

**RESPONSE TO OFCOM'S DISCUSSION PAPER:
The future of FM and AM services and the alignment of analogue
and digital regulation.**

Prepared by: Estuary Media Limited

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Summary

- The need for a fresh consultation so soon after *Radio – Preparing For The Future* is questionable: the issues the industry is facing are not new and the argument that there is evidence of a structural change in recent months is unconvincing.
- However, any new proposals for major changes to radio licensing, regulation and spectrum use must be presented for proper consultation.
- For any new consultation to add new value, it must:
 - Present all stakeholders with clear, un-led options
 - Be backed up by meaningful, relevant research where this is available or feasibly can be undertaken (it appears that the research base under-pinning the discussion paper may be lacking in several areas, especially concerning the rationale for behavioural trends)
 - Be well publicised, especially to invite comments from the listening public and all interested stakeholders (not just the radio industry and affiliated organisations). Of all stakeholders, we believe the listening public is most important, since to properly understand their interests is critical for all other stakeholder interests being satisfied
 - Not be restricted, explicitly or implicitly, to considering the future of radio under the regulatory remit of Ofcom, e.g. fully engaging the BBC, considering the allocation of spectrum to BBC frequencies and the BBC's role (which may not be fully within Ofcom's remit to make strategic plans for)
 - Explain how proposals will best serve the public interest, e.g. considering the scenario where a re-advertisement of all licences may be required to satisfy a new 'playing field'
 - Ensure that, if any legislative changes are likely to be required, concrete White Paper recommendations are provided (we doubt Parliament will have much appetite for this, especially if these contradict the policy enshrined in recent legislation, so the way forward **to action** after any consultation must be made clear)
 - Allow for radical, unrestrained 'blue sky thinking' (e.g. a radical rethink in the use of spectrum, replacement of the 3-tier commercial radio model, or dilution of local commercial radio service in favour of BBC and community radio services).
- There are several simple, tangible ways in which Ofcom can better support the growth of a healthy radio industry now, which are totally within its remit and do not require consultation.

Introduction

- We are pleased to have the opportunity to respond to Ofcom's discussion document *The Future of Radio – The future of FM and AM services and the alignment of analogue and digital regulation*.
- As indicated by the paper, we have restricted our response to the topics, thought lines and areas of research we believe any new consultation should consider - and whether a consultation is needed - rather than offering specific comments on the future of radio or possible proposals *per se* (of which we have many observations and several concerns which would doubtless surface during any consultation).
- **Context for our response.** Our stakeholder interest for responding is two-fold:
 - Interested members of the listening public, who have followed developments in the radio industry for many years,
 - A local group contributor, in partnership with an established radio group, to a recent application for a small scale FM licence, in which we had had a longstanding interest and significant target audience engagement.
- Our response is presented as follows:
 1. Are the issues discussed relevant?
 2. Do the issues warrant further consideration and consultation?
 3. What additional issues should be considered or researched?
 4. What is required to ensure a satisfactory consultation and so a satisfactory strategy for the future of radio?
 5. The way forward (pre consultation).

1. Are the issues discussed relevant?

- Clearly it is appropriate that the external trends impacting any business or industry are periodically assessed. All of the issues presented in the paper therefore warrant consideration, but, as some of the graphs included in the paper show, these aren't new and should have been foreseen by anyone entering or operating in the industry within the past 3 years and especially by Ofcom, and certainly at the time of *Radio – Preparing for the future*. Ofcom's justification for a new review so soon after its substantial report is therefore unconvincing, and begs the question as to whether the pressure to change is being mainly driven by the industry itself (for example, following the hand back of the licence for Stroud).

- There is at least a fresh opportunity to set a proper course for the future, albeit at additional public expense. To succeed, this consultation must be comprehensive, open and broad in its reach.
- Certainly any proposed changes to formats, localness provisions or spectrum use must be opened to public consultation, since these reflect major changes to the way radio may be delivered to the public.

2. Do the issues warrant further consideration and consultation?

- There is a growing evidence of the pace of take-up of new technologies. However, there appears to be far too little data to draw any firm inferences about their impacts on radio listening, and aspects of the discussion presented in the paper appear to be no more than evolving theories rather than firm indicators of underlying issues (such as a view that structural factors *are* most likely to explain the current demise in commercial radio performance). Further research and investigation is needed to give credence to these, although of course it is acceptable to merely present these as ideas or possibilities.
- The paper offers some theories regarding trends, but ignores other possible explanations. In preparing proposals for public consultation, it is important to ensure that adequate consideration is given to all foreseeable factors and issues (we suggest some additional factors below).
- Research evidence to support and ground some suppositions presented in the paper is needed – e.g. what realistic on-line alternatives are really available to the small independent advertiser *locally*?
- Similarly, actual data would help support the facts behind the 'hard lines' drawn in some aspects of the study, such as the implied switch to high user interaction/high user personalisation depicted in figure 13: in this example, showing to what extent a dominant switch is happening as opposed to (say) a moderate one. Here, deeper research of listener behaviour than may currently be available may help.

