



Radio Multiplex Licence Renewals

	Consultation
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Contents

Section		Page
1	Summary	1
2	Background to the consultation	2
3	National radio multiplex licence	5
4	Local radio multiplex licences	13
Annex		Page
1	Responding to this consultation	16
2	Ofcom's consultation principles	18
3	Consultation response cover sheet	19
4	Consultation questions	21
5	Impact Assessment	22

Section 1

Summary

- 1.1 This consultation document sets out our proposals on the decisions we are required to make when renewing radio multiplex licences.
- 1.2 The Broadcasting Act 1996 sets out the statutory framework for the renewal of radio multiplex licences, including the timetable within which the holder of a radio multiplex licence is able to apply for renewal, and the circumstances in which a renewal can be granted.
- 1.3 In considering whether to grant a renewal of the national radio multiplex licence and local radio multiplex licences, we are proposing not to require any licensee to expand coverage to currently unserved areas, except where any such expansion has already been announced by the licensee, or was part of its original application for the licence but has not yet been implemented.
- 1.4 We do, however, propose to require licensees to submit a supplementary technical plan which sets out their existing coverage as measured by a new set of field strength levels provisionally agreed by key DAB stakeholders, and to then include a condition in the licences to ensure the continued provision of this level of coverage during the renewed licence period.
- 1.5 In respect of the national radio multiplex licence only, we are proposing not to set any new requirements in relation to the licensee (Digital One)'s obligations regarding promoting the take-up of DAB receiving equipment.
- 1.6 We are also proposing not to require Digital One to pay a percentage of multiplex revenue. This proposal takes into account our intention to commence charging for the spectrum occupied by digital terrestrial radio (i.e. DAB) broadcasters from the end of 2014, using Administered Incentive Pricing (AIP). However, as we said in our submission to the last Government's Digital Britain report (http://www.ofcom.org.uk/radio/ifi/radio_digitalbritain/digitalbrit.pdf) we recognise that if a clear policy decision is taken by Government to migrate radio broadcasting from the existing analogue platforms to DAB, we would need to look afresh at the efficiency benefits of introducing AIP to digital radio multiplexes.
- 1.7 We welcome responses on our proposals.

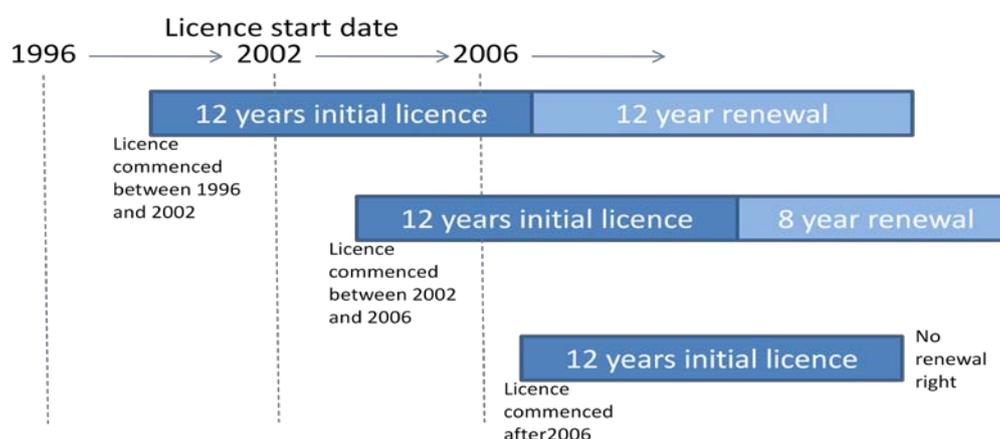
Section 2

Background to the consultation

Statutory requirements

Eligibility for renewal

- 2.1 Under section 58 of the Broadcasting Act 1996 (“the Act”), a radio multiplex licence which was granted within six years of the commencement of the Act (which equates to the period from 1 October 1996 to 1 October 2002) may be renewed on one occasion for a period of twelve years beginning with the date on which it would otherwise expire.
- 2.2 A licence which was granted within ten years of the commencement of the Act but not within six years (i.e. the period from 2 October 2002 to 1 October 2006) may be renewed on one occasion for a period of eight years beginning with the date on which it would otherwise expire.
- 2.3 This is illustrated in the following diagram:



- 2.4 There are currently a total of 47 radio multiplex licences in issue: one national licence, and 46 local licences. The national radio multiplex licence, which is held by Digital One, was granted on 15 November 1998 for a twelve-year period, which means its expiry date is 14 November 2011. Under the Act, the licence is therefore eligible to be renewed for a further twelve-year period (i.e. until 14 November 2023). Of the 46 local radio multiplex licences which have been granted (all by the Radio Authority prior to 2004), 28 may be renewed for a further twelve-year period, while all of the others may be renewed for an eight-year period. The 13 new local radio multiplex licences which Ofcom has awarded but not yet granted will not be eligible for a renewal.

Renewal timetable

- 2.5 The legislation prescribes a ‘window’ within which the holder of a radio multiplex licence is able to apply for a renewal. This ‘window’ opens four years before the licence expires, and closes three months before the ‘relevant date’.

