

## Sanction Decision by Ofcom and Notice of Proposed Revocation under section 111(2) of the Broadcasting Act 1990

To be imposed on Voice of Africa Radio

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### For failure to provide the Licensed Service<sup>1</sup>

**Ofcom's decision of sanction against:**

Voice of Africa Radio ("VOAR" or the "Licensee") in respect of its service **Voice of Africa Radio (or the "Licensed Service")** (CR000070BA).

**For:**

Breach of Licence Conditions 2(1) and 2(4) contained in Part 2 of the Schedule to VOAR's licence. These state respectively:

"The Licensee shall provide the Licensed Service specified in the Annex for the licence period." (Section 106(2) of the Broadcasting Act 1990); and

"The Licensee shall ensure that the Licensed Service accords with the proposals set out in the Annex so as to maintain the character of the Licensed Service throughout the licence period." (Section 106(1) of the Broadcasting Act 1990).

**Decision:**

To revoke the Broadcasting Act licence unless the Licensee takes the remedial steps which Ofcom specifies to remedy the failure.

**Remedial steps which VOAR is now required to take in order to avoid revocation of the licence:**

1. **By 15 January 2016:** To provide Ofcom with a schedule setting out all the steps that VOAR must take in order to recommence broadcasting of the Licensed Service in accordance with the key commitments set out in the Annex to VOAR's licence ("the Key Commitments") and its timetable for taking such steps;

2. **By 1 February 2016**, to either:

a) provide Ofcom with evidence that VOAR has secured a contract enabling it to re-commence broadcasting from the existing licensed transmitter site; or

b) provide evidence to Ofcom that it has successfully negotiated an agreement (subject to contract) to secure a suitable alternative transmitter site and provide Ofcom with all necessary documentation and information to enable Ofcom to clear the alternative transmission site.

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<sup>1</sup> See: <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb290/>

**3. No later than 1 March 2016:** To recommence the broadcast of the Licensed Service in accordance with the Key Commitments, from the licensed transmitter site approved by Ofcom, **as soon as possible and in any event no later than 1 March 2016.**

## **Executive Summary**

1. Voice of Africa Radio is a community radio service for the African community in Newham, East London, which is provided by VOAR (or “the Licensee”) under a licence granted by Ofcom under Part 3 of the Broadcasting Act 1990 (the “1990 Act”). The service is licensed to broadcast on 94.0 MHz on the FM band.
2. The Licensee’s licence includes conditions requiring it to provide the licensed service and to maintain the character of the licensed service throughout the licence period (Conditions 2(1) and 2(4) of Part 2 of the Schedule to VOAR’s licence).
3. On 22 July 2015, an Ofcom engineer established that VOAR was not being broadcast. On the same day, we received an email from VOAR informing Ofcom that it had not been broadcasting since 14 July 2015. Ofcom subsequently received an update from VOAR on 5 August 2015 in which it stated that it would resume broadcasting “in the next few days”. However, the service remains off the air.
4. As a result of the failure to broadcast its service since 14 July 2015, Ofcom found VOAR in breach of Licence Conditions 2(1) and 2(4) in Part 2 of the Schedule to the community radio licence for VOAR. These breaches were recorded on 12 October 2015 in issue 290 of the Broadcast Bulletin<sup>2</sup>.

## **Sanction Decision**

5. In accordance with Ofcom’s Procedures for the consideration of statutory sanctions in breaches of broadcast licences (“the Sanctions Procedures”)<sup>3</sup>, Ofcom considered whether the breaches were serious, deliberate, repeated or reckless so as to warrant the imposition of a sanction on the Licensee in this case.
6. Ofcom has reached the Decision that a sanction is merited in this case since the breaches are serious and ongoing – the Licensed Service remains off air. The breaches are also repeated: Ofcom has previously recorded two breaches of the same Licence Conditions against the Licensee, most recently on 16 March 2015 for a failure to provide the Licensed Service from 26 November 2014<sup>4</sup>. On that occasion, the service did not resume until 5 June 2015 – a total of 27 weeks.
7. In arriving at its Decision of the appropriate type and level of sanction, Ofcom was not bound by the Preliminary View. Ofcom took account of all the representations made by the Licensee, including those on the Preliminary View, and has regard to the Sanctions Procedures in reaching its Decision.
8. For the reasons set out below, Ofcom’s Decision is that VOAR’s failure to provide the Licensed Service is of sufficient seriousness that, if not remedied, it would justify the revocation of VOAR’s licence.

