

THE FUTURE OF RADIO
RESPONSE TO OFCOM'S CONSULTATION DOCUMENT FROM
CHRYSALIS RADIO

Background

Chrysalis Radio is the UK's third largest commercial radio operator. We own and operate nine analogue local and regional commercial radio services under the Heart, Galaxy and LBC brands. Our analogue stations reach over 5.4 million adults each week, out of a potential audience of 25 million, and account for nearly 48 million listening hours. We are also a key player in digital radio in the UK, both as the lead shareholder in the MXR regional DAB multiplex consortium, a shareholder in the Channel 4 Digital national DAB multiplex group, and as a service provider with our analogue brands as well as The Arrow all available via DAB, digital television and the internet.

The Future of Radio – Policy Goals

We welcome Ofcom's consultation on the future of radio – both as an industry and a medium. In particular, we welcome Ofcom's desire to take a more strategic and holistic view of radio's future, and its place in an expanding, global and increasingly crowded media marketplace. The last 17 years have seen three major pieces of primary legislation affecting radio, including the creation and eventual replacement of a dedicated regulator. The world in which the Broadcasting Act 1990 and the Radio Authority were launched bore no resemblance to the world of today. The personal computer was nine years old, and priced out of the reach of most households. The first successful version of Microsoft Windows was launched in this year. The first major web browser – Mosaic – was three years away. Broadband would not arrive in homes for another decade. The first mobile phone call in the UK had been made just 5 years previously. Satellite TV was four years old, and struggling. It would be seven years (and another Broadcasting Act) before Channel 5 launched. 'User generated content' meant a radio phone-in; 'social networking' meant a coffee morning.

The policy goals for radio in 1990 matched the circumstances of the time. Spectrum was extremely scarce – the top 3 MHz of the current FM dial were reserved for private mobile radio until 1995. The culture in government was one of centralised control of public assets. With no substitutes for the provision of live information and entertainment, broadcasters were considered extremely powerful, and they exercised that power through the use of the public asset of radio spectrum. Extensive regulation was therefore considered essential and the notion of allowing market forces to shape the broadcasting industry was inconceivable. Virtually every aspect of radio was regulated to secure its public value and defend the public interest. The result was a self-reinforcing system of regulatory barriers where both access and activity were highly restricted.

The changes in the media world since 1990 have been swift and profound, and are ongoing. Entry barriers have fallen. Whilst terrestrial broadcasting spectrum remains scarce (although less so than previously with the availability of spectrum for DAB), access to spectrum is no longer a prerequisite to running a radio station. Media choice has exploded – through multi-channel television on various platforms, through an increasingly mobile internet, through mobile telephony systems, and potentially through other wireless technologies currently in development. The influence that

broadcasters wield over public opinion and cultural tastes has therefore diminished. 'Radio' no longer equates with 'the radio industry' the form of the traditional radio companies like GCap, Emap and Chrysalis. New technology has also greatly reduced the cost barriers as well – in terms of both production and consumption. The ability to run an online radio station at minimal cost has vastly increased the availability of audio entertainment, and also allowed for niche and minority tastes to flourish in a way that is not economically feasible on a broadcast model. The growth of user-generated content, and the resulting disintermediation of information and entertainment, has greatly eroded the power of traditional media owner as content 'gatekeepers'. The accessibility of personal computers and broadband connections in the home, as well as the ubiquity of mobile phones and devices, has given citizens and consumers an unprecedented level of choice and control in their media consumption. All these new media choices operate on largely unregulated platforms. As radio goes from being a major part of a small media environment to just one of a vast multitude of media choices, so the regulation of radio becomes increasingly meaningless. Ofcom has clearly recognised how quickly and profoundly the media world has changed but it appears not to have fully understood the consequences in terms of the regulatory rationale. Instead of the kind of fundamental changes that the new media environment mandates, we are still left with the vestiges of the 1990 mindset – with analogue radio still considered as the core of audio media provision, warranting ongoing micro-management by the regulator.