- 2.6 The 'relevant date' is defined (in statute) as the date by which, if the licence was not renewed, Ofcom would need to publish a notice inviting applications for the licence to enable a fresh licence to be granted from the expiry date of the current one. In other words, the 'relevant date' is designed to ensure that there is continuity of service for listeners in the event that there is a change of licensee.
- 2.7 In relation to the national radio multiplex licence and all but four of the local radio multiplex licences, we have set the 'relevant date' at 18 months prior to the expiry date of each licence. For the first four local radio multiplex licences which were granted, the 'relevant date' for each has been set at 17½ months before expiry.
- 2.8 The resulting closing-date for Digital One to apply for a renewal of its national radio multiplex licence was 14 February 2010. Digital One applied for the renewal of its licence by the required deadline. The first deadline for a local radio multiplex licensee to apply for a renewal will be during September 2010 – this closing-date applies to the licences for each of Birmingham, Manchester, Greater London I and Glasgow.
- 2.9 Although the effective backstop date for having completed all of the stages of the licence renewal process is the expiry date of the current licence, we believe that it is consistent with the intention of the statute to seek to complete the licence renewal process as close as possible to the 'relevant date' of the licence in question. This is because, as set out in paragraph 2.6, the 'relevant date' is the date by which we would need to commence the process of re-advertising the licence if it was not renewed. As licences are renewed from the expiry date of the existing licence, there is no disbenefit to the licensee if the renewal process is completed 18 months prior to the expiry of the current licence, and indeed there is arguably greater certainty for licensees in knowing whether their application for renewal has been successful as early as possible.

Renewal requirements

- 2.10 As part of the licence renewal process, Ofcom must reach decisions on certain issues that are set out in the Act.
- 2.11 First, in respect of both national and local radio multiplex licences, we may require the licensee to submit a new technical plan which supplements the one submitted as part of the original application for the licence. If we choose to do this, we must also tell the licensee of any requirements which must be met by this new technical plan. Such requirements could include, but are not limited to, the expansion of coverage to currently unserved areas.
- 2.12 Second, in respect of the national radio multiplex licence only, we may also require the licensee to submit new proposals for promoting the take-up of DAB receiving equipment, to supplement those made in its original application for the licence.
- 2.13 Finally, and again this relates only to the national radio multiplex licence, we may, with the consent of the Secretary of State for Culture, Media and Sport, set a percentage of multiplex revenue (PMR) that the licence holder must pay during the renewed licence period. Digital One's current PMR is zero.
- 2.14 We can only refuse to renew a radio multiplex licence if:

- 2.14.1 The licensee has failed to comply with the conditions in its existing licence, or we think that it will not be able to comply with the conditions in its renewed licence; or
 - 2.14.2 We have notified the licensee of new requirements it must meet relating to its technical plan or (for a national licence only) promotion of DAB take-up, and the licensee's proposals fail to meet these requirements.
- 2.15 The purpose of this consultation is to present Ofcom's proposals for the radio multiplex licence renewal process, including how we propose to exercise the powers granted to us as set out above.

Section 3

National radio multiplex licence

- 3.1 The one national radio multiplex licence currently in issue, which is held by Digital One, was granted on 15 November 1998 for a twelve-year period, which means its expiry date is 14 November 2011. Under the Act, the licence is therefore eligible to be renewed for a further twelve-year period (i.e. until 14 November 2023). As noted in paragraph 2.8, Digital One has already applied for licence renewal by the required deadline.

Coverage requirements

- 3.2 As noted previously in this consultation document, as part of the radio multiplex licence renewal process Ofcom can require a licensee to submit a technical plan which supplements the one it submitted as part of its original application for the licence, and notify the licensee of any requirements which must be met by the new plan.

Background

- 3.3 Digital One's network and all other existing DAB networks have been planned to a signal strength of 58dB μ V/m. This is what we currently call 'outdoor', or mobile, coverage. When we say that a licensee is expected to provide 'outdoor' coverage to a defined percentage of the adult (aged 15+) population in the area it is licensed to cover, we mean that the defined percentage should receive a signal strength of 58dB μ V/m or higher.
- 3.4 A signal strength of 65dB μ V/m is what we currently call 'indoor', or portable, coverage. The network of 30 additional transmitters that Digital One implemented in order to facilitate the now-defunct BT Movio mobile television service were planned in order to deliver coverage in certain areas at a much higher signal strength of 82dB μ V/m.
- 3.5 In general, the coverage which applicants for radio multiplex licences propose to deliver has been seen as a commercial decision for the licensees, with neither Ofcom nor its predecessor regulator the Radio Authority seeking to impose a minimum coverage obligation that an applicant's proposals must meet, in terms of population or area (i.e. that Digital One must cover X% of the population in its licensed area). The extent of the coverage area proposed to be achieved by the applicant is, however, one of the statutory criteria which must be taken into account when deciding on radio multiplex licence awards.
- 3.6 Coverage obligations are currently reflected by the requirement on the licensee to implement transmitter assignments contained in the licence based on the original Technical Plan. Specifically, Digital One is currently required to transmit its multiplex service from the transmitters currently listed in its licence, on the frequencies specified in the licence and to within a reasonable proportion of the powers and other technical characteristics also specified in the licence.
- 3.7 In the Technical Plan in its original licence application, Digital One committed to providing 'outdoor' coverage of 69% of the adult population of Great Britain (the national radio multiplex licence it holds does not allow for coverage of Northern

Ireland) from launch. Digital One also committed to deliver 85% GB 'outdoor' population coverage by 2002. Digital One has since met both of these targets.

