

Response to Ofcom consultation on local commercial analogue radio licence durations

Introduction

1. RadioCentre is the industry body for commercial radio, formed in July 2006 from the merger of the Radio Advertising Bureau (RAB) and the commercial radio Companies Association (CRCA).
2. The role of RadioCentre is to maintain and build a strong and successful commercial radio industry - in terms of both listening hours and revenues. RadioCentre operates in a number of areas including working with advertisers and their agencies, representing commercial radio companies to Government, Ofcom, copyright societies and other organisations concerned with radio. RadioCentre also provides a forum for industry discussion, is a source of advice to members, jointly owns Radio Joint Audience Research Ltd (RAJAR) with the BBC, and includes copy clearance services for the industry through the Radio Advertising Clearance Centre (RACC).
3. RadioCentre members account for 90% of commercial radio listening and 86% of industry revenue. The membership is made up of 267 radio stations of all types – including the major commercial radio groups, small local radio groups, independent local stations and digital-only services.

Executive summary

4. RadioCentre welcomes the opportunity to consider the most appropriate duration for analogue radio licences. This issue is of utmost importance for the future of radio services on offer to citizens and consumers. We are pleased that this is understood and appreciated by Ofcom and Government, as well as the commercial radio industry.
5. RadioCentre's approach to this consultation is underpinned by the fact that the relevant legislation allows for analogue licences to run for a period of 12 years. Therefore we believe that the burden of proof should be on Ofcom to make a compelling case as to why these licences should not be granted for a full 12 years.
6. We understand why it was considered appropriate to offer shorter licences to analogue stations between 2007 and 2010, as neither Ofcom nor Government had the power to set an end date for licences and enable digital radio switchover. However, this rationale no longer exists following the passage of the Digital Economy Act 2010, which includes the power for the Secretary of State to terminate licences.
7. The debates around the Digital Economy Act also indicate that parliament expected longer licence terms to be restored following the passage of this legislation. Therefore Ofcom should fulfil its duty in this regard and its responsibility to ensure some of the most vulnerable local radio services have the best opportunity to succeed.

8. Ofcom identifies four criteria that it considers relevant when defining the optimum duration of analogue licence terms. RadioCentre provides a number of comments on these criteria.
- **Flexibility** – Recent changes in legislation and statements of Government policy regarding the future of analogue radio broadcasting have removed the need to retain shorter licences in order to retain legislative and regulatory flexibility.
 - **Viability** – The experience of RadioCentre members is that a longer licence term provides (a) a better opportunity to recoup investment required to establish a radio business, and (b) to secure investment terms that ensure a business can be financially viable and provide an acceptable return on investment.
 - **Competition for licences** - The principle of competition for licences is one way of encouraging stations to serve consumer needs effectively. However, we believe longer licences are more likely to lead to greater competition as the value of the licences will be greater.
 - **Incentives** – We agree with Ofcom that it must be mindful of creating incentives for stations to come off digital, but believe that Ofcom has not given enough consideration to the disincentives and disruption to services that such a decision would entail.
9. The evidence available, and the experience of commercial radio operators, leads us to support the re-introduction of full 12 year terms for all re-advertised licences (Ofcom's Option 2), as our preferred approach. Ofcom has indicated that it has serious concerns regarding the incentives that may exist under this option. It highlights the possibility that stations providing a digital service could cease broadcasting on the platform and forgo their right to an uncontested seven year renewal, in return for a new twelve year analogue licence that is not tied to digital carriage. RadioCentre does not share Ofcom's concerns as it does not believe that it has fully considered the disincentives that exist for operators seeking re-advertisement.
10. 12 year licence terms for analogue stations would provide the benefit of clarity and certainty, as well as being the logical outcome of the recent changes in legislation. However, if Ofcom still retains serious concerns regarding the nature of incentives and considers it absolutely essential to reject Option 2, RadioCentre would reluctantly support a solution based on a variation of the differential approach (which builds on Ofcom's Option 4). The pragmatic response we outline to address Ofcom's concerns would mean that 12 years should be the usual duration for re-advertised analogue licences, *unless* an operator chooses to end their commitment to providing a digital service *and* has already taken their 12 year renewal, in which case the licence could be re-advertised for 7 years. This would maintain the benefit of 12 year licences for most analogue stations.

