



Nation Radio

Request to change Format

Consultation

Publication date: 11 November 2016

Closing Date for Responses: 09 December 2016

About this document

Ofcom is consulting on whether to approve a Format Change Request from Nation Radio Limited ('Nation Radio'), which holds an FM commercial radio licence for South Wales, broadcasting as Nation Radio.

The station's Format describes the type of programme service which it is required to provide, and forms part of the station's licence.

Nation Radio wishes to change the 'Character of Service' of the station's published Format from one which requires the service to be a music station that plays "a majority of rock and rock-oriented tracks" to one which requires it to be "a music station for Wales". Nation Radio also wishes to increase its commitment to locally made hours from 10 hours per day weekdays and 4 hours per day at weekends to 21 hours each day.

We are seeking views on the request. The consultation closes at 5pm on **Thursday 08 December 2016**.

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Section 1

Details and background information

- 1.1 Ofcom has received a Format change request from Nation Radio Limited, which holds a local FM commercial radio licence for the South Wales area, with regard to its service 'Nation Radio'. Nation Radio Limited's parent company, Nation Broadcasting Limited, holds five other local analogue commercial radio licences in Wales plus a number of digital radio licences.
- 1.2 The station originally launched in November 2007 as XFM, but was sold by GCap Media in May 2008 and was relaunched as Nation Radio in June of that year. The licence has a Measured Coverage Area of 873,636 adults (aged 15+).
- 1.3 In February 2010 Ofcom agreed, following a consultation, to a request from Nation Radio to change the Format's 'Character of Service' from "*An Alternative Rock station for South Wales, playing modern and classic rock genres, with weekly sessions and coverage of local artists*" to "*A predominately modern rock station for 15-34 year olds. Other compatible genres will complement the output, which will also include coverage of local artists.*"
- 1.4 In October 2013, Ofcom agreed following a consultation to a request from Nation Radio to change the Format's 'Character of Service' to "*A rock-oriented music station that includes coverage of local artists.*" In this change, the requirement to appeal primarily to 15-34 year olds was dropped.
- 1.5 In September 2015, Ofcom agreed to a request from Nation Radio to change the Format's 'Character of Service' to "*A music station playing a majority of rock and rock oriented tracks, including coverage of local artists.*"
- 1.6 Nation Radio now wishes to change the Format's 'Character of Service' to "*A music station for Wales including coverage of local artists.*"
- 1.7 Alongside the proposed change to the Character of Service, Nation Radio is also asking to increase the number of locally-made hours required by the station's Format from at least 10 hours during daytime on weekdays (and at least 4 hours on weekend days) to at least 21 hours per day, every day.
- 1.8 The South Wales licence was awarded by Ofcom in May 2007. In addition to the winning application from GCap Media (Xfm South Wales Ltd) there were seven other applicants for the licence:
 - Talk FM South Wales Limited
 - David FM Limited
 - Kerrang! Radio Wales Ltd
 - Original 107 FM Ltd
 - South Wales Radio Ltd
 - Variety FM South Wales
 - UK Media and Radio Wales Ltd
- 1.9 Under section 106(1A) of the Broadcasting Act 1990 (as amended), Ofcom may consent to a change of a Format only if it is satisfied that *at least* one of the following five statutory criteria is satisfied:

- (a) that the departure would not substantially alter the character of service*
- b) that the departure would not narrow the range of programmes available by way of relevant independent radio services to persons living the area or locality for which the service is licensed to be provided;*
- (c) that the departure would be conducive to the maintenance or promotion of fair and effective competition*
- (d) that there is evidence that, amongst persons living in that area or locality, there is a significant demand for, or significant support for, the change that would result from the departure; or*
- (e) that (i) the departure would result from programmes included in the licensed service ceasing to be made at premises in the area or locality for which the service is provided, but (ii) those programmes would continue to be made wholly or partly at premises within the approved area (as defined in section 314 of the Communications Act 2003 (local content and character of services)).*

