



Local analogue commercial radio licence re-advertisement

Notes of guidance for applicants

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Section 1

Introduction

- 1.1 This document provides guidance for those wishing to apply for re-advertised local analogue commercial radio licences. For both the existing holders of those licences and others who may wish to apply for them, it explains the licensing process that Ofcom will follow, the main statutory requirements we will consider and the licence conditions that will need to be met.

General disclaimer

- 1.2 Information is supplied on a wide range of matters in this document, many of which depend on interpretation of the law. The information given is not an exhaustive account of the statutory and licensing requirements and should not be regarded as a complete and authoritative statement of the law. Nor does any information issued by Ofcom, whether in this document or elsewhere, imply any judgement by Ofcom as to commercial prospects for licences, or that licensed services will be profitable.
- 1.3 Prospective applicants for local analogue commercial radio licences must make their own independent assessment after taking their own professional advice and making such further investigations as they deem necessary on all relevant matters. Ofcom makes no representation or warranty, express or implied, with respect to information contained in this document or with respect to any written or oral information made or to be made available to any potential applicant or its professional advisors. Any liability therefore is expressly disclaimed. Ofcom reserves the right to alter or correct any part of this document.
- 1.4 Prospective applicants should be aware that certain features of the licensing process, such as fees, sanctions procedures and the drafting of relevant content codes, may change in the future as various public consultations are carried out and their results assessed.

Section 2

Licensing process

Ofcom's general approach to licence re-advertisement

- 2.1 Re-advertisement of an existing local analogue commercial radio licence is not a statutory requirement – it is for Ofcom to decide whether it wishes to grant a further licence for a given area.
- 2.2 Under the Communications Act 2003 ("the 2003 Act"), we have a general duty to secure "the availability throughout the United Kingdom of a wide range of television and radio services which (taken as a whole) are both of high quality and calculated to appeal to a variety of tastes and interests"¹. In addition, under the Broadcasting Act 1990 ("the 1990 Act"), we have a duty to secure the provision of "a range and diversity of local services"².
- 2.3 In order to fulfil these duties, our general approach is to re-advertise licences as they approach their expiry dates, following the process set out in this document. However, we also have other statutory duties, including a duty to secure "the optimal use for wireless telegraphy of the electro-magnetic spectrum"³, and there may be circumstances in which we consider that in light of our duties the most appropriate course of action would be not to re-advertise a licence. These circumstances may include (but are not limited to) cases where the incumbent has handed back the licence because of financial difficulties and we believe that, given the characteristics of the area covered by the service, it is highly likely that a new licence-holder would also fail to operate an economically viable business.
- 2.4 Should we propose not to re-advertise a licence, the current holder of that licence will be given a reasonable opportunity to make representations to us before a final decision is taken.
- 2.5 Our current policy is for re-advertised licences to be granted for a twelve year period.

Special application procedure

- 2.6 The special application procedure is contained within section 104B of the 1990 Act (which is reproduced in full at Annex 1), and is designed to streamline the licence re-advertisement process in cases where there is no competition for a licence.
- 2.7 Where we propose to re-advertise a local licence, section 104B provides for a preliminary stage, which is designed to identify whether any competing interest from one or more prospective new applicants exists. Initially, rather than publishing a notice of advertisement under section 104(1) of the 1990 Act (as would be the case for a new licence or the full re-advertisement of an existing licence), we may instead publish a notice, stating that we propose to grant a further licence in the area, and inviting 'declarations of intent' to apply for such a licence. This stage is known as

¹ Communications Act 2003, section 3(2)(c).

² Broadcasting Act 1990, section 85(2)(b).

³ Communications Act 2003, section 3(2)(a).

'pre-advertisement', and is optional. We may alternatively decide to bypass this phase, and move straight to a full licence re-advertisement.

Non-implementation of the special application procedure

2.8 Other than where we have decided that we do not intend to re-advertise a licence at all (see paragraphs 2.3-2.4 above), we intend to follow the special application procedure in all cases apart from the following:

- where the size of the licensed area (i.e. the area which a service is licensed to cover) is changing significantly;
- where we consider an incumbent licensee's record of compliance with licence conditions and/or statutory requirements to have been unsatisfactory, or;
- where an incumbent licensee does not formally confirm that it would submit any uncontested ('fast track') application on the basis that it would wholly maintain its existing programme service, as defined in its licensed Format.

Change to licensed area

2.9 We consider that we could not implement the special application procedure where there is a difference between the size of the existing and proposed licensed areas which we would not authorise under the terms of section 106(4) – (5) of the 1990 Act. These statutory provisions allow us to authorise an extension to any licensed area provided that we do not consider the increase in area to be "significant", or if there are exceptional circumstances which in our view justify a larger increase.

