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Name and title under which you would like this response to appear:

Town and Country Broadcasting

Representing:

Town and Country Broadcasting

What are your comments on these proposals?:

Executive summary

Town and Country Broadcasting is a privately-owned media business operating five analogue FM radio stations and employing 50 people. We welcome Ofcom's review and consultation on the future of the UK radio industry and the environment in which it operates.

We support RadioCentre's detailed and evidence-based response to this consultation. We have some specific additional points that are included in this response.

Commercial radio has consistently been over-regulated and this has acted as a disincentive to investment.

We note RadioCentre's legal advice that Ofcom has significant discretion in how it regulates. We believe that an unnecessarily high level of regulation is costly and time consuming for both Ofcom and radio operators alike, and restricts innovation and investment.

Commercial radio requires a fresh regulatory approach. It is necessary only to protect consumers and citizens on matters of content, and against offensive or harmful material, unfairness or the infringement of privacy.

All content regulation should be based on programme output rather than inputs; no controls should be set on where or how programming is produced.

With digital listening having already passed through 20%, 'Character of Service' Formats should be introduced immediately. Existing 'Character of Service' descriptions are distinctive enough to secure provision of a wide range of local and national sound programme services.

Competition for listeners' time, and advertising expenditure, will increase further and we urge Ofcom to set a clearer path through the digital maze by announcing a detailed study/consultation, to include all stakeholders, into the future of DAB.

We disagree with Ofcom's proposals to make analogue licences subject to a two-year termination, with an extension to 2015. Such a time frame takes no account of standard contract periods in standard contract areas such as transmission, talent or sports or event rights. All analogue licences should be extended to 2020, prior to carrying out the review on the future of DAB mentioned above.

Current analogue and digital ownership restrictions should be abolished, with all industry ownership issues simply subject to UK competition legislation.

Commercial radio content regulation

Proposal 1

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

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.

We agree that regulation of analogue and digital content should be aligned. We disagree on the proposed timing. With digital listening already at 20%, and with commercial radio companies already investing in the digital future today, the appropriate time for the alignment of content regulation is already here. All changes with regards content regulation should therefore be made immediately.

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.

We support Ofcom's proposal to make analogue Formats a simple 'character of service' in line with DAB Formats. Again, it is our belief that the appropriate timing is already with us, and therefore this should be progressed immediately.

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.

We do not support the proposals for regulated minimum levels of locally-made programming hours based on TSA size. Ofcom has complete discretion in how much local material it need require stations to produce (i.e. it could decide that none need be provided) and we believe that every station - large or small - should be free to serve their listeners in the way that they believe to be most suitable.

It is our experience that, for local stations, locally relevant content is the most powerful tool to attract audiences and advertisers, whilst for more specialist services local content is less important. We trust the market to deliver the appropriate levels of

locally produced content.

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.

We note the legal advice to RadioCentre that Ofcom has discretion when it comes to the amount of local material required. We believe all radio licensees - whatever the platform - should be free to produce the level of local content that they feel is appropriate. We do not believe that statutory levels of local content are relevant in today's multi-channel, multi-platform digital world.

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.

We support the moves to remove Format restrictions on national analogue radio stations given the diversity available via DAB national services.

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.

We support this suggestion as long as UK wide services include a short 'Character of Service' Format, in line with local services.

Commercial radio ownership regulation Proposal 2

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.

We welcome Ofcom's acceptance that there is a case for liberalising ownership regulation but are disappointed it has not proposed the removal of all radio-specific ownership regulations.

We urge Ofcom to consult with Government at the earliest opportunity on making radical changes to radio ownership rules - analogue and digital. Our belief is the only way to 'future proof' radio ownership laws is to bring them under general UK competition law. We believe that further consolidation would increase diversity of services, increasing choice to consumers in markets across the UK.

We are not convinced that the timing of any changes to ownership regulation of commercial radio should be linked to any threshold based on the overall proportion of listening accounted for by digital platforms.

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.

We believe all existing ownership restrictions and regulations should be removed as soon as is practicable, with ownership issues being subject only to UK competition legislation.

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.

Ofcom's suggestion for a new ownership points system based on defined ownership areas is underwhelming. Precedent shows that a points based system becomes quickly dated. Consequently, we believe that all ownership restrictions and regulations should be removed immediately and be subject only to UK competition legislation.

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.

We believe that all areas of radio ownership should be subject only to UK competition legislation.

