



# ORIGINAL 106.5 (Bristol)

Request to change Format

Consultation

Publication date: 11 September 2009

Closing Date for Responses: 9 October 2009

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## Section 1

# Summary

- 1.1 Ofcom has received a request from Tomahawk Radio Ltd to change the Format of Original 106.5 (Bristol). The station is currently an adult alternative album-led station of adult-oriented music. Original wishes to change it to become an adult-alternative station playing some adult-oriented album tracks with classic rock and predominantly non-contemporary pop/rock hits. The target demographic would remain the same (35-59 year-olds). News would remain as a 24-hour service.

### Current Format

**AN ADULT ALTERNATIVE STATION PLAYING AN ALBUM-LED, CREDIBLE MIX OF ADULT-ORIENTATED MUSIC WITH PARTICULAR APPEAL FOR 35-59 YEAR OLDS, WITH 24-HOUR NEWS**

### Proposed Format

**AN ADULT ALTERNATIVE STATION PLAYING ADULT-ORIENTATED ALBUM TRACKS, CLASSIC ROCK, AND PREDOMINANTLY NON-CONTEMPORARY POP/ROCK HITS, WITH PARTICULAR APPEAL FOR 35-59 YEAR OLD MALE LISTENERS, WITH 24-HOUR NEWS**

- 1.2 Ofcom has published guidelines with regard to criteria that will be considered when stations request a change of Format.
- 1.3 Ofcom must consider the request by Original to change its Format against the statutory criteria set out in the legislation below, and the consultation question, at Annex 4, reflects that.

*Ofcom has the ability to consent to such changes under conditions included in the Original (Bristol) licence, in accordance with Sections 106 (1A) of the Broadcasting Act 1990 if it is satisfied that at least one of the following criteria is satisfied:*

*(a) The departure would not substantially alter the character of the service*

*(b) The change would not narrow the range of programmes available in the area by way of relevant independent radio services*

*(c) The change would be conducive to the maintenance or promotion of fair and effective competition or*

*(d) There is evidence that, amongst persons living in the affected areas, there is a significant demand for, or significant support for, the change.*

- 1.4 If a station wants to make changes that will substantially alter the character of its service, Ofcom consults publicly before coming to a decision. In this case the request could, if granted, substantially alter the character of the station's service.

- 1.5 In this case, as the wording of the Character of Service would change, in line with previous Format change requests, Ofcom regards the change as substantial and so is consulting on the requested change.
- 1.6 In this case the issue centres on the requested change to reduce the requirement for being album-led to playing a broader mix of album tracks and other music. The station's proposed Format would still require it to play album tracks . It would remain an adult-alternative station and its target age range (35 to 59 year-olds) would not change, although it would be more specifically male-focused. The proposed Format also sets out the sort of genres that would be played as part of its "adult alternative" offering.
- 1.7 As Ofcom believes that criterion (a) above is not satisfied, the changes can only be approved if one of criteria (b) to (d) is satisfied. In these circumstances Ofcom is required to carry out a public consultation.
- 1.8 In particular, when considering whether criterion (b) is satisfied (*the change would not narrow the range of programmes available in the area by way of relevant independent radio services*), neither local DAB services nor BBC services 'count' as relevant independent radio services. The relevant independent radio services are those local analogue commercial and community stations which operate in the region, which are listed in Annex 7.
- 1.9 Ofcom, therefore, seeks views on the requests, having particular regard to the Broadcasting Act 1990 Section 106 (1A) **(b) (c) and/or (d)**, as set out above.
- 1.10 Annex 5 contains the Format change request, in which an argument is made that the output would still be distinctive within the Bristol market and that criteria (b) is satisfied.

## Section 2

# Background

- 2.1 Original 106.5 (Bristol) was licensed by Ofcom in September 2006 and went on air for the first time in May 2007.
- 2.2 Six applicants competed for this Bristol licence. In addition to Original, the applicants were:

B106.5 (Bristol FM Ltd) – Full service  
Bristol's 106.5 Rock Radio (Bristol Sound Ltd) - Rock  
Chill Bristol (GWR (West) Ltd) – Chill-out  
Diamond 106.5 FM (Radio UK Holdings Ltd) - Rock  
Wicked FM (UK Media and Radio Bristol Ltd) – Modern rock

In the statement setting out its reasons for the award, Ofcom noted the research carried out by the applicant and its identification of a gap in the Bristol market.

