

---

# **Bauer Radio West Midlands & Shropshire stations**

Requests to change Formats

---

**STATEMENT**

Publication Date: 01 November 2018

# About this document

---

A commercial radio station's Format describes the type of programme service which it is required to provide, and forms part of the station's licence.

Following a public consultation, Ofcom has decided to permit Format Change Requests relating to three analogue commercial radio licences in the West Midlands and Shropshire which are ultimately owned by Bauer Radio Limited.

The changes which have been agreed are as follows:

- West Midlands FM licence (currently Absolute Radio) – change from a 'rock-orientated' service to a 'classic pop hits' service, with a requirement for local production and content added.
- Birmingham AM licence (currently Free Radio 80s) – change from a 'classic pop hits' service to a 'classic rock' service with existing local production and content requirements removed.
- Wolverhampton, Shrewsbury & Telford AM licence (currently Free Radio 80s) - change from a 'classic pop hits' service to a 'classic rock' service with existing local production and content requirements removed.

# Contents

---

## Section

1. Details and background information	1
2. Statutory and policy criteria	4
3. Ofcom's analysis and decision	5

# 1. Details and background information

- 1.1 In August 2018, Ofcom received three related Format Change Requests from commercial radio licensees ultimately owned by Bauer Radio Limited (“Bauer Radio”). The licences affected were as follows:
- The West Midlands FM licence held by Bauer Radio (West Midlands) Limited, broadcasting as ‘Absolute Radio’.
  - The Birmingham AM licence held by Birmingham Broadcasting Limited, broadcasting as ‘Free Radio 80s’.
  - The Wolverhampton, Shrewsbury & Telford AM licence held by Orion Media Limited, broadcasting as ‘Free Radio 80s’.

## West Midlands FM licence

- 1.2 The licence has a Measured Coverage Area of 2,294,015 adults (aged 15+).
- 1.3 The current ‘Character of Service’ in the Format of this licence is: ***“A rock-orientated station combining new music with classic album tracks aimed at 25-44 year-olds.”***
- 1.4 The new Character of Service proposed by Bauer Radio in its request was: ***“A classic pop hits service with local news and information aimed primarily at the over-30s in the West Midlands.”***
- 1.5 Other changes proposed by Bauer to the Format, which would see this licence return to a ‘local’ rather than ‘national’ service<sup>1</sup>, are summarised below:

	Current arrangements	Proposed new arrangements
<b>Programme sharing and/or co-location arrangements</b>	No programming need be locally made.	Locally made programming must be produced within the licensed area.
<b>Locally-made hours</b>	No programming need be locally made.	The minimum required by Ofcom’s localness guidelines (three hours per day during weekday daytimes <sup>2</sup> ).

<sup>1</sup> In 2013 the licensee took advantage of a clause in the 2010 Digital Economy Act which allows regional FM licences to broadcast a national service on a local frequency, without any local content or production, provided that the service is also being broadcast nationally on DAB.

<sup>2</sup> This is the new minimum requirement, as set out in Ofcom’s Statement on commercial radio localness regulation published on 26 October 2018 and available at: <https://www.ofcom.org.uk/consultations-and-statements/category-2/guidelines-localness-commercial-radio>

	Current arrangements	Proposed new arrangements
<b>Local news bulletins</b>	No requirement for local news bulletins.	At least hourly during weekday daytimes and at peak-time at the weekend. Outside these times, UK-wide, national and international news should feature.