Legislative background

11. Central to our approach is the legislative context regarding the duration of analogue licences. This states that they should run for a specified period of '*no*

*more than twelve years*¹. While we recognise that this is a maximum period, the fact that it has been laid down in primary legislation means that any decision taken by Ofcom to depart from this period must be based on a clear and compelling case. While the previous approach of agreeing a common end date of 2015 (or 5 years whichever is longer) was not universally welcomed, it was broadly accepted that a persuasive case existed for such a variation from the statutory provisions. If Ofcom wishes to continue to diverge from the maximum licence period outlined in the legislation it should be required to make suitably persuasive arguments, and meet the burden of proof associated with reaching such a decision. Moreover, we believe that the practice applied by Ofcom (and the Radio Authority before it) has always been to offer the maximum licence period permitted under statute, other than in this particular case.

12. We are re-assured by Ofcom's record of being especially mindful of its duties and accountability to parliament, and its function in delivering the will of parliament rather than setting policy in isolation. Therefore if it intends to pursue licence terms that are anything other than those permitted in legislation, we are sure that it recognises the high threshold that it will be required to meet in making the case for such a decision.
13. For many commercial operators the opportunity to re-visit this approach has been a critical consideration ever since it became clear that new communications legislation would be brought forward during 2009-10, which was likely to provide Government with greater flexibility in setting a date for digital radio switchover.
14. The Digital Economy Act 2010 now provides the Government with the power to terminate licences and facilitate a future process of digital switchover, once the appropriate criteria are met. This removes the main rationale that Ofcom had considered relevant when setting the duration of analogue licences in 2006-07, which led it to standardise the expiry date of licences in the absence of any other power to do so (leading to a common end date of 2015, or a fixed term of 5 years, whichever is longest).
15. Given Ofcom's accountability to parliament, it is critical to note the expectation and intention of parliament on this matter when it was last considered (during the passage of the Digital Economy Bill). Had it been the will of parliament that the duration of analogue licences should be for less than 12 years or for shorter fixed periods (for example a duration 7 years), we believe that it would have been stated explicitly during the deliberations on this matter. However, no such statements were made by Government or parliamentarians
16. On the contrary, this issue was raised specifically during the debates on the clauses of the Bill and the Government's stated position was that *'there is clearly a strong argument for allowing analogue licences over a longer licence period'*². Other senior parliamentarians speaking in support of the radio clauses in the Bill also highlighted the ability to provide longer analogue licences as a potential benefit of the changes in legislation. For example, the Liberal Democrat spokesman stated that *'FM could become a new vibrant platform for local and*

¹ Communications Act 2003, section 252 (2) - amendment to 1990 Act replacing 86 (3)

² Hansard (Lords), Digital Economy Bill Committee Debate, 3 February 2010, column 279

micro-local radio stations' and as part of this *'Ofcom could start to give them even longer licences'*³.

17. In addition, Ofcom will recall that the Lords Communications Committee was even more explicit in its preference for longer analogue licences. During its evidence session Ofcom was asked directly *'would there not be a case for reverting to 12-year licences?'*⁴ once the Digital Economy Bill was through parliament, as part of a range of measures to support the viability of analogue services in future.

