

## Response to Ofcom Draft Annual Plan 2008/9

### Background

1. RadioCentre is the industry body for Commercial Radio. Formed in July 2006 from the merger of the Radio Advertising Bureau (RAB) and the Commercial Radio Companies Association (CRCA), its members consist of the overwhelming majority of UK Commercial Radio stations, who fund the organisation.
2. The role of RadioCentre is to maintain and build a strong and successful Commercial Radio industry - in terms of both listening hours and revenues. As such, RadioCentre operates in a number of areas including working with advertisers and their agencies, representing Commercial Radio companies to Government, Ofcom, copyright societies and other organisations concerned with radio, and working with stations themselves. RadioCentre also provides a forum for industry discussion, is a source of advice to members on all aspects of radio, jointly owns Radio Joint Audience Research Ltd (RAJAR) with the BBC, and includes copy clearance services for the industry through the Radio Advertising Clearance Centre (RACC).

### Overview

3. With the regulator's Future of Radio review, Commercial Radio was an obvious main priority for Ofcom in 2007. 2008 is likely to see RadioCentre and the rest of the industry collaborate with Ofcom on a broader range of projects which are no less critical to radio's future. These include:
  - Implementation and ongoing evaluation of the new Format arrangements and localness guidelines resulting from the Future of Radio review, which we consider to be an important step towards creating the right future regulatory framework for radio;
  - DCMS's Digital Radio Working Group, which needs to chart a path towards radio's digital future, and of which both RadioCentre and Ofcom are members;
  - The Convergence Think Tank established by the Secretary of State for Culture, Media and Sport, which paves the way for new communications legislation in the coming years; and
  - The Competition Commission's inquiry into the merger of the transmission providers Arqiva and NGW, which may well lead to the creation of the post of transmission adjudicator under the auspices of Ofcom.
4. In addition to each of these critical work areas, we are keen to work closely with Ofcom in each of the following areas, where appropriate:
  - Reform of broadcast advertising regulation;
  - Any Market Impact Assessments undertaken by Ofcom in the course of Public Value Tests for new BBC services, with particular reference to the proposed online BBC service, MyLocalNow;
  - Developments at European level, such the European Commission's work on the Telecoms Package which includes proposals for a European Telecom Market Authority;
  - Work to further develop the self-regulatory approach being employed by BTR's, potentially extending its remit to include self-regulation of equal opportunities promotion;
  - The amended relationship between broadcasters, Ofcom and PhonepayPlus, especially in relation to the regulation of PRS telephony;
  - Efforts to maintain high levels of listener and viewer trust in broadcasters following the recent Ofcom seminar hosted jointly with the BBC Trust; and
  - Ongoing activity to tackle illegal broadcasting.

5. It is to be expected that there may be disparities between the views of Commercial Radio and its regulator on certain issues, but RadioCentre has enjoyed a good working relationship with Ofcom in our first full year representing the sector, and we look forward to tackling some of these challenges together in 2008/09.

## **RadioCentre responses to the consultation questions**

### **Question 1. What are your views on the continued relevance of Ofcom's three-year strategic framework for its work in 2008/09?**

6. We believe that the three-year strategic framework is a sensible way for Ofcom to organise its workload, whilst noting that particularly significant projects are likely to cut across multiple strategic objectives. This was certainly the case with Ofcom's work on the Future of Radio in 2007.
7. The strategic framework also inevitably captures the inherent tensions in media policy and regulation, for instance between driving forward market based approaches to spectrum and networks and ensuring the delivery of public interest objectives. We believe that media policy fails if it delivers services whose public service obligations are so onerous that they jeopardise commercial viability.

