



# The Future of Radio

The future of FM and AM services and  
the alignment of analogue and digital regulation

Consultation

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# Foreword

Radio, the oldest broadcast medium, is in transition.

The overall amount of listening remains as high as ever and listeners are benefiting from a rapid increase in the number and range of stations they can choose from, including new community stations, additional local and national services and stations from around the world via the internet. All of this choice is available across a wide range of platforms from traditional AM and FM radio, to digital radio via DAB, digital television and the internet. There will be other new technologies to come.

For established radio broadcasters this explosion of choice brings new challenges through increased competition for listeners and revenues. Broadcasters also face increased costs from having to invest in new platforms and must deal with increased competition from an ever wider range of media. All of these changes create significant pressures on the traditional pattern of local radio, which has emerged as a result of deliberate public policy by successive governments and regulators.

This situation presents challenges to broadcasters and to regulators. There is evidence that the changes in listening habits, together with emerging new technologies have had a more rapid and profound impact on the radio industry than was foreseen just a few years ago when the existing legislation was put in place. As a result, the familiar ways of regulating radio, designed for a largely local analogue radio system, which have served listeners and the industry well, may be ineffective and disproportionately costly in the digital era.

The goal of this document is to outline an approach to regulation which is capable of delivering radio's agreed public purposes as a healthy radio industry makes its transition to a digital world. Radio still has a vital role in fulfilling a range of public purposes – a role shared between the BBC, commercial radio and the new community radio sector – and regulation should be focused squarely on ensuring that those public purposes are met in the interests of listeners as citizens and as consumers.

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

- to enhance choice, diversity and innovation for consumers at the UK, national, regional, local and community levels;
- to secure citizens' interests through the provision of radio designed to meet public purposes; and
- to do this with as little intervention in the market as possible, consistent with meeting our objectives.

In order to facilitate increased choice and diversity at a UK-wide level, while ensuring that local radio prospers in a digital age, we have already advertised an additional national DAB multiplex, which will provide around ten new national radio services, and we have begun the process of filling-in the gaps in local digital radio provision. But these steps alone will not be sufficient to ensure that the industry remains robust. We believe we need to debate now how best to regulate the industry as it copes with the transition to digital.

This report sets out a comprehensive vision for the future regulation of commercial and community radio. Its proposals, taken individually, may not at first sight appear significant but, taken together, we believe they would create the framework for radio to remain a strong and vibrant medium in the 21<sup>st</sup> century. Because there is still a great deal of uncertainty about the future shape of the industry, the proposals set out here aim to provide the flexibility to adapt to changing circumstances.

Some of our proposals have implications for legislation. It is for Government and Parliament to consider the case for new legislation and to take forward any changes they see fit at the appropriate time. We recognise that such legislation may still be some time away. This consultation sets out Ofcom's initial thinking on the options available and suggests changes we believe Parliament may wish to consider in due course. There may, of course, be other options for change that emerge as a result of this consultation exercise or elsewhere.

We have focused on three main areas: the regulation of content and ownership in commercial radio; the regulation of community radio; and the migration of listening from analogue to digital platforms, opening up the possible use of analogue radio spectrum for other things when the time is right.

For commercial radio, most regulation is currently focused on analogue local stations, where station formats and the amount of local output are regulated in much greater detail than those of DAB stations. Stations on other platforms do not have regulated formats at all. The result of this regulatory situation is that the smallest analogue stations often have greater programming obligations than their larger neighbours, but with fewer resources to deliver them.

So long as the majority of listening remains on analogue platforms, Ofcom does not propose to change this situation, but as the proportion of listening on digital platforms increases, the current approach to regulating analogue radio will become increasingly anomalous. At that stage, we envisage a significant simplification of the amount of detail required in formats, along with standardisation of the requirements for local material in programming, based on the size of station. This will ensure that local programming is maintained at those times of day when listeners tell us they most value it and help to ensure the viability of the stations providing that programming by allowing broadcasters to share some programming across a number of stations.

Plurality of provision of commercial radio services alongside the BBC will, we believe, also continue to be of primary importance. However, Government may wish to consider, at the appropriate time, re-visiting the ownership rules, which currently apply in different ways to analogue and digital stations and which may, as a result, become anomalous as digital listening increases. Combining the rules across platforms for a defined set of ownership areas could, we believe, achieve the goal of robust plurality, while offering the industry greater certainty and flexibility for the future. If persuaded of the need for change, it will be for Government and Parliament to consider whether such a change should also be tied-in to increased digital listening.

Community radio is a fledgling new sector which has taken off rapidly in the last couple of years. From a standing start, 122 new stations have already been licensed and many have come on air, offering an extraordinary diversity of services. More awards are in the pipeline.

But the level of regulation imposed upon these tiny stations is very high. The detailed criteria which have to be considered when licensing a station, the ownership rules which prevent common ownership of stations, the funding restrictions which may hamper viability and the relatively short 5-year length of each licence, all put pressures on a sector which will need support if it is to emerge as a bedrock of non-profit, very local radio across the UK.

Ofcom will produce a report for the Secretary of State in the autumn, which will review the statutory framework for community radio. In advance of that report, this consultation makes tentative suggestions, based on Ofcom's early experience of licensing this sector, for possible changes to the existing framework. In doing so, we reaffirm the importance of the sector as a "third force" in British broadcasting, which provides social gain and is not-for-profit, but suggest that the statutory framework surrounding community radio could be simplified significantly.

What about the possible switch-over from analogue to digital radio? On current trends, by 2017, 90% of all radio listening will be via digital platforms. It is essential that we do not rush the question of analogue switch-off, but it is also important that we are ready to address the questions raised by digital migration in the right way at the right time. If and when that time comes, there will need to be a full and detailed review of the costs and benefits involved.

To allow for this possibility, we highlight areas that are properly the domain of Government and Parliament with regard to the current licensing regime. Under the present system, as commercial radio licences expire, the licence is re-advertised for a period of up to 12 years, with the possibility for some of further renewal beyond that. Currently-held licences begin to expire in 2009 in a rolling process that will take many years to complete, with the result that the UK will be unable to achieve analogue switch-off, even if it is decided that this is the correct course of action. In this document, we seek to make the case for new legislation which would allow greater flexibility in planning for the future by amending the commercial radio licensing process.

We recognise that this report is long and detailed. But the issues at stake are of great significance to consumers and citizens and the challenges faced by the radio industry are complex. These questions require thorough examination and vigorous debate if we are to continue to enjoy a vibrant and innovative UK radio sector.

**Ed Richards**

**Chief Executive**

## Section 1

# Executive summary

- 1.1 Radio is at an exciting point in its history. Total listening in the UK reached a record high of 45 million listeners in the final quarter of 2006, with 90% of the population tuned-in every week. At the same time, the number of households which have DAB reached 16% (up 44% on the previous year), while listening via other platforms is also increasing. Listener choice has increased considerably as new stations, offering new Formats, have been launched over the past few years by both commercial radio (e.g. rock, jazz, chill-out, speech) and the BBC.
- 1.2 In a few months, Ofcom will award the licence for a second national commercial multiplex to complement the services already on offer to the majority of the population. This new multiplex could offer an additional ten or so radio stations and perhaps other multimedia services too, significantly extending consumer choice.
- 1.3 However, there remains a significant level of uncertainty about the exact shape that the radio industry will take over the next few years, in terms of operators, platforms, digital take-up and stations.
- 1.4 In our discussion document at the end of last year, we set out the challenges facing the radio industry which, we argued, is facing a world where the media, communications and entertainment technologies are changing at a faster rate than at any time in history. As a result, the radio industry is having to invest in new technologies and re-invent its role in the 21<sup>st</sup> century.
- 1.5 The traditional radio policy in the UK, followed by successive legislation and regulators was for the BBC to be the focus of national broadcasting and commercial radio to be the focus of local broadcasting (although the BBC also did some local broadcasting and commercial radio did some national broadcasting). The pattern was very similar to that traditionally followed in television, with the BBC being the national broadcaster and ITV being a federation of regional broadcasters.
- 1.6 However, just as in television, competition for stations of all sizes has increased dramatically, not only from within the medium but from outside too. Local programming is expensive to deliver and the commercial realities of increasing competition mean that it is no longer sustainable to the extent it used to be. So the pressures on commercial radio, which is primarily a local broadcasting system, are being felt particularly hard.
- 1.7 But the problems faced by commercial radio are not all due to the way the system is regulated. Some are structural, to do with changing business models and competing claims on advertising spend, and some are due to commercial stations not always having made the most of the business opportunities they had. We believe there are two main pressures for change in the structure and regulation of the industry:
  - a) Increasing competitive pressures mean that existing programming commitments may no longer be sustainable. A healthy, sustainable commercial radio industry is necessary to enable Ofcom to deliver the public policy objectives described in its statutory duties. Existing regulation, particularly of the analogue radio sector, is heavy compared to other media and the cost to the radio industry of that regulation is high and may now be becoming disproportionate. This argues for a

general reduction in the level of regulation of the analogue commercial local radio sector.

- b) An increasing proportion of listening is to radio via digital platforms, which are expected to account for the vast majority of radio listening in ten years' time. As digital platforms are significantly less regulated than traditional analogue (AM and FM) local radio, this argues for an alignment of analogue and digital regulation.
- 1.8 These changes have had a more rapid and profound impact on the radio industry than was foreseen just a few years ago when the existing legislation was put in place. As a result, the familiar ways of regulating radio, designed for a largely local analogue radio system, which have served listeners and the industry well, may be ineffective and disproportionate in the digital era.
- 1.9 Changes in regulation alone cannot secure the future of commercial radio – much of that is up to the industry itself – but they can help.
- 1.10 Ofcom has clear statutory duties and regulatory principles. We have previously set out how we will combine these with our analysis of the rationale for intervention and potential public purposes to produce a set of strategic aims for regulation in radio:
- a diversity of programming on commercial radio, catering for different tastes and interests;
  - the provision of local programming to cater for local tastes and interests and fulfil the need of citizens for news about their local community to ensure informed debate; and
  - plurality of provision to ensure access for different voices and viewpoints on both local and national radio.
- 1.11 So, bearing in mind that future uncertainty means that any plans made now must remain flexible and that broadcast radio may only be part of the future audio mix, we foresee a radio landscape in ten to fifteen years' time consisting of a mix of stations, probably all digitally-delivered:
- National stations with minimal regulation to ensure diversity catering for different tastes and interests;
  - Local stations regulated to guarantee a minimum amount of local programming, with some plurality rules to ensure diversity of ownership; and
  - Community stations for any community that wants and can sustain such a service. Their primary aim would be social gain and they would operate on a not-for-profit basis.
- 1.12 If this is to be the long-term future for the radio industry, we will need a transition path to achieve it, which will also account for the increasing pressures faced by the industry. This means we need to start discussing now the options for change in three particular areas: content and ownership regulation, planning future analogue licensing to maximise flexibility to free-up spectrum when the time is right, and the licensing and regulation of community radio.
- 1.13 In bringing forward proposals which are consistent with this proposed strategic approach, we will take into account the cost of regulation to the businesses we

regulate, and the likely impact of those costs on individual businesses and the radio sector as a whole. However, we should be clear that these are not the reasons why we are considering proposing changes to the regulatory framework; they are simply factors to be taken into account when we are exploring ways that the intended outcomes of this project as set out above might be delivered.

### Commercial radio content regulation

- 1.14 We do not believe that the market would necessarily supply local programming, at least not ubiquitously around the UK, as local programming is expensive, and it is always likely to be more profitable to network as much programming as possible, even if that means a drop in audiences. We believe that plurality remains important and that some form of ownership rules should remain. Our view is that some intervention is needed to ensure at least a minimum level of local programming<sup>1</sup> provision and to secure plurality of ownership.
- 1.15 So, in developing for discussion a set of proposals for possible changes to existing content and ownership regulation, we have tried to balance our desire to see a range of strong local radio services against the financial realities which mean the current level of regulation may no longer be sustainable. Our aim is to ensure that local services remain able to provide local programming at those times of day when they matter most to audiences.
- 1.16 We also aim to ensure that our proposals are proportionate to the challenges faced, by linking the timing of such changes to changes in the market, based on the proportion of digital listening. However, we recognise that it would be possible to implement different changes at different points over the next few years.

### Formats

- 1.17 Currently analogue Formats are a lot more detailed than digital (DAB) Formats, while stations on other platforms have no Format regulation at all. When the time is right, as digital listening increases, we believe it will make sense for analogue Format regulation to be relaxed so that these Formats contain only the same level of detail as DAB Formats.

### Localness

- 1.18 Many local commercial radio stations recognise that localness is the key to their success and is the reason that many people listen to them. Being relevant to the communities they serve is what differentiates them from national stations. However, while we welcome stations providing as much local programming as possible, the regulatory question is what is the minimum amount of localness that local stations should be required to provide for public policy reasons, if any?
- 1.19 The smallest local stations are those least likely to be financially successful and yet they often have the greatest local programming obligations. At the same time, the research demonstrates that most people think local radio stations should be county-sized or town- or city-sized, rather than smaller. We therefore propose that once a suitable threshold of digital listening is reached, Ofcom should issue guidance about what it considers an appropriate minimum level of localness that each station should provide. The levels of localness should be proportionate to the size of the station. The proposed changes would also be proportionate to the challenges faced by differently-

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<sup>1</sup> By which we mean local material, which is locally-made.

sized stations and so are likely to have a more significant effect on smaller stations, which currently have the greatest local programming obligations and face the greatest financial challenges. The table below sets out a possible way of delivering this approach.

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

- 1.20 We believe that the proposals as regards Formats and localness, when taken together, could offer quite a radical relaxation of the rules for many stations, while protecting audience needs and expectations at key times of day, allowing stations to re-focus their local investment to meet listener needs more effectively, while also providing an opportunity to raise programming standards at other times of day by sharing content.

### Local digital radio

- 1.21 As digital listening increases, we believe it may also be sensible to balance the requirement for local material across analogue and digital platforms, as currently there is no requirement to ensure local programming provision on DAB.

### Proposal 1

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

*This consultation seeks views on this proposal and considers options for delivering*

*It. Where these relate to potential legislative changes, Government may wish to consider them in the future, should the possibility of introducing new legislation be taken forward. Having considered the options, Ofcom's initial suggestions are as follows:*

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

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

## **Commercial radio ownership regulation**

- 1.22 There are currently separate ownership rules for analogue and digital platforms. The ownership rules are for Government and Parliament to decide and not for Ofcom. However, Ofcom has a statutory duty to secure a sufficient plurality of providers for radio services. We believe that plurality of provision will continue to be important for local radio but we suggest that as digital listening increases and analogue listening declines, Government may wish to consider whether it may make sense to combine

the ownership rules so that they can take account of this changing world. We believe this would provide greater flexibility for stations to take advantage of further consolidation while maintaining a sufficient level of plurality (two local providers plus the BBC in any area where there is a significant number of stations).

## 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.***

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

- 2.1\*: The timing of any changes to ownership regulation of commercial radio could be linked to a threshold based on the overall proportion of listening accounted for by digital platforms. This may be the same threshold as that considered above for changes to content regulation.*
- 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.*
- 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.*
- 2.4: The rule that no one person can control more than one national DAB multiplex could be retained.*
- 2.5\*: The cross-media ownership rules could be based on defined ownership areas, as per 2.2 above; and analogue and digital radio services could be considered together in this regard.*

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

## The flexibility to free-up spectrum in the long-term

1.23 Current forecasts suggest that in ten years' time around 90% of radio listening could be to digital platforms (via DAB, the internet and digital television). At the same time it is becoming increasingly apparent that the spectrum currently used by analogue radio could be used for other things which may offer greater benefits than the current uses. For example:

- The spectrum currently used for FM radio could be used for more digital radio, for mobile TV, for something nobody has yet thought of, or for a different set of FM services (so ending the current practice of simulcasting services on analogue and digital platforms).

- The spectrum currently used for AM radio could be used to provide digital radio of better sound quality than AM and offering more services.
- 1.24 While we believe that digital is the long-term future for the vast majority if not all radio listening, we also believe that it is not yet time to set a date for analogue switch-off on radio. Before setting such a date we suggest a major review would need to take place which would consider, amongst other things:
- digital radio coverage (including the universal availability of the BBC's radio services);
  - the range of services available on digital platforms, including consideration of the future of small-scale commercial and community radio;
  - the benefits and costs to consumers, including the needs of the most vulnerable members of society;
  - the costs and benefits to the radio industry;
  - the costs and benefits of alternative uses of spectrum; and
  - the costs and benefits to the environment in terms of power consumption and set replacement.
- 1.25 We suggest separate reviews for AM in 2009 and FM in 2012 (or when digital listening accounts for 50% of all listening if earlier).
- 1.26 Existing analogue radio licences are currently due to expire at different times over the next few years. As they expire, under the current legislation the licences may be re-advertised for up to 12 years, with those licensees who also offer a local service on a relevant DAB multiplex being eligible for a further 12 year renewal. Such re-advertisements risk tying-up the spectrum for analogue radio for many years to come.
- 1.27 Many of the alternative uses for the spectrum currently used by analogue radio would require the existing spectrum to be packaged in different ways. In order to provide maximum flexibility, significant contiguous amounts of the current spectrum (particularly in VHF Band II, used for FM) would need to be made available simultaneously. That implies that a common end-date for at least the majority of licences would be required.
- 1.28 Current legislation does not allow us to achieve a common end date. Again, whether to bring forward proposals for changes to the legislation is for Government, but Ofcom is minded to suggest achieving a common end-date by:
- removing the automatic renewal for analogue licences also offering a relevant DAB service and
  - providing automatic indefinite extensions for all existing licensees, but making them subject to two years' notice of termination following the reviews referred to above.
- 1.29 We propose that any licences expiring before new legislation is in place would be re-advertised under the current legislation, but with an expiry date of December 2015. However, as this may not be an appropriate end-date this measure alone would not provide the flexibility required to achieve the common end-date for analogue licences.

- 1.30 For small-scale commercial stations and community stations, we recognise that DAB does not currently offer them a transition path to digital. Ofcom does not consider that the current pattern of analogue services, which has been developed more as a result of spectrum availability than consumer demand, should necessarily be replicated on digital platforms, and so no existing analogue station is, or should be, guaranteed digital migration. However, there may remain in future a public policy justification for intervening in the allocation of spectrum and/or developing an appropriate licensing regime, in order to secure the provision of small radio stations which deliver public purposes. We are currently aware of a number of possible platforms and/or technologies that may be used to provide small radio services in the future, including DRM, DAB+, the internet, DAB on L-Band, DRM+, or remaining on FM.

### 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.***

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

- 3.1\*: *So as to maximise DAB coverage for local radio services, Ofcom should be given the power to increase the licensed areas of existing DAB local multiplex licences where such increases would not be significant, and to approve significant increases in exceptional circumstances.*
- 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).*
- 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.*
- 3.4: *We propose that licences re-awarded under the current statutory framework should be granted with an expiry date of 31 December 2015.*
- 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.)*

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

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

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

## New ways of licensing radio broadcasting

- 1.31 Under current legislation Ofcom is not able to license terrestrial radio services which will be regulated to secure public purposes without having to determine beforehand which technology they will use or the types of services they will offer.
- 1.32 This severely limits Ofcom's ability to license effectively new technologies, such as DRM (Digital Radio Mondiale – a complementary form of digital radio which can be used on medium-wave and long-wave). DRM could provide a useful complement to existing DAB digital radio services in achieving universal coverage of digital radio.
- 1.33 The licensing regime is for Parliament and not Ofcom to decide. However, we suggest that there is a case for allowing any new licences, either analogue or digital to be auctioned, possibly with conditions where the licence is required to provide certain things, such as diversity within a multiplex or localness.

## 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.***

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

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

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.*

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

## DAB sound quality

- 1.34 Of the 210 responses to Ofcom's discussion document on the *Future of Radio*, over 70% (153) were regarding the quality of current DAB digital radio broadcasts. Most of the respondents stated their belief that DAB provides a lower technical quality of transmission than that found on FM and, as long as this was the case, there should be no switch-off of FM broadcasts. A number also urged the adoption of the new AAC codec, now known as DAB+. This volume of responses was primarily as a result of an article published in The Guardian's technology section on 23 November 2006, entitled "The future of UK radio is now in your hands", by Jack Schofield, who has previously written several other articles critical of DAB's audio quality.
- 1.35 In the light of the volume of responses received on this issue, Ofcom has undertaken its own independent research into consumer perceptions to ascertain whether there is widespread dissatisfaction with the quality of DAB transmission, or whether it is confined to a small number of audiophiles.
- 1.36 The research, commissioned by Ofcom from ICM in January 2007, interviewed 677 DAB listeners and asked how they would rate the sound quality. 81% of all respondents rated sound quality as either "excellent" or "good", with a further 14% rating it as "average". Only 3% rated it as "poor" or "very poor", with 2% who said they didn't know. As most of the criticism has been from audiophiles, we were particularly interested to test the opinions of DAB hi-fi owners. The proportion of this group who were supportive of DAB was no different from the average DAB listener, with 83% rating quality as excellent and a further 12% as average.
- 1.37 We went on to ask how listeners would rate sound quality on DAB compared to FM radio. On this question 94% of all DAB listeners said it was at least as good as FM, with 77% saying it was better than FM. Only 3% thought it was worse than FM. Among hi-fi listeners the results were broadly similar, with 92% thinking it was at least as good as FM, although 6% thought it was worse.
- 1.38 The implementation of AAC coding (or DAB+) would not necessarily imply improved sound quality. Sound quality is a function of the bit-rate used by the broadcaster to transmit the signal. Within DAB multiplexes, as within digital television multiplexes, the broadcaster (or multiplex operator) has to make a trade-off between the number of services (audio or data) fitted in to the multiplex and the sound quality of those services.
- 1.39 Our conclusion, based on the research among listeners, is that broadcasters have got the trade-off between sound quality and the number of stations about right. DAB+ does offer benefits, but the adoption of DAB+ would be likely to lead to an increase in the number of services rather than in sound quality. The problem for the UK in considering implementing DAB+ is that there are currently 4.6m DAB sets in the market and this figure is likely to grow to over 5m by the end of this year. None of those sets can receive DAB+ services and no such sets are currently in production or likely to be launched before the end of this year. A move to DAB+ now for existing services would disenfranchise all existing DAB listeners, forcing them to buy new sets, or more likely to abandon the technology altogether. A move to DAB+ only for new services would risk consumer confusion and would be unfair to the existing operators who have already invested heavily in DAB. More importantly, any

announcement now that the UK was going to adopt DAB+ would be likely to create confusion and completely stall the DAB market; something it might never recover from.

1.40 We certainly do not rule out the future adoption of DAB+ in the UK. In fact it could well be a desirable outcome if this proves to be the future direction of DAB across the world. It is possible that the UK will have adopted DAB+ well before the closure of FM services, if that ever happens. The question is one of timing. Our preferred approach is therefore to:

- Work with colleagues in the rest of Europe to ensure a common future standard for DAB
- Encourage manufacturers to develop sets which can receive these new standard(s) as well as the existing standard; so that
- In several years, when the vast majority of sets can receive both standards we can consider migrating services to the new standard.

1.41 One other aspect of sound quality is the issue of broadcasting in stereo or mono. In general, these changes have been a matter for the multiplex operator, provided those changes comply with the minimum bit-rate regime. Ofcom considers that it would be likely to 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 therefore want the ability to intervene if we think such a move would not be in the interests of citizens and consumers, and so we propose to use our powers as a backstop to ensure the continued provision of high quality services.

## 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.***

## Community radio

1.42 Community radio licensing started only three years ago and so far 122 licences have been awarded, with 43 currently on air. Ofcom is tasked by the DCMS with carrying out a review of the legislative provisions surrounding community radio two years from the launch of the first station, which was in November 2005. That review therefore falls due shortly and this report aims to provide initial thoughts and proposals for consultation.

1.43 Community radio is intended to be clearly distinct from commercial broadcasting and the BBC. In order to ensure this, the legislation imposes some specific 'characteristics of service' requirements which such stations must adhere to. These state that all such services must:

- Be provided primarily for the good of members of the public or of particular communities and in order to deliver social gain rather than primarily for

commercial reasons or for the financial or other material gain of the individuals involved in providing the service.

- Be intended primarily to serve one or more communities (whether or not it also serves other members of the public).
- Not be provided in order to make a financial profit, and use any profit produced as a result of the provision of the service wholly and exclusively to secure or improve the future provision of the service or for the delivery of social gain to members of the public or target community.
- Offer members of the target community opportunities to participate in the operation and management of the service.
- Be accountable to the target community.

1.44 We believe these characteristics remain key in defining community radio.

1.45 However, we also believe that some of the other elements of the regulation of community radio may be too onerous for such a small sector. Effectively the radio sector with the fewest resources is the one that is most tightly regulated.

1.46 This is only the first stage of Ofcom's review of the community radio sector and much information gathering and analysis remains to be done before the final report is prepared in the autumn. However, based on Ofcom's early experience in licensing this sector, we suggest that there may be ways to simplify the statutory framework without losing the essence of what community radio has been set up to achieve.

1.47 We therefore suggest there may be a case for considering the removal of many of the statutory selection criteria and focusing on the two which we believe matter the most: the provision of social gain – which we think may be better described as “community benefit” - and the ability to launch and maintain the service. This is not to say that the other elements included in the statutory criteria are no longer relevant, but that they are subsumed within these two main characteristics and become expectations rather than mandatory conditions.

1.48 The existing legislation prevents the holding by any person of more than one community radio licence. We believe that there may be significant benefits in considering the removal of this restriction, to allow the sharing of costs and experience for example, and to allow stations better access to funding sources.

1.49 While we believe that diversity of funding sources remains important for community stations so as to maintain their editorial independence, we believe there may be a case for considering the relaxation of the current restrictions on the amount of funding that may come from a single source. Similarly, current legislation does not specifically protect commercial radio broadcasters from competition from other forms of media, such as the internet or the licensing of additional commercial radio services, and therefore the protections currently in place for small-scale commercial stations may not be appropriate. We will carry out more analysis of this area over the coming months and welcome views as to what the limits should be.

1.50 Community radio licences last for only five years and there is no provision for renewal. Rather than re-advertise such licences after such a short period, we suggest that they be offered a one-off extension of up to five years, subject to achieving a common end-date and subject to remaining within the terms of their licence.

## 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.***

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

- 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.*
- 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.*
- 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.*
- 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.*
- 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.*
- 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.*
- 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.*
- 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.*
- 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.*
- 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.*

- 6.11: *There should be no changes to the categories of person prohibited from holding a community radio licence.*
- 6.12\* *The current rule requiring that no body corporate may hold more than one community radio licence should be reconsidered.*
- 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.*
- 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.*
- 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.*
- 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.*
- Note: We believe that suggestions marked with an asterisk would require new legislation.

- 1.51 We would welcome views on the proposals and accompanying suggestions contained in this document by 29 June 2007. Details of how to respond are given in Annex 1.

## Section 2

# The policy goals in radio

2.1 Commercial radio in the UK has existed for over 30 years. Over that time it has grown from a handful of stations to over 300 local stations offering a choice of local AM and FM commercial services in almost every part of the UK and three national analogue services. Digital radio has been introduced offering listeners still more choice. The commercial radio industry has had to adapt and evolve to cope with increased competition and changing listener tastes. But while the regulation of radio has also evolved over the years, changes in the media are now happening so quickly that it may be time for a more radical rethink of radio regulation.

### Ofcom's statutory role

2.2 Any consideration of Ofcom's role in the regulation of radio in the UK, needs to be based upon Ofcom's statutory duties and responsibilities. Ofcom's principal statutory duty as set out in section 3 of the Communications Act 2003 is to further the interests of citizens in relation to communications matters; and to further the interests of consumers in relevant markets, where appropriate by promoting competition. Ofcom is also required to secure (amongst other things):

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

### Public purposes and a strategic framework

2.3 In 2005, following consultation, Ofcom published its views on the future of radio in *Radio – Preparing for the future*. That document set out Ofcom's view on the public purposes of radio and its strategic framework for the future regulation of radio.

2.4 Ofcom conducted audience research in 2005 to consider the question of why we intervene in the radio market. This suggested a number of public purposes for the

radio sector as a whole – BBC, commercial and community - which provide reasons for intervening in the radio market.

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

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

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

- To enhance choice, diversity and innovation for consumers at the UK, national, regional, local and community levels. In the short-term, this means we need to:
  - ensure a wide range of services in the commercial sector and, in particular, the provision of local material, by regulating in the most effective way possible;
  - encourage the development of more choice and competition by licensing new analogue and digital services and encouraging the growth of digital radio; and
  - encourage the growth of a strong commercial sector, capable of extending range and choice and investing in the future.
- To secure citizens' interests through the provision of radio designed to meet public purposes. The public purposes will be met in different ways by different sectors, taking into account:
  - the need to achieve a balance between the public and commercial sectors and clear boundaries between them;
  - the amount of public funding and intervention required to meet the public purposes;
  - the importance of plurality of provision of radio designed to deliver those purposes; and
  - the need to encourage the development of a thriving community radio sector.

- To do this with as little intervention in the market as possible, consistent with meeting our objectives:
  - based, where possible, on the range and quality of services provided to consumers, rather than intervening to determine production methods;
  - in a way that is as consistent as possible across media and across platforms; and
  - adapting regulation to changes in the market and increasing levels of competition.

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

- A wide range of innovative **UK-wide** commercial stations - providing competition for the BBC, and plurality of provision in all major genres; both UK-wide services, and specific services for the nations.
- A wide range and diversity of **local and regional** commercial services - catering for local tastes and interests, with a particular focus on local news, providing a sense of community and serving local communities, but also providing local programming of more specialist interest.
- Community services for every **community** that wants one - Providing programmes for special interest groups (including ethnic and religious communities), providing a sense of identity in local communities, with community involvement and participation, broadcasting community information and allowing for debate.
- All supported by **multimedia** services where viable - On-demand, downloads, archive, text and graphical information.
- Available **where and when audiences want**, on devices which offer real consumer benefits.

### Steps already taken to implement the strategy

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

- The allocation of spectrum to DAB to deliver most of these goals, including a second national commercial radio multiplex to provide more diversity at a national level, and more local radio multiplexes to facilitate local DAB services in every part of the UK. However, we recognised that DAB (or existing FM) will not allow for the delivery of all of these goals, and other technologies (for example, DRM) may be required to deliver them all.
- A move from input to output regulation, allowing more automation, the use of news hubs and some co-location.

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

- 2.10 Ofcom has also awarded licences to 122 community radio stations in the past two years, and has now commenced the second round of licensing.
- 2.11 In November 2006 we published a discussion document on the Future of Radio arguing that
- the rapid changes taking place in the market may mean that the existing model for commercial radio in the UK is unsustainable; and
  - the need to consider how to approach the re-licensing process as existing commercial FM and AM licences expire over the next few years – including potential alternative uses for that spectrum
- necessitated a further review now.
- 2.12 This consultation represents our conclusions and proposals for the future of radio in the UK over the next decade.

### The long-term picture

- 2.13 The traditional radio policy in the UK, as set out in legislation and implemented by regulators, is for the BBC to be the focus of national broadcasting and commercial radio to be the focus of local broadcasting (although the BBC also provides some local broadcasting and commercial radio offers increasing numbers of national services).
- 2.14 The pattern is very similar to that traditionally followed in television, with the BBC being the national broadcaster and ITV being a federation of regional broadcasters.
- 2.15 However, just as in television, competition for stations of all sizes has increased dramatically, not only from within the medium but from outside too. Local programming is expensive to deliver and the commercial realities of increasing competition mean that it is no longer sustainable to the extent it used to be. So the pressure on commercial radio, which is primarily a local broadcasting system, is being felt particularly hard.
- 2.16 These changes have had a more rapid and profound impact on the radio industry than was foreseen just a few years ago when the existing legislation was put in place. As a result, the familiar ways of regulating radio, designed for a largely local analogue radio system, which have served listeners and the industry well, may be ineffective and disproportionate in the digital era.
- 2.17 But it is important to point out that the problems faced by commercial radio are not all due to the way the system is regulated. Some are structural, to do with changing business models and competing claims on advertising spend, and some are due to commercial stations not always having made the most of the business opportunities they had.
- 2.18 As we show in the next section, there are two main pressures for change in the structure and regulation of the industry:
- The first is that increasing competitive pressures mean that existing programming commitments may no longer be sustainable. A healthy, sustainable commercial radio industry is necessary to deliver the public policy objectives which help Ofcom to meet its statutory duties. The current level of regulation of the sector is

heavy compared to that applied to other media, and the cost to the commercial radio industry of this current level of regulation arguably is high, and may be disproportionate. This argues for a general reduction in the level of regulation of the analogue commercial local radio sector.

- The second is that an increasing proportion of listening is on digital platforms, which are expected to account for the vast majority of radio listening in ten years' time. As digital platforms are significantly less regulated than traditional analogue (AM and FM) local radio, this argues for an alignment of analogue and digital regulation.

2.19 Changes in regulation alone cannot secure the future of commercial radio – much of that is up to the industry itself – but they may help.

2.20 In proposing to reduce the regulation of analogue radio and align the analogue and digital regimes more closely, we have taken into account three aims, set out by Parliament:

- The desire for a diversity of programming on commercial radio, catering for different tastes and interests
- The desire for local programming to cater for local tastes and interests and fulfil the need of citizens for news about their local community to ensure informed debate
- The desire for plurality to ensure access for different voices and viewpoints on both local and national radio

2.21 However, in creating a long-term plan for the future of the radio industry, we need to be aware that the future is far from certain. While there is a general trend towards digital listening replacing analogue, the rate of take-up of DAB and other digital technologies is uncertain. New technologies are emerging all the time, which could gain widespread public acceptance and uptake. Similarly the rate of increase of other pressures on the industry, such as a reported move of advertising spend from traditional media to the internet is uncertain. The plans we have developed are based upon our best estimates of the most likely outcome for the future of radio, but we need to be aware that those plans may need to be adapted as the challenges faced by the industry change. We therefore need to maintain as much flexibility as we can in planning for the future.

2.22 So, bearing that caveat in mind, and the three aims set out above, what might the future radio landscape look like in ten to fifteen years' time and how might it be regulated?

**National stations**, largely delivered by DAB and possibly DRM. The main role of these stations would be to provide diversity in programming, catering for different tastes and interests. The operators of these multiplexes and stations would have a duty to ensure diversity in their programming, but beyond this general duty, provision would be largely market led. Ofcom could have backstop powers to prevent a diminution in diversity as we do now for national DAB services (A change in the station line-up must be approved unless it is likely to substantially diminish the range of services on offer). Plurality rules would still apply to ensure that no operator could control more than one national multiplex.

**Local stations (roughly county-sized, generally >250,000 population)**, delivered on DAB. The primary goal of these stations would be to secure the local policy goals and so there would be a guarantee of a minimum amount of local programming on each local DAB multiplex (perhaps one station broadcasting for a number of hours a day). This would ensure that every part of the UK had access to some local commercial programming. DAB local areas are generally county-sized, which is the size most listeners tell us they believe a local radio station should be. This is the only level of local programming that would be guaranteed in every area. Diversity of programming on these multiplexes would be less important, as such diversity would be provided at a national level, and so there would be no format requirements on these multiplexes. Plurality rules would still be relevant for local radio but would be applied on a platform neutral basis.

**Smaller local stations (generally <250,000 population)**, delivered on other (non-DAB) platforms, perhaps FM or DRM. We do not propose to guarantee a transition to digital platforms for all existing analogue stations, the pattern of which is due in part to analogue spectrum availability rather than consumer or industry demand. There may be a public policy case for allocating spectrum to such stations in future, whether analogue or digital, but it may equally be the case that there are better uses for the spectrum. This question should be decided by the future review of the VHF Band II and Medium Wave bands that we propose. If allocated spectrum for public policy purposes, such stations may have certain public policy obligations placed upon them. If delivered purely by market mechanisms, they may not. Whether or not spectrum is allocated specifically to such stations, there would be no guarantee of ubiquity – i.e. the geographical pattern of such services would be determined by demand. For plurality purposes, any local stations would be considered as part of the overall local radio ownership rules, which should be platform neutral.

**Community stations**, delivered on FM, DRM or other technologies. The aim of these stations would be to provide a service to any community that wants and can sustain such a service. Their primary aim would be social gain. They would be not-for-profit, so allowing them to access alternative sources of funding.

- 2.23 We believe the public purposes set out for each of these sectors will remain valid, but the extent to which regulatory intervention is required, or able, to achieve them may be different depending upon the range of platforms which provide audio services. Where public policy goals may already be met sufficiently by existing licensed services, it may be possible to license additional services in a different way. At present the current legislation provides a mechanism for us to license services delivered over a multiplex (where two or more radio services are packaged together and broadcast) as 'general multiplexes'. We think we should also have the ability to license 'single-stream' (not multiplexed) services without necessarily having to apply public policy purposes to such services.
- 2.24 If this is to be the long-term future for the radio industry, we will need a transition path to achieve it. This means we need to plan for change in three particular areas:

- First of all, we need to consider the regulation of diversity (as currently regulated via Formats, but also through statutory format requirements in respect of national analogue services), localness (also currently regulated via Formats) and plurality (as currently regulated via media ownership rules) in the interim.
- Secondly, we need to develop a plan to ensure that we have maximum flexibility in planning the future of the analogue (FM and AM) spectrum, to ensure that it is used efficiently if the majority of listening is on digital platforms in ten years' time. It could be used to deliver small-scale local and community radio, but there may well be applications other than radio that it could be used for.
- Thirdly, we need to consider the statutory framework for community radio to determine whether this remains appropriate (DCMS requires Ofcom to carry out such a review in 2007).

2.25 So, the intended outcome of this review is a new framework for regulating commercial and community radio which takes account of the ongoing transition from analogue to digital platforms and other developments in the communications market (as set out in the discussion document published last November), and is a framework which ensures that regulation is proportionate, consistent and targeted only at cases in which action is needed, while at the same time enabling Ofcom to meet its statutory duties and secure the public policy objectives for radio broadcasting that we have previously identified.

2.26 Some of our proposals and suggestions have implications for legislation. It is for Government to consider the case for new legislation and for Government and Parliament to take forward any changes it sees fit at the appropriate time. We recognise that such legislation may still be some time away. This consultation sets out Ofcom's initial thinking on the options available and suggests changes we believe Government may wish to consider in due course.

2.27 We believe that taking this strategic approach implies that we should seek to bring forward proposals which, when taken as a whole, seek to make radio regulation consistent across different broadcast platforms, as far as is practicable, but which give Ofcom sufficient flexibility to apply regulation in a manner which is proportionate and targeted only where action is needed.

## Section 3

# A changing industry

- 3.1 Radio is at an exciting point in its history. Total listening in the UK reached a record high of 45 million listeners in the final quarter of 2006, with 90% of the population tuned-in every week. At the same time, the number of households which have DAB reached 16% (up 44% on the previous year), while listening via other platforms is also increasing. New stations, offering new Formats, have been launched over the past few years by both commercial radio (e.g. rock, jazz, chill-out, speech) and the BBC.
- 3.2 In a few months, Ofcom will award the licence for a second national commercial radio multiplex to complement the services already on offer to the majority of the population. This new multiplex could offer an additional ten or so radio stations and perhaps other multimedia services too, significantly extending consumer choice.
- 3.3 However, there remains a significant level of uncertainty about the exact shape that the radio industry will take over the next few years, in terms of operators, platforms, digital take-up and stations.
- 3.4 In our discussion document at the end of last year, we set out the challenges facing the radio industry which, we argued, is facing a world where the media, communications and entertainment industries are changing at a faster rate than at any time in its history. As a result, the radio industry is having to invest in new technologies and re-invent its role in the 21<sup>st</sup> century. This section sets out again the challenges facing the radio industry, as they are fundamental to the proposals which follow. It includes relevant responses to this area of the discussion document.

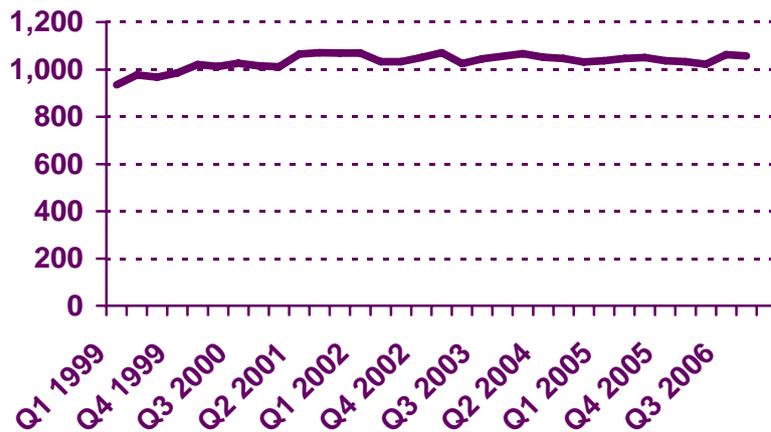
## Radio advertising is stalling as advertisers switch to other media, such as the internet

- 3.5 While overall listening is fairly constant, advertisers are moving to newer media, such as the internet, putting commercial radio under pressure while the BBC is taking a larger share of radio audiences.

## Overall listening is relatively constant; but there are early signs of a decline particularly among young adults

- 3.6 Overall radio audience figures have been constant over the past six years (Figure 1). While this disguises significant changes in demographics and sectoral shifts in listening, there is no sign yet that overall radio listening is set to decline. The robustness of radio listening is helped by the nature of radio - much listening is ambient and less easily substitutable for other activities and radio provides the companionship which cannot easily be matched by other media.

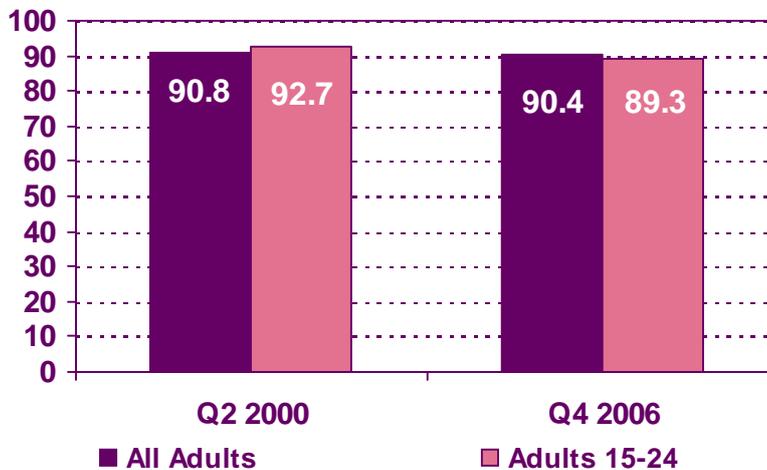
Figure 1: Total hours of listening to radio 2000-2006



Source: Rajar

3.7 Traditionally radio reaches a higher proportion of young adults than the population as a whole, but this difference is beginning to disappear (Figure 2). In addition, 16-24 year olds listen to less radio per week than the population as a whole (18h 18m per week versus 20h 06m). The future of listening by this key group as they get older is difficult to predict.

Figure 2: Percentage of each group listening to radio each week (15 minute reach)



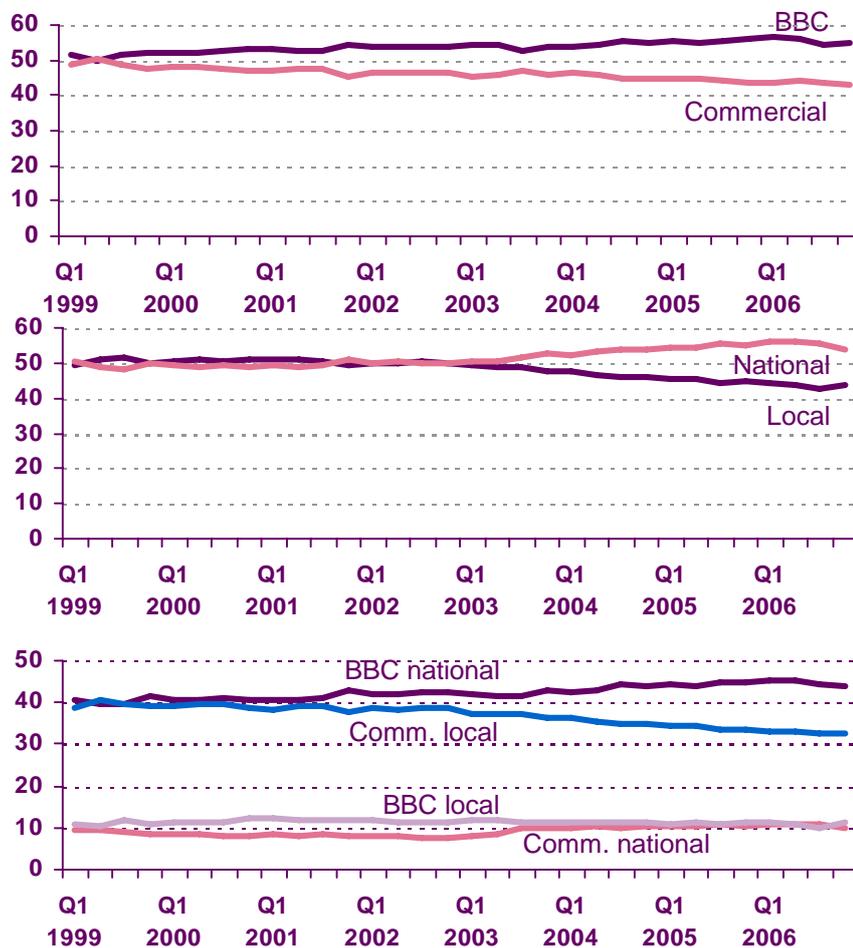
Source: Rajar

**Commercial radio has lost audience to the BBC**

3.8 During the late 1990s, commercial radio and the BBC attracted approximately equal shares of listening, although commercial radio tended to have a greater share than the BBC. However, commercial radio has lost share to the BBC over the last seven years. This trend may be plateauing as BBC share has dipped in recent quarters (Figure 3). As new national digital stations have emerged, the share of national stations has increased. Until 2003 there was approximate parity in the audience shares of local and national radio stations. In only two years, a 10-point gap has

emerged. The BBC has been the main beneficiary of this development, but national commercial stations have also recorded share gains since 1999.

