

# The Future Licensing of FM Commercial Radio

Public consultation on proposals by Ofcom to change the way that local FM commercial radio licences are advertised and awarded.

The deadline for comments is **11 March 2004**.

# Contents

Section		Page
1	<b>Introduction</b>	1
2	<b>Summary</b>	2
3	<b>Background</b>	4
	The historical context	4
	Commercial radio today	5
	Digital radio	7
	'Localness' and Formats	9
	Community radio	9
	Restricted service licences (RSLs)	9
4	<b>Strategy</b>	11
	Our objectives for radio	11
	Local analogue licensing since 1991	11
	Statutory framework	12
	Allocation of FM spectrum	12
	AM frequencies	18
5	<b>Licensing process</b>	19
	Licence advertisement	19
	Defining the area	20
	Assessment of applications	21
	Submission of applications	22
	Decision-making procedures	24
6	<b>Next steps</b>	27
Annex 1	<b>Ofcom's consultation principles</b>	28
Annex 2	<b>Legislative provisions</b>	30
Annex 3	<b>List of questions</b>	36

# Introduction

1. This consultation document contains proposals by Ofcom (the Office of Communications) on its strategy in relation to the future licensing of local commercial radio services on the FM waveband.
2. Ofcom, the new converged regulator for the communications industry, seeks the views of citizen-consumers, consumer organisations, the radio industry and others on the proposals contained in this consultation document by **Thursday 11 March 2004**.

Where possible, comments should be made in writing and sent by email to [neil.stock@ofcom.org.uk](mailto:neil.stock@ofcom.org.uk). However, comments may be posted or faxed to the address below:

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If you have any queries about this consultation or need guidance on the appropriate form of response, or have any other query, please call our consultation helpdesk on 020 7981 3003 during working hours. Ofcom is keen to make responding to consultations easy and we will endeavour to give appropriate support and advice.

3. The proposals put forward in this consultation document represent the conclusion of a review of the commercial radio sector which has incorporated detailed market research and analysis, and discussions with radio industry representatives and other key stakeholders.

# Summary

## Strategy

- Ofcom will concentrate on advertising new commercial radio licences on the FM waveband, to meet the demand from listeners, advertisers and prospective operators alike.
- We believe that licensing more FM services will help to bring about a faster and more successful transition to the digital future, by promoting the growth and prosperity of the radio industry as a whole.
- We propose that the FM frequency range 87.6 – 88.0 MHz should remain as a core resource for restricted service licences (RSLs), to help Ofcom continue to meet the demand for these types of licence.
- Community radio should be rolled out in tandem with further development of commercial radio. Community radio should generally use frequencies that are not viable for commercial services.
- There is some scope for offering larger licence areas in some parts of the UK than previously planned by the Radio Authority. This consultation seeks views on options in the South-West and North-East of England, the South Coast of England, and South Wales.
- Otherwise, the options for offering new licences are severely constrained by existing frequency usage and are similar to previous proposals.
- The proposals in this document are part of a wider programme by Ofcom to develop a strategic framework for radio regulation. Other elements of this will include a review of digital radio and guidance on localness, as required by legislation.

## Licensing process

### Licence advertisement

- Licences will continue to be advertised in an open competition, as required by law.
- We will publish a frequently-updated timetable of future licence advertisements on our website, but not a 'working list'.
- Each licence advertisement will be free-standing, and will contain information specially tailored to that licence. We will not publish generic licensing guidance notes or application forms.

### Defining the area

- Full details of what geographical areas we expect to be covered, and not to be covered, by any particular licence, will be provided when we announce its inclusion in our licensing timetable, and in more detail at the time of advertisement.
- We will provide an analysis of existing commercial radio provision in the area, and recorded listening patterns, in the notice of advertisement for each new licence.

### Assessment of applications

- Guidance will be provided in each notice of advertisement as to how Ofcom intends to apply its statutory remit in respect of the new licence.

- We will aim to announce, within two weeks of applications having been submitted, the date upon which an award decision is expected to be taken.
- Questions of clarification and/or amplification to applicants will be contained within a single letter. Responses to this letter will be made available publicly on the same basis as the written application. We do not intend to conduct telephone interviews.
- We intend to employ a simple scoring system, linked directly to the statutory criteria, to aid the assessment process. The details of this system (but not the results in particular cases) will be made public.

### **Submission of applications**

- The notice of advertisement will include details of the information required in an application. This may be varied for different types of licence, and for different types of applicant, as appropriate. There will be no generic application forms.
- Each question, or set of questions, will be tied directly to one or more of the statutory criteria to which we must have regard when deciding to whom to award a licence.
- Applicants will be asked to write their own Format (i.e. programming commitments) as part of their application. The Format of the winning applicant will be included in their licence.
- One electronic copy of an application will be required (hard copies will be sent out on request only). All non-confidential parts of applications will be published on the Ofcom website, for public scrutiny.
- Closing-dates will generally be three months after the date of advertisement.

### **Decision-making procedures**

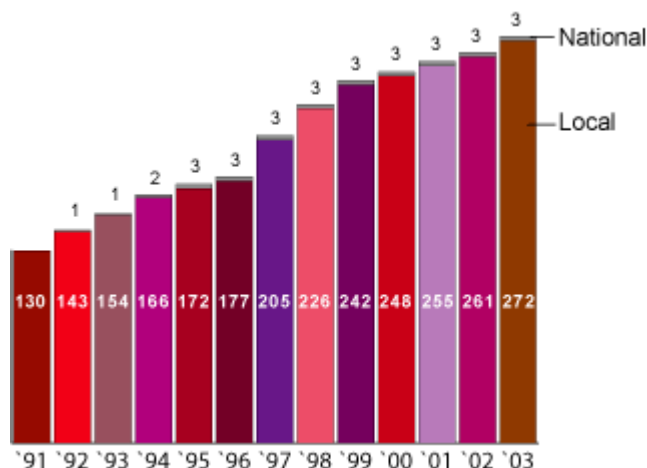
- Licence award decisions will be taken by a standing committee of the main Ofcom Board comprised of a mix of part-time and executive members of the Board and colleagues from the relevant Groups within Ofcom, under powers delegated by the Ofcom board.
- We should not adopt the practice of holding public hearings on a short-list, as this is likely to increase the length of the process without improving the outcome.
- A statement will be published after each licence award which sets out the key determining factors under each of the statutory criteria which led to our decision.

# Background

## The historical context

1. Commercial radio today reaches over 31 million adults each week and earns £582m in revenue from advertising and sponsorship. As it enters its fourth decade the sector looks well placed to continue this success, but the industry's development, particularly in its first twenty or so years, has not always been smooth.
2. From the launch of the first services in 1973 until the establishment of the Radio Authority in 1991, commercial radio (or Independent Local Radio as it was known then) was hampered by two major recessions, frequent uncertainty about its future due to indecision by successive Governments, and a slow pace of development which meant that by 1990 there were still only 79 stations on-air. However, with the requirement for stations to start providing separate services on their AM and FM frequencies, and the swift licensing of 21 new 'incremental' stations targeting particular interest or ethnic groups, this total had jumped to 130 by the end of the Radio Authority's first year as the industry's new regulator.

### Number of commercial radio licences



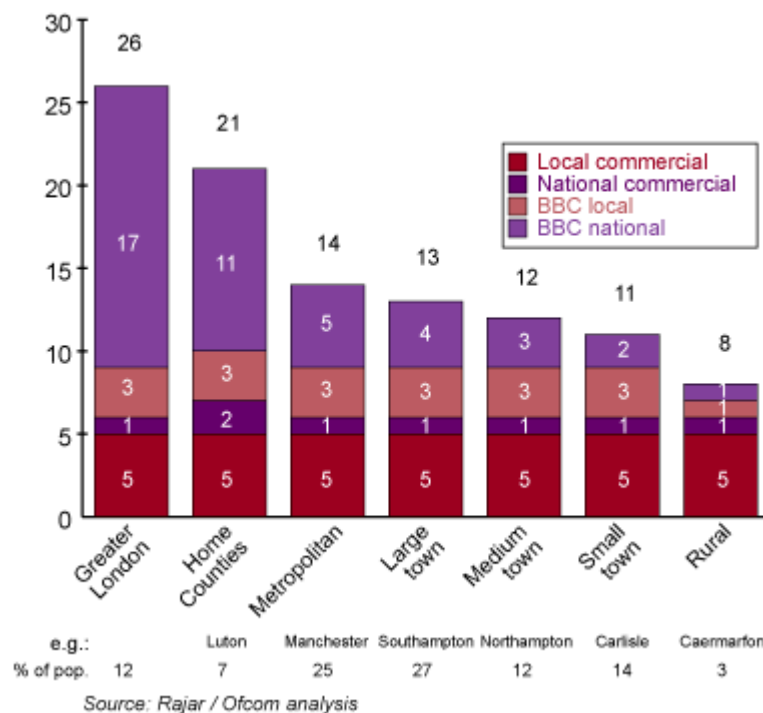
3. As can be seen from the above chart, the 1990s saw a dramatic expansion of the industry, with the number of commercial radio licences, and the pace with which they were advertised and awarded, increasing greatly compared to progress under the IBA. The three national commercial radio services – Classic FM, Virgin Radio and Talksport (formerly Talk Radio) – came on-air between 1992 and 1995. Using new spectrum that became available between 105 and 108 MHz, new regional licences were developed to maximise listener choice in the most populated parts of the country, and small-scale licences were issued to provide a further tier of more localised services. The industry also experienced its first wave of consolidation, with companies such as GWR, Capital Radio and Emap developing rapidly through acquisition. The launch in 1992 of the Radio Advertising Bureau (RAB) and a new audience measurement system, RAJAR, as well as of the first national commercial station, Classic FM, contributed to a sharp upturn in the industry's fortunes, while listening to the sector continued to grow throughout the decade, with its share of all listening reaching an all-time high of 51.1% in 1998.

