

## **RESPONSE TO OFCOM CONSULTATION: LICENSING COMMUNITY RADIO**

From:

### **SUNRISE RADIO / LONDON MEDIA COMPANY**

The Sunrise Radio group welcomes this opportunity to comment upon Ofcom's proposals for the introduction and licensing of community radio, particularly in the context of the potential impact of this new sector upon existing commercial radio services, both analogue and digital. Sunrise Radio has been a pioneer in the establishment of self-financing radio services for ethnic minority communities, while the objectives of its newly-formed sister-company, the London Media Company (LMC), include investing in the development of small-scale commercial radio stations designed to serve localised communities.

## **RESPONSES TO INDIVIDUAL QUESTIONS POSED IN THE CONSULTATION DOCUMENT**

### **Q.1**

We welcome the statement, in paragraph 23 of the consultation document, that the introduction of community radio should proceed "at a measured pace", and we endorse Ofcom's view that it is important to ensure that each one of these new services fully satisfies the statutory remit set out for community radio, and is clearly distinguished from, and does not threaten the viability of, existing commercial services. However, as Ofcom itself acknowledges (in paragraph 63), it is difficult to predict the number of applications for community radio licences that will be forthcoming, and clearly the level of interest from prospective licensees will influence the pace at which Ofcom can deal with applications. This in turn will affect the resource which Ofcom needs to devote to community radio licensing. We note that the consultation document has said nothing about the scale of application or licence fees that will be payable, but assume these will be set at modest or even nominal levels. This raises the question of who will effectively be paying for the costs to Ofcom of licensing and regulating community radio. If this work will in practice be subsidised by the fees paid by the commercial sector, with which community radio will be competing for listeners and some of its revenue, then we consider it crucial that Ofcom's costs should be carefully constrained. Ofcom has provided no indication of the staffing and associated resource commitments which it expects to devote to establishing community radio, relative to those allocated to ongoing commercial radio licensing and regulation.

Given this uncertainty about the resourcing, and thus the costs, of Ofcom's community radio licensing and regulatory operation, we consider that it would be inappropriate for Ofcom to consider extending its activities beyond those which are specifically required under the Communications Act and eventual Community Radio Order, or which are necessary to ensure that community radio licensees comply with their basic programming and funding commitments. In relation to the number of listeners who will stand to benefit from it, community radio will in any case be vastly more expensive to administer than commercial radio, and we would urge Ofcom not to accentuate this disproportionate allocation of resources by involving itself in activities which are not required under the legislation. The illustrations offered – establishing training schemes, or promoting community radio collectively – should properly be the responsibility of a 'trade association' – either the CMA, or an association established by the community radio licensees themselves – rather than of the regulator. In particular, we object strongly to the notion of Ofcom itself taking on a role of "raising awareness of community radio as a sector or 'brand' among the listening public", for several reasons. First, as it appears probable that fees paid by commercial radio operators will in effect be subsidising Ofcom's licensing and regulation of community radio, it would be unacceptable to take this to a point at which we would also be paying for the publicity and promotion for services which could be competing for our own listeners and advertisers. Even if money should become available from a ring-fenced Radio Fund, we believe that promotional expenditure would represent an inappropriate use of public funds, which should instead be channelled into programming-related projects. Furthermore, it seems to us that the idea of promoting community radio generically, as a 'brand', is entirely contradictory to the essential concept of community radio, which is that each individual station should be rooted in its own local community, especially given that only a small fraction of the UK population will fall within the coverage of any community radio station. In addition to the two examples given in paragraph 25, we are also concerned at the prospect of Ofcom itself being involved in the disbursement of funds for community radio, which is mentioned only briefly in the consultation document (paragraphs 75-76), but which raises issues that go beyond that of just the resourcing implications. In summary, therefore, it is our strong view that Ofcom should confine itself to the responsibilities specified in the legislation, and should not attempt to take on any wider protective or

promotional activities which could lead to an open-ended inflation of the staffing and resourcing costs incurred on behalf of this new sector.