- 1.10 Even if Ofcom is of the opinion that the proposed change satisfies one or more of the statutory criteria above, there may be reasons (depending on the particular circumstances of the case) why Ofcom may not consent to the proposed change. The additional criteria to which Ofcom will have regard when exercising this discretion can be found at:
<http://stakeholders.ofcom.org.uk/broadcasting/radio/formats-content/changes/>.
- 1.11 Given that the change proposed by Nation Radio affects the station's core requirement to be a station that plays "a majority of rock and rock oriented tracks", and requires a significant rewording of its published Character of Service, we do not consider that Nation Radio's request meets criterion (a) – that the departure would not substantially alter the character of service. In addition, criterion (e) is not relevant to this request. Therefore, in accordance with section 106ZA of the Broadcasting Act 1990, we are consulting on the request.
- 1.12 When considering whether criterion (b) is satisfied (the change would not narrow the range of programmes available in the area by way of relevant independent radio services), neither local DAB services nor BBC services 'count' as relevant independent radio services. The relevant independent radio services are those local analogue commercial and community stations which operate in the region, which are listed in Annex 6.
- 1.13 Annex 4 contains the Format change request submitted by Nation Radio, in which arguments are made that the proposed changes would not substantially alter the character of service and that therefore criterion (a) is satisfied, and that the departure would be conducive to the maintenance or promotion of fair and effective competition and that therefore criterion (c) is satisfied.
- 1.14 We are seeking views on the request, having particular regard to the Format change criteria set out in Section 106(1A) (b) to (d) of the Broadcasting Act 1990 (as amended), as set out above.

Annex 1

Responding to this consultation

How to respond

- A1.1 Ofcom would like to receive views and comments on the issues raised in this document, by **5pm on Thursday 08 December 2016**.
- A1.2 We strongly prefer to receive responses via the online form at <https://www.ofcom.org.uk/consultations-and-statements/category-3/nation-radio-request-to-change-format/>. We also provide a cover sheet (<https://www.ofcom.org.uk/consultations-and-statements/consultation-response-coversheet>) for responses sent by email or post; please fill this in, as it helps us to maintain your confidentiality, and speeds up our work. You do not need to do this if you respond using the online form.
- A1.3 If your response is a large file, or has supporting charts, tables or other data, please email it to jon.heasman@ofcom.org.uk, as an attachment in Microsoft Word format, together with the cover sheet (<https://www.ofcom.org.uk/consultations-and-statements/consultation-response-coversheet>). This email address is for this consultation only, and will not be valid after 08 December 20-16.
- A1.4 Responses may alternatively be posted to the address below, marked with the title of the consultation.
- Nation Radio consultation
Ofcom
Riverside House
2A Southwark Bridge Road
London SE1 9HA
- A1.5 We do not need a paper copy of your response as well as an electronic version. We will acknowledge receipt if your response is submitted via the online web form, but not otherwise.
- A1.6 You do not have to answer all the questions in the consultation if you do not have a view; a short response on just one point is fine. We also welcome joint responses.
- A1.7 It would be helpful if your response could include direct answers to the questions asked in the consultation document. The questions are listed at Annex 3. It would also help if you could explain why you hold your views, and what you think the effect of Ofcom's proposals would be.
- A1.8 If you want to discuss the issues and questions raised in this consultation, please contact Jon Heasman on 020 7783 4509, or by email to jon.heasman@ofcom.org.uk

Confidentiality

- A1.9 Consultations are more effective if we publish the responses before the consultation period closes. In particular, this can help people and organisations with limited resources or familiarity with the issues to respond in a more informed way. So, in

the interests of transparency and good regulatory practice, and because we believe it is important that everyone who is interested in an issue can see other respondents' views, we usually publish all responses on our website, www.ofcom.org.uk, as soon as we receive them.

- A1.10 If you think your response should be kept confidential, please specify which part(s) this applies to, and explain why. Please send any confidential sections as a separate annex. If you want your name, address, other contact details or job title to remain confidential, please provide them only in the cover sheet, so that we don't have to edit your response.
- A1.11 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and try to respect it. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.
- A1.12 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's intellectual property rights are explained further at <https://www.ofcom.org.uk/about-ofcom/website/terms-of-use>.