## Commercial radio today

4. Ofcom has now assumed regulatory responsibility from the Radio Authority for an analogue commercial radio sector which comprises 272 local and three national licences, which are currently listened to by nearly two-thirds of the adult population in the UK.

5. The range of choice available to listeners depends on where they live. Residents of Greater London have the widest selection of non-BBC radio (15 London-wide stations plus some more localised stations within the capital), and 70% of the population has a choice of at least seven commercial stations. In some areas, however, there is only one local commercial service available. Almost all commercial radio stations provide a music-led programme service, with the vast majority of listeners having at least a choice between a station broadcasting on the FM waveband playing predominantly chart hits, and one on AM with a 'gold' or 'easy listening' format. The smaller stations which have been established in recent years tend to provide a broad-based music format which draws on well-known songs from the 1960s to the present day, together with news and information of particular relevance to the locality in which they operate. The seventeen 'regional' stations which have been licensed outside Greater London since 1994 offer a greater range of formats, from dance music for the under-30s to easy listening for the over-50s. Collectively, these 'regional' services deliver additional choice to about 50% of the UK population.

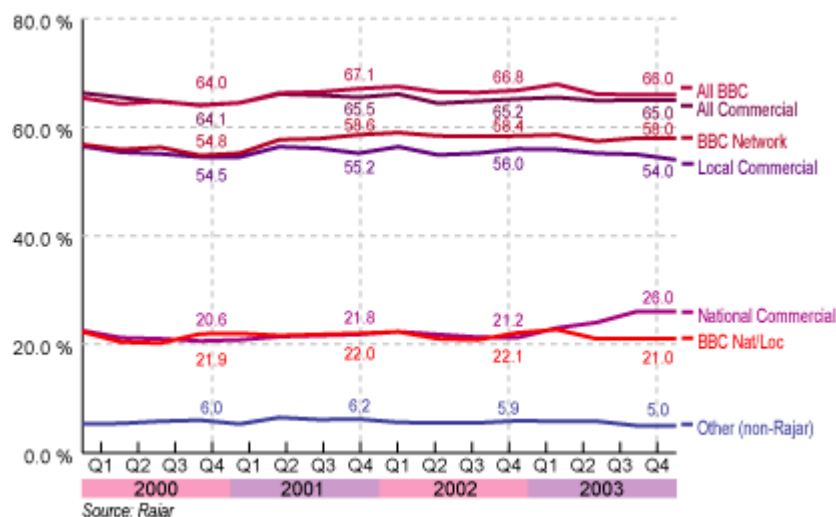
### Choice available to the average listener by size of market



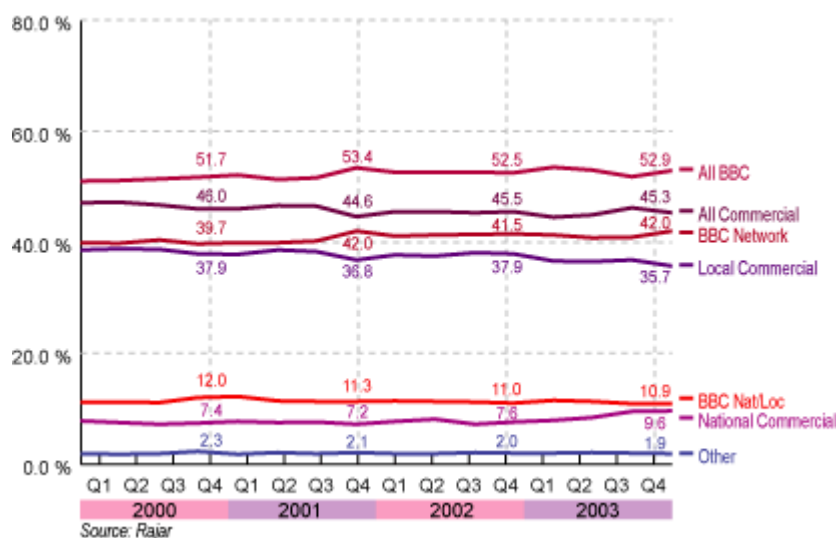
6. Radio as a whole is listened to for at least 5 minutes per week by 91% of the adult (aged 15+) population in the UK. Almost two-thirds (31.5 million people) listens to commercial radio, for an average of 15.4 hours per week. A slightly larger proportion of the population listens to BBC radio, and on average for longer each week. As a result, the share of all listening commanded by commercial radio as a whole (45.3%) is lower than that obtained by BBC radio

(52.9%). The commercial stations which tend to attract the largest audiences are those which provide a mainstream music format such as chart hits or adult contemporary. 61% of the people who listen to commercial radio are under the age of 45, whereas the equivalent figure in respect of BBC radio is just 33%. An increasing number of people now listen to radio services via their television (20%), or through the internet (14%), but neither of these platforms can offer the portability of 'traditional' radio.

### All radio weekly reach



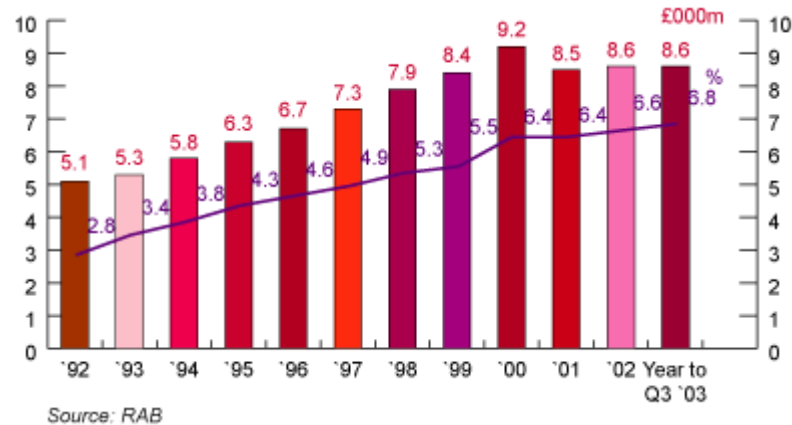
### All radio share



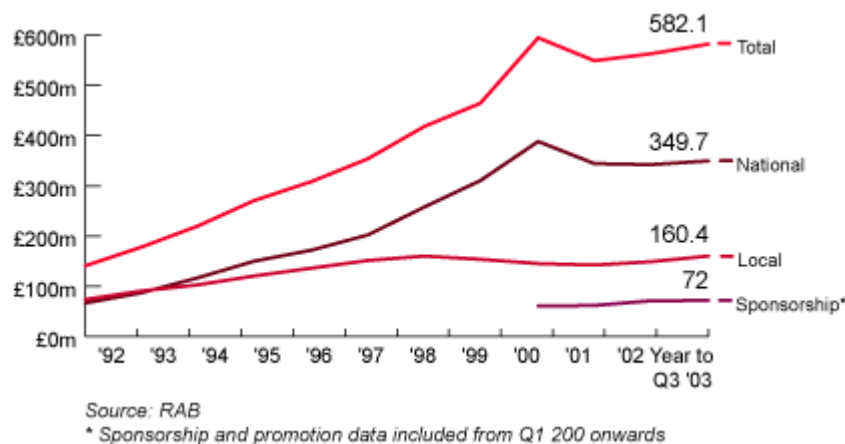
7. In the advertising market, the commercial radio sector was the fastest-growing medium throughout the 1990s. Its share of the total display advertising market in the year to September 2003 was a record 6.8%. This rapid growth, which has continued despite the recent downturn, has largely been driven by increases in national advertising, which now comprises almost 60% of all revenues. Total revenues in the year to the end of September 2003 were £582m. Radio looks to be in a healthy position as we enter 2004, and Ofcom is keen to facilitate continued growth, as we believe that a financially successful industry is one which is able to provide the best possible service to listeners.