The bedrock of broadcasting regulation has been the principle that broadcasters receive a public subsidy – in the form of exclusive, privileged access, at a price fixed well below market value, to a scarce natural resource – which carries with it certain obligations: public service content, in the broadest definition of that term. If you remove the subsidy from this equation, it logically follows that there should be a commensurate reduction in the public service obligations. Newspapers have arguably had equal power and influence to broadcasters in British society, but have never been subjected to the same level of regulatory intervention for the simple reason that they pay for the natural resources they use. Cable and satellite TV channels, similarly, carry no obligations to provide public service content, again on the basis that there is a functioning free market in the spectrum that they occupy, and so they receive no public subsidy. The most disappointing and alarming aspect of the Future of Radio consultation is the implicit uncoupling of spectrum use from public service obligations. Section 2 of the document – 'The policy goals in radio' – suggests that regulatory intervention to secure public purposes is an inherent necessity in radio independent of the spectrum subsidy rationale. Spectrum pricing – in the form of Administered Incentive Pricing (AIP) – is mentioned just once in the main body of the document (section 3.45), with a further reference in the Regulatory Impact Assessment. In neither case is it recognised that the introduction of AIP, by eliminating the subsidised nature of our spectrum access, should logically change the fundamental rationale behind radio regulation. Spectrum pricing should be a central issue in the Future of Radio consultation.

It is particularly worrying that Ofcom should choose to publish, in the closing stages of the Future of Radio consultation, its statement on AIP for digital terrestrial broadcasting. The AIP consultation proved to be an utterly meaningless exercise. It is clear that Ofcom never had any intention of taking seriously the objections raised by broadcasters to its AIP proposals. These proposals are based on Ofcom's adoption of a particular school of economic theory, regardless of the consequences in reality. We are troubled by the disjointed and illogical approach to policy making that these consultations betray. Spectrum pricing is a policy tool – it should follow from a coherent policy framework based around clearly understood principles and objectives. Setting that policy framework is, surely, the purpose of Future of Radio.

As we argued in our response to the AIP consultation, the policy framework should inform the tools used to implement it, not the other way around. By deciding to adopt AIP for terrestrial radio spectrum, Ofcom has foreclosed a whole range of options in the policy framework that arises from Future of Radio. This is not a coherent or effective way to make policy. We also question the apparent incongruity between the supposedly market-based dogma underpinning the AIP policy and the substantially more interventionist approach guiding Ofcom's views on content and ownership regulation. We are not left with the impression of a regulator that communicates effectively internally, nor is capable of a consistent and co-ordinated approach to formulating policy. Ofcom has now announced that it will launch a consultation on extending spectrum pricing to analogue radio. We can only hope that this will be a more worthwhile exercise than the digital AIP consultation, and that it will be informed by the Future of Radio consultation, and not oblivious to it.

That said, we recognise that, even with spectrum pricing, radio retains a privileged position through the protection of spectrum solely for use by radio broadcasters. We acknowledge that it is legitimate to retain some public policy objectives in radio in recognition of this privileged status. For this reason, we do not propose a total deregulation of radio. We support the retention of Formats, albeit in streamlined form, as an effective mechanism to ensure diversity of output and the delivery of those public purpose objectives that remain appropriate.

Each of the three major pieces of broadcasting legislation since 1990 have recognised the diminishing rationale for regulation in radio, and sought to adapt the regime to keep up with the changes in the wider world. The Broadcasting Act 1990 liberated radio stations from the minute control of the IBA, and empowered the new Radio Authority to think more imaginatively about the shape of the commercial radio sector – making way for the three INRs, for regional and small-scale services, and for a vital and vibrant RSL sector. The Broadcasting Act 1996 allowed for the development of DAB, as well as making the first significant step towards the liberalisation of radio ownership. The Communications Act 2003 paved the way for further industry consolidation and for community radio, and established an ostensibly converged media regulator to reflect the converged digital media world. As welcome as each of these changes has been, legislation has proved to be an ineffective tool for dealing with an environment as complex and fluid as the modern media environment. It is clear to us that Ofcom needs to seek from any future communications legislation far greater authority to determine the regulations that should apply to radio, so that future regulations can keep pace with changes in technology and consumer expectations.