*It said : "In general, the RLC felt that Original's application demonstrated a detailed understanding of the Bristol market, and in particular identified a notable gap in current local commercial radio provision (which is also reflected by the RAJAR figures for the existing stations in the market) for ABC1 and male listeners.*

*"With regard to sections 105(b) and (c), the RLC felt that Original's album-led 'Adult Alternative' format was a coherent one that would broaden choice in the Bristol market in a distinctive and well-considered manner. In particular, Original's rock-based (but nevertheless eclectic) music policy would be likely to give exposure to a number of genres or styles that applicant monitoring showed are generally under-represented in the music output of existing Bristol commercial stations. It was noted that Original's Format commitment to restrict the airplay of top 20 chart singles (past or present) to 45% of its music output would help deliver the station's Character of Service, which mandates it to be "Adult Alternative Radio", while members also acknowledged, in this respect, the Format commitment to low rotation levels."*

- 2.3 Original now proposes an "adult alternative" service that still plays album tracks but is not album led.

## Annex 1

# Responding to this consultation

## How to respond

- A1.1 Ofcom invites written views and comments on the issues raised in this document, to be made **by 5pm on 9 October 2009**.
- A1.2 Ofcom strongly prefers to receive responses using the online web form at <http://www.ofcom.org.uk/consult/condocs/originalbristol/howtorespond/form>, as this helps us to process the responses quickly and efficiently. We would also be grateful if you could assist us by completing a response cover sheet (see Annex 3), to indicate whether or not there are confidentiality issues. This response coversheet is incorporated into the online web form questionnaire.
- A1.3 For larger consultation responses – particularly those with supporting charts, tables or other data – please email: [martin.campbell@ofcom.org.uk](mailto:martin.campbell@ofcom.org.uk), attaching your response in Microsoft Word format, together with a consultation response coversheet.
- A1.4 Responses may alternatively be posted or faxed to the address below:
- Original (Bristol) consultation  
FAO Martin Campbell  
Chief Advisor, Radio  
Ofcom  
Riverside House  
2A Southwark Bridge Road  
London SE1 9HA
- Fax: 020 7981 3850
- A1.5 Note that we do not need a hard copy in addition to an electronic version. Ofcom will acknowledge receipt of responses if they are submitted using the online web form but not otherwise.
- A1.6 It would be helpful if your response could include direct answers to the question asked in this document, which are listed together at Annex 4. It would also help if you can explain why you hold your views and how the proposals would impact on you.

## Further information

- A1.7 If you want to discuss the issues and questions raised in this consultation, or need advice on the appropriate form of response, please contact Jon Heasman on 020 7783 4509.

## Confidentiality

- A1.8 We believe it is important for everyone interested in an issue to see the views expressed by consultation respondents. We will therefore usually publish all responses on our website, [www.ofcom.org.uk](http://www.ofcom.org.uk), ideally on receipt. If you think your response should be kept confidential, can you please specify what part or whether

all of your response should be kept confidential, and specify why. Please also place such parts in a separate annex.

- A1.9 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and will try to respect this. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.
- A1.10 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's approach on intellectual property rights is explained further on its website at <http://www.ofcom.org.uk/about/accoun/disclaimer/>

## Next steps

- A1.11 Following the end of the consultation period, Ofcom intends to publish a statement.
- A1.12 Please note that you can register to receive free mail Updates alerting you to the publications of relevant Ofcom documents. For more details please see: [http://www.ofcom.org.uk/static/subscribe/select\\_list.htm](http://www.ofcom.org.uk/static/subscribe/select_list.htm)

## Ofcom's consultation processes

- A1.13 Ofcom seeks to ensure that responding to a consultation is easy as possible. For more information please see our consultation principles in Annex 2.
- A1.14 If you have any comments or suggestions on how Ofcom conducts its consultations, please call our consultation helpdesk on 020 7981 3003 or e-mail us at [consult@ofcom.org.uk](mailto:consult@ofcom.org.uk) . We would particularly welcome thoughts on how Ofcom could more effectively seek the views of those groups or individuals, such as small businesses or particular types of residential consumers, who are less likely to give their opinions through a formal consultation.
- A1.15 If you would like to discuss these issues or Ofcom's consultation processes more generally you can alternatively contact Vicki Nash, Director Scotland, who is Ofcom's consultation champion:

Vicki Nash  
Ofcom  
Sutherland House  
149 St. Vincent Street  
Glasgow G2 5NW

Tel: 0141 229 7401  
Fax: 0141 229 7433

Email [vicki.nash@ofcom.org.uk](mailto:vicki.nash@ofcom.org.uk)

## Annex 2

# Ofcom's consultation principles

- A2.1 Ofcom has published the following seven principles that it will follow for each public written consultation:

### Before the consultation

- A2.2 Where possible, we will hold informal talks with people and organisations before announcing a big consultation to find out whether we are thinking in the right direction. If we do not have enough time to do this, we will hold an open meeting to explain our proposals shortly after announcing the consultation.