## Total display advertising spend (£000m) Radio's share of total display advertising (%)



## Radio revenues

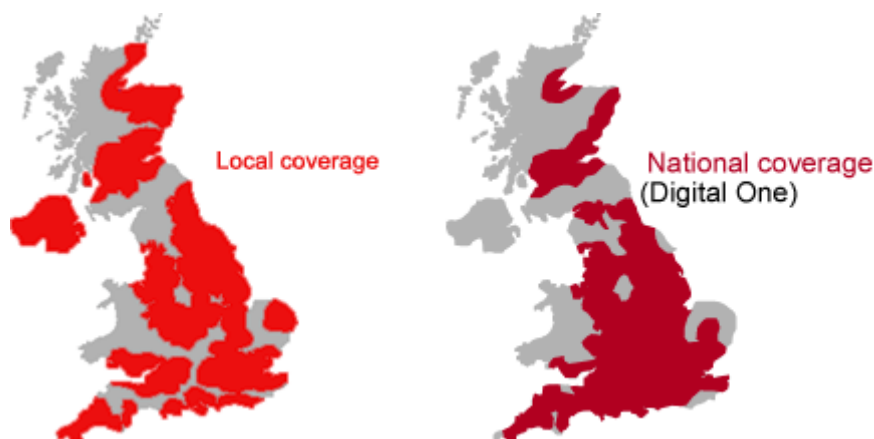


## Digital radio

8. This consultation is primarily about FM radio, but in the longer term digital radio is central to the future of the whole radio sector. Digital radio (Digital Audio Broadcasting, or DAB) is starting to make a significant inroad into public consciousness and appreciation in the UK. This follows substantial investment in transmission and content by broadcasters, and by receiver manufacturers to get digital radios into shops.

9. There is currently one national commercial digital multiplex licence (held by Digital One) and 46 local digital multiplex licences. The former provides coverage of 85% of the UK population, while collectively the latter provide digital coverage of around 70% of the population. Consumers in the most populated parts of the UK can receive services from two or (in Greater London only) three local multiplexes, in addition to the national commercial and BBC multiplexes. Together these provide 30-40 individual programme services to the average listener (a total of 322 individual programme services have been licensed), a significant proportion of which are new commercial brands unique to DAB. Many of these brands also have been rolled out via digital TV platforms. Digital radio

offers significant consumer benefits in terms of choice of listening, robustness of good quality reception, and multimedia capability.



**10.** DAB has been conceived as a replacement technology for much or even all of the present analogue broadcast landscape, but this generally has been considered as a long-term objective. Ofcom believes it is very important that the radio industry and manufacturers continue to invest in DAB. In line with our obligations under the Broadcasting Act 1996, but also as a crucial element in our development of a strategy for the radio sector as a whole, Ofcom later this year will be conducting a major review of digital radio, the scope of which will include some consideration of a potential timetable for switchover. In addition, we are at present considering the responses to a consultation regarding potential future uses of spectrum at 1.5 GHz (the so-called L-Band) and VHF Band III (the same frequency band which supports all of the existing digital radio multiplexes). One possible use for this spectrum is to develop further digital radio multiplexes. This consultation takes as a premise that further development of analogue radio will help rather than hinder the move to a digital future. Most of the companies that have invested in digital radio so far have proved to be, directly or indirectly, analogue broadcasters who seek to be part of the future digital environment. Their investment is underpinned, at least initially, by income from analogue stations. We also think that a further extension of choice in the analogue domain helps to whet the appetite of listeners to take advantage of the much wider extension of choice available on digital radio.

### Other radio issues

**11.** There are a number of other issues in radio broadcasting which largely are beyond the scope of this present consultation, but which will have varying degrees of impact on our ongoing development of an overall strategy for the sector. Some, such as guidance on 'localness' in commercial radio and proposals for the future licensing of community radio services, will be the subject of separate consultations in due course. In respect of analogue ownership, the Communications Act 2003 has replaced the national points-based system with one to be applied in individual local markets only, and we are presently consulting on the public interest test to be applied to media mergers in the event of a request for further investigation from the Secretary of State for Trade and Industry. Separate licences for satellite and cable radio services have been replaced by a single licence called a 'radio licensable content service', while demand for RSLs, both short-term and long-term, remains strong. The following paragraphs set out our current thinking on some of these issues.

## 'Localness' and Formats

**12.** Ofcom intends to keep Formats as the main mechanism by which the character of stations, as defined in their applications, is reflected in their licences. This document contains a new proposal that applicants for new licences should be required to 'write their own Format' as part of their application, and also proposes that new stations should operate under this Format from the time they start broadcasting.

**13.** Section 314 of the Communications Act 2003 has introduced a new duty for Ofcom to "carry out their functions in relation to local sound broadcasting services in the manner that they consider 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 consider appropriate in that case; and that, 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."

**14.** The Act also requires us to draw up guidance as to how we consider these requirements should be satisfied, and to have regard to this guidance in carrying out our functions in respect of local radio broadcasting services. We will be consulting in due course on how we might meet these new statutory requirements in respect of 'localness'.

**15.** In our consultation on localness, we will be seeking views on important issues such as automation, networking, news-sharing and the location of studios. Restrictions in respect of any of these aspects of a radio station's operations can have a significant effect on its costs and viability but can also, where appropriate, help to secure its local character and deliver benefits to local people. Applicants for new licences will be free to propose whatever amount and type of local content, and the methods for delivering this, that they wish, but will need to also provide the rationale behind their proposals.

## Community radio

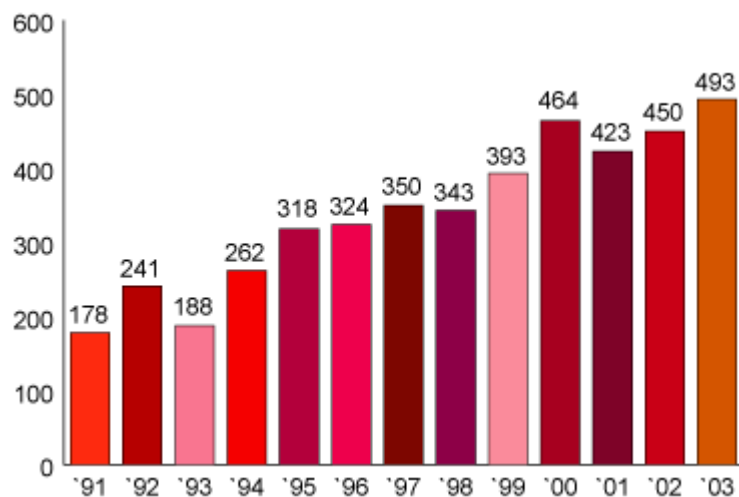
**16.** Ofcom will consult on proposals for a future licensing regime for community radio (formerly Access Radio) separately from this present consultation. The consultation on community radio will take place at the same time as a similar exercise to be conducted by the Department for Culture, Media and Sport, following the publication of a draft Order to be presented to Parliament setting out the legislative framework for this new tier of radio. In general, we expect to offer community radio licences using frequencies that would not be viable for commercial services. Of course, scale of coverage is just one of many differences between these two types of radio service.

## Restricted service licences (RSLs)

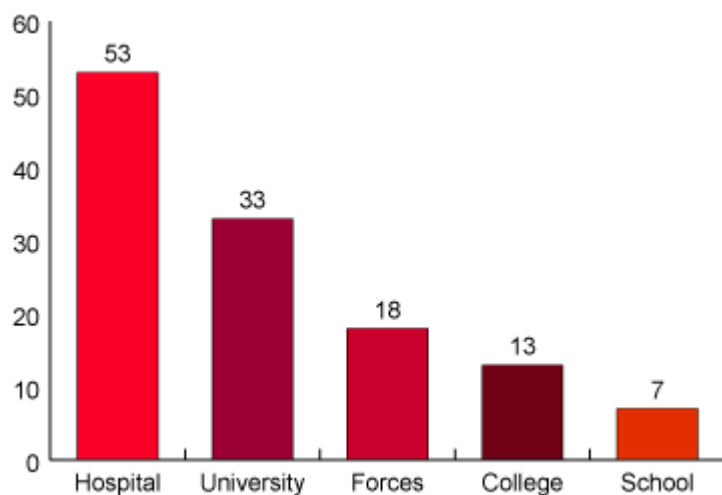
**17.** We have already announced that we intend to maintain existing procedures in respect of restricted service licences until further notice. There are two types of RSL - those of short duration generally issued for coverage of events or as trials for future local licence applications (known as short-term RSLs), and those of longer duration issued to stations serving non-commercial establishments such as hospitals and universities (known as long-term RSLs). We believe that RSLs are an important element in the overall radio landscape, and they will continue to play a significant role in our overall strategy for the sector. They provide opportunities

for people to become involved in radio, and contribute to the cultural enrichment of society by enabling the sharing of information between and within communities.

#### Short-term RSL Licences issued



#### Types of establishment served by long-term RSL stations



# Strategy

## Our objectives for radio

**18.** Ofcom's broad objectives for radio, as guided by our statutory obligations, are to further the interests of citizens-consumers, especially through:

- balancing promotion of choice and competition with the fostering of plurality and diversity;
- supporting the need for innovators, creators and investors to flourish within markets driven by increased levels of fair and effective competition.
- facilitating the provision of a wide range of services which, taken as a whole, are of high quality.

