

Response to the Ofcom Consultation

“Preparing for the Future”

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Introduction

Absolute Radio welcomes the opportunity to participate in Ofcom's consultation concerning the regulation of commercial radio stations.

Currently, Absolute Radio owns 100% of Juice 107.6 FM in Liverpool and has been an active participant in the licence application process as overseen previously by The Radio Authority and is actively applying for further analogue licences being advertised by Ofcom. In addition, AR-UK is committed to extending its services on the DAB network (where capacity exists and where permitted by the multiplex owners) and is eagerly awaiting further availability of local spectrum.

AR-UK is a joint venture between Ulster TV plc, Absolute Radio International Ltd and Eurocast GmbH. For more information, please visit www.absoluteradio.co.uk

Response Summary

Absolute Radio concurs with Ofcom's policy to focus on the regulation of output as opposed to input. The UK commercial radio industry is one of the most developed in the world and its operators should be empowered to operate their business using a variety of acceptable methods which ensure the highest quality output and commercial success.

Specifically, AR-UK has provided detailed comment on the following:

- Additional spectrum allocation to facilitate greater access to DAB channels;
- Sharing of studio facilities;
- Operation of "News Hubs";
- Potential use of AM frequencies;
- And additionally... Power Restrictions placed upon the original Radio Authority "Sallis" (Small Scale Local Alternative Local Initiative Stations).

1. Do you agree with our proposals to use formats as the primary tool of regulation for analogue commercial radio?

Formats have evolved to provide a broad definition of the style and content theme of a radio station. Within the context of purely analogue radio, they do seem to provide a fair and reasonable basis on which to regulate radio stations.

However, the radio landscape is fast changing and analogue commercial stations now have to maintain and develop their place in an ever busier market; amidst digital stations on DAB, Freeview and Satellite as well as broadband offerings. A large number of these other radio stations, unless re-broadcasts of analogue services, are subject to format regulation. Further to this, smaller community radio stations are sprouting up, each creating its own niche in the marketplace.

With this in mind, Absolute Radio believes that it is vitally important for Ofcom to recognise the need for defined formats to reasonably evolve to ensure each analogue radio station can effectively compete for audience in its marketplace. Such evolution would not normally mean radical changes in output, but there needs to be provision for dialogue between regulator and operator to ensure reasonable flexibility and interpretation. Running alongside this is the fact that listener trends evolve too – and every radio station must have the freedom to have constructive dialogue with the regulator to position and re-position its output as reasonably required.

Absolute Radio concedes that such a dialogue does appear to be occurring across the industry and strongly welcomes this approach by Ofcom.

2. How do you think the objective of ensuring the provision on commercial local radio of a high quality local news service is best achieved?

The question immediately raises two fundamental issues:

- For the regulator to seek to ensure how high quality news is best achieved, perhaps ignores the importance and significance of the listeners' ability to exercise their own judgement;
- It is certainly at odds with Ofcom's broad stated interest in regulating output and not input.

Absolute Radio believes that quality of news output, as with all output, is difficult to define and should be left to the licensee to control within the context of the agreed station format.

In its response to the Radio Authority consultation on the introduction of news hubs in July 2002, Absolute Radio made the case that it supported greater freedom and flexibility for commercial radio operators to utilise and distribute its news resource through hubs, provided that quality is maintained.

Absolute Radio stands by this view, but suggests that the existing provision for news hubs does not go far enough - it is somewhat restrictive and does not afford sufficient flexibility for operators. Once again, there seems to be greater emphasis on regulation of input, as opposed to output.

The current provision of news hubs is subject to approval and carries certain conditions, such as that the operator must not employ any less journalists in aggregate. Effectively, this allows hubs to be created but is somewhat restrictive and places some question upon the precise definition of a journalist.

For example, a news hub environment strategy may require fewer journalists, but place greater emphasis on, say, more experienced or better trained journalists to oversee an overall news output function across several stations. Alongside this, greater use of existing resource could be employed for news gathering, editing or presentation functions. Such a structure need not compromise quality, but may, conversely, increase the amount of local comment, interviews and overall localness.

Absolute Radio believes that news hubs should be permitted and that no restriction should be in place by Ofcom with regard to the structure of the hub environment. Rather, Ofcom should focus on the quality of news output at each station.

3. Should stations be allowed to decide for themselves how much programming they automate?

Yes.

Following along the lines of regulating output as opposed to input, Absolute Radio believes that Ofcom should recognise that automation techniques have now become an integral element of many aspects of radio broadcasting.