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<sup>2</sup> See footnote 1.

<sup>3</sup> See: [http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/proceduresjuly2013/Procedures\\_for\\_consideration.pdf](http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/proceduresjuly2013/Procedures_for_consideration.pdf)

<sup>4</sup> See: <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb275/>

9. In the event that the Licensee takes the remedial steps specified by Ofcom and resumes broadcasting the Licensed Service in accordance with the Key Commitments, the Licensee is put on notice that Ofcom considers that a sanction would still be merited, given the seriousness of the breaches that have been recorded. In these circumstances, Ofcom would set out its view as to the appropriate sanction and the factors it takes into account in reaching that view, so that the Licensee would then have an opportunity to make representations before any final determination on penalty is taken.

*The steps the Licensee must take to remedy the breach*

10. Having determined that the licence breaches in this case would justify revocation of the licence, if not remedied, Ofcom sets out the steps that VOAR must take to remedy the breach. Unless VOAR takes each of the steps which are specified within the period specified, Ofcom will serve a further notice on the Licensee, revoking its licence, if it is satisfied that revocation is necessary in the public interest.
11. The remedial steps that VOAR must take are:
  1. **By 15 January 2016:** To provide Ofcom with a schedule setting out all the steps that VOAR must take in order to recommence broadcasting of the Licensed Service and its timetable for taking such steps;
  2. **By 1 February 2016,** to either:
    - a) provide Ofcom with evidence that VOAR has secured a contract enabling it to recommence broadcasting from the existing licensed transmitter site; or
    - b) provide Ofcom with evidence that VOAR has successfully negotiated an agreement (subject to contract) to secure a suitable alternative transmitter site and provide Ofcom with all necessary documentation and information to enable Ofcom to clear the alternative transmission site.
  3. **No later than 1 March 2016:** To recommence the broadcast of the Licensed Service in accordance with the Key Commitments, from the licensed transmitter site approved by Ofcom, as soon **as possible and in any event no later than 1 March 2016.**

## Legal Framework

### **Ofcom's regulatory duties and functions**

12. Ofcom's principal duties, which are set out in section 3(1) of the Communications Act 2003 ("2003 Act"), are to further the interests of citizens in relation to communications matters and the interests of consumers, in carrying out its functions. In addition, it is required to secure certain outcomes, in particular: the optimal use for wireless telegraphy of the electro-magnetic spectrum; the availability throughout the United Kingdom of a wide range of television and radio services; and the maintenance of a sufficient plurality of providers of different television and radio services (section 3(2) of the 2003 Act).
13. Under section 85 of the 1990 Act, Ofcom has the duty of doing all it can to secure a range and diversity of local services. In fulfilment of this duty, Ofcom grants licences under Part 3 of the 1990 Act, including licences for the provision of community radio services (as defined in Article 2 of the Community Radio Order 2004). One of the

objectives that a community radio service is intended to deliver is the provision of radio services to individuals who are otherwise underserved by such services.<sup>5</sup>

14. Under section 6 of the Human Rights Act 1998 there is a duty on Ofcom (as a public authority) to ensure that it does not act in a way which is incompatible with the European Convention on Human Rights (“the Convention”).
15. Article 10 of the Convention provides for the right to freedom of expression. Applied to broadcasting, this right encompasses the broadcaster’s right “to impart information and ideas” and also the audience’s right “to receive information and ideas without interference by public authority” (Article 10(1) of the Convention). The exercise of these rights may be subject only to conditions and restrictions which are “prescribed in law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health and morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence or for maintaining the authority and impartiality of the judiciary” (Article 10(2) of the Convention).
16. Ofcom must exercise its duties in light of these rights and not interfere with the exercise of these freedoms in broadcast services unless it is satisfied that the restrictions it seeks to apply are required by law and necessary to achieve a legitimate aim.

