

Case study: Ofcom and the future of radio

Clive Johnson, July 2007

My experience as a respondent to consultations¹ relates to three conducted by Ofcom since its creation in 2003, and specifically relating to future radio licensing and public service broadcasting (in which I have had a long-standing interest).

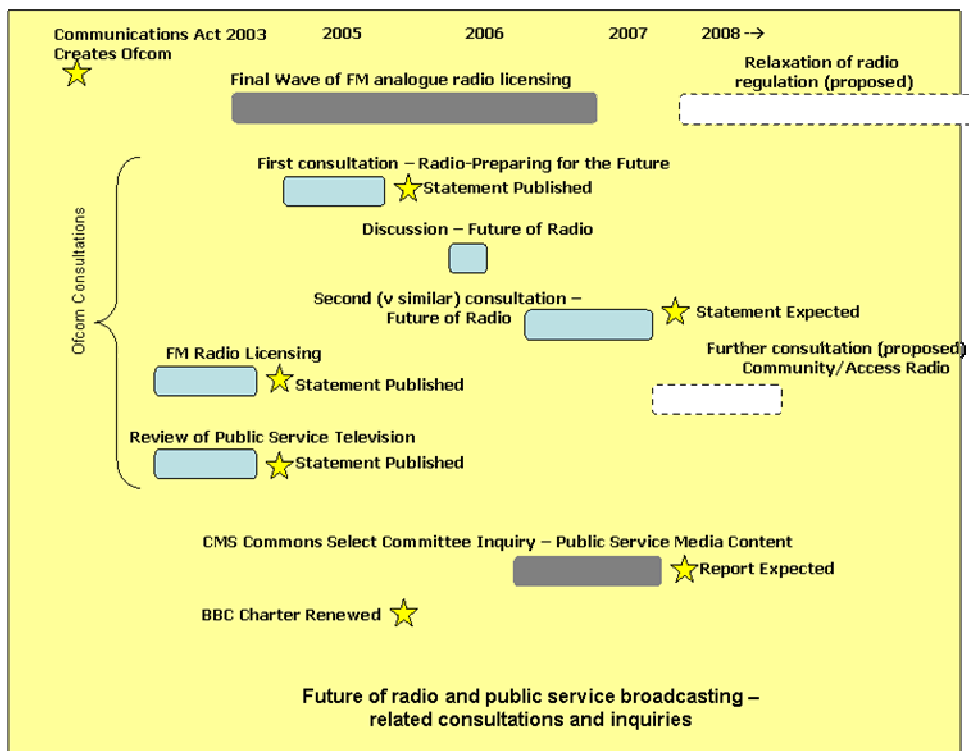
Ofcom is of course a relatively new entity, which had been set up to replace several bodies previously responsible for regulating different parts of the media. Soon after its creation, Ofcom offered refreshing promises regarding fast-track processes, attention to serve the interests of the citizen-consumer and a commitment to tackle some of the emerging problems impacting UK radio head-on. Its senior management included new blood, recruited from outside Government. Together with its focus on rapidly changing, technology-based industry sectors, in many ways, Ofcom might have been seen as a relatively progressive and modern organisation.

Amongst other matters, the consultations I have participated in raised questions about new digital platforms for radio broadcasting (intended to replace the current analogue AM and FM wave-bands), competing new media/internet services, the need for plurality in media ownership, the role of community-based radio, the regulation of public service content in local radio, the future role of the BBC, citizen-consumer interests in media regulation, and how to confront the operating pressures felt by many smaller commercial radio stations. Links to the consultations I have participated in are as follows:

