Response to Ofcom on “Radio - Licensing Policy for VHF Band III, Sub-band 3”

16 November 2005

EXECUTIVE SUMMARY

1. GCap Media plc (**GCap**) is the UK's largest commercial investor in DAB digital radio and has interests in 30 digital multiplexes and 100 individual radio services.

2. GCap maintains the view submitted by GWR Group plc in March 2005 that Ofcom's proposal to issue further national multiplex licences would be **unlawful, unfair, unjustified and disproportionate**.

3. GCap does not agree that these proposals represent the optimal use of the spectrum. GCap welcomes, however, the allocation of **further capacity for local multiplexes**. Nevertheless, GCap is concerned by Ofcom's proposals to allocate only three blocks of spectrum to local multiplexes, which will be insufficient to accommodate the complete transfer of analogue local radio to digital. Ofcom's current proposals would result in some local stations becoming 'stranded' indefinitely on analogue, especially smaller commercial stations and those most recently licensed as well as the new community stations. This would be unpopular with consumers who, although owning a DAB device, cannot listen to their favourite stations or programmes on digital and would have a commercially detrimental effect on these stations.

4. GCap maintains the view submitted by GWR Group plc in March 2005 that the award of **additional national multiplex licences** will not increase choice, and notes Ofcom's own consumer research which identifies that listeners do not wish for additional national services. The introduction of further national radio services will prolong the period of unprofitability for existing local and national digital operators and may destabilise the radio industry.

5. GCap is a 63% shareholder in Digital One which is also submitting a consultation response to Ofcom. We have seen and endorse the views contained in their submission. In addition to these submissions, GCap (along with Digital One) is submitting a confidential legal submission. In this document we have concentrated on issues affecting local multiplexes.

SCENARIOS FOR THE FUTURE

This consultation response starts with two scenarios which illustrate the effects of Ofcom following its proposed course of thinking, and the effects of Ofcom taking cognisance of its own and others' research, and taking a different course. GCap Media contends that Ofcom's intended course will create serious negative effects, whilst the alternative proposed by GCap will bring positive benefits. This is the first scenario to be presented, and represents a significant net benefit over Ofcom's apparent intended course.

Scenario A – Ofcom creates a virtuous circle for DAB digital radio

It is 2011. DAB digital radio is now a mass-market medium, with receivers in 40% of homes and 21.6 million listeners to a wide range of services from the BBC and Commercial Radio. Every BBC local and national station has found a place on an appropriate multiplex, and virtually all commercial stations have a route to digital available to them. Even the new Community Radio stations – receiving enthusiastic support from the targeted groups of listeners they reach out to – will be accommodated.

In 2005, Ofcom had laid the foundations for this success. The regulator had re-examined its own published research on future listener demand, which had shown that 19 channels of national broadcast radio from the BBC and Digital One easily satisfied listener demand; research which also found no discernible appetite amongst listeners for any further national broadcast stations.

Ofcom then looked again at research from its most experienced DAB digital radio licensee, Digital One. This showed that for 48% of listeners, not being able to listen to their favourite local stations in digital quality would make them less likely to buy a DAB digital radio. It then looked at the coverage map, considered the fact that local radio services could only reach their listeners digitally via DAB digital radio (other routes such as digital television being national in their coverage), and resolved to commit all available resources – and four blocks of newly available spectrum - to providing a DAB digital radio path forward for all local stations.

Encouraged by this future-proofing, outbreaks of creativity spread from one local area to another. Resonance FM in London developed its eclectic mix for downloading and replaying by listeners, whilst in Essex and Reading 'Our Kind of Music' led to an explosion in interest in digital radio amongst the swing generation. In DAB technology, innovative low-cost solutions to multiplexing small stations across wider areas are in place by 2011, and the sharing of costs – and revenue from listen-and-click return channels - makes it possible for ever smaller local and community stations to succeed on air. In marketing, local BBC and commercial services come together to jointly market digital radio in "local DRDB" initiatives.

In acknowledging the veracity of its own and others' research in 2005 and concentrating on listener and localness needs, Ofcom had disappointed two organisations – the commercial groups which had indicated that they wished to bid for a second national commercial multiplex. As Ofcom's Chief Executive had said at the 2005 Radio Festival, Ofcom's "primary duty is towards the consumer and citizen interests rather than the industrial ones". The commercial groups found other routes to market for their proposed channels, chiefly through digital television, so in 2011 listeners are not deprived of what could have been on national DAB.

