

## Decision by Ofcom

### Financial penalty: to be imposed on Bauer Radio Limited following revocation of the licence

#### Ofcom's Decision

**of penalty to be imposed on:** Bauer Radio Limited ("Bauer") in respect of national AM licence AN000002 ("the Licence") for Absolute Radio ("the Licensed Service")

**Following:** Revocation of the Licence on 13 February 2023.<sup>1</sup>

**Decision:** To impose a financial penalty (payable to HM Paymaster General) of **£25,000**

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<sup>1</sup> See the [notice of revocation](#) published on the Ofcom website.

## Executive summary

1. Bauer was the holder of the licence to provide the national AM Absolute Radio service (“the Licensed Service”) between 2013 when it acquired Absolute Radio until the Licence was revoked on 13 February 2023. The Licence was most recently renewed in May 2021 for a ten-year period, expiring in April 2031.
2. The Licence required Bauer to provide the Absolute Radio AM service nationally to the end of the licence term. However, on 26 January 2023, Bauer ceased broadcasting the Licensed Service.
3. Under section 111(4) of the Broadcasting Act 1990 (“the 1990 Act”), where Ofcom is satisfied that the holder of a national licence has ceased to provide the licensed service before the end of the period for which the licence is to continue in force, and that it is appropriate to do so, it must revoke the licence. After giving Bauer a reasonable opportunity of making representations, Ofcom therefore revoked the Licence on 13 February 2023.
4. Ofcom is required by statute to impose a financial penalty on the holder of certain types of licence following revocation. The national analogue radio licences are one such licence. The others are the Channel 3 and 5 licences and the TV and radio multiplex licences. The maximum penalty that can be imposed on Bauer in these circumstances is the greater of £250,000 and 7% of its qualifying revenue in its last complete accounting period within the term of the licence. In this case the maximum penalty is £250,000.
5. This paper sets out Ofcom’s Decision on the amount of the financial penalty to be imposed on Bauer, having taken into account all of the relevant material in this case and having regard to Ofcom’s Penalty Guidelines.
6. Ofcom’s Decision is that the appropriate level of this penalty should be **£25,000**.

## Legal framework

### **Ofcom’s regulatory duties and functions**

7. Ofcom’s principal duties, which are set out in section 3(1) of the Communications Act 2003 (the “2003 Act”), are to further the interests of citizens in relation to communications matters; and the interests of consumers in relevant markets, where appropriate by promoting competition. In addition, in carrying out its functions Ofcom is required to secure certain outcomes including: the optimal use for wireless telegraphy of the electro-magnetic spectrum; the availability throughout the United Kingdom 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 (section 3(2) of the 2003 Act).
8. Under section 85(2) of the 1990 Act, Ofcom must do all it can to secure the provision within the United Kingdom of a diversity of national radio services each catering for tastes and interests different from those catered for by the others. Of these, one must be a service the greater part of which consists in the broadcasting of spoken material, and another a service which consists, wholly or mainly, in the broadcasting of music which is not pop music.

## **Imposition of a financial penalty**

9. Where Ofcom revokes a national licence, Ofcom is required to impose a financial penalty on the licensee, subject to a maximum limit of whichever is the greater of £250,000 and 7 per cent of the qualifying revenue for the last complete accounting period of the licence holder falling within the licence period. The relevant statutory provisions are in section 101 of the 1990 Act.<sup>2</sup>

## **Penalty Guidelines**

10. In determining the amount of the financial penalty to be imposed on Bauer, Ofcom must have regard to the [Penalty Guidelines](#) issued by Ofcom under section 392 of the 2003 Act.

## **Background**

### **The Absolute Radio AM service**

11. The Radio Authority first advertised three independent national radio ("INR") licences in 1991. They were originally awarded to applicants who submitted the highest cash bid. One of the two AM licences was for a predominantly speech-based service and was awarded to Talk Radio (which became TalkSport). The other AM licence had no specific statutory requirements as regards the type of programme service it should provide,<sup>3</sup> and was awarded to Virgin Radio, now Absolute Radio. The third licence was for FM, and was awarded to Classic FM.
12. The licence to broadcast Absolute Radio was granted in 1993 and has been renewed on four occasions. Most recently, following the amendment of the 1990 Act to allow Ofcom to further renew analogue commercial radio licences,<sup>4</sup> Bauer applied for a renewal of the Licence in January 2021. The renewal was granted in May 2021. The renewed Licence required Bauer to provide the Absolute Radio AM service nationally for a licence period of ten years, i.e. until the end of April 2031.
13. The Licence required Bauer to broadcast "a rock-oriented station combining new music with classic album tracks, aimed at 25-44 year olds", 24 hours per day. The Licence required Bauer to broadcast UK and international news bulletins at least hourly during peak time (i.e. weekday breakfast and drive-time and weekend late breakfast). It also required Bauer to simulcast the analogue service nationally on DAB, and Bauer was entitled to reserved capacity on the national radio multiplex service provided by Digital One.
14. Absolute Radio is also available on platforms other than analogue radio, specifically DAB, digital TV (on digital terrestrial television as well as Sky and Virgin Media) and online. The provision of the service on these platforms has not ceased.