**19.** In respect of local radio licensing in particular, the criteria of section 105 of the 1990 Broadcasting Act lead us to the conclusion that we shall focus on maximising choice for listeners and catering for the tastes and interests of local people. It will, however, always remain important that applicants can demonstrate their ability to maintain the service they propose.

**20.** Taken together, it is our hope that the strategy and procedures we propose to adopt will help to facilitate a thriving, competitive, commercial radio industry which serves the interests of listeners and continues to be of growing importance to advertisers, as reflected by rising revenues and an increasing share of total display advertising. We recognise that the presence of the BBC has a significant effect on the workings of the market, but believe that the potential for continued growth in commercial radio remains.

### **Question 1:**

*Do you agree with our broad objectives for the radio sector?*

## Local analogue licensing since 1991

**21.** The large majority of the new local licences advertised since 1991 have been for services to be broadcast on the FM (VHF) waveband. The Radio Authority initially gave priority to bringing commercial radio to areas that had until then been unserved by any local non-BBC radio. Once these remaining gaps in ILR coverage had been largely filled, the Authority adopted a two-pronged licensing strategy which sought:

- (i) to expand listener choice in the areas of greatest population through the advertisement of a tier of large-scale licences covering broadly-defined regions or major metropolitan areas, using frequencies in the 105 to 107 MHz range;
- (ii) to facilitate a further tier of 'small-scale' services whose rationale would be the provision of a predominantly localised identity which they could more easily reflect by virtue of their size, primarily utilising frequencies above 107 MHz.

**22.** The 'regional' licences were intended to facilitate large enough population coverage to enable more niche formats to be commercially viable, whereas 'small-scale' services were a response to demand expressed by prospective applicants and other interested parties, and recognised the potential for such licences to fulfil the needs of smaller communities.

## Statutory framework

**23.** The statutory framework under which Ofcom will advertise and award local analogue radio licences remains broadly unchanged, although section 3 of the Communications Act gives us new general duties to add to those specifically related to licensing that are contained within sections 85(2) and 104-105 of the Broadcasting Act 1990 (see Annex 2).

**24.** The criteria to which Ofcom must have regard when determining whether, or to whom, to award a local licence remain essentially the same, although one (section 105(d)) has been amended to allow Ofcom to consider the extent to which there is demand or support for (as opposed to only support for, as previously) a proposed service. The other criteria remain:

- the ability of each of the applicants to maintain, throughout the period for which the licence would be in force, the service which he proposes to provide;
- the extent to which any proposed service would cater for the tastes and interests of persons living in the area/locality; and
- the extent to which any proposed service would broaden the range of programmes available by way of local services to persons living in the area/locality.

## Allocation of FM spectrum

**25.** In developing a licensing strategy for the radio sector, our starting point must be to decide how the valuable and scarce resource of spectrum is to be allocated. Within that part of the FM broadcasting band assigned for non-BBC use, our goal is to support a wide variety of radio services which, taken as a whole, meet the broad objectives we have set out in this document. The following table demonstrates how the FM band is currently occupied, and the coverage objectives of each type of service:

87.6 – 88.0	RSL core band	sparse
88.1 – 94.6	BBC Radio 2 BBC Radio 3 BBC Radio 4	universal coverage
94.7 – 96.0	BBC local radio (1/2)	near-universal
96.1 – 97.6	ILR 'first tier' (1/2)	near-universal
97.7 – 99.8	BBC Radio 1	universal coverage

99.9 – 101.9	INR 1 plus 5 regionals	INR - 90% of population Regionals - 42% of population
102.0 – 103.4	ILR 'first tier' (1/2)	near-universal
103.5 – 104.9	BBC local radio (1/2)	near-universal
105.0 – 107.9	ILR regional scale ↓ ILR small-scale ↑	Population-weighted Respond to evidence of demand

**26.** There are, of course, competing claims for FM frequencies, from commercial radio, RSLs, and now also community radio. In practice, we believe all three types of service can be developed alongside each other, providing choice for listeners, opportunities for innovation, and a diverse and competitive industry.

#### **RSLs**

**27.** Restricted service licences have been a huge success, with thousands of people having been given the opportunity to become involved in radio, and demand for these types of licence continues to grow. We see no pressing case at this stage for reviewing the Radio Authority's policy of setting aside the FM sub-band 87.6 – 88.0 MHz as a core resource for RSLs, and thus we propose to maintain this policy for the foreseeable future. We will continue to try to accommodate RSLs using frequencies outside of this core resource, but are aware that the opportunities to do so are likely to become progressively fewer.

#### **Community radio**

**28.** Community radio is of course another claimant on scarce spectrum, and we are keen to facilitate the growth of this new sector as soon as is practicable. We are currently undertaking a detailed analysis of FM frequency availability for new community radio services, seeking to identify frequencies which could not support commercially sustainable services but which might be usable for non- or partly-commercially funded stations. By adopting this approach to spectrum usage, we believe that it will be possible to establish a meaningful programme of community radio licensing in tandem with the further development of new commercial services. Early studies undertaken by the Radio Authority suggest that there are likely to be enough FM frequencies to facilitate the introduction of one or two community radio services, of a scale similar to the current pilot stations, in most cities/conurbations (or, as an alternative, locations in between them) in the UK.

#### **Commercial radio**

**29.** In respect of future local commercial radio development, our starting position is that demand from listeners, advertisers and prospective operators remains

highest for new services to be licensed on the FM waveband. However, we are very conscious that the opportunities for further analogue development afforded by an already crowded waveband are somewhat limited.

**Question 2:**

*Do you agree with our proposed policy for allocating FM spectrum?*

**30.** In seeking to identify potential licences for future advertisement, we have been informed by the Radio Authority's last published 'working list' of planned new licences (issued in May 2002), which includes the following nine areas for which the Authority intended to advertise licences but did not feel itself to be in a position to do so due to the transition to Ofcom:

Ashford, Kent  
Ballymena  
Banbury  
Blackburn  
Cornwall  
Durham  
Kidderminster  
Norwich  
Torbay

**31.** We have also been informed by the Radio Authority's statement of FM frequency availability, published in March 2003. This identified a minimum of sixteen development opportunities in metropolitan areas, and a further ten potential 'small-scale' licences in areas where there is known to be a demand for such services (it should be noted that, while frequencies have been identified for these areas and those on the 'working list', their use to support new licences will be subject to successful national and international co-ordination):

**Metropolitan development opportunities**

Aberdeen  
Belfast  
Bristol  
Cardiff or Newport  
Dundee and/or Perth  
Edinburgh  
Exeter and/or Torbay (additional to the Torbay on the 'working list')  
Humberside (subject to an existing service changing frequency)  
Liverpool  
Manchester  
Middlesbrough  
Newcastle and/or Sunderland  
Norwich (additional to that on the 'working list')  
Plymouth  
South Hampshire  
Swansea

**Non-metropolitan development possibilities**

Abingdon  
Barrow-in-Furness  
Chorley (subject to decisions about Manchester licence(s))  
Devizes and/or Andover



Halifax-into-Calderdale  
Newry  
Northallerton  
Swindon  
Thames Estuary (two frequencies)

**32.** Two further areas where suitable frequencies are available – Bournemouth (small-scale) and Stoke-on-Trent – have been identified subsequently. The following map shows the locations of all of these potential future licences:



**33.** Apart from areas which are geographically peripheral or low in population, such as northern Scotland and South-West England, the opportunities for further development outside of, or as an alternative to, these published plans (particularly for licences of a medium scale or larger) are severely constrained by the existing pattern of frequency usage and the large number of licences already awarded.

**34.** As part of our review of the commercial radio sector, we have analysed the financial performance of different types of ILR stations broadcasting on the FM waveband, and assessed the extent to which a variety of factors, in particular the population coverage afforded by a licence, can impact upon a radio station's potential profitability. This study revealed that, in general, larger licences are more likely to be profitable than smaller ones.

**35.** Of course, this is only a generalised conclusion and does not make any allowance for the benefits that any particular licensing strategy might generate for consumers, nor the role that it might play in meeting other non-financial objectives (e.g. the social and cultural value of reaching particular groups or serving particular interests). It also does not take into account the extent to which 'localness' in radio is considered important by listeners and other interested parties. As noted previously, this issue will be the subject of a separate consultation in due course.

**36.** That said, the development of commercial radio to date also suggests that larger licences are better able to support more specialised programme formats than smaller licences. This was the rationale for the Radio Authority's establishment of the 'regional' licence concept, and Ofcom considers that in general these 'regional' licences have brought substantial widening of choice to listeners and accompanying innovation.

