



Radio: the implications
of *Digital Britain* for
localness regulation

Consultation

Publication date: 31st July 2009

Closing Date for Responses: 23rd October 2009

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Section 1

One page summary

- 1.1 Ofcom has a number of duties, set out in legislation, in relation to the regulation of radio. The Government's *Digital Britain Final Report* proposes changing these.
- 1.2 This consultation sets out how we propose to change our regulation of localness on commercial radio, were Parliament to pass new legislation proposed by Government. We are consulting now so that new regulation could be implemented as soon as legislation is passed.
- 1.3 Commercial radio has been particularly hard hit by falling advertising revenues and yet audiences continue to value local commercial stations for their local programming.
- 1.4 The central challenge for regulation is to secure the delivery of local radio content, while at the same time ensuring a viable commercial sector able to adapt to the digital world.
- 1.5 We suggest ways to implement a three tier structure for radio. We propose
 - To allow some regional stations to share all of their programming in return for providing a version of that station on a national DAB multiplex. This would effectively allow for the creation of new national stations with significant scale and reach.
 - To allow local stations to co-locate with other stations within newly defined areas, so helping them to save costs. Stations could also request to share their local programming within these areas and they could ask to reduce their hours of local programming in return for an increased commitment to local news throughout daytime.
 - And at the smallest scale, we continue to support the development of community radio, while in the longer term any digital upgrade would allow the creation of a new tier of ultra-local stations.
- 1.6 These proposals are broadly deregulatory, and are aimed at sustaining delivery of local content, increasing choice and diversity of radio services, and ensuring an economically robust commercial sector. Subject to this consultation, we could implement our new regulatory framework quickly if and when new legislation is passed.
- 1.7 We are also separately consulting on our proposed recommendations to Government regarding the media ownership rules: we propose the removal of all local radio ownership rules and liberalisation of rules around ownership of different media in a single area. These proposals similarly are aimed at removing complex regulation on an industry experiencing difficult times.

Section 2

Executive summary

- 2.1 Ofcom has a number of duties, set out in legislation, in relation to the regulation of radio. These include:
- Promoting the interests of citizens and consumers;
 - Securing a range and diversity of local commercial radio services;
 - Ensuring, for each local station, an appropriate amount of local material with a suitable proportion of that material being locally made.
- 2.2 We have to ensure that regulatory burdens are not heavier than required, or worse, counter-productive, threatening the viability of stations. We also have a duty to consult on any change to our policies.
- 2.3 Currently, the legislation sets out specific parameters within which our regulatory decisions must be made. In our submission to the Government's *Digital Britain* review we argued for legislative change so that we are empowered to liberalise the way we regulate commercial radio¹. The *Digital Britain Final Report*² took up some of our recommendations and added its own proposed legislative changes. This consultation seeks views on how Ofcom should implement any changes to regulation if and when new legislation is passed.
- 2.4 Our research shows that the public values local content on commercial radio: both core functional content (local news, traffic & travel and weather) and other local content (such as local sport or community issues) that reflects local identities.
- 2.5 However, commercial radio is facing possibly its greatest ever challenges:
- The most pessimistic forecasts earlier this year suggested that commercial radio's revenues could decline by as much as 20% during 2009, and competition with other platforms has never been tougher. Our analysis suggests that if this worst case is realised many stations, particularly small and medium-sized stations, could be loss-making within twelve months.
 - The increasing diversity of platforms and competition for audiences is putting a particular strain on stations' resources, with many paying for transmission on multiple platforms.
- 2.6 The central challenge for regulation is to secure the delivery of local radio content in the light of financial realities, while at the same time creating an industry structure for the future, which would still be appropriate for a digital radio world.
- 2.7 In respect of localness regulation the *Digital Britain Final Report* suggests Ofcom should:

¹ *Radio in Digital Britain*, Ofcom, 27 March 2009, available at http://www.ofcom.org.uk/radio/ifi/radio_digitalbritain/digitalbrit.pdf

² Available at <http://www.culture.gov.uk/images/publications/digitalbritain-finalreport-jun09.pdf>

- Give stations flexibility to co-locate within newly defined areas, consulting on a new map of such areas which balances the needs and expectations of listeners with the potential economic benefits of that flexibility;
 - Proceed with re-planning the existing DAB licensing structure to increase viability of the DAB platform and prepare for the Government's planned digital upgrade (extending and merging local multiplexes and changing existing frequencies as appropriate and possibly creating a new second national commercial multiplex from existing regional multiplexes);
 - Consider reducing the number of locally-produced hours stations are obliged to broadcast, in return for an enhanced commitment to regular and updated local news.
- 2.8 This document addresses those suggestions, and other proposed relaxation of localness regulation that we consider warranted by evidence and analysis.
- 2.9 The *Digital Britain Final Report* also suggested that we should work with DCMS to develop a two-year pilot of a new output focused regulatory regime, perhaps by an agreed set of obligations proposed by the stations themselves. Discussions will start shortly with DCMS regarding how such a pilot might be implemented. We then propose to consult on those ideas.
- 2.10 The Report also made a number of requests of Ofcom related to the Government's proposal for a digital radio upgrade. These include a request for Ofcom to produce a regular digital migration report, other work on DAB coverage, consideration of our AIP policy as it relates to DAB multiplexes, and licensing matters relating to digital migration. These are not the subject of this document and will be addressed elsewhere.
- 2.11 Some of the proposals in this document require legislative changes to alter Ofcom's duties and powers. Those changes are of course a matter for Parliament. Our understanding is that, following the *Digital Britain Final Report*, the Government intends to include proposals for such changes in a Digital Economy Bill for Parliament's consideration in the autumn.
- 2.12 We are consulting now because, if Parliament were to make such legislative changes, we would want to be in a position to implement any consequent regulatory changes as soon as possible thereafter. This is in light of our concerns that a number of stations, smaller ones in particular, face financial difficulties and may go out of business, causing citizens and consumers to lose 'localness' on commercial radio. If Parliament decides not to take forward the legislative changes proposed in the *Digital Britain Final Report* then most of the proposals in this consultation would not be able to proceed; existing rules would continue to apply.
- 2.13 Our detailed proposals on how localness regulation on commercial radio might be relaxed are made with a three-tier structure as a strategic goal:
- At a UK-wide level, facilitating the creation of new commercial radio stations to create an improved consumer proposition: a wide range of popular and niche services, delivered digitally. This would not only provide greater choice for consumers but also could help drive DAB take-up (as Freeview helped to drive take-up of digital television).

- At a local level, helping ensure the survival of a viable tier of commercial services, large enough and sufficiently well resourced to provide local news and other content in every part of the UK. (These stations would also be expected to broadcast on DAB and would cease broadcasting on FM in the ‘digital upgrade’ proposed in the *Digital Britain Final Report*.)
- At the smallest scale, building on the success of the not-for profit community radio sector, but also allowing for the survival of commercial models where these are viable. (The digital upgrade would allow for the creation of a new tier of ultra-local radio occupying FM spectrum vacated by those services migrating to DAB.)

2.14 Our proposals for changing localness regulation are all based on existing analogue local services regulation, and so would apply to current analogue/DAB simulcasts. If local content were to be similarly protected post-digital upgrade, a new regulatory framework for digital-only local services would be needed.

Encouraging new UK-wide services

2.15 Allowing existing regional analogue stations to share all of their programming in return for providing a version of their programme service on a national DAB multiplex could bring competition and choice in national services, a greater range and diversity of content for consumers, and the potential for new investment in programming. Being carried on national DAB, these stations’ local content would become less of a defining characteristic. The level of localness regulation that applies to them, we propose, would be unnecessary and should be removed.

2.16 Due to the specific needs of the nations, we propose that regional stations in Scotland and Wales should have to retain their specific national focus. In Wales, where there are separate regional services for South Wales and North & Mid Wales (not yet launched), these could combine to form a national service for Wales, provided that service was carried on either a national DAB multiplex or all local DAB multiplexes in Wales.

2.17 The existing national commercial multiplex cannot offer regional variations of either programming or advertising (other than between Scotland and England & Wales). Such regional capability could benefit listeners, station operators and advertisers. So, if the relevant legislation is passed and spectrum can be secured, we propose to allow the six existing regional multiplexes (plus one of the three London multiplexes) to combine and extend their areas to form a single national multiplex with the ability to offer regional opt-out programming and advertising. This would require the allocation of additional spectrum and we would only consent if we were satisfied that this would satisfy certain criteria, in the interests of listeners. We envisage a short consultation upon receipt of such a request.

Regulating for localness within a sustainable, universal local tier

2.18 Ofcom’s current regulatory guidelines and licence conditions require the majority of FM local stations to broadcast at least ten hours a day of locally made programming containing local material. Co-location and programme sharing are generally permitted only for smaller stations.

2.19 Listeners value news more than other content on local commercial radio. Local radio also provides a source of news plurality, complementing the BBC. We propose stations could choose to retain the current commitment or broadcast a minimum of

seven hours locally made programming daily, in return for broadcasting local news, regularly refreshed and updated, at least hourly during weekday daytimes.

- 2.20 The need to balance protection of local content with commercial scale leads us to propose a new set of defined local areas within which stations would have far greater flexibility, whilst still being held to local programming.
- 2.21 We would change our localness guidelines so that within each defined area, FM stations would be able to co-locate and request to share all of their programming, effectively allowing them to come together to become larger, more viable stations. Ofcom would be likely to consent to such requests provided we were satisfied that the stations involved continued to meet their licence obligations to provide local material relevant to the listeners in the licensed areas.
- 2.22 Requests for flexibility beyond these areas would still be considered, but would require individual consultation and assessment using the existing criteria of size, affinities and financial viability.
- 2.23 We also propose that local AM stations should generally be freed of any requirement to provide locally made programming, except for the existing licence requirement to produce 10 hours a day of programming on weekdays from within their home nation (no station would be forced to produce more programming from within each nation than it does at present). This could allow the creation of a national AM service for Scotland.
- 2.24 Some of the existing local multiplexes are probably too small to be financially viable and may need to be re-planned. We suggest that local multiplexes should be allowed to merge within each defined area, to carry the same services across a whole defined area to improve coverage. In some cases it may also make sense to use a common frequency across these multiplexes, although the possibilities for this are limited due to frequency shortages and the need for international coordination, which will become increasingly difficult as other countries make use of the frequencies they have been assigned.

Small-scale radio

- 2.25 Community radio stations are clearly demarcated, but there is no clear or statutory distinction between large commercial radio stations and those that operate at a small scale. In this consultation we do not seek to define which stations are small and which are large, but we do seek to start the debate. We suggest four criteria, broadly correlated, which could be used to distinguish small commercial radio stations from larger: the proportion of the existing local DAB multiplex area covered, the adult population covered, the geographical area covered, and the fact that these stations are not currently simulcast on DAB. We welcome views as to whether these are the right criteria.
- 2.26 The implication of our proposed approach to programme sharing and co-location within defined areas is that if individual stations fall into the small-scale category they have a choice, between now and digital upgrade, of remaining there, or moving up into the larger tier if they are able to do so through combination with other FM services or by broadcasting on DAB. If they did merge to become part of the larger tier they may expect to be part of the proposed digital upgrade, losing their FM licences.

- 2.27 Community radio has been a great success since its introduction, broadening choice and delivering clear benefits to communities served. We do not propose to make changes to its regulation. We welcome the current DCMS consultation on the proposal that community stations should be permitted in areas served by a commercial radio station with a coverage area of 50,000 adults or fewer.
- 2.28 There is very little additional spectrum either to launch more community services or to improve robustness of their coverage. With greater spectrum availability for FM services following digital upgrade, these two problems could be addressed.
- 2.29 The digital upgrade policy proposed by the *Digital Britain Final Report* makes clear that small scale services would be the most local of all broadcast radio, complementing larger scale local commercial services delivered on DAB within our defined areas. However, without some form of positive financial intervention, it is unlikely that such ultra-local services would be ubiquitous around the UK.
- 2.30 The particular exposure of smaller commercial stations right now to reduced advertising revenues might lend weight to a case for further flexibility for smaller commercial radio stations, in addition to the options for programme sharing and co-location set out for larger local stations above. The two-year pilot of a new output focused regulatory regime being proposed might be one way to do this.

Regulating music elements of Formats

- 2.31 Our duties require us to protect diversity of services by regulating music elements within station Formats. We previously raised the issue of relaxing these, while preserving the speech and localness elements of those Formats and also more specialist Formats, whether for particular types of music or particular demographic groups. While stations continue to be distinguished by type of music, there is a question as to whether some of the existing definitions of musical genres remain relevant given changing musical tastes, led by marketing and scheduling of music.
- 2.32 This might suggest that the differentiation between the specific genres *Contemporary and Chart Music* and *Adult Contemporary* is no longer appropriate. There may be arguments for a limited redefinition, combining these into a single *Broad Music* genre. We call for views on this, supported by evidence.

The progress towards a digital upgrade for radio

- 2.33 The *Digital Britain Final Report* has announced the Government's intention to introduce legislation to set the framework for achieving digital upgrade (the switching-off of the FM and AM signals of both BBC and commercial UK-wide, regional and large local services. Small-scale services would remain on FM).
- 2.34 The proposals we set out in this document facilitate a regulatory structure for commercial radio which will fit both the existing mixed broadcast ecology of FM, AM and DAB and also a future DAB-based world (alongside complementary delivery of radio via the internet and digital TV and small-scale stations on FM).
- 2.35 Ofcom has no specific statutory duty to secure a digital future for the radio industry, although we will do all we can to support industry and Government policy to facilitate the digital upgrade proposed by the Government. Any digital upgrade will require full support from both the BBC and the commercial radio sector. That will mean further investment in:

- Coverage, to improve the quality of reception in areas already covered as well as reaching new areas;
 - Digital-only content, which is sufficiently attractive to give listeners a reason to invest in new receivers; and
 - Marketing of both the content and the DAB platform, to let listeners know the benefits available and how to receive them.
- 2.36 Without such further investment, it is generally recognised that achieving the Government's criteria for digital upgrade will be extremely difficult.

Other work on radio

- 2.37 Two other consultations also propose relaxing radio regulation to take account of the changing environment and the financial pressures faced by the radio industry.

Consultation on Ofcom's Media Ownership Rules Review (published 31st July)

- 2.38 This consultation is part of our statutory review of the media ownership rules for the Secretary of State for Culture, Media and Sport. It proposes to recommend:
- Removing all the local radio service ownership rules and the local and national radio multiplex ownership rules. Removal may improve stations' viability. Research also shows a majority of consumers are not concerned about single ownership within local commercial radio.
 - To liberalise the local cross media ownership rules so that the only restriction is on ownership of all three of: local newspapers (with 50% plus local market share); a local radio station; and a regional Channel 3 licence.

Broadcasting Code Review (published 15th June)

- 2.39 We are also currently consulting on proposals for reforming the Broadcasting Code: in particular, replacing the current sections on Sponsorship and Commercial References with a new section specific to radio, which would include
- Content-related promotions - proposals to allow a brief offer of further information, or offer for sale, of a product or service that is directly associated with specific content and funded by a third party.
 - Venue-sponsored outside broadcasts - proposals to allow the sponsorship of outside broadcasts by the venue or venue owner.
 - Sponsored listener competition features - proposals to allow sponsor references to form part of listener competition features.

Detailed proposals for consultation

Proposals 2, 3, 4 and 5 are subject to the relevant legislation being passed by Parliament;

Proposals 1, 3 (in part), 4, 6 and 7 would be implemented by a change to Ofcom's Localness Guidelines.

Proposal 1 – regional stations allowed to share programming to become national stations

Regional analogue stations (as defined by Ofcom – in Figure 12) may request to share all their programming. Ofcom may consent to this where those stations provide a version of the shared programme service on a national DAB multiplex. Where they do, our guidelines will be that they should not generally be required to broadcast local material and locally made programmes.

Otherwise, such regional analogue stations would be treated as large local FM stations and the relevant rules would be applied [see Proposals 3, 4, 6].

Due to the specific needs of the nations, regional stations in Scotland and Wales should have to retain their specific nation focus. In Wales, where there are separate regional services for South Wales and North & Mid Wales (not yet launched), these could combine to form a national service for Wales, provided that service was carried on either a national DAB multiplex or all local DAB multiplexes in Wales.

Proposal 2 – creation of a new national multiplex from existing regional multiplexes

Where any relevant statutory requirements are met, Ofcom should allow the six existing regional multiplexes (plus one of the three London multiplexes) to combine and extend their areas in effect to form a multiplex with national coverage but with the ability to offer regional opt-out programming and advertising, provided we are satisfied that:

- doing so would be calculated to maintain or promote the development of digital sound broadcasting in the UK otherwise than by satellite;*
- the licensees' proposed coverage plans are satisfactory;*
- the licensees have the ability to maintain the licensed service; and*
- there are sufficient safeguards in place to protect the rights and interests of stations carried on the multiplexes and the rights and interests of other multiplex operators (and the stations they carry);*

We would also be likely to expect one of the following criteria to be met, namely that the combination and extension of the multiplexes:

- would promote choice in national radio services, in the interests of listeners; or*
- would be conducive to the maintenance or promotion of fair and effective competition in national radio services.*

We envisage a short consultation upon receipt of such a request.

Proposal 3 – co-location within a new set of defined areas

Ofcom will define a set of areas covering the whole UK, as shown on the map³. These proposed areas will deliver the localness listeners value, taking into account existing transmission areas, scale/viability, and local affinities.

Within defined areas, stations would be able to request to co-locate (and produce their 'locally made' programmes). Ofcom would be likely to consent to such requests provided we were satisfied that the stations involved would continue to meet their licence obligations to provide local material relevant to listeners in their licensed areas.

Outside these areas, we would continue to consider requests for co-location on a case-by-case basis using the existing criteria of size, affinities and financial viability.

Proposal 4 – programme sharing within the newly defined areas

Within defined areas, stations would be able to request to share all of their programming, effectively allowing them to come together to become larger, more viable stations. Provided any statutory requirements are met, Ofcom would be likely to consent to such requests provided we were satisfied that the stations involved continued to meet their licence obligations to provide material that remains locally relevant to each part of their licensed areas. We envisage short consultations in most cases.

Where stations not in the same defined area request to share programming we will continue to consider requests on a case-by-case basis using the existing criteria of size, affinities and financial viability in our localness guidelines (as well as being likely to require that the relevant stations satisfy us that they will continue to meet their local material obligations). We envisage short consultations in most cases.

Proposal 5 – mergers of local multiplexes

Within the defined areas, local multiplexes should be allowed to merge, including by sharing frequencies (if possible), and be extended into any un-served localities within the defined area, where Ofcom consider that appropriate. We are likely to do so where:

- *any statutory requirements are met;*
- *we consider each of the following criteria are met:*
- *the merger and/or extension would be calculated to maintain or promote the development of local digital sound broadcasting otherwise than by satellite;*
- *the licensees' proposed coverage plans are satisfactory;*
- *the licensees have the ability to maintain the licensed service; and*
- *there are sufficient safeguards in place to protect the rights and interests of stations carried on the multiplexes and the rights and interests of other multiplex operators (and the stations they carry);*

One of the following criteria are met, namely that the merger and/or extension:

³ The map is illustrative only. A list of the areas showing which analogue stations and which local DAB multiplexes are included in each defined area is shown in Annex 10.

- *would not unacceptably narrow the range of programmes available on local digital sound programme services to those living in the area or locality covered by the multiplexes;*
- *would be conducive to the maintenance or promotion of fair and effective competition in that area or locality; or*
- *is supported or demanded to a significant extent by those persons living in that area or locality.*

We envisage short consultations in most cases.

Proposal 6 – an enhanced news option for local FM stations

Any FM station (or FM stations which are currently allowed to share programming) generally should produce locally made programming for either:

1. *A minimum of 10 hrs/day during weekday daytimes (including breakfast) and a minimum of 4 hrs/day at weekends during daytime plus local news at peak times , or*
2. *A minimum of 7 hrs/day during weekday daytimes (including breakfast) and a minimum of 4 hrs/day at weekends during daytime plus local news at least hourly during daytime (weekdays) and weekend peak.*

The rules concerning local material within locally made programming would also change: the localness guidance would still apply generally, but we propose some revised guidelines, the key new requirement being that local news should be regularly refreshed and updated (the proposed guidelines are in Section 7).

