



The Future of Radio

Localness on analogue commercial radio
and stereo and mono broadcasting on DAB

Statement

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Contents

Section		Page
1	Executive summary	1
2	Introduction	6
3	Localness guidance for commercial radio	7
4	Stereo and mono broadcasting on DAB	21
Annex		Page
1	Localness guidelines	25
2	Impact assessment	30
3	Consultation responses	38

Section 1

Executive summary

- 1.1 Radio is in transition. Throughout its history, it has evolved and adapted to face new challenges, and that transition continues today, at a rapid pace. Ofcom's work reflects these changes, with this statement forming part of our on-going review of the radio sector. Our work will need to continue, and will this year also include contributions to the Digital Radio Working Group and the Convergence Think Tank. The conclusions that follow should be viewed in the light of this transition, helping to ensure radio's continued popularity and success, in the interest of citizens and consumers.
- 1.2 In April 2007, Ofcom published its consultation document, *The Future of Radio: the future of FM and AM services and the alignment of analogue and digital regulation*.
- 1.3 The initial consultation covered four main areas:
 - Content regulation of local analogue commercial radio services;
 - Commercial radio ownership rules;
 - The future use of FM and AM spectrum; and
 - The regulatory framework for community radio.
- 1.4 We received over 140 responses, and in November 2007, we published our policy statement, *The Future of Radio: the next phase*. In the light of the responses, we revised our proposals in two areas:
 - Localness guidance for analogue (i.e. FM and AM) commercial radio
 - Stereo and mono broadcasting on DAB
- 1.5 These were the subject of a further short consultation, where we welcomed comments providing additional evidence or arguments not already submitted in response to the first consultation.
- 1.6 By the closing date, we received 43 responses to this further consultation. Most broadly supported the policy statement's approach, although some areas remained contentious.

Localness guidance for commercial radio

- 1.7 We proposed revised guidance to include that, in general, each FM station should produce a minimum of ten hours a day of locally-made programming during weekday daytimes (06.00 – 19.00), including breakfast, and a minimum of four hours a day of locally-made programming at weekends in daytime (06.00 – 19.00). In addition, we said that stations would be able to apply for co-location and programme sharing on a sub-regional basis, with requests from stations covering a population of fewer than 250,000 adults (aged 15+) likely to be considered more favourably than requests from stations with greater population coverage.

- 1.8 We also proposed revised guidance that AM stations should produce four hours a day of locally-made programming during daytime, and that at least ten daytime hours should be produced within the nation where the station is based.
- 1.9 We noted that no station would be expected to produce more locally-made programming than at present, and finally we stated that no licensee would be granted a request to change or simplify its Format within two years of its launch.
- 1.10 While there was general support for these proposals, including from a number of MPs, the responses focused in particular on three areas: our proposals regarding the minimum amount of locally-made programming that stations should provide; our proposed population threshold in respect of requests for co-location and programme sharing, and; our proposed policy not to allow a station to apply for a Format change within its first two years on air.

Amount of locally-made programming

- 1.11 Commercial radio industry respondents broadly considered that the amount of locally-made programming should either not be regulated at all, or should be part of a co-regulatory approach. However, these respondents added that if Ofcom considered regulation was required, for FM stations this should be limited to seven hours on weekdays to allow stations maximum flexibility. Conversely, some individual respondents, and groups such as the Campaign for Press and Broadcasting Freedom, the NUJ and Estuary Media, felt that the proposals went too far in removing local content requirements.
- 1.12 We fully considered the responses. On locally-made programming, we considered that in Ofcom's research, a majority of respondents chose the option as close to the status quo as possible. We recognise stations should have the flexibility to offer a networked show within daytime, but to go further than this would risk stations becoming national services with local opt-outs.

Co-location and programme sharing

- 1.13 Industry respondents also felt that the general maximum population coverage threshold of 250,000 adults, whereby requests for co-location and programme sharing from stations with greater population coverage were likely to be approved only in exceptional circumstances, did not reflect that medium-sized stations were also facing financial challenges, and proposed that a maximum of 400,000 or 500,000 adults would be more appropriate. However, other respondents considered that a general policy of permitting larger stations to co-locate and share programmes risked losing bespoke local programming in smaller areas where local services were highly valued.
- 1.14 We can see no compelling reason to increase the population coverage threshold relating to co-location and programme sharing requests. Figures provided by GCap in response to the consultation suggest that a majority of stations with a coverage area containing between 250,000 and 500,000 adults are profitable. Furthermore, we believe that increasing the threshold to this level would be out of step with listener expectations, as Ofcom would be unwilling to permit stations in significant markets such as Ayr, Swansea, Plymouth, Ipswich and York to reduce the amount of locally-made programmes they provide to just four hours each day.

Format changes for new stations

- 1.15 Industry respondents considered that the existing policy under which newly-launched radio stations are in general not permitted to apply for a change to their Format within their first two years on air was unfair to new services operating in markets where longer-established services would be able to request such a change, and also would have a simplified Format (in line with the policy outlined in *The Future of Radio: the next phase*). They suggested instead that, if Ofcom wished to prevent Format changes within a specified period, this period should be two years from the time that a successful applicant submits its licence application rather than two years from when the station launches. Given that successful applicants are permitted two years after being awarded a licence within which to launch their service, such a policy would effectively allow new stations to change their Formats from launch. Other respondents supported Ofcom's proposal; they stated that allowing Format changes during a station's first two years on air would undermine the criteria used to award the licence, and expressed the view that applicants should not effectively be allowed a "second chance".
- 1.16 Our current Format change policy states that as a general rule, "no format changes will be permitted in the first two years after a station is launched and, in the period subsequent to that and up to five years after launch, only changes which do not substantially alter the station's character will be permitted."
- 1.17 We remain of the opinion that removing the general policy of not allowing Format changes within two years of a station's launch would undermine the basis of a licence award. However, we note that this has the potential effect of preventing co-location (which represents a Format change) for stations with a population coverage under 250,000, and incurring increased costs (such as those for premises) for the smallest stations for their first two years before they are likely to have a request for co-location fully considered.

Conclusion

- 1.18 The revised localness guidance, incorporating the proposals regarding recommended minimum amounts of locally-made programming that stations should produce and the population threshold relating to co-location and programme-sharing requests as set out in the consultation document, will come into effect immediately.
- 1.19 We have slightly amended our existing Format change policy¹, such that any station will be permitted to submit a request for co-location (i.e. including stations within their first two years on air). As a matter of policy, requests from stations with population coverage greater than 250,000 adults (aged 15+) are likely to be approved only in exceptional circumstances.
- 1.20 To coincide with publication of this statement, we are writing to each licensee regarding the policy of simplifying Formats outlined in *The Future of Radio: the next phase*, and also inviting requests for Format changes in accordance with the guidance outlined in this document.

¹ Paragraphs 2.38 - 2.46, Radio – Preparing for the Future (Phase 2) statement, Ofcom, 15 February 2006: http://www.ofcom.org.uk/consult/condocs/radio_reviewp2/statement

Stereo and mono broadcasting on DAB

- 1.21 In the consultation document we proposed that the audio characteristics (e.g. stereo or mono) of a digital sound programme service (i.e. a radio station provided on a DAB multiplex) should be considered as an essential aspect of the character of the service, and as such requests for changes to these characteristics would fall to be regulated by Ofcom under the terms of section 54(6A) and (6B) of the Broadcasting Act 1996. This was a change to our previous policy proposal in this area, upon which we had consulted in the original *The Future of Radio* consultation document, and thus we sought views on the new proposal.
- 1.22 Some non-industry respondents again expressed their concern at any moves by DAB multiplex operators to reduce sound quality on DAB, which they considered should be at least equal to FM stereo. Meanwhile, respondents from the commercial radio industry continued to oppose any regulation of stereo and mono broadcasting on DAB at all, considering that this should be entirely a matter for broadcasters.
- 1.23 Ofcom believes that it is appropriate to intervene in this area in the interests of listeners and in light of Ofcom's duty in section 3(2) of the Communications Act 2003 to secure the availability throughout the UK of a wide range of high quality radio services calculated to appeal to a variety of tastes and interests.
- 1.24 There can be many reasons why a multiplex operator may request a change in the audio characteristics of an individual programme service (whether the change is from stereo to mono, or from mono to stereo), and Ofcom fully appreciates that multiplex operators should have the flexibility to vary bandwidth over limited periods to reflect short-term programming priorities. Our proposed policy was not intended to constrain such changes.
- 1.25 Rather, our policy is intended to be a backstop to ensure that multiplex operators do not seek to unacceptably diminish the range and variety of the services that they broadcast by changing the audio characteristics of a radio service in order that freed-up capacity can be allocated to services which, in our view, would not be in the best interests of listeners. Examples of such services would be those aimed at a closed user group (i.e. not available to the general public) and where Ofcom judges this would not be in the overall public interest.

Conclusion

- 1.26 Having considered the responses to this consultation and the responses on this issue to the April 2007 *The Future of Radio* consultation, our view remains that regulatory intervention in this area is appropriate in some circumstances. With immediate effect, we will consider requests to change the audio characteristics of a digital sound programme service in accordance with the statutory criteria in sections 54(6A) and (6B) of the Broadcasting Act 1996. For those stations that propose to switch from stereo to mono on a regular basis, we will agree in advance the general principals of when such changes would be appropriate.
- 1.27 As a matter of general policy, Ofcom is likely to refuse a request for a change in audio characteristics only in cases where the capacity freed-up by the change is to be allocated to services which, in our view, would not be in the best interests of citizens and consumers. Such an example may be where a multiplex using its full capacity for stereo radio services proposes to reduce these radio services to mono, in order to allocate the permitted 30% data capacity to provide a closed user group service. We believe that such a move would generally (in respect of a national radio

licence) unacceptably diminish the capacity of the programme services provided under that licence to appeal to a variety of tastes and interests, or would generally (in respect of a local radio licence) unacceptably narrow the range of programmes available by way of digital sound programme services in the area.

- 1.28 In view of the concerns expressed by some stakeholders, Ofcom will review this policy after twelve months.