### **Licensing and enforcement**

17. Under section 106(1) of the 1990 Act, a licence for a community radio service must include such conditions as appear to Ofcom to be appropriate for securing that the licensed service (as proposed by the licensee when applying for the licence) is maintained during the period for which the licence is in force.
18. Section 106(2) of the 1990 Act provides that a licence shall include conditions requiring the licence holder to secure that the licensed service provides the service described in the application for that licence.
19. Ofcom’s powers to take enforcement action for breach of the conditions of a community radio service licence are set out in sections 109 to 111 of the 1990 Act. These provisions include:
  - the power to impose on the licensee a financial penalty of up to £250,000 or 5% of the licensee’s qualifying revenue, whichever is the greater (sections 110(1)(a), 110(1A) and (1B) of the 1990 Act);
  - the power to shorten the licensee’s licence by up to two years (section 110(1)(b));
  - the power to suspend the licence for up to six months (section 110(1)(c) of the 1990 Act); and
  - the power to revoke the licence (section 111 of the 1990 Act).
20. In order to exercise the power to revoke a licence under section 111 of the 1990 Act, Ofcom must be satisfied that the licensee is failing to comply with a condition of the licence and that the failure is such that, if not remedied, it would justify revocation. Before moving to revocation, Ofcom is required to serve a notice on the licensee, setting out the way in which the licensee is failing to comply with its licence, the steps that the licensee is required to take to remedy the failure and the period within which such steps must be taken. If the licensee fails to take the action specified within the period specified and

<sup>5</sup> See Article 2(2) and Article 3(1)(b) of the Community Radio Order 2004.

Ofcom is satisfied that it is necessary in the public interest to revoke the licence, Ofcom will then serve a further notice on the licensee, revoking the licence.

### **Background**

21. The Licensee holds a licence granted under Part 3 of the 1990 Act for the provision of a community radio service – Voice of Africa Radio – to serve the African community in Newham, East London. The service is licensed to broadcast on 94.0 MHz on the FM band.
22. The Licensee’s licence includes conditions requiring it to provide the licensed service and to maintain the character of the licensed service throughout the licence period (Conditions 2(1) and 2(4) of Part 2 of the Schedule to VOAR’s licence).
23. On 22 July 2015, an Ofcom engineer established that VOAR was not being broadcast. On the same day, we received an email from VOAR informing Ofcom that it had not been broadcasting since 14 July 2015. Ofcom subsequently received an update from VOAR on 5 August 2015 in which it stated that it would resume broadcasting “in the next few days”. However, the service remained off the air. Ofcom considered that the failure of VOAR to provide its Licensed Service since 14 July 2015 raised issues warranting investigation under Conditions 2(1) and 2(4) contained in Part 2 of the Schedule to VOAR’s licence. These state, respectively:
 

“The Licensee shall provide the Licensed Service specified in the Annex for the licence period.” (Section 106(2) of the 1990 Act); and

“...the Licensee shall ensure that the Licensed Service accords with the proposals set out in the Annex so as to maintain the character of the Licensed Service throughout the licence period.” (Section 106(1) of the 1990 Act).
24. Ofcom therefore requested the Licensee’s comments on its compliance with these licence conditions.
25. In response, VOAR referred to its previous correspondence in which it had explained that it was off air because it was renegotiating terms with the transmission site owner. VOAR explained that it had not been able to resolve its dispute with the owner and that negotiations had reached a “sticking point”.
26. VOAR also said that it had discovered subsequently, almost seven weeks later, that the station’s transmission equipment had been stolen while it had been off air. It said that the theft had been reported to police and an investigation was underway. It also said that VOAR was “in the process of resolving this issue” and would keep Ofcom informed of progress.
27. Ofcom found VOAR in breach of Licence Conditions 2(1) and 2(4) in Part 2 of the Schedule to the community radio licence for VOAR. These breaches were recorded on 12 October in issue 290 of the Broadcast Bulletin<sup>6</sup>. In the Decision, Ofcom said that the breaches warranted consideration for a statutory sanction.