### **Question 2. What are your views on Ofcom's proposed policy work programme and top priority areas for 2008/09?**

8. We have already outlined a number of areas in which we envisage working with Ofcom over the coming year. Our four priority areas are as follows:
- Implementation and ongoing evaluation of the partial relaxations to Format and localness regulation introduced by Ofcom, which we consider to be an important step towards creating the right future regulatory framework for radio;
  - DCMS's Digital Radio Working Group, which needs to chart a path towards radio's digital future, and of which both RadioCentre and Ofcom are members;
  - The Convergence Think Tank established by the Secretary of State for Culture, Media and Sport, which paves the way for new communications legislation in the coming years; and
  - The Competition Commission's inquiry into the merger of the transmission providers Arqiva and NGW, which may well lead to the creation of the post of transmission adjudicator under the auspices of Ofcom.

### **'The Future of Radio' was only the first step in securing the future framework for Commercial Radio**

9. Each of the four issues we have outlined above is closely connected with fashioning a framework for the future delivery of non-BBC radio services which both serve the public interest and are commercially viable. In this context, we note that major Ofcom priorities for the coming year are developing an approach to the evolution of radio and examining future models for public service broadcasting. We welcome Ofcom's recognition that these work areas are closely linked, given that "radio continues to be at the forefront of developments in convergence"<sup>1</sup>.
10. In describing the way in which "Convergence raises challenges for delivering broader public interest objectives", the plan states that "The funding models used in the past may need to be adapted to find new, transparent and forward-looking public service delivery mechanisms that reflect the opportunities and challenges resulting from convergence"<sup>2</sup>. Ofcom has previously quantified the cost of public policy in radio (which structured the radio industry as a network of stations serving tightly defined areas and audiences) as "perhaps around £290m per annum"<sup>3</sup>, an opportunity cost which has hitherto been justifiable, in view of the high level of demand amongst advertisers for radio inventory and the premium which this placed upon spectrum access.

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<sup>1</sup> Ofcom, 'Draft Annual Plan 2008/09', page 19, para 4.42

<sup>2</sup> Ofcom, 'Draft Annual Plan 2008/09', page 18, para 4.40

<sup>3</sup> Ofcom, 'The Future of Radio: Discussion Document', November 2006

11. At the turn of the Millennium there was widespread optimism that significant further licensing of FM and DAB services was the public service delivery mechanism which would secure radio's place in the converged media ecology. Nearly 100 original analogue and DAB Commercial Radio services have since been established, with nearly 100 more DAB simulcasts of existing services also being launched since 2000.
12. With the prospect of these future station launches on the horizon, it was not unrealistic to estimate that Commercial Radio revenue would at least continue to grow in line with inflation, from £595m in 2000 to £700m or more in 2007. A more optimistic prediction might have envisaged above inflation growth. Indeed as late as 2004, a report by Oliver and Ohlbaum Associates for the BBC predicted that Commercial Radio revenue could reach nearly £800m by 2007<sup>4</sup>.
13. Instead, the effect of this policy has been to dramatically grow the industry's cost base at a time of substantially increased cross-media competition for advertising revenue. Revenue in 2006 was almost identical to 2000's figure of just under £600m, meaning that the industry's income has dropped by around 20% in real terms, whilst outgoings are now spread across considerably more services and platforms than before.
14. Ofcom has been quick to acknowledge the implications of this discrepancy, saying for instance that "the cost to the radio industry of that public policy ... may now be becoming disproportionate"<sup>5</sup>. The recent partial relaxation of Commercial Radio localness and Format regulation is calculated by Ofcom as being likely to deliver annual cost savings in the order of £9.4m to £11.7m<sup>6</sup>. Ofcom has also suggested that its new guidelines will give stations the flexibility to increase revenues by being able to offer high-profile shared programming.
15. We agree that this is valuable, but do not believe that Ofcom's reforms amount to a complete solution for balancing the dual objectives of promoting competition and innovation whilst also ensuring the delivery of public interest objectives.
16. If, as Ofcom has acknowledged, "radio continues to be at the forefront of developments in convergence"<sup>7</sup>, and if, as Ofcom states, convergence has undermined the justifiability of the existing £290m cost of public policy, then annual savings in the region of £10m or more will not be sufficient to secure a viable long-term framework for Commercial Radio.
17. In this context, initiatives such as the Convergence Think Tank and Digital Radio Working Group need to generate more than just discussion of problems and issues. The impact of convergence on Commercial Radio business models is self-evident; what is needed are forward-thinking ideas and bold answers which get to the heart of the challenges involved and afford the flexibility needed to prevail in the digital environment.
18. Ofcom's Public Service Broadcasting review appears to have the ambition of fashioning a framework which satisfies this objective in television. Yet the review will undoubtedly have a substantial impact on the next piece of Communications legislation, and will therefore interact closely with DCMS's Convergence Think Tank. In this context we urge those responsible for the review to consider the potential implications of each policy option on radio as well as television, whilst also assessing whether similar funding options should be proposed for our sector.
19. We remain optimistic the public policy objectives are attainable in radio, and look forward to working with Ofcom to deliver the public purposes and strategic framework outlined most recently in 'The Future of Radio: the next phase'<sup>8</sup>. Like Ofcom, we want to ensure a wide range of services, choice and competition in the market and above all, the growth of a strong commercial sector. Like Ofcom we recognise the citizen interest considerations involved in regulation: listeners are crucial to the ways in which we run our radio stations. And like Ofcom,

