. Distinguishing between large and small stations**

- 6.4.1. With both 'small' and 'large' local radio stations playing important roles for local listeners, the most significant differences between 'large' and 'small' licences concern their respective prospects for viability. As proposed in sub-section 5.1 of our response, we believe that the driver for distinguishing between 'small' and 'large' stations should be the development of a more relaxed regulatory environment for smaller local commercial radio stations which ensures their future success and enables them to remain as an important part of the local commercial radio sector.
- 6.4.2. In establishing which stations are 'small' and in greatest need of regulatory relief, we agree with Ofcom that it is appropriate to consider coverage of a DAB multiplex area, adult population, geographical area and availability on DAB. However, given the emphasis on delivering viability to smaller stations, we propose that Ofcom also considers the long-term profitability and listening of a station. This is because some stations with large coverage areas face long-term challenges in attracting significant volumes of revenue or listening, due to intense competition within markets such as Greater Manchester. In other words, coverage is not necessarily a proxy for size.

## **6.5. The development of community radio**

- 6.5.1. Whilst discussing small-scale radio, we have important concerns to raise about Ofcom and DCMS's support for continued growth in community radio licensing. The enthusiasm for fresh licensing strikes us as particularly incongruous given the discussions within commercial radio about the sustainability of the sector's 300+ analogue licences. Ofcom states in its current consultation that "there is no doubt that the introduction of community radio can be considered a great success"<sup>31</sup>. If the measure of success is the number of new licences awarded, the explosion in commercial radio licences over the last fifteen years could be described in similar terms. Unfortunately, the economic challenges experienced by local commercial radio proves that profligate licensing cannot be regarded as an automatic indication of success.
- 6.5.2. In fact our experience of community radio is of a sector which is struggling for financial sustainability, whose outputs are hard to measure against social policy objectives, and 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 – such as the Greater Manchester area. As we outlined in our response to Ofcom's 2007 'Future of Radio' review, we believe that the negative impact of this can be seen in Stockport, where 'Pure FM' has been allowed to compete directly with 'Imagine FM', across all key areas of its business, including recruitment, marketing opportunities, audience and revenue.

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<sup>31</sup> Ofcom, 'The Implications of Digital Britain for localness regulation', July 2009, page 68

- 6.5.3. We do not bear any ill-will towards community radio, and we welcome the enthusiasm for radio which it engenders in its participants, but describing this fledgling sector's impact in such unqualified terms underplays the structural impact of fresh licensing on the radio sector. By competing for listeners' attention, community radio reduces the available audience for nearby commercial stations, creating market fragmentation and impacting on their commercial viability.
- 6.5.4. This applies to community stations such as Preston FM, which was launched at a similar time to Central Radio, the new commercial radio station for the city. We do not believe that its impact on Central Radio has been significant, but given the challenges of establishing a new radio station in the current economic environment, it is important that Preston FM remains constrained in terms of the content of its output, ability to accept advertising revenue and transmission coverage.
- 6.5.5. With this in mind, we propose that consideration of any significant changes to community radio's licensing, regulation and coverage criteria should be delayed until economic recovery is in full swing, and the Government can conduct a full cost-benefit analysis of the new sector's delivery of social policy objectives in areas such as crime, education, health and employment, balanced against its impact on audience or revenue fragmentation.
- 6.5.6. In particular, we question the need for community radio stations to "operate to the same coverage standards as are currently used by the majority of commercial broadcasters"<sup>32</sup>. Community radio stations exist for the immediate communities involved in putting them together, rather than for a wider audience of radio listeners. The primary effect of increasing such stations' coverage would be to encourage them to shift their focus away from these communities and towards attracting a wider audience, which would have the inevitable effect of fragmenting listening and reducing the viability of existing commercial radio stations.

## 7. Regulating music elements of formats

### 7.1. Re-examining music formats

#### *Proposal 8 – Limited redefinition of contemporary music Formats*

- 7.1.1. UTV Media (GB) accepts that there may be merit in Ofcom's proposed rationalisation of contemporary music formats for local stations. However, we believe that additional format simplification, over and above that which is currently proposed, would be highly damaging to the radio sector.
- 7.1.2. Ofcom's proposed change would give a small amount of additional operating flexibility to services whose primary objective is to deliver local content and which do not already enjoy 'broad music' formats (although

<sup>32</sup> Ofcom, 'The Implications of Digital Britain for localness regulation', July 2009, page 68

many of them do so). It is unlikely to substantially alter the competitive dynamics of individual local markets, as listeners' decisions to tune into these services are primarily influenced by their relevance to local life, with music output largely a secondary consideration. We consider Ofcom's suggestion that this proposal might undermine the viability of specialist stations to be unlikely, given the limited nature of the change proposed.

7.1.3. However, we believe that more radical format simplification would undermine the breadth of commercial radio's overall offering, leading to a reduction in listener choice and a narrowing of the industry's appeal to advertisers. The increased competition for mainstream audiences would inevitably impact on the profitability of smaller stations and so undermine their delivery of important local content. We note two key limitations built into Ofcom's drafted proposal which must be retained:

- Format simplification must not be extended to **regional** licences or **specialist** music stations. This is because the primary purpose of licensing these stations was to broaden listener choice, rather than deliver local content. The only conceivable motivation for such stations in seeking changes to their formats would be to allow them to adopt less distinctive output, which is likely to be at the expense of competing stations with formats to provide vital local content, given the current maturity of the UK commercial radio market.
- **Target audiences** should remain as currently defined within formats, in order to preserve the breadth of commercial radio's appeal to listeners of different ages and demographics. We believe that current target audience requirements complement music format requirements, and are aware of no instance in which they are out of kilter with each other.