Automation is a very difficult word to define; being a widely used technical means of facilitating a number of practices – ranging from time-shifting to real-time editing. Crude automation might be simply segueing music tracks with some station imaging and commercials, whereas complex automation can represent an entire mix of carefully produced output including significant speech content and listener interaction.

There is absolutely no benefit to the listener in Ofcom seeking to regulate the amount of automation a radio station should engage in. The issue of regulation, however, should revert to the format – which will define agreed speech levels and general content. How this is derived, it is quite academic and totally immaterial.

4. Should the requirement for station's studios to be based within the measured coverage area be relaxed to within the licenced area?

Yes.

Absolute Radio believes the current rules (which prohibit a radio operator from broadcasting material from any studios located outside the radio station's MCA) are unnecessarily restrictive.

We believe the proposed relaxation to the "licence" area should be sanctioned; we also believe Ofcom should consider further relaxation to allow operators greater freedom to operate from studios not directly within the "licence area". A number of radio operators now choose to site their stations in cost effective trading estates which are hardly accessible and do not promote any real physical interaction.

Where an operator benefits from proximity of two or more adjacent radio stations it would often make considerable operational and commercial sense to allow these services to be operated from a single location. There is nothing to suggest that this would lead to any derogation in the quality of individual station outputs; indeed, this would create considerable cost savings which would enable operators to invest more in other areas, such as marketing or programming and production expertise. There are dozens of examples to support this.

Absolute Radio would wholeheartedly welcome a decision by Ofcom to revoke the rule that station's must have their studios located within their MCA and would further welcome consideration for the location of studios to be considered outside the licenced area, where there is clearly good operational sense in doing so.

5. Do you believe that a station's local hours, as defined by the format, should include local material, but that, outside of those hours stations should be free to share material on a network basis as they see fit?

Yes.

We also believe there may be occasions where quality of programming could be enhanced through shared programming during these local hours. This might, for example, be a syndicated breakfast programme running across two or more stations which share the same format. Such flexibility might better enable some commercial radio stations to compete for audience at key day parts, such as breakfast, especially to win audience from BBC Radio 2. Localness should still be achieved through news and information, whilst quality could be achieved through significant increase in resource. We believe the operators should be allowed make this judgement.

6. Do you agree that each station should be required to maintain a format and localness file, available at its premises and on-line, which demonstrates it is meeting its obligations.

Absolute Radio welcomes any opportunity for commercial radio operators to self-regulate and provide clear information about their formats and obligations. Certainly, operators could either carry a copy of their format on the station website – or provide a link to Ofcom’s archive of formats.

Given that not all stations have the same emphasis or requirements associated with localness (see response below to Q7), it might be difficult to create an industry-wide requirement.

7. Do you agree with our localness guidance, which sets out the factors stations should take into account in providing local programming?

Absolute Radio always welcomes guidance; we consider that localness is an essential part of programming strategy and something which plays a key part in winning audience. Localness alone is something which does not necessarily guarantee quality, though. We believe that the station format should provide the basis for regulation.

The vast majority of commercial radio stations position themselves musically. This is because all research shows that music is, for most listeners, the main reason why they listen. Within this sustaining format comes talk. It must surely be editorially left to the radio operator to define how “local” this might be, within the requirements laid down in the format. The format document already provides a clear and simple to understand statement of each stations unique obligations and licence agreement.

8. Do you agree with our proposals to allocate more spectrum in VHF Band III for DAB-compatible use in the following way.

Absolute Radio welcomes more availability of DAB spectrum and strongly urges Ofcom to use this resource for three blocks of local multiplex allocation for the reasons that follow.

DAB’s success must ultimately hinge upon the availability of a wide variety of services. If this choice does not include comprehensive carriage of existing local analogue services, then the process of DAB complimenting analogue radio – and the eventual process of migration from analogue to digital – will surely be compromised.

The majority of existing local DAB multiplexes are now filled to capacity. Whilst this is encouraging, many of the channels are offerings provided by the multiplex owners which are quasi-national music services with little or no speech and, more often than not, no local relevance. Whilst a music choice may be important, should they occupy available spectrum at the expense of valuable local services?

Therefore, AR-UK welcomes the development of further frequency allocation for DAB. We specifically request Ofcom to ensure sufficient additional spectrum is made available to local multiplexes AND to insist it is reserved for local services' carriage.

Beyond this, Absolute Radio would welcome a review of the current licensing of DAB services on local multiplexes, with an emphasis on how many local analogue operators are effectively excluded from current access due to occupation of available spectrum by other non-local channels and/or multiplex owners. Such a review might also need to assess some of the annual carriage fees levied by multiplex owners which often price out of the market smaller, competing analogue services. Absolute Radio would not wish to see multiplex access being used to stifle competition at a local level.