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<sup>2</sup> Section 102(2) to (6) of the 1990 Act applies for estimating or determining qualifying revenue for these purposes.

<sup>3</sup> As set out in section 85(2) of the 1990 Act.

<sup>4</sup> Section 103B of the 1990 Act was amended by The Legislative Reform (Renewal of Radio Licences) Order 2020.

## **Bauer Radio Ltd**

15. Bauer operates over 130 commercial local, national and digital stations, including Magic Radio, KISS, Scala Radio and Jazz FM, as well as Absolute Radio. Bauer acquired Absolute Radio from its then owner Times of India in 2013. Bauer Radio Ltd is part of Bauer Media Audio, a digital commercial radio broadcaster and operator across Denmark, Finland, Ireland, Poland, Sweden, Slovakia and Norway, alongside the UK.

## **Additional payments under the Licence**

16. In common with holders of certain other categories of broadcasting licences, Bauer as holder of the Absolute Radio national AM licence is required to make annual payments, which Ofcom collects and passes to HM Treasury. These “additional payments” consist of a “cash bid” amount and a percentage of the “qualifying revenue” (PQR) generated by the licence holder from the provision of the licensed service during an accounting period.
17. The amount of the cash bid and the percentage of qualifying revenue were first set at the time of the original licence award (the cash bid was submitted by the applicant, the PQR was set by the Radio Authority), and subsequently Ofcom has determined both on each renewal. On the most recent renewal of the Licence in 2021, [Ofcom reviewed the financial terms payable by the licensee](#). This review indicated that the profits derived from analogue transmission would continue to reduce over time as analogue listening as a proportion of total radio listening fell. Consequently, the financial terms for the Licence were set at a nominal cash bid of £10,000 per annum with a 0% PQR payment.

## **Sectoral trends – the Government’s Digital Radio and Audio Review**

18. In October 2021, Government published a [Digital Radio and Audio Review](#) (“the 2021 Review”), commissioned by the Government and undertaken with the participation of industry stakeholders to assess the likely future trends in listening and to make recommendations on approaches to strengthening UK radio and audio. The review’s considerations have been noted by Bauer in its rationale for why the amount of any penalty should be de minimis.
19. Specifically, considerations raised by the review include the following.
  - i. The review noted a relatively consistent linear decline in listening to AM radio and projected further decline for the next decade. It said that “If future AM listening was to follow a similar path, AM listening is likely to fall to commercially unsustainable levels in around 2025.”
  - ii. It set out that estimates indicated that AM listening accounted for around 3% of radio listening. It noted that both the BBC and commercial radio operators had switched off a number of AM transmitters in areas with low listening or that required significant investment.
  - iii. Regarding the future of AM services, the review said that AM “had reached the point where the BBC, commercial radio and Ofcom need to prepare for the retirement of national services.” It recommended that no mandatory dates for the end of AM services should be set at the time, but that the operators of national AM services (BBC, Wireless and Bauer) should “develop a plan for the migration from AM services to take place at some point in the mid 2020s.”

- iv. The review also noted a potential need for “new legislation to clarify any continuing rights and obligations of the two national commercial radio services which broadcast on AM (Absolute Radio and TalkSport) in the event they choose to surrender their INR licences, where those rights and obligations are included in the INR licences.”

