

Estuary Media Limited

Response to 'The Future of Radio – The next phase'

A LISTENER'S PERSPECTIVE

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Executive Summary

Ofcom’s revised proposed programme guidance adds little for protecting the interests of ‘localness’ for listeners and does not heed the stark messages given by the citizen-consumers who participated in the Essential Research study. Furthermore, Ofcom’s proposals may actually encourage deceitful broadcasting, rather than promote truth and transparency.

The proposal fails to specify the significance of setting minima for local material, rather emphasising a measure of the amount of often pre-recorded, locally-made programmes stations should provide. The concept of ‘locally made’ is irrelevant in the context of the large number of stations which will be allowed to co-locate.

We strongly believe that, combined with Ofcom’s intended acceptance of Character of Service definitions as being an adequate basis for regulation, the proposal sounds the death-knell for local commercial radio. We fear that this will become Ofcom’s enduring legacy. **However, we believe that practicable alternatives exist which, at least in one case, would protect localness whilst reducing some of the more onerous aspects of current regulation for radio station operators.**

As listeners who care about local radio, we appeal strongly to Ofcom to reconsider its intentions, and to uphold its primary role – to protect the interests of the citizen-consumer. In this regard, we hope that Ed Richards’ comment that this consultation is principally a “legal requirement”¹ does not suggest that Ofcom has already made its decision or would be reluctant to further revise its proposals after careful consideration – if necessary, involving further consultation. The policies adopted at this time are crucial for the long term future of radio, and therefore justify such action, if appropriate.

¹ Industry presentation at Riverside House, 22/11/07.

1. Introduction

We are pleased to have an opportunity to respond to Ofcom’s revised proposals on localness content in radio. Our stakeholder interest for responding is as well informed and interested members of the listening public who have a longstanding passion for engaging, empathetic local radio.

We realise that given the strong radio industry lobby and the potentially limited or selected knowledge of the issues raised by the consultation available to some (e.g. MP’s lobbied by radio industry groups), ours may be a minority view amongst respondents.

However, we hope that Ofcom will form its views from this consultation on the basis of the merits of the arguments and evidence-based rationale presented, and especially if few informed listener responses are received relative to radio industry views. A strong industry lobby should not be seen as a vote of confidence for the proposals from the point of view of the citizen-consumer.

2. Response to Consultation Questions

2.1 (A4.1) Revised proposal on localness guidance for analogue commercial radio

Type of licence	Proposed programming guidance
FM local stations	<p>Each station should produce a minimum of 10 hours a day of locally-made programming during weekday daytimes (this should include breakfast).</p> <p>Programming should include local material across those 10 hours as a whole, although there is no expectation that local material would be included in each of those individual hours if this is not appropriate.</p> <p>Each station should produce a minimum of 4 hours a day of locally-made programming at weekends (in daytime) which should include local material.</p> <p>Those stations with an MCA (Measured Coverage Area) of 250,000 adults (age 15+) or fewer can apply to share programming within their 10 hours of locally made programming on weekdays to form a small regional network, but should still provide 4 hours of bespoke (i.e. specific to each station) programming with local material every day, including breakfast on weekdays. This should be locally-made within the licensed area unless co-location has been agreed. The criteria used to decide whether to allow such programme sharing will be the same as those used to decide upon co-location, set out below.</p> <p>Stations with an MCA of 250,000 adults (aged 15+) or fewer can also apply for colocation; requests will be considered in relation to our published criteria (local affinity, distance between the areas and financial viability) – although we would not rule out requests from larger stations in exceptional circumstances.</p> <p>The decisions as to whether to allow co-location and/or programme sharing are independent of each other, and are at Ofcom’s discretion.</p> <p>All FM stations should broadcast local news throughout peak-time both on weekdays (breakfast and afternoon drive) and weekends (late breakfast). Outside peak time, UK-wide, nations and international news should feature.</p> <p>In exceptional cases, if a station can put forward a convincing case as to why it should be treated differently, for example, as a specialist music station, and so have</p>

AM local

to provide less local material and less locally-made programming than the guidelines suggest, Ofcom will consider such requests on a case by case basis.

The guidance above also applies to any AM station broadcasting to an area which is not also served substantially by another local commercial station.

Daytime is defined as 0600 to 1900 both weekdays and weekends.

Each station should produce a minimum of 4 hours a day of locally-made **stations** * programming, which should include local material, during weekdays and weekend daytime.

At least 10 hours of programming during weekday daytimes should be produced within the nation where the station is based (i.e. if the minimum 4 hours is locally made, a further 6 hours should be produced from elsewhere in that nation).

Stations with an MCA of 250,000 adults (aged 15+) or fewer can also apply for colocation; requests will be considered in relation to our published criteria (local affinity, distance and financial viability) – although we would not rule out requests from larger stations in exceptional circumstances.

All AM stations should broadcast local news throughout peak-time both on weekdays (breakfast and afternoon drive) and weekends (late breakfast). Outside peak time, UK-wide, nations and international news should feature.

(*any AM station broadcasting to an area which is not also served substantially by another local commercial station will be treated as an FM station.)