Next steps

- A1.13 Following this consultation period, Ofcom plans to publish a statement.
- A1.14 If you wish, you can register to receive mail updates alerting you to new Ofcom publications; for more details please see <https://www.ofcom.org.uk/about-ofcom/latest/email-updates>

Ofcom's consultation processes

- A1.15 Ofcom aims to make responding to a consultation as easy as possible. For more information, please see our consultation principles in Annex 2.
- A1.16 If you have any comments or suggestions on how we manage our consultations, please call our consultation helpdesk on 020 7981 3003 or email us at consult@ofcom.org.uk. We particularly welcome ideas on how Ofcom could more effectively seek the views of groups or individuals, such as small businesses and residential consumers, who are less likely to give their opinions through a formal consultation.

If you would like to discuss these issues, or Ofcom's consultation processes more generally, please contact Steve Gettings, Ofcom's consultation champion:

Steve Gettings
Ofcom
Riverside House
2a Southwark Bridge Road
London SE1 9HA

Tel: 020 7981 3601
Email steve.gettings@ofcom.org.uk

Annex 2

Ofcom's consultation principles

Ofcom has seven principles that it follows for every public written consultation:

Before the consultation

- A2.1 Wherever possible, we will hold informal talks with people and organisations before announcing a big consultation, to find out whether we are thinking along the right lines. 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

- A2.2 We will be clear about whom we are consulting, why, on what questions and for how long.
- A2.3 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 for people to give us a written response. If the consultation is complicated, we may provide a short Plain English / Cymraeg Clir guide, to help smaller organisations or individuals who would not otherwise be able to spare the time to share their views.
- A2.4 We will consult for up to ten weeks, depending on the potential impact of our proposals.
- A2.5 A person within Ofcom will be in charge of making sure we follow our own guidelines and aim to reach the largest possible number of people and organisations who may be interested in the outcome of our decisions. Ofcom's Consultation Champion is the main person to contact if you have views on the way we run our consultations.
- A2.6 If we are not able to follow any of these seven principles, we will explain why.

After the consultation

- A2.7 We think it is important that everyone who is interested in an issue can see other people's views, so we usually publish all the responses on our website as soon as we receive them. After the consultation we will make our decisions and publish a statement explaining what we are going to do, and why, showing how respondents' views helped to shape these decisions.

Cover sheet for response to an Ofcom consultation

BASIC DETAILS

Consultation title: Nation Radio

To (Ofcom contact): Jon Heasman

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 Name/contact details/job title

Whole response Organisation

Part of the response 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 3

Consultation question

- A3.1 Ofcom is seeking views on this Format Change Request. In this case any decision by Ofcom, can only be taken having particular regard to three statutory criteria (Section 106 (1A) (b) (c) and/or (d) of the Broadcasting Act 1990 (as amended).
- A3.2 These criteria are set out on page 2 of this consultation document. Ofcom may consent to a change of a Format only if it is satisfied in relation to at least one of the statutory criteria.
- A3.3 Respondents are requested to frame their views and responses with reference to, or in the context of, these three statutory criteria.

Consultation question: Should Nation Radio Limited be permitted to make its proposed change to the Format of Nation Radio?

Annex 4

Format change request from Nation Radio

| | |
|--|----------------------|
| Date of request: | 14 September 2016 |
| Station Name: | Nation Radio |
| Licensed area and licence number: | South Wales AL327 |
| Licensee: | Nation Radio Limited |
| Contact name: | Martin Mumford |

Details of requested change(s) to Format

| | |
|---|---|
| Character of Service <i>Complete this section if you are requesting a change to this part of your Format</i> | Existing Character of Service: A MUSIC STATION PLAYING A MAJORITY OF ROCK AND ROCK-ORIENTED TRACKS, INCLUDING COVERAGE OF LOCAL ARTISTS. |
| | Proposed new Character of Service: A MUSIC STATION FOR WALES INCLUDING COVERAGE OF LOCAL ARTISTS. |
| Programme sharing and/or co-location arrangements <i>Complete this section if you are requesting a change to this part of your Format</i> | |
| | Proposed new arrangements: |
| Locally-made hours and/or local news bulletins <i>Complete this section if you are requesting a change to this part of your Format</i> | Current obligations: At least 10 hours a day during daytime weekdays (must include breakfast). At least 4 hours daytime Saturdays and Sundays. |
| | Proposed new obligations: At least 21 hours a day Monday to Sunday (must include breakfast and weekend breakfast) |

