

Commercial Radio Content Regulation

Proposal 1

The regulation of content on analogue commercial radio and on DAB digital radio should be aligned, at the appropriate time.

This consultation seeks views on this proposal and considers options for delivering it. Where these relate to potential legislative changes, Government may wish to consider them in the future, should the possibility of introducing new legislation be taken forward. Having considered the options, Ofcom's initial suggestions are as follows:

1.1: The timing of any changes to Format and localness regulation of commercial radio should be linked to a threshold based on the overall proportion of listening accounted for by digital platforms. For those changes which could be made without new legislation, we suggest an appropriate threshold would be 33%, but welcome views as to alternatives.

The ACW believes that the threshold for making changes based on digital take-up cannot be standardised across the UK. The take-up of DAB is much lower in Wales than other parts of the UK; and the availability of Wales based services, including the BBC's National Services on DAB is very limited.

1.2: Analogue local commercial radio station Formats should be streamlined to bring them into line with the level of detail in DAB Formats, when the relevant digital listening threshold is met.

The ACW agrees that it is a good idea for formats to be aligned across platforms. However, members believe that DAB formats should be brought into line with existing analogue, not, as Ofcom proposes, the other way around. Simplifying formats will do nothing to protect citizen and consumer issues in Wales. This would ensure that the formats for local commercial stations, which simulcast on analogue and DAB, would be retained once analogue transmissions ceased.

1.3: Ofcom could give guidance on appropriate minimum levels for the amount of locally-made programmes and local material (local programming) required to be provided by analogue local commercial stations, according to the size and type of station. Local material should be locally made within the licensed area unless subject to any agreement for co-location of studios, according to specified criteria. These changes should be introduced when the relevant digital listening threshold is met.

The ACW is completely opposed to reducing the requirement for Commercial Radio to provide local content. As we made clear in our opening statement we face a situation with no indigenous National press, little coverage of Wales in the UK press; only two National TV news providers; and only one National

Radio news provider, it is vital that the Welsh agenda is covered by every station based in Wales throughout the day.

We believe that if these proposals are implemented local commercial stations in Wales will come under increasing pressure to take more networked programmes, and these guidelines will quickly become a minimum. Informally local station managers have told us that they are worried about losing localness, and they believe that ultimately these proposals will also lose them audience. In the long term that could lead to questions over viability.

The Consultation Document itself points out that networking is not necessarily the answer for commercial local radio's success. In 3.14 the document states

'... The radio industry has not always helped itself, sometimes withdrawing from one of its main selling points – its ability to connect with local audiences through local programming – and sometimes focusing on defining its output too tightly with what listeners believe are limited playlists and a lack of entertaining speech output.

ACW entirely concurs with that view.

We would however suggest that there may be an opportunity to redefine 'local' in a Wales context. News of all Wales events (such as the National Assembly Elections) which is carried on Commercial Local Radio Stations in Wales is at present not counted as local unless put in a specifically local context (candidates from the constituency etc) This is clearly not an incentive for stations to cover the overall citizenship agenda. We therefore propose a review of this definition in certain circumstances.

1.4*: It is properly the domain of Government and Parliament to determine Ofcom's statutory duties. Ofcom's existing statutory duty to ensure the provision of an appropriate amount of local material with a suitable amount of local production applies only to each analogue commercial local radio station. Our analysis suggests that, as digital listening increases Ofcom should be allowed to look at the provision of local material across all local commercial stations in an area on a platform neutral basis for broadcast radio (i.e. analogue and DAB digital radio). Government may also wish to consider whether this duty should apply to all future broadcast platforms which seek to replace analogue radio listening, such as DRM, but not to platforms intended primarily to deliver other types of services such as digital television.

We welcome this proposal which is sensible, especially in the context of our proposal and response above.



1.5*: Government may wish to consider bringing forward proposals to amend the existing legislation to remove the Format restrictions on national analogue radio, at an appropriate time, if it considers that DAB national services will provide the required diversity of national stations.

Ofcom needs to get its terminology right. It is clearly here referring to UK wide, rather than Nation specific services.

1.6: The requirements on DAB digital radio to offer national (UK-wide) services which appeal to a variety of tastes and interests should remain.