Daytime is defined as 0600 to 1900 both weekdays and weekends.

No station should be required to produce more locally-made programming or more local material than at present.

In line with Ofcom's previously stated policy, no licensee will be granted a request to change its hours of local material and locally-made programming within two years of a station's launch.

Issue for consultation

We welcome views as to the extent to which these revised proposals strike the right balance between safeguarding the interests of listeners and ensuring the viability of the commercial local radio industry.

We are not surprised that Ofcom has, ostensibly, attempted to find a compromise to meet the differing claims of the radio industry and interests of the citizen-consumer. However, we strongly feel that Ofcom's revised proposals *do not strike the right balance* to meet the interests of listeners, but continue to heavily favour radio operators, approaching a high level of self regulation in all but name.

Critically, we believe that, if implemented, the intended programme guidance will sound the death-knell for local commercial radio and, combined with the dilution of formats to often inadequate Character of Service definitions, will not protect breadth of choice available to listeners.

Our conclusion is rationalised as follows, and further detailed below:

- (1) Mandating locally-made programmes but not setting minima for local material cannot possibly guarantee that licensees will deliver any more than a few moments of local material daily
- (2) Audiences loyal to local radio want engaging local radio, presenters who understand and connect with the areas they serve, not 'national names' syndicated across regional or national networks – local commercial radio revenues are suffering in large part because

- operators have disengaged from their audiences, a cause-and-effect relationship which can easily become a vicious circle
- (3) Highly ambiguous Character of Service definitions will continue to allow bland, safe programming to crowd the spectrum
 - (4) At a local level, commercial radio operators will continue to seek ways to minimise costs as they increasingly chase more lucrative advertising revenues on their national/regional flagship stations and through networked programming across local stations
 - (5) Co-location will erode the local character of stations, whilst moving operators further away from the 'localness USP's' which they claim and audiences so clearly want
 - (6) BBC local radio and, increasingly, selected community stations will out-class commercial services
 - (7) Listeners are unlikely to tolerate 'fakery' in local programming when they become aware of the 'games licence holders play'
 - (8) The experience of US deregulation is clear – Ofcom must take heed.

Each of these points raises serious concerns not only for the future of local commercial radio, but also for Ofcom's regulatory responsibility to promote fairness, truth and transparency in broadcasting.

As a result of the proposed programme guidance, the local listener in need of information, for example an accurate up to date report following a road traffic accident, will soon be faced with a choice which is already becoming evident in some areas:

Example Scenarios:

- *AnyCounty FM* – the national "shock-jock", broadcasting across 50 so-called "local" stations, the only local identity being clumsily inserted station IDs and a few commercials for local advertisers large enough to afford them (against competition from cross-network advertisers)
- *AnyCounty AM/DAB* – in the highly unlikely event that this is locally presented, there is every chance that the programme was voice tracked a week ago, when the presenter can have had little chance of connecting with the audience in a meaningful way
- *AnyTown FM* – purporting to be local, but in fact broadcasting from a town 60 miles away with a low-paid, inexperienced presenter voice-tracking simultaneously for 4 stations and therefore has no capacity to provide essential local information, and who, in any case, not only has no knowledge of the local roads affected but cannot even properly pronounce the names of local towns. (Note: Examples of this scenario are already evident).

Unless there is a community station with the resources to provide the local information demanded (which is unlikely to be the case under the proposed funding regime), the only reliable choice for a listener seeking vital real time information will be the BBC, the quality of whose local output will not be tested and maintained by the competition from a strong commercial sector.

Mandating locally-made programmes but not setting minima for local material cannot possibly guarantee that licensees will deliver any more than a few moments of local material daily

Protecting 'localness' fundamentally relies on setting minima for the amount of local material broadcast, *not* merely the amount of locally made material. Excepting the restriction this may impose on the amount of networked programmes a station may carry during weekday daytime, the small extension of locally made material under Ofcom's revised proposal is effectively meaningless: in practice, this means that a radio operator need only broadcast marginally more music programming from a 'local' rather than a remote studio base than Ofcom previously proposed, which may in any case be automated as well as potentially prepared days in advance and therefore not 'in touch' with current local actuality; for co-located stations, not even this requirement will exist.

Example: The 'local' AM services for many areas are provided by the quasi-national *Gold*. In at least some cases, the limited 4 hours of locally made programming per day which such stations are currently required to provide is produced by automated voice-tracking, **pre-recorded up to 1 week in advance.**

The notion that stations will naturally improve the quality of programme output or satisfy local interests as a unique selling point (USP) against competitors – assuming any exist - has not been borne out in practice, and we can see no reason to believe that this will change.

Examples: We understand that Hallam FM, the FM operator licensed to serve South Yorkshire, provided very limited real time information about the 2007 floods at a critical time the flood waters were rising. Contrary to Ofcom's claims that commercial radio can take pride in its handling of this emergency, this is completely shameful.

