

Change of Format: talkSPORT

Ofcom's Radio Licensing Committee agreed on 25 November 2004 a request to change to the Format of the national commercial station talkSPORT which will permit them to 'split' limited broadcasting for football coverage on their Moorside Edge transmitter in the north-west and their Droitwich transmitter in the West Midlands.

Under Section 106 of the Broadcasting Act 1990 Ofcom may decide to allow a change to a station Format if (inter alia) it is satisfied that the character of the service would not be substantially altered by the change. The Committee decided the limited 'opt-outs' would not substantially alter talkSPORT's character of service and that the change should be allowed.

In reaching its decision to allow the change the Committee took into account a number of factors, including that:

- The station already has limited permission to split services for London and for Scotland. A facility to split transmission during evening coverage was inherent within the original Notes of Guidance issued before the station went on air, and therefore, as the station is now a mainly sport station, it appeared to the Licensing Committee that afternoon/evening splitting for the two regions involved was logical.
- Section 3 (2)(c) of the Communications Act 2003 deals with Ofcom's general duty with regard to the overall quality of services. Having regard to this duty, the Committee considered the possibility that the opting out might create 'mush' areas where reception interference is increased. However, in accordance with Ofcom's duty under section 3(3)(a) to have regard to the principles under which regulatory action should be proportionate and targeted only at cases where action is needed, the Committee felt that the commercial imperative would be an adequate surrogate for regulatory intervention to secure coverage of a national character.

The request from talkSPORT was to opt-out on the Moorside Edge transmitter for Manchester City coverage, and on the Droitwich transmitter for Aston Villa coverage. Opt-outs were requested for 2 hours at the following times: early Saturday (12 noon or 12.45pm), Sunday 2pm, 3pm or 4pm, Mon/Tues/Wed evening (normally 8pm). If Manchester City or Aston Villa play Arsenal, Chelsea or Crystal Palace then we would want to opt-out on two transmitters (to include the Brookman's Park transmitter covering the London area).

talkSPORT does not propose to cover Saturday afternoon games (from 3pm) leaving the number of games covered limited in relation to any particular local club. With the exception of early Sunday games the opt-outs will be placed within a national football-based programme, with both services will giving regular updates of other football games. talkSPORT estimated that the number of games covered in this way during the season will be approximately 30 games, equating to 60 hours opt-out (0.68% of output) each year.

The change will be allowed with immediate effect.

Broadcasting Act 1990

106 Requirements as to character and coverage of sound broadcasting services

(1) *A national or local licence shall include such conditions as appear to Ofcom to be appropriate for securing that the character of the licensed service, as proposed by the licence holder when making his application, is maintained during the period for which the licence is in force.*

(1A) *Conditions included in a licence for the purposes of subsection (1) may provide that OFCOM may consent to a departure from the character of the licensed service if, and only if, they are satisfied-*

(a) that the departure would not substantially alter the character of the service;

(b) that the departure would not narrow the range of programmes available by way of relevant independent radio services to persons living in the area or locality for which the service is licensed to be provided;

(c) that, in the case of a local licence, the departure would be conducive to the maintenance or promotion of fair and effective competition in that area or locality; or

(d) that, in the case of a local licence, there is evidence that, amongst persons living in that area or locality, there is a significant demand for, or significant support for, the change that would result from the departure.

(1B) *The matters to which OFCOM must have regard in determining for the purposes of this section the character of a service provided under a local licence include, in particular, the selection of spoken material and music in programmes included in the service. ...*

(7) *In this section 'relevant independent radio services' means the following services so far as they are services falling to be regulated under section 245 of the Communications Act 2003-*

(a) sound broadcasting services;

(b) radio licensable content services;

(c) additional services;

but, in relation to a departure from the character of a service provided under a local licence, does not include a service that is provided otherwise than wholly or mainly for reception by persons living and working in the area or locality in question."

Communications Act 2003

3 General duties of OFCOM

- (2) *The things which, by virtue of subsection (1), OFCOM are required to secure in the carrying out of their functions include, in particular, each of the following-*
- (c) *the availability throughout the United Kingdom of a wide range of television and radio services which (taken as a whole) are both of high quality and calculated to appeal to a variety of tastes and interests;*
- (3) *In performing their duties under subsection (1), OFCOM must have regard, in all cases, to-*
- (a) *the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed; and*