**Question 3:**

*Do you consider that, where possible, advertising larger or smaller licences best serves the interests of citizen-consumers?*

**37.** We have therefore looked at whether any of the individual areas already identified for potential licence advertisement could be combined to form larger licences covering geographically contiguous areas. We have identified five possible options:

- Newcastle and/or Sunderland + Middlesbrough (i.e. a North-East 'regional');
- Cornwall + Plymouth + Exeter and/or Torbay (i.e. a South-West 'regional') OR;
- Plymouth + Exeter and/or Torbay;
- Swansea + Cardiff (but not Newport);
- South Hampshire + Bournemouth (i.e. a Solent 'regional').

The remaining areas identified in paragraphs 30 and 31 would not appear to lend themselves readily to aggregation.

**38.** The possibility of a third North-East 'regional' licence was originally identified by the Radio Authority in its FM options document published in March 2003. This would be at the expense of separate licences, of a medium-scale, for Newcastle and/or Sunderland and for Middlesbrough. There is also an interrelationship between the scale of coverage of a putative Durham licence (as included on the Radio Authority's 'working list') and that which could be provided by another North-East 'regional' service. In simple terms, the larger the coverage permitted for a Durham licence, the more limited the options elsewhere in the North-East region become.

**39.** Cornwall is another of the areas on the Radio Authority's 'working list', and we are very aware that there are prospective applicants for such a licence who have been actively preparing their submissions. Ofcom has no pre-determined view about the appropriateness of larger or smaller licences in this region, but is interested to hear views as to whether a licence that combined coverage of Cornwall with coverage of the major population centres in Devon would represent a more effective use of this spectrum. As suggested above, a larger licence is likely to provide sufficient population coverage to enable a more specialist format to be delivered viably, while a Cornwall-only licence is likely to facilitate a more mainstream music service, but one which is better able to reflect a local identity. An alternative would be to combine coverage of Plymouth and Exeter and/or Torbay rather than offering separate licences for these cities, while maintaining Cornwall as a discrete licence area.

**40.** Two possible licences for Swansea have been identified by the Radio Authority. One of these could be combined with a putative licence for Cardiff to provide coverage of the two largest population centres in Wales. However, utilisation of this particular frequency for coverage of Cardiff would be at the expense of a further service for Newport.

**41.** Combining the frequency which would deliver coverage of Southampton and Portsmouth with the one which would permit a small-scale service for Bournemouth would allow a second Solent 'regional' licence to be advertised, although this would offer different coverage to that provided by the existing such licence.

**Question 4:**

*Should we seek to aggregate any or all of the potential licence areas within the following four broad regions:*

- North-East England
- South-West England
- South Wales
- Solent

*What are the costs and benefits attached to adopting such a policy?*

**42.** The advertisement of all of the areas identified in this document (whether or not they are aggregated in certain cases) would effectively exhaust the supply of FM frequencies usable for further ILR services in the metropolitan areas of the UK, save for a very limited amount of possible future small-scale development. This would also be the case in most of the non-metropolitan areas around London, the West and East Midlands, East Anglia, North-West England and Yorkshire, the South and West of England, and the central belt of Scotland. Elsewhere, further development of smaller, or in some cases medium-scale, services would remain technically feasible.

**43.** In moving towards a potential timetable of future licence advertisements, we are interested in any views on the desired pace of future local radio development. We are very keen to minimise the hiatus in radio licensing, and intend to resume the advertisement of new licences as soon as practicable. We are minded to advertise one 'large' licence and one small-scale licence each month, on the basis that there are unlikely to be any applicants who wish to apply for both. However, we could advertise a larger number of licences but at intervals greater than one month. We welcome views on this matter, but are conscious that a significant acceleration in the pace of licence advertisements would have resource implications for applicants as well as for Ofcom.

**Question 5:**

*Should Ofcom adopt a policy of advertising two new licences of a different size each month, or would advertising a larger number of licences but at longer intervals be preferable? What impact would either option have for resource management among prospective applicants?*

**44.** Ofcom recognises that it is desirable to give as much prior notice as possible of the licences to be advertised in the first few months after advertising recommences. This is important if potential applicants are to have as much time as possible to prepare high quality proposals. Ofcom has not yet concluded its plans for the recommencement of advertising. However, recognising the points made above, we propose to publish, during this consultation, a timetable for licence advertisements during the first three months after advertising recommences. This will be prepared on the basis of the proposal above – one large and one small licence per month – but will be without prejudice to the results of this consultation, and is therefore subject to change.

## AM frequencies

**45.** This consultation focuses on new FM licensing. However, there are also AM frequencies available for use. One possible use for these is to support the development of new community radio services, and this will be discussed in the separate consultation document which deals with community radio. In addition, we plan to publish a further consultation document in the Spring which will seek views on how this spectrum might best be utilised.

# The licensing process

46. The following table compares our proposals for a new licensing process with the procedures previously employed by the Radio Authority.

Ofcom	Radio Authority
<ul style="list-style-type: none"><li>• Timetable of advertisements only</li><li>• Detailed guidance, including market analysis and weighting of statutory criteria, provided as part of each licence advertisement.</li><li>• Information required in an application tailored for each licence.</li><li>• Follow-up questioning by a single letter</li><li>• Details of scoring system published</li><li>• Electronic applications only required</li><li>• Implementation of Format from launch</li></ul>	<ul style="list-style-type: none"><li>• 'Working list' + timetable</li><li>• Generic notes of guidance</li><li>• Standard application forms</li><li>• Letter for each section of an application + telephone interview.</li><li>• Details of scoring system not published</li><li>• 20+ printed applications required</li><li>• Detailed 'promise of performance' for first six months of broadcasting.</li></ul>

## Licence advertisement

47. The concept of areas due for future advertisement being contained within a published 'working list' was employed throughout the Radio Authority's lifetime. This 'working list' was updated and added-to roughly annually. The list did not normally specify advertisement dates, but rather took the form of a sequence in which areas would be advertised. In recent years, the Radio Authority also published a rolling timetable of future advertisements on its website, but this initiative was considerably less visible to stakeholders than the 'working lists'. We think that it would help prospective applicants to plan ahead if Ofcom was to specify in advance when individual licences will be advertised. Therefore, we intend to maintain on our website a rolling timetable of planned advertisements for the year ahead, and do all that we can to meet the schedule. We do not propose to publish a 'working list'. We will be assisted in our aim to meet the published schedule by the fact that, in contrast to the position of the Radio Authority in recent years, there are unlikely to be any existing licences which will require competitive re-advertisement during the immediate period ahead, as all current licence holders are entitled, under the provisions of section 253 of the Communications Act, to apply for an extension of up to four years to their licence.

48. We propose to maintain the Radio Authority's practices of publishing notices of advertisement electronically only (i.e. on our website), rather than in local newspapers, and also of writing to relevant locally-elected representatives, inviting their views. We will also aim to inform all known prospective applicants for a licence that it is due to be advertised, and therefore will continue to welcome 'letters of intent' from such parties.

49. One of the most significant changes to past practice we are proposing, however, concerns the form and content of the licence advertisement itself. Applicants for new local licences advertised by the Radio Authority were provided with guidance in the form of a variety of documents designed to be applicable to all such licences, as well as a 'coverage brief' which provided technical

information specific to each individual licence. Applications were required to be submitted using a standard application form.

**50.** We propose not to produce generic guidance notes and application forms but, instead, to provide tailored information as part of each individual licence advertisement. In particular, we believe that, in the interests of greater transparency, considerably more information could be provided to prospective applicants than historically has been the case, particularly in respect of the way in which Ofcom intends to apply its statutory remit relative to particular types of licence. Any advice provided would need to make clear that Ofcom may nevertheless depart from its general policy in exceptional circumstances, and that ultimately each licence application is to be judged individually on its merits in accordance with the statutory criteria and Ofcom's duties. Nevertheless, we think there is merit in adopting a more open approach than has been the case previously.

**51.** In addition, we believe there is scope to vary the type of information requested in an application according to the size of the licence being advertised, and perhaps also to take account of whether an applicant is an existing commercial radio operator.

**Question 6:**

*What is your view regarding the proposal to provide information tailored around a specific licence area at the time of its advertisement, rather than generic guidance on the licensing process?*

**Question 7:**

*Would it be beneficial for Ofcom to vary the nature of information requested in an application according to the type of licence and/or applicant?*

Our proposal is that each licence advertisement will comprise the following:

- (a) a definition of the licensed area, and accompanying technical parameters;
- (b) a report on existing ILR provision and listening patterns in the area;
- (c) guidance as to how, and on what basis, applications will be assessed;
- (d) guidance in respect of what information is required in an application, how this will be related to the relevant statutory criteria, and the format in which this should be submitted;
- (e) the deadline for applications to be submitted, and the arrangements for delivering them to Ofcom;
- (f) the application fee payable, and;
- (g) guidance in respect of Ofcom's decision-making procedures.

The remainder of this document sets out our current thinking, and proposals, on each of the above aspects of the licensing process.