Scenario B – Ofcom jeopardises the future of DAB digital radio

It is 2011. DAB Digital Radio has stalled in its development, hampered by a backlash from broadcasters unable to find a place on a local digital multiplex, campaigns in the local press pointing out the technological backwardness of their advertising competitors in commercial radio, and the precarious financial position of many local multiplexes which lost channels to the second national multiplex which launched in 2008. Consumer interest in DAB digital radio is waning – the national commercial channels seem to be copying each other with two channels for each audience segment, putting pressure on the business plans of Digital One and the owner of the second national multiplex. In many areas struggling local multiplex operators find it difficult to keep going.

It is 2011 in Digitown, in the Midlands. In 2005, listeners could enjoy 19 national digital radio stations from the BBC and from the commercial sector. On the local multiplex they were blessed with 9 channels of local output, in genres ranging from Modern Rock to Bollywood. The second national commercial multiplex was allocated to a consortium of channel operators and launched in 2008. Despite previous assertions to the contrary, 3 service providers on the Digitown multiplex ceased their contracts on the local multiplex in 2008 and took these stations to a national audience. Cost reduction and a more attractive national proposition to advertisers were behind this decision, which left the Digitown multiplex – with a business plan assuming 9 channels paying for transmission – to struggle on with just 6. The less attractive range of local stations – most of which were now analogue simulcasts - restricted demand for DAB digital radios in the area, especially when the channels on the second national commercial multiplex began to mimic those on the first national multiplex. Although it had tried hard to ensure distinctive services on the new national multiplex, by 2011 Ofcom found itself with a situation where the two national commercial multiplexes were transmitting virtually identical services, as had happened with attempts at format control in big cities in the analogue age.

The situation is even worse for some of the smallest commercial stations. For them, the Ofcom decision in 2005 to ignore its own research and place the interests of commercial organisations wishing to operate national services above those of listeners wanting to hear local services in digital quality has created the “New Medium Wave”. A collection of unfortunate local stations find themselves becalmed on the increasingly unpopular FM frequency. Although twin-band DAB/FM receivers are available, listeners shun the FM stations with their lack of scrolling text information and their confusing numerical frequencies. The digital stations’ collaborative marketing – “listen to a name not a number” – makes things worse.

Capital Gold is now a great success on digital radio, but on Medium Wave it had declined from 1.5m listeners in 1999 to 860,000 in 2005 as Medium Wave became ever more painful to FM-accustomed ears. In 2011 the same effect afflicts the FM stations when compared to their digital competitors. History repeats itself as the becalmed FM local stations face falling audience and advertising revenues until closure, or amalgamation with neighbouring stations, are the only options.

Another victim of that 2005 decision is Community Radio. One of the great new ideas of the early years of the century, by 2011 it is locked in an unappreciated backwater. Stations targeting disadvantaged audiences are denied the accessibility benefits of DAB digital radio, such as spoken station identification and subtitling of output. The entire Community Radio sector is denied the fundraising possibilities of DAB digital radio, such as subscription services and click-to-donate return channels.

The final irony comes as national radio listening via digital TV continues to grow. The national channels which Ofcom saw as supporting the case for a second national commercial multiplex are also available nationally through digital television. Listening through Digital TV – at 30% in 2005 – rises to more than 50% in 2011. But local radio cannot get digital TV carriage, as localisation of digital TV output was never a priority. By denying local radio its only opportunity to get into the digital age, and creating instead parallel broadcasting of the same output on a number of different national digital platforms, Ofcom has created a rather perverse kind of listener choice.

The parallel of through-the-TV listening with radio is fully realised in 2014, when DVB-H is launched. The Freeview TV and radio services are available on a mobile platform, entirely duplicating the opportunity that Ofcom had extended to the national DAB campaigners in 2005 – a decision that froze many local radio stations out of the digital future.

Detailed Response - Introduction

In the short amount of time Ofcom has allowed interested parties to prepare a response we have compiled a number of points where we think Ofcom is misguided in its thinking. We would be happy to discuss these issues at any future time. As Ofcom is aware, this response takes as its starting point that a second national multiplex is **unlawful, unfair, unjustified and disproportionate**.

GCap Issues with Ofcom Thinking

1. In paragraphs 6.28 and 6.30 Ofcom make judgments about the desire for profit-maximisation on local multiplexes leading their growth and therefore concludes that smaller areas are more likely to be economically unviable. At the same time Ofcom state that "the availability of local digital radio services to areas that are presently not served by local digital radio services is an important policy objective". However GCap believes that whilst smaller local multiplexes may not go the traditional commercial route, there is still likely to be significant demand to fund their development. GCap has had discussions that suggest that smaller areas would have support from public bodies, the BBC and the commercial operator to ensure the multiplex had good coverage and provided a range of services, both audio and data, that would serve local people. Prior to the merger between GWR Group plc and Capital Radio plc to form GCap Media plc we made a commitment to apply to operate all local multiplexes where we broadcast a radio service.

