

## **CONSULTATION LETTER SENT TO ALL HOLDERS OF DIGITAL ADDITIONAL SERVICE LICENCES ON 19 SEPTEMBER 2003**

Copies of the 'marked-up' version of the proposed standard form licence referred to in this letter are available by request. Please contact Gwen Morgan on 020 7887 4384.

### **A. Consultation on Amendments Proposed to be made to your Digital Additional Service Licence**

1. As a result of the entry into force of the Communications Act 2003 (the "Act"), including Paragraph 30 of Schedule 18 to the Act, Ofcom intends to vary your licence by means of a notice of variation. In particular, it is proposed that the notice of variation will make amendments to the front page of your licence and replace the schedule to your licence with a new schedule of conditions (the "Schedule"). The proposed amendments reflect changes to the regulatory regime brought about by the Act\* and, so far as is possible within the provisions of the regulatory regime, attempt to ensure consistency across all classes of Ofcom licences, both for television and radio services. Overall, the amendments will result in your licence to all intents and purposes being identical to the standard form digital additional sound service licence (the "standard form licence") which Ofcom will issue to all new digital additional sound service licensees. The notice of variation, which will be issued following completion of the consultation process, will come into effect on the date of commencement of the relevant statutory provisions (expected to be 29 December 2003), from which date you must comply with the terms and conditions of your licence as amended by the notice of variation.
2. Under Condition 9 of Part 2 of the schedule to your licence, and in accordance with Section 42 (3) of the Broadcasting Act 1996 (the "1996 Act"), your licence cannot be varied unless you have been given a reasonable opportunity to make representations concerning the proposed variations. You will therefore find enclosed with this letter a copy of the proposed standard form licence, both in 'clean' form and in 'marked-up' form showing changes from the current standard form digital additional sound service licence. Please submit any representations you may have on the amendments proposed to be made to your licence to Peter Bourton at Ofcom by 27 October 2003.
3. This consultation process is concurrently taking place with all current digital additional sound service licensees. We will consider all the representations received from these licensees by 27 October 2003 prior to finalising the standard form licence.
4. You will find below a description of some of the amendments that Ofcom proposes to make to your licence by the notice of variation (as described above at point 1, the Schedule to the notice of variation will be identical to the Schedule to the standard form licence). Please note that this description is only illustrative and is not exhaustive: it is only an indication of certain amendments which may affect your current rights and obligations. The fact that a provision has been crossed out in the 'marked up' form of the proposed standard form licence does not necessarily mean

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\* A copy of the Act can be downloaded from [www.legislation.hmso.gov.uk](http://www.legislation.hmso.gov.uk) or purchased from The Stationery Office Ltd (TSO).

that it has been omitted, as it may be found elsewhere in the proposed standard form licence. Furthermore, the fact that a provision has been deleted does not necessarily mean that it is no longer enforceable. It may still be enforceable under another licence condition or by other means such as a code of practice. It is your responsibility to read the proposed standard form licence carefully, and take appropriate legal advice, if necessary, to determine how your licence as amended by the notice of variation would affect your business.

5. When making representations about the proposed amendments, please bear in mind that Ofcom is obliged by the Act to make certain amendments to your licence. Representations are therefore sought on areas where Ofcom can exercise its discretion in its interpretation of the statutory provisions and in the drafting which is used to incorporate those provisions in the standard form licence.

## **B. General and/or Minor Amendments to your Licence**

6. Ofcom proposes to make some general and/or minor amendments to your licence. For example, as a result of the entry into force of the relevant provisions of the Act, references to the Radio Authority and the Broadcasting Standards Commission will be replaced by references to Ofcom. To ensure consistency with all classes of licences granted by Ofcom, the order and headings of some of the conditions in your licence will be changed and some minor variations will be made to the text of some of the conditions. The service which you provide under your licence, as detailed in the Annex of your licence, will not change.

