



The Future of Radio

The next phase

Statement
and further
consultation

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Foreword

Over the last three years radio has occupied two parallel universes.

One universe consists of the experience of millions of listeners for whom things have seldom been better. In terms of choice, listeners not only have more than 300 FM and AM commercial radio stations, a diverse suite of services from the BBC and a range of new community services. Many can also access at least 25 radio services through digital terrestrial television and satellite users can choose from over 90 stations. Through DAB, listeners in the majority of UK cities have access to over 35 digital stations. You can pause and rewind live radio programmes; you can discover more information about radio programmes through text and data services. UK broadband subscribers, now over 50% of the population, also have access to thousands of stations across the world. The BBC's i-Player and the RadioCentrePlayer position radio at the centre of on-demand developments in the media sector. And the quality of programming is strong too, as radio continues to fulfil important public purposes, illustrated by radio's importance to communities caught up in floods across the UK this summer.

So from the listener's perspective, the picture is bright in terms of choice, range, quality of programming and innovation, right across the UK.

But there is another universe. This is the one occupied by those directly involved in running commercial radio stations, where financial pressures have been making it harder to provide those things that the audience expects.

Commercial radio revenues have been declining for several years. While there are some signs of recovery in recent months, the decline in revenues may partly be structural as advertisers move to new media. Competition from the wide choice of stations on digital platforms and from the calls other media place on listeners' time is fragmenting audiences. These two factors together could mean that the business models of many local commercial radio stations, particularly the smaller ones, cease to be viable.

At the same time, the partial migration of radio to digital has increased transmission costs, generating a debate about whether, like television, we should set a date for radio to abandon analogue broadcasting.

These are serious issues and that is why, in April this year, Ofcom published a consultation entitled *The Future of Radio*. We recognised the need to try to pull the disparate strands of the radio debate together into an over-arching narrative; but we also recognised the risk of over-simplifying a set of issues which do not easily lend themselves to crisp, over-arching solutions.

Ofcom's basic stance, however, is very clear. Our job is to interpret and apply the detailed statutory framework which Parliament has created for radio, much of it only four years old, and to advise Government where we see a case for adjustment. It is, of course, up to Government and Parliament whether and when to change this legal framework again.

The current framework is designed to ensure that commercial radio in the UK serves diverse tastes and interests; that it meets the needs of local audiences and that it is protected by ownership rules from the kind of excessive concentration which would jeopardise the plurality of voice which audiences value highly. In the 2003 Communications Act, Ofcom was also given the responsibility to expand the scope of radio. We have done this by licensing a

network of community radio stations across the UK – 149 so far. We have also licensed a second national DAB radio multiplex, which was awarded to 4 Digital Group, led by Channel 4 in July this year, and further local DAB multiplexes.

For this statutory framework to be successful, however, commercial radio also needs to thrive as a business. So, in thinking about the application of the legal framework, and its possible modification, Ofcom must balance the goals set by Parliament, and the passions of listeners, against the changing commercial circumstances of the industry. When we propose change, it must be change which makes sense from a commercial perspective, as well as from the listener's perspective.

Achieving this balance requires Ofcom to make judgments about the likely further development of digital radio. In *The Future of Radio* consultation document we argued that while it is not yet time to consider establishing a date for a switch-off of analogue radio, we need to think about providing the flexibility for such an outcome. This remains a subject of the utmost importance, but it is also one which requires the direct involvement of Government, as well as Ofcom, broadcasters, manufacturers, consumers and other stakeholders. So we are delighted that James Purnell, Secretary of State for Culture, Media and Sport, has recently announced the formation of a new Digital Radio Working Group, to carry forward this discussion. Ofcom will play a leading role in the group's work, which we expect to be the focus for further work on the conditions which would need to be achieved before digital platforms could become the predominant means of delivering radio.

There are, however, some specific issues which need not await resolution of the big digital question, and it is on these that this document focuses. Some of these changes are substantial, others more detailed. All go in the direction of reducing regulation – some will say too fast, others not fast enough. But it is our view that this is the pace justified by the evidence, and by our overriding responsibility to listeners. The digital debate has been brought forward and is about to begin - now is not the time to tear up the analogue rulebook.

The immediate issues we tackle here fall under four headings: commercial radio content regulation; commercial radio ownership rules, other radio spectrum issues and rules specifically applying to community radio.

The tensions between the parallel world perceptions of UK radio mean that there will continue to be a vigorous debate about the issues addressed in this document. Ofcom is confident that radio will remain a highly valued part of the UK communications spectrum and we remain committed to playing our part in shaping this important industry's future.

Ed Richards

Chief Executive

David Currie

Chairman

Section 1

Executive summary

- 1.1 In April this year Ofcom published its consultation on *The Future of Radio*. This consultation was based on our understanding of the challenges faced by commercial radio, which has seen competition increasing both from digital radio and from other media and what we believe may be a structural shift in the advertising market in favour of new media to the detriment of traditional radio.
- 1.2 We recognised that the way analogue commercial radio is regulated may need to change in the light of this changing competitive situation and so we considered the content and ownership regulation of commercial radio. The review of the ownership rules is a statutory review required by the Secretary of State.
- 1.3 We also considered how, if radio is to become primarily a digitally-delivered medium, we could achieve the flexibility to free up analogue radio spectrum when the time is right.
- 1.4 Finally we considered the rules around the newly emerging community radio sector, in response to a request from the Secretary of State for a review two years after the first station launch.
- 1.5 This Executive Summary captures the main proposals set out in this document, along with a brief account of the context for each decision.
- 1.6 Our thinking is based on our long-term aims to see a radio market which delivers a wide range of innovative UK-wide commercial stations providing plurality of provision in all major genres, a wide range and diversity of local and regional commercial services catering for local tastes and interests and a community service for every community that wants one and where suitable frequencies are available. We want to see these provided alongside a strong, independent BBC and all supported by multimedia services where viable: on-demand, downloads, archive, text and graphical information and available where and when audiences want, on devices which offer real consumer benefits.
- 1.7 In pursuing these aims, Ofcom will apply the statutory framework for radio regulation established by Parliament, whilst recognising that this can only be satisfactorily delivered if there is a thriving radio industry.
- 1.8 In recent months, we have made further progress towards our aims, by licensing a second national DAB digital radio multiplex to 4 Digital Group, led by Channel 4, which will offer a wide range of national services to complement those already offered by Digital One and the BBC, and a number of additional local DAB multiplexes. We have also licensed over 140 community radio stations in the past three years.
- 1.9 This report focuses on each of the areas we consulted on in April 2007. Where we can we have come to conclusions or final recommendations for Government to consider as they see fit. In the case of our ownership proposals, we recognise the case for some relaxation, and suggest ideas which Government may wish to consider. We offer to work with Government to develop this thinking further over the coming months. We have not taken forward all of our original suggestions regarding the flexibility to free-up spectrum in the long-term, as these areas will now be

considered by the Digital Radio Working Group which has recently been set up jointly by the DCMS and Ofcom and with the strong support of the radio industry, including the BBC.

Commercial radio content regulation (section 3)

- 1.10 Ofcom is required by statute to regulate local analogue commercial radio to secure diversity of output and a suitable amount of local material, an appropriate amount of which should be locally-made. This is currently achieved by the inclusion in each licence of a Format which includes a description of the character of service which is designed to secure diversity; and specific requirements (e.g. the number of hours that a station must provide locally-made programming) designed to secure the provision of localness, together with published guidance. Compliance is ensured by sample content checks and the maintenance of an online public file for each station.

Formats: Delivering programme diversity

- 1.11 Increasingly, diversity of programming, such as different types of music, is being provided at both a national and local level by digital stations. Currently analogue Formats are a lot more detailed than digital (DAB) Formats, while stations on other platforms have no Format regulation at all. We suggested in April that analogue Format regulation should be relaxed so that these Formats contain only the same level of detail as DAB Formats. This would still preserve the overall character of each radio station, but would remove many more detailed requirements.
- 1.12 Responses to this proposal were broadly supportive, with those opposed generally more concerned about the loss of local programming than the loss of diversity.
- 1.13 Taking into account the responses received on this issue, the interests of consumers and case for increased flexibility for the industry, we believe the proposal should stand and that analogue radio Formats should be simplified.

Formats: Amount of localness

- 1.14 The amount of local material and local production is currently different for each station and is enshrined in its licence, based on the promises in its own licence application. Often the smallest stations have the highest obligations to deliver local material, locally-made (many 24 hours a day). Stations may request a change to their local hours but Ofcom currently provides no guidance for stations as to the number of locally-made hours that would be generally acceptable and so there is little regulatory certainty for stations.
- 1.15 We suggested in April that Ofcom could give guidance on appropriate minimum levels for the amount of locally-made programmes and local material (local programming) to be provided by analogue local commercial stations, according to the size and type of station. These proposals would represent a significant reduction in the amount of local programming that the majority of stations would have to produce, often reducing the requirement for locally-made hours by between a third and a half.
- 1.16 The main industry response regarding the regulation of localness was provided by commercial radio's trade body, RadioCentre, supported by most of the major commercial radio groups. They called for self-regulation of localness, focused on the delivery of local material (rather than the regulation of locally-made programming) on the grounds that licensees know best how to serve their listeners. They later put in a further proposal suggesting a minimum local programming requirement of three

hours a day on weekdays for most stations and seven hours a day for the largest stations.

- 1.17 The BBC, the Community Media Association (CMA), Ofcom's Advisory Committees for Wales and Scotland and others urged caution and argued for the protection of localness.
- 1.18 In the light of these and other responses we have carried out further audience research this summer which, added to our earlier analysis, confirms our belief in the importance of locally-made programmes containing local material throughout most of daytime. This belief was further strengthened during the floods which affected a number of areas of the UK this summer. In addition, while Ofcom operates under UK-wide statute we also recognise that the different nations of the UK increasingly have their own defined interests and that commercial radio has an important role in catering for these.
- 1.19 Our previous analysis of the experience of other countries, such as France and the United States, suggests that, left to itself, the market would not deliver local radio services ubiquitously across the UK, due to the financial pressures to maximise shareholder returns. As a result we believe the regulation of a minimum level of localness is still required.
- 1.20 We are confident that our revised localness guidance proposals strike the right balance between the financial pressures faced by the industry and safeguarding the interests of listeners as citizens and consumers.
- 1.21 The revised localness guideline proposals for FM stations are for a minimum of ten hours a day of locally-made programming during weekday daytimes (which must include breakfast) and four hours per day during daytime at weekends. Smaller stations may request to be allowed to share some daytime programmes on a sub-regional basis. AM stations should provide a minimum of four hours a day of locally-made programming, but at least ten hours during weekday daytimes (including the four hours of locally-made programming) should be produced in the nation to which the station broadcasts. No station should be required to produce more locally-made programming or more local material than at present. We welcome views on this proposal, which is set out in more detail in section 3.
- 1.22 Our original proposal was to introduce changes to the regulation of both the character of service and the amount of localness when digital listening reaches a certain threshold. However, we think that our revised localness proposals are sufficient to safeguard listener interests and that our Format proposals will protect the core character of service of every station. We therefore propose to implement both changes as soon as the localness proposal is finalised following consultation.
- 1.23 In the longer term, as the process of digital migration matures, there may be a case, as RadioCentre argues, for some form of co-regulation of content issues. But at present that case has not been made and the alignment of industry and consumer and citizen interests, which would be required for a successful co-regulatory scheme, is not obvious. We remain open to ideas on this subject, but for now we do not propose to take this issue further.

Other commercial radio content regulation proposals

- 1.24 We have dropped the suggestion that Government may wish to consider removing the statutory Format restrictions on national analogue radio, at an appropriate time, noting that there was no support for this proposal.
- 1.25 However, we maintain our suggestion that the requirement on DAB digital radio to offer national (UK-wide) services which appeal to a variety of tastes and interests should be retained.
- 1.26 At a local level, as digital listening increases, we believe Ofcom should be required, in ensuring an appropriate amount of local material and locally-made programmes, to consider the provision of localness across all local commercial stations in an area (rather than just analogue) on a platform neutral basis for locally broadcast radio.

Commercial radio ownership rules (section 4)

- 1.27 Currently, there are four types of rules relating to plurality of radio ownership: those applying to local analogue services; those applying to local DAB programme services; limits on ownership of multiple digital radio multiplexes and cross-media ownership rules.
- 1.28 In April, we suggested that the local analogue and DAB service rules could be brought together into a single simplified system based on DAB coverage areas and could include future terrestrial platforms broadcasting local radio services; that the local DAB multiplex ownership rules should be simplified but that the national DAB ownership rule should be retained; and that the cross-media ownership rules should be retained but should look across analogue and digital radio as a single radio platform.
- 1.29 The radio industry argued strongly against the current radio-specific ownership rules on the basis that the radio industry is much smaller than other media industries which have no such regulation, that consolidation was in the interests of both industry and listeners and that competition law alone would suffice in ensuring a plurality of ownership.
- 1.30 In June 2007, Ofcom published research into audiences' use of different news sources. This showed that while radio has declined somewhat since 2003 as a source of news, it is still important at both national and local levels. At a local level, commercial radio still has three times the audience of BBC local radio.
- 1.31 Ofcom's latest research on localness shows that while news is one of the core elements of local content, other elements of local programming are important too, such as debates on community issues, coverage of local events and phone-ins.
- 1.32 Nevertheless we accept that there is some force in the argument that further consolidation could be in the interests of listeners by increasing the ability of the industry to invest in programming. We also recognise the case for any future legislation to be flexible to adapt to changing market conditions but also to provide as much predictability as possible for business.
- 1.33 Our recommendation to Government is that there may be a case for significantly simplifying the analogue and DAB radio services rules, allowing further consolidation while protecting plurality, along the lines we suggested in April. We propose to keep

this matter under review and will be ready to work with Government over the coming months to help develop thinking in this area.

- 1.34 Similarly we believe the DAB local multiplex ownership rule could be simplified. We suggested in April that the only overlaps that should matter are those where there are two or more DAB multiplexes covering substantially the same area. We suggest that Government may wish to consider relaxing the existing rule, perhaps in the way we suggested or perhaps going further and abolishing the rule.
- 1.35 At a national level, given the increasing importance of national commercial radio relative to local commercial radio, we continue to believe, as we suggested in April, that the existing rule, whereby one person can only control one national multiplex, should also remain both for plurality and competition reasons.
- 1.36 Ofcom's recent Review of Media Ownership Rules¹ found that plurality of voice in a local area remains important, even though radio itself ranks behind television and newspapers as a source of news. Taking local newspapers and local radio together under common ownership could unacceptably diminish the range of voices in an area, suggesting that cross-media ownership rules remain important.
- 1.37 The ownership rules are a matter for Government and Parliament. Ofcom is happy to work with Government over the coming months to help develop a new set of ownership rules for radio, fit for a digital future.

Achieving flexibility in licensing and the use of spectrum (section 5)

- 1.38 In April, while we stated that it is not yet time to consider a switch-off date for analogue (FM and AM) radio, we noted that the spectrum these services currently occupy could in future be used for other things, for the benefit of citizens and consumers. But we also set out how the current statutory licensing framework would make it very difficult to free-up the spectrum, potentially for other uses.
- 1.39 We made a number of suggestions about how consideration of these issues might be taken forward. But, in light of the formation of the Digital Radio Working Group, bringing together the Government, Ofcom, broadcasters, manufacturers, consumers and other stakeholders, it would not be appropriate at this time for Ofcom to develop its own proposals further. Ofcom will play a leading role in the working group.
- 1.40 However, there are some issues which need to be considered now, in particular the re-advertising of licences under current legislation. A number of existing analogue commercial radio licences (national and local) will expire before any new legislation is likely to have been enacted (the timing of which is, of course, a matter for Government), and therefore Ofcom needs to determine its re-licensing policy. We proposed in April that all licences re-awarded under the current statutory framework should be granted with an expiry date of 31 December 2015. This proposal was considered the best option to maintain flexibility ahead of any new legislation.
- 1.41 The response to the proposal was mixed, with some suggesting postponing a decision for the Digital Radio Working Group to consider. However, the re-licensing process cannot await the outcome of that group's report. The proposal in the consultation document was intended simply to ensure that any re-awarded

¹ Review of Media Ownership Rules, Ofcom, 14 November 2006
http://www.ofcom.org.uk/research/media_owners/rulesreview/

commercial radio licences would not expire before any new legislation is enacted, at which time it is hoped that a new statutory licensing framework will be established.

- 1.42 Our conclusion is that all national and local commercial radio licences which are re-awarded under the existing statutory framework will be granted for a five-year period or with an expiry date of 31 December 2015, whichever constitutes the longer period.
- 1.43 Section 5 of this document also makes detailed suggestions about the award of technology and spectrum neutral licences, and the extension of existing DAB local areas. It also sets out our further thinking on mono and stereo broadcasting on DAB, on which we are consulting further.

Community radio (section 6)

- 1.44 In *The Future of Radio* consultation we set out some initial thoughts concerning the future licensing and regulation of community radio services.
- 1.45 Community radio services are currently licensed under the terms of the Community Radio Order 2004. We suggested that while the underlying community radio characteristics should remain unchanged, there might be scope for simplifying the detailed selection criteria in such a way as to encourage applications by providing greater flexibility of interpretation, while maintaining the distinctive nature of community radio. We also considered how some other specific requirements contained within the current order might also be simplified by future legislation.
- 1.46 In relation to a number of questions there was a lack of enthusiasm for major changes at this early stage in the life of community radio. There was general agreement that the unique nature of community radio should not be diluted through any future changes to legislation and regulation. So in the areas of funding limits, ownership, and economic impact assessments, we argue that it is too early to draw any firm conclusions. We suggest a further review of these areas in two years' time.
- 1.47 In some specific areas however demand for early change is apparent. We therefore make specific suggestions to Government in two main areas:
 - We suggest that the statutory selection criteria should be simplified so as to give greater flexibility in Ofcom's ability to award licences
 - We recommend that community radio licences should be eligible to be extended for up to a further five-year period, on one occasion only (without having to be re-advertised), subject to the licensee meeting specified requirements.
- 1.48 In addition, we plan to recognise the financial value of volunteer time when it comes to assessing turnover. Further details are given in section 6.

Conclusion

- 1.49 Taken together, the decisions, further proposals and recommendations to Government made in this document will have the effect of supporting Parliament's and the public's desire to see commercial radio continue to play its role as a provider of diverse services with a strong local character and to encourage the further development and sustainability of community radio.
- 1.50 They will also reduce the regulatory burden on commercial and community radio, providing material cost relief to the commercial radio industry, especially to smaller

stations to safeguard their viability and their ability to provide local programming. Changes to ownership rules could provide further cost savings. For community radio the inclusion of volunteer time as a source of income provides greater funding flexibility.

Section 2

Introduction

- 2.1 Over the past 30 years UK commercial radio has grown from a handful of stations to over 300 local stations offering a choice of local AM and FM commercial services in almost every part of the UK and three national analogue services. Digital radio has been introduced offering listeners still more choice. The commercial radio industry has had to adapt and evolve to cope with increased competition and changing listener tastes. But while the regulation of radio has also evolved over the years, changes in the media are now happening so quickly that Ofcom felt the time was right to review the regulation of commercial radio to ensure that it is focused on those areas that matter most.
- 2.2 Our aim in doing so is to ensure the continued delivery of those characteristics of commercial radio set out by Parliament in the Communications Act 2003 (“CA 2003”), which are still highly valued by listeners both as citizens and consumers, in a way that ensures that the radio industry is thriving financially and so in a position to deliver those characteristics. At the same time we want to reduce or remove regulation where it is no longer required. If we get the balance right, this should allow for a more commercially viable industry with greater freedom to consolidate, while safeguarding the interests of listeners in terms of local programming and plurality of voice.
- 2.3 Community radio has also been introduced in the UK over the past two years and at the request of the Department for Culture Media and Sport (DCMS) we are carrying out a review of the statutory regulation of the community sector to ensure that it is best placed to meet its primary objective of providing social gain.
- 2.4 Building on the discussion document that had preceded it, *The Future of Radio* consultation document in April 2007 set out a wide range of proposals and suggestions for a new regulatory framework for commercial and community radio which recognises the transition from analogue to digital, while still ensuring that listeners' interests are best served through the continued provision of a wide range of and diversity of services, including local services.
- 2.5 The consultation covered four main areas:
- Content regulation of local analogue commercial radio services, where we proposed to simplify Formats and reduce localness obligations based on the size of stations, in a bid to improve viability while protecting what citizens and consumers value most about local radio;
 - Commercial radio ownership rules, which are a matter for Government but which we suggested could be simplified across analogue and digital platforms to allow for greater consolidation;
 - The future use of FM and AM spectrum, where we argued for the flexibility to be able to free-up analogue spectrum for potentially better uses when the time is right, including reviews of AM and FM in 2009 and 2012 respectively; and
 - The regulatory framework for community radio, where we suggested simplifying criteria and reducing regulation while maintaining the not-for-profit and social gain basis for community radio.

- 2.6 Some of the proposals and suggestions are within Ofcom's gift to deliver. Where this is the case, this statement sets out our decision on each proposal, with the exceptions of the regulation of localness in commercial radio, where we put forward a revised proposal for consultation, and the regulation of mono and stereo broadcasting on DAB.
- 2.7 Other proposals or suggestions are for Government and Parliament to take forward at the appropriate time as they see fit. This applies to:
- our recommendations on the ownership rules that apply to radio, where this statement forms the final part of Ofcom's statutory review of the media ownership rules;
 - our recommendations on community radio (where the section of this report forms our report to the Secretary of State, following a requested review two years after the launch of the sector);
 - other suggestions around licensing (the ability to extend DAB areas and license new radio platforms such as DRM) and localness on digital platforms.

In these cases we put forward our final recommendations and suggestions to Government.

- 2.8 However, in the case of three of our original suggestions regarding the flexibility to free-up spectrum in the long-term (the suggestions for reviews of AM and FM in 2009 and 2012 respectively, the removal of the 12-year renewal provision for analogue licensees providing a relevant DAB service, and the indefinite extension of all existing local analogue licences but with a termination clause), we are proposing to postpone any final recommendations. These areas will be passed over for consideration to the Digital Radio Working Group which is being set up jointly by the DCMS and Ofcom.
- 2.9 This working group will comprise representatives from industry and consumer bodies and will report to the DCMS in due course. It will consider:
- What conditions would need to be met before digital platforms could become the predominant means of delivering radio, in the best interests of a) listeners in all parts of the UK and b) the radio industry?
 - What are the current barriers to the growth of digital radio?
 - What are the possible ways of removing those barriers?
- 2.10 There are no simple answers here and Ofcom welcomes the engagement of a wider set of stakeholders to help think through the issues and provide an appropriate way forward.

Ofcom's statutory role

- 2.11 Any consideration of Ofcom's role in the regulation of radio in the UK needs to be based upon Ofcom's statutory duties and responsibilities. Ofcom's principal statutory duty as set out in section 3 of CA2003 is to further the interests of citizens in relation to communications matters; and to further the interests of consumers in relevant markets, where appropriate by promoting competition. Ofcom is also required to secure (amongst other things):

- the optimal use for wireless telegraphy of the electro-magnetic spectrum;
- the availability throughout the UK of a wide range of television and radio services which (taken as a whole) are both of high quality and calculated to appeal to a variety of tastes and interests; and
- the maintenance of a sufficient plurality of providers of different television and radio services.
- Under section 85 of the Broadcasting Act 1990 (“The 1990 Act”) Ofcom is required to secure the provision of a diversity of national analogue services (of which one must consist mainly of speech and another must consist wholly or mainly of non-pop music), and a range and diversity of local services.
- Ofcom is required (under section 314 of the CA 2003) to ensure that in local analogue radio services programmes consisting of or including local material are included in such services but, in the case of each such service, only if and to the extent (if any) that Ofcom considers appropriate in that case; and where such programmes are included in such a service, what appears to Ofcom to be a suitable proportion of them consists of locally-made programmes.
- Ofcom is also responsible for licensing and regulating community radio services.

Public purposes and a strategic framework

2.12 *The Future of Radio* consultation published in April² reiterated Ofcom’s view on the public purposes of radio and its strategic framework for the future regulation of radio.

2.13 This view is that intervention in the radio market is required to ensure the provision of a number of public purposes for the radio sector as a whole – BBC, commercial and community:

- Sustaining citizenship and civil society
- Promoting education and learning
- Stimulating creativity and cultural excellence
- Representing the UK, its nations, regions and communities
- Bringing the UK to the world and the world to the UK
- Promoting social gain

2.14 We believe these provide a comprehensive set of public purposes for which intervention may be required. We also believe that plurality in the provision of the services which deliver these identified public purposes is important, and therefore we do not believe it is sufficient to leave the achievement of these aims only to the BBC.

2.15 Ofcom has clear statutory duties and regulatory principles. We have previously set out how we will combine these with our analysis of the rationale for intervention and potential public purposes to produce a set of strategic aims for regulation in radio. This framework has three elements:

² <http://www.ofcom.org.uk/consult/condocs/futureradio/>

- To enhance choice, diversity and innovation for consumers at the UK, national, regional, local and community levels. In the short-term, this means we need to:
 - ensure a wide range of services in the commercial sector and, in particular, the provision of local material, by regulating in the most effective way possible;
 - encourage the development of more choice and competition by licensing new analogue and digital services and encouraging the growth of digital radio; and
 - encourage the growth of a strong commercial sector, capable of extending range and choice and investing in the future.
- To secure citizens' interests through the provision of radio designed to meet public purposes. The public purposes will be met in different ways by different sectors, taking into account:
 - the need to achieve a balance between the public and commercial sectors and clear boundaries between them;
 - the amount of public funding and intervention required to meet the public purposes;
 - the importance of plurality of provision of radio designed to deliver those purposes; and
 - the need to encourage the development of a thriving community radio sector.
- To do this with as little intervention in the market as possible, consistent with meeting our objectives:
 - based, where possible, on the range and quality of services provided to consumers, rather than intervening to determine production methods;
 - in a way that is as consistent as possible across media and across platforms; and
 - adapting regulation to changes in the market and increasing levels of competition.

2.16 We also published, following consultation, an outline of what we thought a healthy radio market in the UK would look like³. Our aim is to encourage a market-driven approach, alongside a strong independent BBC, aimed at delivering the following benefits for consumers:

- A wide range of innovative UK-wide commercial stations - providing competition for the BBC, and plurality of provision in all major genres; both UK-wide services, and services addressing the specific needs of Scotland, Wales and Northern Ireland.

³ Radio – Preparing for the future: Phase 2, Ofcom 19 October 2005
http://www.ofcom.org.uk/consult/condocs/radio_reviewp2/radio_reviewp2/

- A wide range and diversity of local and regional commercial services - catering for local tastes and interests, with a particular focus on local news, providing a sense of community and serving local communities, but also providing local programming of more specialist interest.
- Community services for every community that wants one - providing programmes for special interest groups (including ethnic and religious communities) and a sense of identity in local communities, with community involvement and participation, broadcasting community information and allowing for debate.

2.17 We want to see these provided:

- Alongside a strong, independent BBC providing a wide range of services offering something of value to all listeners; and
- All supported by multimedia services where viable - On-demand, downloads, archive, text and graphical information and available where and when audiences want, on devices which offer real consumer benefits.

Steps already taken to implement the strategy

2.18 In order to begin to achieve these goals, Ofcom has already:

- Allocated spectrum to DAB to deliver most of these goals, including the award in July 2007 of a second national commercial radio multiplex licence to 4 Digital Group to provide more diversity at a national level, and more local radio multiplex licences to facilitate local DAB services in every part of the UK. However, we recognised that DAB (or existing FM) will not allow for the delivery of all of these goals, and other technologies (for example, DRM) may be required to deliver them all.
- Moved some way from input to output regulation on analogue commercial radio, allowing more automation, the use of news hubs and some co-location.
- Awarded licences to 149 community radio stations in the past two years. We will award more over the coming months.

2.19 In doing so, we have also taken into account Ofcom's policies on spectrum as well as its policies on radio.

The long-term picture

2.20 In our consultation document in April, we set out the challenges facing the radio industry which, we argued, is facing a world where the media, communications and entertainment technologies are changing at a faster rate than at any time in history. As a result, the radio industry is having to invest in new technologies and re-invent its role.

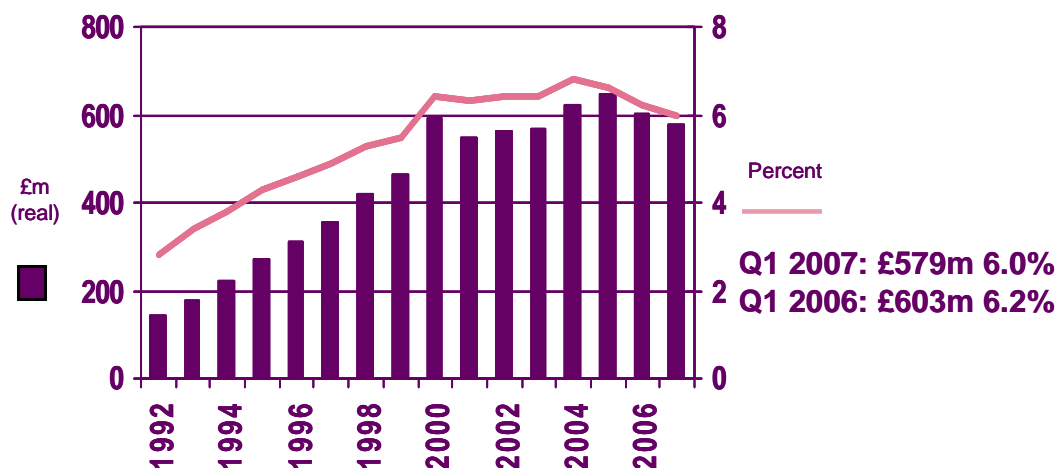
2.21 The traditional approach to radio policy in the UK, followed by successive Governments and regulators was for the BBC to be the focus of national broadcasting and commercial radio to be the focus of local broadcasting (although the BBC also did some local broadcasting and commercial radio did some national broadcasting).

- 2.22 However, competition for stations of all sizes has increased dramatically, not only from within the medium but from outside too. Local programming is expensive to deliver and the commercial realities of increasing competition mean that it is no longer sustainable to the extent it used to be. So the pressures on commercial radio, which is primarily a local broadcasting system, are being felt particularly hard.
- 2.23 But the problems faced by commercial radio are not all due to the way the system is regulated. Some are structural, to do with changing business models and competing claims on advertising spend. As we reported in the consultation we believe there are two main pressures for change in the structure and regulation of the industry:

a) Revenues declining

- 2.24 The rapid growth in radio advertising revenues before 2000 has given way to a decline in revenues and a stagnant or declining share of the overall advertising market. This must also be set against the backdrop of an overall display advertising market that has been declining in real terms since Q1 2005. Although larger stations are still making money, even they are under pressure. Commercial radio revenues fell by 4.4% overall year-on-year to Q2 2007; local revenues fell by 4.3%, national revenues by 6.4%. By Q2 2007 commercial radio’s share of total display advertising had fallen to 6.0% (its lowest since 2000) (Figure 1).

Figure 1: Radio advertising – amount and share of total advertising market



Source: RAB

- 2.25 Smaller stations in particular are struggling, with around 40% losing money.
- 2.26 While radio advertising has been declining, internet advertising has grown rapidly over the last five years and is forecast to continue to grow at a similar rate. In 2004, internet advertising overtook radio and is forecast to become the third largest advertising sector, behind regional newspapers and TV, in 2007. So there is some evidence of structural changes in the advertising market which may impact on radio funding.
- 2.27 But, to some extent, these trends may be cyclical and lately there are some signs of a modest recovery in radio advertising revenues. In August 2007, RadioCentre said “National revenue figures for the Q2 period have risen to over £85 million – a healthy 3.4% increase year-on-year. Local revenue for the quarter grew year on year by

1.2% to over 40 million and S & P revenue dipped slightly down to 24 million, but overall, the figures are showing strong signs that the industry is well on its way to a recovery - growing in confidence as it heads to Q3."

- 2.28 There may also be more that radio can do to win new revenues, such as a move from spot advertising to sponsorship, as evidenced by the recent launch of Emap's Heat Radio, or the increased use of music downloads.
- 2.29 So, while local commercial radio may remain popular and advertising may be recovering somewhat, the extent of any structural decline in its attractiveness to advertisers may mean that the current business model for commercial radio – particularly for the smallest local stations - may not be sustainable in the long-term.
- 2.30 Increasing competitive pressures mean that existing programming commitments may no longer be sustainable. A healthy, sustainable commercial radio industry is necessary to enable Ofcom to deliver the public policy objectives enshrined in its statutory duties. Existing regulation, particularly of the analogue radio sector, is heavy compared to other media and the cost to the radio industry of that public policy is high and may now be becoming disproportionate. This argues for a general reduction in the level of regulation of the analogue commercial local radio sector, but only to the extent that this is balanced against listener needs.

b) Digital listening increasing

- 2.31 At the same time as overall radio revenues are declining, after a very slow start, listening on digital platforms is increasing. By Quarter 2 of 2007 digital listening accounted for at least 12.8% of all listening (66% of listening was to analogue radio, while 21% was unspecified).
- 2.32 Digital platforms are expected to account for the vast majority of radio listening in ten years' time. As digital platforms are significantly less regulated than traditional analogue (AM and FM) local radio so far as programming obligations are concerned, this argues for an alignment of analogue and digital regulation in this area.
- 2.33 In addition, young people have been listening less to the radio and the commercial sector has been losing audience share to the BBC. Taken together these changes have had a more rapid and profound impact on the radio industry than was foreseen just a few years ago when the existing legislation was put in place. As a result, the familiar ways of regulating radio, designed for a largely local analogue radio system, which have served listeners and the industry well, may be inappropriate in the digital era.
- 2.34 Changes in regulation alone cannot secure the future of commercial radio – much of that is up to the industry itself – but they can help.
- 2.35 In bringing forward our original proposals, we took into account the cost of regulation to the businesses we regulate, and the likely impact of those costs on individual businesses and the radio sector as a whole. Ofcom's aim is to facilitate diverse, high quality radio services. The industry's financial position threatens the quality, or in a few cases the very existence of those radio services and so it has become particularly important to ensure that regulation is proportionate, as the level of regulation may directly contribute to radio stations' costs.
- 2.36 However, as our latest research shows, many of the things that commercial radio provides, particularly in terms of localness are highly valued by audiences.

Community radio

- 2.37 When the Community Radio Order 2004 was introduced, its sponsoring government department, the DCMS, asked Ofcom to carry out a review of the new sector, reporting back two years after the first new community radio licences were launched. The first community radio service began broadcasting in November 2005.
- 2.38 In *The Future of Radio* April consultation document, we considered the existing statutory framework for community radio and set out some possible options for its future regulation. The consultation considered whether any changes should be made to the current statutory framework and posed sixteen individual questions, each concerned with a particular aspect of current community radio legislation or regulation.
- 2.39 Approximately seventy groups and individuals responded to one or more of the specific questions set out in the consultation document.
- 2.40 It is a matter for Government to decide which changes, if any, should be made to legislation. However, some of the suggestions we made would not require a change to the legislation and so could be implemented by Ofcom as we consider appropriate.
- 2.41 The rest of this report sets out our further thinking or conclusions on each of those proposals.

Section 3

Commercial radio content regulation

- 3.1 The 'positive' content obligations required of local analogue commercial radio stations (by statute) are enforced through the Format, which forms a part of each station's licence. These obligations can be classified into two main areas:
- a description of the **character of service** which is primarily designed to secure the continuing public policy objective of programme diversity; and
 - specific requirements (e.g. the number of hours that a station must provide locally-made programming) designed to secure the **amount of localness**. These are backed up by published guidance, which sets out the considerations that Ofcom will take into account when judging whether a station is delivering an appropriate degree of localness.
- 3.2 Format regulation in respect of both localness and diversity is carried out on a case-by-case basis. Stations may request a change to their Format at any time; these requests are considered by Ofcom in relation to specified statutory criteria designed to ensure that listeners' interests are protected⁴. *The Future of Radio* consultation document published in April 2007 (hereafter referred to as "the consultation document") set out a range of proposals in this area which were designed to ensure the continued provision of a diversity of local commercial radio services offering an appropriate degree of localness, as radio undergoes the transition from a predominantly analogue medium to a predominantly digital one.
- 3.3 The proposals were also designed to provide greater regulatory certainty for operators by setting out in guidance what Ofcom considers generally is a reasonable minimum amount of locally-made programming that a local radio station should provide. Our currently published localness guidance (a statutory requirement) is not specific as regards to the type of changes related to localness provision which might be considered acceptable, particularly in terms of the hours of locally produced programming. Our aim in reviewing the current guidance is to provide greater regulatory certainty for licensees and consistency across radio broadcast platforms.

a) Formats: Delivering programme diversity

- 3.4 The challenges facing local commercial stations mean that such stations often find that they have (self-authored) obligations which they were able to fulfil in a world where there was less competition, and so more revenue to invest in programming, but which they are finding increasingly difficult to fulfil as financial pressures increase. In addition, some stations argue that increased competition from other radio stations and other media and changing audience tastes mean that such obligations do not give them the flexibility to serve audiences most effectively.
- 3.5 It could be argued that the Format change request regime allows for stations to adapt to changing needs over time and that this mechanism is all that is required. However, we said in the consultation document that we believe that relying purely on Format variation requests would result in a piecemeal approach that would not adequately address the fundamental issues the industry faces.

⁴ The statutory provisions applying to a request to change a Format are in sections 106 and 106ZA of the Broadcasting Act 1990.

- 3.6 In addition, diversity of programming, such as different types of music, is increasingly being provided at a both a national and local level by digital stations. For this reason we argued that the amount of detailed requirements in local analogue stations Formats are unnecessary to maintain the overall character of each radio station.
- 3.7 It was therefore proposed in the consultation document that the Formats of analogue stations could be streamlined to bring the description of the character of service into line with the significantly lesser level of detail included in the Formats of services provided on DAB radio multiplexes. In the vast majority of cases the headline character of service as currently written would remain unchanged, but in exceptional circumstances there may be elements within the detail of the Format description which are so important to the station's output that they will need to be included in a new character of service. In no case would this result in new obligations for the licensee. Each Format change would be discussed on a case by case basis with each station before implementation.
- 3.8 These proposals would ensure that diversity would still be provided where there is more than one commercial local station in an area, but many of the detailed requirements would disappear. For example, there are seven commercial local services serving the city of Birmingham (four just for Birmingham and three for the wider West Midlands). Under these proposals, their Characters of Service would remain largely unchanged (Figure 2).

Figure 2: Birmingham and West Midlands stations' present Characters of Service

Station	FM/AM	Area	Character of service
BRMB	FM	Birmingham	A contemporary and chart music and information station for 15-44 year-olds in the Birmingham area.
Gold	AM	Birmingham	A classic hits station targeted primarily at 35-54 year-olds in the Birmingham area.
Galaxy	FM	Birmingham	A rhythmic-based music and information station primarily for listeners of African or Afro-Caribbean origin, but with cross-over appeal to young white fans of urban contemporary black music
Radio XL	AM	Birmingham	Radio XL is a music and information service for the Asian community of the west midlands.
Smooth	FM	West Midlands	Melodic music and lifestyle orientated speech primarily targeting listeners in the area aged 50 plus.
Heart	FM	West Midlands	A melodic adult contemporary music-led service for 25-44 year-old West Midlanders, supplemented with news, information and entertainment. The service should have particular appeal to people in their 30s.
Kerrang!	FM	West Midlands	A specialist rock music service mixing modern & classic rock (plus some complementary tracks selected from genres appreciated by rock fans) with stimulating speech for young rock aficionados.

- 3.9 What would disappear is most of the detail underlying these Formats. For example, the detail under Gold’s Format, which forms part of the licence and is therefore mandatory, currently reads as follows:

The programming will feature classic pop hits selected predominantly from the period 15-50 years prior to broadcast. Hits less than 15 years old will never account for more than 30% of the music output.

Speech should never normally exceed 25% of daytime output or 50% non-daytime (apart from sports coverage weekday evenings or weekend afternoons), but a reasonable balance of information from across the area must be maintained within each day.

Across each week, during non-locally produced/presented time there must be at least 40 informational inserts/drop-ins spread through weekday daytime and 10 through weekend daytime.

Hourly bulletins containing local news will be aired at least during daytime. National and international news will feature at all other times.

Themed music or music days focussing on a genre from the main mix (i.e. 60s, 70s, 80s etc) may also be broadcast.

- 3.10 With the exception of a requirement for local and national news (see localness section below), under this proposal it is likely that most of this detail would disappear. However, we would modify the wording of some Characters of Service where this would provide clarification which would otherwise be lost with the removal of the detailed requirements. For example, the detail in the existing Gold Format makes it clear that the hits being aired are generally pop hits rather than specialist music hits. With this detail removed, we would amend the Character of Service to insert the word “pop” to read:

Gold	AM	Birmingham	A classic pop hits station targeted primarily at 35-54 year-olds in the Birmingham area.
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- 3.11 Compliance with these revised Formats will be rigorously enforced through a mix of Ofcom’s sampling of content, spot checks and the requirement for each station to maintain an online Public File providing information about output.
- 3.12 A licensee would still be able to request a change to its Format, as at present. In order for Ofcom to consider whether to allow the change, the licensee’s request must meet at least one of four statutory criteria. These are that:
- the change would not substantially alter the character of the service (if it would, Ofcom must formally consult on the change)
 - the change would not lead to a narrowing of the range of programmes available in the area (not including programmes available on DAB multiplexes)
 - the change would be conducive to the maintenance of fair and effective competition in the area

- that there is evidence of significant demand or significant support for the change
- 3.13 If the request meets at least one of these criteria, Ofcom will decide whether to allow the request. Ofcom published its procedures for considering Format changes following consultation in *Radio – Preparing for the future*.
- 3.14 In *Radio – Preparing for the future: phase 2*⁵, Ofcom has said that it will not consider any Format changes within two years of the launch of a station, as this would undermine the basis on which the station won its licence.

Consultation responses

- 3.15 This proposal was broadly welcomed by the industry as providing more flexibility. They generally argued for the changes to be made sooner than we proposed, so as to allow them to adapt more easily to changing listener tastes.
- 3.16 However there were objections from Ofcom's Advisory Committees for each of Scotland and Wales, the Voice of the Listener and Viewer ("VLV"), and from some individual listeners.
- 3.17 Ofcom's Advisory Committee for Scotland said "*we feel that 'streamlining (analogue) formats to bring them into line with the level of detail in DAB formats' could be used by some operators to reduce local input to minimum levels. While some sensible reduction in unhelpful regulation is appropriate, we shouldn't lose sight of the purpose of 'local' licences... we aren't convinced that regulation is actually a significant cost factor, and even less convinced that large numbers of stations will go to the wall if the rules aren't swept aside.*"
- 3.18 The VLV stated that "*it is of paramount importance that the industry's concerns, and especially those of dominant players, should not be allowed to dominate those of other stakeholders, most crucially the listening public... we question whether the level of detail contained within current DAB licences is sufficient to secure citizen and consumer value, and to ensure that licence-holders can be held accountable for significant changes in format. Therefore, we would propose that future licences should contain a greater level of detail than that currently required for DAB formats, and should include specific references to the provision of local programming (at a local/regional level) and diversity for audiences.*"
- 3.19 The Ofcom Advisory Committee for Wales suggested an alternative approach: "*members believe that DAB formats should be brought into line with existing analogue, not, as Ofcom proposes, the other way around*"

Consideration of responses

- 3.20 We believe that a sufficient level of diversity would still be able to be secured through more streamlined analogue Format descriptions, as a shorter Character of Service description is enough to ensure the differentiation of one station's programming from another (see figure 2 above).
- 3.21 In contrast with analogue licences a DAB station Format is much simpler, consisting only of a short description specifying the character of service. Ofcom considers that

⁵ Radio – Preparing for the future: Phase 2, Ofcom 19 October 2005
http://www.ofcom.org.uk/consult/condocs/radio_reviewp2/radio_reviewp2/

this approach is still appropriate, for the reasons we set out in the consultation⁶. If the current level of detail is maintained in local analogue Formats the difference in the level of regulation of local analogue and DAB Formats is likely to become increasingly anomalous as digital listening increases.

- 3.22 The current level of detail in analogue Formats also represents an undue burden on licensees, preventing them from reacting flexibly to audience need, flexibility which stations on other platforms already have.
- 3.23 It is also noteworthy that both Ofcom Advisory Committees and the VLV appear to be more concerned that streamlining Format descriptions as proposed would result in a loss of local content than a potential loss of diversity. The localness issue is addressed separately below. Any change to the character of service would not affect the amount of local programming a station is required to broadcast.

Conclusion

- 3.24 Taking into account the responses received on this issue, the interests of consumers and increased flexibility for the industry, we believe the proposal should stand.

Decision on delivering programme diversity

Analogue local commercial radio station Formats will be streamlined to bring them into line with the level of detail in DAB Formats. In most cases this will mean the programming detail in the Format will be removed but the Character of Service will remain. However, where clarity would be lost by the removal of the detail, the wording of the Character of Service may be amended. Ofcom will discuss each Format change with the licensee on a case by case basis before implementation.

No licensee will be granted a request to change or simplify its Format within two years of a station's launch, as per our existing policy on this matter.

b) Formats: Amount of localness

- 3.25 For all of the local stations, apart from some specialist music services, localness is their key distinctive feature. However this does not necessarily mean that they should have to broadcast local programming all of the time. Existing legislation requires Ofcom to consider the appropriate amount of localness for each station on a case by case basis.
- 3.26 It was proposed in the consultation document that Ofcom could give guidance under section 314 of the CA2003 so as to indicate what Ofcom considers to be appropriate minimum levels for the amount of locally-made programmes and local material (local programming) to be provided by analogue local commercial stations, according to the size and type of station (although in applying this guidance, under the existing legislation Ofcom would still need to assess each station on a case by case basis and consider changes under the Format change regime). It was further proposed that local material should be locally-made within the licensed area unless Ofcom agrees to the co-location of studios, according to specified criteria. The proposals also

⁶ The Future of Radio, para 4.33, Ofcom, April 2007

indicated that the changes could be introduced when the relevant digital listening threshold is met.

- 3.27 The amount of local material and locally-made programming is currently different for each station and is enshrined in its licence, based on the promises in its own licence application. Often the smallest stations have the highest local material and locally-made obligations (many 24 hours a day) while larger stations typically have to produce local material and be locally-made at present for between 13-24 hours a day. Stations may request a change to their local hours but Ofcom currently provides no guidance for stations as to what is generally acceptable. Our aim in reviewing the current guidance is to provide greater regulatory certainty for licensees.
- 3.28 As set out in the consultation document, based on our audience research, we believe that the provision of local radio is important for public policy reasons and that financial pressures mean that the provision of local material in all areas cannot be guaranteed in the future. We therefore believe that intervention in the market will still be required to meet the public policy objective of securing local material and that the most effective way for stations to keep in touch with the audiences they serve is for their programming to be produced in their licensed area.
- 3.29 However, if it is true that the current local radio industry structure is unlikely to be viable in the future, there is a question as to whether local material and locally-made programming on commercial radio should be regulated at all.
- 3.30 We argued, on the basis of our previous research, that localness is still important to listeners and that a certain level of it should be protected. We therefore set out our proposals for localness guidelines:

Type of licence	Programming requirements
FM and AM stations with populations under 100,000 (67 stations, for example those for Pembrokeshire and Ballymena)	Minimum four hours per day of locally-made programmes (all in peak time) with local material including local news
FM stations with populations of 100,000 – 250,000 (62 stations, for example those for Chelmsford and Inverness)	Minimum eight hours per day of locally-made programmes each weekday (at least four hours in peak time and all eight within daytime) with local material including local news; minimum four hours per day of locally-made programmes at weekends (in daytime) with local material including local news
FM stations with populations over 250,000 (125 stations, for example those for Plymouth, Belfast and Liverpool)	Minimum 13 hours per day of locally-made programmes each weekday (including all peak time and at least ten hours in total in daytime) with local material including local news; minimum six hours per day of locally-made programmes at weekends (in daytime) with local material including local news.
AM local stations with populations over 100,000 (54 stations; of which 53 are over 250,000)	Minimum four hours per day of locally-made programmes each weekday (all in peak time) with local material and local news for all AM stations, plus local material drop-ins throughout daytime for larger AM stations (over 250,000 population)

- 3.31 We also suggested that one exception to the general guidance set out in the above table could be for those stations which focus heavily on a particular type of music. We proposed that these stations could provide fewer hours of locally-made programmes and less local material if they could make a strong case that the music they provide could be better provided on a shared basis, and that the local element of their programming is less important than the music they play.
- 3.32 These proposals were based on the standard length of commercial radio programmes (4 hours). A random check of the schedules of radio stations belonging to each of the major and some of the smaller groups revealed that 4 hours is the length of a standard breakfast show, suggesting that it would be reasonable to require four hours as the standard scheduling block for that time of day. The stations selected at random, all of which broadcast a four hour weekday breakfast show, were:
- Marcher Sound (GCap)
 - Clyde 1 (Emap)
 - Smooth Radio East Midlands (GMG)
 - Galaxy 105 Yorkshire (Global)
 - Spire FM (TLRC)
 - Lincs FM (Lincs FM)
 - Touch FM (CN Radio)
 - Wire FM (UTV)
 - Star FM Cheltenham (UKRD)
 - KMFM Medway (KM Group)
 - Kick FM (Tindle)
 - Swansea Bay Radio (5 hour breakfast) (Town & Country)
- 3.33 The proposals were also based on the research conducted for *Radio – Preparing for the Future* (in 2004-5) which demonstrated when listeners expect their local commercial radio station to offer locally-made programming. The proposal to differentiate the requirements by the size of a station's potential audience was intended to recognise that the smallest stations currently face the greatest regulatory burden, and are least able to bear the costs of this regulation.
- 3.34 We said that the proposals would allow some stations to be local for only four hours a day with the remainder of the programming being allowed to come from anywhere and be shared with any number of other stations. We suggested that it would generally be appropriate to allow local stations to share programming outside key times of day, when most listeners say that it is less important for a local station to be local. However the amount of such networking would be limited, so as to maintain the local character of services at key times of day.
- 3.35 We said that these proposals would represent a significant reduction in the amount of local programming that the majority of stations would have to produce, often reducing locally-made hours by between a third and a half. However in our view it would ensure that stations deliver an appropriate amount of local material for listeners without imposing a disproportionate regulatory burden. Of course, this would not prevent stations from offering more local programming than their minimum obligations, as many already do. Localness will remain the main selling-point for many stations, but it would be up to them how they deliver this beyond the minimum regulatory requirements.

Consultation responses

- 3.36 The main industry response regarding the regulation of localness was provided by commercial radio's trade body RadioCentre, supported by most of the major commercial radio groups, which called for self-regulation of localness, focused on the delivery of local material (rather than the regulation of locally-made programming), on the grounds that licensees know best how to serve their listeners. In further discussions with the industry, it was suggested that if self-regulation is not acceptable then a co-regulatory model should be considered, although few suggestions have been made about how this might be done. RadioCentre not only disagreed with Ofcom on the need to regulate for locally-made programmes but also with our proposal to differentiate regulation by the size of the population in stations' licensed areas.
- 3.37 But in a late response RadioCentre argued that *"We recognise that, for very small commercial radio stations, this proposal does represent a significant reduction in the number of local hours they are currently required to produce. We welcome this. However, we firmly believe that flexibility is needed right across the spectrum of stations to secure the commercial viability, quality of output and audience appeal of the sector as a whole."* Instead they propose a two-tier approach whereby all FM stations with a population below 500,000 (around three quarters of all existing local stations) and all AM stations should only be required to produce three hours a day of locally produced and presented content on weekdays (there is no mention of weekends), which stations should be allowed to schedule as they see fit to allow stations to *"maximise the impact of ... local content every weekday"*; and FM stations with populations of over 500,000 should only be required to produce 7 hours of locally produced and presented content, scheduled as they see fit (again there is no mention of weekends). RadioCentre argues that in many cases stations will choose to be local at breakfast and drive time, but that other stations may instead choose to be local during the middle of the day. *"This would be sensible for groups that want to compete with national BBC stations during breakfast but could not secure national calibre talent in their area."*
- 3.38 Emap Radio, while supporting the standardisation of local programming requirements, wrote that *"one standard requirement for all FM services that requires locally relevant output at peak times would provide for a simple and straight forward solution that gives licensees greater flexibility and satisfies listener expectations for local output."* It also proposed that *"those stations that provide specialist music services should not be required to provide local programming and information."*
- 3.39 However, many respondents were opposed to reductions in localness. Notably, the BBC said it *"believes that listeners are not best served if localness is left to us alone... Ofcom should recognise that a rounded, balanced local radio service is one which is delivered by all participants in the market: not just the not-for-profit sector."* The Community Media Association (CMA) also had concerns about reducing or removing the requirement for locally produced content, without adequate provision and facilitation of alternative providers, for example new community radio stations.
- 3.40 Some other respondents urged caution. As noted earlier in this section, Ofcom's Advisory Committee for Scotland said *"while some sensible reduction in unhelpful regulation is appropriate, we shouldn't lose sight of the purpose of 'local' licences... we aren't convinced that regulation is actually a significant cost factor, and even less convinced that large numbers of stations will go to the wall if the rules aren't swept aside."* Ofcom's Advisory Committee for Wales said *"The ACW is completely opposed to reducing the requirement for Commercial Radio to provide local content."*

- 3.41 John Grogan, MP for Selby, wrote that *“I do think that at root, local radio should be local.”* He cited the example of Clear Channel’s actions in the US following deregulation of the radio sector in 1996, and concluded *“Increasing uniformity and a general lack of local diversity do not necessarily seem to lead to commercial viability. As such, I think it imperative that in reaching a decision on the minimum level of localness, plurality and diversity are put at the very heart of any framework.”* The Campaign for Press and Broadcasting Freedom, NUJ, Radio Verulam, Radio North Angus, and ten individual respondents made similar points regarding dilution of localness and what was perceived to be a reduction in local content on existing local radio services.