The holder of an analogue local commercial radio licence may apply to Ofcom to have the station's Format amended. Any application should be made using the layout shown on this form, and should be in accordance with Ofcom's published procedures for Format changes (available on our website at <http://stakeholders.ofcom.org.uk/broadcasting/radio/formats-content/changes/>)

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

- (a) *that the departure would not substantially alter the character of the service;*
- (b) *that the departure would not narrow the range of programmes available by way of relevant independent radio services to persons living the area or locality for which the service is licensed to be provided;*
- (c) *that the departure would be conducive to the maintenance or promotion of fair and effective competition*
- (d) *that there is evidence that, amongst persons living in that area or locality, there is a significant demand for, or significant support for, the change that would result from the departure; or*
- (e) *that (i) the departure would result from programmes included in the licensed service ceasing to be made at premises in the area or locality for which the service is provided, but (ii) those programmes would continue to be made wholly or partly at premises within the approved area (as defined in section 314 of the Communications Act 2003 (local content and character of services)).*

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

<http://stakeholders.ofcom.org.uk/broadcasting/radio/formats-content/changes/>)

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

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

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

This change is submitted under 106 (1A) (a) that the departure would not substantially alter the character of the service and (c), that the departure would be conducive to the maintenance or promotion of fair and effective competition in the local radio market.

As a background to this format change request, Ofcom has received a number of complaints over time about Nation Radio's format compliance around the delivery of rock music. Although no complaint has been upheld, complaint investigations have taken considerable management time to deal with and revealed the highly subjective nature of regulating formats based on music genre.

At times, this has unfortunately resulted in detailed analysis of playlists with correspondence between the broadcaster and regulator over which tracks constitute 'rock'.

Whilst we remain confident that Nation Radio complies with its current format we do not believe that a continuation of rock music as the primary yardstick for format compliance is necessary or helpful in defining the distinctive place that Nation Radio occupies in an increasingly crowded, competitive and evolving marketplace.

Since the launch of the second national digital multiplex a range of new services are available to listeners in the area including stations closely aligned to 'rock' whilst established local commercial competitors have very significantly moved their market position and music playlists in recent years.

We believe Nation Radio's programming is distinctive from these commercial competitors who produce the majority of their programming from outside Wales and we seek to enshrine this as a new format commitment.

For a minimum of 21 hours a day we commit to provide locally-made programming from Nation Radio's licensed area. This is in stark contrast to many commercial radio stations in Wales who have a commitment to and actually deliver around 7 hours of locally-made programming on weekdays and 4 hours at weekend.

In this context 'Locally made' means the main presenter or host of any programme broadcast during a station's locally-made hours will be physically located within the station's licensed area.

Should this change be agreed we do not believe listeners would notice a significant difference from the output currently being broadcast however we believe that Nation's cultural affinity with Wales (i.e. being a 'station for Wales') alongside this enhanced commitment to provide programming from the licensed area should be important to the regulator in applying any future format compliance tests.

Whilst the easiest future regulatory test would be the commitment to locally-produced hours, the cultural affinity to Wales is also demonstrated in a number of other ways on air – support for National teams, events and charities, news bulletins placing Wales' items news at the top of the agenda, dedicated programmes for Welsh rugby and football, programme presentation and studio location based in Wales.

It is also demonstrated off air through the maintenance of employment and the organisation of station initiatives such as Pride of Wales Awards, Sport Awards and the Big Welsh Fundraiser in support of Tŷ Hafan.

For all these reasons we believe that fair and effective competition in the local radio market would be maintained as Nation Radio would have a format requirement to remain distinctive from competitive commercial radio services which are already established parts of UK networks.

