

Response to Ofcom consultation on Radio Multiplex Licence Renewals

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 on all aspects of radio, 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). RadioCentre is also a founding Board member of Digital Radio UK (DRUK).
3. RadioCentre shareholders account for 98% of Commercial Radio listening and >95% of industry revenue. The membership is made up of 267 radio stations of all types – including the three major Commercial Radio groups, small local radio groups, independent local stations and digital-only services. A number of RadioCentre members also own (or have significant shares in) several of the companies that hold local radio multiplex licences.

Background – context of multiplex licence renewals

4. Ofcom's consideration of the multiplex renewal process comes at a critical time for the radio industry in the UK, particularly in relation to the steps that will be required over the next few years to make digital switchover a reality. To this end, we welcomed the launch of the joint Government and industry Digital Radio Action Plan¹, which outlined its commitment to the future of digital radio. This plan is essential in affirming the Government's commitment to switchover and providing a structure for achieving this with consumers and industry stakeholders
5. However, we are under no illusion regarding the amount of work that still needs to be done over the coming months. There are numerous unanswered questions that must be addressed if the vision of a digital radio switchover is to be realised. The most significant of these issues is regarding coverage build-out and funding, which must be resolved sooner rather than later. The commercial sector has been clear that it believes that the BBC should take lead responsibility for this, in line with its obligations to universality and because of the sources of funding it has available².
6. In addition, the work on coverage planning that is being overseen by Ofcom (and the consequential commercial considerations for multiplex operators and service

¹ DCMS/ BIS, 'Digital Radio Action Plan', July 2010

² RadioCentre, 'Putting Listeners' First – Response to the BBC Strategy Review', May 2010, p.22-23

providers) must be addressed so that the industry can understand fully their implications, and build these assumptions into their business planning.

7. While commercial radio remains committed to the digital switchover process, the industry requires much greater certainty, both in terms of market developments and the process that Ofcom is pursuing. A significant degree of uncertainty remains at this time, and we do not believe that this context has been fully and appropriately considered by Ofcom within this consultation. The lack of clarity on these issues is becoming a material consideration given that a number of the most significant multiplex licence renewals are fast approaching, with the closing dates for Birmingham, Manchester, Greater London 1 and Glasgow all falling during September 2010.
8. Section 2 of the consultation document does provide an outline of the statutory requirements, timetable and renewal policy, but the industry requires urgent clarification regarding this process and its implications. In particular, Ofcom prescribes a 'closing date' for the receipt of applications, which it has determined should be three months before the 'relevant date'. The 'relevant date' determined by Ofcom is 18 months before the date when a new licence comes into force, to provide it time to enable a fresh licence to be granted if that were necessary. However, against the background outlined above it is more important than ever for the industry to understand **what level of commitment if being required (or is implied) by any application from a licensee received by the closing date.** This is an urgent and pressing consideration given the September 2010 closing date for the multiplexes outline above.
9. In addition, the industry needs to understand urgently **when multiplex licences and the terms within them are considered to have been finally determined by Ofcom.** The current consultation does nothing to clarify when the renewed licence would be agreed and confirmed. This is critical, as the current context and information available makes it is highly unlikely that multiplex operators will be able to make a decision on the commercial viability of future 12 year licences, either by the 'closing date' or the 'relevant date'.
10. Given that the time periods for these dates are set by Ofcom (rather than through legislation) there would appear to be a degree of flexibility available regarding both of the critical considerations that are outlined above. RadioCentre and its members will be approaching Ofcom before the end of this consultation to seek the urgent clarity on these matters that is required.

National radio multiplex licence

Question 1: Do you agree that Ofcom should not impose any new coverage obligations on Digital One as part of the licence renewal process?

11. RadioCentre notes the considerations regarding the coverage requirements for the Digital One network. Ensuring robust national coverage is clearly an essential element in ensuring the future success of digital radio in the UK, and we commend the work that is underway through the ad-hoc working group to consider appropriate field strengths to be used for determining coverage (para 3.10 – 3.11). This initial work provides a helpful starting point for the Coverage Planning Group that will be chaired by Ofcom, which was announced recently by

the new government as part of its Digital Radio Action Plan.

