

## Statement on Format Change Requests from Heartland FM and Wave 102

26 October 2016

Requests from the owners of Heartland FM in Perth and Wave 102 in Dundee to share all local programming hours and co-locate at Wave 102's studios in Dundee have been approved by Ofcom.

As a result of these decisions, the Perth licence will no longer co-locate and share programming with the Pitlochry & Aberfeldy licence. Instead, the Perth licence will co-locate and share programming with the Dundee licence. In addition, the Perth licensee will be required to broadcast a considerably higher number of local news bulletins each day than is the case at present.

### **Statutory and policy criteria**

Ofcom may consent to a departure from the character of the licensed service (a "Format change") in accordance with section 106 (1A) of the Broadcasting Act 1990 only if it is satisfied in relation to at least one of the following criteria:

- (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 the departure would be conducive to the maintenance or promotion of fair and effective competition;
- (d) that 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; or
- (e) that (i) the departure would result from programmes included in the licensed service ceasing to be made at premises in the area or locality for which the service is provided, but (ii) those programmes would continue to be made wholly or partly at premises within the approved area (as defined in section 314 of the Communications Act 2003 (local content and character of services)).

Under section 106ZA of the Broadcasting Act 1990, a change that is not considered by Ofcom to satisfy the first or last of these criteria must, if it is to be considered further under any of the other three criteria, be consulted upon.

In our view, the changes proposed by The Heartland Radio Foundation Ltd ('HRF') and Wave 102 Ltd ('Wave') would represent a significant change to the output of the existing Heartland FM service received by listeners in Perth. In addition to the music and presenters

changing as a result of sharing Wave 102's programming, listeners to the Perth service would hear – in addition to local Perth news and information – 'out of area' news and information pertinent to Dundee, rather than 'out of area' information relevant to the Pitlochry & Aberfeldy area.

Ofcom therefore determined that the changes would substantially alter the character of the Perth service in particular, and therefore was not satisfied in relation to section 106(1A)(a). We also noted that section 106(1A)(e) was not satisfied, since there are no Ofcom 'Approved Areas'<sup>1</sup> in place in the north of Scotland. In line with statute, the proposed change was therefore subject to a public consultation. Having reviewed the detailed information provide to us by HRF with regard to its current financial status, we were satisfied that consulting for the normal 28-day statutory period would result in a delay that would be likely prejudicially to affect the interests of the licence holder. The consultation therefore ran for one week until 11 October 2016.

We received 10 responses to the consultation, all of which were opposed to the changes. The seven non-confidential responses may be found, along with the consultation document, at: <https://www.ofcom.org.uk/consultations-and-statements/category-3/heartlandfm-wave102/>

Even if Ofcom is satisfied that the proposed change would meet one of the statutory criteria, Ofcom still has discretion as to whether to agree to the change. Ofcom has published guidance about how it generally expects to exercise its discretion. This guidance refers in particular to the following criteria:

- The extent of the impact of the change on the Character of Service
- The time elapsed since the licence was awarded
- Considerations taken into account in making the original award
- The views of listeners and stakeholders
- The avoidance of 'Format creep'
- Whether the station broadcasts on AM or FM
- Ofcom's statutory localness and other obligations.

In cases such as this one, where local radio stations are applying for co-location and/or programme sharing arrangements outside of Ofcom 'Approved Areas' we have said the type of factors we will also take into account (in addition to the policy criteria set out above) are as follows:

- The size of the stations involved (in terms of the population they cover)
- The distance affinity between the areas

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<sup>1</sup> In 2010 Ofcom introduced a set of 'Approved Areas' within which local radio stations would have greater flexibility than previously to co-locate and share programming.

- Financial factors.

### **Ofcom's decision**

Following the consultation, Ofcom examined the Format Change Request documents submitted by HRF and Wave and all of the consultation responses. We first considered whether we were satisfied in relation to any of the three remaining statutory criteria (i.e. section 106(1A)(b), (c) or (d)).

We were not satisfied in relation to section 106(1A)(c), given that there was insufficient evidence available (either from the licensees or respondents to the consultation) to enable us to reach the view that the departure would be conducive to the maintenance or promotion of fair and effective competition.