The consultation (paragraph 2.7) states that Ofcom's aim "is to encourage a market-driven approach" to the radio industry. This does not appear to have been carried through the proposals in the rest of the document. The notion that a single, centralised, paternalistic regulator is best placed to understand the needs of citizens and consumers – indeed, that it is better placed to do so than the citizens themselves, acting as a well functioning market – is surely the attitude of a bygone age. We believe that broadcasters – particularly local broadcasters – who are closer to their audience and interact with them constantly are in a better position than Ofcom to understand their interests, needs and expectations. Moreover, in a crowded and competitive media marketplace, broadcasters are strongly incentivised to satisfy those interests, needs and expectations. Audience growth is fundamental to the success of radio as an industry. Without it, stations have no future. By imposing regulations that are inflexible or slow to respond to local audience needs, Ofcom may actually prevent us from serving the public interest, rather than encouraging it, as well as undermining our financial viability.

Radio is unique in this media landscape in being dominated by regulatory intervention in the shape of the BBC. It accounts for about 55% of radio expenditure. BBC Radio is guaranteed, every year, a sum of public money massively in excess of the funding available to any commercial radio group. Having no shareholders or profit motive, it can spend every single penny that it receives, and has no advertising sales costs. It has also, until very recently, been subjected to little effective regulation. The statements of programming performance (SOPPs) that apply to BBC Radio services have done little to guarantee public service content during the daytime output of Radios 1 and 2 – the two stations that are the principal competitors to virtually every commercial station in the country. BBC Radio enjoys the lion's share of FM spectrum, extensive cross-promotion on BBC television, third party marketing budgets massively in excess of those available in the commercial sector, and the freedom to plunder commercial stations for talent to whom it can offer substantially higher salaries. Given the colossal cost of the BBC, we might expect it to redress concerns of market failure, where commercial radio is unable to provide a service on a viable commercial basis. Instead, we find ourselves competing head on for audience with two national networks providing a similar diet of popular music and light entertainment as commercial radio, but with the added advantage of carrying no advertising. In assessing the public purpose objectives of radio, we believe Ofcom should look first to the BBC for their fulfilment. Public service broadcasting is supposed to be at the heart of everything the BBC does, and it is funded royally to deliver it.

We are baffled by the statement in paragraph 2.17 in the consultation document that some of the problems faced by commercial radio “are due to commercial stations not always having made the most of the business opportunities they had.” This statement is made without substantiation or evidence, and as such is an inappropriate opinion for a regulator to publish. We are unclear as to the source of Ofcom's sense of superiority in business management. We recognise that we are responsible for the success or failure of our businesses, and we make no claim to infallibility in the business decisions we make. However, we are not aware – and Ofcom offers no enlightenment – of specific instances where, within the parameters in which we operate, we have failed to make the most of any opportunities presented to us.

In a competitive media marketplace, businesses need to be able to take risks. Those risks inevitably imply the potential for failure. When radio stations fail, Ofcom is empowered to create the opportunity for another to take its place, and take different risks in the hope of succeeding. A heavily regulated market is one in which businesses have too many of their decisions pre-determined, precluding the ability to take risks. It cannot learn from its mistakes because it is ‘protected’ from making them, but may have other mistakes imposed on it as well. When the competition is less regulated, or unregulated, and so can take risks and learn from mistakes, regulations cease to be a source of protection and instead become a straightjacket, confining the regulated industry within parameters that limit its growth and success. It is always unfortunate to see radio stations fail and hand back their licences. But we believe this is preferable to an entire industry being forced to watch itself being overtaken by competitors but being held back by a regulatory burden that it suffers alone.

It is worth focusing on one particular observation in the consultation document – paragraph 3.30 observes that the ratio between television and radio advertising in the US is 5-to-1, compared with 14-to-1 in the UK. There will be many historical factors to explain this, but undoubtedly one of them is the regulatory regime that has existed

in the US. US commercial broadcasters have never had to compete with a bloated, under-regulated state broadcaster. The absence of regulator-imposed formats has meant that US stations can respond to the genuine demands of local listeners, rather than what the regulator thinks their demands are (or should be). And recent relaxations in ownership limits have allowed for a more efficient industry structure, with major broadcasters like Clear Channel able to raise sufficient funding through economies of scale to invest in programming and innovation. It is also worth noting that some of radio's most creative talent, from Howard Stern to Oprah Winfrey, have chosen to occupy the entirely deregulated space of satellite radio – encouraging a level of investment in that platform that dwarfs the entire UK radio industry. Whilst we do not propose a regulatory regime as liberal or permissive as that which exists in the US, it is clear to us that regulation's main impacts on radio are negative. Regulation masks the market signals that are the best and clearest indicator of public demand, and so acts against the public interest. Regulation imposes both a real cost and an opportunity cost on the industry by preventing it from organising itself efficiently, and so slows its economic development. And regulation stifles creativity by acting as a brake on imagination and innovation and so hinders programme quality and appeal.