12. However, given that the work on coverage planning has only got underway recently it would seem unnecessarily restrictive (and speculative) to propose further coverage obligations for Digital One as part of its licence renewal process. Therefore we agree with Ofcom's proposals in this area at this time.
13. However, it would seem appropriate and proportionate to request that Digital One provides a supplementary technical plan to show how current levels of coverage are provided at the provisionally agreed field strengths, and will continue to be provided throughout the period of the renewed licence.
14. In addition, once an industry coverage plan has been agreed, we would anticipate this may in due course entail new coverage obligations for Digital One, as part of an agreed Government Switchover Plan.

Question 2: Do you agree that Ofcom should not impose any new obligations on Digital One regarding the promotion of DAB take-up as part of the licence renewal process?

15. Ofcom is correct to identify that there have been a number of significant changes in the marketing and scale of digital radio listening in recent years, and a marked shift in these activities since the terms of Digital One's original licence were agreed in 1998.
16. Digital radio listening is now at an all time high accounting for 24% of listening in the first quarter of 2010 (up 19% year on year and up 15% quarter on quarter)³. This is the biggest increase for digital share since RAJAR started tracking listening by platform. Weekly reach of digital radio is up 15% year on year to 38.5%. This means that 43% of radio listeners are tuning in to digital on a weekly basis.
17. There is also now greater clarity for listeners and industry following the passage of the Digital Economy Act, which provides the means to enable a switch to digital for national and large local services. The fact that this has been followed by clear support for this strategy from the new Government – through its Digital Radio Action Plan – also helps to provide greater certainty, which in itself will help to galvanise support for digital radio and ensure that appropriate action is taken.
18. These changes, along the presence of Digital Radio UK as the cross-industry body that will have the principal responsibility for promoting digital radio, may shift the emphasis on promotion required by Digital One. However, we are not convinced that it removes the need for ongoing regulatory intervention completely.
19. There is still much to be done to drive digital radio in future and we would expect Digital One to continue to work closely with Digital Radio UK and the rest of the radio industry to support this work. Therefore it may be appropriate to consider new obligations on Digital One that are more appropriate for the current environment. This may not be as prescriptive as being a specific sum – such as the £27m total spend over the previous 12 year licence period – but it could still involve a requirement to demonstrate a clear and significant level of commitment

³ Rajar, Q1 2010

and activity to support digital take-up.

Question 3: Do you agree with our preference not to set a PMR rate for the renewed period of the national radio multiplex licence?

20. RadioCentre agrees with Ofcom – and the provisional view expressed by DCMS – that the correct percentage of multiplex revenue (PMR) that should be charged for the duration of the renewed licence period for the national commercial multiplex should be zero. To do otherwise would introduce an inflexible and undesirable cost, at a time when Ofcom and Government should be seeking to support and incentivise investment in coverage and the best possible standards of service as we move towards digital radio switchover. Unfortunately the likelihood is that such a charge will only become a tax on service providers, so should be avoided.
21. However, we are concerned that such considerations have not been extended to the introduction of Administered Incentive Pricing (AIP). The proposal to introduce this charging method by the end of 2014 for national and local radio multiplexes, as well as digital radio broadcasters, is based upon a consultation that took place a number of years ago (2006)⁴, which was itself based on a policy that came out of a review several years earlier⁵.
22. At that time market expectations regarding the development of the digital radio market were significantly different. Ofcom was predicting that the penetration of digital listening by 2010 would be in the order of 60%⁶. Yet despite the recent impressive increases in listening outlined above, overall digital listening still only accounts for 24% of listening at this point.
23. This disparity between Ofcom's expectation of digital take up and the current position is only one example of the different market conditions, when compared to the picture that Ofcom had anticipated when it agreed to introduce a policy of AIP. We explore this issue in more detail below.

Local radio multiplex licences

Question 4: Do you agree that, unless or until the Government makes a decision to the contrary, Ofcom should not impose any additional coverage obligations on local radio multiplex licensees as part of the licence renewal process, other than any already proposed by the licensees themselves (either as part of their original licence applications or subsequently)?

