



**ORIGINAL 106
(Aberdeen)**

Request to change Format

Consultation

Publication date: 23 September 2011

Closing date for responses: 21 October 2011

Contents

Section		Page
1	Executive summary	2
2	Details and background information	3

Annex		Page
1	Responding to this consultation	5
2	Ofcom's consultation principles	7
3	Consultation response cover sheet	8
4	Consultation question	10
5	Request to change the Format of Original 106 (Aberdeen)	11
6	Existing Format of Original 106	16
7	Other commercial and community radio stations in the Aberdeen area	17

Section 1

Executive summary

- 1.1 Ofcom has received a Format change request from Original FM Aberdeen Ltd ('Original') in relation to Original 106, which holds a local FM commercial radio licence for the Aberdeen area.
- 1.2 While retaining the station's overall "adult alternative" theme, Original wishes to remove the obligation contained in the Format's existing Character of Service which requires the station to be "album [track]-led", and instead proposes the introduction of a requirement to play specific types or genres of music ("adult-oriented album tracks, classic rock and predominantly non-contemporary pop-rock hits"). No change is proposed to the target demographic of 35-59 year-olds, or to the station's existing news and localness commitments.
- 1.3 A request for a Format change can be approved only if it satisfies at least one of the five criteria set out in section 106(1A) of the Broadcasting Act 1990 (as amended). The criteria are set out in full in Section 2 of this document.
- 1.4 We do not consider that Original's request meets criterion (a), that the departure would not substantially alter the character of service. As a result, we are required to consult on the request.
- 1.5 We are therefore seeking views on the request, having particular regard to the Format change criteria set out in the 1990 Broadcasting Act (as amended).

Section 2

Details and background information

- 2.1 Ofcom has received a Format change request from Original FM Aberdeen Ltd ('Original') in relation to Original 106, which holds a local FM licence for the Aberdeen area.
- 2.2 Broadcasting from studios in Aberdeen, the station launched in October 2007. It has a Measured Coverage Area of 291,872 adults (aged 15+).
- 2.3 The request from Original is to make some alterations to the station's music policy, within the context of continuing to provide an "Adult Alternative" service for the Aberdeen area. It proposes removal of the existing Format's requirement for the station's music to be "album-led," and instead proposes the introduction of a requirement to play specific types or genres of music ("adult-oriented album tracks, classic rock and predominantly non-contemporary pop-rock hits"). No change is proposed to the demographic of the target audience, or to the station's existing news and localness commitments.

Existing Character of Service (as set out in Original 106's published Format):

AN ADULT ALTERNATIVE STATION PLAYING AN ALBUM-LED*, CREDIBLE MIX OF ADULT-ORIENTED MUSIC, WITH PARTICULAR APPEAL FOR 35-59 YEAR-OLDS, WITH 24-HOUR NEWS. * Album tracks which become UK Top 20 singles, or UK Top 20 singles subsequently appearing on albums, would not qualify.

The new Character of Service proposed by Original:

AN ADULT ALTERNATIVE STATION PLAYING ADULT-ORIENTATED ALBUM TRACKS, CLASSIC ROCK AND PREDOMINANTLY NON-CONTEMPORARY POP/ROCK HITS, WITH PARTICULAR APPEAL FOR 35-59 YEAR OLD MALE LISTENERS, WITH 24-HOUR NEWS.

- 2.4 This local Aberdeen licence was awarded by Ofcom in January 2007. In addition to the winning application from Original FM from Original FM Aberdeen Ltd, there were three other applicants for the licence:

Aurora FM (Aurora FM Ltd)
Real Radio Aberdeen (Real Radio Scotland Ltd)
Waves Radio (Waves Radio Ltd)

- 2.5 In the statement setting out its reasons for the licence award, Ofcom made the following comments regarding the album-led music policy proposed by Original:

It was noted that Original Aberdeen's Format commitment to restrict airplay of top 20 chart singles (past or present) to 35%, and the commitment to low rotation levels, would ensure distinctiveness from the existing [Aberdeen] commercial services. This was well-supported by the applicants' monitoring which demonstrated the dominance of mainstream contemporary music both past and present in the marketplace.