This is one of the very few areas in the document where Ofcom succeeds in using the appropriate term. ACW wonders why the organisation cannot be consistent.

Note: We believe that suggestions marked with an asterisk would require new legislation

Commercial Radio Ownership Regulation

Proposal 2

There may be a case for Government to consider bringing together the ownership rules regarding analogue commercial radio and DAB digital radio into a single set of rules as the proportion of listening accounted for by digital platforms increases.

This consultation seeks views on this proposal and considers options for delivering it which Government may wish to consider in the future, should the possibility of introducing new legislation be taken forward. Having considered the options, Ofcom's initial suggestions are as follows:

2.1*: The timing of any changes to ownership regulation of commercial radio could be linked to a threshold based on the overall proportion of listening accounted for by digital platforms. This may be the same threshold as that considered above for changes to content regulation.

2.2*. There could be a single set of ownership rules based on defined ownership areas which would be applied across analogue and DAB platforms, once the relevant digital listening threshold is met.

2.3*: The local DAB multiplex ownership rules could be changed so that no person can control more than one DAB multiplex designed to cover substantially the same area.

2.4: The rule that no one person can control more than one national DAB multiplex could be retained.

2.5*: The cross-media ownership rules could be based on defined ownership areas, as per 2.2 above; and analogue and digital radio services could be considered together in this regard.

Note: We believe that suggestions marked with an asterisk would require new legislation

The ACW would welcome consistent ownership rules in principle but would wish to give further consideration to their application in terms of geographic area. There could be some instances where the citizen interest in Wales would be better served by consideration of a pan-Wales boundary rather than local areas within Wales when considering plurality of ownership.

The Ability to Free Up Spectrum

Proposal 3

While we do not currently propose that a date should be set for the switch-off of analogue (FM and AM) radio, we should aim to maximise flexibility in the licensing system so as to be able to free-up that spectrum for other uses, when the time is right.

This consultation seeks views on this proposal and considers options for delivering it which Government may wish to consider in the future, should the possibility of introducing new legislation be taken forward. Having considered the options, Ofcom's initial suggestions are as follows:

3.1*: So as to maximise DAB coverage for local radio services, Ofcom should be given the power to increase the licensed areas of existing DAB local multiplex licences where such increases would not be significant, and to approve significant increases in exceptional circumstances.

3.2: In order to achieve the flexibility to use the spectrum currently used for analogue radio for other things, we would need to have the ability to clear the spectrum of many, if not all, current users in each waveband simultaneously by setting a common end-date for existing services.

We propose two reviews to set such common end-dates:
- VHF Band II (FM) - a review should take place in 2012, or when listening on digital platforms accounts for 50% of all listening, whichever is the earlier, to consider the future use of VHF Band II and determine a common end-date for existing FM services (commercial and BBC).

- Medium wave (AM) - a review should take place in 2009 to consider the future use of medium wave and determine a common end-date for existing AM services (commercial and BBC).

ACW members very strongly believe that Medium Wave (AM) should not be lost without any replacement for existing radio services on that spectrum. Our

case is reinforced by the position of BBC Radio Wales, the only National service for Wales in English which can only reach a maximum of 60% of the Welsh population on FM. Given the paucity of Wales based speech radio, the ACW is opposed to any limit on the ability of Radio Wales to reach its potential audience, including ending transmission of the service on AM.

3.3*: The spectrum currently used for analogue AM and FM radio should be available to use in other ways (if and when it is no longer required for analogue radio broadcasting), using market mechanisms unless there are strong public policy reasons to allocate the spectrum for a specific use.

Members of the ACW for Wales do not believe that AM should be used for services other than radio, though the technology may be adapted to provide DRM for example, which might make up for the lack of Wales based services availability on DAB; and, indeed, might offer potential for other National services for Wales.

3.4: We propose that licences re-awarded under the current statutory framework should be granted with an expiry date of 31 December 2015.

3.5*: The 12-year renewal provision for local and national analogue licensees (both FM and AM) which also provide a station on a relevant DAB radio multiplex service should be removed. (This would not apply retrospectively to licensees which have already been granted such a renewal.)