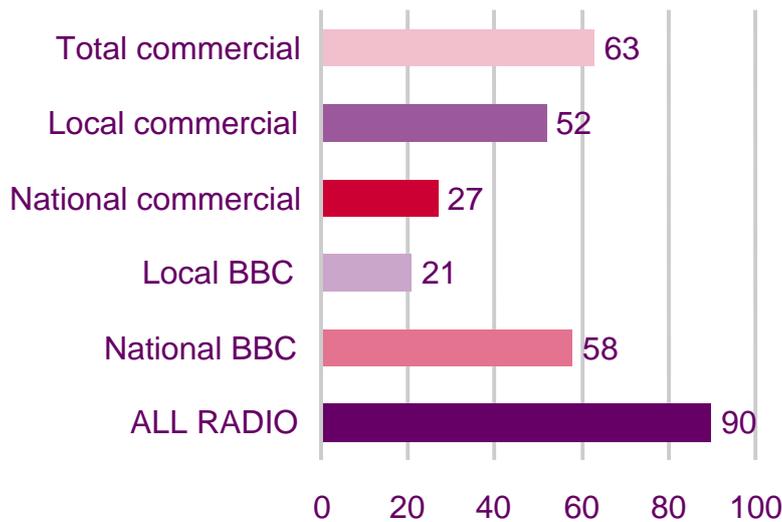
**Figure 3: Audience share by sector (%)**



Source: *Rajar*

- 3.9 However, although its reach has fallen slightly over the past six years, local commercial radio is still listened-to by over half of the UK population every week (reach was down from 55% in Q2 2000 to 51% by Q4 2006), while the reach of national commercial radio has risen from 23% in Q2 2000 to 26% in Q4 2006, largely as a result of new national digital stations emerging.
- 3.10 The total reach of commercial radio is still almost two-thirds of the UK population, although it has fallen over the same six-year period from 66% to 63% (Figure 4).

**Figure 4: Weekly reach by sector Q4 2006 (% of UK population listening each week)**



Source: Rajar

**This trend can partly be explained by an expanding BBC**

3.11 The BBC invests heavily in radio services and has in recent years launched a number of new national radio services on its digital multiplex. Existing services are also in receipt of significant increases in funding, with expenditure on radio estimated to have risen by £19m in 2005, from approximately £610m to £630m. The scale of the BBC’s operations allows for cost savings due to centralisation and economies of scale. Cross media pooled costs (e.g., news gathering) allow BBC radio access to content at a reduced rate compared to stand alone radio companies. In the UK, radio makes up a lower proportion of display advertising than in other countries. This may be due in part to the role played by the BBC.

**Figure 5: Share of total industry funding by sector**

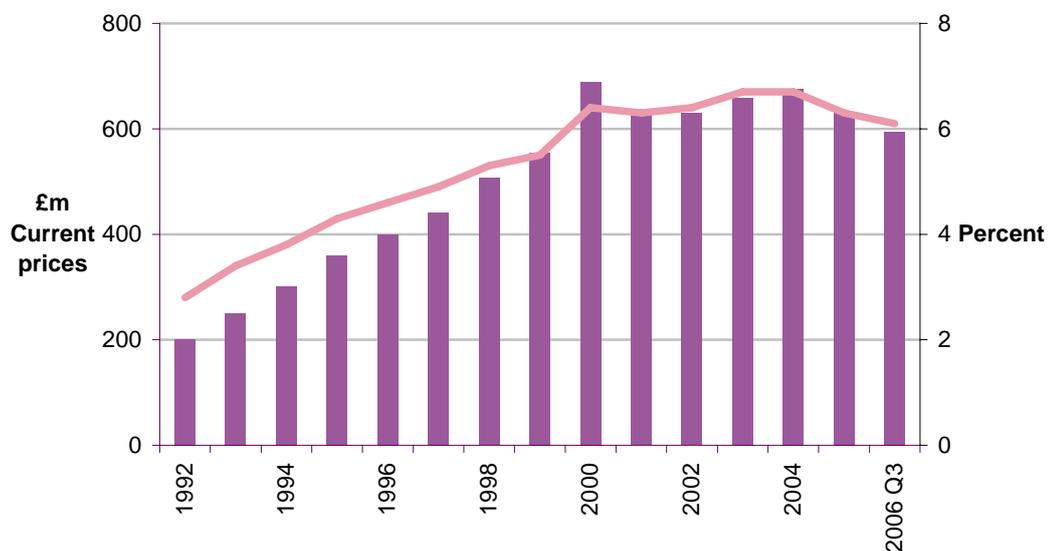


Source: BBC figures are Ofcom estimates; commercial figures from Ofcom licensees

**...But while the BBC has invested more in radio, commercial radio advertising growth has stalled, partly because local commercial radio has sometimes failed to capitalise on its strengths ...**

3.12 The rapid growth in radio advertising revenues before 2000 has given way to a decline in revenues and a stagnant or declining share of the overall advertising market. This must also be set against the backdrop of an overall display advertising market that has been declining in real terms since Q1 2005. Although larger stations are still making money, even they are under pressure. Commercial radio revenues fell by 5.2% overall year-on-year to Q4 2006; local revenues fell by 8.6%, national revenues by 7.2%. Commercial radio's share of total display advertising fell to 6.1% (its lowest since 2000) (Figure 6).

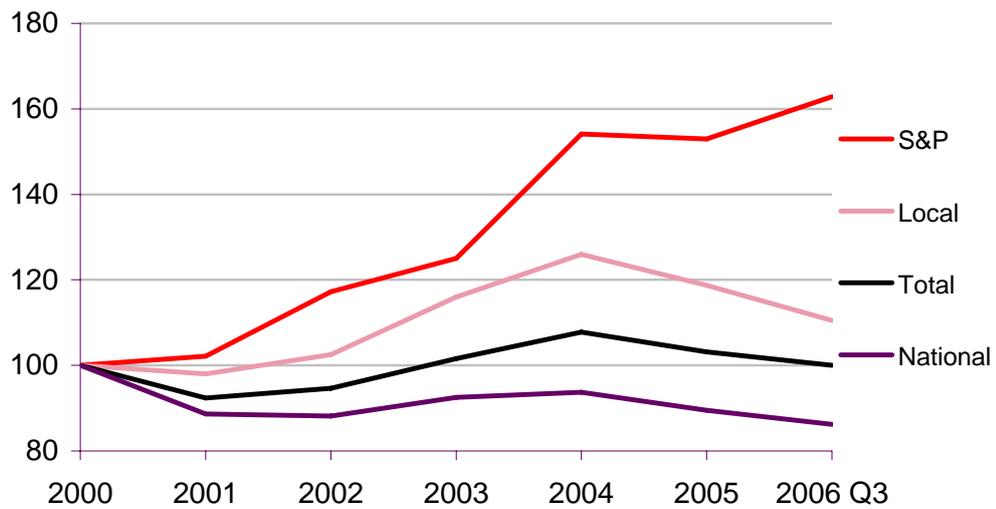
**Figure 6: Radio advertising – amount and share of total advertising market**



Source: RAB

3.13 Local stations gain revenues from a mix of national and local advertising and sponsorship. National advertising revenues have performed particularly poorly over the past few years, although recent trends suggest this may be growing again at the expense of local advertising (Figure 7). Anecdotal evidence from advertising agencies suggests that national advertisers are re-allocating their advertising spend from regional campaigns to national targeted niches. Sponsorship growth may be being fuelled by firms' desire to move away from spot advertising, which technology allows them to do via different platforms.

Figure 7: Radio revenue by type



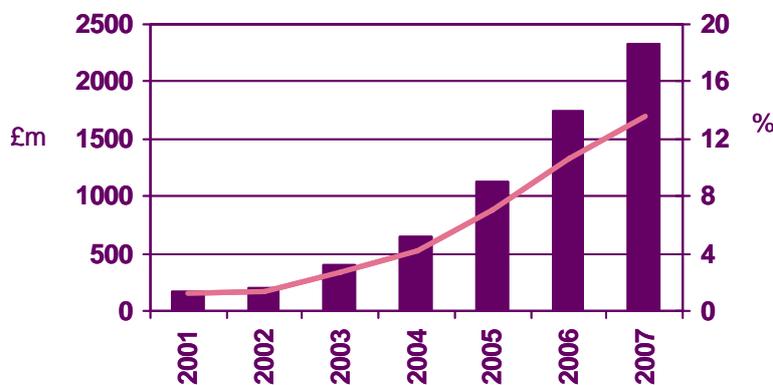
Source: RAB / Ofcom licensees

3.14 We believe this shift is largely structural, although the radio industry has not always helped itself, sometimes withdrawing from one of its main selling points – its ability to connect with local audiences through local programming – and sometimes focusing on defining its output too tightly with what listeners believe are limited playlists and a lack of entertaining speech output.

**... But also because there appears to be a process of structural adjustment in advertising in favour of other media including the internet**

3.15 While radio advertising has been declining, internet advertising has grown rapidly over the last five years and is forecast to continue to grow at a similar rate (Figure 8). In 2004, internet advertising overtook radio and is forecast to become the third largest advertising sector, behind regional newspapers and TV, in 2007.

Figure 8: Internet advertising – amount and share of display advertising



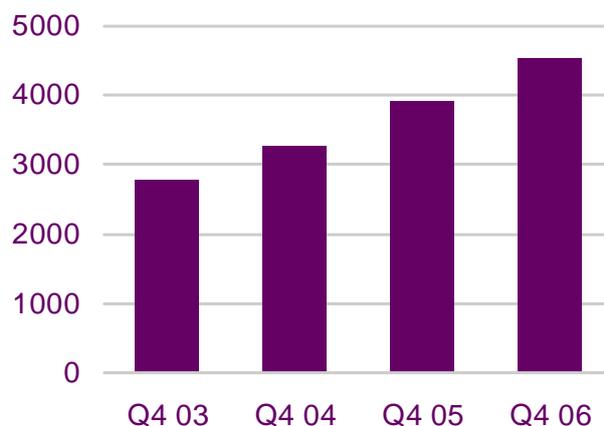
Source: Advertising Association

- 3.16 As far as radio is concerned, these trends may be cyclical to some extent and there may be more that radio can do to win new revenues, such as a move from spot advertising to sponsorship or the increased use of music downloads, but a straw poll of advertising agencies suggests they have little optimism that commercial radio can participate in the growing new media sector of marketing investment.
- 3.17 So, while local commercial radio may remain popular, the decline in its attractiveness to advertisers may mean that the current business model for commercial radio – particularly for local stations - may not be sustainable.

### Digital platforms are taking an increasing share of radio listening

- 3.18 After a very slow start, for the reasons we set out in *Radio – Preparing for the future*, listening on digital platforms is increasing in the UK. By Quarter 4 of 2006:
- 16% of the adult population lived in DAB households - up from 11.1% twelve months before
  - 38.9% had listened via TV; 21.8% did so at least once a week
  - 22.2% had listened via the internet; 12.2% at least once a week
  - 2.1m (17.4% of mp3 owners) listened to radio programme “podcasts”.

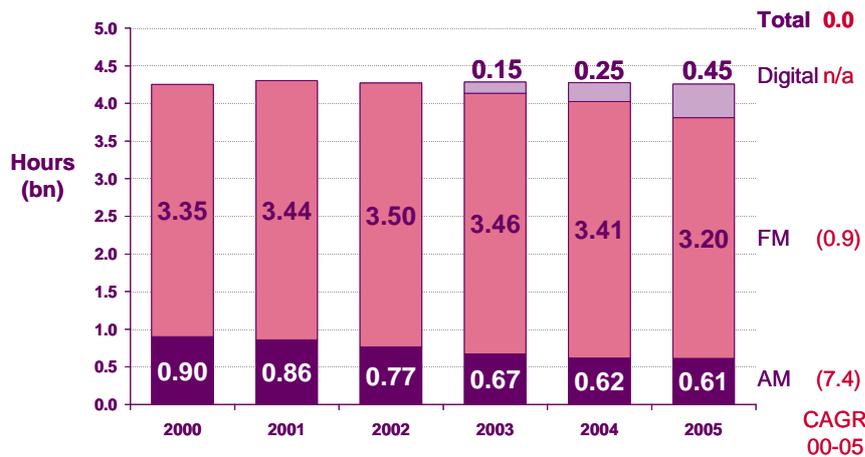
**Figure 9: Listening to digital only services (all adults 15+, reach 000s)**



Source: *Rajar*

- 3.19 Within the overall constant level of radio listening over the past six years, digital platforms are taking an increasing share (Figure 10).

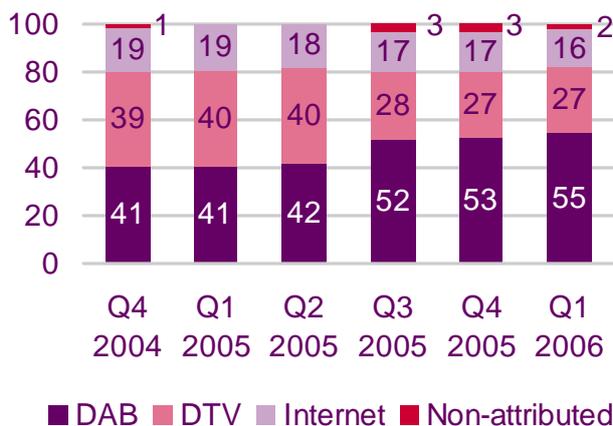
**Figure 10: Total radio listening by platform**



Source: Rajar

3.20 Although DAB penetration is currently lower than other platforms offering digital radio (digital TV and the internet), DAB's share of digital radio listening continues to grow. This may be due to the fact that DAB is the only digital platform which currently offers the same degree of portability and mobility as is offered by analogue radio (Figure 11).

**Figure 11: Share of digital listening by platform**



Source: Rajar

3.21 The Radio Advertising Bureau (RAB) platform listening survey showed that as of June 2006, 16% of all commercial radio listening was via digital platforms. This represents growth of 46% compared to November 2005.

**DAB forecast take-up**

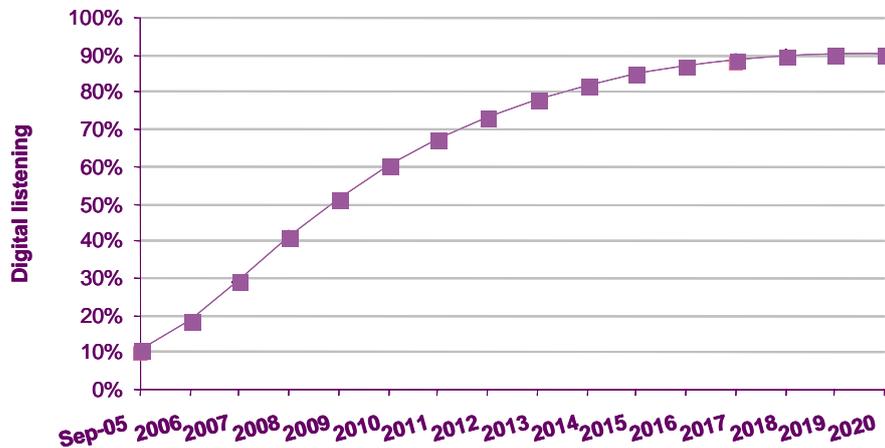
3.22 By 2010, the Digital Radio Development Bureau predicts that DAB household penetration will have increased to 50%.

3.23 Despite the increasing competition from other forms of audio entertainment, independent forecasts for Ofcom suggest that digital listening will predominate within a few years.

3.24 Digital listening across all digital platforms (DAB, TV, internet) currently accounts for 13.6% of all radio listening, and is growing at around 8 percentage points per year (Figure 12). If this rate of growth continues, this could see around 90% of listening being to digital services in ten years' time.

**Figure 12: Projected growth in digital listening (across all digital platforms)**

**Digital listening as percentage of total listening**

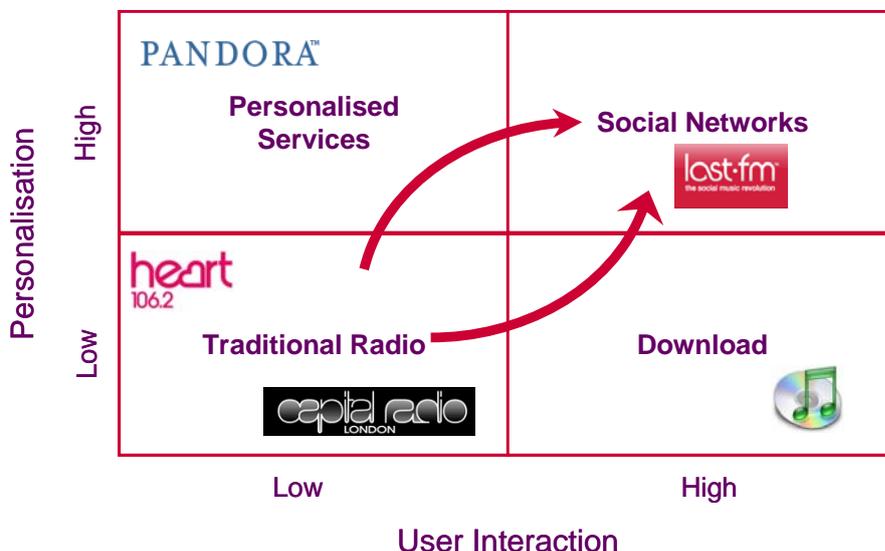


Source: Ofcom

**A shift in the business model opens-up new opportunities**

3.25 As well as a shift to digital listening, the traditional broadcast market is beginning to be complemented by new ways of listening to audio content. New entrant services are offering listeners the ability to create their own radio stations, download their own content, or to communicate and share content with friends or other members of social networks. New mobile devices with enhanced storage capacity and connectivity compared with previous generations of devices are making it far easier to access on demand music or speech content. Over time, increasing penetration of 3G and fixed and wireless broadband will create new opportunities for audio content distribution.

**Figure 13: A move towards personalisation and interactivity**



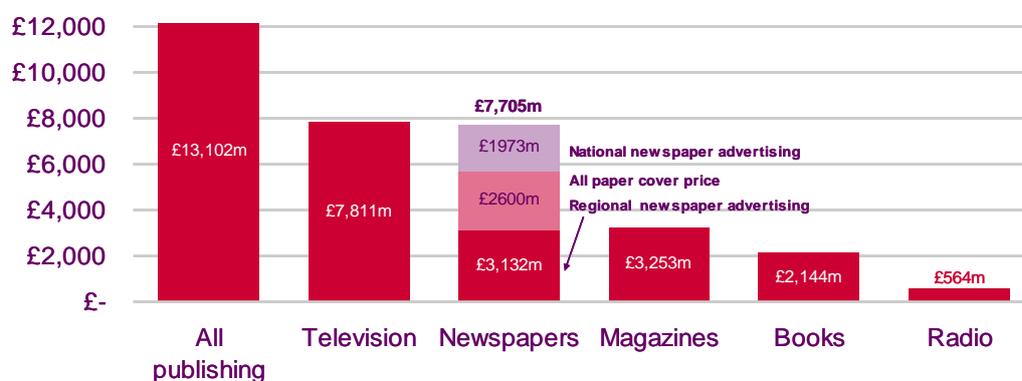
- 3.26 In addition to audio services, the internet has brought many new ways for people to find information and debate local issues, and over time will perhaps reduce the significance of broadcast radio in delivering local content.
- 3.27 For the current broadcast radio industry, these trends offer opportunities to develop enhanced services building on established brands and audience relationships, but they also suggest that traditional analogue broadcast business models may come under pressure and that some of the public purposes which previously only local analogue broadcast radio could meet may now be able to be secured in other ways.
- 3.28 As we demonstrated in the discussion document, analogue radio is much more heavily regulated than any of these digital platforms, particularly in terms of its Formats, which often specify in some detail what sort of music each station should play and how much local material and locally-made programming each must include.

### Radio is a small industry and public policy intervention has been relatively high

- 3.29 The commercial radio industry in the UK is small, relative to other media industries. For example, local newspaper advertising revenues are over five times those of the commercial radio industry, while newspaper revenues as a whole are 13 times the size of radio's. Similarly commercial television revenues are 14 times the size of radio's (Figure 14).

**Figure 14: Relative size of different media industries**

Market revenue in 2004 (£m)



Source: Advertising Association, operator returns

- 3.30 This picture is not so dramatic in other countries. For example, in the United States, commercial radio revenues are £16 billion, while television's are £75 billion – a ratio of less than 5 to 1. The comparatively small (in revenue terms) size of the commercial radio industry in the UK compared to television is likely to be due in large part to the significant presence of the BBC in the radio market in the UK.

### Public policy intervention in the UK radio market is substantial

- 3.31 Intervention in the UK radio market is significant. The BBC, which accounts for over half of all radio audiences and almost half of all revenues (via its share of the licence fee) is by some margin the largest intervention.

- 3.32 In establishing commercial radio in the 1970s, Parliament decided, for public policy reasons, that it should primarily be comprised of local rather than national services.
- 3.33 While there are three national commercial analogue radio licences, the primary policy of developing local analogue commercial radio has continued over the past 30 years and was strengthened by Parliament in the Communications Act 2003, which gave Ofcom a duty to secure an appropriate amount of localness in commercial radio. Each local station is required to provide a service which caters for local tastes and interests and is distinct from the output of other local commercial radio services. This requirement is enforced by including details of the programme service in the station's licence (a 'Format'). Even though the Format is written by the station itself, this policy represents a major intervention in the market. The three national commercial analogue stations are also tied to specific formats (two of which are, in broad terms, mandated by Parliament), designed to increase choice.

### **An alternative public policy would have been possible**

- 3.34 In our discussion document we noted that it would have been possible to adopt a different public policy goal, which rather than a large number of local services and only three national commercial services could instead have seen a much larger number of national or quasi-national analogue commercial radio services. We noted that the cost of the public policy we have followed was high but that this may well have been outweighed by the public benefits.

### **The public policy benefits**

- 3.35 The public policy we have followed in the UK has ensured that almost every part of the UK has at least one commercial local station, catering for local tastes and interests, providing local news and ensuring a plurality of local voices alongside the BBC. Given that television in the UK has never been local and that even regional commercial television has been in retreat in recent years, local commercial radio has provided the only source of broadcast local news and information as an alternative to the BBC.

### **As competition increases, the existing pattern and number of analogue stations may not be sustainable**

- 3.36 It can take a number of years for a radio station to become profitable – and some stations have yet to become so.

**Figure 15: Financial performance of local commercial stations**

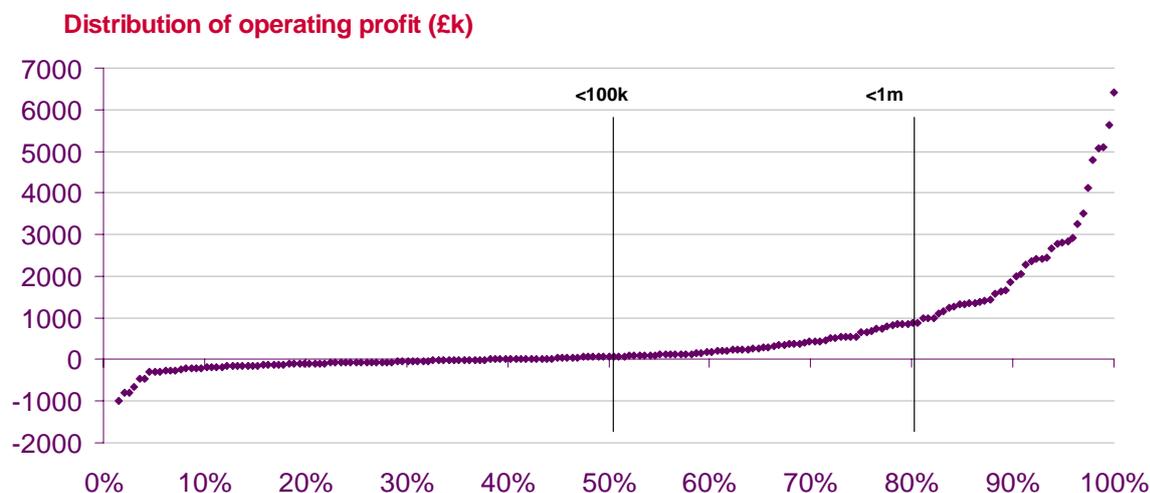
<b>Stations launching 1996-2002 (93 stations)</b>	
Broke even in 3 years	14%
Broke even in 3-6 years	16%
Broke even in more than 6 years	12%
Broke even	42%
Never broke even	53%
No data	5%

Source: Ofcom licensees

- 3.37 Even many profitable stations make only limited returns. 50% of licence-holding companies either lose money or make less than £100k per annum – about 40% lose

money (Figure 16). Most of the figures which make up the chart are based on returns before the last two quarters of advertising slowdown and so the latest picture is likely to be worse than this.

**Figure 16: The distribution of operating profit at local commercial stations**



Source: Ofcom licensees

- 3.38 Profits are concentrated in the hands of larger stations, which are predominantly owned by major groups (Figure 17).
- 3.39 Analysis of analogue station revenues shows that all sectors of the radio industry have seen revenues decline in the past year (Figure 18). While this hits all stations, the effect on the smaller stations, many of which are already loss-making is particularly hard. Indeed one of the smallest commercial licences, for Stroud, has already been handed back to Ofcom by its former holder, although conclusions about the whole small radio sector should not be drawn from the experience of one station, where other factors may have been involved.

**Figure 17: Profits by size of local commercial station (based on population coverage)**

MCA	Average £k	% profitable	Average years on air
<50k	(3)	58%	6
50-150k	(20)	36%	8
150-250k	65	48%	10
250k-500k	400	65%	15
500k-1000k	865	95%	21
1000k-5000k	1,200	89%	15
>5000k	1,400	73%	14

Source: Station accounts. Most recent data has been used but data not available on all stations. No stations less than one year old are included

- 3.40 However, the five-year trends show a more positive picture and most of the decline has come in the past year. While it is not possible to say how much of this decline is cyclical and how much structural, the evidence of a structural shift in favour of newer media, such as the internet, is beginning to become apparent.

**Figure 18: Change in breakdown of revenues by size of local commercial station – 2005-06**

Revenues 2006 £m	0-50K	50-100k	100-200k	200-500k	500-1,000k	1,000- 5,000k	5,000k+	Total
Local	2.1	9.2	15.7	34.4	31.7	51.9	14.2	159.2
National	0.4	2.1	3.5	16.6	33.5	100.2	74.4	230.7
Sponsorship	0.5	3.8	4.5	10.6	10.8	26.4	17.6	74.2
<b>Total</b>	<b>3.0</b>	<b>15.1</b>	<b>23.7</b>	<b>61.6</b>	<b>76.0</b>	<b>178.6</b>	<b>106.1</b>	<b>464.1</b>

Change 2005-2006 %	0-50K	50-100k	100-200k	200-500k	500-1,000k	1,000- 5,000k	5,000k+	Total
Local	-5%	-3%	-3%	-6%	-12%	-6%	-22%	-8%
National	-5%	12%	9%	-14%	-12%	-6%	-8%	-8%
Sponsorship	-3%	15%	3%	-5%	-9%	-4%	2%	-2%
<b>Total</b>	<b>-5%</b>	<b>3%</b>	<b>0%</b>	<b>-8%</b>	<b>-12%</b>	<b>-6%</b>	<b>-8%</b>	<b>-7%</b>

Source: Ofcom licensees

- 3.41 Over the past six years, local commercial radio's share of total radio audiences has declined from 38.7% to 32.8%. If these trends continue at the current rate, local commercial radio's share by 2016 could be down to 22.2%. The impact of this on local commercial radio revenues could be significant.

### Traditionally, radio stations have been seen as vulnerable to downturns as a largely fixed cost business

- 3.42 Estimates suggest that radio businesses face a fixed cost base of around 70% of total costs, allowing little scope for rationalisation and thus a high degree of exposure to changes in revenue (Figure 19). This pattern is true across the wide range of differently-sized stations. The percentage of fixed costs is similar across the range of commercial radio, from the smallest stations to the largest.

**Figure 19: Typical breakdown of costs for a radio station**

	% of total costs	Comment
<b>Variable</b>		
Sales commission	13%	Commissions paid to both internal staff and external agencies. Variable with revenue.
Royalties	15%	Variable with sales
Other direct costs	2%	Includes costs of commercial production and sponsorship
<b>"Fixed"</b>		
Staff (non-programming)	25%	Tends to be high sales-staff churn, especially among smaller stations
Marketing	5%	This may be very low at small stations, but can be significant at larger and new licences
Transmission	5%	Fixed, usually 12 year contracts
Programming	20%	Many presenters are employed on a freelance basis allowing stations to flex costs. Also includes costs of jingles, licences, prizes, etc
Premises	10%	Principally rent and rates for the studio and office space
Admin	5%	General office and other office costs

Source: Ofcom estimates

- 3.43 However, some elements of the revenue base may be more variable than traditionally assumed. For example, staffing costs may contain some flexibility due to high churn, and automation may offer scope to reduce presenter costs. Taken together this flexibility could create potential to adjust to a structural downturn in revenues although potentially at the expense of programme quality and hence listening in the long term.
- 3.44 While there may be scope for flexibility across all stations, the flexibility of smaller stations is likely to be much more limited than that for the larger operations, so emphasising the pressure these stations face.

### The impact of AIP

- 3.45 The proposed introduction of AIP (Administered Incentive Pricing) to the spectrum occupied by terrestrial broadcasters, which is likely to lead to an increase in costs for stations, also implies that consideration may need to be given to how public policy objectives can continue to be secured in light of these increased costs.

### Responses to the discussion document on the Future of Radio

- 3.46 By the closing date of 14 December 2006, 210 responses to the discussion document had been received. 168 were from individuals, while 42 were from representatives of organisations.
- 3.47 Almost all respondents expressing a view on the matter (including the BBC and major commercial radio groups such as GCap, Emap and GMG) agreed with Ofcom, that as set out in the discussion document, “the issues faced by the broadcast radio industry warrant further consideration and the development of proposals to ensure that listeners’ interests are protected over the coming years.” The Radiocentre said that the document “sets out some important issues for the industry and, we believe, correctly identifies the areas which should be addressed by a full consultation in 2007.”
- 3.48 Only one respondent did not support the principle of a consultation: Estuary Media, part of an unsuccessful applicant group for the recently-awarded Southend commercial radio licence. It argued that “the need for a fresh consultation so soon after *Radio – Preparing For The Future* is questionable: the issues the industry is facing are not new and the argument that there is evidence of a structural change in recent months is unconvincing. However, any new proposals for major changes to radio licensing, regulation and spectrum use must be presented for proper consultation.” This document presents such proposals for full consultation.
- 3.49 In particular, Estuary Media suggested that for any consultation to add value, it should “not be restricted, explicitly or implicitly, to considering the future of radio under the regulatory remit of Ofcom, e.g. fully engaging the BBC, considering the allocation of spectrum to BBC frequencies and the BBC’s role (which may not be fully within Ofcom’s remit to make strategic plans for)... [and] allow for radical, unrestrained ‘blue sky thinking’ (e.g. a radical rethink in the use of spectrum, replacement of the 3-tier commercial radio model, or dilution of local commercial radio service in favour of BBC and community radio services).” A number of other respondents, including Digital One, Mr David Lucas and Mr Keith McMahon, made similar points regarding the full inclusion of the BBC in the review. The role of the BBC’s public radio services was recently considered by Parliament in its renewal of the BBC’s Charter. This resulted in a requirement for each service to have a service licence and for any new services or significant changes to existing services to undergo a Public Value Test, administered by the BBC Trust with a Market Impact

Assessment carried out by Ofcom. Ofcom's own review, *Radio – preparing for the future* noted the public service role of BBC radio alongside the public service contributions of commercial and community radio. Ofcom does not believe that a further review of the BBC's services, which in any case is beyond Ofcom's remit, is warranted at this stage. However, the role of the BBC and the impact of any proposals upon the BBC in terms of any spectrum changes for example, will need to be widely debated and involve all relevant parties.

- 3.50 A number of respondents urged a degree of caution in any proposals. These included one confidential response from an individual, BECTU, Lincs FM and UTV Radio. Ofcom's Advisory Council for Scotland noted that "changes in listening patterns are only just beginning to show through and one needs to be cautious about drawing too many conclusions. While it is true that younger listeners are finding new media, the audience for radio remains remarkably robust and local content was never of much interest to younger listeners." Others, however, called for prompt action, including UBC Media and GCap, which wanted Ofcom and the DCMS to "undertake an urgent review of current legislation including the ownership rules, and to introduce new legislation as soon as possible to enable commercial radio to react in a rapidly changing media landscape."
- 3.51 The BBC took issue with "the suggestion that the comparative decline in listening to commercial radio is largely due to the investment that the BBC has made in its radio services. We believe that a failure by the commercial sector to invest in content over the last few years may be partly responsible for their relative decline in audience share. Therefore, we advise against changing the regulatory framework in response to a short-term effect."
- 3.52 The proposals in the following sections attempt to strike an appropriate balance between the need to act and the need for caution. All interested parties now have the opportunity to comment as to whether the right balance has been struck.
- 3.53 The BBC also proposed that "Ofcom consider the following very specific issues:
- What should be done about local DAB rollout in areas where DAB multiplexes may not be profitable – with particular reference to the nations?
  - How should mobile TV sit alongside DAB?
  - How does the industry feel the audio quality threshold should be set on radio services?"
- 3.54 Meanwhile, Brighton and Hove Radio suggested that "Ofcom should consider involvement in rights licensing: the discussion paper refers to the desirability of multimedia services alongside broadcast platforms in a healthy radio market. However the cost and inflexibility of music licensing is proving a major barrier to new services and will be to the broader evolution of radio in coming years. There may be a case for government intervention in order to facilitate the development of new audio services on emerging platforms. This is particularly relevant while there remains a commitment to public policy goals." While we note this point, it is beyond Ofcom's remit to consider music rights licensing.
- 3.55 Three responses from MPs were received. Michael Fabricant MP wrote requesting that "Ofcom will do all it can to ensure that commercial radio continues to thrive in the digital future". Danny Alexander MP, Chair of the All Party Media Literacy Group, wrote to offer his support "in addressing the challenges faced by commercial radio,

such as competition and stricter regulations than digital channels". He also "highlighted the importance of retaining variety among analogue providers, particularly for those sectors of the population, especially many elderly people, who find themselves excluded from digital markets." Bob Blizzard MP wrote to urge that Ofcom acts upon its "analysis that 'the regulatory burden on analogue local radio may be unsustainable' in order to safeguard the range of valuable local services provided by our stations for listeners across the UK."

3.56 Other responses on specific issues will be addressed in the relevant sections that follow.

## Conclusion

3.57 In general, our analysis and the responses to the discussion document suggest that it is worth considering whether any changes are required to the current regulatory environment, particularly for analogue commercial radio. However, in line with Ofcom's statutory duties, any proposals should balance the need for change against the need to safeguard those elements of commercial radio which are highly valued, such as an appropriate amount of localness and programming diversity.

3.58 As digital listening (on all platforms) grows, it will be less important to regulate analogue commercial local radio, as it forms an ever-smaller role in people's lives. For the same reason, and because at the same time advertising revenues for traditional local commercial radio stations are stagnating, such regulation will become unsustainable, as many existing stations could become unviable.

3.59 The next section considers:

- Proposals for maintaining localness in commercial radio
- Proposals for maintaining diversity of output on commercial radio
- Proposals for maintaining plurality of ownership in commercial radio
- The appropriate timing of any proposed changes

3.60 The sections after that consider:

- the re-licensing process for commercial radio as existing FM and AM licences expire over the next few years. This includes the questions of: how to provide flexibility to free-up analogue FM radio spectrum as analogue listening declines to allow the use of the spectrum for other things which may offer greater benefits; and the options for using AM spectrum for other technologies such as Digital Radio Mondiale
- the role of the new community radio sector in this landscape and its relationship with small-scale local commercial radio?

3.61 Some of the proposals we set out in the following sections could be introduced without legislation, and we make clear which those are. Other suggested changes would require legislation. As we noted above, it is for Government to propose new legislation and for Parliament to consider and to take forward any changes it sees fit at the appropriate time. We recognise that any such legislation may still be some time away.

## Section 4

# Commercial radio content and ownership regulation

### Overall direction

- 4.1 In section 2, we set out our aims which, in line with our statutory duties, include the provision of a wide range and diversity of innovative UK-wide commercial radio services and a wide range and diversity of local and regional commercial services. We said that the latter should cater for local tastes and interests, with a particular focus on local news, providing a sense of community and serving local communities, but also providing local programming of more specialist interest.
- 4.2 In section 3, we set out the challenges facing the industry, arguing that while overall listening is fairly constant, listening to local analogue commercial stations is declining as competition from other platforms and media increases and particularly as digital listening grows. At the same time, advertisers are finding new means of reaching consumers, particularly via the internet. While financial pressures are being felt across the whole industry, it is the smaller analogue stations in particular which are finding it hard to remain viable – on average, those covering a population of fewer than 100,000 each make an annual loss of £14,000.
- 4.3 It could be argued that these pressures have always existed and that the fact that, to date, only two analogue licences have been handed back means there is no immediate crisis in the commercial radio industry. It would therefore be possible for us to propose no changes to the current regulatory framework. But this would be to ignore the trends towards increased digital listening and declining advertising revenues, which mean that at some point in the future, possibly quite soon, if regulation remains unchanged, we may reach crisis point. This could see large-scale closure of existing stations with the associated loss of all of their local programming.
- 4.4 We believe that these factors make it appropriate for us to review the extent to which content and ownership regulation of commercial radio is necessary in order to ensure that Ofcom meets its statutory duties and to ensure that the public purposes that we have identified for radio are delivered. In doing so, we will have particular regard to the need for regulatory activities to be proportionate, consistent and targeted only at cases in which action is needed.<sup>2</sup>
- 4.5 We also think it is appropriate for us to look further ahead and begin a discussion of what an appropriate regulatory regime for radio might look like as digital listening increases. This might involve the total removal of all content and ownership regulation on the grounds that radio is a very small industry which is currently heavily regulated and that the market would meet consumers needs: If there is a demand for local programming the market will supply it, so content regulation is not required; and local radio is not people's primary source of local news and so plurality of ownership in radio, and hence a set of ownership rules, is no longer required. However, we do not believe that the market would necessarily supply local programming, at least not ubiquitously, as local programming is expensive, and it is always likely to be more profitable to network as much programming as possible, even if that means a drop in audiences. We also believe that plurality remains important and that some form of

<sup>2</sup> See further section 3(3) Communications Act 2003

ownership rules should remain. We therefore believe that some intervention is needed to ensure at least a minimum level of local programming<sup>3</sup> provision and to secure plurality of ownership. In the long-term, this may change as other media grow in importance and may provide the things traditionally provided by local radio. But it is only four years since Parliament debated these issues and decided that local programming was important enough to give Ofcom a new statutory duty to ensure its provision, and that plurality of ownership was important enough to ensure that there were at least two providers of commercial radio in every significant area.

- 4.6 So, in developing suggestions for possible changes to existing content and ownership regulation, we have tried to balance our desire to see a range of strong local radio services against the financial realities which mean the current level of regulation may no longer be viable. We believe that the aim of any such changes should be to ensure that local services remain able to provide local programming at those times of day when they matter most to audiences.
- 4.7 We also aim to ensure that our suggestions are proportionate to the challenges faced by linking the timing of such changes to changes in the market, based on the proportion of digital listening. However, we note that it would be possible to implement different changes at different points. The proposed changes will also be proportionate to the challenges faced by differently- sized stations and so are likely to have a more significant effect on smaller stations, which currently have the greatest local programming obligations and face the greatest financial challenges.
- 4.8 We believe that the suggestions set out below, when taken together, could offer quite a radical relaxation of the rules for many stations, while protecting audience needs and expectations at key times of day, allowing stations to re-focus their local investment to meet listener needs more effectively, while also providing an opportunity to raise programming standards at other times of day by sharing content.
- 4.9 The radio landscape which could result from these proposals in the medium-term (the next 10-12 years) could see local programming provided throughout most of daytime by all stations serving over 250,000 people with the possibility of a limited amount of network programming, while smaller stations would be more free to adapt to local conditions while still guaranteeing local programming at the key times of day. All stations would have simpler Formats, allowing them to adapt more readily to market conditions and changing listener tastes. This should help to keep smaller stations in business, while giving larger stations greater flexibility. Beyond that timeframe, it is difficult to know what sort of local radio services will exist and how they will be delivered. It may be that DAB becomes the dominant platform or it may be that other technologies become more important, or it may be that analogue broadcasting will continue to be the main platform for delivery of local radio services. In preparing for this future, the key will be to maintain flexibility.
- 4.10 It should also be borne in mind that any reduction in local programming by commercial stations will, to some extent, be offset by what we hope will be a dramatic increase in local programming by community stations (as we set out in section 6). At the same time, the increase in national digital services, catering for a wide range of tastes and interests, should increase the diversity of commercial radio programming available to any listener. Overall, we believe that listeners will benefit from the proposed changes.

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<sup>3</sup> By which we mean local material, which is locally-made.

## The differences in regulation across different platforms

- 4.11 Other than licensing (see Section 5), the regulation of analogue commercial radio in order to secure public purposes comprises a number of regulatory tools:
- Formats ensure a diversity of programming by specifying the type of material that the station will broadcast (as proposed at the time of application for a licence), such as the type of music, the amount of speech and the number of news bulletins. The degree of detail required in a Format is a matter of regulatory policy rather than statutory requirement.
  - Formats are also used to specify the amount of local material and the amount of locally produced programming the station must provide (again, as proposed at the time of application for a licence). These requirements are backed up by a set of localness guidelines produced by Ofcom which set out how we consider localness can best be delivered.
  - Plurality ownership rules, set by Parliament and Government, are designed to ensure a plurality of ownership of local analogue commercial radio stations and other local media.
  - The Ofcom Broadcasting Code sets out rules to prevent harm and offence in programming, to protect fairness and privacy and to maintain due impartiality and accuracy in news. The code also covers sponsorship of radio programmes and services, commercial references, the coverage of crime and religion, and other matters relating to programme content.
- 4.12 Stations carried on DAB digital radio are subject to different regulation (which includes a different licensing regime, although this is not discussed here):
- For reasons related to the nature of the DAB platform and the greater number of programme services that it facilitates, it was decided by the Radio Authority (and has been continued by Ofcom) that Formats for individual digital sound programme services should be much simpler than those for analogue stations. There is less detail about the nature and amount of music and speech content, and there is no requirement to include local material or locally made programming, although some digital-only stations have committed in their Formats to introduce some local programming when digital take-up passes a certain threshold. Stations provided on DAB which are simulcasts of analogue services are still bound by the terms of their analogue Formats.
  - There is a different set of ownership rules from analogue stations, with separate rules for the ownership of individual stations and the ownership of DAB multiplexes
  - All stations carried on DAB multiplexes must comply with the Ofcom Broadcasting Code.
- 4.13 Stations carried on satellite, Freeview or cable are not subject to Format or ownership plurality controls, although they must comply with the Ofcom Broadcasting Code.
- 4.14 Stations carried on the internet, whether streamed or providing programmes for download (e.g. as podcasts) are not regulated by Ofcom.

- 4.15 For the reasons set out in the previous section, we believe the current level of regulatory intervention on the analogue local commercial radio sector, will become increasingly unsustainable and unjustifiable.
- 4.16 At the very least, as the trends towards increased digital listening across all platforms continue, it will become increasingly anomalous to regulate analogue commercial radio differently from digital platforms.

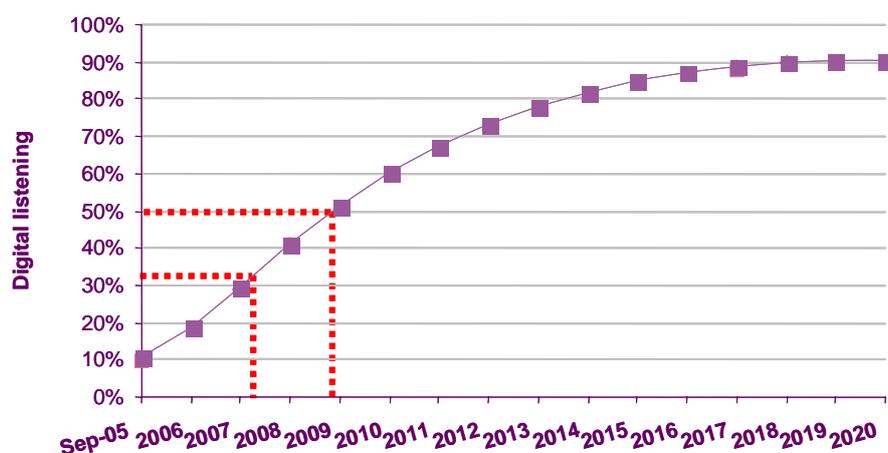
## Proposal 1

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

- 4.17 The questions are then: what changes in regulation might be appropriate? And when should any such changes be introduced? Having considered the various options, our suggested way forward in each case is highlighted.

### The timing of any changes

- 4.18 While we believe the case for a relaxation in regulation is strong, many respondents to the discussion document urged caution in the timing of implementation of any changes. It is important to note that, while the forecasts show digital listening across all platforms increasing rapidly over the next few years, such listening at present still only accounts for a minority of overall listening. Similarly, the move of advertising revenues to other platforms may level off. Meanwhile local commercial radio remains popular, albeit with a declining audience and it would be a mistake to rush through any radical changes which could have the opposite effect to that intended.
- 4.19 We therefore suggest that, as one of the main reasons for proposing regulatory changes is the differential regulation of analogue and digital platforms, the implementation of some or all of the proposed changes in regulation should be tied to the proportion of listening accounted for by digital platforms. This would ensure that changes are only allowed when conditions require them.
- 4.20 Appropriate thresholds for regulatory changes could be the point when digital listening (across all platforms) accounts for a third of all listening or when it accounts for half of all listening. While this may sound some way off and the exact timing of reaching such thresholds is difficult to predict, digital listening is currently 13.6%, and growing at around 8% a year. Our forecast suggests that the first of those thresholds (33%) could be reached as early as 2008, and the second (50%) by 2010. If this forecast proves to be optimistic, the proposed regulatory changes would simply be implemented later on the grounds that they were not so urgently required.
- 4.21 In deciding whether the appropriate threshold is 33% or 50%, we need to balance the financial sustainability of local services as competition increases against the potential reduction in local programming for consumers.
- 4.22 A threshold of 50% would ensure that the majority of listeners had access to, and were listening to, services on other platforms and so analogue radio would be less important.
- 4.23 A threshold of 33% takes into account digital listening to some extent but also recognises that the financial pressures facing the industry may impact on the sustainability of existing analogue services before the 50% digital listening threshold is reached.

**Figure 20: Forecast digital listening across all platforms****Digital listening as percentage of total listening**

Source: Ofcom

- 4.24 It might well be that different changes should be implemented at different points during digital transition. For example, it would be possible
- to implement changes to Formats before changes to local programming requirements; or
  - to introduce all of the changes for the smallest stations, which face the greatest financial challenges, immediately, leaving the changes for larger stations to be implemented when digital listening reaches a certain level.
- 4.25 On balance, we believe that a 33% threshold may be the most appropriate, but we welcome views on the timing of the proposed changes and whether those changes should be implemented in stages and what would be appropriate threshold points for implementation.

