

The logo for Folder Media, featuring the word "folder" in yellow and "media" in white, both in a bold, sans-serif font, set against a black rounded rectangular background.

foldermedia

**Response by
Folder Media Ltd to Ofcom's
consultation on
the Future of Radio**

June 2007

Summary

Folder Media Ltd is pleased to present its response to Ofcom's consultation on the 'Future of Radio'. Folder Media was established in early 2007 to provide consultancy on digital radio opportunities and develop data projects, and to apply for and invest in local DAB multiplexes.

The prospects for commercial radio, both national and local, are strong. Radio is still a dominant media, with over 90% of the population listening to at least one radio station each week. The adoption of digital radio is growing apace, with over 20 million homes having DTV (and a range of digital radio services delivered through Freeview, Sky, Virgin Media and IPTV) and over 5m DAB sets now sold.

However, whilst these offer opportunities, it is widely recognised that the radio industry faces a number of challenges:

- The commercial radio sector is a small industry compared with other media, comprising a number of entities, none of which can be described as major media companies.
- New technologies and platforms, most of which are unregulated such as multi-channel TV, the internet, music downloads, as well as local press, are increasing choice and the overall number of listening opportunities.
- The BBC remains a strong operator, with a guaranteed income stream for the next 7 years.
- In light of this, there is a question over the continuing need for detailed regulation of commercial radio.

The current legislative and regulatory environment can trace its roots to the 1990 Broadcasting Act, which created licensees over franchises, and introduced ownership and programming codes. Whilst subsequent legislation and change of regulator has resulted in some relaxation, new restrictions have also been introduced.

Ofcom provides in detail the background to its 'Future of Radio' review, in particular the current state of affairs of the industry and its challenges, and makes a number of proposals to assist the industry, whilst seeking to protect the rights and interests of citizens and consumers. Whilst some of the proposals can be enacted by Ofcom, others will require new legislation.

A significant issue facing both Ofcom and the industry is the timescales involved with change. Whilst the last Communications Act only came into force in 2003, discussions on the White and Green Papers that led to its creation began in the late 1990s. The thinking therefore behind the current legislation is dated, and reflects a different environment. In addition, even if discussions for new legislation commenced later this year, it is unlikely that any new Act would be enacted before 2009/10. It would be sensible for the next Communications Act to be able to react to future changes, with perhaps the Secretary of State able to make a larger number of legislative changes through secondary legislation.

It would not seem appropriate for Ofcom to have a significantly increased operational remit – it is and should remain the body that oversees the industry within parameters created by Government, rather than being able to both create those parameters and regulate within it.

Radio is all about the listening experience. Radio stations, just like the records they play and books that listeners read, are judged and discarded on the basis of consumer experience. If the consumer likes what he hears, he will remain. If he finds that something is missing (such as traffic & travel), he will find it elsewhere (for example through a SatNav system or on the Internet), but so long as his overall radio experience was still satisfying, he will still return to that station because of its overall quality. The listener judges radio by its output. Ofcom should regulate radio by its output. The listener is not interested where the radio station is based; indeed few listeners ever visit their local station. They just want a good listen. A good commercial radio station will still want to maintain visibility within his broadcast area and to be seen to be part of the community. This will lead to trial and help build loyalty.

In summary:

- The radio industry needs the overall level of regulation to be relaxed to enable it to react to the rapidly changing world.
- An appropriate level of Format regulation should remain. However, this should be on output rather than inputs.
- Changes should be introduced sooner than later so that the industry can adapt and grow, rather than merely react and firefight.
- Future legislation needs to be change-proof. The ability for the Secretary of State to amend a larger element of legislation through secondary legislation would be beneficial and expedite the ability of the industry to adapt.

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.

The timing of changes

In relation to the introduction of changes which do not require changes to legislation, there seems no obvious link between changing Formats and the status of digital penetration. As Ofcom identifies, there are a significant number of smaller licences that would benefit from further de-regulation. Local and national commercial radio services need to build their audiences and revenues in order to improve their digital offerings, and they need to do it within the next few years, not when rule of thumb listening thresholds are reached. It is reasonable and appropriate for Format relaxation to be undertaken sooner rather than later.

If an industry-wide change was not palatable at this stage, a staggered approach may be a reasonable alternative, with Formats (and localness requirements) for FM stations under a certain population size (say 500,000) and AM stations relaxed in the immediate future, whilst larger FM stations (which appear not to face similar financial issues) are relaxed subsequently.

Streamlining of analogue local commercial radio station Formats

Commercial radio should not become unregulated - it just needs to have less regulation, and for that regulation to be appropriate. Formats should be retained as means of ensuring diversity of output and delivery of public policy objectives. Ofcom's proposals to streamline analogue Formats to capture the 'character of service' and remove over-detailed descriptions, is appropriate for the next stage of commercial radio development. This change should enable analogue licensees to operate in a more relaxed regulatory environment, able to adapt to changing markets, whilst still maintaining their uniqueness. However, the proposed change should be introduced as early as possible, in particular for smaller stations so that they can adapt and grow, rather than just react to what has happened in other areas of media.

