

## Addendum

# Analogue licence renewals and national DAB stations

- 1.1 We are issuing this addendum as an update to our recently published *Statement on commercial radio localness regulation*. It addresses one further issue arising out of the new legal provisions about local analogue licence renewals contained in the Digital Economy Act 2010 (“the 2010 Act”) and on which we consulted in our July 2009 consultation (*Radio: the implications of Digital Britain for localness regulation*).

## Background

- 1.2 The Digital Britain Final Report proposed to allow analogue stations to merge to form new DAB stations. This flexibility would permit two or more regional stations, as defined by Ofcom, to align services to form a single UK or nation’s service. To support this, the report proposed to amend the rules under which Ofcom grants analogue licence renewals to ensure that regional stations which became national DAB stations do not lose their current or future renewal.
- 1.3 In our July 2009 consultation (*Radio: the implications of Digital Britain for localness regulation*) we set out a number of proposals for changing the way we regulate localness on radio. Some of these were proposals for the exercise of our powers under the existing legislative framework. We also made proposals about how we would exercise powers if the law changed (and which it now has as part of the 2010 Act). These were designed to complement one another.

## Policy proposals under existing legislation

- 1.4 In Proposal 1 of our July 2009 consultation we proposed a list of regional stations (see Figure 1) which should have the flexibility to become national stations on DAB and in turn be freed from localness requirements (e.g. regional speech content). One of our objectives in doing so was to enable and encourage enhanced choice and competition in radio broadcasting on a UK wide basis, whilst at the same time preserving the localness that consumers and citizens value (through, for example, maintaining the regulation of localness on local stations not on our proposed list). In drawing up the list, we highlighted that the regional stations are now providing a service which is focused on providing an extension of music choice as well as the required locally made programming and regional speech content. In our final statement we approved this list of stations for the purpose of our Proposal 1.

**Figure 1 Regional FM stations**

Station	Region(s)	Owner
Absolute Radio	London	TIML
Capital Radio	London	Global Radio
Galaxy	North East, Central Scotland, Yorkshire	Global Radio
Heart	London, East Midlands, West Midlands	Global Radio
Kerrang!	West Midlands	Bauer Media
Kiss	London, East of England, Severn Estuary	Bauer Media
LBC 97.3	London	Global Radio
Magic	London	Bauer Media
Nation Radio	South Wales	Town & Country
Real Radio	Central Scotland, North East, North West, Yorkshire, South Wales, North & Mid Wales	GMG Radio
Smooth Radio	London, East Midlands, West Midlands, North East, North West	GMG Radio
The Coast	Solent	Celador
Wave 105	Solent	Bauer Media
XFM	London	Global Radio

Source: Ofcom

## Proposals relating to new legislation

- 1.5 We further proposed in our July 2009 consultation that the stations listed for our Proposal 1 would also be the ‘regional stations’ for the purpose of any new legal power we were given to determine those stations under any new legal provisions about local analogue licence renewals. This was designed to complement our Proposal 1, and made in direct reference to the proposals in the Digital Britain Final Report referred to above.
- 1.6 The 2010 Act contains those new legal provisions (it inserts them into the Broadcasting Act 1990 (“the 1990 Act”) as new sections 104AA – 104AC). They allow Ofcom to renew a local analogue licence for a period of up to seven years, provided it has already been renewed or is granted after 8 April 2010. Furthermore, in relation to certain local licences, they allow Ofcom to grant such a renewal in return for the holder of that licence providing substantially the same service<sup>1</sup> on a national DAB multiplex.

<sup>1</sup> One which Ofcom are satisfied would in each calendar month include at least 80% of the programmes included in the analogue service the licence for which is being renewed

- 1.7 Under the renewal conditions that already existed under the 1990 Act, the applicant for renewal of a local licence must nominate a local digital sound programme service that it will provide and a local DAB multiplex on which it will provide it. The 2010 Act makes provision for holders of certain local licences (“approved licences”) to choose instead to make a “national nomination”, i.e. to nominate a national digital sound programme service they will provide and a national DAB multiplex on which they will provide it, and to have their “approved licence” renewed on that basis.<sup>2</sup>
- 1.8 This option to make a national nomination is restricted to licences approved by Ofcom, following consultation. As noted above, our July 2009 consultation contained a list of stations which we proposed should be defined as “approved licences” for this purpose.

### Consultation responses

- 1.9 We did not receive any consultation responses which made specific reference to the stations we had proposed as “approved licences.” In response to our Proposal 1, RadioCentre suggested that the option to become a national service should be open to all stations – in particular those Galaxy and Smooth stations which we did not include on our proposed list of ‘regional stations’ and so fell outside our proposal. It may have intended that the same stations should have been on our list of approved licences for the purpose of the new renewal provisions, but this was not explicitly stated.
- 1.10 As with our Proposal 1, our objective in proposing these ‘regional’ stations as approved licences was to promote competition and choice in radio services provided nationally, whilst maintaining the appropriate level of provision of local analogue services and the ‘localness’ on them. It is necessary to consider both these proposals together.
- 1.11 Some stations may therefore choose to provide an appropriate service on a national DAB multiplex, have their analogue licences renewed on that basis and, by virtue of our Proposal 1, be freed of their localness obligations under those analogue licences. It may be that stations will seek to do all those things together.
- 1.12 In order, therefore, to maintain the level of localness that citizens and consumers value, whilst promoting competition and choice in radio services provided nationally, we consider it appropriate to limit the licences to be approved for the purpose of the new renewal provision to those we proposed. Again, they are generally focused on providing an extension of music choice, as well as the required locally made programming and local (regional) material. As a result, they are more apt to be given the flexibility to link their renewal to a national DAB station. By contrast, more locally-focused stations, which have at their core the provision of programming specific to their own locality, should be preserved (rather than included on our list of “approved licences”). This will maintain the citizen and consumer benefits localness provides, and the public purposes and strategic aims its provision fulfils, in line with our statutory duties. In addition, we note that the original Digital Britain proposal which informed the legislation specifically aimed ‘to ensure that *regional stations which do become national DAB stations do not lose their current or future renewal*’ (emphasis added). This indicates that the focus of the legislative policy is firmly on the larger regional stations.

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<sup>2</sup> As well as having other approved licences amended and renewed on the same basis, so that stations broadcasting under approved licences would in some cases be able to merge to provide services on a national basis

## Conclusion

- 1.13 Accordingly, the regional analogue stations listed at Figure 1 are now defined as “approved licences” for the purposes of sections 104AA – 104AC of the 1990 Act (as inserted by section 32 of the 2010 Act). Any station listed may apply for its licence to be renewed on the nomination of a national DAB service.
- 1.14 Should stations not appearing on the list wish to nominate a national DAB service as part of their local analogue licence renewal process, they should make a request to Ofcom on the matter. Ofcom is required by legislation to consult on whether licences should be approved for the purpose of the relevant renewal provisions. It is likely, given the rationale and objectives set out above, that requests that other local licences be approved will only be granted in exceptional circumstances, such as where the licensee satisfies us that approval of their licence would be consistent with that rationale and those objectives.