

The Future Licensing of FM Commercial Radio

A statement of Ofcom's strategy for the future licensing of FM commercial radio, and the process by which new FM local licences will be advertised and awarded.

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Introduction

1. This document sets out the policies which Ofcom (the Office of Communications) will implement in relation to the future licensing of new local commercial radio services on the FM waveband.
2. The policies put forward in this statement take full account of the 123 responses to the public consultation which was conducted between 5 February and 11 March 2004. All non-confidential responses have been published on the Ofcom website.

Summary

Strategy

- We will allocate available FM spectrum to support the further development of commercial radio. In parallel, we will continue to issue restricted service licences and work to establish a new community radio sector.
- Subject to frequency clearance and co-ordination, we intend to advertise new licences offering a 'regional' scope of coverage in North-East England, the Solent area, and South Wales. In South-West England, we shall advertise a new licence offering coverage of Cornwall only, as well as new licences for each of Plymouth and Exeter.
- In the first year after licensing recommences, we will advertise one 'smaller' (i.e. non-metropolitan) licence each month, and one 'larger' (i.e. metropolitan) licence every 2-3 months. The period between advertisement and the closing-date for the submission of applications will be three months.

Licensing process

- Each licence advertisement will be free-standing, and will contain information specially tailored to that licence. We will not publish generic licensing guidance notes or application forms.
- Guidance will be provided in each notice of advertisement as to how Ofcom intends to apply its statutory remit in respect of the new licence.
- We will publish an analysis of existing commercial radio provision in the area in the notice of advertisement for each new licence.
- Initial questions of clarification and/or amplification to applicants will be contained within a single letter. Responses to this letter will be made available publicly on the same basis as the written application. We do not intend to conduct telephone interviews.
- The notice of advertisement will be published on our website, and will include details of the information required in an application. This may be varied for different types of licence, and for different types of applicant, as appropriate.
- One electronic copy of an application will be required. All non-confidential parts of applications will be published on the Ofcom website, for public scrutiny. Hard copies will be sent by Ofcom to third parties on request only.

- We will not adopt the practice of holding public hearings on a short-list, as this is likely to increase the length of the process without improving the outcome.
- A statement will be published after each licence award which sets out the key determining factors under each of the statutory criteria which led to our decision. This will not make detailed, specific references to unsuccessful applicants.

Strategy

Our objectives for radio

1. In the consultation document we asked respondents (**Question 1**) to indicate whether they agreed with our broad objectives for the radio sector, as set out below:

2. Ofcom's broad objectives for radio, as guided by our statutory obligations, are to further the interests of citizens-consumers, especially through:

- balancing promotion of choice and competition with the fostering of plurality and diversity;
- supporting the need for innovators, creators and investors to flourish within markets driven by increased levels of fair and effective competition.
- facilitating the provision of a wide range of services which, taken as a whole, are of high quality.

3. In respect of local FM licensing in particular, the criteria of section 105 of the 1990 Broadcasting Act lead us to the conclusion that we should focus on maximising choice for listeners and catering for the tastes and interests of local people. It will, however, always remain important that applicants can demonstrate their ability to maintain the service they propose.

4. Taken together, it is our hope that the strategy and procedures we propose to adopt will help to facilitate a thriving, competitive, commercial radio industry which serves the interests of listeners and continues to be of growing importance to advertisers, as reflected by rising revenues and an increasing share of total display advertising. We recognise that the presence of the BBC has a significant effect on the workings of the market, but believe that the potential for continued growth in commercial radio remains.

5. The reaction to Ofcom's broad objectives for the radio sector has been overwhelmingly positive although, naturally, many respondents have raised specific points for consideration. Two areas of concern were raised repeatedly. The first was the position of the BBC in the radio market, and the second was Community Radio, specifically the impact that it is likely to have upon smaller commercial stations.

6. With regard to the first concern, we have stated our belief that there remains potential for commercial radio to grow its share of total listening. The matter of the BBC's radio services is the subject of a wide-ranging review by the DCMS during 2004. Issues regarding Community Radio, and its potential impact on commercial radio, will be discussed in our statement regarding future licensing policy for the new sector, due for publication in the early Summer. Our overall view remains that there can be three flourishing tiers of radio in the UK, and that it is possible to balance the needs of the commercial, community and BBC sectors.

Allocation of FM spectrum

7. **Question 2** in the consultation asked respondents whether they agreed with our proposed policy for allocating FM spectrum for commercial radio, community radio and restricted service licences (RSLs).