We may allow particular stations to broadcast less local material and locally produced programmes where in exceptional cases particular factors make that appropriate. No licensee would be required to produce more local output than they do currently.

Proposal 7 – AM stations

AM stations generally need no longer produce locally made programming or carry local material. But a minimum of 10 hours during weekday daytimes should be produced within the nation where the station is based (unless the station is already required to do less than this).

Proposal 8 – Limited redefinition of contemporary music Formats

We do not make a specific proposal, but we welcome views, supported by evidence, as to whether there is a case for a limited redefinition of some music formats as they are applied to local, not regional stations: combining the definitions of “contemporary and chart music” and “adult contemporary” into a single “broad music” definition, to allow stations with these formats greater freedom to respond to audience tastes, focusing regulation more on local content.

Figure 1 Proposed defined areas⁴



⁴ Areas on the map are approximate only and overlaps are not shown. Accurate definitions will be based on amalgamations of local DAB licensed areas plus currently unlicensed areas.

Section 3

Radio in Digital Britain

The strategic context for our proposed changes

- 3.1 The Government's *Digital Britain Final Report* aims "to secure and deliver a digital radio platform for the benefit of broadcasters and listeners". It proposes to achieve this by way of a "digital upgrade" that would take national and large local services broadcasting on FM (many of which are already on DAB) to DAB only, and services broadcasting on AM (MW) to either DAB only or to FM, depending on their scale. It also proposes reform of localness regulation on radio. This consultation relates to the regulatory changes to localness and the structure of UK radio.
- 3.2 The *Digital Britain Final Report* asked Ofcom to take forward a review of existing localness policy in a number of areas, some of which are subject to legislative change that it intends to ask Parliament for. Specifically, it asks Ofcom to:
- Consider how to give greater flexibility for stations to co-locate, consulting on a new map of "mini-regions" which balances needs and expectations of listeners against the potential economic benefits to industry;
 - Proceed with working with industry to consider the re-planning of the existing local DAB map to increase viability of the DAB platform and prepare for the planned digital upgrade. This is likely to entail extending and merging local multiplexes, possibly changing existing frequencies to increase spectrum efficiency and the creation of a new second national commercial multiplex from the existing regional multiplexes; and
 - Consider reducing the number of locally-produced hours stations are obliged to broadcast, in return for an enhanced commitment to regular and updated local news.
- 3.3 Each of these things requires some element of analysis and consultation by Ofcom. This consultation document addresses other suggestions, and other proposed reforms to localness regulation that we consider warranted by our evidence and analysis.
- 3.4 The *Digital Britain Final Report* also suggested that we should work with DCMS to develop a two-year pilot of a new output focused regulatory regime, perhaps by an agreed set of obligations proposed by the stations themselves. Discussions will start shortly with DCMS regarding how such a pilot might be implemented. We then propose to consult on those ideas.
- 3.5 The *Digital Britain Final Report* also made a number of requests of Ofcom not directly related to localness regulation⁵. These are not addressed in this document. The policy of digital upgrade will require more, detailed policy and regulatory thinking, and Ofcom looks forward to working with DCMS, consumer groups and industry stakeholders on the various issues arising.

⁵ A regular digital migration report and other work on DAB coverage, a consideration of our AIP policy as it relates to DAB multiplexes, and licensing matters relating to digital migration.

- 3.6 Some of the proposals in this document require legislative changes to alter Ofcom's duties and powers. That is a matter for Parliament. But, our understanding is that the Government intends to include proposals for such changes in a Digital Economy Bill for Parliament's consideration in the autumn. We are consulting now because, if Parliament makes those changes, we would want to be in a position to give effect to any consequent regulatory changes as soon as possible thereafter.
- 3.7 Part of the strategic context for these actions is the three tier structure for the radio industry that we outlined in *Radio in Digital Britain*:
- At a UK-wide level, we suggested facilitating the creation of new commercial radio stations to create a consumer proposition: a wide range of popular and niche services, delivered digitally. This would provide greater competition and choice for consumers. It could also build demand for a national DAB digital radio platform, analogous to the way that Freeview helped to build a free-to-air digital television platform.
 - At a local level, we argued for changes to ensure the survival of a viable tier of commercial services, large enough and sufficiently well resourced to provide local news and other content in every part of the UK. (These stations would also be expected to broadcast on DAB and so would be subject to digital migration if it occurs.)
 - At the smallest scale, we suggested a need to build on the success of the not-for-profit community radio sector, but also allow for the survival of commercial models where these are viable. While we would like to see community stations for every community that wants and can sustain one, we do not expect this small-scale tier of stations to provide a service to every part of the UK (These stations would stay on FM. Indeed, in the event of spectrum being freed up by migration, awarding more FM licences of this type would be possible.)
- 3.8 We propose that this new, simpler framework could help realise three key goals:
- Continued protection for commercial radio content that is valued by radio consumers and citizens and fulfils the important public purposes of radio, principally the provision of local content and the maintenance of a range and diversity of local services;
 - An evolution of industry structure to a simpler, more sustainable model, preserving local commercial radio broadcasting in the face of structural changes to advertising revenues and cyclical challenges during the economic downturn; and
 - An increase in national radio services, promoting competition and choice for consumers and citizens of a range and diversity of services that appeal to a variety of tastes and interests.
- 3.9 This framework could also, in due course, play a part in an evolution of radio platforms to a predominantly digital world, in which DAB will be the primary delivery platform for national and large local radio stations in a mixed ecology of audio consumption. Our proposals create a framework for commercial local radio which is valid for both an analogue world and for any possible digital upgrade as proposed by the *Digital Britain Final Report*.

Section 4

Statutory duties and new legislation

Ofcom's role and duties with regard to radio

- 4.1 Any consideration of Ofcom's role in the regulation of radio in the UK needs to be based upon Ofcom's statutory duties and responsibilities.
- 4.2 Ofcom has general duties set out in the Communications Act 2003 ("the 2003 Act").
- 4.3 Our principal general duty, when carrying out our radio functions, is set out in section 3 of the 2003 Act. It 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.
- 4.4 To meet this duty, Ofcom is required to secure (amongst other things):
- 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
 - the maintenance of a sufficient plurality of providers of different television and radio services.
- 4.5 And, in performing that duty, Ofcom must have regard to:
- the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed; and
 - any other principles appearing to Ofcom to represent the best regulatory practice.
- 4.6 In elaborating these, Ofcom has published its regulatory principles, the following of which are relevant here:⁶
- Ofcom will intervene where there is a specific statutory duty to work towards a public policy goal which markets alone cannot achieve;
 - Ofcom will operate with a bias against intervention, but with a willingness to intervene firmly, promptly and effectively where required;
 - Ofcom will strive to ensure its interventions will be evidence-based, proportionate, consistent, accountable and transparent in both deliberation and outcome;
 - Ofcom will always seek the least intrusive regulatory mechanisms to achieve its policy objectives; and
 - Ofcom will consult widely with all relevant stakeholders and assess the impact of regulatory action before imposing regulation upon a market.
- 4.7 Ofcom must also take into account in relevant cases, amongst other things:

⁶ See <http://www.ofcom.org.uk/about/sdrp/>

- the opinions of consumers in relevant markets and of members of the public generally; and
- 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.⁷

Ofcom's specific duties and current functions: Analogue radio

- 4.8 Ofcom's specific duties and functions in relation to the regulation of localness in (analogue) radio broadcasting are as follows.⁸
- 4.9 Under section 85 of the Broadcasting Act 1990 ('the 1990 Act'), one of Ofcom's functions is the licensing of national, local and community analogue radio stations.⁹ This includes advertising, awarding and renewing those licences in accordance with Part III of that Act (as modified for the purposes of community radio), in particular sections 98 to 103A (for national licences) and 104 and 105 (for local services and as modified for community radio).
- 4.10 Section 85 also requires Ofcom, in performing those functions, 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), and a range and diversity of local analogue services.
- 4.11 We are further required, under section 314 of the 2003 Act, to ensure that programmes consisting of or including local material are included in local analogue radio services. However, we need only do so, in the case of each such service, if and to the extent (if any) that we consider appropriate in that case. Where such programmes are included in such a service, we are required to ensure that what appears us to be a suitable proportion of them consists of locally made programmes.
- 4.12 Section 314 also provides that Ofcom must draw up guidance as to how we consider these requirements should be satisfied. That section says we must consult on that guidance when we make it and when we change it. And, we must have regard to that guidance in carrying out our functions in relation to local analogue radio services.
- 4.13 Our current guidance on "Localness on Local Commercial Radio Stations" can be found at <http://www.ofcom.org.uk/radio/ifi/rbl/car/localness/>. These are not binding minima, but guidelines whose application is considered in the case of each station and turned into the appropriate licence conditions.
- 4.14 Ofcom's functions also include setting the conditions in local radio licences, including those conditions that we consider appropriate taking into account our duties under, amongst others, the 1990 and 2003 Acts (section 87(1) of the 1990 Act). And, they include varying licence conditions either with the licensee's consent (where the

⁷ See section 3(4)(l) Communications Act 2003. This is the basis, for example, for requiring radio services based in the UK nations to broadcast material produced in those nations.

⁸ Ofcom also regulates other aspects of national, local and community analogue radio services not directly relevant to localness regulation, though nonetheless of some relevance to this consultation. These include rules restricting who may hold radio broadcasting licences and on the number of local commercial analogue licences a person may hold (under Schedule 14 of the 2003 Act and The Media Ownership (Local Radio and Appointed News Provider) Order 2003 (SI 2003/3299)), as well as restrictions on licences for digital broadcasting.

⁹ It is a criminal offence to provide analogue radio broadcasting services without a licence (section 97 of the 1990 Act).

variation relates to the licence duration) or after giving the licensee the chance to make representations (section 86(5) of the 1990 Act).

- 4.15 More particularly, Ofcom's functions include regulating the character of national and local analogue radio services. Under section 106 of the 1990 Act (as modified for community radio), we must include in licences such conditions as appear to us 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.
- 4.16 The localness guidance referred to above, and these statutory requirements, are reflected in character of service licence conditions, which set out the Format of the service each local radio licensee must broadcast. These include requirements about the local content of broadcast material, where stations are based and where programmes are made.
- 4.17 Ofcom also has the function of regulating changes to licence conditions relating to characters of service. Under section 106(1A) of the 1990 Act, we can consent to changes to the character of licensed services if, but only if, we are satisfied that:
- the change would not substantially alter the character of the service;
 - the change would not narrow the range of programmes available by way of relevant independent radio services to persons living in the area or locality for which the service is licensed to be provided;
 - in the case of a local licence, the change would be conducive to the maintenance or promotion of fair and effective competition in that area or locality; or
 - in the case of a local licence, there is evidence that, amongst persons living in that area or locality, there is a significant demand for, or significant support for, the change.
- 4.18 Section 106(1B) says the matters to which we must have regard in determining the character of a service provided under a local licence include, in particular, the selection of spoken material and music in programmes included in the service.
- 4.19 Another of Ofcom's relevant functions is to set the coverage area for national, local and community analogue radio services:
- under section 106(2) of the 1990 Act Ofcom must include in national and local licences conditions requiring the licensee to secure that its service serves as much of the licensed area or locality as is reasonably practicable;
 - under section 106(3) we must include in national licences conditions enabling Ofcom to require the licensee to provide the licensed service for additional areas beyond the minimum area we have previously determined; and
 - under section 106(4) we can, if we think fit, vary a local licence to authorise the licensee to provide the licensed service for any additional area or locality adjoining the area or locality for which that service has previously been licensed to be provided. But, we can only do this if it appears to us that doing so would not result in a significant increase of the licensed area or locality for the service in question. Or, that the increase that would result is justifiable in the exceptional circumstances of the case.

Ofcom's specific duties and current functions: Digital radio

- 4.20 There are no provisions regulating specifically the extent to which material broadcast on digital radio is about, for and/or made in a particular locality. Nonetheless, Ofcom has duties and powers which impact on the regulation of localness on digital radio.
- 4.21 So, the general duties under the 2003 Act referred to above – for example, relating to securing the availability of a wide range of radio services of high quality and calculated to appeal to a variety of tastes and interests – apply equally in Ofcom's exercise of our functions of licensing national and local radio multiplex services. And, when awarding a local multiplex licence, we must take into account the extent to which the digital sound programme services proposed to be included on the multiplex would cater for the tastes and interests of people in the relevant locality (section 51(2) (d) of the Broadcasting Act 1996).¹⁰

Proposed legislative changes

- 4.22 In the *Digital Britain Final Report* the Government has proposed that certain changes be made (and/or that Ofcom consults on changes) to the regulation of localness in local commercial analogue radio. Some require legislative changes and the Government proposes to ask Parliament to make those changes.
- 4.23 These legislative changes will, *if* Parliament grants them, give Ofcom amended powers to regulate localness. But, before we could exercise them, it is necessary to make proposals, based on evidence, about how we might do so and to consult on them. That is what we are consulting on now.

Public purposes for radio

- 4.24 In previous consultations and regulatory statements, Ofcom has set out how we will combine:
- our statutory duties and regulatory principles, as set out above;
 - our analysis of the rationale for regulatory intervention in radio markets; and
 - a set of potential public purposes for radio,
- to produce a set of strategic aims for regulation in radio.¹¹
- 4.25 Our rationale for intervention has consumer and citizen aspects:
- for consumers, that radio is sufficiently important in people's lives to warrant intervention to address any market failures. We suggested there may be market

¹⁰ In awarding national multiplex licences, we also have to consider the capacity of the digital sound programme services proposed to be included in the service to appeal to a variety of tastes and interests (section 47 (2) (d) of the 1996 Act)

¹¹ For example, see *The Future of Radio: Localness on analogue commercial radio and stereo and mono broadcasting on DAB*, Ofcom, 7 February 2008, available at <http://www.ofcom.org.uk/consult/condocs/futureradio07/statement/statement.pdf>. See also *Radio Preparing for the Future Phase 2*, Ofcom, 19 October 2005, available at http://www.ofcom.org.uk/consult/condocs/radio_reviewp2/p2.pdf; and *The Future of Radio: The future of FM and AM services and the alignment of analogue and digital regulation*, Ofcom, 17 April 2007, available at <http://www.ofcom.org.uk/consult/condocs/futureradio/future.pdf>

failures depriving some listeners of the types of services they want – including in particular local programming; and

- for citizens, even if the radio market were working effectively for consumers, it may not provide things that are good for society. For example, listening to news on the radio, both UK-wide and local, helps to make listeners better informed and therefore better able to participate in a democratic society, to the benefit of everyone.

4.26 In general terms, the main public purposes Ofcom identified for the radio sector as a whole are: Sustaining citizenship and civil society; Promoting education and learning; Stimulating creativity and cultural excellence; Representing the UK, its nations, regions and communities; Bringing the UK to the world and the world to the UK; and, promoting social gain.

We considered that these provide a comprehensive set of public purposes for which regulatory intervention may be required, although some of these apply to the BBC rather than to commercial radio.

4.27 The framework of strategic aims for the future regulation of radio we identified has three main elements. Two of these set out the objectives of regulatory intervention. One referred to the implementation of that framework.

4.28 The two key objectives are:

- to enhance choice, diversity and innovation for consumers at the UK, national, regional, local and community levels; and
- to secure citizens' interests through the provision of radio designed to meet public purposes.

4.29 As to the first objective, we said we would seek to achieve it by:

- ensuring a wide range of services in the commercial sector and, in particular, the provision of local material, by regulating in the most effective way possible;
- encouraging the development of more choice and competition by licensing new analogue and digital services and encouraging the growth of digital radio; and
- encouraging the growth of a strong commercial sector, capable of extending range and choice and investing in the future.

4.30 A key consideration is securing universality of certain radio services, especially ensuring local services nationwide, another is seeking to secure the provision of localness and as many smaller local services as possible given prevailing market conditions.

4.31 In relation to localness, we considered that these rationales, purposes and aims mean that some intervention is needed to ensure at least a minimum level of local programming provision.

4.32 That is, we did not believe the market would necessarily supply local programming. Or, at least not ubiquitously around the UK, as local programming is expensive, and it is always likely to be more profitable to network as much programming as possible, even if that means a drop in audiences. But, provision of that programming is linked

to the first, fourth and sixth of the public purposes outlined above. And, intervention to secure its provision would pursue each of the key objectives outlined.

- 4.33 The third element of the framework related to its implementation. In relation to that, we aimed for a system with as a little intervention in the market as possible, consistent with meeting the key objectives.
- 4.34 We also took into account, in developing in previous consultations proposals for changes to existing content (including localness) regulation, the need to balance our desire to see a range of strong local radio services against the financial realities which meant existing levels of regulation may not have been sustainable. Our aim was to ensure that local services remain able to provide local programming at those times of day when they matter most to audiences.

Our present approach

- 4.35 Ofcom's general and radio-specific statutory duties have not changed since we used the rationales for intervention and the public purposes for radio to inform the strategic framework described. Similarly, evidence from citizens and consumers continues to indicate the importance they attach to radio and to localness on radio.
- 4.36 Accordingly, we propose that the rationales, purposes and framework remain appropriate in the context of Digital Britain. We therefore use these objectives in this consultation document (and accompanying Impact Assessment), where relevant, as a set of criteria against which to assess our proposals for changes to regulation. We also again seek to take into account financial realities facing the radio industry and consider whether these mean existing levels of regulation may not be sustainable.

Section 5

Localness on radio

The evidence base for our proposed changes

- 5.1 We are bound to consider evidence that demonstrates both the consumer and industry perspective on any proposed changes to regulation. This chapter considers:
- The current radio market;
 - The importance of localness on commercial radio for citizens and consumers;
 - The current delivery of localness on commercial radio; and
 - The economic picture for local commercial radio.

The current radio market

- 5.2 At the end of 2008 there were 305 local commercial stations broadcasting on analogue, 59 on AM and 246 on FM. Of these 305 stations 41% served a population of over 500,000, 17% served a population of between 250,000 and 500,000 and 42% served a population of less than 250,000. Many of these stations, particularly those serving larger populations, are also broadcast on DAB. Most are streamed on the internet and a few are available via digital television.
- 5.3 Thirty years ago each commercial radio station was independently owned, but today, consolidation has meant that the sector is dominated by three companies which command a 77% share of all commercial radio listening.
- 5.4 Total listening to the radio has remained broadly flat over the last decade both in terms of the number of listeners reached and the total number of hours spent listening – still in excess of 1 billion hours per week.
- 5.5 As Figure 2 demonstrates, radio listening is highest amongst the over 45s. Despite total radio listening being relatively stable, there have been substantial decreases in average listening amongst younger age groups in the past 10 years (Figure 3). This could suggest a significant decline to come in total radio listening.

Figure 2 Average listening hours by age group



Source: Rajar/Ipsos/MORI/RSMB, Q1 2000-2009

Figure 3 Percentage change in average weekly listening hours per head by age group between 2000 and 2009



Source: RAJAR/Ipsos/MORI/RSMB (average weekly hours per head) Q1 2000-2009

The importance of localness on commercial radio for citizens and consumers

What do consumers understand by 'local'?

- 5.6 There is not a single nationwide understanding amongst citizens and consumers of what constitutes local. Different views have emerged in different research exercises.
- 5.7 Research undertaken by Essential Research on behalf of Ofcom in 2007 explored listeners' views of localness and local analogue radio.¹² The research took place in a number of locations and found that perceptions about localness differed, driven for example by
- The (perceived) geographical size of the area;
 - Whether the location was predominantly urban or rural; and

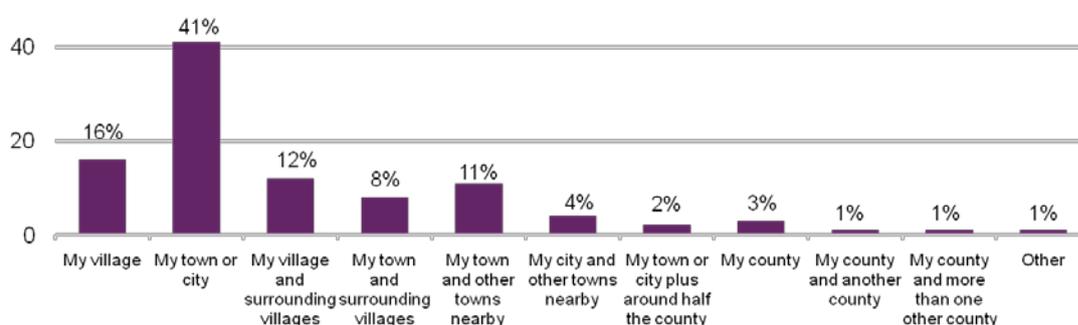
¹² *The Future of Radio: Localness*, produced for Ofcom by Essential Research, 22 November 2007, available at <http://www.ofcom.org.uk/consult/condocs/futureradio07/localness.pdf>

- In Scotland, Wales and Northern Ireland, the relative importance of national identity.