Regulatory background

18. We would also stress that Ofcom has a responsibility to regulate the commercial radio industry, and develop the licensing framework, in a way that is likely to be most beneficial to citizens and consumers. We believe that Ofcom can achieve this most effectively by providing operators with the best opportunity of establishing and running a successful business.
19. In practice this also requires Ofcom to provide positive incentives and encouragement for operators to act in a certain manner, as indicated by the legislative framework. Therefore we understand why Ofcom oversees a system of commercial radio licensing that includes an incentive to commit to providing a digital service (in the form of uncontested licence rollovers), designed to help stations through to digital radio switchover. However, we would be concerned if Ofcom was seeking to use its powers to create a disincentive for analogue broadcasters. The framework provided by parliament is clearly designed to provide incentives for stations that commit to providing a digital service; it does not provide Ofcom with a remit to put analogue stations at a disadvantage.
20. This matter is of particular importance to those operators who have consistently offered analogue services and never opted to provide a digital service, with the associated licensing benefits and rollovers that were laid down in legislation. As far as these stations are concerned, nothing has changed in terms of their platform status and expectations of licence terms. Therefore Ofcom should ensure that the licensing framework does not put them at a disadvantage due to broader considerations regarding incentives for those stations that *do* offer a digital service.
21. Ofcom should also avoid penalising stations that have offered a digital service in good faith (and took a licence rollover associated with this commitment), but have not found this to be viable on an ongoing basis⁵.

Determining licence duration - criteria to consider

22. Ofcom considers four broad criteria as being relevant when determining the duration of analogue licences – flexibility; viability; competition for licences; and

³ Hansard (Commons), Digital Economy Bill Second Reading, 6 April 2010, column 855

⁴ House of Lords Communications Committee report, 'Digital Switchover of Television and Radio in the UK', minutes of evidence, March 2010, p.52

⁵ This includes stations that choose to not commit to digital once their analogue licence expires, but opt for re-advertisement (even if they continue to provide a digital service until their multiplex contract expires).

incentives. We address each of these in turn, along with Ofcom's reasoning behind these criteria and their potential implications for licence terms of varying length.

Flexibility

- 23. RadioCentre's position: Recent changes in legislation and statements of Government policy regarding the future of analogue radio broadcasting have removed the need to retain shorter licences in order to retain legislative and regulatory flexibility.**
24. The relationship between the level of regulatory flexibility and duration of local analogue radio licences is far from clear from Ofcom's consultation document. It seems to suggest that Government or Ofcom could be constrained from making changes to the regulatory framework if licence terms are too long. However, there is no evidence that Ofcom was prevented from making any such changes to the regulation of commercial radio prior to 2007 (when it reduced the length of new and re-awarded analogue licences from 12 years to a common end-date of 2015, or 5 years whichever is longer). Conversely the ability of Ofcom or Government to make significant changes has not increased noticeably since 2007.
25. This background, along with the lack of detail from Ofcom outlining the regulatory changes it believes could be prevented through longer licence terms, would seem to undermine the power of this argument. As Ofcom makes clear in the document, any commercial analogue licence that is won, re-awarded following an advertisement process, or renewed could be terminated by the Secretary of State in any case. We agree with Ofcom that the *'relative importance of flexibility is perhaps diminished'*⁶ by this fact, although we believe that this is a certainty, rather than a possibility.
26. Even the scenario that is presented in the document⁷, regarding small commercial stations and community stations occupying the vacated FM spectrum following digital switchover, is unclear in that it fails to identify the nature of possible changes that could be precluded. If the implication from this is that Government and Ofcom may wish to retain the flexibility to terminate such analogue licences – either because services are part of a digital switchover process or for another reason as yet unspecified – then this should be stated more clearly. However, it is absolutely clear from recent statements by Government that it does not wish to exercise any such power upon FM stations and that *'FM will remain a platform for small local and community radio for as long as these services want it'*⁸.
27. For these reasons we do not accept that the general principle of imposing shorter licence terms in order to retain flexibility is sufficient or persuasive enough to choose any particular licensing option over another, and certainly not on this basis alone.

⁶ Ofcom, 'Local commercial analogue radio licence durations', 9, July 2010, para 4

⁷ Ofcom, 'Local commercial analogue radio licence durations', July 2010, para 4.8

⁸ Ed Vaizey MP, Minister of State for Creative Industries, speech to Intellect Consumer Electronics Conference, 8 July 2010

Viability

28. RadioCentre's position: The experience of RadioCentre members is that a longer licence term (a) provides a better opportunity to recoup investment required to establish a radio business, and (b) helps secure investment terms that ensure a business can be financially viable and provide an acceptable return on investment.