We believe radio provides public value. This is independent of the notion of public purposes – although some of the public value is obviously tied to the delivery of public purposes. The public value derives from the provision of services that the public enjoys, finds useful, and would miss if they were absent. A healthy, vibrant, secure radio industry is, we believe, in the public interest.

Ofcom states that the future of commercial radio is up to the industry itself. We agree. For us to be able to shape our future, we need to be freed from the burdens of unnecessary and counter-productive regulation. We need to be able to take full responsibility for our business decisions – for our failures as well as our successes. We need to be able to decide for ourselves how best to serve our listeners, fully in the knowledge that if we fail to do so, we will have no future. The future of radio is up to us, not Ofcom. If Ofcom regulates with a view to securing our future for us, it is liable to fail.

It is time to put the 1990 mindset aside. In framing our response to this consultation, we have sought to apply the following assumptions:

- public demands and expectations of radio are not static. They have changed enormously over the last 16 years, and will change even more rapidly as new technology brings new demands on their time and more competition in the media marketplace.
- the market – made up, as it is, of the citizens and consumers who listen to radio – is a more effective and more accurate determinant of public demand and expectations than any regulator. Ofcom cannot pre-determine what public purposes inherently apply to radio because it does not receive, on the constant basis that broadcasters do, the market signals that indicate how listener expectations shift, and because it is not economically incentivised to do so. Like any public body, Ofcom is also vulnerable to being influenced by the pre-conceptions and personal agendas of the people within it, and its own organisational culture. Citizens and consumers should determine what radio they get – not every six or seven years, but on a constant, ongoing basis.

- the BBC is the UK's principal public service broadcaster, and it is amply resourced to do that job. Where market failure exists, it should be the BBC that we turn first to address it, not regulatory intervention in commercial businesses.
- radio is now just part of a much wider media environment. New platforms and new technologies – many of them entirely unregulated – have placed radio, with its regulatory burden, at a significant, and unfair, disadvantage. Citizens have choices. If a radio station fails to meet their needs, they can choose a different station, or alternative media. The barriers to entry for competing media provision – particularly through the internet – have become marginal, meaning that even niche minority interests can be served on a financially viable basis. The rationale for mono-media regulation of radio, in isolation from other, competing forms of audio-visual entertainment, no longer exists.
- spectrum pricing must logically lead to further deregulation. Our regulatory burden reflects the opportunity cost to society of our spectrum use. If, through spectrum pricing, that cost is reduced, so must be the burden.
- if we are to be responsible for the future of our industry, we must be free to make the decisions required to secure that future. Regulation of our business inputs and processes deprives us of the power and autonomy to make the right decisions.

Ofcom understands the new environment in which we operate, and yet fails to propose the kind of fundamental change that we believe is required if we are keep pace with public expectations. It is time to apply these principles to deliver to the public a radio sector fit for the modern age.

Proposal 1 – The regulation of content on analogue commercial radio and on DAB digital radio should be aligned at the appropriate time.

We welcome Ofcom's move to lighten the regulatory burden in terms of format regulation for analogue services. Ofcom has correctly identified the threats to radio from alternative platforms and technologies – many of which are unregulated – which make such detailed micro-management of stations' output inappropriate. This not a prediction of the future – the threat to radio and the impact of over-regulation are features of today's radio market. The appropriate time for change is now.

Suggestion 1.1 – The timing of any changes to Format and localness regulation of commercial radio could 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.

We do not see the logic of aligning these changes with an arbitrary digital listening figure that is unrelated to the rationale for the changes. Ofcom has identified the urgency of the need to change. It has recognised that the threats to radio are current and pressing. It states that “listening to local analogue commercial stations *is* declining as competition from other platforms and media increases”. It adds that “advertisers *are* finding new means of reaching consumers” [emphases added]. The incongruity of maintaining detailed format regulation for terrestrial analogue radio when no such regulation exists at all on other platforms is illogical and anachronistic today. The rationale for reducing Format and localness regulation is relevant now,

and will not become significantly more relevant as DAB listening increases because DAB is not the most significant source of competitive pressure.

