
Kiss (East of England)

Request to change format

STATEMENT

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1. Overview

A commercial radio station's Format sets out the type of broadcast output it is required to deliver, and forms a part of its licence. Formats may include requirements relating to a station's music output, news provision, other types of speech content, its target audience, the volume and origin of locally-made programmes, and any programme sharing arrangements. Taken together, these elements encapsulate the nature and overall character of a licensed service.

On 31 January 2023, Bauer Radio Limited ('Bauer') submitted a request to Ofcom to make changes to the Format of its analogue (FM) commercial radio licence for the East of England, under which it currently broadcasts its national 'Kiss' service on all four transmitters – 105.6 MHz (Cambridge); 106.1 MHz (Norwich); 106.4 MHz (Suffolk) and 107.7 MHz (Peterborough).

What we have decided – in brief

The proposal was to change the 'Character of Service' covering the Cambridge, Suffolk and Peterborough transmitters from:

"A contemporary and classic dance music station primarily for under-30s. Identifiable specialist music features for at least six hours per week."

to:

"A station playing classic pop and rock hits of the 70s, 80s and 90s with specialist features, local news and information appealing to 25-54 year-olds."

Under Bauer's request, the character of service applicable to the programming provided on the Norwich (106.1 MHz) transmitter under this licence would remain unchanged.

In Ofcom's view, the proposed change would constitute a significant departure from the 'Character of Service', and so was subject to a public consultation.

Following that consultation, Ofcom has decided to approve the change to the 'Character of Service' proposed by Bauer, for the reasons set out in this Statement.

We have also approved changes requested by Bauer to the locally-made programming, local news and programme sharing arrangements contained in this licence. These requests are consistent with Ofcom's localness guidance and therefore were not part of the public consultation.

2. Statutory and policy criteria

- 2.1 Conditions included in a licence pursuant to section 106(1A) of the Broadcasting Act 1990 (as amended) (the ‘Act’), provide that Ofcom may consent to a change of a Format (a departure from the character of the licensed service) only where we are satisfied that at least one of the following five statutory criteria is met:
- a) that the departure would not substantially alter the character of the service¹;
 - b) that the departure would not narrow the range of programmes available by way of relevant independent radio services to persons living in the area or locality for which the service is licensed to be provided;
 - c) that, in the case of a local licence, the departure would be conducive to the maintenance or promotion of fair and effective competition in the area or locality;
 - d) that, in the case of a local licence, there is evidence that, amongst persons living in that area or locality, there is a significant demand for, or significant support for, the change that would result from the departure; or
 - e) that, in the case of a local licence (i) the departure would result from programmes included in the licensed service ceasing to be made at premises in the area or locality for which the service is provided, but (ii) those programmes would continue to be made wholly or partly at premises within the approved area as defined in section 314 of the Communications Act 2003 (local content and character of services).
- 2.2 Under section 106ZA of the Act, Ofcom is required to hold a public consultation on a proposed Format change unless criterion (a) or (e) is satisfied.
- 2.3 In relation to criterion (b), national and regional analogue commercial services, local DAB services and BBC services do not fall within the definition of ‘relevant independent radio services’ (by virtue of section 106(7) of the Act). Accordingly, only local analogue commercial and community radio services are taken into account in considering whether the Format change requested would narrow the range of programmes available for the purposes of section 106(1A)(b).
- 2.4 The legislation leaves the decision as to whether to permit a change, even if one of the above statutory criteria is satisfied, to Ofcom’s discretion. There may be reasons, depending on the particular circumstances of the case, why Ofcom may decide not to consent to the proposed change, notwithstanding that one of the statutory criteria is met. We have set out on our website [factors we use to help us judge whether a request of this kind should be approved](#). We also take account of our general statutory duties under the Communications Act 2003, including:
- a) our principal duty to further the interests of citizens and consumers;

¹ The legislation requires Ofcom to have regard to the selection of spoken material and music in programmes when determining the character of the service in question.

- b) our duty to secure 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 (including specifically a range and diversity of local radio services), as well as the maintenance of a sufficient plurality of providers of different services; and
- c) our duty to have regard to the different interests of persons in the different parts of the UK, of the different ethnic communities within it and of persons living in rural and in urban areas.

