

The Future of Radio - Ofcom Consultation Document April 2007

Response from the Community Media Association

The Community Media Association (CMA) is the UK representative body for the community media sector. It supports and represents community based radio stations, local and community TV operators and community based internet groups.

Proposal 1

The regulation of content on analogue commercial radio and on DAB digital radio should be aligned, at the appropriate time.

We agree in principle that the regulation of content on analogue and digital commercial radio should be aligned. However, we have concerns about reducing or removing the requirement for locally produced content on both platforms, without adequate provision and facilitation of alternative providers, for example new community radio stations. The requirement for locally produced content is a stimulus and a distribution outlet for arts and journalistic activity in local areas, through small commercial stations, community radio, where it exists, and the BBC.

Proposal 2

There may be a case for Government to consider bringing together the ownership rules regarding analogue commercial radio and DAB digital radio into a single set of rules as the proportion of listening accounted for by digital platforms increases.

We agree that ownership rules across all platforms need to be streamlined so that they are platform neutral. However we would be very concerned if any proposal in this did not ensure and maintain plurality and diversity of services and access, particularly for local material, as in 1 above. There is already considerable consolidation of ownership of commercial radio stations, leading potentially to lack of competition and reduced localness.

Proposal 3

While we do not currently propose that a date should be set for the switch-off of analogue (FM and AM) radio, we should aim to maximise flexibility in the licensing system so as to be able to free-up that spectrum for other uses, when the time is right.

We agree that, in the very long run, most radio offering will be digital, with audiences listening in a variety of ways. These ways will include portable radio, car radio, the internet, cable and satellite television and mobile telecoms. However, we think the "very long run" to be at least twenty years.

While there needs to be a plan in place for possible switchover, including harmonisation of licence end dates, we think this will need to take a long term view of the needs of citizens, particularly those in disadvantaged and poorer

communities, many of whom are likely to be the last to migrate to digital. Many of the people served by community radio currently are also on the “wrong side” of the digital divide. Internet broadcasting cannot and will not be the sole solution for community radio broadcasters. We therefore think that it will be a very long time before analogue radio, particularly VHF Band II (FM), will “no longer be needed”.

FM is particularly suitable for community radio, both full-time licensed stations and short term RSLs, in terms of its ability to ensure localness of coverage, quality of sound and technology costs. AM is also used by community radio in areas where there are no FM frequencies available. Migration from FM and AM to digital, whether DAB or possibly in the future DRM (if the technical difficulties in urban areas can be resolved), will be very costly for community radio and also for small commercial operators. Therefore any review of FM and AM needs to include the financial and technical needs of these stations (and their audiences) to enable them to migrate successfully should they wish to.

We welcome the proposed reviews of AM and FM analogue spectrum but they must also fully consider the facilitation of progression routes for licensed small stations, in line with previous commitments made by Ofcom; also facilitation for stations wishing to remain on FM and short term RSLs, through spectrum reservation or other mechanisms. Community radio would not be able to compete in any “market-based” auction of spectrum. The public policy benefits achieved by community radio are widely acknowledged and need to be protected, through public intervention in broadcasting (and therefore spectrum allocation) policy.

Proposal 4

Radio services, including those designed to deliver public purposes, should be able to be licensed on any spectrum in a technology neutral way.

We agree with the proposal that licensing of radio services designed to deliver public purposes (which would include community radio services) should be technology neutral. However we believe it is vital to ensure plurality of services and requirements for local content locally produced. Community radio would be unable to compete if such licences were awarded through auction.

Proposal 5

Ofcom will generally approve a change from stereo to mono ...when it considers that the reduction in sound quality ...is outweighed by the benefit to citizens and consumers of the use to which the feed-up capacity is put.

We would argue that sound quality is always important to listeners. Stated benefits Ofcom might consider under this proposal “are the enhancement of choice and diversity for listeners”. However many listeners might consider that greater choice and diversity are not worth it if the sound quality is so poor that they do not want to listen to it. However, in cases where a broadcaster may have a particular emphasis on speech, it may be appropriate to approve

a change from stereo to mono in order to enable more efficient use of the spectrum. It must be understood though that mono would not be suitable for some specialist stations (for example Resonance FM) where the full capacity of stereo technology is being used to create a rich experience for the listener.

Proposal 6

The characteristics of community radio, based around social gain provided by stations on a not-for-profit basis remain key. However, there may be an argument for simplifying the statutory selection criteria and the regulation of funding and ownership without losing the essence of what community radio has been set up to achieve.

