
Cross Counties Radio

Request to change Key Commitments

STATEMENT:

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1. Overview

A community radio station's Key Commitments set out the type of broadcast output it is required to deliver, and form a part of its licence. Key Commitments include a description of the community to be served; a summary of the character of the service; a description of the programme service; social gain objectives; access and participation arrangements; and mechanisms to ensure accountability to the target community. When a request to change Key Commitments constitutes a significant departure from the character of service, the request is subject to consultation.

In November 2022, Cross Counties Radio ("the Licensee") submitted a request to Ofcom to change its Key Commitments for the FM community radio licence it holds for Lutterworth and Blaby Town in Leicestershire. In Ofcom's view the proposed change would or could have substantially altered the character of the service, and therefore the request was subject to a public consultation.

What we have decided – in brief

Having considered the responses to our consultation, Ofcom has decided not to approve the request by Cross Counties Radio to reduce its original output requirement from 161 hours per week to 70 hours per week.

2. Details and background information

- 2.1 The licence for each community radio service contains 'Key Commitments' which describe the type of programme service the licensee is required to provide.
- 2.2 In November 2022, Ofcom received a Key Commitments change request from Cross Counties Radio Limited, which holds a community radio licence for Lutterworth and Blaby Town, with regards to its service 'Cross Counties Radio'. Cross Counties Radio's target community is "the Magna Park workforce, local residents, commuters and business community of Lutterworth and surrounding towns and villages".

Cross Counties Radio Limited's licence

- 2.3 The station commenced broadcasting in July 2020. The Licensee successfully applied for an extension to its coverage area, to include Blaby Town, in July 2021.
- 2.4 The current Key Commitments are appended to this document as Annex 6. They are also available on the [Ofcom website](#).
- 2.5 Cross Counties Radio Limited requested one change, to reduce its original output requirement from 161 hours per week to 70 hours per week.

Statutory framework and considerations

- 2.6 Community radio services are licensed under the terms of three related pieces of legislation. In particular, the Community Radio Order 2004 (the "Order") applies modified versions of the provisions of the Communications Act 2003 (the "2003 Act") and Broadcasting Act 1990 (the "1990 Act") to community radio. The legislation sets out requirements that must be met for radio services to qualify as 'community radio services', including that such services are not profit-distributing, are provided for a target community, deliver social gain objectives, invite access and participation in the service, and are accountable to the target community.
- 2.7 Section 106(1) of the 1990 Act (as modified by the Order) requires that community radio licences include such conditions as appear to Ofcom to be appropriate for securing that the character of the licensed service (as proposed by the licence holder when making its application) is maintained during the period for which the licence is in force.
- 2.8 The way section 106(1) applies in practice is that, when a prospective licence holder applies for a community radio licence, it must set out its proposals as to the character of the service it intends to provide. Those proposals are summarised in what is known as a 'Key Commitments' document, which then forms the basis for the terms and conditions contained in the licence regarding the 'character of the service' and its delivery. Such terms and conditions are agreed with each licensee before the station starts broadcasting. (The 'licensee' is the organisation which holds the community radio licence.)
- 2.9 The Key Commitments document includes:

- a description of the community to be served;
 - a summary of the character of service (a short description of the station's aims);
 - a description of the programme service;
 - social gain objectives (including how the station will satisfy the mandatory social gain requirements set out in the legislation, and any other social gain objectives of the service);
 - access and participation arrangements; and
 - mechanisms to ensure accountability to the target community.
- 2.10 In determining the licence conditions that should be included in a licence under section 106(1) of the 1990 Act, section 106(1A) provides that Ofcom may, in particular, include conditions that enable it to consent to a “departure from the character of a licensed service” (or, in other words, the Key Commitments) should a licence holder subsequently request such a change. This is embodied in condition 2(5) of each community radio licence, allowing Ofcom to consent to changes in Key Commitments. Before Ofcom can give its consent it must be satisfied that one of a number of statutory criteria has been fulfilled (see below). However, the legislation also gives Ofcom discretion not to consent to a proposed change, even if one of these criteria is satisfied.
- 2.11 The statutory criteria that Ofcom must apply when considering requests to change Key Commitments are set out in Section 106(1A) of the 1990 Act (as modified by the Order), and are as follows:
- that the departure would not substantially alter the character of the service (section 106(1A)(a));
 - that the departure would not narrow the range of programmes available by way of relevant independent radio services to persons comprising the relevant community (section 106(1A)(b));
 - that, there is evidence that, among persons comprising that community, there is a significant demand for, or significant support for, the change that would result from the departure (section 106(1A)(d));
 - that the departure would not be prejudicial to the access by members of that community to the facilities used for the provision of the service and for training in the use of those facilities (section 106(1A)(e)); or
 - that the departure would not be prejudicial to the delivery of social gain resulting from the provision of the service provided under that licence (section 106(1A)(f)).
- 2.12 Where Ofcom is considering whether or not to consent to a proposed change on the basis of sections 106(1A)(b), (d), (e) or (f) above, it is under a general obligation to consult with those who, in its opinion, are likely to be affected by the change. Ofcom is not, however, required to consult when it is satisfied that a proposed change satisfies section 106(1A)(a) - i.e. that a proposed change would "not substantially alter the character of the service". The term 'character of the service' is not defined in the legislation. We consider that it includes everything that is set out in each service's Key Commitments section of its licence. For the avoidance of doubt, this goes beyond a sub-section in the Key Commitments document

entitled 'description of character of service' to encompass the entirety of the Key Commitments annex to the licence.