- 3.8 Indeed, since launching its service in 1999, Digital One has continually extended its coverage such that it now provides 'outdoor' coverage to over 90% of the adult population of Great Britain (based on the field strengths stated above) using 137 transmitters. In other words, Digital One has gone well beyond the coverage levels proposed in its original licence application and Technical Plan.

Coverage considerations

- 3.9 Set against the context outlined above, in deciding whether to require Digital One to submit a new technical plan and, in particular, whether to impose any new coverage obligations on Digital One, we must first settle on an agreed definition of coverage, and then consider what might be an appropriate level of coverage to expect Digital One to provide (if any) beyond that which it already delivers.
- 3.10 Informing the first of these considerations (i.e. how to define coverage) are the discussions of an ad-hoc working group consisting of key DAB multiplex stakeholders – the holders of all the national and local radio multiplex licences, the BBC, the Department for Culture, Media & Sport (DCMS), the Digital Radio Development Bureau (now Digital Radio UK) and Ofcom. With the previous Government's aims as set out in its Digital Britain report of last Summer in mind¹, this group carried out some initial work on DAB coverage planning.
- 3.11 This group came to a provisional agreement that the field strengths currently used for determining coverage are no longer appropriate given operators' experience after several years of operation. The group provisionally agreed that a revised set of appropriate field strengths should be used from now on (and for determining coverage should the new Government pursue a policy of seeking to match DAB coverage to FM coverage in advance of any digital switchover). The provisional proposal of the group is as follows:
- Outdoor (mobile) coverage: a location is deemed to be served if it receives a field strength of at least 58dB μ V/m (i.e. the same as now).
 - Indoor (portable) coverage (excluding dense urban areas): a location is deemed to be fully served if it receives a field strength of at least 69dB μ V/m. If a location receives a field strength of 64dB μ V/m, then 80% of the population residing within it will be considered to be served. For field strengths between 64 and 69dB μ V/m, a proportion of the population greater than 80% but less than 95% will be considered to be served, proportionate to the percentage of specific locations served by the field strength delivered to the wider location. This represents an increase in the field strength used to define 'indoor' coverage currently and historically.
 - Indoor (portable) coverage (dense urban areas only): the population residing within a location is considered fully served if the location receives a field strength of at least 77dB μ V/m. If a location receives a field strength of 71dB μ V/m, then 80% of the population residing within it will be considered to be served. For field strengths between 71 and 77dB μ V/m, a proportion of the population greater than 80% but less than 95% will be considered to be served, the actual proportion

¹<http://webarchive.nationalarchives.gov.uk/+/http://www.culture.gov.uk/images/publications/digitalbritain-finalreport-jun09.pdf>

depending on the percentage of specific locations served by the field strength in the wider location. This is a proposed new coverage 'standard', designed to recognise the need to ensure adequate coverage in urban areas.

- 3.12 In March 2010, the then Secretary of State for DCMS asked Ofcom to lead a formal process to consider the future coverage planning requirements of DAB digital radio to prepare for a possible digital switchover, and to make recommendations to Ministers. Specifically, the Government asked Ofcom to:
- Establish the current levels of acceptable FM coverage, which will provide the benchmark for all future planning; and
 - Determine the most technically efficient way of matching DAB coverage to FM coverage; this is likely to include consideration of the appropriate field strengths (i.e. building on the work of the ad-hoc working group), the need for additional transmitters, and changes to the existing infrastructure.
- 3.13 This work has now commenced and is likely to take around one year to complete. Consequently, the results will not be known by the time we need to make decisions regarding coverage as part of the process of renewing Digital One's licence. In carrying out this work, the group being led by Ofcom will build on the provisional proposals on field strengths from the ad hoc working group.
- 3.14 Given that this work on DAB coverage planning has only recently started, we are not proposing to set any additional coverage obligations that Digital One must meet as part of the licence renewal process.
- 3.15 We note that in the future, for example, following developments in Government policy, Digital One may have the opportunity to take advantage of a further renewal of its licence (beyond that which is the subject of this consultation) in return for increasing its coverage levels to facilitate any potential Digital Radio Upgrade, although the exact detail and extent of any such plans has not yet been finalised. The relevant statutory provisions are contained in section 58A of the Broadcasting Act 1996 (as amended by the Digital Economy Act 2010), as follows:

Renewal of radio multiplex licences: supplementary

(1) The Secretary of State may by regulations—

(a) amend section 58, and

(b) make further provision about the renewal of radio multiplex licences

(2) The regulations may, in particular, make provision about—

(a) the circumstances in which OFCOM may renew a radio multiplex licence,

(b) the period for which a licence may be renewed,

(c) the information that OFCOM may require an applicant for renewal of a licence to provide,

(d) the requirements that must be met by such an applicant,

(e) the grounds on which OFCOM may refuse an application for renewal of a licence,

(f) payments to be made in respect of a licence following its renewal, and

(g) further conditions to be included in a licence following its renewal.