Section 2

Introduction

- 2.1 Radio is in transition. Throughout its history, it has evolved and adapted to face new challenges, and that transition continues today, at a rapid pace. Ofcom's work reflects these changes, with this statement forming part of our on-going review of the radio sector. Our work will need to continue, and will this year also include contributions to the Digital Radio Working Group and the Convergence Think Tank. The conclusions that follow should be viewed in the light of this transition, helping to ensure radio's continued popularity and success, in the interest of citizens and consumers.
- 2.2 Building on the discussion document that preceded it, *The Future of Radio*² consultation document in April 2007 set out a wide range of proposals and suggestions for a new regulatory framework for commercial and community radio which recognised the transition from analogue to digital, while still ensuring that listeners' interests are best served through the continued provision of a wide range of and diversity of services, including local services.
- 2.3 The initial consultation covered four main areas:
- Content regulation of local analogue commercial radio services;
 - Commercial radio ownership rules;
 - The future use of FM and AM spectrum; and
 - The regulatory framework for community radio.
- 2.4 We received over 140 responses to this consultation, and in November 2007 we subsequently published our statement, *The Future of Radio: the next phase*³ containing decisions and recommendations to Government.
- 2.5 In that document, we also published two revised proposals for consultation:
- localness guidance on the minimum acceptable levels of local material and locally-made programming on analogue commercial local radio stations; and
 - regulation of the audio characteristics of digital sound programme services under the authority of section 54(1)(b) of the Broadcasting Act 1996.
- 2.6 We requested comments which provided additional evidence or arguments not already submitted in response to the first consultation. By the closing date of 21 December 2007, we had received 43 responses: 19 corporate, 16 from MPs, and 8 from individuals; no fully confidential responses were received. One further response from an MP was received after the closing date. The two consultation issues are considered separately in the following sections.

² The Future of Radio: the future of FM and AM services and the alignment of analogue and digital regulation, Ofcom, 17 April 2007;

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

³ The Future of Radio: the next phase; Ofcom, 22 November 2007

<http://www.ofcom.org.uk/consult/condocs/futureradio07/>

Section 3

Localness guidance for commercial radio

- 3.1 In the April 2007 consultation document, we proposed that Ofcom could give guidance under section 314 of the Communications Act 2003 so as to indicate what Ofcom considers to be appropriate minimum levels for the amount of locally-made programmes and local material (local programming) to be provided by analogue local commercial stations, according to the size and type of station (although in applying this guidance, under the existing legislation Ofcom would still need to assess each station on a case by case basis and consider changes under the Format change regime). It was further proposed that local material should be locally-made within the licensed area unless Ofcom agrees to the co-location of studios, according to specified criteria.
- 3.2 Based on the responses to the April 2007 consultation, new audience research⁴, and other factors set out in the November 2007 statement (para 3.65-3.71), we revised our proposals on the guidance as to the minimum acceptable levels of local material and locally-made programming.
- 3.3 Our revised proposal for localness guidance on the minimum acceptable levels of local material and locally-made programming on analogue commercial local radio stations was as follows:

Type of licence	Proposed programming guidance
FM local stations	<p>Each station should produce a minimum of 10 hours a day of locally-made programming during weekday daytimes (this should include breakfast). Programming should include local material across those 10 hours as a whole, although there is no expectation that local material would be included in each of those individual hours if this is not appropriate.</p> <p>Each station should produce a minimum of 4 hours a day of locally-made programming at weekends (in daytime) which should include local material.</p> <p>Those stations with an MCA (Measured Coverage Area) of 250,000 adults (age 15+) or fewer can apply 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. This should be locally-made within the licensed area unless co-location has been agreed. The criteria used to decide whether to allow such programme sharing will be the same as those used to decide upon co-location, set out below</p> <p>Stations with an MCA of 250,000 adults (aged 15+) or fewer can also apply for co-location; In deciding whether to allow co-location the sort of factors Ofcom may take into account are:</p> <ul style="list-style-type: none"> • Size of station: there may be stronger case for co-location where at least one of the stations has a licensed area with a population of fewer than 250,000, and

⁴ The Future of Radio: Localness - An independent report on localness and local analogue commercial radio; Produced for Ofcom by Essential Research; November 2007
<http://www.ofcom.org.uk/consult/condocs/futureradio07/localness.pdf>

	<p>especially those under 100,000, although we would not rule out requests from larger stations.</p> <ul style="list-style-type: none"> Distance and affinity between the areas: there is likely to be a stronger case for co-location where the stations concerned are not too far apart geographically and are able to demonstrate a cultural affinity between the two areas. Financial: there may be a stronger case for co-location where stations can demonstrate that co-location is required to ensure the financial viability of the stations concerned. <p>However, there may be other factors to be taken into account, and Ofcom will treat each co-location request on a case-by-case basis. Ofcom does not rule out allowing co-location for larger stations in exceptional circumstances.</p> <p>The decisions as to whether to allow co-location and/or programme sharing are independent of each other.</p> <p>All FM 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.</p> <p>In exceptional cases, if a station can put forward a convincing case as to why it should be treated differently, for example, as a specialist music station, and so have to provide less local material and less locally-made programming than the guidelines suggest, Ofcom will consider such requests on a case by case basis.</p> <p>We will also apply the FM guidance set out above to any AM local commercial station where at least half the population within its Measured Coverage Area (MCA) is not also within the MCA of an FM local commercial station.</p> <p>Daytime is defined as 0600 to 1900 both weekdays and weekends.</p> <p>AM local stations *</p> <p>Each station should produce a minimum of 4 hours a day of locally-made programming, which should include local material, during weekdays and weekend daytime.</p> <p>At least 10 hours of programming 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)~.</p> <p>Stations with an MCA of 250,000 adults (aged 15+) or fewer can also apply for co-location; requests will be considered in relation to our published criteria (local affinity, distance and financial viability) – although we would not rule out requests from larger stations in exceptional circumstances.</p> <p>All AM 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.</p> <p>Daytime is defined as 0600 to 1900 both weekdays and weekends.</p> <p>* The FM guidance set out above will also apply to any AM local commercial station where at least half the population within its Measured Coverage Area (MCA) is not also within the MCA of an FM local commercial station.</p> <p>~ This particular requirement is based on Ofcom's duty under section 3(4)(l) rather than under section 314 of the Communications Act 2003.</p>
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- 3.4 We stated that this guidance was provided in addition to the existing localness guidance.
- 3.5 No station would be required to provide more local programming than it is currently required to, but in many cases these proposals would offer substantial deregulation.
- 3.6 We believed the revised proposals protected the needs and expectations of listeners (as expressed in our research) while still allowing a significantly reduced regulatory burden and greater flexibility for stations. The greatest benefits and flexibility would accrue to the smallest stations which could share some programming. The proposals would allow Ofcom to step away from detailed day-to-day regulation, providing a clear and transparent approach which is fair to the whole industry.
- 3.7 We suggested that the revised proposals could achieve considerable cost savings for the industry. We estimated that the revised proposals saved around £7.3m - £8.1m in presentation costs; co-location proposals could allow further savings in administrative, premises and office costs, taking total possible savings to between £9.4m and £11.7m, on an industry cost base of around £400m (revenues are around £620m).
- 3.8 We suggested that by enhancing the prospective viability of commercial local radio stations, these proposals should help to safeguard the interests of listeners in ensuring the continued provision of local radio at the times of day that listeners value and expect it most.
- 3.9 For consistency with Ofcom's previously stated policy for Format change requests⁵, we suggested that no licensee will be granted a request to change its hours of local material and locally-made programming within two years of its launch.
- 3.10 In *The Future of Radio: the next phase* statement and further consultation we requested views as to the extent to which these revised proposals struck the right balance between safeguarding the interests of listeners and ensuring the viability of the local commercial radio industry.
- 3.11 While responses were broadly supportive of the overall deregulatory approach, three areas remained contentious: the amount of locally-made programming, co-location and programme sharing, and Formats changes for new stations. These are considered in turn.

Amount of locally-made programming

Consultation responses

- 3.12 16 Members of Parliament wrote to support the consultation proposals. For example, Mr Simon Burns MP wrote "I certainly believe that localness is what makes Commercial Radio unique and I am encouraged that Ofcom has produced some firm proposals, to ensure that the valuable services provided by local stations are maintained. I would urge you to do all you can to protect local radio stations and ensure the future viability of these vital services are maintained." The Christian Broadcasting Council also supported the proposals.

⁵ Radio – Preparing for the Future (Phase 2) statement, Ofcom, 15 February 2006: http://www.ofcom.org.uk/consult/condocs/radio_reviewp2/statement.pdf

- 3.13 Ofcom's Advisory Committee for Scotland was "pleased to see the revised proposals and would urge Ofcom to resist any further 'weakening' at this stage. As the very useful research done by Ofcom shows, local output is hugely valued by listeners and these licences were after all issued as local radio licences. The louder voices in the industry will doubtless be calling for a dilution of the proposed minimum hours etc – the argument being that is in their interests to stay local and it should be left to some form of 'self regulation'. However it is the role of regulation to set a minimum standard to guard against the well documented tendency by the less enlightened to play safe, cut costs and reduce local input."
- 3.14 The commercial radio industry, represented by RadioCentre and backed in separate responses from groups including GCap Media, Emap Radio, Global Radio and UTV Radio, broadly welcomed the approach set out in the statement and the formation of the Digital Radio Working Group (DRWG). Their responses however restated opposition to input regulation, such as specifying where programming is produced. The responses called again for self-regulation, which GCap suggested that "could be based on guidelines developed by a working group drawn from the industry and Ofcom", in a similar manner to DRWG.
- 3.15 RadioCentre, supported by the submissions from commercial radio groups, stated that Ofcom's proposal "does not give sufficient flexibility in terms of the industry's ability to better focus resources, stimulate innovation and raise programming quality. As per our submission in October, RadioCentre continues to believe that a 7 hour quota during weekday daytimes (to include breakfast) would go further in protecting the commercial viability of the sector, whilst still safeguarding listener interests." It argued that this was consistent with the Essential Research findings, which showed a high demand for core local content at breakfast and drivetime.
- 3.16 RadioCentre was opposed to the requirement that each AM station should broadcast ten hours of programming from within the nation where the station is based. It considered this to conflict with the proportionality principle of good regulation.
- 3.17 GCap Media remained opposed to minimum local programming requirements on AM, stating that "We believe the needs of listeners would be fulfilled if the minimum requirement was the provision of local news, weather, travel and traffic only, and the requirement for locally produced programming was removed... We envisage that many local services currently broadcast on AM and DAB are likely to migrate entirely to DAB within the next 3-5 years and we therefore believe that ongoing regulation of the kind Ofcom is proposing for AM services is no longer appropriate."
- 3.18 However the Campaign for Press and Broadcasting Freedom said "Regulation should not necessarily be seen as a burden by the industry and Ofcom, but as a way of protecting and developing high quality news and local diverse programming." It suggested the guidelines "represent a reduction from the present levels. We are conscious that this means that many of the large local radio stations will be able to significantly reduce the amount of locally produced material, and will, may, increase their dependence on news produced outside of their catchment area. We also consider that Ofcom should seek to ensure that local programming is made by local producers, writers, journalists and performers, with the active involvement of local individuals and community groups, and should not be reduced to spot items on the news, the publicity for charity events, and local traffic news and advertisements."
- 3.19 Radio Jackie commented that "If radio licences were issued on a non-transferable basis, on demand, with open format, in a competitive radio market, stations would come and go to reflect the variety of listening requirements in a locality. We only

need content regulation since licences are presently allowed to migrate to a few large groups, which eventually, if left unchecked, will dictate the future of radio to government and leave no role for a radio regulator.”