## **The revocation of the Licence**

### **Circumstances leading to revocation of the Licence**

20. On 2 December 2022, Bauer wrote to Ofcom giving notice that Bauer wished to relinquish the Licence. It said that switch off of the network would take place over four days, beginning from 23 January.
21. Bauer’s letter gave the following reasons for its decision to switch off the service.
  - i. *Declining audience for Absolute Radio on AM.* Bauer referred to the watermarking research it had commissioned IPSOS to undertake. It said the results indicated that the level of actual listening to Absolute Radio on AM was only around [~~CONFIDENTIAL~~] of Absolute Radio’s total audience, as opposed to the 19% reported by RAJAR.
  - ii. *Commercial viability.* This new information on the amount of listening the service attracted meant that the AM service was no longer commercially viable, especially given rising electricity costs for a “power-hungry” transmission system.
22. Ofcom informed Bauer via email on 7 December that a financial penalty would apply in the event Bauer ceased broadcasting the Absolute Radio AM service and that the statutory maximum was £250,000 or 7% of qualifying revenue for the service, whichever was the greater.
23. Dee Ford, Group Managing Director, Bauer Media Audio UK, wrote to Melanie Dawes, Ofcom CEO, on 8 December 2022 asking for clarification regarding the financial penalty that would apply to Bauer for ceasing the broadcasting of Absolute Radio on AM.
24. Melanie Dawes replied via email on 8 December, indicating that it was not possible to give any indication of the likely penalty.
25. Also on 8 December, Ofcom wrote to Bauer to draw attention to the relevant statutory provisions that would apply if Bauer ceased to provide the Licensed Service. Ofcom referred Bauer to the mandatory financial penalty that applied when Teletext Limited ceased to provide the public teletext service in 2010.
26. On 19 December 2022, Bauer wrote to Ofcom confirming that it would cease broadcasting the Licensed Service with effect from 23 January 2023. The transmitters would be switched off in stages, concluding on 26 January 2023.
27. Bauer publicly announced its plans to switch off the Licensed Service on 4 January.

## Summary of licence revocation process

28. On 11 January 2023, Ofcom wrote to Bauer Media setting out the process it intended to follow for revoking the Licence and determining the amount of the financial penalty that would be imposed if the Licence were revoked. It was a stand-alone process designed specifically for the case because Ofcom's published General procedures for investigating breaches of broadcast licences and Procedures for the consideration of statutory sanctions in breaches of broadcast licences were not directly applicable. However, Ofcom incorporated elements of those procedures where appropriate.
29. On 26 January 2023, Bauer confirmed via email to Ofcom that all Absolute Radio transmitters had been switched off.
30. On 27 January 2023, Ofcom wrote to Bauer setting out Ofcom's preliminary view that Bauer had ceased to provide the Licensed Service before the end of the period for which the Licence was to continue in force, and that it was appropriate for Ofcom to serve on Bauer a notice revoking the Licence. Ofcom gave Bauer five working days to make representations on the preliminary view on licence revocation.
31. On 27 January 2023, Bauer responded in a letter to Ofcom setting out that it did not anticipate making representations on the preliminary view on revocation.
32. Also on 27 January, Dee Ford wrote to Lord Grade, Ofcom Chair, setting out Bauer's reasons for switching off the Absolute Radio AM service and submitting that any penalty should be of a *de minimis* amount.
33. On 1 February 2023, Lord Grade replied setting out that Ofcom would follow a statutory process to determine whether it should revoke the licence and a further process for determining the financial penalty that would apply if it did so.
34. Ofcom wrote to Bauer on 13 February 2023 setting out that it was satisfied that Bauer had ceased to provide the Licensed Service before the end of the licence period and it was appropriate to serve on Bauer a notice revoking the Licence. Ofcom served on Bauer a notice of revocation of the Licence. The notice of revocation was published on the Ofcom website on 14 February 2023.

## Bauer's representations on the level of financial penalty

35. In its letter of 27 January 2023 Bauer set out its rationale for why any financial penalty that applied should be of a *de minimis* amount.
36. On 13 February 2023, Ofcom wrote to Bauer requesting information on qualifying revenue for the Absolute Radio service, along with other matters, many of which related to the rationale Bauer had set out for why any financial penalty following licence revocation should be *de minimis*.

37. Bauer responded on 3 March 2023, providing information clarifying and / or supporting its view in a letter and an internal decision paper from September 2022 (the “internal decision paper”). The reasons given for its position were as follows.

- i. *Lack of deterrence benefit.* Bauer said that Government had “declared a clear policy desire” for AM transmission to end by the mid-2020s. This meant there would be no deterrence benefit associated with imposing a financial penalty on Bauer. In support of this position, Bauer highlighted several statements from the 2021 [Review](#) and that Government planned to amend the legislation relating to the INR licences to protect them following closure of AM networks and ahead of full analogue switch off. Bauer noted that, given economic changes, it considered the estimate that AM services would become commercially unsustainable by the mid-2020s was “optimistic.” It further noted an issue of parity insofar as the BBC will not face a financial penalty when it decides to switch off its national AM services.<sup>5</sup>
- ii. *Minimal consumer benefit of continued broadcast.* According to data from the industry standard listening measurement service RAJAR supplied to Ofcom by Bauer in its letter of 27 January 2023, listening on the AM platform accounted for 19.6% of all Absolute Radio listening at the time of the licence renewal. However, Bauer [~~CONFIDENTIAL~~] commissioned research from IPSOS whereby listening was “watermarked” and measured rather than relying on listener recollection.<sup>6</sup> According to this research, listening on the AM platform accounted for [~~CONFIDENTIAL~~] of overall listening to Absolute Radio. Bauer gave this as one of its reasons for ceasing to broadcast the national AM service. The Licensed Service was also available on DAB, digital TV and over IP. In Bauer’s view, minimal consumer benefit would follow from continuing AM broadcasts.
- iii. *The Licensed Service was no longer financially viable.* Bauer set out that the AM Absolute Radio service had lost [~~CONFIDENTIAL~~] in the last financial year. Revenue was lower than foreseen at the time of licence renewal (which Bauer attributed to the smaller audience) and in Bauer’s view would decline further. Meanwhile, transmission costs on AM were high and likely to rise significantly due to equipment replacement and electricity costs.