3. What additional issues should be considered or researched?

- We believe that the most critical stakeholder interest to be considered is that of **the listener**. If the listener's needs, interests and behaviour are understood and he/she is won over, then a lively and prosperous

radio industry should follow. To really understand how the listener interacts and chooses between alternative media outlets takes research into behavioural trends, awareness and adoption triggers for new technology, association and loyalty analysis, amongst other factors.

- The type and scope of research needed extends well beyond that normally presented to support licence applications (largely oriented toward justifying a programming proposal against the 4 statutory criteria of the Broadcasting Act 1990 – usually involving ‘lead’ questions to meet this end¹) or by RAJAR, yet it is essential for drawing meaningful conclusions about what works. Clearly some research has been conducted in this area by Ofcom and others, but if recent behavioural-based analysis of the type we suggest is not available, it would seem to be timely for more.
- Secondly, current **advertiser behaviour** may need to be researched in detail (we are not familiar with the range of available research in this area). For example: how are markets segmented locally (e.g. between sub-regional chains and small-scale independent advertisers – and are the trends toward fall-off higher in any one group?). What causes smaller advertisers to perceive radio as a good or bad medium for marketing spend? To what extent are stations creative in their advertising offerings? How sensitive are listeners to advertisement styles and content, and what other factors influence tolerance thresholds for listening or switching stations? Presumably RAB can offer insights in these areas, again themes which should impact on the reasons for market trends and future option proposals.
- **The meaning of ‘public gain’**. Even if valid, the suggested extra costs to meet public policy interests (paragraph 4.45 in the paper) can’t be interpreted on a value basis without an attempt to quantify the public gain from local radio – for example, what price is put on the “social gain” from radio or “sustaining citizenship and civil society”? Such issues need to be thought through prior to any consultation (probably involving consultation with other government departments).
- Fuller consideration of the range of **possible factors explaining the decline of commercial radio** is needed. These might include:
 - Ofcom’s part in recent licensing decisions and its ability to improve future licensing assessments. Licence award assessments clearly have a part to play in driving subsequent applicants’ bids – the over-riding objective of an applicant is of course to first secure a licence. Common statements in award assessments such as “Ofcom was impressed with [XYZ FM’s] commitment to 24 hour local news” are a red flag; similarly, the

¹ Explaining the wide differences in interpretation of market interests which occasionally are seen across competing applications.