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

We believe that all areas of radio ownership should be subject only to UK competition legislation.

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.

We believe that all areas of radio ownership should be subject only to UK competition legislation.

The ability to free-up spectrum

Proposal 3

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.

We want to see some bigger thinking at Ofcom about DAB and the move of radio to digital.

We are not convinced that Ofcom has made an appropriate case for freeing up spectrum when no use for the freed up spectrum has been identified. The freeing up of spectrum should only be pursued if we can all be confident that DAB is a better technology than FM, benefiting UK consumers and the commercial radio industry.

Commercial radio companies have invested millions of pounds into the DAB technology and it still has a long way to go before it reaches critical mass. Licensees are making significant additional investment in additional digital platform carriages

and this is investment that could be going into marketing or programming. At some point commercial radio companies will expect a return on their investment, or their investment in additional platforms will cease. That is why - even at this point with 5 million DAB sets sold - DAB may never gain the foothold it requires. It may get overtaken by a new technology. We just do not know.

That is why we support the RadioCentre's idea of a DAB/Digital Radio Review in the next 12 months, the findings of which can be used to reach a properly considered conclusion on whether DAB has a future in the UK. It may be that the conclusion is that radio can exist in a mixed digital/analogue economy; it may find that analogue can be switched off, or it may be that digital will not make it in the foreseeable future. The report must have no preconceptions. That way, everyone can contribute and decide what the best path is to a successful digital radio future for the UK.

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.

We agree with this proposal.

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).

As we state above, rather than separate reviews for AM and FM in 2009 and 2012, we advocate a single review of digital/analogue spectrum as soon as possible. We believe that a single, wide ranging review will be more beneficial than two separate investigations.

It should be a formally-constituted, DCMS commissioned, Ofcom-led, cross-industry working group comprising Ofcom, Commercial Radio, BBC, Community Radio, DCMS, DTI, manufacturers and Digital UK.

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.

We believe any decisions on subsequent policy should be born out of the findings of the above review.

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

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 review. A longer time frame for existing licensees will increase their confidence to invest in DAB and other digital platforms.

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.)

We believe any decisions on this should be born out of the findings of the above review.

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.

We believe any decisions on this should be born out of the findings of the above review. However, we wish to state that we do not believe that Ofcom has thought through its proposal that that a two year termination clause should be included conditions in all new or extended licences. Such a time frame ignores the reality of running a commercial radio (or any other) business.

New ways of licensing radio broadcasting
Proposal 4

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

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.

We believe any decisions on this should be born out of the findings of the digital radio review, recommended in the previous section.

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.

We believe any decisions on this should be born out of the findings of the digital radio review, recommended in the previous section.

DAB sound quality
Proposal 5

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.

We are not against this proposal as we believe that the choice of mono or stereo operation is a matter for the broadcaster and should not be subject to Ofcom intervention.

Community radio licensing and regulation

Proposal 6

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.

We are unconvinced by the success of community radio. Only a handful are on air, those that have are experiencing issues of funding, personnel and direction and we are aware of at least one that has closed already. This reflects badly on radio.

We also believe that there is no well defined policy on what is 'social gain'. Many stations are not representing social gain if they are merely playing Top 40 hits for the majority of the broadcast day. We urge Ofcom to establish a credible measure for social gain.

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.

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.

It is too early in the cycle of community radio to consider further deregulations.

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.

It is too early in the cycle of community radio to consider further deregulations.

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.

It is too early in the cycle of community radio to consider further deregulations

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.

It is too early in the cycle of community radio to consider further deregulations

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.

It is too early in the cycle of community radio to consider further deregulations

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.

It is too early in the cycle of community radio to consider further deregulations

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.

It is too early in the cycle of community radio to consider further deregulations

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.

It is too early in the cycle of community radio to consider further deregulations

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.

It is too early in the cycle of community radio to consider further deregulations

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.

It is too early in the cycle of community radio to consider further deregulations

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

It is too early in the cycle of community radio to consider further deregulations

6.12 The current rule requiring that no body corporate may hold more than one community radio licence should be reconsidered.

It is too early in the cycle of community radio to consider further deregulations

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.

It is too early in the cycle of community radio to consider further deregulations

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.

It is too early in the cycle of community radio to consider further deregulations

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.

It is too early in the cycle of community radio to consider further deregulations

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.

It is too early in the cycle of community radio to consider further deregulations