

Kismat Asian Talk Radio (KATR)

**A Consultation on change to the
Format of Easy 1035 AM**

Consultation document

Issued: 09/09/04
Closing date for responses: 01/10/04

Contents

Section		Page
1	Summary	- 1 -
2	Background	- 2 -
3	Change	- 4 -
4	Responding to this consultation	- 5 -
Annex 1	Ofcom's consultation principles	- 7 -
Annex 2	Consultation response cover sheet	- 8 -
Annex 3	Broadcasting Act 1990	- 10 -

Section One

Summary

1. Sunrise Radio Ltd, owners of Easy 1035 AM, which broadcasts country-flavoured music output to Greater London, wishes to change the character of the service to provide KATR (Kismat Asian Talk Radio).
2. They propose a station which broadcasts a minimum of 55% speech during daytime, and a third outside daytime. The music they plan to play would emphasise Ghazals and Qawaalis and Asian gold and hits.
3. Ofcom has the capacity to consent to such a change under conditions included in Easy 1035 AM's licence, in accordance with Sections 106 (1A) and (1B) of the Broadcasting Act 1990 (Appendix 1), if it is satisfied that:
 - the change would not narrow the range of programmes available by way of relevant independent radio services in Greater London; or
 - the change would be conducive to the maintenance or promotion of fair and effective competition in Greater London; or
 - there is evidence that, amongst persons living in Greater London, there is significant demand for, or significant support for, the change.
4. Before deciding whether to consent to this change, Ofcom is required under section 106ZA of the Broadcasting Act 1990 (also Appendix 3) to consult (a minimum of 28 days) those likely to be affected. This consultation is therefore seeking views on the proposal to change the character of the Easy 1035 AM service.

Section Two

Background

The Licence

5. Country 1035AM was awarded by the Radio Authority in September 1994 to an independent consortium. It was subsequently controlled by RTL UK, and then by Ritz Music Group. Mean Fiddler took the licence over in 2002. Sunrise acquired Mean Radio Holdings in 2003 and the Authority sanctioned a change to the Format of the station that allowed a country flavour (as opposed to an all-country Format) when the station was re-launched as Easy 1035 AM.

Output

6. The audience figures and sales performance of the station have, in general, been disappointing, arguably demonstrating a lack of major demand for a country station in the capital. Its present weekly reach is 0.3% with a market share of 0.025%. The quality of output has, in general, not been an issue for the regulator in the station's history.

7. The output quality on the AM wavelength has, traditionally, been a problem for music stations in London, (notwithstanding Capital Gold's performance) as it is generally. The success of Sunrise, also on AM, has led its management to conclude that an Asian talk-based station would not meet the level of resistance broadcasting on AM that might be met by the output of stations such as Easy 1035AM, which would continue to be provided on the London III digital multiplex.

Relevant independent services

8. One of the three criteria under which Ofcom may consent to a request to change the character of a service is that the change would not narrow the range of programmes available by way of relevant independent services to persons living in the area or locality for which the service is licensed to be provided.

9. In this case, the services that are relevant when considering the effect of the change are those local commercial services provided wholly or mainly for people living and working in Greater London.

10. The measured coverage area (MCA) of the 1035 Greater London AM is also served by another fourteen Londonwide ILR services (eight broadcasting on FM, and six on AM):

- 95.8 Capital FM – Contemporary Hit Radio
- Capital Gold 1548 AM – Gold
- Heart 106.2 – Adult Contemporary

- Jazz FM 102.2 – Soul, R’n’B and jazz.
- Kiss 100 FM, - Contemporary and Classic Dance
- LBC News 1152 AM – Rolling News
- LBC 97.3 FM – Talk and Phone-Ins
- Magic 105.4 FM – Mellow A/C and Classic tracks
- Premier Christian Radio AM – Christian/News/Speech
- Club Asia AM – Younger Asians
- Spectrum Radio AM – Multi ethnic (Format requirement for a max of eight hours’ Asian output in any one day. Its major Asian show is the morning show from 7am to noon or 1 pm, also on AM, targeting mainly Pakistani 35-pluses).
- Sunrise Radio AM - Asian, music and information, targeting mainly Indian.
- Virgin 105.8 – Rock
- Xfm – Modern Rock.

