

Title:

Mr

Forename:

William

Surname:

Isaac

Representing:

Self

Organisation (if applicable):

Email:

What do you want Ofcom to keep confidential?:

Keep nothing confidential

If you want part of your response kept confidential, which parts?:

Ofcom may publish a response summary:

Yes

I confirm that I have read the declaration:

Yes

Ofcom should only publish this response after the consultation has ended:

Yes

Additional comments:

With the present application, Ofcom is in grave danger of having the wool pulled over its eyes. What is taking place by degree is a pincer movement whereby remote corporate interests with no commitment to community or truly local radio broadcasting attempt to squeeze out any prospect of local or community-based competition to their service.

Local programming on the potentially lucrative analogue frequency in North Devon was abandoned by Global as first Lantern become Heart, followed by the closure of all of the company's studio capacity in North Devon leaving the station carrying nothing but

syndicated/generic output. The process has stripped out costs for the company thereby making this analogue frequency commercially attractive, but has left no permanent or sustainable community or locally-based radio service within the area of coverage.

Having been able to 'get away' with this, Global/Now Digital has now evidently decided it would like to retain its stifling monopoly over independent radio broadcasting within North Devon, and has identified an opportunity for doing so at relatively modest cost simply by committing to the provision of a 'local' DAB multiplex. Upon closer examination one discovers - perhaps unsurprisingly given the company's track record - that the proposal contains no commitment of any kind whatsoever to programming or production capacity which is in any sense local to the area of coverage!

It may be that the Now Digital application is deemed to meet the statutory requirements for its application to be considered, and it may also be that Ofcom's general policy criteria for determining such applications (as set at paragraph 2.13 in the consultation document) are deemed to be satisfied. If such is the case, then unless Ofcom exercises the discretion bestowed upon it by statute, the application will quite simply fall to be granted.

In practical terms such a decision which would be likely to have the effect of precluding the re-emergence of an independent local or community radio station serving North Devon for perhaps a generation - which is one would trust not an outcome for which Ofcom would wish to be held responsible.

Quite possibly the key to making what might be described as a better decision lies, in my submission, within the fourth of the bullet points setting out Ofcom's policy for the exercise of its discretion in this area. Since at present there are no stations providing local content within the North Devon area, it is impossible to safeguard or protect their access to the proposed 'local' digital multiplex, because there is simply nothing to protect.

In such a circumstance, it is therefore impossible to apply the fourth policy criteria in any constructive or meaningful way unless or until such there may be at least one local provider or service with rights and interests in need of protection. When viewed in this manner, the Now Digital application can be seen as premature.

The fact that as a consequence of granting the present application, the current analogue frequency could be renewed by the incumbent operator without the possibility of any competition from locally-based providers serves only to add considerable weight to this argument.

The general policy principles set out by Ofcom in respect of the exercise of its discretion must not in any event be allowed to become a set of rules by the decision is made. Such an approach would be a subversion of the statutory duty to exercise discretion, and as such would be open to legal challenge.

For the reasons set out above, Ofcom should exercise its discretion to REFUSE the present application.

Question 1: Do you think that allowing Now Digital to extend the coverage area of its Exeter & Torbay local radio multiplex licence to include North Devon would unacceptably narrow the range of DAB programme services

available in the Exeter and Torbay area? Please explain the reasons for your view.:

Yes. A precedent would have be established whereby the whole of Devon (with the exception of Plymouth) - the second largest county with considerable social, cultural and economic diversity within its borders - is to be regarded as a single homegeneous block for the purpose of independent local radio broadcasting. The effect of this approach would be to impose a straightjacket upon potential locally-based providers as a large vested-interest operator would in effect have been allowed to create an unassailable monopoly on the provision of the service, resulting in a dearth of innovation, creativity and most especially competition to the incumbent provider. The quality of the provision can be guaranteed to deteriorate in such a scenario.

Question 2: Do you think that allowing Now Digital to extend the coverage area of its Exeter & Torbay local radio multiplex licence to include North Devon would be calculated to maintain or promote the development of digital sound broadcasting in the UK otherwise than by satellite? Please explain the reasons for your view.:

No. Whilst it cannot be denied that those living in the sparsely-populated North Devon area would, in the short term, have access to a greater number of DAB radio services than is presently the case, those services are so similar and undifferentiated from the current DAB boquet in North Devon that the effect of promoting the development of the platform in this area of coverage would be inconsequential. A considerable beneficial effect would however ensue if but a single one of the additional services were distinctive and truly local to the area of coverage, which is something that New Digital makes no commitment to providing.

Question 3: Do you think that Now Digital?s proposals for providing coverage of North Devon are satisfactory? Please explain the reasons for your view.:

The Now Digital proposals unsatisfactory. In-car listening is vital for accelerating DAB uptake. The experience in North Devon of a single transmitter providing service from Huntshaw Cross is that there are too many locations - especially in the populations centres - where in-car reception is either unreliable or completely unusable. The present application serves only to perpetuate this failing approach, whilst introducing nothing new, distinctive or noteworthy by way of content.

Question 4: Do you consider that Now Digital has the ability to maintain its local radio multiplex service if its request is granted? Please explain the reasons for your view.:

There can be little doubt that Now Digital has the capacity to maintain the service it is offering to provide, which is completely undifferentiated from existing services and as a 'local multiplex' lacks any form of local distinctiveness or indeed any programming originating from within the local area of coverage. It would be preferable to risk an alternative, less well-resourced provider that was prepared to undertake to address these deficiencies.

Question 5: (For programme service providers on the Exeter & Torbay local radio multiplex only) Do you consider that there are sufficient safeguards in place to protect your rights and interests in the event that Now Digital is permitted to extend coverage to include North Devon?:

n/a

Question 6: Do you consider that there any other grounds on which Ofcom should approve, or not approve, the request from Now Digital? Please explain the reasons for your view.:

Ofcom should refuse this application on the grounds that it would severely damage the prospects of any local or community based radio station becoming established in North Devon on account of the dominant position it creates for the incumbent operator which has no interest in or commitment to providing such services. The reasons for this are set out in the additional notes (above).