**Suggestion 1.1**

- *The timing of any changes to Format and localness regulation of commercial radio could 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*

**Programme diversity - Formats****Analogue local commercial radio**

- 4.26 Ofcom's aim is to ensure a wide range and diversity of local and regional commercial radio services catering for local tastes and interests. We welcome the availability of a wide range of local radio stations, available across the whole of the UK, whatever platform they are on. However, as for national radio, we will intervene (and have statutory duties requiring us to do so) to ensure that there is a guaranteed level of

diversity on analogue radio (AM and FM), and DAB digital radio. We need a framework for the short to medium-term delivery of our local public purposes.

Figure 21: Example analogue local commercial Format

## Format Outline Form OfW 307

<b>STRAY FM</b>	
<b>Format Outline</b>	
<b>Station Name</b>	Stray FM
<b>Licence Area</b>	Harrogate area (as defined in licence advertisement)
<b>Frequency</b>	97.2 MHz
<b>Hours of Broadcast</b>	24 hours a day (locally made for at least 14 hours weekdays, 12 hrs Sat, 12 hrs Sundays)
<b>Definitions</b>	
<b>Speech</b>	excludes advertising, trails, sponsor credits and the like and will be calculated over the period specified.
<b>Music</b>	percentages are calculated as a percentage of the total tracks broadcast in the specified period.
<b>Peak time(s)</b>	refers to weekday breakfast and afternoon drive output, and weekend late breakfast.
<b>Daytime</b>	is 0600 to 1900 weekdays and 0800 to 1400 weekends.
<b>Locally made</b>	refers to output produced and presented from within the licence area and must include peak time.
<b>Character of Service</b>	
<b>A TUNEFUL MUSIC-LED STATION FOR 25-54 YEAR-OLDS IN HARROGATE AND THE SURROUNDING AREA, HIGHLY FOCUSED ON LOCAL NEWS AND ISSUES.</b>	
<b>Detail</b>	
<p>Local current affairs coverage is an important ingredient in the station, which is the voice of Harrogate, Boroughbridge, Knaresborough, Ripon and Wetherby. It will include features about local leisure and sporting activity as well as local politics, education and social issues for the area. Speech will not drop below 20% of daytime output.</p> <p>Bulletins with local news will be broadcast at least hourly during daytime, including at least one extended bulletin of at least 15 mins. duration each weekday. (This requirement may alternatively be met by airing a magazine-style programme combining music and news-based speech over a longer period of up to one hour, provided that overall speech minutage remains the same). National news should also feature at other times.</p> <p>The music will be quality popular songs from the last four decades with no decade dominating the output. During non daytime specialist shows will feature genres of music which complement the main music mix for at least 14 hours a week. A networked overnight programme may be aired within local hours between 0100-0600 daily, provided this has live presentation throughout and localised idents/jingles etc. This must originate from a station within the TLRC group.</p>	

AL162-2 (August 2006)

- 4.27 Every analogue local commercial radio licence, from that held by the smallest station (serving fewer than 2,000 people) to that held by the largest (serving over 10 million), includes a Format which sets out the type of programming the station is required to provide. This is how Ofcom meets its statutory 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 and a range and diversity of local services*”.
- 4.28 The Format not only sets out the type of programming that the station will broadcast – the type of music, the amount of speech, the number of news bulletins, etc – but also specifies the amount of local material and the amount of locally produced programming the station must provide. Formats have been simplified in recent years, but are still one page long, and generally include what might be considered to be some quite detailed requirements (Figure 21).
- 4.29 The Format is written by the licensee itself (as part of its application for the licence) and is an important part of the station’s licence, as it forms the basis of Ofcom’s content regulation designed to secure the public purposes of diversity and the provision of localness (as opposed to the Broadcasting Code, which all stations must adhere to and which is designed to prevent harm and offence and other ‘negative’ outcomes).
- 4.30 A licensee may request a change to its Format, but in order for Ofcom to consider whether to allow the change, the licensee’s request must meet at least one of four statutory criteria. These are that:
- the change would not substantially alter the character of the service (if it would, Ofcom must formally consult on the change)
  - the change would not lead to a narrowing of the range of programmes available in the area (not including programmes available on DAB multiplexes)
  - the change would be conducive to the maintenance of fair and effective competition in the area
  - that there is evidence of significant demand or significant support for the change
- 4.31 If the request meets at least one of these criteria, Ofcom will decide whether to allow the request. Ofcom consulted on its procedures for considering Format changes in *Radio – Preparing for the future*.
- 4.32 In previous publications, Ofcom has said that it will not consider any Format changes within two years of the launch of a station, as this would undermine the basis on which the station won its licence.

## **DAB digital radio**

- 4.33 Every multiplex licence contains details of the stations the multiplex licensee is required to provide over its multiplex service. Each station detailed within the multiplex licence has its own Format. In contrast with analogue licences, a DAB station Format is much simpler, consisting only of a short description specifying the character of service (Figure 22). Most localness in DAB is delivered by simulcasts of analogue services which are bound by the terms of their analogue Formats. The Radio Authority (the regulatory authority for radio broadcasting which preceded Ofcom) did not consider it appropriate to require in the Formats of non-simulcast DAB

services an equivalent level of detail to that in an analogue Format, as the greater number of individual programme services that the DAB platform is able to offer implied less need for regulatory intervention to secure diversity, and thus detailed Formats would have been inappropriate and disproportionate. Ofcom considers that this approach is still appropriate.

### Figure 22: Example of a DAB Format

<p><b>Chill-out (DSPS provider: GCap Media Digital Ltd) 24hours</b></p> <p>A music service called Chill playing music in a chill-out format – a relaxing, uplifting and varied mix driven by melody and harmony, chosen for its ability to reflect and create a mood rather than for its chart success. Musical influences will include ambient, acoustic songwriters, trance and smooth jazz. Approximately 100% music.</p>
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- 4.34 The multiplex operator can request a variation to the services listed in its multiplex licence. Ofcom must vary the licence if it is satisfied that the variation would not lead to an unacceptable narrowing of the range of DAB programmes provided in the area; or that the variation would be conducive to the maintenance of fair and effective competition in the area; or that there is evidence of significant demand or support for the change.

### Other platforms

- 4.35 Radio services licensed by Ofcom to be carried on digital satellite television (i.e. Sky), cable or digital terrestrial television (i.e. Freeview) have no Format requirements (i.e. Ofcom is not required, and does not seek, to regulate for diversity or localness on these platforms), while radio services on the internet are not regulated in any way.

### Why is change required?

- 4.36 The challenges facing local commercial stations, as set out in section 3, mean that such stations often find that they have (self-imposed) obligations which they were able to fulfil in a world where there was less competition, and so more revenue to invest in programming, but which they are finding increasingly difficult to fulfil as financial pressures increase. In addition, some stations argue that increased competition from other radio stations and other media and changing audience tastes, mean that such obligations do not give them the flexibility to serve audiences most effectively.
- 4.37 It could be argued that the Format change request regime allows for stations to adapt to changing needs over time and that this mechanism is all that is required. However, we believe that relying purely on Format variation requests would result in a piecemeal approach that would not adequately address the fundamental issues the industry faces.

### Options for change

- 4.38 **Option 1 – Maintain the current level of detail in local analogue and DAB Formats:** It would be possible to maintain the existing level of regulation, with stations permitted to request Format changes as at present. However, this level of regulation of local analogue stations is far more detailed than for digital stations and

as digital listening grows, it is likely to become increasingly anomalous. *We do not therefore think this option is viable in the medium to long-term.*

- 4.39 **Option 2 – Abolish Formats completely:** It could be argued that there are sufficient alternatives available to listeners via various platforms to make Format regulation redundant both for analogue and DAB services. This may well be true in the long-term if, for example, listening to audio via the internet comes to predominate. The internet offers thousands of stations and so if it became the dominant platform for delivery of radio Format regulation would become unnecessary. *However, for the short to medium-term while broadcast platforms still predominate and while Ofcom still has a statutory duty to ensure a wide range of radio services, we do not believe this option is viable.*
- 4.40 **Option 3 – Bring DAB Formats into line with analogue Formats:** It could be argued that, as the penetration of, and listening to, DAB increases, it would be appropriate to amend all existing DAB Formats such that they include the same level of detail as is currently included in the average local analogue station Format, as this would better help to secure the provision of diversity and localness on the DAB platform. However, we do not think that this is necessary in order to deliver an appropriate level of diversity and localness and adopting such a policy would therefore be disproportionate, especially in circumstances where we have argued that the current level of analogue Format regulation may not be sustainable for much longer in light of the changing market within which broadcast radio services are operating. *We therefore do not think that this option is a viable one.*
- 4.41 **Option 4 – Streamline analogue Formats to bring them into line with DAB Formats:** As the proportion of digital listening reaches a certain threshold (we have already suggested either 33% or 50% of total listening), it would be possible to simplify all analogue Formats to make them consistent with the level of detail in DAB Formats. This should still maintain diversity across the range of services while allowing stations more readily to adapt to changing circumstances.
- 4.42 The key element of the analogue Format is the “Character of Service”, which is supported by the detailed requirements. Effectively this proposal would see the Character of Service retained but all of the detail would be removed.
- 4.43 For smaller local analogue commercial stations, their Format would be very simple, effectively becoming almost a generic Format, with perhaps only a demographic focus. For example, the analogue Format for Stray FM (figure 21 above) might simply become:

#### **STRAY FM**

A tuneful music-led station for 25-54 year-olds in Harrogate and the surrounding area, highly focused on local news and issues.

- 4.44 This would allow such stations greater flexibility than they have at present to adapt programming to changing local tastes and interests. In the example of Stray FM, the requirements for a certain proportion of speech, or for news bulletins of a certain length at a certain time of day would disappear, as would requirements for specialist music programmes in the evenings. The localness of the programming would be

guaranteed by the proposals set out below (and would also be included in the Format).

- 4.45 Larger analogue local services, particularly those serving specialist audiences, are likely to require more detail, akin to the example shown above for digital station “Chill”.
- 4.46 DAB Formats are already fairly simple and, as DAB choice for individual listeners is still relatively limited, such Formats are probably still necessary to ensure diversity at both a local and national level.
- 4.47 Between them, DAB and analogue radio are likely to be the primary listening platform for the majority of listeners over the next ten years, particularly when they are on the move, although many will also have the additional choice of stations via television and the internet.
- 4.48 We believe it is too early to adopt this change at present, when the majority of listening is still to analogue radio. The commitments that analogue stations have made should be enforced while most listening is still on those platforms. But as digital listening increases, it will appear to be disproportionate to require analogue stations to have a greater regulatory burden than digital stations. Therefore, we believe it would be more appropriate to move to the reduced Format regime when there is greater parity between listening to analogue and digital platforms
- 4.49 *We believe this option is best suited to the changing environment over the next decade and so recommend that it is adopted when the relevant threshold is met.*

#### **Suggestion 1.2**

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

## **Localness – local material and locally-made programmes**

### **Analogue local commercial radio**

- 4.50 Another element of each station’s Format is the amount of localness it is required to provide. According to statute, localness consists of two elements: the programme content (local material) and where that content is made (locally-made programmes).
- 4.51 The Communications Act 2003 gave Ofcom a specific duty for analogue local commercial radio services to “*secure that:*

*programmes consisting of or including local material are included in such services but, in the case of each such service, only if and to the extent (if any) that Ofcom considers appropriate in that case; and*

*where such programmes are included in such a service, what appears to Ofcom to be a suitable proportion of them consists of locally-made programmes*<sup>4</sup>

4.52 "Locally-made" is defined in the legislation as being programmes made wholly or partly at premises in the area or locality for which the service is provided. Ofcom currently carries out this statutory duty via a combination of Formats and also published guidelines which set out the means by which Ofcom believes localness best can be delivered. These effectively limit the amount of networking and syndication that can currently take place.

### **Co-location of local analogue commercial stations**

4.53 While we believe it is important for local stations to be based in their licensed area wherever possible (in research carried out for *Radio – Preparing for the future*, 71% of respondents said that it was either important or very important that a local radio station is based in or near to the area in which its listeners live), we said in the same document that we would allow co-location in exceptional circumstances. By co-location, we mean two or more local radio stations being provided from the same premises, such that one or more of the services is no longer making its programmes at premises in the area it serves. In these circumstances, Ofcom is willing to accept that the service is still providing 'locally-made programmes', despite the fact that the programmes are not being made in the area the station serves. In considering such exceptional circumstances, the sort of factors Ofcom may take into account are:

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

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

4.55 Co-location has already been allowed in a number of cases for smaller stations – e.g. the services for Bridlington and Scarborough have been permitted to co-locate – and in exceptional circumstances for larger stations – e.g. the local service for Paisley has been permitted to be provided from the studios of Central Scotland regional service Real Radio, which are located outside the licensed area of the Paisley service.

4.56 Generally, where the population is over 250,000, based on the financial information we have, we believe it should be possible for the vast majority of stations to be able to produce their local material within their licensed area.

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<sup>4</sup> Section 314 Communications Act 2003

## DAB digital radio

- 4.57 There are no equivalent statutory requirements relating to the provision of local material or locally-made programmes on DAB digital radio. Two of the criteria to which Ofcom must have regard when awarding a local radio multiplex licence are the extent to which the proposed line-up of services caters for the tastes and interests of people living in the area, and the extent of local demand or support for the proposed services, but neither of those criteria necessarily secure any local programming.
- 4.58 The majority of local programming currently provided on DAB digital radio derives from simulcasts of stations already on analogue frequencies in the area, although some digital-only stations do provide some local or regional news or other locally-relevant speech content (or have committed to doing so when the penetration of DAB receivers has reached a specified level).
- 4.59 If analogue commercial radio services were to cease to be provided, the DAB radio multiplex operators could request a change in the line-up of their services to remove local services and there is currently no specific statutory protection for local services. However, as was set out in our statement *The Future Licensing of DAB Digital Radio*, Ofcom considers that, as catering for local tastes and interests is one of the criteria to which it must have regard when awarding a local radio multiplex licence, and given the importance that listeners attach to localness, the amount of local material provided on a local radio multiplex service properly should be a matter to which it should have regard when considering a request to vary a local radio multiplex licence.

## Other platforms

- 4.60 Some local stations, particularly community stations, broadcast on the internet and some local services are carried on Sky and cable, but there are no localness requirements for radio carried on these platforms (i.e. Ofcom does not regulate to secure localness).

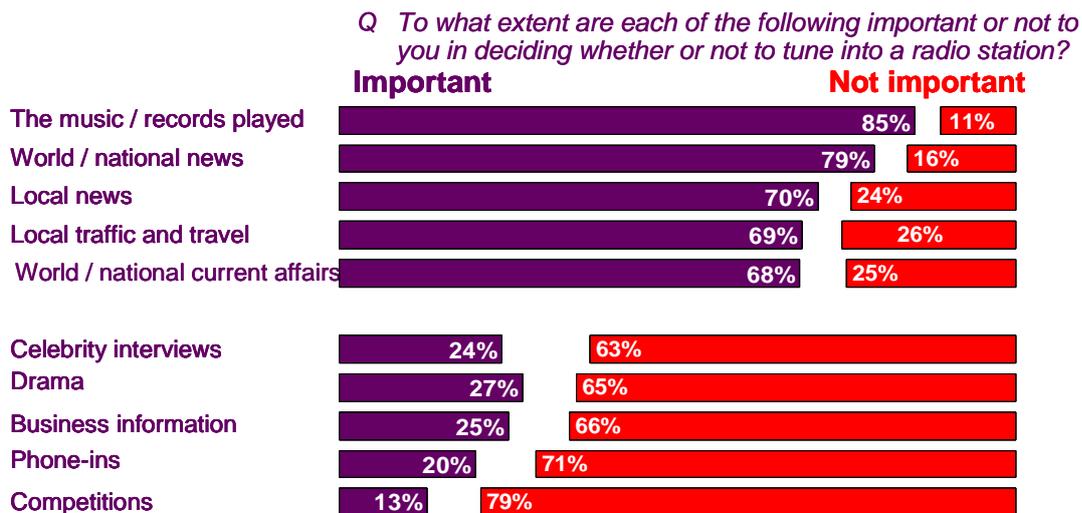
## Community radio

- 4.61 Much of the essence of community radio concerns localness. Although there are some stations which provide for communities of interest, the way that services are licensed means that these are also limited by geography. However, coverage of community radio services is far from ubiquitous, partly because the sector is a new one, but also because the spectrum for community radio is currently limited.

## What does the audience think?

- 4.62 In *Radio – Preparing for the future*, we carried out research into what listeners expect from their local station and when they expect it to provide local programming. The research suggested one of the main reasons people listen to radio is for local news, weather and traffic (Figure 23). While the level of listening to local stations has fallen slightly in recent years, there are no signs that local radio will not remain important for many listeners for years to come – although local radio listening is likely gradually to transfer from analogue to digital platforms. While new sources of local news and travel may reduce the need for local radio to be required to deliver such output, the other attributes of local radio, such as providing companionship and a sense of belonging, are unlikely to be met by other media. There is no evidence so far that some form of local radio will not have an important place in the media landscape of the future.

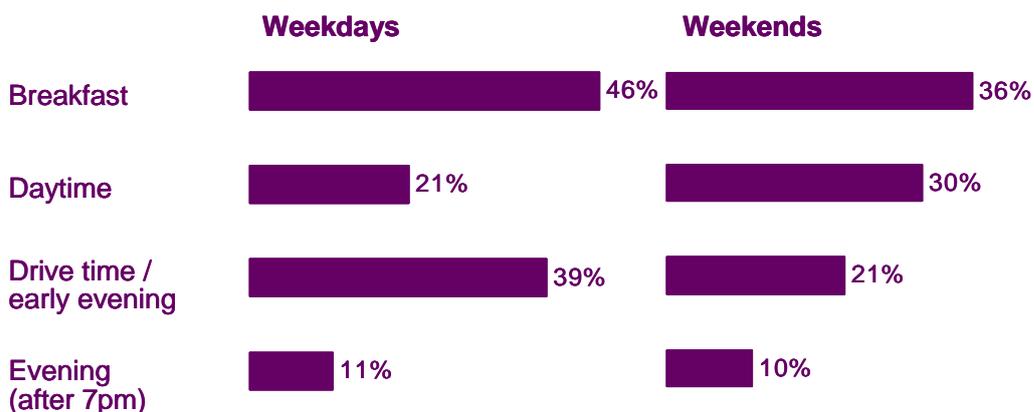
**Figure 23: Important characteristics of radio**



Base: All radio listeners (1,501)

4.63 The research also suggested that listeners want local programming at peak times, but there is less interest at other times (Figure 24).

**Figure 24: At what times of the day is it important to you to be able to listen to local programming?**

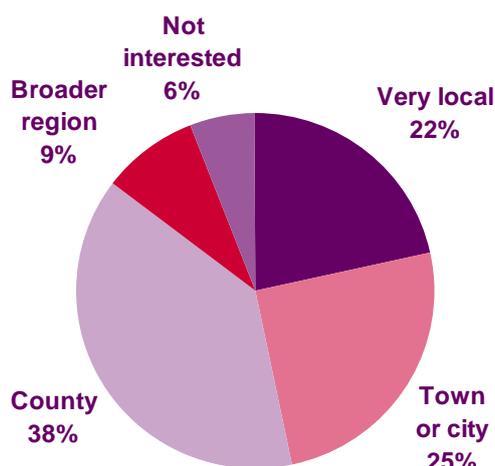


Base: All who listen to local stations (1,146)

4.64 This is supported by the fact that although the weekly reach of local commercial radio has fallen in the past five years from 54.4% of the population at the end of 2000, to 52% at the end of 2006, half the population still listens to local commercial radio. There is, as yet, no evidence that local radio is no longer wanted.

4.65 The research also asked people what sized area a local radio station should cover. Responses varied around the country, but 73% indicated a size roughly equivalent to local DAB multiplex areas. 22% wanted smaller stations (Figure 25).

**Figure 25: Which of the following best describes the area you would like your local radio to cover?**



*Source: Ofcom research*

- 4.66 This research suggests that commercial local radio is valued for its localness and that there are significant public benefits to be weighed against the costs to the industry of the public policy followed by the UK over the past 30 years.

### **Is the current regulatory regime achieving its aim of securing an appropriate amount of localness?**

- 4.67 There are 308 analogue local commercial radio services either on-air, or about to launch.
- 4.68 Many local commercial radio stations recognise that localness is the key to their success and is the reason that many people listen to them. Being relevant to the communities they serve is what differentiates them from national stations. Some of the most successful local stations are those which have the most “local” content in their programming.
- 4.69 However, every station is unique and faces different local conditions. Every area has its own local characteristics; some areas have a much stronger sense of local identity than others; some local areas are more easily defined by geography than others; the level of competition for listeners varies significantly between areas; and of course stations come in very different sizes covering populations from 2,000 to 10 million.
- 4.70 In addition, the financial picture for local radio is not a consistent one across the UK. Some local stations, particularly those in rural areas or where there is less competition, are highly profitable while many other local stations struggle financially.
- 4.71 This makes it difficult to apply the section 314 duty consistently across all stations.
- 4.72 While we welcome stations providing as much local programming as possible, the question for Ofcom is what is the minimum amount of localness that local stations should be required to provide for public policy reasons, if any?

- 4.73 The Format requirements for the amount of local programming vary widely across the country. This is a result of the varying proposals put forward by the successful applicants for licences which are subsequently encapsulated in their licences as a Format. Often the smaller stations have the greater programming obligations. To take just a few examples:
- The station for Rutland (population 32,000) is required to broadcast distinct local programmes for 21 hours a day, 7 days a week, while the nearby heritage (original commercial) station for Leicester, Leicester Sound, (population 713,000) is required to broadcast only 16 hours on weekdays, 12 on Saturdays and 8 on Sundays.
  - The station for Maidstone, CTR, (population 90,000) is required to broadcast distinct local programmes 24 hours a day, 7 days a week, while the heritage station broadcasting to the whole of Kent, Invicta FM, (population 1.1 million) need only broadcast local programming for 16 hours a day.
  - The station for Buxton, High Peak FM (population 68,000) must broadcast local programming 24 hours a day, while the bi-lingual station for Cardigan Bay, Radio Ceredigion, (population 72,000) need only broadcast local programming for 6 hours a day.
- 4.74 It could be argued that each station won its licence on the basis of its promises to provide these amounts of local programming and that each should live by those promises. But it would be difficult to argue that this is necessarily in the best interests of audiences.
- 4.75 As we demonstrated in section 3, the smallest local stations are those least likely to be financially successful and yet they often have the greatest local programming obligations. At the same time, the research demonstrates that most people think local radio stations should be county-sized or town- or city-sized, rather than smaller.
- 4.76 In practice many stations broadcast more locally-made programmes than their Format requirement – for example, the Dundee/Perth FM service, Tay FM, and Aberdeen FM service, Northsound 1, both have a Format obligation to provide 13 hours of locally-made programmes each day, but instead each service provides 24 hours of locally-made programmes each day. But we do not believe that it is for the regulator to micro-manage the amount of local programming on each station, beyond setting an appropriate minimum amount of local programming. Beyond that minimum it should be a matter for the broadcaster. If their programming does not deliver to audience needs then they will lose audience and suffer financially.
- 4.77 The basic building blocks of local radio programming are four-hour programmes which customarily represent one presenter shift. Ofcom defines day-parts on local stations as follows:
- Daytime:
    - Weekdays - 06:00 to 19:00 (13 hours per day)
    - Weekends – 08:00 to 14:00 (6 hours per day)
  - Peak-time:
    - Weekday breakfast

- Weekday afternoon drive-time
- Weekend breakfast

4.78 We have taken these definitions into account in considering possible options for the future. The options consider local material and locally-made programmes. The requirement for all local material to be locally produced would apply, subject to any agreement for co-location as set out above.

### **Categorisation of stations by size and type**

4.79 There is a huge range in the size of commercial radio stations. As section 3 showed, financial performance differs significantly by size of population covered.

4.80 For the purposes of analysis and differentiating policies, we have divided stations into a number of categories:

#### **4.81 FM and AM stations with populations below 100,000.**

- There are 67 such stations (65 on FM, 2 on AM), ranging in population coverage from the station which serves Gairloch and Loch Ewe, which covers just 1,680 people, to the one for Basingstoke, covering just under 100,000. The category includes stations for Grimsby, Bridgend, Coleraine and Jersey.
- The total combined population coverage of these 65 stations is 3.7 million people.
- 37 of the 65 stations, accounting for 2.6 million of the 3.7 million people served by these stations, are in areas also covered by a larger commercial local radio station.
- Many of these stations are not measured by RAJAR. Those that are, comprising mainly the larger stations in this category account for 0.75% of all radio listening. We estimate that in total, stations in this category account for less than 2% of all radio listening.
- While a few of the stations in this category are highly profitable, the vast majority struggle to make ends meet. The average annual profit of those stations with populations under 50,000 is just £2,000, while those with populations between 50,000 and 100,000 make an average annual loss of around £50,000.
- Yet between them, the Formats of these stations oblige them to produce almost 7,000 hours of locally-made programmes every week. In fact many stations have obligations to provide local programming 24 hours a day, 7 days a week; a far higher level than many much larger stations.
- However, many of these stations are highly valued by the communities they serve. In many ways a lot of these stations are more akin to community radio stations, albeit that they are operated as commercial businesses. (So as to try to protect such stations financially, the Community Radio Order prohibits community radio services from being licensed in areas which have a commercial radio station covering 50,000 people or less, while those licensed in areas where there is a commercial radio service covering between 50,000 and 150,000 can take no revenue from advertising).

#### 4.82 **FM stations with populations of 100,000 – 250,000 people**

- There are 62 such stations, ranging in size from the stations for High Wycombe (Mix 107) at 100,000 and Londonderry (Q102.9; 107,000) to Aberdeen (Northsound 1) at 236,000 and the smaller stations in Brighton (Juice 107.2; 240,000) and Coventry (Touch FM, 247,000).
- Almost all of the 62 stations are in areas also served by larger local commercial radio services. Coventry for example, as well as being served by Touch FM is also served by Mercia FM, based in the city, as well as Classic Gold 1359 and the West Midlands regional services.
- The average profit made by stations with populations between 100,000 and 200,000 is £65,000, although there are wide variations within this group.
- Those stations which participate in RAJAR (38 of the 61, with a further 6 still to launch) account for under 1.5% of total radio listening.
- The local programming commitments of this category of station are generally between 14 and 24 hours a day on weekdays (normally including all of daytime from 06.00 to 19.00) and between 12 and 24 hours at weekends.

#### 4.83 **FM stations with populations over 250,000 people**

- This is the largest category of stations comprising 125 stations ranging in size from the ones for Plymouth (Plymouth Sound, 265,000), Stirling (Central FM, 268,000 population), and Swansea (The Wave, 301,000) to the London stations such as Capital 95.8, Magic 105.4 and Heart 106.2 with populations of over 7 million.
- These stations have all been included in the same category as they all cover significant population centres, where it might be reasonable to expect to have local radio stations broadcasting throughout most of daytime. Many of the stations in this category are heritage stations (the original commercial radio stations with established and loyal audiences), or regional stations covering large areas.
- The majority of these stations have local programming obligations for between 13 and 18 hours a day, although a few must be local for 24 hours a day.
- Many of these stations are still profitable, although the financial pressures are increasing as demonstrated in section 3.

#### 4.84 **AM stations with populations over 100,000 people**

- AM listening has been in decline over many years and local commercial AM stations now account for less than 3.8% of all radio listening.
- While some stations, such as BBC Radio Five Live, TalkSport and stations for ethnic minorities remain popular on AM, most music-based stations struggle to win audiences against the technically superior sound of FM and digital stations.
- As a result of this decline in listening, AM stations generally face even greater financial pressures than other stations.

- The Radio Authority recognised this some years ago, allowing many AM stations to reduce their locally-made programming commitment to just 4 hours a day, to allow them to remain viable. This relaxation was taken advantage of by the Capital Gold, Magic and Classic Gold networks, although not all stations reduced their local programming commitments in this way.
- There are 54 AM stations broadcasting to over 100,000 people, ranging in size from Aberdeen (Northsound 2 with a population of 246,000) to London (Spectrum Radio, 10.4 million population)
- 34 of the 54 stations are part of one of three quasi-national networks, Classic Gold (owned by UBC), Magic (owned by Emap) and Capital Gold (owned by GCap Media). Each station broadcasts only four hours a day of locally-made programming, with the rest being networked.
- Of the remaining stations, eight broadcast to ethnic minorities (including Sunrise Radio, Club Asia, London Turkish Radio and Sabras Sound), one is a Christian station (Premier Radio), one a news station (LBC 1152), and nine are heritage AM stations still broadcasting a full service of 13 to 18 hours a day of locally-made programming (mainly in Scotland).

#### 4.85 **Specialist music stations**

- Within the two larger FM categories, there are 17 specialist music stations, ranging in size from the yet-to-launch rock station in Plymouth (Diamond FM, covering 200,000 people) and Oxford's cutting-edge music station (Oxford's FM 107.9, covering 214,000) to the major regional and London stations with well-known brands such as Kiss, Xfm and Galaxy, offering dance music and alternative rock.
- Ofcom has recently allowed the three Kiss stations in London, the Severn Estuary and the East of England to share their programming for all but seven hours a day on the grounds that the *raison d'être* of these stations is their focus on particular types of music rather than their local programming. Such niche programming can often work better at a national rather than a local level, as the stations can then attract top talent to present programming. The relatively small audiences these stations are able to achieve (due in part to the specialist nature of their output) also mean that some level of programme-sharing may make sense, especially as competition from elsewhere increases, so as to maintain their viability.

4.86 As set out above, based on our audience research, we believe that the provision of local radio is important for public policy reasons and that financial pressures mean that the provision of local material in all areas cannot be guaranteed in the future, we believe that intervention in the market will still be required to meet the public policy objective of securing local material and that the most effective way for stations to keep in touch with the audiences they serve is for their programming to be produced in their licensed area. However, the question is what is the right level of such intervention?

4.87 For all of the local stations, apart from the specialist music services, localness is their key distinctive feature. However, this does not necessarily mean that they should have to broadcast local programming all of the time. The research quoted in Figure 24 above suggests that most listeners do not think it is important for a local station to be local all of the time. It may well be in listeners' interests to be offered a mix of local and networked programmes, if those network programmes offer something that the

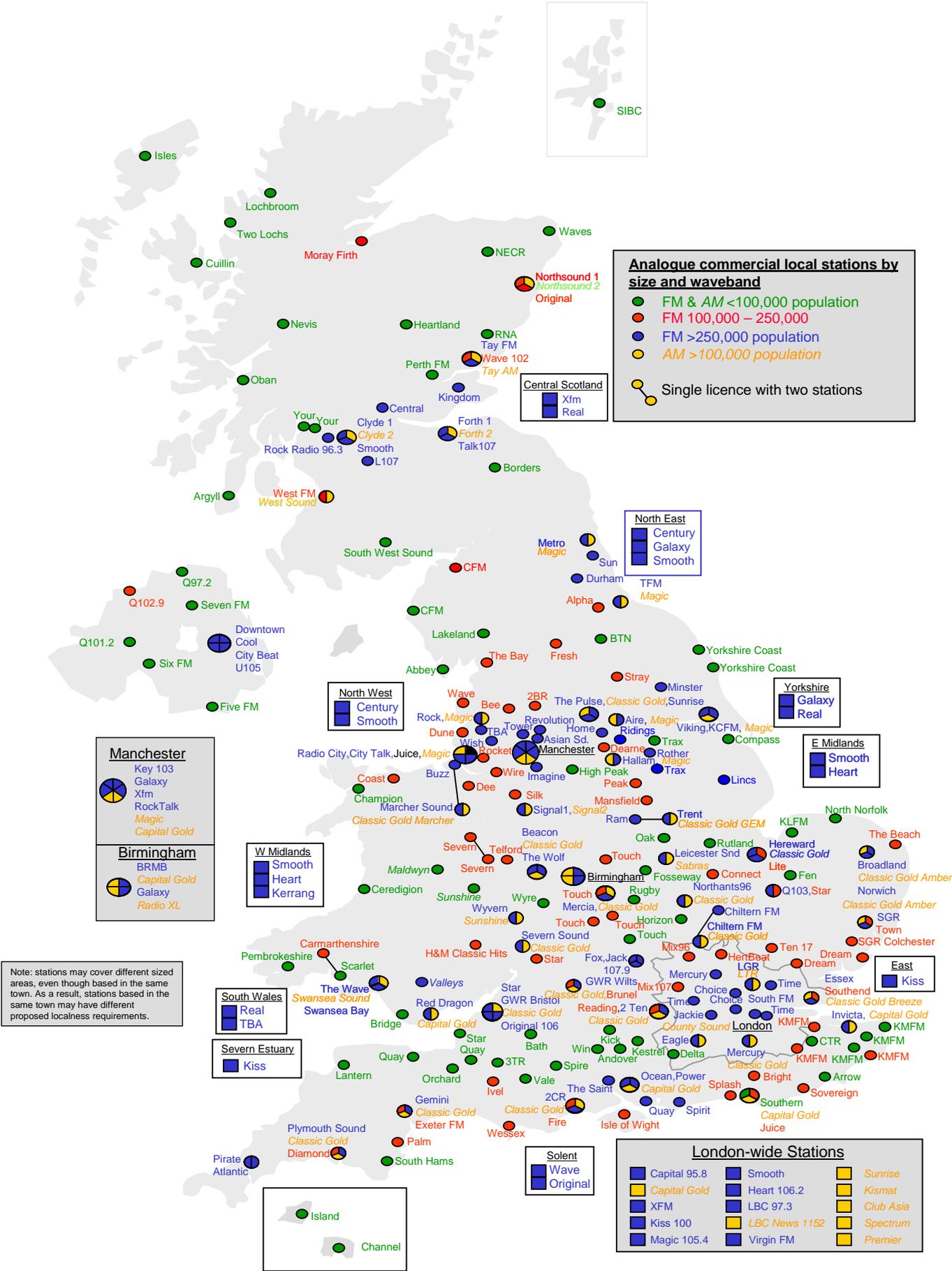
local programmes could not, such as presentation by major talent or access to interviews and features that a local station by itself could not access. Or it may be a way of focusing local resources at key times of day, allowing programme-sharing at those times of day when listeners do not find localness so important and when the choice may be between a locally-made automated show, perhaps without any presenter content, and a programme shared with other stations which would cover a wider area but include live presentation. On the other hand, networking could simply be used as an excuse to cut costs. The question is whether it is appropriate for the regulator to insist on programmes being locally-made, even if this means they are of inferior quality to a shared programme offering, or whether stations should be allowed to decide for themselves what to broadcast, so allowing listeners to give their verdict on what they want to hear. If they don't like the programmes, they won't listen.

### Options for change – analogue local commercial radio

- 4.88 **Option 1 - status quo:** One option for the future would be simply to let this situation continue, requiring stations to keep to their existing obligations, as proposed by themselves (i.e. the appropriate amount of local material and locally-made programmes is that set out in each station's Format), but to continue to allow each station to ask for a Format change (using the process set out above) on a case-by-case basis, according to individual circumstances. However, as the commercial and competitive pressure on local stations increases, the majority of stations are likely to seek some sort of change to their obligations and a wholesale review now would provide transparency and regulatory certainty for stations. *We do not believe that this option would provide a transparent sustainable framework for local radio in the long-run and so it is not recommended.*
- 4.89 **Option 2 – The abolition of all local programming obligations (i.e. the removal from Formats of all commitments relating to the provision of local material and locally-made programmes):** This would be the most radical option, allowing stations to decide for themselves how much local programming to produce, if any. However, the likely outcome of this option would be that commercial pressures for networking would result in the disappearance of local programming from many services, potentially leaving some areas with no local commercial service at all (although local news and traffic bulletins may still be provided). A 'blanket' policy of removing all localness obligations would not allow Ofcom to fulfil its statutory duty to ensure an appropriate amount of local material, of which a suitable proportion is locally-made. Such an approach would also undermine the basis upon which licences have been awarded. *We do not believe this option is in the interests of listeners and so it is not recommended.*
- 4.90 **Option 3 – A standard minimum local programming obligation for all stations:** It would be possible to set a minimum level of local programming for all stations. For example, the obligation on all stations could be reduced to four hours of locally-made programmes containing local material per day in daytime. This represents a standard presenter shift in commercial radio, so any smaller obligation would be unlikely to deliver additional cost savings for stations.
- 4.91 Existing legislation requires Ofcom to consider the appropriate amount of localness for each station on a case by case basis. However, it would be possible for Ofcom to issue revised localness guidance under section 314 of the Communications Act 2003, so as to indicate what Ofcom considers to be an appropriate amount of localness for all stations (although in applying this guidance, under the existing legislation Ofcom would still need to assess each station on a case by case basis and consider changes under the Format change regime.)

- 4.92 This option would ensure that, where appropriate, every station provided at least some local programming and most stations would probably choose to provide it at the peak time when most listeners say they want local programming. This option represents the current situation in France, where no local commercial station has to provide more than four hours of local programming per day, although some have to be part of a regional network. Some stations would probably produce significantly more than this, although in France when the rules were relaxed, stations rarely provided more than the minimum amount of local programming. If this experience was to be repeated here, this might mean a radical reduction in the amount of local radio programming we have known in the UK in recent years. (Although it should be noted that some UK stations currently provide significantly more local programming than their licence requires.)
- 4.93 This option has the downside that it takes no account of the differential pressure on differently-sized stations (it is the smallest stations which are least viable) and may be an unnecessary relaxation in the rules, given that:
- Ofcom has a duty to ensure an appropriate amount of locally-made programming and local material;
  - In research, listeners say that they value local programming; and
  - Listeners say that larger local stations are the most appropriate size of local station.
- 4.94 *We do not believe this option would be in listeners' interests and so it is not recommended.*
- 4.95 **Option 4 – Allow smaller stations to share all of their programming:** It would be possible to allow any station covering a population below a certain size - less than 100,000 say - to share all programming with a neighbouring larger station, in effect creating larger local stations than at present. This would still provide a local service in all areas, albeit that the service would be less “local” than before.
- 4.96 Existing legislation requires Ofcom to consider Format changes for each station on a case by case basis. However, it would be possible for Ofcom to adopt a policy that in general requests for changes in these circumstances are likely to be looked at sympathetically under the statutory Format change regime.
- 4.97 While this may appear attractive in some ways, the practical financial benefits to stations may be quite limited as:
- Ofcom already allows co-location for these stations, and will consider Format changes to allow some programme sharing (as described above); these two measures provide most of the financial benefits that this option would deliver while still protecting an appropriate amount of local programming.
  - Often small stations' neighbours are owned by different companies, and their owners are unwilling to sell.
- 4.98 While not as controversial as option 3, this option would still be likely to be strongly resisted in the areas affected. *We believe that the limited financial benefits to stations would be outweighed by the detriment that would be suffered by listeners, and so this option is not recommended.*

Figure 26: Analogue commercial local stations, categorised by size and type



- 4.99 **Option 5 – A differential approach linked to the size of station:** Based on the standard length of commercial radio programmes, and our research which demonstrated when listeners expect their local station to offer local programming, it may be appropriate to adopt different local programming requirements for different types of station, for example according to the size of licence, with AM stations being treated as a separate category (a map of all analogue commercial local stations categorised by size and type is shown in figure 26).
- 4.100 Existing legislation requires Ofcom to consider the appropriate amount of localness for each station on a case by case basis. However, it would be possible for Ofcom to issue revised localness guidance under section 314 of the Communications Act 2003, so as to indicate what Ofcom considers to be an appropriate amount of localness depending on the size of station (although in applying this guidance, under the existing legislation Ofcom would still need to assess each station on a case by case basis and consider changes under the Format change regime). The table below sets out a possible way of delivering this approach.

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

- 4.101 One exception to the general guidance set out in the table could be for those stations which focus heavily on a particular type of music, which could be permitted by Ofcom to provide fewer hours of locally-made programmes and less local material if they can make a strong case that the music they provide could be better provided on a shared basis, and that the local element of their programming is less important than the music they play.

- 4.102 We suggest that it would generally be appropriate to allow local stations to share programming outside key times of day, when most listeners say that it is less important for a local station to be local. However the amount of such networking would be limited, so as to maintain the local character of services at key times of day.
- 4.103 This would represent quite a radical reduction in obligations for many stations, particularly smaller stations, but in our view it would ensure that stations deliver an appropriate amount of local material for listeners without imposing a disproportionate regulatory burden. Of course, this would not prevent stations from offering more local programming than their minimum obligations, as many already do. Localness will remain the main selling-point for many stations, but it would be up to them how they deliver this beyond the minimum regulatory requirements.
- 4.104 For the largest stations the proposed minimum level (if appropriate to that particular station) would allow them, if they so wished, to introduce a limited amount of networked programming during the day, outside of breakfast and drive-time, to allow them to utilise key talent more effectively, while still protecting local programming for the majority of the day and at key periods.
- 4.105 This option would also take into account the fact that it is the smaller local stations which are struggling the most financially.
- 4.106 The minimum levels set out in the table above would not apply to stations whose commitments are already lower than those shown.
- 4.107 We have modelled the possible effect on differently-sized stations of the minimum levels proposed in the table above together with the potential for co-location.
- 4.108 We have taken two hypothetical examples, but based them on the costs of real stations
- 4.109 **Example 1 – Programme sharing for most of the day, but maintaining separate studios in each location for local programming:** In this example, we assume a group operates six stations in a region, each serving fewer than 250k people, with their own localness obligations and separate studios. We have assumed that all centralised output comes from one of the stations (say station A) and that costs are similar between stations. Each station only broadcasts the minimum amount of local programming and that revenues are unaffected. Group costs could fall in line with the variable costs of producing local output, the majority of which is the cost of presentation talent. The typical presentation arrangement at stations of this size is for there to be two main presenters (breakfast and drive), a third doing daytime and further freelance cover for other dayparts, holiday and sickness cover. Some or all of these presenters may produce automated output for the overnight schedule. Based on our knowledge of typical talent costs at this size of station, our calculations suggest that implementing the changes allowed by reduced localness commitments could reduce operating costs by £150-220k per annum for a group of this size.

Station	Pop K	Current local output		New local output		Presentation line-up under new local output				
		Weekday	Weekend	Weekday	Weekend	Pres 1	Pres 2	Pres 3	Freelance	
A	200	24	24	8	4	x	x	x	x	
B	180	16	16	8	4	x	x		x*	
C	160	16	12	8	4	x	x		x*	
D	85	24	24	4	4	x			x*	
E	80	16	16	4	4	x			x*	
F	70	16	12	4	4	x			x*	
Typical annual cost £k						25-40	20-25	15-20	5-15	
Potential saving £k						-	60-75	75-100	15-45	
Total £k						150-220				

- 4.110 **Example 2 – Programme sharing and centralised studios providing the local programming for remote stations:** In example 2, our group operates the same six stations, each currently with its own localness obligations and separate studios. We have assumed that output is concentrated in two studio centres, in towns A and D. These centres provide the local programming for stations B and C and E and F respectively, as well as their own local output. For the remainder of the day, the same programming is broadcast across each three-station cluster. Local studios are no longer maintained at the remaining four stations, leading to reductions in premises and office costs, as well as savings in talent, as in example 1, and admin. We have assumed that management, sales and news arrangements are already structured in the best possible way, although if this is not the case there may be scope for further savings, e.g. if each station currently has a dedicated station manager this may not continue under this scenario. The group may also need to incur capital expenditure at stations A and D to ensure the local programming for other stations can be provided, for example, extra studios. Based on our knowledge of typical talent, admin, premises and office costs at this size of station, our calculations suggest that implementing these changes (reducing local programming commitments and taking advantage of co-location) could reduce operating costs by £420-665k per annum, before any incremental capital expenditure that might be necessary.

Station	Pop K	Current local output		New local output		Presentation line-up under new local output				Admin	Premises	Office
		Weekday	Weekend	Weekday	Weekend	Pres 1	Pres 2	Pres 3	Freelance			
A	200	24	24	8	4	x	x	x	x	x	x	x
B	180	16	16	8	4							
C	160	16	12	8	4							
D	85	24	24	4	4	x	x	x	x	x	x	x
E	80	16	16	4	4							
F	70	16	12	4	4							
Typical annual cost £k						25-40	20-25	15-20	5-15	12-15	15-30	15-25
Potential saving from 4 fewer locations £k						100-160	80-100	60-80	15-45	48-60	60-120	60-100
Total £k						420-665						

- 4.111 In both of these examples, the savings could make the difference between profit and loss and the changes could actually be required to maintain the viability of the stations.
- 4.112 **Overall our calculations suggest that for stations with population coverage of fewer than 100,000, the reduced localness requirements could potentially turn an average £14k operating loss into an £16k operating profit. That is before any savings related to co-location.**
- 4.113 If our calculations were applied across the industry, the sums saved, even without co-location, may be of the order £3.75m-7m:

Station size	<100k population		100 - 250k population		>250k population	
	Current set-up	New set-up?	Current set-up	New set-up?	Current set-up	New set-up?
<b>Typical line-up</b>						
Presenter 1	x	x	x	x	x	x
Presenter 2	x	?	x	x	x	x
Presenter 3	?		x	?	x	x
Presenter 4			?		x	?
Freelance cover	x	x	x	x	x	x
Total number	2 - 3	1 - 2	3 - 4	2 - 3	4+	3+
<b>Typical costs £k</b>						
Presenter 1	16 - 20		25 - 40		50+	
Presenter 2	14 - 16		20 - 25		50+	
Presenter 3	12 - 14		15 - 20		25+	
Presenter 4	12 - 14		15 - 20		25+	
Freelance cover	5 - 10		5 - 15		15+	
<b>Potential saving £k</b>	7 - 30		7.5 - 40		25+	
No. of FM stations in category	65		65		122	
Total potential saving per category £k	455 - 1,950		487 - 2,600		3,050+	
<b>Total potential saving across radio industry</b>	£4.0m - £7.6m+					

- 4.114 Of course, this is a very simplistic calculation – every situation will be different - and the primary aim of the changes is not to increase profits but to ensure that stations deliver an appropriate amount of local material for listeners without imposing a disproportionate regulatory burden.
- 4.115 This option would allow stations to reinvest in programming in the way that was most effective at serving their audiences.
- 4.116 *We believe this option is worthy of consideration.*

### **Suggestion 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 could be introduced when the relevant digital listening threshold is met.*

### **What would be the effects of these proposals taken together?**

- 4.117 For stations covering a population of under 100,000, the proposals set out above could have a dramatic impact, as they currently have the greatest programming obligations and face the greatest financial pressures. The proposals would mean these stations would have a much simplified Format, which might simply require them to provide local programming for four hours a day in peak-time, with no specific requirements for certain types of programming. Beyond this, they would be able to decide for themselves how much of their programming should be local and how much should be networked from elsewhere. They would also be able, subject to Ofcom permission, to co-locate with a neighbouring station. In many cases, this would allow currently unprofitable stations to become viable, so protecting local programming at the time of day when most listeners value it. Listeners would have guaranteed local

programming at key times (46% of listeners think it is important for stations to provide local programming at breakfast and 39% at drive-time) but would certainly risk losing local programming at other times (but only 21% think it important for stations to provide local programming during the day outside breakfast and drive-time and only 11% think it important to provide local programming after 7pm in the evening). However, this would not necessarily happen if the broadcaster believed that there was sufficient demand for local programming to make it viable at other times. It may also be that the shared programming provided at times of the day may prove more attractive to audiences than the local programming it replaces (good local programming talent is often scarce). The majority of listeners served by these small stations are also within the coverage area of larger local stations, which would still be required to provide local programming at other times of the day, so overall relevant local programming from the larger station would still be available to them for most of the day, with ultra-local programming from the smaller station for at least four hours in peak-time (i.e. they would get local programming at, say, county level from the larger station for most of the day, with local programming for their own town from the smaller station at peak-times). The majority of listeners say they expect their local radio station to cover city or county-sized areas, and so this proposal would be in line with listener expectations. The alternative to this scenario may be the complete disappearance of these small stations with the loss of their ultra-local programming.