5.8 Similarly audience research conducted by MORI on behalf of Ofcom in 2004 found that perceptions regarding localness varied according to each respondent's experiences and circumstances. Despite the somewhat amorphous nature of the concept of localness, the 2004 survey was able to identify a number of factors that would define localness. These included 'Pride and belonging', 'Shared geography and focal points', and a common 'sense of humour'.¹³

5.9 The nature of localness is further considered in Ofcom local media research conducted in 2009. This research suggests that in general people are most likely to identify the town, city or village in which they live as their local area.

Figure 4 Definition of local area



Source: Ofcom local media research, April-May 2009
Base: UK adults (1034)

What area do listeners believe local radio should cover?

5.10 In addition to exploring how listeners defined localness, the 2004 survey asked a sample of listeners what sized area they felt local radio should cover. As figure 5 illustrates 47% of respondents said that they favoured coverage focusing on their town or village or coverage focusing on the area around their city or the nearest city and 38% said that they favoured coverage at the county level.

5.11 Taken together with the data considered above, these statistics appear to indicate that there is often a discrepancy between the size of the area which people define as 'local' and the size of the area which they believe local radio should cover. This discrepancy may in part be a result of differences in the research methodologies used in the 2009 research and in the 2004 MORI survey.¹⁴ However, it may also in part reflect a the fact that people's definition varies depending on whether they are considering their local shops, their local council or media provision.

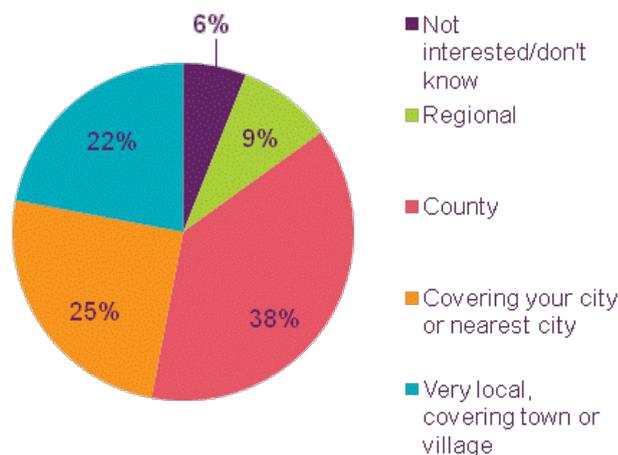
5.12 What nonetheless does broadly appear to be the case, throughout the country, is the identification of 'local' with certain affinities, relevant to the experience and identity of listeners, and a desire for the provision of local radio which draws upon these points,

¹³ *Radio – Preparing for the future: Appendix B*, produced for Ofcom by MORI, 15 December 2004, available at http://www.ofcom.org.uk/consult/condocs/radio_review/radio_review2/appendixB.pdf

¹⁴ The research conducted in 2009 required participants to give spontaneous responses regarding their definition of their local area. By contrast, the 2004 study offered participants a list of possible responses to the question of what area local radio should cover.

providing services relevant to and targeted at specific areas. This can be linked to the public purpose for radio of representing the UK, its nations, regions and, in particular, communities.

Figure 5 Which of the following best describes the area you would like your local radio to cover?



Source: MORI 2004

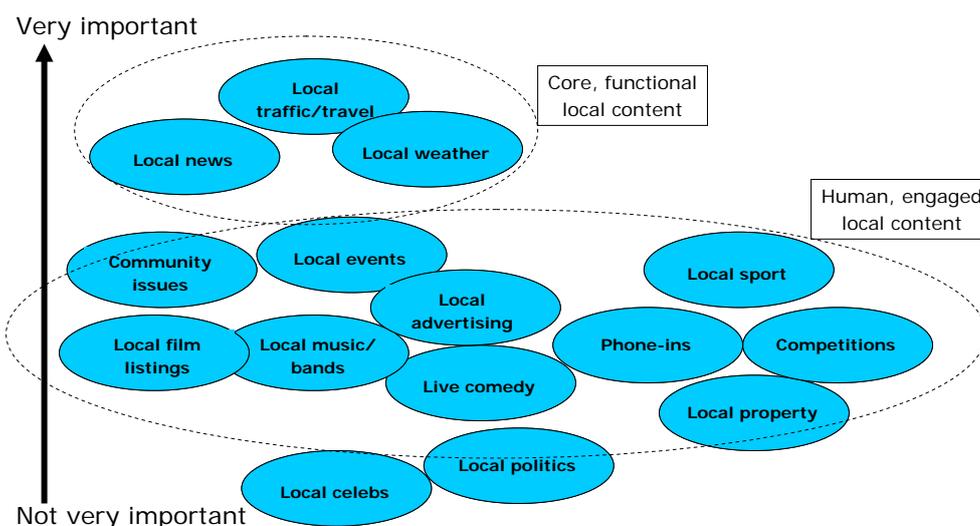
Base: All who listen to local radio (1,146)

Types of local content on radio

- 5.13 Ofcom's audience research has identified two distinct types of local radio content, both of which are important to consumers:
- Core functional content: local traffic and travel, local weather and local news. This is of interest and importance to all listener types and seen as a crucial element of local radio output by the majority of listeners.
 - Human, engaged local content: such as local community issues, local entertainment, and locally-themed chat shows and competitions. This varies in perceived importance depending upon the age and personal tastes/needs of the listener. (For example, community issues are of interest to the more community minded and to those in rural areas; phone-ins are of interest more to older, speech radio listeners; sports coverage for sports fans; etc.)¹⁵
- 5.14 The research also found that consumers identified core, functional local content – local news, travel and weather – as most important. This is shown in figure 6 below.
- 5.15 Added to these two types of local radio content is a local station's social action role. Here stations become a conduit for meeting social needs at the local level. Other social action work takes the form of on air activities raising public awareness on health issues or blood transfusion and donation appeals.

¹⁵ See *The Future of Radio: Localness* and Ofcom local media research, April-May 2009.

Figure 6 Relative importance of local content types delivered by local radio



Source: *Essential research 2007*

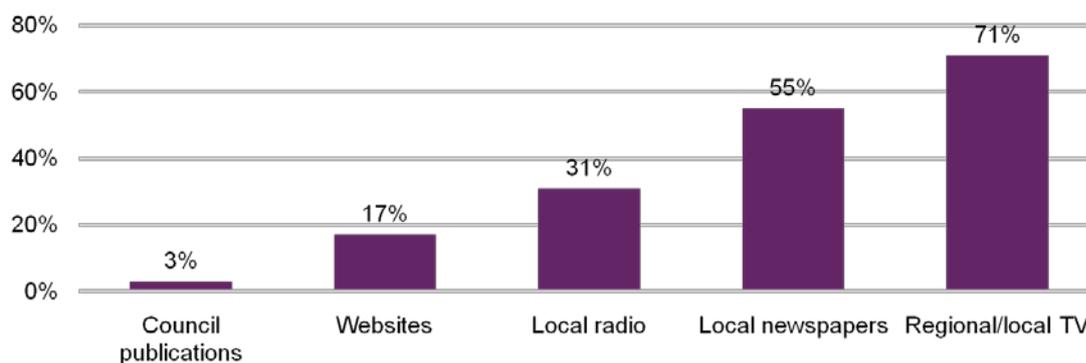
The value of localness on radio

- 5.16 Local content on radio is valued by listeners. The audience research conducted for Ofcom in 2004 by MORI found that over 66% of respondents rated local news, local traffic & local travel and local weather as attributes that were important or very important in their decision to listen to a particular station. A separate study conducted on behalf of Ofcom by Knowledge Agency in 2005 found that 68% of radio listeners interviewed felt that the existence of radio stations that reflect the needs of local and regional communities was important.¹⁶ This again links to the public purpose for radio of representing the UK, its nations and, especially, regions and communities.
- 5.17 The findings detailed above are echoed in research conducted in 2009 which found that 69% of weekly listeners who were interviewed stated that local radio was important or very important to them.

Radio's role in delivering localness

- 5.18 Overall, there is evidence that radio is not the primary medium for delivering local content for most consumers but nonetheless plays a key role in the delivery of such content.
- 5.19 As figure 7 demonstrates, Ofcom local media research conducted in 2009 indicates that local radio is the third most commonly used source of local content after regional TV and local press.

¹⁶ *Radio – Preparing for the Future: Appendix A*, produced for Ofcom by Knowledge Agency, 19 October 2005, available at http://www.ofcom.org.uk/consult/condocs/radio_reviewp2/appendix_a.pdf

Figure 7 Use of each medium as a main source for at least one type of content

Source: Ofcom local media research, April-May 2009

Base: Weekly users of any local media source (1024)

- 5.20 Local radio's importance as a vehicle for the delivery of local content is further evidenced by qualitative research on local media conducted for Ofcom in 2009. This research suggests that local radio is seen as having a number of unique characteristics such as its mobility and its capacity to deliver time sensitive local news and information to its audience. In this sense, other local media were not seen to provide an adequate substitute for this method of access to local content.¹⁷
- 5.21 In a series of three-hour focus group discussions held in eight cities in 2007 as part of the project conducted by Essential Research, radio was singled out as the medium with which communities *most strongly* identified. Radio was seen as more local from a community perspective than television, yet it was still seen as a large-scale broadcast medium with greater impact than local press, for example.
- 5.22 Local radio was felt to involve communities in very tangible and positive ways. The visibility of presenters in the community, road-shows, and other ways of supporting local events and causes help to create empathy and trust. Local voices, requests and competitions and more direct community participation help to create a sense of ownership.
- 5.23 For many, therefore, their local radio service was important and truly valued as a deliverer of localness, again in a way linked to the public purpose of representing regions and communities.
- 5.24 Our research suggests that listeners' views on the extent to which content aired on local radio stations should be produced locally are in part a function of the nature of the content in question. The importance listeners attach to whether non-core content is produced locally appears to vary. Audience research indicates that a large proportion of younger music-driven listeners feel the quality of such content is often reduced by the presence of local presenters. By contrast, our research indicates that many older listeners value locally made non-core content highly and feel that it enhances their sense of local identity.
- 5.25 Whilst views on the value of locally made non-core content varied, in 2007 Essential Research found that nearly all listeners felt that the quality and relevance of local traffic/travel reports, and local news and weather bulletins, were enhanced by being locally made and broadcast by local people. This becomes even more important at

¹⁷ These findings are consistent with the results of the research summarised in *The Future of Radio: Localness in 2007*.

times of local crisis, such as floods or heavy snow, when local content beyond pure news and travel has a major role to play in serving the community. On balance then, it is clear that the genuinely local attachment of a local station to its local area is important to its audience.

The importance of content made in the nations

- 5.26 There is evidence that material produced in the nations is of particular importance. The research conducted by Essential Research in 2007 established that national identity played an important role in many people's sense-of-self in the nations. As has been stated, one of the public purposes of radio is to represent the UK, its nations, regions and communities. Given the importance of national identity in the nations, we would argue that in order for radio to fulfil this purpose, content which is produced in and focussed on the nations should be available to listeners based there.
- 5.27 MORI's 2004 audience research noted that the BBC's nations' services enjoyed particular popularity. In addition to this, as discussed below, a number of regional stations in Scotland and Wales have made a particular strength of regional content and effectively developed into quasi-national stations. Taken together this suggests that in Scotland, Wales and Northern Ireland there is a particular appetite for content produced in and focussed on the relevant nation.

Relationship between local content and time of day

- 5.28 There is a relationship between the time of the day and the extent to which different types of local content are valued by listeners; this also changes by audience age demographic.¹⁸ The following table summarises the importance listeners attached to receiving core functional local content by time of day. As is shown, listeners consider core functional content most important at breakfast time and in the early evening.

¹⁸ *The Future of Radio: Localness*

Figure 8 Importance of core functional local content by day part

Time	Importance	Core functional content	Other local listening
6 a.m. – 10 a.m.	High	“Plan the day”: Traffic/travel/weather Local and national news	Some (younger) opt for music from nationals but tune to locals on the hour. Very important in rural areas for school closures/poor weather
10 a.m. – 1 p.m.	Medium	Hourly local news updates and flashes	Music for parents at home/workers. Some (older) enjoying local speech
1 p.m. – 4 p.m.	Medium	Music; news updates and flashes	Older/housebound enjoy local phone-ins, competitions and magazine items
4 p.m. – 7 p.m.	High	(3 p.m. – 5 p.m.) School run: traffic info. (6 p.m. – 7 p.m.) Commute home from work: music, traffic and news update. “My evening briefing”	Older/housebound enjoy local phone-ins, competitions and magazine items
7 p.m. – 10 p.m.	Low	TV dominant: “A time to relax” Some noted that local content stopped entirely at this time	(Younger) listen to nationals for music. Some older listening to local phone-ins /community-based shows
10 p.m. – 1 a.m.	Low		Some (esp. older) enjoy local phone-ins and magazine items at bedtime
1 a.m. – 6 a.m.	Low		Important for farming/shipping and shiftworkers

Source: *Essential Research 2007*

Citizen dimensions of localness

- 5.29 From a citizen viewpoint, the two types of local content delivered by local commercial radio are important in different ways. The availability of core functional local content has clear implications for society and democracy: helping to make listeners better informed and better able to participate in a democratic society, to the benefit of everyone. This is linked to the public purposes for radio of sustaining citizenship and civil society and promoting social gain.
- 5.30 But, human engaged content also has a role: certain sections of the community, in particular the elderly, those at home with young children and those whose ability to use other media may be limited, like the visually impaired, can rely on local radio for company and a connection to their local community. This sense of social inclusivity helps fulfil similar purposes, as well as that of representing communities, as far as these groups are concerned.
- 5.31 The research commissioned by Ofcom in 2007 supports this latter point. It shows that, in addition to valuing core content such as local news, respondents also attached value from a citizen perspective to the role of local radio in providing human engaged contact and a connection to the local community to certain sections of the community like those referred to in the previous paragraph. This view was reinforced

during discussion of a number of scenarios, where respondents expressed concern from the citizen viewpoint at the possibility of greatly reduced local output, citing those who lived in rural areas, the elderly, shift workers and the local economy as elements within the community which would suffer.

- 5.32 From the citizen point of view, the plurality provided by local commercial radio is also important. Local radio reaches over 32 million listeners each week (64% of the UK population) with 78% of these being commercial radio listeners (22% BBC local radio listeners). There is evidence that local commercial radio plays a different role to the BBC in terms of its content, but nonetheless, in providing news, it offers an independent voice in addition to that of the BBC.¹⁹

Localness vs. viability

- 5.33 When the financial state of the industry was explained to consumers as part of the qualitative research conducted by Essential Research in 2007, many were unwilling to see a reduction in local material and locally made programmes even given the financial challenges faced by stations.
- 5.34 But, when given a stark choice, most listeners stated that they would be willing to accept a reduction in local provision if this were necessary to avert the possibility of losing their local stations altogether.

Localness consumer research findings – a summary

- 5.35 Consumers see and value local content as that which demonstrates affinities with their experience and identity. It is important in their decision to listen to commercial radio. Whilst local radio is not necessarily the main medium for delivering local content, it is, nonetheless, an important vehicle for the delivery of this content. Many consumers value it more for delivering timely information and human, engaged content, involving communities in tangible and positive ways, using local voices and creating a sense of community and ownership.
- 5.36 More generally, listeners value hard, local news and information content particularly highly, but also value softer, local content, and especially value both at key times of the day. There is some evidence that faced with a threat to the provision of localness, listeners would be willing to accept that the provision of localness may be balanced with the need to preserve stations' financial viability.
- 5.37 These points are linked to the different interests and opinions of consumers and the public purposes Ofcom has identified for radio. They explain both the consumer and the citizen value of local commercial radio.

The current delivery of localness on commercial radio

- 5.38 Ofcom has recently carried out monitoring of a sample of eight stations to determine how much locally relevant programming they actually produce. The results are shown in Annex 9. In summary:
- News is generally well delivered, although some stations were significantly stronger than others. This was not always a function of size: the smallest station monitored (Mansfield FM) and the largest station (Real Radio, Scotland) both featured relatively large quantities of local news, including locally-gathered audio

¹⁹ *Radio – Preparing for the Future: Appendix A*

clips. Other stations preferred less on-air information and instead directed listeners to their websites. In some cases the local news bulletins fed across into the rest of the programming with the presenter referring to local news stories and adding context (such as knowledge of crash areas and past interviews with newsmakers).

- Other local information was also generally well delivered. This was often enhanced when the presenter could add his or her local knowledge.
- Some did 'softer' content well, with human touches bringing content alive, whether news and information (e.g. personal experience of weather conditions or having attended a local event) or to other local content (such as local music history and concerts).
- Generally, the smaller stations monitored demonstrated that localness is at their heart, with delivered links tilted heavily in favour of local value. It was noticeable that during the bad weather these stations recognised the need for comprehensive local information, such as lists of soccer matches cancelled, and lists of likely school closures. This is consistent with the research conducted for Ofcom by Essential Research in 2007 which highlights that local radio plays a particularly important role in delivering information to rural communities in times of crisis (floods, heavy snow etc).
- There was more of a divergence in the larger stations, with localness matching the way in which other content is targeted at certain demographics or audiences.

5.39 As noted above, a recurrent theme which emerged from Ofcom's analysis of the sample of local radio stations referred to above was that the quality of local content delivered was enhanced in instances where presenters had personal knowledge of the local area being covered. Taken in conjunction with the consumer research referred to above, this indicates that a presence in the area to which a local radio station is broadcasting adds significantly to the quality and relevance of that station's local output and thereby helps it to fulfil the public purposes of radio.

5.40 We acknowledge that this does not preclude separating out elements of the production and delivery process, so that it may be possible for some of these to be located outside a local area. There may be good arguments for this. For example, the use of news hubs can bring benefits by creating critical mass of journalists, and freeing up those within a local area to do more news gathering rather than being tied to the routine of reading hourly bulletins. However, for local authenticity to be maintained at least some of the generation of content will need to be located in the area.

The economic picture for local commercial radio

5.41 The local commercial radio business model is under strain for three related reasons:

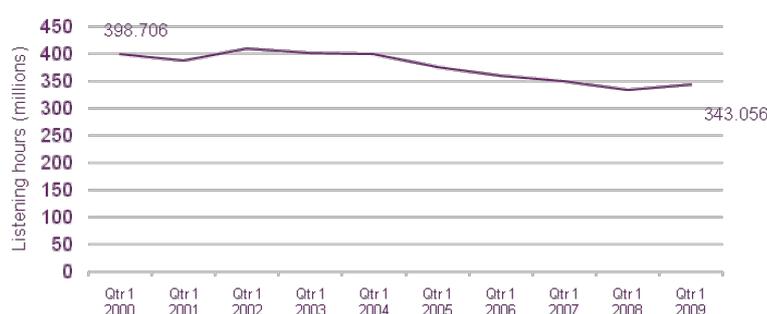
- The downturn in the economy has brought with it a reduction in total UK advertising spend. Most analysts have forecast that advertising revenues will decline significantly over the course of 2009. Forecasts as to the exact magnitude of this decline vary. Some analysts have forecast revenue decreases of 15%²⁰ and industry sources interviewed by Value Partners have stated that

²⁰ Enders commercial radio update 2009-034, available at <http://www.endersanalysis.com/publications/publication.aspx?id=686>

they believe advertising revenues might decline by up to 20% over the course of 2009.²¹ Similarly, a survey of advertisers and media agencies conducted by Change Agency found that estimates of year on year declines in radio advertising revenues for 2009 ranged from 10% to 20% (see Annex 7).

