

RADIOCENTRE RESPONSE TO OFCOM CONSULTATION ON LOCAL COMMERCIAL ANALOGUE RADIO LICENCE DURATIONS

SUMMARY

1. **RadioCentre warmly welcomes Ofcom's proposal to adopt a new policy of issuing local analogue radio licences being for a period of 12 years.** This measure will be of significant assistance to some of the smallest commercial radio stations, which often operate on very narrow margins of profitability (if at all).
2. Ofcom expressed a number of concerns during the 2010 consultation about moving to 12 year licence, following consideration of the most relevant criteria – namely flexibility, viability; competition for licence; and incentives. As a result it only agreed to a period of 7 years at that time. This outcome was disappointing, but we were pleased that Ofcom and Government agreed to keep this issue under review.
3. We note that there have been several significant radio policy and market developments since 2010. When considering the impact of these developments we are pleased that Ofcom appears to have been reassured that its original concerns (particularly regarding policy flexibility and incentives) no longer carry the same weight.
4. In order to ease the transition to this new policy we make some suggestions regarding certain mitigations that could be put in place to support those radio stations that have been issued with 7 year licence terms since this issue was last considered in 2010.
5. Finally, given the significant developments identified in this consultation, we request that Ofcom also acknowledges the urgent need to bring forward measures to renew the licence terms of stations not affected by this policy (i.e. those providing a relevant service on DAB). This will require legislative change from Government, but it is vital that Ofcom supports these efforts actively, to protect investment, minimise disruption and ensure continuity of service to listeners.

BACKGROUND

- **2010 consultation**

6. The issue of analogue licence terms for local commercial radio stations was last considered by Ofcom in 2010. At that time it outlined what it believed were the most important criteria to consider in determining the correct approach. These criteria were felt to be flexibility; viability; competition for licences; and incentives. We agreed that these areas are sufficiently broad to take into account the most relevant issues.
7. Following an assessment of these criteria and their implications, Ofcom was clear that its preferred approach would be to move to a new licence period of 7 years for the stations affected. However, RadioCentre and other stakeholders did not share Ofcom's interpretation, or the same degree of concern regarding the various criteria (summarised below).
 - Flexibility - We felt that the emphasis on regulatory flexibility was misplaced, given Government reassurances over the future of analogue broadcasting and the extent of powers already held by DCMS and Ofcom.

- Viability – The viability of longer licence terms did not appear to have been fully explored in a manner that provided sufficient justification for Ofcom to curtail the potential licence terms by 5 years (from a possible 12 years to 7 years).
 - Competition for licences – The role of longer licences in making a radio station more attractive to potential owners, thus encouraging competition, did not seem to have been fully appreciated. Instead there appeared to be undue focus on incremental changes that could be brought about through the re-advertisement process.
 - Incentives – While understanding Ofcom did not want to create an incentive for stations to come off digital radio, there was not enough consideration given to the scale of the disruption that such a decision would involve for a small radio business and the resulting disincentive.
8. These concerns were fed back strongly at that time by RadioCentre. As a result of our consideration of these criteria and the options put forward by Ofcom, this led us to support the re-introduction of full 12 year terms for all re-advertised licences. We understand that this approach was the most widely supported by those who responded to the 2010 consultation.
 9. As far as we are aware no respondent supported Ofcom's proposal to move to 7 year licence terms. Yet despite this lack of compelling evidence, or any apparent support from those responding to the consultation, a move to licence terms of 7 years was confirmed in Ofcom's statement of November 2010.
 10. While disappointed with this outcome, we were reassured that Ofcom indicated that it would review this decision in the light of a Government decision on digital radio or other significant radio policy developments. We also welcomed the further clarification regarding the nature of such developments, provided to in a letter to RadioCentre on 11 February 2011 from Christopher Woolard, the then Ofcom Partner for Content, International and Regulatory Development.
- **Developments since 2010**
11. In the latest consultation Ofcom provides a helpful summary of relevant policy and market developments since 2010. This considers a range of factors, including the activity undertaken under the Government's Digital Radio Action Plan; the additional policy detail provided in the Government's policy paper 'Connectivity, content and consumers'; and the package of measures relating to radio announced by the Minister in December 2013. It also highlights a number of data sources and provides factual information relating to radio market developments.
 12. There is probably no need to comment on these further, other than to say that we agree that they are very significant and relevant factors, which Ofcom is correctly taking into account when assessing the criteria for making a decision on analogue licence duration.
 13. The only other comment we would add, in terms of market developments and dynamics, is that the local commercial radio market continues to be extremely challenging. While headline revenues for commercial radio have been broadly flat since 2010 (£523m in 2010, £536.8m in 2013), they have fallen further in real terms. Moreover, the smallest stations (which are the most likely to hold an analogue-only licence) continue to operate on the narrowest margins. This is a further relevant factor that does not appear to have been fully considered, particularly in relation to considerations regarding viability.

