

RadioCentre response to DCMS Consultation on Amendments to the Community Radio Licensing Regime

Background

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), RadioCentre's membership comprises the overwhelming majority of UK Commercial Radio stations, who fund the organisation. RadioCentre is governed by a board of eight directors, representing a cross section of the industry and including all the major Commercial Radio groups.
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).

Introduction

3. The Commercial Radio industry continues to support the development of Community Radio as a distinct third tier of the overall radio landscape, which is focused on social gain, participation and community involvement. We recognise that this new sector can make a valuable and positive contribution to community life in the UK.
4. However, when considering the appropriate framework for Community Radio to enable it to thrive in future it is also vital to consider the possible impact on existing local services and the current fragile economic situation of commercial stations (particularly smaller stations).
5. Therefore the current restrictions on the operations of community stations that exist as part of the Community Radio Order 2004 are more important than ever. In particular they provide an important safeguard to ensure the ongoing financial viability of the smallest commercial stations, which are themselves often community focused.
6. The most important underlying principle in this regard is expressed by Section 105(3) of the Broadcasting Act 1990, as amended by the Community Radio Order 2004, which states that Ofcom shall "*have regard to the need to ensure that any service provided under that [a community radio licence] does not prejudice unduly the economic viability of any other local service*".
7. This is supported by the cap on on-air advertising or sponsorship at 50% of income for stations overlapping with commercial services serving over 150,000 adults in their measured coverage area (MCA), along with the ban on advertising for community stations overlapping with smaller commercial services serving between 50,000 and 150,000. The other important element (directly relevant to this

consultation) is the rule prohibiting the licensing of community services that overlap with the smallest of all commercial stations with an MCA of less than 50,000.

The expansion of Community Radio

8. The current restrictions have been in place since the inception of Community Radio in the UK and the first round of licensing in September 2004 (which was followed by the first station launch in November 2005).
9. Since then Ofcom has invited applications in two rounds of licensing and it reported earlier this year that it has offered licences to a total of 191 community stations, of which 131 have been issued and are on air (with 51 preparing to launch, 6 not launching and 3 handing back their licence)¹. At the time of writing this has expanded still further with the number of licensed community stations listed on the Ofcom website² now reaching 197, which we understand is likely to reach 250 next year.
10. This rapid expansion would indicate that the restrictions that are in place have certainly not acted as a disincentive or stymied the development of Community Radio. Indeed Ofcom has described the expansion of this sector as "*one of the great UK broadcasting success stories in the last few years*"³.
11. However, in our own submissions to Ofcom⁴ and DCMS⁵ we have highlighted the need to gather objective evidence on the potential impact of encouraging such growth in this sector, both in terms of meeting its social and community objectives and its place within the wider media ecology.
12. We continue to believe that the evidence base and criteria for pursuing this approach is uneven and lacking in clarity. In our view, general goodwill or untested assumptions are an insufficient basis for decisions about future funding or regulatory approaches to Community Radio.
13. Therefore we would repeat our suggestion that an objective cost-benefit analysis of its impact should be undertaken before the Government or Ofcom considers any changes to the remit and scope of the new Community Radio sector. This work should strive to answer two basic questions:
 - What is the measurable contribution of Community Radio to Government policy objectives in areas such as employment, skills, pirate broadcasting, crime and social inclusion?
 - What is the sector's net economic cost, in terms of its gifted spectrum subsidy, direct government funding (at local, national and European level), income from colleges and employment bodies, charitable grants, and impact on the existing balance in the radio industry?
14. RadioCentre believes that this work should be undertaken independently of Ofcom and Government, given their current involvement in the maintenance of the Community Radio sector. This would provide the necessary objective information on the impact and viability of the sector in the light of its expansion.