- 3.20 While BECTU broadly welcomed the proposals, it noted “that while rejecting self-regulation, the document proposes revised localness guidelines which introduce greater elements of flexibility than before. We believe that localness should continue to be carefully monitored in order to ensure that stations ‘safeguard listener interests’ in respect of access to locally made programming.”
- 3.21 The NUJ said that “While we accept the new proposal puts forward a more streamlined solution than matching station size with local content provision we believe the one size fits all approach will still mean the loss of an unacceptably high volume of local content...We are also concerned about the development of a two tier system in which those stations that currently provide less than the Ofcom minimum will not have to increase their local output.
- 3.22 One confidential respondent suggested that “the proposals go too far away from protecting local content in favour of big business interest and risk the establishment of pseudo-national radio networks. 10 hours per day is not sufficient for large stations covering big cities.”
- 3.23 Mr John Ellerby suggested “that the weekday figure be increased to 12 hours, based on 3 presenters being on air for 4 hours each. I would also suggest that the weekend figure be increased to 8 hours on either Saturday or Sunday, as chosen by the radio station. This would allow for each of the 3 weekday presenters being on-air for one 4 hour programme over the weekend.”
- 3.24 Estuary Media’s response, headed “A Listener’s Perspective”, stated that “we strongly feel that Ofcom’s revised proposals *do not strike the right balance* to meet the interests of listeners, but continue to heavily favour radio operators, approaching a high level of self regulation in all but name. Critically, we believe that, if implemented, the intended programme guidance will sound the death-knell for local commercial radio and, combined with the dilution of formats to often inadequate Character of Service definitions, will not protect breadth of choice available to listeners.”
- 3.25 Estuary Media stated that “If there is to be any hope of balancing the interests of the commercial radio industry with those of the citizen-consumer, Ofcom’s proposals on Format and localness relaxations must be combined with a major change in the licensing process in order to free up supply. As a very minimum, any existing licensee who wishes to take advantage of relaxation must be willing for their licence to be re-advertised in an open contest; this will provide a powerful gauge on the efficacy of Ofcom’s licensing decisions: if a licence has been won on the grounds of high levels of quality local output then – save for major unforeseen structural changes – that is the basis on which the licence should be operated. In the unlikely event that fundamental changes have taken place, then it is imperative that the licence should be put out for open contest in the new market conditions.”

Consideration of responses

- 3.26 As part of our consideration of the responses to the previous consultation, we noted the calls from the commercial radio industry for a reduction in the amount of locally-made programming to seven hours each weekday. We believe that our proposed guidelines already represent a substantial deregulation of locally-made programming

in many cases. For the smaller stations, we have proposed additional measures to help them achieve this, such as co-location and programme sharing.

- 3.27 The research into localness conducted for Ofcom by Essential Research found that local programming was of importance throughout the day. For example, the majority of respondents chose the option as close to the status quo as possible; the most popular scenario was based on Ofcom's original proposal, which would have provided locally-made programming for 13 hours each day (i.e. throughout daytime) on larger stations. The research showed that as well as core local content, the respondents valued highly the human engagement (community issues, local events, phone-ins etc) which was less time critical. Also as noted in the statement, RAJAR data shows that while listening is highest at breakfast time, the audience through daytime remains greater than it is at drivetime.
- 3.28 As set out in *The Future of Radio: the next phase* (para 3.69), we consider there is a good case for allowing stations some flexibility to offer a networked show during daytime. However, we continue to believe that to go further than this would risk changing the character of stations from local services to becoming national services with local opt-outs. We therefore consider that ten hours represents an appropriate balance between safeguarding the interests of listeners and ensuring the viability of the local commercial radio industry.
- 3.29 We also believe that local programming requirements for AM stations remain appropriate; locally-made programming is a key element of any local licence. As noted above, Ofcom's research found that listeners valued more than just local news, weather and travel news. Furthermore, the amount of locally-made programming required for AM stations is already generally lower than that required of FM stations, reflecting the lower levels of listening. At present, we see no argument for reducing this beyond four hours, but in exceptional circumstances, we may consider alternative proposals.
- 3.30 We noted RadioCentre's opposition to the requirement for AM stations for 10 hours of programming to be produced within the nation where the station is based. This proposal is designed to reflect different audience needs in the devolved nations and the higher levels of listening on AM in Scotland and Wales. It should be noted that no station would be required to provide more locally-made programmes than it is currently required to.
- 3.31 Additionally, we noted the call for Ofcom to "encourage" co-location and programme sharing in the devolved nations. However we do not believe it is Ofcom's role to encourage requests - it remains for stations to request co-location and/or programme sharing, and to make the case accordingly. As set out in the guidelines, Ofcom will fully consider factors such as the cultural affinity between the areas.
- 3.32 In its consultation statement of January 2006, following "*Radio – Preparing for the Future (Phase Two): Implementing the Framework*", we outlined the principles involved in the regulation of local commercial radio Format changes⁶. We believe that these principles will continue to provide sufficient protection for citizens and consumers. We consider that the proposed simplification of Formats will not amount to a change to the character of the service, and therefore consider that re-advertisement of the licences would be neither appropriate nor necessary.

⁶ <http://www.ofcom.org.uk/radio/ifi/rbl/formats/formats/fc/changeregs/>

- 3.33 Ofcom will continue to ensure that an individual station is meeting its Format requirements by listening to that station's output – a process referred to as 'content sampling'⁷. The sampling of a particular station may be prompted by a complaint concerning a Format-related issue, or may be entirely routine (a 'spot check').

Co-location and programme sharing

Consultation responses

- 3.34 RadioCentre, supported by responses from GCap, UTV Radio and Town and Country Broadcasting questioned the proposed Measured Coverage Area (MCA) population threshold of 250,000 for co-location and programme-sharing requests. It stated that "We understand that Ofcom has set a threshold with a view to providing regulatory assistance to particularly small stations but we believe that setting the threshold at 250,000 does not adequately capture all the stations which are most in need of help." It proposed instead a threshold of 400,000, which it noted was in line with the bands used in Ofcom's current Tariff table⁸.
- 3.35 UTV Radio proposed a threshold of 500,000, and suggested an alternative methodology which took into account the nature of competition in each market. Its proposal "uses the MCA overlap analysis published by Ofcom, and for each station calculates the total points in the system in their respective markets, and a station's share of those points...Our proposal is that stations with MCAs between 250,000 and 500,000, which have 25% or less of the points in their market, be treated as though they had MCA's of 250,000 or under for locally-made programme quota purposes."
- 3.36 GCap Media argued that there should be no threshold, as financial viability was already a criterion in its own right, although it commented that if a threshold was required it should be no lower than 400,000. GCap considered that the proposed threshold "would unfairly handicap the significant proportion of larger stations which are also loss-making", and provided analysis of financial data of analogue radio licence holding companies which suggested that 44% of companies with MCAs between 250,000 and 500,000 were loss-making.
- 3.37 RadioCentre additionally proposed that "In view of the considerable number of stations likely to be interested in applying for the flexibility to at least consider broadcasting less than 10 hours of locally-made content per weekday, we suggest that there should be a fast-track process for those stations which obviously meet the criteria."
- 3.38 In *The Future of Radio: the next phase* statement, Ofcom noted it would consider co-location for larger stations in exceptional circumstances. RadioCentre urged Ofcom to consider programme-sharing requests on a similar basis.
- 3.39 Town and Country Broadcasting, which operates a number of stations in Wales, suggested "that co-location should be particularly encouraged in Wales, Scotland and Northern Ireland, where there is a low population density; i.e. there may be greater geographic distance between transmission areas but where the population is more thinly spread. As long as the main operational base remains within the specific Nation, we believe that there could be significant economies to be achieved by taking a more progressive approach to co-location in Wales, Scotland and Northern Ireland."

⁷ <http://www.ofcom.org.uk/radio/ifi/contentssampling/>

⁸ Ofcom's Tariff Table 2007/8; <http://www.ofcom.org.uk/about/account/tariff/table0708/>

- 3.40 Meanwhile, the NUJ stated that “The decision to allow smaller stations to request sharing of some daytime programmes is also problematic. The definition of ‘sub-regional’ in this context is not clear although the criteria used in determining decisions will be the same as that used for determining co-location... We appreciate the further detail Ofcom has provided in relation to the criteria used to determine a co-location request. We believe these should additionally include an analysis of the impact of co-location (or the sharing of programmes) on the quality of local news provision. Financial imperatives of the private companies involved must be weighed against providing a high quality and diverse service to local people.”
- 3.41 Mr John Ellerby noted that “OFCOM’s revised proposal also states that stations with an MCA of 250,000 adults or less could apply to have the requirement reduced to 4 hours per day. Many rural areas such as west Norfolk, north Devon and south Wiltshire rely on their local stations, particularly for news and information. Furthermore the RAJAR figures show that they are widely listened to and have been for many years. Reducing the localised output from a full daytime service to one finishing at 10a.m. would be draconian. I would therefore suggest that the MCA figure be changed to 100,000 adults or less.”
- 3.42 Mr Tony Wilding wrote that he considered that co-location of stations was “not in the best interests of the listener. The localness of a station will virtually disappear...” Mr Neil Asher stated that “I get heartily fed up of radio stations deciding to network programmes during the day. If I wanted to listen to a station that had no editorial coverage for my own area then I would tune to a national station.”
- 3.43 One confidential respondent suggested that a licensee requesting a Format change should be required to “publicise any format changes to an Ofcom format on the station and solicit audience response.” Estuary Media stated “we don’t believe that Ofcom is able to judge ‘cultural affinity’ without public consultation and adequate research, and neither is this a matter for the vested interest operators applying for co-location to assess... ‘Affinity’ is best judged by the affected audiences and other local stakeholders... They must be given an opportunity to at least voice their views before co-location requests are granted.”