CONSIDERATION OF CRITERIA

14. In the light of the policy and market developments highlighted by Ofcom, it has sought to reconsider the validity and weight afforded to the criteria it identified in 2010.

- **Flexibility**

15. We welcome Ofcom's view that it should place less weight on the need for flexibility, when assessing the appropriate options for future licence duration.

16. However, as noted above, RadioCentre made it clear in the 2010 consultation on this issue that it felt that too much emphasis was being placed on flexibility at that time. Considerable uncertainty remained regarding any potential switchover of stations to digital radio and future regulation. Therefore we are surprised that Ofcom feels able to state so definitively that a new regulatory regime for FM services post switchover 'was anticipated in 2010'¹ – and that this was a key reason for retaining a degree of flexibility through shorter licence terms.

17. Nevertheless we are pleased that Ofcom has now concluded that there is less need to retain such flexibility, following moves to accommodate more small services on DAB and the stability in the statutory and spectrum framework that it describes.

- **Incentives**

18. We would not want any decision regarding the duration of analogue licence terms to inadvertently undermine the growth of digital radio. We agree with Ofcom that digital radio can bring a significant range of benefits to consumers, particularly in terms of functionality and range of services.

19. We can understand why Ofcom might consider that it could create such a risk if it was to offer 12 year licences to local analogue stations, but 7 year renewals to stations also broadcasting on DAB. However, this ignores the level of risk and disruption that is involved in moving from an automatic rollover (for a DAB simulcast service) to a licence awarded through a renewal process, which would create significant uncertainty and cost.

20. Ultimately any such decision will be more likely to be based on affordability of transmission and the long-term business plan for the station, rather than seeking to gain a short term benefit of a longer licence term, which may or may not be achieved depending on the outcome of any re-advertisement.

21. That said, as Ofcom points out, digital radio has become more established since 2010, and future initiatives (such as a new national commercial multiplex and a possible move to enable small scale services onto DAB) will assist further in this regard. As a result, the risk of a narrowing the range of services available to consumers, should stations move off DAB in significant numbers, is less of a concern. Therefore it is correct that it should be given less weight in assessing the options.

- **Competition**

¹ Para 3.32, p.13

22. We understand that Ofcom wishes to ensure a broad choice of services for listeners, but would argue that longer licence terms may actually help encourage competition, as new entrants are more likely to invest in companies that have the enhanced security of longer licences. Moreover, there is little evidence in recent years that the re-advertisement process for local analogue radio licences has been a significant means of introducing additional competition into the radio market.
23. When considering the trade-off between licences long enough to encourage applications, and short enough to ensure opportunities for competitive selection, we note that Ofcom states in the consultation that it was 'not able to say with any certainty whether there would be any material difference between licence periods of 7 or 12 years in this respect'².
24. This absence of a clear and material difference between 7 year and 12 year licence terms can be interpreted in a number of ways. Ofcom appears to be keeping an open mind on whether there is a difference and is seeking evidence on the relative impact. However, we would argue that the lack of clear evidence means that there is no compelling case to offer any other period that the statutory maximum of 12 years.

- **Viability**

25. We are pleased that Ofcom highlights its 2010 analysis, which found that 'particularly short licence durations might have a damaging effect on the ability to finance a station and the ability of operators to generate a reasonable return on investment'³. Unsurprisingly this work also found that longer licence terms may increase the economic viability of a radio station, as it will have more years of potentially increasing annual revenues to recover costs.
26. The report concluded that periods of less than 5 years could limit viability. While this information was useful, RadioCentre remained concerned that changes to the commercial radio industry and broader changes to the advertising market were not reflected fully in the research. In addition, the relative improvements in viability between 7 years and 12 years did not appear to have been assessed.
27. As a result of these limitations the research was of limited value in determining the most appropriate licence term. However, the information and evidence shared by RadioCentre members certainly supports the underlying finding that longer licence terms provide a better opportunity to recoup investment (and secure investment terms to ensure the business can be viable and make an acceptable return).

POLICY OPTIONS

28. Given that RadioCentre was already convinced of the case to move to 12 year licence terms in 2010, it follows that the policy and market developments that have occurred during that time have only helped to reaffirm our support for this approach.