Under section 106(1A) of the Broadcasting Act 1990 (as amended), Ofcom may consent to a change of a Format only if it is satisfied that *at least* one of the following five statutory criteria is satisfied:

- (a) that the departure would not substantially alter the character of 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)).*

- 2.6 Even if Ofcom is of the opinion that the proposed change satisfies one of more of the statutory criteria above, there may be reasons (depending on the particular circumstances of the case) why Ofcom may not consent to the proposed change. The additional criteria to which Ofcom will have regard when exercising this discretion can be found at:
www.ofcom.org.uk/radio/ifi/rbl/formats/formats/fc/changeregs/
- 2.7 Given that the change proposed by Original affects the station's core music policy, and requires a significant rewording of its published Character of Service, we do not consider that Original's request meets criterion (a), that the departure would not substantially alter the character of service. Therefore, in accordance with section 106ZA of the 1990 Broadcasting Act, we are consulting on the request.
- 2.8 When considering whether criterion (b) is satisfied (*the change would not narrow the range of programmes available in the area by way of relevant independent radio services*), neither local DAB services nor BBC services 'count' as relevant independent radio services. The relevant independent radio services are those local analogue commercial and community stations which operate in the region, which are listed in Annex 7.
- 2.9 Annex 5 contains the Format change request submitted by Original, in which an argument is made that the output of Original 106 would still be distinctive within the Aberdeen marketplace and that, therefore, criterion (b) is satisfied.
- 2.10 We are therefore seeking views on the request, having particular regard to the Format change criteria set out in Section 106 (1A) of the Broadcasting Act 1990 (as amended), as set out above.

Annex 1

Responding to this consultation

How to respond

- A1.1 Ofcom invites written views and comments on the issues raised in this document, to be made **by 5pm on Friday 21 October 2011**.
- A1.2 Ofcom strongly prefers to receive responses using the online web form at <https://stakeholders.ofcom.org.uk/consultations/original-106/howtorespond/form>, as this helps us to process the responses quickly and efficiently. We would also be grateful if you could assist us by completing a response cover sheet (see Annex 3), to indicate whether or not there are confidentiality issues. This response coversheet is incorporated into the online web form questionnaire.
- A1.3 For larger consultation responses – particularly those with supporting charts, tables or other data – please email: jon.heasman@ofcom.org.uk, attaching your response in Microsoft Word format, together with a consultation response coversheet.
- A1.4 Responses may alternatively be posted to the address below:
- Original 106 consultation
F.A.O. Jon Heasman
Manager, Commercial Radio Licensing
Ofcom
Riverside House
2A Southwark Bridge Road
London SE1 9HA
- A1.5 Note that we do not need a hard copy in addition to an electronic version. Ofcom will acknowledge receipt of responses if they are submitted using the online web form but not otherwise.
- A1.6 It would be helpful if your response could include direct answers to the question asked in this document, at Annex 4. It would also help if you can explain why you hold your views and how the proposals would impact on you.

Further information

- A1.7 If you want to discuss the issues and questions raised in this consultation, or need advice on the appropriate form of response, please contact Jon Heasman directly on 020 7783 4509.

Confidentiality

- A1.8 We believe it is important for everyone interested in an issue to see the views expressed by consultation respondents. We will therefore usually publish all responses on our website, www.ofcom.org.uk, ideally on receipt. If you think your response should be kept confidential, can you please specify what part or whether

all of your response should be kept confidential, and specify why. Please also place such parts in a separate annex.

- A1.9 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and will try to respect this. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.
- A1.10 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's approach on intellectual property rights is explained further on its website at <http://www.ofcom.org.uk/about/accoun/disclaimer/>

Next steps

- A1.11 Following the end of the consultation period, Ofcom intends to publish a statement.
- A1.12 Please note that you can register to receive free mail Updates alerting you to the publications of relevant Ofcom documents. For more details please see: http://www.ofcom.org.uk/static/subscribe/select_list.htm

Ofcom's consultation processes

- A1.13 Ofcom seeks to ensure that responding to a consultation is as easy as possible. For more information please see our consultation principles in Annex 2.
- A1.14 If you have any comments or suggestions on how Ofcom conducts its consultations, please call our consultation helpdesk on 020 7981 3003 or e-mail us at consult@ofcom.org.uk . We would particularly welcome thoughts on how Ofcom could more effectively seek the views of those groups or individuals, such as small businesses or particular types of residential consumers, who are less likely to give their opinions through a formal consultation.
- A1.15 If you would like to discuss these issues or Ofcom's consultation processes more generally you can alternatively contact Graham Howell, Secretary to the Corporation, who is Ofcom's consultation champion:

Graham Howell
Ofcom
Riverside House
2a Southwark Bridge Road
London SE1 9HA

Tel: 020 7981 3601

Email Graham.Howell@ofcom.org.uk

Annex 2

Ofcom's consultation principles

A2.1 Ofcom has published the following seven principles that it will follow for each public written consultation:

Before the consultation

A2.2 Where possible, we will hold informal talks with people and organisations before announcing a big consultation to find out whether we are thinking in the right direction. If we do not have enough time to do this, we will hold an open meeting to explain our proposals shortly after announcing the consultation.