## Defining the area

**52.** The Broadcasting Act 1990 (section 104) requires Ofcom to define a licensed area (as distinct from the actual area which might ultimately be covered) when it advertises a licence. We believe that it would enable interested parties to make a more informed decision as to whether they will wish to apply for a particular licence if the likely scale of coverage is made available at the time the area is identified as being for future licence advertisement (i.e. added to the timetable), as well as subsequently at the time of advertisement. We therefore propose to provide full details of what geographical areas we expect to be covered, and not

to be covered, by any particular licence, as part of the announcement of its inclusion in our licensing timetable. In the period which elapses between a particular licence being added to the timetable and its full advertisement, we will be prepared to consider representations from those who might have alternative suggestions as to how an individual licensed area should be defined. However, it should be recognised that the scope for re-definition is likely to vary considerably between different areas, and in any case will become increasingly constrained in respect of most locations as the supply of available frequencies becomes exhausted.

53. The statutory provisions in respect of the advertisement of new local radio licences lead us to conclude that we cannot, and indeed should not, seek to specify the type of format we wish to be provided by any particular licence. However, we believe there would be merit in a notice of advertisement including factual information about the level of existing commercial radio provision and recorded listening patterns in an area. Such a policy should not be taken to imply that our mind might be closed to a particular format being proposed, but it will at the very least give applicants an indication of which sections of a local population are currently well-served, and not well-served, by existing commercial radio services.

**Question 8:**

*Would applicants find it helpful to be provided with factual information about existing listening patterns etc. in a new licence area?*

## Assessment of applications

54. We believe that applicants would benefit from more guidance than has hitherto been provided as to how the regulatory body intends to apply its statutory remit in respect of any given licence. For example, there is considerable evidence to suggest that the majority of small-scale radio stations are very marginal businesses. In order to be commercially viable, it seems clear to us that applicants for these types of station will be more than likely to choose to provide a mainstream, broad-based, format which is designed to attract as large an audience as possible. We therefore believe it is reasonable to make clear that, in considering applications for such licences, Ofcom is likely to pay relatively more attention to issues of viability, and less to the extent to which choice would be broadened. Conversely, considerations of 'localness' are likely to play a lesser part in the consideration of applications for large-scale licences than they are in respect of small-scale licences, whose essential rationale is the more localised identity that they can reflect.

55. Notwithstanding any guidance an individual licence advertisement may contain as to the factors which Ofcom is likely to deem of particular significance when reaching its decision, the assessment of applications will be conducted with regard to Ofcom's general duties under section 3 of the Communications Act 2003, and also the "special requirements" of section 105 of the Broadcasting Act 1990 as amended. These criteria will be set out in each notice of advertisement, and the information being requested in an application will be directly related to at least one of the criteria in order that applicants may understand the basis upon which the information is being requested.

56. Once the closing-date for a particular licence has passed, we will aim to announce, within two weeks, the date upon which an award decision is expected to be taken. This will of course vary depending upon the number of applications



submitted, but should not generally be later than three months after the closing-date.

57. It has been suggested that Ofcom should conduct face-to-face interviews with all applicants, in order to seek clarification and/or amplification of their proposals. However, it seems to us that this would be likely to be time-consuming, and contrary to our broad intention to streamline and simplify the licensing process. The Radio Authority normally conducted questioning on the history and composition of applicants by telephone, and sought clarification on all other aspects of an application by sending at least three separate letters to nominated contacts. To help facilitate consistency and speediness, we propose to include any questions of clarification and/or amplification in a single letter, the responses to which (and any further clarification provided) will be made available publicly on the same basis as the written application. We do not intend to conduct telephone interviews.

**Question 9:**

*Do you agree that a single letter is preferable to other means of seeking clarification and/or amplification of an applicant's proposals? Please provide a rationale for your preferred method of follow-up questioning.*

58. To assist our assessment of each applicant's proposals, we propose to use a simple scoring system. This will be derived exclusively from the statutory criteria against which applications must be judged, varied to take account of the type of licence being advertised, and will be used as a method of highlighting the relative strengths and weaknesses of each application. We intend to make the details of this system public but not the scores awarded to individual applications, as these will not represent the only basis upon which decisions will be made.

## **Submission of applications**

59. As indicated above, we propose that each individual notice of advertisement should include guidance on the information required in an application, with each question or set of questions tied directly to one or more of the statutory criteria to which we must have regard when deciding to whom to award a licence. This is similar to the approach undertaken by the Radio Authority in respect of applications for local digital multiplex licences, but a move away from the standard application form that applicants for new analogue licences have previously been required to complete and submit.

60. In considering how applicants might best respond to the questions being asked, we have been conscious of the fact that, over the past decade, a large number of assumptions have developed among licence applicants about what type or level of information would be most likely to lead to success. Therefore, it will be our intention to make as clear as possible to all applicants what type and level of information is required, and what is not required, in an application.

61. In particular, we intend to consider only the information that we have requested should be submitted, and so proposals which are clear, concise and simple in layout and style will be strongly encouraged, while over-elaborate applications which include videos and/or other supplementary promotional material will be discouraged. We may set an absolute limit on the length of any single application. Any such restriction would include further rules (such as a minimum type-size) that we consider appropriate to ensure that applications remain manageable.



**62.** As well as tying each question to at least one of the statutory criteria, we may also vary the information requested according to the type of licence being advertised, or to a particular type of applicant group (for example, it is more important for a first-time applicant to demonstrate that it has the knowledge and expertise necessary to operate a station than it is for a company with existing radio interests).

**63.** The following paragraphs set out our current thinking on the type of information that we believe is necessary in order for Ofcom to fulfill its specific statutory obligations in respect of the award of local radio licences.

#### **Section 105(a)**

**64.** In assessing applications against this criterion, we will of course be requesting evidence that there are sufficient and appropriate resources to meet this objective. However, we do not believe that there is a need for existing radio companies, particularly those which are publicly quoted, to provide the same level of detail in this respect as a new entrant. In addition, for example, we would not expect a commercial radio operator to propose that the board which would operate a new licence would include local non-executive directors, if such an approach is not employed at any of its existing stations, or unless it considers there to be a convincing rationale for doing so in the particular circumstances of the case.

#### **Sections 105(b) and (c)**

**65.** In seeking to satisfy the requirements of these provisions, we propose that applicants should be asked to write their own Format (i.e. the commitments that the applicant is willing to have included in its licence if successful) as part of their application. This would in effect represent a public commitment to provide a certain type of programme service, and we would not expect to participate in any post-award discussion that might lead to amendment of the proposals in the application. Such an approach might help to avoid the situation whereby applicants are tempted to put forward proposals that they are unwilling, or unable, to deliver in order to 'impress' the regulator. As a natural consequence of this, we propose that new licensees are issued with a Format from launch, rather than being given a more detailed Promise of Performance for their first six months on air before being converted to a Format.

#### **Section 105(d)**

**66.** As is noted earlier in this document, this criterion has been amended in the new legislation to permit Ofcom to have regard to the extent to which there is evidence of local demand, or support, for a proposed service, as opposed to only support as previously. In our view, evidence of local demand, as demonstrated by formal audience research or analysis, is a more meaningful and cogent measure than evidence of local support as demonstrated by letters or petitions. If applicants do submit evidence of local support, we will focus in our evaluation on its quality rather than quantity. We will strongly discourage applicants from submitting volumes of repetitious letters and petitions.

**67.** There appears to be a broad consensus that a period of three months between a licence advertisement and the closing-date for submission of applications is sufficient to enable an applicant to assemble credible proposals from a standing start (in any case, most applicants will have begun preparing

their proposals well before a licence is formally advertised). We therefore propose to normally set the closing-date for submission of applications for a particular licence as close of business 12 weeks after the date of advertisement.

68. In keeping with our general objective of streamlining the licensing process and reducing applicants' potential costs, we do not feel it is necessary that applicants be required to submit multiple printed copies of their proposals. We therefore propose that one electronic copy of an application only will be required. All applications will then be published on the Ofcom website, for public scrutiny (elements of an application which may be submitted in confidence will be indicated as part of an advertisement).

69. In respect of application and licence fees, Ofcom intends to consult on a new Statement of Charging Principles that it will apply from 1 April 2004 in the near future. In the event that an applicant chooses to submit more than one application for an advertised licence, each application would need to be accompanied by the relevant fee.

**Question 10:**

*Are you content with Ofcom's proposals regarding the submission of applications?*

## Decision-making procedures

70. Applications will be assessed primarily by members of the Radio Planning & Licensing team, which is part of Ofcom's Competition & Markets group, although colleagues with appropriate knowledge from other parts of the organisation, in particular, from Content & Standards and the Nations & Regions, will also be involved. The Radio Planning & Licensing team will be responsible for co-ordinating the input from other colleagues, and for conducting any follow-up questioning of applicants.

71. For each advertised licence, the Radio Planning & Licensing team will prepare and circulate a brief analysis of each application including the Format proposed, together with a short briefing paper highlighting the issues of relevance under each of the statutory criteria. These documents, together with the applications themselves, will be discussed by a standing committee which will be co-chaired by one part-time and one executive member of the main Ofcom Board. This committee will comprise a further two part-time members, at least one of whom will be a member of the Content Board, and four executive colleagues from the relevant groups within Ofcom (two from Competition & Markets and one each from Content & Standards and Strategy & Market Developments). Up to two additional members will be added to the committee when appropriate to provide particular expertise, for example, where there are important issues in the Nations and Regions. This committee will have full delegated authority from the main Ofcom Board. The weight given to each criterion will have been signalled as part of the licence advertisement, and will vary according to the size of the licence area and other factors.