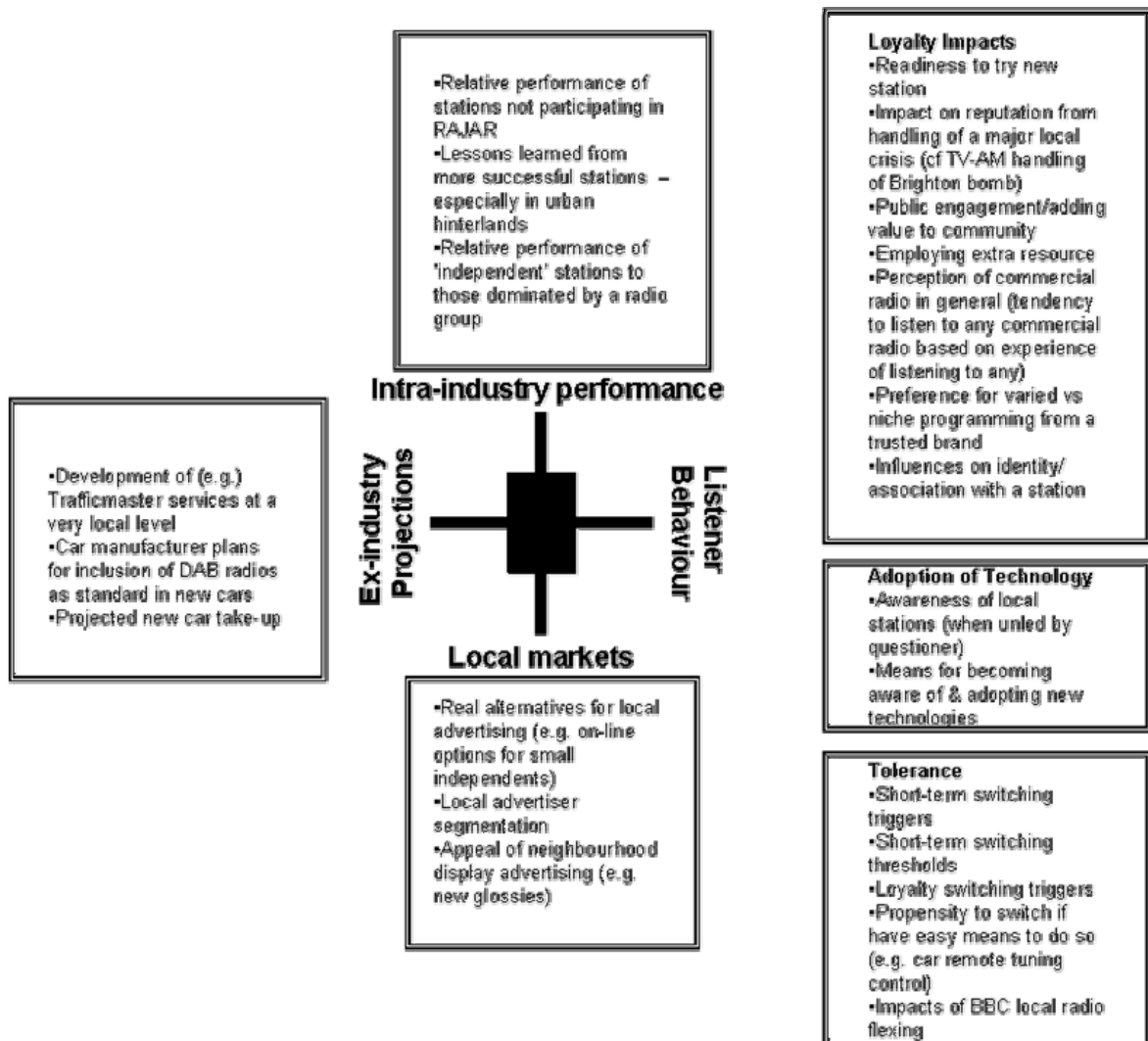
way legislation is interpreted encourages applicants to focus primarily on comparing service offerings against existing commercial stations in an area (e.g. playing down detailed monitoring of BBC output or output from commercial stations across a county divide).

Good, long-term market intelligence is usually available to support viable business planning and informed decision making by the RLC, and should be referenced by applicants themselves. Tastes and populations do not change as quickly as many may imagine. The impacts of ensuring the RLC is properly informed on available market data and taking a (true) broader picture of competition in assessing applications can be immediate and are fully within Ofcom's power to implement. This should ensure that the stations best able to perform – whilst meeting the 4 statutory criteria – are awarded licences, rather than those which most obviously play to the 4 criteria (Ofcom may in practice do this already, but this isn't apparent from published award assessments)

- Start-up time for new stations possibly being under-estimated, especially if a station has no background of engagement with its community until just before it launches and if it faces strong competition from larger, established radio groups
 - An increasing range of display media outlets in many towns – e.g. glossy magazines targeted at very specific neighbourhoods
 - Listeners being likely to be far more discerning in choosing to switch off than might be believed – for example, being sensitive to a traffic report or local news read by a presenter who has local knowledge over a report read from a regional hub (behavioural research might examine the sensitivity of listeners to such aspects and their role in disengaging loyalty/identity with their 'local' station)
- Lessons might be learned from the more successful stations (especially those operating in the hinterlands of major metropolitan areas).
 - To ensure diversity of choice and in seeking to harmonise regulation across digital and analogue platforms, one option which we believe must be considered and presented for consultation is a need to **strengthen format requirements for digital players in the long term** rather than relaxing analogue regulation.

Research Lines

- To properly present options for consultation, we believe that at least high level research or focus group discussion is needed in the areas depicted below (we are not aware of which of this data may already be available to Ofcom).
- In some cases, insight may be gained through only brief discussions with relevant organisations; we do not envisage that a prolonged or expensive research programme is needed for any of these dimensions.



4. What is required to ensure a satisfactory consultation and so a satisfactory strategy for the future of radio?

In preparing a full consultation document, it is important to engage a broad, representative range of un-led views on all aspects of the debate. Really discerning public preferences and behaviour are critical in this – and in everyone's interests.