Presenters on Dream 107.7 (Chelmsford and mid Essex) have been known to mispronounce the names of prominent towns in the area such as Witham and Rayleigh, sizeable towns which should be well known to anyone living or working in the station's MCA. This may result partly from the fact that a significant proportion of "local news" is produced in Ipswich. Similar anecdotes regarding other stations are cited in the Essential Research report.

Failure to pronounce town names properly or adequately handle a major local emergency will not win audience loyalty, and this kind of output, which will become the norm under Ofcom's proposals, quickly turns radio stations into laughing stocks amongst local people.

Moreover, such failings don't represent 'engagement' in the sense that participants to the Essential Research study highlighted as being so important. Rather, we believe that such episodes will disengage audiences, allowing the market share of BBC local stations who do demonstrate a clear knowledge of the localities they serve to grow.

Audiences loyal to local radio want engaging local radio, presenters who understand and connect with the areas they serve, not ‘national names’ syndicated across regional or national networks – local commercial radio revenues are suffering in large part because operators have disengaged from their audiences

The favoured scenario described by participants in Essential Research’s study is clear, even after being presented with Ofcom’s views on the pressures faced by local operators: **to maintain the *status quo* as much as possible.** The study reveals that most people sampled don’t want ‘national names’ in favour of presenters who understand their area, see no positives in the alternative scenarios presented and value local radio which is a part of the community. Clearly some small stations achieve this and remain viable, whilst others ‘do minimum’ and achieve fickle audiences. These are striking findings to which both Ofcom and commercial operators must take heed.

‘Striking the right balance’ means maintaining or improving on the *status quo* as much as possible. This shouldn’t be difficult for the many recent licensees whose business plans and robust local-content programme commitments were accepted by the Radio Licensing Committee (RLC) as being credible and sustainable: to ‘cry wolf’ just a few months later on viability grounds will have little credibility with stakeholders outside the radio industry.

Highly ambiguous Character of Service definitions will continue to allow bland, safe programming to crowd the spectrum

Ofcom’s revised proposals on localness cannot be considered separately from Character of Service definitions: in the absence of more meaningful format descriptions, these fundamentally must make clear the ‘local’ identity of the station in terms which anyone can understand.

Character of Service definitions vary widely in their openness to interpretation, many to the point of being meaningless for listeners to judge and Ofcom to regulate.

The example of Birmingham commercial station definitions offered by Ofcom², which Ofcom sees would “remain largely unchanged”, are in the main highly unsatisfactory, making wide use of highly subjective terms such as ‘classic hits’, ‘contemporary’, ‘melodic’ and ‘rhythmic’; and (excepting ethnic targets) principally distinguishing themselves by purporting to target broad audience age ranges.

One of these stations (Smooth 105.7) promotes itself publicly as offering “classic pop songs”³, a description that is no less vague and therefore meaningless than its “melodic music and lifestyle oriented speech primarily targeting listeners in the area aged 50 plus” Character of Service description, which Ofcom believes can adequately define the station’s format. Who determines what music formats 50 plus audiences will generally prefer? Which periods of charts does BRMB draw ‘chart music’ from (as opposed to ‘current hits’)?

² ‘The Future of Radio – The Next Phase’ pp. 21

³ See for example: full page advertisement in *The Guardian*, 8th December 2007.

In many cases existing Format definitions are not adequate, meaning that some stations have been able to radically change their programming mix at whim but remain compliant with the wording of their Format.

Examples:

Juice 107.2 FM (Brighton and Hove, Character of Service definition: “a locally-oriented contemporary music and information station reflecting the culture of the area”) has demonstrated virtually a complete revision of daytime programme output in the past 2 years:

- moving from a heavy focus on high-rotation, limited play-list with a strong emphasis on current hits targeting a young audience to a low-rotation, wide play-list with a nod away from a contemporary emphasis
- apparently making significant changes in presentation style from an edgy, young-sounding approach to a more mainstream style
- from a listener perspective, the station has undertaken a sea change in its day time programming.

No fewer than four of the music-based licensees serving London have developed Formats which are barely distinguishable from each other. The ongoing battle for ratings between Capital, Magic, Smooth and Heart may excite some in the industry, but the limited choice they offer do not serve the best interests of the citizen-consumer.

Furthermore, for there to be any possibility of simplification or relaxation of existing Format definitions protecting the diversity and localness demanded by citizen-consumers and required by listeners, there must be confidence that the regulator has the understanding to protect these interests under the current regime. Ofcom has not understood a prospective licensee’s proposals even under existing regulation.

Example: The award of the Southend licence⁴ provides a striking example of Ofcom’s apparent failure to understand the fundamental Character of Service proposed by the successful applicant under the existing Format template. The Format proposed in this case was very similar in detail to that of the existing Gold service licensee for Southend/Chelmsford; yet in its award statement Ofcom demonstrated a confused understanding of the type of service proposed. For example:

- the applicant’s commitment that “speech will account for 30% or more of daytime output” was interpreted by Ofcom as “an emphasis on **local news and information** as a minimum of 30% of the output”
- the applicant’s commitment that “music from the past 5 years will not form more than 15% of output” was interpreted as “a 15% cap on current hits”, even though the phrase “current hits” was clearly defined by the applicant in answer to a question raised by Ofcom during the application process as being tracks from the past three months.