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<sup>6</sup> See footnote 1.

## **Ofcom's Decision to Impose a Statutory Sanction**

### **Serious and repeated nature of the breaches**

28. As set out in paragraph 1.10 of the Sanctions Procedures, the imposition of a sanction against a broadcaster is a serious matter. Ofcom may, following due process, impose a sanction if it considers that a broadcaster has seriously, deliberately, repeatedly or recklessly breached a relevant requirement.
29. Having taken into account all the relevant material in this case Ofcom considered that these breaches were serious, repeated and are ongoing and so warranted the imposition of a statutory sanction. Accordingly, Ofcom issued a Preliminary View ("Preliminary View") that it was minded to impose a statutory sanction in the form of licence revocation. Ofcom sent a copy of the Preliminary View to the Licensee on 6 November 2015, at the same time giving the Licensee the opportunity to provide written and oral representations ("the Representations") on the Preliminary View. The Licensee provided its written representations to Ofcom on 30 November and 7 December 2015 and gave its oral representations at a sanctions hearing at Ofcom on 15 December 2015. The Representations are summarised in paragraphs 31 to 35 below.
30. In reaching its final Decision on whether to impose a statutory sanction and, if so, the type and level of sanction, Ofcom was not bound by the Preliminary View. Ofcom took account of all the representations made by the Licensee and has had regard to its published Sanctions Procedures in reaching its Decision.

### **Licensee Representations**

31. In its Representations the Licensee explained that the main reason it had not been broadcasting since 14 July 2015 was that it discovered it had fallen into arrears with the rent for its transmission site and had been unable to reach a new agreement with the owner for the continued use of the site.
32. As a result of a failure to reach a commercial agreement, VOAR confirmed that the owner of the transmitter site switched off the station's FM transmitter, and therefore all broadcasting ceased at that point.
33. VOAR had been unable to access the transmission site for some weeks because of the dispute and when it did so in order to remove its equipment, it discovered that all the transmission equipment had been stolen. The theft was reported to the Police.
34. VOAR explained that it had since purchased new transmission equipment but was not in a position to re-commence broadcasting its licensed service because currently, it does not have a transmission site agreement in place with any transmission site owner. VOAR explained that it was still hoping to enter a new contractual arrangement with the owner of the site it has been using but that there had been difficulties in progressing negotiations.
35. The Licensee stated that it had access to sufficient funding to be able to recommence broadcasting and it was trying its best to come back on air as soon as possible. The Licensee said that it had not investigated any other possible transmission sites that may provide an alternative to its current transmission site but said that these would require permission from the local authority to erect an aerial.

*Serious Nature of the Breach*

36. As set out in paragraph 1.10 of the Sanctions Procedures, the imposition of a sanction against a broadcaster is a serious matter. Ofcom may, following due process, impose a sanction if it considers that a broadcaster has seriously, deliberately, repeatedly or recklessly breached a relevant requirement.
37. Ofcom considered that the breaches of Licence Conditions 2(1) and 2(4) were serious and repeated and therefore warranted the imposition of a statutory sanction. The breaches are also ongoing.
38. First, and principally, the failure to broadcast the Licensed Service is a fundamental breach of the Licensee's obligations, given that the essential purpose for which the licence is granted is the broadcast of the radio service on the frequency assigned. Furthermore, one of the statutory objectives of a community radio service is the provision of radio services to individuals who are otherwise underserved by such services. By failing to broadcast its service, the Licensee is not serving its target audience.
39. The breaches are also serious because of the length of the time for which they have continued. According to the Licensee, the service went off air on 14 July 2015 and has still not been restored. Therefore, at the date of the sanctions hearing, VOAR had not been providing its licensed service for 22 weeks. This is a significant period of time and longer than similar failures to broadcast by other licensees, which have been the subject of enforcement action by Ofcom (as set out in paragraphs 54 and 55 below).
40. The Licensee occupies a broadcast radio frequency which is a scarce public resource, particularly so in London. When VOAR applied for its licence, there were 34 applicants in total in the licensing round and 10 community radio licence awards were made. This demonstrates both the demand for spectrum for broadcast radio services that exists as well as the likelihood that other enterprises would, in all likelihood, apply to provide a service for the community should the frequency currently allocated to VOAR become available.
41. Ofcom has a statutory duty to ensure optimal use for wireless telegraphy of the electromagnetic spectrum.<sup>7</sup> VOAR's failure to provide a service on the radio frequency licensed to it therefore compromises the public interest in securing that spectrum is used efficiently.
42. Ofcom noted the representations that the Licensee made concerning its transmitter being switched off by the transmission site owner, the difficulties in progressing negotiations for a new lease for the site and the theft of its transmission equipment. However, the service has been off air for a considerable period of time and other than replacing its transmission equipment, the Licensee has not provided evidence of the steps it was actively pursuing to secure the re-commencement of the Licensed Service as quickly as possible.
43. VOAR has admitted that it has not explored other options for locating its transmitter, noting that alternative sites would require planning permission. Ofcom recognises that renegotiating a lease with its current site-owner may appear to be the quickest solution but we would encourage the licensee to explore other options without delay.