## Q.2

We are dismayed by the statement, in paragraph 29, that Ofcom proposes that "in general, community radio should have a higher priority for resources than potential improvements to the coverage of existing FM commercial radio stations", which has been put forward without any explanation or justification. As we have argued in our response to the consultation on FM licensing, we believe that Ofcom's foremost priority should be to address the long-standing coverage problems of existing commercial stations – on both FM and AM – that it has inherited from the previous regulator, and that it should ensure that these stations derive the optimum benefits from the frequency resources which remain available, before moving ahead with any fresh development in these parts of the country, either commercial or community. This is especially pressing in the case of small-scale FM stations which are currently operating on power levels and/or aerial constraints imposed to protect potential future services. It must be more important to secure the viability of existing services, by delivering the coverage which these operators and their local audiences are entitled to expect, than to engage in further speculative development in the same or neighbouring localities. Indeed, without such coverage enhancements, it is in practice difficult to see how commercial small-scale services, in metropolitan areas especially, will be distinguished from new non-commercial 'community radio' services operating on similar power levels delivering broadly equivalent geographical coverage.

In paragraph 31, it is proposed that "community radio stations in urban areas will be licensed for a coverage radius of up to 5 km" (i.e. diameter of 10 km). It is noteworthy that neither of LMC's commercial services in South-East London currently achieves reliable reception across an area of this size. While this differentiation may be of less concern in remote rural areas, we feel that it is crucial that in urban areas commercial and community radio services should be clearly distinguishable from each other by the robust coverage afforded to the former, which is essential for their commercial sustainability.

We also seriously question the assumption implicit in paragraphs 30 and 33 that it is the non-BBC sub-bands of the FM spectrum which should form the primary resource for community radio, with the BBC Radio sub-bands providing only a secondary resource. This seems to us to be a mistaken and outdated approach, now that Ofcom, by subsuming the previous responsibilities of the Radiocommunications Agency, is in a position to adopt a more authoritative stance on frequency usage. The simple fact is that BBC Radio coverage, of both its national networks and its local stations in England, is now effectively completed. It is difficult to imagine how the BBC could put forward any convincing case for further coverage extensions, especially in those non-rural areas of the UK where frequency usage is most congested, as it is already achieving virtually universal population coverage for all of its services. (Indeed, in most locations around the UK, each BBC service can be easily heard on a number of different frequencies). We believe that it is untrue that there is significant "additional uncertainty" as to "the BBC's remaining requirements" – but if there is, Ofcom should act promptly to define these requirements, in discussion with the BBC, and approve or refuse them. The remaining frequency availability within BBC sub-bands, both national and local, would then become a finite and known resource which Ofcom could utilise for new services, both commercial and community, and within which it could plan ahead with confidence. It is in fact within the commercial radio sub-bands, not the BBC's, that there is authentic uncertainty about future requirements, because – unlike the BBC – commercial radio is still developing and expanding. Both the need for new services, and for coverage enhancements for existing services, are much greater in the commercial sector than for the BBC. The BBC has no ambition or entitlement to establish more than one local station in any given area, and its local radio network is already fully established; by contrast, the local commercial radio system continues to evolve organically, with no natural fixed limit. It therefore must make sense for Ofcom to use the BBC rather than the commercial radio portions of the FM spectrum as the primary resource for new community radio services in all areas of the UK where frequencies are in limited supply. If further illustration of the logic of this prioritisation is needed, we would note that the great majority of illegal 'pirate' radio stations choose to broadcast on frequencies in the BBC sub-bands, where they know that 'spare' spectrum is more plentiful and readily available.

Finally, in responding to question 2, we would seek clarification of an apparent inconsistency in the consultation document. Paragraph 32 talks about "not wishing to rule out the possibility of licensing community stations on the AM waveband", whereas the preceding paragraph adopts a far more prescriptive tone, noting that for some types of community radio service (large urban 'community of interest' services, and also some larger rural ones), "only AM frequencies will be considered". This matter is of some concern to Sunrise Radio, which already runs a large 'community of interest' commercial station on the AM waveband, and we would ask you to clarify this ambiguity.