2. In paragraph 6.36 Ofcom states that much radio innovation comes from the "provision of services that have special appeal to groups with particular interests" and then in 6.37 "commercial services that appeal to groups with particular interests are less likely to be economically viable". We would argue that the core 'particular interest' (something backed up by Ofcom's own research) would be for services that have resonance with local or regional listeners. If blocks three and four were used to enhance and develop local and regional multiplexes, a combination of vibrant local services and quasi-national formats could be developed that would meet both Ofcom's needs.

3. We disagree with Ofcom's statement at paragraph 6.170 that the risk to existing local multiplexes from services switching from local multiplexes to a national multiplex is "not so severe as to be likely materially to damage" any existing multiplex. This is especially so when combined with the statement at paragraph 6.171 in regard to services ceasing to operate due to reduced economics as a result of new national competition which Ofcom states that it is not able "to predict with any accuracy what the net effect of these developments will be, especially not for individual stations". If Ofcom is uncertain of the economic affect that a decision might have, when it states that part of its strategic framework is to "encourage the growth of a strong commercial sector", it should not pursue an action when the economic impact cannot be assessed. The Precautionary Principle must apply.

4. In paragraph 6.169 (ahead of the conclusion in 6.170) Ofcom provides a table and detail of services on local multiplexes. In relation to GCap controlled multiplexes, we believe the impact of services leaving multiplexes **will** have a material affect. In addition, we are already aware that one major radio group wishes to terminate contracts on local multiplexes for one of its key youth brands.

5. The following table summarises 37 third party services that operate across GCap's local multiplexes, highlighting the significant financial impact to GCap if these services were to terminate their carriage either to upgrade to a national multiplex or to cease operating due to economic pressures from competing services on national multiplexes. These contracts represent carriage fees of over £2m per year.

Brand	Multiplexes
Kiss	11
Passion	6
Fun Radio	11
Gaydar	1
Saga	1
Sunrise	2
Yarr	2
Smash Hits	3

6. We also disagree with Ofcom's speculation that "it is unlikely to be in the owners' interests to remove these [services] from the local multiplexes in order to be carried on a national multiplex, without being able to replace them with another of their own stations or with another operator's local or 'quasi-national' station, as they would lose local multiplex revenues". We would argue that the economic benefits of operating a service on a national multiplex outweigh those of operating locally; a commercially orientated company would be keen to make such a switch. It is of course in the multiplex operators interests not to operate with fallow capacity. However, if there were to be a new national multiplex, combined with the fact that many local multiplexes already operate with fallow capacity, the chances of contracting with replacement services are very limited. In addition, a group may believe that it has a better chance of attracting an audience or selling advertising by providing a clearer proposition on the national multiplex. Consortium-operated multiplexes would be at particular risk if one of the consortium members were to cease its contracts.

7. In bullet point 1 of paragraph 6.169 Ofcom suggests that because stations simulcast on digital, there is still no incentive to broadcast a national version of the service, citing Heart has an example. If Heart (or a similar station) decided it wanted to cover the whole country in addition to its analogue simulcasts it might find that it was more cost effective to broadcast on the national multiplex (in addition to the analogue simulcasts that rolls over their licences) than building up a piecemeal network on local/regional capacity. Whilst listeners in the analogue areas would receive two digital versions of the service, the benefit of reducing cost by national broadcasting would be hard for any group to ignore. Also by transmitting on a national multiplex, an operator would be able to broadcast a version of the analogue service in a different format to that otherwise mandated in an analogue format and without any of the local commitments they had agreed to within a quasi-national setup.

8. We disagree with Ofcom's assessment of stations in London who do not have an interest in the multiplex and which Ofcom feels could potentially seek national carriage. On **London 1** LBC 97.3, LBC 1152 and Sunrise are all stations that broadcast nationally on the digital television platform and so have shown demand for this 'local' service to have national coverage. These three stations do not need to simulcast that service on a local multiplex to trigger a licence roll-over, as for LBC the broadcast by Chrysalis of The Arrow and Galaxy would renew their analogue licence, and Yarr on London 2 would renew the Sunrise licence. On **London 2** stations including Kerrang, Saga Radio, and The Hits all do not have interests in Switchdigital and could leave London 2 for the national multiplex. On **London 3**, Easy Radio, Classic Gold, FUN radio, Gaydar Radio, Heat, Panjab Radio and Passion also have no shareholding in the multiplex and no reason to remain London-focused and so are strong candidates for any new national multiplex.