Consultation	Date	Scope	Our response	Post consultation Statement
The Future licensing of FM Radio http://www.ofcom.org.uk/consult/condocs/future_fm/licensingfm/	March 2004	Proposed new streamlined approach for FM radio licensing, replacing Radio Authority methods. Included proposal to abandon public consultation prior to licence award assessment	http://www.ofcom.org.uk/consult/condocs/future_fm/responses/estuayfm.pdf	http://www.ofcom.org.uk/radio/ifi/rbl/car/la pr/fut_comcl_rad/
The Future of Radio (pre-consultation discussion) http://www.ofcom.org.uk/consult/condocs/radio_future/	Nov 2006	Questioned whether a second consultation on the future of radio was appropriate, one year after a similar consultation ('Radio – Preparing For The Future')	http://www.ofcom.org.uk/consult/condocs/radio_future/responses/estuarymedia.pdf	None – some references in full consultation briefing (it seems mainly drawn from executive summaries of responses)
The Future of Radio http://www.ofcom.org.uk/consult/condocs/futureradio/	June 2007	Presented broad-ranging proposals for future regulation, localness content, allowing automated programming & remote location of 'local' studios, spectrum use & ownership of public broadcast radio	http://www.ofcom.org.uk/consult/condocs/futureradio/responses/EstuaryMedia2.pdf	Pending (autumn 2007)

¹ My involvement has been as part of a small group, Estuary Media Limited.

The following diagram shows the timing of these and several related Ofcom consultations and other activities:



I believe that these may be representative of many consultations undertaken by other Government departments, for example illustrating:

- ❑ A public body trying to find its way in an unclear future and in which no obviously 'right' way exists amongst several alternative possible directions
- ❑ Consideration of matters which impact on a wide range of stakeholders – a small British industry competing on an increasingly international stage, customers of that industry (advertisers), industry association and interest groups, community and minority groups, the BBC and the general public amongst others
- ❑ Consideration of matters in which citizen and consumer interests and impacts were paramount (these being the key stakeholder groups)
- ❑ Consideration of complex matters, impacted by a number of factors outside the control or remit of the sponsoring department
- ❑ Consideration of at least one matter impacting various interests across Government departments², in which a 'joined up' policy is called for.

² The role of public service radio in supporting public policy objectives/meaning of 'citizenship'.

General critique – the consultations taken together

Good

- ❑ Ofcom didn't pretend to know all the answers
- ❑ Consultations made public – not restricted
- ❑ Web-based submission for brief responses was supported
- ❑ Consultation papers included well scoped executive summaries
- ❑ Consultations didn't restrict length or format of responses.

Bad

- ❑ Consultations appeared to run independently of other media consultations conducted by Ofcom and/or DCMS. Similarly, they didn't appear to have been timed to take account of the findings of parallel Select Committee inquiry into public service broadcasting (PSB), which has raised questions about the purpose and future of PSB, including radio
- ❑ Whilst public and on-line, the consultations appeared to be otherwise 'hidden' from the key stakeholder interest group (listeners) – no supplementary consultation appeared to take place
- ❑ Consultations usually open for 10 weeks or less, following their launch³
- ❑ Apparently poor consideration of and engagement of the BBC
- ❑ Short-sighted – very narrow focus, poorly thought through
- ❑ No obvious link to other Government consultations
- ❑ No obvious input from relevant stakeholders (economists, futurologists, motor industry⁴) – looked like internally produced or the work of a poorly informed management consultant
- ❑ Lengthy paper and repetitive
- ❑ Responses invited on Ofcom's stated proposals, not actively inviting suggestion of others⁵
- ❑ Policy proposals appeared to be led by one stakeholder group – commercial radio operators
- ❑ Apparently uncoordinated – repeating in space of little over 1 year, not linked to community radio consultation, no obvious link to public service broadcasting/other media consultations or policies (the creation of Ofcom would seem in part to have been prompted by an intention to harmonise cross-media regulation)
- ❑ Prior to its latest (2006/07) report, Ofcom's annual reports merely list which consultations have been conducted with or without impact assessments, offering no performance assessment (the 2006/07 report does include various statistics, e.g. the time taken to publish statements)
- ❑ Intent of pre-consultation obviously missed on many – objective restricted to a few lines – whether deliberate or 'slide pass' of second consultation was also deliberate for some unknown reason is unclear.