We therefore believe that any consultation must be proactive. This means:

- Knowing who all the stakeholders are (amongst others, these include: the listener, radio industry groups, stations and current investors, interested (innovative) would-be new entrants, potential radio investors, the BBC, advertisers, radio professionals, TV licence payers, media students, potential advertisers, unsuccessful licence applicants, public service/information providers, other government departments, community groups, business enterprise associations, advertising agencies etc.)
- Proactively consulting with all of them (not just expecting that they will stumble across a consultation paper on Ofcom's website; this pre-consultation doesn't indicate what level of listener participation Ofcom engaged ahead of presenting this discussion document)
- Allowing adequate time for consultation responses (at least 3 months)
- Presenting all options Ofcom has been able to identify – using terms and language non-industry people can understand (e.g. concepts such as 'format' may need to be explained or illustrated, as for Stray FM) - the discussion paper seems to do this well
- Honestly and completely presenting the advantages and disadvantages of each option and the likely impacts on listener choice as far as Ofcom has been able to identify, but not leading with a proposal or restricting fresh proposals being put forward
- Backing up proposals with adequate research, where feasible
- Making clear how Ofcom will perform its duties under each proposed option (for example, ensuring sustained broadening of choice were a general relaxation of formats proposed, allowing public comment on alternative 'formats' in a licence re-advertisement and then enforcing their implementation)
- Applying true 'blue sky thinking' in considering *any* option – especially allowing for radical thinking on the use of spectrum

- Keeping an open mind on the course beyond the consultation -- this is most likely to generate a higher quality of honest responses, as well as ideas which Ofcom hadn't considered
- Building the best possible knowledge of future scenarios by engaging a dialogue with other government departments and major players in the development and promotion of new media technology (including the BBC, travel information providers etc.)
- If necessary, it is far more in the public and radio industry's interests to slightly delay publication of any consultation document until better data is available. However, if properly planned and targeted, this shouldn't incur excessive expense or time.

5. The way forward (pre consultation)

- To formulate sensible proposal options for the future regulation of radio and use of spectrum, a serious attempt needs to be made to define what a healthy radio industry looks like from all stakeholders' points of view, and who is best placed to deliver specific services. This must be objective and embrace the role and reach of the BBC.
- Ofcom should be slow to suggest policy or legislative changes, and especially if it can't offer any certainty that these would uphold the public interest. The governing legislation is recent (and within the age of the new technology) and there is likely to be a low appetite for change in legislation in the near future. As highlighted by the paper, policy decisions have been made in the UK which place significant value on the role of local services.
- Ofcom shouldn't wait for the conclusion of consultation to learn lessons and draw insights and, where appropriate and within the scope of its current framework, to implement immediate changes. No more so is this true than in its approach to licensing new FM stations (a process which will probably be concluded by the time the outcomes from any new consultation are implemented).

Annex A – Referral to Department of Media, Culture & Sport

Mr Jonathan Stephens
Permanent Secretary
Department for Culture, Media & Sport
2-4 Cockspur Street
LONDON
SW1Y 5DH

10th December 2006

Dear Mr Stephens,

Potential consultation on the future of radio

Following the publication of its recent discussion paper (*The Future of Radio – The future of FM and AM services and the alignment of analogue and digital regulation*), Ofcom has invited public opinion regarding the value of conducting a consultation into the future of radio, an exercise which would appear to address very similar issues to *Radio – Preparing For The Future*, published only one year ago. The reasons which may justify a fresh consultation suggested by the discussion paper are unconvincing.

In considering the questions posed, we feel strongly that if any new consultation proceeds, Ofcom may not be best placed to conduct some aspects of this. Specifically, formulating a strategy for the future of radio cannot adequately happen by considering radio currently regulated by Ofcom alone (e.g. including the BBC and internet services not regulated by Ofcom). Radical re-thinking on not only the use of spectrum but also the capability and role of the BBC, commercial and community radio services to deliver broadcasting policy objectives at a local level and otherwise is likely to be needed.

We are aware that these issues yet again call into question the role of the BBC, and doubt that Parliament will have an appetite to revisit major legislation so soon after the renewal of the BBC's Charter and passing of the Communications Act 2003. We are therefore sceptical that any new consultation will be in the public interest unless it can present options based on research and robust thought lines which includes all radio in its remit.

We therefore urge the department to consider whether and, if so, how and by whom any new consultation should be conducted, as well as to ensure that its outcomes will not require further consultation to allow direct action or legislative change. We would appreciate your comments on this matter.

A copy of our response to Ofcom's invitation is attached for your information (please note that this includes one annex which we wish to be treated confidentially).

Yours sincerely,

Clive Johnson

For and on behalf of Estuary Media Limited

Copies:

Rt Hon Tessa Jowell MP, Secretary of State for Culture, Media & Sport
Mr Shaun Woodward MP, Minister for Creative Industries & Tourism
Mr Ed Richards, Chief Executive, Ofcom
Mr Peter Davies, Director of Radio & Multimedia, Ofcom
Mr Neil Stock, Head of Radio Planning & Licensing, Ofcom