### During the consultation

- A2.3 We will be clear about who we are consulting, why, on what questions and for how long.
- A2.4 We will make the consultation document as short and simple as possible with a summary of no more than two pages. We will try to make it as easy as possible to give us a written response. If the consultation is complicated, we may provide a shortened Plain English Guide for smaller organisations or individuals who would otherwise not be able to spare the time to share their views.
- A2.5 We will consult for up to 10 weeks depending on the potential impact of our proposals.
- A2.6 A person within Ofcom will be in charge of making sure we follow our own guidelines and reach out to the largest number of people and organisations interested in the outcome of our decisions. Ofcom's 'Consultation Champion' will also be the main person to contact with views on the way we run our consultations.
- A2.7 If we are not able to follow one of these principles, we will explain why.

### After the consultation

- A2.8 We think it is important for everyone interested in an issue to see the views of others during a consultation. We would usually publish all the responses we have received on our website. In our statement, we will give reasons for our decisions and will give an account of how the views of those concerned helped shape those decisions.



## Annex 3

# Consultation response cover sheet

- A3.1 In the interests of transparency and good regulatory practice, we will publish all consultation responses in full on our website, [www.ofcom.org.uk](http://www.ofcom.org.uk).
- A3.2 We have produced a coversheet for responses (see below) and would be very grateful if you could send one with your response (this is incorporated into the online web form if you respond in this way). This will speed up our processing of responses, and help to maintain confidentiality where appropriate.
- A3.3 The quality of consultation can be enhanced by publishing responses before the consultation period closes. In particular, this can help those individuals and organisations with limited resources or familiarity with the issues to respond in a more informed way. Therefore Ofcom would encourage respondents to complete their coversheet in a way that allows Ofcom to publish their responses upon receipt, rather than waiting until the consultation period has ended.
- A3.4 We strongly prefer to receive responses via the online web form which incorporates the coversheet. If you are responding via email, post or fax you can download an electronic copy of this coversheet in Word or RTF format from the 'Consultations' section of our website at [www.ofcom.org.uk/consult/](http://www.ofcom.org.uk/consult/).
- A3.5 Please put any parts of your response you consider should be kept confidential in a separate annex to your response and include your reasons why this part of your response should not be published. This can include information such as your personal background and experience. If you want your name, address, other contact details, or job title to remain confidential, please provide them in your cover sheet only, so that we don't have to edit your response.

## Cover sheet for response to an Ofcom consultation

### BASIC DETAILS

Consultation title: Original (Bristol) Consultation

To (Ofcom contact): Martin Campbell

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

### CONFIDENTIALITY

Please tick below what part of your response you consider is confidential, giving your reasons why

Nothing

☐

Name/contact details/job title

☐

Whole response

☐

Organisation

☐

Part of the response

☐

If there is no separate annex, which parts?

If you want part of your response, your name or your organisation not to be published, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

### DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response that Ofcom can publish. However, in supplying this response, I understand that Ofcom may need to publish all responses, including those which are marked as confidential, in order to meet legal obligations. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

Ofcom seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

☐

Name

Signed (if hard copy)

## Annex 4

# Consultation question

## One Question

A4.1

*Q 1. Should Original (Bristol) be permitted to make its proposed changes to the station, with particular regard to the statutory criteria as set out in the summary? (The Broadcasting Act 1990 Section 106 (1A) (b) and (d) relating to Format changes).*

## Annex 5

# Original's request for the change of Format to Original 106.5 (Bristol)



## Format Change Request Form OfW 332

|  |   |
|--|---|
| <b>Station Name:</b>                           | Original 106.5  |
| <b>Name of Person Proposing Format Change:</b> | Richard Johnson   |
| <b>Outline Format Change(s) Proposals:</b>     | <p>Amendment in the character of service from:-</p> <p>"an adult alternative station playing an album-led, credible mix of adult-orientated music with particular appeal for 35-59 year olds, with 24-hour news"</p> <p>to</p> <p>"an adult alternative station playing adult-orientated album tracks, classic rock, and predominantly non-contemporary pop/rock hits, with particular appeal for 35-59 year old male listeners, with 24-hour news"</p> |

Operators of analogue local radio licences 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 (available on our website).