In its letter in reply to our request for information of 3 March 2023, Bauer noted that the decision to cease broadcasting was based on existing costs rather than a projection of future price rises, though taking account of future price rises would only have strengthened the case for ceasing broadcasting.

- iv. *Beneficial environmental impacts.* Bauer said that ceasing to broadcast the Licensed Service was consistent with the 2021 Review’s recommendation to reduce energy usage on transmission to support the Government’s net zero emissions targets. The internal decision paper notes that ceasing to broadcast Absolute Radio on AM would be good for Bauer’s sustainability as a business.

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<sup>5</sup> [BBC Director General Tim Davie said](#) in May 2022 that 5Live on Medium Wave will close “no later than December 2027, in line with a proposed industry-wide exit from the platform”.

<sup>6</sup> The survey ran from 4 April to 31 July 2022.

- v. *Savings can be repurposed to the benefit of listeners.* Bauer indicated that the money saved by ceasing AM broadcasting could be invested in other content and platforms. In its letter of 3 March 2023, in response to a question from Ofcom on further information on its plans for investment, Bauer set out that it is about to launch an IP platform bringing together radio, on-demand and premium content.
38. On 13 March 2023, Ofcom requested further information from Bauer. In response, on 20 March 2023 Bauer provided information on the steps taken to help audiences to continue to listen to Absolute Radio on other platforms.
39. On 17 April 2023, Ofcom sent Bauer its Preliminary View on the level of financial penalty to be imposed, providing Bauer with an opportunity to make oral and written representations. Bauer said that it “did not wish to make further written or oral representations in support of a lower financial penalty”. However, it made the following points.
40. Bauer noted [Ofcom’s decision published on 24 April 2023](#) to allow TalkSport (the only other national commercial AM radio station) to reduce the level of its AM coverage. Bauer stated that this decision supports the argument that AM listening is in terminal decline, even for a speech station, where sound quality is much less important than for a music station such as Absolute Radio.
41. Bauer said that its revenue figures for 2022 (which were not available before Ofcom reached its Preliminary View on the level of the financial penalty) show that Absolute Radio’s qualifying revenue [~~CONFIDENTIAL~~]. (Qualifying revenue attributable to the AM service was, Bauer said, much lower than this.) Bauer said that accordingly, the actual financial position of the AM service was lower than that taken into account in Ofcom reaching its Preliminary View.
42. [~~CONFIDENTIAL~~].

#### **Representations from third parties**

43. Ofcom also received representations from third parties on the level of the financial penalty that should apply. These representations are summarised below.
- i. Maxxwave considered a financial penalty should be the value of £1. Its reasoning for this position was as follows.
- the increase in wholesale electricity costs meant that cost increases not anticipated by the 2021 Review until 2025 had already been exceeded.
  - Bauer waited nine months before deciding to cease transmission and acted “extremely properly”.
  - Maxxwave had lobbied Ofcom on spectrum changes that would have improved the quality of AM transmissions and thereby contributed positively to the viability of the Absolute Radio AM service.
- ii. An individual noted that the Licence had important rights associated with it, e.g. carriage on DAB. They said that when considering any penalty Ofcom should note that by not

allowing the Licence to be contested, Bauer had denied others the opportunity to hold a national licence.

- iii. An individual said that the level of the penalty should relate to the savings Bauer will make as a result of switching off the Absolute Radio AM service. They said that the fine should be “considerable” given the original licence award was on a competitive basis and the need to disincentivise other radio groups from switching off their services.

### **Level of the financial penalty**

44. As the imposition of a financial penalty is mandatory under the statutory scheme, the decision in this case is solely concerned with the level of that penalty. In reaching a view on the appropriate level of financial penalty, Ofcom must have regard to its Penalty Guidelines and it is appropriate to take account of the representations made to date by Bauer in correspondence with Ofcom.
45. Under section 101 of the 1990 Act, the maximum level of financial penalty that can be imposed in this case is £250,000 or 7 per cent of Bauer’s qualifying revenue for its last complete accounting period, whichever is greater. In this case the maximum penalty is £250,000.
46. Ofcom’s Penalty Guidelines state that *“Ofcom will consider all the circumstances of the case in the round in order to determine the appropriate and proportionate amount of any penalty. The central objective of imposing a penalty is deterrence. The amount of any penalty must be sufficient to ensure that it will act as an effective incentive to compliance, having regard to the seriousness of the infringement. Ofcom will have regard to the size and turnover of the regulated body when considering the deterrent effect of any penalty.”*<sup>7</sup>
47. In reaching our Decision on the level of financial penalty, Ofcom took into account the following factors which we consider to be relevant to this case.