Consideration of responses

- 3.44 In the April 2007 consultation, we noted (para 4.56) that “Generally, where the population is over 250,000, based on the financial information we have, we believe it should be possible for the vast majority of stations to be able to produce their local material within their licensed area.” The data supplied in the latest responses does not alter this view; for example, GCap’s analysis shows that while only 31% of stations with an MCA of 0-250k are profitable, this rises to 56% for those stations between 250k and 500k.
- 3.45 All stations – including those with MCA populations greater than 250,000 - will benefit from the streamlining of Formats confirmed in *The Future of Radio: the next phase* statement, while the requirement for ten hours of locally-made programmes each weekday will still represent a significant reduction for many.
- 3.46 The interests of citizens and consumers remain paramount. We believe that to increase this general threshold would be out of step with listener expectations of stations in a number of significant marketplaces with populations between 250k and 400k. Towns and cities such as Ayr, Swansea, Plymouth, Ipswich and York would only be guaranteed four hours of local programming each day. We therefore believe it is appropriate, in general, to retain a threshold of 250,000.

- 3.47 The alternative methodology proposed by UTV Radio would prove administratively complex. While it takes into account the marketplace a station operates in, it does not take account of the original intention of that station to provide a local service. For example, the system would recognise the competitive nature of the Stockport marketplace, covered by a number of Manchester and North West England regional stations, but it does not reflect Imagine FM's licence to provide a distinctive local service specifically for Stockport.
- 3.48 We noted the suggestion that news provision should form a specific criterion in assessment of co-location and programme sharing requests. Ofcom's over-arching statutory duty to further the interests of citizens will include consideration of the level and nature of news provision. Ability to cover news stories will form part of the existing criterion of distance and affinity between the areas (for example, whether stations are located within the same administrative areas). Finally, a requirement for all stations to provide local news at peak-time is a key part of the guidelines, regardless of co-location or programme sharing arrangements.
- 3.49 It should be noted that co-location and programme sharing remain separate issues. For example, a station requesting only co-location would still produce separate output for each licensed area, and as noted above, stations should provide local news at peak times. Additionally, we state in the guidelines for programme sharing outside breakfast that stations could form "a small regional network", while the criteria for approval of requests include distance and affinity between the areas. We believe this will safeguard an appropriate amount of local content on each station.
- 3.50 It was suggested that there should be wider consultation on all Format changes and co-location requests. As we have already consulted on the criteria for assessing co-location and Format change requests, we do not see a general requirement for further consultation unless a substantial change is being requested. As at present, we will publish the reasons for approving or refusing any requests, and the original request, on the Ofcom website. Stations should highlight any changes to the Format in the Public File published on the station website. However, we reserve the right to consult on Format change requests in exceptional circumstances.
- 3.51 As noted above, Ofcom will continue its programme of "content sampling" to ensure that stations are meeting their Format requirements.

Format changes for new stations

Consultation responses

- 3.52 Mr Paul Chantler wrote that Ofcom should allow "new stations to apply to make changes to Formats within the first two years as long as they do not affect the character of the service and there are no legitimate objections... it is unfair for new stations to have to maintain Formats while other neighbouring stations are allowed to change theirs... If some flexibility is not built into this moratorium on changes, new stations will suffer from having to stick to highly detailed Formats for two years while their competitors enjoy much more freedom."
- 3.53 RadioCentre stated that "Denying newly launched stations the opportunity to participate in the de-regulatory programme until after 2 years of launch, will put them at a significant competitive disadvantage to incumbent stations whose regulatory burden would have been reduced under Ofcom's new plans... It would seem appropriate, therefore, for Ofcom to stipulate that no changes can be made within two years of the date of a licence submission, given that it would have been at this

time that the competitive impact of the particular market would have been assessed, and obligations proposed.”

- 3.54 While UTV suggested that “Ofcom should be doing as much as it can to support these final-round analogue licensees... and consequently should move to allow them to compete on a level playing field with established market competitors, for the ultimate benefit of consumers”, it did state that it would support RadioCentre’s proposal outlined above. GCap also supported this stance.
- 3.55 CanWest suggested “that the policy be to achieve a non-discriminatory and level playing field and that all stations whenever licensed receive equal and fair treatment by Ofcom. We therefore would propose either 1) that in markets with a new entrant no station in that market be allowed to change until the two years are complete or 2) that the two year period commences from Application Submission Date as this is the point when the competitive landscape was defined.”
- 3.56 Town and Country Broadcasting noted that “we do not believe Ofcom should continue to insist on a two year period after launch before new licensees can ask for a Format change... As an example, in South Wales our company launched Swansea Bay Radio in November 2006. The station was awarded its licence in November 2006, having submitted its application in August 2005. Since then - more than two and a half years, if you allow for the period including licence advertisement and when market research was undertaken - existing operators have significantly changed their output and we also have two new competitors; regional rock station XFM and local community station Afan FM. Yet, we are unable to respond to these significant market changes for another 12 months. That is more than three and a half years from when we originally analysed the local market.”
- 3.57 However, Ofcom’s Advisory Committee for Scotland said it “would also strongly urge Ofcom to resist calls for newly licensed stations to seek changes to their formats in any significant way within two years of launch. Promises were made at the time of application, on which basis the licence was awarded in competition with others. It would make a nonsense of the application and award process to sweep that aside so soon.”
- 3.58 Estuary Media wrote that “A 2 year cool-off period after before Ofcom will consider a Format change is totally inadequate. Licensees shouldn’t be permitted to ‘keep trying’ to find the optimum programme mix until they find one which makes most profit. ‘Second attempts’ are not only unfair to listeners who were promised a particular service, but also to unsuccessful applicants whose (potentially more viable and ‘in touch’) applications were rejected because they didn’t make as many ambitious promises to impress the RLC [Ofcom’s Radio Licensing Committee]. Fundamental changes proposed by incumbent licence holders should require the licence to be re-advertised, to allow fair competition and to confirm local audience interests.”

Consideration of responses

- 3.59 The principles previously set out for Format changes⁹ include the following:

- ***The time elapsed since the licence was awarded.*** Ofcom recognises that audiences change over time and stations need to adapt in parallel. Consequently, long established stations’ requests to modify their format are likely in general to

⁹ Radio – Preparing for the Future (Phase 2) statement, Ofcom, 15 February 2006: http://www.ofcom.org.uk/consult/condocs/radio_reviewp2/statement.pdf

be considered positively in the light of changing listener demands. However a change soon after award would be inconsistent with the licensing process whereby stations define their own Formats in their licence application. As a general rule therefore, no format changes will be permitted in the first two years after a station is launched and, in the period subsequent to that and up to five years after launch, only changes which do not substantially alter the station's character will be permitted. After a five year period since launch, stations will be considered long established and so it is likely that in general a proposed change where there is a strong evidentially-based argument for it, will be entertained. However, even in these circumstances applicants and licensees should not assume that they will be permitted to dispense with the fundamental proposition on which the licence award was based. If a substantial change is permitted at any stage, the RLC will, in general, reset the clock, i.e. to measure 'time since award' as starting from the time when the substantial change is implemented. None of the above guidelines will be affected by any changes in ownership of a radio station.

- 3.60 It should be noted that we also said "It is Ofcom's intention to consider such requests on a case-by-case basis but it is also clear that any requests granted within these periods would be exceptional."
- 3.61 We continue to believe that were this not the case, the basis of a licence award would be undermined. It was suggested that the two year period should commence from the submission of the application. However, given that following the award of a licence (generally three to four months after submission), successful applicants have a two year period from award in which to launch, in many cases this period would elapse before the launch of the station. This may therefore effectively prove a disincentive to an early launch of the station, which would not be in the interests of listeners.
- 3.62 Some respondents suggested that the proposal would put new stations at a commercial disadvantage to those operating under a simplified Format, but no evidence was provided to support this or to demonstrate how this would be the case. We note however that the more detailed Formats are those which licensees wrote themselves, and made the case to Ofcom that they could deliver. We therefore consider it appropriate that the stations demonstrate to local listeners that they are able to deliver the promises made in applying for the licence. The degree of flexibility available to the station within the Format will have been entirely down to the licensee itself in constructing the Format.
- 3.63 In terms of the changing marketplace stations operate in, it should also be noted that no station will be changing its Character of Service as part of the Format simplification process. Any station applying for a change to its Format will have to consider the overall shape of the market, and demonstrate that the range of programmes available would not be narrowed.

- 3.64 For clarity, we believe there are five separate elements to this issue:

Format simplification

- 3.65 We set out in the November 2007 statement our decision that analogue local commercial radio station Formats will be streamlined to bring them into line with the level of detail in DAB Formats. In most cases, this will mean the programming detail in the Format will be removed but the Character of Service will remain. However,

where clarity would be lost by the removal of the detail, the wording of the Character of Service may be amended.

- 3.66 We do not regard the simplification of a station's Format as a change to the Character of Service, and we therefore propose to vary Formats under section 86 of the Broadcasting Act 1990. In order to provide consistency, we intend to adopt the same approach as for the Format change procedure, and therefore the simplification process will not include stations within the first two years of their licence period.
- 3.67 The grounds a request for a Format change must meet are set out below (para 3.76).

Amount of locally-made programming

- 3.68 A change to the amount of locally-made programming would require a change to the Format, and in line with our existing policy, as a general rule, would not be permitted in the first two years after a station is launched.
- 3.69 If a station wishes to take advantage of changes to the localness guidance, it should request a change to its Format (using the procedure set out below).

Programme sharing

- 3.70 A request to share programmes would require a change to the Format, and in line with our existing policy, as a general rule, would not be permitted in the first two years after a station is launched.
- 3.71 If a station wishes to take advantage of changes to the localness guidance, it should request a change to its Format (using the procedure set out below).