⁴ Of which we have strong knowledge and a vested interest and therefore are most familiar (whilst other examples may exist).

Local commercial stations, unable to compete on the basis of diverse and less popular music formats, will naturally drift toward serving the 'lowest common denominator' in an attempt to grow audiences, thus diluting the market opportunity for competing commercial stations operating in the same space.

To be clear: **we do not oppose a level of appropriate deregulation or reduction of some current Format descriptions *per se***, in particular to allow stations to respond flexibly to changing listener demands, and understand that some intricate details regarding the numbers of particular genre/period songs to be played per hour may be overly cumbersome to monitor and schedule; what matters is that the distinctive characteristics of a station's service offering are unambiguous, both for listeners to understand, and for Ofcom to regulate. To make this distinction may take a more detailed explanation for some licences over others.

At a local level, commercial radio operators will continue to seek ways to minimise costs as they increasingly chase more lucrative advertising revenues on their national/regional flagship stations and through networked programming across local stations

It is regrettable that major operators of local commercial stations see national broadcasters as their primary targets as opposed to BBC and other *local* services: not only is this not what listeners want (as clearly evidenced by the Essential Research study), but it detracts from the purpose of local radio which we believe Parliament intends. Furthermore, networking can prohibit vital real-time local information being broadcast.

Example: GCap has signalled its interest to target national BBC radio audiences through networked programmes. Quite apart from it being patently wrong for an operator licensed to offer *local* services to want to compete on a *national* basis, networking has been practised at the expense of vital core local information being broadcast. For example, Essex FM recently failed to deliver vital traffic reports at a time of a major accident on one of the county's primary routes owing to the need to sustain a networked programme on a Saturday morning, not only a traditional radio audience peak but also a time when thousands of motorists will have been let down by their chosen radio station.

We believe that this mis-placed focus must be driven by a perception that it will allow the controlling radio groups to maximise audience revenues. **The message from the Essential Research study, that listeners to local radio *don't* want networked programmes featuring high profile personalities (since these are already available via national services), seems to be ignored by such operators, whilst weakening claims that the USP for a local station is its commitment to 'localness'.**

We can see no evidence to the contrary that this perception will change, although there are notable exceptions (even where networking is practised at other times). These include Essex FM's commitment to late night local programming rather than the networked programming carried on other GCap stations.

It is reasonable for national and regional commercial radio to compete with national BBC stations; however it is not a proper use of spectrum for scarce frequencies intended for local services to do the same.

Co-location will erode the local character of stations, whilst moving operators further away from the ‘localness USP’s’ which they claim and audiences so clearly want

The co-location precedents proposed will open the flood-gates for any station with a population under 250,000 to not only apply for co-location but to *insist* on it.

Unless Ofcom is able to publicly and robustly justify the case for ‘cultural affinity’ and demonstrate why it is satisfied with the financial stewardship and operational management of stations for which it has granted co-location (presumably thereby compromising operators’ commercial confidentiality), it can expect a strong push-back from any operator applying for co-location but denied on generalised reasons.

Example: Ofcom’s full published assessment in accepting Tindle Radio Ltd’s request to co-locate Kick FM, Delta FM, Kestrel FM, Win FM and Andover FM merely states: “Ofcom felt the request was in line with criteria outlined within its Radio Review, with particular regard to the size of station (all are under 100k MCAs), cultural affinity of the areas involved, operational processes, financial implications, the geographical position of the MCAs and the consequent ‘fit’ of the co-location arrangement. The arrangement in no way affects the programming output Format obligations. It is, therefore, agreed”⁵. No explanation is given as to why it was felt that this was acceptable without any public consultation either by Ofcom or the applicant group.

We don’t believe that Ofcom is able to judge ‘cultural affinity’ without public consultation and adequate research, and neither is this a matter for the vested interest operators applying for co-location to assess (“there is likely to be a stronger case where...stations are able to demonstrate a cultural affinity”⁶). How can local content be preserved in what are (in some cases) sizeable towns without a local studio or radio journalist presence? How is this compatible with the strong desire for local empathy and engagement so clearly evidenced in Essential Research’s study? **Ofcom must be confident that it has taken adequate measures to protect citizen-consumer interests in affected areas, and not simply accept a co-location applicant’s perspective as sufficient.**

To judge affinity assumes that the character and local interests of the areas concerned is understood, requiring consultation with local stakeholders in the affected areas. Left alone, operators who desire co-location will naturally ‘spin’ an argument to persuade Ofcom to their case, e.g. tending to choose ONS and geographical-based data to point to interchanges between settlements and pointing out any similarities they can find, rather than explicitly *cultural* factors. The extent to which a geographic community can define an area’s social identity and character is striking.

Example: In collating information to support Estuary FM’s programme proposal for the Southend FM licence, we asked a forum of around 100 Southend-based business

⁵ Format Change Request, Kick FM, Win FM, Delta FM, Kestrel FM, March 2007.