- Despite radio consumption overall holding steady, total listening hours for local commercial radio fell by 14% between Q1 2000 and Q1 2009 impacting on airtime sold and therefore revenues raised. Significantly, falls in total listening hours were most pronounced amongst 25-34 year olds and of all the age groups 15-24 year olds and 25-34 year olds currently listen to least local commercial radio, indicating that generational change may place further pressure on the sector's revenues.

Figure 9 Total listening hours to local commercial radio



Source: RAJAR/Ipsos/MORI/RSMB Q1 2000-2009

- 5.42 Structural adjustments in advertising have taken revenues away from the radio sector that are unlikely to be returned (online advertising grew by 40% in 2007 and has overtaken radio, television and newspapers, now accounting for around 20% of total UK advertising spend. Online's share is still growing in the current climate, albeit more slowly.)
- 5.43 Stations generally face a high proportion of fixed costs, including copyright fees (£46m per annum for the sector), transmission costs (£12.6m p.a. at the local level, an average of £52,000 per local commercial radio station) and programming (£74m last year). This means that station profitability is relatively sensitive to changes in revenue.
- 5.44 We have recently carried out financial analysis of a sample of 30 local radio stations, selecting those for whom regulatory relief might be expected to make a material impact. This analysis (see table below) considered stations grouped by size of population coverage, based on actual revenues for 2008. (See also the related study conducted by Value Partners, below. This uses an entirely different sample of stations.)
- 5.45 The results show that the smaller stations in our sample have the smallest margins. In 2008 (when radio industry revenues fell year on year by 6.3%), the analysis shows that mainstream stations serving an MCA (measured coverage area) of 300,000 people or fewer, delivered average operating margins of below 4%. The largest stations showed healthy margins of, on average, 25%.

²¹ UK Radio – Flow of Funds, produced for Ofcom by Value Partners, 19 February 2009

- 5.46 Other analysis for Ofcom by Value Partners showed a cumulative commercial radio industry EBITDA²² margin of just 8% in 2008 with smaller stations generating an EBITDA of -6%.
- 5.47 Whilst our analysis indicated that on average stations with an MCA of less than 300,000 people made a slim profit, both our own analysis and the Value Partners study provided evidence that many of the 146 stations in this category are currently loss making.²³
- 5.48 In the worst-case scenario of revenues declining 20%, our analysis suggested that the smallest stations in our sample were the ones that are most likely to become unprofitable. The largest stations could, on average, see their margins halved to around 12%.
- 5.49 If this worst-case scenario was to be realised then, on average, stations in our sample serving fewer than around 750,000 people could become unviable. According to our analysis, a fall in revenues of just 10% would leave only the stations serving 300,000 people or more in a profitable position.

Figure 10 Profit by size of station

2008 Actuals (averaged)

Population (MCA)	>750k	500-750k	300-500k	<300k
No. of stations in sample	8	6	5	11
Total revenue (£000s)	7,775	2,636	1,758	958
Total variable / direct costs (£000s)	1,492	555	367	180
Total operating costs (£000s)	4,302	1,829	1,158	743
PBIT (£000s)	1,981	252	233	35
Operating margin %	25.5%	9.6%	13.3%	3.7%
DAB costs (£000s)	100	90	80	-
Revised PBIT excl DAB costs	2,081	342	313	35
Revised operating margin %	26.9%	13.0%	17.8%	3.7%

²² Earnings Before Interest, Taxes, Depreciation and Amortisation

²³ *Radio: Impact of regulatory relaxations*, produced for Ofcom by Value Partners, 5 May 2009

2009 estimate (assuming revenues down 10%)

Population (MCA)	>750k	500-750k	300-500k	<300k
No. of stations in sample	8	6	5	11
Total revenue (£000s)	6,998	2,372	1,582	862
Total variable / direct costs (£000s)	1,343	499	330	162
Total operating costs (£000s)	4,302	1,829	1,158	743
PBIT (£000s)	1,353	44	94	-43
Operating margin %	19.3%	1.9%	5.9%	-5.0%
DAB costs (£000s)	100	90	80	-
Revised PBIT excl DAB costs	1,453	134	174	-43
Revised operating margin %	20.8%	5.6%	11.0%	-5.0%

2009 estimate (assuming revenues down 20%)

Population (MCA)	>750k	500-750k	300-500k	<300k
No. of stations in sample	8	6	5	11
Total revenue (£000s)	6,220	2,109	1,406	766
Total variable / direct costs (£000s)	1,194	443	294	144
Total operating costs (£000s)	4,302	1,829	1,158	743
PBIT (£000s)	724	-163	-46	-121
Operating margin %	11.6%	-7.7%	-3.3%	-15.8%
DAB costs (£000s)	100	90	80	-
Revised PBIT excl DAB costs	824	-73	34	-121
Revised operating margin %	13.2%	-3.5%	2.4%	-15.8%

Source: Ofcom 2009

5.50 There are factors other than MCA that may impact on viability (which may explain the mixed picture in this study). Micro-economic and managerial/creative factors may both be important:

- Individual markets can vary greatly in terms of their competitiveness (for example, northern cities tend to have larger but more competitive local radio markets);
- Local areas also vary in terms of their general economic strength (with some parts of the UK less affluent or more prone to trading downturns);

- The quality and nature of content offered by local stations clearly has a significant effect on listening levels within a given MCA;
 - The efficient management of stations is also important.
- 5.51 A further factor is the cost of transmission on the DAB platform. Many medium-sized and larger stations are committed to the DAB platform (114 licensees have had their analogue licences renewed on the basis of their commitment to DAB). Analysis suggests that last year commercial radio spent £31.7 million on DAB transmission, of which £27.6m were at the regional and local level. An analogue local commercial radio operator simulcasting on a local DAB multiplex can expect to pay, dependent upon size of coverage area, in the order of £80,000 per annum plus line costs. The Government's policy of digital upgrade announced in the *Digital Britain Final Report* will mean that the industry will need to continue to pay dual transmission costs (analogue and DAB) until 2015.
- 5.52 These points notwithstanding, however, the profitability figures, and the impact of declines in revenue, suggest there may be some relationship between station size and viability. This is not surprising given that generally for radio stations, revenues are related to the size of the area they cover, but costs remain the same, whatever the area covered.
- 5.53 That would appear to us further to suggest that stations need to be able to achieve a certain (bigger) size to secure their future and thereby ensure the continued provision of local content. To the extent that the current level of localness regulation prevents stations from achieving sufficient size to be viable, it can be argued that current regulation is counter-productive and that there is therefore a case for proposing to change it, to give stations the possibility of attaining viable scale.

Balancing public value against sustainability

- 5.54 The analysis above brings into sharper focus the question of balancing the consumer and citizen value in localness against the sustainability of local commercial stations.
- 5.55 On the one hand, there is strong evidence both of the value consumers attach to local radio and local content and of local radio's capacity to deliver citizen value and fulfil the public purposes for radio.
- 5.56 On the other hand, there is evidence that the viability of an appreciable number of stations is in question, given the external financial pressures they face and their cost structures: stations may need to achieve a certain scale to be viable.
- 5.57 In addition to this, there is some evidence that consumers would be willing to forgo a degree of localness if that would preserve the services providing it.
- 5.58 Ofcom's relevant duties – to citizens and consumers, to secure a range and diversity of local services delivering localness throughout the UK – and the rationales for market intervention, the public purposes for radio and our consequent strategic aims:
- require us to maintain localness on commercial radio; and
 - to do so by regulatory intervention where necessary.
- 5.59 But a regulatory regime governing localness would not be compatible with our duties if that regime were so stringent that it acted in an opposite direction to commercial

pressures facing stations, to the extent that it threatened their viability, thus jeopardising the very localness it sought to protect.

- 5.60 So, in seeking to meet our duties to consumers and citizens as to localness, it seems to us that we must take into account evidence of stations' financial positions and its implications for the right level of localness regulation.

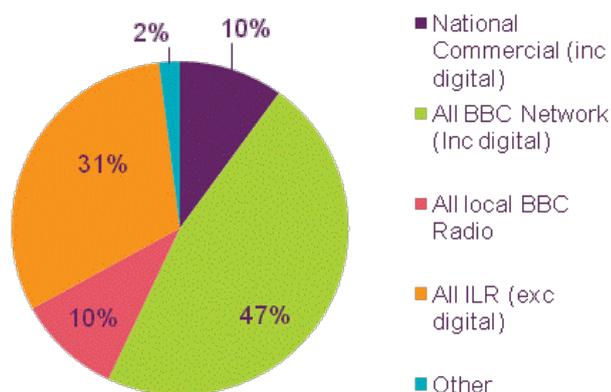
Section 6

Encouraging new UK-wide services

The case for more national commercial stations

- 6.1 At UK-wide (and larger local) levels, the commercial radio sector complements the BBC's radio services, but also has an important role providing competition and choice, diversity of genres and plurality of voice, given the BBC's share of the radio audience.

Figure 11 Share of UK-wide listening hours by sector



Source: RAJAR/Ipsos/MORI/RSMB Q1 2009

- 6.2 Commercial radio services can achieve scale through UK-wide audiences, enabling them to invest in content and talent to create mass appeal services, or to make niche services viable. Historically there has been little competition for the BBC or plurality at the UK-wide level, mainly due to spectrum constraints.
- 6.3 Our aim, in line with our statutory duties, the public purposes for radio and our strategic aims, is to enable and encourage in the longer term enhanced choice and competition in radio broadcasting on a UK wide basis.

Background

- 6.4 Three national commercial analogue radio stations – Classic FM, talkSPORT and Absolute Radio – provide choice and competition on a UK wide basis (Of these only Classic FM is on FM; the other two are on AM). The Formats for two of these stations were specified in statute so as to increase diversity in a market limited by spectrum availability (one to offer non-pop music, one to have at least 50% speech).
- 6.5 There is also a number of larger 'regional stations'. There is no statutory definition of these stations, but the term is used generally to refer to stations licensed after the original "heritage" local commercial stations (such as Key 103, Radio City or BRMB), which were larger than those stations (including stations covering Greater London and beyond).

- 6.6 Ofcom’s Localness Guidelines suggest that FM regional commercial stations should currently broadcast at least ten hours a day of locally made programming during weekday daytimes and four hours a day at weekends. Most are required to do so by their licences.
- 6.7 Some of 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. We believe that, if these stations were given the flexibility to become national stations, this could create greater competition and choice at the national level. Freeing these stations from obligations to provide locally made programming and regional speech content, in return, is a way of giving these stations an incentive to make the necessary investments. This would not rule out the possibility of them continuing to provide local content (using a second DAB multiplex with the ability to regionalise services), if this is what listeners demanded.
- 6.8 So, at the regional level, consumer choice is greater, with the larger conurbations such as London and Manchester generally best served.
- 6.9 The list of such regional FM stations we propose is as follows:

Figure 12 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

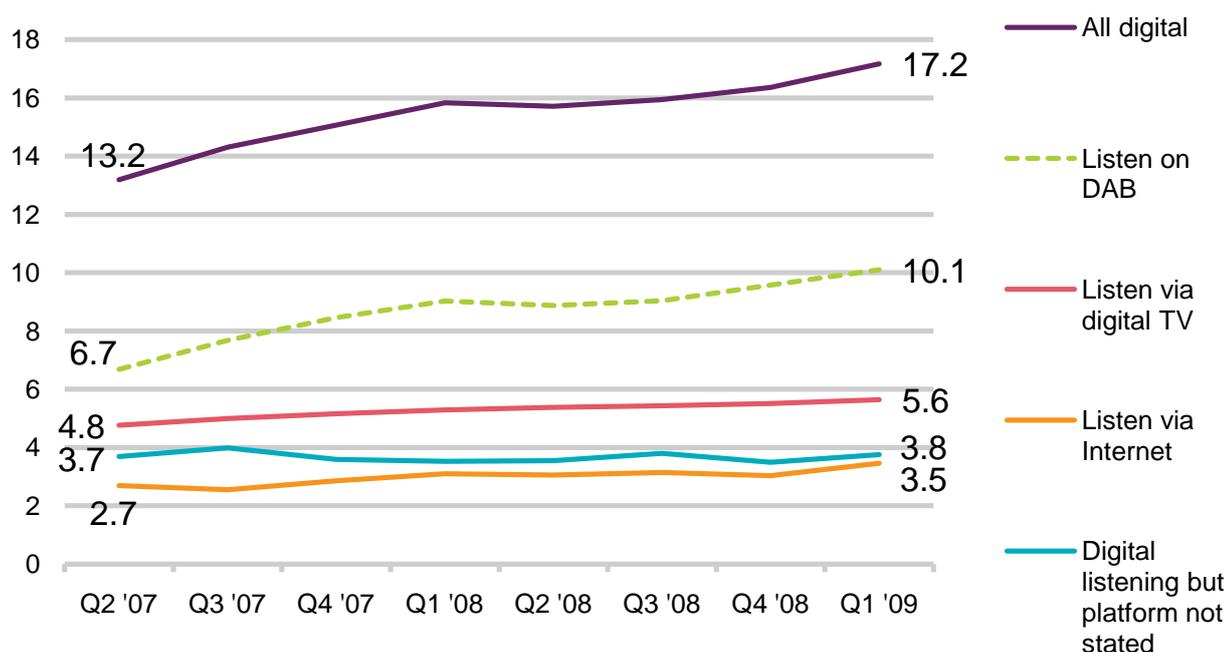
Source: Ofcom

- 6.10 While some of these regional stations, such as Real Radio in Central Scotland and South Wales, have made a strength of their regional content and effectively become quasi-national stations within their home nation, for others, such as Smooth (in the North West or the West Midlands for example) or Galaxy (in the North East for example) the required regional content has been strongly supplemented by the type of music they play.
- 6.11 We believe these stations should have the flexibility to become national stations and so should be able to drop regional speech content.

Ofcom duties, choice and competition

- 6.12 Listener choice consists of national, regional and local radio services, and the extent to which these are substitutes for one another will depend on listener tastes, and also on other potential non-radio substitutes.
- 6.13 As we note above, our principal duties include furthering the interests of consumers, where appropriate by promoting competition, and doing so by securing, amongst other things, the availability throughout the UK of a wide range of radio services which (taken as a whole) are both of high quality and calculated to appeal to a variety of tastes and interests.
- 6.14 And, out of our statutory duties, our rationales for market intervention and public purposes for radio, we produced the strategic objective of enhancing choice, diversity and innovation for consumers at, amongst others, the UK and national levels. We have said we will seek to achieve this by, amongst other things, encouraging the development of more choice and competition by licensing new analogue and digital services and encouraging the growth of digital radio, and by encouraging the growth of a strong commercial sector, capable of extending range and choice and investing in the future.
- 6.15 To some extent we are already seeing increased choice for listeners, from radio delivered over platforms without the spectrum constraint of national analogue radio (via the internet and via DAB). Listening via these routes has increased significantly in recent years, with audiences for stations such as Planet Rock (674,000 listeners, Q1 2009 RAJAR) and Jazz FM (408,000) demonstrating a demand for the sort of niche services which are only likely to be viable at a national level (despite both stations only being available on digital platforms and Jazz FM having only quasi-national DAB coverage). Indeed, the success of the BBC relative to commercial radio is due in part to its ability to provide a range of quality national services.
- 6.16 RAJAR's data releases indicate that the total reach of radio on digital platforms in Q1 2009 was 30% higher than the reach of radio on digital platforms in Q2 2007 (when RAJAR started gathering granulated statistics on listening on digital platforms). The challenge is how to continue to deliver and enhance such plurality and competition across the UK. The following sections explore this in terms of viability and possible options, including the use or expansion of the DAB platform.

Figure 13 Weekly reach of digital radio platforms (millions of listeners)



Source: Rajar/Ipsos/MORI/RSMB Q2 2007-Q1 2009

The viability of more commercial national stations

6.17 It would be important that any additional national radio services, enabling greater choice and competition, had a good chance of viability.

6.18 In early 2009 Ofcom commissioned Change Agency to carry out research into advertisers' and media buyers' attitudes towards commercial radio and its role in a digital age. In particular the research aimed to determine their appetite for more national radio stations. The findings are published in Annex 7, but in summary its conclusions regarding this were:

- Most respondents would like to see more national commercial radio overall. The development of (more) national or quasi national radio brands would potentially help radio's competitive position versus other national media by delivering efficiencies of scale, attracting new listeners to commercial radio and providing a more suitable environment for national brands.*
- However, given the focus on media effectiveness, incremental audience delivery is more important than specific formats or genres for most interviewees. Although some visualise specific market gaps for both mainstream and niche national stations (such as speech or alternative youth), most are agnostic and some are sceptical about the likelihood of attracting additional listening hours. Most find it difficult to see the business opportunity for national digital-only stations, especially on the basis of current penetration.*
- Commercial radio's biggest hurdle – especially in the digital era – is the BBC. For most, the BBC's national station line-up represents both the competition and the benchmark for commercial radio on a playing field that remains structurally uneven.*
- Whatever form national commercial radio takes in the future, radio's inherent regional and local strengths and capabilities must be preserved - for both listeners and for*

buyers. Specifically there should be options to target and up-weight coverage in regions (no larger than Classic FM's current macros) that broadly correspond to ITV's.

- *The emerging national/quasi-national network brands will need to strike the right balance between consistency of brand, station sound and audience delivery across stations on the one hand and locally relevant personalities and content on the other.*
- *Finally, radio needs also to retain strong local services and content to meet the needs of some of its largest advertisers, who are currently buying heavily into commercial radio precisely because of the ability to plan and buy accurately and flexibly on a multi-local basis and because they value the bond that local stations have with their listeners.*

6.19 This suggests one model for enabling greater choice and competition in national radio services would be national services with the ability to offer regional opt-out programming and, in particular, regional advertising. But, it is clear that advertisers do not want this at the expense of local radio.

Possibilities for delivering more national commercial stations

6.20 If there is a case for facilitating the provision of more national services, and we suggest the analysis above shows there is, these might be delivered by:

- Reconfiguring the FM band to provide more national services;
- Without reconfiguring the FM band, creating quasi-national services by merging existing local analogue services;
- Using DAB; or
- Using an alternative technology, such as satellite broadcasting or internet distribution.

6.21 There are no FM frequencies available nationally. The reconfiguration of the FM band that would be necessary to make them available could result in the provision of two or three additional UK-wide services. This, though, has the difficulties of taking a number of years to achieve, and requiring international coordination, and it would be incompatible with the Government's policy of a digital upgrade by 2015. It would also be at the expense of losing local stations, which would have to be cleared from the analogue spectrum.

6.22 Allowing existing local analogue stations to merge, would also potentially create two or three properly UK-wide services (i.e. which cover more than just the major cities). Some networking is already happening (e.g. the Heart services). However, to go further than we are currently suggesting local stations should be allowed to go in networking output risks losing the localness listeners demand at key times of day.

6.23 There are a number of reasons why we believe DAB still offers the best solution for the future growth of radio in the UK:

- The number of radio services which could be delivered online is effectively limitless. However, the costs to the broadcaster of online live-streamed services are proportionate to listening. This means that online streaming is a cost-effective way to reach niche audiences, but for mass-market services it remains very much

cheaper to reach large audiences via broadcasting technologies, where the costs of transmission are independent of the number of listeners.