(3) The regulations may, in particular, amend or modify this Part of this Act.

(4) A statutory instrument containing the regulations may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.

(5) The power to make regulations under this section may not be exercised after 31 December 2015 (but this does not affect the continuation in force of any regulations made under this section before that date)."

3.16 Alternatively, Digital One may wish to increase its coverage levels voluntarily as it further extends its network.

3.17 To ensure that Digital One continues to provide the current levels of service which consumers rely on, we consider that it is appropriate and proportionate to request that Digital One provides a supplementary Technical Plan to show how the current levels of coverage are provided at the provisionally agreed field strengths and will continue to be provided throughout the period of the renewed licence. We also intend to amend the related ancillary provision in Part IV of the licence to make it clear that *at least* the current levels of coverage must continue to be provided throughout the period of the renewed licence.

Question 1: Do you agree that Ofcom should not impose any new coverage obligations on Digital One as part of the licence renewal process?

Promotion of DAB receiver take-up

3.18 As part of the licence renewal process, Ofcom can also require Digital One to submit proposals for promoting or assisting the acquisition of digital equipment which supplement those in its original application, and notify Digital One of any requirements which must be met by the new proposals. In other words, akin to the position in respect of coverage, the licence renewal process is an opportunity for Ofcom to impose additional marketing obligations on Digital One, should we consider it appropriate to do so.

3.19 In its original licence application, Digital One committed to a range of marketing activities to promote the (then nascent) DAB platform, and to a total spend over the (twelve-year) licence period of £27m.

3.20 At the time, digital receiving equipment was not readily available. Through a combination of investment in the Digital Radio Development Bureau (DRDB, now replaced by the new body Digital Radio UK), the Chorus chip (the technology contained within the majority of DAB radio sets that have been sold) and the Pure Evoke receiver, and through numerous other marketing and promotional activities, Digital One helped to secure that DAB take-up figures were (until the end of 2007) in line with the predictions it had made in its original application.

- 3.21 In considering this aspect of the licence renewal process, we believe there are a number of issues to take account of:
- It is extremely difficult to predict the circumstances in which Digital One will operate in renewed licence period (2012-2023). Although there are no plans currently to advertise a second national commercial radio multiplex licence, the service of which would provide direct national DAB competition, the degree of competition from audio services on other platforms has increased markedly over the past decade.
 - The radio industry (through the BBC and the commercial radio trade body, RadioCentre) has established Digital Radio UK as a means of promoting the development of the DAB platform in the light of the Government's proposed digital switchover.
 - DAB take-up and listening are continuing to rise, albeit relatively slowly. Sales of DAB radios passed the 10 million mark last November, and DAB now accounts for 15.1% of all radio listening according to RAJAR.
- 3.22 Although the legislation gives Ofcom the specific power to set new marketing requirements which a national radio multiplex licensee must meet in order to gain a licence renewal, this power is discretionary and thus Ofcom can take a view as to whether there is a need for regulatory intervention on this issue.
- 3.23 Arguments in favour of setting new requirements might include the fact that Digital One holds a unique position as the only current holder of a national radio multiplex licence, and as such should be required to take a particular and primary role in promoting the platform upon which it provides its service. This view may appear to be supported by the aim of the statute, under which the promotion of the platform is one of the considerations to be taken into account when awarding a national radio multiplex licence.
- 3.24 Set against this, however, is the existence of Digital Radio UK, a body specifically created (by the radio industry rather than regulation) to promote the DAB platform. Also, there is a strong argument that the individual radio stations carried by Digital One are better placed to promote the platform than the holder of the multiplex licence, who is in the main a 'packager' of programme and other services, and whose existence is unknown to most consumers.
- 3.25 On balance, we do not think that there is a strong case for ongoing regulatory intervention in this area. In line with our statutory obligation to act proportionately and only in cases where action is needed, we propose not to require Digital One to submit any further proposals with respect to promoting DAB take-up as part of the licence renewal process.

Question 2: Do you agree that Ofcom should not impose any new obligations on Digital One regarding the promotion of DAB take-up as part of the licence renewal process?

Percentage of multiplex revenue (PMR)

- 3.26 The other main consideration when considering the licence renewal for Digital One is whether to set a percentage of multiplex revenue (PMR), which would be a sum payable annually by Digital One as a condition of holding the licence. Such payments are also known as "additional payments" (as they are additional to the standard

annual licence fee payable by Digital One, which is set to cover the cost to Ofcom of regulating the national radio multiplex service) . PMR payments do not form part of Ofcom's revenues – instead, they are collected by Ofcom and paid to the Treasury.