12. The MCA also covers the areas served by eight more localised stations within parts of the London area: Time 107.5 (Havering), Choice FM (Brixton), Choice 107.1 FM (North London), Fusion 107.3 (Lewisham), London Greek Radio (North London), London Turkish Radio AM (North London), Time 106.8 (Thamesmead) and 107.8 FM Radio Jackie (Kingston-upon-Thames); and overlaps the coverage of a large number of ILR services for areas surrounding London. The BBC’s *Asian Network*, available on digital as a national service, broadcasts output probably most similar to that which is proposed by KATR, but legislation prohibits Ofcom from taking BBC services or digital services into consideration when looking at the issues of choice and availability.

Section Three

Change

The Request

13. Sunrise Radio's rationale behind the request for change is available on the Ofcom website and attached (KATR request documents.zip).
14. Some of the main points made can be summarised as follows:
 - a) A country Format has been delivered for a decade without success or evidence of anything other than a dwindling demand.
 - b) Easy's Format would still be provided on DAB.
 - c) An Asian talk-based station would broaden choice given its emphasis on speech, Ghazals and Qawaalis, standing it apart from both Sunrise Radio and Club Asia, by catering for the older Asian listener.
 - d) Change to the character of service would be in line with the legacy regulator's strategy for AM, encouraging change to re-vitalise the wavelength.
 - e) The change to the character of the service would satisfy all three of the criteria in Section 106 (1A) (b) to (d) (see Appendix 1).

Precedent

15. It has not been uncommon for stations to request changes to their Format, and the legacy regulator (the Radio Authority) made many changes to stations' Formats. Such changes were not regarded as substantial. In 2003, in an effort to help revitalise AM, it issued a statement reminding licensees that it was willing to look at radical changes to AM Formats if they met the statutory criteria. Ofcom has not rescinded this policy, and this is the first such request received.

Questions

16. Summary of Consultation Questions:
 - 1) *Would the output of KATR as described in Sunrise Radio's submission narrow the range of programmes available on services in Greater London?*
 - 2) *Would the change be conducive to fair and effective competition in Greater London?*
 - 3) *Do you agree that there is significant demand for a speech-based Asian service?*
 - 4) *Is the loss of Easy 1035 justifiable in the circumstances as outlined?*
 - 5) *Are there any other matters you think Ofcom should take into account when considering the request to change the character of the Easy 1035 service?*

Section Four

Responding to this consultation

How to respond

17. Ofcom invites written views and comments on the issues raised in this document, to be made by **5pm on Thursday 7 October**.

18. Ofcom strongly prefers to receive responses as e-mail attachments, in Microsoft Word format, as this helps us to process the responses quickly and efficiently. We would also be grateful if you could assist us by completing a response cover sheet (see Annex 3, among other things to indicate whether or not there are confidentiality issues. The cover sheet can be downloaded from the 'Consultations' section of our website.

19. Please can you send your response to martin.campbell@ofcom.org.uk.

Responses may alternatively be posted or faxed to the address below, marked with the title of the consultation.

Martin Campbell, Floor 5, Ofcom, Riverside House, 2A Southwark Bridge Road, London SE1 9HA

Note that we do not need a hard copy in addition to an electronic version. Also note that Ofcom will not routinely acknowledge receipt of responses.

20. If you have the expertise, It would be helpful if your response could include direct answers to the questions asked in this document. It would also help if you can explain why you hold your views, and how Ofcom's proposals would impact on you.

Further information

21. If you have any questions about the issues raised in this consultation, or need advice on the appropriate form of response, please contact Martin Campbell on 020 7981 3850.

Confidentiality

22. Ofcom thinks it is important for everyone interested in an issue to see the views expressed by consultation respondents. We will therefore usually publish all responses on our website, www.ofcom.org.uk, ideally on receipt (when respondents confirm on their response cover sheet that this is acceptable).