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

We support Ofcom's proposal to amend analogue formats so that they resemble their digital counterparts, reflecting only the essential character of the service. We believe this should be done as a matter of urgency, and ask that Ofcom commence this process immediately after publication of its formal statement on the outcome of this consultation.

Suggestion 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 could be introduced when the relevant digital listening threshold is met.

We are struck by the irony of having requirements for localness imposed uniformly by a single, central, London-based regulator. This is, surely, the very antithesis of localness!

We agree with Ofcom that localness is important to our listeners. But this is not the same as saying that it is important to all listeners, on all stations, in all locations, at all times. Indeed, Ofcom recognises this in its proposals to exempt specialist music stations from its proposed localness provisions. It also does not follow that all listeners have the same understanding of what localness is, what it would sound like, and what they expect from it. What localness means, and its relevance to listeners, are not fixed values. Ofcom's research is valuable, but it provides only a single snapshot of public opinion at a particular point in time. It does not reveal the fluid variations in attitudes from time to time, place to place, station to station. Research is, in any case, a blunt tool. Respondents to research may say one thing in response to a question about an abstract concept, like localness, but behave very differently when confronted with a range of actual services. Research is no substitute for actual, measured listening behaviour.

In making its proposals on localness, Ofcom seeks to fulfil the will of Parliament and protect the public interest. We do not believe its proposals are best calculated to do either.

Ofcom makes much of the 'will of Parliament' in seeking to justify the detailed regulation of localness – both the current regime and the equally detailed, if somewhat less onerous, system proposed in the consultation document. We believe that Ofcom has interpreted the will of Parliament more narrowly than is warranted. Parliament clearly recognised the complexity and fluidity surrounding the issue of localness. For this reason, it delegated to Ofcom absolute discretion in assessing the relevance of localness to radio stations. Under section 314 of the 2003 Act, local material should be included in local radio services "only if and to the extent (if any) that Ofcom considers appropriate." Ofcom's discretion is unlimited. The "only if" and "if any" phrases make clear that Ofcom can, at its discretion, decide that local material may not be appropriate at all for any radio station. It is left to Ofcom to determine what it considers to be "a suitable proportion" of locally-made

programmes. It then is left solely to Ofcom to draw up localness guidance, and Parliament offers no view as to what that guidance should include or exclude.

We believe that local radio stations are far better placed to understand the relevance and meaning of localness to their local audiences. The information flow from listeners to stations is constant – both through research and listener feedback – in a way that it is sporadic to Ofcom. Our stations are part of the communities they serve; Ofcom is not. Our stations' survival as businesses is dependent on understanding and responding to the needs of our listeners; Ofcom's is not.

We take 'public interest' to mean the needs, demands and expectations of the public, taken as a whole. We believe it is best defined by the public, not by the paternal wisdom of a regulator. In competitive markets, where citizens can make free choices between a wide range of alternatives, the best determinant of the public interest is the market. Our listeners have choices and the power to exercise those choices in their own interests. If local material is important to them, they can seek it out. If their current media choice fails to provide it, they will stop using it. If this is one of their local radio stations, its audience will fall and it risks failure as a business. No amount of cost-savings through networking will prevent the failure of a radio station in a market where localness is of paramount importance. Local material for that market will inevitably be available – either from a rival commercial station, from BBC local radio, or from other sources such as local websites, television and newspapers. The first people to notice this shift, and be able to respond to it, will be the radio station in question, not the regulator.

Conversely, in a hypothetical market in which the radio station that provides the least local material flourishes while the one providing the most struggles, that would indicate a market in which localness is of lesser importance. In such a market, why should the successful station be compelled by regulatory intervention to provide content that the public does not want – or, at least, does not want from radio?

Ofcom is concerned that, in the absence of regulatory intervention, "financial pressures mean that the provision of local material in all areas cannot be guaranteed in the future." This may be true. But, since market failure in a competitive market is highly likely to lead to commercial failure, we do not believe that the provision of local material will disappear from those markets where its provision is in the public interest.