Co-location

- 3.72 Given we proposed that stations with an MCA of less than 250,000 will be able to apply for co-location, one possible consequence of this is that licensees would incur the costs of locating a studio within a licensed area for only the short period from launch until able to apply for co-location after two years. As we have noted in previous documents, the financial challenges faced by smaller stations are substantial, particularly during the early years of a licence.
- 3.73 We will therefore slightly amend our existing Format change policy¹⁰, such that any station will be permitted to submit a request for co-location (i.e. including stations within their first two years on air). As a matter of policy, requests from stations with population coverage greater than 250,000 adults (aged 15+) are likely to be approved only in exceptional circumstances.
- 3.74 If a station wishes to take advantage of changes to the localness guidance, it should request a change to its Format (using the procedure set out below).

Substantial changes to the Format

- 3.75 In line with our existing policy on Format changes, as a general rule, substantial changes will only be considered after a five year period from launch. We state that after this period *"stations will be considered long established and so it is likely that in*

¹⁰ Paragraphs 2.38 - 2.46, Radio – Preparing for the Future (Phase 2) statement, Ofcom, 15 February 2006: http://www.ofcom.org.uk/consult/condocs/radio_reviewp2/statement

general a proposed change where there is a strong evidentially-based argument for it, will be entertained. However, even in these circumstances applicants and licensees should not assume that they will be permitted to dispense with the fundamental proposition on which the licence award was based. If a substantial change is permitted at any stage, the RLC will, in general, reset the clock, i.e. to measure 'time since award' as starting from the time when the substantial change is implemented."

Next steps

- 3.76 The revised localness guidance, incorporating the proposals regarding recommended minimum amounts of locally-made programming that stations should produce and the population threshold relating to co-location and programme-sharing requests as set out in the consultation document, will come into effect immediately. This is set out in Annex 1.

Format simplification

- 3.77 To coincide with publication of this statement, we are writing to each licensee regarding the policy of simplifying Formats outlined in *The Future of Radio: the next phase*, and also inviting requests for Format changes in accordance with the guidance outlined in this document.
- 3.78 As noted above, we do not regard the simplification of a station's Format as a change to the Character of Service. We will therefore write to each station with a proposed notice of variation under our general power in section 86(5)(b) of the Broadcasting Act 1990 to vary a licence by notice served on the licensee, setting out a proposed amended Format. The licensee will have six weeks to make any representation regarding the proposed change, which we will take into account in finalising the notice of variation. The existing Format will remain in place until the new Format is agreed; if a licensee decides to retain its existing Format, they are entitled to do so. This procedure will also apply when a new station approaches the end of its second year on air.

Amount of locally-made programming, programme sharing and co-location

- 3.79 As part of this process, we will additionally invite licensees to consider whether they wish to request a Format variation to change their hours of locally-made programming, and/or request co-location and/or programme sharing.
- 3.80 We consider that these changes would form a change to the character of service of a local station, and therefore one of four grounds specified in section 106 of the Broadcasting Act 1990 (as amended) must be met for Ofcom to be able to consent to the change:
- a) that the departure would not substantially alter the character of the service. (Note: The legislation requires Ofcom to have regard to the selection of spoken material and music in programmes when determining what the character of the service in question is.);
 - b) that the departure 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;

- c) that, in the case of a local licence, the departure would be conducive to the maintenance or promotion of fair and effective competition in that area or locality;
or
 - d) that, 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 that would result from the departure.
- 3.81 There is no requirement that licensees should apply for the number of hours of locally-made programming in the revised localness guidance. However in general, we consider that a change to the character of service to reduce hours of locally-made programming to the minimum levels set out in the localness guidelines would not amount to a substantial change. However, we will consider in each case whether there are exceptional circumstances that make it a substantial change.
- 3.82 If the change is substantial, Ofcom will consult on it (as required by the legislation) before passing it to the Ofcom Content Board for comment. The Radio Licensing Committee will take into account the Content Board's comments in reaching a decision.
- 3.83 In considering requests for changes to hours of locally-made programming, we will take into account our duty under section 314 of the Communications Act 2003.
- 3.84 Stations should highlight any changes to the Format in its Public File published on the station website.

Section 4

Stereo and mono broadcasting on DAB

- 4.1 It was proposed in the April 2007 consultation document that Ofcom would generally approve a change in the technical parameters of a DAB audio service from stereo to mono in circumstances when it considered that the reduction in sound quality of the service whose technical parameters were being changed was outweighed by the benefits to citizens and consumers of the use to which the freed-up capacity would be put.
- 4.2 In light of the responses to the original consultation we reconsidered our view of the statutory basis for this intervention.
- 4.3 We therefore proposed in this present consultation that the bit rates used to broadcast DAB services were a matter of technical quality falling to be regulated under the provisions of section 54(1)(g) of the 1996 Act, but that the issue of whether a service is broadcast in stereo or mono did not, we thought, fall within the same category. We thought that this issue was better seen, in regulatory terms, as a characteristic of a digital sound programme service. As such, Ofcom has the statutory authority under section 54(1)(b) of the Broadcasting Act 1996 to impose conditions in a radio multiplex licence to secure that a licensee implements proposals submitted by him under section 46(4)(c) or section 50(4)(c) – "the applicant's proposals as to the number of digital sound programme services to be broadcast and as to the characteristics of each of those services". The same position should, we thought, also apply to the issue of service coding (full or half-rate coding).
- 4.4 The statute requires, under section 54(6), that where a condition has been imposed under subsection (1)(b) and relates to the characteristics of digital sound programme services, Ofcom must vary the condition in accordance with a request from a licensee if it considers that the criteria in section 54(6A) (in respect of a national radio multiplex licence) and section 54(6B) (in respect of a local radio multiplex licence) would be satisfied.
- 4.5 In respect of a national radio multiplex licence, Ofcom would not approve a change from stereo to mono if it was felt that such a change if granted would "unacceptably diminish" the capacity of the digital sound programme services broadcast under the licence to appeal to a variety of tastes and interests.
- 4.6 In respect of a local radio multiplex licence, Ofcom would be able to approve a change from stereo to mono only if it was satisfied with regard to one of three criteria. These criteria are: that the change would not unacceptably narrow the range of local DAB services available in the area; that the change would be conducive to the maintenance or promotion of fair and effective competition in the area; or that there is evidence of local demand or support for the change.
- 4.7 As this represented a change from the analysis set out in the April 2007 consultation document and from our previous practice in this area, we requested views on the proposal that the audio characteristics (e.g. stereo or mono) of a digital sound programme service should be considered as an essential aspect of the character of the service, and therefore should be regulated by Ofcom under the terms of section 54(1)(b), (6), (6A) and (6B) of the Broadcasting Act 1996.

Revised policy on mono and stereo broadcasting on DAB for consultation

Ofcom will consider requests to change the audio characteristics of a digital sound programme service in accordance with the statutory criteria in sections 54(6A) and (6B) of the Broadcasting Act 1996.

Consultation responses

- 4.8 The Christian Broadcasting Council (“CBC”) wrote that it “believes that the extension of listener choice needs to guide Ofcom’s proposal on whether to allow DAB radio stations to broadcast in stereo or mono.” It cited an example in the West Midlands, where it noted that “If all DAB stations were forced to broadcast in stereo then a number of radio stations, including Asian and Christian ones, would possibly disappear from the radio, thus reducing listener choice.”
- 4.9 CBC agreed with Ofcom that the issue of whether a service should broadcast in stereo or mono is a characteristic of a digital sound programme service. It suggested that “the overall governing criteria for national and local radio multiplexes should be as follows: National Section 54(6A) multiplexes should broadcast in stereo for mainly music stations but that predominately speech stations should be allowed to broadcast in mono. This would therefore allow for the programme services to appeal to a variety of tastes and interests. Local Section 54(6B) multiplexes should be allowed to use their capacity in order to provide a wide range of services, that are of interest to local listeners, and that the ability of a station to broadcast in stereo or mono should be a secondary consideration.”
- 4.10 Five individual respondents called for regulation of any changes. One confidential respondent wrote “It is essential that Ofcom enforce a minimum sound quality requirement equivalent to the best of current FM broadcasters on all DAB broadcasts.” Another confidential respondent wrote that “to allow the quality of the service to be reduced from stereo to mono would be a retrograde step which the majority of listeners would notice... allowing the industry to make such choices at will would maintain FM listening levels.”
- 4.11 Mr Neil Asher wrote “If listeners have taken the trouble to go to the expense of buying a really high specification DAB tuner then the broadcasters should respect that and broadcast programmes of the highest possible definition.”
- 4.12 Ofcom’s Advisory Committee for Scotland “remain of the view that for the vast majority of listeners using domestic receivers stereo is an irrelevance.”
- 4.13 Radio Jackie stated that “Ofcom has inherited a poisoned chalice. It should now show its “technology neutral” position by allowing licences for any technically sound digital encoding.”
- 4.14 RadioCentre stated that it “disagrees with Ofcom’s proposed policy on mono and stereo broadcasting on DAB. It is our belief that none of the parameters that affect perceived audio quality ought to be micro-managed by Ofcom, whether they are categorised as ‘technical quality’ or ‘characteristics’ of digital sound programme services. Digital sound programme content providers and respective multiplex operators are best placed to jointly make judgements of all of the parameters associated with the audio broadcast chain.”

- 4.15 RadioCentre additionally noted that “The proposed regulation would also impose short term constraints on operators looking to vary bandwidth day to day and hour to hour to reflect programming priorities. This flexibility is open to the BBC which varies mono-stereo mode and bitrates regularly throughout each day. This flexibility would be unavailable to commercial multiplexes should this regulation be implemented.”
- 4.16 Digital One, GCap and Emap supported RadioCentre’s position. UTV Radio additionally noted that “The Technical Policy Guidance for DAB Multiplex Licensees lays out an agreed set of procedures for the monitoring of DAB audio quality. We believe these procedures are an adequate form of regulation and there is no need for further intervention or further consultation.” 4 Digital Group made a similar point and suggested that the proposal was evidence of “regulatory creep” and would lead to uncertainty, as it was not clear “to what ‘tastes and interests’ would a mono or stereo service appeal or not appeal...”

