

Yvonne Matthews
5th floor
Content and Standards
Ofcom
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London SE1 9HA

3 June 2008

Dear Yvonne,

1. UTV Radio GB Limited (UTV Radio) welcomes the opportunity to respond to Part 2 of the Participation TV consultation.
2. This response should be read and considered in line with the RadioCentre response on behalf of the commercial radio industry given the concerns expressed in that submission accord with our overall views regarding the proposed amendments to the Broadcasting Code, and specifically the issues raised by the three questions asked within the consultation.
3. In particular, we would like to reiterate the view that the legitimate commercial interests of radio operators should not be restricted (now or in the future) by blanket, untargeted rule changes brought about by the misconduct of television broadcasters.
4. The proposed one-size-fits-all approach to the problem does not recognise the inherent differences between listener/radio station interaction and viewer/TV channel interaction. We expressed concern in our submission to the initial consultation last October, that there was insufficient attention paid to the differences between participation in radio and television and the nature of PRS usage within radio. These concerns remain in the current proposed Broadcast Code changes.
5. In addition to fully supporting the RadioCentre's response to the consultation questions, we feel it is also important that we raise our particular concerns regarding our national speech station, talkSPORT.
6. talkSPORT is the most interactive broadcast radio station in the country and as such is more likely to be affected by the proposed rule changes than any other commercial radio station. Interaction with listeners has been (and will continue to be) a fundamental part of talkSPORT's output and that must be recognised in developing any new code rules that impact radio.
7. To be clear, UTV Radio fully supports the three important objectives outlined in 1.2 of Ofcom's Executive Summary, namely: that audiences and consumers are adequately protected; that advertising is kept separate from programme content ('editorial'); and, that broadcasters do not circumvent advertising prohibitions by using programmes to promote services that cannot be advertised.

8. We also agree with Ofcom's stated aim that content which purports to be editorial but actually consists entirely of promotion of PRS numbers should be defined as advertising or teleshopping.

9. Our specific issues are with the proposed rules set out in Section 4 and are summarised here:

a) *Broadcasters may only charge viewers via PRS to take part in programmes (not by credit card, direct debit, cash etc).*

UTV Radio believes that Ofcom should not limit methods of payment and therefore Rule 10.10 should not include a ban on credit and debit cards.

b) *Where a PRS is used in a programme for audience participation, it must not be given undue prominence within the programme.*

We are concerned about the definition of "undue prominence" and its interpretation by the regulator.

c) *The programme must consist primarily of content other than the promotion of the PRS.*

We would not argue with the proposal, but our concern lies in the interpretation of "primarily".

d) *The primary purpose of the programme must be editorial, and any commercial activity associated with the PRS (e.g. generation of call revenues) must be secondary to that purpose.*

As above, it is how "primary" and "secondary" purposes are defined that forms the basis of our concern.

10. As the only national commercial speech radio station with a phone and text-led (and email) format that relies on listener interaction, talkSPORT is most vulnerable as an unintended victim of the application and interpretation of new rules that are intended for another medium, particularly given that Ofcom intend that any new rules for PRS should also apply to radio phone ins – Para 1.17 of the consultation document.

11. A blanket approach such as this is in danger of failing to recognise that one of the primary editorial techniques of any phone in presenter is the ability to successfully "trawl" for calls. The frequent repetition of the phone number to call, in talkSPORT's case 08717 223344, is a primary editorial function without which there would be no content. Any Code changes that apply to radio must take in to consideration the need for prominence of call numbers (and other interactive platforms) as a primary part of the editorial output of all phone-in shows.

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13. After broadcasting phone-ins for more than 13 years, talkSPORT (formerly Talk Radio) is renowned for its phone-in programmes and the public is well aware that calling the station is not a guarantee of being taken to air. Since the introduction of text messaging, the public is also clear that not all text messages are read out. The same applies to emails.
14. Ever since the station began in 1995, talkSPORT (and Talk Radio) has had a policy of employing highly opinionated, controversial presenters who voice their strong opinions without fear or favour. The balance in the debate (and therefore the editorial) is provided by listeners calling, texting or emailing the station to take the presenter to task and challenge his/her views.
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16. It is in this context that talkSPORT is concerned about the application of these new rules that are targeted elsewhere.

Interpretational issues need to be clarified

17. Our main concern is to protect our ability to invite listeners to phone and text our shows. Virtually every show is phone and text (and email) led and relies on the widest possible variety of opinions from the widest variety of listeners. It is therefore crucial for presenters to frequently broadcast the phone and text numbers to attract these opinions in.
18. It is equally important to repeat our numbers to encourage new callers to the station and to recognise the “dip in dip out” nature of speech radio. The proposed new rules, however, now cover undue prominence, the actual content of the programme, and the purpose of the programme. Indeed, one of the considerations cited by Ofcom that would tend to suggest a breach of Rule 10.11 is “there are excessively frequent calls to action, visual or oral”.
19. Without further clarity on potential interpretation, this appears to open up a number of grey areas, such as: what are “excessively frequent calls to action”? how is “directly derived from the particular programme” defined?; what constitutes “undue prominence”?
20. Phone-in shows inevitably consist of content that involves use of the service. In our view, the new rule should focus on whether text or calls are editorially justified and that consumers are protected and aware of any charges they may incur by wishing to participate. Certainly, talkSPORT complies on both these counts.

Rule changes need to be targeted

21. Our second key concern involves the use of quizzes and competitions that form an integral part of the talkSPORT listening experience. These are primarily editorially linked, and conditions of entry are always clearly explained on air together with any charges that listeners may incur. However,

the new rules appear ambiguous. Under 1.12 of the Executive Summary, Ofcom acknowledges that: "Many mainstream programmes, such as game shows with a viewer competition element, feature PRS in a secondary manner that is likely to comply with the new rules". Yet under 1.17, Ofcom suggest that other PRS content on radio may give rise the possibility, in the future, of similar concerns regarding the promotion of PRS [as has arisen in TV] arising in radio programming. As explained above, the highly interactive nature of talkSPORT content means there is significant, but editorially essential use of "other telephony" services in our output. Rule changes targeted at malpractice in one medium should not simply be applied in a blanket fashion to radio.

22. We believe that Ofcom should consider revising the proposed Code changes to treat radio and television separately.

Future innovation should not be discouraged

23. Finally, the ban on credit and debit card methods of payment restricts radio stations from coming up with innovative programming ideas and interactive commercial solutions in the future. The BBC, for example, promotes ticket hotlines for events and talkSPORT, with its editorial focus on major sporting fixtures, would like to do the same without contravening the new rules.
24. In summary therefore, we believe that talkSPORT editorial content, and radio phone ins, given their reliance on high levels of audience participation and interaction via telephone, text (and email) should not be affected by new rules. Callers and audience interaction are the lifeblood of the station and an integral part of the editorial output and should not be affected by rules designed to capture malpractice surrounding audience participation in TV. Therefore to re-iterate there needs to be separate rule changes for radio.
25. Given our unique level of interactivity we would welcome further discussion directly with Ofcom around the proposed code changes and the impact on talkSPORT and going forward, Talk Radio.

Yours sincerely



Calum Macaulay
Commercial Director
UTV Radio (GB) Limited