

CONSULTATION LETTER SENT TO ALL HOLDERS OF LOCAL RADIO MULTIPLEX 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 Local Radio Multiplex 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 proposed amendments will result in your licence to all intents and purposes being identical to the standard form local radio multiplex licence (the "standard form licence") which Ofcom will issue to all new local radio multiplex 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 16 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 local radio multiplex 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 local radio multiplex 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 Ofcom proposed 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

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

'marked up' form of the proposed standard form licence does not necessarily mean 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 will affect your business.

5. When making representations about the proposed amendments, please note that Ofcom is obliged by the Act to make certain amendments to your licence. Representations are therefore sought on areas where Ofcom can exercise some 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 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 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. In this respect, although the definition of "licensed area" will be amended to reflect the relevant statutory wording more closely, your obligation as to geographic coverage will not change (see Condition 1 (1) of the Schedule to the proposed standard form licence).

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 23 (3) (g) 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.

Availability of capacity on the Frequencies

11. As a result of the entry into force of the relevant provisions of the Act, Condition 6 (Availability of capacity on the Frequency Block) of Part 2 of the schedule to your licence will be amended (see Condition 6 of the Schedule to the proposed standard form licence). It is proposed that the standard form licence will use the term 'Frequency' where your licence currently refers to 'Frequency Block'. This change is proposed purely for the purposes of consistency of drafting across multiplex licences, and has no significance in relation to the service you provide under your licence.

Provision of information to Ofcom

12. 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 would 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 would 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 7 of the Schedule to the proposed standard form licence).
13. A new condition in relation to provision of information on change of control will be included in your licence (see Condition 8 of the Schedule to the proposed standard form licence).

Renewal of your licence

14. As a result of the entry into force of the relevant provisions of the Act (see Section 261 of the Act), Condition 8 (1) of Part 2 of the schedule to your licence will be amended (see Condition 10 (1) of the Schedule to the proposed standard form licence). Note that any local radio multiplex licences granted after 1 October 2002 will only be eligible for an eight-year renewal period. Local radio multiplex licences granted before 1 October 2002 will continue to be eligible for a twelve-year renewal period.

Fair and effective competition

15. As a result of the entry into force of the relevant provisions of the Act, it is proposed that Condition 9 of Part 2 of the schedule to your licence (Fair and effective

competition) 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

16. As a result of the entry into force of the relevant provisions of the Act, it is proposed that Condition 10 (Restrictions on the holders of multiplex licences) of Part 2 of the schedule to your licence be amended, for example, to include obligations in relation to Schedule 14 to the Act (see Condition 12 of the Schedule to the proposed standard form licence).
17. As a result of the entry into force of the relevant provisions of the Act, it is proposed that Condition 12 (Obligation to comply with directions issued by the Authority) of Part 2 of the schedule to your licence be amended to refer in addition to Ofcom's duties under the Act (see Condition 14 of the Schedule to the proposed standard form licence).

Powers of inspection

18. It is proposed that Condition 7 (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 9 of the Schedule to the proposed standard form licence).

Power of Ofcom to vary Licence Conditions

19. As a result of the entry into force of the relevant provisions of the Act, it is proposed that Condition 16 (Power of the Authority to vary Licence Conditions) of Part 2 of the schedule to your licence be amended (see Condition 17 of the Schedule to the standard form licence). Note that although it is proposed to delete the specific powers to vary details of stations currently in Condition 2 (2) (Provision of Multiplex Service by the Licensee) of Part 2 of the schedule to your licence, Ofcom would retain the ability to vary details of stations under its general powers in Condition 17 of the Schedule to the standard form licence.

Equal opportunities and training

20. 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 19 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

21. It is proposed that Condition 4 of Part 2 of the schedule to your licence be replaced with a new condition in relation to interest on late payments (see Condition 21 of the Schedule to the proposed standard form licence).

Sanction for breach of licence conditions

22. It is proposed that amendments be made to Condition 19 (Sanctions for breaches of Condition) of Part 4 of the schedule to your licence (see Condition 22 of the Schedule to the proposed standard form licence). For example, the amount of the financial penalty that can be imposed by Ofcom for breach of a licence condition will be increased from £50,000 to £250,000 (note that the Secretary of State will still be able to specify another sum by order; see Condition 22 (1) (b) of the Schedule to the proposed standard form licence). 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

23. It is proposed that amendments be made to Condition 20 (Revocation) of Part 4 of the schedule to your licence (see Condition 23 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. In addition, the amount of the financial penalty that can be imposed by Ofcom for the revocation of your licence in certain circumstances will be increased from £50,000 to £250,000 (note that the Secretary of State will still be able to specify another sum by order; see Condition 23 (5) of the schedule to the proposed standard form licence).

Protection levels

24. Part III of the Annex to your licence currently provides that the digital sound programme services set out in Part I of the Annex shall be transmitted at protection level 3 or better. In order to allow for programme services to be transmitted at the protection levels which are agreed with Ofcom (typically based on the licence application), it is proposed to amend this so that the digital sound programme services set out in Part I of the Annex shall be transmitted at the protection levels set out in Part IV of the Annex, or better.
25. As Condition 16 (1) (b) of your licence provides that the conditions in Part III of the Annex can only be varied with your consent, if you do wish this amendment to be made to your licence you need to send your express written consent to this variation to Peter Bourton at Ofcom by 27 October 2003.

Yours faithfully,

Kip Meek
Senior Partner, Content and Competition