⁶ ‘Future of Radio’, pp. 54.

people to anonymously but honestly state what they thought 'made Southenders special.' Virtually all listed a list of similar traits, with many purposefully stressing what they perceived as being the differences from other urban communities in Essex.

'Affinity' is best judged by the affected audiences and other local stakeholders such as councils, community organisations and businesses. They must be given an opportunity to at least voice their views before co-location requests are granted.

We believe that Ofcom should give particular attention to sampling stations for which it permits co-location, to ensure that the local provisions committed by co-location applicants are maintained (e.g. the assurances of some regarding the continued provision of 24 hour local news for those communities which have lost a commercial station's studio presence).

Furthermore, any claims of 'unique' identity or special character of an area for which co-location is proposed, claimed at the time of the licence award (whether by the current operator and/or under Ofcom's regulation or not), should be substantiated. A failure to require this could undermine public confidence in licensing decisions.

BBC local radio and, increasingly, selected community stations will out-class commercial services in delivering what local audiences want

The programme values of some community radio stations should not be underestimated by commercial operators: for example, Reverb (Brighton and Hove) and Phoenix (Brentwood) consistently deliver very high standards of local content programming. Combined with genuine attempts to engage with listeners, including regular participation in local events, such stations are likely to increase their audiences as awareness of them grows and as listeners increasingly realise that their 'local' commercial station in fact broadcasts from another area.

BBC local stations are also more likely to attract talented broadcasters, as the career opportunities for such professionals within commercial radio is likely to be ever-more squeezed. The economic dynamic of a heavily relaxed market (but one which remains restricted for potential new entrants), described in our response to 'The Future of Radio', will in turn also lead to a reduction in both the number and diversity of stations. This does not add up to a formula for promoting a healthy, creative industry, and we are therefore very disappointed that Ofcom's Statement excludes consideration of this crucial point. (This is integral to policy making on the future of radio, is fully within Ofcom's remit⁷, and is not exclusively a matter for the Digital Radio Working Group to review).

Listeners are unlikely to tolerate 'fakery' in local programming when they become aware of the 'games licence holders play'

Media and public scrutiny of 'fakery' in television programmes has attracted prominent and sustained interest during recent months, and not just in connection

⁷ According to advice given by the DCMS.

with dishonest premium rate phone-in competitions. We don't believe that the issue of truth and transparency in broadcasting can be detached from Ofcom's proposals on 'localness'.

In our view, 'fakery' in radio broadcasting includes:

- presenting 'local' programming from a remote studio, *whilst* promoting it (explicitly or implicitly) as though it is being presented locally
- networking programmes which are presented as though they are being locally produced
- automating programmes whilst giving the appearance that these are being presented live (often inviting listener input which has no chance of being included in the broadcast).

These practices are evident now, and can only be expected to become the norm if Ofcom's new proposals are adopted.

To be clear: we do not fundamentally object to the principles of networking, automation and even (in exceptional cases) co-location *per se*. Indeed, some of the best broadcast radio involves careful pre-editing of recorded actuality or other material, whilst sustaining 24 hour services must inevitably involve a level of automation. However, broadcasters have a responsibility to be honest with the public they purport to serve: making clear to listeners that 'what's written on the tin' is real.

Before committing to any new policies on localness, we therefore suggest that Ofcom must seek to understand citizen views on what constitutes 'fakery' in radio. This must be a fundamental concern for protecting citizen-consumer interests and must form part of regulatory policy: a failure to do so may be seen as a policy of actively *allowing* fakery in radio. Clearly, this would be a very unwise strategy for a regulator to adopt.

Similarly, before any Character of Service, localness content or re-location change is permitted, it is imperative that the proposed change is made known to affected listeners.

We suggest that this should include requiring the requesting operator to broadcast an Ofcom-sanctioned announcement of the proposed change at pre-agreed times, and that relevant stakeholder views should be invited to be put forward to Ofcom to assist its assessment (e.g. concerning 'affinity'). Ofcom should also advise the local press of any such proposed change⁸. These simple measures would clearly connect Ofcom, the requesting station operators and local stakeholders in a very direct and transparent way, reducing the risk of any later charge that any party has acted deceitfully.

Furthermore, section 106 of the Broadcasting Act 1990 (as amended) states that "OFCOM must publish a notice specifying...[proposed Character of Service changes]... 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". This notice should be given unless it would "result in a delay that

⁸ We also believe that local commercial stations would benefit by re-engaging listener advisory panels, although this is not a matter for regulation.

would be likely prejudicially to affect the interests of the licence holder”, i.e. breach commercial confidentiality or endanger the *immediate* sustainability of the service⁹.

To avoid the possibility for co-location applicants exploiting a loophole under this legislation and so avoid public consultation, applicants should not be able to claim that the affected stations' service would be lost immediately (i.e. could not be foreseen by more than several months); to claim otherwise would suggest incompetent management, whilst the incidence of operator bankruptcy or return of licences to Ofcom would have been far more common than the few such examples to date.