## Birmingham AM licence

- 1.6 The licence has a Measured Coverage Area of 1,758,367 adults (aged 15+).
- 1.7 The current 'Character of Service' in the Format of this licence is: ***“A classic pop hits station, with local information and occasional local sports coverage, targeted primarily at 35-54 year-olds in the Birmingham area.”***
- 1.8 The new Character of Service proposed by Bauer Radio was: ***“A classic rock music station for listeners in the Birmingham area.”***
- 1.9 Other changes proposed by Bauer to the Format are summarised below:

	Current arrangements	Proposed new arrangements
<b>Programme sharing and/or co-location arrangements</b>	Locally made programming must be produced within the licensed area.  All programmes may be shared with the Coventry licence (AL022) and the Wolverhampton, Shrewsbury & Telford licence (AL118).	10 hours per day must be produced within England.
<b>Locally-made hours</b>	At least 4 hours per day between 6am and midnight on weekdays.	10 hours per day must be produced from within England.
<b>Local news bulletins</b>	At least hourly during weekday daytimes and at peak-time at the weekend.  Outside these times, UK-wide, national and international news should feature.	No requirement for local news bulletins.

## Wolverhampton, Shrewsbury & Telford licence

- 1.10 The licence has a Measured Coverage Area of 2,174,406 adults (aged 15+).

- 1.11 The current ‘Character of Service’ in the Format of this licence is: **“A classic pop hits station, with local information and occasional local sports coverage, targeted primarily at 35-54 year-olds in the Wolverhampton area.”**
- 1.12 The new Character of Service proposed by Bauer Radio was: **“A classic rock music station for listeners in the Wolverhampton and Shropshire area.”**
- 1.13 Other changes that were proposed by Bauer to the Format are summarised below:

	Current arrangements	Proposed new arrangements
<b>Programme sharing and/or co-location arrangements</b>	<p>Locally-made programming must be produced within the licensed areas of Wolverhampton, Shrewsbury and Telford (AL118), Birmingham (AL076) or Coventry (AL022).</p> <p>All programmes may be shared with the Birmingham licence (AL076) and the Coventry licence (AL022).</p>	10 hours per day must be produced within England.
<b>Locally-made hours</b>	At least 4 hours per day between 6am and midnight on weekdays.	10 hours per day must be produced within England.
<b>Local news bulletins</b>	<p>At least hourly during weekday daytimes and at peak-time at the weekend.</p> <p>Outside these times, UK-wide, national and international news should feature.</p>	No requirement for local news bulletins.

## 2. Statutory and policy criteria

- 2.1 Ofcom may consent to a departure from the character of a licensed local commercial radio 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 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)).
- 2.2 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 (i.e. a change that Ofcom considers *would* or *could* substantially alter the character of the service, or does not relate solely to the origin of locally-made programmes) must, if it is to be considered further under any of the other three criteria, be consulted upon.
- 2.3 Even if Ofcom is satisfied that the proposed change would meet one of the statutory criteria, we still have discretion as to whether or not to agree to the change. Ofcom has published guidance about how it generally expects to exercise this discretion<sup>3</sup>. 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; and
  - Ofcom’s statutory localness and other obligations.

---

<sup>3</sup> The guidance in full is available at [https://www.ofcom.org.uk/data/assets/pdf\\_file/0024/87405/The-regulation-of-Format-changes.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0024/87405/The-regulation-of-Format-changes.pdf)

## 3. Ofcom’s analysis and decision

- 3.1 The proposals from Bauer affect the core nature of each station’s programming, such that they would require a rewording of each published Character of Service, and propose changes to arrangements for locally-made programming, locally made hours and news provision. Consequently, we did not consider that any of the three requests met criterion (a) – that the departure would not substantially alter the character of service. In addition, criterion (e), which relates to co-location requests, was not the only criterion relevant to these particular requests. In accordance with section 106ZA of the Broadcasting Act 1990, we therefore consulted upon the requests in a public consultation which ran for four weeks from 07 September 2018 to 05 October 2018.
- 3.2 Although each Format change decision is separate, as they relate to three individual licences, we said in the consultation that we would consider them together, looking at the combined effect of the proposed changes on the West Midlands and North Shropshire analogue radio markets should all three changes be approved. We asked that respondents to the consultation adopt the same approach in considering the three requests.