Consideration of responses

- 4.17 We considered carefully all of the responses to the previous consultation on this issue, and the responses to the most recent consultation set out above. We again noted the concerns of some respondents that the provision of digital sound programme services in mono may not be in the best interests of citizens and consumers.
- 4.18 Ofcom’s Digital Technical Code states that licensees are able to choose between two approaches to multiplex capacity allocation: either to apply to sound programme services the minimum bit-rate requirements specified in the Digital Technical Code, or to adopt a flexible approach where the licensee is responsible for determining the bit-rate appropriate to individual programme services. Adoption of the flexible approach is subject to satisfying Ofcom that the licensee has in place suitable procedures to ensure appropriate attention is given to audio quality when deciding the bitrates allocated to sound programme services.
- 4.19 We recognise that multiplex operators require flexibility and do not seek to restrict this. In the vast majority of cases, the broadcaster and/or multiplex operator will be best placed to determine the characteristics of the services they are broadcasting.
- 4.20 We do not accept however that, left to itself, the market will necessarily reflect the interests of consumers. For example, the carriage of non-radio data services may prove more lucrative for multiplex operators than audio services, which may not be in the interests of listeners.
- 4.21 While we note the strength of feeling from the commercial radio industry that this area should not be regulated, we have previously stated we propose to use these powers as a backstop to ensure the continued provision of high quality services, intervening if we think such a move would not be in the interests of citizens and consumers – for example where there may be more lucrative uses of the capacity that do not benefit consumers, such as closed-user data services.
- 4.22 We do not seek to impose short-term constraints on operators looking to vary bandwidth day to day and hour to hour to reflect programme priorities. This policy is purely designed to ensure that a multiplex operator cannot amend the audio characteristics of a programme service such that it would not, in Ofcom’s view, be in the best interests of citizens and consumers.

- 4.23 The statutory limit of 30% of capacity to be used for data services is designed to protect the provision of audio services on a multiplex. However, the increase of this limit from 20% to 30% in 2006 makes it more likely that data could be provided at the expense of the sound quality of radio services.
- 4.24 As a matter of general policy, Ofcom is likely to refuse a request for a change in audio characteristics only in cases where the capacity freed-up by the change is to be allocated to services which, in our view, would not be in the best interests of citizens and consumers. Such an example may be where a multiplex using its full capacity for stereo radio services proposes to reduce these radio services to mono, in order to allocate the permitted 30% data capacity to provide a closed user group service, and where we judge this would not be in the public interest. We believe that such a move would generally (in respect of a national radio licence) unacceptably diminish the capacity of the programme services provided under that licence to appeal to a variety of tastes and interests, or would generally (in respect of a local radio licence) unacceptably narrow the range of programmes available by way of digital sound programme services in the area. The policy is therefore designed to ensure that the multiplex as a whole – not an individual service - continues to cater for the overall tastes and interests of listeners.
- 4.25 We do not consider that the proposed policy represents an additional administrative burden. Our current Technical Policy Guidance for DAB Multiplex Licensees¹¹ notes that “Licensees should ensure that sound programme services are broadcast with the audio parameters as recorded in the technical annex to their multiplex licence.” It is already the case therefore, that when a multiplex operator changes the audio characteristics of a service, they need to notify Ofcom in order for us to reissue licence documentation.
- 4.26 Having considered the responses to this consultation and on this issue in April 2007’s *The Future of Radio* consultation, we consider that regulatory intervention in this area may be appropriate in some circumstances, under the authority of section 54(1)(b) of the Broadcasting Act 1996.

Conclusion and next steps

- 4.27 This policy will be implemented with immediate effect. Requests will be considered by Ofcom in the same way as for requests for changes to other characteristics of digital sound programme services.
- 4.28 For those stations that propose to switch from stereo to mono on a regular basis, we will agree in advance the general principals of when such changes would be appropriate.
- 4.29 In view of the concerns expressed by some stakeholders, Ofcom will review this policy after twelve months.

Policy on mono and stereo broadcasting on DAB

Ofcom will consider requests to change the audio characteristics of a digital sound programme service in accordance with the statutory criteria in sections 54(6A) and (6B) of the Broadcasting Act 1996.

¹¹ Technical Policy Guidance for DAB Multiplex Licensees, Ofcom, December 2006
http://www.ofcom.org.uk/radio/ifi/rbl/dcr/technical/policy_guidance.pdf

Annex 1

Localness guidelines

Introduction

The Communications Act 2003 introduced a new duty on Ofcom in relation to the local content and character of analogue local commercial radio. Under section 314, Ofcom must carry out its functions in relation to local commercial radio services in the manner it considers is best calculated to secure that:

- “programmes consisting of or including local material are included in such services but, in the case of each such service, only if and to the extent (if any) that Ofcom considers appropriate in that case; and
- where such programmes are included in such a service, what appears to Ofcom to be a suitable proportion of them consists of locally-made programmes.”

In line with the Statute, Ofcom is required to draw up guidance as to how it considers that these requirements should be satisfied, and have regard to this guidance in carrying out its functions in relation to analogue local commercial radio.

We consider that localness is comprised of two separate elements:

- locally made programmes; and
- local material

Localness is not an issue for all stations, but where it is demanded within the format, it should be addressed directly as per these guidelines.

The extent to which local material is included in the service provided by a licensee varies by station and is specified in the station's Format. Ofcom regards the Format, as supported by the localness guidelines, as fulfilling the statutory requirement regarding the provision of an appropriate amount of local material and a suitable proportion of locally made programmes.

Ofcom guidelines are not rules or demands as such. However, Ofcom feels it is useful to outline the sort of considerations that may come into play if it becomes necessary to investigate a station's localness output. Many of these considerations are based on listener expectation.

Locally-made programmes

It is the obligation of each station to deliver the level of locally-made programmes output as defined within the Format in whichever way it sees fit within its licence conditions. The guidelines set out the areas of issue that may be questioned by Ofcom if it has cause to investigate a station's localness output. The extent to which any particular guidelines have been considered may vary, dependent on the context of the complaint.

While stations are free to network programmes outside the requirements regarding locally-made programming in their formats, they are still expected to be able to respond to local events in a timely manner, providing live local programming in the way and at times that audiences expect.

FM local stations

Each FM station should produce a minimum of 10 hours a day of locally-made programming during weekday daytimes (this should include breakfast). Programming should include local material across those 10 hours as a whole, although there is no expectation that local material would be included in each of those individual hours if this is not appropriate.

Each station should produce a minimum of 4 hours a day of locally-made programming at weekends (in daytime) which should include local material.

In exceptional cases, if a station can put forward a convincing case as to why it should be treated differently, for example, as a specialist music station, and so have to provide less local material and less locally-made programming than the guidelines suggest, Ofcom will consider such requests on a case by case basis.

We will also apply the FM guidance set out above to any AM local commercial station where at least half the population within its Measured Coverage Area (MCA) is not also within the MCA of an FM local commercial station.

Daytime is defined as 0600 to 1900 both weekdays and weekends.

AM local stations¹²

Each AM station should produce a minimum of 4 hours a day of locally-made programming, which should include local material, during weekday and weekend daytime.

At least 10 hours of programming 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)¹³.

Daytime is defined as 0600 to 1900 both weekdays and weekends.

Local material

Local material can be both characterised and delivered in a number of ways (news, information, comment, outside broadcasts, what's-on, travel news, interviews, charity involvement, weather, local artists, local arts and culture, sport coverage, phone-ins, listener interactivity etc.), therefore precise definitions can be unhelpful.

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.

¹² Any AM local commercial station where at least half the population within its Measured Coverage Area (MCA) is not also within the MCA of an FM local commercial station will have FM local guidance applied.

¹³ This particular requirement is based on Ofcom's duty under section 3(4)(l) rather than under section 314 of the Communications Act 2003.

What it is

- Station programming of specific relevance which also offers a distinctive alternative to UK-wide or nations' service;
- Content drawn from, and / or relevant to, the area is often the major point of difference between stations, and therefore licensees should be able to identify a range of local aspects of their stations and how they are providing output specific to their area;
- The feel for an area a listener should get by tuning in to a particular station, coupled with confidence that matters of importance, relevance or interest to the target audience in the area will be accessible on air; and
- Programming likely to give listeners a feeling of ownership and / or kinship, particularly at times of crisis (snow, floods etc).

What it isn't

- Localising news (e.g. conducting vox pop interviews in one area and playing them out as if from another or inserting local place names into UK-wide stories) without local news / information generation would not be regarded as a contribution towards localness;
- Pure promotional off-air activity such as station promotion in the area (vehicles carrying station logos, roadshows, etc.) are not in themselves substitutes for localness without on-air activity involving something other than self-promotion;
- Competitions / promotions that invite and involve listener participation from outside a station area would not be regarded as a contribution to localness; and
- The Communications Act 2003 [Section 314] stipulates that advertisements are not regarded as local programming within the context of localness and Ofcom's localness guidance.

These statements are guidelines which recognise local material can be delivered in many ways, which are neither mutually exclusive nor individually obligatory. For instance, regular featuring of local music or artists is not a pre-requisite ingredient for the delivery of local material, but would certainly be regarded as a contribution towards such delivery. Similarly, the organisation of roadshows and the presence locally of promotional vehicles are regarded by Ofcom as important aspects of radio station activity, but could only be regarded as a contribution towards the delivery of local material if such activity manifested itself constructively on-air, as Section 314 requires Ofcom to consider only what is included in programmes.

News provision

In addition to the above general guidance we want to outline the sort of factors likely to be considered by Ofcom if the provision of local programming at a particular station is questioned. Such factors are guidelines only, but the extent to which they may appear to have been considered might influence Ofcom's findings in the event of Ofcom 'output' scrutiny.

- 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.

Co-location and programme sharing

Stations can apply for co-location; in deciding whether to allow co-location, the sort of factors Ofcom may take into account are:

- Size of station: there may be stronger case for co-location and/or programme sharing where at least one of the stations has a licensed area with a population of fewer than 250,000, and especially those under 100,000, although we would not rule out requests from larger stations in exceptional circumstances.
- Distance and affinity between the areas: there is likely to be a stronger case for co-location where the stations concerned are not too far apart geographically and are able to demonstrate a cultural affinity between the two areas.
- Financial: there may be a stronger case for co-location where stations can demonstrate that co-location is required to ensure the financial viability of the stations concerned.

However, there may be other factors to be taken into account, and Ofcom will treat each co-location request on a case-by-case basis. Ofcom does not rule out allowing co-location for larger stations in exceptional circumstances.

The decisions as to whether to allow co-location and/or programme sharing are independent of each other.

FM local stations

FM stations can also apply 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. This should be locally-made within the licensed area unless co-location has been agreed. The criteria used to decide whether to allow such programme sharing will be the same as those used to decide upon co-location, set out above.