6.1: The characteristics of community radio services, as included in the Community Radio Order 2004, should be retained, but the definition of "social gain" should be reconsidered.*

It is vital that there is clear and strong differentiation in the characteristics of commercial and community radio. Therefore, while it may be appropriate to revisit the actual definition of social gain in the Community Radio Order, we believe that some form of wording defining social gain, including its essential elements (including, for example accountability, demand for service, commitment to training) in the Order is important. We would welcome the use of the term "community benefit" as this is more widely understood within the voluntary and community sectors and by potential local, regional and national funders. We would not want the essential characteristics defining community radio as a third tier of broadcasting to be "watered down". The current statutory requirements for community radio to benefit its local community, be accountable to its community (through for example governance arrangements) and to be not-for-profit must be retained.

6.2: The statutory criterion regarding the ability to maintain the service should be reconsidered such that Ofcom could be required to have regard to the ability of an applicant to establish and maintain its proposed service for the first year of the licence period.*

We agree that it is almost impossible to accurately predict the sources of income and potential sustainability routes for stations when applying for a community radio licence, both financially and in terms of achieving and evidencing social gain. We agree with this proposal, with the proviso that applicants outline their plans and contingency plans beyond the first year of service for both these elements.

6.3: The statutory criterion which requires Ofcom to have regard to the extent to which a proposed service would cater for the tastes and interests of the community to be served should be reconsidered.*

6.4: The statutory criterion which requires Ofcom to have regard to the extent to which a proposed service would broaden choice should be reconsidered.*

6.5: The statutory criterion which requires Ofcom to have regard to the extent to which there is evidence of demand, or support, for a proposed service should be reconsidered.*

With reference to 6.3, 6.4 and 6.5, we believe that these overlap to a large extent and could be combined and streamlined. Community radio stations by definition should be “by the community for the community”. If this is the case then the demand for the service and its catering for the community’s tastes and interests should be self-evident as would be broadening choice. We agree with the proposals that these three current criteria be included as part of the requirement to evidence social gain, with the proviso that they are not diluted as it is crucial that any proposed service is wanted and will be supported by the local community.

6.6: The statutory criterion which requires Ofcom to have regard to the extent to which a proposed service would deliver social gain should be retained.

We agree with this proposal (NB our remarks above about rewording to include the term “community benefit”).

6.7: The statutory criterion which requires Ofcom to have regard to the provision that an applicant proposes in order to render himself accountable to the target community should be reconsidered.*

6.8: The statutory criterion which requires Ofcom to have regard to the provisions an applicant proposes to make in order to allow for access by members of the target community to the station's facilities and for their training in the use of those facilities should be reconsidered.*

Access, involvement and training are also crucial elements of community radio and should be retained as part of the social gain criterion.

We can understand the argument that these two requirements should be included under the social gain/community benefit criterion. However, accountability to the community served by a community radio station, whether a locality based community or community of interest, is a prime characteristic of community radio. If this proposal was to happen we would argue that this characteristic needs to be evidenced even more robustly than now.

6.9: It is important for a community radio station not to receive all of its funding from a single non-commercial source. However, it may be that there is a case for increasing or removing the current maximum percentage limit on funding from a single non-commercial source. Ofcom welcomes views as to what the appropriate limit should be.*

We recognise the necessity that community radio delivers on all its social gain/community benefit criteria and maintains editorial independence. We would urge Ofcom to explore ways of measuring this, regardless of the sources of income a station receives. There are many arguments for retaining in statute a fixed percentage limit as currently exists. However, any such limit is by nature arbitrary. Therefore we would advocate a change in approach, whereby there is no fixed limit, but a requirement to ensure and demonstrate that there is more than one source of income and that no particular source of funding exerts undue influence on the character of a particular community radio station and accountability to its community. Many stations are affected by the current rules, either because they have to turn

away small, very local advertisers (who would not otherwise advertise on commercial radio), or because they are unable under the rules to accept grant funding because it would form more than fifty percent of the station's income. The viability of the sector depends on this rule being changed, to allow greater flexibility while not compromising independence and accountability. We also think that further guidance on the current rules would be helpful, to enable stations to clearly distinguish what sources of income fall under the fifty percent rules.

6.10: It would be possible to take into account volunteer time when assessing the turnover of a community radio service. Ofcom welcomes views on this issue and on how the value of such input could be calculated.*

The valuing of volunteers in the third sector (voluntary and community) is widely understood and accepted by many government departments and local authorities in the UK and across Europe, who use well-established methodologies, well able to be externally verified.