³ Ofcom Annual Report 2006-07, annex 2.

⁴ e.g. regarding plans for installing digital radios as standard in future new cars.

⁵ e.g. Phrasing like "we welcome views on these proposals" were mainly used.

Specific critique

(1) FM licensing - Statement

Following its consultation on 'FM licensing', Ofcom published an 11 page Statement, setting out its policy intention. As a result of the consultation, Ofcom amended only one of the 9 proposals it had made in the initial consultation; some of these policies do not appear to have been subsequently followed in practise⁶.

The Statement contains a lot of imprecise language (e.g. "generally speaking", "broadly supportive") and the whole response has a feeling of lacking substance and presenting several unconvincing arguments.

General critique of 'The future of FM licensing' – the good and the bad

Good

- Published within 90 days of the close of the consultation.

Bad

- Ignored various important points (we) raised in the interests of the citizen-consumer, instead seeing its primary audience as the commercial radio industry⁷
- Ignored 7 out of 9 of main response points offered by us to specific proposals, in contrast to the radio industry (on most other questions we tended to conform to majority views)
- Our response to 'FM licensing' wasn't initially published alongside other respondents, nor acknowledged (we needed to make Ofcom aware for this to be corrected)
- No meaningful feedback was given on 3 questions (13-15), offering just a brief paragraph mentioning a couple of points which supported Ofcom's proposals
- Gave no analysis of which stakeholder groups responded and their differing arguments
- Excepting listing respondents to one question (applicants to specific planned regional licences), explicitly named only one respondent – an Asian radio station, presumably to appear to have taken account of a 'minority' view
- No information was provided about how the consultation analysis was carried out
- Odd points from some respondents were referred to, but not others
- Very limited (and poor) marshalling of reasons for opposing some alternative views, and only normally where these appeared to have been expressed by a reasonable number of respondents

⁶ e.g. In its Statement, Ofcom said it would provide an analysis of commercial radio activity in areas for which licenses would be advertised, but usually just named the stations and pointed to their published programme 'Formats'; the Statement lists a key objective to favour innovation and increased levels of fair and effective competition, however in its licence awards in practise has favoured operator consolidation across wide geographic areas; the Statement promised meaningful licence assessments for all interested parties, however these haven't generally been provided in practise.

⁷ One question concerned the continued value for holding public hearings ahead of licence assessments (of which the public are a stakeholder); citizen interest points not acknowledged included reference to social gain in communities, reduction in quality of services for the citizen-consumer versus radio operator profitability interests, creating opportunities for new entrants, acting against generic radio station brand formats in local areas.

- No level of impact analysis was provided, although a question concerning the costs and savings for the radio industry was raised
- Response to one question (5) appeared to be structured along the lines (paraphrasing) of *'we've noted that a large number of responders favour option A...however we still intend to follow our original plan, option B'*.

(2) The future of radio – consultation briefing and stakeholder engagement

The future of radio represents a major consultation by Ofcom, which has recently closed. This is the consultation in which we invested most effort and have most concern about the outcomes, due to be published in September. It considered a range of crucial issues which will be central to Ofcom's work and the interests of the listening public and broadcasters over the next few decades.

There is no indication that Ofcom will consult further on the matters raised, other than on community/access radio⁸, which was partially covered within its scope, but for which a further consultation is proposed later this year.

The consultation followed a very similar consultation ('Radio – Preparing for the future') conducted just a year before; Ofcom arguing that so much had changed within a year to justify a second consultation. In an initial discussion consultation to test the demand for a second consultation, we alone challenged this view.

How Ofcom launched the consultation

Ofcom launched the consultation at a stakeholder event in April 2007 (it isn't clear who was invited to this group, e.g. what citizen-consumer representation was included). It isn't clear who Ofcom had or will proactively seek to consult other than radio industry. A news release was sent, although does not appear to have generated much publicity outside of the specialist media press and the business/media sections of a couple of the broadsheets.