We believe that to comply with this legislation, Ofcom should ensure that adequate publicity is given to affected listeners before accepting revised Character of Service descriptions. In protecting public interests, embodied in the spirit of the legislation, such publicity should also be given to proposed station co-locations, since all listeners of such stations have legitimate interests in any change in quality of service which may result.

We also doubt that the basis for allowing a Format change under section 106 (1A) of the Broadcasting Act 1990 (as amended), that Ofcom may consent to a change solely on the basis of one of four criteria being satisfied, is what Parliament intended. This would appear to suggest that up to three of the criteria needn't be satisfied.

The experience of US relaxed regulation is clear – Ofcom must take heed.

The commercial ambitions of the larger radio groups will especially threaten localness. The US experience provides a cautionary tale: Federal Communication Commissioners, politicians and even media owners have berated the consequences of relaxed regulation in radio, whilst the FCC received its greatest ever number of complaints from a public disillusioned with homogenised programming, the deterioration or loss of local news services and drum-beat talk¹⁰.

Ahead of its reading of the Media Ownership Order 2003, Pat Mitchell, then Chief Executive of the US's bedrock of public service broadcasting, PBS, told the House of Lords that the “media canaries” which a move toward radio deregulation has produced are “barely standing, much less singing” and that “tuning into a local station these days is the aural equivalent of eating a Big Mac”¹¹. The FCC actually strengthened its ownership regulation following the disastrous consequences of earlier relaxed regulation.

This is an unmistakable, stark warning of the likely consequences of Ofcom's proposals. Ofcom must take heed.

There are alternatives

⁹ (Section 313 of the Communications Act 2003).

¹⁰ 'Clear Channel's big, stinking deregulation mess', Eric Boehlert, Salon.Com, 2003.

¹¹ House of Lords Hansard, 9th December 2003.

We have outlined our rationale for opposing Ofcom's proposals above. **There are at least 2 alternatives to the proposed guidance, and additional to the 3 options presented by Ofcom in 'The Future of Radio – The next phase':**

- (1) We propose Ofcom considers the 'blue sky thinking' proposals made in pages 8-40 of our response to 'The Future of Radio'. These crucial points were not considered in the Future of Radio Statement and unfortunately none were presented as alternative scenarios in Essential Research's deliberative forums.
- (2) Mandate local *material* minima for stations whose licensing *raison d'être* is to serve local audiences. **This would involve a very simple adaptation of Ofcom's proposals whilst reasonably reducing the heavier burdens of current regulation, however correct the fundamental flaw of believing that localness will be protected by stipulating minima for locally made programming alone.**

Correspondence between proposed new guidance and recent licence award assessments

One further major issue which we believe must be explained in the context of the new proposals is why Ofcom awarded many recent licences in part on the basis of what are now being claimed as unrealistic localness commitments made by applicants. Strong format commitments and in-area studio presence were promised by virtually all winning applicants.

RLC award assessments frequently cite "impressive business plans", "commitment to 24 hour local news", "commitment in [Formats] to delivering high levels of local material" and similar as important factors in award decisions, and clearly Ofcom has a responsibility in its award judgements to feel comfortable that the proposals submitted are viable and sustainable for a significant period (and certainly beyond the 2 year period before Format changes might be requested*).

To bow to the prevailing arguments of the radio industry that heavy relaxation is urgently required to ensure commercial radio's survival seems peculiarly at odds with the RLC's judgements and many licence applicants' business plans. It is therefore critical that this apparent discrepancy is properly explained, to avoid Ofcom being open to criticism of the integrity of its award decisions.

* A 2 year cool-off period after before Ofcom will consider a Format change is totally inadequate. Licensees shouldn't be permitted to 'keep trying' to find the optimum programme mix until they find one which makes most profit.

'Second attempts' are not only unfair to listeners who were promised a particular service, but also to unsuccessful applicants whose (potentially more viable and 'in touch') applications were rejected because they didn't make as many ambitious promises to impress the RLC¹². Fundamental changes proposed by incumbent

¹² We declare a vested interest on this point beyond our perspective as citizen-consumers, as part of a former applicant group for an FM analogue licence (Estuary FM).

licence holders should require the licence to be re-advertised, to allow fair competition and to confirm local audience interests.

Furthermore, an admission of early failure must undermine confidence in the validity of operators' licence applications and market insight: unforeseen demographic, technological, competitive and business market changes rarely happen so quickly, nor can structural trends be judged so soon (as shown by recent up-turns in commercial radio advertising revenues against the pessimistic prognosis presented by Ofcom ahead of 'The Future of Radio' consultation).

Economic consequences of Ofcom's proposal: protecting the interests of the citizen-consumer

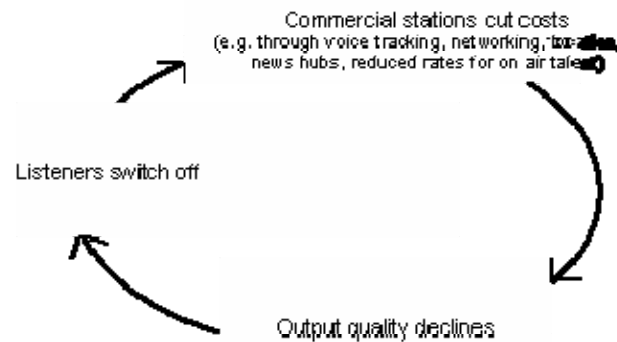
Basic economic principles determine that high levels of deregulation can only begin to satisfy the needs of the consumer – never mind the citizen – if there is relative abundance on both the demand and supply sides of the equation.

