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# talkSPORT – proposals to reduce AM coverage

Statement

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**STATEMENT**

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# 1. Overview

## What we are proposing

- 1.1 Following a public consultation, Ofcom has decided to approve proposals from talkSPORT to reduce by 2.4% the transmission coverage of its AM national commercial licence. This document summarises the responses we received to the consultation and explains our decision, and the reasons for it.

## Introduction

- 1.2 talkSPORT Limited holds a national commercial radio licence to broadcast its sport-oriented service across the UK on the AM (medium wave) band. Under its broadcasting licence, talkSPORT must secure that its service serves so much of the UK “as is for the time being reasonably practicable”.
- 1.3 Through closing seven transmitter sites, talkSPORT has proposed a reduction in the coverage of its AM network from 95.4% of the UK adult population (aged 15+) to 93%<sup>1</sup>. talkSPORT would like to implement these changes as soon as possible.
- 1.4 talkSPORT has made these proposals in the context of declining listening to its service on AM, as well as increased listening on digital platforms. It also pointed out that last year Ofcom agreed to a request from Absolute Radio to switch off twelve AM transmitters (five of which are in the same regions as those requested by talkSPORT).

## Consultation

- 1.5 On 23 October 2019<sup>2</sup>, we published a consultation document setting out that we were minded to accept talkSPORT’s proposals, given the decline in analogue listening and the number of listeners likely to be affected by the proposed changes.
- 1.6 We received three responses to the consultation,<sup>3</sup> which disagreed with talkSPORT’s proposals, in Section 4 we summarise stakeholders comments, assess them and outline the conclusions we have reached.

## Conclusion and next steps

- 1.7 In light of consultation responses, we remain of the view that it is appropriate to approve talkSPORT’s proposals. Therefore, we have decided to vary its broadcasting licence and

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<sup>1</sup> Based on Ofcom’s estimate of adult population served within talkSPORT’s measured coverage area. talkSPORT estimates coverage of UK households as 97% reducing to 95%.

<sup>2</sup> Ofcom consultation document of 23 October 2019, entitled “talkSPORT – proposals to reduce AM coverage Proposed variation of national analogue radio”, available at [https://www.ofcom.org.uk/data/assets/pdf\\_file/0034/173977/talksport-consultation-proposals-to-reduce-am-coverage.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0034/173977/talksport-consultation-proposals-to-reduce-am-coverage.pdf)

<sup>3</sup> All non-confidential responses are available on our website.

associated WT Act licence by removing references to the transmitter sites that talkSPORT have proposed to close.

## 2. Background

- 2.1 talkSPORT Limited ('talkSPORT', or the 'Licensee') holds one of the three national analogue commercial radio licences<sup>4</sup> in the UK issued under the Broadcasting Act 1990 (the "**Broadcasting Licence**"). Under the terms of its Broadcasting Licence, it must provide a radio service which is "A 24-hour speech service featuring primarily sports-related programming. Regular news bulletins will be included".
- 2.2 The Broadcasting Licence was initially awarded by an auction process in July 1994, and has subsequently been renewed on three occasions. The latest renewal process was completed in December 2017, when we decided to renew the Broadcasting Licence for a further five-year period, until December 2022.<sup>5</sup>
- 2.3 Since its launch in 1994, talkSPORT has incrementally increased the coverage of its national analogue AM radio service to, currently, 95% of the UK adult population through voluntarily adding further transmitter sites.
- 2.4 On 8 May 2019, Ofcom received a formal submission from talkSPORT proposing to switch off seven AM transmitter sites, this would reduce coverage to 93%. These changes are:
  - a) **closing seven transmitter sites.** These transmitters are located at Rosemarkie (Inverness), Redruth (Cornwall), Redmoss (Aberdeen), Londonderry (Northern Ireland), Occombe (Devon), Plummers Barracks (Plymouth) and Pearce's Hall (Devon).
- 2.5 In addition to this national AM licence, talkSPORT also broadcasts nationally on the Digital One multiplex. The service is also available via television on the Freeview, Sky and Virgin Media platforms, in addition to the internet.

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<sup>4</sup> The other two licences are held by Absolute Radio and Classic FM.

<sup>5</sup> <https://www.ofcom.org.uk/consultations-and-statements/category-3/renewal-independent-national-radio-licences>

## 3. Legal Framework

### Ofcom's statutory duties

#### Ofcom's Statutory duties

3.1 The statutory duties that appear particularly import to assessing talkSPORT's proposals derive from the Communications Act 2003 (the "2003 Act") and the Broadcasting Act 1990 (the "1990 Act").