Consideration of consultation responses and further evidence

- 3.42 We recognise that there is a wide range of views on the appropriate amount of local programming and that a balance needs to be struck between safeguarding the interests of listeners as consumers and citizens and ensuring the continued viability of local services. Over the summer we have looked again at the question of localness and decided to carry out further research into audience attitudes to localness, both in terms of its content and where it is produced.
- 3.43 We commissioned Essential Research to carry out six deliberative workshops around the UK to ensure that we gauged opinion in each of the four UK nations and covered a mix of big cities, towns and rural areas with differing levels of local radio provision (locations were: Haverfordwest, Belfast, Dundee, Liverpool, Lincoln and Plymouth), in total covering 117 respondents in depth. Deliberative research is a qualitative methodology, which allows for respondents’ views to be listened to and for them to be probed for the reasons behind their attitudes and opinions. It also allows for relatively complex stimulus material to be used. Respondents completed a questionnaire at the start and end of each session to ensure that individual opinions on key topics were recorded (in a group situation, people will tend to reach a consensus) and as a means of validating or challenging our findings from the group discussions. The Essential Research report is shown in Annex 6 to this report.
- 3.44 In order to answer the overall question of whether we should be regulating for localness at all, we first need to answer three subsidiary questions:

a. What elements of local programming are important to listeners, based on their needs and expectations as citizens and consumers?

- 3.45 There are two factors to consider here:
- What types of local material are important to listeners?
 - Does it matter where that local material is made?
- 3.46 The research suggested that there are two elements of localness that people find important in the local material on commercial radio: core local content (news, weather, traffic) and human engagement (community issues, local events, phone-ins, competitions, banter between songs, etc).
- 3.47 The research also suggested that people expect that local material should be locally-made as they expect the presenters to know and understand the area they are broadcasting to.

- 3.48 There was consensus amongst all listener types regarding how far core, functional local content should be locally-made in terms of the localness of the presenter and proximity of the local station. Nearly all listeners felt that the quality and relevance of local traffic/travel reports, and local news and weather bulletins, were enhanced by being locally-made and broadcast by local people:

“It’s important that the information comes from someone who actually knows the roads and understands the problem.” F 16-44 Liverpool

“If the station is coming from the Lincoln area they find out about school closures quite quickly which is important – we need this information ASAP so we know if the school is open or closed before we leave the house.” F 45 + Lincoln

- 3.49 For others it was important that this content came from a local source for reasons of local empathy, or more simply authentic local pronunciation:

“It is not so important that we identify with the station but rather that the station identifies with us – for example they get excited if something happens nearby or if they have difficulties getting home [from the local studio] if there is heavy snow.” F 45+ Haverfordwest

“They had this guy on for a while reading the local news and he couldn’t pronounce the place names properly – you could hear other people in the studio laughing at him.” F 16-44 Belfast

- 3.50 A minority of mainly younger listeners felt that it was not important where local news and weather were compiled, as long as they were up to date and accurate.
- 3.51 Some respondents considered the impact that fewer locally-made programmes would have on the local economy, in the sense that local radio personnel, local studios and local advertisers would suffer as a result.
- 3.52 In addition to this research evidence of the importance of local radio stations having a local presence, we believe that it matters where local material is made for two further reasons:

- Firstly, we believe that in order to reflect fully the character and concerns of the local area, the presenters need to be based in and broadcasting from that area (or at least from nearby). This was supported by our research and has never been more apparent than during the floods which afflicted parts of the UK this summer. Local presenters were able not only to provide practical information which was enhanced by their detailed knowledge of the local area but also to empathise with the listeners as they were sharing the same situation. The fact that some stations’ studios were themselves flooded and so the stations had to temporarily decamp to alternative locations outside the area does not diminish this argument but arguably strengthens it as listeners knew that their local station understood their predicament. This sort of coverage could not have been achieved had the presenters been based potentially hundreds of miles away. Of course there are some elements of local programming which can be provided from anywhere – weather forecasts generally come from the Met Office, rather than from a local meteorologist – but, in general, if the presenters do not live and breathe their local area then many believe the station is failing its listeners.
- Secondly, there is the question of trust in broadcasters, which has been highlighted dramatically this summer by numerous examples of broadcasters

“faking” programming. Listeners who are interested in hearing local content expect their local station to be based in the local area – this is supported by our research - and it could be perceived by listeners to be dishonest of broadcasters to pretend a station was local when it was actually being produced many miles away.

b) Would the market provide this anyway, without regulation?

- 3.53 If it is accepted that local material and locally-made programmes are important the question is then whether regulation is required to secure them or whether the market would provide them anyway.
- 3.54 As we argued in *Radio - Preparing for the future – phase 1 appendix D*⁷, we believe that, left to itself the market would not deliver locally-made radio services or even services including local material ubiquitously across the UK, as much of the cost of commercial radio services arises from having to have studios and a certain amount of production within each area. Meanwhile, the costs saved by stopping local production are always likely to outweigh any loss of revenues from ceasing to provide as much local output and replacing it with shared (networked) programming across a number of stations.
- 3.55 In the United States there has been much public criticism of the disappearance of locally-made programming and its substitution by programming coming from many miles away which gives the false impression of being locally-made. Indeed the common practice in many cases is for one presenter to produce programmes for a number of local stations simultaneously using voice-tracking techniques (where a link is pre-recorded by a presenter for later automated play-out) to tailor output to each area.
- 3.56 This has prompted the FCC to carry out “Localism Proceedings”, to gather information from consumers, industry, civic organizations, and others on broadcasters’ service to their local communities⁸. We want to avoid a similar situation developing in the UK.
- 3.57 Meanwhile, in France, where localness requirements were substantially reduced when the industry consolidated, the results were that many areas have only the four hours of local programming a day required by the station’s licence.
- 3.58 If analogue local stations were allowed to drop most local programming, they could if they wished effectively consolidate into a small number of mainly national networks (which would be likely to be mainstream), as has happened in France⁹.
- 3.59 RadioCentre’s proposal set out in its second response would see the minimum required local programming reduced to just three hours a day on weekdays for most local stations with none at weekends. While the current radio station owners may in practice provide much more than this, such a change in regulation could encourage buyers to purchase stations and then reduce local programming to this minimum level in order to cut costs and maximise profits.

⁷ Radio – Preparing for the Future : Phase 1 Appendix D, Ofcom, 15 December 2004
http://www.ofcom.org.uk/consult/condocs/radio_review/radio_review2/appendixD.pdf

⁸ <http://www.fcc.gov/localism>

⁹ Radio – Preparing for the Future : Phase 1 Appendix D, Ofcom, 15 December 2004
http://www.ofcom.org.uk/consult/condocs/radio_review/radio_review2/appendixD.pdf

3.60 It is also important to bear in mind the spectrum remains scarce (there are no frequencies left in most parts of the UK which could offer any significant coverage) and is provided specifically for local radio (by which we mean services offering content relevant specifically to that location). It is unlikely that audio services which are locally-made and provide local material would develop ubiquitously around the UK on any other platform without intervention. It seems reasonable to expect therefore, that as analogue radio is currently the most effective way of delivering local audio content in a way in which citizens and consumers can access readily (although DAB is gradually also assuming this role and we argue elsewhere in this section that localness obligations should be extended to DAB), there should in general be local obligations placed upon the users of that spectrum. If existing commercial stations decide not to continue to offer local programming they may choose to hand back their licence. Ofcom would then consider whether to re-advertise the frequencies so that other operators, either commercial or community, might use the frequencies to provide local programming.

c) What is the minimum amount of localness that Ofcom guidance would regard as acceptable for stations to provide?

3.61 If regulation is required to ensure the provision of local material and locally-made programmes, how much of it should there be? There is no “right” answer to the question of how much localness is enough, and any proposal will be based on judgment, but we have tried to balance citizen and consumer needs and expectations against commercial realities and viability.

3.62 The research (outlined above) allowed us to probe listeners’ attitudes having provided them with an understanding of the commercial challenges facing the industry. In the research we asked when it was most important for local radio to provide local material and be locally-made. The research found a distinction between the core local content (news, weather, traffic), which is time critical, and the human engagement (community issues, local events, phone-ins, competitions, banter between songs, etc) which is less time critical but still highly valued. Among the key findings were that attitudes vary around the country, but that core local programming on local stations is most important at breakfast and drive-time, but also important, although to a lesser extent, during the rest of daytime. It is less important during the evening and overnight (Figure 3).

Figure 3: Importance of local programming at different times of day

Time	Importance	Key content	Notes and exceptions
6 a.m. - 10 a.m.	HIGH	“Plan the day” : Traffic/travel/weather Local and national news	Some (younger) opt for music from nationals but tune to locals on the hour. V. important in rural areas for school closures/poor weather
10 a.m. – 1 p.m.	MEDIUM	Hourly local news updates and flashes	Music for parents at home/ workers. Some (older) enjoying local speech
1 p.m. – 4 p.m.	MEDIUM	Music; news updates and flashes	Older/housebound enjoy local phone-ins, competitions and magazine items
4 p.m. – 7 p.m.	HIGH	(3-5) School run – traffic info. (6-7) Commute home from work: music, traffic and news updates. “My evening briefing”	Older/housebound enjoy local phone-ins, competitions and magazine items
7 p.m. – 10 p.m.	LOW	TV dominant: “A time to relax” Some noted that local content stopped entirely at this time	(Younger) listen to nationals for music. Some older listening to local phone-ins/community-based shows
10 p.m. – 1 a.m.	LOW		Some (esp. older) enjoy local phone-ins and magazine items at bedtime
1 a.m. – 6 a.m.	LOW		Important for farming/ shipping and shift workers

3.63 The groups were asked to discuss five possible scenarios for the future regulation of localness, ranging from the current situation to one where there would be no local material and none of the programming would be locally-made (Figure 4).

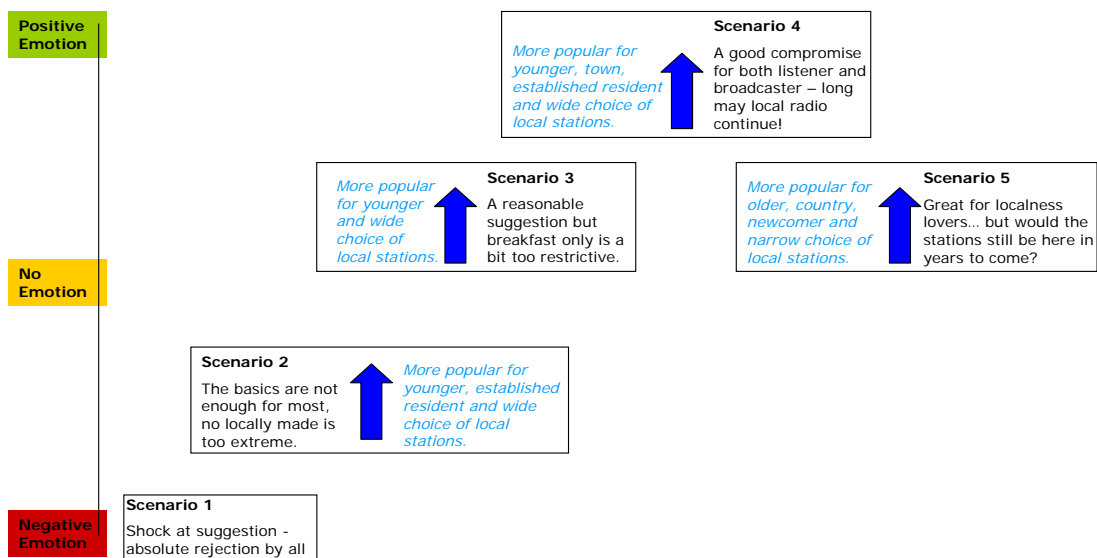
Figure 4: Scenarios for local material and locally-made programming

1	Locally-made	Local content
	None	None
2	Locally-made	Local content
	None	News, weather, travel etc. through daytime
3	Locally-made	Local content
	Breakfast	Breakfast, plus news, weather, travel etc through daytime
4	Locally-made	Local content
	4-13 hours depending on size of station	4-13 hours depending on size, plus news, weather, travel etc through daytime
5	Locally-made	Local content
	No change from current requirement	No change from current requirement

Least local content/
Locally made
↓
Most local content/
Locally made

3.64 Following discussion of the issues facing commercial local radio, and the likely unsustainability of the current model, they were asked to rank each of these scenarios in order of preference. The results showed that most people supported scenario 4, which was the proposal put forward by Ofcom in *The Future of Radio* consultation (Figure 5).

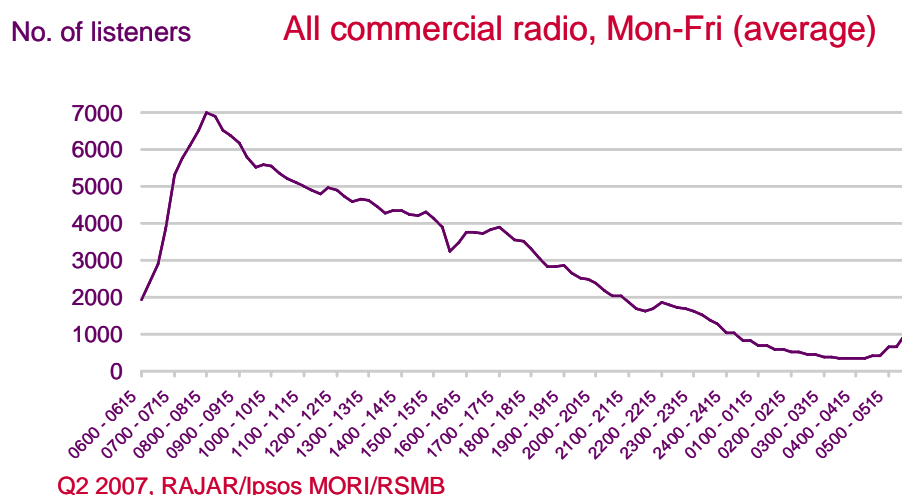
Figure 5: Relative ranking of scenarios by respondents



Other factors to consider

- 3.65 The peak time for listening to commercial radio is at breakfast. Listening then declines gradually throughout the day. Even though listeners say it is important for stations to be local at drive-time (particularly for traffic and travel news), in fact listening is lower at evening drive-time than it is in late morning or early afternoon (Figure 6). We therefore conclude that it is more important for a programme to be locally-made and include local material at breakfast than it is at evening drive-time, as a station's greatest impact is at breakfast time.

Figure 6: Weekday daytime listening profile for commercial radio



- 3.66 The consultation document, and the discussion document before it¹⁰, set out the problems facing commercial radio and in particular the financial pressures from falling advertising revenues. However, since the publication of the consultation document, some of this pressure seems to have eased slightly. On 21st August 2007, RadioCentre stated that “*national revenue figures for the Q2 period have risen to over £85 million – a healthy 3.4% increase year-on-year. Local revenue for the quarter grew year on year by 1.2% to over 40 million and S & P revenue dipped slightly down to 24 million, but overall, the figures are showing strong signs that the industry is well on its way to a recovery - growing in confidence as it heads to Q3.*” Despite this good news, there is still evidence of a structural shift in funding to some extent and so the need for action to reduce regulation is not necessarily diminished.
- 3.67 However, buyers are still interested in acquiring local radio stations – over half of all stations have changed hands in three years; for example, Saga’s four stations were sold to GMG for an undisclosed sum; the two Century FM stations were sold to GMG for £60m, Chrysalis sold to Global Radio for £170m, and at the time of writing several groups are reported to be interested in acquiring Emap’s radio stations – so local radio is still perceived as offering value to investors.
- 3.68 Although Ofcom has now finished licensing new FM commercial stations, evidence from recent local licence awards demonstrates that potential operators are still willing to offer significant amounts of locally-made programming, and the majority of applicants had viable business plans. For example:

¹⁰ The Future of Radio : Discussion document, Ofcom 16 November 2006
http://www.ofcom.org.uk/consult/condocs/radio_future/summary/

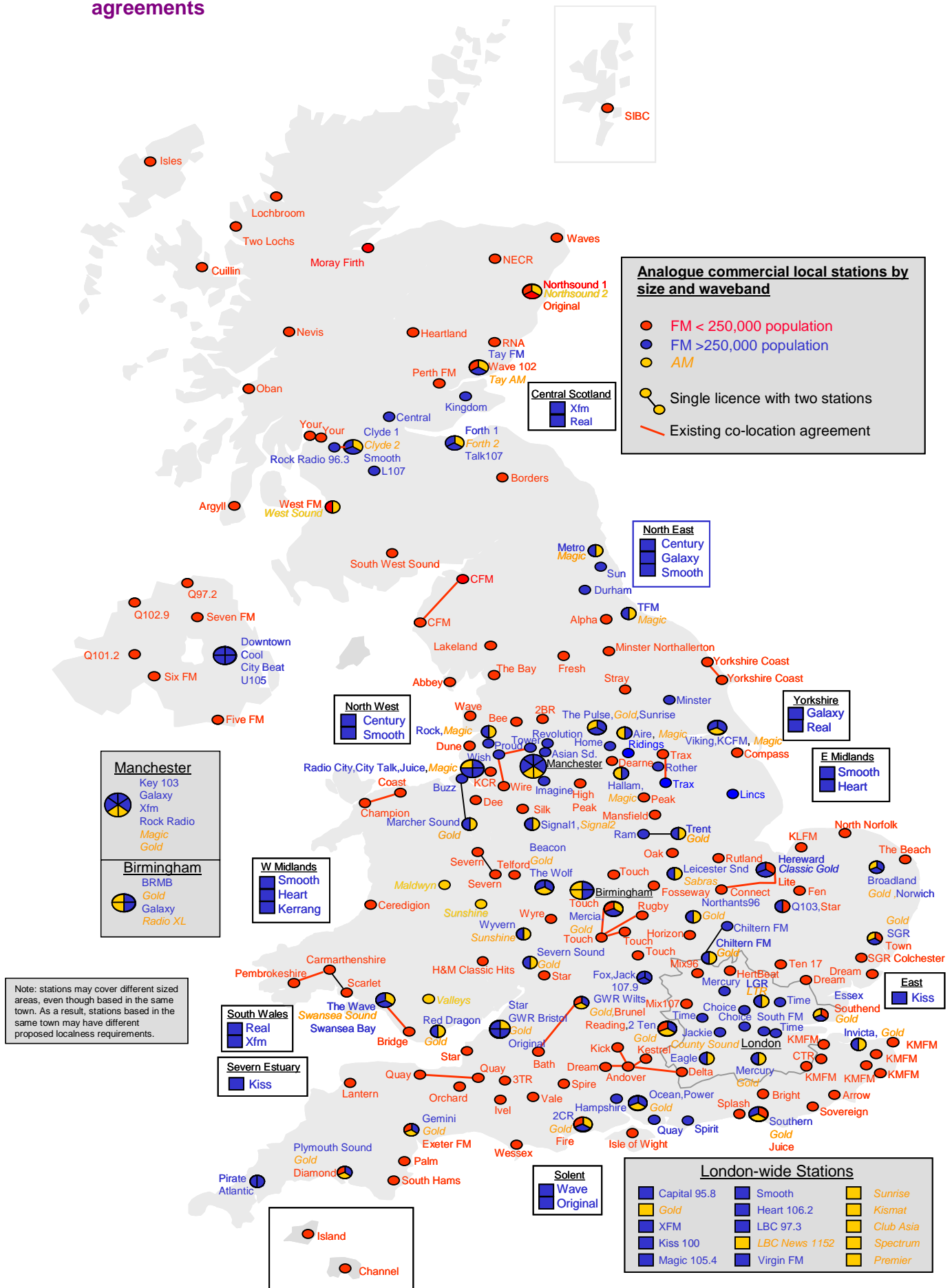
- For the recently awarded Manchester licence, won by GMG's RockTalk, there were 11 applicants, eight of whom promised 24 hours a day of locally-made programming, while the other three proposed at least 16 hours a day.
 - In Aberdeen, there were four applicants for the licence won by CanWest's Original FM. Two of the applicants promised 24 hours a day of locally-made programming, while one promised 12 hours and the other 18.
- 3.69 There is a good case for giving stations some flexibility to offer a networked show during daytime, if they believe this is in the interests of listeners, but it would not be appropriate to reduce the amount of local programming too far, as the stations would then effectively change their character and become national stations with local opt-outs, rather than mainly local stations with the occasional daytime networked show.
- 3.70 While Ofcom operates under UK-wide statute we also recognise that, since devolution, the different nations of the UK increasingly define their own interests on a national basis. Many of the smallest stations operate in Scotland, Wales and Northern Ireland. Our original proposals would have seen many of those stations' obligations reduced to just four hours of localness a day. Our latest proposals seek to address this issue by considering the need for programming which is at least targeted at each nation during most of daytime on all stations and for FM stations is focused on local programming throughout most of daytime. In arriving at this new proposal, we have tried to balance this audience need against the financial situation in which many stations find themselves.
- 3.71 In the consultation document, we made the case for stations below 250,000 population to be considered differently from larger stations. We still believe this idea has merit. However, some respondents argued that if a station is required to have a local presence for four hours a day, it may as well have a requirement to produce more than four hours as it was already paying the high fixed cost of having to maintain studio facilities in the area.

Co-location

- 3.72 As we stated in the consultation document, Ofcom already considers requests for co-location (i.e. where two or more radio stations serving different local areas with different programming are based in a single location). The factors Ofcom may take into account when considering such requests are:
- Size of station: there may be stronger case for co-location where at least one of the stations has a licensed area with a population of fewer than 250,000, and especially those under 100,000, although we would not rule out requests from larger stations.
 - Distance and affinity between the areas: there is likely to be a stronger case for co-location where the stations concerned are not too far apart geographically and are able to demonstrate a cultural affinity between the two areas.
 - Financial: 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.
- 3.73 A map of all stations by population size, showing those which have already been granted permission to co-locate is shown in figure 7. However, there may be other

factors to be taken into account, and Ofcom will treat each co-location request on a case-by-case basis.

Figure 7: Commercial radio stations by population size, showing current co-location agreements



- 3.74 Co-location requests are considered against these criteria and against the statutory criteria relating to Format changes (as a change to the place of production of programmes to somewhere outside the licensed area requires a Format change).
- 3.75 The decisions as to whether to allow co-location and/or programme sharing are independent of each other and would be at Ofcom's discretion. See comment in the localness guidelines above on this sentence.
- 3.76 Examples of where co-location requests have already been granted are:
- Bolton (Tower FM), Warrington (Wire FM) and Wigan (Wish FM) – co-location in the Newton-le-Willows/Haydock area;
 - Kettering (Connect FM) and Peterborough (Lite FM) – co-location in Peterborough;
 - Andover (Andover FM), Basingstoke (Kestrel FM), Newbury (Kick FM), Winchester (Dream FM) and Alton (Delta FM) – co-location in Andover;
 - Coventry (Touch FM), Warwick (Touch FM), Rugby (Rugby FM), and Stratford (Touch FM) – co-location in Honiley.
- 3.77 We believe many more examples are possible based on these criteria and we estimate that, in total, over 100 stations with common ownership have the potential to co-locate. It should be emphasised that it would be up to each group of stations to request such a change if they desired it and each would require a case to be made for Ofcom to approve.
- 3.78 Adjacent stations not under common ownership could also take advantage of these proposals.

Revised proposals

- 3.79 Our original proposals would have seen the smallest stations (populations of fewer than 100,000) having to be local for only four hours a day (based on the usual length of a single presenter shift) with the remainder of the programming being allowed to come from anywhere and be shared with any number of other stations.
- 3.80 Based on the consultation responses, our latest audience research, and the other factors noted above, we have revised our proposals on the guidance as to the minimum acceptable levels of local material and locally-made programming.
- 3.81 In the case of medium-sized stations (i.e. those covering a population between 100k and 250k adults) our original proposal was for eight hours of locally-made programming. Our new proposal goes further, in that many stations would only have to produce four hours of bespoke programming with local material. This should be locally-made within the licensed area unless co-location has been agreed.
- 3.82 Because AM listening is generally a lot lower than FM listening, AM stations are often less viable than FM stations, and so AM stations will generally not be expected to provide as much local programming as FM stations. This approach was adopted by the Radio Authority and has been followed by Ofcom. However, in some areas there is no local FM station. An expectation of a lower level of localness provision on AM stations could result in listeners living in those areas where the only local commercial station is on AM receiving a lower level of local material provision than in similar

areas where commercial radio is provided on FM. In order to avoid this situation, we will apply the FM guidance to any AM local commercial station broadcasting to an area where at least half the population is not also within the Measured Coverage Area (MCA) of an FM local commercial station.

- 3.83 We recognise calls from some consultation respondents to protect the local output of stations in each of Scotland, Wales and Northern Ireland. We believe our revised proposals answer those concerns by providing guidance on the minimum levels of localness which Ofcom would consider acceptable. This should ensure that all FM stations provide locally relevant programming locally-made throughout most of daytime (but with smaller stations allowed to co-locate and share some programming on a sub-regional basis). However we also note that AM listening is higher in some parts of the UK than others – particularly in areas of Scotland and Wales. So while we recognise that AM listening is generally lower than FM listening, given the different audience needs in the devolved nations we recognise that it may be going too far to remove all material of specific relevance to each nation outside of the 4 hours that each AM station should be local.

- 3.84 We therefore propose to include guidance to the effect that we expect that for these AM stations, most of their daytime output is produced from within the home nation. This guidance will apply to all four UK nations, although in practice it will have no impact on existing AM services in England as all network programming on AM is currently produced in England. This proposal is based on Ofcom’s general duty under section 3(4)(l) of the CA 2003 to have regard to the different interests of persons in the different parts of the United Kingdom, when carrying out its functions. The relevant functions in this context are to secure a range and diversity of local analogue services and to include appropriate conditions in licences to secure the character of local analogue services rather than our specific localness duties under section 314. We do not think section 314 would apply to whole nations, as it refers to local programming and it would be difficult to categorise the whole of Wales, say, as being a “local” area. Even though this proposal is not covered by section 314, and so not strictly part of Ofcom’s localness guidance required by statute, it clearly has affinities with localness and so we think it should be addressed together with localness. We have therefore included the proposal in the localness guidance, to provide clarity for licensees as to the general expectations Ofcom has of them.

- 3.85 The revised proposals would therefore mean that in each of Scotland, Wales and Northern Ireland the majority of daytime programming would still be produced in that nation.

- 3.86 Our revised proposal for localness guidance on the minimum acceptable levels of local material and locally-made programming on analogue commercial local radio stations is as follows:

Type of licence	Proposed programming guidance
FM local stations	<p>Each station should produce a minimum of 10 hours a day of locally-made programming during weekday daytimes (this should include breakfast). Programming should include local material across those 10 hours as a whole, although there is no expectation that local material would be included in each of those individual hours if this is not appropriate.</p> <p>Each station should produce a minimum of 4 hours a day of locally-made programming at weekends (in daytime) which should include local material.</p>

AM local stations *

Those stations with an MCA (Measured Coverage Area) of 250,000 adults (age 15+) or fewer can apply to share programming within their 10 hours of locally-made programming on weekdays to form a small regional network, but should still provide 4 hours of bespoke (i.e. specific to each station) programming with local material every day, including breakfast on weekdays. This should be locally-made within the licensed area unless co-location has been agreed. The criteria used to decide whether to allow such programme sharing will be the same as those used to decide upon co-location, set out below

Stations with an MCA of 250,000 adults (aged 15+) or fewer can also apply for co-location; In deciding whether to allow co-location the sort of factors Ofcom may take into account are:

- Size of station: there may be stronger case for co-location where at least one of the stations has a licensed area with a population of fewer than 250,000, and especially those under 100,000, although we would not rule out requests from larger stations.
- Distance and affinity between the areas: there is likely to be a stronger case for co-location where the stations concerned are not too far apart geographically and are able to demonstrate a cultural affinity between the two areas.
- Financial: 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.

However, there may be other factors to be taken into account, and Ofcom will treat each co-location request on a case-by-case basis. Ofcom does not rule out allowing co-location for larger stations in exceptional circumstances.

The decisions as to whether to allow co-location and/or programme sharing are independent of each other.

All FM stations should broadcast local news throughout peak-time both on weekdays (breakfast and afternoon drive) and weekends (late breakfast). Outside peak time, UK-wide, national and international news should feature.

In exceptional cases, if a station can put forward a convincing case as to why it should be treated differently, for example, as a specialist music station, and so have to provide less local material and less locally-made programming than the guidelines suggest, Ofcom will consider such requests on a case by case basis.

We will also apply the FM guidance set out above to any AM local commercial station where at least half the population within its Measured Coverage Area (MCA) is not also within the MCA of an FM local commercial station.

Daytime is defined as 0600 to 1900 both weekdays and weekends.

Each station should produce a minimum of 4 hours a day of locally-made programming, which should include local material, during weekdays and weekend daytime.

At least 10 hours of programming during weekday daytimes should be produced within the nation where the station is based (i.e. if the minimum 4 hours is locally-made, a further 6 hours should be produced from elsewhere in that nation)~.

Stations with an MCA of 250,000 adults (aged 15+) or fewer can also apply for co-location; requests will be considered in relation to our published criteria (local

affinity, distance and financial viability) – although we would not rule out requests from larger stations in exceptional circumstances.

All AM stations should broadcast local news throughout peak-time both on weekdays (breakfast and afternoon drive) and weekends (late breakfast). Outside peak time, UK-wide, nations and international news should feature.

Daytime is defined as 0600 to 1900 both weekdays and weekends.

* The FM guidance set out above will also apply to any AM local commercial station where at least half the population within its Measured Coverage Area (MCA) is not also within the MCA of an FM local commercial station.

~ This particular requirement is based on Ofcom's duty under section 3(4)(l) rather than under section 314 of the Communications Act 2003.

- 3.87 This guidance is provided in addition to the existing localness guidance.
- 3.88 No station would be required to provide more local programming than it is currently required to, but in many cases these proposals would offer substantial de-regulation.
- 3.89 At first sight, they may appear to be less deregulatory than the original proposals (which are set out in earlier in this section), but we believe the outcome will achieve the same aims as the original proposals, but in a more pragmatic and flexible way, which will be both more useful to industry and provide a better service to listeners, protecting programming which is locally relevant throughout the majority of daytime. These revised proposals do not seek to differentiate regulation so greatly by station size, and thus in the case of many stations would secure more locally-made programming than the proposals we set out in the consultation document.
- 3.90 To go further than these revised proposals in reducing minimum localness requirements across the UK would, we believe destroy the essence of local radio (and its ability to deliver public policy goals) as we know it.
- 3.91 We believe these revised proposals protect the needs and expectations of listeners (as expressed in our research) while still allowing a significantly reduced regulatory burden and greater flexibility for stations. The greatest benefits and flexibility will accrue to the smallest stations which can share some programming. The proposals will allow Ofcom to step away from detailed day to day regulation providing a clear and transparent approach which is fair to the whole industry.
- 3.92 Our original proposals also suggested there may be a case for allowing specialist music stations to broadcast fewer hours of locally-made programming than other stations. In practice however, it is difficult to define a specialist music station. However, in exceptional cases, if a station can put forward a convincing case as to why it should be treated differently, for example, as a specialist music station (although this may not be the only circumstance in which we would consider such requests), and so have to provide less local material and less locally-made programming than the guidelines suggest, Ofcom will consider such requests on a case by case basis.

- 3.93 In line with Ofcom's previously stated policy¹¹, no licensee will be granted a request to change its hours of local material and locally-made programming within two years of its launch.

Conclusion on localness

- 3.94 As the original proposals on localness have been significantly revised, Ofcom is re-consulting on the revised proposals. We welcome views and any additional evidence not already submitted in response to the first consultation.

Issue for further consultation

We welcome views as to the extent to which these revised proposals strike the right balance between safeguarding the interests of listeners and ensuring the viability of the local commercial radio industry.

Potential benefits for commercial radio and its listeners

- 3.95 These new proposals could achieve a higher level of financial savings for the industry than the original proposals. We estimated that the original proposals saved around £4m - £7.6m in presentation costs; this could rise to £7.3m - £8.1m under the new proposals. Co-location proposals could allow further savings in administrative, premises and office costs, taking total possible savings to between £9.4m and £11.7m, on an industry cost base of around £400m (revenues are around £620m). This potential saving may appear small, but its benefit would be felt most by the smallest stations which are struggling the most financially (Figure 8).
- 3.96 In addition to these cost savings, groups of stations, particularly the larger groups, may gain additional revenues by being able to offer high-profile network programming for three hours a day in daytime during the week and much more at weekends.
- 3.97 By enhancing the prospective viability of commercial local radio stations, these proposals should help to safeguard the interests of listeners in ensuring the continued provision of local radio at the times of day that listeners value and expect it most.

¹¹ page 61, Radio – Preparing for the future: phase 2, Ofcom 19 October 2005
http://www.ofcom.org.uk/consult/condocs/radio_reviewp2/radio_reviewp2/

Figure 8: Assessment of the financial impact of the new proposals on different sized stations

Station size	<100k population			100-250k population			>250k population	
	Current	Hub	Cluster	Current	Hub	Cluster	Current	New
Typical line-up								
Presenter 1	x	x	x	x	x	X	x	x
Presenter 2	x	x		x	x		x	x
Presenter 3	?	?		x	?		x	?
Presenter 4				?			x	
Freelance cover	x	x	x	x	x	X	x	x
Total	2 - 3	2 - 3	1	3 - 4	2 - 3	1	4+	2 - 3
Typical costs £k								
Presenter 1		16 - 20			25 - 40			50+
Presenter 2		14 - 16			20 - 25			50+
Presenter 3		12 - 14			15 - 20			25+
Presenter 4		12 - 14			15 - 20			25+
Freelance cover		5 - 10			5 - 15			15+
Saving - presentation £k			25 - 33		15 - 20	42.5 - 55		37.5+
Saving - co-location £k			42 - 70			42 - 70		
No of stations	65	30	35	65	44	21	122	122
Total potential savings			2345 - 3605		660 - 880	1774 - 2625		4575+
Total potential savings £k	£9.4m - £11.7m							

The issue of self-regulation and co-regulation

- 3.98 We have considered carefully the possibility of a self-regulatory or co-regulatory approach proposed by RadioCentre, whereby stations would be required to comply with an industry-administered localness code instead of the current arrangements whereby stations are regulated for localness through a combination of specific requirements (akin to quotas in television) set out in their Formats backed up by the Ofcom-administered localness guidance.
- 3.99 Perhaps the biggest hurdle to pursuing such a course of action is that self- or co-regulation is most appropriate when the interests of industry and consumers are aligned (for example, in the case of advertising, where the issue of consumer protection is aligned with that of the reputational risk to advertisers and broadcasters). In the case of localness on radio, the interests of industry (profit maximisation) are not obviously aligned with the needs of citizens and consumers for local services.
- 3.100 Our principal concern with this proposal is that all remaining 'input' regulation (i.e. requirements for locally-made programming) would disappear, to be replaced by a system based entirely on 'output' regulation. We believe that this would be a step too far, and risks the disappearance of genuinely local radio services.
- 3.101 In the long term, as the process of digital migration matures and the future shape of the UK radio industry becomes clearer, there may be a case for some form of co-regulation of content issues.
- 3.102 We remain open to ideas on this subject, but for now, we do not propose to take this issue further.

The case for more national commercial radio services

- 3.103 We argued in section 2 of this document that we would like to see both a wide range of innovative UK-wide commercial services (including services for the nations), and a wide range and diversity of local services, catering for local tastes and interests. We therefore need to find a way to achieve both of those policy objectives.
- 3.104 We have argued above that there is a strong case for the maintenance of regulation to ensure the continued provision of commercial local radio to achieve the public policy goal for local services.
- 3.105 One of the main reasons we awarded a second national commercial DAB multiplex was to enhance the provision of UK-wide commercial services and so help to achieve that public policy goal.
- 3.106 The launch of that second national DAB radio multiplex service, offering 10 new UK-wide radio stations, will complement the eight radio services already available across the UK on Digital One. Together with the three existing analogue national commercial radio stations they will provide a wide range of national services catering for different tastes and interests. National commercial DAB services will also provide a means for commercial radio to compete on a more level playing field with the BBC.
- 3.107 If the local stations were also allowed effectively to become quasi-national stations, this would undermine the achievement of one of the public policy goals to provide local radio. We do not believe this would be in listeners' interests.
- 3.108 We remain confident that DAB will form the cornerstone of the future of radio in the UK and predict that digital listening will account for around 90% of all listening in ten years time. But if DAB take-up does not grow as fast as is predicted and so analogue remains the primary radio delivery mechanism for a number of years, there may be merit, at some point in the future, in re-considering the current allocation of spectrum for national FM services between the BBC and commercial radio to provide additional UK-wide FM commercial radio networks.

Spectrum pricing (AIP) of analogue radio

- 3.109 Ofcom plans to consult shortly on changes to the pricing of spectrum used for analogue radio broadcasting. This follows the statement that we issued in June 2007¹², in which we stated our intention to extend to the BBC the principles for charging for spectrum use that currently apply to commercial analogue radio broadcasters. This should allow a consistent approach to spectrum pricing across analogue radio broadcasters. As stated in June, we do not expect these proposals to involve any substantive changes to the charges paid by commercial radio licensees, though they are likely to have an effect on the costs faced by BBC.

Timing of proposed changes

- 3.110 Our original proposal was to introduce this relaxation in regulation of localness and a reduction in the amount of detailed programming requirements in Formats (e.g. the proportion of different types of music allowed) when digital listening accounted for 33% of all listening on the basis that at this point a reasonable proportion of listeners would be making use of the additional choice available on digital platforms. While we

¹² Future pricing of spectrum used for terrestrial broadcasting, Ofcom, 19 June 2007
<http://www.ofcom.org.uk/consult/condocs/futurepricing/statement/>

recognised that only a minority of listening would be on digital platforms we suggested 33% as a compromise between the availability of increased listener choice and the decreasing viability of analogue stations as their analogue audience diminished. We recognised that other digital listening thresholds may be appropriate and asked for views.

Consultation responses

3.111 The collective response from the commercial radio industry (via RadioCentre) was that any changes to regulation should be introduced immediately. However, one confidential respondent from the radio industry said that *“the overall suggested threshold of 33% has been set too low and does not reflect the complexity of the situation. We believe that a higher 50% threshold would be an appropriate level to be achieved before formats are loosened.”*

3.112 There were very few other responses on this specific issue.

Revised proposals

3.113 We argued in the section on Format diversity above that our proposals will be enough to protect the diversity of analogue commercial local radio. Originally we argued that such a relaxation should wait until digital listening had reached a certain level on the grounds that then more listeners would have access to greater choice and so detailed Format requirements could be reduced. .

3.114 Having considered the matter again, and based on responses to the consultation, as we argued above, we now believe that a sufficient level of diversity would still be able to be secured through more streamlined Format descriptions, as the headline character of service description is enough to ensure the differentiation of one station’s programming from another. As we noted above, we already regard the level of detail of DAB local Formats sufficient to ensure the required level of diversity on that platform and so there is currently an inconsistency in the way we regulate analogue and DAB stations.

3.115 For localness, we believe our revised proposed guidance on the minimum acceptable level of localness would ensure the majority of daytime programming included local material and was locally-made and that these minimum levels are in line with listener expectations, based on our research (see *The Future of Radio: Localness*, para 7.15, Annex 6).

3.116 We therefore believe that these revised proposals are sufficiently robust in protecting the interests of listeners that the changes in both Formats and localness guidance can be introduced as soon as possible, no matter what balance of technologies may be used for radio in future. In order to simplify the process for licensees, we will not implement the planned simplification of programming details until we have made a final decision on the localness guidance, so that we can make both changes to each station’s licence at the same time. Once we have published that decision, we plan to write to each licensee within three months regarding their potential Format changes, before implementing such changes.

3.117 There are also other grounds for making the changes sooner rather than later:

- Regulatory certainty. The original proposals, linked to digital listening levels, would come into force at some point over the next four years, and could be as

early as 2008 - but their exact timing is difficult to predict, making it very difficult the industry to plan for the future.

- The difficulty of measuring digital platforms listening. In October 2007 RAJAR audience data provided the latest breakdown of listening by platform (this was only the second quarter such data has been provided). Digital listening to any platform takes a 15.0% share of listening; however 13.9% remained unspecified (Figure 9). Although unlikely, taking these two figures together could mean that almost 30% of listening is already to digital - but this does now demonstrate the difficulty of measuring listening to digital platforms, and therefore subsequently linking this to regulatory change.

Figure 9: Audience share by platform

Platform shares	All radio %	All commercial radio %
AM/FM	71.1	69.6
All digital	15.0	16.8
DAB	8.6	8.0
DTV	3.0	4.3
Internet	1.6	1.5
Digital unspecified	1.9	3.1
Analogue/digital unspecified	13.9	13.6

(Source: RAJAR/Ipsos MORI/RSMB, Quarter 3 2007)

- 3.118 In addition, the threshold of 33% was chosen as being roughly mid-way between current listening and 50%. Nobody in the consultation responses suggested an alternative (other than “now” or 50%).

Decision on the timing of changes to Formats and localness guidance

Any changes to Formats regarding the character of service and minimum localness guidance (once decided) should be implemented as soon as is practicable.

Other proposals relating to content regulation

Localness on digital platforms

- 3.119 There are currently 46 local DAB multiplexes in operation and Ofcom is currently licensing further local DAB multiplexes to fill in the gaps in local DAB provision. As we have previously argued local DAB multiplexes are likely to be the cornerstone of digital local radio provision in the future.

- 3.120 The statutory criteria for awarding a local radio multiplex licence include:

- the extent to which the services included would cater for local tastes and interests;
- the extent to which they would broaden the range of programmes available in the area.

- 3.121 On DAB, the multiplex operator is effectively the gatekeeper, deciding which stations should be carried on the multiplex.

- 3.122 However, under section 54 of the Broadcasting Act 1996 (“The 1996 Act”) Ofcom must approve any changes in the line-up of stations, provided that it is satisfied:
- That the variation would not unacceptably narrow the range of programmes available by way of local digital programme sound services to persons living in the area or locality for which the licensed multiplex service is provided; or
 - That the variation would be conducive to the maintenance of fair and effective competition in that area or locality; or
 - That there is evidence that, among persons living in that area or locality, there is significant demand for, or significant support for, the change that would result from the variation
- 3.123 It could be argued that the statutory provisions set out above are sufficient to ensure local material on local DAB multiplexes. However, the criterion to ensure that services cater for local tastes and interests does not explicitly include local material or local production. For example, the multiplex operator could claim that local tastes and interests would be catered for by a variety of music stations with no local material or production.
- 3.124 Parliament has set Ofcom a duty to secure an appropriate amount of local material with a suitable proportion of locally-made programming on analogue local radio services. Ofcom believes that it will continue to be important to secure localness in future, as analogue listening migrates to digital platforms. However, in a possible all-digital future radio landscape, there currently is no duty on Ofcom to secure digital local radio programming, and so there is a risk that if analogue radio no longer exists, so local radio may no longer exist.
- 3.125 Some respondents argued that Ofcom should have a duty to ensure the provision of all existing analogue local services on digital radio platforms and that this would be an essential pre-requisite for an all-digital radio world.
- 3.126 In the consultation document we suggested three main options which Government may wish to consider should it be minded to lay new legislation before Parliament at the appropriate time:
- Option 1 – No specific localness requirement on DAB
 - Option 2: Amend Ofcom’s existing statutory duty to ensure the provision of an appropriate amount of local material with a suitable amount of local production on analogue commercial local radio to be platform neutral for broadcast radio.
 - Option 3 – Introduce a must-offer requirement for multiplex operators to offer capacity to all existing analogue local commercial stations which broadcast to the majority of the multiplex area.
- 3.127 We suggested that option 2 may be the most appropriate.
- 3.128 If Parliament did decide to amend Ofcom’s existing localness statutory duty in this way, this would give Ofcom greater flexibility to deliver its duties as regards local material and local production, and is consistent with our aim of securing regulation which is platform and technology neutral. Also, as digital listening rises, it may be possible to reduce localness requirements on analogue radio, while ensuring localness on digital platforms.

- 3.129 The aim would not be to increase local provision on existing local multiplexes, but to ensure that Ofcom had the powers to ensure its continued provision, where appropriate, once analogue services have ceased broadcasting.
- 3.130 There was little comment on this proposal. Some of those who did respond believed we were arguing for the introduction of new local services or new requirements on existing digital-only stations.
- 3.131 This is not the case. The proposal was intended simply to ensure the continued provision of the existing analogue/digital local simulcasts beyond any possible analogue switch-off. As such we continue to believe that Government should consider this option as it stands.

Recommendation on localness on digital platforms

Ofcom believes that it will continue to be important to secure localness in future, as analogue listening migrates to digital platforms. Therefore, Government should consider whether Ofcom's existing duty should be amended to secure localness on commercial radio on a platform neutral basis for locally broadcast radio.

Analogue national commercial radio Formats

- 3.132 It was also proposed that Government may wish to consider bringing forward proposals to amend the existing legislation to remove the statutory Format restrictions on national analogue radio, at an appropriate time, if it considers that DAB national services will provide the required diversity of national stations. This proposal was designed to reflect the belief that, as the number of national commercial radio services increases, and listening to these services increases, the statutory restrictions which require that one national analogue service provides 'music which is not pop music' and another provides 'mostly speech' are no longer necessary.
- 3.133 There was no support for this proposal from the small number of respondents who addressed the issue. RadioCentre said *"We recommend the maintenance of Format restrictions on national analogue radio on the grounds that their removal (as proposed by Ofcom) would have no benefit for plurality of opinion and diversity of choice, nor for competition, and could actually damage the transfer of radio to mainly digital transmission."*
- 3.134 Two of the national analogue licensees said that they believe that they should be guaranteed a continued existence until any analogue switch-off, on the basis that this would maintain consistency with their BBC competitors and would prevent the possible licensing of new national analogue services with new, probably mainstream, formats and what the current licensees believe would be less incentive to promote a transition to DAB.
- 3.135 The question of national analogue commercial radio Format requirements is one for the Secretary of State as the legislation would need to be amended. The proposal was designed to give the radio industry greater flexibility but this flexibility was not welcomed by any of the respondents and so we are inclined not to pursue the proposal.

Recommendation on national analogue radio Format requirements

Ofcom does not recommend any change to these requirements at this time.

DAB national radio diversity requirements

- 3.136 Digital One's national commercial DAB radio multiplex currently offers eight radio services, including simulcasts of the three analogue national commercial stations, for whom capacity is required to be made available. The second national commercial DAB radio multiplex, the licence for which was awarded to 4 Digital Group in July 2007 will offer a further 10 national radio services.
- 3.137 The statutory criteria for awarding a national DAB radio multiplex licence require Ofcom, inter alia, to have regard to the capacity of the proposed programme services to appeal to a variety of tastes and interests. In addition, we stated that any proposed line-up of services on the second national commercial multiplex should appeal to tastes and interests that are distinct from those catered for by services on the existing national multiplex.
- 3.138 The ongoing delivery of diversity is secured by an obligation in the multiplex licence to provide the stations listed in the licence. The multiplex licence also includes a brief Format description of each station. The multiplex operator may request a change to individual Formats in its line-up. Ofcom set out how it will consider such requests in "The Future Licensing of DAB Digital Radio".¹³ These rules should ensure that there is a diversity of national radio services on DAB.
- 3.139 In the consultation we suggested these rules should be retained. There were no specific comments received against the proposals and so we recommend that the existing rules should remain in place.

Recommendation on DAB national radio diversity requirements

The requirements on DAB digital radio to offer national (UK-wide) services which appeal to a variety of tastes and interests should remain.

¹³ Ofcom, July 2006: <http://www.ofcom.org.uk/consult/condocs/dab/statement/>

Section 4

Commercial radio ownership rules

Current rules

- 4.1 Currently, there are four types of rules relating to plurality of radio ownership:
- Local analogue services rules: a limit of 55% of points based on station ownership in any market with more than two commercial stations;
 - Local DAB services rules: limits on ownership of individual DAB stations in any market, taking into account overlaps between the multiplexes upon which they are carried;
 - Digital radio multiplex rules: limits on:
 - ownership of local radio multiplex licences whose coverages overlap by more than a certain percentage; and
 - ownership of national radio multiplex licences, where a person may hold only one such licence; and
 - Cross-media ownership rules: limits on ownership of local radio, local newspapers and regional TV.
- 4.2 These rules are set out in the CA2003 and in the Media Ownership (Local Radio and Appointed News Provider) Order 2003¹⁴.
- 4.3 Further, under the media merger regime set out in the Enterprise Act 2002, the Secretary of State has the ability to intervene in media mergers on public interest grounds, one of which relates to the need in relation to different audiences for there to be a sufficient plurality of persons with control of media enterprises serving those audiences.

Why are there plurality rules?

- 4.4 Access to different viewpoints is important because it enables democratic participation. Citizens need information on what is happening in their communities to enable participation in the democratic process; i.e. to make informed choices when voting, participate in public discourse, and have a forum to contribute their views, and obtain the information they need for markets to work properly.
- 4.5 It is also important for citizens to have access to a wide range of viewpoints. The more perspectives that citizens have on issues, the more likely they are to have information about the full range of issues, and the more likely they are to be fully informed about each individual issue. It is also important that one viewpoint does not dominate over others. If any one viewpoint has too much influence (for example, if one viewpoint has particular incentives to increase its influence), that viewpoint can distort the democratic process.

¹⁴ SI 2003/3299

- 4.6 There is currently no accepted way of measuring the degree of viewpoint plurality in the media. As a proxy for viewpoint plurality, the media ownership rules aim to ensure plurality of media ownership. This approach assumes a correlation between viewpoint and ownership plurality: different owners may be different sources of news and may also provide different perspectives on what is going on in the world.
- 4.7 Clearly, this proxy is imperfect:
- Ownership plurality *does not ensure plurality of sources of news*: e.g. two local radio stations might have different owners and yet obtain all their news from the same sources;
 - Ownership plurality *does not ensure editorial or viewpoint diversity*: different sources of news may offer the same perspectives on issues. Also, journalists, editors or producers, rather than owners, may have a more direct impact on the views expressed by a media outlet;
 - Finally, ownership (or, indeed, viewpoint) plurality *does not ensure* the provision of the *quantity and quality of news* output that society desires.
- 4.8 However, it may be argued that ownership plurality is the best proxy for viewpoint plurality available at the moment.
- 4.9 After reviewing the Media Ownership rules in 2003, the Government concluded that there remained a justification for certain rules but that they needed to be substantially relaxed. Government took the view that:
- “Safeguards are needed against joint ownership of significant newspaper assets and mass audience universal access public service TV services;
 - No particular group should be disqualified from a broadcasting licence unless there is a compelling reason to expect adverse effects;
 - Within individual media markets (TV, radio, newspapers), deregulation can promote healthy competition, as long as minimum guarantees of plurality remain.”
- 4.10 Since the current radio ownership rules were established in 2003, the range of local news sources available to consumers has increased, particularly as a result of the increasing penetration of broadband. This might suggest that the radio ownership rules should be relaxed.

Ofcom’s role

- 4.11 Due to the importance of media plurality in a democratic society, Parliament gave Ofcom a specific statutory duty to maintain a sufficient plurality of providers of different TV and radio services (s.3(2) CA2003).
- 4.12 Any changes to the ownership rules would require legislation and so are a matter for Government to consider as it sees fit at the appropriate time. However, Ofcom is required to carry out a statutory review of the media ownership rules every three years.
- 4.13 At the end of 2006 Ofcom reported to the Secretary of State following the first such statutory review. That report argued that “*while further deregulation (of the radio ownership rules) may not be justifiable immediately, it could become so before very*

long and we believe that this should be considered as part of Ofcom's Future of Radio review which we will be consulting on later this year."