Ofcom's concerns are of market failure – the failure to provide local material in markets where it is not commercially attractive to do so. We believe that this is an overly simplistic view. In any market where essential resources – in this case radio spectrum – is extremely limited, market failure in the provision of services catering to minority tastes, or services that are expensive, is inevitable. There are no local radio stations providing opera, for example. This is also a market failure, yet not one that any reasonable regulator would intervene to correct. The notion of market failure also relies on a specific definition of the market. If consumers prefer to get local information from other sources, and those sources are readily available, then there is no market failure. There is, instead, a fully functioning, effective market, in which consumers have, and exercise, the power to make media choices in their own interests.

Content regulation imposes a cost on broadcasters. There is both the real cost of providing the resources needed to deliver on regulatory obligations, and the opportunity cost of delivering what the regulator thinks the public wants, rather than delivering what they actually want. We do not believe the costs of the localness

regime proposed by Ofcom are merited by the benefits that the regime would bring about.

Ofcom's proposals for minimum hours of local material depending on the population coverage of the station will not protect the interests of the listening public. They deprive the public of the power to make its own choices in its own interests – imposing, instead, the regulator's own view of the public interest, based on imperfect information. They also fail to reflect the complexity and fluidity of the importance and meaning of localness.

We believe that localness should be determined locally. Ofcom is empowered to do this. It can exercise the discretion granted by section 314, and the option granted in section 4(d) to use effective forms of self-regulation, to allow local radio stations to assess for themselves, guided by their listeners, local expectations of local material. We therefore support the proposal by the RadioCentre that Ofcom should work with the industry to develop a self-regulatory regime to secure a level of localness on radio stations that is appropriate to each station and each locality, and protects the public interest.

Locally-originated material

As we have stated in previous consultations, there is no logical connection between the local relevance of radio programming and its local origination. No aspect of radio content is restricted to its location of origin. News, information and entertainment is capable of being distributed instantly to and from any part of the world without any change to its nature or relevance. It is possible for a local presenter in a local studio to deliver content of no local relevance whatsoever. It is equally possible for a non-local presenter in a remote studio to deliver content of immediate and unarguable local relevance. If a reporter in Hartlepool delivers a live report from a news event, does its local relevance to Hartlepool diminish in any way if the studio presenter to whom the reporter is talking is in Newcastle? Does a weather forecast for Aberdeen, sourced from the Met Office in Exeter, lose its local relevance if it is read in a studio in Glasgow? Does a commuter on the Coventry Ring Road care if her travel information comes from AA Roadwatch in Cheadle, via a radio presenter in Birmingham? We think not.

It may well be that local material is most easily and cheaply produced in local studios. However, that is a determination best made by the individual broadcaster, able freely to balance the relative financial benefits of different options against the potential risks to the quality and appeal of its output.

Regulations on business inputs, such as studio location, have no place in a modern regulatory framework. They do not serve the public interest as they are logically unrelated to the public's expectations of local relevance. They may even have perverse consequences – such as the ability of a station to count programming that it produces as 'local' even if that programme is networked across multiple locations and has no content of local relevance to any of them. We believe that Ofcom should, under the discretion granted to it in section 314, determine that the "suitable proportion" of locally-made programmes that it should intervene to secure is none.

We therefore ask Ofcom to remove immediately all regulations relating to studio location and the origination of content.

Suggestion 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 do not believe it is in the public interest or the interest of the industry to introduce additional regulation where none currently exists. For all the reasons detailed previously, we believe that it should be for local audiences, exercising their power of choice as consumers, to determine in their own interests the expectations they have of their local radio stations, whatever the platform of delivery. It is impossible to predict what those expectations may be in the future. As digital radio listening increases, so may the provision of local news and information via wireless or mobile platforms. Alternatively, listeners may make the same demands of DAB in terms of localness that they currently do on analogue radio – in which case, DAB stations will respond to the market signals and ensure the provision of local material.

Even in the absence local material, the rationale for local DAB multiplexes does not diminish. One of the key purposes of DAB was to provide for more listener choice, with multiplexing allowing for a wider range of services than can be provided locally on the spectrum available to analogue radio. If a particular genre of music is especially popular in one part of the country but not in others, then a DAB station providing that genre is clearly locally relevant, and catering for local tastes and interests, regardless of whether or not it is also providing local news and information.