During the consultation

A2.3 We will be clear about who we are consulting, why, on what questions and for how long.

A2.4 We will make the consultation document as short and simple as possible with a summary of no more than two pages. We will try to make it as easy as possible to give us a written response. If the consultation is complicated, we may provide a shortened Plain English Guide for smaller organisations or individuals who would otherwise not be able to spare the time to share their views.

A2.5 We will consult for up to 10 weeks depending on the potential impact of our proposals.

A2.6 A person within Ofcom will be in charge of making sure we follow our own guidelines and reach out to the largest number of people and organisations interested in the outcome of our decisions. Ofcom's 'Consultation Champion' will also be the main person to contact with views on the way we run our consultations.

A2.7 If we are not able to follow one of these principles, we will explain why.

After the consultation

A2.8 We think it is important for everyone interested in an issue to see the views of others during a consultation. We would usually publish all the responses we have received on our website. In our statement, we will give reasons for our decisions and will give an account of how the views of those concerned helped shape those decisions.

Annex 3

Consultation response cover sheet

- A3.1 In the interests of transparency and good regulatory practice, we will publish all consultation responses in full on our website, www.ofcom.org.uk.
- A3.2 We have produced a coversheet for responses (see below) and would be very grateful if you could send one with your response (this is incorporated into the online web form if you respond in this way). This will speed up our processing of responses, and help to maintain confidentiality where appropriate.
- A3.3 The quality of consultation can be enhanced by publishing responses before the consultation period closes. In particular, this can help those individuals and organisations with limited resources or familiarity with the issues to respond in a more informed way. Therefore Ofcom would encourage respondents to complete their coversheet in a way that allows Ofcom to publish their responses upon receipt, rather than waiting until the consultation period has ended.
- A3.4 We strongly prefer to receive responses via the online web form which incorporates the coversheet. If you are responding via email, post or fax you can download an electronic copy of this coversheet in Word or RTF format from the ‘Consultations’ section of our website at www.ofcom.org.uk/consult/.
- A3.5 Please put any parts of your response you consider should be kept confidential in a separate annex to your response and include your reasons why this part of your response should not be published. This can include information such as your personal background and experience. If you want your name, address, other contact details, or job title to remain confidential, please provide them in your cover sheet only, so that we don’t have to edit your response.

Cover sheet for response to an Ofcom consultation

BASIC DETAILS

Consultation title: Original 106 consultation

To (Ofcom contact): Jon Heasman

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

CONFIDENTIALITY

Please tick below what part of your response you consider is confidential, giving your reasons why

Nothing	<input type="checkbox"/>	Name/contact details/job title	<input type="checkbox"/>
Whole response	<input type="checkbox"/>	Organisation	<input type="checkbox"/>
Part of the response	<input type="checkbox"/>	If there is no separate annex, which parts?	<input type="checkbox"/>

If you want part of your response, your name or your organisation not to be published, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response that Ofcom can publish. However, in supplying this response, I understand that Ofcom may need to publish all responses, including those which are marked as confidential, in order to meet legal obligations. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

Ofcom seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

Name

Signed (if hard copy)

Annex 4

Consultation question

Q1. Should Original FM Aberdeen Ltd be permitted to make its proposed changes to the Format of Original 106, with particular regard to the statutory criteria set out in Section 2 of this consultation document ? (Section 106 (1A) of the 1990 Broadcasting Act, as amended, relating to Format changes).