#### Our duties under the Communications Act 2003

3.2 Ofcom's principal statutory duty as set out in section 3 of the 2003 Act is to further the interests of citizens in relation to communications matters; and to further the interests of consumers in relevant markets, where appropriate by promoting competition. Ofcom is also required to secure (amongst other things):

- a) the optimal use for wireless telegraphy of the electro-magnetic spectrum;<sup>6</sup>
- b) the availability throughout the UK of a wide range of television and radio services which (taken as a whole) are both of high quality and calculated to appeal to a variety of tastes and interests;<sup>7</sup> and
- c) the maintenance of a sufficient plurality of providers of different television and radio services.<sup>8</sup>

3.3 In performing our duties, we must have regard to those factors that appear to us to be relevant in the circumstances. In this case, we consider that "the different interests of persons in the different parts of the United Kingdom, of the different ethnic communities within the United Kingdom and of persons living in rural and in urban areas" is of particular importance (section 3(4)(l) of the 2003 Act).

3.4 In performing our duties, we are also required under section 3(3) of the 2003 Act to have regard in all cases to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed.

#### Our duties under the Broadcasting Act 1990

3.5 In addition, under section 85 of the 1990 Act, Ofcom is required to secure the provision of a diversity of national analogue services, of which one must consist mainly of speech and another must consist wholly or mainly of non-pop music.

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<sup>6</sup> Section 3(2)(a) of the 2003 Act.

<sup>7</sup> Section 3(2)(c) of the 2003 Act.

<sup>8</sup> Section 3(2)(d) of the 2003 Act.

## talkSPORT’s broadcasting licence

### The ‘reasonably practicable’ threshold for ensuring coverage

- 3.6 Condition 2(1) of the Broadcasting Licence requires talkSPORT to secure that its analogue radio service serves so much of the UK “as is for the time being reasonably practicable”.<sup>9</sup> This licence condition mirrors section 106(2) of the 1990 Act, which provides that:

“A national or local licence shall include conditions requiring the licence holder to secure that the licensed service serves so much of the area or locality for which it is licensed to be provided as is for the time being reasonably practicable”.

- 3.7 The Broadcasting Licence requires talkSPORT to reach such coverage by broadcasting the licensed service from 28 transmitter sites. The location and technical characteristics of these transmitters are specified in the Broadcasting Licence (Parts II and III of the Annex).

### Failure to comply with the coverage requirement

- 3.8 Failure to secure that the licensed radio service serves so much of the UK “as is for the time being reasonably practicable” may constitute a breach of Condition 2(1) of the Broadcasting Licence.<sup>10</sup>
- 3.9 The range of penalties that can be imposed on licensees for breach of a licence condition includes financial penalties, shortening the licence, suspending the licence or revocation. These penalties are set out in the statutory regime, together with procedural requirements,<sup>11</sup> and mirrored in the Conditions set out in Part IV (‘Conditions relating to enforcement of licences’) of the Broadcasting Licence.

### Licence Variations

- 3.10 Ofcom has a general power to make changes to broadcasting licences by means of serving a notice of variation on the licensee.<sup>12</sup> This power is reflected in Condition 23 of the Broadcasting Licence. We must give the licensee a reasonable opportunity to make representations before making the variation (Condition 23.2 of the Broadcasting Licence).<sup>13</sup>

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<sup>9</sup> This licence condition reads as follows: “The Licensee shall provide the Licensed Service specified in the Annex for the licence period and shall secure that the Licensed Service serves so much of the licensed area as is for the time being reasonably practicable.”

<sup>10</sup> We would investigate any such breach according to our Enforcement Guidelines. See Ofcom’s “General procedures for investigating breaches of broadcast licences”, 3 April 2017; [https://www.ofcom.org.uk/data/assets/pdf\\_file/0019/31942/general-procedures.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0019/31942/general-procedures.pdf).

<sup>11</sup> Sections 109-111 of the 1990 Act.

<sup>12</sup> Section 86(5) of the 1990 Act. The 1990 Act provides that if Ofcom thinks that it would be reasonably practicable for a national service to be provided to an additional area falling outside the minimum area set in the award process, Ofcom can require the licensee to provide the service for that additional area (section 106(3)). However, the 1990 Act does not contain any specify provision for requests to reduce the minimum area.

