

## Analogue Commercial Radio Licence: Format Change Request Form

<b>Date of request:</b>	4/12/18
<b>Station Name:</b>	Heart
<b>Licensed area and licence number:</b>	Exeter & Torbay AL032
<b>Licensee:</b>	Gemini Radio Ltd
<b>Contact name:</b>	Will Harding

### Details of requested change(s) to Format

<p><b>Character of Service</b></p> <p><i>Complete this section if you are requesting a change to this part of your Format</i></p>	<p><b>Existing Character of Service:</b></p>
	<p><b>Proposed new Character of Service:</b></p>
<p><b>Programme sharing and/or co-location arrangements</b></p> <p><i>Complete this section if you are requesting a change to this part of your Format</i></p>	<p><b>Current arrangements:</b></p> <p><i>Studio location:</i> Locally-made programming must be produced within the licensed areas of Plymouth (AL103), Exeter &amp; Torbay (AL032), Barnstaple (AL140) or South Hams (AL252).</p> <p><i>Programme sharing:</i> All programmes may be shared between the Plymouth licence (AL103), the Exeter &amp; Torbay licence (AL032), the Barnstaple licence (AL140) and the South Hams licence (AL252), subject to satisfying the character of service requirements above.</p>
	<p><b>Proposed new arrangements:</b></p> <p><i>Studio location:</i> Locally-made programming must be produced within the bespoke approved area of South West and West Country (as proposed to Ofcom on 4<sup>th</sup> December 2018).</p>

	<p><i>Programme sharing:</i> All programmes may be shared between the Cornwall licence (AL296), the Plymouth licence (AL103), the Exeter &amp; Torbay licence (AL032), the Barnstaple licence (AL140), the South Hams licence (AL252), the Bristol &amp; Bath licence (AL016), the Taunton &amp; Yeovil licence (AL128), the Swindon &amp; Wiltshire licence (AL065) and the Gloucester &amp; Cheltenham licence (AL030) subject to satisfying the character of service requirements.</p>
<p><b>Locally-made hours and/or local news bulletins</b></p> <p><i>Complete this section if you are requesting a change to this part of your Format</i></p>	<p><b>Current obligations:</b></p> <p><i>Locally-made hours:</i> At least 7 hours a day during daytime weekdays (must include breakfast). At least 4 hours daytime Saturdays and Sundays.</p> <p><i>Local news bulletins:</i> At least hourly during daytime weekdays and peak-time weekends. At other times UK-wide, nations and international news should feature.</p> <hr/> <p><b>Proposed new obligations:</b></p> <p><i>Locally-made hours:</i> At least 3 hours a day during daytime weekdays.</p> <p><i>Local news bulletins:</i> No change.</p>

The holder of an analogue local commercial radio licence may apply to Ofcom to have the station's Format amended. Any application should be made using the layout shown on this form, and should be in accordance with Ofcom's published procedures for Format changes.<sup>1</sup>

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

- (a) *that the departure would not substantially alter the character of the service;*
- (b) *that the departure would not narrow the range of programmes available by way of relevant independent radio services to persons living the area or locality for which the service is licensed to be provided;*
- (c) *that the departure would be conducive to the maintenance or promotion of fair and effective competition*

<sup>1</sup> Available at [https://www.ofcom.org.uk/data/assets/pdf\\_file/0024/87405/The-regulation-of-Format-changes.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0024/87405/The-regulation-of-Format-changes.pdf)

- (d) *that there is evidence that, amongst persons living in that area or locality, there is a significant demand for, or significant support for, the change that would result from the departure; or*
- (e) *that (i) the departure would result from programmes included in the licensed service ceasing to be made at premises in the area or locality for which the service is provided, but (ii) those programmes would continue to be made wholly or partly at premises within the approved area (as defined in section 314 of the Communications Act 2003 (local content and character of services)).*

Only one of these five criteria need be satisfied in order for Ofcom to consent to the proposed change. However, even if Ofcom is of the opinion that the proposed change satisfies one or more of the statutory criteria, there may be reasons (depending on the particular circumstances of the case) why Ofcom may not consent to the proposed change. The additional criteria to which Ofcom will have regard when exercising this discretion can be found on our website.<sup>2</sup>

Applicants should note that, under section 106ZA of the same Act (as amended), a proposed change that *does not* satisfy the first or last of these criteria (i.e. a change that Ofcom considers *would* or *could* substantially alter the character of the service, or does not relate to the origin of locally-made programmes) must, if it is to be considered further under any of the other three criteria, be consulted upon.

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

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

(a) *that the departure would not substantially alter the character of the service;*

and

(e) *that (i) the departure would result from programmes included in the licensed service ceasing to be made at premises in the area or locality for which the service is provided, but (ii) those programmes would continue to be made wholly or partly at premises within the approved area (as defined in section 314 of the Communications Act 2003 (local content and character of services)).*

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<sup>2</sup> At [https://www.ofcom.org.uk/data/assets/pdf\\_file/0024/87405/The-regulation-of-Format-changes.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0024/87405/The-regulation-of-Format-changes.pdf)

Please provide any additional information and/or evidence in support of the proposed change(s) below. In particular, the applicant may wish to outline how they see that the proposed change fits within Ofcom's published Format change request policy<sup>3</sup> and also Ofcom's Localness guidance, which includes our co-location and programme sharing policy.<sup>4</sup>

The changes being requested to the minimum number of locally-made hours and to the arrangements for programme sharing will not substantially alter the character of the service. These changes are consistent with Ofcom's latest published localness guidelines, which require a minimum of 3 hours per weekday of locally-produced programming for stations providing enhanced local news, and with Ofcom's general policy to permit a station to share its locally-made programmes with any other station in its approved area.