Automation

It is up to each station to decide how best to produce its locally-made programming and so there are no restrictions on the amount of automation (e.g. using voice tracking) that a station may use. To the extent that such programming forms a part of local hours (as defined in the station's Format), any such automated programmes should be locally-made and to the extent it comprises part of the station's local material should take account of Ofcom's localness guidelines. However, as with news, licensees are expected to take into account listeners' expectations and be able to react to events on a timely basis when it comes to automated and live programming.

Annex 2

Impact assessment

- A2.1 This annex when read in conjunction with the rest of this consultation document represents an IA, as defined by Section 7 of the Communications Act 2003 (“the Act”). IAs form part of best practice policy making and are commonly used by other regulators. This is reflected in Section 7 of the Act, which means that generally we have to carry out IAs where our proposals would be likely to have significant effect on businesses or the general public, or where there is a major change in our activities.
- A2.2 We analyse the impact on our stakeholders (e.g. listeners and broadcasters) and, where possible, attempt to quantify the costs and benefits. Where it is not possible to quantify costs and benefits, we instead use a qualitative approach to discuss the types of costs and benefits generated by the options under consideration.
- A2.3 In accordance with Section 7 of the Act, in producing this IA, we have had regard to such general guidance as we consider appropriate, including related Cabinet Office guidance and our own IA guidelines¹⁴.

Introduction

- A2.4 As set out in the main document, *The Future of Radio: the next phase* which was published in November 2007 included a consultation on two specific proposals around:
- Localness guidance for commercial radio;
 - Stereo and mono broadcasting on DAB.
- A2.5 The IA that accompanied that document set out the advantages and disadvantages of different options under these two headings. This IA sets out the issues that were raised in response to the consultation, our response to those issues and our final decision. The focus of the IA is on issues which had not been raised previously in response to the earlier consultation on these issues in *The Future of Radio: the future of FM and AM services and the alignment of analogue and digital regulation* which was published in April 2007.

Citizen-Consumer interest

- A2.6 As discussed in earlier consultations¹⁵, in general terms the main public purposes identified for the radio sector as a whole are:
- Sustaining citizenship and civil society;
 - Promoting education and learning;
 - Stimulating creativity and cultural excellence;

¹⁴ http://www.ofcom.org.uk/consult/condocs/ia_guidelines/condoc.pdf

¹⁵ For example, see *The Future of Radio: the future of FM and AM services and the alignment of analogue and digital regulation* (Ofcom: April 2007)

- Representing the UK, its nations, regions and communities;
- Bringing the UK to the world and the world to the UK; and,
- Promoting social gain.

A2.7 We also considered that plurality in the provision of the services which deliver these public purposes was important and that therefore it was not sufficient to leave the achievement of these aims to the BBC.

A2.8 These public purposes have been used to develop a strategic framework for the future regulation of radio. That framework had three main elements, two of which set out objectives of regulatory intervention and one which referred to the implementation of that framework. 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.

A2.9 In relation to the implementation of the framework, we have aimed for a system with as a little intervention in the market as was possible, consistent with meeting those objectives. These objectives in turn have provided a set of criteria against which to assess our proposals.

Localness guidance for commercial radio

A2.10 As set out in the consultation, the main lever that is currently used to secure appropriate levels of local programming on commercial radio is the specific local content and local programming requirements set out in Formats. In the original consultation document it was recognised that the nature of the localness requirements in terms of both content and where it is produced could impose a cost on radio station licensees. Given the fixed cost nature of radio stations businesses, we recognised that these costs would tend to fall proportionately more heavily on smaller stations.

Ofcom's additional proposal

A2.11 We proposed making use of new localness guidance which would set out separate minimum expectations regarding locally-made programming and local material for FM and AM stations.

A2.12 In relation to FM, we proposed revised guidance to include that each FM station should produce a minimum of ten hours a day of locally-made programming during weekday daytimes, including breakfast and a minimum of four hours a day of locally made programming at weekends in daytime.

A2.13 In the first instance, the minimum requirements will apply to all FM stations. However, those FM stations with an MCA of less than 250,000 adults (15+) would then be able to apply to co-locate stations and to share programming, based on published criteria.

- A2.14 We made clear that we were not attempting to determine the “right” level of localness in all cases but rather we are attempting to put in place a broad framework but then allowing stations to respond to local circumstances.
- A2.15 In relation to AM stations, we proposed to set an overall lower minimum level of 4 hours per day locally made content during weekday times. There would also be a requirement for at least 10 hours of programming on weekday daytimes that has been produced in the nation in which the station is based. That would mean that if the station did 4 hours of local programming, there would need to be at least a further 6 hours of programming produced from elsewhere in the nation.

Consultation responses

- A2.16 As set out in the main document, there was support for our general approach of revised guidelines. The responses focused on three main areas: the amount of locally-made programming; population thresholds for co-location and programme sharing and Format changes within two years of launch.
- A2.17 Industry responses felt that the amount of locally made programming should either not be regulated or should be part of a co-regulatory approach. They argued that if nevertheless Ofcom considered that regulation was appropriate, then the limit should be set at seven hours on weekdays in order to allow stations maximum flexibility. Other responses argued that Ofcom’s proposals went too far in removing local content requirements.
- A2.18 In relation to the population thresholds, industry respondents argued that the maximum population threshold for considering co-location should be increased to 400-500,000 so that medium sized stations that also faced financial challenges could be included as well.
- A2.19 Finally in relation to Format changes within two years of launch, industry respondents argued that this would be unfair to new services that were operating in markets where other, long-established operators could take advantage of streamlined Format changes. They argued that if there was to be a restriction it should be that there could be no Format changes within two years of submitting an application. Other respondents argued that streamlining Formats would undermine the criteria used to award the licence and that applicants should not be given a “second chance”.

Ofcom’s response

- A2.20 As set out in the IA that accompanied the November consultation, our starting point was that listeners did value the fact that material is locally produced. Research carried out for that consultation also found that not only did audiences value the core local content of news, weather and traffic but they also valued the human engagement aspect that local radio offered. For example, coverage of community issues, local events, phone-ins, competitions, banter between songs etc. This would tend to suggest that local programming was important throughout the day.
- A2.21 Although we recognise that listeners are able to access information about local events, news etc through other means, there is considerable uncertainty about the rate of development of alternative means of the delivery of local content. As a result we felt it appropriate to move to a system which had some flexibility to take into account local conditions but at the same time retained some rules about the amount of locally made programming.

- A2.22 Against this background, the issue is to try to strike a balance between some reduction in the level of local programming to benefit stations whilst retaining those aspects of local programming which listeners themselves value.
- A2.23 In terms of the levels of locally made programming, it is the case that the proposed guidelines represent a reduction in locally made programming for many stations compared to a status quo position and should help to support the financial viability of these stations. However, we consider that if we were to reduce the guideline levels any further (e.g. down to seven hours a day for weekdays as proposed by the industry) then there is the risk that the character of the services could be changed to be something more akin to national services with local opt-outs. We consider that, at present, the levels we have set should be sufficient to retain the local character of the services.
- A2.24 In terms of the proposed thresholds for co-location and programme-sharing requests, we think it is important in the first instance that these particular measures are aimed at smaller stations. Many stations – large, medium and small - will benefit from the change to the guidelines in respect of the amount of locally produced programming reduction. These are additional options which are aimed at the smaller stations which are most in need of further assistance.
- A2.25 In the November consultation, we estimated that our revised proposals could offer savings in the order of £7.3-8.1m in presentation costs. Co-location proposals could allow further savings in administrative, premises and office costs, taking total potential savings to between £9.6-11.7m (on an industry cost base of around £400m). We estimated that it was the smallest stations that stood to benefit to the greatest extent. Obviously the extent to which these savings are realised will be a function of when stations come forward with proposals and whether such requests are approved. We did not receive any further evidence on the costs or benefits of these particular measures. As a result, we consider that the threshold should remain at 250,000 at present as proposed.
- A2.26 It is important to note that we said we would consider applications for co-location on a case-by-case basis and in particular to take into account issues such as local affinity and distance. We have not completely ruled out allowing requests for programme sharing from stations with an MCA greater than 250,000: if there are exceptional circumstances, then stations still would have the ability to make a case.
- A2.27 Finally in respect of simplifying Format changes within two years of launch, we recognise the issue that there is inevitably a delay between a firm submitting an application and that service launching and that it is possible that there could be a change in local circumstances in the meantime. However, we are not convinced of the significance of this problem. Furthermore, we would be concerned that allowing Format changes within two years of the submission of a licence application would give the wrong incentive to licensees.
- A2.28 Respondents who have made the argument that audiences can change in the time that elapses between a licensee submitting an application and two years after launch of the service have not provided evidence to establish that such changes in audience presents a material problem. Ofcom would expect that when licensees are developing their business plans and their applications, they should - as a matter of good business practice - consider how audiences in the local areas could change, how competition from other established stations might develop, and factor that in to their proposals. Changes in audiences in the short-term should – for the most part – be anticipated and the proposals should be able to deal with such changes. The

proposal to allow changes in Format two years after launch enables a service to be launch and tested before an operator is granted the flexibility to adapt their Format.

- A2.29 In terms of considering licence applications, Ofcom aims to make the licence aware between 2-4 months of applications being submitted. Stations then have up to two years from the award of the licence to launch the service. If we keep the proposal to allow Format changes within two years of launch, and where changes in audiences are anticipated, then there should be a straightforward incentive for the successful applicant to proceed to launch in a timely fashion. If we were to allow a change in Format within two years of submitting an application, then it would be possible for a station to delay launching a service until two years had passed since submitting their application and then to launch the new service straightaway with a simplified Format. That would mean that the station had not even attempted to deliver the character of service on which the award of the licence was based and that would clearly undermine the whole licence application process. We do not consider that that would be in the interests of the audiences which the service proposed to serve in its original application.
- A2.30 We recognise the fact that new services could be launching into areas where more established stations have been able to benefit from simplifications to their Formats but we do not consider that this would represent a significant competitive disadvantage. The established stations would only have been able to simplify their Formats, they would not have been able to change their underlying Character of Service.