<sup>13</sup> This licence condition mirrors section 86(5)(b) of the 1990 Act. Condition 24 of the Broadcasting Licence specifies in which way we may give any notice of variation, including in electronic form (subject to the requirements set out in Sections 395 and 396 of the 2003 Act).

## talkSPORT’s wireless telegraphy licence

- 3.11 talkSPORT holds also a licence issued under the Wireless Telegraphy Act 2006 (the “**WT Licence**”) which authorises it to establish, install and use radio transmitting stations and/or radio apparatus (i.e. transmitters) in the same locations authorised under its Broadcasting Licence (i.e. 28 sites in total) for the transmission of the sound broadcasting service described in the Broadcasting Licence.
- 3.12 Condition 3 of the WT Licence allows Ofcom to vary this licence in specific circumstances, which include where the variation is “at the request of, or with the consent of, the Licensee”<sup>14</sup>, and requires us to notify the licensee in writing or by a general notice in accordance with Schedule 1 paragraph 6 of the WT Act. Ofcom has a broad discretion under paragraph 6 of Schedule 1 of the WT Act to agree to vary licences, but legal rules operate to limit that discretion. In particular, according to paragraph 6A of Schedule 1 of the WT Act, any variation of a wireless telegraphy licence must be objectively justifiable.

## Application of our relevant duties to assessing talkSPORT’s proposals

### Ofcom’s task

- 3.13 Given the requirement set out in Condition 2(1) of the Broadcasting Licence (see paragraph 3.6 above), the main questions that we need to address are:
- b) whether it remains reasonably practicable for talkSPORT to serve **95.4%** of the UK adult population with its analogue radio service; and
  - c) if that level of coverage is no longer reasonably practicable, whether the combined effect of the measures that talkSPORT has proposed to take (i.e. a reduced coverage of **93%** of the UK adult population), would meet the “reasonably practicable” threshold set out in the licence conditions.
- 3.14 The “reasonably practicable” threshold entails a balancing exercise to ensure proportionality. To simplify, we put on one side any costs and other disadvantages involved in providing the service at the current level of coverage and, on the other side, the nature and extent of the risks involved if the current coverage of the service was reduced. In considering the various factors involved in this balancing exercise, we need to take account of our statutory duties.

### Ofcom’s decision in light of our statutory duties

- 3.15 We have considered the consultation responses and decided to approve talkSPORT’s proposals for the reasons set out in section 4 of this document. We consider that our

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<sup>14</sup> This licence condition mirrors Schedule 1, paragraph 8(2)(a) of the WT Act 2006.



decision complies with our statutory duties (paragraphs 4.23-4.26). In summary, this is because:

- a) in these specific circumstances, we consider that broadcasting the licensed service to 93% of the UK adult population would still ensure optimal use of spectrum; and
- b) the availability of talkSPORT Radio on alternative platforms (including digital radio, television and internet) is likely to be sufficient to maintain a plurality of radio providers and radio services in the geographical areas affected by the proposals.

3.16 Removing reference to the transmitter sites that talkSPORT has proposed to close from its WT Licence (with effect from the date when talkSPORT intends to close them) would be objectively justifiable as it would align this licence with the Broadcasting Licence.

### **Impact assessment**

3.17 The analysis presented in our consultation document constituted an impact assessment as defined in section 7 of the 2003 Act. Impact assessments provide a valuable way of assessing different options for regulation and showing why the preferred option was chosen. They form part of the best practice policy-making. As set out in our consultation document, we have not identified any detrimental impact on any equality groups.

