

Analogue Commercial Radio Licence: Format Change Request Form

Date of request:	24 May 2019
Station Name:	Free Radio (Birmingham)
Licensed area and licence number:	Birmingham and the surrounding area AL077
Licensee:	Birmingham Broadcasting Ltd
Contact name:	Graham Bryce

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:
	Proposed new Character of Service:
Programme sharing and/or co-location arrangements <i>Complete this section if you are requesting a change to this part of your Format</i>	Current arrangements: <u>Programme sharing:</u> All programmes may be shared between the Birmingham licence (AL077) and the Coventry licence (AL022) <u>Co-location arrangements:</u> Locally-made programming must be produced within the licensed area
	Proposed new arrangements: <u>Programme sharing:</u> All programmes may be shared between the licences for Birmingham (AL077), Coventry (AL022), Hereford & Worcester (AL061 and Wolverhampton, Shrewsbury & Telford (AL119) <u>Co-location arrangements:</u> Locally made programming must be made within the Ofcom Approved Area of the Midlands

<p>Locally-made hours and/or local news bulletins</p> <p><i>Complete this section if you are requesting a change to this part of your Format</i></p>	<p>Current obligations: At least 7 hours a day during daytime weekdays (must include breakfast). At least 4 hours daytime Saturdays and Sundays.</p>
	<p>Proposed new obligations: At least 3 hours a day during daytime weekdays</p>

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.¹

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 on our website.²

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.

¹ Available at https://www.ofcom.org.uk/_data/assets/pdf_file/0024/87405/The-regulation-of-Format-changes.pdf

² At https://www.ofcom.org.uk/_data/assets/pdf_file/0024/87405/The-regulation-of-Format-changes.pdf

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.

- a. The proposed change would not substantially alter the character of service. The change to local hours and programme sharing are in line with Ofcom's localness guidelines.
- e. Programmes included in the licensed service will cease to be made at premises in the area or locality for which the service is provided, but those programmes will continue to be made wholly or partly at premises within the approved area.

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 policy³ and also Ofcom's Localness guidance, which includes our co-location and programme sharing policy.⁴

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.

Data Protection

We require the information requested in this form in order to carry out our licensing duties under the Broadcasting Act 1990, Broadcasting Act 1996 and Communications Act 2003. Please see Ofcom's General Privacy Statement www.ofcom.org.uk/about-ofcom/foi-dp/general-privacy-statement for further information about how Ofcom handles your personal information and your corresponding rights

³ Available at https://www.ofcom.org.uk/_data/assets/pdf_file/0024/87405/The-regulation-of-Format-changes.pdf

⁴ Available at <http://stakeholders.ofcom.org.uk/broadcasting/radio/localness/>

Ofcom notes on the request

Statutory requirements

This request relates to the FM licence for Birmingham and the surrounding area held by Birmingham Broadcasting Ltd, currently broadcasting as 'Free Radio'.

Every FM local commercial radio service is required to broadcast a certain amount of locally-made programming, which is specified in its Format. Locally-made programmes are those made within a station's licensed area or, where Ofcom has approved a wider area relating to that station, that 'approved area.' The approved area relating to all the licensed services involved in this request is Central England.

Following changes to Ofcom's localness guidelines published in October 2018, Birmingham Broadcasting Ltd has requested the following changes to the Format of the Birmingham licence:

- To share all programming between the licences for Hereford & Worcester (AL061) and Wolverhampton, Shrewsbury & Telford (AL119); together with the currently permitted programme sharing between the Birmingham licence (AL077) and the Coventry licence (AL022).
- For locally-made programming to be made within the Ofcom Approved Area of Central England.
- To reduce the required number of locally-made programming hours during daytime weekdays from seven to three

These proposed changes would change the character of service as set out in the Format of the licence, and accordingly can be agreed only if Ofcom is satisfied in regard to one of the statutory criteria set out in section 106(1A) of the Broadcasting Act 1990 (as set out in the request, above).

If we are satisfied in relation to one of the statutory criteria, we are then able to decide whether or not to approve the request, taking account of our published policy criteria.

Assessment

With regard to the request to broadcast locally-made programming hours from anywhere within the approved area of Central England, Ofcom was satisfied in relation to section 106(1A)(e) of the Broadcasting Act 1990, on the basis that the change requested, if approved, would result in programmes included in the licensed service being made at premises within the Central England approved area.

In considering the request concerning locally-made hours, we were satisfied in relation to section 106(1A)(a) – that the reduction in the number of locally-made hours would not substantially alter the character of the service. This is because the proposed new amount of locally-made programming is consistent with our recently amended localness guidelines⁵, and in addition because we would continue to expect the licensee to provide a local service that includes, as well as the level of news

⁵ <https://www.ofcom.org.uk/tv-radio-and-on-demand/information-for-industry/radio-broadcasters/localness>

specified in its Format, sufficient other local material to deliver the character of service, regardless of where the content is being broadcast from.

We were also satisfied in relation to section 106(1A)(a) with regard to the request to share all local programming hours with the Coventry (AL022), Hereford & Worcester (AL061) and Wolverhampton, Shrewsbury & Telford (AL119) licences. Again, this request is consistent with our localness guidelines, and we would continue to expect the licensee to provide a local service that includes sufficient local material relevant to listeners in its individual licensed area to deliver the required character of service.

As a matter of general policy⁶, we are content to approve Format change requests relating to locally-made programming and programme sharing which are consistent with our published localness guidelines on these matters.

Decision

Ofcom decided to approve this Format change request from Birmingham Broadcasting Ltd because we were satisfied in relation to two of the relevant statutory criteria, and for the policy reason outlined above.

July 2019

⁶ https://www.ofcom.org.uk/_data/assets/pdf_file/0024/87405/The-regulation-of-Format-changes.pdf