- 4.118 For stations covering populations of between 100,000 and 250,000, which still face serious financial pressure but are not as threatened as the smallest tier of stations, the proposals could see their Formats simplified, with many possibly having a requirement simply to serve a certain demographic (e.g. 25-55 year-olds) and to provide eight hours a day of local programming at breakfast and drive-time (the times most listeners believe it is important to be able to listen to local programmes). Beyond this they would be able to choose whether to provide local programming or programming shared with other stations. They would also be able to apply to Ofcom for co-location with neighbouring stations where they can make the case. These measures would allow stations in this category to focus their limited resources at key times of day, allowing for shared programming, and greater investment in shared talent, at other times.
- 4.119 For the larger stations, with populations over 250,000, their Formats could be simplified, but they would still be required to provide local programming for at least 13 hours a day, including breakfast and drive-time, with a least 10 hours of local programmes during daytime. However they would be able to provide shared or networked programmes for up to 3 hours in daytime, if they wished to; enough for a key networked show using major talent. Stations would have greater flexibility to respond to changes in the market as a result of their simplified Formats. Stations in this category would not normally be allowed to co-locate with other stations, although there may be exceptional circumstances where such co-location may be granted. Listeners would be guaranteed local programming throughout most of daytime but could also benefit from networked shows which could enhance the offering.

### **Options for change – DAB digital local commercial radio**

- 4.120 There are currently 46 local DAB multiplexes, and frequencies have been specifically reserved by Ofcom for around a further 30, to facilitate the provision of digital local radio services in every part of the UK. (These frequencies could alternatively have been allocated to providing more national services.) Local DAB multiplexes are likely to be the cornerstone of digital local radio provision in the future.
- 4.121 The statutory criteria for awarding a local radio multiplex licence include:

- the extent to which the services included would cater for local tastes and interests;
  - the extent to which they would broaden the range of programmes available in the area; and
  - the extent to which they would cater for tastes and interest not already catered for by local digital radio services.
- 4.122 On DAB, the multiplex operator is effectively the gatekeeper, deciding which stations should be carried on the multiplex.
- 4.123 However, Ofcom will approve any changes in the line-up of stations, provided that it is satisfied (based on a consideration of statutory criteria):
- That the variation would not unacceptably narrow the range of programmes available by way of local digital programme sound services to persons living in the area or locality for which the licensed multiplex service is provided; or
  - That the variation would be conducive to the maintenance of fair and effective competition in that area or locality; or
  - That there is evidence that, among persons living in that area or locality, there is significant demand for, or significant support for, the change that would result from the variation
- 4.124 It could be argued that the statutory provisions set out above are sufficient to ensure local material on local DAB multiplexes. However, the criteria to ensure that services cater for local tastes and interests does not explicitly include local material or local production. For example, the multiplex operator could claim that local tastes and interests would be catered for by a variety of music stations with no local material or production.
- 4.125 Currently, all local multiplexes carry at least one station which broadcasts local material, locally made throughout daytime (and often beyond) and at least one station which carries local material, locally made for at least four hours a day. However, this may not be the case for all future local multiplexes.
- 4.126 The vast majority of these services with local content on DAB are simulcasts of existing analogue local stations, and their localness requirements are only written into their analogue licences. This is not a problem at present, but there is a question as to whether, if and when analogue services cease, there should be some additional minimum requirement for localness on DAB multiplexes, given that spectrum has been specifically reserved for local multiplexes with the aim of allowing local radio services.
- 4.127 Parliament has set Ofcom a duty to secure a wide range of analogue local radio services. Ofcom also believes that it will continue to be important to achieve this aim in future, as analogue listening migrates to digital platforms. However, in a possible all-digital future radio landscape, there currently is no duty on Ofcom to ensure digital local radio programming, and so there is a risk that if analogue radio no longer exists, so local radio may no longer exist.

- 4.128 Some people would go further and argue that Ofcom should have a duty to ensure the provision of all existing analogue local services on digital radio platforms and that this would be an essential pre-requisite for an all-digital radio world.
- 4.129 We believe there are three main options which Government may wish to consider should it be minded to lay new legislation before Parliament at the appropriate time:
- 4.130 **Option 1 – No specific localness requirement on DAB:** This is the current position. As noted above, local services are currently provided as simulcasts of analogue local services, but as and when analogue broadcasts cease there is nothing to protect the provision of these local services. Without local services on these multiplexes, the rationale for local DAB multiplex provision disappears and the spectrum may no longer be being used efficiently. As we set out above, for public policy reasons, we believe that the continued provision of local material on radio is important and that intervention is likely to be required to ensure this provision. As digital listening takes over from analogue listening, there is no regulatory mechanism to ensure the provision of local material on such radio platforms. *For these reasons, we do not believe this option is appropriate.*
- 4.131 **Option 2: Amend Ofcom’s existing statutory duty to ensure the provision of an appropriate amount of local material with a suitable amount of local production on analogue commercial local radio to be platform neutral for broadcast radio.**
- 4.132 While it may not be necessary to change the statutory framework for awarding and approving variations to local radio multiplex licences, as set out above, we believe that changing Ofcom’s existing duty to ensure an appropriate amount of local material with a suitable amount of local production on analogue commercial local radio across all broadcast radio platforms, so as to be able to balance provision of local material across platforms, would be sufficient to allow us to guarantee local programming on digital radio.
- 4.133 We suggest that it would not be appropriate to apply such regulation to all broadcast platforms, such as satellite or digital television, but to those which seek to replace traditional analogue radio, such as DAB or DRM.
- 4.134 ***It should be noted that any change here, unlike our other proposals, could actually result in an increase in regulation.***
- 4.135 If Parliament did decide to amend Ofcom’s existing localness statutory duty in this way, this would give Ofcom greater flexibility to deliver its duties as regards local material and local production, and is consistent with our aim of securing regulation which is platform and technology neutral. Also, as digital listening rises, it may be possible to reduce localness requirements on analogue radio, while ensuring localness on digital platforms.
- 4.136 The aim would not be to increase local provision on existing local multiplexes, but to ensure that Ofcom had the powers to ensure its continued provision, where appropriate, once analogue services have ceased broadcasting. *As digital listening increases, we believe this is the most appropriate option.*
- 4.137 **Option 3 – Introduce a must-offer requirement for multiplex operators to offer capacity to all existing analogue local commercial stations which broadcast to the majority of the multiplex area:** This would be a significant new obligation for multiplex operators. The advantages are that this would:

- Guarantee all of the larger stations a place on the relevant local multiplex, should they wish to take it up
- Help digital take-up as all of the most listened-to stations would be carried on DAB.

4.138 However, there are also a number of disadvantages:

- There are very few larger local analogue commercial radio services which are not already simulcasting on their relevant local DAB multiplex, so a new legislative requirement would appear to be disproportionate and unnecessary. (examples of larger analogue services which are not currently available on DAB include stations launched since the local multiplex went on-air and where the multiplex is now full, such as Original in the Solent region and Bristol, Exeter FM, Atlantic FM in Cornwall, U105 in Belfast and Talk 107 in Edinburgh; and smaller stations, some of whom did not seek carriage on DAB, such as Star in Cambridge and Bristol, Juice in Liverpool and Fire in Bournemouth)
- This would not provide a digital solution for the many smaller stations whose footprints do not neatly fit those of DAB radio multiplex services
- No other non-BBC stations have guaranteed DAB carriage and so to introduce significant new intervention may be unfair.

#### **Suggestion 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.*

### **Other broadcast platforms – Digital television**

4.139 While many people listen to radio via digital television, this is still not their primary source of radio listening and is unlikely to become so as it does not currently allow for portable or mobile listening – attributes that are expected of radio reception. In addition, digital television does not, on the whole, provide local radio programming, although some local stations are carried on each digital television platform (these are mainly local London stations). As such, we do not see a need to consider any new regulation to ensure local programming on digital television platforms. This should be purely a matter for the market.

### **National radio services**

4.140 For national (UK-wide) radio services, Ofcom's aim is to have a wide range of innovative UK-wide commercial stations providing competition for the BBC in all

major genres. We would also welcome the development of commercial services for each nation, should there be demand for such services.

- 4.141 Ofcom welcomes the availability of a wide range of radio stations available across the whole UK, regardless of platform. However, we will intervene (and have duties to do so) to ensure that there is a guaranteed level of diversity on the two platforms which are still the only way to provide free-to-air radio to listeners in ways that they expect (on mobile and portable devices) and which between them account for the vast majority of listening: analogue radio (AM and FM), and DAB digital radio.

### **Analogue national radio**

- 4.142 There are three analogue national commercial radio services: two on AM, one on FM.

- 4.143 Legislation sets out the criteria for national analogue radio. There must be:

- One station which plays “music which is not pop music” (currently Classic FM)
- One station which is “mostly speech” (currently TalkSport)
- There is no statutorily-defined Format requirement on the third (or subsequent) station(s) (currently Virgin Radio).

- 4.144 Within these limitations, licensees may request a change to their Format, which Ofcom may approve if it is satisfied either that the change would not substantially alter the character of the service, or that the change would not narrow the range of radio services available (not including DAB services).

- 4.145 These licences are due to expire in 2011-12. The sections on VHF Band II and Medium Wave deal with our proposals for these licences at expiry.

- 4.146 National DAB digital radio multiplexes have a requirement to offer a range of services which cater for a variety of tastes and interests (see below).

- 4.147 This issue is a matter for Government and Parliament rather than Ofcom. However, we suggest that as analogue listening, particularly to AM services, declines and a wide range of national services becomes available by DAB and other platforms, it may no longer be necessary to require different Formats for two of the analogue stations.

#### ***Suggestion 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.*

### **National (UK-wide) services on DAB digital radio**

- 4.148 The existing national commercial multiplex offers eight radio services (including a requirement to make capacity available for the simulcast of the three analogue national commercial stations). We expect the second national commercial multiplex will offer a similar number. Multiplex licences are awarded by beauty contest.

- 4.149 The statutory criteria for awarding a national multiplex require Ofcom, inter alia, to have regard to the capacity of the proposed programme services to appeal to a variety of tastes and interests. In addition, we have stated that any proposed line-up of services on the second national commercial multiplex should appeal to tastes and interests that are distinct from those catered for by services on the existing national multiplex.
- 4.150 The on-going delivery of diversity is secured by an obligation in the multiplex licence to provide the stations listed in the licence. The multiplex licence also includes a brief Format description of each station. The multiplex operator may request a change to individual Formats in its line-up. Ofcom set out how it will consider such requests in “The Future Licensing of DAB Digital Radio”. These rules should ensure that there is a diversity of national radio services on DAB.

#### **Suggestion 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*

### **Securing plurality through media ownership rules**

- 4.151 After localness and Format regulation, the third area for consideration is the mechanisms by which the other main public policy objective for radio, namely plurality, is secured for the benefit of consumers and citizens.
- 4.152 Ofcom has recently reported to the Secretary of State following a statutory review of the current media ownership rules. That report highlighted for potential further work the ownership rules which apply specifically to the holding of commercial radio licences.
- 4.153 Any changes to the ownership rules would require legislation and so are a matter for Government to consider as it sees fit at the appropriate time.

#### **Current rules**

- 4.154 Currently, there are four types of rules relating to plurality of radio ownership:
- Cross-media ownership rules: limits on ownership of local radio, local newspapers and regional TV;
  - Local analogue services rules: a limit of 55% of points based on station ownership in any market with more than two commercial stations;
  - Local DAB services rules: limits on ownership of individual DAB stations in any market, taking into account overlaps between the multiplexes upon which they are carried;
  - Digital radio multiplex rules: limits on:
    - ownership of local radio multiplex licences whose coverages overlap by more than a certain percentage; and

- ownership of national radio multiplex licences, where a person may hold only one such licence.
- There is also a public interest test which may be required by the Secretary of State in certain cases of proposed take-overs or mergers.

### **How the current rules work**

- 4.155 The majority of the current rules are set out in the Communications Act 2003 and in the Media Ownership (Local Radio and Appointed News Provider) Order 2003<sup>5</sup>.
- 4.156 The rules applying to local analogue stations are based on the principle that there should be at least two owners of local radio stations, plus the BBC, in any market where there are more than two local commercial stations.
- 4.157 The rules exist due to concerns that otherwise all of the access to local news and information in an area could be controlled by a single operator, i.e. they exist for plurality reasons rather than economic competition reasons.
- 4.158 There are currently separate rules for analogue and DAB services. Each set of rules is based on individual station coverage areas (or multiplex coverage areas in the case of digital programme services). However, because almost every station's market is unique, with many overlaps between stations' markets, the calculation of the ownership limits has to be carried out on a case-by-case basis, and is far from simple.
- 4.159 For radio multiplexes, there are rules preventing control of local radio multiplexes whose coverage areas (known as "protected areas") overlap, and to prevent one person from holding more than one national radio multiplex licence.

### **Why are there plurality rules?**

- 4.160 Access to diverse viewpoints is important because it enables democratic participation. Citizens need information on what is happening in their communities to enable participation in the democratic process; i.e. to make informed choices when voting, participate in public discourse, and have a forum to contribute their views, and obtain the information they need for markets to work properly.
- 4.161 It is also important for citizens to have access to a wide range of viewpoints. The more perspectives that citizens have on issues, the more likely they are to have information about the full range of issues, and the more likely they are to be fully informed about each individual issue. It is also important that one viewpoint does not dominate over others. If any one viewpoint has too much influence (for example, if one viewpoint has particular incentives to increase its influence, such as political bodies), that viewpoint can distort the democratic process.
- 4.162 Due to the importance of media plurality in a democratic society, Parliament gave Ofcom a specific statutory duty to maintain a sufficient plurality of providers of different TV and radio services (s.3(2) Communications Act 2003).
- 4.163 There is currently no accepted way of measuring the degree of viewpoint plurality in the media. As a proxy for viewpoint plurality, the media ownership rules aim to ensure plurality of media ownership. This approach assumes a correlation between viewpoint

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<sup>5</sup> SI 2003/3299

and ownership plurality: different owners may be different sources of news and may also provide different perspectives on what is going on in the world.

4.164 Clearly, this proxy is imperfect:

- Ownership plurality *does not ensure plurality of sources of news*: e.g. two local radio stations might have different owners and yet obtain all their news from the same sources;
- Ownership plurality *does not ensure editorial or viewpoint diversity*: different sources of news may offer the same perspectives on issues. Also, journalists, editors or producers, rather than owners, may have a more direct impact on the views expressed by a media outlet;
- Finally, ownership (or, indeed, viewpoint) plurality *does not ensure* the provision of the *quantity and quality of news* output that society desires.

4.165 However, it may be argued that ownership plurality is the best proxy for viewpoint plurality available at the moment.

### Station ownership rules

4.166 The plurality arguments set out above may still be relevant, but a possible question is whether the current rules secure the appropriate degree of plurality. The evidence of the importance of plurality in radio per se is contradictory:

- Local radio is not most people's primary source of local news (regional TV and local newspapers are seen as more important);
- Yet the majority of people say one of the most important things for radio to provide is local news.

4.167 The current rules are concerned with licences which overlap. Two licences are considered to overlap, for the purpose of the rules, if the population shared between them is more than 50% of the total population of either licence<sup>6</sup>. For example licence A could overlap licence B by 60%, but B may overlap A by only 20%, depending on the total sizes of A and B. As long as one of these figures is over 50%, the two licences overlap for the purpose of the rules.

4.168 The analogue ownership rules apply only once an operator seeks to hold a third or subsequent licence such that the MCA for this further licence shares a 50% overlap with the two or more licences already owned. Holding this third or subsequent licence would form a "cluster" of three or more overlapping licences. The points test is applied to each licence in the cluster, in order to see whether the points limit would be breached immediately after the operator became the holder of the further licence.

4.169 Since the current radio ownership rules were implemented in 2003, the range of local news sources available to consumers has increased, particularly as a result of the

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<sup>6</sup> The population coverage of a local licence (and hence any related overlap population) is defined by reference to its Measured Coverage Area or MCA. The MCA is the area within which a service is capable of being received at a level satisfying the technical standards set out in Ofcom in its "Coverage: Planning Policy, Definitions and Assessment" document. This area is combined with data from the latest census to produce population coverage, and population overlap, figures.

increasing penetration of broadband. This might suggest that the radio ownership rules should be relaxed.

- 4.170 Furthermore, even if plurality is maintained, there may be a question as to how this is best achieved, and whether separate analogue and digital rules are sensible.
- 4.171 On the other hand there is very little evidence that the current ownership rules have held back consolidation in the industry so far and there has been very little lobbying for a change in the rules.
- 4.172 We believe that there are three main options for station ownership rules going forward:
- 4.173 **Option 1 – The rules could be left as they are:** The rules were only agreed by Parliament and implemented in 2003. It could be argued that conditions have not changed sufficiently in the past four years to warrant a reconsideration of the rules. Some consolidation within the industry has occurred (with mixed success) and there is scope for a considerable amount more within the existing rules, so it would be difficult to argue that the rules are constraining the further growth of the industry. Perhaps more importantly there is scope under the existing rules for the consolidation of radio brands, particularly specialist music brands, which could help the industry to compete more effectively than changes in ownership rules.
- 4.174 However, having a separate set of rules for analogue and DAB station ownership may no longer make sense in a world where digital listening (across all platforms) is taking an increasing share of the audience and the listener does not distinguish between stations on different platforms. In fact many stations are available on both analogue and digital platforms.
- 4.175 So while the arguments for plurality of radio station ownership may remain valid and the overall aim of Parliament to secure two commercial radio owners plus the BBC in all significant markets may still be desirable, the way that this policy is implemented in practice may need to change to take account of different listening patterns and the changing relative importance of different platforms.
- 4.176 In the short-term the existing rules are workable, but we believe that in the medium-term having different rules for analogue and DAB stations may not be desirable. *We therefore believe this option may not be appropriate to deliver the desired goals in the medium-term.*
- 4.177 **Option 2 – The rules could be removed altogether:** It could be argued that there is a sufficient number of media outlets, both radio and other media, to provide plurality without the need for intervention. The internet has allowed the voices and opinions of a vastly increased number of people and organisations to be heard on local issues should they wish to be. Local radio is therefore significantly diminished as a source of local news and information, and may no longer need protection. This could apply both to analogue and digital services.
- 4.178 The existing rules are complex and it could be argued that they have little impact, other than to frustrate further consolidation and greater coherence of offering by the radio industry. For example, some people would argue that allowing all of the stations serving a particular area to come under common ownership would provide increased diversity of output, as the owner would ensure that the services did not compete with one another.

- 4.179 As noted above, ownership rules are an imperfect proxy for plurality, as they do not ensure plurality of sources of news, editorial or viewpoint diversity, or the provision of the quantity and quality of news output that society desires.
- 4.180 Some would argue that the BBC, alongside a single commercial supplier, would provide sufficient plurality of provision.
- 4.181 Competition law could be relied upon to resolve any economic competition issues to prevent undue concentration in the hands of a small number of owners. The provision for a public interest test, at the discretion of the Secretary of State, would remain to deal with any other undesirable outcomes of consolidation.
- 4.182 As analogue listening declines, the analogue station ownership rules will become increasingly less important and, it could be argued, they will no longer be required.
- 4.183 However local radio is still sufficiently important, that to abolish the rules at a time when over half of the population still listens to commercial local radio every week seems inappropriate. The fact that the current rules were only put in place three years ago, when many of the other media that offer alternative sources of information were already in place, suggests that there are as yet few grounds for removing the existing rules.
- 4.184 In addition, while some consolidation of the industry has taken place under the current rules, there is still scope for a considerable amount more without any changes in the rules.
- 4.185 *In the short to medium-term therefore, we do not believe it would make sense to remove the current rules regarding station ownership for either analogue or digital radio.*
- 4.186 **Option 3 – apply one set of ownership rules across analogue and DAB platforms:** If it is accepted that plurality of radio ownership still needs to be protected, but that the distinction between analogue and DAB rules will become increasingly anomalous over time, the question is how the rules could be integrated?
- 4.187 We believe it is desirable, for the sake of regulatory certainty, to have specific ownership rules based on an objective system where possible. An objective system needs to include a threshold for the number of points triggering the application of the rules and for establishing the maximum concentration of ownership permitted. The exercise of setting such thresholds is, to some extent, a subjective process in that there are likely to be a number of reasonable thresholds that might be selected compatible with the overlying policy aim of the rules. For example, a system that aims to secure at least two owners of local radio in an area (plus the BBC) could, in theory, set a maximum permitted concentration of ownership at any number between 50% and 99%.
- 4.188 We suggest therefore that Government may wish to consider bringing together the existing rules into a single set of consistent rules.

## 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.***

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

### **When should any changes be implemented?**

4.190 We set out above, when considering the timing of changes to content regulation, our view that as one of the main reasons for proposing regulatory changes is the differential regulation of analogue and digital platforms, the implementation of some or all of the proposed changes in regulation should be tied to the proportion of listening accounted for by digital platforms. This would ensure that changes are only allowed when conditions require them.

4.191 Although the timing of any changes to the ownership rules is a matter for Parliament, we suggest that appropriate thresholds for regulatory changes could be the point when digital listening (across all platforms) accounts for a third of all listening or when it accounts for half of all listening.

4.192 A threshold of 50% would ensure that the majority of listeners had access to, and were listening to, services on other platforms and so analogue radio would be less important.

4.193 A threshold of 33% takes into account digital listening to some extent but also recognises that the financial pressures facing the industry may impact on the sustainability of existing analogue services before the 50% digital listening threshold is reached.

#### ***Suggestion 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.*

### **How might the rules work in practice?**

4.194 One way that a combined analogue / digital system might work is by defining a set of areas, based on local DAB multiplex licensed areas and to consider all of the stations, both analogue and DAB, within each area for the purposes of ownership regulation. These areas have been designed with listeners' interests in mind. They often correspond to existing heritage commercial radio areas, being city or county-based. As our research showed above, this size of area is the most relevant for listeners to local radio services when they consider the ideal size for a local radio station, as counties or city areas are often relevant to listeners when they consider their local affinities. These areas often also correspond to local government boundaries, police authorities, etc, and so make for a coherent editorial area. (This is partly the reason the BBC has often chosen to base its local radio services on counties.)

4.195 Because the main reason for having plurality rules is an editorial one (to ensure plurality of voice), rather than an economic competition one, no attempt has been made, nor we believe should be made, to define these areas as economic markets.

4.196 An example of how a system that combined analogue and DAB rules might work is shown below:

- In each of the 70 or so defined ownership areas (based on existing or planned local DAB multiplex areas), each station, analogue and DAB, would be allocated a number of points based on its population coverage in the ownership area. For example:

<u>Population coverage within the DAB multiplex area</u>	<u>Number of points</u>
< 100,000	1
100,001 - 300,000	2
300,001 - 500,000	3
500,001 – 1,000,000	5
>1,000,000	8

- Regional DAB multiplexes would be accounted for to the extent that they overlap smaller local DAB multiplexes. There are no regional DAB multiplexes which do not cover a smaller local DAB multiplex area.
- Each station would only be counted once within each ownership area, no matter how many platforms it was carried on. The number of points allocated to it would be based on its greatest population coverage by platform (e.g. if a local station covers 250,000 people in the area on FM, but 600,000 on DAB, the larger figure will be the relevant one)
- Any other DAB multiplex which covers at least two thirds of the of the population of the ownership area in question (e.g. a regional DAB multiplex overlapping with a local DAB multiplex) would be included in the calculation for that ownership area.
- Any analogue station which covers at least two thirds of the population of the ownership area, based on its Measured Coverage Area (MCA), (e.g. a regional station) would be included in the calculation, although the number of points would be based only on the population living in the ownership area.
- Any analogue service which has at least two thirds of the population it covers, based on its Measured Coverage Area (MCA), (e.g. a smaller analogue station on the edge of a DAB local multiplex area) living within the ownership area would be included in the calculation, although the number of points would be based only on the population living in the ownership area.
- Currently, areas where there are only two local stations are not subject to ownership rules. Similarly, in the new system, any area where there are very few local stations would not be subject to ownership rules. So, the rules would only be applied in an area with 20 or more points in total.
- Due to overlaps, it is possible that some analogue stations would be counted in more than one ownership area (for example the Warrington FM licence would be counted in both the Liverpool and Manchester multiplex areas).

- A limit would be set on the percentage of points a single owner could control within each ownership area. For example, perhaps no one company would be allowed to control more than 66% of the points in an ownership area (The current limit for analogue stations is 55%).
- The reason for choosing a threshold of 66% is as follows:
  - The ownership limits would only apply to an ownership area if the total number of points was greater than 20.
  - This means that in order for the ownership limits to apply, an ownership area must have at least three stations (the largest number of points that can apply to a station is 8, so the minimum number of stations an ownership area could have in order to reach 20 points would be two large stations at 8 points each and a smaller one at 5 points).
  - A 66% threshold would ensure that there were at least two owners of local stations in the ownership area (plus the BBC)
- An example, based on the Liverpool DAB local multiplex area is shown in figure 27.

4.197 We believe that this system might have a number of advantages over the current system in a world where digital listening is increasing:

- While at first sight the rules may look complicated, in practice they are simpler than the existing rules – a table similar to that in the example below would be published for every ownership area.
- The system preserves the principles of plurality and the “two plus the BBC” principle in any significant area.
- The new system would apply to both analogue and DAB stations, so making it more relevant for a world of multiple platforms
- Any changes in platforms could be incorporated – for example, local DRM stations could be included in the calculation if they launched, while any closure of analogue stations would simply remove stations from the list

Figure 27: An example of how new station ownership rules might work

Multiplex area				Liverpool		TOTAL POPULATION								
				1,819,227										
AREA	An.	DAB	STATION	POPULATION	Ownership									
					UTV	Gcap	Chrysalis	Emap	GMG	TLRC	UBC	Other	TOTAL	
Liverpool	y	y	Radio City	1,819,227				8						8
Liverpool	y	y	Magic 1548	1,819,227				8						8
Liverpool	y		3C	1,819,227				8						8
Liverpool	y		Classic Gold	1,819,227							8			8
Liverpool	y		Heat	1,819,227				8						8
Liverpool	y		Kerrang!	1,819,227				8						8
Liverpool	y		Kiss	1,819,227				8						8
Liverpool	y		Smash Hits	1,819,227				8						8
Liverpool	y		Xfm	1,819,227		8								8
N W England	y		Arrow	1,819,227			8							8
N W England	y		Capital Disney	1,819,227		8								8
N W England	y		Choice	1,819,227		8								8
N W England	y		LBC	1,819,227			8							8
N W England	y	y	Galaxy	1,819,227			8							8
N W England	y		Heart	1,819,227			8							8
N W England	y		Real	1,819,227					8					8
N W England	y	y	Century 105.4	1,819,227					8					8
N W England	y	y	Smooth 100.4	1,819,227					8					8
Wrex./Chest/Wirral	y		Marcher Sound/Buzz	503,620		5								5
Wrex./Chest/Wirral	y		Class. Gold Marcher	319,793							3			3
Chester	y		Dee 106.3	98,745		1								1
Knowsley	y		The Rocket	231,468								2		2
Warrington	y		Wire	189,091	3									3
Wigan	y		Wish	370,562	3									3
Liverpool	y		Juice	675,905	5									5
Southport	y		Dune	158,812						2				2
<b>TOTAL POINTS</b>					<b>11</b>	<b>30</b>	<b>32</b>	<b>56</b>	<b>24</b>	<b>2</b>	<b>11</b>	<b>2</b>	<b>168</b>	
					6.5%	17.9%	19.0%	33.3%	14.3%	1.2%	6.5%	1.2%	100.0%	

4.198 However, there are also some disadvantages in this example:

- It could lead to there being one owner of all of the analogue stations in an ownership area, as there are generally a lot fewer analogue than digital stations in any area. This may not be a problem once digital services are listened to by the majority of listeners but if implemented in the short-term may cause a lack of plurality in the local services available to most listeners.
- It takes no account of the fact that some “local” DAB digital stations carry no local content
- It takes no account of other radio platforms, such as the internet, or national stations’ ownership

4.199 On balance, while the rules in a system similar to that set out above may appear complicated, in practice they would not be as complicated as the existing rules, and would bring together analogue and DAB rules, while maintaining the overall principles of plurality.

4.200 However, due to the short-term risk of a diminution of plurality on the platform that accounts for the majority of listening, we do not believe a move to a combined analogue/DAB system should be implemented until a certain threshold for the proportion of total listening accounted for by digital platforms has been reached. However, this is a matter for Parliament and not for Ofcom.

4.201 The impact of these proposals would be to allow some additional flexibility for consolidation while preserving a sufficient level of plurality.

**Suggestion 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.*

**DAB Multiplex ownership rules**

- 4.202 The arguments for having multiplex ownership rules are based on the principle that it is undesirable for one owner to control access to the stations on every multiplex in any given area.
- 4.203 The rule for local multiplexes is that no person can hold licences for two local multiplex services where the protected area of one service would overlap with the protected area of the other service in a way that means the potential audience for one of them includes at least half the potential audience of the other.
- 4.204 For many other local DAB multiplexes which overlap with each other, these overlaps are generally incidental.
- 4.205 We believe that the only overlaps that should matter are those where there are two or more DAB multiplexes covering substantially the same area (this only applies at present to London, where there are three Greater London multiplexes at present) or where regional DAB multiplexes exist (North West England, North East England, West Midlands, Yorkshire, Severn Estuary/South Wales and Central Scotland) and wholly overlap local DAB multiplexes. The reason for this is that the services carried by multiplexes which overlap so significantly are targeted at listeners in that area. Any overlap of less than this could be regarded as incidental. We suggest Parliament may wish to consider the following suggestion.

**Suggestion 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.*

- 4.206 Taken together with the combination of analogue and digital points into a single system for station ownership rules, this proposal would address the problem, highlighted in Ofcom's recent report on media ownership, recently experienced by Emap in Scotland, where the company had to dispose of a local multiplex and remove services from the multiplex with nothing to replace it. This resulted in a reduction in the overall number of services available to listeners.
- 4.207 This same principle would apply to national DAB multiplexes, where one person cannot control more than one national DAB multiplex.

**Suggestion 2.4**

- *The rule that no one person can control more than one national DAB multiplex should be retained.*

4.208 If new technologies, such as Digital Radio Mondiale, are introduced, then the ownership rules may need to be revised, as DRM services may be operated as either single services, or as multiplexes with two or more services.

### **Cross-media ownership rules**

4.209 Ofcom's recent Review of Media Ownership Rules found that plurality of voice in a local area remains important, even though radio itself is not a primary source of news. Taking local newspapers and local radio together under common ownership could unacceptably diminish the range of voices in an area.

4.210 This suggests that cross-media ownership rules remain important for plurality reasons, but there may be a case for considering local analogue and digital radio services together alongside other media.

4.211 The current rules mean that in any area where there are three or more overlapping local licences, a person who is the dominant local newspaper provider, or the holder of the local Channel 3 television licence, may become the holder of one or more of those radio licences only if the points attributed to the licences held by that person would not account for more than 45% of the total points available in the area. As for the radio-only points test described above, the test may be applied prospectively, that is before the person becomes the holder of the radio licence in question. The test is applied as if he has become the licence-holder, in order to see whether the points limit would be breached if he did so.

4.212 Note that this cross-media ownership rule applies wherever there are three or more overlapping licences, no matter who owns each of them, whereas the radio-only rule above takes effect only when the same person holds three or more overlapping licences.

4.213 There is also a "backstop" rule that no person may hold a local radio licence and the local Channel 3 television licence and be the dominant local newspaper provider in the same area.

4.214 "Dominant local newspaper provider" means someone who runs:

- a local newspaper with a local market share of 50% or more in the coverage area of the radio licence in question; or
- local newspapers which together have a local market share of 50% or more in that area.

4.215 In line with the move to integrate analogue and digital radio ownership rules as digital listening comes to predominate, these rules will also need amending, albeit that the aim of the rules remains unchanged.

4.216 As the number of stations available in a local area is increased with digital platforms, and as digital listening increases as a proportion of total listening, the importance of a single local station, whether analogue or digital diminishes.

4.217 The rules could be re-written in the following way to achieve this end:

- No person can provide at the same time a local radio service (analogue or digital), and a regional Channel 3 licence that includes at least 50% of the population

served by the local radio licence, and run a dominant local newspaper (market share of 50% or more in the coverage area of the local radio licence).

- No person who runs a dominant local newspaper or holds a regional Channel 3 licence (covering 50% of the population served by the local radio licence concerned) can provide a local radio service (analogue or digital) if
  - a) the licence is within a qualifying ownership area (an area in which there are local radio services in total accounting for 20 or more points)
  - b) the local radio services (analogue or digital) provided by the person within the ownership area would represent more than 45% of the points available in the ownership area.

4.218 We suggest Government may wish to consider aligning the cross-media rules with any changes in radio ownership rules.

**Suggestion 2.5**

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

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

## Section 5

# The flexibility to free-up spectrum in the long-term

## Ofcom's spectrum policy framework

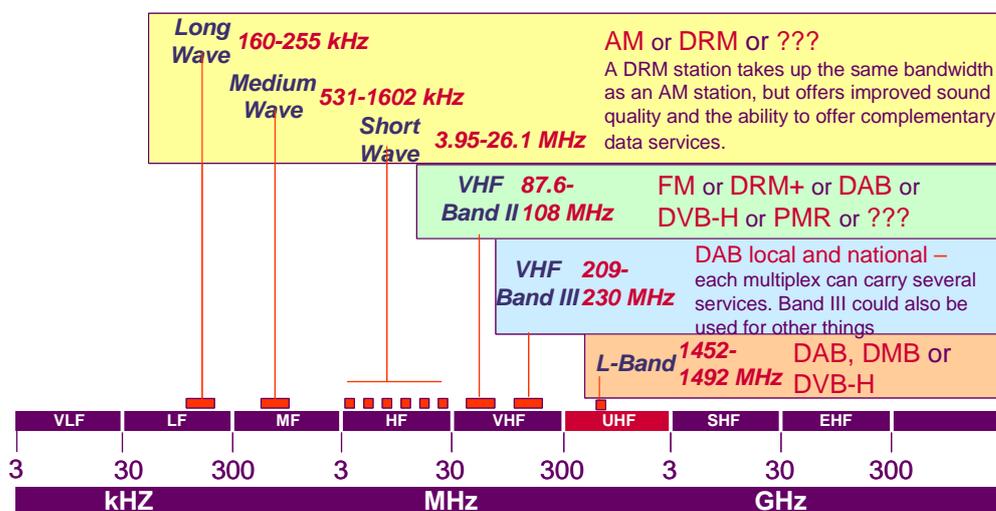
- 5.1 Ofcom set out its approach to spectrum management in the conclusion to its Spectrum Framework Review (SFR) published in 2005. The Review advocates a market-led approach, in contrast to the previous regime, known as 'command & control', under which the regulator decided the type of organisation that should have access to specific parts of the spectrum and how they should be used. Ofcom's proposals were subject to public consultation and were broadly supported by stakeholders. The Review set out four key recommendations to achieve Ofcom's duties and aims.
- Allow the market to decide on the best use and user for much of the spectrum.
  - Allow licence holders to trade spectrum in an open market and change the use they make of it in order to develop new technologies and offer innovative services.
  - Clearly define the rights of spectrum users, giving them the confidence to plan for the future.
  - Increase the amount of licence-exempt spectrum where feasible and appropriate to allow businesses to develop new technologies and services without the need for a licence.
- 5.2 Ofcom considers that the management of the radio spectrum can be carried out most effectively if market mechanisms are harnessed to a significantly greater degree than in the past and that this approach is better calculated than command & control to achieve Ofcom's statutory duties. In particular, market mechanisms will:
- promote efficient use of the radio spectrum by allowing spectrum to be transferred to, and used by, the user who values it most highly;
  - promote competition by increasing the availability of spectrum for use by the most valuable service; and
  - facilitate economically valuable innovation as new users enter the market to offer new services.
- 5.3 The new approach is being primarily implemented through the development and implementation of three policies:
- spectrum trading;
  - spectrum liberalisation; and
  - prompt release of unused spectrum into the market, allowing maximum flexibility as to subsequent use.

- 5.4 Although the SFR sets out a vision based on market mechanisms, it acknowledges that there are certain areas in which trading and liberalisation cannot be fully applied. These include broadcasting, which is subject to national broadcasting legislation and a number of international agreements and technical constraints.

### New ways of using spectrum

- 5.5 Broadcast radio services currently occupy a number of wavebands, as shown in figure 28. However, the historical use of these wavebands for radio broadcasting does not mean that these are the only possible use for this spectrum. The VHF Band II spectrum currently used for FM radio and the medium wave spectrum currently used for AM radio could be used for other things if no longer required for the existing services. These alternative uses may not be broadcasting.

Figure 28: New ways of using spectrum currently occupied by radio broadcasting

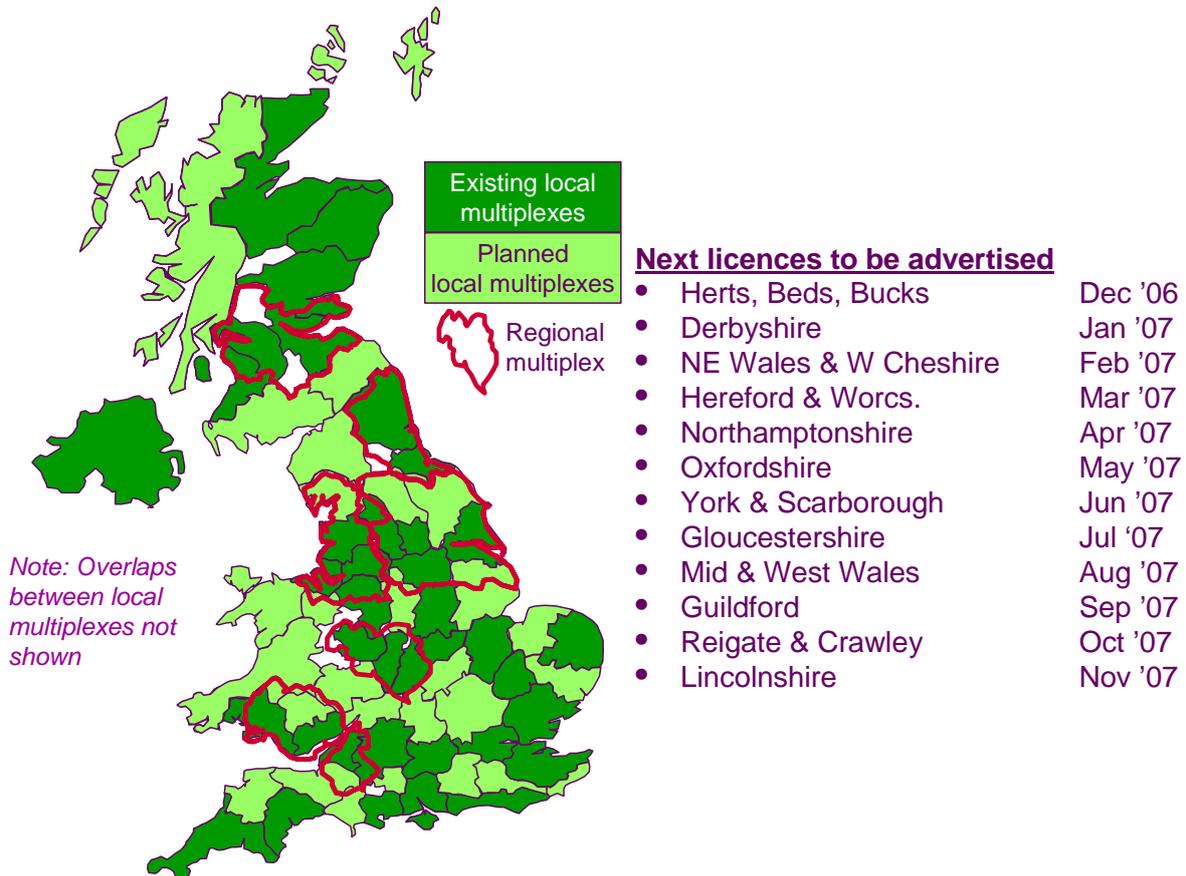


### DAB digital radio could provide for the majority of Ofcom's public policy goals in radio

- 5.6 In section 2 we set out how we interpret our statutory duties in terms of a set of overall public policy goals for radio which include “a wide range and diversity of local and regional commercial services - catering for local tastes and interests, with a particular focus on local news, providing a sense of community and serving local communities, but also providing local programming of more specialist interest.”
- 5.7 Although we welcome all technologies which can provide radio, we have said that DAB is the cornerstone of our digital radio policy as it can offer national and local services to mobile and portable devices. Furthermore, we welcome moves by the industry to find cheaper ways of transmitting DAB.
- 5.8 We have allocated spectrum in VHF Band III to DAB, potentially to facilitate approximately county-sized stations for every part of the UK in line with the majority of public opinion about station size, and we have started the licensing process for further local radio multiplex services (Figure 29).
- 5.9 Assuming DAB take-up continues to rise, and within the next decade or so DAB services account for the majority of radio listening, it is possible (although by no means certain) that DAB could fulfil the particular policy aim set out in paragraph 5.6, without the continued need for radio services broadcasting on AM and FM to fulfil

public policy goals, at least to the extent they do today. However, there may be some small areas which remain un-served by DAB, either because they are too small for a local DAB multiplex (such as southern and western Shropshire which is not part of the existing Wolverhampton and Shrewsbury multiplex) or because building out DAB transmission may be prohibitively expensive (other technologies may be required in these areas).

**Figure 29: Existing and planned local DAB digital radio multiplexes**



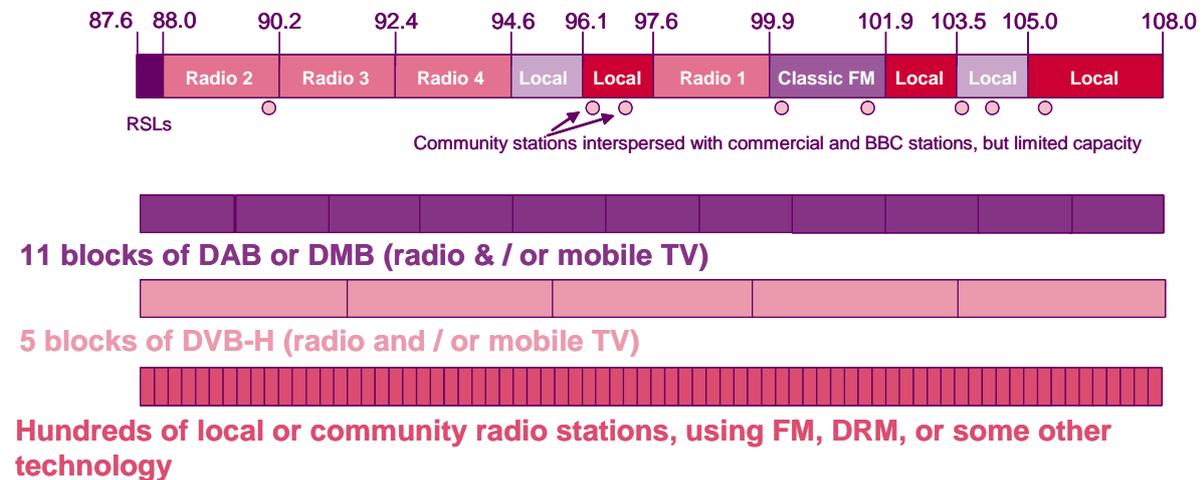
## VHF Band II

- 5.10 The majority of radio listening today remains to services broadcasting on FM (VHF Band II), but the picture is changing rapidly. At some point over the next 10-15 years there may come a point where the vast majority of radio listening is via digital platforms (including DAB, and other platforms such as digital television and the internet) and the optimal use of the VHF Band II spectrum is for other applications, rather than for simulcasting the radio broadcasting services also available on digital platforms, especially if public purposes are being delivered by the DAB services using spectrum in VHF Band III.
- 5.11 Already, the analogue services (commercial and BBC) which account for over 90% of all radio listening are also carried on DAB. These services occupy most of the current VHF Band II (FM) and medium wave (AM) spectrum.
- 5.12 Ofcom considers that it is too early yet to say what the best use of the VHF Band II spectrum may be in the future. Indeed it may be that the best use for it remains FM

radio, either for some or all existing services, or for a much greater number of new services for which there is currently a lack of spectrum.

- 5.13 But there may be alternative uses (subject to any relevant international constraints), such as digital radio, mobile television, data services, private mobile radio services, or perhaps something that has not yet been thought of (Figure 30).

**Figure 30: Current VHF Band II use and some possible alternatives**



...or something not yet thought of.

- 5.14 Even if some capacity were to remain reserved for small-scale commercial and community radio stations (assuming it is decided that it is appropriate to reserve spectrum for this purpose), most VHF Band II capacity could be released, to allow the market to decide upon its optimal use (which could still be FM radio).
- 5.15 It would also be possible to clear the band in stages, for example removing the national networks first.
- 5.16 However, it is not necessary to analyse the alternatives now, as these will inevitably change by the time we are in a position to release the spectrum; for now, we simply need to be aware that there are alternatives and to maximise our flexibility for the future. This flexibility also needs to take into account the possibility of slower than expected digital radio take-up.