- 4.14 *The Future of Radio* consultation published in April 2007 duly considered options for changing the media ownership rules as they relate to commercial radio.

Local analogue and DAB services rules

- 4.15 The rules applying to local analogue stations are based on the principle that there should be at least two owners of local radio stations, plus the BBC, in any market where there are more than two local commercial stations.

- 4.16 There are currently separate rules for analogue and DAB services. Each set of rules is based on individual station coverage areas (or multiplex coverage areas in the case of digital programme services). However, because almost every station's market is unique, with many overlaps between stations' markets, the calculation of the ownership limits has to be carried out on a case-by-case basis, and is far from simple.

- 4.17 *The Future of Radio* consultation in April set out three possible options for station ownership rules going forward:

4.18 **Option 1 – The rules could be left as they are:**

- We argued that having a separate set of rules for analogue and DAB station ownership may no longer make sense in a world where digital listening (across all platforms) is taking an increasing share of the audience and the listener does not distinguish between stations on different platforms. In fact many stations are available on both analogue and digital platforms. *We therefore argued that this option may not be appropriate to deliver the desired goals in the medium-term.*

4.19 **Option 2 – The rules could be removed altogether:**

- We argued that while the number of media outlets (including the internet, which has allowed the voices and opinions of a vastly increased number of people and organisations to be heard on local issues should they wish to be) is growing, local radio is still sufficiently important that to abolish the rules at a time when over half of the population still listens to commercial local radio every week seems inappropriate. The fact that the current rules were only put in place three years ago, when many of the other media that offer alternative sources of information were already in place, suggests that there are as yet few grounds for removing the existing rules. *In the short to medium-term therefore, we argued that it would not make sense to remove the current rules regarding station ownership for either analogue or digital radio.*

4.20 **Option 3 – Apply one set of ownership rules across analogue and DAB platforms:**

- If it is accepted that plurality of radio ownership still needs to be protected, but that the distinction between analogue and DAB rules will become increasingly anomalous over time, we argued that the analogue and digital rules should be simplified and combined into a single set of consistent rules. *This was the approach that we said we preferred in the consultation.*

How would combined analogue and digital services rules work?

- 4.21 One way that a combined analogue / digital system might work is by defining a set of areas, based on local DAB multiplex licensed areas and to consider all of the stations, both analogue and DAB, within each area for the purposes of ownership regulation. These areas have been designed with listeners' interests in mind. They often correspond to existing heritage commercial radio areas, being city or county-based. Our research showed this size of area is the most relevant for listeners to local radio services when they consider the ideal size for a local radio station, as counties or city areas are often relevant to listeners when they consider their local affinities. These areas often also correspond to local government boundaries, police authorities, etc, and so make for a coherent editorial area. (This is partly the reason the BBC has often chosen to base the editorial areas of its local radio services on counties.)
- 4.22 Because the main reason for having plurality rules is an editorial one (to ensure plurality of voice), rather than an economic competition one, no attempt has been made, nor we believe should be made, to define these areas as economic markets.
- 4.23 We gave an example of how such a system might work in *The Future of Radio* consultation published in April.
- 4.24 We argued that such a system might have a number of advantages over the current system in a world where digital listening is increasing, while still preserving the principle of plurality:
- While at first sight the proposed new rules may have looked complicated, in practice they are simpler than the existing rules.
 - The proposal preserved the principles of plurality and the “two plus the BBC” principle in any significant area.
 - The new rules would apply to both analogue and DAB stations, so making it more relevant for a world of multiple platforms.
 - Any changes in relevant radio broadcast platforms could be incorporated – for example, local DRM stations could be included in the calculation if they launched, while any closure of analogue stations would simply no longer be included in any calculation.

Consultation responses

- 4.25 RadioCentre, and most respondents including the radio groups, called for the removal of radio-specific ownership rules. In particular, RadioCentre noted that *“mono-media plurality rules are of decreasing importance in a multi-media, multi-platform world, and it is inappropriate that only the smallest section of the traditional media landscape should continue to be subject to them.”* It suggests that the existing rules are considered to be a disincentive to investment in the radio industry. It also argues that consumers rely less on radio as a source of information than they did in the past, that listeners' continuing demand for local news on radio does not necessarily equate to a demand for a plurality of news providers, and that the benefits of common ownership of stations outweigh any perceived plurality benefits of enforced separation.

- 4.26 A small number of respondents opposed further relaxation stating that existing consolidation had already led to a reduction in diversity and to the standardisation of output.

Consideration of consultation responses

- 4.27 In order to consider these responses comprehensively, we have taken another look at the available evidence and updated it with the latest data to address two questions:

- Is plurality of local commercial radio services still important?
- Are the rules applied to deliver such plurality still proportionate in the light of a changing communications market?

Is plurality of local commercial radio services still important?

- 4.28 We have explained above why there are plurality rules. The question remains: how important is plurality of commercial radio services in a given area, and has its importance changed since the ownership rules were put in place in 2003?

- 4.29 The pattern of media usage has changed over the past three years as choice expands rapidly. UK households now have access to more digital platforms capable of delivering content than ever before.

- Household penetration of DAB at 21.7% is increasing rapidly; in 2003 it was just 2%. In addition, digital radio services can be accessed through other platforms: the latest audience research figures from RAJAR suggest that by Q3 2007 9.9% of people every week were listening to digital radio via their TV, while 5.1% were listening to radio via the internet. A wide choice of radio services is available throughout the UK, with 418 DAB and 333 analogue services broadcasting in Q1 2007. A DAB home has access to up to 60 radio services. Moreover, thousands of stations from around the world are available over the internet.
- DAB take up will be given a further boost in 2008 when the second national commercial DAB multiplex launches offering ten new national radio services (including three from Channel 4, and one each from Sky News, Disney, UTV, Emap, Sunrise Radio, Virgin Radio and CanWest) and a range of on demand programmes from other operators. New local multiplexes, filling the gaps in existing local provision, will also begin to launch in 2008.
- Community radio is also adding to plurality. 149 licences have been awarded, with around 80 so far on-air, and more are in the pipeline.
- By September 2007, some 88% of UK households had digital television, compared to 43% at the end of 2003. A television multi-channel home has access to a broader range of television channels which has led to declining shares for the five main channels in those homes. Ofcom's Communications Market Report 2007 shows Sky offering more than 200 channels on average, Virgin Media more than 125, and Freeview 44. Moreover, broadcasters are increasingly making their programmes available live on the web and some are vodcasting content (i.e. making it available for downloading). This means that consumers are now no longer tied to the television in the home when they want to watch audio-visual content.

- An increasing number of homes are connected to broadband as prices fall and the availability of the service widens: Over 50% of households and small businesses now have a broadband connection, representing a five-fold increase in three years.
 - The uptake of 3G mobile services is relatively low, compared to other platforms, although it has accelerated over the past two years. Like broadband, 3G mobile opens up a wide range of new services to subscribers alongside new ways of accessing existing content.
- 4.30 In addition, citizen self-generated content has been growing in significance as an alternative to mainstream media brands in the recent years, spurred by digital technologies that make it increasingly easy to create, distribute and consume user-produced resources such as homepages, weblogs, videologs and podcasts.
- 4.31 Blogs are proving particularly popular: 17% of UK internet users were blog readers in 2005, according to an Oxford Internet Institute study. Our own survey carried out last year, showed that 11% of UK internet users had a weblog or a webpage, with 45% using these as a means of publishing original material and 11% used their pages as a platform for commenting on current affairs and politics. This data suggests that over 1.5 million UK adults use the internet as a means of publishing content and opinion, bypassing traditional media outlets¹⁵.
- 4.32 Traditional media outlets are also increasingly embracing user-generated material alongside their own online content. This ranges from the inclusion of text, photographs and videos submitted by the public (in particular, of dramatic events, such as the 7 July bombings in London) to running aggregated services relying on material posted by bloggers (for example BlogBurst, launched in April 2006 to deliver bloggers' commentary for major publishers' newspaper websites).
- 4.33 The widening range of digital platforms, the increasing take-up of those platforms alongside the growing penetration of multi-media digital devices and the growing significance of user-generated content means that people now have a great deal more choice in the types of content they can consume, more convenience in when they choose to watch that content and more control over where they watch it.
- 4.34 In the summer of 2007, Ofcom commissioned deliberative research into localness on commercial radio in six locations around the UK (Annex 6). This qualitative research demonstrated that for many listeners, core functional local content (local news, local traffic and local weather) was deemed more important from their local radio station than national news and was second only to music in their overall ranking of desired output from radio. The research also confirmed that the provision of local news is important from a citizen perspective too, with respondents commenting that certain members of the community – shift workers, nurses, those in shipping and farming – had an equal if not greater need for such content at differing times of day.
- 4.35 The floods during the summer of 2007 demonstrated the continued need for local news and information, and both commercial radio and BBC local and national radio provided invaluable services to their listeners.
- 4.36 The importance of the provision of local news is supported by other research carried out for Ofcom's discussion document *New News, Future News*, published in June

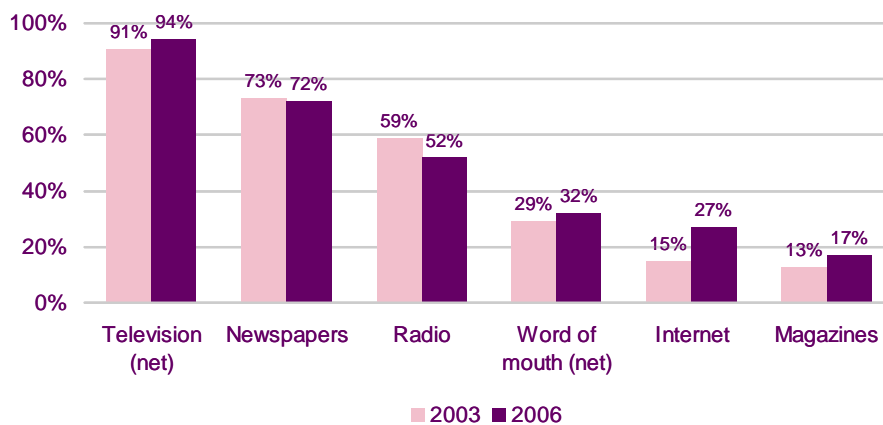
¹⁵ Source: Ofcom ad-hoc research, fieldwork conducted by ICM June 2006.

2007, which found that 48% of respondents said they are interested in “current local events where I live”.

- 4.37 For these reasons, in the previous section of this document we argued that localness (including the provision of local news) on local radio will remain important and should be protected going forward.
- 4.38 However, the research we carried out did not specifically test the importance of having more than one source of local commercial radio news compared with other sources of local news, or of having more than one source of local information in emergency situations such as the recent floods.
- 4.39 It is true that the role of radio in providing news has been diminishing in recent years. *New News, Future News* found that the use of radio for news had declined from 59% in 2003 to 52% in 2006, while the importance of all other sources of news, particularly the internet, had either increased or remained constant (Figure 10). However, despite the increasing importance of the internet, radio is still over twice as important as the internet as a news source.

Figure 10: Sources of news – ever used

Question: Which of the following do you EVER use for news?



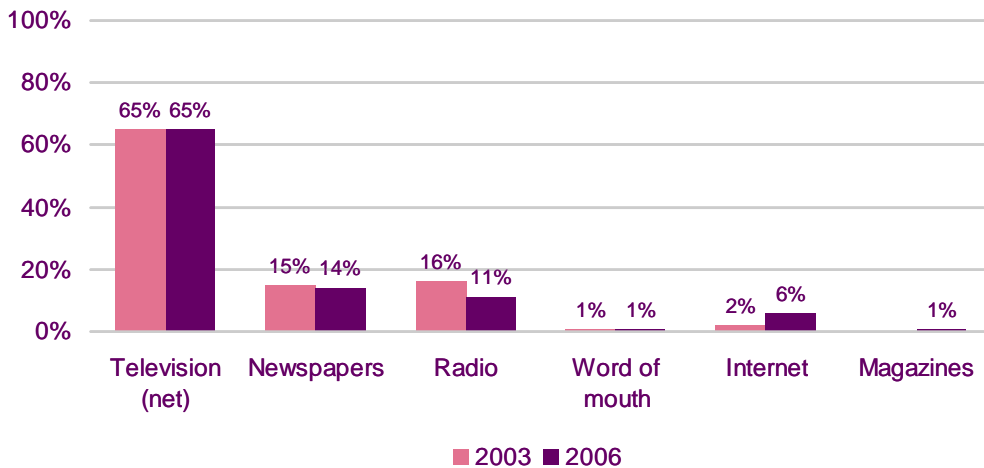
Base: All adults 15+, 2216

Source: Ofcom research *New News, Future News, June 2007*

- 4.40 When asked which source of news they used most often, radio came third at 11%, a long way behind television at 65% and behind newspapers at 14% (Figure 11). However, radio still remains the most often used source of news for almost twice as many people as the internet and is only slightly behind newspapers.

Figure 11: Sources of news – most often used

Question: Which ONE of these do you use MOST OFTEN for news nowadays?



Base: All adults 15+, 2216

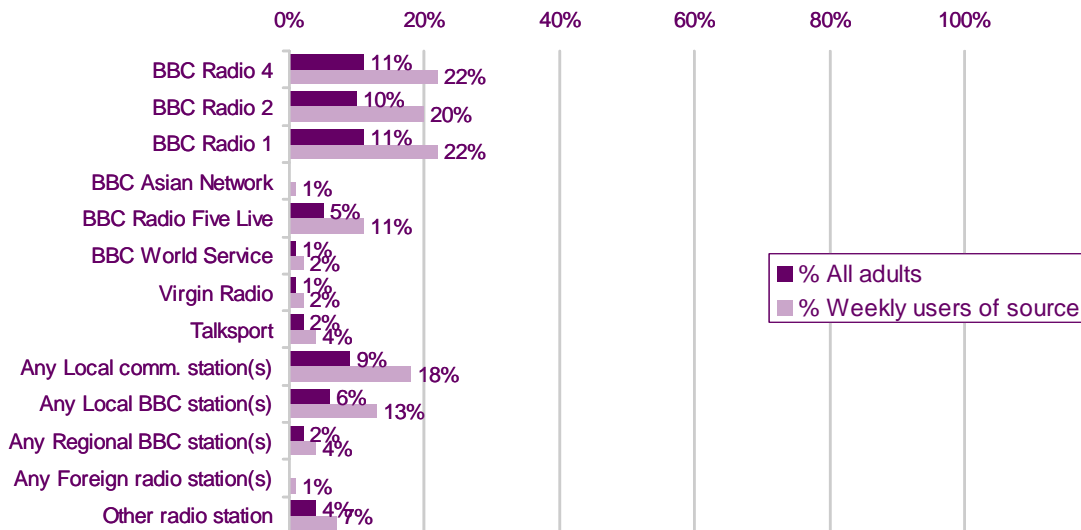
Source: Ofcom research *New News, Future News, June 2007*

4.41 While daily use of radio for news was found to have declined from 44% of respondents in 2003 to 35% in 2006, this is still a significant proportion of the population.

4.42 Commercial local radio is used regularly for news by 9% of all adults (Figure 12) – less than the number who use each of BBC Radio 4, BBC Radio 2 or BBC Radio 1 but more than use BBC local radio, the only other source of local radio news in many areas.

Figure 12: Regular use of different types of radio service for news

Question: Thinking specifically about Radio which of the following do you use REGULARLY for news?



Base: All adults 15+, 2216 & All weekly users, 995

Source: Ofcom research *New News, Future News, June 2007*

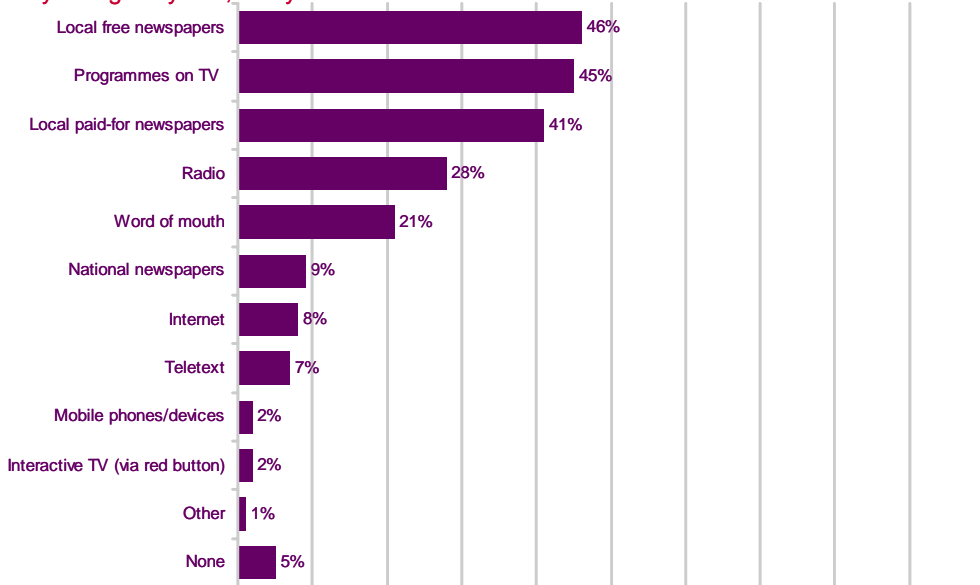
4.43 This data suggests that while radio’s importance as a source of news has declined somewhat, it still plays a major role as a news provider.

4.44 However, the data quoted so far relates to news in general rather than specifically local news. So what does the data say about local news?

4.45 At a specifically local level, 28% of people regularly use radio as a source of local news. While this is less than for regional television and newspapers, it is still significant (Figure 13).

Figure 13: Regularly used sources of local news

Question: Thinking just about LOCAL news and information about where you live, which of the following do you regularly use, if any?

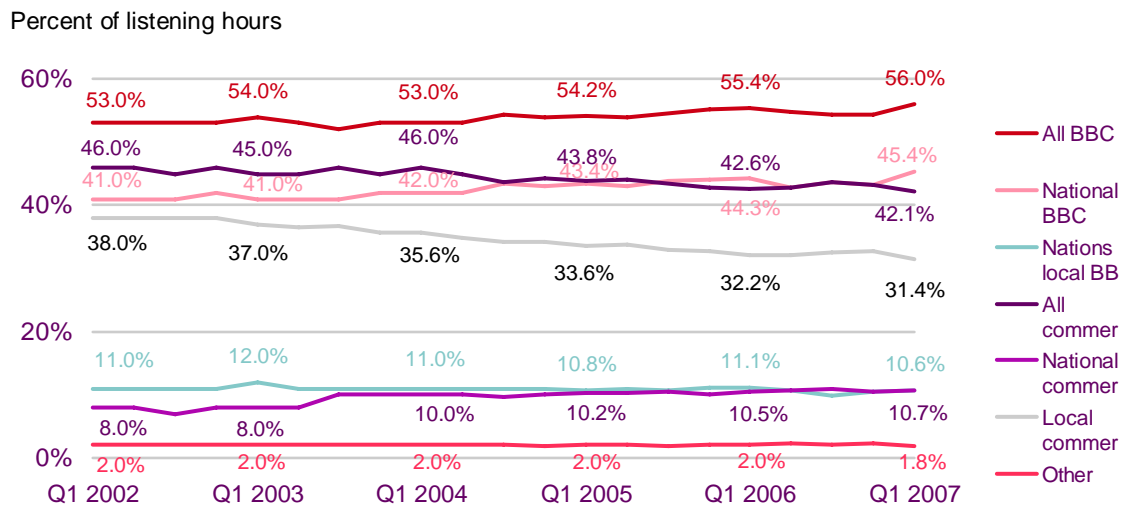


Base: All adults 15+, 2216

Source: Ofcom research *New News, Future News, June 2007*

4.46 While listening to local commercial radio has been declining in recent years, falling from 38.0% on Q1 2002 to 31.4% by Q1 2007, it is three times higher than listening to BBC local radio, which has also been falling (Figure 14).

Figure 14: of radio listening by sector



Source: RAJAR

4.47 However the question remains how important is the *plurality* of local radio provision *within* commercial local radio?

- 4.48 The data presented so far refers only to the provision of news. While as Ofcom's latest research shows (Annex 6), this is one of the core elements of local content, other elements of local programming are important too, such as debates on community issues, coverage of local events and phone-ins. It could be argued that plurality of provision is even more important in these areas, where viewpoints are expressed, than they are in the provision of hard news which is more factually based.
- 4.49 Radio allows for the expression of local viewpoints in a way that reaches far more people than a local website does and with a far greater level of access to express different viewpoints than the hour or so a day of regional television, which covers bigger areas and rarely engages viewers directly in debate. As such, access to the airwaves is important and it is in the public interest for there to be a plurality of such access to ensure that different viewpoints can be heard.

Are the rules applied to deliver such plurality still proportionate in the light of a changing communications market?

- 4.50 There are four main arguments put forward as to why ownership rules for commercial local radio may no longer be appropriate:
- The radio industry is by far the smallest of the media industries and yet has the tightest ownership rules;
 - The commercial radio sector is struggling financially and the current rules preventing consolidation may be damaging its viability;
 - Consolidation may actually offer a better service to listeners;
 - There is evidence that the existing rules are acting against listener interests.

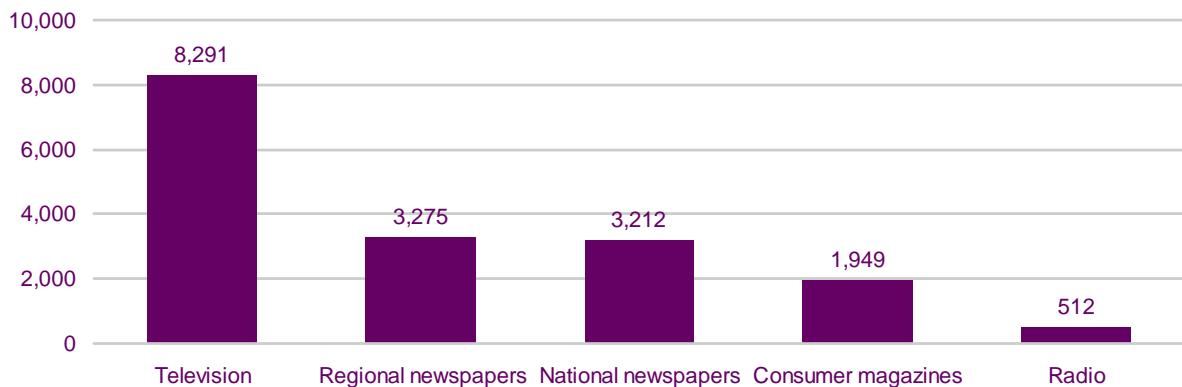
4.51 We now address each of those arguments in turn.

The radio industry is the smallest media industry yet has the tightest ownership rules

- 4.52 The commercial radio industry in the UK is small, relative to other media industries. For example, local newspaper advertising revenues are over five times those of the commercial radio industry, while newspaper revenues as a whole are almost 13 times the size of radio's. Similarly commercial television revenues are 16 times the size of radio's (Figure 15).

Figure 15: Relative size of different media industries

Revenue 2006, £m, current prices



Advertising Statistics Yearbook 2007 - Advertising Association, Operators' returns - Ofcom

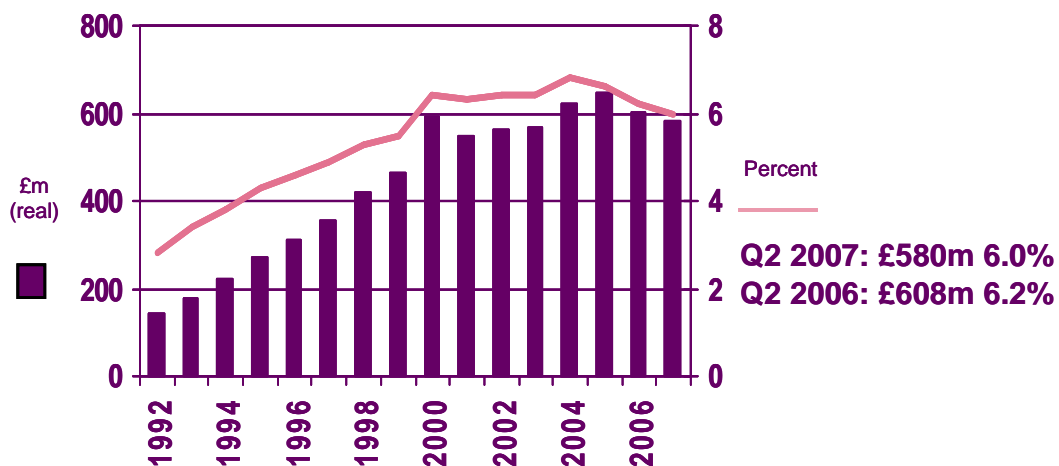
- 4.53 However, the ownership rules to secure plurality within commercial local radio are more restrictive than for other media with far greater resources.
- 4.54 In television, the media ownership rules were simplified in 2003 paving the way for greater consolidation. In particular:
- Two rules which prevented the joint ownership of Channel 3 were repealed. These limited Channel 3 licence holders to no more than 15% of the TV audience, and prevented the same company from holding the two London licences;
 - Most media ownership rules for Channel 5 were removed;
 - Ownership of television licences by non-EEA persons was permitted.
- 4.55 Regulation of TV mergers is now largely a matter for the competition authorities. However, certain special rules still exist:
- Under the Enterprise Act 2002 a public interest test can be applied to mergers at the Secretary of State's discretion;
 - Under the CA 2003 national news on Channel 3 must be provided by an "appointed news provider";
 - Specific rules also still restrict cross-ownership between Channel 3 and national newspapers, while the disqualified person rules prohibit or restrict the ownership of TV licences by religious (and certain other) bodies.
- 4.56 The rules to ensure plurality are therefore primarily cross-media rules and the public interest test, both of which also apply to radio, but there is no television equivalent of the local analogue or DAB service rules.
- 4.57 In terms of local or regional provision, there is only one commercial provider, ITV, which provides an alternative to the BBC. Even here, ITV is arguing that the changing competitive environment means that the existing pattern of regional news provision is no longer viable, and so is asking for a reduction in its obligations.

- 4.58 In newspapers the media ownership regime was streamlined following the 2003 review. Regulatory action by the competition authorities is now focused on those larger mergers which appear to raise competition or plurality concerns with provision for a public interest test to be carried out if the Secretary of State requests this. There are no sector-specific plurality rules for local newspapers, even though they are used by more people than commercial local radio as their primary source of local news.
- 4.59 However, radio has always been the smallest medium in terms of revenues and this was known when the current media ownership rules were introduced, so this argument is not sufficient to justify the removal of the current ownership rules. The question is whether anything has changed since 2003 to require the rules to be changed?

Are the current rules preventing consolidation and so damaging commercial radio’s viability?

- 4.60 As we set out in the discussion document on *The Future of Radio*, the commercial radio industry has been facing testing financial conditions in recent years.
- 4.61 The rapid growth in radio advertising revenues before 2000 has given way to a decline in revenues and a stagnant or declining share of the overall advertising market. This must also be set against the backdrop of an overall display advertising market that has been declining in real terms since Q1 2005. Although larger stations are still making money, even they are under pressure. Radio Advertising Bureau (RAB) Annual Revenue Growth figures show that commercial radio revenues fell by 4.4% overall year-on-year to Q2 2007; local revenues fell by 4.3%, national revenues by 6.4%. By Q2 2007 commercial radio’s share of total display advertising had fallen to 6.0% (its lowest since 2000) (Figure 16). We believe this change is structural and not just cyclical.

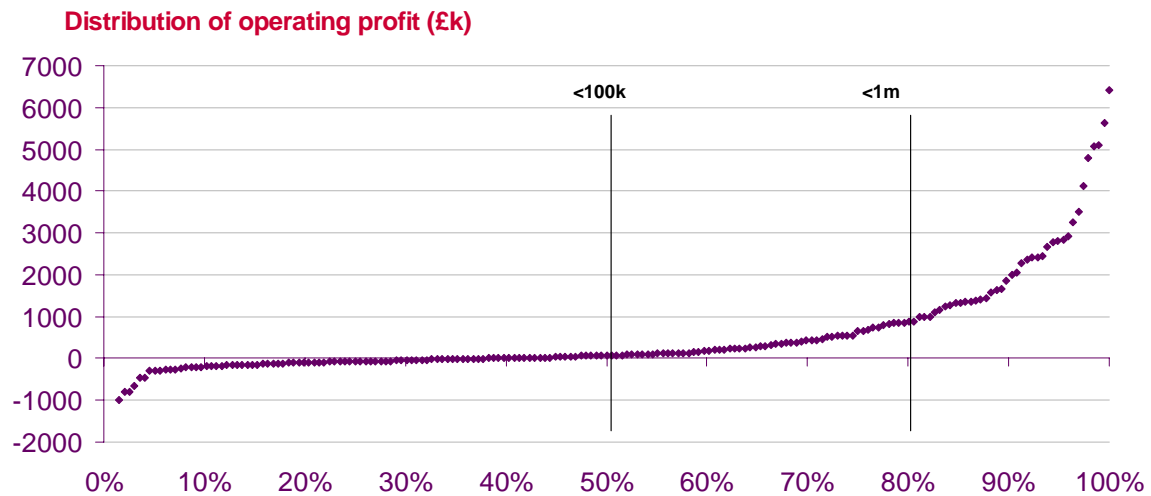
Figure 16: Radio advertising – amount and share of total advertising market



Source: RAB

- 4.62 Smaller stations in particular are struggling, with around 40% losing money (Figure 17).

Figure 17: The distribution of operating profit at local commercial stations



Source: Ofcom licensees

- 4.63 The fact that some smaller stations are struggling financially may support a relaxation of the current rules to allow for greater consolidation, on the grounds that this would allow synergies and cost savings, but it does not necessarily support their complete abolition. So would greater consolidation be in citizens and consumers' interests?

Would greater consolidation in the radio industry offer a better service to listeners?

- 4.64 As we reported in *New News, Future News*, "over the years, local news coverage on commercial radio has tended to be the first victim whenever stations hit financial problems. As with all speech-based programming, news can be particularly expensive compared to music output. Smaller stations have, by tradition, carried heavier burdens in terms of local news and information obligations (as this is their *raison d'être*) - and this has proved a particularly difficult circle for some to square."
- 4.65 Further consolidation could help to make many of these smaller stations financially viable by allowing for cost sharing. It could be argued therefore that having a single provider of commercial local radio news in a given area may provide a better service for listeners than having two or more poorly funded commercial local news providers, especially when there is an increasing number of alternative news sources available on other media.
- 4.66 As digital radio listening increases, via a number of different platforms including digital television and the internet, the ownership rules for local analogue radio will become increasingly disproportionate and could unfairly restrict the ability of the sector to remain viable.
- 4.67 We noted in the original consultation that there is little evidence that the existing ownership rules have prevented consolidation in the commercial radio industry. In its response, RadioCentre argues that "market confidentiality makes it impossible for Ofcom to know whether the current rules have prevented consolidation. Confidential advice from our members points to radio-specific ownership rules being identified as a significant hurdle by analysts considering potential changes of ownership within the industry. This suggests that the rules provide a disincentive for investment in the commercial radio industry."

- 4.68 RadioCentre goes on to argue that the benefits to be gained from further consolidation within the industry include increased diversity of output, operational efficiencies and greater innovation.
- 4.69 However, while we support the case for allowing further consolidation in the radio industry in so far as we believe that this could improve station viability in some cases, this does not necessarily mean that it would be acceptable for all plurality to disappear. Some rules may still be required to safeguard the interests of listeners.

Are the existing rules acting against listener interests?

- 4.70 There is evidence that the current rules do not always act in the interests of listeners. An example from DAB radio occurred when Emap merged with Scottish Radio Holdings. Emap was obliged to drop a service (Smash Hits) from three local digital multiplexes in Scotland (Ayr, Aberdeen and Dundee) following the merger and the capacity was left unused. So the rules led to a reduction in consumer choice without any increase in plurality.
- 4.71 The rules are highly likely to impact on potential future mergers as the industry becomes more concentrated. At the time of writing, for example, Emap's radio stations are up for sale. Acquisition of these stations by any of the other major UK radio groups is likely to lead to the company concerned having to dispose of a number of analogue radio licences.
- 4.72 This argument certainly supports the case for revising the rules, but not for their complete abolition, if it is accepted that plurality of provision remains important.
- 4.73 Before reaching a conclusion on the local analogue and DAB services rules, it is worth noting that there are two other safeguards to prevent excessive concentration in the radio market:

Competition law also protects ownership plurality

- 4.74 Competition legislation aims to prevent or punish anti-competitive behaviour. A firm is allowed to be dominant if it is not acting anti-competitively.
- 4.75 So even if media ownership rules did not exist, competition law would prevent consolidation to a level where a market would not function properly. For example:
- merger regulation prevents consolidation that would substantially lessen competition;
 - prohibitions on anti-competitive agreements (e.g. collusion) also prevent the coming together of actual or potential competitors that would undermine competition in a market.
- 4.76 As well as applying the media ownership rules, Ofcom also has sector-specific competition powers which foster ownership plurality:
- Ofcom has competition powers to ensure fair and effective competition in broadcasting through ex-ante regulation (i.e. codes);
 - powers also exist to conduct market investigations under the Enterprise Act 2002.

- 4.77 However, competition law is not always appropriate for ensuring ownership plurality. For example, some cross-media mergers might not increase concentration above competition law thresholds, but they might reduce viewpoint plurality below a level considered acceptable by society.

Public interest test for radio

- 4.78 Under the Enterprise Act 2002 the Secretary of State may in certain circumstances intervene in mergers involving radio where he believes that a “public interest consideration” is relevant. These public interest considerations include:
- the need in relation to every different audience for there to be a sufficient plurality of persons with control of media enterprises serving those audiences;
 - the need for a wide range of broadcasting which is both of high quality and calculated to appeal to a wide variety of tastes and interests; and
 - the need for media enterprises to have a genuine commitment to the objectives of section 319 of the CA 2003 which cover matters such as impartiality and the protection of viewers from offensive and harmful material.

Conclusion on local analogue and DAB services rules

- 4.79 There is some evidence that the need to have in place safeguards to deliver a minimum level of plurality has not significantly diminished since the current legislation was made in 2003.
- 4.80 However, we recognise the pressure that the radio industry has been under and how further consolidation may help it to build the scale it may need to flourish in an increasingly competitive world.
- 4.81 The ownership rules are a matter for Government and Parliament. We continue to believe that the current rules need simplifying along the lines we proposed in April. The case for a more far-reaching de-regulation may emerge if and when the industry moves towards an all or mostly digital future. For now, we suggest that Government may wish to consider whether to adopt the proposals we put forward in the consultation.
- 4.82 We propose to keep this matter under review and Ofcom is happy to work with Government over the coming months to develop further thinking in this area.

Recommendation on local analogue and DAB services rules:

Our recommendation to the Secretary of State is that there is a case for Government to consider simplifying the local analogue and DAB services rules, at the appropriate time, allowing further consolidation while protecting plurality. This could take the form of bringing together the local analogue and DAB services rules into a single set of rules, although other options are possible.

DAB multiplex ownership rules

- 4.83 Restrictions apply to the ownership of both national and local DAB digital radio multiplexes.

- 4.84 No single person may hold more than one national multiplex licence.
- 4.85 The current rule for local multiplexes is that no person can hold licences for two local multiplex services where the coverage area of one service would overlap with the coverage area of the other service in a way that means the potential audience for one of them includes at least half the potential audience of the other. For many other local DAB multiplexes which overlap with each other, these overlaps are generally incidental and much less than half the potential audience of either multiplex.
- 4.86 The rationale for these two rules is that the number of these type of licences is limited by spectrum scarcity and they act as gatekeepers to digital programme services. It is undesirable for one owner to control access to the stations on every local multiplex in any given area, or on every national multiplex.
- 4.87 However, the situation in radio contrasts with that in television where no limits are placed on the ownership of multiplexes as a result of the deregulation in 2003.
- 4.88 It is possible that removing the radio multiplex ownership rules would encourage investment in the provision of DAB.
- 4.89 In *The Future of Radio* consultation, we argued that the only overlaps that should matter are those where there are two or more DAB multiplexes covering substantially the same area (this only applies at present to London, where there are three Greater London multiplexes) or where regional DAB multiplexes exist (North West England, North East England, West Midlands, Yorkshire, Severn Estuary/South Wales and Central Scotland) and wholly overlap local DAB multiplexes. The reason for this is that the services carried by multiplexes which overlap so significantly are targeted at listeners in that area. Any overlap of less than this (effectively an overlap of less than 70% of the population in one area being also served by another local multiplex) could be regarded as incidental.

Consultation responses

- 4.90 The proposal drew mixed responses with some, including Absolute Radio, CBC, Estuary Media and Channel 4 arguing that multiplex ownership rules should be retained, while others including Chrysalis Radio, UTV Radio and Town and Country Broadcasting argued that they should only be subject to competition law. RadioCentre argued that this proposal be considered as part of a wider review of Digital Radio.

Conclusion

- 4.91 There are already behavioural and competition based rules imposed in respect of multiplexes to ensure that an operator of a multiplex does not abuse his position.
- 4.92 Under the 1996 Act, each radio multiplex licence contains a condition to ensure that the terms under which capacity is offered to service providers does not show undue discrimination. Carriage agreements are also not allowed to restrict the ability of a service provider to sub-lease his capacity.
- 4.93 In addition to these licence conditions, Ofcom also has the ability, under the terms of each licence, to put in place ex-ante competition rules (subject to the requirement to consider first whether to take action under the Competition Act) to ensure that there is fair and effective competition in the way that the multiplex is operated.

- 4.94 Between them these rules are designed to regulate access to the multiplex.
- 4.95 It could be argued that these rules are sufficient to protect the public interest and that no further rules are required.
- 4.96 Alternatively it could be argued that our original proposal would be sufficient to provide greater flexibility for the industry while ensuring a level of competition between gatekeepers operating in the same geographical area.
- 4.97 The ownership rules are a matter for Government and Parliament. We continue to believe that the current rules need simplifying. Ofcom is happy to work with Government over the coming months to develop further thinking in this area.

Recommendation on local DAB multiplex ownership rules

Our recommendation to the Secretary of State is that there is a case for the Government to consider simplifying the local DAB multiplex ownership rules. This could take the form of an amendment to the current rule such that no person can control more than one DAB multiplex designed to cover substantially the same area, although there may be a case for abolishing this rule completely.

- 4.98 At a national level, given the increasing importance of national commercial radio relative to local commercial radio, we believe the existing rules whereby one person can only control one national multiplex should also remain, to ensure plurality of multiplex operators.

Recommendation on national DAB ownership rules

Our recommendation to the Secretary of State is that the Government should retain the rule that no one person can control more than one national DAB radio multiplex.

Cross-media ownership rules

- 4.99 Ofcom's recent Review of Media Ownership Rules found that plurality of voice in a local area remains important, even though radio itself is not a primary source of news. Taking local newspapers and local radio together under common ownership could unacceptably diminish the range of voices in an area.
- 4.100 This suggests that cross-media ownership rules remain important for plurality reasons.
- 4.101 The current rules mean that in any area where there are three or more overlapping local licences, a person who is the dominant local newspaper provider, or the holder of the local Channel 3 television licence, may become the holder of one or more of those radio licences only if the points attributed to the licences held by that person would not account for more than 45% of the total points available in the area. As for the current radio-only points test, the test may be applied prospectively, that is before the person becomes the holder of the radio licence in question. The test is applied as if he has become the licence-holder, in order to see whether the points limit would be breached if he did so.

- 4.102 This cross-media ownership rule applies wherever there are three or more overlapping licences, no matter who owns each of them.
- 4.103 There is also a “backstop” rule that no person may hold a local radio licence and the local Channel 3 television licence and be the dominant local newspaper provider in the same area.
- 4.104 “Dominant local newspaper provider” means someone who runs:
- a local newspaper with a local market share of 50% or more in the coverage area of the radio licence in question; or
 - local newspapers which together have a local market share of 50% or more in that area.
- 4.105 In line with the move to integrate analogue and digital radio ownership rules as digital listening comes to predominate, we said in the consultation document that our view was that these rules would need to be amended, albeit that the aim of the rules remains unchanged.
- 4.106 The reason for saying this was that as the number of stations available in a local area is increased with digital platforms, and as digital listening increases as a proportion of total listening, the importance of a single local station, whether analogue or digital diminishes.

Consultation responses

- 4.107 Responses from many in the radio industry, including RadioCentre and a number of confidential responses supported the maintenance of cross-media ownership rules. This was echoed by the VLV. However, the Newspaper Society said that changes needed to be more radical: *“There is no need to handicap the traditional media by special media ownership controls. The local newspaper/local radio controls should be abolished. The multitude of information sources means that plurality can now be sustained without any such specific regulation. Competition law is sufficient to deal with any commercial concerns.”*

Conclusion

- 4.108 The evidence set out earlier in this section argued that while plurality remains important, the range of media people are using to access news and information is growing. More importantly, Ofcom’s research shows that while radio remains important to listeners for accessing news, it is not their primary source of news for either local or national news, coming well behind television and newspapers in its importance. It would not be desirable for all media ownership rules to be abolished and we believe the cross-media rules remain an important safeguard for plurality.

Recommendation on cross-media ownership rules

Our recommendation to the Secretary of State is that the Government should retain the cross-media ownership rules but should consider taking into account DAB digital radio as well as analogue radio in making any re-assessment.

- 4.109 The ownership rules for community radio are considered in section 6 below.

Section 5

Achieving flexibility in licensing and the use of spectrum

The ability to free-up spectrum in the future

- 5.1 In the consultation document, Ofcom noted that the spectrum currently occupied by analogue (FM and AM) radio broadcasting services could in future be used for other things, for the benefit of citizens and consumers, but also set out how the current statutory licensing framework would make it very difficult to free-up the spectrum potentially for other uses.
- 5.2 The consultation document therefore included a variety of proposals designed to provide maximum flexibility to allow the spectrum currently occupied by analogue broadcast radio services to be managed in accordance with Ofcom's spectrum policy framework. The consultation document did not propose a timescale for when any such freeing-up of spectrum could or should be achieved, nor did it take a view on what might be the most appropriate use of the spectrum in the future. In other words, Ofcom did not propose that any switch-off date should be set for existing analogue services.
- 5.3 In order to maximise the flexibility to use the spectrum currently used for FM and AM radio for other things in the future, it would be necessary to have the ability to clear the spectrum of many, if not all, current users in each waveband simultaneously. This therefore implies achieving a common end-date for existing analogue licences (in respect of non-BBC radio stations) and services (in respect of the BBC). Existing analogue licences expire on a rolling basis and thus there is not currently a common end-date.
- 5.4 It was proposed that, in order to determine any such common end-dates (as it is too early to set any such dates now), a review should take place, the timing of which would depend on the current pattern of commercial radio licence expiry dates, and our current knowledge of the likely developments in radio listening (on both analogue and digital platforms) over the coming years. The consultation document also stated that Ofcom believed that the differing characteristics of VHF Band II and medium wave imply that each waveband should be the subject of its own review to determine a common end-date for the existing users of the spectrum. In light of the smaller proportion of radio listening accounted for by AM services, and the rapid decline in this level of listening as shown above, we said that we believed that a review of the future use of medium wave spectrum should be undertaken by Ofcom earlier than the equivalent review in respect of VHF Band II.
- 5.5 The consultation document therefore proposed that the review of medium wave (AM) spectrum use should take place in 2009, and a review of VHF Band II (FM) spectrum use should take place in 2012, or when listening to digital radio services accounts for 50% of all radio listening, whichever is the earlier.

Licensing for maximum flexibility

- 5.6 In the consultation document we set out our proposals for what we suggest Government may wish to consider including in any new legislation it lays before

Parliament, to enable a licensing process for broadcast radio services which secures the flexibility required to make optimal use of the spectrum currently occupied by analogue radio services and to license radio services in a more flexible manner.

- 5.7 Ofcom made two specific suggestions to Government for changes to legislation which would help to facilitate a common end-date. The first of these was that the existing statutory provision which allows the holder of an analogue commercial radio licence to apply for a 12-year renewal of his licence in return for the provision of a digital sound programme service on a relevant DAB radio multiplex should be repealed.
- 5.8 The second was that all analogue commercial radio licences existing at the time any new legislation is enacted should be able to be extended indefinitely, but should include conditions allowing for their termination by Ofcom with two years' notice (the appropriate termination date to be determined by the aforementioned spectrum reviews).
- 5.9 Taken together, it was argued that these two legislative amendments would end the current pattern of rolling licence expiries which prevents the achievement of a common end-date.

Consultation responses

- 5.10 In response to these proposals, RadioCentre proposed establishing a cross-industry working group, commissioned by the DCMS and led by Ofcom, to set out a route for the radio industry to a digital future. Some commercial radio groups, including Emap and UTV, considered it too early to call for any analogue switch-off, while the BBC said 2010 would be more appropriate for any review of radio switch-over. Some respondents called for FM to be retained for smaller stations, including community radio. Many individual respondents were concerned at any loss of analogue radio for a range of reasons, including lack of digital coverage, particularly in rural areas.
- 5.11 RadioCentre also expressed concern at the proposal in the consultation document regarding the inclusion of termination clauses in licences, stating that such a policy would *"fundamentally undermine investor confidence in commercial radio and would be damaging to companies' balance sheets"*. It added that *"it would also make it impossible to make any kind of strategic investment or negotiate long-term contracts, for example in the fields of transmission, talent or sports rights."* Similar responses were also received from many radio companies. The BBC expressed the view that indefinite licence extensions might distort the market by unbalancing the regulation between analogue and digital radio *"given that the former would become licensed forever while the latter – which is inherently a riskier business – would still be tied to time-limited licences"*, and also expressed concern that it would create "a stagnant market which could not be broken, rewarding only those FM radio stations which were in business in 2012". The BBC also had "serious concerns" regarding the proposed termination clauses, stating that two years' security of tenure "would risk entirely destabilising the radio sector" and, like RadioCentre, citing issues such as talent contracts and sports rights.
- 5.12 Estuary Media stated: *"we believe that it is imperative that periodic re-licensing continues, to sustain radio services which best serve public interests and to encourage innovation, talent development and opportunities for public participation."*

Consideration of responses

- 5.13 Many respondents failed to recognise that Ofcom was not proposing to close down stations completely but simply to terminate their broadcasting on a particular platform. By the time such termination clauses were triggered, we envisage that the vast majority of listening to the station in question would already be taking place on a digital platform.
- 5.14 In response to Estuary Media's comment that periodic re-licensing encourages innovation, talent development and opportunities for public participation, we note that well over half of all stations have changed hands in the past four years and that this provides for a refreshing of stations, so reducing the need for periodic re-licensing to achieve this aim.

Conclusion

Conclusion on the flexibility for the future use of analogue radio spectrum

Ofcom remains firmly of the view that we should aim to maximise flexibility in licensing broadcast radio services so as to be able to free-up spectrum, potentially for other uses, at the appropriate time, and that spectrum reviews such as those suggested in the consultation document may be appropriate at a future date. However, Ofcom is keen to support DCMS in the immediate establishment of a cross-industry working group, tasked with considering in more general terms the transition from analogue to digital radio and proposing the criteria under which an end-date for analogue/digital simulcasting may be decided. We believe this group should also be asked to consider the barriers to achieving those criteria, and what might be the steps to resolve those issues.

In terms of the two specific suggestions in the consultation document regarding changes to legislation to allow for a common end-date, we believe that it would be sensible for the cross-industry working group also to consider these issues. We therefore do not propose at this stage to make any suggestions to Government on these particular matters.

Re-licensing under current legislation

- 5.15 It was noted in the consultation document that there will be a number of existing analogue commercial radio licences (national and local) which will expire before any new legislation is likely to have been enacted (the timing of which is, of course, a matter for Government), and therefore Ofcom needed to decide upon what re-licensing policy it wished to adopt. Having considered three main policy options (including not re-advertising licences as they expire), it was proposed that all licences re-awarded under the current statutory framework should be granted with an expiry date of 31 December 2015. This proposal was considered the best option to maintain flexibility ahead of any new legislation.

Consultation responses

- 5.16 The response to the proposal was mixed, with organisations such as BT and Channel 4 supportive, but the three national analogue licensees and some other licensees (e.g. Town & Country Broadcasting, which owns six small stations, and

Chrysalis Radio) opposed, largely on the grounds that it is too early to decide on a common end-date for licences. RadioCentre suggested that this issue should be addressed by its proposed cross-industry working group.

Conclusion

- 5.17 The current licensing regime with its rolling 12 year licence end dates does not allow for a practical common end-date for all analogue radio licences. In the consultation we suggested ways that such a common end-date might be achieved, but noted that this would be likely to require new legislation. We did not suggest what that common end-date might be but argued that we should set the licence duration of any licences advertised before any new legislation to be sufficiently short so as to leave open as many options as possible for any new legislation. Such new legislation could, for example, see all such licences given automatic extensions if this was deemed appropriate. The proposal in the consultation document was intended therefore simply to ensure that any re-awarded commercial radio licences would not expire before any new legislation is enacted, at which time it is hoped that a new statutory licensing framework will be established.
- 5.18 The first such licence to be re-advertised under this revised policy would be that for Kingston-upon-Thames which would be granted for a period of 6 years and 10 months. Licences re-advertised thereafter under this policy would be for correspondingly shorter periods the nearer to the end of 2015 they were granted.
- 5.19 We still consider that it is desirable, in order to maximise future flexibility, to grant new licences to end as close as possible to the end of 2015. However, in light of the responses to the consultation, we have considered how short a licence period could be before it is likely that nobody except the incumbent would apply for the licence, and also at what point the costs of running a licence award process under the current statutory framework become disproportionate when compared with the value of the licence to the successful applicant. Our analysis of the business plans included as part of applications to Ofcom for commercial radio licences shows that applicants generally anticipate being profitable by year three of the licence period. Our conclusion is that in order to pass these two 'tests', a licence should be granted for a minimum period of five years, in order to make it long enough to be viable, yet short enough so as to maximise the flexibility to free-up spectrum and not undermine any recommendations which emerge from the aforementioned cross-industry working group.
- 5.20 We will keep this policy under review, taking into account the outcome of the Digital Radio Working Group and the possible timing of any new legislation.
- 5.21 A separate document setting out in detail the process and timetable for re-advertising and re-awarding local analogue commercial radio licences will be published shortly. A similar document in respect of the national analogue commercial radio licences will be issued in due course.

Decision on duration of licences re-awarded under current legislation

All national and local commercial radio licences which are re-awarded under the existing statutory framework will be granted for a five-year period or with an expiry date of 31 December 2015, whichever constitutes the longer period.

New ways of licensing radio broadcasting

- 5.22 It was highlighted in the consultation document that, under current legislation, Ofcom is not able to license terrestrial radio services, including any designed to deliver public purposes (e.g. localness), without having to determine beforehand which technology they will utilise (in particular, without having to determine whether the service should use digital or analogue technology). This is because the current legislation sets out different licence/spectrum award procedures and regulatory frameworks for multiplexes and single-stream broadcasts, and it assumes that single-stream broadcasts will use analogue rather than digital technology.
- 5.23 The current legislation also does not allow for single-stream terrestrial radio broadcast services (national or local) to be licensed in circumstances where the spectrum to be used by those services has been acquired independently, or where the services are not to be regulated for public purposes. In other words, the current statutory framework does not allow for a terrestrial national or local radio service to be provided unless the licence to provide such a service (and the spectrum required to deliver the service) is advertised for this purpose and awarded by Ofcom. This means that, under current legislation, analogue radio broadcasting services can be provided only using spectrum that has been specifically reserved (and planned) for the purpose by Ofcom. By contrast, radio programme services provided on satellite platforms are currently able to be licensed (as radio licensable content services) without being specifically regulated for public purposes such as diversity or localness. Ofcom considers that a similar ability should apply to all platforms capable of providing radio services.
- 5.24 In line with Ofcom's overall desire to secure maximum flexibility in the future use of spectrum and licensing, it was proposed in the consultation document that Government may wish to consider breaking the current link between broadcasting policy (as manifested in the licensing regime and subsequent regulatory intervention) and spectrum allocation, such that analogue radio services can be provided by those who acquire spectrum through means other than applying for a broadcasting licence advertised by Ofcom.
- 5.25 It was noted that there may still be public policy reasons (e.g. relating to the technology to be used, the coverage to be achieved, or the nature of the programme service to be provided) for continuing to allocate some spectrum specifically for radio services, in the way that it is currently allocated, but it was suggested that the current statutory framework does not provide sufficient flexibility to allow for spectrum to be allocated for radio services in a less interventionist manner, where there are no public policy justifications for reserving spectrum for this purpose. We therefore suggest that Parliament may wish to consider, at the appropriate time, allowing for single-stream (i.e. not multiplexed) national and local radio services to be licensed in circumstances where the spectrum to be used by those services has been acquired other than by applying for a broadcasting licence for which the spectrum to be used has already been determined by the regulator.
- 5.26 In line with the suggestions made in respect of existing licences, it was further suggested that Government may wish to consider enacting legislation allowing any licences issued for terrestrial radio services in the manner described above to be granted for an indefinite period, but also including conditions allowing for their termination by Ofcom with at least two years' notice. In order to provide a degree of certainty for new licensees, it was suggested that it may be appropriate that these licences should have a guaranteed five-year minimum term.