We were also not satisfied in relation to section 106(1A)(d), that amongst persons living in the area, there was evidence of significant support for the change. In reaching this view, we noted that neither applicant provided anything beyond anecdotal evidence of support, while all 10 respondents to the consultation were opposed to the changes.

The main grounds upon which the respondents to the consultation objected to the changes were concerns that the new Perth service would be Dundee-dominated (“it would become a Dundee-run radio station”, with “limited contributions from Perthshire”), and that the current Heartland presenters are likely to have a better knowledge of the Perth area than Wave 102’s presenters will. There were also concerns that specialist music programmes (covering country music and folk, for example) which currently air on Heartland would be lost, given that Wave 102 doesn’t currently air any specialist music programming of this nature. Noting the economic difficulties currently faced by HRF, a number of correspondents suggested that the difficult financial situation had been caused by poor management rather than the Perth licence being inherently unviable. There was also some frustration expressed that there had been no consultation by HRF with the local community about its proposals.

However, while acknowledging these concerns, Ofcom was satisfied that the proposed changes, taken as a whole, would not narrow the range of programmes available in the area by way of relevant independent radio services, and therefore was satisfied in relation to section 106(1A)(b).

In reaching this conclusion, we were cognisant that the Perth licence already shares 100% of its output with another licensee (the Heartland FM service for Pitlochry & Aberfeldy), and that there is no bespoke Perth programming currently transmitted. Therefore, while the change of programme sharing partner from the Pitlochry & Aberfeldy licensee to the Dundee licensee would represent a substantial change for Perth listeners, we did not consider that it would narrow the range of programming. This was particularly the case given the Format commitment to increase local news coverage on the Perth licence from the current requirement for two bulletins per day, broadcast at 08.10 and 09.10, to a requirement for hourly local bulletins at peaktime (i.e. weekday breakfast and drivetime, and weekend late breakfast). While we acknowledge that there might be some narrowing of the range of programmes available if the specialist music shows currently aired by Heartland FM were to disappear from the Perth airwaves, we note that specialist music is not a requirement of the

Format of the Perth licence, meaning that there is no requirement for any owner of the licence (including HRF) to include these in its schedule.

Having been satisfied in relation to one of the relevant statutory criteria, we then considered the requests under Ofcom's policy criteria. This included policy criteria specific to co-location and programme change requests, in addition to Ofcom's more general Format change policy criteria.

We concluded that two of the policy criteria relating to co-location and programme sharing requests were particularly relevant to this case.

The first is 'size of station', where Ofcom has previously recognised that there may be a stronger case for co-location and/or programme sharing where at least one of the stations has a licensed area with a population of fewer than 250,000, and especially those under 100,00. With a Measured Coverage Area of 45,276 adults (aged 15+), the Perth licence fits into that category, and is one of the smallest commercial radio licences in the UK.

Secondly, Ofcom has previously said that there may be a stronger case for co-location where stations can demonstrate that co-location is required to ensure the financial viability of the stations concerned. HRF has provided evidence to Ofcom that it has been experiencing severe financial difficulties and needs to dispose of the Perth licence as quickly as possible in order to focus on its core Pitlochry & Aberfeldy service which – although remaining as an independent service – will also benefit from some 'back office' synergies with Wave 102.

Having carefully considered the financial evidence provided by HRF, we accepted that the proposed changes were necessary to ensure the ongoing financial viability of the Perth licence. In reaching this view we were also mindful of the fact that, since it launched in 2008, this is the second time that the Perth licence has experienced significant financial difficulties (HRF took over the licence from its original owners, Perth FM Ltd, in 2011).

Given that not all the changes proposed in this request related to programme sharing and co-location (in particular, as noted above, there was a request to extend the requirements for local news on the Perth licence), we also considered the request against our more general policy criteria for Format Change Requests. We concluded that two of the criteria were of particular relevance here. Firstly, given the promise to significantly increase the amount of local news broadcast on the Perth service, we felt that the extent of the impact of the change on the Character of Service would be limited. Secondly, we noted that, given eight years has passed since the Perth licence launched, this was not a case of a recently-licensed station asking for a quick change.

In summary, therefore, Ofcom agreed this Format change request because it was satisfied in relation to one of the relevant statutory criteria, and for the policy reasons outlined above.