Levels of locally-made programmes and local material

The proposals for the relaxation of locally-made programmes, with minimum levels set according to the size and type of station seem reasonable, albeit a little arbitrary. Ofcom highlights a number of issues surrounding whether local material should be made within the licensed area or in neighbouring areas. The primary objective for the radio industry is to provide high quality programming that is of interest to consumers and citizens. Where such content is made should be irrelevant. Commercial businesses will provide programming that is demanded. If they do not, listeners will find alternative services and those businesses will suffer. As before, there is no correlation between the level of localness and digital penetration. Commercial radio will benefit from the early introduction of simplified Formats and reduced localness requirements, which will help enable to industry fund its investment in digital radio, and will help speed up digital penetration.

The provision of local material across all local commercial stations in an area

It is reasonable for the radio industry to be regulated as a whole rather than in parts according to platform. In the digital world, it is likely that some services will opt to provide regular local news bulletins and speech content focusing on local issues and needs, and providing a wide range of information, such as what's on, weather, traffic & travel etc. These services will be characterised by a broader range of music, but with higher than average speech content.

Other services, though, will opt to focus on the music and provide less speech content, if any at all. This does not mean that these services are not providing a valid local service. They are likely to be catering for local tastes and interest which are not served by existing choice.

Ofcom should look at the full complement and range of services broadcast within a particular multiplex area rather than each individual service on a particular multiplex. In a situation where a number of services provide specific speech content, be that entertainment news, phone ins, traffic & travel etc, and with speech content in the future able to be downloaded as DABcasts, there is no need to require every other service to have local speech or programming requirements. These services will provide what the market requires.

The proposal to look at both analogue and DAB radio services in any market appears correct. However, if the level of listening to radio through DTV and Internet platforms grows significantly over the next decade, Ofcom should review the implication of these services within the overall radio landscape.

National analogue radio

The licences for the three national analogue licences expire between 2011 and 2012. The mechanism for the re-advertisement of these licences (if at all) needs to be reviewed and established by Ofcom and the proposal to remove the Format restrictions would seem appropriate.

Maintaining choice on national DAB digital

We agree that the services on the national multiplexes should appeal to a wide variety of tastes and interests and broaden choice. We recognise that these can be achieved through both diversity of choice as well as plurality of ownership.

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.

The timing of changes

The current ownership rules for analogue and digital radio services are based on the potential audience rather than the actual audience and as such it seems strange to have the timing of a change of ownership rules linked to audience trends. As ownership rules are established by legislation and given the timescale for any new legislation to be introduced, the proposed changes should be automatic on the introduction of new legislation, rather than being linked to digital penetration.

Ownership rules

The proposal to have a single set of ownership rules based on defined ownership areas appears reasonable, but as before, the proposed changes should be automatic on the introduction of new legislation, rather than being linked to digital penetration.

Local DAB multiplex ownership

As a multiplex operator is the gatekeeper for radio operators, it would seem wrong for one entity to have significant control over who can and cannot broadcast. The current ownership rules, with its 50% overlap limit, appear reasonable and appropriate.

National DAB multiplex ownership

The proposal appears reasonable.

Cross-media ownership

The proposal appears reasonable.

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.

The consultation document details Ofcom's belief that the future of radio is digital, and highlights potential timespans by when digital will be the dominant listening platform. The document, though, does not set out any plan by which radio will get there.

The radio industry, and in particular commercial radio, has invested millions to help establish and grow DAB digital radio. This investment has encompassed transmission, simulcasting of analogue services, the creation and broadcasting of new services, and consumer and trade marketing of DAB. Ofcom provides no clear road map to a return on that investment.

DAB is a solid technology and should be used to provide the maximum number of digital radio broadcasting opportunities for local BBC and commercial radio. DAB is a viable platform for many areas of the UK, and should be the primary platform for areas with populations of, say, over 200,000 plus.

It is recognised that DAB is unlikely to provide a solution for all local radio services. It is a good transmission system, but in certain areas of the UK, DRM may be the better technology for local commercial and BBC services to use, especially where there are only a small number of operators in a particular area, for instance rural areas of England, Wales and Scotland. As a complementary technology to DAB, DRM is unlikely to de-stabilise the market.

Altering local DAB multiplex licence areas

It is uncertain whether the proposal is recommending maximising coverage of DAB digital radio for the benefit of citizens and consumers, or for the benefit of certain individual services / companies.