- 3.27 The Act makes specific provision for Ofcom, with the consent of the Secretary of State for Culture, Media & Sport, to specify a PMR to be paid by the licence holder for each of its accounting periods. Alternatively, the Secretary of State can require Ofcom to set a specific PMR. The percentage may vary over the course of the licence period, provided that any such variation is set in the licence conditions at the time of renewal. The rate or rates specified may not be changed once the licence is renewed.
- 3.28 When Digital One's licence was granted in 1999, a Statutory Order was in force requiring that no PMR should be specified. This Order ceased to have effect at the end of 2006. Ofcom must now therefore consider whether any PMR should be specified for the renewed licence period.
- 3.29 The PMR mechanism for additional payments is the DAB equivalent of the percentage of qualifying revenue which is paid by the holders of national analogue commercial radio ('INR') licences. PMR is defined in section 56 of the Act, and in 2006 we published the principles we would follow in assessing the amount of any additional payments payable by a national radio multiplex licensee, if these are required by the licence². In simple terms "multiplex revenue" is the income a national radio multiplex licensee derives from the carriage of programme services on its multiplex, and the income a programme service provider on the multiplex derives from the sale of advertising and/or sponsorship.
- 3.30 As set out above, if we decide to set a PMR to be paid, we need the Secretary of State's consent to include this obligation in the licence. Alternatively, the Secretary of State may positively direct Ofcom to set a particular rate, or make an(other) Order specifying that no rate (i.e. zero) shall be set.
- 3.31 In considering whether to set a rate, and what rate to set, it is important to bear in mind that Ofcom intends to introduce pricing for spectrum used for digital terrestrial radio broadcasting, starting from the end of 2014. The pricing mechanism that Ofcom intends to employ is Administered Incentive Pricing (AIP), the charging of annual fees for the holding of spectrum that reflect the opportunity cost of the holding of that spectrum.
- 3.32 Given that Ofcom intends to charge licence holders for their use of digital broadcasting spectrum through AIP, and this may include charging Digital One for its use of the spectrum in operating the national radio multiplex, we consider that the key issue for Ofcom to consider is whether Digital One should also be required to pay a PMR in respect of any value in the multiplex licence other than that captured by AIP (PMR does not apply to local radio multiplex licences, the holders of which will also be required to pay AIP from the end of 2014). However, as we said in our submission to the Digital Britain report (http://www.ofcom.org.uk/radio/ifi/radio_digitalbritain/digitalbrit.pdf) we recognise that if a clear policy decision is taken by Government to migrate radio broadcasting from the existing analogue platforms to DAB, we would need to look afresh at the efficiency benefits of introducing AIP to digital radio multiplexes.

² "Computation of Qualifying Revenue and Multiplex Revenue for Radio Licensees: Statement of Principles and Administrative Arrangements under the Broadcasting Act 1990, the Broadcasting Act 1996 and the Communications Act 2003" (<http://www.ofcom.org.uk/radio/ifi/ifiguide/revenue/>)

- 3.33 However, the Act does not specify either the purpose of the payments to be made by way of PMR in respect of a radio multiplex licence, nor the methodology required to set them. Given that it could be argued that PMR seeks to capture, for the taxpayer, some element of the revenue generated by a person who has not only the right to use a particular piece of spectrum but also the right to use it for a particular purpose (namely, the provision of a national radio multiplex service), we have sought the views of the DCMS (whose Secretary of State must, in any case, consent to any positive rate of PMR being set).
- 3.34 DCMS has indicated to Ofcom its provisional view that a zero PMR rate may be appropriate for the entire renewed licence period, but is not yet able to offer a definitive view.
- 3.35 In considering whether to propose a PMR, and recognising the fundamental role of the Secretary of State in reaching any such decision, Ofcom has identified the following options (each of which assumes the introduction of AIP from the end of 2014, in line with Ofcom's existing policy):
- Option 1:** Set a zero PMR rate for the entire duration of the renewed licence period;
- Option 2:** Set a PMR rate, or rates, to run throughout the duration of the renewed licence period, in recognition of some or all of the value in the licence. This rate, or rates, would need to take into account the fact that (subject to the note on the implementation of AIP above) AIP will be applied from the end of 2014; conversely, in implementing AIP we would need to take account of any PMR payments that are directly linked to the value of the spectrum.
- Option 3:** Set a zero PMR rate from the start of the renewed licence period, with a positive rate to start at a later date, say in 2014. As above, we would need to take into account the expected introduction of AIP.
- Option 4:** Set a PMR rate to apply from the start of the renewed licence period, to fall to a zero rate at the end of 2014 when AIP is introduced.
- 3.36 It is important to note that, while accepting that PMR and AIP are different types of charge with different aims, Ofcom has previously confirmed³ that no licensee should find itself in the position of paying twice for the same spectrum rights. In addition, Ofcom has adopted the AIP pricing policy on the principle that one of the best ways of ensuring that the opportunity costs of spectrum are fully and accurately reflected by decision-makers is for those opportunity costs to be reflected in prices that have to be paid to hold spectrum.
- 3.37 Our preferred approach, on which we seek views, is Option 1; setting a zero PMR rate for the entire duration of the renewed licence period. However, as noted above, we believe that the clear implication of the statute is that ultimately this decision should rest with the Secretary of State.
- 3.38 We believe that this approach would be more appropriate than the other three options for the following reasons:
- 3.38.1 We anticipate that some form of AIP may be charged in relation to the licence in 2014. We consider that this is the most appropriate way of

³ "Future pricing of spectrum used for terrestrial broadcasting – A Statement", Ofcom, June 2007, p.26 (<http://www.ofcom.org.uk/consult/condocs/futurepricing/statement/statement.pdf>)

capturing the value of the spectrum Digital One is benefitting from. Given that we consider that AIP is the appropriate way to capture spectrum value, and that in the current Digital One licence period no PMR has been charged, we do not think it is appropriate to set a PMR which includes an element for the implicit value of the spectrum: this may result in Digital One paying twice for the same spectrum access.