3. Ofcom's analysis and decision

- 3.1 The Format change requested by Bauer would significantly alter the character of the service in relation to the nature of the station's programming and target audience on three out of the four transmitters covered by this licence. The change would replace a contemporary and classic dance music station aimed at under 30s with an older-targeted service aimed at 25-54 year-olds which plays classic pop and rock hits of the 70s, 80s and 90s (with no current music).
- 3.2 On that basis, we did not consider that criterion (a) in section 106(1A) was met, and criterion (e) in section 106(1A) was not relevant to this request as the change did not relate solely to the premises from which locally-made programmes originate.
- 3.3 Ofcom therefore consulted on this request in accordance with section 106ZA.

Ofcom's preliminary view

- 3.4 In the [consultation](#) we noted that the Format change request was made by Bauer on the basis that criterion (d) of section 106(1A) of the Act was met: that there is evidence that, amongst persons living in that area or locality, there is a significant demand for, or significant support for, the change that would result from the departure.
- 3.5 Based on our analysis of the consumer research undertaken by Bauer in support of its request, we said in our preliminary view that, despite some methodological shortcomings in the research, there was evidence of a preference among listeners in Suffolk and Cambridgeshire (including the Peterborough area) for the 'Greatest Hits Radio' format, and that it would be likely to appeal to a broader range of demographics than the current 'Kiss' dance music format. Moreover, the research findings were supported by Bauer's analysis of RAJAR audience data for the East of England licence area, which illustrated a long-term decline in the levels of listening to Kiss, and provided evidence (from parts of East Anglia where the station already broadcasts on FM) that Greatest Hits Radio would be likely to obtain a significantly higher weekly audience reach than Kiss currently achieves.
- 3.6 We were therefore satisfied on a preliminary basis in relation to statutory criterion (d).
- 3.7 In considering this change on a preliminary basis under our [published policy criteria](#), we accepted that the extent of the impact of the change on the character of the service for listeners in the Suffolk and Cambridgeshire areas would be very substantial. We said that the views of listeners and stakeholders we receive in response to the consultation would therefore be fully taken into account in reaching our final decision on whether or not to approve the change.
- 3.8 We also noted in our Preliminary View that our policy criteria states that the time which has elapsed since a licence was first awarded is a relevant factor, as a licensee's need to adapt to audiences changing over time is understandable, whereas a change soon after award may be inconsistent with the licensing process whereby stations define their own Formats in their licence application. The service provided under this East of England FM

licence launched (as dance music station Vibe FM) over 25 years ago, in November 1997. Ofcom recognises that audiences change over time, and that, consequently, stations need to adapt in parallel.

3.9 We did not believe there were any other policy reasons not to approve the request.

Summary of consultation responses

- 3.10 We received ten responses to this consultation. Two came from companies who operate local commercial FM radio stations in the area – namely Nation Broadcasting (the owner of Nation Radio, which has a licence for Ipswich) and Star Radio, which has a licence for Cambridge & Ely. The other responses were all submitted by individuals.
- 3.11 One respondent, David Edmonds, said that he accepted the “commercial reality” of the proposal, but observed that “stations are heading in the same direction leading to a lack of diversity between stations.” Another respondent agreed that Kiss should be allowed to change its Format, but that it should instead be replaced by a service similar in format to Bauer’s Wave 105, which broadcasts to the Solent region. However, Ofcom is only able to consider the change of Format that has actually been requested.
- 3.12 The other eight respondents were all firmly against the proposed change, for a variety of reasons.
- 3.13 A number of respondents commented that, in Cambridgeshire (including the Peterborough area) and in Suffolk, replacing Kiss with Greatest Hits Radio would fail to meet criterion (b) of the Act – i.e. that the departure would not narrow the range of programmes available by way of relevant independent radio services. This is on the basis that Kiss is the only analogue station in these areas that is required to cater for an overtly younger (aged under 30) demographic, and is the only one required to play dance music (and also, within that overall remit, more specialist sub-genres). Grime, dubstep, UK Garage and hip hop were all cited by respondents as examples of specialist genres that Kiss currently devotes airtime to.
- 3.14 Some respondents argued that the removal of Kiss from the FM band would disproportionately affect minority ethnic communities living in Peterborough and Cambridgeshire. For example, The Mayor of Cambridgeshire and Peterborough, Nik Johnson, observed that some of the specialist music aired by Kiss “provides a useful outlet for our diverse communities in Peterborough and Cambridgeshire.”
- 3.15 A number of the respondents said that the proposed replacement service for Kiss, Greatest Hits Radio, would be musically very similar to a number of the other analogue local commercial radio stations already broadcasting to Cambridgeshire and Suffolk, and thus would be likely to appeal to a similar demographic. To illustrate this point, Nation Broadcasting conducted some music analysis during March/April 2023 which showed that 63% of overall airplay (i.e. music tracks) on Greatest Hits Radio was shared by Nation Radio, with 57% of the overall airplay of Nation Radio being shared by Greatest Hits Radio.