8. Generally speaking, most respondents were happy with the proposed allocation of FM spectrum. The main issues of concern were the same as those expressed in response to Question 1, and are discussed in paragraph 6 above.

New licences

9. As part of our assessment of potential future licensing opportunities, we highlighted the results of a study of the financial performance of different types of ILR stations broadcasting on the FM waveband which indicated that, in general, and without taking account of non-financial factors, larger licences are more likely to be profitable than smaller ones. We also noted that the development of commercial radio to date has suggested that larger licences are better able to support more specialised programme formats than smaller licences. **Question 3** of the consultation asked respondents to indicate whether advertising larger or smaller licences best serves the interests of citizen-consumers.

10. There was a range of responses to this question, with some respondents arguing that large licences would broaden choice and are more likely to be viable and well resourced while others contended that each area should have access to the type of locally focused service generally provided by smaller scale stations. The one consensus that can perhaps be traced is the belief that simply opposing large versus small licences oversimplifies the matter and that the decision as to size of licence should be determined by the characteristics of the area in question and the level and type of services already available.

11. **Question 4** of the consultation sought views on whether we should seek to aggregate any or all of the previously-identified potential licence areas within four broad regions, and what would be the costs and benefits attached to adopting such a policy. The regions are:

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

North-East England

12. There were very few respondents who made specific reference to the licensing options in this region. Two suggested that we should advertise separate licences for Durham, Tyne & Wear and Teesside, but a significant majority of respondents appeared to favour aggregation of the latter two areas into what would be a third North-East 'regional' licence. Ofcom's engineers

believe that, subject to frequency clearance and co-ordination, we will be able to offer a regional licence to satisfy the clear demand for such a licence expressed in response to the consultation. In addition, we believe that we will also be able to advertise a licence which offers coverage of the city of Durham and the surrounding area (including Chester-le-Street and, depending on the transmitter site selected, possibly Bishop Auckland also), as well as some other small-scale services in the region.

South-West England

13. Given the established interest in a licence specifically for Cornwall and the widespread perception in the county that it is a distinct entity within the South-West region, it is perhaps unsurprising that the wide, although not universal, approval given to the proposal to aggregate licences in other regions does not extend to respondents from the South-West, and Cornwall in particular. In fact, the response from people living in Cornwall (and some Devon residents) to the idea of aggregating licence areas in the South West was almost entirely negative. All five of the MPs representing Cornish constituencies wrote to express in the strongest terms their belief that Cornwall has a unique identity which should be reflected in the advertisement of a discrete licence for the county as opposed to a region-wide service. Seven prospective applicant groups from different areas in the South-West - Atlantic Broadcasting (Newquay), Kernow FM (St. Austell), CKFM (Cambourne), Exeter Local Radio, Radio Plymouth, Regatta Radio (Plymouth) and Your Radio (Torbay) - also expressed their dismay at the idea of a regional licence that they felt would not adequately reflect local identities and interests. A further 17 members of the public resident in Cornwall and Devon wrote to express their resentment at the idea of aggregation as did the Plymouth Chamber of Commerce and a Truro-based media research company, Ryan Research. Several of the larger radio groups that favoured aggregation in other areas noted that the South-West should be regarded as an exception.

14. In addition to seeking direct responses to the question as to whether or not to aggregate potential licences in the South-West region, and to help us to make the most informed decision possible, we commissioned some primary research into attitudes to radio in Devon and Cornwall. A summary of the findings from this study are appended to this statement. The research shows a clear split in terms of age and location regarding the choice between local versus regional service(s), with older Cornish residents strongly favouring a Cornwall-only service while younger people from Cornwall and Devonians from all age groups appear to welcome the idea of a pan-regional licence on the basis that this would be more likely to offer a broader outlook and/or a more appealing music mix. However, respondents in Devon would appear to prefer localised city-based services as an alternative to a pan-regional (i.e. Devon and Cornwall) service, rather than the Plymouth + Exeter/Torbay option also presented to them.

15. Ofcom considers that the evidence from the market research does not make a compelling case for rejecting the overwhelming response to the consultation. As a result, we believe that the most appropriate strategy for us

to pursue is to advertise separate licences for each of Cornwall, Plymouth and Exeter (subject to frequency clearance and co-ordination).