Annex 5

Request to change the Format of Original 106 (Aberdeen)

Date of request:	6/9/2011
Station Name:	Original 106
Licensed area and licence number:	North East Scotland licence nos AL324
Licensee:	Original FM Aberdeen Ltd
Contact name:	Adam Findlay

Details of requested change(s) to Format

Character of Service <i>Complete this section if you are requesting a change to this part of your Format</i>	Existing Character of Service: An adult alternative station playing an album-led, credible mix of adult-orientated music with particular appeal for 35 - 59 year olds, with 24 hour news.
	Proposed new Character of Service: An adult alternative station playing adult-orientated album tracks, classic rock and predominantly non-contemporary pop/rock hits with particular appeal for 35-59 year old male listeners with 24 hour news.
Programme sharing and/or co-location arrangements <i>Complete this section if you are requesting a change to this part of your Format</i>	Current arrangements:
	Proposed new arrangements:
Locally-made hours and/or local news bulletins <i>Complete this section if you are requesting a</i>	Current obligations:

<i>change to this part of your Format</i>	Proposed new obligations:
--	----------------------------------

The holder of an analogue local commercial radio licence may apply to Ofcom to have the station's Format amended. Any application should be made using the layout shown on this form, and should be in accordance with Ofcom's published procedures for Format changes (available on our website at <http://stakeholders.ofcom.org.uk/broadcasting/radio/formats-content/changes/>)

Under section 106(1A) of the Broadcasting Act 1990 (as amended), Ofcom may consent to a change of a Format only if it is satisfied that *at least* one of the following five statutory criteria is 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 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)).*

Only one of these five criteria need be satisfied in order for Ofcom to consent to the proposed change. However, even if Ofcom is of the opinion that the proposed change satisfies one or more of the statutory criteria, there may be reasons (depending on the particular circumstances of the case) why Ofcom may not consent to the proposed change. The additional criteria to which Ofcom will have regard when exercising this discretion can be found at:

<http://stakeholders.ofcom.org.uk/broadcasting/radio/formats-content/changes/>)

Applicants should note that, under section 106ZA of the same Act (as amended), a proposed change that *does not* 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 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. #.

In the event that Ofcom receives a request for Format change and considers that criterion (a) or (e) is *not* satisfied, it will seek confirmation from the applicant as to whether it wishes to proceed with the request (and, if so, whether it wishes to amend or replace its submission in light of the necessity to make it public).

Please set out the statutory criterion, or criteria, set out in section 106(1A) of the Broadcasting Act 1990 that you believe is/are satisfied in relation to this Format change request, and the reasons for this:

The proposed amendment does not significantly alter the character of service. Our Aberdeen based station will continue to:

- Play a credible mix of adult orientated music
- “Spice” selected album tracks throughout the output.
- Have particular appeal to 35-59 year olds
- Be located in Aberdeen
- Focus on a service that provides a unique alternative listen and extends listener choice in the North East.
- Maintain the audience profile and the overall musical sound of the station as proposed at the licence award.
- Retain the “spirit” of the licence.

Section A relevance :

The departure will not substantially alter the character of service

The alterations to the format will still appeal to the same target market.

We will not seek to mimic mainstream stations or duplicate the programming of competitors on the dial.

The station has carved a place in the local market as providing a varied adult alternative to the other radio stations in the North East.

Our music and programming are biased to a predominately male audience and RAJAR figures have shown that we have historically maintained a higher share of the male audience than female, a trend that continues in the current results.

The changes are designed to reflect a desire to strengthen the brand as a natural evolution, rather than a marked shift in focus, with no rebranding or move away from our current male biased audience.

Our reach of 14% of the local population confirms that listeners are tuning in, but the low listener hours of 5.6 per head suggest that the less familiar album led mix is resulting in listening being restricted to short bursts. By playing a recognizable selection of adult alternative music more frequently, we will be able to deliver a product that retains its uniqueness in the market while creating greater appeal and commercial viability.

Section 106 B , C and D relevance

b) This change will not decrease the range of programmes available to the North East audience.

Original 106FM will continue to provide a genuine alternative to both Northsound 1 and 2 - both station's formats are markedly different to that proposed by Original 106:

Northsound 1: A LOCALLY ORIENTED CONTEMPORARY AND CHART MUSIC AND INFORMATION STATION FOR 15-44 YEAR-OLDS IN THE ABERDEEN AREA.

Northsound 1 is a CHR service, focusing on a youthful audience majoring on artists such as Lady GaGa and Rihanna. Original 106 would be markedly different with our proposed predominately non contemporary mix. Of the ten most played songs on Northsound 1 over the last week (31st July to 6th August 2011), only two received any airplay on Original and this minimal duplication would continue under the proposed format.