3.6*: Ofcom should be given the power to:

- extend all existing licences for an indefinite period, so as to achieve a common end-date for all licences;
- include conditions in all new or extended licences allowing for their termination by Ofcom with at least two years' notice, so as to allow the spectrum to be taken back for other uses. The appropriate termination date should be decided by future reviews, which should also have a view to maximising flexibility for the use of the spectrum and take into account public policy needs.

Note: We believe that suggestions marked with an asterisk would require new legislation

New ways of licensing radio broadcasting

Proposal 4

Radio services, including those designed to deliver public purposes, should be able to be licensed on any spectrum in a technology neutral way. This consultation seeks views on this proposal and considers options for delivering it which Government may wish to consider in the future, should the

possibility of introducing new legislation be taken forward. Having considered the options, Ofcom's initial suggestions are as follows:

4.1*: Ofcom could have the ability to license radio services designed to deliver public purposes without having to determine beforehand which technology they must utilise. Ofcom could also grant licences for the provision of national and local terrestrial radio services to prospective providers who have acquired spectrum independently. Such services would not be regulated to secure diversity and/or localness. We suggest that any new licences for the provision of radio services be granted for an indefinite period, and include conditions allowing for their termination by Ofcom with at least two years' notice. Licences would have a guaranteed five-year minimum term.

Members of ACW are concerned at the lack of proposed regulation in this proposal. As we have already pointed out, the citizenship agenda is not covered by allowing market forces to prevail. Moreover, we reiterate our insistence that any decisions about licensing new services for Wales are taken in Wales by a Wales Licensing Committee

4.2*: Any new licences which are to be regulated in order to secure defined public purposes could be awarded by auction, but with conditions attached to the licences to secure these purposes.

Note: We believe that suggestions marked with an asterisk would require new legislation.

DAB sound quality

Proposal 5

Ofcom will generally approve a change from stereo to mono in circumstances when it considers that the reduction in sound quality of the service whose technical parameters is being changed is outweighed by the benefits to citizens and consumers of the use to which the freed-up capacity is to be put.

There is an ongoing healthy debate on whether DAB using the MP2 codec compression is suitable to provide high quality fidelity. Most of the world has adopted the new AAC (advanced audio codec) and this is known as DAB+ broadcasting. Consumers are expecting and would prefer a high quality audio listening experience. It would be a retrograde step for Ofcom to lower the audio quality from stereo to mono - a move that would be difficult to reconcile with the advertised benefits of DAB. Ofcom should be assisting the radio industry by considering and supporting future plans to provide the highest possible sound quality through the use of minimum audio quality standards and ensuring spectrum is available to do this. This will help in reviving radio even more, together with high quality content. Whilst some will state that existing DAB radios will not work with AAC the world of technology moves on, as in mobile phones, computers etc. Careful and considered planned DAB improvements will assist consumers in making choices, assist the commercial

world develop products and make radio a force to be reckoned with - and all with a high quality audio sound. There is little planning to do this in the consultation. A clear DAB improvement plan is needed.

Community radio licensing and regulation

Proposal 6

The characteristics of community radio, based around social gain provided by stations on a not-for-profit basis remain key. However, there may be an argument for simplifying the statutory selection criteria, and the regulation of funding and ownership without losing the essence of what community radio has been set up to achieve.

Much information gathering and analysis remains to be carried out before Ofcom produces its final report on community radio for the Secretary of State. In preparation for that, we welcome views on the following initial suggestions regarding the simplification of the existing statutory framework.

6.1*: The characteristics of community radio services, as included in the Community Radio Order 2004, should be retained, but the definition of "social gain" should be reconsidered.

ACW members are happy for the term 'community benefit' to replace 'social gain'.

6.2*: The statutory criterion regarding the ability to maintain the service should be reconsidered such that Ofcom could be required to have regard to the ability of an applicant to establish and maintain its proposed service for the first year of the licence period.

This may well encourage the start up of new Community Radio Services, though it seems sensible for applicants to also have to consider from the outset how they would sustain the service over a longer period. It takes a long time for a new service to establish itself with listeners, and if it is to achieve lasting 'community benefit' it need to run for more than a year. It might be better to amend the policy on RSLs (which the ACW is surprised to see isn't mentioned in this document) to allow for longer temporary broadcasts so that organisations can build up more gradually to applying for a full Community Radio Licence, than to take this approach.