29. We welcome the fact that Ofcom appreciates the need to consider the financial viability of stations, and the influence that licence duration can have on this viability. Moreover, we support the conclusion provided in the commercial assessment at Annex 5 that *'longer licence periods may increase the economic viability of a radio station as it will have more years of potentially increasing annual revenues to recover the initial up-front costs'*⁹.

30. This is a logical conclusion and one that would be understood and appreciated by any commercial operator that has had to make the sort of capital investment required to start a radio station, and meet the range of set up costs and contractual commitments associated with this activity. However, the experience of commercial radio operators would suggest that Ofcom is probably a little too narrow in its consideration of this, as well as its varying application to different kinds of operator.

31. Despite the assessment provided at Annex 5, Ofcom does not appear to acknowledge that the most significant costs faced by a radio stations are precisely those that need to be planned and recouped over the longest period. For example a considerable proportion of General & Admin costs (which are estimated to be as much as 37% of total costs overall) relate to property, and the best chance of keeping these costs as low as possible for operators is through longer leases. Yet the possibility of achieving such savings could be precluded by analogue licence terms being too short. Moreover the type and location of much of the property portfolio used by most local commercial radio stations makes it highly unlikely that operators will be able to take on longer contracts with a view to subletting if necessary.

32. Similarly contracts for large fixed cost such as transmission (both in terms of fees and equipment, which are often packaged together by the transmission provider) need to be spread over a long period, particularly if the cost of depreciating capital expenditure is to be manageable. A move towards a relatively short standard licence term such as 7 years makes it much more difficult to meet such costs. In addition, this approach would preclude the emergence of new entrants into the broadcast transmission market, as any prospective provider would have to try and develop a broadcast package for 7 year periods, which would be prohibitively expensive for any station.

33. This combination of preferential terms on costs and a longer period over which to generate revenue means that operators would normally benefit from a longer licence term. However, this reality may not have been reflected fully in the (sometimes rather optimistic) business plans reviewed by Ofcom when setting the current policy on analogue licence duration, which *'generally anticipated*

⁹ Ofcom, 'Local commercial analogue radio licence durations', July 2010, para A5.18

*making an annual operating profit by year three of the licence period*¹⁰. At the time that Ofcom was considering these matters and operators wrote these plans (around 2006) that probably seemed a reasonable assumption (although it would be interesting to know how many stations that predicted profitability in year three of their licence period actually achieved this outcome).

34. The fact is that industry revenues and profitability have changed significantly since that time due to structural and cyclical changes in the commercial radio industry. Indeed Ofcom acknowledges that commercial radio has since entered a period when it is "*facing possibly its greatest ever challenges*"¹¹, with small analogue stations being hardest hit by a combination of high fixed costs, structural change and recession.
35. Research conducted by RadioCentre in 2009 for John Myers' independent report commissioned by Digital Britain found that this downturn in revenues has translated to an extremely serious position in terms of profitability. It found:
 - Half of all commercial radio stations were loss making, with two thirds of all stations (66%) loss making or only generating profits of less than £100k per annum¹².
 - 12% of stations were predicting to lose more than £250,000 in their current financial year (of whom more than 80% also lost >£250,000 last year and of those almost 70% also lost >£250,000k in the previous financial year)¹³.
36. Total industry revenue for 2009 was £505m. This is down 21% from the peak in 2004 calendar year (when revenues were £641m)¹⁴. This situation has fed through to commercial radio's profit margins, which halved between 2003/04 and 2007/8 (falling from 19% to 9%), dropping further still during the credit-crunch, followed by a deep recession, so that the industry as a whole has been loss making¹⁵. In addition, commercial radio is currently anticipating severe cuts in advertising revenue from the COI (the single biggest advertiser on commercial radio) as part of the Government's commitment to reduce advertising and marketing expenditure.
37. This shift in the economics of commercial radio since the duration of analogue licences was last under consideration is critical when considering the viability of these services and the changing periods over which such licences might be able to become profitable. This changing value of analogue licences also affects the nature of incentives (which is explored below).
38. In addition, we would also point out that while it is probably fair to emphasise the particular importance of return on investment for potential new entrants, who need time to establish their operation, promote their brand and attract an audience, the impact of licence duration on incumbents should not be underplayed (particularly as the majority of licensees affected by this policy will