Under section 106(1A) of the Broadcasting Act 1990 (as amended\*), Ofcom may consent to the change only if it is satisfied that *at least one* of the following four 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; or*

- (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.*

**Only one of these four 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 particularly circumstances of the case) why Ofcom may not consent to the proposed change.**

**In addition, applicants should note that, under section 106ZA of the same Act (as amended\*), a proposed change that *does not* satisfy the first of these criteria (i.e. a change that Ofcom considers *would or could* substantially alter the character of the service) must, if it is to be considered further under any of the other three criteria, be consulted upon.<sup>#</sup>**

**In the event that Ofcom receives a request for Format change and considers that criterion (a) 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 present your submission in the following manner:

**Section 106(a) relevance...**

Amendment in the character of service from:-

"an adult alternative station playing an album-led, credible mix of adult-orientated music with particular appeal for 35-59 year olds, with 24-hour news"

to

"an adult alternative station playing adult-orientated album tracks, classic rock, and predominantly non-contemporary pop/rock hits, with particular appeal for 35-59 year old male listeners, with 24-hour news"

The proposed amendment does not significantly alter the character of the service.

The amended format will appeal to a similar target market, with character grounded in male-focused musical eclecticism.

Our Bristol station will continue to:

- play a broad range of tracks drawn primarily from rock genres
- play a credible mix of adult-orientated music
- play selected album tracks
- be adult alternative
- be male focused
- be rock-led
- have particular appeal for 35-59 year olds
- offer 24 hour news
- be locally produced 24 hours a day
- be located in Bristol

We will not seek to mimic mainstream stations or duplicate existing provision on the

dial. The format is distinctive and characterful, and we plan the transition as an evolutionary "brand strengthening" process rather than a marked change in direction.

The shifts of emphasis we seek in the amendment are intended firstly to clarify unambiguously that the new service will be more "classic" and less "contemporary" than Original's current output, and secondly to shift our current emphasis on album tracks to a slightly more familiar mix of classic rock.

The difference from the current character to the new character of service, and the significant difference in terms of additional audience appeal, is in its flexibility to place greater emphasis on familiar classic rock and rock-orientated "hits". This will deliver a mix which remains highly distinctive while attracting greater response from listeners.

### **Section 106 (b), (c) and (d) relevance...**

b) Whilst we believe that this is not a substantive change under (a) above, we also believe that this will in no way narrow the range of programmes available in Bristol.

Original will continue to provide a genuine alternative to Heart, Star, Kiss and Gold. The station will continue to offer local news, traffic and travel, weather and local information. It will also play a broad mix of predominantly rock music – something that is not found on other radio stations in this market.

This is a relatively uncluttered market. The stations that include Bristol in their TSA have formats that fit neatly into the genres of CHR, AC, Dance and Gold. No station even includes the word rock music within their format.

The local competitors have markedly different Characters of Service from Original.

**Heart** is a CHR service playing "contemporary and chart music" for the "under 44's". In Ofcom's sampling report of March 2009, it was stated that the expectation was that at least two-thirds of the output on Heart (then GWR) would be tracks less than two years old.

**Kiss 101** is a "rhythmic based" service that covers a significantly larger TSA being a regional service for the Severn Estuary.

**Star Radio** is a "soulful adult contemporary" service for 30 to 50 year olds.

**Gold** is a predominantly networked AM Gold service playing classic pop.

c) As this is a minor shift of the service rather than a step-change in terms of music or content, it will not have an unfair effect on competitors. The main local competitors to this service in audience terms are Heart – part of Global's quasi national network – and Star Radio, which is owned by Tomahawk Radio, the owners of Original.

### **Any additional information and/or evidence in support of proposed change(s).**

Ofcom's "Regulation of Format Changes" states that "Local commercial radio stations

are, by their nature, commercial businesses and if a Format fails to deliver a commercial return to the owner there may be a need to allow a more fundamental change”

The document also states that “ The judgement will be made on the basis of the overall “sound” of the station.”