- 5.27 In terms of awarding new licenses, the consultation document recognised that auctions are generally the best way of securing the optimal use of spectrum, as an open, objective, non-discriminatory and transparent way of assigning spectrum to those who value it most, but also recognises that the efficiency of auctions is strongly dependent on how they are designed. Licences awarded by auction can still include conditions designed to secure desired public purposes, such as diversity, localness and coverage. Further, the changing nature of regulation, including guidelines for the minimum acceptable level of locally-made programmes and simplified Formats which include far less detailed programming requirements, makes it increasingly difficult to envisage how to differentiate between applicants in a beauty contest.
- 5.28 Finally, it was suggested that any new commercial radio licences for terrestrial radio services which are to be regulated in order to secure defined public purposes could be awarded by auction, rather than by beauty parade as at present.

Consultation responses

- 5.29 RadioCentre commented that *“the effect of Ofcom’s proposal is to separate the current linkage within Broadcast and WT Licences which associate specific blocks of spectrum with specific transmission technologies (DAB, for example). This reflects current legislation, which is proving inflexible given the increasing pace of development and we agree there is merit in principle in separating Spectrum and Technology. We understand the need to allow more flexibility to license single stream and multiplex radio technologies, but would recommend limiting the combinations of spectrum and technology in such a way they can be expanded over time, when this is in the interests of consumers and there are clear paths to consumer uptake.”* It proposed that the specific suggestions in the consultation could be included in the agenda of its proposed cross-industry working group; this was supported by other respondents including Town and Country Broadcasting and UTV Radio.
- 5.30 Other respondents felt further work was needed, including Channel 4 Radio and Digital One, which said that it was *“keen for Ofcom to develop this proposal more fully, taking into account AIP and the intention to auction spectrum in a platform/technology neutral way.”* Arqiva *“would suggest that Ofcom consult with industry specifically on how a transition to market-based allocation of tradable spectrum, licensed on a technology-neutral basis, might be implemented for the delivery of radio services.”*
- 5.31 As noted above, the BBC had reservations about the proposed approach and suggested that *“Ofcom cannot achieve its duties of maintaining sufficient localness on radio and protecting a diverse radio market and also take an agnostic or hands-off approach to the technology and frequencies in use... Our broad view – expressed in a number of responses to Ofcom consultations – is that spectrum is rarely truly technically neutral and that benefit comes from selecting technologies which are appropriately designed and optimised for the frequencies in which they are to work. We hold that the radio bands are the epitome of this.”*
- 5.32 However, many respondents supported the suggestion regarding technology neutral licences, including Absolute Radio, Bay FM, Folder Media and the Ofcom Consumer Panel, which noted that *“this would allow consumers to benefit from access to radio through a wider variety of technologies.”* BT also agreed: *“users should be able to acquire spectrum without restriction on use. Hence a spectrum buyer should be able to use the spectrum for broadcast radio.”*

- 5.33 There was considerable opposition to the suggestion to award licences by auction, from respondents such as Emap and Folder Media, which noted that *“there are considerable arguments against award by auction, which will reduce the level of potential investment in programme and marketing, resulting in a further weakening of choice.”* The CMA and CBC also opposed this, with the latter suggesting *“this would severely restrict opportunities for charitable funded broadcasters including Christian broadcasters and community radio stations from obtaining the required spectrum to operate. We would therefore urge the Government to safeguard spectrum for public purposes from being auctioned.”* However, BT was in favour, stating that *“spectrum should be obtained by auction even for defined public purposes. In principle we agree with this suggestion but we wonder how this may work in practice.”*

Consideration of responses

- 5.34 Ofcom welcomes the widespread support for the suggestion that legislation should allow for technology-neutral licensing of radio broadcast services, and thus intends to make this a firm recommendation to Government. Without any changes to the current statutory licensing framework, Ofcom will not be able to license any radio broadcast services using the Digital Radio Mondiale technology, for example.
- 5.35 However, in light of the decision to pass to the cross-industry working group consideration of matters such as the duration and conditions of any commercial radio licences granted after new legislation, we intend to defer consideration of the same matters as they relate to any licences granted in a technology-neutral manner.
- 5.36 With regard to the auctioning of licences in future, we continue to believe that any new legislation should incorporate this mechanism, and so suggest that Government should take this into account when considering any new radio legislation. While we recognise concerns related to the potential cost of acquiring a licence in an auction and the effect that this could have on the winner’s ability to invest in programming, it remains Ofcom’s view that auctions may represent a more transparent and objective method of awarding licences, especially if programming requirements are simplified and localness requirements standardised.

Conclusion on new ways of licensing broadcasting

Ofcom suggests that Government may wish to consider how any future changes to legislation could allow for Radio services, including those designed to deliver public purposes, to be licensed on any spectrum in a technology neutral way.

For example, Ofcom could be given the ability to license radio services designed to deliver public purposes without having to determine beforehand which technology they must utilise. Ofcom could also grant licences for the provision of national and local terrestrial radio services to prospective providers who have acquired spectrum independently. Such services would not be regulated to secure diversity and/or localness.

We suggest that any new licences which are to be regulated in order to secure defined public purposes could be awarded by auction, but with conditions attached to the licences to secure these purposes.

Extending DAB multiplex areas

- 5.37 It was suggested in the consultation document that, in order better to facilitate universal local DAB coverage and therefore enhance the prospects of re-using the spectrum currently occupied by analogue radio, Government may wish to consider giving Ofcom the authority to vary the areas to be covered by local DAB radio multiplex licences so as to allow for an extension into an adjoining area where the increase would not be significant, thus maximising the potential coverage of local DAB. However there may be exceptional circumstances that justify a significant increase to the licensed area. An equivalent power already exists in the 1990 Act in respect of local analogue licences.

Consultation responses

- 5.38 There were very few responses on this specific suggestion, but those who did respond (e.g. RadioCentre, Arqiva, Emap) largely were in agreement. The most detailed response on this issue came from Folder Media, which agreed with the suggestion provided that the power was exercised only in order to eliminate 'white spaces' which are currently not included within the licensed area of any local radio multiplex service, and not in order to enable an existing multiplex operator to expand into an area which could support its own local multiplex service.
- 5.39 Ofcom can confirm that the intention behind the proposal was to eliminate 'white spaces'. In light of the general agreement with this suggestion among those respondents who addressed the issue, Ofcom will recommend this proposal to Government.

Decision on the extension of existing DAB licence areas

So as to maximise DAB coverage for local radio services, we suggest that Government may wish to consider giving Ofcom the power to increase the licensed areas of existing DAB local multiplex licences where such increases would not be significant, and to approve significant increases in exceptional circumstances.

Mono and stereo broadcasting on DAB

- 5.40 In the light of changes to some related regulatory provisions (the regulation of sound quality through bit-rates, and the capacity on a radio multiplex service allowed for digital additional, i.e. data, services), it was proposed in the consultation document that Ofcom will generally approve a change in the technical parameters of a DAB audio service from stereo to mono in circumstances when it considers that the reduction in sound quality of the service whose technical parameters are being changed is outweighed by the benefits to citizens and consumers of the use to which the freed-up capacity is to be put.

Consultation responses

- 5.41 Rik Watson reflected the views of seven respondents, including Estuary Media, Vixen Broadcasting, Radio Verulam, Ofcom's Advisory Committee for Wales and the ISBA, who considered this proposal a backwards move, commenting that the "move to mono shouldn't happen... are we going back to the 1950s?" The VLV said "Many listening devices can receive stereo and we do not consider that the provision of some extra stations necessarily justifies the loss of quality that a mono only

broadcast would bring. At the very least, this proposal requires greater clarity on what would constitute 'benefits to citizens and consumers'."

- 5.42 RadioCentre, supported by other radio stakeholders including Digital One, Emap, Town and Country Broadcasting and UTV Radio, stated that *"We believe that intervention by Ofcom in the area of sound quality stems from a misinterpretation of Section 54(1)g of the 1996 Broadcasting Act. Our view is that where the Act refers to "quality", it means the technical quality of the methods used to deliver the DAB ensemble (such as adequate field strength, correct network timing, system resilience and so on) not the audio quality of individual services within the multiplex. As a general principle we believe that the choice of bit-rate for any particular service should be based on factors such as the service format (speech/music etc) and left to the discretion of the broadcaster and multiplex operator. It is surely obvious that no broadcaster would deliberately inflict sub-standard audio on its listeners. It follows from this position that the choice of mono or stereo operation is a matter for the broadcaster and should not be subject to Ofcom intervention."*
- 5.43 Both CBC and Radio Regen supported the proposal, if this allowed more stations to access a multiplex. A number of respondents, such as Michael Barraclough, Arqiva and Channel 4 Radio, noted the opportunities that the DAB+ specification might offer.

Conclusion

- 5.44 Ofcom has considered carefully all of the responses to the consultation document in respect of this issue. We understand the concerns of some respondents that the provision of digital sound programme services in mono may not be in the best interests of citizens and consumers, and we believe that regulatory intervention in this area may be appropriate in some circumstances. However, in light of the responses to the consultation we have reconsidered our view of the statutory basis for this intervention.
- 5.45 It remains our view that the bit rates used to broadcast DAB services are a matter of technical quality falling to be regulated under the provisions of section 54(1)(g) of the 1996 Act. However, the issue of whether a service is broadcast in stereo or mono does not, we now think, fall within the same category. We think that this issue is better seen, in regulatory terms, as a characteristic of a digital sound programme service. As such, Ofcom has the statutory authority under section 54(1)(b) of the Broadcasting Act 1996 to impose conditions in a radio multiplex licence to secure that a licensee implements proposals submitted by him under section 46(4)(c) or section 50(4)(c) – "the applicant's proposals as to the number of digital sound programme services to be broadcast and as to the characteristics of each of those services". The same position should, we think, also apply to the issue of service coding (full or half-rate coding).
- 5.46 The statute requires, under section 54(6), that where a condition has been imposed under subsection (1)(b) and relates to the characteristics of digital sound programme services, Ofcom must vary the condition in accordance with a request from a licensee if it considers that the criteria in section 54(6A) (in respect of a national radio multiplex licence) and section 54(6B) (in respect of a local radio multiplex licence) would be satisfied.
- 5.47 In respect of a national radio multiplex licence, Ofcom would not approve a change from stereo to mono if it was felt that such a change if granted would "unacceptably diminish" the capacity of the digital sound programme services broadcast under the licence to appeal to a variety of tastes and interests.

- 5.48 In respect of a local radio multiplex licence, Ofcom would be able to approve a change from stereo to mono only if it was satisfied with regard to one of three criteria. These criteria are: that the change would not unacceptably narrow the range of local DAB services available in the area; that the change would be conducive to the maintenance or promotion of fair and effective competition in the area; if there is evidence of local demand or support for the change.
- 5.49 As this represents a change from the analysis set out in the consultation document and from our previous practice in this area, we think that it is appropriate to seek views on the proposal to regulate the audio characteristics of digital sound programme services under the authority of section 54(1)(b) of the Broadcasting Act 1996.

Revised policy on mono and stereo broadcasting on DAB for consultation

Ofcom will consider requests to change the audio characteristics of a digital sound programme service in accordance with the statutory criteria in sections 54(6A) and (6B) of the Broadcasting Act 1996.

Issue for consultation

The audio characteristics (e.g. stereo or mono) of a digital sound programme service should be considered as an essential aspect of the character of the service, and therefore should be regulated by Ofcom under the terms of section 54 of the Broadcasting Act 1996.

Illegal broadcasting

- 5.50 Earlier this year we published the results of some independent research into the amount of listening to illegal broadcasters¹⁶, and the reasons why some people choose to listen to these stations.
- 5.51 It is possible that the proposed simplification of the statutory criteria for community radio licensing, and the increased flexibility regarding community radio coverage areas that are outlined in section 6, may encourage providers to offer new services which may cater for those listeners who currently choose to listen to illegal stations.
- 5.52 Ofcom believes in taking firm and swift action against those who choose to broadcast illegally. In 2006, we undertook 1,085 separate operations against illegal broadcasters. This included seizing transmitters, disconnecting transmitters and aerials, and raids on their broadcast studios.
- 5.53 Over the last three years resources to deal with illegal broadcasters have been increased, and a move towards more focused in-depth operations against persistent or high impacting illegal broadcasters has been undertaken. We will continue to maintain an active and focused investigative capability to tackle illegal broadcasting activity and protect legitimate services which use the broadcast spectrum.

¹⁶ Illegal Broadcasting – Understanding the Issues, published by Ofcom on 19 April 2007

- 5.54 Working together with interested and affected stakeholders, we are continually looking at ways of making enforcement policy more effective (Ofcom has recently, for example, been conducting more in-depth investigations into the individuals involved in illegal broadcasting), and are currently looking at what changes could be made to legislation and how we could utilise different pieces of existing legislation more effectively. We will also review our prosecution procedures and monitor the effectiveness and appropriateness of the sentences imposed upon conviction.

Section 6

Community radio

Community radio in context

- 6.1 In the consultation we set out some initial thoughts concerning the future licensing of community radio services, designed to encourage discussion and inform our recommendations, as set out later in this document.
- 6.2 The consultation set out the context within which community radio operates, providing both an historical perspective and making specific reference to the six public purposes of radio, on which Ofcom has previously consulted:
- i) Sustaining citizenship and civil society
 - Informing ourselves and others and increasing our understanding of the world through news, information and analysis of current events and ideas.
 - ii) Promoting education and learning
 - Stimulating our interest in and knowledge of a full range of subjects and issues through content that is accessible and can encourage either formal or informal learning; and
 - Providing specialist educational programmes and accompanying material to facilitate learning at all levels and for all ages.
 - iii) Stimulating creativity and cultural excellence
 - Enriching the cultural life of the UK through creative excellence in distinctive and original programming;
 - Fostering creativity and nurturing talent; and
 - Promoting interest, engagement and participation in cultural activity among new audiences.
 - iv) Representing the UK, its nations, regions and communities
 - Reflecting and strengthening our cultural identity through original programming at UK, national and regional level, on occasion bringing audiences together for shared experiences; and
 - Making us aware of different cultures and alternative viewpoints through content that reflects the lives of other people and communities within the UK.
 - v) Bringing the UK to the world and the world to the UK
 - Making UK audiences aware of international issues and of the different cultures and viewpoints of people living outside the UK; and

- Bringing high quality international news coverage to a global audience through radio, TV and new media.

vi) Providing social gain

- Serving individuals who are otherwise under-served by radio;
- Facilitating discussion and the expression of opinion;
- Providing education and training (other than to employees); and
- Enhancing understanding of the target community and strengthening links within it.

6.3 These six purposes apply to differing degrees to all radio sectors: the BBC, community and commercial radio. The community radio sector takes the lead in providing social gain, but also supports the provision of some of the other public purposes in varying degrees according to the nature and objectives of each individual community radio service.

6.4 In highlighting the importance of these public purposes, Ofcom also recognised the need to encourage the development of a thriving community radio sector as part of our wider approach to securing the interests of citizens.

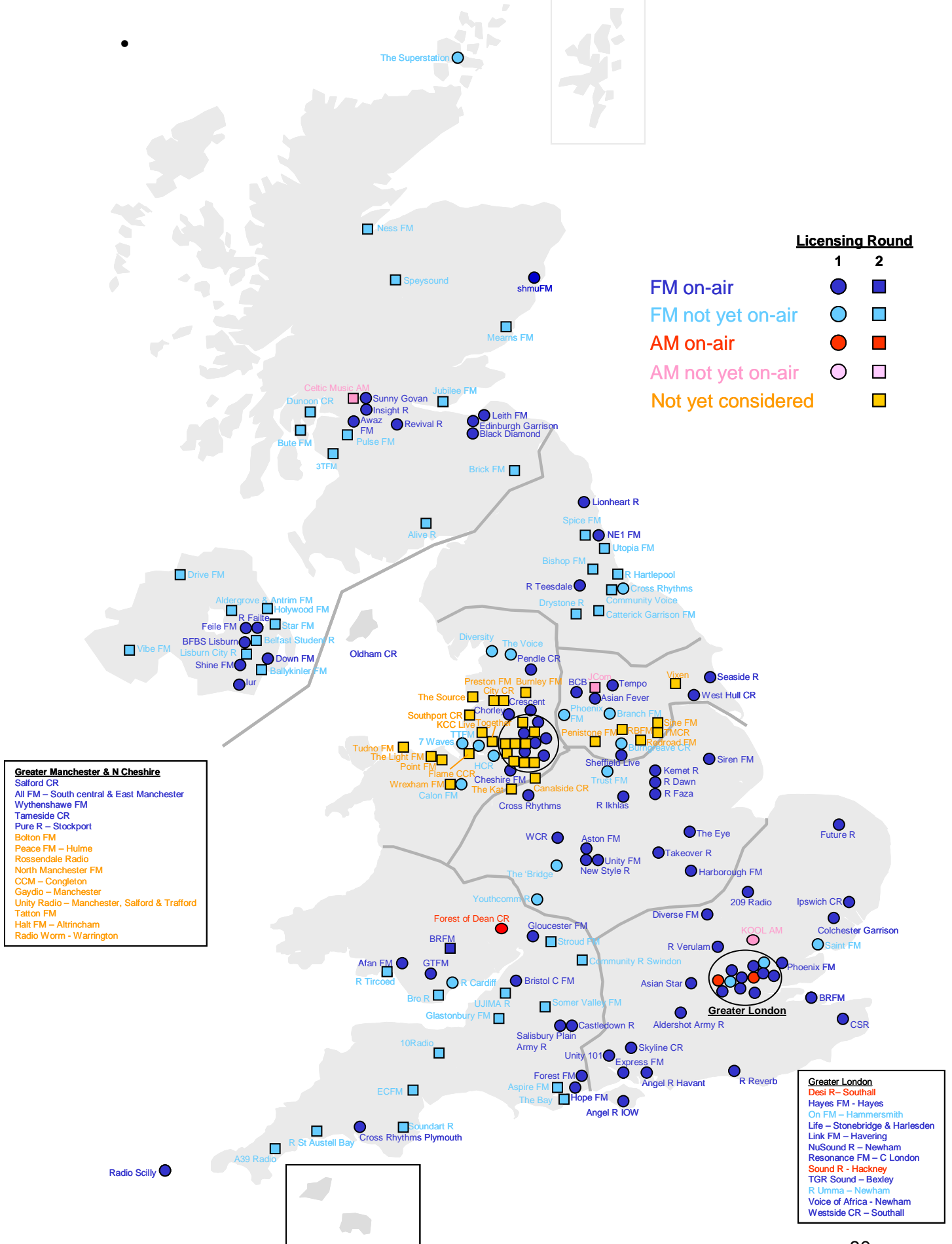
6.5 In support of this objective, the consultation reiterated the importance of community radio in contributing to a strong, diverse, broadcast radio sector. The range of radio services available should, we said, include community services for every community that wants one – providing programmes for special interest groups (including ethnic and religious communities), providing a sense of identity in local communities, with community involvement and participation, broadcasting community information and allowing for debate.

Progress to date

6.6 Ofcom first invited applications for community radio licences across the UK in September 2004. The first new station launched just over a year later, in November 2005. We are currently in the process of completing a second round of community radio licensing, this time on a region-by-region basis. In total to date, some 149 stations have been offered a community radio licence, of which more than 80 have now commenced broadcasting.

6.7 These figures demonstrate a radio sector which, from a standing start in 2004, has grown remarkably quickly. However, despite such a rapid and diverse take-up of community radio licenses, demand for yet further such services is still very much apparent. Figure 18 shows the locations of those community stations which have, to date, been offered a licence to broadcast, together with the location of those other groups which have also applied and which are awaiting a licensing decision.

Figure 18: Community radio services licensed or applications pending



Current community radio regulation

- 6.8 Community radio services are currently licensed under the terms of the Community Radio Order 2004 (the “Order”) which amends the 1990 Act. This secondary legislation¹⁷ sets out a wide range of requirements which broadcasters must comply with in order to be awarded, and, subsequently, to retain a community radio licence.
- 6.9 The current legislation governing the licensing of community radio services is comprehensive and highly detailed. It is intended to ensure that each such service reflects the needs and aspirations of a particular community or number of communities. It is also intended to ensure that the community radio sector as a whole operates as a clearly distinct entity, different from both commercial broadcasting and the BBC. The Order is designed to ensure that such differences are present both in terms of the outputs delivered (programming) and in respect of the inputs used to create such outputs (finance and structure etc.).
- 6.10 At the heart of the Order are various characteristics of service and selection criteria which define the nature of community radio as well as various more detailed specific requirements which Ofcom must take into account when assessing an application for a community radio licence.
- 6.11 The specific characteristics of service requirements imposed upon community radio stations by Article 3 of the Order require that such services operate:
- for the good the public;
 - deliver social gain;
 - serve specific communities;
 - operate on a non-profit-distributing basis;
 - provide operational and managerial opportunities for members of the target community; and
 - are accountable to the community concerned.
- 6.12 These characteristics of service are supported by seven selection criteria under section 105(1) of the 1990 Act (as amended) to be used when deciding whether to award a particular group a licence. Ofcom is required to take into account an applicant's ability to:
- maintain the proposed service for the duration of the licence;
 - cater for the tastes and interests of members of the target community;
 - broaden the range of programming locally;
 - provide evidence of demand and support for the proposed service;
 - deliver social gain;

¹⁷ The Future of Radio, Annex 9, Ofcom, April 2007 - <http://www.ofcom.org.uk/consult/condocs/futureradio/annexes6-12.pdf>

- be accountable to members of the target community; and
 - provide members of that target community with opportunities to access station facilities and be trained in their use.
- 6.13 Community radio licensees must operate within strict financial constraints, requiring that they be funded from a variety of sources, with no one source of funding comprising more than 50% of the cost of providing the service within each financial year. The majority of community radio services are allowed to generate up to 50% of their funding from on-air commercial sources (spot-advertising and sponsorship opportunities taken together).
- 6.14 A small number of community radio services are prohibited from taking any income from on-air commercial sources in order to protect the interests of nearby small-scale commercial stations which serve more than 50,000 but fewer than 150,000 adults (aged 15 +) within their MCA (Measured Coverage Area). A further restriction, also implemented to protect very small-scale commercial stations, is that Ofcom is prohibited from licensing any community radio services which would have a coverage area that would overlap by 50% or more (in terms of population) with the MCA (of an existing commercial radio station containing 50,000 adults (aged 15+) or fewer).
- 6.15 Community radio services must comply with the various ownership rules set out in the 1990 Act (as amended).
- 6.16 In addition however, community radio services must also adhere to a number of additional ownership requirements, the most fundamental of which is that any single organisation may only own a maximum of one community radio licence. As well as commercial radio operators, the BBC, Channel 4 and S4C are all prevented from holding such a licence, but no such restriction applies to other broadcasters including satellite radio stations and the operators of restricted service licences.

Suggested amendments to the Community Radio Order 2004

- 6.17 In the consultation, Ofcom suggested that while the underlying community radio characteristics concerning the delivery of social gain, not for profit operation and accountability etc. should remain unchanged, there might well be scope for simplifying the detailed selection criteria in ways which would still ensure that the distinctive nature of community radio would still be maintained. In addition, some of the suggestions put forward in the consultation also addressed some other specific requirements contained within the current Community Radio Order and the extent to which these might also be simplified by future legislation. Finally, other suggestions considered issues of Ofcom community radio policy, which could be altered without the need for legislative change.
- 6.18 We recognise the importance of maintaining a distinctive and clearly separate community radio sector. While some of our specific proposals, such as those relating to volunteer time or licence duration are concerned with operational issues, most of them are predicated on the basis that they would, if introduced, simplify the application process for prospective community radio broadcasters and would allow the regulator to be somewhat more accommodating of particular narrowly-formatted community radio services (such as, for example, student radio stations). Our objective, to provide a framework which supports a strong, vibrant, distinctive and independent community radio sector, remains core to these proposals. We address each of the specific proposals below.

Consultation responses

- 6.19 In relation to a number of questions concerning community radio the responses to the consultation show a marked lack of enthusiasm for major changes at this early stage in the life of the sector. Although, perhaps not surprisingly, responses tend to divide between proponents of community and commercial radio, in some areas there is a strong degree of unanimity. For example, whilst not agreeing on everything, both the Community Media Association and RadioCentre are firm in their belief that the unique nature of community radio should not be diluted through any future changes to legislation and regulation.
- 6.20 In some specific areas however, demand for early change is apparent. Most notably, there appears to be general support for the extension of licence durations beyond the current five year non-renewable term. In addition, despite opposition from some in the commercial radio sector, there appears to be considerable support for recognising the financial value of volunteer time when it comes to assessing turnover. Other areas where there appears to be a reasonable degree of consensus include, judging of applications primarily in relation to first year financial proposals, maintaining existing accountability requirements, keeping existing limits on those persons able to hold a community radio licence, and, to a lesser extent, maintaining the one licence per group limit.
- 6.21 As previously mentioned, it should be noted that many of the changes proposed in the consultation would require a change to the current legislation governing the licensing of community radio. It is for Government to bring forward legislation to implement such changes as it sees fit in the light of the recommendations made in this report.
- 6.22 In relation to many of the questions posed, Ofcom received a wide range of responses, often suggesting a lack of consensus as to how it might be best to proceed in future. We feel that such an outcome is perhaps inevitable given that the various responses received concern a tier of broadcasting services which is still in the process of establishing itself. Moreover the responses received came not only from the sector itself, but also from other parties, often with very specific self interests, such as commercial radio operators and would-be commercial broadcasters.
- 6.23 A particular theme from a variety of respondents (including, for example, the BBC, Campaign for Press and Broadcasting Freedom, Castledown Radio, Chrysalis Radio, Folder Media, Lincs FM, Town and Country Radio, and UKRD) was that, to a greater or lesser extent, it is as yet too early to suggest major alterations to the legislative framework and regulations governing the operation of community radio services.

Individual consultation suggestions

The characteristics of community radio

- 6.24 We suggested that *the characteristics of community radio services, as included in the Community Radio Order 2004, should be retained, but the definition of "social gain" should be reconsidered.*
- 6.25 Most respondents to this question broadly agreed that the characteristics of community radio services, as included in the Community Radio Order 2004, should be retained.

Consultation responses

- 6.26 A number of respondents were broadly in favour of redefining "social gain" either because they felt that current requirements for its delivery were too onerous, or through a more general concern that community radio is too over-regulated as a whole. However, others argued strongly that it is simply too early in the life of community radio to be considering changes at this time.
- 6.27 Channel 4 Radio stated that "*Community Radio should be supported to become a vibrant and sustainable component of the radio universe. This should include reducing regulatory burdens so that they are proportionate to the size and value of the sector.*" However, a number of community radio broadcasters and others, as well as the Community Media Association, stressed the importance of maintaining the distinctive nature of community radio, variously making reference to factors such as the delivery of social gain, not-for-profit operation, governance and accountability as being key requirements essential for achieving this objective.
- 6.28 The suggestion that the term "social gain" be referred to instead as "community benefit" received support from a number of respondents.

Consideration of consultation responses

- 6.29 Ofcom recognises the concerns of respondents worried that our proposed suggestions for changes in relation to the delivery of "social gain" would reduce the importance we might attach to its delivery in future. As the CMA succinctly put it, "*[we] would not want the essential characteristics defining community radio as a third tier of broadcasting to be 'watered down'.*" We agree wholeheartedly with this view.
- 6.30 With the above in mind, we do not agree with those respondents advocating a reduction of the requirement to deliver social gain. We believe that such a move would, in effect, be a "green light" for those wishing to dilute the distinctive nature of community radio services.

Conclusion

Recommendation on the characteristics of community radio

We recommend to Government that the characteristics of community radio services, as included in the Community Radio Order 2004, should be retained. Any future legislative changes should retain the delivery of social gain or community benefit as a core, indispensable, characteristic of community radio.

We also propose to suggest to DCMS that it considers adopting the term "community benefits" in future.

Statutory selection criteria

1. Ability to maintain service criterion

- 6.31 We suggested that *the statutory criterion regarding the ability to maintain the service should be reconsidered such that Ofcom could be required to have regard to the ability of an applicant to establish and maintain its proposed service for the first year of the licence period.*

Consultation responses

- 6.32 There was some support for this view (for example from Community Media Northern Ireland, Estuary Media (Southend), IUR FM, Preston FM, Tameside Radio and Vixen Broadcasting) primarily because it was felt that such a time-frame would be both realistic and achievable. However, others (including the Community Media Association, Cross Rhythms Radio, The Highlands and Islands Community Broadcasting Federation, Ofcom's Advisory Committee for Wales, Radio Regen, and RCT Community Radio) recommended that detailed year one proposals should be backed up with more general outline plans covering how the applicant would expect to develop its financial base over subsequent years. Ofcom's Community Radio Fund Panel stressed the importance of Ofcom having a full understanding of the finances of the sector.

Consideration of consultation responses

- 6.33 In light of the various responses received in relation to this question, and drawing upon our now considerable experience of assessing community radio licence applications, we continue to believe that it makes sense to assess applications over the lifetime of the proposed licence on offer. We also continue to believe that it is sensible to look at first year proposals in detail and at longer-term potential viability in more general terms.

2. Catering for tastes and interests criterion

- 6.34 We suggested that *the statutory criterion which requires Ofcom to have regard to the extent to which a proposed service would cater for the tastes and interests of the community to be served should be reconsidered.*

Consultation responses

- 6.35 Many respondents to this question, including the Community Media Association, perceived a large degree of overlap between this issue and those covered in the next two criteria.
- 6.36 While a number of respondents welcomed the suggestion that this issue (and broadening choice and evidence of demand and support) could be subsumed into a broader "social gain" or "community benefit" criterion, the vast majority were of the opinion that this should not be done at the expense of reducing the importance of taking into account an applicant's ability to cater for the tastes and interests of the community to be served. For example, in relation to this criterion (as well as in relation to the criteria for ability to maintain service, broadening choice and evidence of demand and support) the Christian Broadcasting Council also took the view that: *"There is a need to simplify the selection criteria and licensing procedures for community radio while maintaining the nature of these types of services".*

Consideration of consultation responses

- 6.37 We accept the view of respondents that the degree to which an applicant's ability to cater for the tastes and interests of members of the target community is taken into account should not be reduced. We also agree with those that feel that the current level of complexity in the linked areas of catering for tastes and interests, broadening choice and evidence of demand and support is area could be reduced without reducing the relative importance of any of these criteria. We remain confident that this combined objective could be achieved within an expanded "social gain" criterion.

3. Broadening of choice criterion

- 6.38 We suggested *that the statutory criterion which requires Ofcom to have regard to the extent to which a proposed service would broaden choice should be reconsidered.*

Consultation responses

- 6.39 A similar range of views was received in relation to this question as compared to those received concerning catering for tastes and interests and evidence of demand and support. Supported by the views of some other respondents, RadioCentre urged caution in any approach which diluted the importance of ensuring that any new community radio station should broaden choice.

Consideration of consultation responses

- 6.40 We accept the view of respondents that the degree to which an applicant's ability to broaden choice available to members of the target community is taken into account should not be reduced. We also agree with those that feel that the current level of complexity in the linked areas of catering for tastes and interests, broadening choice and evidence of demand and support is area could be reduced without reducing the relative importance of any of these criteria. We remain confident that this combined objective could be achieved within an expanded "social gain" criterion.

4. Evidence of demand and support criterion

- 6.41 We suggested *that the statutory criterion which requires Ofcom to have regard to the extent to which there is evidence of demand, or support, for a proposed service should be reconsidered.*

Consultation responses

- 6.42 A similar range of views was received in relation to this question as compared to those received concerning questions of catering for tastes and interests and the broadening of choice.

Consideration of consultation responses

- 6.43 We accept the view of respondents that the degree to which an applicant's ability to demonstrate evidence of demand and support from members of the target community is taken into account should not be reduced. We also agree with those that feel that the current level of complexity in the linked areas of catering for tastes and interests, broadening choice and evidence of demand and support is area could be reduced without reducing the relative importance of any of these criteria. We remain confident that this combined objective could be achieved within an expanded "social gain" criterion.

5. Social gain criterion

- 6.44 We suggested that *the statutory criterion which requires Ofcom to have regard to the extent to which a proposed service would deliver social gain should be retained.*

Consultation responses

- 6.45 The majority of responses to this question agreed with Ofcom that the requirement to deliver "social gain" should indeed be retained.
- 6.46 Some respondents urged that a greater degree of flexibility should be permitted in relation to how such benefits might be delivered. For example, Pure Innovations (Stockport) Limited, which operates the community radio service Pure FM, stated: "We agree that social gain or providing community benefit is a fundamental part of community radio; however we would welcome more flexibility when being asked to demonstrate how the station has benefited the local community".

Consideration of consultation responses

- 6.47 Ofcom takes the view that, despite being somewhat detailed, the current definitions of "social gain", as set out in the Community Radio Order 2004 are broad enough to allow appropriate application across a wide range of community radio services. We continue to hold the view that the delivery of "social gain" remains both one of the underlying public service objectives of radio and a key factor in distinguishing community radio from other forms of broadcasting.

6. Accountability criterion

- 6.48 We suggested that *the statutory criterion which requires Ofcom to have regard to the provision that an applicant proposes in order to render himself accountable to the target community should be reconsidered.*

Consultation responses

- 6.49 The vast majority of respondents to this question argued that accountability should remain a distinct and separate requirement of community radio services. The view that 'market forces' would be able to ensure such accountability was put forward only by a very small minority.

Conclusion

- 6.50 In the consultation we had proposed subsuming this requirement within that to deliver "social gain". Taking on board responses received in relation to this question, we propose to maintain the separate nature of this requirement.

7. Accessibility and training criterion

- 6.51 We suggested that *the statutory criterion which requires Ofcom to have regard to the provisions an applicant proposes to make in order to allow for access by members of the target community to the station's facilities and for their training in the use of those facilities should be reconsidered.*

Consultation responses

- 6.52 A small number of respondents argued for a relaxation in the requirement to provide access to station facilities and training in their use. However, the majority view was that this should be maintained as a distinct and separate requirement of community radio services. For example, RadioCentre stated: We believe that this must remain obligatory for any community radio service. As Ian Stewart MP says, “The strength of community media lies in their participatory approach, whereby local people are involved in the operation of all aspects of the organisation”.

Conclusion on statutory selection criteria

- 6.53 We have taken into account the consultation responses, and our now wide-ranging experience of assessing community radio licence applications in reaching firm recommendations to Government to take forward as it sees fit.
- 6.54 We are confident that our proposal to bring the requirements regarding the catering for the tastes and interests of the community, the broadening of choice, and evidence of demand and support within a single, more encompassing "social gain" or "community benefit" criterion would ensure that the relative importance of these criteria would remain unchanged. The key objective behind recommending this change is that its introduction would streamline part of the current application process, removing some apparent overlaps and duplication and thereby simplifying it for aspiring community radio licence holders.
- 6.55 However, we recommend that the separate nature of other criteria, concerning the ability to maintain service, and the provision of social gain, accountability, accessibility and training, should be retained.

Recommendations on statutory selection criteria

Following consultation, we make the following recommendations to Government to take forward as it sees fit:

Ability to maintain service

This statutory selection criterion should be retained. Ofcom will continue to examine first year financial proposals in detail and to consider longer-term viability in more general terms.

Catering for tastes and interests, broadening of choice and evidence of demand and support

We recommend that Government should consider how Ofcom can be given the flexibility to simplify the application process and remove a degree of perceived duplication for applicants in this area. These requirements should continue to be taken into account by Ofcom when considering the extent to which an applicant's proposals would deliver social gain. However, we do not believe that there is necessarily a need for them to be specified separately in statute as is presently the case.

Social gain

The statutory requirement which requires Ofcom to have regard to the extent to which a proposed service would deliver social gain or community benefit should be retained.

Accountability

The statutory criterion which requires accountability to the target community to be a distinct and separate requirement of community radio services should be retained.

Accessibility and training

The statutory criterion regarding the provision of access to station facilities and training in their use should be retained.

Funding limits

- 6.56 We suggested that *it is important for a community radio station not to receive all of its funding from a single non-commercial source. However, it may be that there is a case for increasing or removing the current maximum percentage limit on funding from a single non-commercial source. Ofcom welcomes views as to what the appropriate limit should be.*

Consultation responses

- 6.57 The funding of community radio is perhaps one of the most contentious issues explored in the consultation. As a result, the range of responses received in relation to this question was very diverse. BRFM (Kent) observed: *“We believe that the funding issue with the current legislation is a juggling act.”*
- 6.58 A considerable number of responses, such as that from Canalside Radio, urged that *“it should be up to the individual station as to how it chooses to raise its own funding.”* However, there was no consensus on this point. Some other respondents suggested relaxing the percentage limit but not allowing 100% funding from a single source, while others suggested maintaining the status quo or even perhaps tightening the current funding rules. Radio Fish (Felixstowe) went as far as suggesting that: *“Majority funding from one source must be avoided - certainly no more than 50%, ideally no more than 25% for any one source.”* Some respondents, including the Community Media Association and Radio Regen, suggested that a more flexible approach might be taken, perhaps considering the nature of the specific funding bodies involved.

Consideration of consultation responses

- 6.59 We recognise that there is no consensus on this issue and also that community radio is a relatively new sector. Ofcom is in the process of gathering data from the sector to help make a more informed recommendation. However, at this stage many stations are yet to launch and many of those that have launched have been on air for less than a year. It will therefore be some time before we have sufficient evidence to make a reasoned judgment on this issue.

Conclusion**Recommendation on funding limits**

As there is no consensus on this issue, and bearing in mind the limited operational experience of the sector to date, we consider it too early to recommend making any alterations to the current 50% funding limit at this time. We recommend that the position be reviewed again in two years' time when more evidence is available.

Volunteer time

- 6.60 We suggested that *it would be possible to take into account volunteer time when assessing the turnover of a community radio service. Ofcom welcomes views on this issue and on how the value of such input could be calculated.*

Consultation responses

- 6.61 Respondents to this question overwhelmingly welcomed the suggestion that Ofcom should take into account the value of volunteer time when assessing the turnover of community radio services. Some respondents cautioned against the setting up of complex measurement systems to record such inputs, RadioCentre in particular warning that this could prove a time-consuming distraction and that it is not appropriate to use a back-door method to deliver changes to community radio's funding.

Consideration of responses

- 6.62 We do not agree with the view that this proposal could be a back-door method of delivering changes to community radio funding. Our intention is to recognise the value of volunteer inputs which are a key requirement of community radio services and without which they would not be able to operate. Taking into account the financial value of such inputs would bring Ofcom's regulatory approach broadly in line with recognised common practice in the wider, not-for-profit, sector.
- 6.63 This matter is one which does not require legislative change and thus it would be possible for Ofcom to implement a new policy approach at any time.

Conclusion

- 6.64 Given the high degree of consensus on this issue, we agree that volunteer time should be taken into account in future when assessing the turnover of community radio services. Individual stations will be free to choose whether or not to include the value of volunteer inputs in their turnover figures as submitted to Ofcom. As access and participation are key requirements of community radio, the recording of volunteer inputs will provide stations with an opportunity to acknowledge, demonstrate and measure the value of such contributions from members of their target communities.
- 6.65 We recognise that there may be circumstances where it would be inappropriate for a station to be funded from a combination of a single financial source and volunteer time. However, we remain confident that the undue influence provisions of Part II Schedule 2 of the 1990 Act will be sufficient to protect against such outcomes. We expect the vast majority of community radio services to continue to be funded from a multiplicity of sources. Where this is not the case, Ofcom will examine the potential for undue influence using the provisions of the 1990 Act as referred to above.
- 6.66 Under the provisions of the Community Radio Order 2004, the majority of community radio stations are permitted to obtain up to 50% of their income from on-air spot advertising and sponsorship opportunities taken together. The remaining 50% of income may come from another source or combination of other sources.
- 6.67 Taking the value of volunteer inputs into account means that whilst in percentage terms the amount of income a community radio station may generate from on-air commercial revenues (spot-advertising and sponsorship opportunities), or from any other single source, would remain unchanged at 50%, the actual amount of income

which could be generated from a single source would increase. This is due to the fact that taking into account the value of volunteer inputs increases total station turn-over (referred to as "relevant income" under section 105(5) of the 1990 Act).

- 6.68 In order to maintain the distinctive nature of the community radio sector and, in particular, to mitigate the potential for adverse economic impacts on commercial radio stations, we believe it would be inappropriate for any community radio station to be able to generate all of its funding from a combination of on-air commercial revenues and the value of volunteer inputs.
- 6.69 We therefore propose to impose a specific limit on the value of volunteer inputs which may be offset by a similar value of on-air spot-advertising and sponsorship income. The value of any further income from on-air spot-advertising and sponsorship income which a station is allowed to generate must be offset by income from sources other than volunteer inputs.
- 6.70 For those stations which wish to take advantage of this new policy, we therefore propose to introduce a licence condition which will place a limit on the value of volunteer inputs when matched against on-air spot-advertising and sponsorship income for the purposes on section 105(5) of the 1990 Act. Initially, we will limit the value of such volunteer inputs against on-air spot-advertising and sponsorship income to a maximum of 25% of relevant income.
- 6.71 The overall value of volunteer time is not limited. Stations can employ as many volunteers as they see fit in whatever capacities they choose. Ofcom is **only** limiting the value of volunteer inputs which can be claimed in a station's financial reporting.
- 6.72 The tables below set out examples of possible funding scenarios for community radio services, as at present, and when taking the value of volunteer inputs into account.

Current Situation	
0 - 50% (maximum)	50% to 100%
On-air spot-advertising and sponsorship income.	Income from another source or combination of other sources (Maximum 50% from any single source).
100%	
Stations which are either prohibited from generating on-air spot advertising and sponsorship income, or choose not to do so, generate 100% of their relevant income from a combination of other sources (Maximum 50% from any single source).	

Revised funding model, taking the value of volunteer inputs into account (examples):

Revised Situation (without on-air commercial revenues). Increasing turn-over by taking value of volunteer inputs into account
100%
Income from sources other than on-air spot advertising and sponsorship income, including the value of volunteer inputs.
(Maximum 50% from any single source).

OR:

Revised Situation (with on-air commercial revenues). Increasing turn-over by taking value of volunteer inputs into account		
25%	25%	25% to 75% 50% (maximum from one source)
On-air commercial income	Value of volunteer inputs	Income from another source or combination of sources

OR:

Revised Situation (with on-air commercial revenues). Increasing turn-over by taking value of volunteer inputs into account		
On-air commercial income	Value of volunteer inputs	Income from another source or combination of sources
Station generates 50% of income from on-air spot-advertising and sponsorship	25%	25% to 50% (maximum)
Note: Only the first 25% of income from on-air commercial sources may be offset against the value of volunteer inputs, any further income from this source must be offset against another source of income (or sources of income) so as to ensure that any one source of income does not exceed 50% of turn-over (relevant income).		

- 6.73 This approach will provide stations with some further flexibility in terms of funding, but also ensure that they must continue to be funded from multiple sources, including those other than on-air spot-advertising and sponsorship. Under our general duty to consider the potential economic impacts of community radio services on other local services, we propose to keep this percentage figure under review such that it may be increased or decreased in future.
- 6.74 Prior to introducing this change, we will hold further discussions with the sector concerning the development of a straightforward system for quantifying, valuing and recording volunteer inputs. Following the conclusion of such discussions we will amend our Notes of Guidance accordingly.

Decision on accounting for volunteer time

Volunteer time should be able to be taken into account when assessing the turnover of community radio services and stations will be free to choose whether or not to include the value of volunteer inputs in their turnover figures as submitted to Ofcom.

However, we believe it would be inappropriate for any community radio station to be able to generate all of its funding from a combination of on-air commercial revenues and the value of volunteer inputs. While the overall value of volunteer time is not limited, for the purposes of calculating funding limits we propose to introduce a licence condition to limit the value of such volunteer inputs against on-air spot-advertising and sponsorship income to a maximum of 25% of relevant income.

Prohibited persons

- 6.75 We suggested that *there should be no changes to the categories of person prohibited from holding a community radio licence.*

Consultation responses

- 6.76 There was little disagreement from respondents concerning this proposal. However, some, such as Mr Neil Kenlock and Ofcom's Consumer Panel, noted that community radio stations could provide an alternative option for some individuals currently involved in unlicensed broadcasting.

Consideration of consultation responses

- 6.77 Any change to the categories of person prohibited from holding a community radio licence would require a change in legislation. In relation to unlicensed broadcasters, the restriction only applies to individuals who have been successfully prosecuted within the past five years. As a result, this restriction applies only to a small number of individuals. We therefore do not propose to recommend a change at this stage.

Conclusion

Recommendation on prohibited persons

We do not propose to recommend any changes to the current legislative requirements concerning the categories of person prohibited from holding a community radio licence.

Ownership of multiple licences

- 6.78 We suggested that *the current rule requiring that no body corporate may hold more than one community radio licence should be reconsidered.*

Consultation responses

- 6.79 In the main, respondents to this question put forward one or other of two conflicting views. The BBC, the Campaign for Press and Broadcasting Freedom, Canalside Radio, the Community Media Association and several others, all cautioned against a change to the current rule.
- 6.80 Other respondents, such as British Forces Broadcasting, the Christian Broadcasting Council, and Cross Rhythms Radio suggested a relaxation in the rules to a greater or lesser extent. BFBS cited the extra layer of unnecessary and time-consuming paperwork to the licensing process which they have encountered through their support of a number of separate community services for military personnel.
- 6.81 Laser Broadcasting suggested that urgent consideration be given to a return to the “mother-hen-and-chicks” concept that is a part of the early history of UK commercial radio. It suggested that this approach would allow existing commercial radio stations to take ownership, where such agreement can be reached, of community licences operating within their existing TSAs.

Consideration of consultation responses

- 6.82 Ofcom agrees with the suggestion that to allow the ownership of multiple community radio services by a single body corporate could lead to a dilution of local control. In the light of these responses, we have revised our proposals in this area. On balance, we now consider the importance of protecting local ownership to be paramount. This

out-weighs the additional overheads which groups involved in more than one station currently encounter. We reject the notion that there could be cross-sector ownership of community radio services by commercial radio operators. It is right and proper the individual community radio services can collaborate with other broadcasters, both BBC and commercial, where they feel this to be appropriate. Such involvement may include collaboration at an operational level but may also include managerial input, up to and including minority involvement at board level by individuals. However, fundamentally, we regard the community radio sector as being distinct and separate from BBC and commercial broadcasting. As such, it would be inappropriate to allow the control of any community radio service to pass outside the sector.

Conclusion

Recommendation on the ownership of multiple licences

We do not recommend any changes to the current legislative requirements concerning the number of community radio licences which a body corporate may hold.

Feedback processes

- 6.83 In the consultation document, we said that *Ofcom needs to ensure that community radio services operate within the terms of the relevant legislation. The process of feedback has not yet begun, as no station has been on-air long enough. It is not therefore possible to assess the advantages or shortcomings of the existing system.* For this reason, we did not propose specific alterations to the level of feedback required at this time.
- 6.84 *[Note: In the intervening months since the consultation was published, Ofcom has begun to gather feedback from stations which have been broadcasting for approximately 12 months or more.]*

Consultation responses

- 6.85 Although a small number of respondents were concerned that the level of feedback required by Ofcom would be too onerous, the majority of responses broadly agreed with this proposal, many stressing the importance of obtaining detailed, broad-ranging information about the sector and its activities.
- 6.86 The Community Media Association, felt that it would benefit the sector if Ofcom moved from measuring the “inputs” into community radio, for example sources of income, to measuring the outputs achieved – operational performance, community benefit and community impact, while an anonymous respondent urged that Ofcom must, during the fairly near future, be prepared to produce a set of performance criteria by which community stations are to be judged and their output monitored.
- 6.87 Some respondents were concerned that the expected level of monitoring by Ofcom would not be sufficient. For example, Mr S Saul said “Ofcom should carry out more rigorous checks to ensure community stations adhere to the terms of their licence, and [do] not become a mini mainstream station via the back door”.

Consideration of consultation responses

- 6.88 The process of gathering and evaluating feedback from community radio stations has only just begun. We believe that the wide-range of responses received in relation to this question confirms that it is too early to reach any conclusions as to the effectiveness of the current system. We agree that the monitoring of community radio stations should be used to ensure that such stations provide distinctive services and do not become "mini-mainstream stations".

Conclusion

Decision on feedback processes

We will not make any changes to the level of feedback required from community radio licensees at present.

Licence durations and extensions

- 6.89 We suggested that *community radio licences should be eligible to be extended for up to a further five-year period, subject to meeting specified requirements, on one occasion only (without being readvertised). The period of extension for some licences may be less than five years, should that be necessary to achieve a common end-date for all analogue radio services.*

Consultation responses

- 6.90 Various respondents agreed with this proposal but stressed the importance of ensuring that stations should only benefit from such an extension when proven to have met its licence objectives. Others questioned why this process should be limited to a once-only renewal or suggested that licence durations for community radio services should be aligned with those of commercial radio stations. Roger Dury of Soundwork noted that in Ireland 10-year community radio licences are now in place.
- 6.91 Some respondents, including Radio Fynside, noted that the current five-year licence duration is likely to make financial planning difficult, as well as limiting the potential of operators to attract required capital investment.
- 6.92 A number of respondents replied to this question by exploring wider issues concerning the longer term continued use of analogue broadcasting. The Community Media Association, Takeover Radio and others questioned the need for analogue switch-off for community radio services.
- 6.93 Radio Regen requested "*that Ofcom seeks legal opinion whether the omission [of a licence renewal process] equates to a bar on renewal (requiring new legislation to amend) or a legal 'void' that the regulator could reasonably fill with suitable guidelines*".

Consideration of consultation responses

- 6.94 We understand the concerns of community radio operators concerning long-term stability and issues of viability. However, we do not believe that community radio stations should be granted licences which, in effect, could be seen as being

perpetual. In many parts of the country, demand for community radio licences clearly outstrips the availability of suitable frequency resources to a considerable degree. In such circumstances, it would not be fair to prospective applicants to provide potentially permanent access to spectrum for existing operators. In addition, given the wider ongoing developments of licensing and digital migration we do not feel it possible to propose longer-term solutions at this time.

- 6.95 The possible five-year licence extension would only be available to stations which could demonstrate that they have met their licence conditions to date and were able to demonstrate that they would also be able to do so for the duration of the proposed licence extension period.

Conclusion

Recommendation on licence durations and extensions

We recommend to Government that community radio licences should be eligible to be extended for up to a further five-year period, on one occasion only (without being readvertised), subject to meeting specified requirements. The period of extension for some licences may be less than five years, should that be necessary to achieve a common end-date for all analogue radio services.

Economic impact assessments

- 6.96 We suggested that *there may be a case for removing all of the current restrictions relating to the economic impact of licensing community radio services. Ofcom will be conducting further assessment in this area, with a view to bringing forward proposals for consultation later in the year as part of our review for the Secretary of State. In the meantime we welcome views on these matters.*
- 6.97 The restrictions on limiting the economic impact of licensing community radio stations on small scale commercial radio services are noted at paragraphs 6.18 & 6.19, above. In addition, Ofcom has a wider general duty to consider the economic impact which licensing a new community radio service may have on any other existing local radio services.

Consultation responses

- 6.98 Perhaps not surprisingly, responses considering the economic impact of licensing community radio services demonstrated a considerable level of disagreement between those involved in delivering such services and the operators of commercial radio stations.
- 6.99 Some community broadcasters urged the wholesale scrapping of economic impact assessments. For example, Penistone FM wrote: *“In no other industry does this nanny like protection of local commercial radio happen, local commercial radio should not be protected any more than the local shop keeper is protected from the national supermarket...”*
- 6.100 Other respondents from the community radio sector took a more nuanced approach. The Christian Broadcasting Council suggested that *“there maybe a case for the removal of restrictions related to economic impact where a community station will*

have a significantly different format to those of existing commercial stations e.g. Christian music or an arts-based station”.