## 4. Assessment of talkSPORT's proposals

### Summary of talkSPORT's request and rationale

- 4.1 talkSPORT has proposed to close the following seven transmitters:
- Rosemarkie (Inverness);
  - Redruth (Cornwall);
  - Redmoss (Aberdeen);
  - Londonderry;
  - Occombe (Devon);
  - Plummers Barracks (Plymouth);
  - Pearce's Hill (Devon).
- 4.2 talkSPORT has calculated that, these changes would lead to the UK household coverage of its licensed service being reduced from 97% to 95% (see map at Annex A6 to talkSPORT's submission for the affected areas).
- 4.3 Ofcom has calculated that these changes would lead to the adult (aged 15+) UK population coverage of its licensed service being reduced from 95.4% to 93%, and that 1.2 million adults in the UK would lose access to the AM service.
- 4.4 talkSPORT maintains that switching off the seven requested transmitters will have a negligible impact on its AM reach and, and coverage in some of the areas will continue to be provided via DAB.
- 4.5 talkSPORT notes that there has been a decline in analogue listening at a rate faster than it had predicted and the listening at the sites talkSPORT wants to close, based on RAJAR data, is no longer at appreciable levels due to the evolution of audience behaviour.
- 4.6 talkSPORT has calculated, using RAJAR data, a decline in AM listening of 18% since 2013 and listening via its digital platforms has increased 18% since 2013.
- 4.7 talkSPORT notes its parent company, the Wireless Group's, investment into their own digital services and the expansion recently with five new digital services (talkSPORT 2, Virgin Radio, Virgin Radio Anthems, Virgin Radio Chilled and talkRADIO).
- 4.8 In terms of terrestrial broadcast radio coverage, talkSPORT notes that, while the move to a 21 site network will reduce coverage, there will be overlapping coverage via the DAB platform reducing the loss of coverage to 0.5%. talkSPORT suggests that the availability of the service via DTV and online distribution means the loss of coverage is likely to be less than this.

- 4.9 To put its request in context, talkSPORT notes Absolute Radio’s closure programme of local radio AM transmitters, highlighting that Absolute Radio decommissioned five equivalent AM transmitters in the same regions in 2018.

### **Ofcom’s preliminary view on talkSPORT’s proposals**

- 4.10 In our consultation document, we said that we were minded to approve talkSPORT’s proposals on the basis that the impact will be marginal given the decline in analogue listening and the number of listeners likely to be affected by the proposed changes. In summary, we considered that our provisional decision would comply with our statutory duties because:
- a) In these specific circumstances, we consider that broadcasting the licensed service to 93% of adult population of the UK would still ensure optimal use of spectrum; and
  - b) the availability of talkSPORT on alternative platforms is likely to maintain a plurality of radio providers and radio services in the geographical areas affected by the proposals.
- 4.11 Although there is no statutory requirement to consult more widely, we have allowed stakeholders an opportunity to provide comments in this specific case, since we noted that:
- a) According to Ofcom’s estimates around 2.4% of the adult UK population (1,249,272 adults) would no longer be able to receive talkSPORT on AM; and
  - b) holders of other analogue commercial radio licences, and particularly those holding AM licences, might be interested in the approach that we are minded take in this case.

### **Stakeholders’ responses to our consultation**

- 4.12 We received three responses to the consultation: two from individuals and a response from Digital Radio Mondiale. All non-confidential responses are available on our website.<sup>15</sup>
- 4.13 Three respondents (Mr Fraser, Digital Radio Mondiale and a confidential respondent) disagreed with talkSPORT’s proposals. The main points raised by these respondents were as follows:
- a) Mr Fraser said that many of the transmitters that talkSPORT have proposed to close are in rural areas which are “unlikely to have good access to talkSPORT on DAB or other platforms” and fears many listeners could lose access to the service.
  - b) Digital Radio Mondiale said “closing down 7 transmitters, affecting 1.3 million listeners especially in regions where connectivity and other digital platforms are not as ubiquitous as in the south, is no small matter”. While Digital Radio Mondiale did agree that “Analogue medium wave is certainly on the wane”, they argued that there is a solution that can transform analogue AM into a new and comprehensive platform via their own service.

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<sup>15</sup> <https://www.ofcom.org.uk/consultations-and-statements/category-3/talksport-proposals-to-reduce-am-coverage>

- c) A confidential respondent said that if talkSPORT were no longer interested in providing a “good national coverage on AM” then the network could be handed to another organisation. They said given “we face various uncertainties in the near future...” it would be a good idea to “keep at least two AM national networks running alongside that of the longwave service on 198Khz”. The respondent also said if “Ofcom has allowed Absolute Radio, if they allow talkSPORT, other stations may follow”.

4.14 Below we assess the arguments presents by respondents and outline the conclusions we have reached.

## Ofcom’s assessment and concussions

### Impact on listeners

- 4.15 As set out in our consultation document, on the basis of the information provided to Ofcom by talkSPORT, the proposed changes would have the following effects:
- a) the proposed changes would result in about 650,000 of UK households losing their ability to receive talkSPORT’s AM signal;
  - b) of these, about 554,000 UK households would instead be able to listen to talkSPORT on DAB digital radio;
  - c) therefore, around 96,000 UK households would lose AM coverage and would also not have the option of listening talkSPORT on DAB digital radio. However, they are likely to be able to listen to talkSPORT via the internet and other digital platforms.
- 4.16 According to Ofcom’s estimates around 2.4% of the adult UK population (1,249,272 adults) would no longer be able to receive talkSPORT on AM.
- 4.17 Digital Radio Mondiale said the switch off affecting 1.3 million listeners is ‘no small matter’ and Mr Fraser said Mr Fraser said “although the reduction in coverage area is small, [I] fear many listeners could loose access to the service”. However, talkSPORT have said, while the move to a 21 site network will reduce coverage, there will be overlapping coverage via the DAB platform reducing the loss of coverage to 0.5%. The availability of the service via DTV and online distribution means the loss of coverage is likely to be less than this.