- **Option 1: Licence durations of 7 years (current policy)**

29. Ofcom adopted 7 year licence terms following the 2010 consultation. The decision to opt for this approach, rather than 12 years, was based particularly on its view that it would provide

² Para 3.40, p.14

³ Para 3.42, p.17

greater policy flexibility and prevent any unintended consequences regarding the availability of DAB services.

30. However, we are pleased to see that Ofcom now states 'in light of our view that flexibility is no longer a consideration of the same significance, we do not consider it is necessary to limit the licence duration to seven years for this purpose'⁴. In addition, it accepts that longer licence terms are 'less likely to affect the number and range of services on DAB'⁵.

- **Option 2: Licence durations of 12 years (the maximum permitted under the legislation)**

31. In the light of Ofcom's consideration of the relevant criteria we welcome its key finding that 'there is little justification for not granting re-awarded licences for a period of 12 years. As the consultations states very clearly 'a 12 year period would ensure the greatest benefit to the stations themselves in ensuring their viability'⁶ and no negative impact has been identified regarding impact of listeners, Government, Parliament or other stakeholders.

32. As a result, **we warmly welcome the report's conclusion that it proposes a new policy that licence durations be set at 12 years.**

IMPLEMENTATION

33. Following the publication of this consultation Ofcom made a separate announcement regarding the relicensing of local analogue commercial radio. In a statement dated 1 April 2014 it stated that it would put in place a temporary moratorium on the planned advertisement (and pre-advertisement) of all local analogue commercial radio licences until the consultation was concluded.

34. As we understand it, this means that the proposal will be for station that has already had its licence advertised or pre-advertised to be awarded 7 years. Licences that are advertised following the publication of Ofcom's final statement on this consultation – and the lifting of the moratorium – will be awarded the new licence term (most likely 12 years).

35. However, in the interests of fairness, **we would propose a slight variation to this approach designed to assist those stations that have been awarded 7 year licences since 2010.** Specifically we believe that any such station could be given the option of seeking re-advertisement, which (if uncontested) would add a further 5 years to their licence.

36. This would be consistent with the new policy of offering re-advertised licences that are a total of 12 years in duration, while also being entirely within Ofcom's statutory remit to offer licences for a period of up to 12 years through the existing process. Therefore we ask Ofcom to consider this option in order to mitigate against the negative impact for those stations that have been awarded significantly shorter licences since 2010.

37. We hope that Ofcom will consider this approach, which we believe offers a practical solution to the inequity that may otherwise occur. We would also emphasise the need to publish a revised re-advertisement timetable alongside its final statement, in order to ensure that all operators understand the implications of the decision.

⁴ Para 3.55, p.17

⁵ Para 3.38, p.14

⁶ Para 3.55-6, p.17

LICENCE RENEWALS/ 'ROLLOVERS'

38. All issues related to commercial radio licence terms are, of course, intrinsically linked. Therefore, while it is not directly within the scope of this consultation, RadioCentre would also like to highlight the need to consider the future licensing arrangements of stations that currently provide a relevant service on DAB.
39. As Ofcom is aware, these local and national services have historically seen their licences 'rollover' to support investment in digital radio and avoid disruption for consumers. The last such extension in licences was granted in the Digital Economy Act 2010, but these licences will start to expire from around 2018-19. Following the Minister's announcement in December 2013 we now know with some certainty that this will be in advance of any proposed migration of large radio services to digital-only.
40. Failure to provide an option for stations to rollover their licences would be an odd position for Government to adopt, as it would create significant cost, bureaucracy and difficulty for Ofcom assessing and awarding new licences; it could lead to instability and confusion for listeners as brands would disappear; and it could undermine commercial radio's planned investment in DAB (alongside Government and the BBC).
41. Given that such a change would require a primary legislation, we have asked the Government directly to consider bringing forward measures to continue the renewal of commercial radio licences carried on DAB. However, we would also ask Ofcom to acknowledge this issue within its statement on analogue licence terms at the end of this consultation.
42. Specifically we would hope to see Ofcom confirm its intention to provide its full and active support to this approach, and highlight the negative implications to Government if a legislative solution is not agreed. In addition, we would ask Government and Ofcom to consider if there are *additional* measures that could be introduced to enable the rollover or extension of existing licences, in order to recognise the support and investment of existing operators.

ABOUT RADIOCENTRE

43. RadioCentre is the industry body for commercial radio. It represents a range of commercial radio groups and stations from independent, small-scale ventures, to household names serving major metropolitan areas. RadioCentre's member companies operate 245 licensed stations across the UK, through 45 different businesses, which represent 90% of commercial radio in terms of listening and revenue.

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