- 3.38.2 AIP, in contrast to PMR, may be reviewed and adjusted periodically so reducing the risk that a multiplex licensee would be over- or under-charged. As more information about the opportunity cost of the spectrum occupied by Digital One becomes available, the level of AIP could be adjusted during the renewed licence period. As noted above, the required (i.e. statutory) method for setting a PMR rate would not allow for this degree of flexibility.
- 3.38.3 While setting a PMR rate in theory would allow for the full value of the licence to be captured (the value that a licensee might have been prepared to pay to hold the licence), it could reduce Digital One's incentives to maximise revenues. This is because PMR payments are set as a rate, not a price, and therefore the amounts payable would vary depending on the licensee's ability to generate multiplex revenue. Digital One might have a disincentive to carry more programme services, or to carry more profitable services that might pay more for carriage, if the result is higher additional payments. Setting a PMR rate may also deter Digital One from pursuing revenue streams which are only marginally profitable, given that PMR is a flat tax on revenue.
- 3.38.4 As PMR is by definition payable only in relation to multiplex revenue, Digital One could have incentives to maximise other revenue sources in preference to multiplex revenue, leading to a possible distortion of its commercial priorities and a resulting potential reduction in the overall benefits available to society.
- 3.39 A more detailed analysis of the advantages and disadvantages of each of the four options are set out in Annex 5 of this consultation document.

Question 3: Do you agree with our preference not to set a PMR rate for the renewed period of the national radio multiplex licence?

Section 4

Local radio multiplex licences

4.1 As noted previously in this consultation document, there are currently 46 local radio multiplex licences in issue, facilitating local and regional DAB services for the majority of the UK population, additional to the national services provided by Digital One and the BBC. Of these 46 licences (all of which were granted by the Radio Authority prior to 2004), 28 may be renewed for a further twelve-year period, while the others may be renewed for an eight-year period. The 13 new local radio multiplex licences which Ofcom has awarded but not yet granted will not be eligible for a renewal.

Coverage requirements

- 4.2 As noted previously in this consultation document, as part of the local radio multiplex licence renewal process Ofcom can require a licensee to submit a Technical Plan which supplements the one it submitted as part of its original application for the licence, and notify the licensee of any requirements which must be met by the new plan.
- 4.3 As with the national radio multiplex licence, coverage obligations are currently reflected by the requirement on the licensee to implement transmitter assignments contained in the licence based on the original Technical Plan. There is no specific minimum coverage requirement in terms of population or area (i.e. that a licensee must serve X% of the local population or area). Rather, each local multiplex licensee is required to transmit its multiplex service from the transmitters currently listed in its licence, on the frequencies specified in the licence and to within a reasonable proportion of the powers and other technical characteristics specified in the licence.
- 4.4 Although each licence includes details of the transmitter sites in use by the licensee, there is no specific licence condition which specifies the overall coverage (in adult population terms) which must be achieved.
- 4.5 As noted above at paragraphs 3.9 to 3.13, while there are currently discussions within industry as to (a) the appropriate way of measuring coverage and (b) future coverage planning requirements for any potential Digital Radio Upgrade, these have not yet been finalised.
- 4.6 In addition, there are two sets of provisions in the Digital Economy Act 2010 which may have an impact on local radio multiplex services.
- 4.7 Firstly, as noted in paragraph 3.14 above, section 58A of the Act gives the Secretary of State the power to amend the current statutory requirements (as set out in this consultation document) relating to radio multiplex licence renewal⁴. This power, which if it is to be exercised must be so exercised before the end of 2015, could be used to change any or all of the current requirements (e.g. duration of renewed licences, issues to be considered as part of the renewal process) relating to multiplex licence renewals in the future.
- 4.8 The second set of statutory provisions, in section 54A of the Act, give Ofcom the power to change the frequencies upon which local radio multiplex services are

⁴ See Clause 36 of the Digital Economy Act 2010

provided, and to reduce or extend the area covered by a local radio multiplex service. This power can be exercised only upon Ofcom receiving an application from the holder of a local radio multiplex licence. As part of any such application, the licensee will be required to submit a technical plan setting out the proposed new coverage area, and the timetable for achieving this.