23. All comments will be treated as non-confidential unless respondents specify that part or all of the response is confidential and should not be disclosed. Please place any confidential parts of a response in a separate annex, so that non-confidential parts may be published along with the respondent's identity.

24. Ofcom reserves its power to disclose certain confidential information where this is necessary to fulfil its functions, although in practice it would do so only in limited circumstances.

25. Please also note that copyright and all other intellectual property in responses will be assumed to be assigned to Ofcom unless specifically retained.

Next steps

26. Following the end of the consultation period, Ofcom intends to publish a statement as soon as possible.

27. Please note that you can register to get automatic notifications of when Ofcom documents are published, at http://www.ofcom.org.uk/static/subscribe/select_list.htm.

Ofcom's consultation processes

28. Ofcom is keen to make responding to consultations easy, and has published some consultation principles (see Annex 1) which it seeks to follow, including on the length of consultations. If you have any comments or suggestions on how Ofcom conducts its consultations, please call our consultation helpdesk on 020 7981 3003 or e-mail us at consult@ofcom.org.uk. We would particularly welcome thoughts on how Ofcom could more effectively seek the views of those groups or individuals, such as small businesses or particular types of residential consumers, whose views are less likely to be obtained in a formal consultation.

29. If you would like to discuss these issues, or Ofcom's consultation processes more generally, you can alternatively contact Philip Rutnam, Partner, Competition and Strategic Resources, who is Ofcom's consultation champion:

Philip Rutnam, Ofcom, Riverside House, 2A Southwark Bridge Road, London SE1 9HA

Tel: 020 7981 3585

Fax: 020 7981 3333

E-mail: philip.rutnam@ofcom.org.uk

Annex 1

Ofcom's consultation principles

Ofcom has published the following seven principles that it will follow for each public written consultation:

Before the consultation

1. Where possible, we will hold informal talks with people and organisations before announcing a big consultation to find out whether we are thinking in the right direction. If we do not have enough time to do this, we will hold an open meeting to explain our proposals shortly after announcing the consultation.

During the consultation

2. We will be clear about who we are consulting, why, on what questions and for how long.
3. We will make the consultation document as short and simple as possible with a summary of no more than two pages. We will try to make it as easy as possible to give us a written response. If the consultation is complicated, we may provide a shortened version for smaller organisations or individuals who would otherwise not be able to spare the time to share their views.
4. We will normally allow ten weeks for responses, other than on dispute resolution.
5. There will be a person within Ofcom who will be in charge of making sure we follow our own guidelines and reach out to the largest number of people and organisations interested in the outcome of our decisions. This individual (who we call the consultation champion) will also be the main person to contact with views on the way we run our consultations.
6. If we are not able to follow one of these principles, we will explain why. This may be because a particular issue is urgent. If we need to reduce the amount of time we have set aside for a consultation, we will let those concerned know beforehand that this is a 'red flag consultation' which needs their urgent attention.

After the consultation

7. We will look at each response carefully and with an open mind. We will give reasons for our decisions and will give an account of how the views of those concerned helped shape those decisions.

Annex 2

Consultation response cover sheet

- A2.1 In the interests of transparency, we will publish all consultation responses in full on our website, www.ofcom.org.uk, unless a respondent specifies that all or part of their response is confidential. We will also refer to the contents of a response when explaining our decision, unless we are asked not to.
- A2.2 We have produced a cover sheet for responses (see below) and would be very grateful if you could send one with your response. This will speed up our processing of responses, and help to maintain confidentiality by allowing you to state very clearly what you don't want to be published. We will keep your completed cover sheets confidential.
- A2.3 The quality of consultation can be enhanced by publishing responses before the consultation period closes. In particular, this can help those individuals and organisations with limited resources or familiarity with the issues to respond in a more informed way. Therefore Ofcom would encourage respondents to confirm on the response cover sheet that Ofcom can publish their responses upon receipt.
- A2.4 We strongly prefer to receive responses in the form of a Microsoft Word attachment to an email. Our website therefore includes an electronic copy of this cover sheet, which you can download from the 'Consultations' section of our website.
- A2.5 Please put any confidential parts of your response in a separate annex to your response, so that they are clearly identified. This can include information such as your personal background and experience. If you want your name, contact details, or job title to remain confidential, please provide them in your cover sheet only so that we don't have to edit your response.