### Summary of consultation responses

- 3.3 Ofcom received six responses to the consultation, one of which – from radio transmission company Maxxwave Limited – was neutral with regard to whether the Format changes should be permitted, but observed that “the audio quality from the Langley Mill transmitter on 1152 kHz<sup>4</sup> [is] very poor” and that “this may result in less listenership than would otherwise be achievable.”
- 3.4 The remaining five responses, all from individuals, produced a mixture of views. One respondent welcomed the proposed change to the West Midlands FM licence on the basis that there are no ‘classic pop hits’ stations targeting an older audience currently available on the FM band in the West Midlands. Although Smooth Radio (which also holds a West Midlands FM licence) targets an older audience, its ‘easy listening’ Format means that Smooth excludes the more uptempo music from past decades.
- 3.5 Three respondents opposed the replacement of Absolute Radio with a ‘classic pop hits’ format on the grounds that it would reduce choice for rock fans in the West Midlands, who would “no longer be served by FM radio”. One respondent also suggested that the change of the FM service to a more mainstream music format could threaten the commercial viability of smaller stations within the West Midlands area that play mainstream pop music, such as Touch FM.
- 3.6 One respondent said that Bauer’s plans to remove the local content and production from the two AM licences should not be allowed, commenting that “local content is vital to

---

<sup>4</sup> This is the transmitter for the Birmingham AM licence.

serve audience properly – and local production is important for the local economy and to provide employment for those in the media industry.”

- 3.7 Two of the respondents suggested that, because there is considerable overlap in coverage areas between the Birmingham and Wolverhampton AM licences, Bauer could have extended listener choice further by keeping Free Radio 80s on one of the AM licences, and putting Absolute Classic Rock on the other. However, Ofcom can only consider the requests that have been submitted to us by the licensees.

## Ofcom’s assessment and conclusions

- 3.8 Following the consultation, Ofcom examined the Format change request documents submitted by Bauer Radio and the consultation responses we received. 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)).
- 3.9 Bauer Radio, or any respondents to the consultation, did not provide any evidence that the proposed departures would be conducive to the maintenance or promotion or effective competition in the West Midlands and Shropshire analogue radio markets, in accordance with section 106(1A)(c).
- 3.10 In arguing that Ofcom should be satisfied in relation to 106(1A)(d), evidence of significant demand or support for the proposed changes, Bauer Radio noted that a Format Change Request relating to the Liverpool market agreed by Ofcom in 2015 - which allowed it to move a ‘classic pop hits’ service (Radio City 2) from AM to FM - had resulted in a significant increase in listening to Radio City 2. However, there was no analysis of the subsequent change in listening to the station which moved from FM to AM (City Talk). In any case, the programming formats of the stations involved in the West Midlands requests are different to those in the Liverpool case. Bauer acknowledged in its request that it had not carried out any specific audience research in the West Midlands and Shropshire to support its proposals.
- 3.11 We therefore considered that we could not be satisfied in relation to section 106(1A)(c) or (d).
- 3.12 We were, however, satisfied in relation to section 106(1A)(b) – that, when taken together, the Format changes would not narrow the range of programmes available to listeners in the West Midlands and North Shropshire areas by way of relevant independent radio services.<sup>5</sup>
- 3.13 This view was based on the following analysis:

### West Midlands area

- 3.14 In the West Midlands FM licence area, Bauer Radio has effectively proposed a ‘frequency swap’, with a rock-based service moving from FM to AM, and a ‘classic pop hits’ service

---

<sup>5</sup> This includes both local analogue commercial and community radio services, as listed in Annex 11 of the consultation.

moving from AM to FM. Therefore, both a rock-based service and a ‘classic pop hits’ format would continue to be available to listeners in the West Midlands, albeit we recognise that a more contemporary “rock-oriented” service (Absolute Radio) is being substituted by a classic rock format (Absolute Classic Rock). However, since classic rock is not a music format that is already available on analogue radio in the West Midlands, we do not believe that replacing a ‘rock-oriented’ service with a ‘classic rock’ service would narrow the range of programmes available to listeners in the area.