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<sup>7</sup> Section 3(2)(a) 2003 Act.



*Repeated nature*

44. The breaches are also repeated since it is the third time within the last five years that VOAR has ceased broadcasting its licensed service.
45. In 2011 breaches of VOAR's licence were recorded for being off the air for four weeks<sup>8</sup>. On that occasion, a financial penalty of £1,000 was imposed on the Licensee<sup>9</sup>.
46. More recently, in March 2015, VOAR was found in breach for not broadcasting its licensed service. On that occasion, the service went off air on 26 November 2014 and VOAR did not resume broadcasting until 5 June 2015, a period of 27 weeks. Taking these breaches together with the breaches which are the subject of this Decision, Ofcom noted that since November 2014, VOAR has only broadcast its licensed service for 39 days (almost six weeks).
47. Ofcom also noted that the circumstances of the breach finding of March 2015 included a failure by the Licensee to inform Ofcom during the period it was off air about the steps it was taking or proposing to take to resume broadcasting.<sup>10</sup>
48. A number of other breaches have been recorded against the Licensee since launching the service in 2007, but are not directly relevant to the breaches which are the subject of this Decision<sup>11</sup>.

**Imposition of sanctions**

49. In view of the factors set out above, Ofcom considered that the breaches are serious and repeated, and so warrant the imposition of a statutory sanction. They are also ongoing.

**Consideration of the appropriate sanction**

50. Provision of the licensed service is the fundamental purpose for which the licence was originally granted to VOAR. The failure to provide the licensed service therefore is a fundamental breach of the licence obligations. Furthermore, it is harmful to the public interest since it results in a failure to serve listeners generally and specifically, in the case of a community radio service, to meet the statutory objective of providing a service to the target audience, which is otherwise underserved by other radio services. It also results in a failure to make any use of a scarce public resource, namely the radio frequency allocated for the provision of the service.
51. Given these serious and repeated breaches recorded against VOAR and the fact that they are ongoing, Ofcom considers that the appropriate sanction in this case is one that

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<sup>8</sup> See: <http://stakeholders.ofcom.org.uk/binaries/broadcast/radio-ops/breaches/africaradio.pdf>

<sup>9</sup> See: <http://stakeholders.ofcom.org.uk/binaries/enforcement/content-sanctions-adjudications/voice-of-africa.pdf>

<sup>10</sup> See: <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb275/Issue275.pdf>

<sup>11</sup> The breaches recorded concerned: a failure to provide recordings (2 occasions); a failure to submit the Annual Return (6 occasions); non-payment of fees (3 occasions); breach of Rule 7.1 of the Broadcasting Code (Fairness) (1 occasion).

would secure an effective and comprehensive remedy for VOAR's failure to comply with its licence obligations. Ofcom does not consider that alternative sanctions short of revocation would achieve such a remedy. In particular, Ofcom notes that:

- the central objective of imposing a financial penalty is deterrence from further breaches and as an effective incentive to compliance.<sup>12</sup> It is not a sanction that in itself will secure a remedy to an ongoing breach; and
- the shortening or suspending of a licence for a service that is currently not being provided by the Licensee would be unlikely to serve any relevant purpose.