### The need to free-up frequencies simultaneously

- 5.17 Many of the currently known possible alternative uses for VHF Band II spectrum require the spectrum to be divided up in different ways from today. For example, a DAB or DMB multiplex requires 1.7 MHz of spectrum. Individual FM stations take up only 0.3 MHz of capacity, so unless many adjacent frequencies (both spectrally and geographically) were made available at the same time, allocation to other uses such as DAB or DMB would be impossible, and market mechanisms would be prevented from working efficiently.
- 5.18 As the BBC currently uses a significant proportion of the VHF Band II spectrum, any plan to free-up the spectrum for alternative uses would also need to include the BBC's services.

## Medium wave

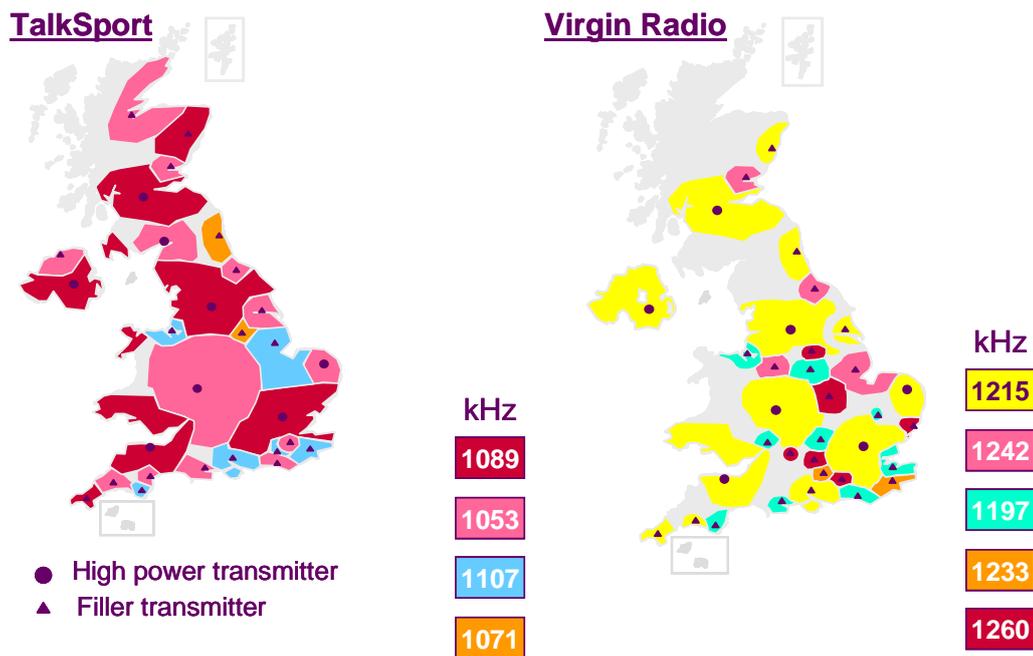
- 5.19 Medium wave is currently used for AM radio. There are 56 local commercial AM stations and two national commercial stations, Virgin Radio and TalkSport. The BBC also uses AM radio, primarily for BBC Radio Five Live, for the BBC Asian Network in the Midlands and for some local and nations' stations (which are also carried on FM). Medium wave spectrum is also used by a large number of the restricted services licensed by Ofcom, particularly establishment-based broadcasters such as student and hospital radio stations.
- 5.20 The UK has a number of high power medium wave frequency allocations, some of which are used for UK-wide stations and some which are currently used for nations and local services. In total there are 11 such high powered frequencies available; four used exclusively by commercial radio, five exclusively by the BBC and two shared by commercial radio and the BBC.

**Figure 31: UK high power medium wave frequency allocations: current use**

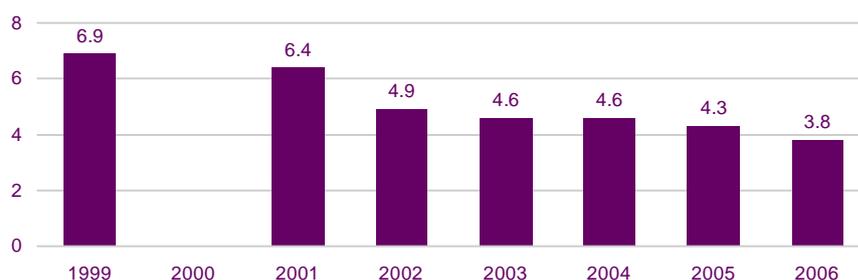
Frequency (kHz)	Currently used by		
	Local commercial	National commercial	BBC
693			✓ (Five Live)
810			✓ (R Scot)
882			✓ (R Wales)
909			✓ (Five Live)
1053		✓ (TalkSport)	
1089		✓ (TalkSport)	
1152	✓ (numerous)		
1215		✓ (Virgin)	
1341			✓ (R Ulster)
1458	✓ (London, Manchester)		✓ (B'ham, Cumbria, Devon, Newcastle)
1548	✓ (London, Liverpool, Sheffield, Edinburgh)		✓ (Bristol)

- 5.21 Generally, at least two medium wave frequencies are required to cover the whole UK on AM, to avoid interference between adjacent transmitters, although it would be possible to cover the majority of the population with a single frequency. Often a number of AM filler transmitters on different frequencies (in addition to the high power frequencies) are required to achieve near-national AM coverage.

Figure 32: Current national AM networks



- 5.22 The UK also has a number of frequency assignments offering medium-sized coverage, which, as noted above, are used for BBC and commercial local radio around the UK, and for filler transmitters for the national networks, as well a small number of community services. In addition to the frequencies used for the national and local AM services, there are also a few frequencies, which offer small-scale coverage and are used for long-term RSLs and some short-term RSLs.
- 5.23 While all of these frequencies require international clearance, if they were to be used for radio broadcasting services in the future, they could be used in a different pattern from the current configuration, i.e. used to cover different areas.
- 5.24 Listening to many AM radio stations has declined rapidly in recent years, largely due to poor sound quality, although there are exceptions particularly for speech stations and those targeted at Asian audiences (Figure 33). As noted above, the majority of AM stations (including the two INRs) are already simulcast on DAB in much improved sound quality. More are likely to be simulcast on the new DAB local radio multiplexes soon to be advertised; we forecast that within the next couple of years, 49 of the 56 local commercial AM stations will also be broadcasting on DAB. Work carried out recently by Ofcom in the context of considering applications for extension from the three national analogue radio licences suggested national AM listening would continue to fall.

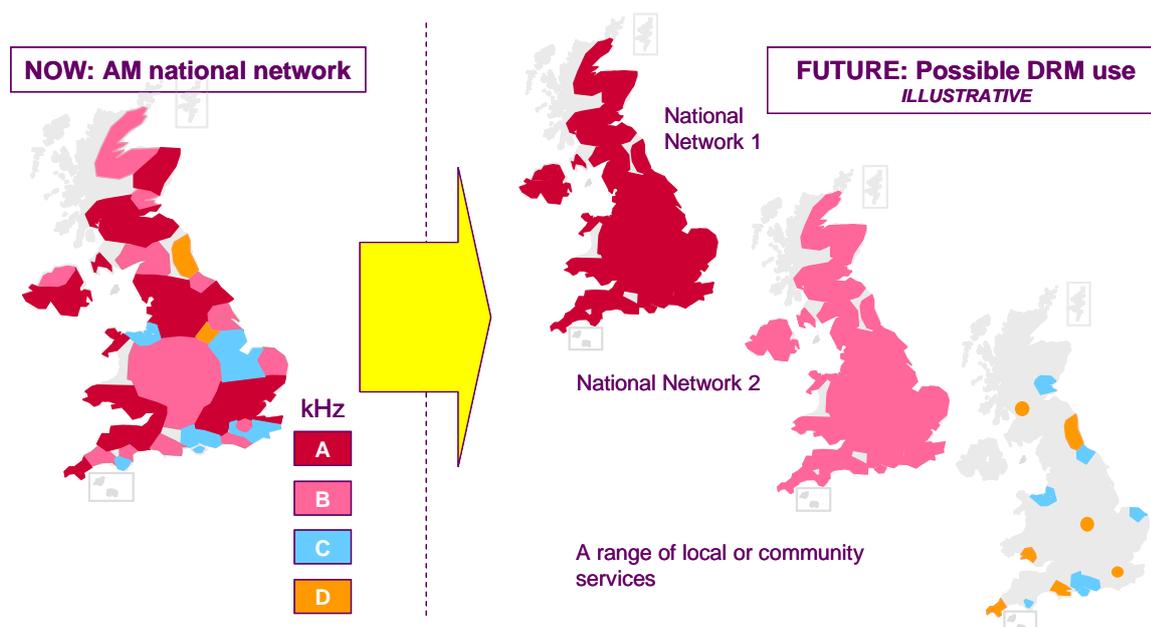
**Figure 33: Share of total listening taken by local AM stations 1999-2006 (%)**

Source: RAJAR

Note: The chart shows listening to these stations on any platform, including DAB, DTV and internet, so overstates actual listening on AM.

- 5.25 As with VHF Band II, there may be alternative uses of medium wave spectrum which are of a higher value, either in public policy terms or in economic value, than the current use. These may not necessarily be (radio) broadcasting technologies. However, one new broadcasting technology which is capable of using medium wave spectrum is DRM (Digital Radio Mondiale). It offers much improved sound quality over AM on medium wave, long wave or short wave spectrum – many international broadcasters are already taking up the technology.
- 5.26 The technical characteristics of DRM coverage are similar to AM. It would be relatively easy to convert an AM transmitter to DRM. Coverage areas can be anything from a few kilometres radius to half a continent, depending on transmission power and frequency. Medium wave is generally considered to be a cost-effective way to offer terrestrial radio coverage to rural and remote areas – **therefore DRM could be a complement to DAB, rather than an alternative.**
- 5.27 One advantage of DRM over AM is that DRM can use single frequency networks (SFNs), which means that rather than using two high-power frequencies plus a number of filler frequencies to cover the whole UK, DRM signals on the same frequency at adjacent transmitters do not interfere with each other – in fact, they reinforce one another – so DRM could cover the whole UK with a single frequency. However, like AM, DRM on medium wave offers less good coverage in cities, particularly within steel-framed buildings. A single medium wave frequency can offer a single good sound-quality DRM service plus data, or two lower sound-quality services.
- 5.28 Other countries are either experimenting with or implementing DRM services. For example, RTE in Ireland is converting some of its main AM transmitters to broadcast DRM, and the Dutch regulator has recently given all Dutch AM stations the choice of converting to DRM under their existing licence if they so wish. China and Australia are among other countries planning or already broadcasting DRM services. In the UK, the BBC is about to begin a year-long DRM trial, closing the AM transmitters of BBC Radio Devon in Plymouth and using them to broadcast DRM services instead.
- 5.29 Ofcom notes that the spectrum currently used for UK-wide AM radio services could instead be used to provide a greater number of DRM UK-wide stations plus a range of local or regional DRM services (Figure 30), assuming the spectrum is used for radio broadcasting.

Figure 34: Possible frequency re-use for DRM



- 5.30 DRM could also provide a potential digital migration path for those stations which have no other obvious transition route to digital, such as small-scale commercial radio stations and community radio stations (subject to there being public policy justification for reserving spectrum for such services), and, again subject to public policy considerations, may also provide a means to provide digital radio services to remote areas where the technical characteristics of DAB mean that it may never be viable.
- 5.31 Other than AM radio and DRM, we are not currently aware of any other uses for medium wave spectrum. However, the advocacy for widespread use of power-line communications could be regarded as mutually exclusive with use for radio-communications in certain frequencies, because of the unintended but significant radiation of radio waves from power line transmission (PLT) systems. To that extent, it is an alternative use of the frequencies.

### The need to free-up frequencies simultaneously

- 5.32 For medium wave, there is less of an imperative than with VHF Band II (FM) to free-up as many of the frequencies as possible simultaneously.
- 5.33 This is because the medium wave frequencies allocated to the UK are not generally adjacent to each other, and so it would not be possible, without a major internationally-coordinated re-planning and re-assignment process (which would take many years), to group together the frequencies to provide large blocks of spectrum for alternative technologies. The frequencies do not therefore need to be released simultaneously.
- 5.34 However, some of the frequencies are each used for a number of AM radio stations around the UK. For example, 1548 kHz is used by Capital Gold in London, Magic 1548 in Liverpool, Magic AM in Sheffield, Forth 2 in Edinburgh and BBC Radio Bristol. It may therefore be sensible to seek a common end-date for all of the radio stations currently occupying a particular frequency, to allow for maximum flexibility for the spectrum:

- to be allocated for radio broadcasting either as a national service or a number of local services, or;
- to be allocated using market mechanisms for any use.

5.35 In the case of the two existing national commercial stations, their three high power frequency allocations are not used for anything else and so these could potentially be re-used at a time independent of other frequencies. The same is true for the frequencies currently used by the BBC for BBC Radio Five Live, BBC Radio Wales, BBC Radio Scotland and BBC Radio Ulster.

### Responses to the discussion document regarding the future of FM and AM

5.36 Responses to the discussion document on the issue of the future of FM were varied.

5.37 Digital One called for a commencement of switch-over (meaning a switch-off of FM in favour of DAB) in 2015, starting with an initial batch of FM frequencies in metropolitan areas. It “saw merit in initially dimming-FM (i.e. reducing power and/or reducing network coverage) in advance of switch-over of particular stations. These approaches, which are different to the process adopted for television, need to be tested against other scenarios.” Digital One did however also note that “in the meantime, and in the absence of suitable DAB spectrum, FM would appear to be the most suitable technology for small commercial stations and Community Radio for the foreseeable future. This approach is not incompatible with a plan to start a switch-over process for radio in 2015. It is expected that manufacturers will continue to produce radios that receive both DAB digital radio and FM and the costs of including FM in a digital radio are low.”

5.38 Some respondents, including the Christian Broadcasting Council and Radio Jackie considered the best option to be an end to the “simulcasting” of services on both DAB and FM. CBC said that “all ‘Heritage’ ILR should be ordered to stop the simulcasting [of] their services on two different terrestrial wavebands (FM or AM and DAB) or lose one waveband by a specific date within the next 5-10 years. The ‘use it or lose it’ policy in an earlier age helped to expand listener choice.”

5.39 A number of other respondents challenged the belief that the future was all-digital. The Community Media Association, for example, said that “Section 3 also puts forward the notion that DAB will (and should?) become the industry standard for digital radio. We do not believe that this will be the case, due to its inferior quality. DAB is also an inappropriate platform for the vast majority of community radio providers as it does not offer “localness” which is one of the defining features of community radio. Brighton and Hove Radio, owners of Juice 107.2, said that “given the ubiquity of FM there remains a question mark over the need for, or public value in, switching it off for radio. While it lacks the interactivity of digital services it does have near universal coverage and penetration plus it is easily integrated in other devices.” Radio Jackie said that “clearly FM will be the main means of radio reception for at least the next decade.”

5.40 The BBC considered that “further work and debate is required in order to determine the possibility of a complete analogue switch-off within the medium term... Ofcom needs to consider the role that FM could and should play in the UK radio ecology of the future, given the adoption and development of digital radio and audio technologies.”

- 5.41 A small number of respondents further commented on the possible environmental effect of any digital switch-over in radio. One respondent noted that switch-over would entail “millions of radios having to be land-filled [and] a huge amount of money being spent on new sets – which would have to be produced so raising CO2 output”.
- 5.42 Media coverage of the discussion document, such as The Guardian’s “Ofcom dials up FM’s demise” (16 November 2006), tended to focus on a possible FM switch-off, and as a result, many respondents were concerned that existing FM services should not be switched off before DAB digital radio was available in their area (the discussion document made clear that any switch-off of FM services “*would not happen without a full review which considered the costs and benefits to citizens and consumers and took into account the needs of the more vulnerable members of society, many of whom rely heavily on radio services*”). This and other issues around existing coverage of DAB broadcasts were raised by 21 respondents. Some of these will be addressed with the further roll-out of local DAB radio multiplexes, and the award of the second national DAB radio multiplex licence. We discuss the issue of DAB sound quality, which was raised by many respondents, later in this section.
- 5.43 Fresh Radio and SIBC, operators of ILR services in rural areas (Yorkshire Dales and the Shetland Islands respectively), noted that DAB was unlikely to ever provide a viable option for coverage in sparsely populated areas.
- 5.44 On the question of the future of AM services, there was some disagreement. UBC Media, which operates the Classic Gold AM services, suggested that “AM operators should be transferred to digital as soon as possible, with incentive structures swiftly put in place. The decline of medium wave seems to be taking place faster than anticipated, leaving some operators with dwindling assets. Choices for these broadcasters are stark - to run their businesses into a loss, or to give back licences. Whether DRM and the options raised from section 5.31 onwards [of the discussion document] are viable is not clear to us at this time, but the consultation certainly needs to help the industry find a route forward.”
- 5.45 However, UTV Radio, owners of the national TalkSport AM network, argued “there should be a path mapped out which allows the national stations a future on AM. While all commercial radio operators are developing their digital futures, the reality is that digital growth is slower than expected. It is therefore highly unlikely that the 8.5 million adults listening to BBC 5 Live, TalkSport and Virgin on AM will have migrated in sufficient numbers by 2012 to justify any contemplation of an AM switch-off at such an early stage. It is also a reasoned assumption that the older audiences listening on AM, to BBC 5 Live and TalkSport in particular, are not the early adopters of new digital radio reception technology.”
- 5.46 A confidential respondent suggested that “stations that have struggled with AM should have a “matching right” over the AM capacity in any auction when it is upgraded to DRM. Licensees should be free to replace analogue AM with DRM transmissions as dictated by the marketplace.”

### **The ability to free-up spectrum**

- 5.47 We do not currently propose that a switch-off date should be set for existing analogue (FM and AM) services. However, as argued earlier in this section, we continue to believe that there are strong reasons why it may be a good idea to have the flexibility to re-use the spectrum currently used by analogue (FM and AM) radio for other things in the future, for the benefit of citizens and consumers. Those other things could

include more FM and AM radio, other radio technologies, other broadcasting services (such as mobile TV), or something else completely.

### 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.***

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

#### DAB extensions

- 5.49 Although as noted above, we have allocated spectrum in order to facilitate local DAB services in all areas of the UK, it is likely that there will still remain some areas of the UK which are not included within the licensed area (the area a multiplex is designed to serve) of any local radio multiplex service.
- 5.50 Without the possibility of universal digital radio coverage, the possibility of using the spectrum currently used for analogue radio for other things is severely curtailed.
- 5.51 Therefore in order to achieve flexibility we suggest that Government may wish to consider permitting Ofcom to vary the licensed area of a local radio multiplex service once it has been licensed to allow for the service to be provided for an adjoining area. We propose that this power should be limited to increases which are not significant, unless exceptional circumstances apply that justify a significant increase to the licensed area. Such a power would be consistent with the provisions of s106 of the Broadcasting Act 1990 which allow Ofcom to extend the area covered by a local analogue service subject to the same criteria.

#### **Suggestion 3.1**

- *So as to maximise DAB coverage for local radio services, Ofcom could 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.*

#### The need for a common end-date for existing analogue radio services

- 5.52 For the reasons set out above, we believe that there is a strong case for providing the maximum flexibility to use the spectrum currently used for FM and AM radio for other things in the future.
- 5.53 In order to maximise that flexibility, it would be necessary to have the ability to clear the spectrum of many, if not all, current users in each waveband simultaneously. This implies achieving a common end-date for existing analogue licences (in respect

of commercial radio) and services (in respect of the BBC). The only apparent alternative approach would be to let existing local commercial radio licences expire in accordance with their current expiry dates, and then wait until such time as a sufficient amount of spectrum had been freed-up to allow alternative uses of the spectrum to be considered. Such an approach would appear to be inconsistent with Ofcom's statutory duty to secure optimal use of the spectrum, as an increasing proportion of the VHF Band II and medium wave spectrum would lie fallow until the time when it was decided that enough had been freed-up for a re-allocation process to be undertaken. Ofcom considers that there are a number of other disadvantages to this approach, which are discussed in paragraphs 5.87-5.91, and thus it appears that achieving a common end-date is the only realistic option for freeing-up the spectrum currently occupied by FM and AM radio services.

- 5.54 It is important to note that at this stage we are not proposing that existing analogue radio services, either on FM or on AM, should be switched-off at a particular date. What we are proposing is that we should seek the flexibility to name such a date and implement such a clearance policy at some point in the future. The dates for clearing the spectrum need not be the same for medium wave and VHF Band II, or even the same for different sets of frequencies, or sub-bands, within the medium waveband or VHF Band II.
- 5.55 As noted earlier in this document, the need to achieve a common end-date for the use of medium wave spectrum is less relevant than it is for the VHF Band II spectrum currently occupied by FM services, as medium wave spectrum cannot so readily be re-packaged in different ways due to international agreements on its use and the characteristics of the spectrum. However, as the same frequency could be re-used for a number of services around the UK, a common end-date for such shared frequencies is desirable if the spectrum is to continue to be used for radio broadcasting. As with VHF Band II, any such end-date would need to be co-ordinated with the BBC, which operates one national network (Radio Five Live) and many of its local services on medium wave spectrum.

### Setting a common end-date

- 5.56 As already stated, we do not believe it is possible or appropriate to set a common end-date for the transmission of analogue radio services at present, as the majority of listening is still to analogue radio, and the future uptake of digital radio technologies is far from certain. Many factors would have to be taken into account when considering whether to cease analogue radio broadcasts, and we do not have sufficient information to be able to make informed decisions now.
- 5.57 This implies that the costs and benefits of different options for the future use of the VHF Band II and medium wave spectrum, with a view to determining a common end-date for existing users, will need to be reviewed at a future date.
- 5.58 Such a review (or reviews) would consider a wide range of factors including:
- The costs to consumers (including the most vulnerable groups in society)
  - The benefits to consumers
  - The costs and benefits to station operators

- The availability and uptake of digital radio sets in all of the ways in which consumers are used to listening to radio (e.g. on portables, on mobiles and in cars)
- Coverage of digital radio services
- The universal availability of the BBC's core radio services on appropriate digital platforms
- Consideration of the continued availability of smaller commercial and community stations
- The costs and benefits of alternative uses for the spectrum
- The implications for the environment of such things as power consumption

5.59 In seeking to propose when this review(s) should take place, we have considered the current pattern of commercial radio licence expiry dates, and our current knowledge of the likely developments in radio listening (on both analogue and digital platforms) over the coming years.

### **Existing analogue local commercial radio licences begin to expire soon**

- 5.60 There are currently 308 licensed (or planned) analogue local commercial radio stations (251 FM licences and 57 AM licences). These services cover a variety of population sizes, from fewer than 2,000 adults (aged 15+) in places like Ullapool, to over 7 million in the case of most London licences. All stations operate under the same regulatory regime.
- 5.61 The programme of licensing new analogue commercial radio stations is almost at an end. Licences have been awarded where there were available frequencies and evidence that potential operators wished to apply for them.
- 5.62 New licences are granted for up to 12 years. However, any licensee which also provides a digital radio service on a local DAB multiplex in the same area is entitled to apply, on one occasion only, for a 12-year renewal of its licence. There is no scope for the regulator to change this 12-year renewal period. All licensees whose licences were granted prior to the passage of the Communications Act 2003 (and thus were granted for an eight-year period) are also entitled to apply to have their licences extended by four years. This process of extending licences is likely to continue for some years to come, and is separate from the renewal process described above.
- 5.63 Existing licences are due to expire from 2009 onwards, with the latest expiry date currently occurring during 2027. The pattern of licence expiries shown in figure 35 is based on our best guess as to when licences will expire, which includes an estimate of those which will seek a 12-year renewal of their existing licence by the end of 2010, and those who will apply to have their licence extended by four years. It also assumes that licences will not be re-advertised as they expire.

**Figure 35: Number of licences expiring by year (base on current expectations without re-licensing)**



5.64 As shown in the chart above, it is likely (subject to Ofcom's estimation of which licences will be either extended or renewed, as appropriate) that all of the existing FM commercial radio licences will expire during the period 2009 to 2027, with the bulk of licences expiring by the end of 2016.

5.65 Under current legislation, and assuming that stations which become eligible for a renewal of their analogue licence by virtue of providing a service on a relevant DAB radio multiplex take up the opportunity, we estimate there would be 71 licences still in issue at the end of 2016. With new legislation which has removed the option of a licence renewal for providing a DAB service, and assuming that any new legislation would not be in place until around 2010, we estimate that this number could reduce to 54 (see figure 36).

**Figure 36: Licences remaining at different year-ends**

Number of local licences remaining at year-end	Under current legislation (Note: because of automatic extensions, the re-licensing process could increase these numbers significantly)	Assuming new legislation in 2010 removing extensions and renewals
2016	71	54
2018	48	31
2020	26	11

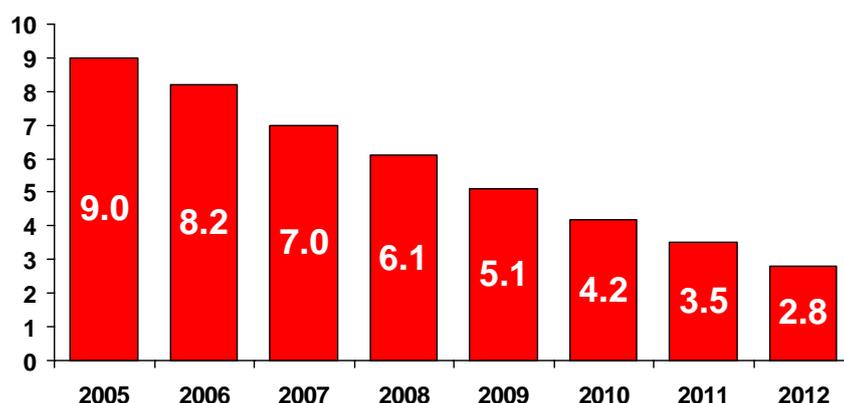
5.66 Consequently, without any major intervention to take back licences early, 2016 is probably the earliest that it would be possible to achieve a common end-date, which would allow a significant proportion of the spectrum to be cleared. Those stations remaining could either be moved to one end of the existing band (this process would be likely to require the stations involved to be compensated for the costs they incur), so freeing up the majority of the band, or could be offered compensation to hand back their licences early.

- 5.67 By the end of 2020, assuming the legislative change to remove the renewal clause outlined above, only 11 local commercial licences would remain.
- 5.68 The more licences it is deemed acceptable to leave on FM or AM or to offer compensation to, the earlier the common end-date could be; however, a date some time between 2016 and 2018 appears at this point like it would be practicable.
- 5.69 The bulk of existing AM local commercial radio licences are due to expire between 2013 and 2015. The two AM national commercial radio licences both expire during 2012.

### Listening to AM radio services is declining rapidly

- 5.70 As is noted at paragraph 5.25, listening to AM radio services has been declining rapidly in recent years and, as is shown in the chart below, is forecast to continue its decline over the coming years. In addition, Ofcom notes that, unlike the case in respect of VHF Band II, at least one alternative radio broadcasting technology capable of using medium wave spectrum is already available, in the form of DRM.

**Figure 37: Forecast share of total listening accounted for by AM radio (BBC and commercial stations)**



*Source: Ofcom assessment. Includes listening to commercial national and local stations and BBC Radio Five Live. Assumes overall listening trends to these stations continue over the next few years (Talk stations and Virgin have constant overall share, local commercial stations share has been declining by 0.2% points p.a. as competition increases. Assumes AM listening to music stations falls faster than listening to speech stations.*

- 5.71 As the vast majority of AM commercial radio licences expire by the end of 2015, and listening to AM services is forecast to represent less than 3% of all radio listening by this time, it may seem appropriate to set the end of 2015 as a common end-date.
- 5.72 However, the rapid decline in listening to AM services may imply that the spectrum that these services occupy should in fact be freed-up earlier than 2015. Such an outcome could be achieved without regulatory intervention, if AM licensees decide that it is no longer commercially viable to provide their services and consequently request that their licences be revoked. Alternatively, Ofcom could offer licensees (and, potentially, the BBC) compensation in exchange for them relinquishing their spectrum for re-allocation by Ofcom.
- 5.73 It is important to note, though, that while AM listening as a whole may be declining, there are still some AM services which attract significant audiences, such as

TalkSport, BBC Radio Five Live, local commercial and BBC stations serving Asian audiences, and some mainstream local commercial radio stations, particularly in Scotland. As these stations are not available on FM (although many are available on DAB and other digital platforms), it would seem inappropriate to require such services to cease their AM transmissions until digital listening has increased further.

### **Spectrum reviews to determine a common end-date**

- 5.74 Taking these various factors into account, Ofcom believes that the differing characteristics of VHF Band II and medium wave imply that each waveband should be the subject of its own review to determine a common end-date for the existing users of the spectrum.
- 5.75 In respect of **VHF Band II**, we suggest that a review should be undertaken by Ofcom in **2012**, or when listening on digital platforms accounts for 50% of all radio listening, whichever is the earlier, to assess the state of the market and the prospects for digital radio, across all platforms, the prospects for FM radio and for other prospective uses of VHF Band II, in order to determine what a common end-date for existing FM commercial radio licences should be and when the spectrum occupied by FM services (commercial and BBC) could be re-allocated, potentially for other uses.
- 5.76 In light of the smaller proportion of radio listening accounted for by AM services, and the rapid decline in this level of listening as shown above, we believe that a review of the future use of **medium wave** spectrum should be undertaken by Ofcom earlier than the equivalent review in respect of VHF Band II. We suggest that this review of medium wave should take place in **2009**. Like that for VHF Band II, this review would assess the state of the market and the prospects for digital radio, across all platforms, the prospects for AM radio and for other prospective uses of medium wave, in order to determine what a common end-date for existing AM commercial radio licences should be and when the spectrum occupied by AM services (commercial and BBC) could be re-allocated, potentially for other uses.
- 5.77 These reviews should consider all of the costs and benefits, economic and social, for spectrum users and for consumers (including the needs of the vulnerable). They should also consider what the alternative uses of the spectrum might be, and develop an appropriate framework for awarding the spectrum which is consistent with Ofcom's statutory duties and stated policies.
- 5.78 The setting of a common end-date for analogue commercial radio licences is likely to depend, at least in part, upon the take-up of digital radio receivers and the proportion of all radio listening which is accounted for by digital services at that time. Digital radio listening is forecast to account for almost 90% of all listening by the end of 2016, but it is possible that digital listening may not grow as fast as expected, or that the penetration of digital receivers, especially in cars, does not reach the required level. In such circumstances, it may be the case that the most appropriate use for VHF Band II spectrum and/or medium wave spectrum would continue to be radio broadcasting. This is why we believe that flexibility in setting an end-date must be maintained for as long as possible.
- 5.79 As noted above, the BBC's use of VHF Band II and medium wave spectrum will of course also have to be taken into account in the setting of a common end-date for existing FM and AM services. The BBC currently uses over half of the total VHF Band II (FM) spectrum – its four national networks use 8.8MHz, and a further 3MHz is allocated for the provision of BBC local radio services (although a few commercial and community stations also use frequencies in this part of the band).

- 5.80 The BBC is committed to rolling out its own national DAB multiplex to 90% of the population. This multiplex service carries simulcasts of all of the analogue networks, together with five new services. All BBC network radio services are also carried on Sky, Freeview and the internet. Local BBC services are accommodated on the local DAB radio multiplexes operated by commercial companies. If digital radio listening continues to grow, the BBC may be in a position to relinquish its VHF Band II allocation at the same time as commercial radio. Indeed, it would be unreasonable to expect commercial radio to relinquish its use of VHF Band II spectrum while the BBC still continued to use it. No switch-off of BBC services would be contemplated without the continued universal availability of the BBC's core radio services.

### **Suggestion 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).*

### **Can flexibility be achieved under current legislation?**

- 5.81 If the aim of achieving a common end-date for existing users of the VHF Band II and medium wave spectrum in order to free up the spectrum for other uses is accepted, this implies that two questions need to be considered:
- Does the current statutory framework allow the flexibility to clear all or part of the spectrum currently occupied by broadcasting services at a specific date?
  - Is there sufficient flexibility in the legislation to allow the spectrum to be allocated and used in a different way once vacated by the existing users?

### **Current licensing framework**

#### **Suggestion 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.*

- 5.82 Later in this section of the consultation document, we make suggestions as to how to facilitate a more flexible regulatory regime for radio broadcasting.

- 5.83 Firstly, however, we need to consider what re-licensing policy Ofcom should adopt in respect of those existing commercial radio licences whose expiry dates imply that the process for their re-advertisement, should it be decided that re-advertisement is the appropriate course, needs to commence prior to any new legislation being enacted. This policy would continue until such time as any new legislation was enacted. The timing of new legislation is a matter for Government.

### Re-licensing under current legislation

- 5.84 **Option 1 – Allowing licences to expire and spectrum to remain fallow.** We have already stated (in paragraph 5.49) that we do not believe that allowing existing local commercial radio licences to expire in accordance with their current expiry dates, and then waiting until such time as a sufficient amount of spectrum had been freed-up to allow alternative uses of the spectrum to be considered, would be consistent with Ofcom's statutory duty to secure optimal use of the spectrum.
- 5.85 Such an approach would also appear to risk undermining one of Ofcom's other key statutory duties - 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 - particularly while the majority of radio listening is still to analogue services, and would severely disadvantage listeners.
- 5.86 We also note that the first licences scheduled for re-advertisement are those held by stations which are currently not on DAB, due in part to the lack of alignment of their coverage areas with the coverage offered by local DAB multiplex services. If these licences were not to be re-advertised, these services would simply cease to exist.
- 5.87 Although it could be argued that there may be no, or very little, commercial demand for some licences, and therefore they should not be re-advertised and the spectrum used for something else, such an approach would not deliver the degree of flexibility required to allow for the spectrum to be re-used for applications other than radio broadcasting. This is because other potential uses of the spectrum, such as more digital radio or mobile TV, cannot make use of the spectrum if it is released in a piecemeal way. The providers of these services would need to wait for a sufficient amount of spectrum to be released in any particular area. This could take many years.
- 5.88 *We therefore believe that not re-advertising analogue commercial radio licences as they expire is not an attractive option, for the reasons outlined above.*
- 5.89 **Option 2 - Re-advertise licences for 12 years but with a termination clause.** A second option would be for Ofcom to re-advertise all existing licences for the full twelve-year period, but then to terminate those licences at the appropriate point in the future by paying compensation to licensees who do not consent to their licences being revoked.
- 5.90 This option would achieve the desired goal of a common end-date, but would appear to be a perverse way of achieving it by licensing stations for a given period, while at the same time planning to pay them to hand back those licences during the licence term.
- 5.91 This option may also create an unattractive level of uncertainty for licensees, as licensees would not know at what point Ofcom might seek to revoke their licences.

- 5.92 *We therefore believe that this too is not an attractive option.*
- 5.93 **Option 3 – Re-advertise licences for a shortened period.** The one remaining option would be to re-advertise licences as they approach their expiry dates, but aim for a common end-date for licences (perhaps different dates for FM and AM licences) by granting licences for different periods but all with the same expiry date.
- 5.94 Under current legislation, as existing local analogue licences approach their expiry date Ofcom can seek to establish whether there is likely to be any competition for a licence before commencing the full re-advertisement process. This is the so-called 'pre-advertisement'. If only the incumbent registers an interest (by submitting a cash deposit), the licence is re-awarded under an abbreviated 'fast-track' procedure for up to 12 years, subject to the incumbent meeting some basic requirements. If there is interest from other potential applicants – and Ofcom considers that there is likely to be competition for many of the larger licences - the licence is advertised in an open competition as if it was a new licence, and the normal beauty contest process applied.
- 5.95 Under this option, the local licence would simply be 'pre-advertised' (or fully advertised, if there is to be a competition) for a shorter period, with all new licences awarded only until a specified end-date, which would be the same for all new licences, regardless of the date of their award.
- 5.96 National analogue licences would be auctioned to the highest bidder, in accordance with the procedures laid down in the Broadcasting Act 1990. These too would be awarded until a specified end-date, which would be the same for all new licences, regardless of the date of their award.
- 5.97 Until such time as the statutory format requirements relating to national analogue commercial radio stations are repealed (as we proposed in section 4), one of the stations would have to provide a service which is “mostly speech”, while a second would have to consist primarily of “music which is not pop music”.
- 5.98 Under this option, a common end-date would have to be set at the time each licence was awarded, as it would not be possible for Ofcom to set a flexible end-date (for example, by inserting a clause in the licence for Ofcom to give notice of termination). However, it may not be possible to know at the time of the licence award what an appropriate end-date should be. There would be no flexibility to tailor the end-date to changing circumstances. Moreover, if the common end-date set is the wrong one, and analogue broadcasting has to continue in its current form beyond this date, a further process of re-licensing would need to be undertaken, or new legislation would be required to change the process.
- 5.99 Nevertheless, despite these clear disadvantages, we consider that for existing analogue licences which expire before any new legislation is enacted, the only realistic option is for Ofcom to re-advertise these licences in accordance with the current statutory procedures (i.e. for local licences, implementing the fast-track process where relevant), and then to grant new licences for varying periods but with a common expiry date.
- 5.100 Although, as we have made clear, this approach presents the difficulty of determining an appropriate expiry date, as Ofcom is not yet in a position to determine when it might be appropriate to make the spectrum currently occupied by analogue radio services available for re-allocation, we nevertheless believe that the setting of a common expiry date is a better option than to grant licences for the full twelve-year

period allowed for under the legislation, as the latter approach will severely inhibit our ability to meet our duties to secure the optimal use of the spectrum. We therefore propose that licences re-awarded under the current statutory framework should be granted with an expiry date of 31 December 2015, as by this time it is hoped that new legislation offering a greater degree of flexibility will be in place.

#### **Suggestion 3.4**

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

### **Licensing for maximum flexibility**

5.101 We have set out above the reasons why we believe that Government may wish to consider changes to the statutory framework for broadcast radio licensing when the time is right, and how we propose to approach the re-advertisement of existing licences prior to any new legislation being enacted. In the following paragraphs, we set out our proposals for what we suggest Government may wish to consider including in any new legislation it lays before Parliament, to enable a licensing process for broadcast radio services which secures the flexibility required to make optimal use of the spectrum currently occupied by analogue radio services and to license radio services in a more flexible manner

### **Changes to achieve a common end-date**

#### Analogue licence renewal for provision of a DAB service

- 5.102 As noted elsewhere in this consultation document, at present any analogue licence holder who also provides a DAB service on a relevant local radio multiplex can apply for a renewal of its analogue licence for a further 12 years.
- 5.103 This legislative provision was enacted in order to encourage analogue local stations to broadcast on DAB in the early years of the new platform's development. However, as digital take-up increases and the proportion of listening to DAB services increases, the incentive becomes less relevant and may actually have the perverse effect of prolonging the life of analogue radio rather than encouraging a switch to digital.
- 5.104 These renewal provisions could make the setting of a common end-date almost impossible for the next 20 to 30 years, as all re- or newly-licensed stations potentially could have this option.
- 5.105 We therefore suggest that Parliament may wish to consider repealing these provisions.
- 5.106 For those existing analogue licences which have been renewed for supplying a relevant DAB service, it is already a condition of the licence that failure to continue to provide the DAB service could lead to revocation of the analogue licence. We propose that, even if the legislative provision allowing for renewals is repealed, this requirement for the holders of renewed analogue licences to continue providing a DAB service or face the possible revocation of their licences should be maintained. This would ensure that those analogue licence holders who have been able to benefit from having their licences renewed in return for providing a DAB service are required to continue providing their nominated DAB service throughout the renewal period of

their analogue licences. In the absence of such a provision, it would be possible for some analogue licence holders to continue to benefit from the fact that their licence has been renewed, without any longer delivering the DAB service upon which the renewal was based. Such an outcome would not appear to be fair given that there are many analogue licence holders who have been unable to benefit from a renewal of their licences, for various legitimate reasons.

### **Suggestion 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.)*

### Licence durations and expiries

- 5.107 Under the current statute, all national and local analogue commercial radio licences are granted for a period of up to twelve years. Ofcom considers that it will not be possible to achieve the objective of a common end-date unless the current pattern of rolling licence expiry dates (as shown in Figure 35) is ended. The above suggestion, to remove the current statutory provisions which provide for analogue licences to be renewed for a 12-year period in exchange for the provision of a digital sound programme service on a relevant radio multiplex, if enacted, will help to achieve a common end-date, but does not represent a complete solution.
- 5.108 It has been stated above that, in respect of existing analogue licences which expire before any new legislation is enacted, the only realistic option is for Ofcom to re-advertise these licences in accordance with the current statutory procedures (i.e. for local licences, implementing the fast-track process where relevant), and then to grant new licences for varying periods but with a common expiry date. A date of 31 December 2015 has been proposed.
- 5.109 The options which Government may wish to consider for dealing with existing licences which expire after any new legislation has been enacted would appear to be as follows:
- re-advertise licences as they expire (applying the 'fast-track' process to local licences and auctioning to national licences, as appropriate) and grant new licences for either a fixed or an indefinite period. These new licences could be awarded by beauty contest or by auction.
  - extend all existing licences for a fixed period (e.g. twelve years)
  - extend all existing licences for an indefinite period.
- 5.110 Under any of these options, Ofcom suggests that maximum flexibility would be achieved by including in any new broadcasting licence a clause for notice of termination, with Ofcom required to provide at least two years' notice. Such a clause would be similar to the position in respect of some Wireless Telegraphy Act licences, which are granted without a fixed end-date but can be terminated by Ofcom for spectrum management reasons after a minimum period has elapsed.

- 5.111 The reviews of VHF Band II (FM) and medium wave (AM) proposed earlier in this document could determine when such termination clauses should be activated.
- 5.112 Option (a) above would allow for a new competition to be held for those licences where such competition exists. However, given that licences are tradable (and 50% of all commercial radio licences have changed ownership in the past three years), and that it is possible that some new licences may be granted for only a short period if a common end-date has been determined, Ofcom considers that it may be disproportionate to hold new competitions for licences, and does not consider this to be a preferred option.
- 5.113 Options (b) and (c) would maintain the current licensees in place for at least a further twelve-year period, although the proposed termination clauses in licences would allow Ofcom to terminate licences on the agreed common end-date once this has been determined. Under either scenario, Ofcom would not terminate a licence prior to the date when it would have expired had new legislation not been enacted, without the licensee being compensated. Given that, as stated above, it is not possible at this stage to set a common end-date, Ofcom suggests that the greatest degree of flexibility would be achieved if licences were to be extended for an indefinite rather than fixed period, subject to termination with two years' notice. It is proposed that the existing terms of the licence, at the time of the extension (e.g. Format and localness requirements), would remain in place throughout the extended period, subject to any relevant changes to the legislation and/or Ofcom's policy (discussed in section 4 of this document). The financial terms for national licences would have to be set nearer the time.

### **Suggestion 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.*

## **New ways of licensing radio broadcasting**

- 5.114 Under current legislation, Ofcom is not able to license terrestrial radio services which will be regulated to secure public purposes without having to determine beforehand which technology they will utilise (in particular, without having to determine whether the service should use digital or analogue technology).
- 5.115 This is because the current legislation sets out different licence/spectrum award procedures and regulatory frameworks for multiplexes and single-stream broadcasts, and it assumes that single-stream broadcasts will use analogue rather than digital technology.
- 5.116 Ofcom considers that the case for removing the link between a broadcasting licence and the technology used to broadcast is a strong one. The issue is epitomised by the

case of DRM, which is used here as an example, but the same case could apply equally to other future technologies.

- 5.117 DRM on medium wave (and long wave) generally occupies 9kHz of spectrum per channel, because this is the way that medium wave and long wave spectrum has been allocated in Europe by international agreement. It could operate as wider channels, which would give it more of the characteristics of a multiplex – i.e. a number of services could comfortably be accommodated within a single DRM channel.
- 5.118 As it is, a 9 kHz DRM block is on the cusp of being a single service and a multiplex. It could offer one high quality audio service, with some data services attached, or it could offer two lower quality sound services, say for speech.
- 5.119 The problem in licensing terms is that current UK legislation is not designed to be able to deal easily with this hybrid (it is only recently that this technology has emerged). A single audio service (with no data) is licensed under the terms of the Broadcasting Act 1990, while a multiplex is licensed under the terms of the Broadcasting Act 1996. The award processes use different criteria and different licence conditions result.
- 5.120 We do not believe it would be practicable to license a DRM service offering a single programme stream under the current legislation, although we could license a DRM service offering two programme streams as a multiplex. This would severely restrict the licensee's (and Ofcom's) flexibility.
- 5.121 The current legislation also does not allow for single-stream terrestrial radio services (national or local) to be licensed in circumstances where the spectrum to be used by those services has been acquired independently, or where the services are not to be regulated for public purposes. In other words, the current statutory framework does not allow for a terrestrial national or local radio service to be provided unless the licence to provide such a service (and the spectrum required to deliver the service) is advertised for this purpose and awarded by Ofcom. This means that, under current legislation, analogue radio broadcasting services can be provided only using spectrum that has been specifically reserved (and planned) for the purpose by Ofcom.
- 5.122 By contrast, radio programme services provided on satellite platforms are currently able to be licensed (as radio licensable content services) without being specifically regulated for public purposes such as diversity or localness. Ofcom considers that a similar ability should apply to all platforms capable of providing radio services.
- 5.123 Thus, Ofcom suggests that Government may wish to consider breaking the current link between broadcasting policy (as manifested in the licensing regime and subsequent regulatory intervention) and spectrum allocation, such that analogue radio services can be provided by those who acquire spectrum through means other than applying for a broadcasting licence advertised by Ofcom. There may still be public policy reasons (e.g. relating to the technology to be used, the coverage to be achieved, or the nature of the programme service to be provided) for continuing to allocate some spectrum in the way that it is currently allocated, but Ofcom suggests that the current statutory framework does not provide sufficient flexibility to allow for spectrum to be allocated for radio services in a less interventionist manner, where there are no public policy justifications for reserving spectrum for this purpose.

- 5.124 We therefore suggest that Parliament may wish to consider, at the appropriate time, allowing for single-stream (i.e. not multiplexed) national and local radio services to be licensed in circumstances where the spectrum to be used by those services has been acquired other than by applying for a broadcasting licence for which the spectrum to be used has already been determined by the regulator.
- 5.125 Such licences could be granted on demand, subject to the general requirements applying to all broadcast services being met. They would not be regulated for diversity or localness, but would require compliance with Ofcom's Broadcasting Code. It would be up to the licensee to make arrangements to secure spectrum for the service, either by being awarded the spectrum by Ofcom under an award process for a licence under the Wireless Telegraphy Act 2006, or by acquiring the spectrum.
- 5.126 In line with our suggestions in respect of existing licences, which are designed to facilitate maximum flexibility, Parliament may wish to consider issuing new licences for an indefinite period, and also permitting Ofcom to include conditions in such licences allowing for their termination by Ofcom with at least two years' notice. In order to provide a degree of certainty for new licensees, we suggest that it may be appropriate that licences should have a guaranteed five-year minimum term.