Cover sheet for response to an Ofcom consultation

BASIC DETAILS

Consultation title:

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

CONFIDENTIALITY

What do you want Ofcom to keep confidential?

Nothing

Name/contact details/
job title

Whole response

Organisation

Part of the response

If there is no separate annex, which parts?

If you want part of your response, your name or your organisation to be confidential, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

Yes

No

DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response. It can be published in full on Ofcom's website, unless otherwise specified on this cover sheet, and all intellectual property rights in the response vest with Ofcom. If I have sent my response by email, Ofcom can disregard any standard email text about not disclosing email contents and attachments.

Ofcom can publish my response: on receipt once the consultation ends

Name

Signed (if hard copy)

Annex 3

Broadcasting Act 1990

106 Requirements as to character and coverage of sound broadcasting services

(1) A national or local licence shall include such conditions as appear to Ofcom to be appropriate for securing that the character of the licensed service, as proposed by the licence holder when making his application, is maintained during the period for which the licence is in force.

(1A) Conditions included in a licence for the purposes of subsection (1) may provide that OFCOM may consent to a departure from the character of the licensed service if, and only if, they are satisfied-

- (a) that the departure would not substantially alter the character of the service;
- (b) that the departure would not narrow the range of programmes available by way of relevant independent radio services to persons living in the area or locality for which the service is licensed to be provided;
- (c) that, in the case of a local licence, the departure would be conducive to the maintenance or promotion of fair and effective competition in that area or locality; or
- (d) that, in the case of a local licence, there is evidence that, amongst persons living in that area or locality, there is a significant demand for, or significant support for, the change that would result from the departure.

(1B) The matters to which OFCOM must have regard in determining for the purposes of this section the character of a service provided under a local licence include, in particular, the selection of spoken material and music in programmes included in the service. ...

(7) In this section 'relevant independent radio services' means the following services so far as they are services falling to be regulated under section 245 of the Communications Act 2003-

- (a) sound broadcasting services;
- (b) radio licensable content services;
- (c) additional services;

but, in relation to a departure from the character of a service provided under a local licence, does not include a service that is provided otherwise than wholly or mainly for reception by persons living and working in the area or locality in question."

106ZA Consultation about change of character of local services

(1) Before deciding for the purposes of a condition imposed under subsection (1A) of section 106 whether to consent to a departure from the character of a service provided under a local licence on any of the grounds mentioned in paragraphs (b) to (d) of that subsection, OFCOM must publish a notice specifying-

- (a) the proposed departure; and
- (b) the period in which representations may be made to OFCOM about the proposal.

(2) That period must end not less than 28 days after the date of publication of the notice.

(3) The notice must be published in such manner as appears to OFCOM to be appropriate for bringing it to the attention of the persons who, in OFCOM's opinion, are likely to be affected by the departure.

(4) OFCOM-

- (a) are not required to publish a notice under this section, and
- (b) may specify a period of less than 28 days in such a notice as the period for representations,

if they consider that the publication of the notice, or allowing a longer period for representations, would result in a delay that would be likely prejudicially to affect the interests of the licence holder.

(5) OFCOM are not required under this section-

- (a) to publish any matter that is confidential in accordance with subsection (6) or (7); or
- (b) to publish anything that it would not be reasonably practicable to publish without disclosing such a matter.

(6) A matter is confidential under this subsection if-

- (a) it relates specifically to the affairs of a particular body; and
- (b) its publication would or might, in OFCOM's opinion, seriously and prejudicially affect the interests of that body.

(7) A matter is confidential under this subsection if-

- (a) it relates specifically to the private affairs of an individual; and
- (b) its publication would or might, in OFCOM's opinion, seriously and prejudicially affect the interests of that individual.