- 6.101 Not surprisingly, commercial radio operators and their supporters argued either that the current rules should be retained, or indeed that they should be strengthened. Mr Steve Jenner argued that *“legislation is being changed in respect of community licences, then it should be amended in such a way that small stations of less than 100,000 MCA should not have to face a community licence on “their patch” at all”*. Conversely, Radio Regen observed that: *“This is probably the most contentious area of community radio regulation for both our sector and our commercial colleagues. At a small scale local level both sectors are faced with extremely challenging business models but only one sector – the commercial - has received any regulatory protection.”*
- 6.102 The Highlands and Islands Community Broadcasting Federation, which represents the interests of non-profit distributing organisations holding commercial radio licences in Scotland, did *“not feel a wholesale removal of the current restrictions would be advisable, particularly in those areas where commercially licensed stations are providing very small scale operations on a not-for-profit social gain basis.”*
- 6.103 Mr Barry Mole, Director of Warminster Community Radio, a station prevented from holding a licence because of the restrictions, observed that: *“One could possibly understand restrictions placed to protect a small autonomous station privately owned, working and existing alone in a rural area. But how many are, in fact part of a larger corporation which owns multiple stations around the country and draws on large resources of staffing to support the small station to minimise their costs and maximise profits for shareholders. In these cases the small non-profit, voluntary run, rural community station is banned in order to protect just a “small” commercial interest in a large national company, which has no community loyalties”*.
- 6.104 The Community Media Association called for the existing protections for small scale commercial operators to be scrapped adding: *“We do think that the requirements for carrying out economic impact assessments when having regard to issuing new community or commercial licences should be aligned. Either there should be economic impact assessments when considering new licences for both community and commercial stations, or that there should be no economic impact assessments at all. We would favour the latter, although we would want a system in place to allow any current operators to know that licences were going to be issued in their areas.”*
- 6.105 In its response, Community Media Northern Ireland questioned *“how the existing legislation and regulations are compatible with UK and European Union legislation of monopolies and anti-competitive practices. We would call on Ofcom to refer this matter to the Competition Commission”*.
- 6.106 RadioCentre stated that: *“We are not aware that any such case has been convincingly made on the basis of any evidence. It also referred to evidence it has compiled which suggests that, not only is it too early to consider making changes in this area, but that such changes could be damaging to the smallest and most community-critical commercial radio stations.”*

Consideration of consultation responses

- 6.107 Clearly from the wide range of views put forward by respondents to this question, the issue of economic impact remains highly contentious. We have some sympathy with the argument from the Community Media Association that there should in future be a

'level playing field' when it comes to considering the economic impact of introducing new broadcast radio services, both community and commercial. We also understand the frustrations experienced by potential broadcasters prevented from holding full-time community radio licences, or from generating on-air commercial revenues.

- 6.108 Conversely, we agree with RadioCentre that, to date, there is insufficient evidence to support the introduction of any changes to the current rules. We remain of the opinion that, while the current restrictions clearly limit our ability to move towards our stated aim of allowing a community radio service for any community that wants one, for the present, these restrictions should remain.
- 6.109 We will continue to examine the issues surrounding economic impact, and will discuss with DCMS and other interested parties options for gathering further evidence to inform possible future changes in this area.

Conclusions

Recommendation on economic impact assessments

For the present, we do not recommend immediate changes to the current economic impact requirements of the legislation. We will carry out further work in this area as the community radio sector develops and more information and evidence becomes available. This question should be considered again in two years' time.

Coverage restrictions

- 6.110 We suggested that *the coverage of community radio services will still be restricted by frequency availability constraints, and Ofcom will continue to need to weigh up the relative merits of alternative licensees, for example where it might be possible to licence two small stations or only a single larger service, when deciding on the best use of the available spectrum resources.*

Consultation responses

- 6.111 The main issue raised in response to this question concerned the problems which many community radio stations feel they have with inadequate coverage. Many respondents also urged Ofcom to make more FM spectrum available to community broadcasters in future, once larger commercial broadcasters have transferred to solely digital transmission networks.

Consideration of consultation responses

- 6.112 We recognise the difficulties which some community radio services encounter in terms of coverage, where this is limited by a lack of available spectrum. We will consider the requirements and aspirations of the community radio sector alongside those of other broadcasters as we develop proposals for the future use of the FM spectrum and the migration of services to digital platforms.
- 6.113 This is a matter that is within Ofcom's gift and would not require any legislative change. We will continue to judge competing applications for community radio licences on the basis of their relative merits, weighing this against our general obligation to make best use of available spectrum resources.

Conclusion

Decision on coverage restrictions

Ofcom will continue to need to weigh up the relative merits of alternative licensees, for example where it might be possible to license two small stations or only a single larger service, when deciding on the best use of the available spectrum resources.

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 21 December 2007**.
- A1.2 Ofcom strongly prefers to receive responses using the online web form at <http://www.ofcom.org.uk/consult/condocs/futureradio07/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 peter.davies@ofcom.org.uk attaching your response in Microsoft Word format, together with a consultation response coversheet.
- A1.4 Responses may alternatively be posted or faxed to the address below, marked with the title of the consultation.
- Peter Davies
Director of Radio and Convergent Media
5th Floor
Riverside House
2A Southwark Bridge Road
London SE1 9HA
- Fax: 020 7981 3806
- 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 questions asked in this document, which are listed together at Annex 4. It would also help if you can explain why you hold your views and how Ofcom's 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 Will Jackson on 020 7981 3938.

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 in spring 2008.
- 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 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 Vicki Nash, Director Scotland, who is Ofcom's consultation champion:

Vicki Nash
Ofcom
Sutherland House
149 St. Vincent Street
Glasgow G2 5NW

Tel: 0141 229 7401
Fax: 0141 229 7433

Email vicki.nash@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 version for smaller organisations or individuals who would otherwise not be able to spare the time to share their views.

A2.5 We will normally allow ten weeks for responses to consultations on issues of general interest.

A2.6 There will be a person within Ofcom who will be in charge of making sure we follow our own guidelines and reach out to the largest number of people and organizations interested in the outcome of our decisions. This individual (who we call the 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. This may be because a particular issue is urgent. If we need to reduce the amount of time we have set aside for a consultation, we will let those concerned know beforehand that this is a 'red flag consultation' which needs their urgent attention.

After the consultation

A2.8 We will look at each response carefully and with an open mind. 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:

To (Ofcom contact):

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?	

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 questions

- A4.1 As we have revised our proposal on localness guidance for commercial radio, we are re-consulting on this proposal. The rationale for this proposal is given in section 3. We welcome comments which provide additional evidence or arguments not already submitted in response to the first consultation on the localness proposals:

Revised proposal on localness guidance for analogue commercial radio

Type of licence	Proposed programming guidance
FM local stations	<p>Each station should produce a minimum of 10 hours a day of locally-made programming during weekday daytimes (this should include breakfast). Programming should include local material across those 10 hours as a whole, although there is no expectation that local material would be included in each of those individual hours if this is not appropriate.</p> <p>Each station should produce a minimum of 4 hours a day of locally-made programming at weekends (in daytime) which should include local material.</p> <p>Those stations with an MCA (Measured Coverage Area) of 250,000 adults (age 15+) or fewer can apply to share programming within their 10 hours of locally-made programming on weekdays to form a small regional network, but should still provide 4 hours of bespoke (i.e. specific to each station) programming with local material every day, including breakfast on weekdays. This should be locally-made within the licensed area unless co-location has been agreed. The criteria used to decide whether to allow such programme sharing will be the same as those used to decide upon co-location, set out below.</p> <p>Stations with an MCA of 250,000 adults (aged 15+) or fewer can also apply for co-location; requests will be considered in relation to our published criteria (local affinity, distance between the areas and financial viability) – although we would not rule out requests from larger stations in exceptional circumstances.</p> <p>The decisions as to whether to allow co-location and/or programme sharing are independent of each other, and are at Ofcom’s discretion.</p> <p>All FM stations should broadcast local news throughout peak-time both on weekdays (breakfast and afternoon drive) and weekends (late breakfast). Outside peak time, UK-wide, nations and international news should feature.</p> <p>In exceptional cases, if a station can put forward a convincing case as to why it should be treated differently, for example, as a specialist music station, and so have to provide less local material and less locally-made programming than the guidelines suggest, Ofcom will consider such requests on a case by case basis.</p> <p>The guidance above also applies to any AM station broadcasting to an area which is not also served substantially by another local commercial station.</p> <p>Daytime is defined as 0600 to 1900 both weekdays and weekends.</p>
AM local	<p>Each station should produce a minimum of 4 hours a day of locally-made</p>

stations *

programming, which should include local material, during weekdays and weekend daytime.

At least 10 hours of programming during weekday daytimes should be produced within the nation where the station is based (i.e. if the minimum 4 hours is locally-made, a further 6 hours should be produced from elsewhere in that nation).

Stations with an MCA of 250,000 adults (aged 15+) or fewer can also apply for co-location; requests will be considered in relation to our published criteria (local affinity, distance and financial viability) – although we would not rule out requests from larger stations in exceptional circumstances.

All AM stations should broadcast local news throughout peak-time both on weekdays (breakfast and afternoon drive) and weekends (late breakfast). Outside peak time, UK-wide, nations and international news should feature.

(*any AM station broadcasting to an area which is not also served substantially by another local commercial station will be treated as an FM station.)

Daytime is defined as 0600 to 1900 both weekdays and weekends.

No station should be required to produce more locally-made programming or more local material than at present.

In line with Ofcom’s previously stated policy, no licensee will be granted a request to change its hours of local material and locally-made programming within two years of a station’s launch.

Issue for consultation

We welcome views as to the extent to which these revised proposals strike the right balance between safeguarding the interests of listeners and ensuring the viability of the commercial local radio industry.

A4.2 As we have revised our proposal on stereo and mono broadcasting on DAB, we are re-consulting on this proposal. The rationale for this proposal is given in section 5. We welcome comments which provide additional evidence or arguments not already submitted in response to the first consultation on this proposal:

Revised policy on mono and stereo broadcasting on DAB for consultation

Ofcom will consider requests to change the audio characteristics of a digital sound programme service in accordance with the statutory criteria in sections 54(6A) and (6B) of the Broadcasting Act 1996.

Issue for consultation

The audio characteristics (e.g. stereo or mono) of a digital sound programme service should be considered as an essential aspect of the character of the service, and therefore should be regulated by Ofcom under the terms of section 54 of the Broadcasting Act 1996.

- A4.3 As these issues have been the subject of previous consultations, this will be a one month consultation only. We would therefore welcome views on these proposals by 21 December 2007. Details of how to respond are given in Annex 1.

Annex 5

Impact assessment

A5.1 This annex when read in conjunction with the rest of this consultation document represents an IA, as defined by Section 7 of the Communications Act 2003 (“the Act”). IAs form part of best practice policy making and are commonly used by other regulators. This is reflected in Section 7 of the Act, which means that generally we have to carry out IAs where our proposals would be likely to have significant effect on businesses or the general public, or where there is a major change in our activities. In accordance with Section 7 of the Act, in producing this IA, we have had regard to such general guidance as it considers appropriate, including related Cabinet Office guidance and our own IA guidelines¹⁸.

Introduction

A5.2 The *Future of Radio* consultation document in April 2007 presented a package of measures covering four main areas:

- Content regulation of local analogue commercial radio services where we proposed to simplify Formats and reduce localness obligations based on the size of stations in a bid to allow cost-savings while protecting what citizens and consumers value most about local radio;
- Commercial radio ownership rules, which are a matter for Government but which we suggested could be dramatically simplified across analogue and digital platforms to allow for greater consolidation and cost savings;
- The future use of FM and AM spectrum, where we argued for the flexibility to be able to free up analogue spectrum for potentially better uses when the time is right, including reviews of AM and FM in 2009 and 2012 respectively; and,
- The regulatory framework for community radio, where we suggested simplifying criteria and reducing regulation while maintaining the not-for-profit and social gain basis for community radio (DCMS asked Ofcom to carry out a review of the sector two years after the first services were launched).

A5.3 Following on from that consultation, we recognise that it is not possible to take forward all the proposals as one integrated package. It is instead necessary to make more of a distinction between those areas where we can move ahead and introduce changes to the current regulatory framework and other areas where it is ultimately up to Government and Parliament to take forward any recommendations. There are also a number of areas in respect of spectrum matters where we have not yet been able to move to make final recommendations.

A5.4 As a result we have adjusted the scope of the IA according to the status of the proposals according to whether we are making specific decisions, consulting again or making recommendations for Government to consider. Thus, for example, in respect of the regulation of Format changes, the IA sets out the issues that were raised in response to the consultation, our response to those issues and our final decision. In respect of the localness requirements, the IA sets out the issues that were raised in response to the consultation, our response to those issues and then

¹⁸ http://www.ofcom.org.uk/consult/condocs/ia_guidelines/condoc.pdf

our modified proposals, together with an assessment of those new proposals. As before the IA reviews the main advantages and disadvantages of the various options and, where appropriate, attempts to include some idea of their magnitude.

- A5.5 In respect of the ownership rules for commercial radio, the licensing and localness of digital platforms and key aspects of community radio, we set out: the issues that were raised in the consultation responses, our response to those issues and then our final recommendations for Government to consider.
- A5.6 In respect of spectrum matters, our proposals in respect of ensuring the flexibility to free-up spectrum going forward have been postponed. These issues are now being considered by the Digital Radio Working Group and so the IA does not make any recommendations or decisions.

Background – objectives of regulatory intervention in the radio sector

- A5.7 The IA that accompanied the *Future of Radio* consultation document summarised the historical basis for intervention in the radio sector and set out the main public purposes that have been identified for the radio sector as a whole. Broadly speaking they are:
- Sustaining citizenship and civil society;
 - Promoting education and learning;
 - Stimulating creativity and cultural excellence;
 - Representing the UK, its nations, regions and communities;
 - Bringing the UK to the world and the world to the UK; and,
 - Promoting social gain.
- A5.8 We also considered that plurality in the provision of the services which deliver these public purposes was important and that therefore it was not sufficient to leave the achievement of these aims to the BBC.
- A5.9 We used these public purposes to develop a strategic framework for the future regulation of radio. That framework had three main elements, two of which set out objectives of regulatory intervention and one which referred to the implementation of that framework. The two key objectives are:
- To enhance choice, diversity and innovation for consumers at the UK, national, regional, local and community levels; and,
 - To secure citizens' interests through the provision of radio designed to meet public purposes.
- A5.10 In relation to the implementation of the framework, we aimed for a system with as a little intervention in the market as was possible, consistent with meeting those objectives. These objectives in turn provided a set of criteria against which to assess the various proposals.
- A5.11 The IA referred to the discussion in the main consultation document of the challenges that face the commercial radio industry. It then went on to discuss a set

of proposals that were aimed at providing us with an appropriate degree of flexibility to manage the evolution of the regulatory framework to the changing market circumstances. We do not propose to summarise the detail of that discussion again in this IA – the reader is referred to the original consultation document.

- A5.12 We propose to address the responses received to key issues that were raised in the consultation under the appropriate section.

(1) Matters for decision

Content regulation – Format restrictions

- A5.13 The main lever that is currently used to secure appropriate levels of diversity of programming on commercial radio is the use of Format for both local and national services.
- A5.14 Each analogue local commercial radio station licence includes a Format which sets out the type of programming the station is required to provide. The Format sets out not only a description of the character of the service which is designed to secure diversity (the type of music, the amount of speech, the number of news bulletins etc) but also includes the amount of local material and locally produced programming that the station has committed to provide. The Format is written by the licensee itself (as part of the licence application) so in essence it represents a series of commitments that the licensee makes at the outset of the licence about the service it will provide, given its views/expectations about the development of the market it is entering. Formats for analogue radio stations have been simplified in recent years but still can include some detailed requirements.
- A5.15 There are then different rules/requirements in respect of other platforms. The formats for DAB Formats do not have to be as detailed as those for analogue, consisting only of a short description specifying the character of the service. Radio services licensed by Ofcom for carriage on digital television platforms such as digital satellite, cable or DTT have no Format requirements and radio services on the Internet are not regulated in any way.

Format restrictions on analogue local radio

- A5.16 In the consultation document we put forward three options: “Do Nothing” i.e. retain the status quo; align the Format requirements for local analogue stations with those for DAB digital stations once a threshold of digital listening had been reached; and, remove the Format requirements altogether. Taking into account the likely advantages and disadvantages of the different options, we considered that the option of aligning the Format requirements for local analogue and digital stations once a certain threshold of digital listening has been achieved would be more in line with the idea of introducing more flexibility into our regulatory framework while at the same time being consistent with our statutory duties.

Consultation responses

- A5.17 As set out in the main document, responses to the proposal were broadly supportive although concerns were expressed in relation to the loss of local programming. Although many respondents accepted the logic of bringing the level of detail in Formats for analogue licences into line with the formats for digital licences (a “levelling down” approach), some respondents did argue that the detail in the Formats for digital licences should be increased, i.e. there should be a

“levelling up”. For instance, the response by the VLV argued that the level of detail in respect of local programming in DAB licences should be increased, not the other way round.

Ofcom's response

- A5.18 We consider that the concerns expressed about the loss of local programming can be addressed using other means. The principal issue for Format changes concerns the character of the service and that as such Formats are a mechanism that provides for diversity rather than local programming. The proposal to simplify Formats does not affect the amount of local programming.
- A5.19 We do not consider that increasing the level of detail in the Formats for digital licences would be an appropriate response to the issue of differential rules/requirements as between analogue and radio. It would not be consistent with a general approach of seeking to remove regulation where possible.

Ofcom decision

- A5.20 Taking into account the consultation responses and the discussion above, we continue to believe that our proposal to allow for the streamlining of the Formats of analogue radio stations is appropriate. However, as discussed in more detail below, in light of the fact that the original set of proposals are no longer being treated as an integrated package, we propose to allow analogue radio stations to apply to change or simplify their Formats as soon as they can, with the exception of stations that are still within two years of their launch.

Duration of licences re-awarded under current legislation

- A5.21 As part of work to provide for flexibility in the regulation of radio going forward, we considered matters around the use of spectrum and licensing of radio. To the extent that over time digital radio comes to provide the majority of our public policy goals in radio, there would be a case for considering whether the existing spectrum that is used for analogue radio broadcasting could be subject to a more market-led approach.
- A5.22 We therefore put forward a series of proposals aimed at working towards the simultaneous release of a number of frequencies to allow a more market-led approach to be considered.
- A5.23 Ofcom made two specific suggestions to Government for changes to legislation which would help to facilitate a common end-date for analogue licences.
- A5.24 The first of these was that the existing statutory provision which allows the holder of an analogue commercial radio licence to apply for a 12-year renewal of his licence in return for the provision of a digital sound programme service on a relevant DAB radio multiplex should be repealed.
- A5.25 The second was that all analogue commercial radio licences existing at the time any new legislation is enacted should be able to be extended indefinitely, but should include conditions allowing for their termination by Ofcom with two years' notice.
- A5.26 It was noted in the consultation document that there will be a number of existing analogue commercial radio licences which will expire before any new legislation is likely to have been enacted, and therefore Ofcom needed to decide upon what re-

licensing policy it wished to adopt. It was proposed that all licences re-awarded under the current statutory framework should be granted with a common expiry date. This proposal was considered the best option to maintain flexibility ahead of any new legislation.

Consultation responses

A5.27 Many responses indicated that people thought that it was too early to be considering a digital switch-over for radio. In order to address this issue, the radio industry proposed a cross-industry working group to set out a route for the radio industry to a digital future.

Ofcom's decision

A5.28 We remain of the view that we should aim to maximise the flexibility in licensing broadcast radio services as to be able to free up spectrum, potentially for other uses. In addition, we recognise that the issue in relation to re-licensing under current legislation is linked into other decisions about the achieving flexibility in the use of spectrum and re-licensing. However, we do need to make a decision in respect of a number of national and local analogue licences which will expire before any new legislation can be enacted.

A5.29 Given that a decision needs to be made – while at the same time preserving a degree of flexibility - we propose in this specific case that all licences re-awarded under the current statutory framework will be granted for a five-year period or with an expiry date of 31st December 2015, whichever constitutes the longer period.

A5.30 The other matters to do with the use of spectrum have been remitted to a Digital Radio Working Group set up by Ofcom and the DCMS to consider other matters – see below.

Community radio

A5.31 In the consultation document, we proposed that it would be possible for a licensee to take into account volunteer time when assessing the turnover of a community radio service. We invited views on this issue and on how the value of such input could be calculated.

Consultation responses

A5.32 Respondents to this proposal overwhelmingly welcomed this proposal although a number of responses cautioned against setting up complex measurement systems to record the relevant inputs. Other respondents expressed a concern that this was back-door method to deliver changes to community radio's funding and that recognising the financial value of volunteer time on the grounds could undermine the requirement that a station not be dependent on a single source of financing.

Ofcom's response

A5.33 The proposal is not an attempt to change the funding arrangements for community radio by the "back door". Rather it is intended recognise the value of something which forms a key requirement of community radio services. It also would bring Ofcom's regulatory approach broadly into line with recognised common practice in the not-for-profit sector. However, we do recognise the concern that it would be inappropriate for any community radio service to be able to generate all its funding

from a combination of on-air commercial revenues and the value of volunteer inputs and accordingly there needs to be appropriate checks and balances to prevent this.

Ofcom's decision

A5.34 Given the high degree of consensus, we agree that community radio stations can take volunteer time into account when assessing the turnover of a service if they wish when submitting turnover returns to Ofcom. However, while the overall amount (and value) of volunteer time is not limited, for the purposes of calculating funding limits, we propose to introduce a licence condition to limit the value of such volunteer inputs against on-spot advertising and sponsorship income to a maximum of 25% of relevant income.

Timing of changes

A5.35 In the consultation document, we proposed that the package of measures for changes to the regulatory framework should be linked to a measure of the growth of digital radio and suggested a threshold based on a proportion of digital listening.

Consultation responses

A5.36 Consultation responses were split between those that argued that there was a need to move ahead with proposals immediately either because such changes were required immediately or because respondents recognised that, in some cases, the need for primary or secondary legislation would itself impose a delay before any changes became effective. In some cases respondents argued that a date based on any form of threshold was subject to too great a degree of uncertainty and that Ofcom should set a specific date for changes.

A5.37 Others argued that there was not such a pressing need for change and that a threshold of 50% digital listening should be used as a trigger for implementing changes.

A5.38 Some responses raised a number of practical issues about the implementation of such a threshold e.g. was it actually an accurate measure of digital listening? Should it be applied on a differential regional basis? Etc.

Ofcom's response

A5.39 We recognise that setting a specific date for implementing any changes would provide an important degree of certainty for the industry. However, we also consider that there are considerable risks attached to the setting of a specific date.

A5.40 At the same time we were struck by some of the practical issues that might be attached to relying on a threshold measure such as the proportion of digital listening.

Ofcom's decision

A5.41 Now that the various proposals have been split into different components (those for Ofcom, those for Government etc), we do not consider that there is the need to link the timing of decisions to the same parameter.

A5.42 Based on the discussion around the practicalities of using the proportion of digital listening as a threshold, and the separation of the various measures originally

consulted on, we are now proposing that for measures in relation to Format changes and the regulation of Localness (subject to the outcome of the consultation process) we should aim to implement such measures as soon as reasonable. For measures on which we are simply making recommendations, that is then a matter for Government as to how quickly it wishes to move to implement any changes.

(II) Matters for further consultation

Content regulation - localness requirements

- A5.43 The main lever that is currently used to secure appropriate levels of local programming on commercial radio is the specific local content and local programming requirements set out in Formats. In the original consultation document it was recognised that the nature of the localness requirements in terms of both content and where it is produced could impose a cost on radio station licensees. Given the fixed cost nature of radio stations businesses, we recognised that these costs would tend to fall proportionately more heavily on smaller stations.
- A5.44 In the consultation we put forward proposals for a range of options including reducing all local programming obligations to a standard minimum threshold once a certain threshold of digital listening was reached; allowing smaller stations to merge their programming once a certain threshold of digital listening was reached; allowing a differential approach linked to the size of the station once a certain threshold of digital listening was reached; and abolishing localness requirements altogether.
- A5.45 Our preference was for localness requirements to be varied according to the size of station once a certain threshold for digital listening was reached.

Consultation responses

- A5.46 In its consultation response, the Radio Centre took issue with our approach, suggesting that it focused too much on inputs rather than outputs. The Radio Centre argued that the operation of the market would provide ubiquity of local output - because that was what listeners - valued but it would not provide a uniform level of localness across the country precisely - because that would depend on local factors.
- A5.47 The Radio Centre initially proposed a new self-regulatory approach to localness with the industry taking greater responsibility for its delivery. It argued that the focus of this new system should be on the delivery of local output rather than quotas for locally produced programming. In a supplementary submission, the Radio Centre subsequently proposed a two tier approach with different rules applying to stations above and below a population-coverage of 500,000.
- A5.48 Responses from other parties were more sceptical about the need to relax the localness requirements. For instance, the BBC argued that the interests of listeners were not best served if localness was left to the BBC alone. The Community Media Association also has concerns about reducing the requirements for locally produced content on both platforms without adequate provision and facilitation of alternative providers.
- A5.49 Ofcom's Advisory Committee for Scotland also argued that reducing the streamlining analogue formats to bring them into line with the level of detail in DAB formats could be used by some operators to reduce local programming to a

minimum. It argued that it was not convinced that the localness requirements were in fact a significant cost factor.

Ofcom's response

- A5.50 As set out in the original IA, we recognised that the cost structure of local radio is such that profitability could be particularly volatile according to market conditions and that, in part, the fixed nature of some of the costs derive from regulatory requirements, e.g. the requirement to maintain studios in the area served by the station, the need to produce content in the area served by the station etc.
- A5.51 The IA also identified two important dimensions to “localness”: one being the nature of the output itself (e.g. local news, weather and traffic); and the other being local production i.e. producing material in the actual area served by a particular radio station. The IA made the point that we had already announced a move away from an emphasis on input regulation to one which puts the emphasis on output regulation – the services actually delivered to listeners. Those proposals had allowed more automation, the use of news hubs etc. At the same time, earlier Ofcom reviews had recognised that the localness requirements probably did impose certain cost structures on broadcasters e.g. the requirement for studios to be located with a station’s licensed area meant that radio groups were not able to exploit economies of scale in terms of premises and administrative/management overheads.
- A5.52 Further research carried out by Ofcom confirms that localness remains important to listeners. However, the research also looked at other elements of local programming and found that not only do audiences value the core local content of news, weather and traffic but they also valued the human engagement aspect that local radio offered. For example, coverage of community issues, local events, phone-ins, competitions, banter between songs etc. At the same time this research also confirmed that listeners do use other media to obtain information about the area in which they live and work.
- A5.53 We consider that these findings, taken together, confirm our original assumption that local radio would be important for many listeners for a number of years to come. At the same time, what this research has done is to bring out more clearly the fact that not only did listeners consider that it was important for local stations to provide locally made programming containing local material at peak-times and afternoon drive-time but it was also important for programmes to be made locally as well.
- A5.54 Given the evidence from the consumer research it would seem more appropriate to change the focus of our proposals. We now focus on keeping in place an overarching framework on the amount and nature of local programming while at the same time allowing some additional flexibility within that framework for small and medium-sized stations to come forward with proposals for co-location of stations in a particular locality. Given this change it would also appear appropriate for Ofcom to set out guidance to assist licensees in weighing up the factors that they would need to take into account in making such an application.

Ofcom's revised proposal

- A5.55 In response to the consultation responses and the Essential Research on localness at Annex 6 we have modified our proposals. We are now proposing to make use of new localness guidance which will set out separate minimum expectations regarding locally-made programming and local material for FM and AM stations. In the first instance, the minimum requirements would apply to all FM stations. However, those FM stations with an MCA of less than 250,000 adults (15+) would then be able to apply to co-locate stations and to share programming, based on published criteria.
- A5.56 We are not attempting to determine the “right” level of localness in all cases but rather we are attempting to put in place a broad framework but then allowing stations to respond to local circumstances.
- A5.57 In relation to AM stations, Ofcom is proposing to set an overall lower minimum level of 4 hours per day locally made content during weekday times. There will also be a requirement for at least 10 hours of programming on weekday daytimes that has been produced in the nation in which the station is based. That would mean that if the station did 4 hours of local programming, there would need to be at least a further 6 hours of programming produced from elsewhere in the nation.
- A5.58 As set out in the original IA, given that listeners do value the fact that material is locally produced, a move away from the current situation could impose costs on listeners in that it would reduce the value they place on local radio even though it might deliver cost savings to producers. However, as before there is an expectation that the “loss” suffered by listeners would diminish because other sources of local content were available.
- A5.59 It has also been argued that allowing more co-location between services would diminish the local character of those services. However, our proposals are to consider applications for co-location on a case-by-case basis and in particular to take into account issues such as local affinity and distance.
- A5.60 Given that that some automation and networking is already allowed, allowing more co-location would offer the potential for additional cost savings. In the *Future of Radio* consultation, we estimated that our original proposals could offer savings in the order of £4m - £7.6m in presentation costs. As set out in Section 3 of the main document, we now estimate that under our new proposals, this saving could rise to be in the order of £7.3-8.1m. Co-location proposals could allow further savings in administrative, premises and office costs, taking total potential savings to between £9.6-11.7m (on an industry cost base of around £400m). We also estimate that the smallest stations would stand to benefit to the greatest extent. Obviously the extent to which these savings are realised will be a function of when stations come forward with proposals and whether such requests are approved.
- A5.61 It is also possible that groups of stations – particularly larger groups – may gain additional revenues by being able to offer hi-profile network programming for three hours a day during the week and more at weekends. However, we have not been able to quantify this effect.
- A5.62 The advantages/disadvantages of the three options on which we are now consulting are set out below:

Proposed Approaches	Advantages	Disadvantages
(1) <i>Do Nothing</i>	<p>Research indicates that listeners value local content and also the human engagement in local matters that local radio stations can offer.</p> <p>Stations can still request a change to their localness requirements via the Format change process on a case by case basis.</p>	<p>The requirements in respect of local production on individual stations can be expensive to maintain – particularly for small stations.</p> <p>It is likely to become more difficult to sustain localness requirements over time. This could ultimately result in collapse of some stations – which could result in the loss of local services altogether in some areas.</p> <p>Relying on a Format change process will not necessarily provide a transparent sustainable long-term framework. The principal issue for Format changes should be the character of the service rather than local programming.</p>
<p>(2) <i>Set minimum expectations for locally made programming but with greater allowance for sharing among small and medium sized stations.</i></p> <ul style="list-style-type: none"> • <i>FM Stations: min. of 10 hours per day locally made on weekday daytime & 4hours per day in daytime at the weekend</i> • <i>AM Stations: min 4 hours per day locally made during weekday daytime and 10 hours per day of programming must be produced within the nation where the station is based.</i> <p><i>No station is required to produce more locally-made programming than at present.</i></p>	<p>Sets certain minimum levels but gives option to small and medium sized stations to apply for co-location based on published criteria.</p> <p>It would allow cost savings in respect of sharing costs across a number of stations serving a given area while still preserving an appropriate degree of localness.</p> <p>Benefits of cost savings likely to be available to smallest stations.</p> <p>Licensees make the case to Ofcom according to local circumstances: greater flexibility in use of resources in an area.</p> <p>Ofcom guidance helps to clarify key factors for parties to address and will help to ensure greater consistency.</p>	<p>Given that some co-location has already been permitted, the financial benefits to the industry as a whole are likely to be relatively limited.</p>
(3) <i>Abolish localness requirements altogether</i>	<p>Would simplify the regulatory system</p>	<p>Ofcom's ability to fulfil its statutory duty to ensure an appropriate degree of localness would be severely constrained.</p> <p>Research indicates that</p>

		<p>listeners do value localness – not just the local content but also the human engagement.</p> <p>There is also uncertainty as to the extent which the market would deliver the appropriate level and mix of local content</p>
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A5.63 Given the uncertainty about the rate of development of alternative means of the delivery of local content, it would not seem appropriate to move to withdraw the localness requirements altogether. However, it would seem appropriate to consider a move to a system which had the flexibility to take into account local conditions. Therefore, our preference at this stage is for second option in which we set some minimum requirements but there is flexibility for small and medium sized stations to apply to co-locate stations according to local circumstances. As set out above – in relation to timing issues – we would propose to implement these changes as a soon as the localness proposal is finalised following consultation.

Mono and stereo broadcasting on DAB

A5.64 The consultation document proposed that Ofcom would generally approve a change in the technical parameters of a DA audio service from stereo to mono in circumstances when it considered that the reduction in sound quality of the service whose technical parameters were being changes was outweighed by the benefits to citizens and consumers of the use to which the freed-up capacity was to be put.

Consultation responses

A5.65 Responses to this proposal were mixed. A number of respondents argued that this proposal was a backward step. Other respondents queried Ofcom’s ability to intervene in the area of sound quality, suggesting that we had misinterpreted the relevant section of the 1996 Broadcasting Act. Other respondents supported this proposal provided that it would allow more stations to access a DAB multiplex.

Ofcom’s response

A5.66 We have carefully considered all the responses on this issue and as a result have reconsidered our view in the statutory basis for this intervention. We consider that the bit rates used to broadcast DAB services are a matter of technical quality falling to be regulated under the provisions of section 54(1)(g) of the 1996 Act. However, we see the issue of whether a service is broadcast in stereo or in mono as a characteristic of a digital sound programme service and as such. This would mean that changes from stereo and mono fall to be considered under criteria set out in sections 54(6A) – for a national radio multiplex licence - and (6B) – for a local radio multiplex licence. As this represents a change from the position set out in the consultation document and from previous practice in this area, we consider that it is appropriate to seek views on a revised proposal.

Ofcom’s revised proposal

A5.67 In light of the consultation responses, we are now consulting on a proposal to consider requests to change the audio characteristics of a digital sound service in

accordance with the statutory criteria in section 54(6A) and (6B) of the 1996 Broadcasting Act.

- A5.68 We consider that the main advantages of such an approach would be that it would relate the consideration of a request to change from stereo to mono broadcasting to specific statutory criteria. This would in turn help to provide transparency and also consistency in the process of considering such requests going forward. Thus, in respect of a local radio multiplex licence, we would have three specific criteria to consider such a request against: that it would not unacceptably narrow the range of local DAB services available in the area; that the change would be conducive to the maintenance or promotion of fair and effective competition in the area; or that there was evidence of local demand or support for the change. Licensees applying for a change would have a clear idea of the information they would need to provide in support of such a request and, equally, other stakeholders would have a clear idea of the arguments they would need to make to support or oppose such applications.
- A5.69 It is not clear what the disadvantages of such an approach would be given that we would be following more closely the requirements of the relevant legislation.

(III) Matters where Ofcom is making recommendations

- A5.70 As set out above, in a number of areas we are not in a position to make changes to the existing legislative requirements and instead offer recommendations to the DCMS as to how the regulatory framework could be changed going forward.

Format restrictions on national analogue radio stations.

- A5.71 The importance and role of Formats has been noted above. In the consultation document we again put forward three options for Formats in national analogue licences.
- A5.72 We suggested that – based on the discussion of the advantages and disadvantages of the different options – our preference was to seek changes in the legislation to allow the format restrictions on national analogue licences to be relaxed once a certain threshold of digital listening has been achieved.

Consultation responses

- A5.73 There was no support for this proposal from respondents.

Ofcom's recommendation

- A5.74 Taking into account the lack of support for this proposal, we have decided to recommend no change to the current regulation at this time.

Localness of digital platforms

- A5.75 At present Ofcom's duties in respect of the consideration of diversity and localness apply only in respect of analogue radio and there are no equivalent restrictions on digital radio. With the growth of digital listening, it is appropriate to consider whether maintaining this difference in treatment is likely to remain appropriate e.g. as listening via digital platforms becomes the main way of accessing radio, should the focus of regulation shift?

A5.76 The consultation document proposed that as digital listening increased, the current requirement for Ofcom to consider localness on analogue platforms should also be extended to digital platforms.

Consultation responses

A5.77 The main concern expressed was that this proposal should not lead to an increase in the local content requirement for DAB.

Ofcom's response

A5.78 The proposal is not intended to impose new requirements on digital-only stations. Its purpose is rather to ensure the continued provision of existing analogue/digital local simulcasts beyond any possible analogue switch-over.

Ofcom's recommendation

A5.79 We consider that our original recommendation should remain i.e. that as digital listening increases, the Government should consider requiring Ofcom to look at the provision of local material across all local commercial stations in an area on a platform neutral basis for locally broadcast radio.

Ability to license new radio platforms (e.g. DRM)

A5.80 In the consultation document we suggested that the Government might wish to consider giving Ofcom the flexibility to license services using new technologies (such as DRM) and that such licenses could be auctioned and run for an indefinite period but could include conditions designed to deliver public purposes such as localness.

Consultation responses

A5.81 As set out in the main document, consultation responses were mixed with many objecting to the idea of auctioning licences.

Ofcom's response

A5.82 We recognise the concerns being expressed but without any change to the current statutory licensing framework Ofcom is not able to licence any radio broadcast services using new technology such as DRM.

Ofcom's recommendation

A5.83 We suggest that the Government may wish to consider how any future changes to legislation could allow Radio services, including those designed to deliver public purpose, to be licensed on any spectrum in a technology neutral way.

Ability to extend DAB radio multiplex areas

A5.84 In the consultation document we suggested that to better facilitate universal DAB coverage and to enhance the prospects of re-using spectrum currently occupied by analogue radio Government might wish to consider giving Ofcom the authority to vary the area covered by local DAB radio multiplex licences.

Consultation responses

A5.85 As set out in the main document, there were few responses on this issue but those who did comment were broadly supportive.

Ofcom's recommendation

A5.86 We recommend that – in order to maximise DAB coverage for local radio services - Government may wish to consider giving Ofcom the power to increase licensed areas of existing DAB local multiplex licences where such increases would not be significant and to approve significant increases in exceptional circumstances.

Ownership rules

A5.87 In the consultation document we made a series of proposals in relation to radio ownership. They were that:

- There could be a single set of ownership rules based on defined ownership areas which could be applied across analogue and DAB platform, once the relevant digital listening threshold were met;
- The local DAB multiplex ownership rules could be changed so that no person could control more than one DAB multiplex designed to cover substantially the same area;
- The rule that no one person can control more than one national DAB multiplex should be retained.
- The cross-media ownership rules could be based on defined ownership areas as set out above and analogue and digital radio services could be considered together in that regard.

Consultation responses

A5.88 The radio industry argued strongly against the current radio-specific ownership rules on the grounds that the radio industry was much smaller than other media industries which had no such regulation and that “mono-media” plurality rules were of decreasing importance in a multi-media, multi-platform world. The radio industry argued that consolidation would be in the interests of the industry and listeners and that it would be sufficient to rely on competition law to ensure diversity of ownership. The industry also challenged the contention put forward in the consultation document that it was not clear as to the extent to which the current rules had prevented consolidation. It argued that market confidentiality made it impossible for Ofcom to make such judgements and argued that financial analysts had identified radio-specific ownership rules as a significant hurdle when assessing potential changes of ownership. The industry highlighted the importance of future-proofing changes to radio ownership in that primary legislation would be required to amend the existing rules and therefore it could be a number of years before they can be updated.

A5.89 The industry and indeed some consumer organisations (e.g. the VLV) did support the maintenance of the existing cross-media ownership rules. Only the Newspaper Society argued for more radical changes.

Ofcom's response

- A5.90 As set out in the main document, while Ofcom's latest research confirms that while local radio as a source of local news is of decreasing importance, other elements of local programming remain important. For these other elements of local programming – debates on community issues, coverage of local events and phone-ins etc – rules on plurality of provision are likely to remain important. It is not clear that a reliance on existing competition law alone would preserve diversity of ownership.
- A5.91 We also recognised that there had been instances where the current rules had caused problems and needed to be updated. For example, in the case of Emap/SRH in Scotland, the existing rules on the ownership of local DAB multiplexes had meant that Emap had been required to divest itself of a local multiplex and remove services from the multiplex but there had been no replacement services.

Ofcom's recommendation

- A5.92 We recommend that this situation needs to be addressed and we believe that the proposals set out in the main statement provide an appropriate way forward. We would be happy to work with Government over the coming months to develop thinking in this area.

Community radio

- A5.93 When the Community Radio Order 2004 was introduced, the DCMS asked Ofcom to carry out a review of the new sector, reporting back two years after the first new community radio licences were awarded. Ofcom is due to report back to DCMS towards the end of 2007. Ofcom is also currently examining the scope of existing community radio legislation in the context of considering whether it might be possible to simplify its contents and thereby reduce the burden of regulation on licence holders.
- A5.94 The consultation document set out some issues on the future licensing arrangements for community radio. We suggested that there could be scope for simplifying the detailed selection criteria whilst retaining the distinctive nature of community radio. This proposal would take account of experience of licensing community radio to date; looked to reducing the burden of regulation; and removed selection criteria which appeared to be redundant
- A5.95 As discussed above the consultation document also proposed greater flexibility in terms of the amount of funding that can come from any single source. The proposal would make funding of community radio services easier to sustain; could broaden the range of community-based groups that apply; could allow enhanced delivery of output objectives e.g. social gain, training etc; and could still be combined with a requirement to obtain funding from a multiplicity of source.

Consultation responses

- A5.96 In general there was a widespread feeling that it was too soon to consider major changes to the licensing regime at this early stage in the life of community radio. There was a general agreement that the unique nature of community radio should not be diluted through any future changes to legislation and regulation.

Ofcom's response

- A5.97 Given our experience of assessing community radio licence applications we continue to believe that some changes to the statutory selection criteria as they relate to catering for tastes and interest, broadening choice and evidence of demand and support should be made to provide more flexibility for Ofcom and to remove a degree of perceived duplication for applicants across these criteria.
- A5.98 We accept that it is difficult to draw any firm conclusions about issues relating to funding limits, ownership and economic impact given the limited data/experience to date. These would therefore seem to be issues which could be looked at again in subsequent reviews. The issues in relation to recognising the value of volunteer inputs have been dealt with separately.

Ofcom's recommendation

- A5.99 Taking into account the consultation responses, do think it is important to put forward certain recommendations in relation to the statutory selection criteria and licence duration for the Government to take forward as it sees fit. Accordingly we make recommendations to the Government in two main areas:
- We suggest that the statutory selection criteria in respect of: catering for tastes and interest; broadening of choice; and, evidence of demand and support should be simplified so as to provide greater flexibility in Ofcom's ability to award licences; and,
 - We recommend that community radio licences should be eligible to be extended for up to a further five-year period, on one occasion only (without having to be re-advertised), subject to the licensee meeting specified requirements.

(IV) Matters on which a decision has been postponed

A5.100 As set out earlier there are a series of issues where we are postponing any final decisions/recommendations because the matter has been passed over to the Digital Radio Working Group (DRWG) for consideration. The DRWG has been set up jointly by DCMS and Ofcom.

A5.101 The decisions that have been remitted to the DRWG are:

- The decision to carry out a reviews of AM and FM in 2009;
- The renewal provisions for analogue licensees providing a relevant DAB service
- The indefinite extension of all existing licenses but subject to a termination clause.

Given that these issues are being considered in another forum, we do not propose to discuss them any further in this IA.

Annex 6

Localness research

Published separately

Annex 7

Consultation responses

Introduction

A7.1 By the closing date of 29 June 2007, 143 responses to the consultation had been received: 54 from individuals and 89 corporate. The majority of the corporate responses were from broadcasters; among the other respondents were Ofcom's Advisory Committees for Scotland and Wales, trade bodies, unions, transmission providers, and consumer representatives such as Voice of the Listener and Viewer and Ofcom's Consumer Panel. A further response from RadioCentre was received on 3rd October 2007.

Summary of responses

- A7.2 Individual responses were mostly regarding switchover – either fully opposing analogue switch-off, or noting that there was no DAB signal in their area. Other respondents also commented on a perceived decline in localness on their local station, while a handful continued to raise the issue of sound quality on DAB.
- A7.3 Corporate responses were broadly supportive of the proposals. However, while RadioCentre and the major radio groups welcomed the overall direction of the consultation, they did not consider that the proposals went far enough to remove what they considered to be inappropriate regulation.
- A7.4 Broadly, responses from many in the commercial radio industry called for:
- A self-regulatory approach to localness, focused on delivery of local material
 - Establishment of a cross-industry working group, to be commissioned by the DCMS and led by Ofcom, to set out a route to a digital future
 - Removal of radio-specific ownership rules
 - De-regulatory programme to start immediately, not linked to digital listening levels
 - Limited changes to community radio rules
- A7.5 There was some criticism of the consultation. Ofcom's Advisory Committee for Wales was "very disappointed with the way the consultation has been framed... there is no mention at all of the Nations which make up the UK in this consultation document." The level of consumer engagement was questioned by Voice of the Listener and Viewer (VLV) and Ofcom's Consumer Panel, which asked "Ofcom to consider whether its stakeholder engagement on this document has been as full as it could be; and whether, in the light of this, it should be considering different ways of engaging with consumers and citizens."

The regulation of content on analogue commercial radio and on DAB digital radio should be aligned, at the appropriate time.

This consultation seeks views on this proposal and considers options for delivering it. Where these relate to potential legislative changes, Government may wish to consider them in the future, should the possibility of introducing new legislation be taken forward. Having considered the options, Ofcom's initial suggestions are as follows:

1.1: The timing of any changes to Format and localness regulation of commercial radio should be linked to a threshold based on the overall proportion of listening accounted for by digital platforms. For those changes which could be made without new legislation, we suggest an appropriate threshold would be 33%, but welcome views as to alternatives.

A7.6 The table below sets out the comments, where they differed from Ofcom's view, made by respondents in relation to this proposal, and Ofcom's response. Further discussion of the issues is set out in Section 3 above.

Issue raised	Comments	Ofcom's response
Changes should be implemented immediately	16 respondents - Channel 4 Radio, Christian Broadcasting Council (CBC), Chrysalis Radio, CN Group, Digital One, Emap Radio, GCap, GMG Radio, ISBA, Lincs FM, MNA Broadcasting, RadioCentre, Town and Country Broadcasting, UKRD, UTV Radio and one confidential respondent - thought changes should be implemented immediately, or as soon as practicable.	As detailed more fully in Section 3, we believe that the revised proposals are sufficiently robust in protecting the interests of listeners that the changes can be introduced as soon as possible. In addition, introducing the changes immediately provides regulatory certainty for the industry.
Standardisation of threshold	Ofcom's Advisory Committee for Wales and one confidential respondent did not consider that the threshold could be standardised across the UK.	We do not believe this would be practicable as regional data on listening to digital platforms is very limited.
Distinction between DAB listening and other platforms	Laser Broadcasting called for "a clear distinction between listening to "digital platforms" and "digital radio", along with one confidential respondent. UTV Radio noted that "This blanket definition is overly simplistic, and does not take account of key structural	The revised proposals remove the linkage to any threshold.

	factors such as the level of DAB listening, and more importantly the level of DAB/analogue in-car listening...”	
Higher threshold	Estuary Media and one confidential respondent believed a higher threshold should be adopted.	We believe that the revised proposals are sufficiently robust in protecting the interests of listeners that a threshold of listening is no longer required.

1.2: Analogue local commercial radio station Formats should be streamlined to bring them into line with the level of detail in DAB Formats, when the relevant digital listening threshold is met.

A7.7 The table below sets out the comments, where they differed from Ofcom’s view, made by respondents in relation to this proposal, and Ofcom’s response. Further discussion of the issues is set out in Section 3 above.

Issue raised	Comments	Ofcom’s response
Proposals should go further	Digital One and Steve Jenner said the proposals should go further in lightening the regulatory burden	We are required by statute to regulate local analogue commercial radio to secure diversity of output. While we acknowledge digital stations provide a greater level of diversity, we believe the proposal strikes a balance between continuing to ensure the fundamental character of service of individual stations while allowing them more flexibility to cater for changing audience tastes.
Formats should contain a greater level of detail than current DAB Formats	Estuary Media, Mr James Robertson, VLV and Wester Ross Radio considered Formats should contain more detail than proposed. Ofcom’s Advisory Committee for Wales considered digital should be brought into line with analogue.	We believe that diversity would still be able to be secured through more streamlined Format descriptions, and that the increasing level of diversity provided by audio services carried on other platforms renders the high level of detail in existing analogue local Formats unnecessary and an undue burden on licensees, preventing them from reacting flexibly to audience need.

1.3: *Ofcom could give guidance on appropriate minimum levels for the amount of locally-made programmes and local material (local programming) required to be provided by analogue local commercial stations, according to the size and type of station. Local material should be locally-made within the licensed area unless subject to any agreement for co-location of studios, according to specified criteria. These changes should be introduced when the relevant digital listening threshold is met.*

A7.8 The table below sets out the comments, where they differed from Ofcom’s view, made by respondents in relation to this proposal, and Ofcom’s response. Further discussion of the issues is set out in Section 3 above.

Issue raised	Comments	Ofcom’s response
Provision of local material should not be secured through a requirement for a minimum amount of locally-produced programmes	RadioCentre, supported by Chrysalis, Emap Radio, GCap Media, Lincs FM, UTV Radio and one confidential respondent stated “it is inappropriate to seek to secure the provision of local material, which is of primary importance to listeners, through quotas on locally-produced programmes. Stations operate in a range of varied and complex markets and need to be free to find the best means of serving their listeners whilst being sufficiently financially robust to invest in their digital future. Ofcom’s proposals do not use anything like the full flexibility offered to the regulator by the Communications Act. We propose an alternative self-regulatory approach to localness on Commercial Radio. This should be implemented as soon as practicable.”	<p>This is covered in detail in Section 3. We believe that, left to itself the market would not deliver locally-made radio services or even services including local material ubiquitously across the UK.</p> <p>Ofcom has a duty to balance the needs of citizens and consumers against the demands of industry.</p> <p>Therefore, as detailed in Section 3 Ofcom conducted research, which found people valued core local content and human engagement.</p> <p>We believe that in order to reflect fully the character and concerns of the local area, the presenters need to be based in and broadcasting from that area (or at least from nearby). Listeners who are interested in hearing local content expect their local station to be based in the local area.</p>
Objections to tiered proposals	One confidential respondent noted that there was “very little difference between a MCA 100,000 and one of 250,000”.	We accept that these tiers may not have been suitable, and have therefore largely removed this proposal.
Specialist genres	CBC and Emap Radio suggested that locally-made	It may prove difficult in practice to define a specialist

	<p>programme requirements should not apply to specialist stations.</p>	<p>music station. If however, in exceptional cases, a station can put forward a convincing case as to why it should be treated differently as a specialist music station and so have to provide less local material and less locally-made programming than the guidelines suggest, Ofcom will consider such requests on a case by case basis.</p>
<p>Co-location not in listeners interests</p>	<p>Estuary Media and VLV made similar points regarding the risks of permitting co-location. VLV suggested this risked “diminishing the character of local radio, and it is our belief - supported by evidence from Ofcom [4.53] – that this would not be welcomed by audiences.” Estuary Media and the NUJ also questioned the criteria on which co-location requests would be judged.</p>	<p>Co-location would only be allowed on a case-by-case basis, for FM stations under 250k population. Decisions on whether to permit co-location would be based on our published criteria (local affinity and distance, as now) and set out in para 3.72.</p> <p>The proposal would remove significant overheads (therefore ensuring the viability of the services) while retaining local programming and the local identity of each station.</p>
<p>Concern regarding programming in the nations.</p>	<p>Ofcom’s Advisory Committee for Wales was “completely opposed” to any reduction in local content requirements. A number of respondents made similar points about locally-made programming for nations and more sparsely populated areas.</p>	<p>The revised proposals would also mean that in the nations the majority of daytime programming would still be produced in that nation. We note that AM listening is higher in some parts of the UK than others – particularly in areas of Scotland and Wales where FM is not available. So while we recognise that AM listening is generally lower than FM listening, given the different audience needs in the devolved nations we recognise that it may be going too far to remove all material of specific relevance to each nation outside of the 4 hours that each AM station is required to be local. We therefore propose to include guidance to the effect that</p>

		<p>we expect that for AM stations, most of their daytime output is produced from within the home nation. In addition, any AM station broadcasting to an area which is not also served substantially by another local commercial station will be treated as an FM station for the purposes of localness.</p>
Concern at general reduction in localness	<p>Four confidential respondents, Mr Ian Waugh, Mr Michael Hamilton, Mr James Robinson, Radio Verulam and Ofcom's Advisory Committee for Wales broadly expressed concern at a perceived reduction in localness and that the level of local content should be maintained or increase.</p>	<p>We believe the revised proposals would provide a better service to listeners, protecting local programming (or at least regional programming) throughout the majority of daytime. These revised proposals do not seek to differentiate regulation by station size, and thus in the case of many stations would secure more locally-made programming than our consultation proposals.</p>
RadioCentre proposal, 3 rd October 2007	<p>Smaller stations (with MCAs of 500,000 or less) and AM local stations should be required to deliver a minimum of three hours per weekday of locally produced and presented content. Stations should be able to schedule these hours as they see fit, based on their view of their local audiences' expectations and where they feel they can make the greatest impact.</p> <p>Larger stations (with MCAs of 500,000 or more) should be required to deliver a minimum of seven hours per weekday of locally produced and presented content. This would allow stations to deliver their localness commitment in any combination of three or four hour programme blocks.</p>	<p>We believe that stations with MCAs of 500,000 or less include some county-wide "heritage" services, such as those for Cornwall or Somerset, and that a threshold of 250,000 is more appropriate, although, for example, we would not rule out requests for co-location from larger stations in exceptional circumstances.</p> <p>A random sample of station schedules suggested that the standard length of a commercial radio breakfast show was four hours (set out at para 3.32).</p> <p>RAJAR data and our research suggested that it is most important for a programme to be locally-made at breakfast time and we will secure that provision; however the proposals still</p>

allow programming to include high profile network programming for three hours a day in daytime during the week and much more at weekends.