#### 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.***

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

##### ***Suggestion 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.*

#### **Method of awarding new terrestrial radio licences designed to deliver public purposes**

- 5.128 It is assumed that radio services which are not licensed to secure public purposes will have been awarded spectrum in an award process for a Wireless Telegraphy Act licence, or have acquired the spectrum. Should Ofcom wish in future to license any

new terrestrial radio services in order to secure specified public purposes, a method for awarding such licences must be determined.

- 5.129 Local analogue licences, all of which at present are regulated to secure a range of public purposes such as localness (including limitations on coverage designed to maintain the integrity of the local radio map) and diversity, are currently awarded following a beauty contest, which is designed to enable Ofcom to decide upon the "best" applicant on public policy grounds. The statutory criteria which Ofcom is required to take into account when deciding on licence awards are designed primarily to secure that licensed services cater for local tastes and interests and broaden audience choice. Licences include conditions requiring the provision of the proposed service, and restrictions on coverage. National analogue licences are currently awarded by auction, but the statute seeks to secure diversity by requiring that there is one national analogue service which provides "mostly speech" and another which consists primarily of "music which is not pop music". The procedures for re-advertising local and national analogue licences are explained in paragraphs 5.97 – 5.99. In addition, DAB radio multiplex licences, both local and national, are awarded by a beauty contest process, although the criteria for award are different from those in respect of local analogue licences, and are different for national and local radio multiplex licences.
- 5.130 Ofcom recognises that if Format regulation is relaxed in line with the proposals set out in section 4 of this consultation document, potentially it will become more difficult to judge between competing applications in a beauty contest, while it is arguable that, despite the changes introduced by Ofcom in 2004, the current application process for local licences is still relatively costly, and creates an administratively heavy burden, both for the regulator and for applicants. While it could be argued that beauty contests may still be a useful mechanism for allocating licences for public policy purposes in circumstances where spectrum is scarce, it may not be appropriate for any future beauty contest process to include the same criteria as at present. This might be because a requirement upon the regulator to consider the ability of an applicant to maintain its proposed service has in practice been significantly undermined by the fact that licences are tradable once awarded (this has happened on a number of occasions since Ofcom began licensing stations), and the thresholds of localness and the simplifications of Formats proposed in section 4 of this document may not lend themselves readily to a comparative selection procedure.
- 5.131 The main alternative method of awarding licences to beauty contests is auctions. As noted above, national analogue licences are currently awarded by this method. Ofcom considers that auctions are generally the most open, objective, non-discriminatory and transparent way of assigning spectrum to those who value it most, but also recognises that the efficiency of auctions is strongly dependent on how they are designed. Licences awarded by auction can still include conditions designed to secure desired public purposes, such as diversity, localness and coverage.
- 5.132 Ofcom considers that it may be disproportionate to seek to introduce new methods of awarding analogue radio licences which potentially could be more costly and administratively burdensome than the current processes. However, it may also be the case that appropriately-designed auctions would offer a more transparent, less subjective, method of awarding licences, while still securing whatever public policy outcomes are required.
- 5.133 On balance, as the changing nature of regulation makes it more difficult to envisage the type of criteria which could be applied in a beauty contest, Ofcom suggests that auctions may provide the most appropriate form of licensing across all platforms.

**Suggestion 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.*

**The future for smaller-scale commercial and community radio stations**

- 5.134 An issue that has been raised by respondents to previous consultation documents published by Ofcom regarding radio issues is whether all existing analogue radio services should be guaranteed carriage on a digital platform.
- 5.135 Ofcom does not consider that its statutory duties imply that such a policy should be adopted, as unlike for BBC local and national services, there is no statutory requirement for commercial radio services to be carried on local radio multiplexes, and analogue licences are granted for finite periods after which there is an opportunity for others to apply for them. Furthermore, Ofcom does not consider that the current pattern of analogue services, which has been developed more as a result of spectrum availability than consumer demand, should necessarily be replicated on digital platforms.
- 5.136 This policy position notwithstanding, Ofcom considers that there may remain in future a public policy justification for intervening in the allocation of spectrum and/or developing an appropriate licensing regime, in order to secure the provision of small radio stations which deliver public purposes. We are currently aware of a number of possible platforms and/or technologies that may be used to provide small radio services in the future.
- 5.137 The first is DRM. DRM receivers are now starting to come onto the market and in time, DRM could be built into every new digital set. We would need to decide whether the medium wave frequencies that DRM would use should simply be auctioned on a technology, service and geography neutral basis, or whether there are particular public policy reasons for intervening to secure local DRM stations, either commercial or community. It is too early to decide this now and (as noted in proposal 12) a review to determine the future use of the medium wave band should be undertaken in due course.
- 5.138 A second possibility is that small stations may simply stay on FM. In this instance their position would be helped by the development of platform-invisible sets - that is sets that would have a single menu of stations covering DAB, DRM and FM and that the technology they are using and the waveband they broadcast on would be invisible and irrelevant to the listener. Such sets are already being produced – in fact the first DRM sets that have been launched do exactly that – and these could become the standard for receivers across Europe in the medium-term. The question of the future of FM (VHF Band II), and whether some of that spectrum should be reserved for particular purposes, should be one of the subjects considered by a review of VHF Band II (as noted in proposal 12)
- 5.139 A third possibility is that new AAC coding on DAB (see paragraphs 5.163 – 5.175 below) will offer much more capacity on existing multiplexes, so cutting the cost per station and providing room for those who cannot gain carriage today.

- 5.140 A fourth possibility is that some other technology, such as wi-max, will achieve prominence over the next few years which may negate the need for broadcast spectrum for such stations.
- 5.141 A fifth possibility is the use of DAB on L-Band. L-Band is already used in some other countries for DAB and the technical characteristics of L-Band mean it is better suited to smaller coverage areas than VHF Band II. However, it is expensive to achieve coverage and there is still the inherent problem of DAB for smaller stations in that they would be likely to have only a single local station to put on a multiplex. Larger operators are unlikely to be interested, making it very expensive for the small station and wasteful of the spectrum. As different frequencies would need to be available in adjacent areas for adjacent small local stations, a significant proportion of L-Band would be likely to be required. Ofcom has already set out and consulted on its proposals to auction L-Band in 2007. This auction will be open to smaller stations either individually or grouped together to provide such services.
- 5.142 Finally there is the possibility that an alternative technology, such as DRM+, may be implemented on VHF Band II (currently used for FM).

### Illegal broadcasting

- 5.143 Ofcom has recently conducted audience research to determine the amount of listening to, and audience attitudes to, illegal broadcasters (commonly known as pirate radio stations), of which we estimate there to be around 150 across the UK, with around half of that total in London. Illegal broadcasting is taken very seriously by Ofcom, as it causes a number of problems:
- Most serious of all, illegal broadcasters can cause interference to safety-of-life radio networks, such as those used by air traffic control and the fire service. In 2005, Ofcom responded to 41 safety-of-life cases;
  - Illegal broadcasting causes problems of interference for listeners who want to hear legitimate stations;
  - It can have a major impact on those legal stations affected by indirectly or directly reducing their advertising;
  - Illegal broadcasters avoid the obligations the legal broadcasters have, to pay tax, rents, national insurance, copyright fees and licence fees;
  - Illegal broadcasters have in the past threatened and assaulted neighbours and local authority staff to obtain access to rooftops for transmitter sites and flats for studio locations;
  - Sometimes, to feed the transmitter, the illegal broadcaster will tap into the building's power supply, often by diverting electricity from the lift motor room – in the process putting the lift out of action for the residents. Raids on studios of illegal broadcasters have uncovered weapons, including firearms. Illegal broadcasting also fuels theft: legitimate commercial broadcasters and transmission companies have been targeted by thieves seeking high-quality equipment such as transmitters, encoders and audio processors.
- 5.144 Nevertheless, our research demonstrates that there is a significant audience demand for the types of services such broadcasters provide. We will publish that research shortly, and consider the issue of illegal broadcasters separately over the next few

months. The proposals for the future regulation of radio set out in this consultation document will form the framework for any proposals that may result from our consideration of the relevant issues.

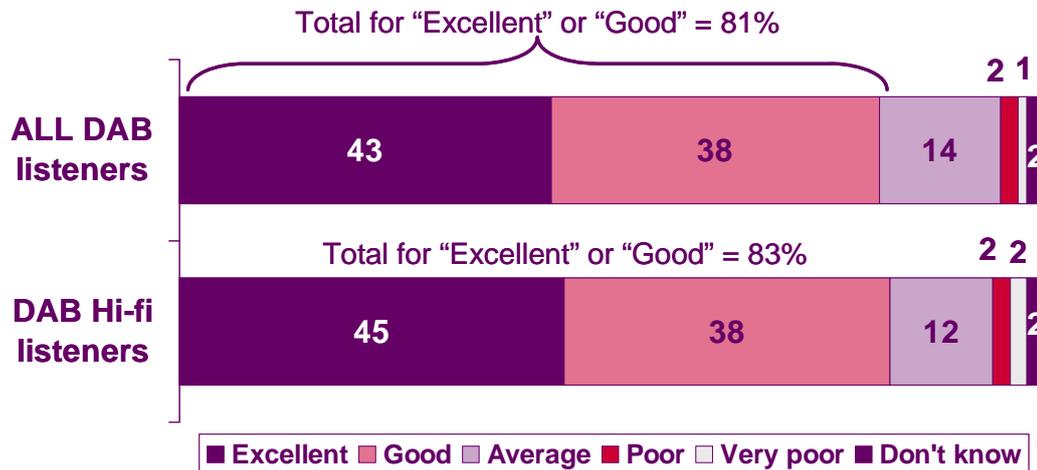
### **DAB sound quality**

- 5.145 Of the 210 responses to Ofcom's discussion document on the Future of Radio, over 70% (153) were either solely (92 responses) or partly (a further 61) regarding the quality of current DAB digital radio broadcasts. This volume was primarily as a result of an article published in The Guardian's technology section on 23 November 2006, entitled "The future of UK radio is now in your hands", by Jack Schofield, who has previously written several other articles critical of DAB's audio quality.
- 5.146 This article suggested that "Ofcom is simply ignoring the whole issue of sound quality". Most of the respondents to the discussion document stated that DAB provided a lower technical quality of transmission than that found on FM, and as long as this was the case, there should be no switch-off of FM broadcasts. A number also urged the adoption of the new AAC codec, now known as DAB+. Others questioned why digital stations should be broadcast in mono, which was seen as a retrograde step. Some raised concerns regarding the transmission quality of BBC services, in particular that of BBC Radio 3.
- 5.147 It is notable that DRDB research (Online survey, January – May 2006) showed that 89% of new digital radio owners rated their satisfaction with the "better sound quality" offered by DAB as "good" or "excellent". However, one respondent made the point that "the vast majority of DAB listening is done on portables with relatively poor speakers... If the surveys had bothered to break down DAB listeners by type of radio, I'm sure the dissatisfaction of those listeners not using portables would be clear for all to see."
- 5.148 In the light of the volume of responses received on this issue, Ofcom has undertaken its own independent research into consumer perceptions to ascertain whether there is widespread dissatisfaction with the quality of DAB transmission, or whether it is confined to a small number of "audiophiles".
- 5.149 In January 2007, ICM was commissioned by Ofcom to carry out such a survey.
- 5.150 In total 677 DAB listeners were interviewed about how many DAB receivers they have and of what type. They were also asked to rate sound quality on DAB and to compare it to FM sound quality. The research also attempted to distinguish between reception issues and broadcast quality issues for those who assessed DAB quality as poor.
- 5.151 The research found that of the respondents, 73% had one DAB receiver, 18% had two and 9% had three or more.
- 5.152 Almost half (46%) of the respondents owned portable sets (e.g. kitchen radios), 23% were hi-fi receivers, 6% were personal (walkman-type) receivers, 6% clock radios and 3% car radios.
- 5.153 We asked people who have DAB how they would rate the sound quality. 81% of all respondents rated sound quality as either excellent or good, with a further 14% rating it as average. Only 3% rated it as poor or very poor, with 2% who said they didn't know. (Figure 38)

5.154 As most of the criticism has been from audiophiles, we were particularly interested to test the opinions of DAB hi-fi owners. The proportion of this group who were supportive of DAB was no different from the average DAB listener, with 83% rating quality as excellent and a further 12% as average.

**Figure 38: Listeners' rating of sound quality on DAB**

**Q. How would you rate the sound quality on your DAB radio(s)?**  
(% of respondents)



Source: ICM research for Ofcom, Jan 2007 –  
Sample size 917; sample size of DAB listeners with a Hi-fi 213

5.155 We went on to ask how listeners would rate sound quality on DAB compared to FM radio.

5.156 On this question 94% of all DAB listeners said it was at least as good as FM, with 77% saying it was better than FM. Only 3% thought it was worse than FM.

5.157 Again, we tested the opinions of those who listen to DAB on hi-fi sets. The results were broadly similar, with 92% thinking it was at least as good as FM, although 6% thought it was worse (Figure 39).

Figure 39: DAB sound quality compared to FM

**Q. How would you describe the sound quality on DAB compared to FM?**  
(% of respondents)



Source: ICM research for Ofcom, Jan 2007 –

Sample size 917; sample size of DAB listeners with a Hi-fi 213

- 5.158 We wanted to test whether people who rated the sound quality as poor or worse than FM were doing so because they were suffering from poor reception (often typified by the signal breaking up or hearing a burbling sound in the background) as opposed to the broadcast sound quality (for example where the dynamic range of the signal is limited). However, although we asked these questions in the research, because the number of respondents rating sound quality as poor, or worse than FM was so small, the sample size was insufficient to draw any conclusions. Nevertheless in practice the dissatisfaction of these listeners is likely to be based on a combination of these two effects.
- 5.159 It is worth noting that the reception issues should largely be solved well before any switch-off of existing FM services approaches, if that ever happens. DAB transmitters are still being built for national services, both commercial and BBC and Ofcom is advertising new local DAB multiplex licences to fill-in the gaps in existing local coverage. In addition, the RRC international frequency planning conference which took place in the summer of 2006 has allowed the UK to increase significantly the transmitter powers of existing transmitters, so extending coverage further and improving the robustness of the signal.
- 5.160 So in conclusion, the research showed little evidence that the majority of the public would agree with those respondents to the discussion document. That is not to say that those respondents are wrong; it is simply that their expectations of audio standards are not shared by the vast majority of listeners.
- 5.161 That brings us to the broader question of AAC coding, which many respondents referred to, and whether and when it should be adopted in the UK.
- 5.162 AAC is a new improved coding standard for the DAB platform, known as "DAB+", which was agreed by WorldDAB (now known as World DMB) at the end of 2006.
- 5.163 The first point to make is that the implementation of AAC coding would not necessarily imply improved sound quality. Sound quality is a function of the bit-rate used by the broadcaster to transmit the signal. Within DAB multiplexes, as within digital television multiplexes, the broadcaster (or multiplex operator) has to make a

trade-off between the number of services (audio or data) fitted in to the multiplex and the sound quality of those services.

- 5.164 With the existing DAB coding system, known as MPEG 1 Layer 2 (or MP2 for short), broadcasters had to make such a choice. The fact that listeners generally think that sound quality is good and that previous research by Ofcom and others has found that one of the main things listeners appreciate about DAB is greater choice, suggests that broadcasters have got it about right. (The BBC had to go through the same trade-off process in its implementation of DAB)
- 5.165 As a safeguard against multiplex operators trying to squeeze in too many stations, the Radio Authority operated a system of minimum bit-rates to ensure minimum sound quality. This was inherited by Ofcom. However, as coding technology has improved, it has become possible to offer the same quality at lower bit-rates. So in 2005 Ofcom consulted on replacing this with a co-regulatory code which would allow operators to reduce bit-rates while maintaining good sound quality. This scheme has now been put in place, allowing operators to choose between maintaining the minimum bit-rate scheme or putting in place their own procedures to ensure that sound quality is maintained as they implement new equipment and reduce bit-rates. (It is important to note that this relates only to commercial stations. Ofcom has no remit or powers to consider or enforce sound quality for the BBC's DAB services.)
- 5.166 The benefits of DAB+ to the UK market would be greater capacity which could be used to improve sound quality, although as most listeners are happy with DAB sound quality (which our research confirms), it would be more likely to be used to offer more radio services or data services.
- 5.167 Some other countries, which have either not yet launched DAB or where DAB has failed to make any consumer impact are planning to launch (or re-launch) their DAB services using DAB+ rather than the existing coding standard. However, it is far from certain that DAB+ will be the only contender. The French are considering adopting a different DAB variant, DMB Audio. So it may be too soon for the UK to decide which path to follow.
- 5.168 The problem for the UK in considering implementing DAB+ is that there are currently 4.6m DAB sets in the market and this figure is likely to grow to over 5m by the end of this year. None of those sets can receive DAB+ services and no such sets are currently in production or likely to be launched before the end of this year.
- 5.169 A move to DAB+ now for existing services would disenfranchise all existing DAB listeners, forcing them to buy new sets, or more likely to abandon the technology altogether. A move to DAB+ only for new services would risk consumer confusion and would be unfair to the existing operators who have already invested heavily in DAB.
- 5.170 More importantly, any announcement now that the UK was going to adopt DAB+ would be likely to create confusion and completely stall the DAB market; something it might never recover from.
- 5.171 There is also an issue of damaging the market by releasing too much capacity simultaneously. While Ofcom welcomes competition, a sudden doubling of capacity could completely undermine the business plans of existing DAB stations and multiplex operators, at a time when the market is still developing.
- 5.172 We certainly do not rule out the future adoption of DAB+ in the UK. In fact it could well be a desirable outcome if this proves to be the future direction of DAB across the

world. It is possible that the UK will have adopted DAB+ well before the closure of FM services, if that ever happens. The question may be one of timing.

5.173 Our preferred approach is therefore to:

- Work with colleagues in the rest of Europe to ensure a common future standard for DAB
- Encourage manufacturers to develop sets which can receive these new standard(s) as well as the existing standard; so that
- In several years, when the vast majority of sets can receive both standards we can have the possibility of migrating services to the new standard.

### **Mono and stereo broadcasting on DAB**

5.174 There is one final issue on DAB sound quality, that of stereo and mono broadcasting.

5.175 Ofcom has a wide discretion to include in radio multiplex licences such conditions as appear to Ofcom to be appropriate having regard to any duties that Ofcom or the licensee has under the Broadcasting Acts of 1990 and 1996 or the Communications Act 2003 (section 43(1)(a) of the Broadcasting Act 1996). Ofcom also has a specific power to include conditions enabling Ofcom to supervise and enforce technical standards in connection with the provision of the licensed service (section 43(1)(b) Broadcasting Act 1996).

5.176 Section 54 of the Broadcasting Act 1996 requires Ofcom to secure particular aims by imposing appropriate conditions in radio multiplex licences. One of the things that Ofcom is required to secure is that the signals carrying the radio multiplex service attain high standards in terms of technical quality and reliability throughout so much of the area or locality for which the service is provided as is for the time being reasonably practicable (section 54(1)(g) of the Broadcasting Act 1996).

5.177 In Ofcom's "Technical Policy Guidance for DAB Multiplex Licensees", we said that Ofcom would consult on the circumstances under which, as a matter of policy, we would approve changes to the parameters associated with each sound programme service. This is because changes to some related regulatory provisions (sound quality and the capacity allowed for additional data services) imply a need to review Ofcom's policy in this area. We said that we would not routinely approve changes to these audio parameters until the consultation is complete.

5.178 The Technical Policy Guidance states that licensees should ensure that sound programme services are broadcast with the audio parameters as recorded in the technical annex to their multiplex licence. Any change is recorded as a variation to that technical annex.

5.179 In general, these changes have been a matter for the multiplex operator, provided those changes comply with the minimum bit-rate regime.

5.180 Ofcom considers that it is unlikely that any change from mono to stereo would be refused solely on technical quality, although the change may be refused if, as a result, a station was to be removed from the multiplex and not replaced with another service. Under these circumstances, the proposed variation would be considered in accordance with s54 (6A) and (6B) of the 1996 Act.

- 5.181 Ofcom considers that it would be likely to 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. Benefits which might be considered in this regard are the enhancement of choice and diversity for listeners.
- 5.182 We therefore want the ability to intervene if we think such a move would not be in the interests of citizens and consumers, and so we propose to use our powers as a backstop to ensure the continued provision of high quality services.

## 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.***

## Section 6

# Community radio

## Introduction

- 6.1 When the Community Radio Order 2004<sup>7</sup> was introduced, its sponsoring government department, the Department for Culture Media and Sport (DCMS), asked Ofcom to carry out a review of the new sector, reporting back two years after the first new community radio licences were launched. The first community radio service began broadcasting in November 2005, which means that the two-year review period concludes towards the end of this year.
- 6.2 This is only the first stage of Ofcom's review of the community radio sector and much information gathering and analysis remains to be done before the final report is prepared in the autumn. However, based on Ofcom's early experience in licensing this sector, we suggest that there may be ways to simplify the statutory framework without losing the essence of what community radio has been set up to achieve.
- 6.3 This section therefore represents Ofcom's initial thoughts concerning the future licensing of community radio services and is designed to encourage discussion to inform Ofcom's final recommendations later this year.

## Community radio in context

- 6.4 In *Radio – Preparing for the Future*, published in October 2005, we set out six public purposes for radio, based on the five public purposes for the BBC (as set out in the Government's Green Paper on the review of the BBC's Charter) plus a new purpose of providing social gain (see figure 40). These six purposes apply to differing degrees to each radio sector: the BBC, commercial radio and community radio.
- 6.5 Based on these public purposes, the report recognised the need to encourage the development of a thriving community radio sector as part of a wider approach to securing the interests of citizens. The community radio sector takes the lead in "providing social gain" but also supports the provision of some of the other public purposes.
- 6.6 As noted in section 2 above, one of the aims of Ofcom's strategic approach is to secure community services for every community that wants one, providing programmes for special interest groups (including ethnic and religious communities), providing a sense of identity in local communities, with community involvement and participation, broadcasting community information and facilitating debate.

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<sup>7</sup> The Community Radio Order 2004, HMSO Statutory Instrument 2004, Number 1944, (Into force 20th July 2004) ISBN 0 11 049605 1

#### Figure 40: The public purposes of radio

- i) Sustaining citizenship and civil society
  - Informing ourselves and others and increasing our understanding of the world through news, information and analysis of current events and ideas.
- ii) Promoting education and learning
  - Stimulating our interest in and knowledge of a full range of subjects and issues through content that is accessible and can encourage either formal or informal learning; and
  - Providing specialist educational programmes and accompanying material to facilitate learning at all levels and for all ages.
- iii) Stimulating creativity and cultural excellence
  - Enriching the cultural life of the UK through creative excellence in distinctive and original programming;
  - Fostering creativity and nurturing talent; and
  - Promoting interest, engagement and participation in cultural activity among new audiences.
- iv) Representing the UK, its nations, regions and communities
  - Reflecting and strengthening our cultural identity through original programming at UK, national and regional level, on occasion bringing audiences together for shared experiences; and
  - Making us aware of different cultures and alternative viewpoints through content that reflects the lives of other people and communities within the UK.
- v) Bringing the UK to the world and the world to the UK
  - Making UK audiences aware of international issues and of the different cultures and viewpoints of people living outside the UK; and
  - Bringing high quality international news coverage to a global audience through radio, TV and new media.
- vi) Providing social gain
  - Serving individuals who are otherwise under-served by radio;
  - Facilitating discussion and the expression of opinion;
  - Providing education and training (other than to employees); and
  - Enhancing understanding of the target community and strengthening links within it.

### A brief history of community radio in the United Kingdom

- 6.7 Licensed community radio services are a recent arrival on the UK's airwaves. Although only five years ago, full-time licensed community based services did not exist, now well over 100 have been offered licences, mostly operating on FM frequencies, with the likelihood that this total will be approaching 200 by the end of the year. However, the campaign to introduce a so-called 'third-tier' of radio broadcasting began as far back as the early 1970s, soon after the establishment of

licensed commercial radio stations in 1973, by the then regulator, the IBA (Independent Broadcasting Authority).

- 6.8 **Alternative forms of 'broadcasting':** Despite not being able to get 'on-air' in the traditional sense, some forms of what can loosely be described as community radio services still have a considerable history in the UK. Hospital radio services have been operating since at least the 1950s, joined by university radio stations in the 1960s and 70s and subsequently by early cable-based community radio stations in 'new town' locations such as Basildon (Radio Basildon), Milton Keynes (CRMK) Telford (TCR) and Thamesmead (Radio Thamesmead). The similarity between all these types of service was that (barring a few short-lived freely radiating student services on AM in the late 1960s) none were permitted to broadcast using a standard AM or FM transmitter. All services, which were not BBC or IBA-licensed stations, were limited to operation through early analogue cable networks, or via technologies such as 'induction-loop' or 'leaky-feeder' systems. The infrastructure required for such installations was expensive to install and maintain, and the coverage achieved was strictly defined and deliberately limited. Viable reception was typically restricted to the insides of buildings, and even then only within a very limited distance of the cables or antenna systems deployed.
- 6.9 **Campaigning bodies:** In the late 1970s and early 1980s a new generation of unlicensed land-based 'pirate' broadcasters took to the airwaves. Although, as today, most of these were essentially specialist music stations a few, such as London-based Radio AMY (Alternative Media for You), Our Radio and Cambridge Community Radio, operated with broader social and political objectives. In 1977, a lobbying group, called Comcom, was formed and later, following a series of standing conferences on community radio, and the Free the Airwaves campaign, the Community Radio Association (now the Community Media Association) was established in 1983, as a membership association and advocacy body aiming to secure a legal framework for community radio in the UK. When drawing up its objectives, the Community Radio Association looked closely at the wide range of community radio services which had been operating successfully in various other jurisdictions, sometimes for many years. It worked, and continues to work, closely with other similar bodies across Europe and the rest of the world, such as the NACB (National Association of Community Broadcasters - now CRAOL, in Ireland), OLON in the Netherlands and AMARC, (the World Association of Community Broadcasters).
- 6.10 **Previous experiments:** Community radio has been debated by politicians and regulators for many years. There have been a number of 'false-dawns', in particular the 1985 Home Office 'Community Radio Experiment'<sup>8</sup>, which was abandoned after applications for licences were invited, and the introduction by the IBA of 22 'incremental radio services' starting in 1989<sup>9</sup>.
- 6.11 There have however also been some notable successes, in particular the introduction of a number of services in Scotland (predominantly in the Highlands and Islands) which, although licensed under commercial radio legislation, are structured as not-for-

<sup>8</sup> Home Office Community Radio Experiment - 271 applications received for 21 trial licences each at a pre-defined location (Prior to locations being specified, over 900 'letters of intent' had previously been received.)

<sup>9</sup> The IBA awarded 20 incremental radio licences between the spring of 1989 and early 1991 as well as two airport information services at Heathrow and Gatwick. Some incremental stations were founded on a community ethos but, although often successful, most found it hard to survive within the then expensive framework of IBA radio broadcasting regulation and were eventually taken over by commercial interests.

profit organisations and have successfully delivered a form of community radio, in some cases for many years.

- 6.12 It was not until May 2001, that the Radio Authority announced its 'Access Radio Experiment'<sup>10</sup>, the genuine precursor of today's community radio sector. The first 'Access Pilot' commenced in February 2002. Originally intended as a one-year experiment, all of the pilot stations (bar two) continued to broadcast under their Access Radio Licences until being granted community radio licences in 2004 - 05. (Of the two stations which ceased broadcasting, one had only ever planned to broadcast for a three month period, while the other chose to re-direct its energies into a community television project.)
- 6.13 The Access Radio scheme was evaluated at the time in two reports authored by Professor Anthony Everitt under the title 'New Voices'. In his reports, Professor Everitt examined a variety of aspects of the various pilot projects beyond a simple analysis of broadcast output. Specifically, these included: training opportunities; work experience; social inclusion; local education; services to neighbourhood and special interest groups; access opportunities, and; linguistic impacts. The Professor concurred with the views of those that had been campaigning for community radio, concluding that it *"promises to be a positive cultural and social development and should be introduced as a third tier of radio broadcasting in the United Kingdom"*<sup>11</sup>. Viewed as an undoubted success by the then regulator, the Radio Authority and Government, the Access Radio pilot scheme went on to inform the subsequent development of the Community Radio Order 2004, the core legislation upon which current community radio licensing is based.
- 6.14 **Restricted services:** Following the cancellation of the 1985 Home Office experiment, the government of the day instead offered a further consultation on the future of local radio and established a system of short-term special event licences which, after the passing of the 1990 Broadcasting Act, became the successful short-term restricted service licence scheme which still operates today.<sup>12</sup> During the early 1990s, a further category of restricted service licence was introduced, providing for the long-term operation of broadcasting services at defined locations such as universities, hospitals, prisons and military bases. A number of student and hospital services took up such licences, allowing them to switch off old and expensive 'induction-loop' systems and to serve more effectively their clearly-defined, site-specific, coverage range of typically less than a maximum of one kilometre from the transmitter. A key licence condition of these long-term RSL services is that their operators are prohibited from serving listeners outside the bounds of the site concerned (campus, hospital grounds, prison or military base etc.) even if longer-distance reception proves technically possible.<sup>13</sup> Although the scope of long-term RSL licensing has recently been expanded<sup>14</sup> to include availability to commercial sites such as shopping centres and holiday camps, a clear distinction remains between such licences and the community radio licensing scheme, as the restriction

<sup>10</sup> Radio Authority 'Access Radio' Experiment - Two hundred expressions of interest were received prior to fifteen organisations being invited to apply for a total of sixteen experimental licences (one group holding two licences).

<sup>11</sup> New Voices - An Evaluation of 15 Access Radio Projects (January 2003) Page 8.

<sup>12</sup> Short-term RSL licences are typically available for a period of up to twenty eight consecutive days. Over 2,000 such licences were issued during the 1990s and in both 2005 and 2006 approximately 500 were issued each year.

<sup>13</sup> Ofcom RSL Notes of Guidance, Section 6: Long-Term RSLs, Page 17, Paragraph 6.1).

<http://www.ofcom.org.uk/radio/ifi/rbl/rsls/rslapps/notes.pdf>.

<sup>14</sup> cc Ofcom Radio Restricted Services and 55 to 68 MHz, Statement following consultation - Executive Summary: [http://www.ofcom.org.uk/consult/condocs/rrs\\_5568/summary/](http://www.ofcom.org.uk/consult/condocs/rrs_5568/summary/)

preventing the targeting or acknowledgement of audiences outside the bounds of such locations remains firmly in place.

## The Community Radio Order 2004

- 6.15 The Community Radio Order 2004 sets out a wide range of requirements which broadcasters must comply with in order to be awarded and subsequently retain a community radio licence. A copy of the Order is attached as Annex 9.

### Community radio characteristics of service

- 6.16 Community radio is intended to be clearly distinct from commercial broadcasting and the BBC. In order to ensure this, the Government has imposed some specific 'characteristics of service' requirements which such stations must adhere to. The detailed nature of these commitments derive from the statutory requirements for community radio, as set out in Article 3 of the Community Radio Order 2004, which state that all such services must:
- a) Be provided primarily for the good of members of the public or of particular communities and in order to deliver social gain (see paragraphs 6.54 – 6.64 below), rather than primarily for commercial reasons or for the financial or other material gain of the individuals involved in providing the service.
  - b) Be intended primarily to serve one or more communities (whether or not it also serves other members of the public). (A community is defined as either people who live or work or undergo education or training in a particular area or locality, or people who have one or more interests or characteristics in common).
  - c) Not be provided in order to make a financial profit, and uses any profit produced as a result of the provision of the service wholly and exclusively to secure or improve the future provision of the service or for the delivery of social gain to members of the public or target community.
  - d) Offer members of the target community opportunities to participate in the operation and management of the service.
  - e) Be accountable to the target community.

### Selection criteria

- 6.17 In addition to the above, the statutory criteria to which Ofcom must have regard when deciding whether or not to award a licence are more numerous for community radio than for commercial radio. In awarding community radio licences, Ofcom must take account of seven selection criteria, under section 105 (1) of the Broadcasting Act 1990 (as modified). (Relevant sections of this Act are attached as Annex 10.) These selection criteria are set out below:
- a) The ability of each of the applicants for the licence to maintain, through the period for which the licence would be in force, the service which he proposes to provide;
  - b) The extent to which any proposed service would cater for the tastes and interests of persons comprising the relevant community, and, where it is proposed to cater for any particular tastes and interests of such persons, the extent to which the service would cater for those tastes and interests;

- c) The extent to which any proposed service would broaden the range of programmes available by way of local services to persons living in the area or locality in which it would be provided, and, in particular, the extent to which the service would be of a nature or have a content distinct from that of any other local service for which would overlap the licence for the proposed service;
  - d) The extent to which there is evidence that amongst persons living in that area or locality, there is a demand for, or support for, the provision of the proposed service.
  - e) The extent to which the provision of any such proposed service would result in the delivery of social gain [see paragraphs 6.83 – 6.84 below] to the public or relevant community;
  - f) The provision that each of the applicants proposes to make in order to render himself accountable to the relevant community in respect of the provision of the proposed service;
  - g) The provision that each of the applicants proposes to make to allow for access by members of the relevant community to the facilities to be used for the provision of the service and for their training in the use of those facilities.
- 6.18 Not only are the output requirements of community radio services defined in great detail by the legislation, the same applies to operational inputs, in particular those of ownership and funding.
- 6.19 In respect of both the characteristics of service and the selection criteria, "social gain" is further defined in the Community Radio Order as being the achievement, in respect of individuals or groups of individuals in the community that the service is intended to serve, or in respect of other members of the public, of the following objectives:
- a) the provision of sound broadcasting services to individuals who are otherwise underserved by such services,
  - b) the facilitation of discussion and the expression of opinion,
  - c) the provision (whether by means of programmes included in the service or otherwise) of education or training to individuals not employed by the person providing the service, and
  - d) the better understanding of the particular community and the strengthening of links within it.
- 6.20 In addition, the Order recognises that community stations may also deliver a wide range of additional (non-mandatory) types of social gain, including the following:
- a) the delivery of services provided by local authorities and other services of a social nature and the increasing, and wider dissemination, of knowledge about those services and about local amenities;
  - b) the promotion of economic development and of social enterprises;
  - c) the promotion of employment;
  - d) the provision of opportunities for the gaining of work experience;

- e) the promotion of social inclusion;
- f) the promotion of cultural and linguistic diversity;
- g) the promotion of civic participation and volunteering.

### Financial requirements

- 6.21 Community radio licensees must operate within strict financial constraints, requiring that they be funded from a variety of sources, with no one source of funding comprising more than 50% of the cost of providing the service within each financial year.
- 6.22 As set out in the characteristics of service, licensees must also operate on a non-profit-distributing basis, ploughing any excess revenues back into the operation of the service.
- 6.23 The majority of community radio services are allowed to generate up to 50% of their funding from on-air commercial sources (spot-advertising and sponsorship opportunities taken together).
- 6.24 A small number of community radio services are banned from obtaining any income from such sources in order to protect the interests of nearby small-scale commercial stations<sup>15</sup> which serve more than 50,000 but fewer than 150,000 adults (aged 15+) within their MCA (Measured Coverage Area)<sup>16</sup>.
- 6.25 A further restriction, also implemented to protect very small-scale commercial stations, is that Ofcom is prohibited from licensing any community radio services which would have a coverage area that would overlap by 50% or more (in terms of population) with the MCA (Measured Coverage Area) of an existing commercial radio station containing 50,000 adults (aged 15+) or fewer.

### Ownership requirements

- 6.26 Community radio services must comply with the various ownership rules set out in the Broadcasting Act 1990 (as amended). These regulations relate to involvement by local authorities, political parties, the BBC, advertising agencies, religious bodies, and those convicted of unlicensed broadcasting (Part II of Schedule 2 of the Broadcasting Act 1990). In some cases the regulations prohibit any involvement, while in others they simply limit the scale of any such involvement. These regulations apply to almost all broadcast services, not just community radio services.
- 6.27 In addition however, community radio services must also adhere to a number of additional ownership requirements, the most fundamental of which is that any single organisation may only own a maximum of one community radio licence. As well as commercial radio operators, the BBC, Channel 4 and S4C are all prevented from holding such a licence, but no such restriction applies to other broadcasters including satellite radio stations and the operators of restricted service licences.

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<sup>15</sup> Of the 107 community services awarded licences in the first round of licensing, five had restrictions placed in their licences to prevent the generation of income through on-air commercial activities.

<sup>16</sup> The Measured Coverage Area of a radio station is defined by the technical characteristics of its transmission. It is the area within which the signal available for reception is of above a specified strength.

## Key Commitments and report back

- 6.28 Once a community radio station is operational it must comply with the terms of its 'Key Commitments' as set out within its Broadcasting Act licence. This is the equivalent of the Format included in every analogue commercial radio licence, but is far more detailed, including, as well as the nature of the programme service to be provided, details of the licensee's commitments in respect of the delivery of social gain, training, access and accountability.
- 6.29 The licensee must also report back to Ofcom each year on its financial and operational activities to ensure that these too comply with legislative requirements.
- 6.30 When compared to the criteria against which commercial radio stations are assessed, community services face a considerable additional burden in terms of compliance.
- 6.31 Against such a background it should however be remembered that, as community radio stations are required to operate on a non-profit-distributing basis, they may be able to access some additional sources of funding which are not typically available to commercial stations.
- 6.32 A further issue for community stations is that they are awarded relatively short-term licences (five years instead of twelve for their commercial counterparts) with no renewal or re-advertisement process provided for within the current legislation.

## Demand for community radio licences

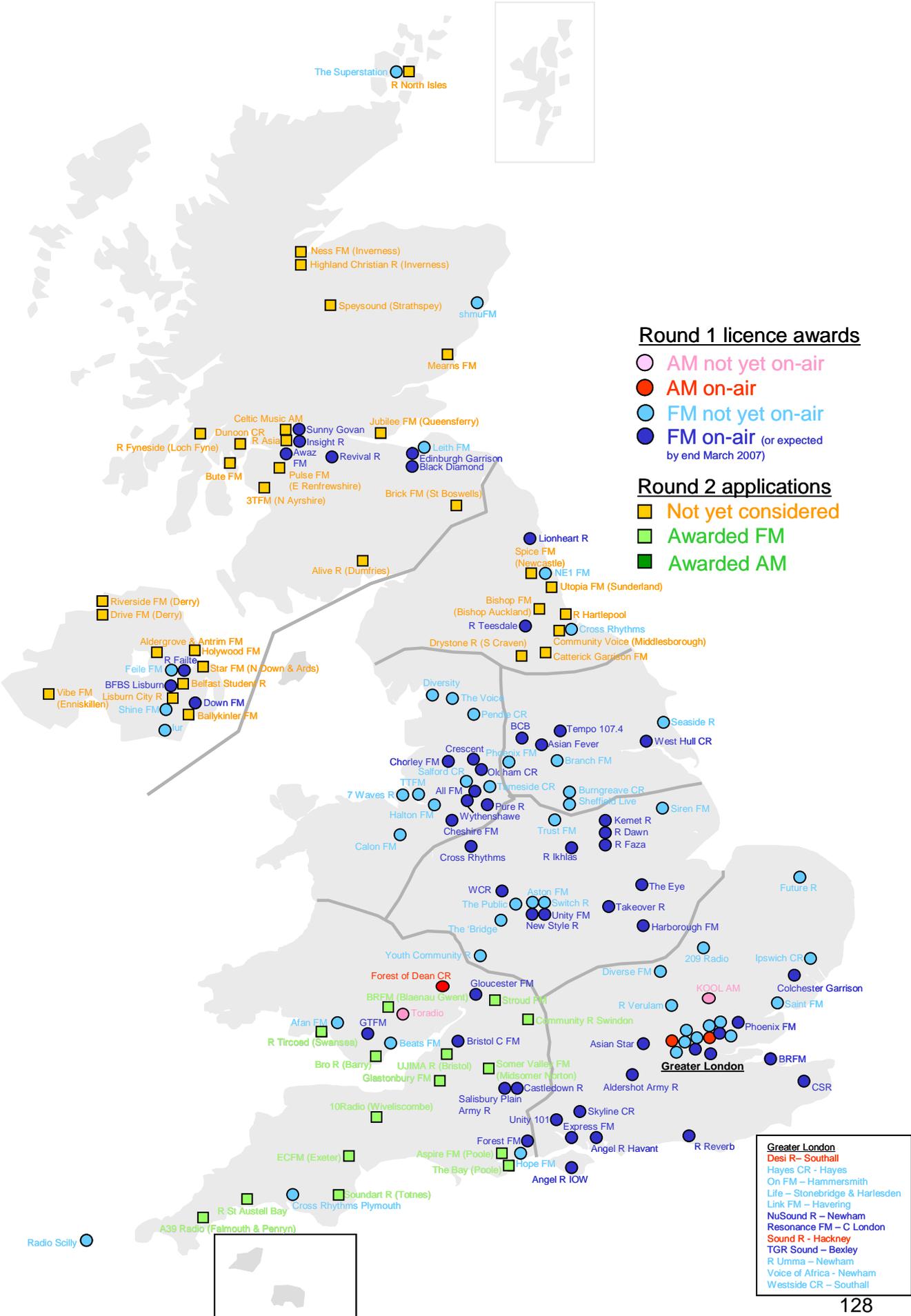
- 6.33 Demand for community radio licences is considerable. The first community radio licensing round was opened in early September 2004, with applications being invited from across the UK (apart from specific areas where the terms of the Community Radio Order 2004 prevents such services being licensed). After the closing deadline, in November 2004, Ofcom had received a total of 194 valid applications. After assessment against the statutory criteria, this resulted in 107 licences being awarded by the time the first licensing round was completed in May 2006.
- 6.34 In the light of such strong demand, Ofcom began preparations to conduct a second round of licensing, this time on a region-by-region basis (so as to avoid long delays between the date at which applicants submit their applications and that at which the decision to award a licence is made), inviting expressions of interest from across the country in March 2006. A total of 184 such expressions were received by the closing date in April 2006. Since that time, full applications have been invited from three of the seven regional groupings defined following an analysis of the expressions of interest received (see Figure 41).
- 6.35 In August 2006, Ofcom invited applications from Mid and South Wales together with the South West of England, receiving a total of 21 by the closing date in November of the same year. In October 2006, Ofcom invited applications from Northern Ireland together with Scotland, receiving a further 24 applications by the closing date in mid January 2007. Such figures indicate that expressions of interest, while not a pre-requisite prior to the subsequent submission of a full licence application, provide a reasonably accurate indication of the likely number of full applications which can later be expected to be received. Applications for community radio licences in North and North East England were invited early in January, with a closing date at the end of March 2007. Seven applications were received. Applications from the fourth region (West and South Yorkshire and the Humber) will be invited in early April, with a closing date in June.

**Figure 41: Community radio licensing timetable for second round**

	<b>Region</b>	<b>Applications invited</b>	<b>Closing date for applications</b>	<b>Applications received</b>
1.	Southwest England and South Wales	16 August 2006	7 November 2006	21
2.	Scotland and Northern Ireland	25 October 2006	16 January 2007	24
3.	North and North East England (inc North Yorkshire)	3 January 2007	27 March 2007	7
4.	West and South Yorkshire and the Humber	4 April 2007	26 June 2007	TBA
5.	North Wales and Northwest England	TBA	TBA	TBA
6.	West Midlands, East Midlands and Lincolnshire	TBA	TBA	TBA
7.	East and South East England, including London	TBA	TBA	TBA

- 6.36 In more general terms, the fact that the number of expressions of interest received for the second round of community radio licensing is similar to the total number of applications assessed in the first round, indicates that, despite over 100 community radio licences having already been awarded, a considerable level of as yet untapped demand still exists. However, it is inevitable that some of this ongoing demand will not be able to be met through use of the limited AM and FM frequency resources currently available for use by community radio services.
- 6.37 The coverage of community radio services to date is far from ubiquitous, partly because the sector is a new one. However, given established usage patterns of FM and AM frequency resources, the potential to meet the ongoing demand for the roll-out of additional community radio services is inevitably limited by the lack of suitable frequencies.
- 6.38 During the first round of licensing, Ofcom encountered considerable difficulties, mainly in and around larger urban conurbations (and particularly in many parts of London), when trying to identify frequencies suitable for use by community services. As a result, Ofcom has concluded that it is not currently possible to license further such services on FM in some such areas (as detailed in Annex 11).
- 6.39 It is likely that as further community radio services are launched, the number of areas where no additional services can be licensed on FM will increase, and that in some areas it will also prove impossible to license such services on alternative AM frequencies.

Figure 42: Community radio stations licensed and applications pending (March 2007).



- 6.40 A lack of frequency availability has undoubtedly shaped the nature of the community radio sector to date. Although in many instances much of the essence of community radio concerns localness, because the way in which such services are currently licensed severely limits geographical coverage, opportunities for services which provide for communities of interest, the members of which are typically dispersed over a wider area, have been very limited.
- 6.41 Another issue, to be addressed when considering the future regulation of community radio, is the degree to which advances in technology may increase the ability to award further licences in future, and to provide for wider coverage where this may be appropriate. Such possibilities may involve the direct use of new technologies, such as DRM (Digital Radio Mondiale) and its subsequent variants by community services, or it may be that additional existing analogue frequencies (FM and / or AM) may be freed up as commercial broadcasters abandon analogue simulcasting and increasingly migrate towards the sole use of digital technologies such as DAB (Digital Audio Broadcasting - Eureka 147). Alternatively, as discussed in section 3 of this document, it may be that widespread adoption of wi-fi and wi-max services could render the use of traditional broadcasting spectrum (and licensing regimes) redundant.

### Range of stations on offer

- 6.42 The first round of community radio licensing resulted in a diverse range of services being offered an opportunity to begin broadcasting. Stations were licensed in all four nations comprising the United Kingdom, as set out in figure 43 below, in a wide range of locations, urban, (including suburban) and rural.

**Figure 43: Distribution of community radio services**

Location	Total	Percentage of awards	FM / AM
England	87	(81.3%)	83 FM, 4 AM
Scotland	9	(8.41%)	9 FM
Northern Ireland	5	(4.67%)	5 FM
Wales	6	(5.60%)	5 FM, 1 AM

- 6.43 While some new stations simply seek to serve the entire geographical community within their defined coverage area, others have a more particular focus, serving a specific age range, ethnic group, or specialist interest. While not always easy to categorise precisely, the following table (figure 44 below) provides an overview of the types of service provided by the 107 stations licensed as part of the first round, between 2004 and 2006.