¹ Ofcom, 'Community Radio Annual Report 2009', March 2009

² <http://www.ofcom.org.uk/static/radiolicensing/Community/community-main.html>

³ Ofcom Annual Report & Accounts 2008/9, p.21

⁴ <http://www.radiocentre.org/documents/8.pdf>

⁵ <http://www.radiocentre.org/documents/6.pdf>

Economic challenges facing Commercial Radio

15. Given the absence of objective data on the impact of Community Radio we have argued against substantial change to the regulatory and funding framework. Instead we have supported a continuation of the current regime, to enable community services to operate successfully without damaging the economic viability of other local services.
16. With this in mind we believe it is even more important to highlight the current economic challenges facing the sector when considering amending these restrictions and the Community Radio licensing regime.
17. It is widely accepted that Commercial Radio has been particularly badly affected by a combination of structural changes, falls in advertising revenue compounded by the recession. Ofcom recently acknowledged that Commercial Radio is "*facing possibly its greatest ever challenges*"⁶, with the possibility of revenues falling by as much as 20% in 2009 and competition with other platforms that has never been tougher.
18. These changes have had a particularly devastating impact of the local and regional level. Indeed there is growing evidence that the current business model upon which local media is provided is becoming unviable and in danger of collapsing; multiple local newspapers and local Commercial Radio stations are at imminent risk of closure.
19. A recent report commissioned by Ofcom indicated that the smallest stations are finding it most difficult in the current climate, with the majority already being loss-making and even more likely to become unprofitable with the expected decline in revenues⁷. The report showed a cumulative Commercial Radio EBITDA margin of just 8% in 2008, with smaller stations generating an EBITDA of -6%. In the worst-case scenario, if industry revenues decline 20%, the vast majority of stations serving fewer than 750,000 people would become unviable.
20. Research conducted by RadioCentre for the Myers Review of local Commercial Radio predicted that up to 50 local Commercial Radio stations were at risk of closure during the next 18 months. Already seven stations have closed since the start of 2009, and the future of more looks uncertain with another local radio group having gone into administration at the start of August 2009.
21. This fragile economic situation (which shows no immediate sign of improving) must continue to be a central consideration for the Government and Ofcom when reviewing an appropriate framework for Community Radio, which does not have a detrimental impact of commercial services and the plurality of local radio provision.

Responses to consultation questions

22. Against this background we welcome the current consultation and the attempts to ensure that both community and commercial services are sustainable. We would provide the following comments in relation to the three specific questions outlined in the consultation document.

Question 1: Do you agree with the proposed criteria for Ofcom to apply when considering a one-off 5 year extension?

⁶ Ofcom, 'Radio: the implications of Digital Britain for localness regulation', July 2009.

⁷ Radio: Impact of regulatory relaxations, produced for Ofcom by Value Partners, May 2009

23. We understand that this proposal arises from a recognition within Government and Ofcom that it takes time for Community Radio stations to become fully established. Consequently these stations are often only beginning to realise the full potential of their social impact towards the end of their licence period. To that end we accept the logic that licence extensions will allow them time to “*plan better for their future*” and provide “*continuity of service for listeners*”⁸.
24. We also support this proposal because we believe that this principle should be applied consistently across the radio industry, in order to help achieve the necessary certainty and stability for all such licence holders at a time of unprecedented change and transition across the sector.
25. That is why we welcomed the proposals in the Digital Britain final report, which included a commitment to a seven year licence extension for national and local stations broadcasting on DAB. We also believe that commercial stations not broadcasting on DAB should benefit from an equivalent level of certainty, but unfortunately this change has not been forthcoming.
26. While we support the application of a similar principle for community radio, the criteria for granting an extension to Community Radio services should not necessarily be restricted to the conditions that are equivalent to those applied to Commercial Radio.
27. As we have stated previously to Ofcom⁹, we believe that it would be impractical to apply an identical approach to both sectors, given that each has differing objectives and measures of what constitutes good performance. Unlike Commercial Radio, Community Radio is a very new sector, such that there is very little data about its delivery of social gain against its public cost. Therefore we suggest that Community Radio regulation should continue to be sufficiently granular as to ensure that the Government’s social gain objectives are met.
28. As such we believe that it would also be appropriate for the criteria to require community stations to provide evidence of the social gain they have been able to deliver to the community, rather than simply the extent to which the existing licence conditions have been met.

Question 2: Do you think the 50% funding restriction from any one source should be lifted?

29. We understand that the original purpose behind the 50% restriction from any one source was to ensure a community station does not become overly reliant on a single funder, and was therefore less susceptible to editorial influence from an influential shareholder.
30. However, we also believe that Ofcom has significant power to ensure that no such funder can exert editorial influence over the output of a Community Radio station through the existing powers set out in the Communications Act 2003, the Community Radio Order 2004 or in relation to the individual licences. The presence of these existing safeguards should therefore be sufficient without the additional restriction on 50% of funding being maintained.

⁸ DCMS, ‘Consultation on amendments to the Community Radio Licensing Regime’, June 2009, p.10

⁹ <http://www.radiocentre.org/documents/8.pdf>

31. Moreover, we accept the principle that community stations should have a degree of autonomy on funding decisions and make decisions on the sustainability of their funding models. However this flexibility must continue to be within the limits of the overall framework that enables community and commercial stations to co-exist, including a continuation of the restriction prohibiting Community Radio from obtaining more than 50% of its income from advertising and sponsorship.
32. Therefore, while we accept the proposal to lift the 50% restriction on funding from any one source, we welcome the Government's support for the limits on advertising and sponsorship and are pleased to see that the "*restriction will remain in force*"¹⁰. Indeed, we would argue that structural changes in the radio market are on the side of extending the limitations (see below).