Two other factors undermine the rationale for imposing further regulation on DAB services. The first is Ofcom's commitment to introduce spectrum pricing for DAB. As noted previously, we believe that the whole basis of radio regulation is the fact that it receives a public subsidy in the form of radio spectrum at below market rates. This subsidy will cease to exist with the introduction of spectrum pricing. The opportunity cost of our spectrum use will be paid for, as a real financial cost, by broadcasters. We believe the additional direct regulatory cost of spectrum pricing should be balanced by a reduction in the indirect cost of content regulation. Adding to the regulatory burden does not do this. Secondly, the rationale for regulation in radio is also founded on the scarcity of radio spectrum, creating an insurmountable barrier to entry for other potential competing broadcasters. This scarcity is not nearly so acute on DAB as it is on analogue radio. Indeed, the presence of vacant capacity on several multiplexes, and the low level of interest in available capacity on others, suggests that the demand for DAB capacity is not significantly ahead of its supply. Barriers to entry are therefore lower, allowing DAB to be more responsive to the market and encourage fair and effective competition. This scenario would also seem to point to a limited need for regulatory intervention.

Suggestion 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.

We believe that the operators of the existing INR services are better placed to respond to this suggestion than us, as they will be directly affected. We therefore take no position.

Suggestion 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.

As stated previously, we support the retention of Formats as an effective mechanism to protect diversity of provision, and as an appropriate level of intervention given the presence of spectrum protected for use by radio broadcasters. Whilst we do not believe that the market, without regulatory intervention, would fail to appeal to a variety of tastes and interests, we believe that Ofcom's suggestion is, nonetheless, appropriate and proportionate, and we are happy to support it.

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.

Suggestion 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.

Suggestion 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.

Suggestion 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.

Suggestion 2.4 – The rule that no one person can control more than one national DAB multiplex should be retained.

We do not believe that the continued imposition of ownership rules specific to radio is appropriate, nor that such rules serve the interests of the public, advertisers or the radio industry.

In 1990, radio-specific ownership restrictions made sense. Although the radio industry was small, it operated in a much less competitive environment than today. Most markets had little radio competition, and fewer alternative media choices. Listeners had few other options for news and entertainment. Advertisers – especially local advertisers with limited budgets – had few other options to reach consumers. None of these factors is true today. The radio market itself is crowded, and the broader media market even more so.

Ofcom has previously recognised that it is no longer appropriate to consider ‘radio’ as an isolated market in competition terms. Ofcom’s Radio Advertising Market Research report, published in October 2006, concluded that television, online and press advertising each imposed competitive constraints on radio as an advertising medium. The Future of Radio consultation observes similar, if not greater, competitive constraints on radio as a consumer media choice.

The result of past and current ownership regulation is an industry that is inefficiently organised, and incapable of achieving the level of scale to secure its survival in the new media world. Popular formats that are available across much of the UK – such as adult contemporary or dance music – and would be most efficiently run under common ownership, instead operate independently of each other, in part because of the regulatory barriers to further consolidation. This is a significant opportunity cost. Money that we are spending duplicating each other’s effort could be dedicated to programming quality and innovation. The public interest is, again, poorly served by ill-conceived regulation. Commercial radio is also prevented, by this lack of scale, from presenting any serious and sustained competition to the BBC.

The successive lifting of some ownership restrictions in the 1996 and 2003 Acts has been beneficial. It has allowed for some consolidation in the industry and we are unaware of any adverse impact on the public interest. This is because plurality in media provision – both locally and nationally – has exploded. Whether or not radio

companies merge has become almost completely irrelevant in determining the plurality of media voices in the marketplace. Moreover, no other media sector has ownership restrictions of anything approaching the level of detailed intervention that radio endures. If radio is, as Ofcom suggests, “sufficiently important” to warrant continued medium-specific intervention, then surely so must be television, newspapers and the internet. We see no logic in subjecting the smallest media sector to the heaviest regulation.

Ofcom’s proposal is to replace one over-complicated, over-restrictive ownership points system with another. We do not believe this is a sensible suggestion.

Ofcom notes, in opposing the option to remove radio ownership rules, that the current rules are only three years old. We fail to see the relevance of this observation. Inappropriate regulation becomes no less onerous because it is new. It should also be remembered that, in adopting the new rules, the Government chose the more liberal regime proposed by the industry over the harsher one being pushed strenuously by the regulator. It is our view that Government and Parliament are willing to be guided on questions of ownership, and that the combined voice of the industry and regulator both calling for the removal of ownership restrictions is capable of making a powerful and persuasive case.