1.4: It is properly the domain of Government and Parliament to determine Ofcom's statutory duties. Ofcom's existing statutory duty to ensure the provision of an appropriate amount of local material with a suitable amount of local production applies only to each analogue commercial local radio station. Our analysis suggests that, as digital listening increases Ofcom should be allowed to look at the provision of local material across all local commercial stations in an area on a platform neutral basis for broadcast radio (i.e. analogue and DAB digital radio). Government may also wish to consider whether this duty should apply to all future broadcast platforms which seek to replace analogue radio listening, such as DRM, but not to platforms intended primarily to deliver other types of services such as digital television.*

A7.9 The table below sets out the comments, where they differed from Ofcom's view, made by respondents in relation to this proposal, and Ofcom's response. Further discussion of the issues is set out in Section 3 above.

Issue raised	Comments	Ofcom's response
Concerns re extension of regulation	RadioCentre stated that "this should not signal an increase in local content requirements for existing DAB services and the manner in which their (or new) local material is delivered is irrelevant and should not be the subject of regulatory intervention." Chrysalis, Emap Radio, Town and Country Broadcasting and UTV Radio shared this view.	This proposal is not intended to impose new requirements on existing digital-only stations. The proposal was simply to ensure the continued provision of the existing analogue/digital local simulcasts beyond any possible analogue switch-off. As such, we believe this proposal should be retained.
Extension to other platforms	Mr James Robinson suggested that satellite and DTT be included. Folder Media considered that "Ofcom should look at the full complement and range of services broadcast within a particular multiplex area rather than each individual service on a particular multiplex." Folder Media also suggested that "if the level of listening to radio through DTV and Internet platforms grows significantly over the next decade, Ofcom should	This will be a matter for Government to consider.

review the implication of these services within the overall radio landscape.” Estuary Media stated that “We... are not sure how this might apply to providers of local content via the internet or who otherwise operate outside of UK regulation.”

1.5: Government may wish to consider bringing forward proposals to amend the existing legislation to remove the Format restrictions on national analogue radio, at an appropriate time, if it considers that DAB national services will provide the required diversity of national stations.*

A7.10 The table below sets out the comments, where they differed from Ofcom’s view, made by respondents in relation to this proposal, and Ofcom’s response. Further discussion of the issues is set out in Section 3 above.

Issue raised	Comments	Ofcom’s response
Terminology used	Ofcom’s Advisory Committee for Wales noted this proposal should refer to “UK-wide” services.	We note this point, however existing legislation uses the term “national” for services covering the United Kingdom.
Re-advertisement of INR licences on expiry	Channel 4 Radio believed the existing INR licences should be fully re-advertised as they expire.	Ofcom will re-advertise each INR licence in accordance with the statutory process. Each licence will be granted for a five year period.
Concerns regarding diversity and parity with other commercial and BBC services	RadioCentre said it “believes that national Formats should be maintained in their present form until such time as Commercial and BBC national analogue radio services have been switched off.” This position was supported by GCap Media, UTV Radio and one confidential respondent. Emap Radio stated that “If the Format obligations for the national analogue stations were completely removed, there would be a danger that diversity would suffer and local/regional services could be adversely affected. VLV stated that “we believe any changes to the existing	This proposal was designed to give the radio industry greater flexibility, but as this was largely unwelcome – only four respondents expressed support – we plan to remove this proposal.

regulatory structure for either analogue or digital stations should take place *only* if diversity of provision can be secured on a universal basis.”

1.6: *The requirements on DAB digital radio to offer national (UK-wide) services which appeal to a variety of tastes and interests should remain.*

A7.11 The table below sets out the comments, where they differed from Ofcom’s view, made by respondents in relation to this proposal, and Ofcom’s response. Further discussion of the issues is set out in Section 3 above.

Issue raised	Comments	Ofcom’s response
Improved coding could lead to more stations and direct competition for formats	One confidential respondent said “consideration should be given to the potential for improved transmission and coding techniques to allow for more services to be offered. As more stations become available, Ofcom should be able explicitly to permit (and even encourage) direct competition for formats.”	Ofcom’s approach to new coding techniques is set out in <i>The Future of Radio</i> consultation document at paras 5.161 to 5.173.
Lack of diversity on DAB	Mr Martin Davies commented that “the greater number of stations on DAB does not mean greater choice as most of the music stations seem to be fighting for the same territory...What do we get on Dab? - lots of local stations playing Oasis, Dire Straits and Tina Turner over and over again in between traffic reports...Please provide a greater variety of output on DAB.”	We believe that DAB, particularly at national level, offers an appropriate level of diversity.

There may be a case for Government to consider bringing together the ownership rules regarding analogue commercial radio and DAB digital radio into a single set of rules as the proportion of listening accounted for by digital platforms increases.

This consultation seeks views on this proposal and considers options for delivering it which Government may wish to consider in the future, should the possibility of introducing new legislation be taken forward. Having considered the options, Ofcom’s initial suggestions are as follows:

2.1: The timing of any changes to ownership regulation of commercial radio could be linked to a threshold based on the overall proportion of listening accounted for by digital platforms. This may be the same threshold as that considered above for changes to content regulation.*

A7.12 The table below sets out the comments, where they differed from Ofcom’s view, made by respondents in relation to this proposal, and Ofcom’s response. Further discussion of the issues is set out in Section 4 above.

Issue raised	Comments	Ofcom’s response
Suitable thresholds	<p>Absolute Radio suggested once overall listening to DAB reaches 33%; Ofcom’s Advisory Committee for Scotland and CBC suggested 50% of the overall proportion of listening via digital platforms.</p> <p>VLV argued that this “should not take place until digital listening within a given ownership area is above 80%, and mechanisms are in place to assist vulnerable members of the community in the receipt of digital radio.”</p> <p>The Ofcom Consumer Panel stated “we believe that this should happen at a future date set by Ofcom, rather than an arbitrary date linked to the threshold of listening through digital platforms.”</p>	<p>The revised content regulation proposal removes the linkage to a threshold of listening, noting the difficulty of accurately measuring digital listening.</p> <p>Our recommendation to the Secretary of State is that there is a case for Government to consider simplifying the local analogue and DAB services rules, at the appropriate time.</p>
Timing of changes	<p>RadioCentre stated that “deregulation is needed now...”</p> <p>UTV Radio, Folder Media and Town and Country Broadcasting all called for changes to be made as soon as the legislative process allowed.</p>	<p>This will be a matter for Government.</p>

2.2*. *There could be a single set of ownership rules based on defined ownership areas which would be applied across analogue and DAB platforms, once the relevant digital listening threshold is met.*

A7.13 The table below sets out the comments, where they differed from Ofcom's view, made by respondents in relation to this proposal, and Ofcom's response. Further discussion of the issues is set out in Section 4 above.

Issue raised	Comments	Ofcom's response
Nature of ownership areas	Ofcom's Advisory Committee for Wales broadly supported the proposals but suggested there could be some instances where a pan-Wales boundary may be more appropriate.	As set out in para 4.194 of the consultation, this proposal was made with listeners' interests in mind, as county-sized areas generally match local affinities, and correspond to a coherent editorial area.
Protection of plurality	<p>VLV noted that "we are reluctant to support the proposed shift to a maximum market share of 66% within a given ownership area [4.196]. There is no justification given for this change in terms of benefits for the consumer and citizen, and it is our contention that it could impact negatively on plurality."</p> <p>The CMA and Radio Verulam broadly agreed with the proposal but shared concerns if the proposal did not ensure and maintain plurality and diversity.</p> <p>The NUJ "does not accept the argument that allowing stations to merge will protect plurality, or lead to so-called "robust plurality". Once again we believe it will in effect mean more shared programming and news produced away from its local roots."</p> <p>Radio Jackie observed that "Virtually all local radio stations, however, have fallen into the hands of large companies on the short-</p>	We believe there is some evidence that the need to retain a diversity of content from a plurality of sources has not significantly diminished since current legislation was enacted in 2003. We continue to believe that the current rules need simplifying. For now, we suggest that Government may wish to consider whether to adopt the proposals we put forward in <i>The Future of Radio</i> consultation.

	<p>sighted premise that the licence is in safe hands and there may be an economy of scale. The reality is that money is sucked away from the core purpose of the business by shareholder and excessive levels of management. The result is a lack of investment in locally generated programming, creating a grey, centralised, bland sound: many would say we have regional radio pretending to be local.”</p> <p>Mr Ian Waugh suggested that ownership regulation was “already a farce... You are trying to shut the stable door when the horse is already in another land!”</p>	
<p>Protection of diversity</p>	<p>British Music Rights suggested that “there should be more controls to ensure that quasi-national networks are required to play a more diverse mix of music genres.”</p> <p>Soundwork said “the issues of ownership... should maintain a diversity, avoid duplication and yet maintain access for all sectors to all platforms.”</p> <p>The Campaign for Press and Broadcasting Freedom opposed this suggestion, “unless the intention was to stimulate variety and accountability in radio output.”</p> <p>One confidential respondent suggested that “In the many areas where a single company controls not only the sole local multiplex but also a national multiplex, we do not believe that local listeners’ interests in terms of diversity are adequately protected, particularly in the</p>	<p>We believe that DAB, particularly at national level, offers a sufficient level of diversity.</p>

	event of analogue switch-off.”	
Access to multiplexes	<p>Lincs FM said “we recommend that Ofcom should take steps, perhaps by issuing guidelines as to how multiplex operators should ‘act fairly’ between service providers, with the intention of facilitating as many analogue services being able to make the transition to digital transmission as possible.”</p> <p>London Turkish Radio said the ownership issue was “important” and should ensure it was “fair for smaller broadcasters”. It noted that it had been unable to get onto DAB digital radio as there was “no room”.</p>	<p>Ofcom has a statutory duty to assess whether, in contracting or offering to contract with providers of digital sound programme services, digital additional services and television licensable content services, an applicant has acted in a manner calculated to ensure fair and effective competition in the provision of such services.</p> <p>We will respond promptly to any complaints in this area.</p>
Inappropriate to retain radio-specific ownership rules	<p>RadioCentre said that “We do not believe it is appropriate to retain radio-specific rules on concentration of ownership, particularly if the changes will require primary legislation (and will therefore take longer to achieve).” This was supported by Chrysalis Radio, Digital One, Emap Radio, GCap Media, Lincs FM, Town and Country Broadcasting, UKRD, UTV Radio, one confidential respondent</p>	<p>We continue to believe that the current rules need simplifying, but we do not believe there is yet a case for radical change. This will need to be kept under review as digital migration progresses.</p> <p>Ofcom is happy to work with Government over the coming months to develop further the thinking in this area.</p> <p>Any changes will require changes to legislation.</p>

2.3: The local DAB multiplex ownership rules could be changed so that no person can control more than one DAB multiplex designed to cover substantially the same area.*

A7.14 The table below sets out the comments, where they differed from Ofcom’s view, made by respondents in relation to this proposal, and Ofcom’s response. Further discussion of the issues is set out in Section 4 above.

Issue raised	Comments	Ofcom's response
Retain existing rules	<p>Folder Media stated that “it would seem wrong for one entity to have significant control over who can and cannot broadcast. The current ownership rules, with its 50% overlap limit, appear reasonable and appropriate.”</p> <p>Channel 4 Radio said that “Multiplex ownership rules should follow the “2-plus-1” rule.”</p>	<p>The ownership rules are a matter for Government and Parliament. We continue to believe that the current rules need simplifying, but we do not believe there is yet sufficient evidence for Ofcom to make a firm recommendation to Government as to whether to adopt something similar to the proposals we put forward in the consultation or to go further and abolish the local DAB multiplex ownership rules completely.</p> <p>Ofcom is happy to work with Government over the coming months to develop further the thinking in this area.</p>
Inappropriate to retain radio-specific ownership rules	DRg, Chrysalis Radio, UTV Radio and Town and Country Broadcasting stated that radio ownership should be subject only to UK competition legislation.	<p>The ownership rules are a matter for Government and Parliament. We continue to believe that the current rules need simplifying.</p> <p>Ofcom is happy to work with Government over the coming months to develop further the thinking in this area.</p>
Issue should form part of wider review	RadioCentre said “We recommend that this proposal be considered as part of the wider review of Digital Radio...”	We do not believe this will fall within the remit of the Digital Radio Working Group, but will be happy to work with Government over the coming months to develop further the thinking in this area.

2.4: The rule that no one person can control more than one national DAB multiplex could be retained.

A7.15 The table below sets out the comments, where they differed from Ofcom's view, made by respondents in relation to this proposal, and Ofcom's response. Further discussion of the issues is set out in Section 4 above.

Issue raised	Comments	Ofcom's response
Inappropriate to retain radio-specific ownership rules	Chrysalis Radio, UTV Radio and Town and Country	We note the increasing importance of national

	Broadcasting stated that radio ownership should be subject only to UK competition legislation.	commercial radio relative to local commercial radio and therefore believe the existing rules should remain, both for plurality and competition reasons.
Issue should form part of wider review	RadioCentre said “We recommend that this proposal be considered as part of the wider review of Digital Radio...”	We do not believe this issue will fall within the remit of the Digital Radio Working Group.

2.5: The cross-media ownership rules could be based on defined ownership areas, as per 2.2 above; and analogue and digital radio services could be considered together in this regard.*

Note: We believe that suggestions marked with an asterisk would require new legislation

A7.16 The table below sets out the comments, where they differed from Ofcom’s view, made by respondents in relation to this proposal, and Ofcom’s response. Further discussion of the issues is set out in Section 4 above.

Issue raised	Comments	Ofcom’s response
Retain current cross media ownership rules	One confidential respondent stated that “cross-media ownership rules in their current guise are sufficient, and as such, there is no need to adopt “ownership areas”.	We believe that as digital listening comes to predominate, Government should consider taking into account DAB digital radio as well as analogue radio in making any re-assessment.
Concerns regarding dominant media owners	One confidential respondent said “Ownership changes should not be allowed where it alters the character of service. It is also worrying that single companies can dominate the media in one area where they may also own the local newspaper.”	We believe that the cross-media rules remain an important safeguard for plurality and therefore recommend that these should be retained.
Competition law sufficient	The Newspaper Society, supported by one confidential respondent, said that changes needed to be more radical: “There is no need to handicap the traditional media by special media ownership controls. The local newspaper/local	Ofcom’s recent Review of Media Ownership Rules found that plurality of voice in a local area remains important, even though radio itself is not a primary source of news. Taking local newspapers and local radio together under common

radio controls should be abolished. The multitude of information sources means that plurality can now be sustained without any such specific regulation. Competition law is sufficient to deal with any commercial concerns. “

Town and Country Broadcasting and UTV Radio agreed that only competition law should be applied.

ownership could unacceptably diminish the range of voices in an area. We believe that the cross-media rules remain an important safeguard for plurality.

While we do not currently propose that a date should be set for the switch-off of analogue (FM and AM) radio, we should aim to maximise flexibility in the licensing system so as to be able to free-up that spectrum for other uses, when the time is right.

This consultation seeks views on this proposal and considers options for delivering it which Government may wish to consider in the future, should the possibility of introducing new legislation be taken forward. Having considered the options, Ofcom’s initial suggestions are as follows:

3.1: So as to maximise DAB coverage for local radio services, Ofcom should be given the power to increase the licensed areas of existing DAB local multiplex licences where such increases would not be significant, and to approve significant increases in exceptional circumstances.*

A7.17 The table below sets out the comments, where they differed from Ofcom’s view, made by respondents in relation to this proposal, and Ofcom’s response. Further discussion of the issues is set out in Section 5 above.

Issue raised	Comments	Ofcom’s response
Maximising choice a priority	Folder Media stated “in an area with distinct radio services and where a commercial business opportunity can exist, Ofcom should consider and evaluate this opportunity to maximise local choice before exercising any power to attach one area to another.”	This proposal is to only increase the licensed areas of existing multiplexes to adjoining areas where such increases would not be significant, and therefore unlikely to be able to sustain a “stand-alone” multiplex.
Logistical issues	DRg and UTV Radio made similar points regarding possible increased adjacent channel interference, and expansion into areas that service providers do not wish	This suggestion is made in order to achieve flexibility, and should Government choose to implement it, would be limited to increases which are not significant, and

to serve, and related compensation issues. DRg additionally noted that “From a service provider perspective, many multiplexes are currently full so extending the PPA area would not allow these analogue services not currently on DAB to obtain a digital alternative.”

where technically viable.

3.2: *In order to achieve the flexibility to use the spectrum currently used for analogue radio for other things, we would need to have the ability to clear the spectrum of many, if not all, current users in each waveband simultaneously by setting a common end-date for existing services. We propose two reviews to set such common end-dates:*

- *VHF Band II (FM) - a review should take place in 2012, or when listening on digital platforms accounts for 50% of all listening, whichever is the earlier, to consider the future use of VHF Band II and determine a common end-date for existing FM services (commercial and BBC).*
- *Medium wave (AM) - a review should take place in 2009 to consider the future use of medium wave and determine a common end-date for existing AM services (commercial and BBC).*

A7.18 The table below sets out the comments, where they differed from Ofcom’s view, made by respondents in relation to this proposal, and Ofcom’s response. Further discussion of the issues is set out in Section 5 above.

Issue raised	Comments	Ofcom’s response
<p>Proposal for cross-industry working group to start as soon as possible.</p>	<p>RadioCentre stated “decisions about the licensing system should flow from a properly considered plan for migrating radio to digital. Work on this plan should begin now. We agree that a flexible approach to licensing will almost certainly be required. This should be tackled by the cross-industry working group we propose, part of whose work should be to examine appropriate licensing regimes and guide legislators to draft an appropriate Act.”</p> <p>RadioCentre also considered “the proposed review dates are too far away to be useful” for a number of reasons,</p>	<p>We accept that such a group should be established to consider what conditions would need to be met before digital platforms could become the predominant means of delivering radio, in the best interests of a) listeners in all parts of the UK and b) the radio industry. The group will also consider what the current barriers to the growth of digital radio are, and what possible remedies exist.</p>

	<p>including the length of time primary legislation would take to implement, and the unsustainable costs of continued simulcasting. It also “the working group should consider AM and FM simultaneously in its deliberations.”</p> <p>The proposal for a working group was supported by Arqiva, Channel 4 Radio, Chrysalis Radio, Digital One, DRg, Emap Radio, GCap Media, Lincs FM, Town and Country Broadcasting and UTV Radio. BT, Folder Media and Intellect also called for the proposed reviews to be brought forward.</p>	
Requirement for a migration strategy	While not specifically proposing a working group, British Music Rights, DRDB, and ISBA called for a migration strategy to be set out.	These issues will be considered by the working group outlined above.
Date of proposed review	<p>The BBC “agrees that now is not the time to set a date for the switch-off of analogue radio. Radio technology is at a pivotal point and we consider that the next three years will be an important time for the development and consolidation of technologies and services. The BBC proposes that there should be a wide review of the whole of the radio market in 2010, involving all stakeholders. We propose that this review should consider the potential for and implications of switchover for radio in more detail, as well as the optimum use of technologies in order to ensure that radio continues to meet its public purposes.”</p> <p>Wester Ross Radio Ltd (Two</p>	These issues will be considered by the working group outlined above.

	<p>Lochs Radio) said “While we recognise the sense of holding a comprehensive review of radio spectrum, we suspect that 2012 is probably the earliest date this will make real sense, and feel that the threshold suggested of 50% digital access as an early trigger for review is too low.”</p> <p>One confidential respondent noted that “2012 may still be too early for a review to avoid irreversible decisions being made on incomplete information.”</p> <p>VLV wrote that “Even if we were able to accept the premise that soon 50% of listeners will be using DAB we do not consider it is the appropriate threshold to consider planning the end of the present analogue transmissions. Among the remaining 50% will be the most vulnerable and least able to either afford or be able to switch.”</p> <p>Absolute Radio suggested the figure should be at least 75% due to the longer time it will take to convert the final 25% of potential listeners.” This was supported by one confidential respondent.</p>	
<p>Smaller stations</p>	<p>Laser Broadcasting noted that “If, however, digital migration is not an option for all stations, we argue strongly that an analogue switch-off programme that removes viable commercial radio businesses from communities that have come to rely on them, in some cases over many years, and negatively affects the shareholder base of the radio companies, is a retrograde</p>	<p>These issues will be considered by the working group outlined above.</p>

	<p>step that should be resisted.”</p> <p>UKRD noted that “Whilst a timetable for the switch-off of analogue radio is ultimately desirable, it is important to ensure that this is only confirmed when there is clarity of the routes available to all the various commercial operations, irrespective of size... A review date is therefore an appropriate way of dealing with this to ensure that there is further clarity on the matter before firm decisions are made.”</p> <p>Ofcom’s Advisory Committee for Scotland noted that there remain “real questions about how small stations might migrate to digital”.</p> <p>16 respondents including CMA, Student Radio Association and Highlands and Islands Broadcasting Federation (HICBF), made similar points including reserving space in VHF Band II for such stations, including community, student and hospital radio stations including current RSL broadcasters.</p>	
<p>DRM</p>	<p>The Bay FM (Poole), CBC, Mr James Robinson and one confidential respondent called for earlier reviews, and/or called for the use of DRM/DRM+.</p> <p>The BBC suggested that while its trial of DRM in Devon demonstrated that broadcasts were technically possible, it was too early to draw any firm conclusions from the trial.</p> <p>Digital One called for a group to re-examine the value of re-use of Band II spectrum,</p>	<p>These issues will be considered by the working group outlined above.</p>

	<p>noting in particular that “DAB... is also designed for use in Band II spectrum and could provide extensive coverage at relatively low transmission cost.”</p>	
Accessibility issues	<p>HICBF noted that “For a station with many elderly listeners such as ourselves, the receiver profile and the ability and willingness of our audience to switch to DAB or Internet will be considerably less than those of urban mainstream commercial audiences.”</p> <p>Prescap Ltd noted that “the consultation document does not include a demographic break-down of the take-up of digital radio. Our experience is that those least likely to migrate away from FM listening include those that can most benefit from the benefits that community radio can offer – including older people and those living in areas of multiple deprivation.”</p>	These issues will be considered by the working group outlined above.
DAB sound quality	<p>Mr Szoka, Mr Richard Stickland, Mr Ian Waugh and five confidential respondents argued there should be no analogue switch off until DAB sound quality matched that of FM.</p>	Analogue switch-off is not proposed by this consultation.
DAB reception/coverage issues	<p>The Ofcom Consumer Panel noted concerns “that DAB digital radio is only available to 90% of the population, with significant parts of rural Scotland and Wales, for example, still without access to DAB. The Consumer Panel believes that DAB should be universally available, as far as practically possible, and urges Ofcom to consider what steps need to be taken</p>	These issues will be considered by the working group outlined above.

	<p>to make this a reality.” Similar points regarding rural coverage of DAB were made by the BBC, The Highlands and Islands Broadcasting Federation and one confidential respondent.</p> <p>SIBC “believes that FM on Band II will remain the only affordable and practical mode of transmission for a small population, but wide area, radio station for the foreseeable future.”</p> <p>Ofcom’s Advisory Committee for Wales considered that MW should not be lost without any replacement for existing radio services on that spectrum. A similar point was made by Mr Martin Davies.</p> <p>Mr Antony Stevens, Paul Stellings, for Vixen Broadcasting Ltd, Mr Ben Baker, Mr John McIntosh, Mr Peter Ward, Mr Roger Hall VLV and four confidential respondents made comments regarding lack of DAB coverage and lack of in-car receivers.</p>	
<p>Other switch-over issues</p>	<p>Mr Ben Baker opposed any withdrawal of Long Wave, stating that the niche users of radio [such as those at sea] should not be forgotten. One confidential respondent made a similar point about Medium Wave.</p> <p>Two confidential respondents noted the use of analogue radio as in emergencies “as a fall back communication system for government communications to the population”, noting AM radio as cheap and having low power consumption.</p>	<p>These issues will be considered by the working group outlined above.</p>

	Mr Douglas Dwyer stated that “the implications of analogue switch off have not been fully evaluated... a radio broadcast system must be employed that provides universal coverage to simple portable receivers...”	
Environmental issues	Mr Ian Kitchen, Mr Roger Hall, Mr Richard Lamont, Dr D Bartram, Mr Duncan Loutitt, Mr Boxall, Mr Ian Waugh, VLV, and five confidential respondents noted the environmental impact switchover, such as disposal of redundant analogue radios or increased power consumption.	These issues will be considered by the working group outlined above.
Opposed to analogue switch-off	<p>Mr Steve Jenner, Mr S Saul, Mr Christopher Brown, Mr Duncan Perrett, Mr Martin Hall and one confidential respondent noted general opposition to analogue switch-off.</p> <p>Radio Jackie commented that “Putting a date now on the compulsory silencing of analogue broadcasts is foolish, destabilises the industry and confuses the public.”</p> <p>One confidential respondent stated that “Since it is not financially viable for either the commercial sector or the BBC to provide universal DAB coverage, there is no case for even starting to consider possible future dates for any ‘digital switchover’ in radio. What is more, any genuine switchover would free up analogue spectrum for new services. As previously noted, Ofcom is unwilling to risk damaging existing digital services by <i>‘releasing too much capacity</i>”</p>	Analogue switch-off is not proposed by this consultation.

	<p><i>simultaneously’.</i>”</p> <p>London Turkish Radio opposed setting of a switch-off date, as it is currently unable to find room on DAB; however it welcomed the proposed reviews.</p> <p>One confidential respondent stated that “Freeing up spectrum” for unspecified new technologies should not be an Ofcom priority compared with the stability and prosperity of an long-established and highly-valued radio industry. There would in our view be minimal public support.”</p>	
Low power MW licences	One confidential respondent stated that “there is no justification for keeping low power MW beyond 2010”.	These issues will be considered by the working group outlined above.

3.3: The spectrum currently used for analogue AM and FM radio should be available to use in other ways (if and when it is no longer required for analogue radio broadcasting), using market mechanisms unless there are strong public policy reasons to allocate the spectrum for a specific use.*

A7.19 The table below sets out the comments, where they differed from Ofcom’s view, made by respondents in relation to this proposal, and Ofcom’s response. Further discussion of the issues is set out in Section 5 above.

Issue raised	Comments	Ofcom’s response
Unrealistic for smaller stations	<p>The Bay FM (Poole) supported this in principle, while noting it was unrealistic for smaller commercial and community stations to access DAB without regulatory intervention; and that spectrum pricing was not effective in ensuring equitable access to a suitable broadcast medium.</p> <p>Prescap Ltd opposed this proposal, noting that “It is unrealistic to expect the community radio sector, and</p>	Our proposal recognises that there may be public policy reasons to intervene in the market, such as provision for smaller radio stations.

	<p>other broadcasters providing radio services focussed on public and social purposes, to afford the market rate in such an allocation. Provision must be made to ensure that sufficient affordable spectrum is available to community broadcasters in the event of band II “switch-off”.</p>	
<p>Provision for smaller stations</p>	<p>Radio Regen suggested that “an ‘FM Reservation’ is created for community radio. This would include provision for all existing licensees on FM and AM and be of such a size as to fulfil Ofcom’s laudable vision of ‘community stations for any community that wants and can sustain such a service.’ We see no reason why this should not be enacted as major networks migrate to DAB.”</p> <p>RadioCentre said that “around 2 MHz of Band II spectrum could be set aside for small-scale radio in the future.”</p> <p>BRFM stated that “FM analogue should be used for other services such as creating more community radio services...”</p>	<p>Our proposal recognises that there may be public policy reasons to intervene in the market, such as provision for smaller radio stations.</p>
<p>Spectrum should continue to be used for radio broadcasting</p>	<p>One confidential respondent stated that it was “very concerned that spectrum currently used by UK radio broadcasters could be lost to the medium... Since the DAB digital radio alternative is not as robust a radio platform as either AM or FM, and cannot fully meet the current requirements of those wavebands, that this spectrum should continue to be used for radio broadcasting. We believe</p>	<p>The proposal does not suggest what spectrum should be used for; one future use may be radio. As noted above, our proposal recognises that there may be public policy reasons to intervene in the market, such as provision for smaller radio stations.</p>

	<p>that it is still too early to be in a position to reallocate this spectrum for non-radio uses.”</p> <p>Radio North Angus commented that “reference is made to alternatives to radio, such as mobile television, data services, and private mobile radio services. We would question whether these would have superior value to the public, given the range of services for the public good that local radio can provide.”</p> <p>VLV opposed this suggestion, noting that “we would argue that the position in proposal 3.3 should be inverted. That is to say, those wishing to take spectrum into private ownership must be made to justify this position in terms of both consumer and citizen value, demonstrating a significant positive impact over the current use of the spectrum for analogue broadcasts (for example in terms of plurality, diversity, and the provision of public service broadcasting). If either of these tests cannot be passed, the spectrum should remain in public hands.”</p> <p>The Campaign for Press and Broadcasting Freedom opposed this proposal, stating that “the BBC’s frequencies should not be handed over to Ofcom so that it can organise the sale of a public asset; nor should other frequencies be sold.”</p>	
<p>Use for DRM</p>	<p>Ofcom’s Advisory Committee for Wales did not agree that AM should be used for services other than radio,</p>	<p>Our proposal recognises that there may be public policy reasons to intervene in the</p>

	<p>with the possible exception of DRM.</p> <p>Mr James Robinson said he opposed use of the VHF or MW band “for anything other than DRM+ and DRM respectively.”</p>	market.
Spectrum allocation body	<p>Radio Jackie suggested that “The radio spectrum - this scarce resource that has been guarded over the decades - has been shamefully wasted, with misinformation from senior regulators based on poor technical knowledge. The frequency cupboard has always been bare! Practices from 30 years ago are still applied and the BBC occupies more than 50% of Band II. A single body needs to be established to allocate the entire broadcast spectrum to its maximum capacity, allowing full utilisation and interference-limited occupation of channels.</p>	Ofcom is responsible for management of the spectrum for wireless communications in the UK, for all non-Crown users. Ofcom’s key statutory duty in this regard is “to secure the optimal use for wireless telegraphy of the electro-magnetic spectrum” for the benefit of citizens and consumers.

3.4: We propose that licences re-awarded under the current statutory framework should be granted with an expiry date of 31 December 2015.

A7.20 The table below sets out the comments, where they differed from Ofcom’s view, made by respondents in relation to this proposal, and Ofcom’s response. Further discussion of the issues is set out in Section 5 above.

Issue raised	Comments	Ofcom’s response
Expiry 2020	<p>Town and Country Broadcasting said “We believe that all licences re-awarded under the current framework should be extended to 31 December 2020, with any decisions on subsequent policy being influenced by the findings of the above [RadioCentre proposed] review.”</p>	<p>We have considered how short a licence period could be before nobody except the incumbent would apply for it, and also at what point we think the costs of running a licence award process under the current statutory framework become disproportionate when compared with the value of the licence to the successful</p>

		<p>applicant. Our conclusion is that in order to pass these two 'tests', a licence should be granted for a minimum period of five years, in order to make it long enough to be viable (community radio licences are for five years for example), yet short enough so as to maximise the flexibility to free-up spectrum or apply new licences following new legislation. Therefore, we suggest a revised proposal that any licences re-awarded under the current statutory framework should be granted for a five-year period or with an expiry date of 31 December 2015, whichever constitutes the longer period.</p>
<p>Advertisement of licences under existing legislation</p>	<p>RadioCentre said “This matter should be considered by the digital working group which we propose. Too little work has been done on mapping a digital future to set such firm dates in stone now. As primary legislation will be required to advance a digital migration plan for radio, and as the industry’s agreement to that plan will be essential, decisions such as how to synchronise end dates of licences should be considered as part of a wider plan rather than agreed on a piecemeal basis. We submit legal opinion on the challenges of suggestions 3.4 and 3.6 in Appendix C.”</p> <p>This was supported by UTV Radio.</p>	<p>A decision on this issue needs to be made before the working group would be expected to have reached any conclusions; as noted in the consultation, the first licences start to expire in 2009.</p>
<p>Too early to set end-date for licences</p>	<p>Absolute Radio considered it is too early to decide this. CN Group stated that an end-date for licences should not be set “until there is a clear way forward for all stations to</p>	<p>We have not set an end-date for all licences. However we need to decide now on the appropriate length of any re-advertised licences in order to maximise future flexibility</p>

	have a viable digital future.”	
Re-award or re-advertise	<p>MNA Broadcasting said that “we suggest radio licences should be automatically re-awarded until the results of a spectrum review and, further, that all current analogue licences should be given automatic carriage on a digital platform should FM being [sic] switched off.”</p> <p>Radio North Angus “would suggest that licences be re-advertised for a 12 year period, on the understanding that migration to DRM would be automatic on the appropriate date. Licence renewal thereafter would be under the usual procedure.”</p>	Ofcom proposes to re-advertise licences as they expire. <i>The Future of Radio</i> consultation document (para 5.134-5.142) sets out that Ofcom does not consider its statutory duties imply that all existing analogue radio services should be guaranteed carriage on a digital platform. It should also be noted that there is no proposal for analogue switch-off.
Opposed to “perpetual licences”	<p>Estuary Media noted that “Setting a common date for expiry of all licences re-awarded under current regulation will present a massive burden for Ofcom to re-award such licences at that time. We are very concerned that the fact that Ofcom is suggesting this might imply a preference to award perpetual licences. As we have indicated elsewhere, we strongly object to such a strategy, which can only serve against the interests of the citizen-consumer as well as denying the opportunity for other potential operators to compete for a licence at the time of re-advertisement. This is especially pertinent to licences which include a public service commitment, including local radio.”</p>	Setting a common end-date was proposed in order simply to ‘fill the gap’ before new legislation is enacted, and to maximise flexibility going forward. It is now proposed that any licences re-awarded under the current statutory framework should be granted for a five-year period or with an expiry date of 31 December 2015, whichever constitutes the longer period. This will give greater flexibility for any new statutory framework arising from new legislation.

3.5*: *The 12-year renewal provision for local and national analogue licensees (both FM and AM) which also provide a station on a relevant DAB radio multiplex*

service should be removed. (This would not apply retrospectively to licensees which have already been granted such a renewal.)

A7.21 The table below sets out the comments, where they differed from Ofcom's view, made by respondents in relation to this proposal, and Ofcom's response. Further discussion of the issues is set out in Section 5 above.

Issue raised	Comments	Ofcom's response
Should be considered by proposed digital working group	<p>RadioCentre considered that this matter should be considered by the digital working group which it proposes.</p> <p>This was supported by Town and Country Broadcasting.</p> <p>UTV Radio stated "While we are happy that the renewal provision should be considered as part of the working group's remit, our own feeling is that this proposal would unfairly penalize those stations that currently do not have a DAB migration path (whether commercially viable or not)... Furthermore, removal of the renewal provision would act as a disincentive for operators to go digital, (even if there was a suitable multiplex for them to go on with sufficient space for their service) which will in turn hamper and slow the uptake of DAB radio by consumers."</p>	We accept that this matter should be considered by the working group outlined above.
Too early to decide	Absolute Radio believed it is too early to decide this.	These issues will be considered by the working group outlined above.
Set fixed termination date	One confidential respondent said "Rather than remove the provisions for automatic renewals, we suggest that any analogue licences renewed should also terminate on 31 December 2015. This would avoid the need for analogue licensees (who have a relevant digital presence) to have to seek	These issues will be considered by the working group outlined above.

	reaward at the end of their current licence terms, a process which adds to regulatory burdens.”	
Risk of destabilising industry	<p>One confidential respondent opposed this suggestion, suggesting that “this appears to ignore the commitment and investment made by the radio industry to the launch and development of the DAB platform and is likely to increase the uncertainty with regard to the regulatory regime.”</p> <p>DRg noted that this suggestion “runs the risk that broadcasters may pull-out of DAB altogether...”</p>	These issues will be considered by the working group outlined above.

3.6*: *Ofcom should be given the power to:*

- *extend all existing licences for an indefinite period, so as to achieve a common end-date for all licences;*
- *include conditions in all new or extended licences allowing for their termination by Ofcom with at least two years' notice, so as to allow the spectrum to be taken back for other uses. The appropriate termination date should be decided by future reviews, which should also have a view to maximising flexibility for the use of the spectrum and take into account public policy needs.*

Note: We believe that suggestions marked with an asterisk would require new legislation

A7.22 The table below sets out the comments, where they differed from Ofcom’s view, made by respondents in relation to this proposal, and Ofcom’s response. Further discussion of the issues is set out in Section 5 above.

Issue raised	Comments	Ofcom’s response
Should be considered by proposed digital working group	RadioCentre proposed that the matter should be considered by its proposed digital working group. It said that “proposing such detailed solutions at this stage, when the route to digital is so unclear, is the wrong approach. Instead, we believe that the right licensing solutions will flow from the industry achieving a	We accept that this matter should be considered by the working group outlined above.

	<p>better understanding of how its digital future might look.</p> <p>This was supported by Town and Country Broadcasting.</p>	
<p>Risk of destabilising industry</p>	<p>Arqiva believes that this “would restrict the ability of stakeholders to raise funds for investment in infrastructure or marketing and would represent a significant destabilising influence on an industry in transition.”</p> <p>Folder Media raised concerns that the suggestions would “distort the market.”</p> <p>Steve Jenner opposed this, stating that “it would be wholly wrong to render the investments of many people worthless through legislation without some form of compensation being put in place; there is also a concern that “short - timing” analogue commercial services, particularly the small ones, will lead to much of the broadcasting talent in the commercial sector “leaking away” as the period of potential employment diminishes.”</p> <p>RadioCentre said it had “particular concerns about the idea of rolling two-year notice periods, which we believe would fundamentally undermine investor confidence in Commercial Radio and would be damaging to companies’ balance sheets. It would also make it impossible to make any kind of strategic investment or negotiate long-term contracts, for example in the fields of transmission,</p>	<p>These issues will be considered by the working group outlined above.</p>

	<p>talent or sports rights.”</p> <p>This point was also noted by BBC, Channel 4 Radio, Emap Radio, Town and Country Broadcasting, UTV Radio and three confidential respondents.</p>	
<p>Other proposed timescales</p>	<p>One confidential respondent suggested that “in the event of “rolling renewal” for FM licences on expiry we believe that three years’ notice would provide more appropriate scope for forward planning than two years.</p> <p>Emap Radio stated that “Given also that there is no other demand for this spectrum we ask that, to avoid the unnecessary uncertainties that would arise from licences with short termination periods, renewed licences should be issued for a further 12 year period terminating in 2027.”</p> <p>Channel 4 Radio suggested that “All analogue licences (including those which are renewable under the provisions for automatic ‘digital’ renewal) should have a common end date (presumptively 2015).</p> <p>One confidential respondent recommended “a ‘roll over’ for licence holders to allow a return on investment if there will be a proposed switch-off in 2015.”</p> <p>London Turkish Radio suggested that “Ofcom should be given the power to extend the existing licences for an indefinite period / reasonable period until the broadcaster moves over to DAB and also given the power to do the same when</p>	<p>These issues will be considered by the working group outlined above.</p>

	<p>pirate stations create unfair competition in their area of broadcasting.”</p>	
Basis for common end-date	<p>One confidential respondent noted that “Ofcom now requests to be allowed to extend analogue licences indefinitely. This proposal is justified on the false and empty premise that Ofcom might one day in the near future release the spectrum back to the market. Why not release spectrum to the market as soon as it becomes available? Since the only realistic user remains FM radio for the foreseeable future, any packaging options required by other possible uses is purely academic.”</p> <p>The BBC commented that “Whilst the use of aggregated spectrum in Band II (the current FM band) may be possible – for example for a T-DAB multiplex – it is our view that there are several issues around this from the perspective of international frequency co-ordination and planning.”</p>	<p>These issues will be considered by the working group outlined above.</p>
Prevention of new entrants	<p>The BBC noted that the proposal “would become unworkable should – as we anticipate – a switch-off date for FM be confirmed as later than the licence would have otherwise been awarded for. If switchover never came, it would create a stagnant market which could not be broken, rewarding only those FM radio stations which were in business in 2012.”</p> <p>Estuary Media said “This would prevent potential new competitors having an opportunity to apply for a</p>	<p>These issues will be considered by the working group outlined above.</p>

licence and so act against the public interest. Furthermore, this is contrary to the principle of a free market and also appears to contradict Ofcom’s proposal 4.1 (below).”

The Campaign for Press and Broadcasting Freedom opposed this proposal, stating that “this constitutes a major restriction on market entry...and reduces the opportunity for public scrutiny of the allocation of publicly important resources.”

Radio services, including those designed to deliver public purposes, should be able to be licensed on any spectrum in a technology neutral way.

This consultation seeks views on this proposal and considers options for delivering it which Government may wish to consider in the future, should the possibility of introducing new legislation be taken forward. Having considered the options, Ofcom’s initial suggestions are as follows:

4.1: Ofcom could have the ability to license radio services designed to deliver public purposes without having to determine beforehand which technology they must utilise. Ofcom could also grant licences for the provision of national and local terrestrial radio services to prospective providers who have acquired spectrum independently. Such services would not be regulated to secure diversity and/or localness. We suggest that any new licences for the provision of radio services be granted for an indefinite period, and include conditions allowing for their termination by Ofcom with at least two years’ notice. Licences would have a guaranteed five-year minimum term.*

A7.23 The table below sets out the comments, where they differed from Ofcom’s view, made by respondents in relation to this proposal, and Ofcom’s response. Further discussion of the issues is set out in Section 5 above.

Issue raised	Comments	Ofcom’s response
Should be considered by proposed digital working group	RadioCentre said that it accepted “the need to separate spectrum and technology within current legislation but proposes that a limited set of approved spectrum/technology standards is maintained to provide certainty to manufacturers and essential simplicity to consumers.” It	We believe we should have the ability to licence services in a technology neutral way.

	<p>proposed that “this topic be included in the agenda of the proposed working group. In particular, we wonder what form of licence would be required by prospective providers who have already acquired spectrum independently?”</p> <p>Channel 4 Radio, Town and Country Broadcasting, and UTV Radio supported this issue being considered by the proposed working group.</p>	
<p>Concern at extension of regulation</p>	<p>Emap Radio noted that “Our concern is therefore that such an option may spread unnecessary regulation to platforms that currently have limited regulatory burdens and could disadvantage some methods of delivery.</p> <p>One confidential respondent noted “that as worded, some currently unregulated services might fall under Ofcom legislation. In particular, paragraph 5.122 highlights the fact that services on satellite platforms are currently able to be licensed without being specifically regulated... Ofcom considers that a similar ability should apply to all platforms capable of providing radio services. We wish to ensure that internet radio is explicitly not included.”</p> <p>Estuary Media stated “we believe the biggest new source of competition for traditional radio in the longer term will be sourced via the internet/satellite. We are not convinced that it is desirable or practical for Ofcom to embrace such services under its regulation.”</p>	<p>Ofcom is not seeking to increase regulations on platforms not currently regulated. As set out in the consultation document (para 5.123) the intention of this proposal is to break the current link between broadcasting policy and spectrum allocation.</p>

	<p>One confidential respondent stated “we are concerned that Ofcom is seeking to delimit the terms of any new, flexible licensing regime before undertaking a full and detailed consultation with the industry on the possibilities. For example, it is important that any new technology-neutral service does not undermine the existing DAB licensing regime which gives the multiplex operator the power to choose which services and which providers to carry.”</p>	<p>We maintain this principle as a recommendation to Government.</p>
Spectrum neutrality	<p>The BBC stated that “Our broad view – expressed in a number of responses to Ofcom consultations – is that spectrum is rarely truly technically neutral and that benefit comes from selecting technologies which are appropriately designed and optimised for the frequencies in which they are to work. We hold that the radio bands are the epitome of this.”</p>	<p>In paragraph 5.123 of <i>The Future of Radio</i> consultation document, we note that “there may still be public policy reasons (e.g. relating to the technology to be used, the coverage to be achieved or the nature of the programme service to be provided) for continuing to allocate some spectrum in the way that it is currently allocated...”</p>
Concern at weakening of regulation	<p>The Campaign for Press and Broadcasting Freedom opposed this proposal, stating that it was “designed to weaken regulation for positive programming. It contains a view that the law should be changed so that such services would not be regulated to secure diversity and/or localness and would be licensed indefinitely.”</p> <p>Ofcom’s Advisory Committee for Wales “were concerned at the lack of proposed regulation in this proposal... the citizenship agenda is not covered by allowing market forces to prevail”.</p>	<p>It was noted that the current statutory framework does not provide sufficient flexibility to allow for spectrum to be allocated for radio services in a less interventionist manner, where there are no public policy justifications for reserving spectrum for this purpose.</p> <p>However, this suggestion does make clear that there may still be public policy reasons (e.g. relating to the technology to be used, the coverage to be achieved, or the nature of the programme service to be provided) for continuing to allocate some spectrum in the way that it is currently allocated.</p>

Relicensing process	Estuary Media stated “we believe that it is imperative that periodic re-licensing continues, to sustain radio services which best serve public interests and to encourage innovation, talent development and opportunities for public participation.”	Licences expiring prior to any new legislation will be re-advertised.
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4.2: Any new licences which are to be regulated in order to secure defined public purposes could be awarded by auction, but with conditions attached to the licences to secure these purposes.*

A7.24 The table below sets out the comments, where they differed from Ofcom’s view, made by respondents in relation to this proposal, and Ofcom’s response. Further discussion of the issues is set out in Section 5 above.

Issue raised	Comments	Ofcom’s response
Should be considered by proposed digital working group	<p>RadioCentre suggested that “given the uncertainties about the future of digital radio, it is too early to come to a view on this specific point. Again, it may come under the remit of our proposed working group in due course.”</p> <p>UTV Radio and Town and Country Broadcasting supported RadioCentre’s position.</p>	We observe that the number of commercial radio licences which have been traded over the past four years demonstrates that a market mechanism exists, and that many companies appear prepared to pay the market rate for a licence.
Further consultation needed	Arqiva would suggest that Ofcom consults with industry specifically on how a transition to market-based allocation of tradable spectrum, licensed on a technology-neutral basis, might be implemented for the delivery of radio services. Such a consultation should not take place until Ofcom has progressed further with its spectrum awards programme, so that the implications for delivery of other services could be assessed when drawing up proposals for the radio	While this is a matter for Government, we suggest that any new licences which are to be regulated in order to secure defined public purposes could be awarded by auction. We have no plans for further consultation.

	industry.	
Effect on INR licences	GCap Media opposed this suggestion with particular regard to INR licences, stating that “the auction of the licence in 2011 could lead to the creation of a new national station broadcasting on FM. Not only would this deny listeners the excellence of Classic FM, it would be likely to slow the process of transfer to digital. The new owners of the INR franchise would have every reason to seek to keep its lucrative FM licence alive for as long as possible, and not to encourage its listeners to transfer to digital radio.”	Under the current statutory framework, we are required to auction INR licences as they approach expiry.
Predetermination of public purposes	One confidential respondent commented that it “is surprised that Ofcom would consider auctioning radio licences with defined public purposes, as to do so would require Ofcom to predetermine what public purposes ought to be provided, rather than – as now – leaving that to applicants to determine... If public purposes are to be attached to licences, then we firmly believe a comparative assessment should be made of applications. The value of the spectrum can then be assessed in the light of the public purposes proposed by the licensee for the payment of AIP.”	The current licence award process requires applicants to demonstrate diversity and localness. We therefore believe that auctioning involves no greater pre-determination than the current “beauty parade” method.
Potentially damaging to public services	Estuary Media said “By implication, auctioning will allow wealthier individuals or media corporates to acquire licences or stretch the financial reserves of a winning applicant. The ‘value’ placed on spectrum by prospective buyers need have nothing to do with a	Licences awarded by auction can still include conditions designed to secure desired public purposes, such as diversity, localness and coverage. We believe that auctions are generally the most open, objective, non-discriminatory

	<p>desire to provide the best, dedicated local or public service.”</p> <p>One confidential respondent “sceptical about any widespread move towards the broadcast licence auction method which has not proven in the past to be conducive to public service, industry stability, programme quality or consumers’ interests.”</p> <p>Emap Radio stated “finances are concentrated on winning the auctions which reduces the funding available for investment and programming.”</p> <p>Folder Media suggested that it “will reduce the level of potential investment in programme and marketing, resulting in a further weakening of choice.”</p>	<p>and transparent way of assigning spectrum to those who value it most.</p>
<p>Impact on smaller stations</p>	<p>The CMA noted that “Community radio would be unable to compete if such licences were awarded through auction.”</p> <p>The Bay FM (Poole) strongly opposed this proposal, as “there will be tendency for larger and better funded organisations to skew the types and styles of radio in any given area.”</p> <p>Radio North Angus opposed this suggestion, suggesting that “Licensing by auction would appear to discriminate against small stations who do not have the ability to financially outbid larger competitors.... If, however, the proposed auction system is on ability to provide a service rather than a financial basis, then our</p>	<p>In assigning spectrum, Ofcom recognises that there may be public policy reasons to intervene in the market, such as provision for smaller radio stations.</p>

<p>opinion would be different.</p> <p>CBC opposed this suggestion, “as this would severely restrict opportunities for charitable funded broadcasters including Christian broadcasters and community radio stations from obtaining the required spectrum to operate.”</p>
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Ofcom will generally approve a change from stereo to mono in circumstances when it considers that the reduction in sound quality of the service whose technical parameters is being changed is outweighed by the benefits to citizens and consumers of the use to which the freed-up capacity is to be put.

A7.25 The table below sets out the comments, where they differed from Ofcom’s view, made by respondents in relation to this proposal, and Ofcom’s response. Further discussion of the issues is set out in Section 5 above.