- Other broadcast distribution technologies, such as satellite, also have high capacity, although not as high as the internet. However, while such services exist in North America, we are not aware of any imminent plans to launch satellite radio direct to mobile devices in the UK.
 - For a commercial radio station to be able to invest in content, it needs to be able to attract large audiences and so large advertising revenues. Internet radio still generally only accounts for a small proportion of listening, despite being available to the majority of households, and so cannot generate such revenues.
- 6.24 These points would suggest DAB is a more plausible solution for commercial radio to be able to grow services and audiences. Only DAB offers the characteristics of the broadcasting platform that consumers value (free-to-access, affordable, via portable and mobile devices), plus efficient delivery for broadcasters, and the capacity to carry more than a couple of services.
- 6.25 Digital One (the single current national commercial DAB multiplex) currently carries seven commercial services, three of which are simulcasts of the analogue UK-wide stations. So, it offers the welcome possibility of some extra national services.
- 6.26 One issue, however, with just using the remaining capacity on Digital One is that only a few more services could be added (given current bitrates). Another is it uses a single frequency for England and Wales, with another for Scotland, and so cannot offer regional programming or advertising opt-outs, other than in Scotland. In other words, the broadcast of national services on Digital One would preclude the market delivering – or broadcasters making commercial decisions to deliver – local (or regional) material as part of their otherwise national service.
- 6.27 It is always difficult, and expensive, for any new entrant to build up mass audiences (and therefore revenues) quickly. This constrains the amount the broadcaster has available to invest in content. While this is a commercial challenge rather than a regulatory one, it would be preferable to have a regulatory solution that allowed services to capitalise on existing brands, both to create an immediately attractive consumer proposition, and also to increase viability of the new national services in the current difficult economic climate. These might be new entrants to radio (such as magazine brands) or existing radio brands.
- 6.28 One possible route, then, to new UK-wide stations, addressing these difficulties, would be to allow the existing regional analogue stations to provide UK-wide DAB services²⁴, while retaining quasi-national FM coverage. This could help to facilitate the creation of national commercial radio stations to create a consumer proposition analogous to that of Freeview: a wide range of popular and niche services, delivered digitally. This would deliver the consumer and citizen benefits of increased choice and competition and the possibility of stations continuing to provide localness, in line with the public purposes for radio and our strategic aims, as set out above.

²⁴ It is, of course, for multiplex operators to decide which services they carry on their multiplexes. Ofcom does not propose that they would be required by regulation to carry a particular service.

Options for change to deliver more national commercial stations by 'upgrading' the existing regional analogue services

- 6.29 In the Digital Britain Final Report the Government has signalled its view that two or more regional stations may align services to form a single UK or nation's service.
- 6.30 Regional stations that wish to do so would need to seek Ofcom's consent to change their character of service licence conditions. As set out in section 4 above, we can give that consent where one of the grounds in section 106 of the 1990 Act is met.
- 6.31 Granting that consent may involve allowing the relevant regional analogue stations not to broadcast any local material or locally made programming. This aspect of our consultation is about whether we should change our localness guidance to permit that and about the policy we adopt to decide whether to give stations the necessary consent (where they meet one of the statutory grounds).
- 6.32 If existing regional analogue services are to 'upgrade' to national DAB in this way, then, this may happen either under the current regulatory rules for localness, or encouraged by regulatory change. There are thus three options:
- The status quo, retention of local obligations on regional stations. Stations may or may not choose to migrate to the DAB platform under this option.
 - Encourage transition to a national (DAB) platform by removing, or altering, regional stations' obligations to carry local programming, in return for carriage on a national DAB multiplex.
 - Remove local obligations on regional stations, with no obligation for national DAB carriage, leaving the market to decide whether to take on such carriage.
- 6.33 There are also a number of sub-options regarding removing or altering the obligations and any move to DAB:
- If it were technically possible to deliver regional news (transmission on Digital One not allowing this), then there is a policy choice to be made as to whether this should be required, and if so, when. On one hand, this may add citizen and consumer value, and there could be synergies with the idea of Independently Funded News Consortia endorsed by the *Digital Britain Final Report*. On the other hand, this could be a sufficient disincentive for commercial operators to decide not to take advantage of the opportunity to offer a new national service.
 - Given the importance of material produced in the nations, it could be argued that the regional services in Scotland and Wales should be considered to be a special case (no regional stations broadcast in Northern Ireland). There is therefore a policy choice: should the stations in the devolved nations be
 - i) Treated the same as stations in England (i.e. they need contain no programming made in or relevant to their nation as such)? This would allow for the creation of truly UK-wide mainstream commercial services.
 - ii) Required to maintain separate programming from the English service? The identity of regional stations in Scotland and Wales is strongly rooted in their respective nations, and this may help to explain their

success. For the reasons given above it may not be sensible to risk losing the nation-focussed content these stations provide.

- iii) Allowed to share programming with other such regional stations in their nation (in practice Wales is the only country currently to have regional muxes offering different services in different areas, and so this would currently only give freedom to Real Radio which holds separate regional licences for South Wales and for North & Mid Wales).

Policy assessment²⁵

6.34 Option A (status quo) would have

- The benefit of guaranteeing by regulatory means the continued delivery of some regional content. Consumer and citizen interests in this, and the public purposes for radio, would (provided the regulation was not counter-productive because it made stations unviable) be protected by the delivery of this content.
- The cost of being unlikely to deliver further choice and competition in radio at national or regional level. So, denying consumers and citizens the benefits of increased choice and competition and delivery of the public purposes for radio that choice and competition provides. It is also unlikely to deliver the national development of radio services desired by advertisers.

6.35 Option B (removing local obligations in return for carriage on a national DAB multiplex) would have

- The benefit of a possible increase in national commercial services with the resources to provide higher quality programming, so offering a better consumer proposition. This would also enhance choice and competition at all locations, offsetting any 'under-provision' of services that may have been a consequence of a limited number of regional stations in any one locality. It would also result in cost savings for existing regional stations which would no longer have to maintain regional bases or regional programming.
- The cost of a possible loss of local (regional) programming which consumers may value (although many regional services were licensed as much for their music content as their regional relevance, the regional stations in Scotland and Wales have particular relevance to their respective nations). There would be the costs to stations of greater transmission, from having to provide a national DAB service rather than the existing regional DAB transmission. There would also be a possible loss of regional advertising (at least on DAB) at least until a second multiplex with national coverage and regional opt-out capability is available.
- However, to the extent this Option leaves open the possibility that relevant stations could (in light of proposal 2 below) provide national services on a new national multiplex that allows for some regionalised output and advertising, it allows stations the choice to offer such 'local' output. This option can, therefore, deliver the consumer and citizen benefits of increased competition and choice in national services, fulfilling the public purposes for radio of, for example, sustaining citizenship and civil society and bringing the UK to the world and the world to the UK, and delivering Ofcom's strategic objectives. And, without at the

²⁵ This section summarises a more detailed Impact Analysis in Annex 5.

same time necessarily foregoing the consumer and citizen benefits of localness, and the public purposes and strategic aims its provisions fulfils.

- This option therefore provides citizens and consumers with twin possible benefits. And, it means that the justification for regulating (requiring by regulation) localness on the relevant regional services, which become national, becomes less: to the extent that there would be a sound basis for removing that regulation. Localness would still be provided in any event by the regulation of stations that remain 'local' stations.

6.36 Option C (removing regional obligations, but with no requirement for national DAB carriage) would have:

- The benefit of regulatory simplification and the release of value to station operators, who would then be able to invest in non-local programming that regionally based consumers and advertisers might value, such as 'name' talent.
- The cost of a possible loss of regional programming which consumers may value (although many regional services were licensed as much for their music content as for their regional relevance, the regional stations in Scotland and Wales have particular relevance to their respective nations). Whilst it remains possible that the market could dictate that the relevant, regional, stations may choose both to become national services (on DAB) and, nonetheless, provide some regional or local content, it appears to us this Option provides less (regulatory) incentive for this. It is, therefore, less consistent with our rationales for market intervention, and less likely than Option B to deliver the public purposes for radio and our strategic objectives.
- There may also be an argument that this option would be unfair to local stations which have to retain their localness obligations.

6.37 Additionally, given the importance of national content, we believe that the option to preserve the national services is preferable.

6.38 Our proposal is therefore based on Option B:

Proposal 1 – regional stations allowed to share programming to become national stations

Regional analogue stations (as defined by Ofcom – in figure 12)²⁶ may request to share all their programming. Ofcom may consent to this where those stations provide a version of the shared programme service on a national DAB multiplex. Where they do, our guidelines will be that they should not generally be required to broadcast local material and locally made programmes.

Otherwise, such regional analogue stations would be treated as large local FM stations and the relevant rules would be applied [see Proposals 3, 4, 6].

Due to the specific needs of the nations, regional stations in Scotland and Wales should have to retain their specific nation focus. In Wales, where there are separate regional services for South Wales and North & Mid Wales (not yet launched), these could combine

²⁶ These are the stations we also propose are the 'regional stations' for the purpose of any legal power we are given to determine those stations in connection with any new legal provisions about local analogue licence renewals (see paragraph 45 of the *Digital Britain Final Report*)

to form a national service for Wales, provided that service was carried on either a national DAB multiplex or all local DAB multiplexes in Wales.

This proposal would be implemented by a change to Ofcom's Localness Guidelines.

Combining and extending regional multiplexes

- 6.39 As we have suggested above, because Digital One is carried by a single frequency nationally, one of the issues in existing regional stations becoming national DAB stations is the potential loss of regional programming and advertising, at least on the DAB service (they could continue to split services on their FM frequencies).
- 6.40 This could be mitigated by the suggestion in the *Digital Britain Final Report* that Ofcom, subject to legislation, should allow existing regional multiplexes (including one of the existing London multiplexes) to merge (including changing frequencies) and expand into currently un-served areas to form a second UK-wide commercial multiplex.
- 6.41 Such a multiplex could carry the same set of services across the whole UK but have the ability to offer regionalised opt-outs for programming or advertising, in much the same way as ITV does on television. The market, then, could be in a position technically to provide local content, delivered at the current regional level, if that is what consumers demanded of their radio services. Advertisers would also be served, with the potential for strong national brands to be created, but at the same time, allowing for targeted, regionalised inventory. This would leave a single local multiplex layer across the whole UK outside London plus two UK-wide commercial multiplexes and the BBC UK-wide multiplex.
- 6.42 We would need to secure appropriate spectrum to allow us to do this. There is a limited window of opportunity to do so, because of the need for international co-ordination and the fact that once other countries begin to make use of this spectrum themselves, any international negotiation becomes more constrained.
- 6.43 The possibility of a further national multiplex, offering the possibility of regionalised programming, is important in ensuring that proposal 1 above can offer the possibility of delivering its benefits described above. We therefore view proposal 1, and the creation of this second regionalised national multiplex, as interlinked.
- 6.44 Our proposal is therefore:

Proposal 2 – creation of a new national multiplex from existing regional multiplexes

Where any relevant statutory requirements are met, Ofcom should allow the six existing regional multiplexes (plus one of the three London multiplexes) to combine and extend their areas in effect to form a multiplex with national coverage but with the ability to offer regional opt-out programming and advertising, provided we are satisfied that:

- *doing so would be calculated to maintain or promote the development of digital sound broadcasting in the UK otherwise than by satellite;*
- *the licensees' proposed coverage plans are satisfactory;*
- *the licensees have the ability to maintain the licensed service; and*

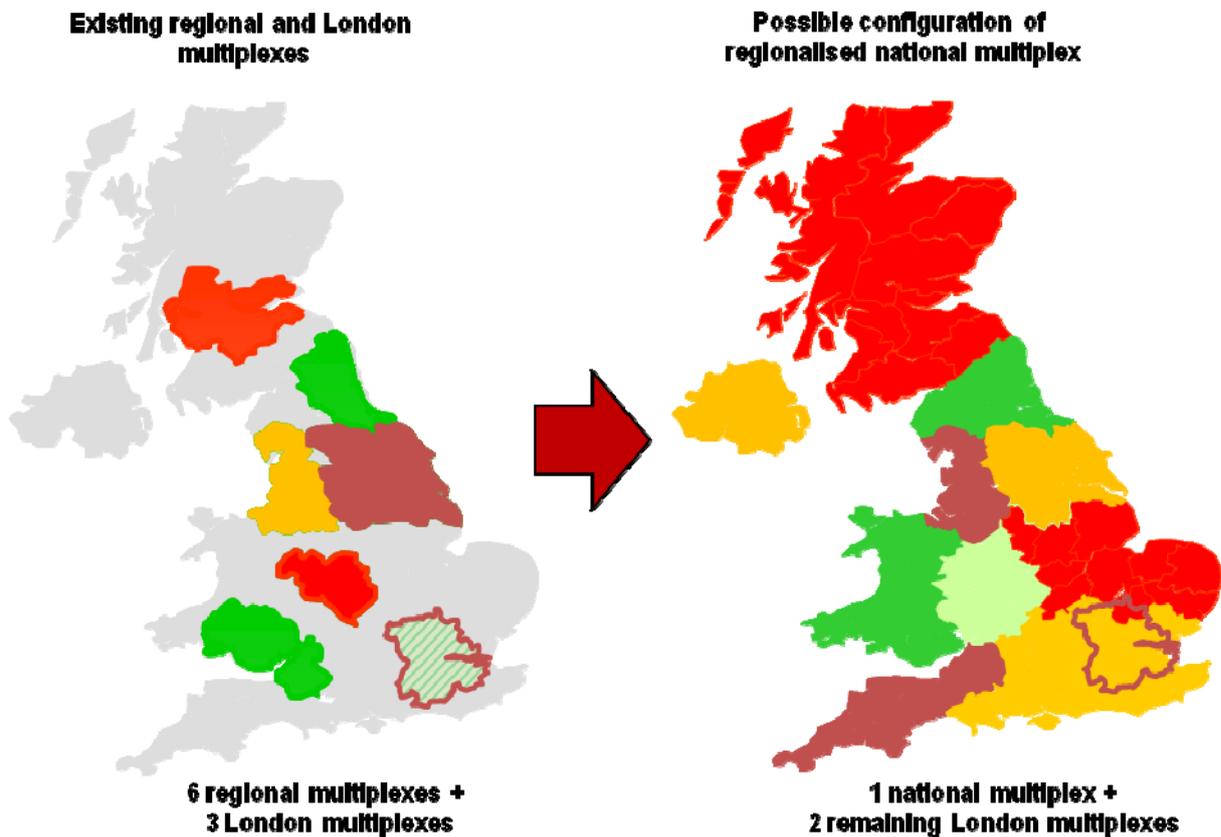
- *there are sufficient safeguards in place to protect the rights and interests of stations carried on the multiplexes and the rights and interests of other multiplex operators (and the stations they carry);*

We would also be likely to expect one of the following criteria to be met, namely that the combination and extension of the multiplexes:

- *would promote choice in national radio services, in the interests of listeners; or*
- *would be conducive to the maintenance or promotion of fair and effective competition in national radio services.*

We envisage a short consultation upon receipt of such a request.

Figure 14 Possible configuration of proposed regionalised D2 Multiplex



Section 7

Regulating for localness

Creating a sustainable, universal local tier of commercial radio services, and reforming localness regulation within this new tier

- 7.1 Our research demonstrates the public's desire for commercial local radio services; the consumer benefits of local commercial radio (in terms of listening enjoyment and connection with local matters); and the wider benefits to communities and citizens.
- 7.2 Ofcom's duty to further the interests of citizens and consumers, and our strategic objectives derived from our rationales for market intervention and the public purposes for radio, therefore lead to the specific goal of ensuring that such local radio services are provided free-to-receive, universally across the country; as does the goal of maintaining plurality (i.e. competition with BBC local services).
- 7.3 The benefits to citizens and consumers are secured through a system that relies on competitive incentives and the sale of advertising, and is underpinned by the regulatory environment. Broadcasting licences for local radio for example contain conditions specifying news and local content output. Ofcom is guided by its statutory duties in designing or refining such regulation and options as appropriate.
- 7.4 While we know that listeners believe "local" generally means their town or city, we also know that they want services of a certain quality. There is often a trade-off to be made between these two desires.
- 7.5 In addition, our analysis of viability (above) suggests that below a certain size, stations may be at risk of closure. Some local stations have already closed and we are aware that the financial situation of many more, as set out above, may put them at risk of closure over the coming months without regulatory change. This could leave some areas without a commercial local radio station at all.
- 7.6 As the evidence above shows, the contribution made by commercial local radio to consumer and citizen value is to a large degree based on the value of local content. It is not clear that the market environment and business model for commercial radio funding would necessarily fully support a socially optimal level of localness and local output. This is the finding of our earlier work on the Future of Radio and our rationales for market intervention.²⁷
- 7.7 As discussed in section 5, the balance needs to be struck between providing the localness audiences value and the viability of those services.²⁸
- 7.8 In the longer-term, there may be other ways to regulate local radio. As suggested by the *Digital Britain Final Report* we will work with DCMS to develop a two-year pilot of a new output focused regulatory regime, perhaps by an agreed set of obligations proposed by the stations themselves. Discussions will start shortly with

²⁷ *The Future of Radio: The future of FM and AM services and the alignment of analogue and digital regulation*, Ofcom, 17 April 2007, available at

<http://www.ofcom.org.uk/consult/condocs/futureradio/future.pdf>

²⁸ This discussion is expanded in the Impact Assessment.

DCMS regarding how such a pilot might be implemented. We then propose to consult on those ideas.

Local radio as locally made radio

7.9 The exact regulatory requirements for local radio stations are outlined and discussed below, but conceptually, they are of two distinct kinds, as set out in statute:

- a requirement for local stations to include an appropriate amount of local material; and
- a requirement for a suitable proportion of that material to be locally made.

7.10 These might be described as ‘output’ and ‘input’ regulation respectively.

7.11 Legislation currently defines locally made as being content that is produced within the area the service broadcasts to. This is one of the main constraints upon our regulation of local radio stations in terms of their operations and associated costs, as a certain physical location is required.

7.12 We have previously argued that locally made content is important, and we repeat this view here. The summary of our previous evidence above in Section 5, makes clear that listeners value types of local content, such as local news and information, particularly when the presenter is part of and based in the community. Quotations from our qualitative research sessions illustrate this:

- ‘It’s important that the information comes from someone who actually knows the roads and understands the problem’
- ‘It is not so important that we identify with the station but rather that the station identifies with us – for example they get excited if something happens nearby or if they have difficulties getting home [from the local studio] if there is heavy snow’

7.13 In responses to previous consultations on this subject, some respondents have suggested that, particularly given the advent of digital media and globalisation, content can be local without being made in a relevant local area. Ofcom already permits news hubs, which gather local information in a central location for broadcast to individual stations. Similarly traffic reports or weather forecasts for any part of the UK can be produced in a central location and tailored for each area. But there is always likely to be more value added to such information by a presenter based in an area and with strong local knowledge of that area. It is the sense of belonging and identity that this engenders that is the essence of true *local* radio.

7.14 In exceptional circumstances, Ofcom has allowed locally made programming to come from a nearby area, for small stations (generally under 250,000 population) where the station has been able to demonstrate that it meets certain criteria regarding (i) distance and affinity between the areas, and (ii) the impact upon financial viability.

Viability of local radio: possible economic benefits of regulatory change

7.15 Our financial analysis suggests that smaller (in general more local) stations face bigger challenges maintaining viability than larger local stations, and therefore are particularly exposed to a fall in advertising revenues. The analysis also suggested that stations may need to achieve a certain size to preserve viability, and we

suggested that, if that current localness regulation is precluding this, there may be a case for changing it.

- 7.16 To get an idea of how regulatory change might impact viability, we have estimated potential effects on our sample stations of two operational changes: merger and co-location of studios.
- 7.17 The sample stations were grouped into 14 pairs/groups likely to benefit from merger or co-location due to their proximity. The sizes of the selected stations varied significantly, with MCAs ranging from under 100k to well over a million, and station pairs were categorised according to MCA: large stations (MCA greater than 750k), mid size stations (MCA between 300k and 750k) and small stations (MCA below 300k).
- 7.18 The analysis comprised:
- Examining the current financial position of the 14 pairs/groups, estimating profits before interest and taxes (PBIT) based on management accounts for the year to December 2008.
 - Modelling the impact of an advertising downturn, in order to identify the categories of stations (in terms of MCA) that are, all other things equal, most vulnerable to reductions in advertising revenues. [The results of this are described in Section 5].
 - Estimating the potential benefits from full merger or co-location between stations:
 - The benefits from a full merger were assumed to include a number of cost savings from the smaller station including premises costs, programming costs, sales costs, General and Administration (G&A), other costs, marketing expenses, a partial reduction in central recharges, etc. Some increases in the costs of the larger station were assumed, including facilities costs, marketing costs, some G&A costs, etc.
 - Co-location benefits were assumed to include all facilities costs from the smaller stations and 50% of G&A and other costs (including insurance, transportation, etc) incurred by the smaller station.
- 7.19 The results are summarised in Figure 15. The sample included 17 smaller stations and, on the basis of 2008 revenues and costs, just over half of these were demonstrating a negative operating profit. This suggests that to the extent that some regulatory requirements, including those relating to localness, constrain station size and are costly to implement, reducing such costs for some stations could enable them to be within budget.