### **Seriousness**

48. This is a serious case in that the financial penalty under consideration is being imposed following the revocation of the Licence. Under section 111 of the 1990 Act, where the holder of a national licence ceases to provide a service before the end of the period for which the licence is to continue in force, the licence must be revoked. The 1990 Act recognises that the revocation of one of the independent national radio licences is a serious matter by requiring under section 101 that a financial penalty is mandatorily imposed following revocation and by setting a maximum penalty that is higher than can be imposed on the holder of a national licence in other circumstances.<sup>8</sup>

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<sup>7</sup> Paragraph 1.11 of the [Penalty Guidelines](#).

<sup>8</sup> The maximum penalty following revocation is set out in paragraph 45. The maximum penalty that may be imposed on the holder of a national licence under section 110 of the 1990 Act in the case of failure to comply with a licence condition or direction is whichever is the greater of £250,000 and 5% of qualifying revenue for the relevant period.

49. Ofcom recognises that since the introduction of sections 111 and 101, the radio landscape has changed significantly, limiting the impact of Bauer’s decision on audiences.<sup>9</sup> Rather than two national services on AM and one on FM, there are now a wide range of national services available to listeners of digital radio. AM listening has declined as listeners adopt new technologies. The 2021 Review projects that AM listening is likely to fall to “commercially unsustainable” levels in 2025 and recommends that the national AM licensees should develop a plan for the migration from AM services in the mid-2020s.
50. However, Bauer applied for and was granted a licence renewal as recently as May 2021. The Licence required Bauer to provide the Absolute Radio AM service – a rock-oriented station, aimed at 25-44 year olds, with UK and international news bulletins – nationally to the end of the licence term in April 2031. In return Bauer was entitled to benefits, specifically access to analogue spectrum and reserved capacity on the D1 national multiplex. In accepting a renewal, we expect a broadcaster to intend and endeavour to meet its obligations for the duration of the licence period. We consider Bauer’s decision to cease provision of the service, less than two years after renewal and with little notice to listeners and Ofcom, to contribute to the seriousness of this case.

### **Incentive**

51. Ofcom’s Penalty Guidelines make clear that the goal of a financial penalty is to incentivise certain behaviour on the part of regulated bodies. The level of the penalty must be “sufficient to deter the business from contravening regulatory requirements, and to deter the wider industry from doing so”.
52. Under the statutory framework, the holders of some categories of broadcast licences must broadcast through the full licence period with cessation of service before the end of the licence period leading to the imposition of a mandatory financial penalty on the licensee. Apart from the independent radio licences, other such licences are the Channel 3 licences, the Channel 5 licence, the TV multiplex service licences and the radio multiplex licences. In the case of the national radio licences and the Channel 3 and 5 licences, this is to reflect their relative scarcity and the important contributions they make to range and diversity of output for audiences (and, in the case of the Channel 3 and 5 licences, their delivery of public service obligations). In the case of multiplex licences, this reflects their importance as the means by which programme service providers reach their audiences along with their access to scarce spectrum. In other words, ceasing to provide a television or radio multiplex service impacts all of the services broadcast on the multiplex and their listeners or viewers.
53. Under the Penalty Guidelines, the level of the financial penalty in this case therefore should form an effective incentive for the licensees of those other services to continue to provide their respective service for the full licence period. However, in every case, Ofcom will consider all the circumstances of the case in the round, in order to determine an appropriate and proportionate penalty. We have set out the particular circumstances relevant to our determination of the penalty in this case, including the decline of AM broadcasting.

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<sup>9</sup> We consider the degree of harm to consumers further below.

54. We note that, as Bauer has said, the provision for a mandatory penalty will not apply if the BBC switches off its national AM service and we have taken this into account.

**The degree of harm, whether actual or potential, caused by the contravention, including any increased cost incurred by consumers or other market participants**

55. Where a licensed service ceases to broadcast before the end of its licence term, there is potential for consumer harm. Bauer said in its letter of 27 January 2023 that listening to the Absolute AM service was low and that, given the service is available on other platforms, “few” consumers would be unable to receive it.

