

Emap Radio's response to The Future of Radio Consultation

Commercial radio content regulation

Proposal 1

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

Emap Radio welcomes Ofcom's proposals to align the content regulation of analogue and digital radio services. We believe that the vastly increased choice now available to listeners via a range of platforms renders the core justification for all current radio regulation far less compelling than before and we hope Ofcom will move to lighten the regulatory burden as quickly as possible.

1.1: The timing of any changes to Format and localness regulation of commercial radio should be linked to a threshold based on the overall proportion of listening accounted for by digital platforms. For those changes which could be made without new legislation, we suggest an appropriate threshold would be 33%, but welcome views as to alternatives.

We do not believe that the timing of the changes should be linked to a digital listening penetration rate. Ofcom states in Section 2 of the Future of Radio document that 'the commercial radio industry has had to adapt and evolve to cope with increased competition and changing listener tastes. But... changes in the media are now happening so quickly that it may be time for a more radical rethink of radio regulation' (para 2.1). In para 2.21 Ofcom adds that 'the rate of take-up of DAB and other digital technologies is uncertain. New technologies are emerging all the time, which could gain widespread public acceptance and uptake. Similarly the rate of increase of other pressures on the industry, such as a reported move of advertising spend for traditional media to the internet is uncertain... We therefore need to maintain as much flexibility as we can in planning for the future.'

Emap Radio endorses these comments and commends Ofcom for its stance regarding flexibility. We strongly urge Ofcom to adopt a radical and bold stance by introducing those changes that are not reliant upon new, or amended, legislation as quickly as possible rather than relying upon unpredictable and uncertain trigger points. Emap Radio has enthusiastically invested in digital platforms and wishes to continue to do so, whether these are DAB, DTT, or other new and emerging forms of distribution. However, to do so, our services need to be regulated in a manner that is appropriate to ensure diversity and local content without unnecessary hindrance from over regulation.

As Ofcom recognises, we are already experiencing pressure from other less regulated platforms such as the internet. Delaying the relaxation of heavy handed and outdated analogue regulation jeopardises not just the viability of those services but the ability to pursue new avenues of delivery.

Given Ofcom's recognition of the need for as much flexibility as possible, we implore Ofcom to expedite the changes it can without delay or an unnecessary reliance on the uptake of other platforms which could, anyway, be usurped by other technologies. Our suggestions are detailed below.

1.2: Analogue local commercial radio station Formats should be streamlined to bring them into line with the level of detail in DAB Formats, when the relevant digital listening threshold is met.

We agree with Ofcom's suggestion to streamline analogue formats and bring them into line with the level of detail outlined in DAB formats and urge Ofcom to do so as soon as possible. To allay any fear that this could lead to a loss of diversity we would suggest that the format/character of service includes a brief, but concise, description of the primary music content of local services. Such descriptions would ensure musical diversity is preserved alongside local content whilst providing licensees with greater flexibility than the current detailed Format obligations.

1.3: Ofcom could give guidance on appropriate minimum levels for the amount of locally-made programmes and local material (local programming) required to be provided by analogue local commercial stations, according to the size and type of station. Local material should be locally made within the licensed area unless subject to any agreement for co-location of studios, according to specified criteria. These changes should be introduced when the relevant digital listening threshold is met.

Emap Radio wholeheartedly supports Ofcom's approach to standardise the requirements for the number of hours of local programming. However, we do not support the tiered approach suggested. Ofcom's own research has indicated that 'listeners want local programming at peak times but there is less interest at other times' (para 4.63). We therefore believe that one standard requirement for all FM services that requires locally relevant output at peak times would provide for a simple and straight forward solution that gives licensees greater flexibility and satisfies listener expectations for local output.

Emap Radio is also concerned that Ofcom appears to rule out co-location of services save for 'exceptional circumstances' and that stations must produce local material from within the licensed area. We maintain that local programming should only be judged on output and not according to where it was produced. It should not matter at all where material was produced and presented - localness should be judged on the provision of adequate and relevant local information and content. Requirements about the location in which that material is produced and presented can actively work against the interests of listeners if, for example, a well known and respected presenter moves outside the transmission area and has to be replaced by a less popular or well known personality solely in order to satisfy a local hours requirement. Additionally, the source of material will become imperceptible to listeners as technology develops. It is therefore sensible to suggest that future assessments about localness issues are

based solely upon outputs and not upon the location from which the material originates.

The RadioCentre is proposing the development of a self-regulatory system for localness that will rely upon Ofcom moving to output regulation which we wholeheartedly support and hope Ofcom will work with the industry and embrace this approach.

Those stations that provide specialist music services should not be required to provide local programming and information. Listeners to these services are primarily interested in the niche music they broadcast. The musical knowledge and reputation of presenters is of far more importance to the audiences of such stations and these will often be personalities from outside the area of local/regional stations. We therefore hope that Ofcom will consider removing localness requirements from specialist services to allow them the flexibility to engage presenters by virtue of their musical knowledge rather than their location.