It would be appropriate for Ofcom to have the ability to increase the licensed areas of existing DAB local multiplex licences where this would eliminate 'white' areas and where such increases would not be significant (which has not been defined) and would not remove an opportunity for legitimate local competition. There are a number of areas that would benefit from being linked to an existing multiplex, such as Kent Coast (where existing analogue services would be best served by this area being part of the existing Kent multiplex licence area) and parts of East Anglia which the Norwich, Cambridge and Peterborough multiplexes do not currently cover.

However, in an area with distinct radio services and where a commercial business opportunity can exist, Ofcom should consider and evaluate this opportunity to maximise local choice before exercising any power to attach one area to another. Otherwise, the future and scope of local could be limited.

Analogue spectrum reviews

Ofcom has identified that it sees the future of radio as being digital, using either DAB or DRM in areas where DAB is not commercially viable. It also highlights that not all existing services are likely to exist in a digital only world and that no operator has a right to broadcast digitally. Ofcom though should help encourage opportunities to be developed under which all local operators have an opportunity to migrate to digital using the same 'digital' standard. Valid business models that help encourage smaller operators adopt digital radio by reducing the net cost of broadcasting on digital have recently been developed. Such models are removing a barrier to entry.

As Ofcom's paper highlights, many small services are operating marginal financial businesses; a result in part of their small analogue operational basis. By having an opportunity to operate in a larger coverage area under digital, the commercial opportunity and viability of such services is enhanced. Is it fair for Ofcom to make a decision over who does and who does not go digital? Should this be a commercial decision for each station? For them to be able to make such a decision, valid commercial opportunities, rather than subsidisation of larger entities, need to be available.

The reviews proposed by Ofcom will determine the future use of each platform, and lead to a view as to digital switch-over. By 2012, all homes will have digital television and a significant choice of radio listening through that platform. If a decision is made about analogue and DAB radio at that time, it may be too late. The reviews for both platforms should be undertaken and concluded sooner. Whilst this may not result in an earlier switch-over, it will provide the industry, set manufacturers and retailers with a clearer vision of the future.

Changes to analogue licence periods

There are concerns over whether the proposed changes to analogue Licence periods might distort the market. Whilst Ofcom is looking to standardise analogue and digital content regulation, its proposals regarding licence periods will create two very different regimes - analogue services will be licensed forever, whilst digital services, which are more risky and need encouragement for investment, remain time limited (a service provider only being able to contract for a maximum 12 years being the length of the multiplex licence). Maintaining DAB multiplex licences as the only licences with defined terms is out of kilter with other licences issued by Ofcom and its proposals under the digital dividend.

In addition, there is still some uncertainty as to whether FM will ever be switched off in all areas of the UK. Therefore, there is a risk that either throughout the UK or in just a few areas, FM licensees will continue to operate indefinitely, benefiting their business models against those who took a risk to move the industry to digital.

Ofcom proposes to limit indefinite analogue periods by reserving power to terminate licences by giving two years' notice. Such a notice period is unlikely to benefit business commercially. Many companies have transmission contracts that correspond to licence periods. By Ofcom giving notice of a licence termination may lead to that licensee incurring penalty fees to break his analogue transmission contract. To mitigate any such penalties, licensees may limit investment in infrastructure, such as transmission networks, studio facilities and digital investment, to the detriment of radio as a whole.

It would appear that the driving force behind the proposal to make licences indefinite, with a two year notice period, is Ofcom's desire to have a common end date enabling it to aggregate spectrum before any potential auction, rather than for the benefit of the radio industry, and ultimately citizens and consumers.

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.

Many radio services broadcast on a plethora of platforms – broadcasting on analogue and / or digital radio platforms, on DTV and the internet. To broadcast across all of these currently requires an operator to hold an analogue licence, a digital sound programme service licences and a radio licensable content service licence. There appears to be considerable benefit for operators to be able to broadcast on a range of platforms under a sole Ofcom licence, in particular reducing administrative burden.

The public demand for localness will still remain, and any revised licensing regime will need to protect localness where an operator wishes to focus on a particular community or area.

In relation to the future award of licences, there are considerable arguments against award by auction, which will reduce the level of potential investment in programme and marketing, resulting in a further weakening of choice.

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.

The proposal appears reasonable.

Community radio licensing and regulation

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.

Whilst Ofcom has a statutory duty to undertake a review of community radio within 2 years of the launch of the first community licence, as the number of licensed services that are operational is small, and with staggered launch dates their experiences are limited, the review is not timely. It is too early to determine fully the impact of the introduction of community licences on commercial radio, and of the administration and regulation of this sector. Community radio is an important sector of radio, with immense benefits for society as a whole. However, to rush into changes because of a pre-determined review date appears irrational.

At this stage of community radio, Ofcom should restrict its proposals to those changes which will streamline the process of licensing community radio, without affecting the goal of social gain.

As Folder Media is not involved in community radio, we have no further comments to add.