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<sup>4</sup> Oliver and Ohlbaum Associates, 'The Contribution Of The BBC's Core Radio Services To The Overall UK Radio Market To 2014', October 2004

<sup>5</sup> Ofcom, 'The Future of Radio: The Next Phase', November 2007, pg 18

<sup>6</sup> Ofcom, 'The Future of Radio: the next phase', November 2007, p. 40, para. 3.95.

<sup>7</sup> Ofcom, 'Draft Annual Plan 2008/09', page 19, para 4.42

<sup>8</sup> Ofcom, 'The Future of Radio: The Next Phase', November 2007, pg 15

we are mindful of the need to shape a framework which involves as little intervention in the market as possible.

#### Implementation and ongoing evaluation of Ofcom's Future of Radio reforms

20. Consultation on 'The Future of Radio' may be at an end, but successful implementation of the agreed Format and localness guidelines reform will be of critical importance to our sector. We encourage Ofcom to be as proactive as possible in making sure that licensees are fully aware of the greater programme-sharing and co-location flexibility available to them. RadioCentre also remains willing to work with Ofcom if necessary to aid the process of Format revision.
21. Once implemented, we believe that it is important for Ofcom to continually review the effect of its reform on both the sector's programming output and its economic viability. Evidence that 40% of local Commercial Radio stations were losing money was a key driver of reform, but as yet, Ofcom has not published an estimate of the likely impact of its regulatory relaxations on this figure. One of the key indicators of whether the changes have been successful (alongside overall revenue and audience figures) will be if the proportion of unviable stations falls significantly below 40%.
22. Commercial Radio continues to believe that there is merit in a movement towards some form of co-regulatory model for localness obligations. We regard co-regulation as a cost-effective, industry-involving way to achieve output as opposed to input regulation which will provide useful, regular assessment and afford the flexibility to develop new and innovative ways to produce great local content. We believe that co-regulation is a proper and useful future development for effective radio content regulation and therefore should be the eventual aim for the industry and its regulator.

#### Plotting a path towards radio's digital future through the Digital Radio Working Group

23. It is already clear that 2008 will be a critical year for DAB, but the wider question is how radio's future platform and distribution strategy should be resolved. RadioCentre welcomes Ofcom's stated commitment to providing strong support to the Digital Radio Working Group, since we believe this will be of crucial importance to the group's success.