**Figure 44: Community radio services by type**

Type of service	Number	Percentage of awards
Geographical community-of-place service (general audience)	65	(60.74%)
Age related service (for children, students, older people etc.)	10	(9.34%)
Ethnic minority service	17	(15.88%)
Christian broadcasters	7	(6.54%)
Specialist interest (arts-based, military-based etc.)	8	(7.47%)

- 6.44 Perhaps not surprisingly, the greatest demand for community based radio services comes from the major urban conurbations where frequency availability is most restricted due to the greater number of radio services already operating.
- 6.45 It should be noted that, rather than solely representing an underlying pattern of demand, the bias towards stations broadcasting to a defined community of place (as shown in the preceding table) is likely also to result from the coverage restrictions of the current licensing regime.
- 6.46 The following table includes some specific examples of the types of community radio service already broadcasting. The details of target community and service description are taken from each station's final or draft 'Key commitments' document:

**Figure 45: Examples of community radio services**

Station and location	Target community and service description
<b>Angel Radio, Havant</b>	Angel Radio will provide an uplifting, nostalgic entertainment service aimed at the over 60s. It will mix music, humour and memories of years gone by with current relevant information. It will also support local initiatives, accentuate the positive aspects of old age and give a voice to a section of the community who are often undervalued and underserved by the media.
<b>Awaz FM, Glasgow</b>	Awaz FM will serve the Asian (Indian sub-continent) population residing in Glasgow. It will deliver entertainment, community information and news. The station will endeavour to be the Asian voice of Glasgow, directly supporting and promoting good causes through its programming, and offering training opportunities to the community.

<b>BFBS Radio, Lisburn</b>	The British Forces Broadcasting Service (BFBS) Lisburn will provide a service of support and welfare for the target community, British soldiers, sailors, airmen, officers, their immediate dependents, and associated civilians, living and working in the Lisburn community. The output will include regular pertinent news and information through entertaining, music-based radio programmes.
<b>CSR, Canterbury</b>	CSR will provide an educationally-orientated radio service for young people studying in the Canterbury area within the secondary, further and higher education sectors. This service will provide a forum for student debate on current affairs. The aim is to establish a new community radio service for young people in education, or aspiring to be in education.
<b>Forest FM, Verwood, Dorset</b>	Forest FM will be a truly local, non profit-distributing, community radio service for Verwood and the surrounding hamlets and villages of rural East Dorset. The station will 'belong' to the community and provide a means of access to the airwaves for local individuals, groups, societies and musicians, as well as providing media training and opportunities for young and old alike. Forest FM will truly be the voice of the local community.
<b>Gloucester FM, Gloucester</b>	Gloucester FM (GFM) will provide a community radio service targeting black and ethnic minorities and disadvantaged communities in the City of Gloucester. It will aim to address the inequalities and under-representation which exists within the media and society at large, while uniting the target audience through entertainment and communication with a strong community flavour. GFM will provide music of black origin, news, information and advice and will encourage and support the participation of the community in the operation of the service.
<b>GTFM, Pontypridd,</b>	GTFM will provide a local and inclusive radio service for all residents of Pontypridd. The aim shall be to invite participation by offering training and encouraging volunteer involvement. The service caters for the community by providing targeted and specialist music programming together with discussion programming on local topics and issues and promoting local events.
<b>Raidió Fáilte, Belfast</b>	Raidió Fáilte's objective is to provide a broad-based, community radio service, based on music and chat in the Irish language. It will typically encompass language learning, arts and literature, news and sports, lifestyles, hobbies and pastimes.
<b>Resonance FM, Central London</b>	Resonance FM will provide a service primarily for practising artists and engaged consumers whose interests fall outside the mainstream media. The service seeks to make public those forms of expression and artworks that have no place in traditional radio broadcasting and bring into being a new audience of listeners and creators. The station will also deliver some multicultural content to the diverse urban community.
<b>Unity 101, Southampton</b>	Unity 101 will promote and broadcast the music and culture of Asian and other ethnic minorities in Southampton and reflect the needs and interests of our target audience. We will aim to fulfil the training, skills and capacity needs of our volunteers and listeners so that they are better able to participate more fully in a socially cohesive society.

## The distinguishing characteristics of community radio

- 6.47 Community radio is a broad church. For any given community radio station, the community served can be a community of place, of interest, of ethnicity or other social grouping. Despite the range and diversity of community radio services, according to the Community Media Association (the UK's membership and advocacy body for community broadcasters) there are some common threads, or underlying principles, which bind them all together. Such commonalities include:
- community ownership;
  - operation for the benefit of members of the community as a whole;
  - a non-profit-distributive, non-profit-maximising, multiple sourced funding structure, which allows for community involvement both in programme making and management;
  - the provision of access by members of the community to the stations facilities; and,
  - a high degree of accountability to the target community.
- 6.48 These principles, which, to a large degree, were built into the terms of the Radio Authority's 'Access Radio' pilot licences and which today clearly underpin the approach taken by the Community Radio Order 2004, are set out in the CMA's Community Media Charter (attached as Annex 12). As incorporated into legislation, these principles provide a definition of community radio services which marks them out, both operationally and objectively as being different and distinct from both commercial and BBC counterparts alike.
- 6.49 Inevitably, there are some existing and aspirant broadcasters which, while seeking to provide services of relevance to a particular community, do not fit comfortably within the preceding definition. For example, illegal broadcasters (sometimes known as "pirate radio stations"), while they may serve a defined community of interest (specialist music) or ethnicity (for example Afro-Caribbean, Asian or Polish), may nevertheless be operated on a for-profit basis, by a closed group, and with little interest in facilitating direct involvement by members of the target audience in their activities. While capable of providing some community benefit, such groups might best be described as small-scale aspirant commercial stations, or sometimes even hobby operations, rather than as community radio services within the internationally accepted definition of that term.
- 6.50 Only one previously illegal broadcaster has applied for and been awarded a community radio licence (the Irish language service, Raidió Fáilte in Belfast – which previously described itself as "pre-licensed"). A few individuals known to have been involved in past illegal broadcasting (but not convicted within the previous five years) are now involved in community radio stations, although these examples clearly represent the exception rather than the rule. Interest was expressed by a number of other illegal broadcasters; however on this basis, none decided to apply for such a licence.

## Options for change

- 6.51 A key issue to be considered when examining the future regulation of community radio services is the extent to which current definitions, and the way in which they are

incorporated into relevant legislation, are appropriate. Adopting a more relaxed definition of what constitutes a community radio service could allow a greater range of prospective broadcasters (for example some currently illegal stations) to take up such licences. However, any such relaxations would also be likely to blur current distinctions between such services and their commercial counterparts both in terms of structure and outputs. The increased competition means there would be a risk that community stations felt more pressure to chase revenues (for example if they were allowed to make profits), so forcing out the more distinctive community-based services and resulting in a narrowing of choice in the diversity of services available to individual communities.

- 6.52 In the light of experience gained from the application of the current legislative framework to the community radio licensing process, which, if any, of these current principles of community broadcasting might be removed or altered? Are there any further principles that should be enshrined in future community radio legislation?
- 6.53 One possible option would be that, in future, all local radio licensing could be accommodated within a single regulatory category, making no distinction between commercial and community applicants. However, we believe that there are benefits from having different licensing regimes for different types of radio service delivering different public outcomes.
- 6.54 With the above in mind, the suggested possible changes and simplifications set out below are based on the premise that community radio remains regulated as a separate and distinctive 'third-tier' of UK radio broadcasting.

## 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.***

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

### Appropriateness of current characteristics of service

- 6.55 As noted in paragraph 6.15, the Community Radio Order 2004 sets out some specific 'characteristics of service' which all community radio stations must adhere to. These are, in essence, the bedrock on which the rest of the Community Radio Order 2004 is built.
- 6.56 Most of the current characteristics of service are amplified by selection criteria which Ofcom is required to consider when assessing licence applications (and which are discussed in more detail below). There is however one important exception – the requirement to operate on a not-for-profit basis.

- 6.57 At present, two of the characteristics required of community radio services are related to operating on a not-for-profit basis:
- Community radio services are required to be provided primarily for the good of members of the public or of particular communities and in order to deliver social gain, rather than primarily for commercial reasons or for the financial or material gain of the individuals providing the service.
  - The person providing a community radio service must not do so in order to make a financial profit, and must use any profit that it produced in the provision of the service wholly and exclusively for securing or improving the future provision of the service, or for the delivery of social gain to members of the public or the community that the service is intended to serve.
- 6.58 The non-profit-distributing structure has many benefits for community radio services. The current legislative framework for licensing radio broadcasting services requires that Ofcom must decide that spectrum will be allocated for this purpose, specify the technology to be used, and then advertise the availability of such spectrum when inviting applications for the required broadcasting licence. The one current exception to this is in respect of 'general multiplexes', whereby it is possible to provide a multiplex service without being required to apply for a radio (or television) multiplex licence under the provisions of the 1996 Broadcasting Act. In such circumstances, the prospective multiplex provider must acquire spectrum independently (e.g. in an auction).
- 6.59 However, this exception apart, the provision of a terrestrial national or local analogue radio service, or a single broadcast service (as opposed to a multiplex service) using a digital technology, by wireless telegraphy requires Ofcom to pre-determine the spectrum that shall be used for this purpose. Such an approach inhibits Ofcom's ability to license radio services using market mechanisms where it would be appropriate to do so. In addition, the existing legislation makes it almost impossible to allow any released spectrum to be used for radio broadcasting in a technology neutral way.
- 6.60 As is set out above, it is also the case that the historic policy of licensing all commercial radio services for the full period available under the legislation (formerly eight, now twelve, years), and the provisions in the legislation allowing for licences to be renewed for a further twelve years in return for the provision of a digital sound programme service on a relevant DAB radio multiplex, have meant that licences expire over many years, with the latest date currently falling during 2027.
- 6.61 In addition, unlike the case with some licences granted under the Wireless Telegraphy Act for spectrum use, there are no provisions within broadcasting licences which allow for their termination by the regulator for spectrum management reasons.
- 6.62 While the current legislative framework remains in place, we do not believe it is possible to set a common end-date for analogue radio broadcasting services which would allow for the spectrum to be re-allocated with the maximum degree of flexibility.
- 6.63 We therefore believe that the current legislative framework does not allow for the flexibility that is needed to clear the spectrum simultaneously, and that a new statutory framework is required.
- 6.64 New legislation is of course a matter for Government and Parliament to consider when the time is right, but we believe that the proposals and suggestions in this

consultation document represent a compelling case for a new statutory framework for radio broadcasting to be established.

- 6.65 For example, it is difficult to see how a for-profit commercial station, accountable to shareholders would be able to maintain the same level of accountability to members of its target community. Equally, the drive to make such a station as profitable as possible for its shareholders would almost inevitably lead to a reduction in the provision of social gain, perceived as it might be as an unnecessary expense.
- 6.66 An alternative approach might be to operate a two-tier community radio licensing scheme in which not-for-profit stations could access additional sources of funds (such as the Ofcom Community Radio Fund) but for-profit stations could not. However, for the reasons set out below Ofcom does not consider this an appropriate change to make.
- 6.67 Under the spectrum proposals in section 5, in the long-term Ofcom would like to facilitate the provision of small-scale local commercial stations wherever the market will support them. This would provide a route for those small-scale stations wishing to make a profit to continue to exist and grow while keeping community radio as a separate third tier.
- 6.68 On balance, operating on a not-for-profit basis is central to the delivery of community radio and a vital element distinguishing it from commercial radio. Stations wishing to make profits have other licensing regimes within which they can achieve their objectives, and it is sensible to maintain a clear divide between them and their not-for-profit counterparts.
- 6.69 Ofcom also considers that the other characteristics of service remain appropriate to distinguish community radio services from other types of radio service, and therefore is not proposing any changes to these, with the exception of the current inclusion of a definition of what constitutes "social gain" – which Ofcom considers may be better called "community benefit". In order to allow for greater flexibility, and potentially to allow for a greater variety of applicants to apply for community radio licences, Ofcom considers that it would be more appropriate for it to publish guidance as to the matters which would be taken into account when considering whether an applicant's proposals satisfy the requirement to deliver social gain or community benefit, rather than for these to be included within legislation.
- 6.70 Ofcom recognises that the four currently mandatory social gain criteria contained within the Community Radio Order 2004 provide between them a broad definition of the types of social gain which it would be appropriate for many community radio stations to provide.
- 6.71 With this in mind, it may be that while the social gain criteria which are currently mandatory provide a useful framework, there should not in future be an automatic presumption that all community stations should be automatically required to deliver against each one of them.
- 6.72 Given the fundamental importance of the delivery of social gain as a key characteristic of community radio stations, Ofcom would expect applicants to put forward a range of community benefit proposals which they consider would be relevant to members of their particular target community. Applicants would be expected to justify the approach taken, and those which failed to set out an adequate range of appropriate community benefit proposals would not be awarded a community radio licence.

**Suggestion 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.*

**Appropriateness of current selection criteria**

- 6.73 Paragraph 6.16 of this document details the seven selection criteria which Ofcom must currently consider when assessing community radio licence applications. It is primarily through the consideration of these selection criteria that Ofcom seeks to ensure that prospective community radio licensees would be able to deliver a service which would meet the requirements of the legislation and by extension, incorporate the various distinguishing characteristics summarised under paragraph 6.16.
- 6.74 The first four of these criteria (ability to maintain the proposed service, catering for tastes and interests, broadening choice, and demonstrating evidence of demand and support) are in effect the same as the criteria which Ofcom must consider when assessing analogue commercial radio licence applications.
- 6.75 The final three criteria (delivery of social gain, accountability and access) are, in legislative terms, unique to the Community Radio Order 2004.
- 6.76 We now consider each of the selection criteria in turn.

**Ability to maintain service**

- 6.77 Under the current legislation, in deciding whether or to whom to award a community radio licence, Ofcom is required to have regard to "the ability of each of the applicants for the licence to maintain, through the period for which the licence would be in force, the service which he proposes to provide".
- 6.78 This first selection criterion underpins the viability of any proposed service. However relevant an applicant's proposals may be in terms of service provision to a target community, the service will not deliver the desired benefits to members of that community if it cannot be sustained.
- 6.79 Ofcom considers this selection criterion to be particularly important, providing as it does a means of assessing proposed inputs to a service rather than focusing solely on proposed outputs such as programming and community benefit. An applicant's business plan, staffing and technical proposals provide Ofcom with much of the information needed to assess whether or not its operational proposals are in fact achievable in practice. As a result, this criterion is particularly useful in helping Ofcom distinguish between competing applicants which may be putting forward broadly similar proposals in terms of outputs.
- 6.80 Ofcom does not wish to restrict unduly applicants' chances of obtaining a community radio licence when putting forward radical or untried proposals, and recognises that, in a dynamic sector, some community radio stations should be "given the chance to fail". However, Ofcom takes the view that, in more general terms, it is important that the community radio sector as a whole becomes both well established and viable in the long-term.

- 6.81 At present, this selection criterion requires Ofcom to consider the ability of an applicant to maintain the service throughout the licence period. In practical terms, Ofcom recognises the difficulties which applicants face when trying to accurately predict income and expenditure over a five year period.

**Suggestion 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.*

**Catering for tastes and interests**

- 6.82 Ofcom is also required to have regard to "the extent to which any proposed service would cater for the tastes and interests of persons comprising the relevant community, and, where it is proposed to cater for any particular tastes and interests of such persons, the extent to which the service would cater for those tastes and interests".
- 6.83 Any radio service must cater for the tastes and interests of its listeners and this is no less true of community-based services than it is for commercial operators. However, it could be argued that in practice this selection criterion duplicates the effect of the social gain and accountability criteria (paragraphs 6.83 – 6.87).
- 6.84 Arguably, for a community radio station to successfully deliver social gain or community benefit to members of its target community, it must take into account the tastes and interests of the community concerned, otherwise its social gain objectives are unlikely to be relevant or achievable.
- 6.85 In addition, the requirement to be accountable to members of the target community (and to provide them with opportunities to be involved in the operation and management of the service) is also likely to enhance the degree to which tastes and interests are catered for by the proposed service.

**Suggestion 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.*

**Broadening choice**

- 6.86 This criterion requires Ofcom to have regard to "the extent to which any proposed service would broaden the range of programmes available by way of local services to persons living in the area or locality in which it would be provided, and, in particular, the extent to which the service would be of a nature or have a content distinct from that of any other local service for which would overlap the licence for the proposed service".

- 6.87 Broadening of choice is considered to be a necessary aspect of the delivery of social gain, and therefore should be considered under that statutory criterion.

**Suggestion 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.*

**Evidence of demand and support**

- 6.88 This criterion requires Ofcom to have regard to "the extent to which there is evidence that amongst persons living in that area or locality, there is a demand for, or support for, the provision of the proposed service".
- 6.89 Ofcom considers that evidence of demand and support is often evidenced through an applicant's proposals to deliver social gain. Setting out details of collaborative projects with external statutory and third sector organisations is an obvious example of where this occurs, the existence of such projects being clear evidence of support. It therefore seems unnecessary for there to be a separate selection criterion which focuses specifically on evidence of demand and support.
- 6.90 This is not to suggest that applicants should not, or will not wish to, submit evidence of demand and/or support for the provision of their proposed services, as part of their demonstration of social gain (rather than as a separate requirement). However, Ofcom recognises that evidence of demand can often be very difficult for a community radio licence applicant to demonstrate empirically. The cost of robust research can be prohibitive, and the programming and social gain proposals of community groups can often be more complex and diverse than the typically clearly defined programming format of a local commercial station. This makes the difficulty of producing relevant research material on a typically tight budget even more difficult.

**Suggestion 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.*

**Social gain**

- 6.91 As noted above, under the current legislation community radio services are required to be provided primarily for the good of members of the public, or of particular communities, and in order to deliver social gain. We have proposed above that social gain should no longer be defined in the legislation, and instead that Ofcom should publish guidance as to the objectives of a social nature which might be considered to represent social gain or community benefit, so that applicants have greater flexibility in deciding how best to meet this fundamental requirement.
- 6.92 The extent to which a proposed service would result in delivery of social gain is also one of the statutory selection criteria. Given the importance of social gain in distinguishing community radio from other types of radio service, as set out above, it also seems to Ofcom to be important that it continues to be included as a selection

criterion, to allow for differentiation between applicants' proposals when making licence award decisions, but may be better described as "community benefit".

#### **Suggestion 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..*

### **Accountability to the target community**

- 6.93 This current statutory criterion requires Ofcom to have regard to "the provision that each of the applicants proposes to make in order to render himself accountable to the relevant community in respect of the provision of the proposed service".
- 6.94 Ensuring accountability to the relevant community is considered to be a necessary aspect of the delivery of social gain, and therefore should be considered under that statutory criterion.
- 6.95 In practical terms, accountability measures help ensure that the type of programming output and the delivery of community benefit implemented by a community radio service remains relevant to, and focused on, the needs of members of its target community.

#### **Suggestion 6.7**

- *The statutory criterion which requires Ofcom to have regard to an applicant's proposals as to how to render himself accountable to the target community should be reconsidered.*

### **Access and training**

- 6.96 This criterion requires Ofcom to consider "the provisions an applicant proposes to make in order to allow for access by members of the relevant community to the facilities to be used for the provision of the service and for their training in the use of those facilities".
- 6.97 Provision of access and training is a considered to be a necessary aspect of the delivery of social gain, and therefore should be considered under that statutory criterion.

#### **Suggestion 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.*

## Proposed new selection criteria

6.98 The outcome of the above proposals would be a statutory framework for community radio which retains the current characteristics of community radio services (albeit without social gain or community benefit being defined in the legislation), to ensure that community radio remains a distinct sector of radio broadcasting, and one that offers greater flexibility for both applicants and the regulator by having fewer comparative selection criteria defined in statute. These proposed criteria are as follows:

- the ability of an applicant to establish its proposed service and maintain it for the first year of the licence period;
- the extent to which a proposed service would deliver community benefit.

## Other aspects of the Community Radio Order 2004.

6.99 In addition to considering the various selection criteria set out in the Broadcasting Act 1990 (as amended), Ofcom also has to consider a number of other factors when taking licence award decisions. These are set out in the Community Radio Order and include the following:

### Diversity of funding

6.100 The terms of the Community Radio Order 2004 amended the Broadcasting Act 1990 so as to require that community radio services obtain their funding from a multiplicity of sources and that no one source of such funding may account for more than 50% of the cost of operating the service in that year.

6.101 **Multiple source funding – non-commercial sources:** The requirement for community radio stations to be funded from a multiplicity of sources exists in order to help ensure that a station cannot, in effect, simply be bought by a single donor, who might have their own ends in mind rather than having the best interests of the target community at heart. In short, this requirement supports the maintenance of editorial independence.

6.102 Undoubtedly however, removing this restriction would make the funding of some community radio stations easier to sustain, as single donors, organisations or individuals, would be able to put more resources into a particular service.

6.103 However, there are risks with removing the requirement for multiple-source funding. If all of a station's funding was allowed to come from a single donor (or indeed from one advertiser) for example, this could compromise the operational and editorial independence of the station.

### **Suggestion 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.*

- 6.104 In addition, the Order also requires that on air commercial activities (the sale of spot advertising and sponsorship opportunities taken together) may also not account for more than 50% of operational income in any one year. This issue is examined under 'Economic impacts of community radio', later in this section.
- 6.105 **Volunteer inputs:** In the voluntary sector, it is often the case that a monetary value is attached to volunteer time. The value of such volunteer inputs may then be used as 'matched funding' against which grants are awarded. The Community Media Association carried out a survey of a number of its member organisations (some already broadcasting, others not) towards the end of 2006. Although analysis of data was still being carried out at the time of writing (February 2007), the CMA cautiously estimates the average value of such volunteer inputs for a station to be in the region of £75,000 per year<sup>17</sup>, (range £7,000 to £201,000).
- 6.106 At present, Ofcom does not recognise the value of volunteer inputs at community radio stations when calculating their annual turnover. Were such 'income' to be taken into account, it follows that the total turnover of a particular service would increase. Thus the amount of funding which could be obtained from a single source would effectively be increased while still remaining below the 50% limit.
- 6.107 One option might be to only take into account the value of volunteer time directly related to management and on-air activities. Volunteers providing management support could claim for a fixed number of hours per week, while volunteer broadcasters might claim only for the hours which they were on air for.
- 6.108 European Union and other schemes which value volunteer inputs typically require volunteers to 'sign in' when starting work and Ofcom would doubtless require a similar system to apply were it to take into account the value of volunteer inputs in future.
- 6.109 Clearly, were such inputs to be taken into account when assessing the turnover of a community radio station, there would need to be robust mechanisms to ensure accurate reporting.

### **Suggestion 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.*

## **Ownership**

### **Disqualified persons etc.**

- 6.110 Part II of Schedule 2 to the 1990 Act (as amended by the Communications Act 2003, and as modified by the Community Radio Order 2004) sets out the categories of people and organisations that may not hold a Broadcasting Act licence:
- a) Local authorities may not hold licences except where the radio service is for the purposes of carrying out the functions of a local authority and information relating to their activities (see section 349 of the Communications Act 2003). In all other

<sup>17</sup> Figures calculated using European Social Fund rates (Management £16.76, Production/front line £13.13, Assistant £11.30, Administration £9.38 per hour).

cases they are limited to a 5% interest in any company which holds a radio licence (this refers to ownership, and would not apply to grants from a local authority to a community radio licensee). An officer of a local authority is not restricted from involvement in a radio licence.

- b) Political bodies may not hold licences and are limited to participating with a 5% interest in any company that does. However, an officer of a political body may participate in a community radio licence, at a level below control.
- c) The BBC and The Welsh Authority may not hold a community radio licence.
- d) Advertising agencies and their associates (including directors) may not hold licences and are limited to participating with a 5% interest in any company that does.
- e) Anyone who has been convicted of any offence for unauthorised broadcasting ('pirate' broadcasting) under the Wireless Telegraphy Act 1949 or Marine etc. Broadcasting (Offences) Act 1967 or of an offence under section 97 of the Broadcasting Act 1990 cannot be involved (in any capacity at all) in the operation of the radio licence or the making of programmes included in the licensed service for five years after the date of conviction.
- f) Religious bodies and their associates may only hold licences if they have prior approval from Ofcom.

6.111 In addition, the Community Radio Order specifies that a licence holder has to be a body corporate. It also states that a licence cannot be held by a BBC, Channel 4 or S4C company, nor a person who currently holds a Broadcasting Act licence, other than a licence to provide a digital sound programme service, or a restricted service licence (radio or television), or a radio licensable content service (i.e. a satellite or cable service), or a television licensable content service.

6.112 In other words, holders of local or national commercial radio licences, all multiplex licences, digital additional service licences, additional service licences, channel 3, 4, and 5 and S4C television licences, television commercial additional service licences, teletext licences and digital programme service licences are all disqualified from controlling a community radio licence. The restrictions also apply to persons connected with the holders of such licences. (The Community Radio Order disappplied in respect of community radio services the restriction that would have disqualified the holding of a licence by an organisation which received more than 50% of its funding from public sources in the previous year.)

6.113 Finally, under the Broadcasting Act 1990, Ofcom will not issue a licence to someone who is considered not to be a 'fit and proper' person. As the term 'fit and proper' is not defined in the Act, it is a matter for Ofcom's discretion as to whether it regards a person as not fit and proper to hold a licence.

6.114 Once a licence has been granted, through the imposition of licence conditions, Ofcom reserves the right to revoke it if changes take place which affect the nature or characteristics of the licensee, or in the persons having control over or interest in the licence, such that they would have affected Ofcom's decision to award the licence had the changes occurred before the award. This does not mean that all changes in the ownership of a licensee would necessarily be problematic. In addition, no community radio licence may be transferred without Ofcom's written consent.

**Suggestion 6.11**

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

**Plurality rules**

- 6.115 At present, the legislative requirements relating to plurality of ownership of community radio services are that no single organisation may own (or have a controlling interest in) more than one community radio service. The principles which this limit secures are: a desire to ensure direct community involvement in the ownership of each community radio service; and, a more general desire to ensure a plurality of ownership within the sector as a whole.
- 6.116 Ofcom considers, however, that it may be disproportionate for there to be any plurality rules in respect of community radio licences. During the first round of community radio licensing, there were a number of examples of applicants who might have been able to benefit from common ownership (through an ability to share costs and thus direct more resources into programming, to the benefit of listeners) but were prevented from doing so by the current rules.
- 6.117 In addition, under the Radio Authority's 'Access Radio' pilot scheme, two stations, ALL FM and Wythenshawe FM, were, in fact, owned by the same organisation without any apparent difficulties arising. The ownership of these two services had to be separated when they became licensed under the terms of the Community Radio Order 2004.
- 6.118 Given that 'community of interest' services are those which are most likely to have considerable synergies between the communities served in different geographical locations, it is for such groups that the possibility of increasing the number of stations which can be owned and controlled by a single group may be most relevant.
- 6.119 More generally, the range of alternative broadcast and other media available in any given area reduce the need for specific plurality rules to be applied to the smallest (in revenue terms) sub-sector of radio broadcasting.

**Suggestion 6.12**

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

**Compliance**

- 6.120 As a relatively new tier of broadcast radio, community radio currently has only a very limited range of 'case history' to call upon in relation to licensing difficulties. To date, the vast majority of community radio services have tended to be particularly proactive in ensuring their compliance with regulations, many contacting the regulator when a specific scenario has given them cause for concern.
- 6.121 Because of the wider range of licensing conditions which apply to community radio services, they are, nevertheless, more heavily regulated than their commercial

counterparts. Ofcom is proactive in ensuring such compliance, through a process of requiring regular feedback from licensees.

- 6.122 At present, Ofcom includes in community radio licences conditions requiring community radio stations to report back to Ofcom on their activities and financial situation on an annual basis. These reports are assessed by Ofcom as part of the process of ensuring that licensees meet the requirements of the Community Radio Order as set out in each station's Key Commitments document.
- 6.123 At present the annual feedback required from stations covers a wide range of issues, as summarised below:
- a) Feedback on specific key commitments (programming output and delivery against social gain targets etc.)
  - b) Detailed financial information (sources of funding, amounts, expenditure etc.)
  - c) Details of volunteer inputs
  - d) Summary of significant achievements
  - e) Summary of significant difficulties encountered
- 6.124 While Ofcom acknowledges that the amount of information currently required from community radio licensees may be onerous, it is considered to be necessary to ensure appropriate regulation of the sector. However, in time, Ofcom will have built up a detailed picture of the community radio sector as a whole. It may well be the case therefore that, in future years, the number of questions asked as part of this process and the amount of detail requested will reduce in the light of experience.

### **Suggestion 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.*

## **Licence duration**

- 6.125 At present, community radio services may be licensed for a period of up to five years, but, there are no specific legislative provisions to allow for a community radio licence to be re-advertised or renewed upon expiry.
- 6.126 By comparison, as noted in section 5 of this document, specific legislative provisions exist which allow for commercial radio licences to be renewed under certain defined circumstances, or to be re-advertised.
- 6.127 There appear to be three options for what process could be undertaken when a community radio licence expires.
- 6.128 **Option 1: Extend licences for a further period, subject to specified requirements** – Under this option, a licence could be extended for a further specified

period (say, five years). It would seem inappropriate to extend a licence automatically, as this would undermine the fact that it was awarded for a limited term (i.e. five years), but it may be that a licence could be extended subject to a licensee demonstrating that it will be able to comply with its licence conditions in the extended period. A policy of extending community radio licences would be consistent with our proposals in respect of commercial radio licences (as set out in section 5 of this document).

- 6.129 Under this option, the ability of new community radio service providers to enter the market, especially in areas where no further suitable frequencies are available, would be reduced.
- 6.130 **Option 2: Re-advertise licences as they approach expiry** – Under this option, Ofcom would advertise the availability of a licence as it approached its expiry date, and invite applications for it. The licence would then be re-awarded under the same process as is undertaken for new licences (i.e. a beauty contest open to all). A similar process to that applied to local commercial radio licences, whereby it is established whether there will be competition for a licence before it is re-advertised and the licence is re-awarded to the incumbent under a 'fast-track' process in the event of there being no competition, could also be applied in respect of community radio licences
- 6.131 The most significant drawback to this option is the fact that, unlike the case in respect of local commercial radio licences, the transmission arrangements of any particular community radio licence are tailored for the specific coverage requirements of the holder of that licence, which in turn are based on the location of the community it serves. In addition, in order to maximise the efficient use of spectrum, the geographical mobility of a frequency allocated (i.e. the flexibility to use the frequency in another location) also tends to be minimal. As a result, it may well be the case that, in the majority of cases, community radio licences which are due to expire could be re-advertised only for coverage of the same area as is served by the incumbent licensee. Such a situation is likely to make any re-advertised community radio licences much less attractive to parties other than the incumbent, and thus potentially undermine the basis for their re-advertisement (i.e. to facilitate opportunities for new entrants).
- 6.132 **Option 3: Require an existing licensee to apply for a new licence** – Under this option, should an existing licensee wish to continue providing a service for longer than its five-year licence term, it would need to apply for a new licence as part of a future licensing round, potentially in competition with other applicants whose proposed services would require use of the same frequency. This process would better allow for potential new entrants, as all applicants would be able to apply to serve a coverage area tailored to their own requirements.

#### **Suggestion 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.*

## Economic impact of community radio

- 6.133 The current legislation includes no fewer than four separate provisions which are all designed to limit the potential economic impact of community radio services, particularly upon small-scale commercial radio services.
- 6.134 Section 105(3) of the Broadcasting Act 1990 as amended by the Community Radio Order 2004 says that Ofcom shall have regard to “the need to ensure that any service provided under [a community radio licence] does not prejudice unduly the economic viability of any other local service”.
- 6.135 The Community Radio Order 2004 also includes some specific restrictions designed to protect the financial viability of existing small-scale commercial radio stations.
- 6.136 In outline, these rules prevent Ofcom from licensing community radio services at all in areas where an existing commercial station broadcasts to fewer than 50,000 adults (aged 15+) within its MCA (Measured Coverage area) if 50% of the total potential audience of either broadcaster were also served by the other station.
- 6.137 On the same basis, the regulations also require that when licensing a community radio service in an area where an existing commercial radio station broadcasts to between 50,001 and 150,000 adults, Ofcom may not allow the new community service in question to generate revenues through the sale of on-air spot advertising or sponsorship opportunities.
- 6.138 There is a specific rule which requires that no community radio service may obtain more than 50% of its income from advertising and/or sponsorship. This requirement exists primarily for two reasons. It exists as a protection for existing commercial broadcasters, and as another of the distinguishing differences between the two types of station, preventing community radio stations from becoming de-facto commercial broadcasters.
- 6.139 Importantly, current regulations do not specifically protect commercial broadcasters from other forms of media, such as the internet, podcasts, or the licensing of additional commercial radio services. Indeed, it should be noted that although the terms of the Community Radio Order 2004 place restrictions upon the licensing of community radio services, it does not prevent the licensing of additional very small scale commercial stations in similar areas. It would therefore be possible to offer a commercial licence serving the same area as would have been the case for a community radio service in the location
- 6.140 One result of seeking to protect the interests of existing commercial broadcasters in this way is that the opportunity to extend choice for listeners in the areas concerned may be reduced. The same may also be said in respect of opportunities to broaden the choice of carrier for potential advertisers. In other words, might the wider benefits of establishing a new community radio service outweigh the perceived negative impact on existing small-scale commercial stations in the area?
- 6.141 However, Ofcom does recognise the harsh economic realities faced by small-scale commercial stations and the fact that the introduction of new services could potentially reduce advertising revenues of established stations.
- 6.142 The existence of the restrictions which relate specifically to whether there is a small-scale commercial radio station in the area proposed to be served by a community radio service mean that it is not easy to gather empirical evidence as to what impacts

the licensing of community radio services, and particularly those generating on-air commercial revenues, would have on existing small-scale commercial stations.

- 6.143 Nevertheless, Ofcom intends to carry out some further work in this area over the coming months. This work will include a comparison of the sources of commercial revenue obtained by community radio services and by their small-scale commercial competitors, to assess the degree of overlap which occurs and the subsequent potential impacts.
- 6.144 With regard to the '50% rule', although it is early days for the community radio sector, it is clear that some stations find it easier than others to obtain operational income from non-commercial sources, and that relaxing this current requirement would give some stations a chance to become operationally more secure.
- 6.145 Current information suggests that the number of community stations in danger of breaching the current 50% limit on income from on-air commercial activities is minimal, comprising predominantly of some of the services aimed at ethnic minority communities. However, as community services become more well-established, it may well be the case that an increasing number of such stations begin to come up against this limit.
- 6.146 One specific way of relaxing the current limits in relation to on-air commercial activities would be to separate the limits on advertising and sponsorship such that the percentage of income generated from each was assessed separately.
- 6.147 Under such modified rules, community stations would then be able to generate up to 50% of their income from the sale of spot advertising, together with up to a further 50% from the sale of sponsorship opportunities.
- 6.148 Such a move could result in services entirely funded from commercial sources, thus diluting one aspect of the current clear distinction between commercial stations and community radio services.
- 6.149 In relation to the future regulation of on-air commercial funding of community stations, there are a number of distinct options.
- The first of these would be, simply, to maintain the status-quo.
  - A slightly more radical approach would be to increase the total percentage of operational income which could be generated from such sources.
  - Alternatively, as set out above, on-air advertising and sponsorship could be assessed separately.
  - Finally, limits on spot advertising and / or sponsorship could be removed altogether.
- 6.150 It may be that there is a case to be made for increasing the current percentage limit on income from on-air commercial activities, or, indeed, for removing it altogether. However, this is a complex issue which requires further discussion and research, and one in relation to which Ofcom intends to develop its proposals over the coming months.

**Suggestion 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.*

**Coverage**

- 6.151 Community radio comes in a variety of shapes and sizes, serving a wide range of differing communities. The current coverage limitations for FM and AM services licensed under the terms of the Community Radio Order 2004 (of typically up to a five kilometre radius in urban areas) stem primarily from a lack of available frequency resources and not from any intrinsic necessity to limit the scale of coverage for other policy reasons.
- 6.152 It should be noted that had a wider nominal coverage radius been available during the first round of community radio licensing it would have been almost inevitable that the total number of community radio services licensed would have been lower than was actually the case. This is because the existence of larger community services would have had a detrimental impact on the ability to re-use frequencies for further such services in adjacent areas.
- 6.153 Although the Communications White Paper (of December 2000)<sup>18</sup> made references to the possible benefits of "very local community based radio" and "small radio stations", the Order itself contains no specific reference to the scale of coverage appropriate for community-based services. Some community services (including a number which are also licensed under the terms of the Community Radio Order 2004 for the operation of a localised FM or AM outlet) often reach out to wider national and even international communities via other platforms, such as satellite radio and the internet.
- 6.154 Within presently available spectrum resources, except in some more remote areas, there is little room for the provision of community radio services seeking to provide wider geographical coverage via FM or AM transmitters.

**Suggestion 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.*

<sup>18</sup> The Communications White Paper, HMSO 'A New Future for Communications' Cm 5010, December 2000, ISBN 0 10 150102 1 (Page 40, Section 4.5.2).

## Annex 1

# Responding to this consultation

## How to respond

- A1.1 Ofcom invites written views and comments on the issues raised in this document, to be made **by 5pm on 29 June 2007**.
- A1.2 Ofcom strongly prefers to receive responses using the online web form at <http://www.ofcom.org.uk/consult/condocs/>, as this helps us to process the responses quickly and efficiently. We would also be grateful if you could assist us by completing a response cover sheet (see Annex 3), to indicate whether or not there are confidentiality issues. This response coversheet is incorporated into the online web form questionnaire.
- A1.3 For larger consultation responses - particularly those with supporting charts, tables or other data - please email [peter.davies@ofcom.org.uk](mailto:peter.davies@ofcom.org.uk) attaching your response in Microsoft Word format, together with a consultation response coversheet.
- A1.4 Responses may alternatively be posted or faxed to the address below, marked with the title of the consultation.
- Peter Davies  
Director of Radio and Convergent Media  
5<sup>th</sup> Floor  
Riverside House  
2A Southwark Bridge Road  
London SE1 9HA
- Fax: 020 7981 3806
- A1.5 Note that we do not need a hard copy in addition to an electronic version. Ofcom will acknowledge receipt of responses if they are submitted using the online web form but not otherwise.
- A1.6 It would be helpful if your response could include direct responses to the proposals made in this document, which are listed together at Annex 4. It would also help if you can explain why you hold your views and how Ofcom's proposals would impact on you.

## Further information

- A1.7 If you want to discuss the issues and questions raised in this consultation, or need advice on the appropriate form of response, please contact Neil Stock on 020 7783 4396 or Will Jackson on 020 7981 3938.

## Confidentiality

- A1.8 We believe it is important for everyone interested in an issue to see the views expressed by consultation respondents. We will therefore usually publish all responses on our website, [www.ofcom.org.uk](http://www.ofcom.org.uk), ideally on receipt. If you think your response should be kept confidential, can you please specify what part or whether

all of your response should be kept confidential, and specify why. Please also place such parts in a separate annex.

- A1.9 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and will try to respect this. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.
- A1.10 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's approach on intellectual property rights is explained further on its website at <http://www.ofcom.org.uk/about/accoun/disclaimer/>

### Next steps

- A1.11 Following the end of the consultation period, Ofcom intends to publish a statement in October 2007.
- A1.12 Please note that you can register to receive free mail Updates alerting you to the publications of relevant Ofcom documents. For more details please see: [http://www.ofcom.org.uk/static/subscribe/select\\_list.htm](http://www.ofcom.org.uk/static/subscribe/select_list.htm)

### Ofcom's consultation processes

- A1.13 Ofcom seeks to ensure that responding to a consultation is easy as possible. For more information please see our consultation principles in Annex 2.
- A1.14 If you have any comments or suggestions on how Ofcom conducts its consultations, please call our consultation helpdesk on 020 7981 3003 or e-mail us at [consult@ofcom.org.uk](mailto:consult@ofcom.org.uk) . We would particularly welcome thoughts on how Ofcom could more effectively seek the views of those groups or individuals, such as small businesses or particular types of residential consumers, who are less likely to give their opinions through a formal consultation.
- A1.15 If you would like to discuss these issues or Ofcom's consultation processes more generally you can alternatively contact Vicki Nash, Director Scotland, who is Ofcom's consultation champion:

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

Tel: 0141 229 7401  
Fax: 0141 229 7433

Email [vicki.nash@ofcom.org.uk](mailto:vicki.nash@ofcom.org.uk)

## Annex 2

# Ofcom's consultation principles

A2.1 Ofcom has published the following seven principles that it will follow for each public written consultation:

### Before the consultation

A2.2 Where possible, we will hold informal talks with people and organisations before announcing a big consultation to find out whether we are thinking in the right direction. If we do not have enough time to do this, we will hold an open meeting to explain our proposals shortly after announcing the consultation.

### During the consultation

A2.3 We will be clear about who we are consulting, why, on what questions and for how long.

A2.4 We will make the consultation document as short and simple as possible with a summary of no more than two pages. We will try to make it as easy as possible to give us a written response. If the consultation is complicated, we may provide a shortened version for smaller organisations or individuals who would otherwise not be able to spare the time to share their views.

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

A2.6 There will be a person within Ofcom who will be in charge of making sure we follow our own guidelines and reach out to the largest number of people and organisations interested in the outcome of our decisions. This individual (who we call the consultation champion) will also be the main person to contact with views on the way we run our consultations.

A2.7 If we are not able to follow one of these principles, we will explain why. This may be because a particular issue is urgent. If we need to reduce the amount of time we have set aside for a consultation, we will let those concerned know beforehand that this is a 'red flag consultation' which needs their urgent attention.

### After the consultation

A2.8 We will look at each response carefully and with an open mind. We will give reasons for our decisions and will give an account of how the views of those concerned helped shape those decisions.

## Annex 3

# Consultation response cover sheet

- A3.1 In the interests of transparency and good regulatory practice, we will publish all consultation responses in full on our website, [www.ofcom.org.uk](http://www.ofcom.org.uk).
- A3.2 We have produced a coversheet for responses (see below) and would be very grateful if you could send one with your response (this is incorporated into the online web form if you respond in this way). This will speed up our processing of responses, and help to maintain confidentiality where appropriate.
- A3.3 The quality of consultation can be enhanced by publishing responses before the consultation period closes. In particular, this can help those individuals and organisations with limited resources or familiarity with the issues to respond in a more informed way. Therefore Ofcom would encourage respondents to complete their coversheet in a way that allows Ofcom to publish their responses upon receipt, rather than waiting until the consultation period has ended.
- A3.4 We strongly prefer to receive responses via the online web form which incorporates the coversheet. If you are responding via email, post or fax you can download an electronic copy of this coversheet in Word or RTF format from the 'Consultations' section of our website at [www.ofcom.org.uk/consult/](http://www.ofcom.org.uk/consult/).
- A3.5 Please put any parts of your response you consider should be kept confidential in a separate annex to your response and include your reasons why this part of your response should not be published. This can include information such as your personal background and experience. If you want your name, address, other contact details, or job title to remain confidential, please provide them in your cover sheet only, so that we don't have to edit your response.

**Cover sheet for response to an Ofcom consultation**

**BASIC DETAILS**

Consultation title:

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

**CONFIDENTIALITY**

Please tick below what part of your response you consider is confidential, giving your reasons why

Nothing	<input type="checkbox"/>	Name/contact details/job title	<input type="checkbox"/>
Whole response	<input type="checkbox"/>	Organisation	<input type="checkbox"/>
Part of the response	<input type="checkbox"/>	If there is no separate annex, which parts?	

If you want part of your response, your name or your organisation not to be published, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

**DECLARATION**

I confirm that the correspondence supplied with this cover sheet is a formal consultation response that Ofcom can publish. However, in supplying this response, I understand that Ofcom may need to publish all responses, including those which are marked as confidential, in order to meet legal obligations. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

Ofcom seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

Name

Signed (if hard copy)

## Annex 4

# Consultation proposals

A4.1 Our key proposals for this consultation are outlined in the executive summary and described in more detail throughout the document. We welcome comments on each of the proposals which are repeated below:

## 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.***

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

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

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.*

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

## 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.***

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

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

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.*

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.*

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

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

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

## 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.**

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

- 3.1\*: *So as to maximise DAB coverage for local radio services, Ofcom should be given the power to increase the licensed areas of existing DAB local multiplex licences where such increases would not be significant, and to approve significant increases in exceptional circumstances.*
- 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).*
- 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.*
- 3.4: *We propose that licences re-awarded under the current statutory framework should be granted with an expiry date of 31 December 2015.*
- 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.)*
- 3.6\*: *Ofcom should be given the power to:*
- *extend all existing licences for an indefinite period, so as to achieve a common end-date for all licences;*
  - *include conditions in all new or extended licences allowing for their termination by Ofcom with at least two years' notice, so as to allow the spectrum to be taken back for other uses. The appropriate termination date should be decided by future reviews, which should also have a view to maximising flexibility for the use of the spectrum and take into account public policy needs.*

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

## 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.***

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

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

*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.*

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

## 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.***

## 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.***

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

- 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.*
- 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.*
- 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.*
- 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.*
- 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.*
- 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.*
- 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.*
- 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.*
- 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.*
- 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.*
- 6.11: There should be no changes to the categories of person prohibited from holding a community radio licence.*
- 6.12\* The current rule requiring that no body corporate may hold more than one community radio licence should be reconsidered.*
- 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.*

*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.*

*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.*

*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.*

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

We would welcome views on the proposals and accompanying suggestions contained in this document by 29 June 2007. Details of how to respond are given in Annex 1.

## Annex 5

# Impact assessment

## Introduction

- A5.1 This annex when read in conjunction with the rest of this consultation document represents an IA, as defined by Section 7 of the Communications Act 2003 (“the Act”). IAs form part of best practice policy making and are commonly used by other regulators. This is reflected in Section 7 of the Act, which means that generally we have to carry out IAs where our proposals would be likely to have significant effect on businesses or the general public, or where there is a major change in Ofcom’s activities. In accordance with Section 7 of the Act, in producing this IA, Ofcom has had regard to such general guidance as it considers appropriate, including related Cabinet Office guidance and our own IA guidelines<sup>19</sup>.
- A5.2 As set out in the main document, the outcome of this review process is intended to be a new framework for regulating commercial and community radio which takes account of the on-going transition from analogue to digital platforms and other developments in the communications market. It is a framework that ensures that regulation is proportionate, consistent and targeted only where intervention is needed while at the same time enabling Ofcom to meet its statutory duties and secure the public policy objectives for radio broadcasting. Taking this strategic approach implies that Ofcom should aim to bring forward proposals which, when taken as a whole, seek to make radio regulation – as far as is practicable - consistent across different broadcast platforms but which give Ofcom sufficient flexibility to apply regulation in a manner which is proportionate and targeted only where action is needed.
- A5.3 At this stage the proposals are set out in general terms. The IA does not set out detailed quantification of the various proposals being considered. Rather it sets out to describe the nature of the advantages and disadvantages of the proposals and, where appropriate, to give some idea of their magnitude. The proposals put forward by Ofcom need to be taken as a whole. The analysis below does discuss each set of proposals in turn but it should be remembered that they form an integrated package.
- A5.4 The timing of any proposed change will be an important consideration in assessing the impact of any proposal.