Figure 15 Estimated impact by station size on PBIT of co-location and full merger under different revenue projections

2009 estimate (assuming revenues down 20%)

Population (MCA)		>750k	300-750k	<300k
No. of stations in sample		2	9	17
2008 Actuals	PBIT %	6	5	-8
Assuming 10% fall in advertising revenues	PBIT %	0	2	-16
	PBIT % with co-location	5	2	-7
	PBIT % with full merger	24	11	7
Assuming 10% fall in advertising revenues	PBIT %	1	-11	-26
	PBIT % with co-location	7	-7	-16
	PBIT % with full merger	7	4	-1

Source: Value Partners 2009

- 7.20 Full merger of these stations could allow a reasonable degree of cost savings, estimated at around one fifth to a quarter of revenue, once full potential for savings are achieved. Hence, under a relatively moderate (compared to some forecasts) reduction in advertising revenue of 10%, operating profits could move from negative to positive. Even where there is a more severe reduction of 20% in annual advertising revenue, under full merger these stations might roughly break even on a PBIT basis.
- 7.21 For the sample of stations analysed, around 40% of those that exhibited negative operating profits on the basis of 2008 costs and revenues were estimated to move into positive operating profit on the basis of assumptions about the benefits of merger.
- 7.22 We caution that the sample size was small here (17 stations) and the estimation of the benefits of merger are subject to a number of assumptions which may differ or not hold for particular stations. Nevertheless, there is some evidence to suggest that the benefits of merger or co-location could be particularly significant for some small stations. It is also worth noting that any cost savings won't be achieved all at once (particularly those relating to premises rental, which may have contract terms remaining), and of course that the revenue downturn is an assumption.

Options for regulatory change

- 7.23 Following from the arguments in favour of locally made content, we believe that it is important for local material to be generally produced in or near the area the station is broadcasting to. Of course, some local information, whether news, traffic or weather bulletins can be produced elsewhere, but the essence of local radio depends upon the presenters being rooted in the communities they are broadcasting to. So, while we propose relaxation in our co-location and programme sharing guidelines, part of

our regulation will still include a requirement for a proportion of programming to be produced in specified areas.

- 7.24 As is noted above, however, there is a basis for suggesting that local stations need to achieve a certain scale to be viable. One way they are constrained is by the guidelines (and licence requirements) on location (although they do not necessarily relate directly to the size of the station, they do affect the size and scope of its business operations by confining them to a small area). Another way such stations are constrained is by the need to maintain discrete programming with all the costs of doing so.
- 7.25 Further relaxation of the current rules on station location and programme sharing could allow co-owned stations which are within a newly defined area to exploit synergies to make savings, and to effectively achieve greater scale.
- 7.26 The number of instances where combining the operation of two radio stations at one site increased during 2008 following Ofcom's relaxation of the rules as they applied to smaller stations. However, while approval has been granted by Ofcom in 34 cases, fewer than 20 individual licensed stations have become part of a co-location process thus far (due to practical issues such as the terms of existing property leases).
- 7.27 Our analysis of pairs of co-located stations suggests that the financial impact on a typical small station is a net average saving of £136,000 per annum.²⁹ For smaller stations this figure typically represents a saving of 18% of the combined turnover of the co-located stations.
- 7.28 There is considerable variation across the local commercial radio sector, and a wide variance in operating costs: this net average saving will be unlikely to apply to all stations. It is safer to identify an annual net saving range of £40,000 to £250,000. It should also be noted that it is too early to assess via RAJAR what effect co-location may have had on audiences.
- 7.29 Our aim is to ensure that this tier of radio services (the larger local tier) is able to be sufficiently sized and well resourced to provide the service expected of it in terms of local news, information and sense of belonging, while still being sufficiently local to be relevant to the communities it serves.
- 7.30 This means that if the UK is to enjoy high quality commercial local radio services in every part of the UK, then a trade-off has to be made in order better to balance viability (so stations can achieve sufficient scale to be sustainable) with the continued need for local content provision, and in a way that maximises such local provision. In effect the choice may be between allowing a station to merge with its neighbours, or at least to co-locate with them to become sustainable, or that station closing down.
- 7.31 It is not Ofcom's place to impose a structure, or to force companies to operate in certain areas where they would not otherwise take a commercial decision to. But we can adapt the regulatory framework, allowing companies to take commercial decisions that ensure sustainability whilst protecting local content that people value.
- 7.32 The question is how to decide the right level of this trade-off. We note that, in the *Digital Britain Final Report*, the Government has indicated its intention to include in the Digital Economy Bill provisions that will enable Ofcom to set new areas by

²⁹ The Value Partners research, using a different sample of stations, came up with a similar figure: between £124,000 and £156,000.

reference to which ‘locally made’ programmes will be defined, and which would enable greater co-location between stations. Nonetheless, there are a number of ways a trade-off could be achieved, and we translate these into regulatory options as follows:

- A. Maintain the status quo – have a set of guidelines concerning local hours and co-location for all stations with the definition of “locally made” programmes remaining based on station’s existing broadcast areas, but without necessarily having defined areas in which stations may co-locate or share programmes.
- B. Use a different population figure to define such stations which benefit from the greater flexibility in our local hours and co-location guidelines, again with the definition of “locally made” programmes remaining based on station’s existing broadcast areas, but without necessarily having defined areas in which stations may co-locate or share programmes.
- C. Abandon specific criteria and treat all requests for co-location and programme sharing, on a case by case basis without reference to any specific guidelines.
- D. Publish a map of new, defined areas for the whole country, based on existing DAB multiplex areas and the need to balance viability with local affinities. This would make the areas fit for a digital future – many multiplex areas are already based on the analogue areas of original ILR stations or on counties and so have an editorial coherence. We would use the areas as a basis for deciding whether to consent to requests by stations to co-locate and/or to merge by programme sharing (we would be more likely to agree to these between stations in the same area). Outside those areas Ofcom may grant permission for stations to co-locate or programme share if our existing co-location policy criteria are met.
- E. Remove rules and regulation concerning localness and local production. For example, it would be possible to allow all stations to co-locate anywhere in the UK.

Assessment of options

- 7.33 Option A (status quo) has the benefit of delivering the current level of local content, which our research suggests consumers value, and which provides citizen value, for stations that are able to remain viable businesses throughout the current economic downturn. This is at the cost, however, of a likely loss of universality of delivery of that content, meaning the public purposes for radio and our strategic objectives would not be delivered across the UK.
- 7.34 Option B (relaxing current localness regulation on stations below a certain size) has the benefit of securing more likely universality of local content delivery, but the potential cost is that stations below the threshold may not deliver local content of a type or at a level valued by consumers in their local areas, in the absence of regulatory requirements to do so. Again this means the public purposes for radio and our strategic objectives would not be met.
- 7.35 Option C (a wholly case by case consideration) has the benefit of delivering the level of local content that we deem necessary, and the potential for universal delivery of that content, if stations at risk of closure are able to apply for regulatory relief in time to secure the benefits in terms of operating costs before it is too late. The costs of this option include the loss of regulatory certainty for industry, and possibly also

increased costs of regulation – there are efficiencies for Ofcom if individual cases are considered at least in part by reference to guidelines.

- 7.36 Option D (a map of newly defined areas) has the benefit of allowing the industry to deliver local content that consumers value, universally, fulfilling the public purposes of, for example, sustaining citizenship and civil society and promoting social gain, and the strategic objective of securing citizens' interests thereby. And, at the same time, being able to achieve the scale our analysis suggests may be needed for viability. The cost of this option would be in terms of the level of localness provided to consumers (the area by reference to which it is defined would be larger than evidence suggests consumers want). So, to some degree, the consumer benefits may be lower than the status quo, and the public purposes for radio and the citizen benefits would be delivered in a different way (that may not be optimal).
- 7.37 Option E (deregulation) has the benefit of giving industry the maximum possible potential to make operating cost savings, but at the cost of guaranteeing local content valued by consumers, and thus also the universal provision of that local content. It does not correlate with our rationales for market intervention, nor safeguard delivery of the public purposes for radio or of our strategic objectives. In any event, the *Digital Britain Final Report* and existing legislation both preclude this option.
- 7.38 Our preferred option, then, is D – a newly defined set of areas across the UK.
- It would deliver localness at a level that ensures content could be still based on local affinities (albeit more widely than some consumers desire) whilst offering likely benefits of scale and viability and regulatory certainty for industry.
 - Although the costs would be potential loss of services at a lower local level, we would not be forcing services to operate at the new level, just making it an option for them to do so: equally they could take a commercial decision to remain at their current level.

Defining the areas

- 7.39 We are consulting not only on the proposal to define a set of areas, but also on the specific defined areas.
- 7.40 In defining the proposed areas we have taken the following into account:
- Basic building blocks – As the intention of the Government in the *Digital Britain Final Report* is for these large stations to migrate to digital-only platforms in the medium term, it would not make sense for us to define areas smaller than existing multiplexes. These are in any case often based on the largest of the local stations in each area – e.g. Viking FM on Humberside or Red Dragon in Cardiff (known in the industry as the heritage ILR stations).
 - Size of area – our viability work suggests that below around 700,000 population, many stations may not be viable if the worst-case projections for advertising revenue are realised (although this varies very much depending upon individual circumstances). We have therefore used this as a broad guide, although as discussed above, other factors are also important and so it should not be an inviolable rule: some areas will be smaller and some much larger (many already are – e.g. stations within Greater Manchester broadcast to populations up to the size of Key 103's MCA of 2.2m).

- Local affinities – often these are based on counties or amalgamations of one or more counties within a recognised government region.
 - Transmission considerations – While these areas are not for the purpose of changing existing transmission arrangements of analogue stations (just their content and studio location), there may be advantage in terms of improved coverage from merging some small adjacent multiplexes, or of extending existing multiplexes into currently un-served areas. This is addressed below and in Annex 10, where (possible) multiplexes corresponding to our proposed areas are listed.
- 7.41 This approach is not determinate and requires a degree of judgement. That is why we welcome views as to whether these are the right areas.
- 7.42 The maps below show the existing multiplex areas, followed by the proposed new areas. The map shows only approximate areas and does not show overlaps (except in the London area). Detailed definitions of areas are based on possible amalgamations of existing DAB licensed areas plus currently unlicensed areas. A full list of areas and the analogue stations that fall into each area is shown in Annex 10.
- 7.43 We recognise that some of these proposed areas are quite large (the whole of the South West for example) and are probably at the limits of what is likely to be acceptable to maintain local programming.
- 7.44 Stations which want to co-locate or programme share (effectively to merge services by sharing all their programmes in a mini-network) need Ofcom’s consent to do so. The law says Ofcom can only give that consent in limited circumstances (where one of the grounds in section 106 of the 1990 Act is met).
- 7.45 To provide greater scope for such co-location and programme sharing, in light of our assessment and analysis in section 5 and in this section, we propose a new policy for giving that consent, where a statutory ground is met, and subject to any consultation the law requires. That policy is based on the defined areas. We would consider two criteria:
- Whether the stations were in the same defined area; and
 - Whether the stations would continue to meet their format obligations with respect to local material (providing material that remains locally relevant to each part of the whole area and not favouring a subset of it)
- 7.46 If the stations were not in the same defined area, we would be likely only to allow such co-location and/or programme sharing in exceptional circumstances. In these cases we would apply the criteria set out in our existing localness guidelines for co-location and programme sharing requests.
- 7.47 Our proposals are therefore:

Proposal 3 – co-location within a new set of defined areas

Ofcom will define a set of areas covering the whole UK, as shown on the map³⁰. These proposed areas will deliver the localness listeners value, taking into account existing transmission areas, scale/viability, and local affinities.

Within defined areas, stations would be able to request to co-locate (and produce their 'locally made' programmes). Ofcom would be likely to consent to such requests provided we were satisfied that the stations involved would continue to meet their licence obligations to provide local material relevant to listeners in their licensed areas.

Outside these areas, we would continue to consider requests for co-location on a case-by-case basis using the existing criteria of size, affinities and financial viability.

This proposal is in part subject to the relevant legislation being passed by Parliament and in part would be implemented by changes to Ofcom's Localness Guidelines.

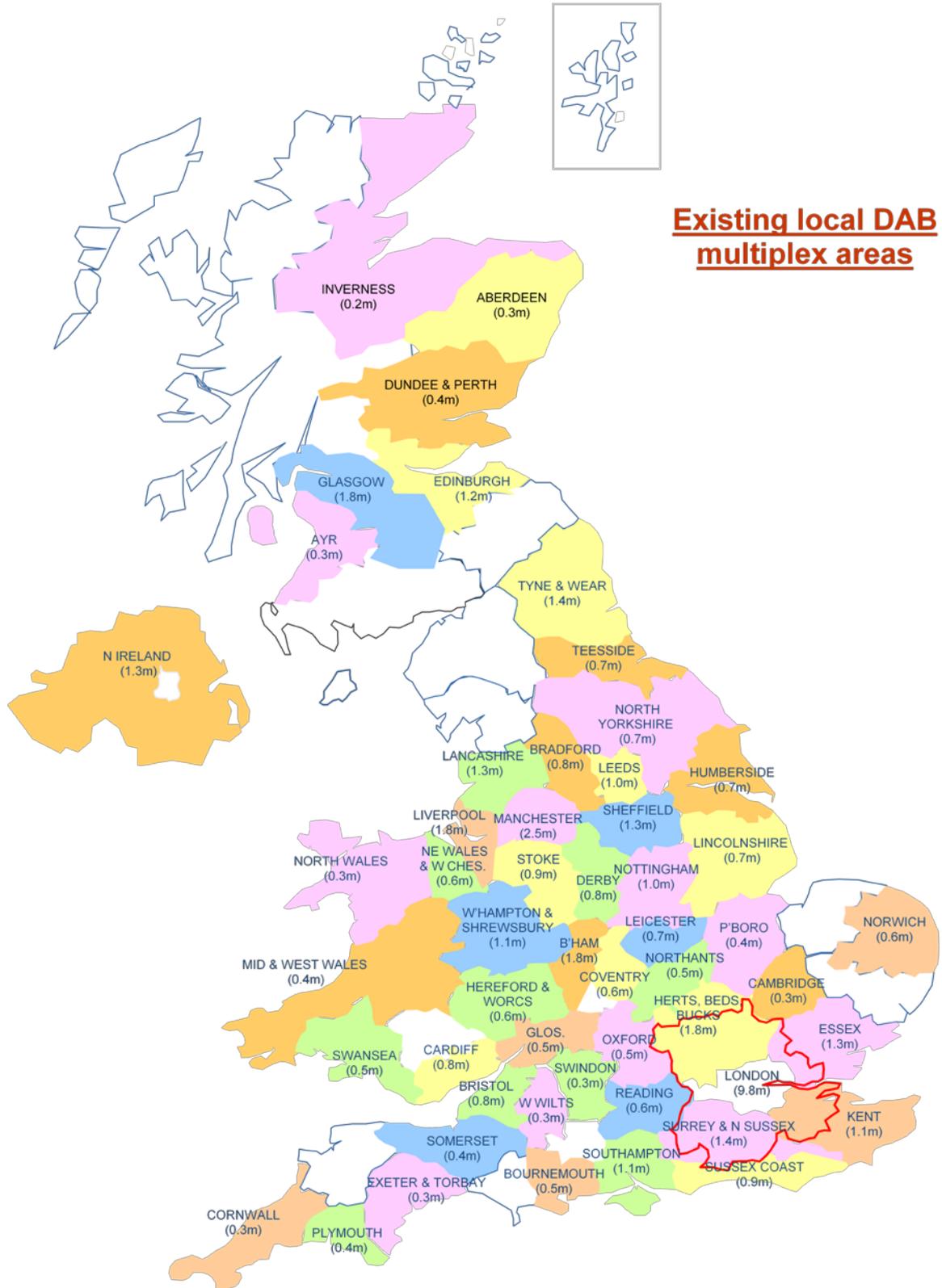
Proposal 4 – programme sharing within the newly defined areas

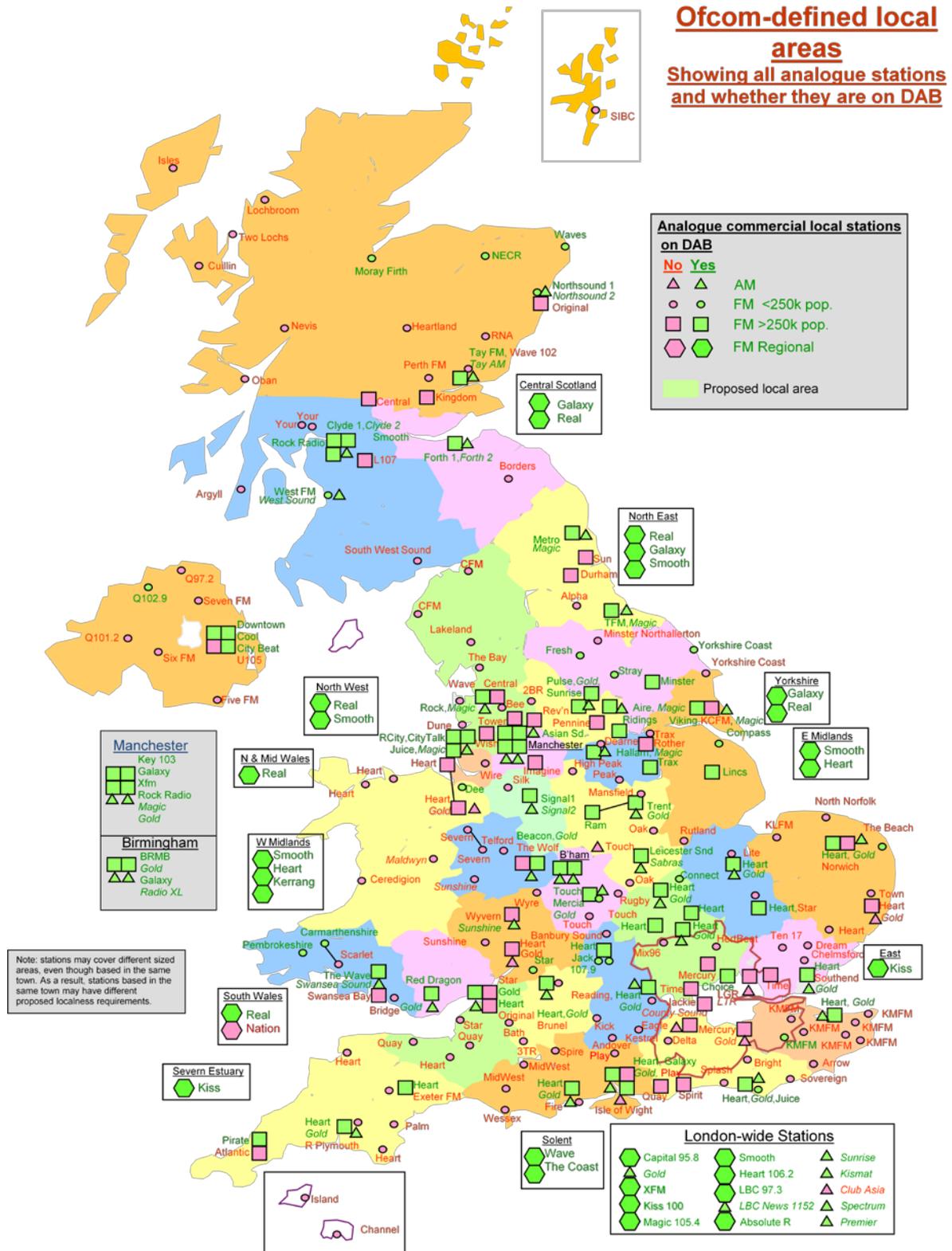
Within defined areas, stations would be able to request to share all of their programming, effectively allowing them to come together to become larger, more viable stations. Provided any statutory requirements are met, Ofcom would be likely to consent to such requests provided we were satisfied that the stations involved continued to meet their licence obligations to provide material that remains locally relevant to each part of their licensed areas. We envisage short consultations in most cases.