No supplementary consultation was referred to, or appears to be planned. We don't yet know whether Ofcom will respond to the suggestion of the BBC, The Voice of the Listener and Viewer and ourselves that wider engagement with the listening public should be sought, nor to the view that Ofcom should not rush to making policy recommendations for the very long term when much uncertainty about changing markets and technologies continues to exist.

Why we decided to respond

As we held a longstanding interest in public service broadcasting and concern at the erosion of 'local' radio during recent years, coupled with a deep concern at the impact of Ofcom's proposals on the public interest, we felt the consultation offered an opportunity to present some strong arguments against prevailing radio industry views. The latter appeared to have dominated Ofcom's policy proposals, but we

⁸ 'Community [or] access radio' is the term used to describe not-for-profit radio services set up in restricted geographical areas, usually to serve particular interest groups.

believe (and had good insight through extended consultation with several radio operators) were not fully valid. Furthermore, the consultation briefing appeared to be extremely short-sighted in its perspectives of the future.

Having become aware of the consultation, we first decided whether or not to respond. This was a relatively simple matter since we felt we could input well informed views and we had an interest in the outcome. We did however question whether the effort put into a response would really be of value – whether our views would be given due consideration (a concern which has persisted, especially following a lack of acknowledgement of several important citizen-interest points raised by us in Ofcom’s Statement following its ‘FM licensing’ consultation).

How we approached our response

I took the lead in the group⁹ in preparing the first draft our response. Reading Ofcom’s briefing paper fully took around 5 hours – a document of more than 220 pages (148 without appendices), albeit with a comprehensive executive summary which addressed the main messages and themes of the document.

My reading and critique of the impact assessment, included as an appendix, was limited to just one walkthrough, although given time, I would have wanted to thoroughly assess each of the options presented with a more critical and open mind. Our response therefore inevitably focused on the key themes and proposals in the document, rather than specific impacts of the recommended options.

Having red-lined the document and brain-stormed topics on which I held a view, I started to structure and write a response (generally, a response for structuring each specific proposal was invited for responses, but not prescriptively; a simple on-line form was also provided for respondents who wished to make only brief comments). This started as a small document and grew as ideas kept coming – some triggered by new lines of thinking.

We then started an iterative and highly critical process of reviewing our draft, generally by email, but also involving at least one full-day’s meeting to walkthrough our response.

We also consulted informally with social contacts known to us working in the radio industry, especially to understand and validate our own understanding of specific technical and operational issues. Similarly, we consulted various on-line information sources, including various documents published by Ofcom: we felt that to be able to respond effectively, we needed to properly understand the issues raised and be able to present compelling arguments based on fact and insight where possible.

Whilst small, our group did represent a mix of tastes, combining a mix of music and speech interests, preferences for different technologies and differing listening behaviours and station-switching tolerance thresholds. Whilst raising awareness and interest amongst some peers who are professional broadcasters, many of these did not feel incentivised to respond, despite having well reasoned opinions on the future of radio¹⁰.

⁹ A core of just 3.

¹⁰ In some cases, this may be because individuals do not realise that they might respond anonymously, or due to a perception that Ofcom’s strategy was ‘already decided anyway’.

Having submitted our response (owing to the time required to prepare this, just a little before the submission deadline), we still had fresh thoughts on the matters raised by the consultation, although did not submit these given the late timing. We were mindful that despite our best efforts, our response was not as comprehensive as we would have liked it to be.