South Wales

16. As with North-East England, there were very few responses which made specific reference to the licensing options in this region. GMG Radio suggested that we should advertise a licence which offers coverage of all of Wales (mixing FM and AM if necessary), rather than one for South Wales only, in order to provide a commercial alternative to the BBC. However, there was a broad consensus that a licence which offered coverage of Swansea and Cardiff would be most likely to facilitate a broadening of choice in the region, and would offer a greater prospect of financial viability than separate licences for each of the two cities. We therefore intend to add to a future licensing timetable (subject to frequency clearance and co-ordination) a licence which offers coverage of Swansea and Cardiff. The lack of spectrum available currently means that it will not be possible to include coverage of Newport in this licence.

Solent

17. Respondents expressed widespread support for the aggregation of the frequency which would deliver coverage of Southampton and Portsmouth with the one for Bournemouth to create a second 'Solent' regional licence, albeit that this would offer less extensive coverage than the existing such licence. In moving towards advertising a larger licence in this region, we note that each of these three cities is already served by its own small-scale service.

Other licence areas

18. As was noted in the consultation document, the advertisement of all of the areas we have identified will effectively exhaust the supply of FM frequencies usable for further ILR services in the metropolitan areas of the UK, save for a very limited amount of possible future small-scale development. This will also be the case in most of the non-metropolitan areas around London, the West and East Midlands, North-West England and Yorkshire, the South and West of England, South Wales, and the central belt of Scotland. Elsewhere, further development of smaller, or in some cases medium-scale, services remains technically feasible.

19. Several of the respondents to the consultation identified areas where they would like Ofcom to advertise new licences which were not included within the lists published in the document. We will investigate frequency availability in each of these areas, and seek to advertise licences where this proves practicable.

Pace of licensing

20. In the consultation document, we proposed advertising one 'large' licence and one small-scale licence each month, on the basis that there are unlikely to be any applicants who wish to apply for both, but also suggested that we could

advertise a larger number of licences but at intervals greater than one month. **Question 5** sought views on this issue, and asked respondents to gauge the impact that either option would have for resource management among prospective applicants.

21. Most respondents welcomed our wish to resume licensing as soon as possible and to institute a reliable timetable, but many were concerned that an acceleration in the pace of licensing could result in a potential 'resource squeeze' which in turn would result in poorer quality applications. In addition, some respondents contested the premise that one company would be unlikely to apply for large and small licences. There was also concern that a three-month period between licence advertisement and closing-date for applications would be insufficient, particularly in the first year of a new licensing regime with which applicants are not yet familiar.

22. We have given full consideration to the responses to this question, and acknowledge that there are many respondents who take the view that the pace of licensing proposed could have considerable resource implications for applicants, and could lead to a reduction in the quality of applications. We have also noted the demand for a longer period between a licence being advertised and the date by which applications must be submitted. However, we believe that the streamlining of the process and, in particular, the reduction in the amount of information required in an application help to counteract the fact that applicants will not be familiar with the details of the new system.

23. We therefore propose that, during the first year after advertising recommences, we will maintain our original intention to advertise one smaller licence each month, but will advertise larger licences every two to three months instead of monthly, to reflect the demand expressed in response to the consultation. However, we will maintain our original intention of allowing a period of three months between a licence advertisement and the closing-date for applications. These policies will be reviewed in mid-2005.

24. This revision to the pace of licensing has implications for the timetable of the first six licences that were announced in March, which was prepared on the basis of the proposal in the consultation document.

25. The new timetable for these first six licences is as follows:

Month	'Larger' licence	'Smaller' licence
June 2004	Edinburgh	Blackburn
July 2004		Ashford
August 2004		Kidderminster
September 2004	Belfast	
October 2004		
November 2004	Manchester	

26. A further three 'smaller', non-metropolitan, licences, for advertisement between September and November of this year, and a full timetable of licence advertisements for the period December 2004 – May 2005, will be published in June.

The licensing process

27. In the consultation document we proposed that, rather than providing applicants with generic guidance notes and application forms designed to be applicable to all licences, each licence advertisement would include, among other information, bespoke guidance about how Ofcom intends to apply its statutory remit with regard to the particular licence, and a list of questions for applicants to answer which might be varied according to the size of the licence and perhaps also to take account of whether an applicant is an existing commercial radio operator. **Questions 6 and 7** asked for views on these proposals.

28. Most respondents believed that information tailored around specific licence areas would be helpful, and might help to reduce wastage by discouraging applications that are ill-suited to the area in question. There was a particular welcome for the proposal to clarify the weighting to be applied to the statutory criteria in different areas. The only note of caution was that such information should be factual, relevant and must be neither proscriptive nor prescriptive. Some respondents suggested that it would be useful if Ofcom were to continue to publish general notes of guidance containing that information which is consistent across the application process.