Clearly in radio this is not the case, due primarily to the shortage of spectrum, which severely limits the availability of supply. For deregulation to the extent proposed to have any hope of satisfying the needs of the consumer, revised programme guidance for localness would have to be matched by a major relaxation of licensing regulation and an entirely holistic approach to the use of spectrum.

Under the proposals as they stand, commercial radio consumers will be faced with the worst of all worlds: an increasingly closed marketplace, dominated by a few powerful interest groups, having virtual *carte blanche* to do what they choose. DAB multiplex operators will further squeeze the opportunities for 'minority' services to access digital broadcast platforms – on a national and regional level, as well as locally - a situation which we believe led (for example) to the withdrawal of Saga from the national multiplex.

More often than not this dominance is not what consumers demand, so as a result listeners are exercising what little choice they do have by switching to the BBC. If the consumers are getting a raw deal, then so much more will citizens suffer.

In an "off the record" environment free of fear from losing their current contract (or securing their next one), nearly everyone we have spoken to who works at the front end of local commercial radio recognises a vicious circle which is equally obvious to outside observers:



Of course, the supply side of the equation is further distorted by the existence of the BBC, but that has always been the case and, therefore, commercial radio's claim that this is somehow a recent market factor simply doesn't hold water.

It is obvious that this vicious circle will very soon spiral out of control – as the Essential Research clearly indicated, people place a high importance on the value of good local radio.

How to balance commercial radio and citizen-consumer interests

If there is to be any hope of balancing the interests of the commercial radio industry with those of the citizen-consumer, Ofcom's proposals on Format and localness relaxations must be combined with a major change in the licensing process in order to free up supply.

As a very minimum, any existing licensee who wishes to take advantage of relaxation must be willing for their licence to be readvertised in an open contest; this will provide a powerful gauge on the efficacy of Ofcom's licensing decisions: if a licence has been won on the grounds of high levels of quality local output then – save for major unforeseen structural changes – that is the basis on which the licence should be operated. In the unlikely event that fundamental changes have taken place, then it is imperative that the licence should be put out for open contest in the new market conditions.

We believe that there is unlikely to be a rush of applications for relaxation unless one of two situations exists: either licences have been awarded under flawed assumptions (e.g. over-ambitious proposals); or there have been genuinely major structural changes in the marketplace. In either of these situations it is essential that licences are contested if the public interest is to be upheld.

2.2 (A4.2) Revised policy on mono and stereo broadcasting on DAB for consultation

Ofcom will consider requests to change the audio characteristics of a digital sound programme service in accordance with the statutory criteria in sections 54(6A) and (6B) of the Broadcasting Act 1996.

Issue for consultation

The audio characteristics (e.g. stereo or mono) of a digital sound programme service should be considered as an essential aspect of the character of the service, and therefore should be regulated by Ofcom under the terms of section 54 of the Broadcasting Act 1996.

We do not have any new comments to add on this proposal, over and above those raised in our response to the 'Future of Radio'. The proposal to specify the audio characteristics of a service in a station's Character of Service definition seems reasonable.

3. Other Comments

3.1 Stakeholder engagement in this consultation

Ofcom's commissioning of deliberative research is welcome, however we continue to be concerned that public awareness and engagement in the full consultation process has been limited. This isn't helped by the timing of this consultation, in the 4 week period immediately before Christmas.

Clearly, Ofcom's new proposals should be of direct interest to a largely unaware public, who will be critically impacted by the intended changes for many years to come. Whilst creating awareness is difficult, Ofcom must attempt to engage this beyond merely publishing the Consultation on its website, holding an industry briefing and issuing a press release.

As a minimum, we suggest that opinion should also be invited from all individuals who participated in the deliberative forums. Re-consultation with these participants might also test individuals' perceptions of the meaning of selected Character of Service definitions (e.g. the meaning of terms such as 'melodic', 'rhythmic based', 'classic hits' and 'contemporary'). We also believe it would be helpful for limited telephone interviews to be conducted with sampled listeners in areas where studio co-location has already been permitted, especially to understand citizen-consumer perceptions of what constitutes 'local' affinity.

3.2 Validity of the Research

Whilst we welcome the Essential Research study and whilst the findings for the specific topics it covered are striking, there are significant deficiencies in its scope and analysis. Deliberative research lacks value unless it presents a comprehensive and fair set of scenarios for individuals to judge.

