

Making changes to a radio multiplex licence

Notes of guidance for radio multiplex licensees wishing to make a change to their licence

The holder of a national or local radio multiplex licence may apply to Ofcom to vary their licence as it relates to the digital sound programme services which are provided on the multiplex. This may be a request to change the Format description of an existing service (or services), a request to add or remove a service, or a request to change the technical parameters under which a service is broadcast (e.g. from stereo to mono).

Any such application should be made using the Radio Multiplex Licence Variation Request form, available from the Broadcast Licensing team.

Statutory requirements

Under the statute, Ofcom must vary a radio multiplex licence in accordance with an application from a licensee, subject to the conditions set out below.

In respect of a **national radio multiplex licence**, Ofcom cannot agree to a requested variation if it considers that, by agreeing to the change, the capacity of the digital sound programme services broadcast under the licence to appeal to a variety of tastes and interests would be unacceptably diminished (section 54(6A) of the Broadcasting Act 1996).

In respect of a **local radio multiplex licence**, Ofcom will consent to the change only if it is satisfied in relation to *at least* one of the following three criteria set out in section 54(6B) of the Broadcasting Act 1996:

- (a) that the variation would not unacceptably narrow the range of programmes available by way of local digital sound programme services to persons living in the area or locality for which the licensed multiplex service is provided;
- (b) that the variation would be conducive to the maintenance or promotion of fair and effective competition in that area or locality; or
- (c) 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 variation.

Only one of these three criteria need be satisfied in order for Ofcom to consent to the proposed change.

Policy guidance

National radio multiplex licences

As noted above, in terms of national radio multiplex licences, the statute requires that Ofcom is not to vary such a licence if it appears that to do so would unacceptably diminish the capacity of the digital sound programme services provided under that licence to appeal to a variety of tastes and interests (section 54(6A) of the 1996 Act).

In this context, digital sound programme services does not include the simulcast of the national analogue (INR) services.

This statutory 'test' requires Ofcom to determine:

1. whether a proposed change would diminish the capacity of the programme services carried on the multiplex to appeal to a variety of tastes and interests, and
2. whether any such diminution is unacceptable.

In applying this 'test', Ofcom will take account of the range of different programming being provided across the multiplex as a whole, and the extent to which this appeals to a variety of tastes and interests as demonstrated by audience figures and/or other evidence showing the particular tastes and interests to which individual services appeal.

Local radio multiplex licences

The statutory 'test' that Ofcom must apply when considering a proposed change to a local radio multiplex licence is different from that for national radio multiplex licences.

Most notably, there are three statutory criteria (as set out above) as opposed to just one. This means that Ofcom has wider grounds on which to agree to a requested change to a local radio multiplex licence than is the case with a national radio multiplex licence.

In considering the first of these criteria, (whether the range of digital sound programme services available in the local area would be unacceptably narrowed as a result of the proposed change), Ofcom will take particular account of whether the change would result in a significant reduction in the provision of local content. This is because Ofcom considers it important that, in the digital environment, radio continues to provide the things that listeners see as important or desirable. In particular, this means a range and diversity of formats, and news and other speech content of local relevance¹.

Stereo and mono broadcasting

Ofcom believes that whether a digital sound programme service is broadcast in stereo or mono is an important characteristic of that service, and as such any variations to these characteristics must be considered in accordance with the requirements of section 54(6A) or (6B) of the Broadcasting Act 1996.²

We recognise that radio multiplex licensees require flexibility in how they allocate capacity, and do not seek to restrict this. In the vast majority of cases, the broadcaster and/or multiplex operator will be best placed to determine the characteristics of the services they are providing. We do not accept, however, that, left to itself, the market will necessarily reflect the interests of consumers. For example, the carriage of closed-user group data services may prove more lucrative for multiplex operators than audio services, but this may not be in the interests of listeners. The statutory limit of 30% of capacity which can be used for data services is designed to protect the provision of audio services on a radio multiplex. However, the increase in this limit from 20% to 30% in 2006 makes it more likely that data services could be provided at the expense of the sound quality of audio services.