1.4: It is properly the domain of Government and Parliament to determine Ofcom's statutory duties. Ofcom's existing statutory duty to ensure the provision of an appropriate amount of local material with a suitable amount of local production applies only to each analogue commercial local radio station. Our analysis suggests that, as digital listening increases Ofcom should be allowed to look at the provision of local material across all local commercial stations in an area on a platform neutral basis for broadcast radio (i.e. analogue and DAB digital radio). Government may also wish to consider whether this duty should apply to all future broadcast platforms which seek to replace analogue radio listening, such as DRM, but not to platforms intended primarily to deliver other types of services such as digital television.*

Emap Radio believes that the revised streamlined Formats proposed above are sufficient to ensure the provision of local material and information for listeners. Ofcom's deregulatory approach would be compromised by the imposition of additional localness requirements and such a move could disadvantage one platform, such as DAB, against others that are free from such regulation (e.g. the internet).

1.5: Government may wish to consider bringing forward proposals to amend the existing legislation to remove the Format restrictions on national analogue radio, at an appropriate time, if it considers that DAB national services will provide the required diversity of national stations.*

We believe such a move would be counterproductive not just for listeners but for the commercial radio industry as a whole. The advent of the national analogue services brought new audiences to commercial radio and did so without damaging the listenership of existing services. If the Format obligations for the national analogue stations were completely removed, there would be a danger that diversity would suffer and local/regional services could be adversely affected. The national stations have already benefited from a reduction of the financial terms of their licences during the four year extension period provided for under the Communications Act 2003. Emap suggests that Ofcom should ensure that there is parity in the

application of Format requirements for local stations and those of the national analogue services (i.e. that the character of the service is defined for both local and national analogue stations).

1.6: The requirements on DAB digital radio to offer national (UK-wide) services which appeal to a variety of tastes and interests should remain.

Emap Radio agrees with this proposal which ensures the provision of a diversity of services.

Commercial radio ownership regulation

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.

2.1: The timing of any changes to ownership regulation of commercial radio could be linked to a threshold based on the overall proportion of listening accounted for by digital platforms. This may be the same threshold as that considered above for changes to content regulation.*

2.2. There could be a single set of ownership rules based on defined ownership areas which would be applied across analogue and DAB platforms, once the relevant digital listening threshold is met.*

2.3: The local DAB multiplex ownership rules could be changed so that no person can control more than one DAB multiplex designed to cover substantially the same area.*

2.4: The rule that no one person can control more than one national DAB multiplex could be retained.

2.5: The cross-media ownership rules could be based on defined ownership areas, as per 2.2 above; and analogue and digital radio services could be considered together in this regard.*

The present separate ownership rules for analogue and digital licences are, by Ofcom's own admission, complicated and difficult to interpret. The involvement of the OFT creates duplication of the regulatory process and adds to the uncertainty surrounding ownership matters. We believe that there are now a sufficient number of different media outlets to ensure plurality. Diversity will not be adversely affected by consolidation within the industry as no operator is going to own services that compete with each other within an area. We therefore believe that the ownership rules can, and should, now be abolished and that any issues about undue concentration of ownership considered under the provisions of competition law by the OFT.

The ability to free-up spectrum

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.

3.1: So as to maximise DAB coverage for local radio services, Ofcom should be given the power to increase the licensed areas of existing DAB local multiplex licences where such increases would not be significant, and to approve significant increases in exceptional circumstances.*

Emap Radio welcomes this proposal. We would also ask that Ofcom considers amalgamating modestly sized licence areas in order to help the viability of those licences.

3.2: In order to achieve the flexibility to use the spectrum currently used for analogue radio for other things, we would need to have the ability to clear the spectrum of many, if not all, current users in each waveband simultaneously by setting a common end-date for existing services. We propose two reviews to set such common end-dates:

- VHF Band II (FM) - a review should take place in 2012, or when listening on digital platforms accounts for 50% of all listening, whichever is the earlier, to consider the future use of VHF Band II and determine a common end-date for existing FM services (commercial and BBC).

- Medium wave (AM) - a review should take place in 2009 to consider the future use of medium wave and determine a common end-date for existing AM services (commercial and BBC).

3.3: The spectrum currently used for analogue AM and FM radio should be available to use in other ways (if and when it is no longer required for analogue radio broadcasting), using market mechanisms unless there are strong public policy reasons to allocate the spectrum for a specific use.*

Emap Radio has been, and remains, a strong advocate of digital radio and has invested heavily in DAB and DTT. However, we do not believe that DAB has yet proved to be a worthy substitute for analogue delivery. As technology develops, it may well be that radio listening continues to be a multiplatform medium with listeners switching and choosing between analogue and digital platforms. Analogue services are universally available, not just in the UK but around the world. Universal coverage of the UK via DAB continues to pose problems and it is unclear if this will be resolved. Aside from the public purpose benefits of services remaining available on analogue, there are also civil defence implications if analogue services do not continue to be provided and DAB is not universally available throughout the UK.