- 2.13 The legislation leaves the decision as to whether to permit a change, even if one of the above criteria is satisfied, to Ofcom's discretion. There may be reasons (depending on the circumstances of the case) why Ofcom may not consent to the proposed change, notwithstanding that one of the statutory criteria is met. We have published criteria we use to help us judge whether a request of this kind should be approved.¹ We also take account of our general statutory duties, including:
- a) our principal duty to further the interests of citizens and consumers;
 - b) our duty to secure 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 (including specifically a range and diversity of local radio services), as well as the maintenance of a sufficient plurality of providers of different services; and
 - c) our duty to have regard to the different interests of persons in the different parts of the UK, of the different ethnic communities within it and of persons living in rural and in urban areas.
- 2.14 Where we consult, we will usually do so by publishing a consultation document on our website. We will usually include in that document a preliminary view about the request. That is not a decision, but a provisional view, subject to the consultation process, so that those who wish to respond to the consultation can do so on an informed basis. We then consider all the responses to the consultation and make our decision on the request.

¹ Ofcom, [Guidance on changes to key commitments](#), 24 May 2018.

3. Ofcom's analysis and decision

- 3.1 Cross Counties Radio asked to reduce its original output requirement from 161 hours per week to 70 hours per week.
- 3.2 The request was made on the basis that the change would satisfy all five of the statutory criteria in section 106(1A) of the 1990 Act, and that it is consistent with Ofcom's generally applied policy criteria for such requests.
- 3.3 We disagreed and considered that the request would substantially alter the character of the service. This is because we considered that a reduction in the amount of original output the station is required to provide, from the current 161 hours per week to the proposed 70 hours per week, could substantially alter the character of the service. The size of the reduction is, in itself, substantial (over 50%), and we considered that the provision of original output is one of the key elements which defines the character of a particular community radio service. Taking these two considerations together, we could not say that this proposed change would not substantially alter the character of the Cross Counties Radio service.
- 3.4 Ofcom therefore considered that section 106(1A)(a) was not met and so we undertook a public consultation on Cross Counties Radio's request.

Ofcom's preliminary view

- 3.5 We said in the consultation that we were minded to be satisfied in relation to section 106(1A)(e) of the Act: that the change would not be prejudicial to the access by members of the target community to the facilities used for the provision of the service and for training in the use of those facilities. This was because the requested change made no reference to any change in the availability of the Licensee's broadcast facilities and we considered that, by reducing the amount of original output which it would need to produce, the Licensee may increase the availability of the facilities for training members of the target community.
- 3.6 The Key Commitments change legislation leaves the decision as to whether to permit a change to Ofcom's judgement, even if one of the statutory criteria is satisfied. In our preliminary view, we considered it would be appropriate to allow the change having considered the policy grounds, as set out in our published policy criteria. This was on the basis that the proposed change, if implemented, would not conflict with the community radio 'characteristics of service' set out in the legislation, and that the licensee may wish to respond to changes in its own operation and the broader environment having been on air for over a year.

Summary of consultation responses

- 3.7 Ofcom received two confidential responses to the consultation, both of which disagreed with our preliminary view. Both respondents thought that Ofcom should reject the request

on the basis that the reduction in the Licensee's original output requirement would restrict local volunteers' ability to access the service's facilities and the training that would enable them to participate in broadcasts on the service, as the Licensee would not need to produce as much original output in order to meet its Key Commitments.

- 3.8 One of the responses cited anecdotal evidence to suggest that the service would reduce the number of volunteers following a reduction in its commitments, as it would not need to produce as many original programmes following this reduction. Both respondents also said potential volunteers had already been turned away from the station and argued that this restriction on access would be exacerbated if the Key Commitment change request were to be approved. Therefore, both respondents made the case that we should not approve this request on the basis that it would not meet statutory criterion (e).

Analysis and conclusion

- 3.9 In our consultation we recognised that Cross Counties Radio's proposed change to its original output requirement had not met statutory criterion (a) and, therefore, the impact on the character of service would be substantial.
- 3.10 However, we also considered that the change was unlikely to be prejudicial to the access by members of the target communities to the facilities used for the provision of the service and for training in the use of those facilities, and that therefore statutory criterion (e) had been met. Given our view that one of the statutory criteria had been met, we considered whether it was appropriate to allow the change in light of our published criteria, and our provisional view was that it was.
- 3.11 We first considered whether, in light of the responses which we received, we still considered statutory criterion (e) was met. We note the respondents' concerns that the reduction in hours would reduce volunteers' access to the studio facilities, on the basis that the number of volunteers on the station would be reduced with the reduction in original output requirement. The respondents also indicated that they believed the Licensee would not encourage the recruitment of new volunteers if this reduction was approved.
- 3.12 In reaching our preliminary view, we indicated that the reduction in original output would not necessarily lead to a reduction in original programming, and that if this was the case the Licensee may use the increased flexibility in its studio time to provide more time for training its volunteers.
- 3.13 However, on the basis of the evidence available to us, we cannot be satisfied that the change would not prejudice the access of volunteers to the station's facilities and the provision of training, given that stakeholders have raised specific concerns about volunteers who may no longer have the ability to present on the station. The application by Cross Counties Radio did not demonstrate to us that this would not be the case, nor did it set out how the Licensee would ensure that a reduction in its original output requirement would not prejudice volunteers' access to the facilities and training.

- 3.14 Therefore, we are not approving Cross Counties Radio's request to change its Key Commitments, on the basis that we are not satisfied with regard to any of the statutory criteria set out in section 106(1A) of the Broadcasting Act 1990.