- Nation added that “by contrast, there is virtually no music overlap between Kiss and Greatest Hits Radio or Kiss and Nation.”
- 3.16 While there was recognition that Kiss would still be available to listeners in Cambridgeshire and Suffolk on DAB, a respondent who wished to remain anonymous observed that: “Younger audiences (those that drive) are likely to have older cars with and [sic] FM/AM radio, and will therefore be less likely to be able to receive Kiss on the move.”
- 3.17 Some respondents commented that they felt that the proposed change also failed to meet criterion (c) of the Act - that the change would be conducive to the maintenance or promotion of fair and effective competition in the area or locality. Star Radio said that: “This effective conversion of a specialist regional licence into a mainstream, local service complete with the addition of local news and regional programming as proposed by Bauer could threaten the viability of stations like Star Radio, which is unable to benefit from the operational synergies of a larger network yet still provides high quality output that, judging by RAJAR, is growing steadily in popularity.”
- 3.18 Nation Broadcasting warned that, if the proposed changes to the East of England licence were to be approved by Ofcom, it would risk creating a “Frankenstein’s monster of a regional licence, split into four parts, creating confusion for listeners, advertisers and regulators.”
- 3.19 On the economic viability of the current Kiss service in the East of England, Keith Marshall commented that “Bauer may say that Kiss doesn’t attract a big audience in Cambridge but that’s the licence they were gifted/awarded and if they can’t make it work, let someone else have a go!”
- 3.20 Another respondent argued that, if the change request was approved, Bauer should be required to provide local programming on Kiss on its Norwich transmitter, since it would no longer be a ‘regional’ service that is currently entitled, under Ofcom policy, to a local programming exemption in return for also providing the service (i.e. Kiss) on a national DAB multiplex.
- 3.21 In considering the change under (d), the criterion in respect of which Bauer argues Ofcom should be satisfied, Nation Broadcasting and Star Radio both expressed concerns about the consumer research that Bauer had provided in support of its change request. In particular, they were critical of the sample size and the demographic weighting of the survey; the way the two formats had been presented to respondents; and the overall lack of context given to the respondents taking part in the survey. On the last point, Nation argued that “no effort has been made to declare [to respondents] that the choice is binary and that by picking the Greatest Hits Radio format listeners, would, consequently lose the Kiss format on FM.”
- 3.22 The two radio companies also said that Bauer’s research failed to recognise the impact and presence of other similarly formatted stations (to Greatest Hits Radio) that are already available on analogue radio in significant parts of Suffolk and Cambridgeshire.

Analysis and conclusions

Statutory criteria

- 3.23 Nearly all of the respondents to the consultation said the removal of Kiss would lead to a reduction of choice among the local analogue radio stations available to listeners in Cambridgeshire and Suffolk. As we set out in the consultation, we agree. However, under the legislation (see section two of this statement) we are only required to be satisfied in relation to one of the statutory criteria to be able to consider whether to approve the request.
- 3.24 Our statutory considerations under the Act have therefore focused on whether we can be satisfied in relation to section 106(1A)(d) – that there is evidence that, amongst persons living in the area or locality served by the radio station, there is a significant demand for, or significant support for, the change that would result from the departure. We carefully considered the arguments submitted by Nation Broadcasting, Star Radio and others with regard to the consumer research evidence submitted by Bauer. However, we felt the submissions did not raise any new points regarding Bauer’s consumer research that we had not already taken account of in our Preliminary View – in particular, the issues around sample size and composition; the way in which the two formats were presented to respondents; and the ‘binary’ nature of the survey which did not take account of other stations available to listeners in the relevant local radio markets.
- 3.25 On balance, while recognising these shortcomings in the consumer research evidence submitted by Bauer, we remain of the view that Bauer’s consumer research, when combined with the RAJAR data it presented, demonstrates that there is a higher level of demand for the ‘Greatest Hits Radio’ format among listeners in the East of England licence area than there is for the ‘Kiss’ dance music format.
- 3.26 We consider that this differential level of demand can be reasonably judged to be ‘significant’ given the notably greater level of demand for Greatest Hits Radio in the consumer research and, as evidenced by RAJAR, the sharp decline in listening to Kiss in the East of England licence area over the past five years. Comparing RAJAR Q1 2018 with RAJAR Q1 2023, Kiss’s weekly reach has fallen from 413,000 adults (a 19% weekly reach and a 4.8% share of listening), to 181,000 adults (an 8% weekly reach and a 2% share of listening).²
- 3.27 We also note from the most recent RAJAR survey (Q1 2023) that, in the three areas of East Anglia where Greatest Hits Radio already broadcasts on FM³, it achieves an average weekly reach of 19% and a 6.9% share of listening.
- 3.28 Some respondents also argued that Ofcom should not be satisfied in relation to section 106(1A)(c) – i.e. that the departure would be conducive to the maintenance or promotion