## **C. Main Amendments to your Licence**

### Electronic communications networks and services

7. It is proposed that your licence be amended by the insertion of references to compliance with the requirements imposed by or under Chapter 1 of Part 2 of the Communications Act 2003 (see paragraph 3 on the front page of, and Condition 28 (2) (e) of the Schedule to, the proposed standard form licence).

### Deregulation and Contracting Out Act 1994

8. The Act (Section 1 (7)) allows the functions conferred on Ofcom to be contracted out under the Deregulation and Contracting Out Act 1994 (the “DCO Act”). Your licence will be amended to include a reference to this in Condition 1 (6), so that in the event that an Order is made under the DCO Act authorising a person to exercise any functions of Ofcom, relevant references in your licence to Ofcom will include a reference to that person.

### Fees

9. It is proposed that the wording of the condition in relation to fees (see Condition 3 of the Schedule to the proposed standard form licence) be amended to facilitate Ofcom's use of its discretion to alter present arrangements.

### V.A.T.

10. It is proposed that a new condition in relation to V.A.T. be included in your licence (see Condition 4 of the Schedule to the proposed standard form licence). You should note that V.A.T. is not currently chargeable on licence fees and there is no current intention for it to become chargeable on licence fees.

#### Compliance with certain standards and requirements

11. As a result of the entry into force of the relevant provisions of the Act, it is proposed that new conditions in relation to general standards and requirements and advertising and sponsorship standards and requirements (see Conditions 5 and 6 of the Schedule to the proposed standard form licence) be included in your licence. Under these proposed conditions you would therefore need to comply with a number of general standards and specific advertising and sponsorship standards and observe the provisions of the Standards Code (as defined in the proposed standard form licence). In particular, you should note Condition 6 (3) of the Schedule to the proposed standard form licence which describes what is considered 'political' in the context of advertising and sponsorship requirements. You should also note that there are specific licence conditions which refer to the requirement to maintain a proper separation between advertising and programming, and compliance with the ICSTIS code on premium rate telephone services. There is also a provision requiring compliance with Ofcom's rules on alcohol advertising.
12. As a result of the entry into force of the relevant provisions of the Act, it is proposed that a new condition in relation to the retention and production of recordings be included in your licence (see Condition 7 of the Schedule to the proposed standard form licence).

#### Provision of information to Ofcom

13. In addition to your current information obligations, it is proposed that you be required to provide information for Ofcom to determine whether you are a disqualified person by virtue of any of the provisions in Section 143 (5) of the 1996 Act and/or Schedule 2 to the Broadcasting Act 1990 (the "1990 Act") or whether in holding your licence you contravene requirements imposed by or under Schedule 14 to the Act. You will also be required to inform Ofcom if you, or your parent company, suffers an insolvency-type event or if you, or any individual having control over you (as defined in that condition), is sentenced to a term of imprisonment on conviction of a criminal offence. You will also be obliged to inform Ofcom if judgment is awarded against you in any court proceedings brought against you in respect of the inclusion in the licensed service of a number of specified matters (see Condition 8 of the Schedule to the proposed standard form licence).
14. It is proposed that Condition 4 (3) of Part 2 of the schedule to your licence in relation to provision of information relating to agreements with radio multiplex licensees be amended to also relate to any agreements with providers of general multiplex services (see Condition 9 of the Schedule to the proposed standard form licence).
15. It is proposed that a new condition in relation to provision of information on change of control be included in your licence (see Condition 10 of the Schedule to the proposed standard form licence).

### Fair and effective competition

16. As a result of the entry into force of the relevant provisions of the Act, it is proposed that Condition 5 of Part 2 of the schedule to your licence (Fair and effective competition) will be slightly amended in order to ensure consistency of wording across all classes of Ofcom licences (see Condition 11 of the Schedule to the proposed standard form licence).