7.1.4. Retaining these important restrictions would be consistent with Ofcom's suggestion that regulation should prioritise the delivery of local content. Giving local services such as The Wave a 'broad music' format would reflect their focus on local audiences, whilst the retention of differentiated music and target audience requirements would maintain breathing space between such stations and their regional or specialist competitors. For instance, the local and 'broad music' output of Swansea's The Wave would continue to be distinguished from the 'adult contemporary' (A/C), 'alternative rock' and 'gold' services which Real Radio Wales, Nation Radio and Bay Radio are respectively licensed to provide.

7.1.5. The importance of regional and specialist stations retaining their current formats is illustrated through music monitoring data. In order to better understand the implications of Ofcom's proposals, UTV reviewed monitoring undertaken in April 2009 of 22 commercial radio stations in the North West, South Yorkshire, Midlands and South Wales<sup>33</sup>. Given the small size of the sample, this exercise would need to be repeated on a wider scale for its

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<sup>33</sup> [33]

results to inform regulatory policy. The monitoring also did not include any data on the number of current chart songs played on each station – an important signifier of contemporaneity. However, the data provides important evidence of the distinctions which exist between formats. Full details are provided at Annex 2, with a summary produced below.

Figure 1. Impact of formats on music diversity

Format	Number of stations	Percentage from 00s
Adult contemporary	3	52%
Contemporary / chart	5	85%
Broad	7	64%

7.1.6. This data demonstrates the distinctiveness of ‘adult-contemporary’ formatted stations, with just over 50% of the songs broadcast on the three A/C stations (all of which operate under ‘Real Radio’ branding) coming from the current decade, compared to 85% on the five stations with ‘Contemporary / chart’ formats. The monitoring data also reveals the impact of niche formats on music output. 100% of music output on Galaxy and 95% on Juice FM consisted of music from the current decade, as befits their ‘Rhythmic (dance/club)’ and ‘New/chart/dance/local’ formats. Conversely, just 10% of music output on Smooth consisted of music from the 2000s, reflecting its ‘Easy Listening’ format.

7.1.7. These findings, limited as they are, undermine Ofcom’s suggestion in its consultation that there is little difference between ‘contemporary hit radio’ (CHR) and A/C Formats. Ofcom argues that “out of the top 20 most played songs in 2008 in terms of airplay (all stations) and public performance, 17 would sit comfortably alongside other songs on both Contemporary and Chart and Adult Contemporary radio stations”. However, we note that the 17 most popular songs in a given year will by their very nature span the genres and attract crossover appeal across formats. Monitoring of different stations over time reveals a distinct character beyond the small number of songs which receive sustained airplay over a long period. It is the wider music output of a station – including the 3 ‘most played’ songs which Ofcom deemed unlikely to sit comfortably on both CHR and A/C stations – which distinguishes music formats and gives them their distinct characters.

7.1.8. Whilst Ofcom is not currently proposing further music format deregulation, its consultation invites a range of views on how to regulate music formats. It also contains analysis on the continuing relevance of the current approach which contains a number of surprising contentions. It is partly this which has prompted our concern about a potential future widening of its proposals. For instance<sup>34</sup>:

- Describing the potential effects of format deregulation, Ofcom states “If the result is stations providing more of what their audiences want, or increased competition between service providers in a local market,

<sup>34</sup> Ofcom, ‘The Implications of Digital Britain for localness regulation’, July 2009, page 73



then consumers may be better served". It is unclear what Ofcom means by "more of what their audiences want", but in any market where there are multiple owners of commercial radio licences, wholesale music format deregulation would encourage stations to reposition themselves to enlarge their market share at the expense of existing services. This would lead in turn to clustering around the middle-ground and a reduction in overall diversity of audience interests served by the commercial radio sector. The result would be increased fragmentation and competition for revenue, and reductions in individual station viability.

- Ofcom refers to "changing tastes" amongst radio listeners, but provides no link between a need for format deregulation and any failure on the part of commercial radio to cater for listeners' tastes and interests. Following the significant licensing of specialist and regional services over recent years, as well as the growth of digital broadcast platforms, commercial radio has never been better placed to serve the full range of UK music tastes.
- Ofcom suggests that a relaxation of formats would allow stations to compete "with new types of music consumption and distribution". We view this suggestion as fundamentally misguided. Radio's high weekly adult reach figures prove the continued attraction of 'one-to-many' broadcast services to audiences. The rise and popularity of personalised 'one-to-one' services such as Spotify and Last.fm is an important trend, but its primary significance for commercial radio is to underline the importance of offering listeners a diverse range of formats. We suggest that broadcasters who wish to take on personalised streaming services should launch equivalent services.

UTV Media (GB), October 2009

**Annex 1. 'Making Waves' – Radio Wave's community impact in Blackpool, Wyre and the Fylde Coast**

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Annex 2: Results of monitoring of 22 stations against their Formats, April 2009

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