² Although caution is advised when comparing figures since the resumption of fieldwork following the suspension due to the pandemic, we are confident that the figures show a continued decline.

³ The three licence areas are Great Yarmouth & Lowestoft; North Norfolk; and Norwich.

of fair and effective competition. Given the concerns about competition raised in the consultation by respondents we have considered the points raised under our policy criteria (see paragraphs 3.33 to 3.38, below).

3.29 We therefore remain satisfied in relation to section 106(1A)(d).

Policy criteria

3.30 The legislation leaves to Ofcom’s judgement the decision as to whether to permit a change where one of the statutory criteria is satisfied.

3.31 We stated in our preliminary view in the consultation that we felt there were no policy reasons to reject this request (see paragraphs 3.7 to 3.9, above). However, we also recognised that the change being proposed by Bauer was a very substantial one, and therefore the views of listeners and stakeholders we received in response to the consultation would be fully taken into account in reaching our final decision on whether or not to approve the change.

3.32 For the purposes of this statement we have grouped the responses together under the different policy considerations that they relate to.

Competition and economic viability

3.33 A number of respondents warned that allowing Greatest Hits Radio to replace Kiss on the FM band in Cambridgeshire and Suffolk could threaten the (economic) viability of smaller commercial radio stations in the market, notably Nation Radio and Star Radio, which both target an ‘older’ audience⁴ with a broad mix of mainstream music and local news and information.

3.34 However, no evidence (of projected lost audience and revenues, for example) was provided by any of the respondents to support this contention.

3.35 As a general rule we do not consider that allowing a Format change request that would potentially narrow the range of available services would necessarily have a detrimental effect on competition. Indeed, Ofcom recognises that increased competition can lead to innovation and improved services.

3.36 Additionally, a decision to approve the proposed change will not be the sole factor affecting the viability of other commercial radio stations in the market. For example, in order to believe the change would endanger the economic viability of Nation Radio and Star Radio (or any other commercial radio stations in the relevant markets), we would need to believe that Greatest Hits Radio would take a significant number of listeners directly from those stations; that this would be directly translated into lost advertising revenues for those stations; and that existing services couldn’t respond to the change in the market (for example, by making some adjustments to their music policy).

⁴The Format of Nation Radio (Ipswich) requires it to target a 35+ audience, while Star Radio’s Format says the station is “aimed at adults”.

- 3.37 We note there have been only a handful of surrenders of commercial radio FM licences over the past 20 years, despite, in some markets, a relatively high number of Format changes being approved by Ofcom.
- 3.38 In light of these considerations, we do not consider that approving the proposed change is likely to have a negative impact on competition, or would lead to some commercial radio licences becoming unsustainable.

Equality impact considerations

- 3.39 We have given careful consideration to whether approving the change proposed by Bauer would have a particular impact on persons sharing protected characteristics⁵ and, in particular, whether the change may discriminate against such persons or impact on equality of opportunity or good relations. This assessment helps us comply with our duties under the Equality Act 2010 and the Northern Ireland Act 1998.⁶
- 3.40 As previously noted (see paragraphs 3.13 – 3.16), some respondents raised concerns that the change proposed by Bauer would disproportionately affect both younger and minority ethnic audiences. We have considered the potential impacts of approving the proposed change on these two groups.