### Q.3

We agree that the licensing process should be applicant-led, as proposed. The idea that there should be an annual opportunity for the submission of community radio licence applications, rather than that this process should be continuous and unstructured, seems a sensible and practicable one. However, we question the need for this annual 'window' to be as long as twelve weeks in duration, rather than being much shorter than this: say, one week, or even a single closing-date. This would have no disadvantage for applicants, who would be working towards the same deadline; it would simply be defined as a single day (or week), rather than the end-point of a three-month period. However, from the perspective of commercial operators who need to comment on the applications, it would logistically be easier to have a single closing-date upon which all applications were received and then simultaneously published, rather than having these seeping gradually into the public domain over an extended period, necessitating continuous checking of the current state-of-play throughout the 'application window'.

The description of the proposed application process, as outlined in the consultation document, leaves many questions unanswered. If it is assumed that there will be an annual opportunity for the submission of licence applications – regardless of whether this 'window' is as long as twelve weeks, or is as short as a single closing-date – how confident is Ofcom that it will be able to deal with all of the applications received, which may (to judge from the Radio Authority's original pilot scheme) total as many as several hundred, during the remainder of the year, and be able to complete this work before the next 'application window' comes around? If not, will applications that have not been dealt with be carried over into the subsequent year, with the risk of an ever-increasing total of applications accumulating; or will each year's 'application window' trigger an entirely fresh start to the process? Will applications which are not awarded licences during a given year actually be rejected (with applicants - and other interested parties, notably commercial stations which had lodged objections – being informed to this effect), or will they just remain in limbo as 'not (yet) awarded'? If an application is not successful in achieving a licence award, will it be made clear to the applicant, and to other interested parties, why this was so? We would hope so, as this could clearly determine whether or not a future re-application might be considered. If the application has been ruled out due to the lack of a suitable available frequency, this would seem to represent a permanent obstacle to licence award. Alternatively, if it was rejected because of a valid objection from a commercial operator on 'economic viability' grounds (see Q.4), it might be argued that this situation could alter in the future (e.g. if the commercial operator became financially more secure over the course of time), and therefore a later re-application could be justified. However, if an application was unsuccessful because the applicant had not convincingly demonstrated to Ofcom that it met the 'social gain' criteria, could that applicant then re-apply the following year with revised proposals more attuned to 'community radio' objectives? We believe it is important for Ofcom to think-through and publish its proposals on these aspects of the procedure, not only to advise prospective applicants, but also because such clarification is important to the existing commercial radio operators who will need to know whether they may face recurring applications from community radio groups over a number of years. It is our view that if a community radio licence application is rejected (rather than simply not dealt with) by Ofcom during a given year, there should be a specified period of time before that group would be permitted to submit a further application.

### Q.4

We very much welcome Ofcom's proposal to invite submissions from commercial radio operators who might consider their viability to be jeopardised by the establishment of a community service in or close to their coverage area. However, we consider that the practicalities of this require a good deal more thought, if this mechanism is to work effectively. Ofcom needs to recognise that the companies likely to be most directly threatened by competition from community radio are the smallest ones, and these are the operators who are the most frugally resourced, and accordingly will find it the most difficult to mount an effective and well-researched challenge to a community radio proposal. The list of indicators relating to "potential economic impact" presented in paragraph 32 represents a valid set of relevant factors, but for a tightly-staffed small-scale commercial operator, the amount of extra effort required to assemble this information and present a well-reasoned economic analysis will be extremely onerous. To allow just one month for the preparation and submission of this material is wholly unrealistic. The difficulty will be compounded if the one-month interval commences from the date of publication of the community radio proposal on the Ofcom website, unless Ofcom is going to be rigorous in proactively notifying all commercial operators who may potentially be affected, immediately when each proposal is posted. (This consideration adds weight to the suggestion which we have mooted above, that there should be a single date on which all community licence applications are simultaneously made available). Otherwise, the response period will be further eroded if some time elapses between the application being published and the affected commercial operators becoming aware of its existence.

Furthermore, it is imperative that the opportunity for commercial operators to comment upon individual community radio applications, and potentially to challenge them on 'economic viability' grounds, is correlated with the sequence in which Ofcom will be dealing with these applications. If several hundred community licence applications are submitted during the 'window' and are then published by Ofcom, this will inevitably involve many commercial radio operators in mounting multiple challenges to a variety of proposals. As noted above, for small companies, preparing even a single submission will prove onerous; if they find themselves needing to respond to a variety of community applications, whether all in a single area or distributed between a number of different areas, this task will become completely impracticable. Moreover, it is unreasonable to expect all such 'viability' submissions to be assembled during an initial one-month period, when Ofcom's consideration of those applications will be spread across the following nine months or more. Indeed, it is likely that some community radio applications will not be seriously entertained by Ofcom, either because they fail to satisfy the basic 'social gain' requirements, or because no suitable frequency is available. It is important that commercial radio operators should not be led into assembling 'viability' submissions about licence applications that Ofcom cannot consider for award, as this would incur a waste of time, effort and cost on their part.