¹⁰ Ofcom, 'Local commercial analogue radio licence durations', July 2010, para 4.11

¹¹ Ofcom, 'Radio: the implications of Digital Britain for localness regulation', July 2009, p.2

¹² Stations generating profits of less than £100,000 per annum are extremely vulnerable to relatively small downturns in revenue (less than £2k per week, equivalent to one major client)

¹³ RadioCentre, Profitability and localness survey of local Commercial Radio, March 2009

¹⁴ Radio Advertising Bureau, February 2010

¹⁵ Value Partners analysis of commercial radio EBITA margins, 2009

be the current operators). Ofcom will be aware from its contact with RadioCentre members that preferential funding and investment arrangements are often only agreed on the basis of longer licence terms being in existence. This should also be a material consideration for Ofcom, but does not appear to have been taken into account in the development of the available licensing options.

Competition for licences

39. RadioCentre's position: The principle of competition for licences is one way of encouraging stations to serve consumer needs effectively. However, we believe longer licences are more likely to lead to greater competition as the value of the licences will be greater.

40. We would not wish to prevent a diversity of licence applications being submitted. However, we are in no doubt that the demand for licences is likely to be much greater if licences are longer in duration, and therefore provide the prospective owners with a more attractive proposition given the enhanced ability to establish their operation, promote their brand and attract an audience over a longer period of time.

41. In addition, the extent of competition and changes in ownership of radio station licences that can take place outside of the re-advertisement process, through the purchase of existing stations, should also be considered. This is especially relevant given the changes in recent years, with Global Radio's purchase of Chrysalis (July 2007) and GCap (June 2008), as well as Bauer's acquisition of Emap Radio (January 2008). Clearly these changes have been much more significant in terms of introducing competition and new entrants into the radio market than the incremental changes brought about by the re-advertisement process. Therefore we do not see competition for licences as a critical factor in determining the duration of local analogue licence terms.

Incentives

42. RadioCentre's position: Ofcom should be mindful of creating incentives for stations to come off digital, but has not given enough consideration to the disincentives and disruption to services that such a decision would entail.

43. RadioCentre agrees that *'it is important to put in place the conditions to allow DAB digital radio to expand and thrive'*¹⁶, and therefore understands why it is necessary to consider how the policy on licence durations could affect the incentives for stations to continue to provide digital radio services.

44. However, we are concerned that Ofcom may be focussing unduly on the length of licence terms when considering the incentives (or disincentives) that stations are likely to take into account when making decisions regarding the platform on which they wish to broadcast.

45. Clearly if this issue is taken in isolation then it would seem to be important not to offer a licence period that appears to provide an advantage to analogue-only

¹⁶ Ofcom, 'Local commercial analogue radio licence durations', July 2010, para 4.20

stations. Yet, this would underestimate the disincentives for stations considering coming off digital to pursue an analogue-only licence through re-advertisement. Strong disincentives would exist for any service that decided to decline a straightforward rollover of an analogue licence (connected to its commitment to digital carriage) and sought re-advertisement instead.

- To start with, the service then may or may not be re-advertised at all, depending on the licence and the local provision.
- The costs associated with a licence application can be considerable, with the range of fees for audience research, Rajar, content analysis and consultancy running into many thousands of pounds for service providers already operating on very fine margins.
- Even if the licence is re-advertised there then no guarantee that the incumbent will secure the licence again going forward (as the licence will be rewarded via a beauty parade).
- In addition, we understand from Ofcom's licensing team that any service *opting* to cease providing a digital service (rather than waiting until their current analogue licence has expired) should expect to face a suspension of their service.