Question 3:

- i) Do you think that the rule prohibiting a community radio station from being licensed if it would overlap with an existing local radio service whose MCA is no more than 50,000 adults, should be lifted?**
- ii) If so, should the advertising and sponsorship restriction be applied to community radio stations that overlap with local radio services of up to 150,000 adults?**

33. In relation to the rule prohibiting a community station from being licensed where it would overlap with an existing commercial station which has an MCA of less than 50,000, we note that "*this restriction was put in place because we believed that, at least in the short term, it was necessary to protect the smallest commercial radio services from an additional tier of competition*"¹¹.
34. If that was the purpose of this measure when it was developed in 2004, then we do not accept that there is a compelling case to remove or weaken it in 2009, particularly in the context of the difficult economic conditions facing Commercial Radio (outlined above), which are most challenging of all for the smallest local stations.
35. Given that local Commercial Radio is facing an even more challenging economic position than at the time these restrictions were introduced, it seems perverse to seek to introduce greater competition for listeners in the smallest and most vulnerable radio markets.
36. The consultation document does appear to favour continuing with the current ban on advertising for all community stations that overlap with local commercial services of an MCA of up to 150,000, with a view to this also being applied to any new stations overlapping with commercial services of an MCA of up to 50,000 (which could be licensed should these changes be agreed).
37. However, it is crucial to understand that competition for advertising (while important) is not the only impact of expanding the number of Community Radio licences in this way. The very presence of an additional radio service can create confusion among listeners and fragment local audiences, meaning that small and community-focused commercial services become financially unviable, irrespective of the protection provided by a limitation on advertising by Community Radio.
38. Furthermore, in times of limited public funds, any funding offered by a local public body (e.g. in the form of a community grant) to a Community Radio station could

¹⁰ DCMS, 'Consultation on amendments to the Community Radio Licensing Regime', June 2009, p.5

¹¹ DCMS, 'Consultation on amendments to the Community Radio Licensing Regime', June 2009, p.5

undermine that body's ability to buy advertising on a small commercial station in the same area.

39. Consequently our strong preference would be for DCMS to resist any proposal to remove the existing restriction on licensing Community Radio stations that would overlap with an existing local radio service whose MCA is no more than 50,000.
40. On the contrary we believe that the current economic situation is so severe that it would be better to recommend that the restriction on advertising and sponsorship be extended to stations that overlap with commercial stations with an MCA of 200,000 (up from 150,000).
41. In addition, there is now a strong case for extending the threshold under which no new Community Radio licences should be issued up to 100,000 MCA (from 50,000), rather than removing this restriction altogether.
42. If the proposal to lift the rule prohibiting a community station from being licensed if it would overlap with an existing local radio service with less than 50,000 MCA is to be implemented, we strongly believe that each potential licensing round should firstly be subject to a market impact test conducted by Ofcom.

Conclusion

43. We are disappointed that the consultation document does not appear to appreciate fully the extent to which these proposals could impact upon the smallest commercial radio stations. In particular, the 'Partial Regulatory Impact Assessment' states confidently that "*there is no obvious cost to consumers*" and the proposals "*may have a small impact on these small stations*"¹², but provides no further evidence or analysis other than a passing reference to improved access to community stations.
44. There does not appear to be any serious consideration within the document of the possible contribution of these changes to the demise of local commercial services. While the number of commercial stations affected is relatively small, with only 26 such stations with an MCA of less than 50,000, the proposed measures would have a significant impact upon them.
45. This in itself could endanger the established role played by small commercial stations, not only in terms the provision of local news, travel and weather, but also in their community and social action role. These stations provide particularly valuable support for local community-based charities and organisations, helping them with publicity for their events and appeals. In addition, presenters and station staff also attend and provide coverage of important community events.
46. For example, Yorkshire Coast Radio, which serves an MCA of 28,405 helps local charities and community organisations by providing publicity for their events and appeals on its daily 'Action' feature, as well as broadcasting a daily feature on tackling crime in the local neighbourhood. In recent weeks presenters and promotions crew from the station have attended several community-based events, including Sneaton Fair, Scarborough Lifeboat Weekend, Mencap Summer Fair, Whitby RNLi fundraiser, Filey Lions Donkey Derby, and more.
47. We understand that a number of other commercial stations with an MCA of less than 50,000 have provided DCMS with similar examples of their community focus,

¹² DCMS, 'Consultation on amendments to the Community Radio Licensing Regime', June 2009, p.10-11

which would be threatened by the expansion outlined in the consultation document. We urge the Government to tread carefully before endangering such valuable community activity.

48. This highlights the need for the Government to maintain a clear policy based on twin objectives (that we share) of continuing to develop Community Radio, while understanding the value and importance of the Commercial Radio sector. In particular, we would endorse the comments by the then Secretary of State for Culture, Media and Sport, Rt Hon Andy Burnham MP on 2 March 2009 when answering a parliamentary question on the viability of Community Radio where he stated, *"we already have established radio stations that provide an excellent service to their community and we want to work pragmatically to ensure not only that community radio can continue to develop but, with one eye on the rest of the media industry, that it does not threaten the development of commercial services."*¹³

RadioCentre, August 2009

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¹³ Hansard, 2 March 2009