24. Broadly speaking RadioCentre's response on the treatment of local radio multiplex licences is consistent with our position on the national licence. In particular, given that the work on coverage planning has only got underway recently it would seem unnecessarily restrictive (and speculative) to propose further coverage obligations for local radio multiplex licensees as part of the licence renewal process. Therefore we agree with Ofcom's proposals in this area.

⁴ Ofcom, 'Future pricing of spectrum used for terrestrial broadcasting', June 2007

⁵ Professor Martin Cave, Independent Review of Radio Spectrum Management, 2002

⁶ Ofcom, 'The Future of Radio', April 2007, p.35

25. In addition, it would seem appropriate and proportionate to request that local radio multiplex licensees provide a supplementary technical plan to show how current levels of coverage are provided at the provisionally agreed field strengths, and will continue to be provided throughout the period of the renewed licence.
26. However we would make several additional observations in relation to the coverage requirements for local multiplex licences. While we support Ofcom's general proposal not to set any additional coverage obligations, we do have some concerns in relation to the proposed exceptions to this approach. In particular, in cases where a licensee outlined plans to launch certain transmitters in its original application it may *not* always be reasonable to require the multiplex operator to commit to launching those transmitters, or propose alternative arrangements for achieving the same coverage.
27. This is due in part to the context and nature of these commitments. Many of these applications were made by licensees more than ten years ago with no knowledge of the actual levels of consumer adoption, or the other conditions which the then regulator finally included in the licences. This is important because many such proposals were conditional on certain levels of consumer adoption or listening by digital being achieved. In some cases these trigger levels have not yet been met and/or there is no relevant measurement tool.
28. The world has moved on significantly in the intervening period. **It therefore seems unreasonable and inappropriate to treat such statements, which were made in applications written over ten years ago, as binding conditions within the new local multiplex licences, when so much has changed in the interim.** Consequently, we believe that unless the transmission commitments were included in the original *licence* (rather than in statements made in the original application) the multiplex operator should not ordinarily be required to include these in their future licence.
29. In addition, RadioCentre is very alarmed by the approach Ofcom appears to be adopting in citing a press release as a basis for binding licence conditions and detailing coverage commitments for Greater London (para 4.14.2). Aside from the practical issue of implementing such a broad commitment (outlined below) we are concerned that this approach sets a very worrying precedent. **It is simply not appropriate for selective public statements and press releases issued by trade bodies, multiplex owners or service providers to be used in this way by Ofcom as a means of securing licence conditions.** If Ofcom was to seek to record and interpret all such statements of this nature and incorporate them within a licence this would constitute a significant expansion of its remit and powers.
30. Not only do public statements of this nature lack the detail and specific binding commitments, but they are also simply not intended to be received and implemented in this way. For example, if a trade body or operator was to make a public statement regarding an aspiration to produce a particular type of content or output across a group of station, it would be highly inappropriate for Ofcom to use this as the basis for a licence condition going forward. They are separate and distinct from one another and should remain so. Ofcom's suggested approach sets a dangerous precedent and does not carry industry support. Paradoxically,

adoption of any such policy by Ofcom would only ensure that licence holders would never express any desire or ambition to increase coverage in the future, less they risk this aspiration being written into a licence obligation.

31. The press release from Digital Radio UK is a clear signal of the industry's intent to extend coverage and improve the signal strength in London. This was (and remains) an important indication of the concerted effort that is being made by the industry to address the critical issue of digital radio coverage. Yet quite aside from the principle and context of this release, implementing this as a licence condition would present significant practical issues. There is no specific commitment provided on either the target for improving coverage or signal strength, so it is unclear exactly what Ofcom would be requiring from the licence holder(s).
32. There is also a lack of detail regarding the London multiplex that this commitment is referring to which Ofcom fails to address. There are of course three commercial radio multiplexes covering London (Greater London 1, 2 and 3), each with different ownership arrangements and obligations. The members of Digital Radio UK only have a controlling interest in London 1, so it is difficult to see how any condition could be enforced more widely than on this multiplex alone.
33. Rather than using this unspecific commitment as a means to build a requirement into future multiplex licences we would recommend Ofcom conducts further dialogue and discussion directly with the licensees, in order to make this commitment a reality.
34. Finally, as part of the overall proposals we would again question the wisdom of Ofcom continuing to factor in the introduction of AIP to local radio multiplex licences (as well as for national radio multiplex licences and digital broadcasters).