29. Similarly, most respondents favour varying the nature of the questions asked according to type of licence/applicant, although several groups cautioned that Ofcom must maintain a "level playing field" and one expressed the belief that those outside the industry must be able to compare bids on a like-for-like basis. There was also support for our proposal that each of the questions that an applicant will be asked to answer will be tied directly to one of the four statutory criteria of section 105 of the Broadcasting Act 1990.

30. We have noted the widespread support for these proposals, which will now represent our policy going forward. We have also taken account of the concerns regarding the need for flexibility and consistency. As was stated in the consultation document, any advice provided will make clear that Ofcom may nevertheless depart from its general policy in exceptional circumstances, and that ultimately each licence application is to be judged individually on its merits in accordance with the statutory criteria and Ofcom's duties.

31. The consultation document also set out a proposal for the type of information that could be included in each licence advertisement, as follows:

- a. a definition of the licensed area, and accompanying technical parameters;
- b. a report on existing ILR provision and listening patterns in the area;
- c. guidance as to how, and on what basis, applications will be assessed;
- d. guidance in respect of what information is required in an application, how this will be related to the relevant statutory criteria, and the format in which this should be submitted;

- e. the deadline for applications to be submitted, and the arrangements for delivering them to Ofcom;
- f. the application fee payable, and;
- g. guidance in respect of Ofcom's decision-making procedures.

Market report

32. **Question 8** in the consultation document asked for respondents' views on the proposal for a notice of licence advertisement to include factual information about the level of existing commercial radio provision and recorded listening patterns in an area.

33. The responses show that while factual information of a robust and comprehensive nature about specific licence areas would be welcomed by many, a fundamental difficulty with the listening patterns aspect of this proposal is that Ofcom will not be able to publish meaningful RAJAR data for new licence areas if those areas do not correspond exactly to the Total Survey Area (TSA) of an existing service or services. It was also pointed out by numerous respondents that most applicants would be likely to conduct their own analysis of the marketplace into which they hoped to launch a new service, and that the cost to Ofcom of conducting its own research in each new licence area (perhaps the only possible solution to the RAJAR issue identified above) would be prohibitive. The publication of such a report would also require the regulator to define a licence area when such a definition often will be entirely dependent on the transmitter site(s) chosen by an applicant.

34. In light of these responses, we have decided that the potential benefits of seeking to publish meaningful listening data are significantly outweighed by the numerous drawbacks, and shall therefore not be publishing such information as part of each licence advertisement. However, we will provide an analysis of existing commercial radio provision in a given licence area, to highlight to applicants the services which will be taken into account when Ofcom comes to consider the extent to which their proposals broaden choice.

Assessment of applications

35. **Question 9** of the consultation sought views on whether a single letter would be preferable to other means (e.g. multiple letters) of seeking initial clarification and/or amplification of an applicant's proposals.

36. In general, respondents believed that conducting the majority of follow-up questioning through the means of a single letter and making the responses to this letter available publicly would help to decrease bureaucracy, aid transparency and encourage relevance on the part of regulator and applicants alike. A few noted that some areas of questioning should be allowed to remain confidential, while others suggested that there was still a place for additional questioning by telephone (perhaps on an ad hoc rather than formal basis), notably in areas where local commitment is an important factor.

37. There is clearly widespread support for our proposals to streamline the assessment stage of the process, but we have noted the concern expressed by some that a lack of telephone contact might prove disadvantageous to new applicants. While a single letter of follow-up questions will be the norm, this does not preclude telephone contact where this is felt to be necessary. However, there will be no formal telephone interview as was practised by the Radio Authority.

Submission of applications

38. The consultation document outlined, in broad terms, the type of information that we believe will be necessary to enable us to evaluate licence applications in accordance with our statutory obligations, and put forward some proposals for how this information might be submitted. **Question 10** asked respondents whether they were content with these proposals.

39. Respondents appeared to be broadly supportive of the submission proposals which they felt should save time and money while offering greater clarity. Several groups gave a particular welcome to the proposal for applicants to "write their own Format" (and the concomitant proposal for new licensees to be issued with a Format from launch), and there was also almost universal support for the proposal that applications may be submitted electronically. We also note that many respondents were keen to see further guidance on the level, length and style of responses that will be permitted and the weight that will be given to aspects of applications such as group history, local boards and support within the area. Opinions differed as to whether supplementary responses (for example research appendices and audio samples) should be allowed and, if so, what form these should take.