It is fair to say that the album led format has been a failure in Bristol. Despite a significant launch marketing campaign, the station achieved a 2% weekly reach in its first Rajar. Since then the reach has oscillated between 2 and 4%, and currently is at 3%. This is an unsustainable business proposition – and furthermore is demonstrably not a popular proposition with Bristolians.

### **The format does not encourage variety:-**

Listeners certainly want a variety of music. But a variety of music they mainly know. After over two years of working to make the Original format a success, we are currently gravitating towards a music mix that has less variety than the format might suggest. The promise to play at least 51% of non-chart music means that we are more selective with these non-chart tracks to avoid alienating listeners. We play less non-chart songs, than chart hits, but due to the format restriction the non-chart tracks are rotated at a higher rate than chart hits.

In the first 18 days of August 2009 Original 106.5 played a total of 1,123 different tracks. The breakdown of chart/non-chart was 41.8% vs 58.2%. However, as there were 552 non-chart songs vs 571 chart songs, the rotation of these non-chart songs was significantly higher. Non-chart tracks were played an average of 6.7 times in the period, compared to chart songs that were played an average of 4.6 times.

The proposed format change will maintain the audience profile and the overall musical sound of the station as proposed at licence award. What it will also do is retain the spirit of the licence. We believe that this change retains a differentiated product in the market, but one that stands greater chance of delivering a more popular service for listeners.

### Notes

\* As amended by sections 312 and 313 of the Communications Act 2003

# 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.

Version 4 – amended March 2007

**Annex 6**

# COMMERCIAL RADIO STATION FORMAT

## ORIGINAL 106.5 (BRISTOL)

**Character of Service**

**AN ADULT ALTERNATIVE STATION PLAYING AN ALBUM-LED\*, CREDIBLE MIX OF ADULT-ORIENTATED MUSIC, WITH PARTICULAR APPEAL FOR 35-59 YEAR-OLDS, WITH 24-HOUR NEWS**

|                             |  |
|-----------------------------|--|
| <b>Licensed area</b>        | Bristol and surrounding area (as in Ofcom advertisement)   |
| <b>Frequency</b>            | 106.5 MHz  |
| <b>Service duration</b>     | 24 hours   |
| <b>Locally-made hours</b>   | At least 10 hours a day during daytime weekdays (must include breakfast).<br>At least 4 hours daytime Saturdays and Sundays. |
| <b>Local news bulletins</b> | At least hourly at peaktime weekdays and weekends. Outside peak, UK-wide, national and international news should feature.    |

**Shared arrangements (if applicable)**

|                          |                 |
|--------------------------|-----------------|
| <b>Co-location</b>       | No Arrangements |
| <b>Programme sharing</b> | No Arrangements |

**Definitions**

|                |  |
|----------------|--|
| Speech / Music | Excludes advertising, programme/promotional trails & sponsor credits |
| Peaktime       | Weekday breakfast and drivetime, and weekend late breakfast          |
| Daytime        | 0600 to 1900 weekday and weekend                                     |
| Locally-made   | Production and presentation from within the licensed area            |

MCA population : 539,064

Licence number : AL 319-1

**Notes**

This Format should be read in conjunction with Ofcom's published Localness Guidelines as updated with additional text from "The Future of Radio : The Next Phase" (2007)

\*Album tracks which become UK Top 20 singles, or UK Top 20 singles subsequently appearing on albums would not qualify.

**AGREED FEB 2009**



## **Annex 7**

# **Commercial and community radio stations operating in the Bristol area**

## **Commercial Stations**

- Heart (Bristol and Bath)  
<http://www.ofcom.org.uk/static/radiolicensing/formats/al016-2.doc>
- Gold (Bristol and Bath)  
<http://www.ofcom.org.uk/static/radiolicensing/formats/al015-2.doc>
- Star FM  
<http://www.ofcom.org.uk/static/radiolicensing/formats/al247-1.doc>
- Kiss 101 (Severn Estuary)  
<http://www.ofcom.org.uk/static/radiolicensing/formats/al167-1.doc>

## **Community Stations**

- Bristol Community FM (BCFM)  
<http://www.ofcom.org.uk/static/radiolicensing/Community/CR078.htm>
- Ujima Radio  
<http://www.ofcom.org.uk/static/radiolicensing/Community/CR116.htm>