72. We have looked at a range of models from other countries regarding decision-making procedures, and in particular have considered whether to undertake a short-listing process such as that implemented by, for example, the Broadcasting Commission of Ireland (see box below). We believe, however, that such an approach would be likely to result in a longer overall process from advertisement to award, and would be unlikely to deliver any cost savings to applicants.

**Question 11:**

*Do you agree that a short-listing process such as that employed in Ireland could potentially slow down licensing? How might the adoption of such a procedure improve the overall process?*

**The radio licensing process in Ireland**

The decision-making process is divided into three phases:

**Phase 1: Initial consideration and short-listing**

- The Commission Members consider each application under the relevant statutory criteria and will individually select for short-listing one or a number of applications. Those applications that receive most support are short-listed for public hearings, the others are excluded. Alternatively, the BCI may at this point decide to award the licence to the strongest applicant on the basis of the written application only.

**Phase 2: Public hearings**

- All short-listed applicants attend a public hearing, the purpose of which is to allow applicants an opportunity to present their case in a public forum and to allow the Commission to clarify certain issues in an applicant's submission.

**Phase 3: Final decision-making**

- Following the public hearings, BCI Members consider the short-listed applications on the basis of the written document and the additional information provided at the hearing. Following discussion, the licence is awarded unless none of the applications is of a sufficient standard.

The process from submission of applications to decision typically takes 5-7 months, compared to the 3 months we are proposing for Ofcom.

**73.** We propose to publish a short statement after each licence award which sets out the key determining factors under each of the statutory criteria which led to our decision. We would be interested to hear views as to whether such a statement should include reference to unsuccessful applications as well as successful ones.

**Question 12:**

*Would you prefer the statements made after licence awards to include reference to unsuccessful applicants as well as to the winner? What would be the benefits/disbenefits of your preferred approach?*

**74.** As part of our strategic review of commercial radio, we asked the applicants for two of the licences recently advertised by the Radio Authority what they thought about the licensing process, and how it might be improved. The following table demonstrates how we believe our proposals address the findings from this research:

## Research finding

Provide more information about what is expected

Reduce the size of applications

Reduce application costs

Increase speed of process

Ensure the new licensees keep their promises

## Proposal

Notice of advertisement to include market analysis, and guidance on weighting of statutory criteria

Set limit on length  
Ask fewer questions, and ensure that they are all tied directly to at least one of the statutory criteria

Electronic applications only

One letter of follow-up questions, if necessary  
No telephone interviews  
No two-stage process

'Write your own Format'

### **Question 13:**

*Are you confident that these proposals for a new licensing process can deliver a regulatory system which is effective, consistent and timely?*

### **Question 14:**

*Can you suggest any changes to the proposals which would improve on current practices?*

### **Question 15:**

*Do you believe there would be additional costs, or cost savings, for the radio industry as a result of the proposed changes? Please specify. If you anticipate higher costs in any area, do the benefits of the proposed new system justify these?*

## Next steps

75. The following represents the action we propose to take during and after this consultation:

Action	When
<ul style="list-style-type: none"><li>• Publish a timetable of licence advertisements for the first three months after licensing recommences.</li></ul>	<ul style="list-style-type: none"><li>• During this consultation.</li></ul>
<ul style="list-style-type: none"><li>• Publish a statement of our licensing strategy.</li></ul>	<ul style="list-style-type: none"><li>• By the end of April 2004.</li></ul>
<ul style="list-style-type: none"><li>• Recommence licence advertisements</li></ul>	<ul style="list-style-type: none"><li>• May/June 2004.</li></ul>

## Annex 1

# Ofcom's consultation principles

**There are seven principles which we will follow for each written consultation.**

### **Before the consultation**

**1.** Where possible, we will hold informal talks with people and organisations before announcing a big consultation to find out whether we are thinking in the right direction. If we do not have enough time to do this, we will hold an open meeting to explain our proposals shortly after announcing the consultation.

In this case, we held informal talks with numerous representatives from the radio industry.

### **During the consultation**

**2.** We will be clear about who we are consulting, why, on what questions and for how long.

In this case, we are consulting the commercial radio industry, citizen-consumers, and any other interested parties.

**3.** We will make the consultation document as short and as simple as possible, with a summary of no more than two pages. We will try to make it as easy as possible for respondents to give us a written response. If the consultation is complicated, we may provide a shortened version for smaller organisations or individuals who would otherwise not be able to spare the time to share their views.

A two-page summary of the key points in this consultation is shown at the front of this document.

**4.** We will normally allow 10 weeks for responses.

In this case, the closing-date for responses is **11 March 2004** (i.e. a consultation period of five weeks). This shorter period reflects our intention to resume commercial radio licensing as soon as possible.

**5.** There will be a person within Ofcom who will be in charge of making sure we follow our own guidelines and reach out to the largest number of people and organisations interested in the outcome of our decisions. This individual (who we call the consultation champion) will also be the main person to contact with views on the way we run our consultations.

Ofcom's consultation champion is Philip Rutnam, Partner, Competition and Strategic Resources. His contact details are 020 7981 3585, and [philip.rutnam@ofcom.org.uk](mailto:philip.rutnam@ofcom.org.uk)

**6.** If we are not able to follow one of these principles, we will explain why. This may be because a particular issue is urgent. If we need to reduce the amount of time we have set aside for a consultation, we will let those concerned know beforehand that this is a 'red flag consultation' which needs their urgent attention.

Other than under point 4 above, the remaining principles have been followed.

### **After the consultation**

7. We will look at each response carefully and with an open mind. We will give reasons for our decisions and will give an account of how the views of those concerned helped to shape those decisions.

We think it is important for everyone interested in an issue to see the views of others during a consultation. We would usually publish on our website all of the responses we have received.

We would prefer for people and organisations to give us views which they would be happy to see in public. However, if those who have responded to a consultation tell us that some or all of their views must stay confidential, we will respect this.

We will also:

- list these seven principles in every consultation document that we publish;
- run a consultation helpdesk – to help organisations such as small businesses and consumer and community groups make their views heard in response to our consultations; for more details contact Philip Rutnam on 020 7981 3585, and;
- keep a table on our website at [www.ofcom.org.uk](http://www.ofcom.org.uk) listing all current consultations, those recently closed and (as far as possible) those we are planning in the near future. The table will include a brief summary of each document.

## Annex 2

# Legislative provisions for radio licensing

## Section 3 of the Communications Act 2003

### General duties in carrying out functions

#### 3 General duties of OFCOM

- (1)** It shall be the principal duty of OFCOM, in carrying out their functions-
- (a)** to further the interests of citizens in relation to communications matters; and
  - (b)** to further the interests of consumers in relevant markets, where appropriate by promoting competition.
- (2)** The things which, by virtue of subsection (1), OFCOM are required to secure in the carrying out of their functions include, in particular, each of the following-
- (a)** the optimal use for wireless telegraphy of the electro-magnetic spectrum;
  - (b)** the availability throughout the United Kingdom of a wide range of electronic communications services;
  - (c)** the availability throughout the United Kingdom of a wide range of television and radio services which (taken as a whole) are both of high quality and calculated to appeal to a variety of tastes and interests;
  - (d)** the maintenance of a sufficient plurality of providers of different television and radio services;
  - (e)** the application, in the case of all television and radio services, of standards that provide adequate protection to members of the public from the inclusion of offensive and harmful material in such services;
- (3)** In performing their duties under subsection (1), OFCOM must have regard, in all cases, to-
- (a)** the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed; and
  - (b)** any other principles appearing to OFCOM to represent the best regulatory practice.
- (4)** OFCOM must also have regard, in performing those duties, to such of the following as appear to them to be relevant in the circumstances-
- (a)** the desirability of promoting the fulfilment of the purposes of public service television broadcasting in the United Kingdom;



- (b)** the desirability of promoting competition in relevant markets;
- (c)** the desirability of promoting and facilitating the development and use of effective forms of self-regulation
- (d)** the desirability of encouraging investment and innovation in relevant markets;
- (e)** the desirability of encouraging the availability and use of high speed data transfer services throughout the United Kingdom;
- (f)** the different needs and interests, so far as the use of the electro-magnetic spectrum for wireless telegraphy is concerned, of all persons who may wish to make use of it;
- (g)** the need to secure that the application in the case of television and radio services of standards falling within subsection (2)(e) and (f) is in the manner that best guarantees an appropriate level of freedom of expression;
- (h)** the vulnerability of children and of others whose circumstances appear to OFCOM to put them in need of special protection;
- (i)** the needs of persons with disabilities, of the elderly and of those on low incomes;
- (j)** the desirability of preventing crime and disorder;
- (k)** the opinions of consumers in relevant markets and of members of the public generally;
- (l)** the different interests of persons in the different parts of the United Kingdom, of the different ethnic communities within the United Kingdom and of persons living in rural and in urban areas;
- (m)** the extent to which, in the circumstances of the case, the furthering or securing of the matters mentioned in subsections (1) and (2) is reasonably practicable.