46. The level of risk that this process involves for a radio business (at the very least an expensive distraction and at worst the loss of an entire business) is not acknowledged by Ofcom, due to its focus upon licence duration alone. We would suggest that these disincentives for seeking re-advertisement are likely to be at least as strong as any incentive to come off digital that may be provided by longer licence terms. Indeed if an operator is facing the threat of losing their business entirely the duration of the licence becomes much less of factor in their decision making.

47. However, if Ofcom still wishes to adapt its approach to the duration of analogue licences according to incentives that it perceives, there are clearly several ways of doing this. Ofcom has stated its preferred approach, but in the light of these factors, we would suggest an alternative solution (see below).

Policy options

48. Ofcom sets out four possible approaches for licensing of analogue stations, which it evaluates against these criteria. RadioCentre has provided its comments on each of these options, addressing both the criteria and (where appropriate) other matters of consideration.

Option 1: a further common end date for all re-advertised licences

49. We agree with Ofcom that setting a further common end date for all re-advertised licences is not the best approach in future. Firstly, it is not clear what an appropriate common end date would be and any date selected would be fairly arbitrary in nature. Once such a date was set by Ofcom, this would then affect operators differently depending on when their licence was due to expire in relation to this date (i.e. stations with licences re-advertised earlier would benefit more than stations re-advertised nearer the end date).

50. This would not seem to be the fairest or most consistent approach, given that a number of the criteria that Ofcom considers to be relevant regarding licence duration (viability, competition for specific licences and incentives over future platform choice) could all be affected by how close an expiry date is to any fixed end date.
51. The key benefit which Ofcom suggests might stem from this option is the level of flexibility that it could provide for Ofcom and Government to construct a new regulatory framework for the remaining local commercial analogue stations. However, it acknowledges that this *'is diminished in importance by the termination provisions in the 2010 Act'*¹⁷.
52. We would simply repeat our view that Ofcom and Government will retain significant discretion to make a range of necessary policy changes that will affect commercial stations, regardless of licence duration. Moreover, dramatic regulatory changes to analogue services – potentially involving the termination of services and the need for common end dates – are unlikely to be required, particularly given the current Government's commitment that FM will remain a platform for small local and community radio for as long as these services want.

Option 2: a full 12 year renewal for all re-advertised licences

53. The re-introduction of full 12 year terms for all re-advertised licences is commercial radio's favoured approach. We believe that there are several clear benefits in relation to several of Ofcom's criteria. In particular, in respect of the viability of stations, RadioCentre would welcome the fact that licensees would have the maximum permissible period within which to make a return on their investment, allowing sufficient time for full recovery of sunk costs and other outlays.
54. Notwithstanding the fact that all licences awarded after 8 April 2010 are subject to the termination provisions of the Digital Economy Act, we know from the experience of our members that it can be immensely helpful for commercial operators to be able to demonstrate to providers of funding and investment that they hold a licence of the maximum possible duration. Ofcom will be aware from its conversations with commercial radio operators that the length of licence term is often a material factor in negotiations on funding. In addition, commercial radio groups will often seek funding for their whole portfolio of stations, whereby the funding they seek is based on the *average* licence term of the stations in question. In such circumstances the difference between (say) a 7 and 12 year licence could have a significant impact on the average licence term and therefore on the funding terms available.
55. RadioCentre is constrained from providing detailed evidence in this submission due to the confidentiality and sensitivity of some of the ongoing commercial negotiations, but would be happy to facilitate further conversations with stations on this issue should Ofcom require further information.