Northsound2: A LOCALLY ORIENTED ADULT POP, NEWS AND INFORMATION STATION FOR OVER 35s IN THE ABERDEEN AREA.

Northsound 2 is a predominantly networked soft AC service, focusing on a mostly female audience with a strong pop bias from the last six decades. Our locally produced and presented service would be entirely made up of adult orientated album tracks, classic rock and predominantly non contemporary hits with particular appeal to male listeners. Over the last monitored week(31st July to 6th August 2011) only one of the ten most played songs on Northsound 2 received any airplay on Original 106 and our proposed format seeks to maintain this point of difference.

b) As this is a minor shift towards a more familiar mix of our current musical output rather than a marked swing towards an alternative target audience or genre of music– it will not have an unfair effect on competitors.

Original 106 will continue to offer a genuine alternative to both Northsound 1 and 2. We will continue to provide a locally produced news service , traffic and travel, weather and local information throughout the day. It will also play a broad mix of adult orientated music including guitar led and rock music – the most popular genre of the last 40 years but a format not currently catered by other stations in the market.

Please provide any additional information and/or evidence in support of the proposed change(s) below. In particular, the applicant may wish to outline how they see that the proposed change fits within Ofcom’s published Format change request policy (<http://stakeholders.ofcom.org.uk/broadcasting/radio/formats-content/changes/>) and also Ofcom’s Localness guidance, which includes our co-location and programme sharing policy (<http://stakeholders.ofcom.org.uk/broadcasting/radio/localness/>) .

Viability

Original 106 is entirely locally produced from our studios in Aberdeen and offers a locally produced news service. We believe this is key to winning audiences in the North East of Scotland, however maintaining a full service with an album led format is becoming more difficult in the face of increasingly more competitive and challenging times where strong RAJAR figures are the key to commercial viability. While our audience share remains steady at 4- 5% share the potential to increase listenership and commercial viability is extremely limited under a format which holds only niche appeal in the marketplace. Allowing us to make these changes is likely to create both wider appeal and hold the audience for longer strengthening our listening hours which directly affects our advertising revenues and crucially move the station to a position of financial viability.

Notes

Ofcom may approve a change under any of criteria (b) to (d) without consultation, or after a consultation of less than 28 days, if Ofcom considers that to hold a consultation at all, or for 28 days or more, would result in a delay that would be likely to prejudice the interests of the licensee. Ofcom may also remove for the purposes of consultation any confidential information submitted by the licensee.

Version 6 – amended April 2010

Annex 6

Existing Format of Original 106

ORIGINAL 106 (ABERDEEN)

Character of Service

AN ADULT ALTERNATIVE STATION PLAYING AN ALBUM-LED*, CREDIBLE MIX OF ADULT-ORIENTATED MUSIC, WITH PARTICULAR APPEAL FOR 35-59 YEAR-OLDS, WITH 24-HOUR NEWS.

Licensed area	Aberdeen and surrounding area (as in Ofcom advertisement)
Frequency	106.3 and 106.8 MHz
Service duration	24 hours
Locally-made hours	At least 10 hours a day during daytime weekdays (must include breakfast). At least 4 hours daytime Saturdays and Sundays.
Local news bulletins	At least hourly at peaktime weekdays and weekends. Outside peak, UK-wide, national and international news should feature.

Shared arrangements (if applicable)

Co-location	No Arrangements
Programme sharing	No Arrangements

Definitions

Speech / Music	Excludes advertising, programme/promotional trails & sponsor credits
Peaktime	Weekday breakfast and drivetime, and weekend late breakfast
Daytime	0600 to 1900 weekday and weekend
Locally-made	Production and presentation from within the licensed area

MCA population : 291,872

Licence number : AL 324-1

Notes

This Format should be read in conjunction with Ofcom's published Localness Guidelines.

*Album tracks which become UK Top 20 singles, or UK Top 20 singles subsequently appearing on albums would not qualify.

AGREED FEB 2009

Annex 7

Other commercial and community radio stations in the Aberdeen area

Commercial radio stations

Northsound One (Aberdeen)

<http://www.ofcom.org.uk/static/radiolicensing/amfm/al002-2.htm>

Northsound Two (Aberdeen)

<http://www.ofcom.org.uk/static/radiolicensing/amfm/al001-2.htm>

Community radio stations

Schmu FM (Aberdeen)

<http://www.ofcom.org.uk/static/radiolicensing/Community/commitments/cr028.pdf>