### Compliance with the licence condition

- 4.18 As already noted in Section 3 (paragraph 3.6), Condition 2(1) of the Broadcasting Licence requires that the licensed service serves so much of the UK “as is for the time being reasonably practicable.”
- 4.19 In our view, beyond considerations of what is technically and logistically possible in terms of transmission provision (for example, the availability of suitable transmission sites), the “reasonably practicable” threshold is a balancing exercise to ensure proportionality with disadvantages to the licensee on one hand, and the benefits to potential listeners on the other.

- 4.20 According to Ofcom’s estimates, around 2.4% of the adult UK population (1,249,272 adults) would no longer be able to receive talkSPORT on AM.
- 4.21 We also note the long-term decline in the popularity of listening to the AM band, and that many of those who would lose the ability to access the talkSPORT AM signal would be able to continue to receive talkSPORT via national DAB digital radio. In the relatively few areas where reception of the national Digital One multiplex is unavailable, there are further options to listen online, or via television (the station is available on the Freeview, Sky and Virgin Media platforms).
- 4.22 We have considered comments provided by Digital Radio Mondiale, Mr Fraser and the confidential response which include arguments in relation to the impact on listeners. We address these comments below:
- a) We believe talkSPORT will continue to provide “good national coverage on AM”, the licensed service will continue to broadcast to 93% of the UK adult population. We also note that many of those who would lose the ability to access the talkSPORT AM signal would be able to continue to receive talkSPORT via national DAB digital radio. In the relatively few areas where reception of the national Digital One multiplex is unavailable, there are further options to listen online, or via television (the station is available on the Freeview, Sky and Virgin Media platforms).
  - b) With regard to the confidential respondents comment on the comparison to the Absolute Radio switch off, both services are still broadcasting to a high proportion of the UK adult population and overall, relatively few listeners are expected to be affected by talkSPORT’s proposed changes.

#### Assessment against Ofcom’s statutory duties

- 4.23 As noted in Section 3, in considering whether talkSPORT would remain compliant with its licence conditions, we also need to take account of Ofcom’s wider statutory duties.
- 4.24 Ofcom's principal statutory duty as set out in section 3 of the 2003 Act is to further the interests of citizens in relation to communications matters; and to further the interests of consumers in relevant markets, where appropriate by promoting competition. Ofcom is also required to secure (amongst other things):
- a) the optimal use for wireless telegraphy of the electromagnetic spectrum;
  - b) the availability throughout the UK of a wide range of television and radio services which (taken as a whole) are both of high quality and calculated to appeal to a variety of tastes and interests; and
  - c) the maintenance of a sufficient plurality of providers of different television and radio services.
- 4.25 In considering the need to secure **optimal use of spectrum**, while we recognise that the implementation of talkSPORT’s proposals would mean a 2.4% reduction in coverage of its AM network, talkSPORT would continue to use the relevant spectrum to broadcast to a high proportion (93%) of the UK adult population. Therefore, we consider that, in these

circumstances, talkSPORT’s proposal to continue to broadcast its licensed service to 93% of the UK adult population would secure optimal use of spectrum.

- 4.26 Regarding the need to ensure **plurality of services and providers**, we note that Ofcom licenses a wide variety of television and radio services across the UK, on a range of different platforms, with a variety of different programme formats. As previously noted, the vast majority of talkSPORT’s listeners affected by its proposals would be able to re-tune to the service on national DAB radio. Finally, we also note that the availability of talkSPORT on alternative broadcast platforms (i.e. on Freeview, Sky and Virgin Media platforms) and internet would further contribute to mitigating any potential adverse impact on consumers.

#### **Ofcom’s conclusion on the licence variations**

- 4.27 Therefore, we have decided to accept talkSPORT’s proposals and remove reference to the transmitter sites that talkSPORT has proposed to close from its Broadcasting Licence and WT Act Licence, with effect from the date when talkSPORT intends to close them.