Therefore, while warmly welcoming Ofcom's intention to invite responses from commercial radio operators, we propose: firstly, that Ofcom should take responsibility for directly notifying commercial radio operators about all community radio licence applications submitted in their local areas (defined by their TSAs, the areas within which they are marketed and their audiences measured), at the outset of the 'viability' consultation period; secondly, that the period allowed for the assembly of 'viability' submissions by commercial operators should be at least two months (and preferably three), rather than merely one month; thirdly, that 'viability' submissions should only be invited once Ofcom has ascertained that the community radio application is a valid contender for a licence award (i.e. that a suitable frequency has been identified, and the application adequately satisfies the 'social gain' aims specified in the Community Radio Order); and fourthly, that these submissions should be phased throughout the year in line with Ofcom's consideration of the actual licence awards, so that commercial radio operators' analyses will be up-to-date, and nugatory work will be avoided.

#### **Q.5**

Our preferred outcome would be that, in areas already served by one or more commercial local stations, community stations should not be permitted to derive any income from advertising or sponsorship, as this would create an unacceptable blurring of the divisions between the different sectors. We believe that a quest for income from commercial sources would inevitably distort the character of community radio, and divert it from its primary objectives. However, we recognise that Ofcom does not currently appear to be minded to adopt such a clear separation between the two types of radio in respect of their funding sources. If that is so, we would firmly favour the maximum proportion of income from advertising and sponsorship to be set by Ofcom on a case-by-case basis, although it should never be higher than 50%, rather than having a blanket 50% limit which would allow all community stations to compete with commercial radio for half of their income. In deciding the appropriate maximum in any individual instance, Ofcom should in particular have regard to the representations on 'economic viability' made to it by commercial operators which have TSAs covering that locality (see response to question 4 above). If there is any prospect that the community radio station would overlap the TSA within which a small-scale or 'community of interest' (e.g. ethnic minority) commercial service draws its revenue, then its maximum permissible advertising/sponsorship income should be set at an appropriately low level, possibly even zero. Ofcom should understand that the threat posed to small-scale and 'community of interest' commercial services is not simply due to the direct competition for a finite pool of local advertising and sponsorship revenue within that locality. By offering advertising rates which are below the level needed to sustain a wholly commercial operation, or by making exaggerated claims about its coverage or audience, a community radio station can undermine the basis on which a local commercial operator's business has been built. We have already seen many examples of this where temporary RSL services have been licensed in areas served by full-time Asian commercial stations.

Regardless of the actual level of commercial revenue that a given community station is potentially permitted to generate, we are concerned that the consultation document exposes none of Ofcom's views as to how this element of income would be managed and regulated, how Ofcom would define commercial revenue, or what remedies would be available in the event that a community radio licensee were to exceed its quota of commercial income. For example, the INR Statement of Principles defines 'qualifying income' for Treasury payment purposes as excluding income derived from 'contra' arrangements. However, all involved in the commercial radio industry would recognise this particular stream as constituting a form of commercial revenue. For a community radio station, income from 'contra' deals could prove relatively significant, and it is therefore crucial that Ofcom should specify whether or not this would count towards the station's aggregate commercial revenue. (We believe that it should).

We also seek clarification on the mechanism whereby Ofcom would validate a community radio licensee's claims about its funding sources. Community radio stations are unlikely to be subject to the same rigorous reporting and auditing procedures that commercial operators are. Moreover, the proposal (in paragraph 71) that each station should be free to "decide when it is most convenient for them to prepare and deliver" an annual report on its activities would appear likely to increase its ability to manipulate the reporting of its funding sources.