#### Laying the foundation for the next Communications Act through the 'Convergence Think Tank'

24. In recent months we have started to formulate our thinking on the objectives which the next piece of communications legislation should seek to achieve. We believe that a new Communications Act is now urgently needed which answers questions such as:
  - What is the right legal and economic framework to allow traditional 'old' media companies the flexibility to innovate and compete with fast-moving 'new' media companies?
  - How important is it that plurality of viewpoint is delivered on a mono-sector basis within radio, or should it be secured on a cross-media basis? If the latter, what are the implications for the current media ownership rules?
  - How can the Government galvanise interest in moving to a fully digital radio broadcasting ecology and ensure that no listeners are left behind in the process?
  - How should public interest objectives for broadcasting (including Commercial Radio) be achieved in an age of declining spectrum scarcity and increased competition for advertising revenue?
  - What approach should be taken to regulating content and advertising on services with niche or substantially fragmented audiences?
25. We are already developing our thinking around these issues, and will be contributing fully to the Government's Convergence Think Tank. We believe that Ofcom can play an important role in this process, both in terms of ensuring that Government understands the urgency with which it should move to formal legislative proposals, and in providing DCMS with relevant analysis and insight.

### Future oversight and regulation of Arqiva / NGW, following their merger

26. At the time of writing (February 2008) it looks increasingly likely that the Competition Commission will choose to address the merger of the transmission companies Arqiva and NGW through a pure behavioural remedies package, rather than by forcing divestment. In view of this, we are keen to continue to work closely with Ofcom over the coming months to ensure that the new regime provides proper protection for customers.
27. Of all of the Arqiva / NGW's customer sectors, Commercial Radio has the least certainty over its future platform strategy. DSO for television is already agreed and well-advanced, and television customers signed long-term contracts with Arqiva prior to the merger. The situation for Commercial Radio companies is very different, and in view of the current ownership and platform uncertainty affecting our industry we believe that Ofcom should be rigorous in guiding both the Competition Commission and Office of Fair Trading as the behavioural remedies package is finalised.
28. If and when a behavioural remedies package is agreed, we believe that Ofcom's support for the adjudicator will be vital in protecting Commercial Radio customers. We envisage Ofcom providing analysis and guidance, whilst also monitoring the adjudicator's effectiveness in enforcing the undertakings, a role which it will share with the OFT.

### Reform of broadcast advertising regulation

29. There are likely to be a number of areas of discussion around advertising regulation over the coming year which are likely to be of crucial significance, and will provide an opportunity for valuable reform.
30. Firstly, BCAP is currently working towards the alignment of the radio and television advertising codes, which will create a single harmonised broadcast advertising code. RadioCentre and the RACC are also actively involved in this process.
31. BCAP's review provides an opportunity to look at each area of the broadcast advertising codes in turn and ask whether there is a clear or compelling reason for retaining the status quo. Where it is not clear as to why a rule is needed, we feel that the committee's bias should be towards removal. In light of the decline in spectrum scarcity and increased competition for advertising revenue, there is a clear rationale for a taking a more liberalised approach without undermining consumer protection concerns.
32. In addition, we note that Ofcom will devote considerable attention to implementing the Audiovisual Media Services (AVMS) Directive over the coming year, saying that "we will carry a review of Ofcom's rules on the amount and distribution of television advertising (the RADA review). The project will examine the opportunities to liberalise regulation of the scheduling and volume of advertising on both commercial public service broadcasters and cable and satellite channels.
33. Alongside each of these projects, there is a pressing need for Ofcom to undertake a review of Sections 9 and 10 of the Broadcasting Code as they apply to sponsorship and commercial references on radio. The rules in these sections are unclear and maintain what we believe is an outdated and overly restrictive view on the role of sponsorship and promotions in radio.
34. Commercial Radio stations are under increasing pressure from the advertising world to deliver more creative and interactive commercial solutions which we believe would cause no consumer harm and would maintain the important principle of transparency in the delivery of commercial messages, but which would seem to fall foul of the letter of the Code rules. We would like Ofcom to undertake an urgent review of these sections of the Code - which might usefully coincide with the BCAP Advertising Code Review - to find ways in which we can provide sensible options to commercial clients whilst maintaining appropriate levels of consumer protection.
35. Finally we believe that social policy concerns continue to carry the threat of potentially disproportionate advertising restrictions in sensitive categories such as food and drink, alcohol, and cars. RadioCentre urges Ofcom to ensure that any interventions of this kind are firmly resisted.