Where stations not in the same defined area request to share programming we will continue to consider requests on a case-by-case basis using the existing criteria of size, affinities and financial viability in our localness guidelines (as well as being likely to require that the relevant stations satisfy us that they will continue to meet their local material obligations). We envisage short consultations in most cases.

This proposal would be implemented by a change to Ofcom's Localness Guidelines.

³⁰ The map is illustrative only. A list of the areas showing which analogue stations and which local DAB multiplexes could be included in each defined area is shown in Annex 10.







Merging of DAB local multiplexes within defined areas

- 7.48 Within these specified areas, multiplex operators could seek Ofcom's consent to offer the same services across the relevant local multiplexes, in effect merging them into a single area, as far as programme services are concerned.
- 7.49 The *Digital Britain Final Report* suggests that new legislation will be aimed at
- “encouraging, where appropriate, adjoining multiplexes to merge and extending existing multiplexes into currently un-served areas rather than awarding new licences³¹”*
- 7.50 If the appropriate legislation is passed, Ofcom may by changing the assigned frequencies, be able to align the frequencies of adjacent multiplexes (provided they carried the same programme services) so as to improve coverage now or make future expansion of coverage more effective.
- 7.51 For example, using a single frequency for two adjacent areas may reduce the number of transmitters required or may simply improve coverage from existing transmitters by the use of a single frequency network or the ability to use higher powers.
- 7.52 However, as in the case of merging the regional multiplexes (see section 5) we would need to secure appropriate spectrum to allow us to do this. There is a limited window of opportunity to do so, because of the need for international co-ordination and the fact that once other countries begin to make use of this spectrum themselves, any international negotiation becomes more constrained.
- 7.53 There would be costs involved in re-engineering the multiplexes:
- There may for example be costs to individual stations carried by multiplexes, following changes of area – either by increased transmission costs arising from covering areas of increased size, or by losing the ability to target specific areas;
 - The infrastructure is already in place, and to change it would be at cost to multiplex operators, which may in turn be passed on to stations.
- 7.54 We suggest that the benefits might outweigh these:
- Coverage would generally be improved, both in the short-term and the longer term;
 - We anticipate some operating cost savings for multiplex operators, which may in turn be passed on to stations.
- 7.55 A sustainable local structure will be realised, allowing a migration to universal, local DAB transmission, with the consumer benefits of greater choice of, and competition in, services and the extension of those services into un-served areas, and the additional functionality on DAB.

³¹ *Digital Britain Final Report*, Radio Chapter, para 26

Proposal 5 – mergers of local multiplexes

Within the defined areas, local multiplexes should be allowed to merge, including by sharing frequencies (if possible), and be extended into any un-served localities within the defined area, where Ofcom consider that appropriate. We are likely to do so where:

- *any statutory requirements are met;*
- *we consider each of the following criteria are met:*
- *the merger and/or extension would be calculated to maintain or promote the development of local digital sound broadcasting otherwise than by satellite;*
- *the licensees' proposed coverage plans are satisfactory;*
- *the licensees have the ability to maintain the licensed service; and*
- *there are sufficient safeguards in place to protect the rights and interests of stations carried on the multiplexes and the rights and interests of other multiplex operators (and the stations they carry);*

One of the following criteria are met, namely that the merger and/or extension:

- *would not unacceptably narrow the range of programmes available on local digital sound programme services to those living in the area or locality covered by the multiplexes;*
- *would be conducive to the maintenance or promotion of fair and effective competition in that area or locality; or*
- *is supported or demanded to a significant extent by those persons living in that area or locality.*

We envisage short consultations in most cases.

7.56 This proposal is subject to the relevant legislation being passed by Parliament.

Current regulation of local material: quantities and guidelines

7.57 Last year, Ofcom relaxed regulation by halving the amount of localness required in many licences as a result of changing our localness guidelines and by simplifying formats. Our early analysis suggests that some radio stations/groups have been able to make appreciable savings on overheads during 2008: comparing same periods and like for like overheads, some stations have been able to implement savings of between 10% and 30% of costs.

7.58 Currently, we have guidelines, written into most local stations' licences as binding conditions, that these stations, located within their licensed area, should produce a minimum of ten hours per day local content during weekday daytimes (including breakfast) and a minimum of four hours per day at weekends during daytime, plus local news throughout peak time.

7.59 Stations can request lesser (or different) requirements, and our current policy is to consider those depending on a station’s size and situation (as well as applying the relevant statutory criteria). The current guidelines are summarised in Figure 16³².

Figure 16 Current guidelines on local radio stations

Type of station	Current guideline for local material
Local and regional FM stations	Minimum 10 hrs/day during weekday daytimes (including breakfast) and min 4 hrs/day at weekends during daytime plus local news throughout peak-time ³³ . Reduction in local hours only considered in exceptional cases (e.g. for specialist music station).
Local FM stations <250,000	Can ask to share programming within their 10 hours of locally made programming on weekdays to form a small regional network, but should still provide 4 hours of bespoke (i.e. specific to each station) programming with local material every day, including breakfast on weekdays.
Local AM stations	Min 4 hrs/day during weekdays and weekend daytime plus local news throughout peak-time. Min 10 hours during weekday daytimes should be produced within the nation where the station is based (i.e. if the minimum 4 hours is locally made, a further 6 hours should be produced from elsewhere in that nation)

Source: Ofcom

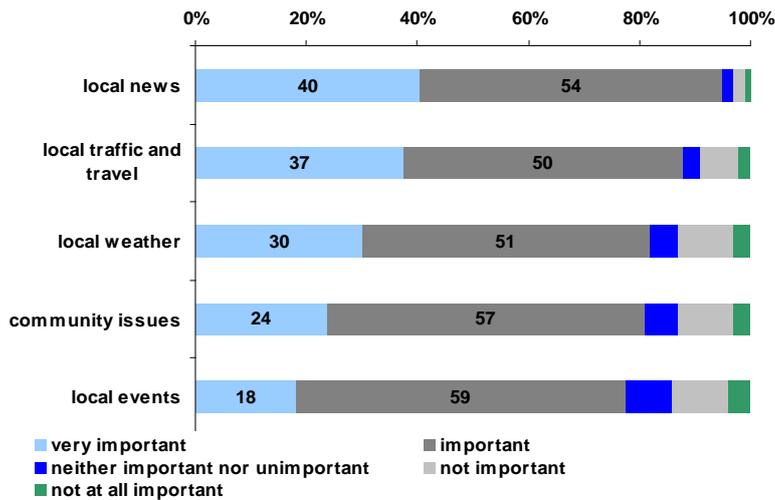
The value of news

- 7.60 The discussion of the different types of local content above (see above) identified core functional local content and human, engaged local content as distinct clusters. Consumers in our qualitative research groups considered the former more important.
- 7.61 It is a consistent result in Ofcom’s consumer research into attitudes towards different types of content that news is valued the most. This was demonstrated by the quantitative research which MORI conducted for Ofcom in 2004 (figure 17) and echoed in the local media research conducted by Ofcom in 2009 (figure 18).

³² Additionally, there are rules around Format, which are considered below

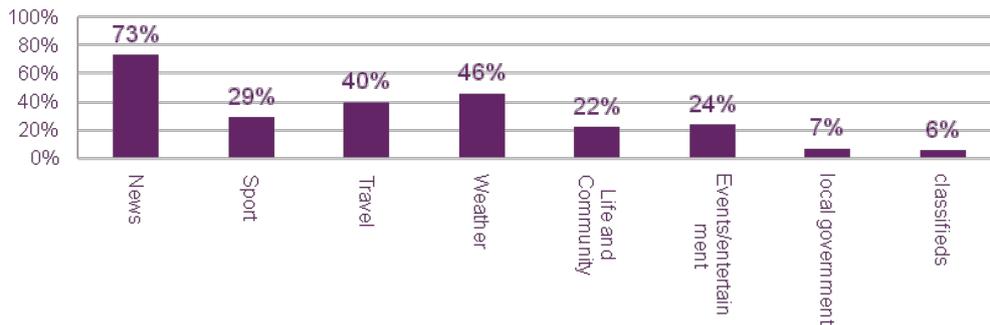
³³ This is defined as weekday breakfast and drivetime, and weekend late breakfast

Figure 17 Importance of issues being covered on local radio



Source: MORI 2004
 Base: All who listen to local radio (1,146)

Figure 18 What type of local content do listeners consumer via local radio?



Source: Ofcom local media research, April-May 2009
 Base: UK adults who use local radio at least weekly (598)

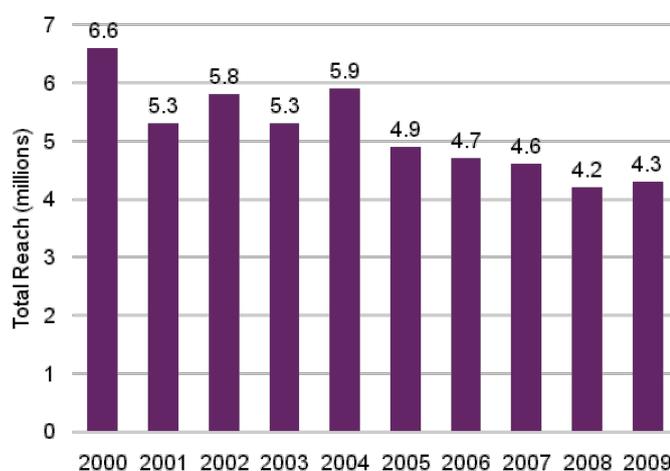
- 7.62 News is important not only as the most valued type of content for consumers, but for its obvious citizen implications. Radio plays a particular role in the local distribution and consumption of news that complements the role of other media. And, local news on local radio is vital in delivering the public purpose for radio of sustaining citizenship and civil society and promoting social gain.
- 7.63 Across local commercial radio the number of journalists employed varies depending on the size of area covered and the scale of the broadcast operation. For most of the smaller music based local stations they will typically include two qualified radio journalists who will compile, write and read news bulletins on air. Larger stations can be expected to run to three or four full time staff. Some regional stations typically operate with five or six journalists. GMG's Manchester news hub, serving three stations, employs more than a dozen journalists and retains reporter shifts for news generation (as opposed to processing). Bauer-owned stations commonly have five full-time journalists even up to eight but never fewer than three.

- 7.64 The function of news provision on local commercial radio complements that of local press which typically employs investigative reporters to write more in-depth local news stories. Radio's emphasis is on immediacy i.e. bringing the breaking local stories first is seen as the chief priority rather than providing analysis at length. Responding to and reporting on adverse weather conditions such as floods or heavy snowfall, or road closures due to major incidents or other exceptional circumstances where life of the public at large may be endangered, are examples of where radio news plays a vital role for the community it serves. This immediacy is often achieved by reporters on location who will file audio reports into bulletins, or conduct interviews for broadcast either on location or via telephone from the studio.
- 7.65 The *Digital Britain Final Report* noted that news is particularly important in local radio content, suggested that a strengthened news requirement might be part of a regulatory reform for localness on commercial radio.

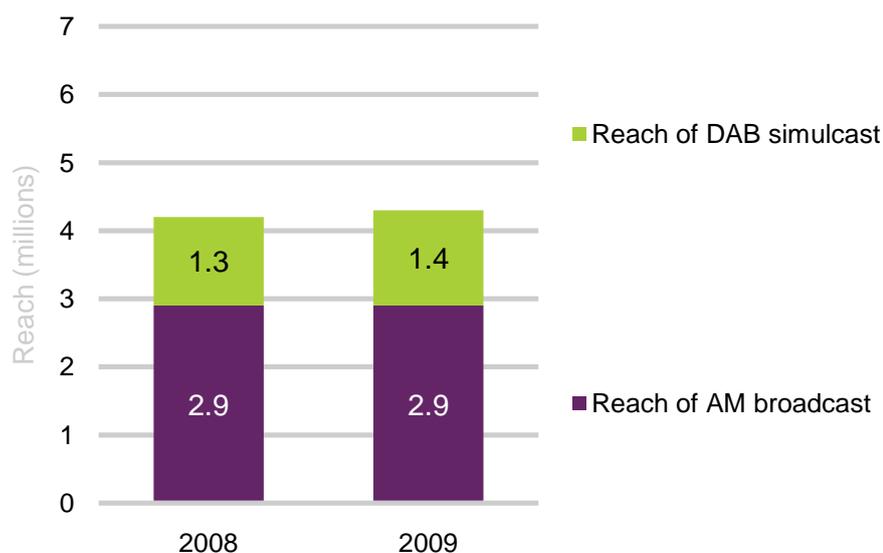
AM stations

- 7.66 The first batch of local commercial stations licensed in the 1970s and 80s all simulcast on both AM and FM. In those days, the majority of listening was on AM. But in the late 1980s simulcasting broadly stopped as it was seen as wasteful of limited frequencies. Stations were allowed to and encouraged to offer different services on AM and FM. Subsequently FM listening grew while AM declined.
- 7.67 Today, of the 25.6 million weekly listeners to local commercial radio around one tenth (2.9 million adults) listen on AM. The majority of the services now offered on AM are simulcast on digital platforms including DAB.
- 7.68 In the last five years total listening hours for ILR AM listening has fallen by 11 per cent but the fall in actual numbers of listeners is even steeper. The table below shows firstly the scale of audience loss and secondly the growth in digital listening to these same services over the last two years (2008 and 2009 since such data became available.) The lower part of both bars (2.9 million) represents the number of listeners to AM, the remainder via a digital platform.

Figure 19 Total reach of all local commercial stations broadcasting on AM



Source: Rajar/Ipsos/MORI/RSMB Q1 2000-2009

Figure 20 Breakdown of reach of local commercial stations broadcasting on AM

Source: Rajar/Ipsos/MORI/RSMB Q1 2000-2009

- 7.69 As the decline in local commercial AM listening continues and with that, the potential to maintain advertising revenues for these services, many AM stations are becoming increasingly unsustainable to operate. This is particularly the case for services which carry the additional financial burden of simulcasting the service on the local DAB multiplexes.
- 7.70 Under the digital upgrade outlined in the *Digital Britain Final Report*, all listening on AM would cease on a common date, 2015 if DAB coverage and penetration criteria are met.
- 7.71 At present, our guidelines are that local commercial AM stations should generally produce four hours per day of locally produced programming. And, given this limited requirement, in the context of the falling reach of, and listening to, AM stations, it might plausibly be suggested that listeners do not listen to such stations, primarily, for localness. But, even producing this localness comes at a cost.
- 7.72 There may be a case to amend our localness guidelines to remove the requirement for local material for these services. As audiences and revenues continue to fall in line with local AM listening overall, this business model will be particularly vulnerable to financial pressures, over and above those we have analysed above for (smaller) local stations broadcasting on FM.

Options and proposals for regulatory change

- 7.73 The *Digital Britain Final Report* asked Ofcom to consider a reduction in the number of locally produced hours in return for an enhanced commitment to regular and updated local news. As we suggested in our published submission *Building on the Myers Report*,³⁴ and outlined above, there is a particular value of news content on local commercial radio, and we consider it consistent with our duties to offer this additional option.

³⁴ Available at <http://www.ofcom.org.uk/radio/ifi/myers.pdf>

- To reflect this, and to make clearer stations' responsibilities with respect to local news production and delivery, we propose to revise our Localness Guidance on this point. (See section below.)
- 7.74 It is important to note that under each of our proposals for greater freedom to co-locate and share programmes, and also the additional news options, no station would be required to change its current service type and level; they would just have the possibility of doing so.
- 7.75 Additionally, the particular position of AM stations leads us to propose to amend the localness guidelines for AM stations, such that generally there need be no local material on them, but that 10 hours during weekday daytimes should continue to be produced within the nation where the station is based (unless the station is already required to do less than this). This is because of the particular value that national content has to citizens and consumers, over and above local content.³⁵
- 7.76 The additional costs and benefits of the further option for strengthened news regulation in return for fewer hours of locally made programming are relatively straightforward:
- The costs to consumers and citizens of a station opting for the strengthened news requirement would be a loss of a certain number of hours of guaranteed locally produced content; the benefits to consumers and citizens would be a greater quantity of more rigorously defined news content, which consumers particularly value and which enhances citizen value and the delivery of the public purposes previously referred to. In addition, even where a station chose to increase its local news commitment, it would (very likely) remain subject to requirements to broadcast other local content at times evidence shows consumers most value it.
 - We expect the costs and benefits to individual stations of this option to vary; for the most part we expect modest net cost savings but do not expect it to afford significant additional viability, seeing as the operational cost savings, would be limited to perhaps one presenter shift daily (assuming sufficient sunk costs in news resource to cover the strengthened requirements without additional outlay).
- 7.77 We therefore make proposal 6:

Proposal 6 – an enhanced news option for local FM stations

Any FM station (or FM stations which are allowed to share programming) generally should produce locally made programming for either:

- 1. A minimum of 10 hrs/day during weekday daytimes (including breakfast) and a minimum of 4 hrs/day at weekends during daytime plus local news at peak times , or*
- 2. A minimum of 7 hrs/day during weekday daytimes (including breakfast) and a minimum of 4 hrs/day at weekends during daytime plus local news at least hourly during daytime (weekdays) and weekend peak.*

The rules concerning local material within locally made programming would also change: the localness guidance would still apply generally, but we propose some revised

³⁵ This would continue to be based on section 3(4)(l) of the Communications Act 2003 (see section [3] above)

guidelines, the key new requirement being that local news should be regularly refreshed and updated (the proposed guidelines are in Section 7).

We may allow particular stations to broadcast less local material and locally produced programmes where in exceptional cases particular factors make that appropriate. No licensee would be required to produce more local output than they do currently.

This proposal would be implemented by a change to Ofcom's Localness Guidelines.

- 7.78 In the case of AM stations, the possible cost of our proposal to amend the localness hours guidelines is in terms of consumer and citizen value. But, for the reasons advanced above, we suggest that this value, if it can be said to exist, is limited. The current guidelines amount to regulation that risks the provision of any consumer and citizen value at all. The cost of our proposal is, accordingly, limited.
- 7.79 By contrast, the benefit is that relevant AM stations become more viable and likely to survive. And, they can find the levels of localness the market will support, potentially preserving the consumer and citizen benefits in a way current regulation may not.
- 7.80 So, the benefits might plausibly be said to outweigh the costs. And, in the case of stations carrying national content, the consumer and citizen benefits that content provides would be preserved.
- 7.81 We therefore make proposal 7:

Proposal 7 – AM stations

AM stations generally need no longer produce locally made programming or carry local material. But a minimum of 10 hours during weekday daytimes should be produced within the nation where the station is based (unless the station is already required to do less than this).

This proposal would be implemented by a change to Ofcom's Localness Guidelines.

Localness guidance

- 7.82 Each of the above proposals 1, 4, 6 and 7 involves amending our localness guidance, as set out.
- 7.83 We propose strengthening the localness guidance in connection with proposal 6 as follows.
- 7.84 Even where we change our guidance, it will, of course, still be necessary for individual stations to request Ofcom's consent to changes to their licence conditions about the character of their service. Ofcom can only consent to such changes on the grounds set out in section 106(1A) of the Broadcasting Act 1990, and will continue to consider requests for such changes, applying the revised localness guidance.

