

General Observations

By its own admission this consolation document “Participation TV: protecting viewers and consumers, and keeping advertising separate from editorial” and the inquiry conducted by Richard Ayre that proceeded it “An inquiry into television broadcasters’ use of premium rate telephone services in programmes” have focussed almost entirely on the impact of the use of Premium Rate Services (PRS) on television *not* radio. Radio has been included in the consultation on the assumption that similar issues exist within both broadcast arenas and therefore similar regulation would be appropriate. We feel that whilst this assumption has some superficial merit it does not take into account substantial differences in the way in which radio interacts with its audience and utilises PRS and we would like to highlight this divergence:

- Radio has a much longer standing interactive tradition with its audience than TV which has until recently largely been ‘one way’ traffic. Indeed radio’s very life blood has always been, and continues to be, its interaction with its audience in the form of requests, comments, votes, competitions and quizzes.
- This extensive history of interaction has meant that radio broadcasters have long understood and valued the trust that listeners have placed in them to conduct their communications with the utmost transparency and clarity. Conducting themselves in a way that perhaps TV, used to tight production deadlines and operational imperatives and to a lesser degree instant audience communication, is only latterly appreciating.
- Against this backdrop radio has embraced the new interactive opportunities that PRS technology affords. Using PRS on occasions to help to monetise competitions that would have previously been run in any case (such as ‘spot the mystery voice’), to create new features that previously could not have been run because of financial constraints (such as reverse text auctions) and to increase general listener interaction via text requests, voting services and the like.
- All these interactions have been carried out against the backdrop of radio’s much valued close relationship with its listeners and in full compliance with the relevant regulation governing PRS.
- On the very few occasions where a radio station has transgressed these regulations, the transgression has been of a completely different order of magnitude to those transgressions that have taken place in the TV arena and the existing regulatory framework has proved more than adequate in rectifying the error and penalising the transgressor.
- In many cases, such as listeners sending in requests for songs or taking part in local debate by means of text voting, the PRS text service used is charged at a low rate of 25 pence and is simply the modern day equivalent of sending a letter to the radio station, although usually cheaper and much more immediate than the post.
- Certainly in the case of TLRC, the use of this sort of low rate PRS text response mechanism allows us to provide an interactive service to the benefit of our listeners that we would not otherwise be able to afford.

Bearing all the above in mind; that radio has a different relationship with its audience, it is different in its use of PRS to TV and it operates on a totally different scale – we would like to suggest that it is treated both separately and proportionately with regard to the drafting of any new regulation.

Response to the Consultation Questions

Protection of viewers and consumers in all PTV

Q1. Do you agree that television broadcasters should be directly responsible for PRS in programmes and also for other forms of communication where viewers seek to interact with programmes? Please explain why.

Taking this question to apply to radio as well as TV: Yes, this seems completely reasonable and nothing more than the responsibility we have already chosen to shoulder without regulation. We control what comes out of a listener's radio so we should be responsible for it, safeguarding our all important relationship with our listeners.

Q2. If so, do you agree that a variation to television licences would be the most appropriate way of ensuring that broadcasters are responsible for such PRS compliance?

Once again applying this question also to radio: We would certainly agree that it is a way to ensure compliance and possibly the most appropriate in the current circumstances. Although we would point out that TV and Radio are not the only users of PRS, they are widely employed by Press, FMCGs and Web sites and therefore there is scope for more wide ranging catch all regulation to ensure a 'level playing field'.

Q3. Do you agree that there is a need for broadcasters to obtain independent, third party verification that they are in fact complying with the draft licence obligations set out in Paragraph 2 of the draft licence variation? If so, which of the options for verification discussed in Section 4 do you think is most appropriate? Are there other appropriate options? Again, please provide reasons.

We cannot comment on the requirement for TV but we do not agree that there is a need for radio to obtain independent, third party verification of PRS. We believe that the existing regulatory framework has already proved itself more than sufficient in successfully managing and regulating the use of PRS within the radio industry. To impose a further layer of third party verification would, we believe, be entirely disproportionate. Such a verification obligation would also impose a great financial burden on the radio industry and this could well lead to a complete withdrawal from the use of PRS putting the industry at a commercial disadvantage, which is surely not the intent of this new regulation.

Q4. Do you have any comments on the draft licence variation set out in Annex 5? Please support your comments with adequate explanation and provide drafting proposals as appropriate.

We would suggest that the wording be 'tightened up' throughout the licence variation to make it clear that it is applying specifically to PRS, which we believe is its intent, and not all forms of communication as it currently suggests. Notwithstanding this, we are happy to accept the text as proposed in paragraphs 1, 2(a) and 2(b), we believe that it is entirely in line with our view expressed in our response to Q1. Therefore this licence variation is formally enshrining a 'de facto' responsibility which we have already taken on. We do not however support the introduction of options A, B or C in relation to paragraph 3 believing, as set out in our response to Q2 that each of the verification audit options suggested are disproportionate and will have unintended consequences for the radio industry.

Q5. Do you agree that the draft licence obligations should not be limited to television but should also apply to radio broadcasters? Please provide reasons.

Yes we agree with this but have reservations as outlined in our response to this consultation.

Separation of editorial and advertising in dedicated PTV

Q6. Which of the options proposed in Section 6 do you believe is most appropriate to ensure separation of advertising from editorial content? Please explain why.

As this section substantially applies to dedicated TV programmes and stations we do not feel competent to comment on what would be applicable for them. However, where this regulation does extend into the radio arena, such as with dedicated PRS driven quiz shows which form a small part of some radio station's output, we feel that in order to maintain the maximum integrity and trust with the listener that Option 2 is the most proportionate and suitable option.

Q7. Do you have any comments on the draft new rules and guidance in respect of Options 2, 3 and 4 set out in Annex 6? Please support your comments with adequate explanation and provide drafting proposals as appropriate.

With regard to the section relating to 'Methods of Payment and Participation' we are keen to ensure that the prohibition of payments by cash, cheque, credit card or money transfer does not have unintended consequences. It is quite possible that perfectly legitimate new methods of interaction with, and provision of service to, our audience may arise particularly with regard to our websites and we would not want to see this prohibition affect the on air promotion of these.

Q8. Do you agree that Option 2 clarifies the existing provisions of the Broadcasting Code and therefore should not be limited to dedicated PTV only, but should apply to all editorial content (on both television and radio) which invites viewers to pay to take part? Please give reasons.

As set out in our response to Q.6 we agree that Option 2 is both appropriate and proportionate and does indeed clarify existing provisions of the Broadcasting Code with regard to radio.

Q9. Has Ofcom correctly identified, in Section 6 and the Impact Assessment in Annex 7, the various impacts arising from each option for dedicated PTV? Again, please give reasons.

No, we feel that before any regulation variations outlined and proposed in the consultation document can be implemented a full Impact Assessment with specific regard to radio needs should be undertaken. As outlined in this consultation response, it is our contention that there are substantial differences in the way in which radio and TV interact with their audiences and utilise PRS which have not been fully taken into account. These differences need to be adequately explored and understood before proportionate and appropriate variations in regulation can be enacted for radio.

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