¹⁷ Ofcom, 'Local commercial analogue radio licence durations', July 2010, para 1.10

56. In addition, we would repeat our view that competition for licences is likely to be much greater if they are longer in duration, and therefore provide either the prospective or incumbent owners with a more attractive proposition.
57. However, Ofcom highlights what it considers to be the two main disadvantages to this approach. One of these relates to the perceived lack of flexibility through providing analogue licences of longer duration. We have addressed this question above, but essentially we believe that Ofcom and Government will retain significant and extensive powers to make necessary policy changes that will affect commercial stations. Furthermore, the need to retain a means to terminate analogue services is unlikely to be required given the current Government's commitment to FM.
58. Most importantly, Ofcom believes that there could be an incentive for stations providing a digital service to cease broadcasting on the platform and forgo their right to an uncontested seven year renewal, in return for a new twelve year analogue licence that is not tied to digital carriage. If this was the outcome of a new licensing framework it could reduce the number of digital services and be detrimental to listeners.
59. RadioCentre understands why Ofcom is mindful of such a possibility and the need to ensure that digital radio is able to thrive and expand. However, we do not believe that the risks that would be faced by stations considering withdrawing from digital are examined sufficiently by Ofcom within the context of this approach.
60. For example, the document appears to suggest that the *only* risk faced by incumbent operators would be the re-advertisement process itself, and that this may be a risk that some operators would be willing to take if they believed that a contest would be uncontested or that they would be highly likely to be successful. This seriously underestimates the level of risk of opting for this approach for the vast majority of operators as there is of course no guarantee that the incumbent will secure the licence again going forward, and therefore stands to lose their whole business.
61. Even if an operator was confident in their belief that they could be successful through a re-advertisement they would still face several other serious difficulties. We understand Ofcom is not obliged to re-advertise at all and would need to take a view based on the particular licence and the local provision. Even if the re-advertisement process is carried out and the incumbent is successful this could be expensive and disruptive. Any service taking the step to come off digital prior to the end of its licence could even face a suspension of their service once they had made such a decision.
62. These disincentives are hugely significant, but do not appear to have been acknowledged by Ofcom. This is despite the fact that these risks are so great that they would generally prevent operators from pursuing an approach that could conceivably give them an advantage in terms of licence duration by opting to cease broadcasting on a digital platform.
63. We would also re-state our belief that Ofcom should strive to ensure that the licensing framework provides operators with the best opportunity of establishing

and running a successful business, by granting the longest licences available. This applies whether stations have consistently offered an analogue service (and therefore nothing has changed for them) or have offered a digital service in good faith (and taken a licence rollover associated with this commitment) but have not found this to be viable on an ongoing basis¹⁸.

Option 3: a fixed licence duration of less than the full 12 years for all re-advertised licences

64. Given that we do not accept that the incentive to come off digital provided by a 12 year licence is anywhere near as great as Ofcom appears to suggest (due to the risks for operators and the high level of disruption that they would face), we do not believe that there is objective justification for introducing fixed term licence of shorter lengths. Due to the importance of these factors, it is too simple to suggest that licence duration is the only incentive to continue offering a digital service, and that *'if the re-advertisement length was longer than the renewal length, these stations may opt for a re-advertisement'*¹⁹.
65. Furthermore, for the reasons outlined above regarding viability and profitability of licences, we would be concerned if licences were fixed for a shorter period of five or seven years. As we have stated, commercial operators find that short licences can have a damaging effect on the financing of a station and the ability for operators to generate a return on their investment. A longer licence term will improve viability and the opportunity to generate further revenues so that stations are able to reach a decent level profitability.
66. The concerns regarding the impact of shorter licence terms on the competition for licences (which are less attractive if they are shorter) and flexibility (the need for which we believe has been negated) also stand in relation to this option. In addition we would repeat our underlying concern that the 12 year period has been laid down in primary legislation. Therefore any decision that Ofcom takes to depart from this period should be based on a clear and compelling case, and meet the burden of proof associated with reaching such a decision.

Option 4: a differential approach, with licence length set in relation to a station's circumstances

67. For the reasons explored throughout this response, RadioCentre has stated a clear preference for the re-introduction of a full 12 year renewal for all re-advertised licences, as permitted by primary legislation.
68. However, if Ofcom still has serious concerns regarding the nature of incentives that could exist by pursuing Option 2, RadioCentre would reluctantly support a solution based on a variation of the differential approach (and the differential example that it provides, relating to previous digital presence)²⁰. In essence this compromise proposal suggests that 12 years should be the usual duration for re-advertised analogue licences, unless an operator chooses to end their

¹⁸ Including stations that choose not to commit to digital once their analogue licence expires, but opt for re-advertisement (even if they continue to provide a digital service until their multiplex contract expires).