9. Also in reference to the London situation, Ofcom states “there is likely to be sufficient demand to fill any slots” created by operators who leave for a new national multiplex. Whilst London is of course of interest to many groups, for most the financial considerations would prevent them from joining the multiplex. With our experience from **London 1** and **London 3** we do not believe that there would be sufficient immediate demand if a significant number of slots became available. Ofcom also suggests, when talking about Gaydar Radio, which is ‘only available in London and Brighton’, that the same argument applies. The loss of Gaydar in Brighton would be harmful to the economics of that multiplex as there is already enough capacity for at least three new services and certainly not ‘sufficient demand’ as Ofcom suggest.

10. The move of stations from local multiplexes to national ones changes many assumptions GCap has made about the local multiplex business. We expect, as digital radio takes off, that more stations will want to join local multiplexes. However, we are at least three years away from that happening. When we consider the future of our local multiplexes we think about new service providers in three levels. Level 1 are the GCap and BBC services, already able to pay carriage fees. Level 2 are the quasi-nationals from other groups keen to achieve coverage for their brands, and Level 3 are new local services which need to be encouraged and brought to economic maturity. With initiatives like the ‘access’ channels, we have started the process of helping to incubate these new local services so they can join full-time towards the end of the licence term. In the interim, the BBC and the quasi-nationals are important sources of carriage fees as they keep the multiplex business stable before we can complete the full range of services. Quasi-nationals moving to a new national multiplex will drastically impact our local multiplex business. The knock on effect of this will be GCap having to reduce its expenditure on content, and new projects such as the possible regionalisation of XFM, to make money available to pay multiplex transmitter costs. Our recent discussions with other radio groups lead us to believe that a number of quasi-national operators are preparing for the removal of services to a new national multiplex once the opportunity presents itself.

11. In Ofcom’s research for “Radio: Preparing for the Future – Phase 2”, Section 1A of The Knowledge Agency’s report states that “when forced to prioritise what they would like to hear more of on radio, the majority [of consumers] opt for more local services, more music, more presenter-based programming and more opportunities for up-and-coming talent”. This tallies with GCap’s own research and has led to our own developments of introducing local programming on our Storm and XFM brands using new talent from across the country, who bring their local knowledge to the programmes they present.

12. None of the six “key purposes and characteristics” identified in the research refer to national issues, and indeed one of them states that “radio provides a sense of community, and serves and supports the different communities that make up the UK”, something we believe can only be carried out at the local level. The report goes on to say that twice as many people opted for local stations than national stations.

13. Ofcom states when talking about the research that they “recognise that consumer research of this type can be open to question and therefore needs to be treated with caution. There are a number of reasons why both of these pieces of research might be treated with caution.” which would seem to be at odds with its research specialists who say in the summary “they [the respondents] clearly articulate what kind of radio they want for themselves and society”. We also think this approach is at odds with Ofcom’s desire to be an evidence-based regulator.

14. Later Ofcom say that they “consider that the evidence that is available from these two pieces of consumer research [Ofcom’s and Digital One’s] is not conclusive, and needs to be seen alongside the evidence from representations made by companies in the radio industry. Ofcom considers that the latter is strongly suggestive of significant demand for additional spectrum for national radio services, and that, for the reasons discussed, this can be regarded as a good indicator of the potential for the assignment of spectrum for national sound services to be used effectively to provide additional services to listeners.”

15. However, in paragraph 5.53 Ofcom say that it “has used this research in this consultation document to demonstrate the value that consumers attach to portability and mobility of radio”. It seems perverse that Ofcom can be in favour of the research for the mobile arguments and disagree with it (especially when it agrees with the research carried out by Digital One) in relation to local choice in preference to national provision.

16. In paragraph 6.40 Ofcom suggest three “considerations that are relevant to Ofcom’s judgement as to the weight that should be attached to the objective of securing additional national services”. These include “the evidence of demand that is available from the radio industry”, “evidence of consumers’ views” and “potential effects on competition”. Whilst we are sure that other radio groups will show demand for other spectrum, and enjoy the benefit of Digital One’s investment in the medium, we believe that evidence has been shown now, and in past consultations, that the consumer view is that local content will be the key driver in the take-up of digital radio.

Conclusion

We have shown that the creation of a new national multiplex will not drive the development of new radio formats, it will merely re-allocate existing radio formats onto different spectrum. This will mean that these brands’ local content commitments (local information being a key demand of consumers) will be dropped in favour of merely providing a generic national service. This will have the combined effect of reducing the economic viability of local multiplexes and reducing localness for a significant number of consumers.

The local multiplex business is one that is fragile and still growing. The introduction of a new national multiplex at this time (even if it were legally possible, which it is not) will significantly destabilise the economics of local digital radio. We believe that the result of a new national multiplex will be to generate maximum benefit for one operator at the expense of the existing businesses for the rest of the radio industry.