Volunteering is one of the main distinguishing characteristics of community radio, and many stations rely heavily on volunteers in many aspects of their operations, including programming, management and governance and administration. Including volunteer time as "in kind" income would go a long way to alleviating some of the pressures on stations (see 6.9).

We do not consider that including volunteer time in this way would require a change in legislation, only the adoption by Ofcom of well-used methods already in existence. The CMA has considerable experience in this area and can provide more detail to back up this response.

6.11: There should be no changes to the categories of person prohibited from holding a community radio licence.

We agree with this proposal.

6.12 The current rule requiring that no body corporate may hold more than one community radio licence should be reconsidered.*

Community radio stations need to be truly accountable to their local community. Although we can see and appreciate there may be financial advantages of synergy in core functions (e.g. finance, administration and personnel management) we believe these would best be achieved by arms length agreements between independent stations sharing a common interest. Anything that would jeopardise the link between the community and their community radio station, such as ownership located outside the community, is inappropriate.

Ofcom also needs to ensure that community radio licence applicants are truly not-for-profit, particularly where the applicant does not have charitable status. This can be done though ensuring that the governing documents (Memorandum and Articles or similar) clearly state that any remaining assets following dissolution of the entity cannot be distributed to directors or members, but must be transferred for free to a similar entity.

We think further work is needed to explore this and all the issues involved.

6.13: Ofcom needs to ensure that community radio services operate within the terms of the relevant legislation. The process of feedback has not yet begun, as no station has been on-air long enough. It is not therefore possible to assess the advantages or shortcomings of the existing system. For this reason, Ofcom is not proposing specific alterations to the level of feedback required at this time.

We think it would benefit the sector if Ofcom moved from measuring the “inputs” into community radio, for example sources of income, to measuring the outputs achieved – operational performance, community benefit and community impact. The current reporting requirements would be essential elements in this measurement. Therefore we agree with this proposal, but think further work is needed to develop the future monitoring regime for community radio.

6.14: Community radio licences should be eligible to be extended for up to a further five-year period, subject to meeting specified requirements, on one occasion only. The period of extension for some licences may be less than five years, should that be necessary to achieve a common end-date for all analogue radio services.*

There is an assumption here that there will be a total switch-off of FM and AM at some fairly foreseeable date. We have already disputed that this should be the case for community radio (see our response to Proposal 3).

The fact that there is no provision at all at present for renewing community radio licences needs addressing with some urgency. There should be a proper re-licensing regime, allowing renewal of licences for successful community radio stations, success being based on the evaluation and reporting of their meeting their key commitments, evidencing community benefit and impact; also evidence that the service can continue. While we would welcome automatic renewal (based on evidence of performance), we cannot agree that this should be a “one-off” exercise only within the context of when the switch-off date might be.

6.15: There may be a case for removing all of the current restrictions relating to the economic impact of licensing community radio services. Ofcom will be conducting further assessment in this area, with a view to bringing forward proposals for consultation later in the year as part of our review for the Secretary of State. In the meantime we welcome views on these matters.*

We welcome Ofcom’s intention to conduct further assessment in this area, with a view to bringing forward proposals for consultation later in the year. We are particularly concerned by limitations in the Community Radio Order that may:

- Exclude entire communities from applying for a community radio licence, due to the pre-existence of a small commercial station broadcasting to fewer than 50,000 adults

- Impose severe restrictions on the viability of other community radio services, through barring them from taking advertising and/or sponsorship income.

We call for both these restrictions to be removed.

We do think that the requirements for carrying out economic impact assessments when having regard to issuing new community or commercial licences should be aligned. Either there should be economic impact assessments when considering new licences for both community and commercial stations, or that there should be no economic impact assessments at all. We would favour the latter, although we would want a system in place to allow any current operators to know that licences were going to be issued in their areas.

6.16: The coverage of community radio services will still be restricted by frequency availability constraints, and Ofcom will continue to need to weigh up the relative merits of alternative licensees, for example where it might be possible to licence two small stations or only a single larger service, when deciding on the best use of the available spectrum resources.

We agree that this will continue to be necessary, unless or until freed up FM spectrum is made available for community radio, so that Ofcom can achieve one of its strategic aims:

“Community stations for any community that wants and can sustain such a service”.

Ofcom Note: We believe that suggestions marked with an asterisk would require new legislation.”