## Background – intervention in the radio sector

- A5.5 The historical basis for intervention in the radio sector was examined in some detail in *Radio - Preparing for the Future*<sup>20</sup> but, as set out in the main consultation document, the main public purposes that have been identified for the radio sector as a whole – BBC, commercial and community – are:
- Sustaining citizenship and civil society;
  - Promoting education and learning;
  - Stimulating creativity and cultural excellence;

<sup>19</sup> [http://www.ofcom.org.uk/consult/condocs/ia\\_guidelines/condoc.pdf](http://www.ofcom.org.uk/consult/condocs/ia_guidelines/condoc.pdf)

<sup>20</sup> Radio – Preparing for the Future (Phase 2). Ofcom February 2006.

- Representing the UK, its nations, regions and communities;
  - Bringing the UK to the world and the world to the UK; and,
  - Promoting social gain.
- A5.6 Ofcom also considered that plurality in the provision of the services which deliver these public purposes was important and that therefore it was not sufficient to leave the achievement of these aims to the BBC.
- A5.7 Ofcom has used these public purposes to develop a strategic framework for the future regulation of radio and this framework has three main elements, two of which set out objectives of for regulatory intervention and one which refers to the implementation of that framework. The two key objectives are:
- To enhance choice, diversity and innovation for consumers at the UK, national, regional, local and community levels; and,
  - To secure citizens' interests through the provision of radio designed to meet public purposes.
- A5.8 In terms of implementation the aim is that the framework will be implemented with as little intervention in the market as possible, consistent with meeting these objectives.
- A5.9 In relation to the first objective of enhancing choice, diversity etc, in the short-run it was identified that there will be a need to:
- ensure a wide range of services in the commercial sector and, in particular, the provision of local material, by regulating in the most effective way possible;
  - encourage the development of more choice and competition by licensing new analogue and digital services and encouraging the growth of digital radio;
  - encourage the growth of a strong commercial sector, capable of extending range and choice and investing in the future.
- A5.10 In relation to the second objective of securing citizen's interests, it was identified that the public purposes will be met in different ways, taking into account:
- the need to achieve a balance between the public and commercial sectors;
  - the importance of plurality of provision of radio designed to deliver the public purposes; and,
  - the need to encourage the development of a thriving community radio sector.
- A5.11 In terms of implementing this approach, it is one of Ofcom's regulatory principles that it will "operate with a bias against intervention" and "will always seek the least intrusive regulatory mechanisms to achieve its policy objectives". It is thus important that the nature of the regulatory intervention in this area is kept under review, particularly against a background of changing market dynamics, to ensure that the level of regulation is appropriate for delivering the public purposes.
- A5.12 Section 3 of the main consultation document has discussed the challenges that face the commercial radio industry in some detail. In summary, while overall listening is

fairly constant, listening to local commercial radio stations is declining as sources of competition increase and digital listening is growing in importance. At the same time, advertisers are finding new means of reaching consumers. While it is the case that financial pressures are being felt across the whole commercial radio industry, given the fixed nature of much of the cost base, it is the smaller stations that suffer from volatility in profits if advertising revenues decline.

- A5.13 These changing market dynamics give rise to a range of important issues but at the heart of them is the question of whether the regulatory framework that was appropriate in an analogue-only world still appropriate in a multi-platform, digital world?
- A5.14 The main document set out an outline of what Ofcom thinks a healthy radio market in the UK would look like in the long-run. The challenge for Ofcom is thus to set out how the regulatory framework needs to change over time so that the regulatory framework does not prove to be a hindrance to the development of the radio sector in the UK. The proposals which are examined in this IA focus on how Ofcom can retain an appropriate degree of flexibility to manage the evolution of the regulatory framework to the changing market circumstances.
- A5.15 As set out in main consultation document, there are currently three main regulatory requirements which apply to commercial radio:
- To secure appropriate levels of diversity of programming on commercial radio, catering for different tastes and interests
  - To secure appropriate levels of local programming on commercial radio, catering for different tastes and interests
  - To secure appropriate plurality to ensure access for different voices and viewpoints on both local and national radio.
- A5.16 This IA considers the how the means of securing these regulatory requirements could be adapted to reflect the changing market circumstances while remaining consistent with Ofcom's overall objectives. The rest of this section examines the rules in relation to each of these three regulatory requirements in order to consider how they might be adapted over time.
- A5.17 The main document also identified two other key elements of the regulatory framework that need to be considered: flexibility in respect of longer-term planning of analogue (FM and AM) radio spectrum and community radio. These are addressed in subsequent sections.
- A5.18 However, Ofcom would make a general point that it is not the case that changes in regulation alone can secure the future of commercial radio – much of that is up to the industry itself – but it is appropriate to review the nature of the regulation to ensure that it remains appropriate.

### Timing of changes

- A5.19 An issue which is common to all the discussions of how the rules in relation to diversity, localness and plurality might evolve is that of timing i.e. the timing at which changes in the regulatory environment might be made.
- A5.20 The issues in relation to deciding on timing matters are set out in the table below.

<b>Proposed approaches</b>	<b>Advantages</b>	<b>Disadvantages</b>
<i>(1) Set a specific date</i>	Provides transparency and certainty for the industry.	Given the dynamic nature of the sector, setting a specific date for changing the regulatory environment would run the risk of Ofcom over- or under-estimating the pace of change. It is very rigid.
<i>(2) Linking changes to a measure of the growth of digital radio e.g. the proportion of digital listening.</i>	Changes would be linked more directly to the changing market circumstances.  The metric could also serve as a proxy for the financial impact of the growth in digital listening on analogue radio stations as well recognising the financial position of digital radio stations.	Setting the appropriate threshold still involves an element of judgement.

A5.21 On balance Option (2) i.e. linking changes in the regulatory regime to some metric of the growth in digital radio would appear to be more in line with the idea of introducing more flexibility into the regulatory framework for Ofcom. The main document invites comments as to what an appropriate threshold might be.

### **Diversity requirements**

A5.22 The main lever that is currently used to secure appropriate levels of diversity of programming on commercial radio is the use of Format for both local and national services.

A5.23 Each analogue local commercial radio station licence includes a Format which sets out the type of programming the station is required to provide. The Format sets out not only the type of programming that the station will broadcast (the type of music, the amount of speech, the number of news bulletins etc) but also specifies the amount of local material and locally produced programming that the station must provide. The Format is written by the licensee itself (as part of the licence application) so in essence it represents a series of commitments that the licensee makes at the outset of the licence about the service it will provide, given its views/expectations about the development of the market it is entering. Formats for analogue radio stations have been simplified in recent years but still can include some detailed requirements.

A5.24 The formats for DAB Formats are less detailed than for analogue consisting only of a short description specifying the character of the service.

A5.25 Radio services licensed by Ofcom for carriage on digital television platforms such as digital satellite, cable or DTT have no Format requirements and radio services on the internet are not regulated in any way.

A5.26 The main issue here is therefore whether having this differential approach in the mechanisms for securing diversity, particularly on local and national analogue radio, is likely to remain appropriate over time or whether it could impose an unnecessary restriction on local analogue radio stations.

## Format restrictions on local analogue stations

A5.27 Taking into account the Ofcom's regulatory objectives in this area, the appropriate criteria against which to assess the different options would appear to be:

- Providing Ofcom with additional flexibility to adopt the regulatory regime according to market circumstances
- Consistency with public purposes for radio;
- Consistency with regulatory principles i.e. seeking least intrusive regulatory mechanisms to achieve Ofcom's policy objectives

A5.28 In terms of considering how the existing Format system might be adapted to the changing market environment, and in particular the rise in digital listening, the advantages and disadvantages of the three main policy options are set out in the table below.

Proposed approaches	Advantages	Disadvantages
<i>(1) Do Nothing</i>	<p>Digital listening is still only a small percentage of overall listening and the existing regulatory requirement secures Ofcom's statutory duties and is well-understood.</p> <p>Formats represent the commitments that radio stations gave as part of licensing process and are thus an important part of regulatory "contract" for which spectrum was granted to the licensee.</p> <p>Licensees can still approach Ofcom to request a licence variation under one of four statutory criteria so they do have the option to seek Format changes.</p>	<p>Although digital listening is still relatively small scale, it is growing rapidly and there is a need to address the issue of flexibility in the regulatory framework now.</p> <p>Format requirements mean that analogue local radio stations are constrained in terms of their ability to respond to changes in market circumstances.</p> <p>In previous publications Ofcom has indicated that it will not consider any Format changes within two years of the launch of a station.</p> <p>Relying on the Format change request process would be a piecemeal response to an issue which affects the industry as a whole.</p>
<i>(2) Align analogue local radio Formats to match those of DAB digital stations with the timing to be based on a threshold of digital listening</i>	<p>It would provide a mechanism for aligning regulation of analogue with that for digital radio stations carried on DAB multiplexes as digital listening becomes more significant over time.</p> <p>Linking the timing of the change to a measure of the growth in digital listening to ensure retention of localness</p>	<p>Analogue local radio would still face competition from stations carried on satellite, DTT, cable and the internet which are not subject to diversity regulation.</p>

	<p>requirements for a period of time and would be consistent with Ofcom's statutory objectives.</p> <p>It would offer the prospect of a level playing field for analogue radio to compete with digital services in the future.</p> <p>The retention of some Format restrictions would mean that Ofcom would retain backstop controls on licensed services.</p> <p>Overall it would represent a flexible approach to changing circumstances.</p> <p>It does not rule out a move to abolish Formats altogether over time.</p>	
<i>(3) Abolish analogue local radio Formats altogether</i>	<p>It would represent a forward-looking restructuring of the regulatory system in anticipation of changing market circumstances.</p> <p>This could be an appropriate long-term solution and so could also be tied to some trigger such as a digital listening threshold (although it would require legislation).</p>	<p>Given that digital listening is still at a relatively low level, it is not clear that it would be appropriate in the short- to medium term.</p> <p>Once implemented it would remove a key "lever" Ofcom has to ensure the fulfilment of its statutory duties: there would be no control over provision of local content/local programming.</p>

A5.29 On the basis of the discussion of the advantages and disadvantages of the different options set out above, Ofcom's preference at this stage is for the option of aligning the Format requirements for local analogue and digital stations once a certain threshold of digital listening has been achieved. It would be more in line with the idea of introducing more flexibility into the regulatory framework for Ofcom while at the same time being consistent with Ofcom's statutory duties.

### **Format restrictions on national analogue radio stations**

A5.30 The above discussion focused on the impact of Format restrictions at the local level. In addition there is an issue in respect of whether the Format restrictions on national analogue radio should be relaxed as DAB national services develop although the relevant criteria against which to judge the options are basically the same.

## Policy proposals

Proposed approaches	Advantages	Disadvantages
<i>(1) Do Nothing</i>	<p>Digital listening is still only a small percentage of overall listening and the existing regulatory requirement secures Ofcom's statutory duties and is well-understood.</p> <p>Licensees took on the Format requirements as part of the licence award process.</p> <p>No evidence that Format restrictions currently impose a significant burden on the relevant national stations.</p>	<p>This approach does not recognise the changing media landscape.</p> <p>It provides Ofcom with little flexibility to respond to changing market conditions.</p>
<i>(2) Seek amendment to the legislation to allow Format restrictions on national analogue radio stations to be relaxed once a certain threshold of digital listening is reached.</i>	<p>As analogue listening declines, the relevance of the Format restrictions at national level will also decline. This option would allow the regulatory system to adapt to such changes in market developments.</p> <p>Does not involve any change to the position of national DAB multiplexes e.g. mux operators will still be required to offer national services which appeal to a variety of tastes and interests.</p>	<p>Requires legislation and so is not within Ofcom's control.</p>
<i>(3) Abolish national Format restrictions altogether</i>	<p>Would give national stations full flexibility to respond to competition from digital listening.</p>	<p>Would require legislation.</p> <p>Digital listening still at a relatively early stage.</p> <p>There would be a potential loss of consumer choice.</p>

A5.31 On the basis of the discussion of the advantages and disadvantages of the different options set out above, Ofcom's preference at this stage is for the option to seek changes in the legislation to allow the Format restrictions on national analogue licences to be relaxed once a certain threshold of digital listening has been achieved. It would be more in line with the idea of introducing more flexibility into the regulatory framework for Ofcom while at the same time being consistent with the delivery of the public purposes for radio.

### Localness requirements

A5.32 The main lever that is currently used to secure appropriate levels of local programming on commercial radio is the specific local content and local programming requirements.

- A5.33 Ofcom's analysis suggests that the cost model for a typical radio station is one which is made up predominantly of fixed costs: e.g. around 70% of total costs may be characterised as fixed in nature. The high proportion of fixed costs means that firms are particularly exposed to changes in their sources of revenue and so their profitability can be particularly volatile according to market conditions. In part, the fixed nature of some of the costs derive from regulatory requirements, e.g. the requirement to maintain studios in the area served by the station, the need to produce content in the area served by the station etc.
- A5.34 In the context of the previous radio review – *Radio – Preparing for the Future* - Ofcom has already announced a move away from an emphasis on input regulation to one which puts the emphasis on output regulation – the services actually delivered to listeners. Those proposals focused on allowing more automation, the use of news hubs etc. At the same time the review did recognise that aspects of the localness requirements probably did continue to impose certain costs on broadcasters e.g. the requirement for studios to be located with a station's licensed area meant that radio groups were not able to exploit economies of scale in terms of premises and administrative/management overheads. For instance, it was estimated that co-locating studios could result in cost savings of up to £30k per annum for smaller stations and £60k per annum for county-sized stations although there would be large variations across the country according to rental values. At the same time, as part of the Radio Review, research carried out for Ofcom did indicate that a substantial majority of listeners did indicate that it was important or very important to them where their local radio station was based.
- A5.35 Taking into account both the costs to producers and benefits to listeners, Ofcom concluded at the time that it remained important for stations to be based locally, "so as to better provide the local programming which audiences want".
- A5.36 Research carried out by Ofcom confirmed that one of the main reasons people listen to radio is for local news, weather and traffic although they are not necessarily the most important reasons why people choose to listen. While the level of listening to local stations has fallen slightly in recent years, there are no signs that local radio will not remain important for many listeners for years to come – although local radio listening is likely gradually to transfer from analogue to digital platforms. While new sources of local news and travel may reduce the need for local radio to be required to deliver such output, other attributes of local radio are likely to remain important: i.e. some form of local radio is likely to continue to have an important place in the media landscape and not be met by other media. Going forward, as digital listening grows, the regulatory regime will need to adapt the localness requirements on analogue stations to maintain their relevance.
- A5.37 Localness has two important dimensions. One is the nature of the output itself (e.g. local news, weather and traffic) and the second is local production i.e. producing material in the actual area served by a particular radio station.
- A5.38 In the case of local content material these two aspects come together e.g. it is difficult to envisage genuinely local news content being produced outside of the area to which it most directly relates. It is likely even if local production requirements were to be relaxed to some "core" level, the local content that listeners value highly would be protected because it is the content which is most amenable to being produced on a local basis. There is thus an argument that if listeners do indeed value local content, then it is likely that radio stations would continue to offer such content whether or not they are under a regulatory obligation i.e. the market would ensure some degree of provision for such content. As such the key issue in terms of an

economic rationale for intervention becomes whether the market would provide a socially optimal level of such output. Ofcom is not saying that the market would not be able to satisfy that level of demand – particularly as spectrum becomes less scarce - rather it is looking to develop proposals which put the industry in a better position to be able to test and evaluate this proposition.

- A5.39 However, for other genres of programming it could be the case that a requirement to maintain certain levels of local production going forward will impose a level of costs on the station licensee that was commercially unsustainable in the longer-run compared to (say) sharing the production costs across a number of stations.
- A5.40 As set out above, it has already been recognised that the nature of the localness requirements in terms of both content and where it is produced could impose a cost on radio station licensees. Given the fixed cost nature of radio stations businesses, these costs would tend to fall proportionately more heavily on smaller stations. In terms of quantifying the scope of these costs, estimates set out in the main consultation document suggest that – across the country as a whole - the costs of the current local production requirements for FM analogue services could be in the order of some £7.5m per annum compared to a situation which took more account of the ability of stations to bear such costs and set localness requirements accordingly.
- A5.41 Given that listeners have reported that they currently value the fact that material is locally produced, Ofcom recognises that, although a move away from the current situation could yield benefits to producers in the form of cost savings, it could also impose costs on listeners in that it would reduce the value they place on local radio. However, it is relevant to take into account the fact that the proposals being considered here would only be triggered once digital listening had reached a certain threshold. Over time there would be an expectation that the “loss” suffered by listeners would diminish because other sources of local content were available. Ofcom would not consider a reduction in the localness requirements on analogue radio until there was a body of evidence that there was provision of local information and content from a range of other sources.
- A5.42 One of Ofcom’s statutory duties is to secure an appropriate level of localness (local material and locally-made programmes) on local analogue radio stations. Against the backdrop of a changing media environment, Ofcom’s proposals aim at introducing greater flexibility in the application of this requirement.
- A5.43 Again, the relevant criteria against which to evaluate the options would seem to be:
- Providing Ofcom with additional flexibility to adopt the regulatory regime according to market circumstances
  - Consistency with public purposes for radio;
  - Consistency with regulatory principles i.e. seeking least intrusive regulatory mechanisms to achieve Ofcom’s policy objectives

## Policy proposals

Proposed approaches	Advantages	Disadvantages
<i>(1) Do Nothing</i>	<p>Research indicates that listeners value local content although it is not necessary the main reason that they listen to local commercial radio stations.</p> <p>Stations can still request a change to their localness requirements via the Format change process on a case by case basis.</p>	<p>The requirements in respect of local production can be expensive to maintain – costs to producers, particularly for small stations – and it is not clear they are relevant to the provision of local content most valued by listeners.</p> <p>It is likely to become more difficult to sustain localness requirements over time. This could ultimately result in collapse of some stations – which could result in the loss of local services altogether in some areas.</p> <p>Relying on Format change approach will not necessarily provide a transparent sustainable long-term framework.</p>
<i>(2) Reduce all local programming obligations to a standard minimum threshold once a certain threshold of digital listening is reached.</i>	<p>It would be transparent and straight-forward to understand and implement.</p> <p>All stations would have to maintain some local programming.</p> <p>There would be financial benefits to producers in that there could be cost savings. It should not affect the provision of the local content that viewers most value e.g. local news, traffic and weather.</p>	<p>It would have to be accepted that broadcasters might not do any more than provide the minimum. It could therefore affect other attributes of localness that are valued from a social perspective e.g. providing companionship, a sense of belonging etc.</p> <p>Does not take account of differing abilities to bear cost of local programming,</p> <p>It would result in less local production than at present.</p> <p>It would remove Ofcom's discretion to vary the localness requirements according to the particular circumstances of an area and could cut across Ofcom's duty to secure an appropriate level of local programming.</p>
<i>(3) Allow smaller stations to merge their programming once a certain threshold of digital listening is reached.</i>	<p>This would represent targeted intervention to assist those producers most in need of assistance.</p> <p>It would allow cost savings in respect of sharing costs across a number of stations serving a given area.</p>	<p>The financial benefits might be relatively limited: some co-location is already allowed.</p> <p>It could potentially difficult to co-ordinate and would not be that transparent.</p>

		Even if it were possible to co-ordinate, it could soften competition in the sale of advertising airtime in areas where smaller stations are in direct competition for listeners.
<i>(4) Allow a differential approach linked to the size of the station once a certain threshold of digital listening is reached,</i>	<p>Would enable a clearer distinction to be made between content of interest to local listeners (which research indicates listeners value) from where material is produced (which may decline in importance over time).</p> <p>Targeted intervention that would take into account the proportionate cost of regulation.</p> <p>The relaxation of the regulatory burden can be tailored to the size of the radio station.</p> <p>Ofcom can still fulfil duty to maintain an appropriate amount of local programming but radio stations will know that the formal localness requirements will be reduced over time.</p> <p>If viewers do value localness, then radio stations are likely to continue to deliver the sort of local programming that listeners value.</p> <p>Does not rule out the possibility of a move to further de-regulation at some point in the future.</p>	<p>Formats for DAB digital radio do not include any requirement to include local material or locally made programming. There is thus a risk that localness requirements will disappear altogether as commercial pressure for networking increases.<sup>21</sup></p> <p>There would be less local production than at present.</p>
<i>(5) Abolish localness requirements altogether</i>	Would simplify the regulatory system.	<p>Ofcom's ability to fulfil its statutory duty to ensure an appropriate degree of localness would be severely constrained.</p> <p>Research indicates that listeners do value localness and there is some uncertainty as to the extent which the market will deliver appropriate level of localness.</p>

<sup>21</sup> However, this problem does not arise if, as a complement, localness requirements for DAB multiplexes are introduced.

- A5.44 Given the uncertainty about the rate of development of alternative means of the delivery of local content, it would not seem appropriate to move to withdraw the localness requirements altogether. However, it would seem appropriate to consider a move to a system which took into account more directly the ability of stations to bear the costs of specific forms of regulation. Therefore, Ofcom's preference at this stage is for the option whereby, once a certain level of digital listening is reached, the localness requirements can be varied to take into account the size of the local commercial analogue station
- A5.45 These measures should again be seen as part of a process to adapt the regulatory framework to the changing media landscape.

### Treatment of analogue versus digital

- A5.46 At present Ofcom's duties in respect of the consideration of diversity and localness apply only in respect of analogue radio and there are no equivalent restrictions on digital radio. With the growth of digital listening, it is appropriate to consider whether maintaining this difference in treatment is likely to remain appropriate e.g. as listening via digital platforms becomes the main way of accessing radio, should the focus of regulation shift?

### Policy proposals

Proposed approaches	Advantages	Disadvantages
<i>(1) Do Nothing</i>	Analogue radio still accounts for the majority of listening – no need to change.  Uncertainty in the future – better to wait and see what happens.	Difference in treatment could place analogue radio at a commercial disadvantage. It runs the risk of waiting until a problem has developed and then trying to deal with it retrospectively.
<i>(2) Amend Ofcom's duty to ensure the provision of an appropriate amount of local material with a suitable amount of local production so as to be platform neutral for broadcast radio. This would require new legislation.</i>	Ofcom would still retain the flexibility to forbear from applying these duties – i.e. they are not automatically applied but allow for the equal treatment across analogue and digital if deemed necessary.  Given that at present most digital stations are in fact simply re-transmissions of analogue services, it should not imply significant additional costs on stations carried in digital.	There could be some additional costs on digital-only stations.  It could represent an extension of regulation.
<i>(3) To introduce a must-offer requirement for multiplex operators to offer capacity to all existing analogue local commercial stations which broadcast to the majority of the multiplex area. This would require new legislation.</i>	Ensure that analogue stations are largely available on digital.  Many local analogue stations already rebroadcast in digital so not a significant burden on multiplex operators.  It could facilitate digital take-	It would represent a significant extension of regulation and may be a disproportionate way of achieving the desired policy outcome.  It would represent a significant intervention in the commercial decisions of

	up e.g. digital radio would offer existing analogue services <i>plus</i> additional digital-only radio services.	multiplex operators – it could be seen as enforcing dual transmission.  The footprint of many local analogue stations may not coincide neatly with those of DAB multiplexes, which may make it commercially unattractive for them to take up reserved capacity.
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A5.47 On balance the second option, i.e. seeking a change in the legislation so that Ofcom's duty to secure localness in terms of content and local production was platform neutral would be an appropriate response to the changing market dynamics. It would provide Ofcom with the flexibility to intervene in a targeted way to preserve a degree of localness if that was felt necessary but at the same time would give Ofcom the discretion over the exercise of this power.

### Radio ownership restrictions

A5.48 The main document sets out the four types of rules relating to plurality of radio ownership together with the key principles which sit behind them e.g. in relation to local analogue services, that there should be at least two owners of local radio stations plus the BBC in any area where there are more than two local commercial services.

A5.49 The discussion points out that there are separate rules for analogue and digital services with each set of rules being based on individual station coverage areas (or multiple coverage areas in the case of digital programme services).

A5.50 The four types of rules are:

- Cross-media ownership rules: limits on the ownership of local radio, local newspapers and regional TV;
- Local analogue services rules: a limit of 55% of points based on station ownership in any area with more than two commercial stations;
- Local digital services rules: limits on ownership of individual digital stations in any area, taking into account overlaps between multiplexes;
- Digital radio multiplex rules: limits on:
  - Ownership of local radio multiplex licences whose coverage overlap by more than a certain percentage;
  - Ownership of national radio multiplex licences, where a person may hold only one national radio multiplex licence.

A5.51 In 2006 Ofcom carried out a review of media ownership rules<sup>22</sup>. One of the conclusions of that report was that rules in relation to radio ownership had not always operated in the public interest. The document highlighted a specific case following the Emap/SRH merger where – as a result of the current local digital

<sup>22</sup> *Review of Media Ownership Rules* – November 2006

service rules - Emap was required to divest a service (Smash Hits) from three local digital multiplexes but no alternative service providers could be found to take up the capacity. Emap was required to withdraw the service and the capacity was then left unused. In that case the application of the rules led to a reduction in choice on these multiplexes as a result of the removal of a service.

- A5.52 The review also considered the effect of the rules on commercial radio more generally. Using a scenario analysis modelling exercise it identified that there was the potential for the “Emap issue” (i.e. being obliged to drop a service when nobody else seems likely to take up the vacant capacity) to arise if there were to be certain permutations of radio mergers. Indeed the modelling exercise found that there could be a number of instances when certain mergers would require the divestment of a range of local analogue services, local digital services and multiplex licences simply in order to comply with various ownership restrictions. This might not be an issue if there were concerns about plurality but the existing rules could result in divestment regardless of competition or cross-media ownership concerns and could therefore discourage mergers from taking place.
- A5.53 This review provides an opportunity to consider whether the existing ownership rules remain relevant to a world in which there is increasing convergence between analogue and digital radio services.

## Policy proposals

- A5.54 In terms of ownership rules for both local analogue and digital radio services, the key question is the extent to which there should be separate plurality requirements in relation to local analogue and digital radio services.

Proposed approaches	Advantages	Disadvantages
(1) <i>Do Nothing</i>	<p>Maintains a system which is well understood, albeit complex to administer.</p> <p>The existing rules have not prevented consolidation in the industry since they were introduced.</p>	<p>The separation of ownership rules will become increasing artificial as digital listening increases: listeners can receive both analogue and digital stations.</p> <p>The current rules do not necessarily operate in the best interests of the listener e.g. Ofcom has already identified the potential of a repeat of the “Emap” issue to occur in a number of merger situations.</p> <p>Plurality of ownership does not <i>per se</i> ensure plurality of sources of news.</p> <p>For most people local radio is not the primary source of local news.</p> <p>Existing rules could hold back further consolidation.</p>
(2) <i>Combine existing</i>	It represents a simplification	It is still a mechanical rule –

<p><i>analogue and digital station ownership rules.</i></p>	<p>of the existing rules.</p> <p>It would allow Ofcom still to secure plurality through media ownership rules – e.g. the principle of two commercial radio station owners plus the BBC in any one area can still be maintained.</p> <p>Analogue and digital versions of a station would only count once in terms of the points system.</p> <p>Where digital listening is growing in importance, the justification for separate treatment is more difficult to justify.</p>	<p>e.g. it is still based on a “points” system.</p> <p>Still more complicated than scrapping rules altogether.</p> <p>Could lead to one owner of all analogue stations or all digital stations in an area - although it is not clear that this is a significant issue.</p>
<p><i>(3) Abolish ownership rules altogether</i></p>	<p>Would represent a rolling back of regulation.</p> <p>Would allow further consolidation which could even increase diversity of output if more stations in an area came under common ownership within one area.</p> <p>Competition issues which might arise from concentration of ownership could still be addressed using competition law powers.</p> <p>Could be the appropriate response in the long-run.</p>	<p>Would undermine the principle of two commercial radio station owners plus the BBC in any one area.</p>

A5.55 As indicated above, Ofcom’s review of the media ownership rules have already identified that “Do Nothing” is not an option in that it can give rise to the “Emap issue”. Based on the advantages/disadvantages of the other approaches, it would appear sensible for Ofcom to move away from a system of differential ownership rules for local analogue and digital radio services. It would also be appropriate to reflect this change in treatment in the cross-media ownership rules as well.

A5.56 Such a move should also prevent a recurrence of the Emap issue.

### **DAB multiplex ownership rules**

A5.57 A key aspect of the local DAB ownership is the way in which overlaps between multiplex areas were taken into account. While it is the case that many local DAB multiplexes overlap, these overlaps are generally incidental.

## Policy proposals

Proposed approaches	Advantages	Disadvantages
<i>(1) Do Nothing</i>		The current rules may not necessarily operate in the best interests of the listener e.g. Ofcom's Review of the Media Ownership rules has already identified the potential for divestment in the event of certain merger situations.
<i>(2) Local DAB ownership rules changed so that no person can control more than one DAB multiplex designed to cover substantially the same area.</i>	<p>Would address the sorts of issues identified as being relevant to the "Emap issue" more generally e.g. the focus would be on substantial areas of overlap rather than just incidental overlap.</p> <p>Transparent, straight-forward to understand – provides a degree of regulatory certainty.</p>	The definition of what constitutes "substantial" overlap is still basically a matter of judgement.
<i>(3) Abolish rules altogether</i>	Competition issues which might arise from concentration of ownership could still be addressed using competition law powers.	

A5.58 As indicated above, Ofcom's review of the media ownership rules have already identified that the current ownership rules may not necessarily operate in the best interests of the listeners. That would again suggest that "Do Nothing" is not an option. Against that background, the most appropriate approach would be for Ofcom to propose changes to the DAB multiplex ownership rules rather than move to abolish the rules altogether.

### Rules on ownership of national DAB

A5.59 At present there no one person can control more than one national DAB multiplex.

A5.60 While there has only been one national DAB multiplex this has not raised any particular issues. However, Ofcom has now advertised a licence for a second national DAB multiplex and so there is a need to consider whether this restriction is still appropriate.

A5.61 The ownership restrictions in radio were devised primarily with plurality objectives to the fore. Ofcom would accept that plurality of ownership does not in itself guarantee plurality in terms of sources of information available to listeners. For instance, it is possible that allowing one owner of both multiplexes could secure greater diversity of output than if the two national multiplexes were under separate ownership. For instance, in such a situation a single owner might be concerned to ensure that the different services available served as wide a range of tastes and interests as possible in order to minimise the risks of cannibalising audiences and thus the advertising revenues of services operating on the multiplexes.

- A5.62 However, it is likely that common ownership would tend to mean the presentation of a common viewpoint: plurality of viewpoint is more likely to be achieved by a restriction that prevents a corporate entity from owning more than one national DAB multiplex.
- A5.63 Against that background, Ofcom considers that it would be more sensible to maintain the existing rule that no one person can control more than one national DAB multiplex going forward.

### Use of spectrum

- A5.64 As set out in the main consultation document broadcast radio services currently occupy a number of wavebands although the historical use of these wavebands for radio broadcasting does not mean that these are the only possible use for this spectrum. To the extent that that spectrum could be used for a more valuable purpose, then the allocation of the spectrum to radio broadcasting would represent an opportunity cost on society.
- A5.65 In its Spectrum Framework Review (SFR) in 2005, Ofcom advocated a market-led approach. Among the recommendations that the SFR made were two key recommendations which have a bearing on this project:
- Allow the market to decide on the best use and user for much of the spectrum
  - Allow licence holders to trade spectrum in an open market and change the use they make of it in order to develop new technologies and offer innovative services
- A5.66 Ofcom considers that the management of the radio spectrum can be carried out most effectively if greater use is made of market mechanisms. In particular market mechanisms will:
- Promote efficient use of the radio spectrum by allowing spectrum to be transferred to, and used by, the user who values it most;
  - Promote competition by increasing the availability of spectrum for use by the most valuable service; and,
  - Facilitate economically valuable innovation as new users enter the market to offer new services.
- A5.67 To the extent that over time digital radio comes to provide the majority of Ofcom's public policy goals in radio, there would be a case for considering whether the existing spectrum that is used for analogue radio broadcasting could be subject to a more market-led approach.
- A5.68 Against that background it would be appropriate for Ofcom to consider how to ensure that there is the appropriate flexibility in future to be in a position to consider the introduction of a market led approach.
- A5.69 There are a number of considerations. One is the need to have a mechanism to allow for the simultaneous release of a number of frequencies. Unless many adjacent frequencies (both spectrally and geographically) are released at the same time, the feasibility of moving to a more market led-approach is significantly diminished. This is more of a factor for the spectrum used for FM radio (i.e. VHF Band II) than for the spectrum used for Medium Wave.

## AIP in broadcasting

- A5.70 Ofcom is currently in the process of consulting on proposals for the introduction of Administered Incentive Pricing (“AIP”) for spectrum used for both television and radio broadcasting.
- A5.71 Local and national analogue radio already pay spectrum fees (Wireless Telegraphy Act licence fees) for the spectrum they use and those fees already reflect AIP principles to some extent. For instance, they are based on population coverage and therefore reflect, at least in part, the amount and value of the spectrum used. Going forward, the system of Wireless Telegraphy Act licence fees can be modified to bring them more into line with AIP principles. For instance, in its consultation on “Future pricing of spectrum used for terrestrial broadcasting” Ofcom announced that it will consider the practicalities of enhancing the existing system to reflect differences in the amount of spectrum used to broadcaster different analogue radio services.
- A5.72 However, in terms of the use of spectrum for digital radio services, Ofcom does not propose to charge the operators of current and already planned terrestrial digital radio multiplexes (or their transmission service providers) AIP on the spectrum used to broadcast those multiplexes until 2012.
- A5.73 This means that post 2012, where licensees are currently broadcasting in both analogue and digital, they will be forced to make a more explicit choice about the use of analogue or digital frequencies for broadcasting. As listening via digital increases over time, and correspondingly analogue listening declines, it might be expected that broadcasters could choose to abandon analogue simulcasting and to hand back analogue licences rather than maintain a dual transmission system.
- A5.74 Ofcom has made it clear that the introduction of AIP is not intended to be a mechanism for moving towards an analogue radio “switch-off” either of AM or FM: at this stage Ofcom is not proposing to switch-off existing analogue radio stations, either on AM or on FM at a particular date. The proposals to introduce AIP are to ensure that users of the digital terrestrial radio spectrum pay a fee which reflects the opportunity cost of their use of that spectrum.
- A5.75 One consequence of the introduction of AIP for digital terrestrial radio spectrum could be the release of analogue radio spectrum. Against that background, it appears relevant to Ofcom’s duty to ensure the optimal use of the radio spectrum to consider whether it is necessary to ensure that in the future it should seek to retain the flexibility in respect of the use of the future planning and use of the VHF Band II spectrum currently used for FM radio and Medium Wave spectrum currently used for MW radio. Ensuring that there is flexibility in the use of the spectrum does not mean that Ofcom is proposing that there should be an analogue switch-off for radio. Rather it is aimed at providing an opportunity to consider what the best use of that spectrum might be: it is possible that it could still be analogue radio broadcasting.

## Policy options

A5.76 Within the framework created by the current legislation there would appear to be three main policy options.

<b>Proposed approaches</b>	<b>Advantages</b>	<b>Disadvantages</b>
<i>(1) Not re-advertising licences as they expire</i>	Would guarantee that spectrum is cleared	<p>Pre-empts incentive properties from introduction of AIP.</p> <p>First of stations to come up for renewal are not currently on DAB. There would therefore be a loss of services to many customers from as early as 2009.</p> <p>Large chunks of spectrum could lie “fallow” before any use if made of them. This in itself would impose an opportunity cost on society.</p> <p>Process could take a number of years.</p>
<i>(2) Re-advertise existing licences as they expire but with a common end-date</i>	<p>Would ensure that the spectrum is cleared by a given date.</p> <p>Existing license award processes are well understood by industry – no new licensing processes are required</p> <p>Would still allow new entrants to apply for licences as they are re-advertised.</p>	<p>Would require Ofcom to set a target date now for potential clearance of AM and FM spectrum.</p> <p>The relative burden of licensing process could be heavy for licences which expire later e.g. the duration of the new licence might only be a few years. This would tend to put off new entrants.</p>
<i>(3) Re-advertising existing licences but take licences back at an appropriate point</i>	Would ensure that spectrum can be cleared at a point in the future	<p>Would give rise to regulatory uncertainty - there could well be industry pressure on Ofcom to set a date at which points licences would be taken back.</p> <p>Possible need to compensate licensees when licences taken back.</p>

A5.77 Although all three options set out above, combined with AIP, should require licensees to think more systematically about the choices they face in terms of the spectrum they use, it is not clear that they would necessarily result in Ofcom having the maximum amount of flexibility to free up spectrum in the long-term. All three options provide a mechanism for ensuring that Ofcom was in a position to clear spectrum at a given point in time but all have various disadvantages.

- A5.78 In addition, given that Ofcom is still in the process of consulting on the introduction of AIP, it is not possible to be definitive about the outcome of that process. It is possible that the introduction of AIP for digital radio post 2012 could provide Ofcom with all of the flexibility that it would require. However, without being able to be certain about the outcome of that process, there is the need to consider what other measures Ofcom might require if it was felt that Ofcom needed the ability to clear the spectrum currently used for FM and MW radio broadcasting at some point in the future (although in itself, such considerations should probably be linked to formal reviews of the AM and FM frequency bands).
- A5.79 One option would be for Ofcom to seek changes in legislation. The biggest constraint on Ofcom with the current regulatory framework is the 12-year renewal provision for local and national analogue licensees (both FM and AM). Ofcom considers that there needs to be the flexibility over time for it to offer to renew licences for periods of less than 12 years. This does not mean that Ofcom has a common end-date in mind, but if over time, such a position did emerge (for instance, as a result of future reviews) it would then be possible for Ofcom to tailor the re-licensing regime to fit in with such a date.
- A5.80 Such a provision would enable Ofcom to address the issue of licence renewals in the period after any new legislation is enacted. However, there could still be issues in relation to existing licences which expire before any new legislation comes into force. In order to address this issue Ofcom would also need changes to legislation to provide for flexibility in terms of determining a common end-date for all licences. Given that extending existing licences for a specific period of time would run the risk of Ofcom over- or under-estimating the appropriate extension period, a more flexible approach would be for Ofcom to seek a provision to enable it to extend all existing licences on an open-ended basis but at the same time to be able to terminate licences with an agreed notice period once a common end-date to achieve spectrum clearance has been agreed.

### Community radio

- A5.81 Community radio is intended to be clearly distinct from commercial broadcasting and the BBC. In order to ensure this, the Government has set out some specific “characteristics of service” requirements which such stations must adhere to. In addition, not only are the output requirements of community radio services defined in greater detail by the legislation, the same applies to operational inputs, in particular those of ownership and funding.
- A5.82 When the Community Radio Order 2004 was introduced the DCMS asked Ofcom to carry out a review of the new sector, reporting back two years after the first new community radio licences were awarded. Ofcom is due to report back to DCMS towards the end of 2007. Ofcom is also currently examining the scope of existing community radio legislation in the context of considering whether it might be possible to simplify its contents and thereby reduce the burden of regulation on licence holders.
- A5.83 As with other parts of the radio sector, it is important to consider the extent to which advances in technology may affect the ability to award further licences in future. On the one hand, there could be the direct use of new technologies such as Digital Radio Mondiale (DRM) and its subsequent variants by community services. Alternatively it could be that widespread adoption of wi-fi and wi-max services could render the use of traditional broadcasting spectrum (and licensing regimes)

redundant. All of this reinforces the need for consider how Ofcom might seek to ensure that the regulatory framework remains flexible.

A5.84 Against that background, the main document sets out a discussion of a range of issues around the growth of community radio in the UK. In particular it considers the issue of whether the existing rules and regulations have hindered or helped the development of this new form of radio service. An important assumption throughout all this is the idea that community radio remains regulated as a separate and distinctive “third-tier” of UK radio broadcasting.

A5.85 In many areas the document finds that the rules and regulations do not need to change. Indeed document does point out that the demand for community radio licences has been considerable which would suggest that the existing rules/regulations have not proved a significant obstacle overall. However, in some specific instances, the discussion has identified concerns that the existing regulatory framework has the potential to constrain the future development of community radio e.g. by not allowing as wide a range of prospective bidders as might have perhaps been expected. The main areas where there could be issues are in relation to:

- Selection criteria
- Operating within specific financial constraints
- Ownership limits

A5.86 Each of these are looked at in turn.

### Selection criteria

Proposed approaches	Advantages	Disadvantages
(1) <i>Do nothing</i>	<p>The community radio system is still bedding down – it is too soon to consider how to make amendments to the existing arrangements.</p> <p>Maintains the distinctiveness of community radio as a third tier.</p>	<p>Ignores some of the issues that are coming out of the experience with the system to date.</p> <p>It runs the risk of maintaining too rigid a set of selection rules which constrains the evolution of the community radio system.</p>
(2) <i>Seek to greater flexibility in application of selection criteria in future community radio legislation, specifically in respect of the application of: ability to maintain service; catering for tastes &amp; interests; broadening choice, evidence of demand &amp; support; social gain or community benefit.</i>	<p>Takes account of experience of licensing community radio to date.</p> <p>Looks to reduce the burden of regulation.</p> <p>Removes selection criteria which appear to be redundant e.g. in respect of catering for the tastes and interests of people living in the area.</p> <p>Makes the selection criteria more focused e.g. focus on</p>	<p>Changing the criteria going forward does not benefit existing community radio licensees.</p>

	<p>applicant's ability to launch and maintain service for first year.</p> <p>Removes selection criteria which could impose an unnecessary cost on applicants e.g. the need to provide evidence of demand &amp; support.</p> <p>Amalgamates selection criteria e.g. broadening choice and social gain.</p> <p>Still maintains the distinctiveness of community radio as a "third tier".</p>	
<i>(3) Seek changes to legislation to remove the selection criteria altogether</i>	<p>Would leave selection criteria to Ofcom's discretion which could then take into account developments in the radio sector.</p>	<p>Lacks transparency – there would be a demand for Ofcom to produce guidance for applicants.</p> <p>Could lead to a piecemeal evolution of the community radio system.</p> <p>Could change the nature of community radio and erode its distinctiveness as a separate "third tier".</p>

A5.87 Taking into account the above discussion, it would appear appropriate in future community radio legislation for Ofcom to seek changes to the selection criteria that would give Ofcom greater flexibility in the application of the criteria while maintaining the distinctiveness of community radio.

### Diversity of funding

A5.88 community radio services are required to obtain their funding from a multiplicity of sources and that no one source of funding can account for more than 50% of the cost of operating the service in that year.

A5.89 This does impose a restriction on community radio services but at the same time it also provides a degree of protection to commercial radio services in that it limits the extent to which community radio might compete for advertising and sponsorship revenue.

A5.90 The table below sets out the different options that Ofcom has considered.

<b>Proposed approaches</b>	<b>Advantages</b>	<b>Disadvantages</b>
<i>(1) Do Nothing</i>	Maintains the current position in respect of funding and supporting the maintenance	Maximum limits on funding from any one source could restrict growth of individual

	of editorial independence.	community radio services and hamper their ability to deliver on output requirements.
<i>(2) Allow greater flexibility in terms of the amount of funding that can come from any single source</i>	<p>Would make funding of community radio services easier to sustain.</p> <p>Could broaden the range of community-based groups that apply.</p> <p>Could allow enhanced delivery of output objectives e.g. social gain, training etc</p> <p>Can still be combined with a requirement to obtain funding from a multiplicity of sources.</p>	Could move towards greater reliance on single sources of funds be it advertising or a single sponsor (with knock-on consequences for editorial integrity).
<i>(3) Abolish funding restrictions altogether</i>	<p>Would make funding of community radio services easier to sustain.</p> <p>Could broaden the range of community-based groups that apply.</p>	Reliance on a single source of funding e.g. a single donor could compromise editorial integrity.

A5.91 On balance, it would seem appropriate for Ofcom to explore approach 2 in more detail, i.e. to consider allowing more flexibility in terms of the amount of funding that can come from a single source while stopping short of abolishing this rule altogether.

### Ownership limits

A5.92 At present there are a series of restrictions on the ownership and control of community radio licences. No single organisation may own (or have a controlling interest in) more than one community radio service. This single station ownership restriction derives from a desire to ensure direct community involvement in the ownership of each community radio service as well as a desire to ensure diversity of ownership within the radio sector as a whole.

A5.93 In addition, there are various restrictions on parties that may control a community radio licence in the first place: holders of local or national commercial radio licences, all multiplex licences, digital additional services licences, additional service licences, Channel 3, 4 and 5 and S4C television licences, television commercial additional service licences, teletext licences and digital programme service licences are all disqualified from controlling a community radio licence.

A5.94 With two years of experience in the licensing of community radio, Ofcom wishes to explore whether this restriction remains in the best interests of the listeners.

## Policy proposals

Proposed approaches	Advantages	Disadvantages
<i>(1) Do Nothing</i>	<p>The rule is clear and simple to understand.</p> <p>It is a way of support the aim of ensuring direct community involvement in the service.</p> <p>Prevents a concentration of ownership in any one area.</p>	<p>Could be too restrictive in that direct community involvement can be secured directly through selection criteria.</p> <p>Prevents the exploitation of synergies between similar communities in different areas.</p>
<i>(2) Allow common ownership of community radio services across different areas so long as the coverage areas do not overlap.</i>	<p>Would prevent concentration of ownership in any one area but allow the exploitation of synergies between similar communities in different areas.</p>	<p>More emphasis on selection criteria to ensure adequate local control and influence over station activities.</p> <p>Potential increase compliance costs both for licensee and Ofcom.</p>
<i>(3) Abolish ownership limits</i>	<p>Would enable the exploitation of synergies between similar communities in different areas.</p>	<p>More emphasis on selection criteria to ensure adequate local control and influence over station activities.</p> <p>Potential loss of plurality in areas with more than one community radio service.</p> <p>Potential increase in compliance costs both for licensee and Ofcom.</p>

A5.95 As before, on balance, Ofcom considers that it would be appropriate to explore approach 2 in more detail.