Issue raised	Comments	Ofcom’s response
Sound quality should not be regulated	RadioCentre said it believed that “intervention by Ofcom in the area of sound quality stems from a misinterpretation of Section 54(1)g of the 1996 Broadcasting Act. Our view is that where the Act refers to “quality”, it means the technical quality of the methods used to deliver the DAB ensemble (such as adequate field strength, correct network timing, system resilience and so on) not the audio quality of individual services within the multiplex. As a general principle we believe that the choice of bit-rate for any particular service should be based on factors such as the service format (speech/music etc) and left to the discretion of the broadcaster and multiplex operator. It is surely obvious that no broadcaster would deliberately inflict sub-standard audio on its	<p>We agree with the contention that the authority to regulate in this area is not contained within section 54 (1)(g) of the Broadcasting Act 1996.</p> <p>It is our view that the audio characteristics of a digital sound programme service (i.e. 'stereo' or 'mono', and 'full-rate coding' or 'half-rate coding') represent an essential aspect of the character of the service. As such, Ofcom has the statutory authority under section 54(1)(b) of the Broadcasting Act 1996 to impose conditions in a radio multiplex licence to secure that a licensee implements proposals submitted by him under section 46(4)(c) or section 50(4)(c) – "the applicant's proposals as to the number of digital sound programme services to be broadcast and as to the characteristics of each of</p>

	<p>listeners. It follows from this position that the choice of mono or stereo operation is a matter for the broadcaster and should not be subject to Ofcom intervention.”</p> <p>BT, Digital One, Emap Radio Town and Country Broadcasting, UTV Radio and one confidential respondent agreed that sound quality should be a matter for the broadcaster.</p>	<p>those services”.</p>
<p>Introduction of DAB+</p>	<p>Channel 4 Radio noted that “Ofcom should be working with the industry to introduce the benefits of DAB+ to consumers, much in the same way digital satellite and DVDs have successfully overtaken earlier standards in consumer electronics.”</p> <p>Mr M Barraclough also supported the introduction of DAB+.</p> <p>Arqiva stated it “does not believe that Ofcom should be so dismissive of the potential benefits of permitting multiplex operators to implement DAB+... we would expect the increased spectrum efficiency to be reflected in lower carriage costs, thus reducing the barriers to entry which are considerable for many commercial stations.”</p> <p>Digital One commented on the issue of DAB+, saying it “would welcome further discussion on the issue to explore practical mechanisms for transition.”</p> <p>On DRM, it re-stated its view that “Ofcom should not commit to any plan to licence spectrum for DRM until other markets have launched commercially and DRM</p>	<p>Ofcom’s current position on DAB+ is set out in the consultation document at para 5.161 to 5.173. However, these issues will be considered by the working group outlined above.</p>

	<p>radios have become available at mass market prices.”</p> <p>One confidential respondent made a number of points regarding DAB+, in particular noting that “The ‘excess supply’ argument [DAB+ could substantially increase capacity] would also appear to undermine Ofcom’s insistence that a move to advanced coding is unlikely to increase audio quality. Enhancing the quality of existing audio services would be an obvious use of any spare capacity which Ofcom fears might become available from a move to greater spectral efficiency... For Ofcom to dismiss any move to allow DAB+ services now on the basis of restricting competition with no Impact Assessment, no balanced argument and no informed analysis would appear to demonstrate little more than contempt within parts of Ofcom for its own stated spectrum strategy as set out in its Spectrum Framework Review.”</p>	
<p>Opposition to perceived reduction in quality</p>	<p>ISBA, Radio Verulam, Mr Paul Stellings, Mr Ian Waugh, Mr M Barraclough Ofcom’s Advisory Committee for Wales, VLV and five confidential respondents opposed any perceived reduction in sound quality.</p>	<p>It is our view that the audio characteristics of a digital sound programme service (i.e. 'stereo' or 'mono', and 'full-rate coding' or 'half-rate coding') represent an essential aspect of the character of the service.</p> <p>As such, Ofcom has the statutory authority under section 54(1)(b) of the Broadcasting Act 1996 to impose conditions in a radio multiplex licence to secure that a licensee implements proposals submitted by him under section 46(4)(c) or section 50(4)(c) – "the</p>

		<p>applicant's proposals as to the number of digital sound programme services to be broadcast and as to the characteristics of each of those services".</p> <p>The relevant statutory criteria are intended to give Ofcom the power to ensure there is no reduction in quality or diversity.</p>
<p>Regulation of sound quality required</p>	<p>VLV additionally considered "that Ofcom should set a standard for the sound quality of DAB radio transmissions probably by reference to bit rates...</p> <p>Mr Phillip Waterman suggested that "Ofcom need to set limits on bit rate and stereo/ mono services for stations multiplex owners wish to broadcast.</p> <p>Estuary Media stated that "individuals should have the choice to be able to access high quality stereo broadcasts, even if they represent a minority of the population."</p>	<p>As set out in Ofcom's Digital Technical Code, licensees are able to choose between two approaches to multiplex capacity allocation: either to apply to sound programme services the minimum bit-rate requirements specified in the Digital Technical Code, or to adopt a flexible approach where the licensee is responsible for determining the bit-rate appropriate to individual programme services. Adoption of the flexible approach is subject to satisfying Ofcom that the licensee has in place suitable procedures to ensure appropriate attention is given to audio quality when deciding the bitrates allocated to sound programme services.</p>
<p>Removal of carriage requirements</p>	<p>Mr M Barraclough suggested "scrapping the rule where multiplexes have to carry a certain number of services when it is clear there is no demand for those services and where operators of them are neither publicising or putting any investment into them."</p>	<p>Radio multiplex licensees can ask Ofcom to vary their multiplex licence to change the characteristics of the digital sound programme services broadcast under the licence. Ofcom must consent to the change if:</p> <ul style="list-style-type: none"> • in the case of a national radio multiplex licence, the variation would not unacceptably diminish the capacity of the digital sound programme services broadcast under the licence to appeal to a variety of

tastes and interests.

- in the case of a local radio multiplex service, one of the three criteria below is satisfied:
 - that the variation would not unacceptably narrow the range of programmes available by way of local digital sound programme services to persons living in the area or locality for which the licensed multiplex service is provided; or
 - that the variation would be conducive to the maintenance or promotion of fair and effective competition in that area or locality; or
 - 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 variation.

Community radio introduction

A7.26 In the April consultation, we invited responses to sixteen specific questions concerning possible options for future legislation and regulation relating to community radio. The questions were all based on the underlying assumption that:

The characteristics of community radio, based around social gain provided by stations on a not-for-profit basis remain key. However, there may be an argument for simplifying the statutory selection criteria, and the regulation of funding and ownership without losing the essence of what community radio has been set up to achieve.

Much information gathering and analysis remains to be carried out before Ofcom produces its final report on community radio for the Secretary of State. In preparation for that, we welcome views on the following initial suggestions regarding the simplification of the existing statutory framework.

A7.27 In relation to those questions specifically about community radio, set out in section 6 of the consultation, Ofcom received some seventy responses, to one or more of these questions, from a combination of individuals and organisations.

Summary of responses

- A7.28 The questions posed specifically concerning community radio covered a wide range of issues. Inevitably, the degree of consensus amongst respondents varied according to the precise nature of the topic in question.
- A7.29 For the most part, responses represented either the views of those directly involved in the operation of community radio services, or those of commercial radio stations. Perhaps inevitably, there was often a considerable difference of view between these two groups, although this was not always the case.
- A7.30 A further diverse range of views came from a variety of other 'third parties, including the BBC, trade bodies including the Community Media Association and Radio Centre, and others, such as Voice of the Listener and the Campaign for Press and Broadcasting Freedom.
- A7.31 Ofcom's Advisory Committees for Scotland and Wales, as well as Ofcom's Consumer Panel and Community Radio Fund Panel also contributed responses.
- A7.32 A number of respondents requested that their input be kept wholly or partially confidential.
- A7.33 Some respondents contributed material and suggestions concerning issues outside the scope of *The Future of Radio* consultation. Others raised points in brief, which were made in more detail by other respondents.
- A7.34 In light of the above, specific reference is not made to each and every respondent in the table below. However, all responses were given due consideration when compiling this document.
- A7.35 The following tables each summarise a set of responses received in relation to one of the sixteen specific questions posed in *The Future of Radio* consultation.

6.1: The characteristics of community radio services, as included in the Community Radio Order 2004, should be retained, but the definition of "social gain" should be reconsidered.*

- A7.36 The table below sets out various comments received in relation to the above question. Where appropriate a response by Ofcom is also provided. Further discussion of the issues is set out in Section 6, above.

Issue raised	Comments	Ofcom's response
Deregulation may undermine distinctiveness of sector / importance of distinctive nature of the community sector	<p>A confidential respondent was concerned that proposed changes could result in a less distinctive community radio sector.</p> <p>The Community Media Association stressed the importance of maintaining a distinctive community radio sector, writing: "It is vital that there is clear and strong differentiation in the</p>	<p>We recognise these concerns which were expressed both by representatives of the community radio sector and by commercial broadcasters. We do not consider that our proposals would lead to an undermining of the distinctiveness of community radio.</p>

characteristics of commercial and community radio ", adding: "We would not want the essential characteristics defining community radio as a third tier of broadcasting to be "watered down". The current statutory requirements for community radio to benefit its local community, be accountable to its community (through for example governance arrangements) and to be not-for-profit must be retained".

Emap Radio wrote that it: "supports deregulation and we do not oppose this for the Community Radio sector. However, lighter touch regulation must not allow Community Radio services to dilute the community-based, social gain ethos of this sector".

The Lincs FM group stressed the importance of a distinctive community radio sector, writing: "We believe it is important that Community Radio should be a real alternative and not allowed to ape small scale commercial radio which provides often highly popular localised services to the benefit of many smaller local communities".

Ofcom's Advisory Panel for Scotland noted that: "While it is an anomaly that the sector is in many ways the most regulated, there is little if any clamour from the stations concerned for lower regulation. In fact, many accept and welcome

	<p>the regulation as underpinning their ethos".</p> <p>PPL and VPL wrote that: "It certainly makes no sense to impose detailed regulatory requirements on such small operations. What is important though is to retain the essential distinction of community radio which has enabled this sub-sector to thrive in its early stages".</p>	
<p>Review is needed</p>	<p>A confidential respondent questioned whether it is possible to attempt a more specific definition of "social gain", particularly in the context of wide geographical and social diversity.</p> <p>A further confidential respondent wrote: "In general, we are pleased to see that the current, very demanding, criteria for obtaining a Community Radio Licence are to be reconsidered, but we would not want to see the current criteria all disappear so that it becomes a free-for-all."</p> <p>A third confidential respondent supported the simplification of regulatory requirements.</p> <p>Bay Radio observed that it was "very encouraging to see that Ofcom are aware that Community Radio generally has very limited resources and yet is regulated more than any other sector of radio".</p> <p>Channel 4 Radio said that: "Community Radio should be supported to become a vibrant and sustainable</p>	<p>In light of other responses received, we do not propose to further review this aspect of community radio legislation at this stage.</p>

	<p>component of the radio universe. This should include reducing regulatory burdens so that they are proportionate to the size and value of the sector."</p> <p>Mr Neil Kenlock supported the simplification of the statutory selection criteria.</p> <p>Ofcom's Advisory Committee for Scotland took the view that: "There is a fairly persuasive case that the statutory criteria could be relaxed somewhat...", but added that: "We are also not sure that there is any evidence that suggests that the criteria have prevented good applications from applying for licences".</p> <p>Ofcom's Consumer Panel said that it would "support proposals to simplify the regulation applied to it, [community radio] making it less stringent and more flexible".</p> <p>Pure Innovations wrote: "We welcome the idea that community radio licence applicants will not need to 'tick every box' when outlining their social gain objectives and instead be given more freedom to explain how their proposal will benefit the target community".</p>	
<p>More focus on outputs rather than inputs</p>	<p>Preston FM wrote: "We feel that concentrating more on what the sector actually does – rather than what it says it will do – will allow Ofcom to more effectively regulate the sector, whilst also enabling the sector to grow and develop directly according</p>	<p>We feel that it is too early in the development of the community radio sector and its regulation to consider making such changes at this time.</p>

<p>Too early for substantive change</p>	<p>to the needs of those people it is serving".</p> <p>The BBC noted "that almost all of the suggestions under this proposal, in common with much else proposed in the consultation document, would require legislative intervention. We are concerned that there is apparently cause for such an overhaul of the regulation for community radio when the sector is so young and the existing regulation so fresh".</p> <p>The Campaign for Press and Broadcasting Freedom took the view that "The thrust of these recommendations is to lift regulations on the community radio sector. This seems remarkable given that it has only come into being in the last three years, that there are only 42 on air and that most of these have not had time to get established. By removing regulations covering existing requirements for these stations to, "broaden choice" "cater for the tastes and interests of the community", show "evidence of demand, or support, for a proposed service", indicate the extent to which a proposed service proposes to render itself accountable to the target community" and "encourage access" the proposals are in danger of removing the community focus from community radio".</p> <p>Castledown Radio believed that "it is too early</p>	<p>In light of the concerns from a variety of respondents, we are taking a cautious approach in this area.</p>
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to commence changing the law now or in the near future and that such consideration should be made after a number of years of 'bedding in'".

Chrysalis Radio took the view that: "it is premature to draw reliable conclusions about the impact and effectiveness of community radio".

Folder Media wrote: "It is too early to determine fully the impact of the introduction of community licences on commercial radio, and of the administration and regulation of this sector. Community radio is an important sector of radio, with immense benefits for society as a whole. However, to rush into changes because of a pre-determined review date appears irrational". The group went on to suggest that: "At this stage of community radio, Ofcom should restrict its proposals to those changes which will streamline the process of licensing community radio, without affecting the goal of social gain".

Laser Broadcasting took the view that community radio remains an experiment and noted that it has had failures as well as success.

The Lincs FM group were of the opinion that: "it is too early to support the need for any changes outside the application process until more community stations are on-air and

have spent longer operating under the existing regime".

The RadioCentre wrote: "We find no evidence that the current definition of social gain is excluding potentially valuable Community Radio stations from being licensed. Until such evidence is presented, we believe it would be inappropriate to propose such fundamental change to legislation".

Roger Dury Soundwork observed that: the "definition of social gain had several interpretations in previous consultations and should remain until more evidence has been shared and debated; it is too early in the rapid growth of the community sector to establish what social gain has achieved".

Town and Country Broadcasting wrote: "With no market impact analysis available and so few services on air we think it would be imprudent to make any changes at this point. We propose a full review of community radio in 2010, when its market impact can be much better assessed". This respondent answered: "*It is too early in the cycle of community radio to consider further deregulations*" in response to all sixteen of the questions posed in relation to the future regulation of community radio.

UKRD was of the opinion that: "It may be too early to make a serious judgement

	<p>about how this semi-state interventionist set of stations is impacting upon the commercially reliant sector and therefore further caution is urged before making too many significant changes to the regulation of this particular sector".</p>	
<p>Use of term "community benefit"</p>	<p>BRFM stated that it has: "always felt that community benefit is a better way to describe the service ".</p> <p>The Community Media Association took the view that it would: "would welcome the use of the term "community benefit" as this is more widely understood within the voluntary and community sectors and by potential local, regional and national funders".</p> <p>Community Media Northern Ireland, IÚR FM and Raidió Fáilte were each of the opinion that: "Social Gain should be re-defined as Community Benefit and it should be up to individual licence holders to justify the benefit of their station to Ofcom".</p> <p>Cross Rhythms (Stoke On Trent) wrote: "The term 'Community Benefit' appears to us more appropriate and gives a little more flexibility for groups to justify the benefits they provide for their community."</p> <p>Mr Mike Gilmour agreed that the term "community benefit" would be more appropriate.</p>	<p>Responses to the suggestion that the term "community benefit" be used instead of "social gain" have been overwhelmingly positive, we therefore propose to suggest to DCMS that it considers adopting this phrase in any future community radio legislation.</p>

	<p>RCT Community Radio wrote: "The replacement of the term 'social gain' with that of 'community benefit' is a welcome move".</p>	
<p>Importance of "social gain"</p>	<p>Canalside Radio considered that: "social gain is still essential".</p> <p>Penistone Radio suggested that while the requirement to deliver "social gain" should be retained it should perhaps be considered in "a more general and less formal way".</p> <p>Tameside Radio took the view that: "attainment of the social gain objectives should be the principle control mechanism of community radio together with the guides and codes that apply to all broadcasters. Tameside Radio would welcome stringent and monitored social gain objectives."</p>	<p>We agree that the importance of "social gain" should be maintained and take the view that its current definition is already sufficiently flexible to be adapted by a wide range of prospective community radio broadcasters. We do not believe there is any evidence that the current "social gain" definitions have prevented high quality applications being submitted by individual community groups.</p>
<p>Importance of "not-for-profit"</p>	<p>The Christian Broadcasting Council stressed the importance of community services continuing to operate on a not-for-profit basis.</p> <p>Cross Rhythms (Stoke On Trent) wrote: "The primary responsibility of a Community Station is its provision of Social Gain to the community it represents".</p> <p>Ofcom's Advisory Committee for Wales stated that its "members are happy for the term 'community benefit' to replace 'social gain'".</p>	<p>We agree that not-for-profit operation remains a key requirement for community radio services.</p>

RCT Community Radio wrote: "The preservation of the 'not-for-profit' status of all community radio stations is essential".

6.2: The statutory criterion regarding the ability to maintain the service should be reconsidered such that Ofcom could be required to have regard to the ability of an applicant to establish and maintain its proposed service for the first year of the licence period.*

A7.37 The table below sets out various comments received in relation to the above question. Where appropriate a response by Ofcom is also provided. Further discussion of the issues is set out in Section 6, above.

Issue raised	Comments	Ofcom's response
Opposed to change	A confidential respondent felt that such a change would be detrimental to the spirit of the original legislation.	We feel that our proposals in this area remain in line with the objectives of current legislation.
Supportive of change	<p>Estuary Media expressed support for this proposal, referring to the success of earlier 'Access Radio' experimental stations.</p> <p>Preston FM expressed its support for the proposed change, writing: "We support the suggestion that Ofcom should consider the ability of an applicant to maintain a community radio service for the first year, rather than require projections for a full five years of a licence period, which have rightly been identified as difficult to accurately predict".</p> <p>Sound Radio wrote: "We would agree that it might be more prudent and reasonable that prospective licensees present a case for a years' operation rather than for the duration of the five year period".</p>	In light of the balance of responses received concerning this issue, we now propose to continue examining proposals beyond first year operational plans.

	Tameside Radio also agreed with the proposal, writing: "We welcome Ofcom's view that a one year timescale is both practical and achievable".	
More emphasis should be placed on the regulation of outputs rather than inputs	<p>Bay FM (Poole) wrote: "We believe that too much emphasis is currently placed on, management structures, formats and justifications around social gain. We are happy that some level of accountability remains".</p> <p>The RadioCentre felt that the delivery of "social gain" was more important than financial viability for its own sake: "What is important is that Ofcom ensures the delivery of social gain through the provision of a successful Community Radio sector. It would be of little value for Ofcom to deliver 500 stations with sound finances and healthy listener numbers if most provided negligible public value".</p>	We take the view that it is currently too early to make major changes in this area.
Revision of regulation should dilute the distinctive nature of community radio services	The Christian Broadcasting Council (CBC) took the view that "There is a need to simplify the selection criteria and licensing procedures for community radio while maintaining the nature of these types of services".	We agree and our proposals are intended to achieve such an outcome.
Consider more than just first year financial proposals	The Community Media Association, stated that it agreed with this proposal "with the proviso that applicants outline their plans and contingency plans beyond the first year of service for both these elements "	Our revised proposal takes these views into account.

Cross Rhythms Radio (Stoke On Trent) also suggested an examination of proposals beyond the first year of operation, writing: "We agree with the suggestion, and would add that at least an ongoing strategy for finance for future years (next three) should be indicated".

Highlands and Islands Community Broadcasting Federation (HICBF) also wanted an examination of proposals to extend beyond looking at first year proposals, writing: "We suggest a two-tier approach be adopted, with a relatively rigorous assessment of year one, and a more general assessment of remaining years. There should at least be a feasibility plan for the full term of the license, even if it is accepted that this may have to be substantially adapted in the course of events".

Ofcom Advisory Committee for Wales felt that it would also be "sensible for applicants to also have to consider from the outset how they would sustain the service over a longer period".

Radio Regen described the first year of operation for a new community radio service as a "honeymoon period" stating: "We agree that a full five year plan may be meaningless but Ofcom should look beyond a year – examining plans for years two and three and the track record and skills of the applicants to

	<p>successfully run a social enterprise".</p> <p>RCT Community Radio said that it "would expect to see a realistic source of funding for year one with at least a robust financial strategy for the first 3 years with a well thought out funding strategy including identified sources of funding".</p>	
Quarterly reports from stations during first year of operation	<p>Mr Mike Gilmour urged greater oversight of new broadcasters, suggesting that "the statutory criterion should include specific information requirements i.e. quarterly accountability to Ofcom during the first year of the licence period. Establishment of the service and the ability to maintain that service will inevitably vary from station to station and such information would be critical in alerting and forecasting probable service maintenance problem".</p>	<p>We feel that to mandate such a requirement would be unnecessarily onerous.</p>
Amend RSL policy to allow for longer trial licences prior to seeking a full-time community radio licence	<p>Ofcom Advisory Committee for Wales wrote: "It might be better to amend the policy on RSLs (which the ACW is surprised to see isn't mentioned in this document) to allow for longer temporary broadcasts so that organisations can build up more gradually to applying for a full Community Radio Licence".</p>	<p>We have recently carried out a separate consultation concerning Restricted Services and, generally, we do not have sufficient frequency resources to provide for such extended trial broadcasts.</p>
Difficulty for applicants to predict financial future	<p>Penistone FM observed that Ofcom should realise: "that funding generally only comes when things are in place, such as premises and the award of the full</p>	<p>We do understand the difficulties encountered by prospective community broadcasters and will continue to take these into account when assessing</p>

	time licence; it is difficult to prove this requirement for stations that aren't up and running already".	licence applications.
Importance of previous experience	Pure Innovations suggested that: "applicants should carry more weight with Ofcom if they are already running a successful community radio station if rules change to allow them to hold more than one licence".	We already take into account the previous broadcasting and other relevant experiences of groups when assessing community radio licence applications. We do not propose to change this approach.
Importance of having a full understanding of the finances of the sector	Ofcom Community Radio Fund Panel noted the importance of this, particularly given that in its opinion the sector is "financially fragile".	We agree and consider that the current reporting regime provides sufficient information to build such a picture.

6.3: The statutory criterion which requires Ofcom to have regard to the extent to which a proposed service would cater for the tastes and interests of the community to be served should be reconsidered.*

A7.38 The table below sets out various comments received in relation to the above question. Where appropriate a response by Ofcom is also provided. Further discussion of the issues is set out in Section 6, above.

Issue raised	Comments	Ofcom's response
Difficulty of discerning what the "tastes and interests" of a particular target community may be	A confidential respondent noted that tastes and interests can change considerably between nearby geographical locations.	It is clear from our assessment of Community Radio Licence applications to date that successful groups do indeed have a clear understanding of the specific tastes and interests of members of their target community.
Ability to cater for tastes and interests is important	A further confidential respondent wrote: " <i>Certain requirements, such as being able to 'cater to the tastes and interests of the community to be served' are very necessary</i> ".	We agree with this view and believe that our proposals will secure the continued importance of this criterion.
Simplification a good idea	Oldham Community Radio, Mr Neil Kenlock, Pure	Our proposal provides some simplification in this

	Innovations and others felt that this criterion should be reconsidered. Ofcom's Community Radio Fund Panel took the view that: <i>"This area should be re-considered simply because it is so complex"</i> .	area whilst not diluting the relative importance of catering for the tastes and interests of members of the proposed target community.
Revision of regulation should not dilute the distinctive nature of community radio services	The Christian Broadcasting Council (CBC) took the view that "There is a need to simplify the selection criteria and licensing procedures for community radio while maintaining the nature of these types of services".	We agree and our proposals are intended to achieve such an outcome.
Overlap between 'catering for tastes and interests', 'broadening choice' and 'evidence of demand and support'	Community Media Association (CMA) noted that "Community radio stations by definition should be "by the community for the community" and felt that catering for community tastes and interests should therefore be a self-evident requirement.	We recognise this overlap, which is part of the reason for suggesting a simplification in this area.
Maintaining importance of catering for tastes and interests	A number of respondents (including the Community Media Association (CMA), Highlands and Islands Community Broadcasting Federation (HICBF), Ofcom Advisory Committee for Wales, and Radio Regen) were of the opinion that if subsumed into a broader 'social gain' or 'community benefit' criterion, the requirement to provide a service catering for the tastes and interests of members of the target community should not be diluted.	We do not believe that our revised proposals would not dilute the importance of the requirement.
Greater flexibility to be welcomed	Community Media (Northern Ireland), IÚR FM, Raidió Fáilte all welcomes greater potential flexibility but agreed with	Our revised proposals are intended to ensure that catering for the 'tastes and interests' remains a requirement.

	the previous group of respondents should not be diluted.	
Risk of diluting community relevance	Mr James H. Robinson wrote that Ofcom must have regard to 'catering for tastes and interests' otherwise a station could provide a service unsuitable for members of its target community.	We believe that the current regime and our future proposals are sufficient to ensure that this does not occur.
Community radio services should not duplicate the output of mainstream media	Ofcom Community Radio Fund Panel and Sound Radio urged that the distinctive nature of community radio services should not be reduced.	We believe that the current regime and our future proposals are sufficient to ensure that this does not occur.

6.4*: *The statutory criterion which requires Ofcom to have regard to the extent to which a proposed service would broaden choice should be reconsidered.*

A7.39 The table below sets out various comments received in relation to the above question. Where appropriate a response by Ofcom is also provided. Further discussion of the issues is set out in Section 6, above.

Issue raised	Comments	Ofcom's response
No change to current situation	A confidential respondent wrote: " <i>We believe that these 'statutory criterion' should remain in the form that they at present formulated</i> ".	We believe that our proposal in this area will simplify and clarify the application process without having a material impact upon the various statutory criteria as currently formulated.
Importance of local content	A further confidential respondent stressed the importance of locally relevant content as a prerequisite for ensuring that proposals would broaden choice.	We agree that this is generally the case for small-scale community radio services which focus on a geographical community of place.
Revision of regulation should not dilute the distinctive nature of community radio services	The Christian Broadcasting Council (CBC) took the view that "There is a need to simplify the selection criteria and licensing procedures for community radio while maintaining the nature of these types of	We agree and our proposals are intended to achieve such an outcome.

	<p>services".</p> <p>Mr Mike Gilmour wrote: "<i>I agree that broadening of choice content distinct from other local services is essential to bring true community benefit to the communities served to satisfy the criteria in Community Radio Order 2004</i>".</p>	
Maintaining importance of broadening choice	<p>A number of respondents (including a confidential respondent, the Community Media Association (CMA), Cross Rhythms (Stoke On Trent) Highlands and Islands Community Broadcasting Federation (HICBF), Ofcom's Advisory Committee for Wales, RadioCentre, and Radio Regen were of the opinion that if subsumed into a broader 'social gain' or 'community benefit' criterion, the requirement to provide a service catering for the tastes and interests of members of the target community should not be diluted. Cross Rhythms Radio (Stoke Upon Trent) wrote: "<i>We see it important that nothing is lost to the Broad[ening] Choice criterion</i>".</p>	<p>We do not believe that our revised proposals would not dilute the importance of the requirement.</p>
Check formats of existing stations	<p>Mr Steve Jenner suggested that: "Before issuing a licence in an area where there is a small - scale commercial incumbent OFCOM should look at the format of the existing station and ask if the new station will add to listener choice or just damage the commercial incumbent without delivering demonstrable</p>	<p>We already take such action when assessing community radio licence applications.</p>

	gains for the listener."	
A cautious approach should be taken	RadioCentre wrote: " <i>We would urge caution in any approach which diluted the importance of ensuring that any new Community Radio station should broaden choice [...] The radio industry is already experiencing dangerous fragmentation of audiences and services</i> ".	We believe our proposals would not reduce the degree to which we consider the output of existing services when assessing community radio licence applications.

6.5*: *The statutory criterion which requires Ofcom to have regard to the extent to which there is evidence of demand, or support, for a proposed service should be reconsidered.*

A7.40 The table below sets out various comments received in relation to the above question. Where appropriate a response by Ofcom is also provided. Further discussion of the issues is set out in Section 6, above.

Issue raised	Comments	Ofcom's response
Agree this should be reconsidered	Oldham Community Radio agreed with this proposal, whilst Pure Innovations wrote: " <i>We agree with Ofcom that providing evidence of the demand for a proposed service can be problematic and should be reconsidered</i> ". Radio Fish put forward the view that: " <i>Demand is a function of supply - and it is not for Ofcom to make decisions...</i> "	Based on the contents of numerous applications received, we do not consider that the majority of applicant groups have found this requirement to be problematic. We are putting forward a proposal which would simplify application requirements in this area but without diluting the essence of this requirement or its relative importance as part of the assessment procedure. Because demand for frequencies continues to outstrip their availability, Ofcom will continue to use the various selection criteria available to us in the decision making process.
Importance of demonstrating demand and support for a proposed community radio service	Mr Mike Gilmour wrote: " <i>I believe evidence of demand, or support is crucial in identifying the need for the proposed service</i> ". Ofcom's Advisory Committee for Wales	We agree that demonstrating evidence of demand and support is important and propose not to change the degree to which this is taken into account in future.

	noted that: " <i>as spectrum is scarce, it should surely be allocated to those applicants who can at least demonstrate some local support for the proposed service</i> ".	
Revision of regulation should not dilute the distinctive nature of community radio services	The Christian Broadcasting Council (CBC) took the view that "There is a need to simplify the selection criteria and licensing procedures for community radio while maintaining the nature of these types of services".	We agree and our proposals are intended to achieve such an outcome.
Requirement to demonstrate demand and support should remain but Ofcom should be flexible about the form of such evidence	Highlands and Islands Community Broadcasting Federation (HICBF) pointed out that formal research in this area is expensive and may not in fact be required to demonstrate evidence of demand and support.	We will continue to assess evidence of demand and support, taking into account the nature of the specific applicant under consideration. We do not require community radio applicants to provide formal research data, although they may do so should they so wish.
Greater flexibility to be welcomed	Community Media (Northern Ireland), IÚR FM, Raidió Fáilte all welcomes greater potential flexibility but agreed with the previous group of respondents that the relative importance of this requirement should not be diluted.	Our revised proposals are intended to ensure that broadening choice remains a requirement.
Relevance of evidence	Penistone FM stressed the importance of considering the nature and source of evidence of demand and support, writing: " <i>Quality support is most important, where is the support coming from, i.e. should be key organisations, council, local community groups, not quantity - support is important</i> ". Tameside Radio took the view that: " <i>Evidence of community</i>	Ofcom already assesses the source and types of evidence provided in relation to this selection criterion. We will continue to take this approach in future.

	<i>support for a project should be clearly visible during the application process as should the linkages between the applicant group, statutory agencies working within the area and community organisations".</i>	
Ofcom must continue to ensure that community radio services are relevant to members of the target community	Mr James H. Robinson	We believe that any changes we are proposing would achieve this.

6.6: The statutory criterion which requires Ofcom to have regard to the extent to which a proposed service would deliver social gain should be retained.

A7.41 The table below sets out various comments received in relation to the above question. Where appropriate a response by Ofcom is also provided. Further discussion of the issues is set out in Section 6, above.

Issue raised	Comments from	Ofcom's response
Agreement with this proposal	Castledown Radio, Community Media Association, Cross Rhythms Radio (Stoke On Trent), Highlands and Islands Community Broadcasting Federation, Mr James H Robinson, Ofcom's Advisory Committee for Wales, Oldham Community Radio, and one confidential respondent agreed with this proposal. The RadioCentre stated that it did not object to this proposal.	
More emphasis should be placed on the regulation of outputs rather than inputs.	Bay FM (Poole) stated: "We believe that too much emphasis is currently placed on management structures, formats and justifications around social gain. We are happy that some level of accountability remains.	We take the view that it is currently too early to make major changes in this area.
Community radio services	The Christian	This will remain the case

must be able show how they deliver (or intend to deliver) social gain	Broadcasting Council	
In future, the term "social gain" could be replaced by the alternative term "community benefit"	Community Media Association, and the Highlands and Islands Community Broadcasting Federation	See responses to 6.1 (above)
Concept of social gain should be viewed in the widest possible context and stations should be able to justify their approach in their own community context	Community Media Northern Ireland, IÚR FM and Raidió Fáilte.	We consider that the community radio legislation allows us to take a flexible approach to the delivery of "social gain"
The concept of social gain should be better defined	Mr Mike Gilmour suggested that such an approach would allow the extent of social gain delivered by individual stations to be defined "more purposefully"	We take the view that the current definitions of social gain are already adequate and very comprehensive. We consider that these definitions are also flexible enough to take into account the particular circumstances of individual community radio services.
How is the delivery of "social gain" defined and assessed?	Mr Steve Jenner asked if Ofcom has a social policy unit with governmental experience and questioned "who is qualified to make judgements on what constitutes "social gain" and on what basis?"	We do not have a specific social policy. Judgements on the provision of social gain (which is not always synonymous with wider public policy objectives), are made on the basis of the relevant contents of the Community Radio Order 2004. We consider that the legislation gives sufficient guidance as to what constitutes "social gain". Ofcom staff have considerable experience of the community radio sector and make judgements in the light of such experience and the relevant legislation.
The requirement to deliver two distinctive types of "community benefit" or "social gain" should be	Ofcom's Community Radio Fund Panel noted from its own experience and from DCMS research that	We consider that our revised proposals would continue to require that such a requirement would

retained in future	community radio services provide two distinctive types of "social gain" viz: The provision of distinctive content, and the provision of training participation and [opportunities for] expression.	remain in future.
Requirement to deliver "social gain" helps ensure that community radio services remain distinct from commercial stations	PPL and VPL stated that "clearly social gain is an essential characteristic"	We agree with this view.
Regulatory burden should be reduced	Pure innovations stated that "we would welcome any effort by Ofcom to reduce the regulatory burden on community radio stations both in the application process and after the licence has been awarded.	We consider the current level of regulation remains necessary to ensure the distinctive nature of community radio services.
More flexibility should be provided when requiring stations to demonstrate how they have benefited the local community	Whilst agreeing that "social gain" or providing "community benefit" is a fundamental part of community radio, Pure Innovations called for more flexibility in this area.	We consider that current and proposed legislation and regulation already provides considerable flexibility in this area, whilst ensuring that the distinctive nature of community radio services is not diluted.
Focus on minority groups and diversity is misplaced	Radio Fish suggested that the delivery of social gain to minority groups and a focus on diversity have both been counter-productive and have done little to encourage social cohesion. Instead, the station argued that "inclusion should be the new buzzword" and expressed concern that any attempt to cater for all minority languages in urban areas such as London would be bound to fail simply because of the number of languages involved.	In our view, the current community radio legislation and regulations, as well as our various proposals for change, allow a wide range of approaches to be taken. It is up to individual community radio groups to decide which approach to take, taking into account the nature and desires of members of its target community.

<p>"Social gain" is the defining factor of the community radio sector</p>	<p>Radio Regen argued that, in light of this view, to weaken its significance in any way would be a mistake.</p>	<p>We consider that the various proposals set out in this document would not weaken the significance of the delivery of "social gain".</p>
<p>The community radio sector should have a better understanding of the requirement to deliver "social gain"</p>	<p>RCT Community Radio suggested that Ofcom should do more work to ensure that this is the case in future.</p>	<p>We carry out various meetings with the community radio sector and with prospective community operators to ensure that those involved have a clear understanding of the legislative requirements concerning the delivery of "social gain". We will continue to do so in future.</p>
<p>Separate sections of the application form in relation to the provision of "social gain" should be simplified</p>	<p>Sound Radio stated its opinion that "social gain" or community benefit (as it might become known) is central to defining the nature of community radio and should be retained". However the group added that the relevant sections of the application form should be simplified.</p>	<p>We keep the contents of the community radio application form under review and will continue to do so in future, taking into account any legislative or regulatory changes which may occur.</p>
<p>The delivery of "social gain" should be stringently monitored</p>	<p>Tameside Community Radio stated its view that the delivery of "social gain" is a key measure of the success and failure of community radio groups. "Stringent Key Commitments and monitoring [should be implemented to] ensure delivery as promised....</p>	<p>Our community radio team works with individual community radio licence holders to define the specific content of each Key Commitments document, taking into account the requirement to deliver "social gain". We are also currently developing our community radio monitoring policy, and have already begun examining the output of particular stations in response to correspondence from listeners.</p>
<p>Current requirements in relation to the delivery of "social gain" are too onerous.</p>	<p>Vixen Broadcasting took the view that the current requirements in relation to the delivery of "social gain"</p>	<p>We agree with those respondents that consider the delivery of "social gain" to be a key aspect of</p>

should be looked at and made less onerous.

community radio services, ensuring they remain distinctive in terms both of operation and outputs when compared to commercial radio stations. It is too early to conclude that the current requirements are too onerous.

6.7*: *The statutory criterion which requires Ofcom to have regard to the provision that an applicant proposes in order to render himself accountable to the target community should be reconsidered.*

A7.42 The table below sets out various comments received in relation to the above question. Where appropriate a response by Ofcom is also provided. Further discussion of the issues is set out in Section 6, above.

Issue raised	Comments	Ofcom's response
Agreement with this proposal	Oldham Community Radio and Vixen Broadcasting Limited.	
Far more accountability is needed to protect volunteers' interests and to ensure fairness and accountability to the community	A confidential respondent argued for a greater degree of monitoring and enforcement to ensure that a minority of those running a particular service do not become "self-interested gate-keepers" preventing community volunteers from having a say in management and programming issues.	We agree that a station's accountability proposals should be robust enough to ensure that such a situation does not occur. Should it be proven that problems of inadequate accountability have arisen at particular stations, Ofcom will take action to ensure that these are rectified.
Current criterion is fit for purpose	Another confidential respondent noted that the notion of accountability is "a multi-faceted one which might be difficult to monitor and legislate for".	We recognise that developing accountability provisions can be difficult for individual stations. Staff provide advice for licensees when developing specific Key Commitments in relation to this requirement.
Real accountability depends not only on practice and process, but also on the skills and experience of those involved in the	A further confidential respondent noted that conflicts can occur between differing interests involved in the operation of community radio services.	We recognise that there can be disagreements over the operation of a particular community radio service. We consider that in such circumstances

management and operation of the service	Such differences, the respondent suggested, can be detrimental to the future development of the service concerned.	appropriate accountability processes can provide operational and managerial stability.
Accountability is an important aspect of community radio	Castledown Radio "that some form of accountability to the local community... should be retained" and argued for continued community involvement and 'ownership' of services.	We agree that accountability is important and make no proposals to reduce such importance.
Preference for keeping accountability as a separate requirement	The Community Media Association argued that accountability is "a prime characteristic of community radio". The organisation argued that if this requirement were to be subsumed under a broader "social gain" criterion "it would need to be evidenced even more robustly than now".	Our revised proposal in relation to accountability recommends that this criterion should be retained as a separate requirement.
Strict controls should be maintained by Ofcom in relation to accountability	Community Media Northern Ireland, IÚR FM and Raidió Fáilte all took the view that "persons seeking a licence who do not wish to be accountable to their community should seek a commercial licence".	Our revised proposals would maintain the current requirements for community services to be accountable to members of their target community.
Accountability is not automatically required for the delivery of "social gain"	The Highlands and Islands Community Broadcasting Federation took the view that whilst accountability "is highly desirable", ... in practice "social gain" could be delivered without it. However, the Federation felt that there should continue to be an explicit statutory requirement concerning the assessment of the extent and mechanisms proposed to ensure the delivery of accountability.	Our revised proposals would maintain the current requirements for community services to be accountable to members of their target community.

<p>Accountability criteria may need to be re-examined in future</p>	<p>Mr Mike Gilmore took the view that whilst the current statutory requirement in respect of accountability appears satisfactory, it may need to be amended in future in the light of experience and changes of circumstance.</p>	<p>We will continue to gather data concerning the operation of community radio services. It is always possible that we may make further recommendations for future changes in the regulation of community radio as our experience of the sector grows over the coming years.</p>
<p>Accountability requirements should not be weakened</p>	<p>Ofcom's Community Radio Fund Panel suggested that, whilst it might be possible to change the terms of reporting by community radio services to their communities, accountability requirements should not be weakened.</p>	<p>We do not propose to weaken these requirements.</p>
<p>Regulation not needed to ensure accountability</p>	<p>Pure Innovations suggested that community radio services will be judged on their outputs and that if they don't deliver relevant content members of the community will not listen or volunteer. If this occurs, this respondent suggested that advertising and funding would be hard to come by and the station would eventually be forced to close.</p> <p>Radio Fish took a similar view suggesting that "accountability is ultimately measured in support gained".</p>	<p>Whilst 'market forces' may play a limited role in ensuring a degree of relevance in terms of broadcast output, they do not provide opportunities for members of the target community to pro-actively influence the content and direction of the service. Moreover, 'market forces' have no influence over such specifics as complaints procedures or station structures. We therefore take the view that specific accountability legislation and regulation remain appropriate for community radio services.</p>
<p>No evidence to support such a change</p>	<p>The RadioCentre stated that there is currently no evidence "to justify such character altering change". The organisation added that the accountability criterion is one "that we are most keen to see preserved".</p>	<p>Our revised proposals in relation to accountability maintain the current level of importance attached to ensuring accountability to members of the target community.</p>

Accountability is a separate matter, not part of "social gain"	Radio Regen stated that accountability is intrinsic to the nature of community media - "a service that delivers social gain via a not-for-profit body without substantial measures for accountability is not community media". On this basis, Radio Regen opposed any weakening of the accountability criterion.	Our revised proposals in relation to accountability maintain the current level of importance attached to ensuring accountability to members of the target community.
Importance of regular volunteer and listener surveys	Roger Dury Soundwork took the view that the nature of the relationship with members of the target community is crucial and distinguishes community services from other radio stations.	We do not propose to mandate particular survey requirements on community radio services. Provided they meet the requirements of the legislation, it is up to individual stations to define how they ensure their accountability.
More assistance should be provided by Ofcom	Tameside Radio recommended that Ofcom should assist community radio applicants by producing minimum standards or guidance about the types of processes and procedures successfully used in other applications.	Whilst we would not wish to mandate specific approaches to ensuring accountability we will continue to provide help and advice to prospective applicants and licensees through workshops and correspondence.

6.8: The statutory criterion which requires Ofcom to have regard to the provisions an applicant proposes to make in order to allow for access by members of the target community to the station's facilities and for their training in the use of those facilities should be reconsidered.*

A7.43 The table below sets out various comments received in relation to the above question. Where appropriate a response by Ofcom is also provided. Further discussion of the issues is set out in Section 6, above.

Issue raised	Comments	Ofcom's response
Agreement with this proposal	Oldham Community Radio, Vixen Broadcasting Limited.	
Importance of building community radio services	A confidential respondent observed that "You can	We agree that sound financial backing is an

<p>on sound financial foundations</p>	<p>have the best station in the world but if its not based on firm financial foundations from the outset then it will not last in the long term".</p>	<p>essential prerequisite for community radio services. However we believe that such an objective can be achieved within the current funding restrictions.</p>
<p>Delivery of access and training will vary on a station by station basis</p>	<p>A confidential respondent noted that the ways in which groups deliver access and training in the use of facilities is likely to vary according to the nature of the particular community radio service concerned. The respondent recommended that Ofcom should do all it can to maximise such opportunities.</p>	<p>We recognise that every community radio service is in some ways unique. As a result we do not impose uniform requirements on all stations concerning the delivery of access to station facilities and training in their use.</p>
<p>Access may not need to be a mandatory requirement</p>	<p>Castledown Radio suggested that whilst this may not need to be a mandatory requirement, it should however be seriously considered during the appraisal of any community radio application.</p>	<p>Taking on board the responses from other groups, we disagree with this view.</p>
<p>Preference for keeping access as a separate requirement</p>	<p>The Community Media Association argued that access to station facilities and the training in their use is "a prime characteristic of community radio". The organisation argued that if this requirement were to be subsumed under a broader "social gain" criterion "it would need to be evidenced even more robustly than now".</p>	<p>Our revised proposal in relation to access and training recommends that this criterion should be retained as a separate requirement.</p>
<p>Access to facilities and training is at the heart of community radio</p>	<p>Community Media Northern Ireland, IÚR FM and Raidió Fáilte all took the view that applicants should continue to be required to state how they intend to provide such access. These respondents were of the</p>	<p>Our revised proposal in relation to access and training recommends that this criterion should be retained as a separate requirement.</p>

	opinion that: "Stations not willing to provide access to training and facilities are better known as commercial stations".	
No automatic assumption that a particular level of access should be provided	The Highlands and Islands Community Broadcasting Federation suggested that whilst it saw no reason for removal of this criterion, the appropriate level of access and training provided should take into account the specific circumstances of the station concerned.	We recognise that the level of access to station facilities and training in their use will vary on a station by station basis. The current legislation, and our revised proposal to leave this unchanged, allows us to take such differences into account.
The requirement to provide access and training should remain in place	Mr James H. Robinson made the point that this criterion benefits the community though increasing the level of training available locally.	We recognise that the provision of access and training can be of considerable benefit to members of the target community.
Health and Safety regulations must be taken into account	Mr Mike Gilmour pointed out that training programmes need to take safety issues into account.	Whilst we are not responsible for oversight of health and safety issues, we recognise the importance of such considerations in the operation of community radio services.
Access and training is essential if "community benefit" is to be actively achieved	Ofcom's Advisory Committee for Wales noted that the provision of access and training "isn't necessarily the most time efficient way of running a station but is part of the essential spirit of this sector".	Our revised proposals in relation to the provision of access to station facilities and training in their use would leave this requirement unchanged.
Provision of training is an essential part of community radio	Ofcom's Community Radio Fund Panel did not agree that this criterion should be reconsidered because it felt that the provision of access and training comprises part of one of two distinctive kinds of community benefit provided by community	Our revised proposals in relation to the provision of access to station facilities and training in their use would leave this requirement unchanged.

	radio services.	
Ofcom should reconsider how the provision of training should be regulated	Pure Innovations notes that whilst it considers the provision of training to be a major part of any community radio service, in practice it can be difficult to provide alongside running a full-time radio service. The organisation considers that it would be unfair for Ofcom to penalise a station harshly for struggling to meet its training commitments.	We must ensure that community radio services operate within the terms of the relevant legislation. However, we recognise that sometimes it can be difficult for a particular station to successfully deliver fully against all its objectives. Within the terms of the legislation, we will discuss options for change with stations that encounter such difficulties.
Access to facilities and training in their use must remain obligatory	The RadioCentre quoted Ian Stewart MP who pointed out that <i>“The strength of community media lies in their participatory approach, whereby local people are involved in the operation of all aspects of the organisation”</i> .	Our revised proposals in relation to the provision of access to station facilities and training in their use would leave this requirement unchanged.
Access and training is vital for community radio services	Radio Fish noted that the possibility of using a community radio service to deliver distance learning, perhaps in conjunction with other similar stations should also be considered. RCT Community Radio noted that the provision of access and training can be very resource intensive.	We agree that community radio services may provide distance learning should they so wish.
There is now considerable experience in the sector of how best to deliver access and training	Roger Dury Soundwork noted that applicants and new stations should draw upon with experience when developing their plans in this area.	We agree that the level of experience in the community radio sector is increasing as the sector expands and matures.
Access and training could be included under an expanded "social gain" criterion	Sound Radio suggested that such a simplification could be appropriate.	In the light of the weight of responses received, we no longer propose to recommend such a course of action.

Opportunities to get involved in community radio must be available to more than the lucky few who present radio programmes	Takeover Radio Trust observed that "the real test for any community radio is to see what individuals have achieved after leaving the station and whether their experiences at the station have changed their lives".	We agree that the provision of access and training can lead to beneficial outcomes for a greater number of members of the target community.
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6.9: It is important for a community radio station not to receive all of its funding from a single non-commercial source. However, it may be that there is a case for increasing or removing the current maximum percentage limit on funding from a single non-commercial source. Ofcom welcomes views as to what the appropriate limit should be.*

A7.44 The table below sets out various comments received in relation to the above question. Where appropriate a response by Ofcom is also provided. Further discussion of the issues is set out in Section 6, above.

Issue raised	Comments	Ofcom's response
Too much protection for commercial stations	BRFM (Kent) Sound Radio described the current restrictions as "the most functionally draconian aspect of the current Community Radio Order" and suggested that it is now time for them to be removed.	We do not believe that there is yet sufficient evidence about the nature and degree of possible impacts on the commercial sector to make major changes at this stage.
	BRFM (Kent) suggested that Ofcom should consider how to develop regulation which reduces the level of financial restrictions placed upon community radio services.	We do not believe that there is yet sufficient evidence about the nature and degree of possible impacts on the commercial sector to make major changes at this stage.
All funding restrictions should be removed	Canalside Radio argued "Ofcom must regulate the 'end result' and not the process of achieving the 'end result'". The group also suggested that there should be no restrictions on the amount of funding obtained from on-air commercial sources. Estuary Media also felt that there should be no limit on the amount of	We believe that it is too early to consider radical changes to the funding model of community radio. We also consider that it would be inappropriate for community radio services to be fully funded from commercial sources.

funding obtained from commercial sources "whilst community services operate on a not-for-profit basis".

IÚR FM simply stated that all limits should be removed except, judged on a case by case basis, where undue influence would be likely to result.

Mr Gary Seed was of the opinion that where other funding is not available, stations should be able to be funded 100% from commercial sources.

Pure Innovations also felt that all funding restrictions should be removed and noted that "only community radio is limited in the funding it may receive".

Raidió Fáilte urged that all limits should be removed and observed that the most important issue was ensuring that undue influence could not be exercised.

The Student Radio Association argued that "the appropriate legislative change be made to enable Students' Unions (which are often registered charities) to own and fund community radio stations".

Vixen Broadcasting Limited noted that community radio operates in "a modern competitive media world, where survival should be guaranteed by providing the best output".

Walsall FM Community Radio argued for the

	removal of the 50% limit, arguing that its relaxation would not in any way change the spirit of community radio.	
The limit on non-commercial funding from a single source should be removed	Ofcom's Advisory Committee for Wales stated: We cannot see the strength of the case for having a limit on non-commercial funding.	We remain concerned about the potential risk of undue influence should a single funding body be allowed to underwrite the entire operational costs of a community radio service.
The current 50% limit on funding from a single source should be retained	<p>Castledown Radio felt that it could easily argue that the current limit should be removed, but felt that, on balance, the rule is appropriate and should be retained in its current form.</p> <p>Mr James H. Robinson was of a similar view. After setting out various alternatives, he concluded that the status quo should be maintained.</p> <p>Penistone FM noted that although the current 50% limit is unpopular in some quarters but encourages licensees to develop a broad sustainable funding base.</p> <p>Takeover Radio Children's Media Trust argued, based on over five years' experience of running a community radio service, that the current limits should be retained.</p>	At present we propose to make no changes in this area.
The current 50% limit should be increased	Desi Radio explained that its funding is currently limited because it has reached the 50% limit on funding from a single source (on-air advertising and sponsorship). The group argued that an increase in the current 50% limit would allow community radio to	We believe that it is too early to consider radical changes to the funding model of community radio. At the present time there is insufficient evidence upon which to base any such change in the current funding limits for community radio.

	<p>enhance its delivery of "social gain".</p> <p>Ofcom's Community Radio Fund Panel suggested that perhaps a better limit on funding from a single source might be 2/3rds over a three year period. Such a move would, the Panel suggested, allow small stations to receive large sustaining grants from local sources.</p> <p>Oldham Community Radio argued that the limit should be removed or increased to 75% from a single source.</p> <p>Penistone FM suggested that the limit should be raised to 70%.</p> <p>Radio Fyneside suggested that the limit should be raised to 75%.</p> <p>Radio Verulam considered that the current 50% limit on funding from a single source to be generally appropriate, but argued there might be some circumstances under which it might be appropriate to increase the limit, provided no issues of undue influence would arise.</p>	
<p>The current 50% limit should be reduced</p>	<p>Radio Fish suggested that majority funding should be avoided and that "ideally no more than 25%" should come from a single source.</p>	<p>We do not feel it necessary to make such a change at this time.</p>
<p>There should be no fixed limit on funding from a single source. Instead, there should continue to be a requirement for community radio services to be funded from more</p>	<p>The Community Radio Association noted that the current regulations cause problems and suggested that Ofcom should help to individual stations about the categorisation of</p>	<p>We remain unconvinced as to the practicalities of considering funding bodies on a case-by-case basis.</p>

<p>than one source and that no single source of funding should exert undue influence over the character of the service and its accountability</p>	<p>income.</p> <p>Community Media Northern Ireland took a similar view, stressing the importance of avoiding undue influence and urging that funding should be considered on a case-by-case basis.</p> <p>The Highlands and Islands Community Broadcasting Federation also took a similar view arguing that whilst there should be a presumption against funding from a single source, the nature of the particular potential funder should be taken into account.</p> <p>Tameside Community Radio suggested that the 50% limit might in circumstances be too low. Ofcom should, the group suggested, consider the nature of particular potential funding bodies. It went on to suggest that increasing the 50% limit on commercial funding would limit the potential for undue influence by a single financial contributor.</p>	
<p>The current funding limits should be reviewed</p>	<p>Ofcom's Advisory Committee for Scotland noted that the current restrictions have had some unintended consequences and concluded that, therefore, a review would be sensible.</p> <p>Roger Dury Soundwork also urged that the current funding limit on income from non-commercial sources should be changed, noting also that: "The local situation of every station will</p>	<p>We have decided to await the gathering of further evidence before considering a review of the current funding limits.</p>

	determine scale of opportunity and challenge of remaining sustainable".	
Additional funding should be made available from Government sources	Ofcom's Consumer Panel noted the support for community radio provided by DCMS and the Welsh Assembly Government. It urged that Ofcom should, in conjunction with the UK Government, consider whether such provision should be made more widely available in the UK.	We take the view that it is up to Government to determine the level of financial support made available for community radio.
Concerns over merged funding sources breaching the 50% limit when taken together	Oldham Community Radio expressed concerns over the pooling of resources through local partnership agreements and urged that Ofcom does not begin to judge such previously separate sources as being one.	We note this concern and, should the problem arise in practice, will discuss the issue with the sector and with DCMS
The importance of editorial independence	Radio Regen stressed the importance of ensuring that editorial independence be maintained. The station suggested that the 50% limit should generally be maintained but that it might be increased in situations where the station could convince Ofcom that the majority funder would be committed to the station's independence.	We recognise the importance of editorial independence.
The importance of multiple sourced funding	A confidential respondent noted the dangers of being dependent on a single source and urged the importance of spreading financial risk through developing multiple streams of income.	We recognise that there may be risks attached to depending on a single major funder.

