

3.3.04

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Dear Neil

Re: 'The Future Licensing Of FM Commercial Radio' Consultation

Please find below my thoughts on the above consultation document. I am glad to be able to add my own views and experience to the document.

1. Objectives for the Radio sector

I have always been a committed radio professional and the continued growth of Commercial Radio in the UK, on all platforms, must be a priority. The continued allocation of FM spectrum to new broadcasters will be a key part of the future of radio in the UK.

I do not believe that the migration to Digital Radio (DAB) will be as successful as is being foreseen presently, if it happens at all. The current growth of DAB is not of a level that indicates Digital Radio's growth into the medium of the future. Indeed I believe that the only reason for the initial (very limited) success of DAB has been the millions of pounds pumped into the marketing of the medium by the RAB and the larger radio groups, who have a second agenda. These groups, such as EMAP, GWR, Capital etc. have been keen to talk-up the future share price of their businesses in advance of the expected consolidation within the radio industry and have been using the 'future' success of DAB to help them do so. Recent comments by Ralph Bernard on the 'switch off' of FM and AM indicate the same.

The lack of sales of DAB radios in the last quarter of 2003 (only 30,000 according to RAB figures) would seem to indicate that the interest in DAB is already beginning to slow. The choice of programme services and the quality of signal (which is far lower than people had been promised) have been cited to me as extremely disappointing by people that have bought DAB receivers.

AM and latterly FM services have been the foundations of radio in this country and there is absolutely no reason why this should not continue. I believe all possible efforts to continue to grow both AM and FM services must be a key part of the future work of Ofcom.

I am sure that you will again be bombarded with comment on the unfair share of FM spectrum currently held by the BBC and I believe that this is a situation that needs to be addressed. The BBC no longer is the dominant broadcaster in the UK and they should not be permitted to control such a high percentage of the FM (and indeed AM) spectrum. This would inevitably release much needed frequencies for new radio services in all parts of the UK, without having a detrimental effect on BBC radio services.

The U model clearly shows that large numbers of radio services can work successfully, which obviously expands listener choice. Whilst I appreciate that existing radio operators will not tend to agree with such comment, it is a fact. Local radio stations, which serve their community wonderfully, are commonplace in the US, often paired with a local TV station also. I was at the NAB Radio awards in Dallas a few years ago when the small-scale station of the year was a Texas station, serving a TSA of 60,000 people. This was a radio/ TV joint business and was also a profitable one. This surely has to be the kind of model that Ofcom must work towards in the future?

I also sincerely hope that the proposed growth in 'Community Stations' that is planned will not be used as a way of simply diluting future FM and AM full service Commercial Radio stations.

The criteria that are used by Ofcom when awarding future FM licences should indeed include 'demand' as well as support. The existing taste and interests; ability to maintain; and, broadening of choice should also remain.

I do, however, believe that greater consideration should be given to the actual applicant group themselves. There has been a widely held view inside the radio industry for a number of years that "you have to have a licence to win one" – whereby existing operators appeared to have a head start. This inevitably led to small, local applicants joining with larger groups, not for any other reason than to have a better chance of winning a licence. I do not believe that this offers any additional help to the small group, or small-scale station, other than leaving them prone to a back-door takeover, as has been proven often in recent years.

2. Proposed Policy For FM Allocation

I take note of the potential opportunities listed in the Consultation Document, but I am concerned that continual investigation into future spectrum use continues. Technological advancement in recent years has given technology that allows much better control of FM signals that will allow more controlled usage of the spectrum. Tighter controls over modulation of such signals should also be a priority.

There is no surprise that the Ofcom review shows that 'larger radio licences are more likely to be profitable than smaller ones' – however, small scale stations can be extremely profitable and yet still serve their area extremely well, as my own radio experience has shown. 'Localness' – which I know will be the subject of separate consultation – has to be the backbone of local radio in the UK. Too often in the past, stations have been allowed to simply simulcast programming across their network, usually from many miles outside a station TSA. This of course completely nullifies any localness at all that the station may have. I believe that The Radio Authority were wrong in their agreement to allow this and in too many cases. I hope that Ofcom will look closely at introducing much stricter guidelines on localness in due course. There is absolutely no doubt that listener's value the localness of their station greatly.

The use of the 'regional' licences for more specialist formats is, of course, an appealing idea. I do believe however that many of the existing regional stations have simply been ignoring the format that they have been given and have simply 'dumbed down'. That certainly appears to be the case with the two North West regionals and I know that there have been formal complaints lodged in those cases. I am also concerned that there has been a view that these stations should only be awarded to existing larger groups, effectively excluding newer operators from the market.

I would urge Ofcom to consider new applicants to the market when considering any licence award in the future.

3. Interests Of Citizen Consumers

This is an extremely important part of this consultation document.

I note the thoughts on whether some of the proposed smaller scale stations should be combined to make more 'regional' licences. This will not expand listener choice in any way, in fact if this is allowed to happen, Ofcom could be accused of oppressing growth in listener choice.