As a matter of general policy, Ofcom is likely to refuse a request for a change in audio characteristics only in cases where the capacity freed-up by the change is to be allocated to services which, in our view, would not be in the best interests of citizens and consumers. Such an example may be where a multiplex licensee using its full capacity for stereo radio services proposes to reduce these radio services to mono, in order to allocate the permitted

30% data capacity to provide a closed user group service, and where we judge this would not be in the public interest. We believe that such a move would generally (in respect of a national radio multiplex licence) unacceptably diminish the capacity of the programme services provided under that licence to appeal to a variety of tastes and interests, or would generally (in respect of a local radio multiplex licence) unacceptably narrow the range of programmes available by way of digital sound programme services in the area. The policy is therefore designed to ensure that the multiplex as a whole not an individual service - continues to cater for the overall tastes and interests of listeners.

Application process

A request to change a radio multiplex licence must be submitted using the Radio Multiplex Licence Variation Request form, available from the Broadcast Licensing Team.

A form must be used to submit proposed changes in respect of one radio multiplex licence only, but may contain more than one proposed change on that multiplex

The form requires the applicant to set out the following information:

- the exact nature of the variation being requested (e.g. if seeking to add a new programme service, is it a replacement for an existing service or a wholly new service? Are there any current licence obligations which the licensee wishes to have removed/varied?);
- if a new digital programme service is being proposed to be provided, the wording to describe the service, for inclusion in Part I of the Annex to the radio multiplex licence (this will be subject to Ofcom's agreement) see below;
- the statutory criterion, or criteria, in respect of which the licensee wishes the application for a variation to be considered
- the reason(s) why the licensee believes that its application satisfies the criterion, or criteria, it has previously identified; and
- relevant technical parameters (e.g. sampling rate, protection level) for any proposed new digital sound programme service

Included within every radio multiplex licence is an annex which lists the programme services which are required to be provided on that multiplex. The description of each programme service consists of:

- a short-form (usually no more than 2-3 words) Format description (e.g. Classic Rock)
- a brief (usually no more than three lines) outline of the nature of the service, and
- if relevant, an indication of how much of the content is unique to that multiplex licence area.

If a request includes a proposal to add a new digital sound programme service, the applicant must draft a Format description for this service which is consistent with the above parameters, and also with the general style and layout of existing Format descriptions.

These can be viewed at <http://stakeholders.ofcom.org.uk/broadcasting/radio/formats->

[content/digital-formats](#). This approach is in line with Ofcom's policy of requiring applicants for analogue local commercial licences to 'write their own Format'. However, as is also the case in analogue local commercial radio licensing, Ofcom will seek clarification and, if appropriate, make drafting changes, in order to avoid ambiguity or misunderstanding. This will always be undertaken in consultation with the applicant/licensee.

The request form will be published on the Ofcom website when a decision has been made, but will then include additional explanatory text setting out the basis for Ofcom's decision. This will be announced in the radio licensing update, which is published monthly as part of Ofcom's Communications Monthly Update. Radio licensing updates can be viewed at <http://licensing.ofcom.org.uk/radio-broadcast-licensing/monthly-updates/>

If an applicant wishes to provide information in support of a request in confidence, this should be submitted separately from the form. As noted above, the application form is available from the Broadcast Licensing Team.

Any approval of a variation is effective for three months from the date of approval. If the approved variation has not been implemented within this period, the approval will lapse and the applicant will need to submit a new request.

Once approval has been given, a licence will not be varied until Ofcom has been informed by the multiplex licensee of the exact date from which the variations are to take effect. Please notify Andrea Jackson in the Broadcast Licensing team (andrea.jackson@ofcom.org.uk) and Martin James in the Broadcast Radio team of Ofcom's Spectrum Policy Group (martin.james@ofcom.org.uk) with this information.

Upon receipt of the above communication, the relevant changes will be made to the licence, and this will be published on the Ofcom website.

Data Protection

We require the information requested in the change request 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.

¹ See also *The Future Licensing of DAB Digital Radio* statement of 18 July 2006 at <http://stakeholders.ofcom.org.uk/binaries/consultations/dab/statement/dabstatement.pdf>

² See also *The Future of Radio* statement of 7 February 2008 at <http://stakeholders.ofcom.org.uk/consultations/futureradio07/statement/>