6.10: It would be possible to take into account volunteer time when assessing the turnover of a community radio service. Ofcom welcomes views on this issue and on how the value of such input could be calculated.

A7.45 The table below sets out various comments received in relation to the above question. Where appropriate a response by Ofcom is also provided. Further discussion of the issues is set out in Section 6, above.

Issue raised	Comments	Ofcom's response
Volunteer inputs should be taken into account when calculating the financial turn-over of community radio stations	<p>Various respondents including Canalside Radio, Castledown Radio, Ofcom's Advisory Committee for Wales, Preston FM, Radio Fish, Thorne-Moorends Community Radio all took the view that the value of volunteer inputs should be taken into account.</p> <p>Oldham Community Radio strongly agreed with this view stating: "The phrase "Time is money" is true. A donation of 'time' has a 'value'".</p> <p>Sound Radio wrote: "We believe volunteer time, which is a crucial element of a community radio station's operation, should be valued and as a consequence those giving their time will also be acknowledged as having value".</p>	
Taking into account the value of volunteer inputs is not an appropriate way of delivering changes to the funding model of community radio	<p>RadioCentre wrote: "We believe this could prove a time-consuming distraction and that it is not appropriate to use a back-door method to deliver changes to Community Radio's funding".</p> <p>Town and Country Broadcasting wrote: "It is too early in the cycle of community radio to consider further deregulation".</p>	We do not believe that this is a "back-door method" of delivering changes to the funding of community radio. However, whilst believe that it is appropriate to take the value of volunteer inputs into account when assessing the turnover of community radio services, we are proposing a cautious approach in relation to offsetting the value of on-air commercial incomes.
Taking the value of volunteer inputs into account is common	The Community Media Association noted that: "The valuing of volunteers	

practice within the voluntary sector

in the third sector (voluntary and community) is widely understood and accepted by many government departments and local authorities in the UK and across Europe, who use well-established methodologies, well able to be externally verified".

Community Radio Northern Ireland, IÚR FM and Raidió Fáilte suggested that Ofcom should "consult the UK's major funding bodies to establish the value of volunteer time".

Desi Radio noted that "Volunteer time is already 'counted' in many areas of the voluntary and community sector".

Radio Regen wrote: "The monetisation of volunteer time is a normal facet of operating a voluntary sector organisation and to not recognise this would signify some degree of 'real world denial' by the regulator".

Roger Dury Soundwork wrote: "The value of volunteer time should be allowed as it is by many funding organisations".

Volunteering as a key characteristic of the community radio sector

The Community Media Association took the view that: "Volunteering is one of the main distinguishing characteristics of community radio, and many stations rely heavily on volunteers in many aspects of their operations, including programming, management and governance and administration".

Taking into account the value of volunteer inputs will help stations to be financially viable within the terms of the Community Radio Order 2004	The Community Media Association argued that: "Including volunteer time as "in kind" income would go a long way to alleviating some of the pressures on stations".	
Difficulty of placing a value on volunteer inputs	A confidential respondent suggested that it will be difficult to place a monetary value on volunteer inputs.	Although the precise value of particular volunteer inputs has yet to be finalised, we are confident that existing practice within the voluntary sector will provide a suitable basis for valuing voluntary inputs in community radio services.
Collaboration with BBC may also be useful	In addition to assessing volunteer time, we suggest that support from or co-operation with the BBC may also be relevant to some community radio business plans. BBC support might also allow more reliable long term plans to be made, so encouraging a licence tenure longer than 5 years and giving greater assurance of the sustainability of the service.	Provided they operate within the terms of their licences, it is up to individual community radio services to agree specific collaborations with the BBC.
Importance of keeping systems relating to volunteer inputs simple and straightforward	The Highlands and Islands Community Broadcasting Federation "The principle is important, but Ofcom should not get bogged down in an unnecessarily sophisticated way of assessing this. A simple scale based on, perhaps two or three broad bands of activity type (e.g. management, specific tasks, general assistance), with rates devised by a small advisory panel aiming to relate the rates to the paid commercial sector with a scaling factor. Otherwise a simple	We agree that systems for valuing volunteer inputs must be kept simple and straightforward.

	<p>flat rate for skilled work, e.g. =£12/hour, maintained in relation to RPI".</p> <p>Mr James H. Robinson observed that any system for recording the value of volunteer inputs should not be so complex "that it gets in the way of other duties that person may undertake".</p> <p>Pure Innovations Limited wrote that: "We can see issues arising should Ofcom try to get statistics to account for volunteers' time. It strikes us as similar to the way European funding worked and there is evidence that this became an audit nightmare".</p>	
<p>Importance of recording specific inputs</p>	<p>Mr Mike Gilmour wrote: "I believe that volunteer time should be taken into account but that input should be defined e.g. Presenting, Production, Training/Being trained, Travel and actions on behalf of the station. The station and volunteer must retain a record approved by the station".</p> <p>Radio Regen wrote: "There are many accepted and rigorous methods by which this can be achieved and the extra work involved for the operator could be seen as a 'quid pro quo' for the benefits that this match funding would bring".</p> <p>Tameside Radio recommended taking into account more than simply the value of on-air contributions, noting that it could cause divisions in a</p>	<p>We agree that stations wishing to include the value of volunteer inputs in their financial reports to Ofcom will be required to keep accurate records. The precise nature of such records will be defined after discussions with representatives of the sector.</p>

	<p>station if some types of input were to be allocated a financial value whilst others were not. The station wrote: "We would argue that, properly monitored, the full extent of volunteering should be recognised".</p>	
<p>The value of volunteer inputs should be clearly defined</p>	<p>Oldham Community Radio suggested that: "Volunteer time to be calculated on Nationally agreed scales e.g. European Social Fund rates".</p> <p>Penistone FM suggested that: "Volunteer time should be valued, a benchmark could be the National Minimum wage in force at the time".</p> <p>Sound Radio wrote: "There have been previous instances of funding regimes, notably with regard to European funding, where there are clearly established tariffs which identify role and value. E.g. Management roles should attract a per hour rate as would technical, presentation and administrative roles. Values associated with comparable activity in the BBC or commercial sectors might be an appropriate start point for discussion".</p> <p>Takeover Radio wrote: "The commitment and dedication shown by many of the volunteers is, in some cases, far greater than that of a paid employee and as such should be greatly valued. To put a price on this would only be possible if you were to consider what</p>	<p>We agree that the value of volunteer inputs should be clearly defined. We will agree scales of value after discussions with representatives of the sector.</p>

you would have to pay someone of similar calibre and consider this their worth".

6.11: There should be no changes to the categories of person prohibited from holding a community radio licence.

A7.46 The table below sets out various comments received in relation to the above question. Where appropriate a response by Ofcom is also provided. Further discussion of the issues is set out in Section 6, above.

Issue raised	Comments	Ofcom's response
Current ban on prosecuted illegal broadcasters encourages further illegal activity	<p>Mr Neil Kenlock, giving examples of mainstream broadcasters who began their careers on unlicensed radio stations, suggested that the current restrictions on prosecuted illegal broadcasters should be amended to provide a route into legitimate broadcasting.</p> <p>Ofcom's Consumer Panel felt that "community radio stations can play a role in tackling illegal broadcasting by providing more opportunities for those who want to broadcast legally...."</p>	We have some sympathy with this respondent's views. However, any change in our policy towards illegal broadcasters would need to be considered in the light of wider policy objectives in this area. We therefore do not propose to make any changes at this time.
Action against broadcasters which encourage hatred towards particular groups in society	One respondent suggested that there may be examples of broadcasters involved in the dissemination of material encouraging hatred against particular groups.	All radio stations licensed by us must adhere to rules concerning harm and offence. We will take firm action against any station which fails to adhere to our broadcasting code.
Limits on involvement by people connected to the BBC or commercial radio	Tameside Radio expressed concerns about the limited degree to which people connected to the BBC or commercial radio can be involved in community radio services. The group felt that current restrictions limit the transfer of skills and knowledge into the sector.	We believe that this respondent has perhaps misinterpreted the current restrictions. Individuals working for the BBC or for commercial radio are permitted to be involved in the operation and management of community radio services, up to and including

	representation at board level. The fundamental requirement is that community radio services may not be owned by the BBC or by commercial radio stations.
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6.12* The current rule requiring that no body corporate may hold more than one community radio licence should be reconsidered.

A7.47 The table below sets out various comments received in relation to the above question. Where appropriate a response by Ofcom is also provided. Further discussion of the issues is set out in Section 6, above.

Issue raised	Comments	Ofcom's response
The current limit should remain the same	<p>A confidential correspondent felt that the current one station limit should be maintained "as it currently stops community monopolies forming, and allows greater access and diversity from the community...".</p> <p>A further confidential respondent agreed, stating: "We are firmly of the view that there should be no entitlement to any more than one community radio license for any group"</p> <p>The BBC stated that raising the current limit could "fundamentally alter the character of community radio".</p> <p>The Campaign for Press and Broadcasting Freedom stated that this proposal "seems to militate against the spirit of community radio".</p> <p>Canalside radio was of the view that "one cannot be in two communities at the same time!"</p>	In the light of responses received. We do not propose to increase the ownership limit.

Castledown radio strongly advocated that no change should be made, stating: "If the ownership rule is altered it would destroy the whole reasoning behind community radio being very local".

The community Media Association stated: "Anything that would jeopardise the link between the community and their community radio station, such as ownership located outside the community, is inappropriate".

IÚR FM stated: "We would disagree with this. There is a danger of forming major community radio groups, which could restrict involving people at a community level".

Mr James H. Robinson disagreed with the proposal, being of the opinion that "networking of programmes would not be of benefit to the communities they are meant to serve".

A confidential respondent was opposed to the proposal because he feared that "it will lead to a similar situation as exists with ILR Stations".

Oldham Community Radio strongly disagreed with this proposal, stating: "Community Radio is about the local community. The 'community of interest' must be a local community of interest that 'lives' within the locality rather than being a 'community of interest' that is 'grafted'

into a locality".

The RadioCentre stated: "We disagree. This would fundamentally dilute the extent to which a Community Radio station is owned by its community, one of the key factors which differentiates Community Radio from Commercial Radio and the BBC".

Radio North Angus took the view that a relaxation of the ownership rules could lead to a situation similar to that of commercial radio where "the vast majority of stations are owned by a few large organisations, with a detrimental effect on the generation of truly local programming".

Radio Regen stated: "We strongly believe that plural ownership of community radio stations would be damaging to their delivery of social gain and flies in the face of community media principles".

Raidió Fáilte disagreed with the proposal but noted the importance of existing operators being able to provide assistance and support to new community broadcasters through partnering and mentoring schemes. The station noted that: "Undoubtedly this would lead to duplication on Boards of Directors but as long as the underlining principle of local involvement is adhered to, substantial additional community benefit would result".

	<p>Roger Dury Soundwork stated: "The single independence of each project has been the method that the sector has grown, cooperation and joint support has sustained the emergence on a scale no one had anticipated, so now is not the time to change, rather to celebrate the grass roots".</p> <p>Thorne-Moorends Community Radio noted that: "To allow an existing group to operate another station in a different area removes the local community aspect "</p> <p>Verulam Community Radio wrote: "We are not convinced about the proposal to allow a company to own more than one Community radio licence". However it then noted: "If this were to be allowed, we would like the number to be limited to a very small number under five ".</p> <p>Vixen Broadcasting urged that the single station ownership limit should remain: "Otherwise, there is the potential for future licences to be awarded to existing licence holders, on the basis of their experience, as happens in some ILR licence awards, thus preventing newcomers obtaining a licence".</p>	
<p>The current limit should be raised</p>	<p>A confidential respondent suggested that "a relaxation in the ownership rules might be appropriate in the future ".</p> <p>Bay FM stated that</p>	<p>We recognise some of the concerns raised by groups which would like to see the current one station per organisation limit raised. However, we agree with those urging the limit not</p>

legislation should allow community radio licensees to own multiple community radio stations.

British Forces Broadcasting Service (BFBS) explained the additional "extra layer of unnecessary and time consuming paperwork" it has encountered through being involved in multiple independent stations each serving a very similar audience but at differing locations. The organisation suggested that the limit should be looked at on a case-by-case basis.

BRFM in Kent suggested that multiple station ownership could provide opportunities for joint funding bids.

The Christian Broadcasting Council suggested that the limit should be reconsidered for community of interest stations, suggesting that for such groups (including religious organisations) a limit of 12 stations would be more appropriate".

Community Media Northern Ireland suggested that if multiple ownership were to be allowed "local community input must be retained...".

Cross Rythms Radio (Stoke On Trent) suggested that: where a group was involved in more than one community radio service: "A degree of ownership, whether total or part, would give more confidence...".

stay the same particularly because of concerns about weakening local ownership and control. We note that a high degree of collaboration (up to and including joint funding bids and joint board representation) are already possible under the current legislation.

The Highlands and Islands Community Broadcasting Federation wrote: "While there should be a general presumption against multiple ownership, we feel that Ofcom should have the flexibility to take account of circumstances where there are obvious benefits which outweigh the general presumption to permit various forms of shared ownership. This should encompass looser forms of association and collaboration than direct ownership".

Mr Mike Gilmour took the view that "this rule should be amended providing the body corporate can satisfy Ofcom that the reasons for holding more than one community radio licence are legitimate".

Mr Neil Kenlock agreed strongly with the proposal.

Ofcom's Advisory Committee for Scotland suggested that "a pragmatic modification to this rule is needed".

Ofcom's Advisory Committee for Wales took the view that a relaxation of ownership limits would mean that stations could link together, sharing resources and aiding viability as a result.

Penistone Radio stated: "This rule should be relaxed, not removed; the applicants should have to satisfy Ofcom that it would not prejudice the delivery of the service".

Preston FM stated: "Our

experience shows that there is much to be gained where community radio stations work in co-operation, and we therefore support the suggestion that this may, in some cases, result in a body corporate holding more than one community radio licence".

Pure Innovations wrote: "We agree with Ofcom that a body should be able to hold more than one community radio licence. The regulator has rules in place to ensure the 'community benefit' or social gain of the proposed service, so it should not be an issue who holds the licence".

Radio Fish observed that it would like to broadcast to a number of stations each serving small towns and villages in the East Suffolk area. Such an approach would the group suggested help ensure sufficient volunteer resources would be available to operate the service.

RCT Community Radio wrote: "This is one of the most important aspects of the consultation and the proposal made is to be welcomed greatly. For sustainability of the sector the ability of a local federation of stations to come together with common aims and goals and sharing central costs is the only way forward...".

Sound Radio suggested that the current ownership restrictions might be relaxed on a case-by-case

	<p>basis, "given a robust social gain test there should in principle not be a problem...".</p> <p>Takeover Radio Children's Trust pointed to the dissemination of experience and cost savings which could come from multiple station ownership, concluding: "there should be no limit on the number of stations that can be operated by one incorporated organisation, apart from the selection criteria laid down by Ofcom".</p> <p>Walsall FM Community Radio suggested that multiple ownership could help failing community radio stations: "if you had two or three community radio stations in close proximity to each other two of them failing the other was growing then it would make sense if the successful station could take in the other two".</p>	
<p>Commercial ownership of community radio services</p>	<p>Laser Broadcasting suggested that existing commercial radio stations should be allowed to take ownership of community radio services operating within their TSAs. This would, the company suggested provide useful economies of scale, management expertise etc.</p>	<p>We reject the notion of a return to the "mother hen and chicks" approach to community radio licensing. Community Radio has been established as a separate sector of radio broadcasting, clearly distinct from commercial radio. It would therefore be inappropriate for control or ownership of a community radio service to pass to the commercial sector.</p>
<p>Transition to 'for profit' operating model</p>	<p>The Bay FM (Poole) proposed allowing community services to convert to a 'for profit' model of operation where such a change "would not</p>	<p>We reject this proposal. Community Radio has been established as a separate sector of radio broadcasting, clearly distinct from commercial</p>

<p>unduly affect existing commercial stations".</p>		<p>radio. Not-for-profit operation is a core requirement of such services and one which we consider essential in ensuring the provision of programming and other services remain focused on the needs of the target community rather than primarily on the interests of advertisers and shareholders.</p>
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6.13: Ofcom needs to ensure that community radio services operate within the terms of the relevant legislation. The process of feedback has not yet begun, as no station has been on-air long enough. It is not therefore possible to assess the advantages or shortcomings of the existing system. For this reason, Ofcom is not proposing specific alterations to the level of feedback required at this time.

A7.48 The table below sets out various comments received in relation to the above question. Where appropriate a response by Ofcom is also provided. Further discussion of the issues is set out in Section 6, above.

Issue raised	Comments	Ofcom's response
<p>Agreement with this proposal</p>	<p>Community Media Northern Ireland, IÚR FM, Ofcom's Community Radio Fund Panel, Oldham Community Radio, Radio Fish, Radio Regen, Raidió Fáilte, and RCT Community Radio all simply stated their agreement with this proposal.</p> <p>The RadioCentre stated that it did not object to this proposal.</p>	
<p>More accountability needed</p>	<p>A confidential respondent suggested that as some stations (former pilot services) have now been on air for five years, feedback from volunteers and stations should be increased at this time.</p> <p>Another confidential respondent suggested that Ofcom should, in the near</p>	<p>Given that the assessment of community radio licensees has only just begun, we do not believe that there is yet sufficient evidence to support this view.</p>

	<p>future "produce a set of performance criteria by which community stations are to be judged and their output monitored".</p> <p>Mr S. Saul suggested that: "Ofcom should carry out more rigorous checks to ensure Community stations adhere to the terms of their licence, and not become a mini-main stream station via the back door".</p>	
<p>Accountability requirements should be reduced</p>	<p>Takeover Children's Media Trust wrote: "The reporting procedure should be reduced to take away some of the pressure on the stations, each station should produce an annual report and this should be sent to Ofcom, if Ofcom require any additional information this can then be requested".</p> <p>Vixen Broadcasting Limited stated: "The feedback process should be simplified. Community radio is largely staffed by volunteers who have paid daytime jobs to do, and have a difficult enough time running a Community radio service, without having to compile lengthy annual reports". The group also pointed out that "this is another restriction that ILR/INR, with bigger resources to not have".</p>	<p>Given that the assessment of community radio licensees has only just begun, we do not believe that there is yet sufficient evidence to support this view.</p>
<p>Move from measuring inputs to measuring outputs</p>	<p>The CMA was of the view that Ofcom should move "from measuring the "inputs" into community radio, for example sources of income, to measuring the outputs achieved – operational performance, community benefit and</p>	<p>We do not believe that it is yet time to make such changes; we believe that the current approach should be properly evaluated first.</p>

	community impact". The organisation added that, in its view, "further work is needed to develop the future monitoring regime for community radio."	
Difficulty of obtaining feedback	<p>Mr James H. Robinson observed that it might be difficult to obtain much feedback at this stage.</p> <p>Mr Mike Gilmour felt that stations need "to experience the initial learning process of establishing, manning and operating the station satisfactorily" before providing feedback.</p>	We recognise that there will inevitably be something of a 'learning-curve' as stations gradually become established, and as practical community involvement develops.
Importance of monitoring process	<p>Preston FM stated: "We are keen to see Ofcom begin its work on gathering and analysing feedback on the performance of community radio stations. We feel that it is very important to ensure that this process – examining the outputs of stations in terms of programming, social gain and community impact evaluation – is used to inform future licensing decisions, and that licensees are held to account to ensure that they deliver on the proposals by which they obtain licenses".</p>	We agree that the monitoring process is important and will continue to develop this in collaboration with stations and the sector as a whole.
Difficulty of providing appropriate feedback	<p>Pure Innovations took the view that "Ofcom does need to urgently review the feedback process; as the current system actually discriminates against a successful community radio station", adding that "In feeding back to Ofcom it is difficult to know what to state and what to leave out, as our programming has consistently met our</p>	We have received very little in the way of complaint about the level and nature of the feedback required. We do not consider that the current level of feedback required is excessive, but keep this under regular review.

	key commitments ". The group felt that the financial information required by Ofcom "in its annual feedback is difficult to compile, even for professionals. The reporting period for Ofcom and the radio side of the business does not lend itself to standard accountancy periods, which has caused further problems".	
Obligation to provide information	Roger Dury Soundwork suggested that it is important for community radio stations to realise that they have "a duty and a contract to deliver" feedback and that the information gathered "should be used to shape the way the sector operates and shares and learns".	Providing feedback to Ofcom is a requirement for all community radio licensees. However, we will always try to keep the amount of feedback required to a minimum commensurate with the licensing requirements of the sector.
Ofcom should assist stations in providing information	Sound Radio suggested that: "It may be worth considering a different approach that involves a closer relationship between Ofcom, or a third party agency, to send officers to assist in the collection of data in the field".	Members of our Community Radio Team regularly attend community radio events and speak to stations on an individual basis providing help and advice concerning licensing issues. They will continue to do this in future.

6.14: Community radio licences should be eligible to be extended for up to a further five-year period, subject to meeting specified requirements, on one occasion only. The period of extension for some licences may be less than five years, should that be necessary to achieve a common end-date for all analogue radio services.*

A7.49 The table below sets out various comments received in relation to the above question. Where appropriate a response by Ofcom is also provided. Further discussion of the issues is set out in Section 6, above.

Issue raised	Comments	Ofcom's response
Agreement with this proposal	A confidential respondent felt that automatic renewal should be possible,	

particularly in light of the substantial investments made by station operators.

BRFM (Kent) wrote: "We agree this should be the case and if a community station has fulfilled its commitments and has done well there should be an extension facility".

Castledown Radio stated: "We wish to see renewal of licences allowed, providing the service has been well provided during its existing licence period."

Mr Gary Seed broadly agreed with this proposal but suggested that the duration of any extension should be between three and five years.

Mr James H. Robinson expressed his agreement with this proposal.

Mr Mike Gilmour agreed that licences should be extended for a further five years on one occasion only subject to meeting specific licensing criteria.

A confidential respondent felt that longer licences would be justified where stations had demonstrated a true commitment to unique programming. He gave the output of Resonance FM (London) as an example of such a service.

Ofcom's Advisory Committee for Scotland stressed the importance of ensuring compliance with licence conditions (Key Commitments etc.) when considering individual

	<p>licence extensions. The committee noted: "it will be difficult in most cases to justify removing a successful service after just 5 years and would lead to an understandable outcry from disenfranchised listeners".</p> <p>Ofcom's Community Radio Fund Panel also agreed with this proposal, as did Radio Verulam, whilst the RadioCentre stated that it did not object to it.</p> <p>Sound Radio stated that it was in broad agreement with this proposal with the proviso that there should be no material change to the service involved.</p>	
<p>Licence duration should be the same as for commercial stations</p>	<p>The Christian Broadcasting Council suggested that: "Community radio licences should have a similar licence length to an analogue commercial licence with an expiry date of 31 December 2015. Any new licences issued for a re-allocated FM Band should be for 10-year periods with Ofcom having the right to give at least two years notice if the spectrum is required for other uses".</p> <p>Estuary Media wrote: "We believe that formats, licence durations and re-licensing plans in the face of changes to spectrum should be aligned with those of other radio services".</p> <p>Vixen Broadcasting agreed with the proposal in principle, but suggested that an initial 12 year</p>	<p>Given wider developments in the development of broadcast radio it would be impractical at this time to extend licenses to such an extent.</p>

	<p>licence period should be granted, to bring licence duration in line with commercial stations.</p>	
<p>Longer extension of licences should be possible</p>	<p>Ofcom's Advisory Committee for Wales stated: "members believe that if a service can be sustained for ten years, then there should be the potential to extend it beyond that period".</p> <p>Oldham Community Radio felt that it was wrong to limit possible licence extensions to "one occasion only".</p> <p>Pure Innovations wrote: "We welcome Ofcom's suggestion that a community radio station could have their licence extended for a further five year period, but we ask the question why this may happen only once?"</p> <p>Radio Fish also questioned why there should only be the option of a single licence renewal, suggesting that stations should have a longer life.</p> <p>Roger Dury Soundwork noted that community radio licences in the Republic Of Ireland are now issued for a period of ten years in one go.</p>	<p>Given wider developments in the development of broadcast radio it would be impractical at this time to extend licenses to such an extent.</p>
<p>Options for potential new licensees should also be considered</p>	<p>The Highlands and Islands Community Broadcasting Federation suggested that: "Ofcom should also be able to have regard to the aspirant applicants in situations where it judges the incumbent to have marginal or poor performance against the criteria on which the</p>	<p>One of the reasons for suggesting a five year extension to existing licensees was because we recognise that there remains unmet demand for community radio licences, some of it in areas where at present it would not be possible to licence additional stations</p>

	<p>licence was originally awarded".</p> <p>Ofcom's Advisory committee for Scotland suggested that Ofcom might consider seeking "expressions of interest from the locality where a licence is due for renewal and invite sitting tenants to justify extending their licence".</p> <p>Penistone Radio said that a licence extension should only be granted "on the proviso no other group wants to compete for the licence in the same area, perhaps a notification that letter of intent should be submitted by a certain date to force an application process".</p>	<p>because of frequency constraints.</p>
<p>Licences should be renewable for the duration of analogue spectrum availability</p>	<p>Bay FM suggested Ofcom should ensure that: "an analogue Community Radio Licence is renewable for the duration of available analogue spectrum".</p> <p>IÚR FM stated: "Community radio projects should have to opportunity for continual renewals for as long as the analogue platform remains".</p> <p>Oldham Community Radio stated: "There must also be the opportunity for Community Radio stations to continue on an appropriate 'media' in the event of a switch off of analogue services".</p> <p>Raidió Fáilte suggested that: "Community radio projects should have the option of continual licence renewal for as long as the</p>	<p>It is not possible to make such a recommendation before having reached a conclusion about the possibility of analogue switch-off and a timescale within which this might be likely to occur.</p>

<p>Licences transferable to digital platform</p>	<p>analogue platform is in place (and for as long as they continue to address and meet the social gain criteria)".</p> <p>A confidential respondent wrote: "we believe that there should be positive discrimination which will allow community stations to broadcast on a DAB multiplex within their own areas as soon as possible".</p> <p>Bay FM also suggested that: Ofcom should ensure "that Community Radio has access to digital radio spectrum"...."We believe it to be the responsibility of Ofcom to put in place a regulatory framework which ensures that Community Radio has affordable access to digital spectrum. Importantly, Community Radio should not be limited in transmission quality and coverage by the use of spectrum with inferior qualities to that of commercial radio".</p> <p>Community Media Northern Ireland and IÚR FM were both of the opinion that: "There should be provisions made to incorporate community media on digital platforms when the switch-over occurs".</p> <p>Preston FM stated: "any decisions relating to migration away from analogue platforms must be taken with due regard of the technical, financial and human-resource capacity of small community radio</p>	<p>This is an issue which we expect to be considering further over the coming months.</p>
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	<p>broadcasters".</p> <p>Raidió Fáilte urged that: "There should be provision made to incorporate community media on digital platforms when the switch-over occurs. In any case there should be no break in the provision of community radio services – community radio is a necessary part of the cohesive fabric of communities".</p>	
<p>No need for total analogue switch-off</p>	<p>The Community Media Association wrote: "There is an assumption here that there will be a total switch-off of FM and AM at some fairly foreseeable date". The organisation added: "While we would welcome automatic renewal (based on evidence of performance), we cannot agree that this is should be a "one-off" exercise only within the context of when the switch-off date might be".</p> <p>Community Media Northern Ireland wrote: "Community radio projects should have to opportunity for continual renewals for as long as the analogue platform remains".</p> <p>Radio Regen wrote that it "would like to see community radio exempted from the main analogue switch off. We equate the delivery of social gain with the tackling of social disadvantage which requires us to prioritise the needs of the most needy in our community. Whether they are newly arrived immigrants, Incapacity Benefit claimants or</p>	<p>This is an issue which we expect to be considering further over the coming months.</p>

	<p>isolated old people they are, almost by definition, going to be late adopters of the new technologies that would enable them to receive our programming by digital means".</p> <p>Takeover Radio Children's trust wrote: "It is also important to consider keeping community radio on the analogue spectrum; this would be a very good use and would keep the costs within community radios reach."</p> <p>Voice of the Listener and Viewer and Wester Ross Radio Limited both made comments urging the continuance of FM spectrum availability for small-scale and community services.</p>	
<p>Investment and long-term planning</p>	<p>Radio Fyneside wrote: "Any station with a serious intent and a substantial commitment to providing a service of real community benefit will inevitably be involved in fund-raising to support the level of investment needed to deliver Ofcom's requirements in a meaningful fashion. It s hard to understand how this could be envisaged as a reasonable investment for a five year lifetime. Equally, stations will only be coming to maturity at the end of a five year period. The current lack of provision for licence renewal is indefensibly wasteful of that achievement. Again it is hard to see how the delivery of any real community gain is possible within this situation".</p>	<p>We recognise these concerns, but feel that the current proposals which would provide a successful community radio service with a minimum ten year life are adequate.</p>

	<p>Raidió Fáilte stressed the importance of long-term planning, urging that: "All uncertainty around this issue should be addressed as soon as possible to allow community radio stations to plan for the longer term. For example, many small community radio stations will require capital investment (in terms of premises, equipment etc) if they are to remain viable and continue to meet the growing needs of their communities".</p> <p>RCT Community Radio posed the question: "Does this mean that it is not envisaged that the lifetime of any single community station will exceed 10 years?", adding: "The notion of licence periods and lifespan of a station (as a community project) is vital in terms of business plan/financial planning".</p> <p>Takeover Radio Children's Trust wrote: "Ensuring there is an additional five years for community radio is obviously a welcome development, however a longer and more permanent solution should be sort to ensure the continuation of the community sector".</p>	
<p>Legal position</p>	<p>Radio Regen suggested that Ofcom "legal opinion equates to a bar on renewal (requiring new legislation to amend) or a legal 'void' that the regulator could reasonably fill with suitable guidelines".</p>	<p>We are recommending to Government that community radio licences should be eligible to be extended for up to a further five-year period. As section 262 of the Communications Act 2003 makes provision for the Secretary of State to make</p>

an order to apply and/or modify the 2003 Act or the 1990 or 1996 Broadcasting Acts to community radio, any amendments to these Acts would need to be carried out by the DCMS.

6.15: There may be a case for removing all of the current restrictions relating to the economic impact of licensing community radio services. Ofcom will be conducting further assessment in this area, with a view to bringing forward proposals for consultation later in the year as part of our review for the Secretary of State. In the meantime we welcome views on these matters.*

A7.50 The table below sets out various comments received in relation to the above question. Where appropriate a response by Ofcom is also provided. Further discussion of the issues is set out in Section 6, above.

Issue raised	Comments	Ofcom's response
Welcome review of economic impact restrictions	Castledown Radio and Vixen Broadcasting Limited both stated their support for a review, whilst A confidential respondent wrote: "I am hugely in favour of proposal 6.15 as I think it will provide genuine choice for listeners and I even suspect it will scare ILR stations into becoming more innovative in their music programmes to compete".	
Too early to make changes	Mr Mike Gilmour suggested that consultation over this issue might be more usefully examined "if consultation was held over until community services became better established and indications are that the 50% rule may be breached by a number of stations".	There is no consensus in relation to this issue. Coupled with a lack of available evidence, we conclude that it is therefore too early to recommend changes at this time.
Restrictions should be maintained	PPL and VPL wrote: "Ofcom has identified that local commercial radio is, in many areas, struggling to remain commercially	There is no consensus in relation to this issue. Coupled with a lack of available evidence, we conclude that it is

	<p>viable. Ofcom should retain the financing distinctions between community radio and commercial radio, both to preserve their separate characteristics and to maintain the commercial viability of the smaller commercial stations. Community radio should not, and does not need to thrive at the expense of commercial radio."</p> <p>The RadioCentre concluded: "We are not aware that any such case has been convincingly made on the basis of any evidence ".</p> <p>Radio North Angus stated: "We would be opposed to any change to the Community Radio Order pertaining to economic impact...".</p>	<p>therefore too early to recommend changes at this time.</p>
<p>Restrictions should be tightened</p>	<p>Mr Steve Jenner stated his belief that "there should be no slackening of commercial controls over community licence holders otherwise many will become "back - door" commercial operations". He suggested that if the legislation were to be changed "then it should be amended in such a way that small stations of less than 100 000 MCA should not have to face a community licence on "their patch" at all ".</p>	<p>There is no consensus in relation to this issue. Coupled with a lack of available evidence, we conclude that it is therefore too early to recommend changes at this time.</p>
<p>Economic restrictions need to take into account nature of community service involved</p>	<p>The Christian Broadcasting Council supported the concept of economic restrictions remaining for stations serving a geographical "community of place" if required to protect the</p>	<p>There is no consensus in relation to this issue. Coupled with a lack of available evidence, we conclude that it is therefore too early to recommend changes at this time.</p>

	<p>interests of existing small-scale commercial stations. However, the organisation suggested that "there maybe a case for the removal of restrictions related to economic impact where a community station will have a significantly different format to those of existing commercial stations e.g. Christian music or an arts-based station".</p>	
<p>Removal of specific protections for small-scale commercial stations</p>	<p>A confidential respondent wrote: "We believe that the current restrictions should be removed. As a station we will be no real threat to the commercial stations operating in our area. If anything we believe that we can add to the commercial attraction of radio as an advertising medium."</p> <p>The community Media Association called for the current restrictions preventing Ofcom from awarding licences in some areas and not allowing on-air commercial activities in others should be scrapped.</p> <p>Ofcom's Community Radio Fund Panel wrote that it "believes that restrictions 'protecting' commercial radio services from competition from community radio should be dropped or modified. If Ofcom is proposing to reduce the regulation of commercial radio services, then it should also support the removal of the protective measures enshrined in the Community Radio Order".</p>	<p>There is no consensus in relation to this issue. Coupled with a lack of available evidence, we conclude that it is therefore too early to recommend changes at this time.</p>

	<p>Tameside Radio wrote: "The protectionist view, in restricting the ability of some community radio groups from obtaining any income from advertising revenue, should cease. We believe that it is not in the long term benefit of radio for inefficient and underperforming commercial radio stations to be protected from the community they are meant to be entertaining and informing. We believe that relaxing of regulations, included elsewhere in Ofcom's consultation document, that control the activities of commercial radio is significant compensation. No other commercial enterprise is protected in this way and we would urge Ofcom to free the community radio groups that suffer from this situation."</p>	
<p>Reduce current protections for small-scale commercial stations</p>	<p>The Highlands and Islands Community Broadcasting Federation took the view that "a wholesale removal of the current restrictions would be advisable ". Instead, the organisation suggested that "there should remain in place mechanisms to protect the already limited viability for these very small scale local radio licensees, but perhaps with a lower threshold than in current legislation (for example with TSA <25,000 and = cash turnover <=£100k), and operating for social gain, not for profit".</p> <p>Ofcom's Advisory Committee for Scotland suggested that there is "a good case for the</p>	<p>There is no consensus in relation to this issue. Coupled with a lack of available evidence, we conclude that it is therefore too early to recommend changes at this time.</p>

	<p>suggestion that some of the protections for small scale ILR may no longer be appropriate. However, if the formal restrictions were lifted they would need to be replaced by discretionary powers. It would be unfortunate if some small scale 'commercial' licensees that only just survive (in Scotland examples might be Nevis Radio, Two Lochs, Isles FM etc) were to be undermined by a new CR service."</p>	
<p>Equal consideration for both community services and commercial stations</p>	<p>The Community Media Association wrote: "Either there should be economic impact assessments when considering new licences for both community and commercial stations, or that there should be no economic impact assessments at all. We would favour the latter, although we would want a system in place to allow any current operators to know that licences were going to be issued in their areas".</p> <p>Radio Fish stated: "We do not understand why commercial stations are treated differently - after all they are just concerned with making a profit - often for people who have no connection with the community served. Remove all restrictions: they should be able to compete - if not they can go away".</p> <p>Radio Regen noted that: "This is probably the most contentious area of community radio regulation for both our sector and our</p>	<p>There is no consensus in relation to this issue. Coupled with a lack of available evidence, we conclude that it is therefore too early to recommend changes at this time.</p>

	<p>commercial colleagues. At a small scale local level both sectors are faced with extremely challenging business models but only one sector – the commercial- has received any regulatory protection."</p> <p>Radio Verulam wrote: "We believe that the current "economic impact" restrictions are unduly biased towards commercial radio operators. Although an assessment is made by OFCOM when a new Community service is proposed in an area with an existing commercial operator, no such assessment is made when a new commercial operator is proposed in an area where there is an existing Community station. Either an assessment should be made under both circumstances or such assessments should be dropped altogether. We would favour the latter option."</p>	
<p>Removal of general duty to have regard to economic impact</p>	<p>Ofcom's Community Radio Fund Panel wrote that it "supports the removal of the requirement for Ofcom to consider the potential economic impact of licensing a community radio services on any commercial radio and community radio services".</p> <p>Oldham Community Radio took the view that: "All these restrictions should be removed. Any radio station willing to be classed as a community radio station and that is willing to comply with and</p>	<p>There is no consensus in relation to this issue. Coupled with a lack of available evidence, we conclude that it is therefore too early to recommend changes at this time.</p>

be regulated as a 'community radio station' should be able to 'enjoy the benefits' of 'public funding etc'".

Penistone Radio stated:
"In no other industry does this nanny like protection of local commercial radio happen, local commercial radio should not be protected any more than the local shop keeper is protected from the national supermarket, more so if the local commercial radio station is part of a group."

Pure Innovations wrote:
"We recommend the removal on all limits of funding as it is the easiest and most honest way forward ".

Radio Fyneside concluded: "The removal of the current restrictions on economic impact in the licensing procedure would be the simplest and fairest way of letting stations find their level of sustainability and work to earn the level of community support that will underwrite that sustainability".

Roger Dury Soundwork took the view that the current financial restrictions should be removed "but any impact study should be a fair assessment, any licence holder having the same right to provide a local service ".

Walsall FM Community Radio felt that community radio services should be able to be funded up to 100% from commercial

	sources, suggesting that: "the lifting of the 50% ceiling would give stations a fighting chance to survive as some station will and in some cases have folded".	
Community Radio Fund is too small	Community Media Northern Ireland, IÚR FM and Raidió Fáilte wrote: "Many stations are finding it more and more difficult to secure grant funding as sources dry up. The community radio fund is now not sufficient to spread itself adequately over an ever-increasing number of community stations".	It is up to DCMS to decide the scale of the Community Radio Fund.
Commercial restrictions unfair to community radio	Community Media Northern Ireland, IÚR FM and Raidió Fáilte recognised that community services need to be regulated to ensure they remain distinct from commercial radio. However, the groups also commented that the current requirement: "Limiting advertising revenue protects the interests of commercial stations, which is unfair to community radio".	We apply the current restrictions as required by the terms of the Community Radio Order.
Current restrictions applied too widely	Mr Stuart Bell provided an example of a commercial station which is protected by the current regulation because each of its two transmitters is categorised as a single licence.	We apply the current restrictions as required by the terms of the Community Radio Order.
Treat spot-advertising and sponsorship separately	Sound Radio wrote: "We would broadly support the proposition that on air advertising and sponsorship be considered separately to provide for a more flexible regime under which the broad church of	There is no consensus in relation to this issue. Coupled with a lack of available evidence, we conclude that it is therefore too early to recommend changes at this time.

	community stations might operate".	
Refer matter to competition commission	IUR FM questioned the legal basis of the current restrictions, writing: "We would also question how the existing legislation and regulations are compatible with UK and European Union legislation of monopolies and anti-competitive practices. We would call on Ofcom to refer this matter to the Competition Commission".	It is a matter for Government to make changes to community radio legislation. We will continue to examine the issues surrounding economic impact, and will discuss with DCMS and other interested parties options for future possible changes in this area.

6.16: The coverage of community radio services will still be restricted by frequency availability constraints, and Ofcom will continue to need to weigh up the relative merits of alternative licensees, for example where it might be possible to licence two small stations or only a single larger service, when deciding on the best use of the available spectrum resources.

A7.51 The table below sets out various comments received in relation to the above question. Where appropriate a response by Ofcom is also provided. Further discussion of the issues is set out in Section 6, above.

Issue raised	Comments	Ofcom's response
Increase coverage of community radio services	<p>Bay FM wrote that Ofcom should: "enable Community Radio to be received by those within the defined community yet which currently fall outside the reception areas due to limited transmitter power".</p> <p>Castledown Radio stated that: "We would like to see a relaxation of the 5 kilometre rule and allow increase in power in order to effectively cover a sensible (and reasoned) wider area".</p> <p>Pure Innovations wrote: "We are currently looking at an expensive relocation of our transmitter to try and improve the signal strength in all parts of our target community. This action</p>	<p>Where coverage of a particular community radio service is limited to less than a five kilometre radius, this is because of local frequency restriction. In rural areas we have sometimes been able to provide frequency resources which provide coverage of more than a five kilometre radius.</p>

	<p>would not be necessary if Ofcom would allow our request to increase the power of our signal and we are disappointed that this consultation does not seek to address the issue of signal strength as this is a key area holding back the growth of community radio".</p>	
<p>A flexible approach is needed</p>	<p>A confidential respondent stated: "we are not convinced that a sudden switch-over from analogue to digital broadcasting is desirable or practical ...".</p> <p>BRFM suggested that Ofcom should take into account the local situation when deciding to award either a number of small licences or one larger one.</p> <p>Community Media Northern Ireland, IÚR FM and Raidió Fáilte, each took the view that current restrictions are not always appropriate in more rural areas. It suggested that "Signal strength should be revised, perhaps looking at it on a case-by-case basis, with 5km the absolute minimum and this be retrospectively applied to current licence holders ".</p> <p>Sound Radio took the view that: "We believe where at all possible a flexible approach should be taken by Ofcom in the constraint placed on a services potential coverage area ".</p>	<p>In light of frequency resource availability Ofcom does try to take a flexible approach to community radio planning. It may be possible that this situation could possibly improve in future should some other broadcast services be moved to digital broadcasting platforms.</p>
<p>Make more analogue spectrum available for community radio and other small-scale broadcasters in future</p>	<p>Canalside Community Radio argued that: "BBC and Commercial Radio services need to be shifted a.s.a.p. to digital format only and analogue</p>	<p>Broadcast spectrum is a finite resource which is heavily used. Providing more frequency resources for community radio would inevitably be detrimental to</p>

spectrums opened up solely & completely for community radio".

The Christian Broadcasting Council that in future, following a shift of other services to digital platforms, the "FM Band should then be re-organised in order to allow for Small FM Commercial Stations (under 300 watts erp) to continue broadcasting on FM and for licensed low-powered FM broadcasting by other small stations – Geographical Community Stations, Community-of-Interest Community Stations, Educational / School / Hospital Radio and RSL broadcasts".

The Community Media Association observed: "We agree that this will continue to be necessary, unless or until freed up FM spectrum is made available for community radio, so that Ofcom can achieve one of its strategic aims: "Community stations for any community that wants and can sustain such a service."

Estuary Media agreed with this proposal: "where frequency restrictions remain". The group noted that "Radio spectrum and regulation decisions must logically be made on a holistic basis".

The Highlands and Islands Community Broadcasting Federation suggested that there is "a good argument for maintaining for the availability of VHF FM Band II for local radio even

the operations of other broadcasters, especially in urban conurbations.

as it is cleared of service becoming digital-only. The would free spectrum for continued FM-only local and small scale operators, particularly in remote and sparse areas badly served by DAB".

Radio Regen noted that it "would always prefer to see more stations".

Sound Radio took the view that as community radio becomes more established, "there maybe a different view of the sector and with it a re-assessment of its relative place in the spectrum scheme of things ".

The Student Radio Association suggested that: "as VHF Band II (FM) spectrum is released by commercial and BBC stations moving to digital, it is made available for an increased number of community and long term LPFM RSL stations".

The Voice of the Listener and Viewer urged greater support for the community radio sector and warned of the potential damage which could be caused to it through "the potential harmful impact of moves to hasten analogue switch-off and the auctioning of spectrum ".

Wester Ross Community Radio urged that FM frequencies should continue to be made available for small-scale and community services.

Should not discriminate against commercial

A confidential respondent stated that it "would query

We do not propose to discriminate against

<p>operators</p>	<p>any solution for this sector which delivers FM spectrum albeit at low power to relatively unpopular stations while simultaneously planning to withdraw it from ILR stations with substantial and appreciative audiences".</p>	<p>commercial broadcasters. We recognise that the concerns of community radio service and of some small-scale commercial stations can often be very similar in this area.</p>
<p>Preference for larger stations</p>	<p>Mr James H. Robinson wrote that in his view "It would not make sense to have two stations where one would be sufficient for the area concerned".</p> <p>Mr Mike Gilmour wrote: "As the constraint is the restriction of frequency availability especially in urban areas where the geographical spread between applicants is small Ofcom could encourage combining groups to share a common establishment under an agreed community sharing scheme."</p> <p>Radio Fynside observed that: "The suggestion of awarding two small-coverage licenses as opposed to one larger one would obstruct attempts - such as ours - to use community radio as a means to bring several dispersed communities into a single community of interest".</p>	<p>We judge individual community radio applications on their merits. In areas where frequency scarcity results in competition, our Radio Licensing Committee will continue to make awards based on an assessment of which application or applications best meet the requirements of the Community Radio Order.</p>
<p>Preference for groups serving a wide range cross-section of target community</p>	<p>Oldham Community Radio took the view that: "The benefit of community radio should be made available to as wide a range of people as possible. Services seeking to meet the needs of several 'communities' should be given preference over</p>	<p>We judge individual community radio applications on their merits. In areas where frequency scarcity results in competition, our Radio Licensing Committee will continue to make awards based on an assessment of which application or</p>

	services seeking to meet the need of one community...".	applications best meet the requirements of the Community Radio Order.
Preference for community services broadcasting to geographical communities of place	Ofcom's Community Radio Fund Panel expressed a preference for community services with a specific geographical target community. It suggested that services for 'communities of interest', such as those focused on a particular age group or faith community should be provided with nation coverage capacity. The Panel also noted that current frequency allocations for the community radio sector are insufficient.	We judge individual community radio applications on their merits. In areas where frequency scarcity results in competition, our Radio Licensing Committee will continue to make awards based on an assessment of which application or applications best meet the requirements of the Community Radio Order.
Equal access to spectrum	Radio Fish wrote: "Community and commercial licence applicants should go in the same pot. In Ipswich the commercial licence has been allowed to cover an area that could properly be covered by 5-6 community stations, and it has been given the most attractive FM bandwidth - why?"	At present, we allocate frequencies for community radio which are not considered viable for commercial use. We do not propose to change this policy at present.
Re-plan FM (VHF BandII)	Vixen Broadcasting Limited suggested "A complete re-shuffle of existing services on VHF Band 2, as per the Governments intention a few years ago, to make more efficient use of the spectrum", plus the use of the band edge frequencies (87.5 and 108 MHz).	We are not convinced that such a re-planning exercise would be an efficient use of resources. We cannot use the band edge frequencies for broadcasting because to do so could cause interference to adjacent non-broadcast spectrum users.

A7.52 Note: We believe that suggestions marked with an asterisk would require new legislation. [The asterisk attached to 6.10, volunteer time, in the previous *The Future of Radio* consultation was in error. We do not believe that a legislative change would be required to accommodate this possible change.]

Other issues

A7.53 A number of respondents commented on radio-related issues other than the specific consultation proposals; all these comments have been duly noted. Some of the more substantial issues have been addressed below.

Illegal broadcasting

Issue raised	Comments	Ofcom's response
Tackling illegal broadcasting	<p>Neil Kenlock said "We believe that if Ofcom is serious about addressing the issue of illegal broadcasting in the UK it must understand that the pirate market will not be satiated by the medium of community radio, and that an effective solution will in all likelihood necessitate Ofcom being flexible enough to find a very different kind of solution than has been tried before."</p> <p>London Turkish Radio suggested the addition of the following: "Ofcom will do everything in its power to help and support all the licencees against unfair competition and abuse by pirate radio stations and use its discretion and powers to allow the licencee to fairly compete with the pirates if it does not or cannot provide this protection. Sometimes when necessary to increase the power or allow the licensee to broadcast on the same wavelength as the pirates (if it is different from their own) so that the pirates do not get the upper hand."</p> <p>Northern Media Group commented that "raiding illegal stations is NO answer. They simply go 'on air' again within 24 hours if not less... Ofcom should advise potential advertisers that they must not use Pirate Stations. Notice of this should be broadcast widely</p>	As noted in Section 5 above, Ofcom is continually looking at ways of making enforcement policy more effective.

	on Legal Commercial Stations and by notices in the local weekly newspapers where Pirate Stations exist.”	
Simplification of application process	One confidential respondent stated that “The hoops one has to jump through to acquire a licence is unrealistic, without the money, lawyers, PR people and control the mainstream commercial ‘big’ radio groups have to help them, it’s pretty much a dream that we realistically have no chance of achieving.”	As set out in Section 6 above, our community radio proposals aim to simplify the licence application procedure.
Need for wider consultation	One confidential respondent suggested that “Currently no pirate broadcasters or their listeners know this consultation is taking place, how can the future of radio be decided without sourcing opinions from the actual people who are likely to be involved in radio in the future?”	The consultation was widely publicised and made available on the Ofcom website. Additionally Ofcom has conducted research which involved interviews with former and current illegal broadcasters. However, the nature of illegal broadcasting makes it difficult to formally engage with such groups.

Nations

Issue raised	Comments	Ofcom’s response
National service for Scotland	Ofcom’s Advisory Committee for Scotland asked “whether the time may not be fast approaching for an independent national Scottish radio service. While there are still some significant geographical gaps in DAB digital coverage which will need to be addressed, there is no longer a technical barrier to such a service if a provider wished to mount a digital challenge to the BBC.”	A national service for Scotland could be currently provided by an operator taking space on all of the existing local DAB multiplexes in Scotland. In addition, our new proposals for AM radio in Scotland could allow for the creation of a national Scottish station for most of the day.
DAB coverage	Ofcom’s Advisory Committee for Scotland “would like to put on record our concern	Ofcom has allocated spectrum in VHF Band III to DAB potentially to facilitate

	<p>that large parts of rural Scotland are still without DAB and urge the parties involved to work together to redress the situation.”</p> <p>The BBC Audience Council for Wales called on Ofcom to “do all within its power to maximise coverage of the BBC’s services on DAB in Wales...It should also lobby the government to act to improve access in those areas which are not within its competencies to act to improve the situation.”</p>	<p>approximately county-sized stations for every part of the UK. However, it has been noted that there may be some small areas which remain un-served by DAB. Multiplexes for Northeast Wales and West Cheshire, and Mid & West Wales have been advertised by Ofcom. As previously noted, some frequencies are currently used for analogue television in the Republic of Ireland and will not become available for use in the UK until this is switched off.</p>
Definition of “local”	Ofcom’s Advisory Committee for Wales suggested a review of the definition of “local” in the context of Wales, to possibly include “all-Wales” news, such as National Assembly elections.	Our revised localness guidance includes our view that outside peak times, stations should provide nations, UK-wide and international news.

Licensing

Issue raised	Comments	Ofcom’s response
Priority for local stations on DAB	One confidential respondent suggested that “Locally-produced services should be prioritised on local multiplexes through revised legislation.”	In December 2005, Ofcom conducted a consultation “The Future Licensing of DAB Digital Radio”. This set out proposals regarding how it would apply the various statutory criteria to which it is required to have regard when assessing applications for radio multiplex licences, the proposed licensing process to be followed, the areas that would be covered by each licence and a proposed timetable.
Extension of L-RSLs	The Student Radio Association recommended that “That the terms of Long-term Restricted Service Licences be amended, to allow stations to acknowledge listeners outside of a strictly defined	In April 2006, Ofcom conducted a consultation on radio restricted service licences. This reviewed the administration of radio restricted service licences (RSLs) and proposed some options to decrease the

	site, and to allow an increase in transmission power where possible to enable student radio stations to better serve students at their institution.”	regulatory burden faced by RSL operators, where appropriate.
Licensing process	One confidential respondent made a number of points regarding the current radio licensing process, and in particular the perceived lack of market mechanisms employed in the selection process.	The framework under which Ofcom will advertise and award radio licences is set out in statute. However, Ofcom consulted in 2004 on “The Future Licensing of FM Commercial Radio” and as noted above, in 2005 for DAB digital radio.
Not enough Ofcom consultations	One confidential respondent asked “why is there not enough consultation from Ofcom?”	Ofcom has issued a number of significant consultation documents; some specific examples are noted in the responses above; plus <i>The Future of Radio</i> follows <i>Radio – Preparing for the Future</i> (Phase 1: developing a new framework, December 2004; Phase 2: implementing the framework, October 2005).