56. Ofcom undertook analysis to estimate the number of people in the UK who would no longer be able to receive Absolute Radio now that it is no longer broadcast on AM. This analysis considered coverage from DAB, DTT and fixed broadband.<sup>10</sup> It estimated that when these three platforms were all considered, the number of people in the UK no longer able to receive the service would be approx. 4,400 people.<sup>11</sup> Absolute Radio is also carried on the pay TV services offered by Virgin Media and Sky – these services were not considered in our analysis. We also did not consider whether any of the remaining number were able to listen on a portable connected device such as a smartphone. This means that the number of people no longer able to receive Absolute Radio may be lower than indicated, insofar as they may be able to access it via one of these means.

57. The final map highlights the geographical locations most affected by the loss of the Absolute Radio service on AM. Areas most affected are in Scotland, Wales, Northern Ireland and the north and south-west of England.<sup>12</sup> Older listeners and those in less affluent social groups could be more affected by the switch off of the service. This is because these groups are less likely than average to own a DAB radio, smart phone or a smart speaker that they could use to access the Absolute Radio service on other platforms.<sup>13</sup> However, analysis of RAJAR data shows that the audience profile for the Absolute Radio AM service is more likely to be younger than the overall audience for the service.

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<sup>10</sup> The analysis looked at 6MUX Core DTT. 6MUX Core means areas where all six national multiplexes (and their associated channels) are available. Absolute Radio is carried on the COM5 multiplex.

<sup>11</sup> The analysis took the total population that could formerly receive coverage of the AM Absolute Radio service, then worked out how many of these people could not receive coverage from DAB or DTT. The analysis then considered how many people could not access the service via fixed broadband, using our [Connected Nations fixed residential broadband data for census areas](#). The ability to access the service by broadband was determined by the availability of a 2 Mbit/s broadband service, which was considered the minimum needed to receive a radio service over the internet. A census area was counted as covered by the Absolute Radio service when it had more than 99% of the area covered by  $\geq 2$  Mbit/s broadband. In areas with less than 99% broadband coverage, the analysis multiplied the percentage of the census area without coverage by the population of that area to estimate the number of people unable to receive the Absolute Radio service, e.g. if there were 100 people in a census area where 20% of premises were unable to receive 2Mbit/s, then rather than saying all 100 people were unable to receive the service, the analysis took 20% of 100 i.e. 20 people. It was considered that this would return a more accurate estimate than concluding that an entire census area could not receive coverage of the Absolute Radio service when it had less than 99% broadband coverage.

<sup>12</sup> The red highlighted census areas represent the approximate locations of the 4,400 people now unable to access Absolute Radio on any platform (other than Sky, Virgin or mobile internet). Not every person in those census areas will have lost access to the service.

<sup>13</sup> [Ofcom Tech Tracker 2022](#)

58. It should be noted that while consumers who wish to continue listening to Absolute Radio on other platforms may be able to do so, they will potentially face costs of acquiring new equipment (such as a DAB, internet or hybrid radio) and/or securing an internet connection. We have not attempted to form an assessment of the scale of such costs. Users may also have faced challenges in accessing Absolute Radio on a new platform. People over 65 and from less affluent households are less likely than average to listen to live, catch up or on demand radio through a website or app, though again listening to the Absolute Radio AM service skews younger.<sup>14</sup>
59. The Absolute Radio AM service ceased to broadcast less than a month after the decision to stop transmitting was announced, which might have had the potential to exacerbate harm to consumers by causing confusion over the rapid changes to the service. Bauer explained that it sought to help Absolute Radio AM listeners migrate to other platforms once transmission ceased by:
- replacing all advertising breaks on the AM service with promotional trails from 9 January 2023 until the station was switched off;
  - sending individualised replies to queries from listeners; and
  - establishing a webpage to answer anticipated listener questions.

These actions may have mitigated the harm to consumers in some cases.

60. It should be noted that for those listeners who are no longer able to receive the Absolute Radio service on AM, there are a range of other music services available via AM and FM. Bauer also noted in its letter of 27 January 2023 that it will be able to invest the money saved by ceasing to broadcast the Absolute Radio AM service in new content as well as its new IP platform. Such investments may result in benefits to its listeners. In its letter of 3 March 2023, Bauer indicated that its investment in developing its IP platform was [§<CONFIDENTIAL] in 2021, [§<CONFIDENTIAL] in 2022 and is projected to be [§<CONFIDENTIAL] in 2023.
61. Ofcom has not received any complaints from listeners who are no longer able to listen to the Absolute Radio service on AM.

**Any gain (financial or otherwise) made by the regulated body (or any connected body) as a result of the contravention**

62. There is clear evidence that financial considerations were the primary reason for Bauer’s decision to cease transmitting the Absolute Radio AM service. For example, in the internal decision paper, approval is sought to relinquish the Licence on 30 April 2023 “when the existing Arqiva contract ends and realise annual cost savings of [§<CONFIDENTIAL]”, including [§<CONFIDENTIAL].
63. In its letter to Ofcom of 27 January 2023, Bauer stated that the Absolute Radio AM service lost [§<CONFIDENTIAL] in the last financial year and that it faced future engineering costs of around [§<CONFIDENTIAL] associated with the Absolute Radio AM service, which it avoided through ceasing transmission.