For example, as soon as Absolute Radio acquired Juice FM in late 2003, we approached EMAP, the owners of the Liverpool multiplex, with a view to Juice FM getting onto this multiplex. Unfortunately, we have been told on several occasions that there is no space to carry the service. And so, despite being one of only two licensed local radio stations for the Liverpool market, Juice FM is unable to obtain carriage on the Liverpool multiplex, nor has any immediate prospect of doing so. Luckily, Radio City, the other licensed Liverpool station, is carried on the EMAP owned multiplex. EMAP also owns Radio City.

Absolute Radio's experiences in Liverpool highlight the situation well. Juice FM is a well-established, award-winning station (NTL Radio Station of the Year 2003/04). It is growing its share of audience year on year (highest ever 15+ share of 4.9% as reported in RAJAR Q4:04) and is committed to providing an alternative to existing radio with its unique mix of contemporary music and relevant speech. Without Juice FM, the vast majority of its 197,000 Merseyside listeners (*Source: RAJAR 2004 Q4 release: 4+ listeners*) would most likely revert to BBC Radio 1 or not listen to radio at all.

This large and growing audience should be able to source their favourite local commercial radio station on DAB – otherwise what incentive do they have to embrace this new technology?

Of the 9 commercial stations on the Liverpool DAB multiplex 6 are EMAP stations. In fact, the majority of radio services available on the multiplex are national brands aimed at younger audiences – including Heat, Kerrang, Smash Hits Radio, Xfm, and Kiss. We do not believe this situation does much to promote migration to DAB at a local level.

9. Do you agree that proposed local DAB licences should be licenced awarded as Broadcasting Act licences?

Absolute Radio believes this is fairer.

10. Do you agree that proposed national DAB licences should be licenced awarded as Broadcasting Act licences?

The key driver to the growth of DAB will come from increased **local** DAB provision. We believe that awarded national DAB channels under the Broadcasting Act (i.e. competitively) would create a degree of parity alongside local services, although disparity against national analogue services – which are currently advertised on a cash bid basis.

Whilst Digital One was awarded on a Cash bid basis, any new provision shouldn't be on the same basis to prevent limiting the scope for dynamic and interesting formats to compete with current BBC dominance.

11. What demand do you envisage there being for nationally-allocated DAB spectrum.

Demand will be linked to the previous decision, if taken, to allocate new National multiplex via auction or not.

Interested parties will link the demand for National services with the view that this is the only way to better broaden choice amongst niche formats to target the BBC's dominance. In reality Absolute Radio believes that LOCAL RADIO will be the key driver for DAB take up over the next 10 years as existing audiences migrate across to find their favourite brands and personalities.

12. Do you think the non-programme related data carried on each commercial DAB multiplex should be raised from the current level of 20%. If so, what should the limit be raised to?

Ofcom may wish to consider allowing greater data carriage for material which, whilst not specifically programme related, would compliment audio content. For example, information about music, such as artist reviews and promotional data about concerts and new releases might be of interest to listeners whilst being commercially attractive.

On this basis, Absolute Radio sees no reason why there should be any limit, provided that there remained sufficient capacity for existing programme information.

13. Do you think the non-programme related data (including radio) carried on each commercial digital terrestrial television multiplex should be raised from the current level of 10%. If so, what should the limit be raised to?

Absolute Radio takes the same view as expressed in our response to Q12 above.

14. Do you agree with the proposal to abolish the minimum bit rate limit for DAB digital radio and replace it with a co-regulatory system akin to that applied in television for picture quality.

If DAB is to be marketed on the strength of quality, in addition to choice, then we believe it is important to ensure standards of audio quality – which is defined by bit rate. It would seem retrograde to create a series of AM quality programme channels purely to accommodate more choice.

On this basis we agree with a co-regulatory system, but which must ensure proper planning of spectrum quality.

15. How should Ofcom allocate further MW (AM) frequencies between commercial and community radio.

Absolute Radio responded to the Radio Authority's consultation about use of available AM spectrum in 2001.

We still believe there is commercial viability in the creation of super-regional sized AM networks which each take in large potential audiences of several million adults. The large audience size will counter the issues of AM quality and increased competition in each local marketplace.

These licences could be advertised in regional segments over a relatively short period of time, subject to the usual clearance and application procedures.

AM suffers from both quality (bandwidth) issues and reception difficulties at night. Aside from this, AM is an ideal platform for larger scale services, assuming sufficient power levels can be granted. We believe that breaking up AM spectrum across smaller licence areas and to include community radio will risk rendering its commercial opportunities unviable.