Scope of our response

Our response highlighted a number of significant issues to the consultation which appeared to have been given no or scant attention in the document, including:

- ❑ Citizen (as well as consumer) interests and concerns
- ❑ Radio's public service broadcasting role against wider public policies, e.g. public health and work/life balance, sustaining community
- ❑ How much choice is 'enough' for consumers?
- ❑ Likely future scenarios for radio listening and consumer behaviour toward media entertainment/information choices
- ❑ The likely economic impacts of deregulation
- ❑ Differing break-points for new competition over the next 20 years (we believe as many as 5 are quite probable, whilst Ofcom's proposals appeared to address only 1 of these)
- ❑ Experiences of US radio deregulation, which have had disastrous consequences for public service
- ❑ Whether Ofcom should be primarily an economic regulator or one which upholds the interests of the public and society as well
- ❑ The role of the BBC and community ventures in local radio broadcasting.

General critique of 'The future of radio' – the good and the bad

Good

- ❑ Our response was accurately and promptly published
- ❑ Non judgemental presentation of pre-consultation views – some detail cited from a range of responses, giving assurances that at least exec summaries were read
- ❑ Global acknowledgement of receipt of responses, though seeming to include the email addresses of many respondents who must have wanted to respond anonymously
- ❑ Good explanations and examples of 'radio speak' were offered for the 'novice' reader (e.g. concerning radio station 'Formats')
- ❑ Ofcom were ready to discuss input from us face-to-face.

Bad

- ❑ These consultations appeared to run independently of other media consultations conducted by Ofcom and the DCMS. Similarly, they didn't appear to have been timed to take account of the findings of a parallel Select Committee inquiry into public service broadcasting (PSB), which has raised questions about the role and future of PSB, including radio
- ❑ A confused discussion preceded the launch of the consultation – most respondents appeared to treat this as a full consultation, not responding to the subsequent 'real' consultation

- ❑ Duplicated many topics covered in a previous consultation, conducted just 1 year previously, and pre-empts further duplication in a consultation on community/access radio, intended later this year
- ❑ Whilst made public and on-line, the consultation was largely 'hidden' from the key stakeholder group (listeners)
- ❑ Apparently poor consideration of and engagement of the BBC
- ❑ Short-sighted focus
- ❑ Apparently uncoordinated – repeating in space of little over 1 year, not linked to community radio consultation, no obvious link to public service broadcasting/other media
- ❑ No obvious link to other Government consultations
- ❑ No obvious research input from several relevant advisors (economists, futurologists, motor industry) – looked like internally produced or the work of a poorly informed management consultant
- ❑ Ofcom appeared to already be possibly set on its policy (e.g. Ofcom CEO's comments to a CMS Select Committee meeting implied this; a strong implication was given in the consultation briefing that Ofcom intended to allow perpetual licensing for local stations)
- ❑ Stated a strong preference to respond using a restricted on-line form, "as this helps us to process the responses quickly and efficiently"¹¹
- ❑ Lengthy paper and repetitive
- ❑ Responses invited on Ofcom's stated proposals, not actively inviting suggestion of others¹²
- ❑ Policy proposals appeared to be led by one stakeholder group – commercial radio operators
- ❑ Lack of responses from several notable mid-sized/smaller radio operators, which most of Ofcom's proposals seemed especially designed to protect
- ❑ Most listener responses focused on just one issue, highlighted in *The Guardian*
- ❑ Some responses were published following the close of the consultation nearly a week before most others
- ❑ Stuffy interaction – website – no front page notification of the consultation, consultation briefing reached through 4 levels of navigation from the home page
- ❑ Consultation paper left a perception that Ofcom hadn't done its homework properly (this was a full and seemingly final consultation, the subject matter of which should have been central to Ofcom's work over several years and several previous consultations).

General perceptions arising from Ofcom's consultations

I have been left with low confidence in Ofcom's competency and true focus, especially its interest to serve the citizen and with a clear direction. This is disappointing not only as a tax payer, but as someone with a genuine interest in one ultimate key 'end product' of regulation – the availability of high quality public service and community-serving local radio.

¹¹ The Future of Radio, Ofcom, April 2007, pp 150.

¹² e.g. Phrasing like "we welcome views on these proposals" were mainly used.