

OFCOM CONSULTATION

LICENSING OF FM COMMERCIAL RADIO

RESPONSE OF KENT MESSENGER LIMITED

Background:

Kent Messenger Limited (KM) is a privately-owned company that controls five small-scale FM radio stations in the county of Kent, broadcasting locally as KM-fm. KM has also contracted to provide a new, digital-only local service on the county-wide multiplex that will commence transmissions in April 2004. KM publishes a variety of both paid and free newspapers around the county and is the leading newspaper publisher in the area.

Question 1 : Do you agree with our broad objectives for the radio sector?

The broad objectives described by Ofcom are a useful and clear summary of the statutory requirements of the Broadcasting and Communications Acts that guide and control Ofcom.

KM fully shares the objective of facilitating a thriving, competitive, commercial radio industry that serves the interests of listeners and advertisers. How these broad objectives are implemented and achieved is the real challenge for Ofcom.

In general, we note:

- The population of the United Kingdom is generally stable and over 95% of the population already listen to the radio for some 3.5 hours every day (24.5 hours per week). The available listening universe is therefore unlikely to increase significantly in the coming years, resulting in a fragmentation of audiences.
- Competition for time and attention increases from other media and activities, including increased offer from BBC Radio that also impacts upon the listening to commercial radio.
- Additional spectrum for analogue radio services remains strictly limited: it is not the licensing of 30 or so additional FM frequencies that will alter the existing commercial radio economy. Those stations, whether local or regional, will surely find an audience and a commercial existence.

The shape, balance and commercial future of the radio industry must take account not only of the analogue base (and future additions) but also of digital developments and the multi-platform future that is currently opening. This is not the subject of the present consultation; but we hope that "joined-up regulation" will enable issues to be brought together and considered in a broader perspective than has perhaps been the case previously. Both Digital development and Community Radio are likely to have as much, if not more, impact on KM's radio business than the licensing of additional analogue services.

As Ofcom's own studies confirm, it is clear to anyone looking at radio station and group accounts that the main profits and revenues are generated from the larger national, metropolitan and regional stations, where there is high national revenue content. An incompressible level of fixed costs (necessary to provide quality local programme content) together with limited local (and negligible national) advertising resources, means that small-scale radio stations are among the most commercially fragile in the radio sector whilst providing a proven service for local listeners demonstrated by ratings success. Ofcom cannot alter the imbalance between smaller-scale radio services and larger stations or groups. However, KM believes that Ofcom should recognise the specificity of small-scale services and adapt its objectives and policies accordingly.

Question 2 : Do you agree with our proposed policy for allocating FM spectrum?

We agree that RSL's should be encouraged and accommodated: maintaining a core resource for RSL's is highly desirable – at the very bottom of the waveband maybe this resource could be expanded slightly.

The remaining spectrum for new FM services remains strictly limited. We agree that the remaining analogue resources should be allocated as swiftly as possible to enable new, viable services to be established before a (currently hypothetical) migration to digital.

We are strongly in favour of Community Radio, provided it offers alternative output to local commercial services and funding mechanisms are implemented that do not upset already fragile local advertising markets.

Question 3 : Do you consider that, where possible, advertising larger or smaller licences best serves the interests of citizen-consumers?

KM operates five small-scale local commercial stations in Kent, all of which have been acquired as loss-making ventures with the intention of turning into break-even and hopefully later profitability. Each has its own community spirit and each has campaigned for many years for the right to have its own commercial radio station.

KM believes that other similar communities should have the right to seek a local commercial radio station for their community. But Ofcom must be mindful of the fact that there is a high cost of running a professional, well-managed radio station serving the community with good programming, local news and information: local interest has to be balanced with economic opportunity and viability.

Question 4 : Should we seek to aggregate any or all of the potential licence areas within the following four broad regions:

- **North-East England**
- **South-West England**
- **South Wales**
- **Solent**

What are the costs and benefits attached to adopting such a policy?

KM does not believe there should be any preference toward larger or smaller licences: the decision in each case should be taken on the basis of the underlying history, circumstances and economics. Different areas/regions should therefore be treated individually rather than according to any general policy.

That said, the mere fact of advertising several frequencies either as individual local licences or re-grouped regionally effectively pre-judges the result: as Ofcom recognises itself, localised licences tend toward a broad local/music format where large regional licences can support more specialised services.

Question 5 : Should Ofcom adopt a policy of advertising two new licences of a different size each month, or would advertising a larger number of licences but at longer intervals be preferable? What impact would either option have for resource management among prospective applicants?

Provided Ofcom announces its advertisements sufficiently in advance and on a regular basis there should be no problem for any applicants. Large groups have obvious resources that they may deploy on multiple applications, if necessary. Smaller applicants will in any event be focused on a particular licence.

Question 6, 7 & 8 :

What is your view regarding the proposal to provide information tailored around a specific licence area at the time of its advertisement, rather than generic guidance on the licensing process?