**(5)** In performing their duty under this section of furthering the interests of consumers, OFCOM must have regard, in particular, to the interests of those consumers in respect of choice, price, quality of service and value for money.

**(6)** Where it appears to OFCOM, in relation to the carrying out of any of the functions mentioned in section 4(1), that any of their general duties conflict with one or more of their duties under sections 4, 24 and 25, priority must be given to their duties under those sections.

**(7)** Where it appears to OFCOM that any of their general duties conflict with each other in a particular case, they must secure that the conflict is resolved in the manner they think best in the circumstances.

**(8)** Where OFCOM resolve a conflict in an important case between their duties under paragraphs (a) and (b) of subsection (1), they must publish a statement setting out-

- (a) the nature of the conflict;
- (b) the manner in which they have decided to resolve it; and
- (c) the reasons for their decision to resolve it in that manner.

**(9)** Where OFCOM are required to publish a statement under subsection (8), they must-

- (a) publish it as soon as possible after making their decision but not while they would (apart from a statutory requirement to publish) be subject to an obligation not to publish a matter that needs to be included in the statement; and
- (b) so publish it in such manner as they consider appropriate for bringing it to the attention of the persons who, in OFCOM's opinion, are likely to be affected by the matters to which the decision relates.

**(10)** Every report under paragraph 12 of the Schedule to the Office of Communications Act 2002 (c. 11) (OFCOM's annual report) for a financial year must contain a summary of the manner in which, in that year, OFCOM resolved conflicts arising in important cases between their general duties.

**(11)** A case is an important case for the purposes of subsection (8) or (10) only if-

- (a) it involved one or more of the matters mentioned in subsection (12); or
- (b) it otherwise appears to OFCOM to have been of unusual importance.

**(12)** Those matters are-

- (a) a major change in the activities carried on by OFCOM;
- (b) matters likely to have a significant impact on persons carrying on businesses in any of the relevant markets; or
- (c) matters likely to have a significant impact on the general public in the United Kingdom or in a part of the United Kingdom.

**(13)** This section is subject to sections 370(11) and 371(11) of this Act and to section 119A(4) of the Enterprise Act 2002 (c. 40) (which applies to functions conferred on OFCOM by Chapter 2 of Part 5 of this Act).

**(14)** In this section-

"citizens" means all members of the public in the United Kingdom;

"communications matters" means the matters in relation to which OFCOM have functions;

"general duties", in relation to OFCOM, means-

- (a) their duties under subsections (1) to (5); and
- (b) the duty which, under section 107(5), is to rank equally for the purposes of subsections (6) and (7) with their duties under this section;

"relevant markets" means markets for any of the services, facilities, apparatus or directories in relation to which OFCOM have functions.

## **Section 85(2) of the Broadcasting Act 1990 as amended**

### **Licensing functions of Ofcom.**

#### **85.**

**(1)** Subject to subsection (2), OFCOM may, in accordance with the following provisions of this Part, grant licences to provide relevant independent radio services.

**(2)** OFCOM shall do all that they can to secure the provision within the United Kingdom of—

- (a)** a diversity of national services each catering for tastes and interests different from those catered for by the others and of which—
  - (i)** one is a service the greater part of which consists in the broadcasting of spoken material, and
  - (ii)** another is a service which consists, wholly or mainly, in the broadcasting of music which, in the opinion of the Authority, is not pop music; and
- (b)** a range and diversity of local services.

## **Sections 104 and 105 of the Broadcasting Act 1990 as amended**

### **Applications for other licences.**

#### **104.**

**(1)** Where OFCOM propose to grant a licence to provide a local service, they shall publish, in such manner as they consider appropriate, a notice—

- (a)** stating that they propose to grant such a licence;
- (b)** specifying the area or locality in the United Kingdom for which the service is to be provided;
- (c)** inviting applications for the licence and specifying the closing date for applications; and
- (d)** stating the fee payable on any application made in pursuance of the notice.

**(2)** Any application made in pursuance of a notice under subsection (1) must be in writing and accompanied by—

- (a)** the fee specified in the notice under paragraph (d) of that subsection;
- (b)** the applicant's proposals for providing a service that would—
  - (i)** cater for the tastes and interests of persons living in the area or locality for which it would be provided or for any particular tastes and interests of such persons, and

(ii) broaden the range of programmes available by way of local services to persons living in that area or locality;

(c) such information as OFCOM may reasonably require—

(i) as to the applicant's present financial position and his projected financial position during the period for which the licence would be in force, and

(ii) as to the arrangements which the applicant proposes to make for, and in connection with, the transmission of his proposed service; and

(d) such other information as OFCOM may reasonably require for the purpose of considering the application.

(3) At any time after receiving such an application and before determining it OFCOM may require the applicant to furnish additional information under subsection (2)(b), (c) or (d).

(4) OFCOM shall, at the request of any person and on the payment by him of such sum (if any) as OFCOM may reasonably require, make available for inspection by that person any information furnished under subsection (2)(b) by the applicants for a local licence.

(5) Where OFCOM propose, in the case of any local licence which is due to expire (otherwise than by virtue of section 110), to grant a further licence to provide the service in question, they shall, in accordance with subsection (1), publish a notice under that subsection relating to the proposed grant of the further licence to provide that service, unless it appears to them that to do so would not serve to broaden the range of programmes available by way of local services to persons living in the area or locality for which that service has been provided.

(6) An application for a licence to provide a restricted service shall be made in such manner as OFCOM may determine, and shall be accompanied by such fee (if any) as OFCOM may determine.

(7) In this section and sections 105 and 106 "programme" does not include an advertisement.

#### **Special requirements relating to grant of local licences.**

**105.** Where OFCOM have published a notice under section 104(1), they shall, in determining whether, or to whom, to grant the local licence in question, have regard to the following matters, namely—

(a) the ability of each of the applicants for the licence to maintain, throughout the period for which the licence would be in force, the service which he proposes to provide;

(b) the extent to which any such proposed service would cater for the tastes and interests of persons living in the area or locality for which the service would be provided, and, where it is proposed to cater for any particular tastes and interests of such persons, the extent to which the service would cater for those tastes and interests;

(c) the extent to which any such proposed service would broaden the range of programmes available by way of local services to persons living in the area or locality for which it would be provided, and, in particular, the extent to which the service would cater for tastes and interests different from those already catered for by local services provided for that area or locality; and

(d) the extent to which there is evidence that, amongst persons living in that area or locality, there is a demand for, or support for, the provision of the proposed service.

## Annex 3

# List of questions

**Question 1:**

*Do you agree with our broad objectives for the radio sector?*

**Question 2:**

*Do you agree with our proposed policy for allocating FM spectrum?*

**Question 3:**

*Do you consider that, where possible, advertising larger or smaller licences best serves the interests of citizen-consumers?*

**Question 4:**

*Should we seek to aggregate any or all of the potential licence areas within the following four broad regions:*

*North-East England*

*South-West England*

*South Wales*

*Solent*

*What are the costs and benefits attached to adopting such a policy?*

**Question 5:**

*Should Ofcom adopt a policy of advertising two new licences of a different size each month, or would advertising a larger number of licences but at longer intervals be preferable? What impact would either option have for resource management among prospective applicants?*

**Question 6:**

*What is your view regarding the proposal to provide information tailored around a specific licence area at the time of its advertisement, rather than generic guidance on the licensing process?*

**Question 7:**

*Would it be beneficial for Ofcom to vary the nature of information requested in an application according to the type of licence and/or applicant?*

**Question 8:**

*Would applicants find it helpful to be provided with factual information about existing listening patterns etc. in a new licence area?*

**Question 9:**

*Do you agree that a single letter is preferable to other means of seeking clarification and/or amplification of an applicant's proposals? Please provide a rationale for your preferred method of follow-up questioning.*

**Question 10:**

*Are you content with Ofcom's proposals regarding the submission of applications?*

**Question 11:**

*Do you agree that a short-listing process such as that employed in Ireland could potentially slow down licensing? How might the adoption of such a procedure improve the overall process?*

**Question 12:**

*Would you prefer the statements made after licence awards to include reference to unsuccessful applicants as well as to the winner? What would be the benefits/disbenefits of your preferred approach?*

**Question 13:**

*Are you confident that these proposals for a new licensing process can deliver a regulatory system which is effective, consistent and timely?*

**Question 14:**

*Can you suggest any changes to the proposals which would improve on current practices?*

**Question 15:**

*Do you believe there would be additional costs, or cost savings, for the radio industry as a result of the proposed changes? Please specify. If you anticipate higher costs in any area, do the benefits of the proposed new system justify these?*