Please provide any additional information and/or evidence in support of the proposed change(s) below. In particular, the applicant may wish to outline how they see that the proposed change fits within Ofcom's published Format change request policy (<http://stakeholders.ofcom.org.uk/broadcasting/radio/formats-content/changes/>) and also Ofcom's Localness guidance, which includes our co-location and programme sharing policy (<http://stakeholders.ofcom.org.uk/broadcasting/radio/localness/>).

Notes

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

Version 6 – amended April 2010

Annex 5

Existing Format of Nation Radio

| |
|---------------------|
| NATION RADIO |
|---------------------|

| | |
|-----------------------|---------------------|
| Licence number | AL327 |
| Licensed area | South Wales |
| MCA population | 873,636 |
| Frequencies | 106.8 and 107.3 MHz |

Character of Service

| | |
|--|--|
| A MUSIC STATION PLAYING A MAJORITY OF ROCK AND ROCK-ORIENTED TRACKS, INCLUDING COVERAGE OF LOCAL ARTISTS. | |
| Service duration | 24 hours |
| Locally-made programming | Studio location: Locally-made programming must be produced within the licensed area. |
| | Locally-made hours: At least 10 hours a day during daytime weekdays (must include breakfast). At least 4 hours daytime Saturdays and Sundays. |
| | Programme sharing: No Arrangements |
| Local news | At least hourly during peaktime. |

Definitions

| | |
|-----------|--|
| Speech | Excludes advertising, programme/promotional trails & sponsor credits |
| Peak-time | Weekday breakfast and drive-time, and weekend late breakfast |
| Daytime | 06.00 to 19.00 weekdays and weekends |

Notes

This Format should be read in conjunction with Ofcom's published Localness Guidelines

Last amended: September 2015

Annex 6

Other commercial and community radio stations in the South Wales area

Commercial radio stations

Bridge FM (Bridgend)

<http://static.ofcom.org.uk/static/radiolicensing/html/radio-stations/analogue/a1000257ba2bridgefm.htm>

Capital FM (Cardiff & Newport)

<http://static.ofcom.org.uk/static/radiolicensing/html/radio-stations/analogue/a1000020ba2capitalfm.htm>

Heart (South Wales)

<http://static.ofcom.org.uk/static/radiolicensing/html/radio-stations/analogue/a1000261ba5heart.htm>

Kiss (Severn Estuary)

<http://static.ofcom.org.uk/static/radiolicensing/html/radio-stations/analogue/a1000167ba3kiss.htm>

Radio Carmarthenshire (Carmarthenshire)

<http://static.ofcom.org.uk/static/radiolicensing/html/radio-stations/analogue/a1000289ba4radiocarmarthenshirescarletfm.htm>

Swansea Bay Radio (Swansea)

<http://static.ofcom.org.uk/static/radiolicensing/html/radio-stations/analogue/a1000306ba4swanseabayradio.htm>

Swansea Sound (Swansea)

<http://static.ofcom.org.uk/static/radiolicensing/html/radio-stations/analogue/a1000090ba2swanseasound.htm>

Smooth Radio (Cardiff & Newport)

<http://static.ofcom.org.uk/static/radiolicensing/html/radio-stations/analogue/a1000019ba5smoothradio.htm>

The Wave (Swansea)

<http://static.ofcom.org.uk/static/radiolicensing/html/radio-stations/analogue/a1000091ba2thewave.htm>

Community radio stations

BRFM (Brynawr, Gwent)

<http://static.ofcom.org.uk/static/radiolicensing/html/radio-stations/community/cr000094ba2radiocardiff.htm>

BRO Radio (Barry)

<http://static.ofcom.org.uk/static/radiolicensing/html/radio-stations/community/cr000122ba2broradio.htm>

GTFM (Pontypridd)

<http://static.ofcom.org.uk/static/radiolicensing/html/radio-stations/community/cr000004ba2gtfmpontypridd.htm>

Radio Cardiff

<http://static.ofcom.org.uk/static/radiolicensing/html/radio-stations/community/cr000094ba2radiocardiff.htm>

Radio Tircoed (Tircoed Forest Village, Swansea)

<http://static.ofcom.org.uk/static/radiolicensing/html/radio-stations/community/cr000111ba1radiotircoed.htm>