Locally-made programming will continue to be produced in an area approved by Ofcom. Details of the proposed bespoke approved area have been submitted to Ofcom under separate cover.

### **Notes**

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

### **Data Protection**

We require the information requested in this form in order to carry out our licensing duties under the Broadcasting Act 1990, Broadcasting Act 1996 and Communications Act 2003. Please see Ofcom's General Privacy Statement [www.ofcom.org.uk/about-ofcom/foi-dp/general-privacy-statement](http://www.ofcom.org.uk/about-ofcom/foi-dp/general-privacy-statement) for further information about how Ofcom handles your personal information and your corresponding rights

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<sup>3</sup> Available at [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0024/87405/The-regulation-of-Format-changes.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0024/87405/The-regulation-of-Format-changes.pdf)

<sup>4</sup> Available at <http://stakeholders.ofcom.org.uk/broadcasting/radio/localness/>

# Ofcom notes on the request

## Statutory requirements

This request relates to the FM licence for Exeter and Torbay held by Gemini Radio Ltd, currently broadcasting as 'Heart'.

Every FM local commercial radio service is required to broadcast a certain amount of locally-made programming, which is specified in its Format. Locally-made programmes are those made within a station's licensed area or, where – as in this case – Ofcom has approved a wider area relating to that station, that 'approved area.'

Following changes to Ofcom's localness guidelines published in October 2018 Gemini Radio Ltd's parent company Global has requested the following changes to the Format of the Exeter and Torbay licence:

- To reduce the required number of locally-made programming hours on weekday daytimes from seven to three, and from four to none on weekend days.
- To broadcast the locally-made programming hours from within the approved area of South West and West Country, as agreed by Ofcom on 20 February 2019.
- To share local programming hours with the FM licences for Cornwall (AL296), Plymouth (AL103), Barnstaple (AL140), South Hams (AL252), Bristol & Bath (AL016), Taunton & Yeovil (AL128), Swindon & Wiltshire (AL065) and Gloucester & Cheltenham (AL030).

These proposed changes would change the character of service as set out in the Format of the licence, and accordingly can be agreed only if Ofcom is satisfied in regard to one of the statutory criteria set out in section 106(1A) of the Broadcasting Act 1990 (as set out in the request, above).

If we are satisfied in relation to one of the statutory criteria, we are then able to decide whether or not to approve the request, taking account of our published policy criteria.

## Assessment

With regard to the request to broadcast locally-made programming hours from within the approved area of South West and West Country, Ofcom was satisfied in relation to section 106(1A)(e) of the Broadcasting Act 1990, on the basis that the change requested, if approved, would result in programmes included in the licensed service being made at premises with the South West and West Country approved area.

In considering the proposed changes to the volume of locally-made hours, we were satisfied in relation to section 106(1A)(a) of the Broadcasting Act 1990 – that the changes would not substantially alter the character of the service. This is because the proposals are consistent with our recently amended localness guidelines<sup>5</sup>. Ofcom is also satisfied in relation to 106(1A)(a) of the Broadcasting Act 1990 because we would continue to expect the licensee to provide a local service that includes, as well as the level of local news specified in its

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<sup>5</sup> <https://www.ofcom.org.uk/tv-radio-and-on-demand/information-for-industry/radio-broadcasters/localness>

Format, sufficient other local material to deliver the character of service, regardless of where the content is being broadcast from.

We were also satisfied in relation to section 106(1A)(a) of the Broadcasting Act 1990 with regard to the request to share all local programming hours with the FM licences for Cornwall (AL296), Plymouth (AL103), Barnstaple (AL140), South Hams (AL252), Bristol & Bath (AL016), Taunton & Yeovil (AL128), Swindon & Wiltshire (AL065) and Gloucester & Cheltenham (AL030). Again, this request is consistent with our localness guidelines, and we would continue to expect the licensee to provide a local service that includes sufficient local material to deliver the required character of service.

As a matter of general policy<sup>6</sup>, we are minded to approve Format change requests relating to locally-made programming and programme sharing where all the stations involved are located within the same approved area, provided we are satisfied that the stations involved will continue to meet their licence obligations to provide local material relevant to the listeners in their individual licence areas. On the basis that Global Radio is a substantial operator with significant resources, we have no reason to consider that Global Radio would not be able to deliver the localness obligations specified in these licences.

## Decision

Ofcom decided to approve this Format change request from Gemini Radio Ltd because we were satisfied in relation to two of the relevant statutory criteria, and for the policy reason outlined above.

*February 2019*

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<sup>6</sup> [https://www.ofcom.org.uk/data/assets/pdf\\_file/0024/87405/The-regulation-of-Format-changes.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0024/87405/The-regulation-of-Format-changes.pdf)