40. In providing guidance about the content of application documents, we are keen to strike an appropriate balance between encouraging the submission of clear and concise proposals which can be easily compared, and allowing applicants the latitude to make their case to the regulator.

41. We set out in the consultation document that we would not expect a commercial radio operator to propose that the board which would operate a new licence would include local non-executive directors, if such an approach is not employed at any of its existing stations, or unless it considers there to be a convincing rationale for doing so in the particular circumstances of the case. At the same time, we appreciate the important role that a local board can play, especially at smaller stations. Ultimately, we will expect applicants to propose whatever arrangements they would intend to implement in the event of being awarded the licence.

42. Similarly, we put forward our view that evidence of local demand, as demonstrated by formal audience research or analysis, is a more meaningful and cogent measure than evidence of local support as demonstrated by letters or petitions. We continue to hold this opinion. This is not to say that we do not agree with some respondents that evidence of support may sometimes be

pertinent in smaller licence areas in particular. However, we will leave it to applicants' judgement what evidence of support they wish to submit.

Decision-making procedures

43. As part of the consultation document, we asked respondents (**Question 11**) whether they agreed that a short-listing process such as that employed in Ireland could potentially slow down licensing.

44. One or two respondents could see potential benefits to short-listing (e.g. Sunrise Radio felt that it might result in an increase in the number of licences awarded to ethnic groups), but on the whole the radio industry felt that short-listing and public hearings would lead to unacceptable delays, offer the potential to introduce an element of bias and might even increase the risk of litigation post-licence award. Given this response, we do not intend to implement a public short-listing process.

45. We also proposed in the consultation document to publish a short statement after each licence award which sets out the key determining factors under each of the statutory criteria which led to our decision, and asked respondents (**Question 12**) whether such statements should include reference to unsuccessful applicants as well as to the winner.

46. A large number of respondents noted that the threat of legal challenges is likely to increase should Ofcom decide to comment on unsuccessful applications, and several mentioned that appearing to make a negative comment about a particular company may affect its share price or damage its reputation. Nonetheless, there was a feeling that a reasoned, accurate and justifiable post-award statement would be invaluable in enabling groups to learn from their mistakes and adding to the transparency of the process. Despite this consensus, there was a split between those who suggested that Ofcom make public statements about the winning applicant and give private feedback to the unsuccessful bidders and those who felt that post-award statements would only be of value if commentary on both winning and losing applicants were to be provided publicly.

47. We have noted the mixed response to this question, and accordingly have given this issue careful consideration. We believe that the availability of applications on our website will enable interested parties to reach their own conclusions about the relative merits of proposals, and are not convinced that making detailed, specific references to unsuccessful applicants is in the best interests of the industry or regulator. Consequently, we will publish statements after each licence award that provide a detailed discussion only of the successful applicant. However, we will seek to ensure that the level of detail provided is sufficient to be meaningful to all interested parties, including unsuccessful applicants. We therefore do not intend to provide private feedback to unsuccessful applicants.

48. The last three questions in the consultation document (**Questions 13, 14 and 15**) sought respondents' overall reaction to the proposals, and invited suggestions for any changes which might improve the radio licensing process.

49. We are encouraged by the broadly warm response to our proposals to streamline and simplify the process for advertising and awarding new FM commercial radio licences. We agree with those respondents who remarked that the extent to which these proposals will decrease the regulatory burden and increase the quality of decision-making cannot be judged until the new processes have been implemented, and as a result we plan to review these processes one year after their implementation.

Radio Licensing Committee

50. The consultation document stated that licence awards would be made by a standing committee of the main Ofcom board, to be called the Radio Licensing Committee. This committee has now been appointed, and its members are as follows:

Ian Hargreaves, Ofcom Board Member (co-chair)
Kip Meek, Senior Partner, Competition & Content (co-chair)
Kevin Carey, Content Board Member
Pam Giddy, Content Board Member
Peter Bury, Director of Strategic Resources
Neil Stock, Head of Radio Planning & Licensing
Peter Davies, Head of Market Intelligence
Martin Campbell, Head of Radio Content & Standards

51. Up to two additional members will be added to the committee when appropriate to provide particular expertise, for example, where there are important issues in the Nations and Regions.

Conclusion

52. We received 123 responses to the consultation document. These have been of great value in improving our proposals, and we are very grateful to all those organisations and individuals who took the trouble to respond.