The majority of existing AM stations have networked to create much larger sized services and, as such, have proved commercial success – for example UBC's network operations. AM still has a very real value if allowed to work to sufficient scale and Absolute Radio would welcome Ofcom's use of this valuable spectrum in the most commercially viable way possible.

16. Strategic Framework statements

Absolute Radio agrees with the statements Ofcom tables pertaining to a regional framework for the future regulation of radio, especially welcoming Ofcom's wish to use as little intervention as possible.

Radio is already a heavily regulated media – one of the most regulated in the UK. Yet, we are one of the most sophisticated medias in the world, basing our programming and strategies upon well researched models through to quality execution. In an ever increasingly competitive market, where the listener can exercise a vast amount of choice (including amongst unregulated channels, such as via satellite or the internet) the industry must have sufficient freedom to exercise its commercial operations within the scope of agreed formats. To this end, we have taken issue with several of the points made in this consultation – as some considerations very much sit at odds with this overall philosophy and theme.

Additional Issue concerning Transmission Power of 'small scale licences'

Absolute Radio believes Ofcom needs to urgently address the following important issue regarding those radio stations originally licenced under the SALLI scheme in the mid-90s. When the Radio Authority opened up the spectrum from 107 to 108 FM for new local radio services, it advertised licences by power as opposed to for a specific area. This attracted a large number of smaller applicant groups – and the licences were duly dubbed Salli's (Small Alternative Local Licence Initiative Stations).

A small number of these licences were granted in metropolitan areas, such as Absolute Radio's radio station Juice FM Liverpool. The majority were licenced in towns or across parts of a county.

At the end of the last decade, it was widely accepted that this policy, whilst increasing listener choice and providing local services, had created a second or third tier of stations which mostly struggled to compete with incumbent dominant existing heritage stations; the latter benefiting from much more powerful signals. The coming of Access / Community radio further compromises this position and highlights a distinct lack of parity and fairness.

There was much excitement amongst smaller scale stations as the Radio Authority, in its final months as regulator, awarded a number of these services power upgrades – e.g. from 100 watts to 200 watts. Whilst greatly welcomed, such recognition was much overdue and has done far from enough to redress the significant imbalance that currently prevails.

The smaller scale stations still have to compete fiercely in their marketplaces, not only with infinitely more powerful BBC services; but they must also sit alongside larger heritage commercial stations which have much more power, even on their relays.

This situation can be never more illuminated than in Liverpool, where Juice FM, whose power is soon to be 200 watts, not only has to compete with existing services, but will also see a potential new Ofcom advertised FM licence which, we presume, will not be advertised at just 200 watts to cover the city. After all, 200 watts is not sufficient power to serve a commerce region the size of Merseyside; the commercial region of Merseyside is expanding rapidly and Juice FM struggles to offer a clear signal across the area compared to the existing services such as Buzz FM (1 kilowatt), Radio City (8 kilowatts), Century FM (5 kilowatts) and Smooth FM (5 kilowatts).

When commercial radio is currently losing adult share to BBC radio, we urge Ofcom to seriously re-appraise this problem and consider a strategy to enable these lower powered commercial radio licences to obtain realistic power increases which enable them to compete in their marketplace.

We recognise power restrictions in the 107 to 108 FM band – but believe there is a strong argument that this issue should take precedence over newly issued licences. People frequently ask us why Juice FM has struggled to make a commercial return since it was first licensed in 1998. This is despite the fact that Juice was NTL Station of the Year in 2003/4 and is now recording its highest audience ever. One of the main reasons that the station finds it difficult to maximise its revenue potential is because its output is restricted to 200 watts, as opposed to all of its competitors which broadcast at several kilowatts. We would urgently request that the power of the various low powered stations be reviewed, with a view to putting them on a level playing field with their other commercial competitors.

Conclusions

Absolute Radio welcomes Ofcom's interest in regulating output as opposed to input. In summary, we believe that Ofcom, in its review, should address the following key issues:

- Affordable availability of DAB spectrum to local commercial operators;
- Attention to maintaining audio quality standards in the provision of DAB spectrum;
- Review licencing procedure of DAB channels with a view to available spectrum being competitively advertised under the Broadcasting Act, which will prevent multiplex owners from controlling / limiting choice (multiplex owners should not be allowed to fill up local multiplexes with emerging centralised brands at the expense of established local analogue brands);
- Urgently address the inadequacy and unfairness of transmission power to those stations advertised under the SALLI scheme
- Provide commercial operators with greater flexibility in terms of studio location and sharing of resource.

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