- 4.9 We do not consider that it is reasonably possible to set out in this consultation document proposals regarding additional coverage requirements to be imposed upon local radio multiplex licensees as part of the process of licence renewal, when there are such uncertainties about the future shape of, and regulatory framework surrounding, local radio multiplex services.
- 4.10 However, given that there are 46 local radio multiplex licences in issue which are eligible to be renewed, many of which do not expire for several years yet (the last licence was granted with an expiry date during 2016), the context within which Ofcom might be making decisions about whether to set additional coverage requirements as part of the licence renewal process has the potential to change considerably for some of these later licences.
- 4.11 In addition, the picture may become clearer once the DAB coverage planning work referred to previously in this consultation document has been completed.
- 4.12 We therefore propose, at this stage, that in general we will not set any additional coverage obligations for local radio multiplex licensees as part of the process of licence renewal, and will follow the general principles set out in this consultation for the renewal of other local radio multiplex licences, until such time as the work on DAB planning is completed and the Government has decided whether, and if so how, it wishes to amend the statutory framework relating to the licensing and regulation of local radio multiplex services. At that point it may be appropriate to reconsider these issues.
- 4.13 Therefore, to ensure that the local radio multiplex licensees continue to provide the current levels of service which consumers rely on, we consider that it is appropriate and proportionate to request that they provide a supplementary Technical Plan to show how the current levels of coverage are provided (at the provisionally agreed field strengths) and will continue to be provided throughout the period of the renewed licence. We also intend to amend the related ancillary provisions in the licences to make it clear that *at least* the current levels of coverage must continue to be provided throughout the period of the renewed licence.
- 4.14 The proposed exceptions to this general approach are where a local multiplex licensee has either:
- 4.14.1 promised in its original application to launch certain transmitters, but has not yet brought those transmitters on air. In such cases we would expect the multiplex operator to commit to launching those transmitters or to propose alternative arrangements to achieve the same increase in coverage; or
 - 4.14.2 already announced plans to extend its coverage, either as part of its original licence application or subsequently. For example, on 3rd February 2010, Digital Radio UK, which is owned by the BBC and the major commercial multiplex operators (with the exception of UTV), announced plans to improve DAB coverage in London:

“London will have a boosted digital radio signal later this year, according to plans announced today by Digital Radio UK (the company tasked with preparing the UK for digital radio upgrade) to increase the digital signal in the Greater London area by installing new transmitters across the capital.

The London upgrade plan is being developed by Digital Radio UK’s key stakeholders - the BBC, Commercial Radio, and multiplex operator, Arqiva – and is phase one of a broader UK-wide strategy to accelerate digital take up by extending coverage into those areas where digital services are currently unavailable as well as increasing the strength of existing digital signals.

The area set to benefit from the initial London phase includes all locations within the M25 and will see the capital ready for digital upgrade more than four years ahead of target.”

In such circumstances, we would expect such proposed enhancements to be reflected in the technical plans.

Question 4: Do you agree that, unless or until the Government makes a decision to the contrary, Ofcom should not impose any additional coverage obligations on local radio multiplex licensees as part of the licence renewal process, other than any already proposed by the licensees themselves (either as part of their original licence applications or subsequently)?

Note on potential application of AIP to local radio multiplex licences

- 4.15 While currently no PMR is charged (and indeed cannot be charged) in relation to local radio multiplex licences, as noted in paragraph 3.32 above, Ofcom intends to charge licence holders for their use of digital broadcasting spectrum through AIP in the future. We note that this may include charging local radio multiplex licensees for their use of the spectrum in operating the local radio multiplexes. However, as we said in our submission to the last Government’s Digital Britain report (http://www.ofcom.org.uk/radio/ifi/radio_digitalbritain/digitalbrit.pdf) we recognise that if a clear policy decision is taken by Government to migrate radio broadcasting from the existing analogue platforms to DAB, we would need to look afresh at the efficiency benefits of introducing AIP to digital radio multiplexes.

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 Friday 30 July 2010**.
- A1.2 Ofcom strongly prefers to receive responses using the online web form at <https://www.ofcom.org.uk/consult/condocs/radiomux/howtorespond/form>, 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 andrea.jackson@ofcom.org.uk attaching your response in Microsoft Word format, together with a consultation response coversheet.
- A1.4 Responses may alternatively be posted to the address below, marked with the title of the consultation.
- Andrea Jackson
Broadcast Licensing
Ofcom
Riverside House
2A Southwark Bridge Road
London SE1 9HA
- 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 answers to the questions asked 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, Head of Broadcast Licensing, on 020 7981 3000.

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, 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 September 2010.
- 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

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 . 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

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 Plain English Guide for smaller organisations or individuals who would otherwise not be able to spare the time to share their views.

A2.5 We will consult for up to 10 weeks depending on the potential impact of our proposals.

A2.6 A person within Ofcom 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. Ofcom's '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.

After the consultation

A2.8 We think it is important for everyone interested in an issue to see the views of others during a consultation. We would usually publish all the responses we have received on our website. In our statement, 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.
- 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/.
- 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 questions

Question 1: Do you agree that Ofcom should not impose any new coverage obligations on Digital One as part of the licence renewal process?

Question 2: Do you agree that Ofcom should not impose any new obligations on Digital One regarding the promotion of DAB take-up as part of the licence renewal process?

Question 3: Do you agree with our preference not to set a PMR rate for the renewed period of the national radio multiplex licence?

Question 4: Do you agree that, unless or until the Government makes a decision to the contrary, Ofcom should not impose any additional coverage obligations on local radio multiplex licensees as part of the licence renewal process, other than any already proposed by the licensees themselves (either as part of their original licence applications or subsequently)?