The view that (for instance) a combination of the proposed Devon & Cornwall licences into one would 'enable a more specialised programme format to be delivered viably is, in my opinion, flawed. More concerning is the view that otherwise a Cornwall-only licence would be 'likely to facilitate a more mainstream music service'. This is a view that I believe has been wrongly held by The Radio Authority in the past. There are many formats that could be adopted to make even a smaller scale station in such an area very successful, not just a 'mainstream music service'. Meaningful local speech must surely be an important consideration for the award of any such licence and a choice of music that is different to what is considered 'mainstream' can also be used in a very successful manner.

Ofcom must consider carefully the best usage of the proposed frequencies and make it a priority to offer as many, varying radio services as is possible within this (apparently) scarce spectrum. Simply grouping licences together to form larger ones, whilst making it easier for the larger operator to make profits, does not seem to sit well with the notion of expanding listener choice, or allowing more new operators into the market, which I understand is a priority.

The advertisement of small licences most definitely serves the interests of the consumer greater than less, larger ones.

4. Aggregation Of Licence Areas

I do not believe that aggregating licence areas serves any benefit to the listener, rather just a potentially larger prize for the eventual licence winner.

I believe that it should be a key part of the Ofcom role to identify new areas that are underserved and to assess suitable frequencies for the same. A steady pace of advertising such licences should be adopted, rather than simply lumping larger numbers of licence advertisements together. This will inevitably lead to a greater workload for Ofcom and, dare I say it, potentially some incorrect decisions being made. I believe that there are still very many areas of the UK that would not only be able to support their own station, but would benefit greatly from having one.

5. Licence Advertising Policy

I believe that for both applicants and for Ofcom, a more steady approach to licence advertisements is the only sensible and feasible method.

To allow groups to be able to submit a quality, considered application, would take such a period of time, specifically for the smaller, local group.

In the case of larger radio groups, they generally have the resources to be able to employ people to work specifically on such applications, something that the smaller applicant is often not able to do.

I do welcome the proposed changes to the application process itself.

6. Tailored Licence Information

I believe that the proposed option of a 'more open approach' in the advertising of licences would be welcomed, specifically by smaller applicant groups. The previous application method was considered by many as being too rigid and this new method would appear to be much more sensible.

The size and type of information should be the same whatever the size of the licence area being advertised and I do not believe that there should be any difference whether the applicant is an existing operator or not.

7. Nature Of Information

As previously mentioned, I do not believe that there would be any merit in the variation of information requested for applications according to licence type/applicant. It would appear to be fair that all applicants received the same information request for simple transparency purposes.

Additionally, I believe that variance of the information request may lead to unnecessary criticism of Ofcom by people who felt that they had been treated differently in different cases.

8. Factual Information

I believe that all applicants for any licence would generally have one research into the listening patterns in that area before considering making a particular application, indeed they would be reckless in not doing so. Similarly I believe that any group should generally have undertaken detailed research before they consider an application.

Respondents to this consultation will no doubt advise you that they would wish to have as much information as possible from Ofcom. I personally believe that it is the responsibility of individuals to ensure that they know such detail on the area for which they may consider applying. Not carrying out such important research would, in my view, indicate that an applicant was not taking the application process seriously enough.

9. Seeking Clarification

It would seem to be sensible in license applications to have a single person nominated by the applicant group that would be responsible for ensuring that questions from Ofcom are answered.

That person would then, presumably, liaise with the appropriate member of the applicant group to ensure that the questions were answered.

Returning to the old IBA days of face-to-face interviews would appear to be a retrograde step when Ofcom is clearly attempting to make the licensing process clearer and more straightforward. The telephone questioning has always seemed to me to be a needless exercise and anything could be answered by mail/ e-mail. In cases where there are two (or more) applications that are being considered very closely by Ofcom, special circumstances may mean that Groups would be

telephoned, or even interviewed face-to-face and I am sure that nobody would object to such a situation.

I believe that when the application process has reached this stage, then there should be no reason that the applicant group(s) should find any depth of questioning difficult, or unnecessary.

10. Submission Of Applications

These proposals make a welcome change from the old license application process and I believe will be welcomed by all.

The 'scoring system' will make it a much more transparent approach to licensing, though I also believe that the additional criteria be published also. The Consultation Document states that 'these (the points scores) will not be the only basis upon which decisions are made'. Applicants should be made aware of the additional criteria.

The case about 'assumptions' is crucial. Many applicants (including myself previously) have been in a situation where we have been forced to try and 'second guess' which information would be best to include in an application document. The idea of restricting information and limiting the amount that can be submitted with an application is a positive move. In the main, all applications should be of a similar size and nature – this will also eliminate the apparent unfairness whereby the larger radio groups (those with the greatest resources) can produce bigger and better-looking applications.