We ask Ofcom to be more radical and forward-thinking in its approach to ownership regulation. We believe that there is no longer any rational basis for placing restrictions on the ownership of a medium as small as radio. Radio ownership rules should be abandoned, and the sector left open, like all business sectors, to intervention by the competition authorities.

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

We recognise that, in proposing that Ofcom and Government should consider the wider media market, rather than just the radio market, in determining issues of plurality, it logically follows that there remains a rationale for cross-media ownership controls. We therefore support the retention of cross-media ownership rules, and welcome Ofcom’s proposal as adding clarity and simplicity to the regulatory regime.

Licensing, spectrum use and radio's digital future

We have not responded specifically to each of the proposals and suggestions in this section of the consultation because we believe that Ofcom needs to take a very different approach to that set out in the Future of Radio document.

All questions on spectrum use and licensing (both analogue and digital) hinge on the shape of radio's digital future. We see no merit in tinkering with the analogue re-licensing process or reviewing analogue band use until there is a clear, comprehensive and coherent strategy for digital. The Future of Radio document does not propose such a strategy, but we think this is a pre-requisite for deciding on the other questions. Settling on an analogue re-licensing regime without knowing what the broader policy goals are on digital transition does not seem sensible, and runs the risk of pre-judging what radio's digital future needs to be.

We are committed to seeing radio make the transition from being a predominantly analogue medium, as now, to being a predominantly digital one. We believe that digital radio offers substantial listener benefits in terms of choice, quality and data services such that digital switchover is clearly in the public interest. Switchover also helps Ofcom fulfil its duty to maximise the efficient use of spectrum. We remain confident that consumer take-up of digital radio will continue apace, and that commercial viability for digital services is realistically achievable within the foreseeable future.

However, this will not happen on its own. It will take a concerted and co-ordinated effort by the radio industry – both commercial and BBC – Ofcom and other stakeholders to ensure the success of digital radio. This requires an agreed strategy, setting out the objectives for radio's digital future, the obstacles to those objectives, and a clearly defined and achievable pathway to overcome those obstacles. We need this strategy to be worked out as a matter of urgency. Chrysalis, and the rest of the radio industry, have invested heavily in digital platforms, including DAB, over the last seven years. We have not yet reached the point where we are seeing a significant return on this investment. In order to continue to be able to justify this investment to listeners, shareholders and advertisers, and to be able to determine what level of future investment is necessary, we need to be able to demonstrate that there is a clearly understood future for digital radio and that this future is in our hands.

We therefore support the recommendation made by the RadioCentre for a cross-industry working group – to include representatives of Government, Ofcom, commercial radio, the BBC, community radio and receiver manufacturers – to define a strategy for radio's digital future. The working group should be asked to consider what objectives are appropriate and achievable for radio's transition to digital, and set out a 'road map' to achieve those objectives. These should include consideration – in a platform- and technology-neutral way, but taking into account the present circumstances as a base starting point – the fullest range of technical, legal, economic and regulatory options possible. We support the RadioCentre's recommendation that this working group should be established as soon as possible, and should be asked to report its conclusions in the first half of 2008. Its conclusions should then inform the policy decisions of both Government and Ofcom in respect of future analogue spectrum use, analogue and digital radio licensing, and any moves to encourage digital switchover for radio.

Community Radio

We believe it is premature to draw reliable conclusions about the impact and effectiveness of community radio. Less than two years from its inception, and with barely a third of the stations licensed on air, we believe it unlikely that there will be sufficient data on the sector to warrant considering significant changes to the licensing and regulation of community radio.

As Ofcom makes clear, community radio is intended to be a unique sector within the industry, providing services that are clearly distinctive in purpose, organisation, funding and output. We have no objection, in principle, to Ofcom amending or streamlining its licensing processes, as long as the unique nature of community radio, and its potential impact on commercial broadcasters, are in no way affected.

As Chrysalis Radio has not had any direct involvement in the community radio licensing process, nor have our stations been noticeably affected by the arrival of community stations, we offer no further comment, other than to support the more detailed suggestions made by the RadioCentre.