6.3*: The statutory criterion which requires Ofcom to have regard to the extent to which a proposed service would cater for the tastes and interests of the community to be served should be reconsidered.

We understand that this criterion would be covered under 'community benefit'. We would expect to see this spelled out

6.4*: The statutory criterion which requires Ofcom to have regard to the extent to which a proposed service would broaden choice should be reconsidered.

We understand that this criterion would be covered under 'community benefit'. We would expect to see this spelled out

6.5*: The statutory criterion which requires Ofcom to have regard to the extent to which there is evidence of demand, or support, for a proposed service should be reconsidered.

We appreciate that this is difficult for new licence applicants to establish empirically. However, as spectrum is scarce, it should surely be allocated to those applicants who can at least demonstrate some local support for the proposed service

6.6: The statutory criterion which requires Ofcom to have regard to the extent to which a proposed service would deliver social gain should be retained.

We agree

6.7*: The statutory criterion which requires Ofcom to have regard to the provision that an applicant proposes in order to render himself accountable to the target community should be reconsidered.

6.8*: The statutory criterion which requires Ofcom to have regard to the provisions an applicant proposes to make in order to allow for access by members of the target community to the station's facilities and for their training in the use of those facilities should be reconsidered.

If 'community benefit' is to be actively achieved then it is essential that Community Radio operators allow access and training for members of the community. It isn't necessarily the most time efficient way of running a station, but it is part of the essential spirit of this sector.

6.9*: It is important for a community radio station not to receive all of its funding from a single non-commercial source. However, it may be that there is a case for increasing or removing the current maximum percentage limit on funding from a single non-commercial source. Ofcom welcomes views as to what the appropriate limit should be.

ACW members agree that limiting the amount of funding from a single non commercial source is restrictive. We cannot see the strength of the case for having a limit on non commercial funding.

6.10*: It would be possible to take into account volunteer time when assessing the turnover of a community radio service. Ofcom welcomes views on this issue and on how the value of such input could be calculated.

ACW members agree

6.11: There should be no changes to the categories of person prohibited from holding a community radio licence.

ACW members agree

6.12* The current rule requiring that no body corporate may hold more than one community radio licence should be reconsidered.

ACW members agree with this. While it is undoubtedly important that community radio stations are local, there is a very strong case that linking stations together could be an aid to viability, especially in deprived areas like parts of Wales. Stations could then share some programming, especially news, and potentially attract greater levels of funding from commercial sources. We would like to see a clearer policy worked out limiting such co-operation or joint ownership perhaps by area, but welcome a reconsideration. The RCT Community Radio Partnership project which is currently underway in Wales may show a way forward here.

6.13: Ofcom needs to ensure that community radio services operate within the terms of the relevant legislation. The process of feedback has not yet begun, as no station has been on-air long enough. It is not therefore possible to assess the advantages or shortcomings of the existing system. For this reason, Ofcom is not proposing specific alterations to the level of feedback required at this time.

6.14*: Community radio licences should be eligible to be extended for up to a further five-year period, subject to meeting specified requirements, on one occasion only. The period of extension for some licences may be less than five years, should that be necessary to achieve a common end-date for all analogue radio services.

ACW members believe that if a service can be sustained for ten years, then there should be the potential to extend it beyond that period. There are only so many people and groups with the interest and expertise to run such stations. To remove a service which will probably have become very valued by its listeners after such a long period would, we believe, be a mistake.

6.15*: There may be a case for removing all of the current restrictions relating to the economic impact of licensing community radio services. Ofcom will be conducting further assessment in this area, with a view to bringing forward proposals for consultation later in the year as part of our review for the Secretary of State. In the meantime we welcome views on these matters.

6.16: The coverage of community radio services will still be restricted by frequency availability constraints, and Ofcom will continue to need to weigh up the relative merits of alternative licensees, for example where it might be possible to licence two small stations or only a single larger service, when deciding on the best use of the available spectrum resources.

Note: We believe that suggestions marked with an asterisk would require new legislation.

ACW
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