### Compliance

17. As a result of the entry into force of the relevant provisions of the Act, it is proposed that Condition 6 (Restrictions on the holders of digital additional services licences) of Part 2 of the schedule to your licence be amended to include obligations in relation to Schedule 14 to the Act (see Condition 12 of the Schedule to the proposed standard form licence).
18. It is proposed that Condition 10 (Obligation to comply with directions issued by the Authority) of Part 2 of the schedule to your licence be replaced with a new condition in relation to compliance (see Condition 14 of the Schedule to the proposed standard form licence).
19. As a result of the entry into force of the relevant provisions of the Act, it is proposed that a new condition in relation to Government directions and representations be included in your licence (see Condition 15 of the Schedule to the proposed standard form licence).

### Powers of inspection

20. It is proposed that Condition 4 (2) of Part 2 of the schedule to your licence be replaced with a new condition in relation to Ofcom's powers of inspection (see Condition 16 of the Schedule to the proposed standard form licence).

### Standards complaints

21. As a result of the entry into force of the relevant provisions of the Act, it is proposed that a new condition in relation to standards complaints be included in your licence (see Condition 17 of the Schedule to the proposed standard form licence). Although not yet finalised, work is currently underway to establish co-regulatory mechanisms for handling advertising standards complaints. This may involve an Order being made under the DCO Act (see point 8 above).

### Fairness complaints

22. As a result of the entry into force of the relevant provisions of the Act, it is proposed that a new condition in relation to fairness complaints be included in your licence including, for example, an obligation to comply with certain information requests from Ofcom and to observe the Fairness Code (as defined in the standard form licence) (see Condition 18 of the Schedule to the proposed standard form licence).

### Publicising Ofcom's functions

23. As a result of the entry into force of the relevant provisions of the Act, it is proposed that a new condition in relation to publicising Ofcom's functions be included in your licence (see Condition 19 of the Schedule to the proposed standard form licence).

#### Equal opportunities and training

24. As a result of the entry into force of the relevant provisions of the Act, it is proposed that a new condition in relation to equal opportunities and training be included in your licence (see Condition 23 of the Schedule to the proposed standard form licence). For example, companies which, individually, have over twenty employees or are part of a group having in aggregate over twenty employees, will be expected to make arrangements to promote, in relation to employment with the licence holder, the equalisation of opportunities for disabled persons.

#### Interest on late payments

25. It is proposed that Condition 3 of Part 2 of the schedule to your licence be replaced with a new condition in relation to interest on late payments (see Condition 25 of the Schedule to the proposed standard form licence).

#### Notice of non-compliance

26. It is proposed that Condition 12 (6) of Part 4 of the schedule to your licence in relation to Ofcom notices of non-compliance be amended (see Condition 26 of the Schedule to the proposed standard form licence).

#### Sanction for breach of licence conditions

27. It is proposed that amendments be made to Condition 12 (Sanctions for breaches of Condition) of Part 4 of the schedule to your licence (see Condition 27 of the Schedule to the proposed standard form licence). For example, the maximum amount of the financial penalty that can be imposed by Ofcom for breach of a licence condition will be increased to the greater of £250,000 (note that the Secretary of State will still be able to specify another sum by order) and 5 per cent. of the aggregate amount of the shares of multiplex revenue attributable to you in relation to national radio multiplex services and general multiplex services ("relevant multiplex services") in respect of relevant accounting periods (see Condition 28 (2) (b) of the Schedule to the proposed standard form licence). Where you have not provided a digital additional sound service for broadcasting by means of a relevant multiplex service the maximum penalty will be increased to £250,000. However, please note that breaches committed before the coming into force of the new financial penalty provisions in the Act will attract fines at the current statutory level.

#### Revocation

28. It is proposed that amendments also be made to Condition 13 (Revocation) of Part 4 of the schedule to your licence (see Condition 28 of the Schedule to the proposed standard form licence). In particular, you should note that Ofcom may revoke your licence if the holding of your licence contravenes a requirement imposed by or under Schedule 14 to the Act.

Yours faithfully,

**Kip Meek**  
**Senior Partner, Content and Competition**