Younger listeners

- 3.41 In considering the potential level of disenfranchisement among younger listeners which may result from approving the change proposed by Bauer, we looked at the amount of listening to Kiss in the East of England by platform among the station's target audience of under-30s.
- 3.42 According to RAJAR audience figures for Q1 2023 (using a 12-month weighting for more robust data), 18% of time spent listening to Kiss in the East of England among those aged 15-29 is through FM radio. This compares to 48% of time via DAB, 25% online and 9% via digital TV. The figures for the younger 15-24 year old segment within this demographic show even less listening to Kiss via FM (just 10%). This is part of a long-term trend which has seen the proportion of listening to Kiss in the East of England on FM among those aged 15-29 fall from 70% in Q1 2018 to 18% in Q1 2023.
- 3.43 Overall, we believe the potential negative impacts from our proposed decision to approve the request can be justified. This is because listeners under the age of 30 will not be disproportionately impacted as Kiss will continue to be available to them on platforms other than FM (online, DAB and digital TV), which – as the figures illustrate above – are all widely used by younger listeners.
- 3.44 Additionally we believe that any potential negative impacts would be mitigated by our expectation that Bauer will have appropriate on-air messaging announcing the change and explaining how listeners can still access Kiss on other platforms if they want to. Bauer has

⁵ Including race, age, disability, sex, sexual orientation, gender reassignment pregnancy and maternity, marriage and civil partnership, and religion or belief in the UK, and in Northern Ireland also dependents and political opinion.

⁶ Further detail is given in section 149 of the Equality Act 2010 and section 75 of the Northern Ireland Act 1998.

previously done this elsewhere when removing other stations from the FM band (such as Absolute Radio in Greater London in May 2021, which was also replaced by Greatest Hits Radio).

Minority ethnic listeners

- 3.45 In considering the potential impact of the proposed change on minority ethnic listeners, we compared the popularity of Kiss among the minority ethnic audience with its popularity among the white audience. According to Q1 2023 RAJAR data for the East of England licence area, there is only a marginal difference in the appeal of Kiss in this respect. Among white listeners it is the ninth most popular individual radio service in terms of weekly reach, while among minority ethnic audiences it is eighth most popular service.
- 3.46 We also note that minority ethnic listeners in the East of England licence area are more likely to listen to the FM band compared to the white audience (33% versus 27% in RAJAR Q1 2023). However, as with other listeners, we expect that minority ethnic listeners (and particularly those in the younger demographics targeted by Kiss) will be able to have easy access to other platforms and devices which will enable them to continue listening to Kiss. Additionally, as with younger listeners, any potential negative impacts can be mitigated by Bauer providing appropriate on-air messaging announcing the change and explaining how listeners can still access Kiss on other platforms.

Status of ‘regional’ licences

- 3.47 In considering the responses to our consultation, we noted comments made by a number of respondents, in particular Nation Broadcasting and Star Radio, that the ‘regional’ nature of the East of England licence means that it should not, or cannot, carry different programme services on different transmitters.
- 3.48 Although Ofcom (and its predecessor the Radio Authority) have identified some licences as being ‘regional’ due to their larger geographical coverage areas, statutorily they remain local commercial radio licences which are subject to the same regulation and statutory award criteria. As noted in our consultation, the regulator has in the past permitted licensees to provide different programming services under a single, large-scale local licence (for example the Northern Ireland FM licence, under which both Cool FM and Downtown Radio are broadcast on different FM transmitters).
- 3.49 We do not agree that such arrangements create “confusion for listeners, advertisers and regulators”, as suggested by Nation Broadcasting. Rather, we think the vast majority of listeners are unlikely to know which radio services are provided under which licences (or that they have licences at all), but instead are interested in what services are available to them. In line with our statutory duties, this is our focus when considering Format change requests.

Decision

- 3.50 We recognise that the replacement of Kiss by Greatest Hits Radio in Cambridgeshire and Suffolk will represent a reduction in the range of programming available to listeners in

these areas on analogue radio. However, if this change were to be approved by Ofcom, the reality is that Kiss would remain available to new and existing listeners throughout the East of England licence area on DAB digital radio, DTV and online platforms.

- 3.51 As we have set out in this Statement, the audience data suggests that the change proposed by Bauer is unlikely to lead to a high degree of disenfranchisement of existing Kiss listeners, and particularly not among those who are in the station’s target demographic.
- 3.52 We also do not consider that there is sufficient evidence to conclusively demonstrate that increased competition for audiences aged over 35 in the relevant areas of Cambridgeshire and Suffolk will negatively impact competition and lead to some commercial radio licences becoming unsustainable.
- 3.53 We are therefore approving the Format change request because we are satisfied in relation to one of the statutory criteria and for the policy reasons outlined above.