In Ofcom's pre-consultation document issued on 16 November 2006, Ofcom said that 'it may be that the best use for [VHF Band II spectrum] remains FM radio'. Emap Radio will continue to be a wholehearted supporter of DAB but does not believe that the time is right for the regulator to be considering analogue switch-off.

We note that the RadioCentre has suggested that a working group, consisting of representatives from Ofcom, DCMS, DTI, commercial, community and BBC radio, set manufacturers and Digital UK, examines the provision of radio services across all platforms. Whilst we do not support any suggestion that analogue services should be switched off we support the RadioCentre initiative and hope that Ofcom agrees with this proposal.

3.4: We propose that licences re-awarded under the current statutory framework should be granted with an expiry date of 31 December 2015.

3.5: The 12-year renewal provision for local and national analogue licensees (both FM and AM) which also provide a station on a relevant DAB radio multiplex service should be removed. (This would not apply retrospectively to licensees which have already been granted such a renewal.)*

3.6: Ofcom should be given the power to:*

- *extend all existing licences for an indefinite period, so as to achieve a common end-date for all licences;*
- *include conditions in all new or extended licences allowing for their termination by Ofcom with at least two years' notice, so as to allow the spectrum to be taken back for other uses. The appropriate termination date should be decided by future reviews, which should also have a view to maximising flexibility for the use of the spectrum and take into account public policy needs.*

We support Ofcom's proposal at 3.4 above to re-award existing licences under the current legislation with an expiry date of 31 December 2015. However, the suggestion that licences are then extended indefinitely but with a two year termination clause is unrealistic. In effect, such licences would be only guaranteed for two years which will remove any incentive for investment and is bound to have an adverse affect on the quality of the services provided. It will not be possible for licensees to prepare coherent business plans or, for example, negotiate contracts. We appreciate that Ofcom has a duty to ensure the efficient use of spectrum and therefore that it needs to set a common end date for the use of this spectrum. However, as mentioned in our response to 3.3 above and echoed in the consultation on page 87, it may be that the best use of Band II spectrum is the provision of FM radio. Given also that there is no other demand for this spectrum we ask that, to avoid the unnecessary uncertainties that would arise from licences with short termination periods, renewed licences should be issued for a further 12 year period terminating in 2027.

New ways of licensing radio broadcasting

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.

4.1: Ofcom could have the ability to license radio services designed to deliver public purposes without having to determine beforehand which technology they must utilise. Ofcom could also grant licences for the provision of national and local terrestrial radio services to prospective providers who have acquired spectrum independently. Such services would not be regulated to secure diversity and/or localness. We suggest that any new licences for the provision of radio services be granted for an indefinite period, and include conditions allowing for their termination by Ofcom with at least two years' notice. Licences would have a guaranteed five-year minimum term.*

We understand that this proposal relates to digitally delivered services. Our concern is therefore that such an option may spread unnecessary regulation to platforms that currently have limited regulatory burdens and could disadvantage some methods of delivery. For example, DRM services could be disadvantaged by the imposition of regulatory constraints compared to services offered by, say, the internet.

Additionally, if such licences included a two year termination clause, this would cause the same uncertainties mentioned in our response to 3.6 above. Consequently, we would suggest that they are licensed for a 12 year period or termination date of 2027.

4.2: Any new licences which are to be regulated in order to secure defined public purposes could be awarded by auction, but with conditions attached to the licences to secure these purposes.*

We believe that a move to offer licences by auction is unnecessary and undesirable. In these scenarios, finances are concentrated on winning the auctions which reduces the funding available for investment and programming. We firmly believe that a change from the current system is therefore unnecessary and not in the interest of consumers.

DAB sound quality

Proposal 5

Ofcom will generally approve a change from stereo to mono in circumstances when it considers that the reduction in sound quality of the service whose technical parameters is being changed is outweighed by the benefits to citizens and consumers of the use to which the freed-up capacity is to be put.

Such issues should be left entirely to the operators of DAB services. No licensee will broadcast a service that offers sound quality that is unattractive to the potential audience as this would be counterproductive.

Community Radio

Proposal 6

Emap Radio supports deregulation and we do not oppose this for the Community Radio sector. However, lighter touch regulation must not allow Community Radio services to dilute the community-based, social gain ethos of this sector. In particular, we would be extremely concerned if the application and licensing process was amended to allow for the licensing of music based services, especially those that may resemble niche music services already licensed by Ofcom which would work against the diversity aspect of the licensing process.

29 June 2007