In addition, we consider that further attention needs to be given to the ongoing checks that can be applied upon a community station's funding sources to ensure that these remain within the limits set by Ofcom at the time of licence award, and what effective sanctions can be applied to rectify a failure to comply with these. For example, if a community station finds that it is generating an appreciably higher proportion of its income from commercial sources as a year unfolds, is it credible that it would then turn away further revenue from these sources in order to comply with a year-end target? Alternatively, what would be the position if expected grant or other non-commercial funding should fail to materialise, thereby producing an increase in the commercial proportion to beyond the permitted limit? And if, at the end of a reporting year, the amount of commercial income is found to have exceeded the permitted maximum, what sanctions would Ofcom apply? Will a station be required to correct any imbalance over subsequent years, or will such a transgression be simply have to be accepted as a *fait accompli* by the regulator?

#### **Q.6**

The draft Community Radio Order proposes that community radio licences will only be transferable with Ofcom's consent (paragraph 55). In contrast to the position with commercial local licences, we would expect that such consent should normally be withheld, unless there are exceptional circumstances. It is intrinsic to the character of community radio that the licence should be held and operated by a group based in that community, and we would urge Ofcom to prevent the situation – as occurred with television restricted services licences, under the ITC – that these licences become tradable commodities, with ownership passing to interests outside the area concerned. For the same reason, we object to the idea that one group may hold as many as five community radio licences in different areas, and can see no persuasive case that any group should be able to hold more than a single licence. However, we acknowledge that it is Government, through its Order, rather than Ofcom which will determine the community radio ownership limit, and thus this point falls outside the scope of this present consultation.

We are content that the procedure for the submission of licence applications should be broadly similar to that which has been proposed for commercial local licences, as outlined in paragraphs 57 to 59. However, please see our comments above, regarding the need for the invitation of representations from commercial operators about the 'economic viability' implications of a community licence application to be carefully co-ordinated with the timing of the consideration by Ofcom of the licence award.

#### **Q.7**

We welcome the confirmation, in paragraph 62, that community radio licence awards will be dealt with by the same committee that is responsible for deciding commercial local licence awards, as this should ensure that a good appreciation exists amongst the committee members of the commercial implications of its community licensing decisions.

We recognise that, as a priority for the first phase of its licensing activity, Ofcom needs to resolve the position of the fourteen existing services which were established under the pilot scheme administered by the Radio Authority, as these licences have already been extended twice without any opportunity for review or competition from other interested parties. We hope that these frequencies will be fully and fairly advertised, as if they were for new licences, and that other applicants will have an opportunity to compete for them without the incumbent enjoying any undue advantage. In particular, we would expect, for these as for all other new community radio licences, that commercial operators that have been (or could be) affected by the operation of community radio services in these areas will have the opportunity to submit 'economic viability' representations, in line with the procedure proposed in paragraphs 50 to 52 of the consultation document. This was not possible when the original 'access radio' experiment was set up by the Radio Authority. Sunrise Radio will, for example, wish to comment upon the adverse commercial effects upon its business of a directly competitive Punjabi community station based in its heartland of Southall, and also of the impact of an Asian community station in Glasgow upon its attempt to develop a viable digital-only channel for Asian listeners in the Glasgow area.

Regardless of the number of community radio licence applications submitted in total during the annual 'window', we feel that it is crucial that Ofcom should shortly afterwards decide and announce how it will set about dealing with them during the subsequent year: whether on a region-by-region basis, or through some other ordering mechanism. This published prioritisation is essential, in order to allow commercial radio operators to be able to assemble considered comments on the 'viability' implications, on a timescale that fits sensibly with the sequence of licence award decisions, as explained in our response to question 4 above.

#### **Q.8**

As regards the selection criteria currently proposed in the draft Community Radio Order (as listed in paragraph 46 of the consultation document), we wish again to emphasise our strong belief, as expressed previously in our company's response to Ofcom's consultation on commercial FM licensing, that an assessment of "the extent to which the service would broaden the range of programmes on local services available in the area" **must** take into account existing services provided on local and regional digital multiplexes in the area concerned (even if, strictly speaking, the statutory definition of 'local services' does not embrace those which are provided digitally). Government has given high priority to the development of DAB as an eventual replacement transmission technology, and Sunrise Radio has already invested heavily in digital carriage costs and the development of its Sunrise and YARR digital programme services, in order to extend choice to Asian listeners in areas of the UK where there is little or no analogue commercial radio provision for Asian citizen-consumers. As a result of making this early commitment to digital radio, our company is incurring substantial financial losses while digital receiver penetration remains low. Awards of analogue licences to directly competitive Asian services, both commercial and community, will undermine this investment and set back the prospects for developing digital radio in these markets, as we feel has already happened in Glasgow.