Ofcom's decision

- A2.31 The advantages/disadvantages of the three options on which we consulted are set out below:

<i>Proposed approaches</i>	<i>Advantages</i>	<i>Disadvantages</i>
<i>(1) Do nothing</i>	<p>Research indicates that listeners value local content and also the human engagement in local matters that local radio stations can offer.</p> <p>Stations can still request a change to their localness requirements via the Format change process on a case by case basis.</p>	<p>The requirements in respect of local production on individual stations can be expensive to maintain – particularly for small stations.</p> <p>It is likely to become more difficult to sustain localness requirements over time. This could ultimately result in collapse of some stations – which could result in the loss of local services altogether in some areas.</p> <p>Relying on a Format change process will not necessarily provide a transparent sustainable long-term framework. The principal issue for Format changes should be the character of the service rather than local</p>

		programming.
<p><i>(2) Set minimum expectations for locally made programming but with greater allowance for sharing among small and medium sized stations.</i></p> <p><i>FM Stations: min. of 10 hours per day locally made on weekday daytime & 4 hours per day in daytime at the weekend</i></p> <p><i>AM Stations: min 4 hours per day locally made during weekday daytime and 10 hours per day of programming must be produced within the nation where the station is based.</i></p> <p><i>No station is required to produce more locally-made programming than at present.</i></p>	<p>Sets certain minimum levels but gives option to small and medium sized stations to apply for co-location based on published criteria.</p> <p>It would allow cost savings in respect of sharing costs across a number of stations serving a given area while still preserving an appropriate degree of localness.</p> <p>Benefits of cost savings likely to be available to smallest stations.</p> <p>Licensees make the case to Ofcom according to local circumstances: greater flexibility in use of resources in an area.</p> <p>Ofcom guidance helps to clarify key factors for parties to address and will help to ensure greater consistency.</p>	<p>Given that some co-location has already been permitted, the financial benefits to the industry as a whole are likely to be relatively limited.</p>
<p><i>(3) Abolish localness requirements altogether</i></p>	<p>Would simplify the regulatory system</p>	<p>Ofcom's ability to fulfil its statutory duty to ensure an appropriate degree of localness would be severely constrained.</p> <p>Research indicates that listeners do value localness – not just the local content but also the human engagement.</p> <p>There is also uncertainty as to the extent which the market would deliver the appropriate level and mix of local content</p>

A2.32 Having taken into account the issues raised in consultation responses, together with responses to previous *The Future of Radio* consultations, we consider that the option of using guidelines to set minimum expectations in relation to locally made programming but retaining flexibility for small and medium sized stations to apply to

co-locate stations/share programming according to local circumstances best meets our regulatory objectives in this area.

- A2.33 In relation to Format changes, we propose to retain the requirement that there stations can only make changes to their Format two years after the launch of the service.

Stereo and mono broadcasting on DAB

- A2.34 The consultation document set out a proposal to consider requests to change the audio characteristics of a digital sound service in accordance with the statutory criteria in section 54(6A) and (6B) of the 1996 Broadcasting Act.
- A2.35 We considered that the main advantages of such an approach would be that it would relate the consideration of a request to change from stereo to mono broadcasting to specific statutory criteria. This would in turn help to provide transparency and also consistency in the process of considering such requests going forward. Thus, in respect of a local radio multiplex licence, we would have three specific criteria to consider such a request against: that it would not unacceptably narrow the range of local DAB services available in the area; that the change would be conducive to the maintenance or promotion of fair and effective competition in the area; or that there was evidence of local demand or support for the change. Licensees applying for a change would have a clear idea of the information they would need to provide in support of such a request and, equally, other stakeholders would have a clear idea of the arguments they would need to make to support or oppose such applications.
- A2.36 It is not clear what the disadvantages of such an approach would be given that we would be following more closely the requirements of the relevant legislation.

Consultation responses

- A2.37 Most of the individual responses on this issue opposed any changes perceived to be reducing sound quality on DAB. Industry responses opposed any regulation of stereo and mono broadcasting on DAB, arguing that that should be entirely a matter for broadcasters.

Ofcom's response

- A2.38 We do recognise that multiplex operators do require a degree of flexibility and that in most cases the broadcaster/multiplex operator will be best placed to determine the technical characteristics of the services they are broadcasting. However, we do not consider that we can leave this matter solely to the broadcasters: we would not be following the requirements of relevant legislation if we did not consider long-term requests to change from stereo to mono broadcasting according to specific statutory criteria.

Ofcom's decision

- A2.39 In light of the above discussion, we propose to move to consider requests to change the audio characteristics of a digital sound service in accordance with the statutory criteria in sections 54(6), (6A) and (6B) of the 1996 Broadcasting Act.

- A2.40 However, given the concerns from industry that this could prove to impose an unnecessary operational burden we do propose to revisit this policy after twelve months.

Annex 3

Consultation responses

- A3.1 By the closing date of 21 December 2007, 43 responses had been received: 19 corporate, 16 from MPs, and 8 from individuals; no fully confidential responses were received. One further response from an MP was received after the closing date.
- A3.2 The responses received on the consultation proposals are summarised, along with Ofcom's response, in Sections 3 and 4 above.
- A3.3 A number of respondents commented on radio-related issues other than the specific consultation proposals; these comments have been duly noted. Some of the more substantial issues have been addressed below.

Issue raised	Comments	Ofcom's response
Coverage of local emergencies	Mr Neil Asher wrote that there should be a level of localness in place to respond in a local emergency.	Existing localness guidelines (which remain in force) state that "Any individual station should have procedures in place to be able to react to and report on local news events in a timely manner."
Duration of existing analogue licences	GCap Media noted "the proposal to re-award existing analogue licences for five years or up to December 2015, whichever is the later" and stated it was "particularly concerned about the impact of this on the national analogue commercial services which, unlike local licences, will be re-awarded on the basis of an auction. We believe there are significant risks that an auction for a five year licence could produce sub-optimal outcomes."	While we have noted the comments on this, the issues and risks were fully considered as part of the previous consultation.
Advertisement of INR licences	UTV Radio requested consideration of "a mechanism that would allow all three INR licences to be advertised at the same time. Such a mechanic would streamline the adjudication and administration process for Ofcom, and ensure all three licences are dealt with on an equal footing."	Ofcom will consider this in discussion with the three licensees concerned.

AIP for analogue radio	Global Radio wrote that “We believe that spectrum pricing is... not an issue that can be treated separately from other regulatory issues. We would also welcome some clarity from Ofcom as to the timing of its consultation on AIP for analogue radio...”	<p>It remains the case that this consultation will take place shortly.</p> <p>As stated in <i>The Future of Radio: the next phase</i> (para 3.109), we do not expect these proposals to involve any substantive changes to the charges paid by commercial radio licensees, though they are likely to have an effect on the costs faced by BBC.</p>
Ownership rules	The Campaign for Press and Broadcasting Freedom said that “we do not believe that the case has been made, from a listener’s point of view, for further relaxing of ownership rules to allow for even greater consolidation of ownership by fewer media companies...Further relaxing of ownership rules taken with the re-regulation proposed above will threaten local content with increasing use of national content.”	We noted in <i>The Future of Radio: the next phase</i> (para 4.79) that “there is some evidence that the need to have in place safeguards to deliver a minimum level of plurality has not significantly diminished...” However, the ownership rules are a matter for Government and Parliament.
Community radio licence duration	<p>Ofcom’s Advisory Committee for Scotland noted “concerns over the proposal to effectively ‘roll’ such licences for a 2nd term...we feel that it would not be unreasonable to ‘open’ the process a little further. One option might be for Ofcom to advertise that it is minded to renew the licence and seek responses and/or ‘letters of intent’ from other groups and listening public. While there would be a presumption against change, it would at least give others an opportunity to make a case for change.”</p> <p>The CMA stated it was “disappointed that the recommendations on licence durations and extensions have not been brought into</p>	We noted in <i>The Future of Radio: the next phase</i> (para 6.94-6.95) that “we do not believe that community radio stations should be granted licences which, in effect, could be seen as being perpetual. In many parts of the country, demand for community radio licences clearly outstrips the availability of suitable frequency resources to a considerable degree. In such circumstances, it would not be fair to prospective applicants to provide potentially permanent access to spectrum for existing operators. In addition, given the wider ongoing developments of licensing and digital migration we do not feel it possible to propose

	line with those for commercial radio... We would urge Ofcom and the government to revisit this and introduce a proper, platform neutral regime covering relicensing of community radio stations...”	<p>longer-term solutions at this time.</p> <p>The possible five-year licence extension would only be available to stations which could demonstrate that they have met their licence conditions to date and were able to demonstrate that they would also be able to do so for the duration of the proposed licence extension period.”</p>
Community Radio levy	The Campaign for Press and Broadcasting Freedom suggested that “the next step should be to institute a levy on the market leaders in the radio industry. This would then be distributed by a transparent and fair mechanism to community radio stations, to bolster their capacity to operate. This was principle deployed by the IBA in the form of ‘secondary rental’ and was also used to create Channel 4.”	We stated in <i>The Future of Radio: the next phase</i> that it is too early to make any judgements on funding of community radio. We continue to gather data from the sector to help inform recommendations. We have suggested that the position be reviewed again in two years’ time when more evidence is available.
Community radio funding and economic impact assessments	<p>The CMA wrote that it would have “preferred a more urgent review of the statutory funding limits on community radio. However, we would urge that there is some detailed research on the effects of the funding limits, both for community radio and small commercial radio. We are also disappointed that there is no intention yet to provide a level playing field for community radio in terms of economic impact assessments.”</p> <p>Ofcom’s Advisory Committee for Scotland said “We are still of the view that the ‘50%’ rule re income from a single source has led to some unintended consequences for some of the smallest</p>	<p>This issue was considered as part of <i>The Future of Radio: the next phase</i> (paras 6.96-6.109).</p> <p>We stated that “We will continue to examine the issues surrounding economic impact, and will discuss with DCMS and other interested parties options for gathering further evidence to inform possible future changes in this area.”</p>

	<p>stations and are disappointed that this will now not be reviewed for another 2 years.”</p> <p>Mr Barry Mole of WCR Community Radio wrote that the “questions do not raise the issue of breach of human rights to those members of the public who are banned from having a radio service in an area of a small commercial station, when there exits no evidence of any threat...How can this be justified?”</p>	
Digital options for community radio services	<p>Mr Gordon Sharpe of Thorne-Moorends Community Radio questioned what digital options were available for community radio stations.</p> <p>Mr John Ellerby stated that “community stations and small-scale local stations must be given equal access to their appropriate DAB multiplex.”</p>	<p>This will be a matter for the Digital Radio Working Group, which includes representation from community radio.</p>