- 3.15 In reaching this view, we noted the concerns raised by respondents about a rock music service disappearing from the FM band in the West Midlands, and also the positive comments from other respondents about the addition of a ‘classic pop hits’ service to the FM band. These comments derive from the superior audio quality of FM transmission compared to AM, which generally make FM services significantly more attractive to listeners than AM services. However, in considering whether Bauer Radio’s proposals narrow the range of programming available to listeners in the area, the statute does not permit us to consider whether the stations concerned broadcast on AM or FM.
- 3.16 In considering Bauer Radio’s plans for local content and production, we noted the opposition to Bauer’s plans to remove local production and content (including local news bulletins) from the two AM services. However, while the Birmingham and Wolverhampton AM services would be losing local content and production, the West Midlands FM service would be regaining it. We therefore concluded that the overall range of programmes available to listeners in the West Midlands licence would not be narrowed in this respect.

### **North Shropshire area**

- 3.17 Approximately 35% of the adult population covered by the Wolverhampton, Shrewsbury and Telford AM licence are not overlapped by coverage of the West Midlands FM licence. In practical terms, this means that listeners in the North Shropshire area are not able to receive the West Midlands FM service (currently Absolute Radio) on their analogue radios, since they are outside the coverage area of the West Midlands FM licence.
- 3.18 For listeners in North Shropshire, a ‘classic pop hits’ service (Free Radio 80s) with local production and content will be replaced by a ‘classic rock’ service (Absolute Classic Rock). Given that there is no rock-based analogue station currently broadcasting to the North Shropshire area, we did not consider that the change from classic pop hits to classic rock would narrow the range of programmes available to listeners in North Shropshire. Indeed, the change may increase the range of programming available given the potential for musical overlap between the existing ‘classic pop hits’ Format of Free Radio 80s and the ‘broad music’ Formats of the FM licences for Telford and Shrewsbury held by Signal 107.
- 3.19 We are cognisant of fact that Bauer Radio’s plans to remove local content and production from the Wolverhampton, Shrewsbury and Telford AM licence would not, for listeners in North Shropshire, be counter-balanced by its addition to the West Midlands licence. However, Bauer’s request is consistent with Ofcom’s localness guidance, which states that AM stations generally need not produce locally-made programmes, nor broadcast local

material. We also note that the Wolverhampton, Shrewsbury & Telford FM licence (Free Radio), and the Telford and Shrewsbury & Oswestry FM licences (Signal 107), all have requirements for local production and to provide local content, including local news.

## Policy criteria

- 3.20 Given all of the above, we are satisfied under section 106(1A)(b) that that the proposed changes would not narrow the range of programmes available to listeners in the West Midlands and North Shropshire areas.
- 3.21 Having been satisfied in relation to one of the relevant statutory criteria, we then considered Bauer Radio's requests under Ofcom's policy criteria (in each case, to the extent that we considered appropriate in relation to these particular requests).
- 3.22 The newest of the three licences, the West Midlands FM licence, was awarded 15 years ago in October 2003 to rock service Kerrang! Radio. The two AM licences have existed for considerably longer than this. Therefore, time elapsed since the licences were awarded was not of particular concern, and we noted that, under Bauer Radio's proposals, a rock music format (Absolute Classic Rock) would continue to be available on analogue radio in the West Midlands licence area.
- 3.23 While the West Midlands FM licence has previously been subject to a Format Change Request (in 2013) to change the 'Character of Service' (to revise the music policy and remove localness obligations), we concluded that 'Format creep' was not a relevant factor in these requests. This was on the basis that the changes proposed by Bauer Radio were all substantial ones, and therefore were subject to a public consultation.
- 3.24 In relation to the views of listeners and stakeholders, we noted that the number and nature of the consultation responses received did not demonstrate widespread opposition to the changes.

## Ofcom's decision

- 3.25 In summary, therefore, Ofcom has agreed these Format change requests because in each case it was satisfied in relation to one of the relevant statutory criteria, and for the policy reasons outlined above.