It is stated that "the delivery of social gain is a key characteristic of community radio", but we are concerned about the extent to which Ofcom is truly equipped to assess this, when it is largely dependent upon self-reporting by community radio operators. This is particularly problematic in the case of services broadcasting in minority languages which Ofcom is unable readily to monitor. We observe that the existing Punjabi 'community' station in Southall broadcasts on satellite and the internet to a national (and even worldwide) audience, and question the extent to which this is compatible with the 'social gain' objectives of an authentic local community programme service.

#### **Q.9**

We are supportive of the proposal that the promises made in a community radio licence application should be enshrined in a set of 'key commitments' to be included in the group's licence when issued. However, we are somewhat doubtful about the regulator's ability to monitor effectively the delivery of these commitments, when so much appears to be reliant upon the licensee's own reporting of its performance. Also, we are unclear about the sanctions which Ofcom could, or would, apply in event that these key commitments are not clearly being met. As noted in our response to question 5 above, we have doubts about the mechanism for ensuring that the balance between elements of a licensee's income remains within the limits set by Ofcom at the time of licence award. However, if a community station was found to be deriving an excessive proportion of its income from commercial advertising or sponsorship, or equally, if it was failing to deliver evidence of fulfilling its 'social gain' obligations or its basic programming remit, what sanctions would be applied, and over what timescale, to rectify this? If this were to prompt nothing more severe than a 'must do better next year' response by Ofcom, it could potentially allow a commercially-motivated licensee to abuse the principles of the community radio regime for much of its five-year licence period. Therefore, if a listing of 'key commitments' is to be the primary mechanism for encouraging compliance with application promises, we would urge Ofcom to devise an effective means of dealing promptly and effectively with licensees that fail to meet these commitments, either in terms of their financing or their 'social gain' or programming commitments.

#### **Q.10**

As indicated in our previous responses, we consider that the proposal to rely solely upon a brief annual report produced by the licensee itself, without any monitoring or checking by the regulator or any independent reviewer of the extent to which the community station is keeping to its funding constraints or its 'social gain' and programming commitments, appears to be a wholly inadequate way of ensuring that the distinctive character of a 'community radio' service is established and maintained. Even the "research" which, it is suggested, would be carried out by Ofcom some "two to three years after the first community stations are licensed" (paragraph 72), would only be into the community radio "sector" as a whole, and would thus not involve an assessment of each station individually. It seems to us that any group which, having

been awarded a community radio licence, then sets out to run an essentially commercial operation, without regard to the promises made in its application or the requirements specified at the time of licence award, has every chance of avoiding detection or censure by the regulator. As noted above, it is unclear whether, even if a failure to deliver were to be reported (for example, as a result of monitoring by a commercial competitor), Ofcom has any effective sanction in place to rectify the situation. Moreover, in the apparent absence of any reliable objective evaluation of a community station's fulfilment of its commitments, it is not clear on what basis Ofcom would be in a position to decide whether or not to re-award the licence towards the end of the five-year licence period (paragraph 68).

**Q.11**

The fact that this question has been posed in this way, without the consultation document itself offering any proposals for the effective assessment of the degree to which a community station has achieved its desired impact within its target listenership, exacerbates our concern that community radio could in practice become an unregulated sector of radio, with the only information available to Ofcom about the value of these services being that which the licensees themselves choose to present in their own annual reports. While such a *laissez faire* approach may be appropriate for temporary restricted service licences, the permanent nature of community radio means that more effective mechanisms are required to ensure that community stations are not allowed to compete unfairly for listeners and revenue with more heavily regulated commercial stations, or to undermine the viability of commercial services by disregarding the basis on which community licences were awarded.

We would like to thank Ofcom for this opportunity to comment upon its proposals for licensing community radio, especially in view of the potential impact which such services might have upon ethnic minority and small-scale stations operated by our company.

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