¹⁹ Ofcom, 'Local commercial analogue radio licence durations', July 2010, para 4.49

²⁰ Ofcom, 'Local commercial analogue radio licence durations', July 2010, p.23

commitment to providing a digital service *and* has already taken their 12 year renewal, in which case the licence could be re-advertised for 7 years.

69. To be clear, the holders of analogue licence licensees should continue to be offered 12 year licences, following re-advertisement, in *all* other circumstances. Most obviously this would apply to analogue-only services once their existing licences expire. But it would also apply if a station no longer had the opportunity to broadcast on digital (for example if a local multiplex was no longer operational), or if a station had not taken its original licence rollover tied to digital coverage.
70. This approach is designed to meet Ofcom's concern – although not shared fully by RadioCentre – about there being an incentive to come off digital (with the associated uncontested 7 year rollover) and provide an analogue-only service (if analogue licences were to be awarded for 12 years).
71. Ofcom appears to offer two main objections to this differential approach, determined by platform²¹; that it would 'take back' some of the renewal benefits gained by offering a digital service; and new applicants would have their licence duration determined on the basis of decisions of previous licensees.
72. The first of these objections concerns the fact that a service choosing not to commit to providing a digital service would lose out relative to other licensees. However, under the compromise approach being proposed, the only stations that would be at some form of 'disadvantage' would be those stations that had already taken an uncontested 12 year renewal in connection with digital carriage. Therefore they will have received significant renewal benefits by offering a digital service already. The disadvantage that they will experience, such as it is, will be the disruption involved with no longer committing to the digital platform and the prospect of a licence term (following re-advertisement) of 7 years, which is the same as they would have received from a rollover in any case. Moreover, if Ofcom remains concerned about the incentives that could be perceived by stations considering coming off digital, then the fact that such services could be seen to 'lose out' may be considered a benefit of this approach.
73. The issue of new applicants having the duration of their licences determined on the basis of the action taken by previous licensees also seems to be a matter of limited impact. Obviously such information would need to be clear and transparent, and available to any potential buyer when reviewing the status of a licence and carrying out their due diligence prior to taking a view on the value of a licence.
74. However, this is not a new phenomenon or one that is linked intrinsically to the duration of analogue licences. Any new entrant (or potential buyer) in the radio market will always need to consider whether the licence they wish to purchase offers an associated digital service, and whether the owner has taken advantage of an uncontested licence rollover (or rollovers) as a result. This has been the case since the first licence rollovers were introduced in the 1996 Broadcasting Act.

²¹ Ofcom, 'Local commercial analogue radio licence durations', July 2010, para 4.79

Conclusion

75. RadioCentre welcomes the opportunity to consider the most appropriate duration for analogue radio licences. We would repeat our support for the re-introduction of full 12 year terms for all re-advertised licences (Ofcom's Option 2), as our preferred approach. Any decision that Ofcom takes to depart from this period – as allowed for in primary legislation – should be based on a clear and compelling case (particularly as parliament has given no indication that it expects shorter licences). We are not convinced that Ofcom has made this case sufficiently and believe that this should remain the underlying principle of Ofcom's licensing framework for analogue stations.
76. That said, if Ofcom continues to reject this approach in case it provides some form of incentive for stations to no longer to commit to digital carriage, we would reluctantly support a solution based on a variation of the differential approach (which builds on Ofcom's Option 4). This provides a transitional arrangement based on 12 year licence terms with a specific carve out for operators that opt to no longer commit to offering a digital service *and* have already taken their 12 year renewal, in which case the licence could be re-advertised for 7 years.
77. We would re-emphasise that this is a critical issue for the future of many commercial radio operators and we look forward to working together with Ofcom to secure a solution that delivers the legislative requirements in this area (and the will of parliament) as effectively as possible.

RadioCentre, September 2010

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