For example, several alternative models for delivering and regulating radio proposed in our response were not put forward to the sample groups*, nor considered in Ofcom's Statement on 'The Future of Radio'. To properly understand perceptions on 'localness' requires:

- Re-thinking which sectors of radio are best placed to deliver local radio where commercial operations are unviable
- Assessing views on the quality of local service versus the number of local stations
- Distinguishing citizen and consumer interests in understanding 'localness' requirements (the former likely to involve greater participation from listeners)
- Eliciting citizen-consumer judgements on the criteria for determining 'local' affinity between different areas
- Understanding what citizen-consumers judge to be 'fakery' in the context of input-output operations.

We hope that Ofcom will undertake further research on these matters before implementing its policy decisions.

The published research suffers from several other limitations¹³:

- Being limited to a small sample size, which doesn't appear to be statistically significant
- Offering highly generalised demographic analysis (grouping 16-44 year olds into one group; not making clear how many normally had access to radio during day-time; identifying how many live *or* work locally, how many have access to/regularly listen to digital stations, highly generalised comparisons between 'younger' and 'older', 'urban' and 'rural' populations)
- Drawing generalised conclusions for (e.g.) all remote rural areas on the basis of a sample of just one or a very few commercial stations
- Not considering the geographical mapping for citizenship and community at 'local' levels other than at a very simplistic level for its chosen samples (see reference to intra-metropolitan, pseudo-regional and consumer/citizen interests described in our response to 'The Future of Radio')
- Not considering perceptions of the desirability of just one station (rather than 'BBC+2 commercial') being available in an area, if a single station would deliver a full local service rather than several 'half services' provided by more
- Presenting some dubious interpretation, e.g. claiming that urban dwellers have more neighbours and so have less need for core information (rural communities may be smaller, but are much more likely to engage in inter-human communication; city dwellers are unlikely to have any less need for 'core' information such as traffic and travel reports than rural populations).

* A range of fundamental matters for regulation policy detailed in pages 8-40 our response to 'The Future of Radio' are relevant for presenting listener focus groups with comprehensive scenarios from which to make their choices, including:

¹³ We realise that other data may be available which have not been published.

- Holistically reviewing the role of *all* sectors in broadcast media, including Community Radio and the BBC, for delivering localness objectives (the DCMS has advised that this is fully within Ofcom's remit)
- Considering the economic consequences for relaxing regulation
- Recognising the differing regulatory policies implied by the distinct interests of the citizen and the consumer – regulating by type of service as well as by geography and audience size
- Considering the long term role of the BBC in radio strategy
- Considering the extent to which 'more is beautiful' in the context of responsible regulation and wider social interest policies
- Considering circumstances in which less than the 'BBC + 2' principle might be favoured, i.e. fewer stations, but more fully serving localness objectives
- Understanding the relationship between public service elements in radio and community geographies (including sub-regional, intra-metropolitan, EU-facing and non-geographical communities), and which sectors of radio are best able to serve these
- Considering the continued relevance for regional radio services.

Some of these issues may be considered by the Digital Radio Working Group, however most directly relate to regulation policy which is fully within Ofcom's gift to determine, and logically are integral to policy decisions arising from 'The Future of Radio' Consultation.

4. Conclusion

Given the significant proposals for localness commitments, the replacement of Formats with (usually inadequate) Character of Service definitions¹⁴ and coming only months after the RLC has repeatedly credited applications for their "impressive" commitments to local programming, we believe that it is in the public interest that all existing analogue licenses whose operators propose co-location or relaxation of their current Format commitments are re-advertised as soon as possible unless there has been full and open public consultation, adequate justification on 'affinity' grounds and evidence of demand for the change. If Ofcom relies on relicensing under its current timetable, and given that Ofcom states that re-advertisement is, in any case, at its discretion, this would allow incumbent stations to relax their Format commitments and co-locate before any opportunity for public consultation. We realise that some critics may consider this an extreme action, however we believe it is democratic and logically justified.

This will also enable any prospective operators who are genuinely committed to retaining local studio presence, maintaining serious local material commitments in their Character of Service definitions and properly engaging with their audiences (whilst subject to realistic business plans) to offer listeners alternatives which the Essential Research study shows they so clearly want. Even in a fully digital age, radio spectrum will remain a scarce resource.

The consequences of a highly deregulated radio industry are clearly apparent in the USA, as prominent observers such as Greg Dyke and Pat Mitchell have stated.

¹⁴ As per the examples for Birmingham.

Heavy relaxation of commitments to producing local material will destroy the proud tradition of true local commercial radio in the UK.

For the purpose of future public, Parliamentary or media scrutiny, the message is clear: the likely logical, evidence-based consequences of implementing the proposed policies are made known to Ofcom now.

Similarly, the 'fakery' issues described above are clearly relevant to any discussion on 'input-output' regulation. If Ofcom proceeds with its proposals without properly explaining why it has not acknowledged viable alternative suggestions put to it during its consultations, its legacy for the citizen-consumers it was instituted to serve will be both disastrous and irreversible.

As we stated in our response to 'The Future of Radio', a choice exists as to whether Ofcom should be primarily an economic regulator favouring radio industry commercial interests or one which upholds the interests of the public and society as well. To further the interests of both consumers and citizens, Ofcom must both accept and enact the latter as part of its primary role.