52. In considering whether revocation of a broadcasting licence is an appropriate sanction, Ofcom weighed the benefits of the continuation of the Licence against the harm to the potential audience for this service, and to the community radio licensing regime more widely, of VOAR's continued non-provision of the service. In relation to benefits of the service, Ofcom will typically take into account matters including the broadcaster's and audience's rights under Article 10 of the Convention when applied to broadcasting.<sup>13</sup> In this case, since the service is not currently being provided and has only been provided for about five weeks since November 2014, Ofcom considered that the benefits of the service are negligible and are substantially outweighed by the harm resulting from VOAR's failure to broadcast its service.

### Precedent

53. Ofcom has taken enforcement action in the following cases involving community radio services where there has been a failure to provide the licensed service.

54. Ofcom recorded breaches of Licence Conditions 2(1) and 2(4) but did not impose a sanction in the following cases:

- 209 Radio – the service was off air for 12 weeks at the time the breach was recorded. The licence was transferred to another company and the licensee went into voluntary liquidation;<sup>14</sup>
- Boundary Sound – the service was off air for six weeks at the time the breach was recorded. Revocation proceedings commenced but the licensee was dissolved before completion<sup>15</sup>.
- Radio Sandwell – the service was off air for seven weeks<sup>16</sup>. The breach was considered for sanction but no sanction was ultimately imposed.
- Rossendale Radio – the service was off air for six weeks. The licence was subsequently surrendered<sup>17</sup>.

<sup>12</sup> See paragraph 3, Ofcom's Penalty Guidelines at: <http://www.ofcom.org.uk/files/2010/06/penguid.pdf>

<sup>13</sup> This right encompasses the broadcaster's right to "impart information and ideas" and also the audience's right "to receive information and ideas without interference by public authority".

<sup>14</sup> See: [http://stakeholders.ofcom.org.uk/binaries/broadcast/radio-ops/breaches/209radio\\_cambridge.pdf](http://stakeholders.ofcom.org.uk/binaries/broadcast/radio-ops/breaches/209radio_cambridge.pdf)

<sup>15</sup> See: <http://stakeholders.ofcom.org.uk/binaries/broadcast/radio-ops/breaches/boundary-sound.pdf>

<sup>16</sup> <http://stakeholders.ofcom.org.uk/binaries/broadcast/radio-ops/breaches/Radio-Sandwell.pdf>

<sup>17</sup> <http://stakeholders.ofcom.org.uk/binaries/broadcast/radio-ops/breaches/Rossendale.pdf>

- NE1fm Newcastle – the service was off air for 15 weeks at the time the breach was recorded<sup>18</sup>. The breach was considered for sanction but no sanction was ultimately imposed.
- OnFM – at the time of breaches being recorded, the service had been off air for almost six weeks<sup>19</sup>. Revocation proceedings commenced but the breaches were remedied before these were completed.

55. Ofcom imposed a financial penalty against the following community radio licensees for recorded breaches of Licence Conditions 2(1) and 2(4):

- VOAR – as set out above, the service was off air for four weeks in 2011, for which the Licensee received a financial penalty of £1,000<sup>20</sup>;
- XS/Afan – the service was not providing its licensed service for 12 days as a result of technical difficulties. The licensee did not inform Ofcom that it was broadcasting only automated output during this time. It received a financial penalty of £500<sup>21</sup>;
- Westside Radio – the service was off air for four weeks followed by a period of automated output only as a result of a studio move. The licensee did not inform Ofcom that it was only broadcasting automated output during this time. It received a financial penalty of £500.<sup>22</sup>

56. Ofcom noted that in some of the precedent cases, small financial penalties were imposed, and in others no sanctions were imposed. However Ofcom considers that the circumstances of the current case are significantly more serious than the precedent cases because:

- the breaches which are the subject of this Decision have resulted in the service being off air for 22 weeks, as at the date of the sanctions hearing;
- the repeated nature of the breaches, as set out above (paragraphs 44 to 48). As noted, this has meant that the service has only been broadcast for a period of approximately five weeks since November 2014; and
- the absence of any firm proposals to date by the Licensee as to how it intends to recommence broadcasting.