Would it be beneficial for Ofcom to vary the nature of information requested in an application according to the type of licence and/or applicant?

Would applicants find it helpful to be provided with factual information about existing listening patterns etc. in a new licence area?

Given that Ofcom is approaching the subject of licensing afresh and under revised legislation, a level of initial generic guidance both as to Ofcom's expectations and processes would be welcome and preferred. As Ofcom notes, a body of expectation and practice has built among licence applicants to the Radio Authority over many years. We agree that procedures should be lightened and simplified: this is what the RA did when replacing the IBA – before inflation set in again! Clear guidance as to what Ofcom expects (and does not want) has increased initial importance.

Specific guidance as to the way in which Ofcom intends to apply its statutory remit relative to a particular licence would clearly orient and assist applicants. As Ofcom recognises, the limitation with such a policy is that each application still has to be judged individually on its merits in accordance with the statutory criteria and Ofcom's duties.

Information tailored around a licence area and generic guidance are both useful. More specific information in terms of coverage, transmission site(s), demographics, TSA etc, would be helpful and save some costs. Information about listening patterns and the like is already readily available through Rajar and applicants' own research. KM also believes that any serious applicant for a Licence should have and demonstrate sufficient general knowledge and information about a licence area in order to meet the aspirations of prospective listeners without relying on Ofcom to provide it.

Question 9 : Do you agree that a single letter is preferable to other means of seeking clarification and/or amplification of an applicant's proposals? Please provide a rationale for your preferred method of follow-up questioning.

Ofcom should be free to obtain as much accurate information concerning a prospective applicant and its intentions as possible. In our view, this should not be arbitrarily limited to a single letter. The key proposal from Ofcom is transparency: if questions and answers are made public on the website, in the same manner as applications, it does not matter how many letters it requires to elucidate a point – clarity replaces theoretical simplicity. We do not believe face-to-face interviews would assist the process as they would need to be public in order to meet similar requirements of transparency and accountability.

Question 10 : Are you content with Ofcom's proposals regarding the submission of applications?

KM welcomes Ofcom's proposals to scale-down application documents and to allow them to be submitted in electronic form rather than bound in numerous copies, often with over-elaborate supplementary material: "we intend to consider only the information that we have requested should be submitted".

That implies that Ofcom will clearly specify the information it wishes to receive. At the same time, many applicants will have undertaken detailed studies investigating the case for their application proposals. These can obviously be summarised in the publicly-available application, but Ofcom will also need to consider and provide a mechanism for submission and consideration of such underlying documentation or research if it wishes to have full regard to applicant's proposals..

Question 11 : Do you agree that a short-listing process such as that employed in Ireland could potentially slow down licensing? How might the adoption of such a procedure improve the overall process?

The process adopted in Ireland has the merit of public transparency and accountability but requires time and resources that may not be similarly available in the UK. In Ireland, accent is placed on public opinion through meetings, but research or other means may also provide evidence of demand or support. Without burdening the process with public hearings, we prefer the simpler approach of documented applications (and follow-ups) made publicly consultable by internet.

Question 12 : Would you prefer the statements made after licence awards to include reference to unsuccessful applicants as well as to the winner? What would be the benefits/disbenefits of your preferred approach?

The problem has largely been legal. If one gives reasons for a decision that decision can be challenged or subject to judicial review; but if no reasons are given almost no challenge is possible! KM believes that, in broad terms, it would be preferable for Ofcom to indicate both its key reasons for awarding a licence and also its broad assessment of or reference to unsuccessful applications. As much can be learned from failure as from success!

Question 13, 14 & 15 :

Are you confident that these proposals for a new licensing process can deliver a regulatory system which is effective, consistent and timely?

Can you suggest any changes to the proposals which would improve on current practices?

Do you believe there would be additional costs, or cost savings, for the radio industry as a result of the proposed changes? Please specify. If you anticipate higher costs in any area, do the benefits of the proposed new system justify these?

KM welcomes any simplification of the licensing or regulatory process applicable to radio. But it is easy to adopt a "group approach" that inevitably favours larger industry players over smaller independent operators. Each local radio area, whether an existing licensee or an applicant, needs in our view to be considered in the light of its specific circumstances. Whilst general procedures and considerations should obviously apply for the purposes of efficiency and consistency, we believe Ofcom should also retain the flexibility to assess and to deal with particular markets or circumstances according to their specific requirements.

Reducing the cost of applications by eliminating multiple printed versions is a positive step – more specific guidance or instructions will be needed when licences are advertised. It remains to be seen how information or data other than that included in an application document can usefully and efficiently be submitted.

We regret that this consultation is limited to licensing commercial FM licences, as we believe existing and future FM services should be viewed in the overall radio context that necessarily includes both Community Radio and the development of digital radio via DAB multiplexes and other platforms. Both of these developments provide additional commercial pressures for economically fragile small-scale FM services.