CURRENT

- *All stations should broadcast local news throughout peak-time both on weekdays (breakfast and afternoon drive) and weekends (late breakfast). Outside peak time, UK-wide, nations and international news should feature.*
- *For listeners, it is the quality, relevance, timeliness and accuracy of the news that matters, not where it is read from. Any group of stations may therefore operate news hubs in any way which makes operational sense for them.*
- *However, in order to provide a comprehensive local news service in touch with the area it is covering, Ofcom believes each station should have direct and accountable editorial responsibility for covering its licensed area.*
- *It also believes that the appropriate provision of professional journalistic cover, based within the licence area, on days when local news provision is a Format obligation, is a reasonable minimum expectation.*
- *Any individual station should have procedures in place to be able to react to and report on local news events in a timely manner.*
- *Therefore, while Ofcom understands the need to record news bulletins this should be as an exception rather than a rule. Ofcom also draws the attention of licensees to the research findings and listeners' expectations that peak time bulletins should be live (or pre-recorded only shortly before transmission); an expectation we believe is reasonable.*

REVISED

- *Local news should be high-quality, relevant, timely and accurate (as well as impartial, in accordance with the Broadcasting Code). Bulletins should seek to reflect the interests and concerns of listeners living in the area.*
- *Local news bulletins should be broadcast at least hourly throughout peak-time both on weekdays (breakfast and afternoon drive) and weekends (late breakfast). For those stations which have been given permission to reduce their hours of locally produced programmes to 7 hours a day on weekdays, local news should be broadcast at least hourly throughout daytime on weekdays and throughout peak-time at weekends.*
- *Local news stories should be up to date and regularly refreshed*
- *Bulletins should also feature nations' (if relevant), UK-wide and international news.*
- *The amount of local news, and the balance of local and national news in any particular bulletin, should be subject to professional journalistic judgments, but local news will always be an essential characteristic of a local station's overall output.*
- *Any group of stations may choose to operate one or more news hubs in any way which makes operational sense for them. However, in order to provide a comprehensive local news service in touch with the area it is covering, each station should have direct and accountable editorial responsibility for covering its licensed area.*
- *There should be an appropriate provision of professional journalistic cover, based within the licence area (or defined local area if appropriate), on days when local news provision is a Format obligation.*
- *Any individual station should have procedures in place to be able to react to and report on local news events in a timely manner.*
- *The pre-recording of news bulletins should be an exception rather than a rule and peak-time bulletins should always be broadcast live (or pre-recorded only shortly before transmission).*

Section 8

Small-scale radio

Regulation of community radio and smaller commercial radio stations

- 8.1 The small-scale radio sector currently comprises two categories of radio service which are licensed and regulated in different ways: community radio and small-scale commercial stations.
- 8.2 Community radio services are a relatively recent innovation, clearly defined by statute. Ofcom has licensed over 200 such stations. While there are a few exceptions, these stations generally broadcast to a small geographic area (up to 5km radius) and broadcast to a population of fewer than 250,000 people.
- 8.3 Small-scale commercial stations do not have a clear or statutory distinction from larger commercial radio stations.
- 8.4 In this consultation we do not seek to define which stations are small and which are large, but we do seek to start the debate.
- 8.5 We suggest that four characteristics, broadly correlated, could be used to distinguish small commercial radio stations from larger:
- The proportion of the existing local DAB multiplex area covered, typically up to 40% (around 125 stations are small by this criterion);
 - The adult population covered, typically up to 250,000 (around 130 stations);
 - The geographical area covered (typically a radius of 10 km); and
 - The fact that these stations are not currently simulcast on DAB, or due to be carried on soon-to-launch local DAB multiplexes (around 140 stations).
- 8.6 We also suggest that all small-scale stations possess one or more of these characteristics, although falling under one of these categories does not automatically make a station “small”.
- 8.7 Annex 10 shows how each analogue station measures up to each of these criteria. However, the proposals in this consultation suggest that stations may be able to merge together, so effectively changing their status. The list shown in Annex 10 should not be taken as definitive or as a guarantee of the future status of any station, and is presented here purely as a starting point for that debate.
- 8.8 We welcome views as to whether these are the right criteria. A full consultation on criteria and definitions would be required before any decisions were made by Ofcom or Government as to the future of any analogue stations.
- 8.9 The *Digital Britain Final Report* makes clear that in any digital radio upgrade this tier of small-scale stations would remain broadcasting on FM, where they do currently, and upgrade to FM, where they currently broadcast on AM.

Community radio

- 8.10 Community radio stations operate on a not-for-profit basis, and are required to be funded from a variety of sources and to deliver social gain to one or more communities. The legislation to enable community radio services to be licensed was introduced in 2004, and the first station launched in November 2005.
- 8.11 Over 130 such services are currently broadcasting, and the total number of licensed stations is now over 200. Despite such rapid growth, because of their limited scale of coverage, community radio services are currently only available to approximately ten percent of the population.
- 8.12 The immediate challenge for the sector is that there is very little in the way of additional spectrum to cater for the demand for more analogue community services. Although we do expect to be able to license some further services over the coming months, within current frequency resources such stations will continue to be available only to a small minority of the general population.
- 8.13 In the longer term, the migration of larger stations to digital platforms provides an opportunity to reduce some of the coverage problems encountered by community radio services as well as by some smaller commercial stations. Because of the scarcity of spectrum in many areas, community radio currently operates under less robust coverage criteria than its commercial counterparts do. Although this approach has allowed a greater number of community radio services to be licensed in particular areas than would otherwise have been the case, it also means that such services can be subject to more intrusive incoming interference (for example from illegal broadcasters or more distant licensed stations).
- 8.14 At present, the majority of commercial radio stations operate with coverage areas being defined as at or above 54 dB ($\mu\text{V}/\text{m}$). By comparison, community radio services tend to be subject to greater levels of incoming interference and therefore are only guaranteed coverage at or above 64 dB ($\mu\text{V}/\text{m}$). With a greater availability of FM frequencies following digital migration, it will be possible to re-plan the transmissions of community radio services such that they would then operate to the same coverage standards as are currently used by the majority of commercial broadcasters. Although such re-planning may well involve changes to broadcasting frequencies it would increase the robustness of community radio transmissions and thereby make these stations more readily available to members of their target communities.
- 8.15 Despite the current limitations, there is no doubt that the introduction of community radio can be considered a great success, broadening choice in areas where such services are available and delivering clear consumer and citizen benefits to a variety of communities served. The community and hyper-local media sector has a diverse funding base. This plurality is only likely to continue.
- 8.16 However, there remain a number of funding challenges. These include the frequently short term nature of grants, issues around independence from funding organisations (e.g. local authorities), and the reduced funding availability as grant-giving organisations see budgets cut. Meanwhile there are limitations on the sector's ability to raise revenues from commercial sources.
- 8.17 We welcome the DCMS' current consultation on removing the restrictions on the licensing of community stations in areas where there is already a commercial station

servicing fewer than 50,000 people and the removal on the limit of raising 50% of revenue from any one source.

Small-scale commercial radio

- 8.18 We have previously noted, both in this and previous consultations, that that profitability and viability in commercial radio is typically related to scale³⁶. Our research indicated that slightly more than half of those stations serving fewer than 250,000 adults (aged 15+) within their measured coverage area (MCA) were making a loss, whereas the majority of larger stations were in profit.
- 8.19 In the intervening two years, the viability of smaller commercial radio services has not improved, as section 5 above shows.
- 8.20 As we set out in section 7, smaller commercial stations would be able to take advantage of our proposals for co-location and for sharing programming within defined areas. This could offer significant cost savings and allow some of those stations to become bigger stations should they choose to. If they do so, they may become subject to any digital upgrade, broadcasting on DAB and surrendering their analogue licences in due course.
- 8.21 The particular exposure of smaller commercial stations right now to reduced advertising revenues might lend weight to a case for further flexibility for smaller commercial radio stations, in addition to the options for programme sharing and co-location set out for larger local stations above. The two-year pilot of a new output focused regulatory regime being proposed might be one way to do this.

The impact of a digital radio upgrade on the small-scale sector

- 8.22 The Government's *Digital Britain Final Report* proposes upgrading the UK's radio broadcast networks from FM to DAB, and "creating a new tier of ultra-local radio which will occupy the FM spectrum vacated by those services migrating to DAB"³⁷. This new tier would include community radio services and small scale commercial services not of sufficient size to migrate to DAB.
- 8.23 As noted above, this provides the opportunity for existing small-scale stations to improve the robustness of their FM reception, as well as providing the opportunity for many more small-scale services to be licensed.
- 8.24 It is even possible that new types of service could be launched, for example with different public purposes and regulatory obligations to those that presently fit into either commercial or community licence categories. With the Government proposing a digital upgrade in 2015, public policy thinking is at an early stage with respect to this ultra-local tier, but the implication of the *Digital Britain Final Report* is clearly that these small scale services would be the most local of all broadcast radio services, complementing the larger scale local commercial services delivered on DAB at a higher level within our proposed defined areas.

³⁶ In *The Future of Radio: The future of FM and AM services and the alignment of analogue and digital regulation*

³⁷ *Digital Britain Final Report*, p 101

Section 9

Regulating music formats

Ofcom's statutory duties

9.1 As noted in Section 4 above Ofcom has statutory duties 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,”³⁸ and
- “do all [we] can to secure the provision within the UK of a range and diversity of local services.”³⁹

9.2 These duties are reflected in the statutory criteria for determining licence awards, in which Ofcom must have regard to:

- the ability of each of the applicants for the licence to maintain, throughout the period for which the licence would be in force, the service which he proposes to provide;
- the extent to which any such proposed service would cater for the tastes and interests of persons living in the area or locality for which the service would be provided, and, where it is proposed to cater for any particular tastes and interests of such persons, the extent to which the service would cater for those tastes and interests;
- the extent to which any such proposed service would broaden the range of programmes available by way of local services to persons living in the area or locality for which it would be provided, and, in particular, the extent to which the service would cater for tastes and interests different from those already catered for by local services provided for that area or locality; and
- the extent to which any application for the licence is supported by persons living in that area or locality.

9.3 Additionally, under the Broadcasting Act 1990⁴⁰ we must include in radio licences conditions we think are appropriate for making sure the character of a service, proposed by the licence holder when making its application, is maintained during the licence period. In determining what the character of the service is, Ofcom must have particular regard to the selection of spoken material and music in programmes included in the service.

Past licensing

9.4 In pursuing its statutory remit, Ofcom has licensed stations so as to provide diversity of services to consumers. Some services are primarily distinguished by the age demographic of their listenership, others by the ethnic groups they serve, and others by the specialist music they play. In licensing decisions, Ofcom has regarded the

³⁸ Section 3(2) Communications Act 2003

³⁹ Section 85(2)(b) Broadcasting Act 1990

⁴⁰ Section 106, 106(1) and 1B in particular

type of music played by a radio station as being one of its key defining characteristics.

- 9.5 The licensing has taken account of existing services operating: where there was already a local commercial radio station, new services were often chosen because they proposed to play a variant of mainstream popular music likely to appeal to a different age demographic from the existing commercial station.
- 9.6 In the case of regional licences, where localness provision was joined at the core of programming by other considerations, services were licensed that would appeal to audiences from different, often older, age demographics.
- 9.7 Some licences were awarded because their programming sought to serve a community of interest. These include specialist music stations, or stations serving a social or ethnic group, such as Sunrise Radio for London's Asian population. These services were sometimes defined in relation to music, for example Choice FM (South) serving "listeners of African and Afro-Caribbean origin in the Brixton area but with cross-over appeal to other listeners who appreciate urban contemporary black music").
- 9.8 The terms *Contemporary and Chart*, *Adult Contemporary* and *Broad Music* are among the most widely used labels used currently in UK radio music Formats: they are presently in the Formats of over 70 per cent of radio stations licensed by Ofcom.

Radio and the consumption of music today

- 9.9 Music today is available to consumers via many more platforms and other routes than just commercial radio: music can be found online (streamed or downloaded, with a range of options for content selection), and consumed via a large range of audio-capable devices, some of which have qualities such as mobility that have been key qualities of radio. 40% of individuals now have access to an MP3 player, and mobile handsets are used for one third of music downloads⁴¹.
- 9.10 Music remains important on radio, being a key reason why consumers choose the medium of broadcast radio above other platforms. In previous research we conducted, 85% of respondents stated that music was important or very important in their decision to listen to a station. More people cited music as an important or very important driver of what station they listened to than cited any other factor⁴².
- 9.11 The music business itself is increasingly digitally driven. To reflect the growing consumption of legitimate digital music, the UK's official music chart was extended to include digital sales in 2007. Digital now accounts for over 95% of single sales and 15% of album sales, and digital sales are driving substantial growth in the singles market: over 11m tracks were downloaded in May 2009 (up 45% year on year)⁴³.
- 9.12 In a report published in 2008 the Radio Centre argued that as an influencing factor leading to music purchase radio is nearly three times more effective than either the internet or television.⁴⁴

⁴¹ *Ofcom Communications Market Report 2008*, Ofcom, 14 August 2008, available at http://www.ofcom.org.uk/research/cm/cmr08/cmr08_1.pdf

⁴² *Radio – Preparing for the future: Appendix B*

⁴³ BPI press release, 23 June 2009

⁴⁴ *Action Stations! The output and impact of Commercial Radio*, Radio Centre, July 2008, available at http://www.radiocentre.org/rc2008/documents/RC_CRCAPSBReportWEB.pdf

- 9.13 With digital catalogues and distribution, the availability of music content is changing. This means, among other things, that individual tracks can be purchased, independently of albums; that the window of availability can be longer; and that a greater range of content can be made available. Hit records today also tend to be prevalent for longer periods due in part to a change in marketing and scheduling practices by record companies and radio stations.
- 9.14 In terms of sales the ongoing duration of download availability and freshly marketed, re-mastered and re-mixed versions create a re-shaped frequency distribution curve (the 'long tail') which radio station scheduling tends to follow, allowing exposure to a wider age demographic over time. This exposure and endorsement may be typified by the wide ranging acceptance of songs and the wide age range appeal among audiences.
- 9.15 Music genres and sub-genres are often linked with particular demographic groups. Contemporary hit music has been aimed at a younger audience (typically 15-34 year-olds; adult contemporary music and broad music at a slightly older audience (say, 25-44); "gold" stations targeting those aged 35+; and softer, easy listening music to attract audiences older still.
- 9.16 It is possible that the genres into which popular music has previously been categorised have become blurred from a consumer perspective, not least through the embracing of contemporary popular music by older listeners. Younger audiences too are enjoying some of the older music to which their parents listened. Both these points have created a significant overlap in the age range of chart music and adult contemporary formatted music enjoyed and consumed by radio listeners.
- 9.17 To illustrate, out of the top 20 most played songs in 2008 in terms of airplay (all stations) and public performance, 17 would sit comfortably alongside other songs on both *Contemporary and Chart* and *Adult Contemporary* radio stations.⁴⁵
- 9.18 If there is an acceptance of this blurring then the terms *Contemporary and Chart* and *Adult Contemporary* in Formats become less clearly defined in the context of radio regulation. This in turn would call into question whether it is necessary for Ofcom to enforce separate formats for these types of music in the interests of diversity.

Re-examining music Formats

- 9.19 In our published submission *Radio In Digital Britain*, we indicated that we were minded to consult on the appropriateness of continuing to regulate music Formats, given a new regulatory framework for localness⁴⁶.
- 9.20 The *Digital Britain Final Report* did not give any indication that the Government would intend to propose legislation which would change our duties in respect to music Formats. We are able, however, to re-examine definitions of existing music Formats, to see whether they continue to have the effect of delivering on our statutory duties.
- 9.21 One effect of the changes in music consumption and distribution outlined above could be that the boundary between music Formats used for radio licensing is becoming increasingly blurred.

⁴⁵ For details of the 20 most played songs in 2008 see *PPL Annual Report 2008*, available at <http://content.yudu.com/Library/A17qa4/PPLAnnualReport2008/resources/index.htm?referrerUrl=http%3A%2F%2Fwww.ppluk.com%2Fitem%2Fdetails%2F54703%2FPPL-Annual--Report-2008>

⁴⁶ *Radio in Digital Britain: A submission from Ofcom to Government*, Ofcom, 27 March 2009, available at http://www.ofcom.org.uk/radio/ifi/radio_digitalbritain/digitalbrit.pdf

- 9.22 But Ofcom is duty bound to balance this with our duties, which require us to retain a diversity of services targeting discrete audiences – age and ethnic group being among these – and the policy question for Ofcom is whether distinctions between these popular music sub-groups are still required to achieve these types of diversity.
- 9.23 The unique contribution that non-specialist, local commercial radio services make is their local content. This is particularly true as a greater range of music becomes more easily available through a wide range of distribution platforms; regulatory intervention targeted at the radio platform may be less necessary to achieve diversity of music content in a multi-platform world.
- 9.24 Allowing the Contemporary and Chart Music and Adult Contemporary Format terminology to become less prescriptive could result in more freedom for stations: to adapt musical content to changing tastes, to concentrate on providing local content, and to compete with new types of music consumption and distribution. If the result is stations providing more of what their audiences want, or increased competition between service providers in a local market, then consumers may be better served, and indeed the audience for local content could be built beyond its present levels. Such an approach would be consistent with Ofcom’s stated commitment to regulatory simplification, where there is no demonstrated need for intervention.
- 9.25 On the other hand, it is possible that simplifying music Formats along the lines described above would lead to a narrowing of the range of services available to consumers. There could be an incentive for stations to cluster around a commercial middle ground. In particular, there may be specific risks to the viability of smaller stations which were set up to offer diversity in a local market with a larger, established ‘heritage’ station, if the two were freer to compete head to head. Larger specialist stations could also suffer: for example one covering a city, with a music Format requiring a non-mainstream music type (e.g. adult alternative or rock), could find itself under pressure if a more mainstream local station takes advantage of music Format simplification to include in its playlist songs from the non-mainstream station’s core artists.
- 9.26 We can see arguments on both sides, and at present have no compelling evidence either way, so we do not put forward a specific proposal. We invite comments on the issues outlined above, particularly submissions with data, case study examples, or other evidence that we should consider.
- 9.27 If there were a compelling case, following consultation responses, to make this change to our general policy, then we would undertake a further, short, consultation, based on that evidence. In the event of this new general policy, stations affected would have the choice of remaining as they are, or applying to change their format to Broad Music.

Proposal 8 – Limited redefinition of contemporary music Formats

We do not make a specific proposal, but we welcome views, supported by evidence, as to whether there is a case for a limited redefinition of some music formats as they are applied to local, not regional stations: combining the definitions of “contemporary and chart music” and “adult contemporary” into a single “broad music” definition, to allow stations with these formats greater freedom to respond to audience tastes, focusing regulation more on local content.

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 23 October 2009**.
- A1.2 Ofcom strongly prefers to receive responses using the online web form at <http://www.ofcom.org.uk/consult/condocs/radio/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 oli.bird@ofcom.org.uk attaching your response in Microsoft Word format, together with a consultation response coversheet.

Responses may alternatively be posted or faxed to the address below, marked with the title of the consultation.

Oli Bird
Policy Manager, Radio Policy and Broadcast Licensing
5th Floor
Riverside House
2A Southwark Bridge Road
London SE1 9HA

Fax: 020 7981 3806

- A1.4 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.
- A1.5 It would be helpful if your response could direct your comments at specific proposals, as they are listed in the Executive Summary of this document. It would also help if you can explain why you hold your views and how Ofcom's proposals would impact on you.

Further information

- A1.6 If you want to discuss the issues and questions raised in this consultation, or need advice on the appropriate form of response, please contact Oli Bird on 020 7981 3938.

Confidentiality

- A1.7 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, 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.

- A1.8 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.
- A1.9 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

- A1.10 Following the end of the consultation period, Ofcom intends to publish a statement in November 2009.
- A1.11 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

Ofcom's consultation processes

- A1.12 Ofcom seeks to ensure that responding to a consultation is easy as possible. For more information please see our consultation principles in Annex 2.
- A1.13 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 . 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.
- A1.14 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

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 normally consult for up to 10 weeks depending on the potential impact of our proposals. However, in this instance we have extended the duration of the consultation to 12 weeks to take the fact that we are consulting over the summer holiday period into account. Our decision to extend the consultation period in this way also reflects the fact that some of our proposals are subject to legislative changes, meaning that a two week extension to the consultation period would not impact on the timetable for the implementation of any proposals which emerge in our final statement.

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.
- 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/.
- 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:

To (Ofcom contact):

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	<input type="checkbox"/>	Name/contact details/job title	<input type="checkbox"/>
Whole response	<input type="checkbox"/>	Organisation	<input type="checkbox"/>
Part of the response	<input type="checkbox"/>	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 proposals

- A4.1 This consultation is an opportunity to respond to our proposed regulatory changes that would, for the most part, follow new legislation. The legislation itself is a matter for Parliament not Ofcom.
- A4.2 Our proposals for this consultation are stated in full in the Executive Summary and described in more detail throughout this document. We do not have any consultation questions in addition to these.
- A4.3 We welcome comments on each of the proposals, including on whether they are the right proposals, and/or how respondents consider they should be amended.
- A4.4 It would be helpful if your response could direct your comments at specific proposals. It would also help if you can explain why you hold your views and how Ofcom's proposals would impact on you.