## Conclusion

57. Provision by a licensee of the radio service specified in its licence on the frequency assigned to it is the fundamental purpose for which a community radio licence is granted. Accordingly, in the case of a service being off air, the licensee is not fulfilling the fundamental purpose for which the licence was granted, and the listener is clearly not served at all by that licensee.

<sup>18</sup> <http://stakeholders.ofcom.org.uk/binaries/broadcast/radio-ops/breaches/NE1fm.pdf>

<sup>19</sup> [http://stakeholders.ofcom.org.uk/binaries/broadcast/radio-ops/breaches/ONfm\\_breach\\_finding.pdf](http://stakeholders.ofcom.org.uk/binaries/broadcast/radio-ops/breaches/ONfm_breach_finding.pdf)

<sup>20</sup> <http://stakeholders.ofcom.org.uk/binaries/enforcement/content-sanctions-adjudications/voice-of-africa.pdf>

<sup>21</sup> [http://stakeholders.ofcom.org.uk/binaries/enforcement/content-sanctions-adjudications/NPT\\_Sanction.pdf](http://stakeholders.ofcom.org.uk/binaries/enforcement/content-sanctions-adjudications/NPT_Sanction.pdf)

<sup>22</sup> [http://stakeholders.ofcom.org.uk/binaries/enforcement/content-sanctions-adjudications/BBA\\_Media\\_Sanction.pdf](http://stakeholders.ofcom.org.uk/binaries/enforcement/content-sanctions-adjudications/BBA_Media_Sanction.pdf)

58. In this case, the Licensed Service has not been provided by VOAR since 14 July 2015 and remains off the air.

59. Ofcom noted the reasons put forward by the Licensee for not broadcasting its service, primarily that the transmission site owner had switched off its transmitter after the two parties had failed to reach a commercial agreement for VOAR's continued rental of the transmitter site. It also noted the subsequent theft of VOAR's transmission equipment.

In Ofcom's view, it is in the public interest for VOAR restore its service as quickly as possible for the benefit of the community it serves. At the date of the sanctions hearing, the Licensed Service has been off air for 22 weeks, and this failure is ongoing. To date, VOAR has not provided Ofcom with a credible plan as to the steps it is taking to secure the resumption of the Licensed Service as quickly as possible.

### **Decision**

60. In all the circumstances and having taken account of the Licensee's Representations, Ofcom has decided that the breaches in this case would justify revocation of the Licence, if they are not remedied. The Licensee will have a period following this Decision to remedy the breaches as set out below.

### **The steps the Licensee must take to remedy the breach**

61. The steps that VOAR must take in order to avoid the licence being revoked are:

1. **By 15 January 2016:** To provide Ofcom with a schedule setting out all the steps that VOAR must take in order to recommence broadcasting of the Licensed Service and its timetable for taking such steps;
2. **By 1 February 2016,** to either:
  - a) provide Ofcom with evidence that VOAR has secured a contract enabling it to recommence broadcasting from the existing licensed transmitter site; or
  - b) provide Ofcom with evidence that VOAR has successfully negotiated an agreement (subject to contract) to secure a suitable alternative transmitter site and provide Ofcom with all necessary documentation and information to enable Ofcom to clear the alternative transmission site.
3. **No later than 1 March 2016:** To recommence the broadcast of the Licensed Service in accordance with the Key Commitments, from the licensed transmitter site approved by Ofcom, as soon as possible and in any event no later than 1 March 2016.

62. **Provided the Licence takes each of the remedial steps specified by Ofcom by the deadline specified, the Licence will not be revoked. A failure to take any of the specified steps within the period required is likely to lead to revocation by service of a further notice, if Ofcom is satisfied that is in the public interest.**

**Ofcom  
December 2015**