Administered Incentive Pricing (AIP)

35. As noted above, our underlying concern with Ofcom's plan to continue with the implementation of AIP – for national and local multiplex licensees and for digital radio broadcasters – is that this is based on an outdated view of the correct regulatory mechanisms and how these should apply to radio. These proposals were formed a number of years ago when the environment and expectations for digital radio were very different.
36. The fact that Ofcom's market expectations have had to change so significantly in the last four years (since it last consulted on the issue of AIP in 2006), demonstrates the difficulty of seeking to strike the right balance between providing the industry with sufficient lead time to prepare for such a change, whilst also ensuring that the policy it is seeking to implement is appropriate and proportionate.
37. Ofcom has stated previously that it intends to introduce AIP in another four years time (from the end of 2014). However, Ofcom has now committed to 'look afresh' at the benefits of introducing AIP once 'a clear decision is taken by Government to migrate radio broadcasting from existing analogue platforms to DAB'. We believe the recent publication of the joint Government-industry Digital

Radio Action Plan reasserts the Government's commitment to working with the industry to achieve digital radio switchover; what it did not do was confirm a timetable for switchover. We believe Ofcom should make a statement **now** confirming that it will postpone its decision as to whether or not to implement AIP until after the completion of digital radio switchover.

38. To continue with the current policy would introduce the prospect of a further additional cost into the radio industry (which already has fixed costs running at a very high level, of around 82%⁷) and at the worst possible time. If the industry is to meet the Government's switchover criteria of achieving national digital multiplex coverage to match FM; local coverage at 90% of the population; and listening at more than 50%, then it will need support for investment to be able to make this happen, not regulatory mechanisms that introduce higher costs. The fact that these criteria will begin to be assessed from around 2013 means that the prospect of AIP being introduced in the following year could become a factor undermining necessary investment at a critical time.
39. This potential impact on investment could be significant, but AIP could also affect the commercial viability of multiplex operations as well as service providers, who are likely to bear the burden of these costs with higher access charges (in addition to being charged additional fees themselves). We understand that the future introduction of AIP is already factored into some multiplex contracts with service providers, making such an increase a contractual certainty rather than just a working assumption.
40. As Ofcom will be aware, the cost of operating DAB multiplexes (whether as a multiplex operator and/or as a content provider) is proving to be one of the biggest barriers to adoption by broadcasters. Introducing this additional cost would seem perverse when the Government and Ofcom should be seeking to provide incentives for digital carriage.
41. The best thing that can be said about Ofcom's current approach is that it does allow for the possibility of looking afresh at the current proposal, which we would urge it to do. In addition, if Ofcom does wish to proceed it has outlined previously that a further consultation will be necessary, in order to consider how to go about prices for spectrum used for digital broadcasting (which could include setting these at zero)⁸.

Conclusion

42. RadioCentre is concerned that this consultation focuses unduly on the technical and process issues involved in multiplex licence renewals, while failing to take into account the broader context and factors that multiplex licensees will inevitably have to consider before agreeing the terms of new licences that they will be required to run for the next 12 years.
43. In addition there are several points of detail that we believe require further consideration and discussion with industry – particularly regarding the proposals to require local radio multiplex licensees to expand coverage in certain cases.

⁷ Value Partners, 'Commercial Radio – Economic Modelling', August 2009

⁸ Ofcom, 'Future pricing of spectrum used for terrestrial broadcasting', June 2007, p.6

44. We also believe that it is time to re-consider the existing proposals for the introduction of AIP for digital radio multiplexes and broadcasters, given the changes in the digital radio market since this policy was established.
45. We look forward to working together constructively on these and other proposals in order to find solutions that meet Ofcom's regulatory and legislative principles, while enabling the radio sector to modernise and deliver its vision of becoming an exciting and thriving digital medium.

RadioCentre, July 2010

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