### Market Impact Assessments for new or altered BBC services

36. Ofcom has a key role in carrying out Market Impact Assessments in the course of Public Value Tests undertaken by the BBC Trust when it receives a proposal for a significant new BBC service.
37. We are aware of at least one service which may be subject to a Public Value Test in 2008/09, and which may have substantial implications for our sector. Commercial Radio's localness plays a crucial role in enabling it to stand out in relation to other media, and finding ways of translating this to the internet will be vital in keeping Commercial Radio relevant in the digital age. In view of this, we are concerned that proposals for a new BBC broadband service, MyLocalNow, may dramatically distort the UK market for local content online.

### The European Commission 'Telecoms Package'

38. Ofcom's makes a substantial contribution to international communications policy, with the European Commission's work on the Telecoms Package likely to be a significant component of this work over the coming year. We note that Ofcom plans to "thoroughly engage with the European Commission on proposals for a supra-national regulatory agency to ensure that the interests of UK citizens and consumers are best represented in this debate". Like Ofcom, we believe that regulatory autonomy should continue to reside at UK level and fully support our regulator's engagement on this issue.
39. RadioCentre is a member of AER (Association Européenne des Radios), the Europe-wide trade body representing the interests of over 4,500 Commercial Radio stations across Europe. AER has been lobbying in relation to the Telecom Package, and is advocating continuing responsibility for national regulatory authorities in allocating spectrum on a prioritised basis for Commercial Radio given its public service remit.

### Other areas of importance to Commercial Radio

40. Inevitably there will be a number of other areas in which we have close contact with Ofcom over the coming year, and in which we have a close interest. These are likely to include work to further develop the self-regulatory approach being employed by BTR, potentially extending its remit to include self-regulation of equal opportunities promotion. We will also be interested to see how the role of PhonepayPlus develops in regulating of PRS telephony, in light of its amended relationship with Ofcom. We also foresee further collaboration between Ofcom and the BBC Trust, as well as broadcasters, in the course of efforts to maintain listener and viewer trust following Ofcom's 2007 'Participation TV' consultation.
41. Finally, but no less importantly, tackling illegal broadcasting should remain a high priority for Ofcom, in view of the substantial impact it has on Commercial Radio listening. In 2007, Ofcom held a seminar and published research on this issue, but as yet it has been difficult to identify any potential new solutions for reducing levels of unlicensed activity. We are keen for this work to remain properly resourced, alongside the crucial ongoing enforcement programme and are committed to playing a part in the fight against illegal broadcasting.

### **Question 3. Are there new or additional areas in which Ofcom should consider reducing regulation and work to minimise administrative burdens? Please provide specific examples.**

42. We have no further suggestions to add at this stage, beyond those which we have made in response to other questions (for instance requesting a review of Sections 9 and 10 of the Broadcasting Code as they apply to sponsorship and commercial references on radio).

### **Question 4. Are there additional areas of international policy development that Ofcom should be contributing to? Please provide specific examples.**

43. In 2007 we wrote to MEPs outlining our concerns about European Commissioner Viviane Reding's endorsement of DVB-H over other technologies, and in particular DMB. We continue to favour technology neutrality in relation to this and other digital broadcasting issues, and encourage Ofcom to advocate interoperability, standardisation and, where appropriate, the development of open standards.

44. We also believe that Ofcom should be proactive in protecting the interests of the wider advertising community at European level, by ensuring that both the European Parliament and Commission are well-informed about the impact of restrictions or other proposals. Most recently, there was discussion about introducing obligations for car advertising to include obligatory messaging about CO2 emissions and fuel consumption. If introduced on radio, the available evidence suggests that such measures would have a substantial impact on advertising revenue, whilst having little or no impact on consumer behaviour.

RadioCentre, February 2008

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