Annex 5

Impact Assessment

Introduction

- A5.1 The analysis presented in this Annex represents an impact assessment, as defined in section 7 of the Communications Act 2003 (the Act). It covers the policy options which relate to whether or not Ofcom should set a PMR rate in respect of the national radio multiplex licence.
- A5.2 You should send any comments on this impact assessment to us by the closing date for this consultation. We will consider all comments before deciding whether to implement our proposals.
- A5.3 Impact assessments provide a valuable way of assessing different options for regulation and showing why the preferred option was chosen. They form part of best practice policy-making. This is reflected in section 7 of the Act, which means that generally we have to carry out impact assessments where our proposals would be likely to have a significant effect on businesses or the general public, or when there is a major change in Ofcom's activities. However, as a matter of policy Ofcom is committed to carrying out and publishing impact assessments in relation to the great majority of our policy decisions. For further information about our approach to impact assessments, see the guidelines, Better policy-making: Ofcom's approach to impact assessment, which are on our website:
http://www.ofcom.org.uk/consult/policy_making/guidelines.pdf

Ofcom's policy objective

- A5.4 Ofcom's objective is to select an additional payments option in respect of the national radio multiplex licence which will maximise consumer and citizen benefits. In doing so, we are required to have regard to good regulatory practice and principles, including those under which regulation should be proportionate, consistent and targeted only at cases in which action is needed.

Options considered

Option 1	Advantages	Disadvantages
<p>PMR: Zero rate, or no rate specified, throughout the duration of the licence.</p> <p>AIP: To be applied from 2014 onwards.</p>	<ul style="list-style-type: none"> • Certainty for the licensee – they will know from the outset that they will not face any charge until 2014. • No need to adjust application of AIP to take PMR rate into consideration. • AIP could accurately reflect the opportunity cost of spectrum from the end of 2014. • AIP would give flexibility in setting appropriate pricing levels. Ofcom would be able to adjust pricing levels periodically. • No effect on multiplex licence holders' incentives in choosing where to invest to increase "multiplex revenues" or other revenues. • All multiplex licence holders would face charges set on the same basis, at the same time. 	<ul style="list-style-type: none"> • This scenario could potentially lead to a gain for the licensee, equivalent to the spectrum value for 2010-2014; and any value additional to the spectrum value from 2014 onwards. • However, in light of our previous decision not to impose AIP before 2014, the licensee's saving in respect of the spectrum value is already established policy. The additional gain – of any value resulting from the licence that is not related to the access to spectrum, is unknown.

Option 2	Advantages	Disadvantages
<p>PMR: Set rate or rates throughout the duration of the licence that would take into account our plans to implement AIP from the end of 2014.</p> <p>AIP: To be applied from 2014</p>	<ul style="list-style-type: none"> • Rates could potentially be set which would capture the full value of the licence. 	<p><i>General PMR disadvantages:</i></p> <ul style="list-style-type: none"> • Difficulty of predicting accurately what value other than spectrum value will be in this licence in later years. • The incentive for the licensee to maximise multiplex revenues would be reduced; greater multiplex revenues would lead to greater payments.

		<p><i>Disadvantages of option 2:</i></p> <ul style="list-style-type: none"> • Inflexibility of PMR, after the licence is renewed. Inaccurate calculations now could lead to over- or under-charging in future.
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Option 3	Advantages	Disadvantages
<p>PMR: Zero rate now, positive rate later.</p> <p>AIP: To be applied from 2014</p>		<ul style="list-style-type: none"> • See Option 2 for general disadvantages of PMR. <p><i>Disadvantages of option 3:</i></p> <ul style="list-style-type: none"> • Inflexibility of PMR, after the licence is renewed. Inaccurate calculations now could lead to over- or under-charging in future. • Difficulty in setting a PMR rate in 2010 which would accurately reflect the non-spectrum value in the licence for the period 2015-2023. Likely that estimates made so far in advance would be inaccurate.

Option 4	Advantages	Disadvantages
<p>PMR: Positive rate now, zero rate from 2014.</p> <p>AIP: To be applied from 2014.</p>	<ul style="list-style-type: none"> • Avoids complication of adjusting AIP after 2014. • Depending on how PMR is set, it could capture the value of spectrum and any other value, or just non-spectrum value for 2010-2014. 	<ul style="list-style-type: none"> • See option 2 for general disadvantages of PMR.

The preferred option

A5.5 Our preferred approach is **Option 1**, setting a zero PMR rate for the entire duration of the licence, and relying on AIP as the sole pricing mechanism, starting from the end of 2014.

A5.6 We have selected this option for the following reasons:

- AIP, in contrast to PMR, may be reviewed and adjusted periodically reducing the risk that multiplex licensees would not be over- or under- charged. PMR would not allow for this level of flexibility.
- While PMR would allow us to capture the full value of a licence, (the value that a licensee might have been prepared to pay to hold the licence), it would reduce licence holders' incentives to maximise their revenues. For example, a licensee who took steps to carry more profitable services, that could pay more for carriage, would pay more for its use of the same amount of spectrum than another licensee.
- In addition, as PMR is only payable on "Multiplex Revenues", licensees would have incentives to maximise other revenue sources leading to a possible distortion of their commercial priorities.