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<sup>14</sup> [Ofcom Adult Media Literacy Core Survey 2021 – 16<sup>th</sup> October to 13<sup>th</sup> December 2021](#)

64. In its letter to Ofcom of 3 March 2023, Bauer gave the total cost saving over the remaining term of the Licence at [REDACTED], without RPI adjustment and ignoring any savings associated with engineering or increased energy costs. Ofcom notes this is significantly more than the maximum financial penalty that can be imposed on Bauer – though elsewhere Bauer indicates that it expected the Licence to end in the mid-2020s, in which case lower savings would have been made.
65. It is evident therefore that Bauer is in a better financial position than it would have been had it continued to broadcast the Absolute Radio AM service for the full period of the licence and has gained financially from the contravention.

**Whether in all the circumstances appropriate steps had been taken by the regulated body to prevent the contravention**

66. There are indications that Bauer considered whether cost savings could be made by switching off individual transmitters. This is referred to in the internal decision paper. Bauer decided against this because most of the costs accrue from five main transmitters, which it would have wished to retain had it continued broadcasting, meaning the desired cost savings would not have been realised. The paper also refers to the possibility of Bauer rolling over its transmission contract for a further 12 months or longer if Bauer did not wish to cease transmitting in 2023. This would have delayed the contravention, and may have enabled more notice to be given, but would not have prevented it.

**The extent to which the contravention occurred deliberately or recklessly, including the extent to which senior management knew, or ought to have known, that a contravention was occurring or would occur**

67. In considering this case, we have taken into account that Bauer chose to pursue a renewal of the Licence in 2021, but within two years had elected to switch off the Licensed Service. The question of when Bauer knew that the service was not financially viable – or whether it ought to have assured itself that the service was viable in advance of seeking renewal of the Licence – is a relevant factor. This is particularly the case because, had Bauer not pursued a renewal, Ofcom could in principle have re-advertised the licence. The option to re-advertise the licence is now available. However, despite receiving some expressions of interest in applying for the licence, there is evidence as set out in this Decision and Ofcom’s decision to approve TalkSport’s request to reduce the coverage of its national AM service, that suggests operating a national radio service on AM for a new licence term may not be economically sustainable.
68. Some of the information that factored into Bauer’s decision to cease broadcasting the Licensed Service was available to it at the time of licence renewal. For example, in its application for licence renewal Bauer submitted a narrative document that referred to “estimated re-engineering uplift from April 2023 on AM contract to provide for full site review and cover increased costs associated with network ageing / cost of sourcing repair equipment etc”.
69. However, Bauer states that other information not available at the time of licence renewal was key to its decision to cease broadcasting. In its letter to Ofcom of 27 January 2023, Bauer said that at the time of licence renewal RAJAR data indicated that 23.5% of Absolute

Radio's listeners were on the AM platform. At the end of 2021 (after licence renewal), the introduction of a "passive listening" element to the RAJAR panel by IPSOS, who carry out the RAJAR research, enabled the insertion of a 'watermark' into a radio station's signal to enable measurement of which platform a RAJAR panel member is actually listening to. This development meant Bauer could then in 2022 commission IPSOS to measure the actual listening to the AM Absolute Radio service, which Bauer claimed showed that listening was in fact [§<CONFIDENTIAL] lower than the traditional RAJAR survey had reported.

70. Based on information Bauer has provided to us, the IPSOS survey commissioned by Bauer appears to be based on one of the three elements which comprise the RAJAR survey (the others being standard diaries and an additional online diary panel). As such, we consider that the RAJAR figures are more robust and likely to provide a better reflection of listening to Absolute Radio on AM. [§<CONFIDENTIAL].
71. In the same letter, Bauer also says that it could not have foreseen the "dramatic increases" in the prices of electricity and the impact that this would have on the financial viability of the Licensed Service. The internal decision paper notes that [§<CONFIDENTIAL] switching off AM would be "good for... reducing electricity costs as prices soar [§<CONFIDENTIAL]."
72. We acknowledge that the potential increase in electricity costs posed a challenge but, in accepting a renewal, we expect a broadcaster to take account of the likely cost of the obligations under a licence, and the value of the benefits associated with it, for the duration of the licence period.

#### **Any steps taken for remedying the consequences of the contravention**

73. As set out above, Bauer took measures to mitigate potential confusion that some listeners might otherwise have experienced as a result of losing the Absolute Radio service via messaging on the service itself, responding to listener queries and information on its website.