(105a) I still believe that the questions asked of each group should remain the same, without the two-tier questioning system that is apparently being proposed in this document. I believe that it is just as necessary for an existing radio group to (for example) prove that it has the knowledge and expertise necessary to run a small-scale radio station. Many of the larger groups have failed (and continue to fail) in their operation of small-scale stations, the logistics of which are considerably different than those of larger stations. It is simply not correct to assume that just because EMAP, or Chrysalis applies for a small-scale licence, that they have the necessary skills to operate that licence. In the case of Chrysalis, it has been stated on numerous occasions in recent years that this has indeed been the case. It is surely fair to expect every applicant to have to undertake the same process, or else I believe that small applicant groups will believe that Ofcom is not being wholly fair and balanced in its approach.

(105b / 105c) This is a welcome move, and particularly in connection with the non-amendment of an applicant's Format. All too often in the past, applications have shown unworkable programme format proposals, simply having them changed as soon as they have won the licence. This was an unfortunate loophole in the application process and led, often, to the licence being awarded to the wrong group. The Format proposed in the application document should be the one to which the eventual license winner must adhere.

(105d) Demand must become a part of the application process, however I do have fears that the larger radio groups will be in a position to 'create' evidence of demand through large (and expensive) amounts of audience 'research'. This will inevitably lead to the assumption that their application is a more powerful one, than the smaller local group that does not have the funding to carry out such in depth research. Situations where major groups have dedicated staff running RSL test stations in all of the major conurbations where new licences are expected should not be encouraged. The resources thrown behind such operations by the large groups make the application process an unbalanced one. I am aware of two

of the big groups that presently have 'departments' dedicated to carrying out such test broadcasts on a cyclical basis around the UK. They simply test existing brands and try their 'new' formats, which in some cases are simply a radio rollout of a magazine title. This enables them to use their vehicle(s) to create a demand that is not, always, strictly true.

Surely we should be encouraging new, innovative players into the radio market and discouraging the bland, repetitive formats that are being broadcast in many parts of the UK presently.

The 3 month application timetable would appear to be a sensible one, allowing applicants to lay down some sort of plan for their own business should they be awarded the licence.

Will Ofcom be setting a stricter timetable upon the date by which a successful applicant should be ready to go on air also? In the past, licence winners have taken inordinate amounts of time after the license award before the commencement of broadcasting. I believe that there should be a tighter timescale whereby winning applicants have a fixed period in which to complete the business preparations and commence broadcasting.

11. Short-Listing Process

I have personal experience of the application process in Ireland and it appears to be a cumbersome one that has no place in the era of modern application process that Ofcom is proposing.

I believe that there are absolutely no benefits to the Irish process and indeed this kind of process would simply slow down the methodology that Ofcom is planning to implement.

12. Application Statements

I believe that the need to mention unsuccessful applicants should only be in a situation where one (or more) of them deserved special mention. Such as when the process has been an exceedingly close and difficult choice.

As you will be aware, with license applications, there always appears to be a minority for whom the process has allegedly been an unfair one (usually the losing applicant!) and Ofcom should try to avoid inflaming this situation any further.

It may be helpful if privately, unsuccessful applicants could learn about the views from the Ofcom team on the (very general) strengths and weaknesses of their application.

13. Effective, Consistent & Timely

This is a question that is difficult to answer at this stage.

It certainly appears from both conversations with Ofcom staff at the recent Manchester meeting and from the way that Ofcom is going about its business that the process should become a better one.

I would, however, stress that the application process needs to be seen to be 'transparent' and that the process is exactly the same for any applicant, for the reasons that I have highlighted earlier in this document.

14. Current Practices

I believe that the proposals are a step forward from the current process, which has (by some) long been seen as unfair and not consistent.

Ofcom should leave room for continued streamlining and 'tweaking' of the process as it goes along and as any potential problems occur.

I understand from the presentation at the Manchester Ofcom meeting that there will be a drive towards bringing new operators into the UK radio market and this has to be encouraged. Existing radio groups clearly see that there are a number of new opportunities for them to enlarge their portfolio and are already setting their dedicated teams to work in many areas. This has to be discouraged and the advertisement of smaller-scale licences encouraged, as opposed to the grouping of such frequencies to form additional regional services. Ofcom now has the difficult task of setting the standards for radio licensing for the next few years and to lay down the future of local stations for the citizen consumer. I believe that very serious thought and attention needs to be paid to this vitally important part of UK culture. People love their local radio station and there are still many parts of the UK that don't have their own service, but have to accept programming from outside their area. There is still time and spectrum availability to ensure that this is the case.

15. Additional Costs/ Benefits

I do not believe that any of the proposals laid out in this document would add anything in terms of costs for applicants. Similarly I do not believe that there will also be any considerable savings. The elimination of paper copies of the licensing process for example may save a small amount of money, but as a whole, this is a small part of the application costs anyway. Research costs, RSL operation, the costs of public meetings and similar costs far outweigh the costs of the printing of application documents.

I trust that my thoughts will be of some assistance in Ofcom's final decisions.

KENNI JAMES L.I.M.