#### **Whether the regulated body in breach has a history of contraventions (repeated contraventions may lead to significantly increased penalties)**

74. Ofcom has made seven breach findings and two resolved findings in relation to Bauer over the last ten years which were all published in Ofcom's Broadcast and On Demand Bulletin. Eight of the findings relate to the broadcast of the most offensive language which was not justified by the context and/or was broadcast at times when children were particularly likely to be listening. One of the findings related to the conduct of a broadcast competition. While the decisions are an indicator of Bauer's compliance with Ofcom's regulations, they are not directly relevant to this case.<sup>15</sup>

#### **The extent to which the regulated body in breach has cooperated with our investigation**

75. Bauer has cooperated throughout the investigation, replying to correspondence and providing information in a timely manner.

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<sup>15</sup> The findings can be found in the following issues of Ofcom's Broadcast and On Demand Bulletin: [465](#), [452](#), [419](#), [417](#), [389](#), [368](#), [347](#) and [243](#).

## Precedents

76. The Penalty Guidelines set out that in determining penalties, Ofcom will have regard to precedents set by previous cases, where relevant – though Ofcom may depart from precedents depending on the facts and context of each case. The only case where Ofcom has imposed a mandatory financial penalty following revocation of a broadcasting licence was that of [Teletext Limited \(“Teletext”\) in 2010](#) following the revocation of the licence to provide the public teletext service.
77. The circumstances of the Teletext case were briefly as follows.
- i. Teletext held the public service licence to broadcast the public teletext service through to 2014, having been granted in 2004, on a non-competitive basis, a ten-year “digital replacement licence” to replace the analogue licence it had been awarded via a competitive process in 1993. In October 2009, Teletext informed Ofcom it would cease providing the public service in December 2009. Ofcom revoked the public teletext licence in January 2010.
  - ii. As in the Bauer case, the imposition of a financial penalty in the event of licence revocation was mandatory. The maximum penalty that could be imposed was the greater of 7% of the qualifying revenue of the licensee in its last complete accounting period within the term of the licence and £500,000. In the case of Teletext, this made the maximum penalty £500,000.
  - iii. In the Teletext case, Ofcom imposed a financial penalty on Teletext of £225,000. Elements in the reasoning given by Ofcom relevant to the Bauer case were:
    - The statutory scheme recognised that the revocation of the public teletext service licence was a serious matter, requiring a financial penalty to be imposed following revocation.
    - In deciding to cease providing key elements of the service, Teletext committed a “serious breach” of the obligations in the licence. Accordingly, the public purposes which the public teletext service was intended to deliver were no longer delivered. Ofcom considered this to be an “extremely serious breach”.
    - Ofcom took into account Teletext’s representations that the digital public teletext service was structurally loss making.
    - Ofcom noted that the holders of various categories of broadcasting licence (including the public teletext service licence, the national analogue radio licences, the Channel 3 and 5 licences and the TV and radio multiplex licences) were required to broadcast throughout the licence period. It took the view that the penalty imposed on Teletext should be a sufficient incentive to all holders of such licences to continue to provide all elements of their respective licensed services throughout the licence period, even if a licensee believed there were commercial reasons for it to cease providing all or part of the service during the licence period.
    - Ofcom considered that Teletext would receive a considerable financial benefit from ceasing to provide the service compared to the position it would have been in had it continued to provide the public teletext service.
    - The cessation of the service had caused serious and significant harm to consumers of the service. We note this difference from our assessment in the present case.

### **Size and turnover of the regulated body**

78. In reaching its Decision on the level of penalty, Ofcom has taken account of Bauer's size and turnover.
79. Bauer submitted its audited financial statements for the year ending December 2021 which are also publicly available on the Companies House website. In that period, Bauer recorded a turnover of £238,762,000.
80. The 2021 revenue for Absolute Radio across all platforms was [REDACTED]. Based on the watermarking analysis undertaken by IPSOS, Bauer attributes [REDACTED] of this revenue to the Absolute Radio AM service and submits that the qualifying revenue for the service is therefore [REDACTED]. Utilising RAJAR's listening figure for the Absolute Radio AM service of 19.6%, the qualifying revenue is [REDACTED].
81. Bauer's financial statements for the year ending December 2022 are not yet audited and were not provided to Ofcom. However, as noted in paragraph 41, Bauer said that its revenue figures for 2022 show that Absolute Radio's qualifying revenue [REDACTED]. (Qualifying revenue attributable to the AM service was, Bauer said, much lower than this).

### **Decision on level of financial penalty**

82. Having regard to Bauer's representations and all the factors referred to above, Ofcom's Decision is that an appropriate and proportionate financial penalty would be £25,000.

**Ofcom**

**1 June 2023**