2.10 This policy reflects the fact that, under the terms of section 104B, we may only implement the special application procedure in cases where it is proposed to grant a further licence for the service in question. Ofcom considers that the substantial redefinition of a licensed area would result in a service which should be regarded as significantly different from the incumbent service, and accordingly it would not be appropriate to use the special application procedure in such cases.

Compliance record

2.11 We believe that an incumbent licensee should not be able potentially to benefit from 'fast track' re-licensing if it has a record of compliance with licence conditions and/or statutory requirements which, in the view of Ofcom, is considered to be unsatisfactory. Prospective applicants for a licence which will be fully re-advertised without the prior implementation of the special application procedure will be alerted to the fact by the publication, with advance notice, of our planned timetable of licence re-advertisements.

Maintenance of existing Format

2.12 The special application procedure will be implemented only if the existing licence holder formally confirms to us that it would submit any 'fast track' application on the basis of wholly maintaining its existing Format. We will contact the existing licensee with a view to obtaining such confirmation, normally around two months prior to the scheduled date of 'pre-advertisement' of the licence concerned. If the licence holder does not wish to make such a commitment, we will at the due time undertake a full competitive re-advertisement of the licence.

- 2.13 This policy is designed to ensure that the special application procedure is not used by an incumbent licensee as a means for achieving changes to its Format without going through the standard Format change procedure (details of which can be viewed at <http://www.ofcom.org.uk/radio/ifi/rbl/formats/formats/fc/request.rtf>), and also to ensure that there is open competition for a re-advertised licence if the existing licensee does not intend to maintain its present Format into a new licence period.
- 2.14 Changes to an incumbent licensee's existing Format that are made as a result of the policies set out in our Future of Radio statement (see www.ofcom.org.uk/consult/condocs/futureradio07) will not be regarded as Format changes for the purpose of the confirmation referred to in paragraph 2.12. In other words, an incumbent will still be regarded as maintaining its existing Format if such changes are made.
- 2.15 If the licence holder confirms that it would submit a 'fast track' re-application on the basis of its existing programme Format, but one or more other parties then declare an intent to apply for the licence as a result of its 'pre-advertisement', thereby triggering a full competitive re-advertisement (see paragraphs 2.31 – 2.37 below), the obligation upon the licensee to propose maintaining the existing Format would be removed, and the incumbent's application could be made either on the basis of the existing programme Format or of any variation to it, or proposing an alternative format.

Declarations of intent to apply

- 2.16 Notices of 'pre-advertisement' inviting declarations of intent to apply will be published on the Ofcom website. The closing-date for the submission of declarations of intent to apply for the licence when re-advertised will be specified in the notice. This will normally be around one month after the date on which the notice is published. The closing-date will apply to declarations of intent from both the existing licensee and any other prospective applicants.
- 2.17 A declaration of intent must be structured strictly in accordance with the template included as part of the notice of 'pre-advertisement'. It will consist of a statement of intent to apply for the licence, and will clearly indicate the identity of the party concerned (i.e. whether a body corporate, a group which is in the process of obtaining (or intends to obtain) this status by the time of application, or an individual). Prospective applicants are not required, at this stage, to provide any indication of their intended programming or other proposals that would be submitted in response to the re-advertisement of the licence.
- 2.18 At the closing-date for the submission of declarations of intent to apply, we will publish the names of all those parties who have submitted declarations of intent (if any), and announce what will be the next stage in the process.
- 2.19 If the only declaration of intent submitted is from the existing licensee, we will then adopt a 'fast track' re-licensing procedure involving only the existing licensee. In such circumstances, section 104B(5) requires us to invite the licence holder to apply for the licence "in such manner as [Ofcom] may determine" (see paragraph 2.28 below).
- 2.20 If a declaration of intent is received from any prospective applicant in addition to, or rather than, the existing licensee, we will proceed to re-advertise the licence in accordance with the procedure set out in section 104(1) of the 1990 Act, and summarised in paragraphs 2.31 – 2.37 below, according to our published timetable.

- 2.21 If no declaration of intent is received from any party, the licence will not be re-advertised.

Application fee and cash deposit

- 2.22 A declaration of intent to apply, whether from the existing licensee or from another prospective applicant, must be accompanied by both an application fee and a cash deposit. The application fee will be for the same amount as that required in response to a notice of advertisement. No further application fee will be required at the time of licence application, if this fee has already been paid to accompany a declaration of intent. The application fee, at whatever point in the procedure it is paid, is non-refundable.

- 2.23 Ofcom's current tariff of application fees for local analogue commercial radio licences is as follows:

Category	Population	FM	AM
A	4.5m +	£50,000	£14,500
B	1m – 4.5m	£25,000	£8,000
C	400k – 1m	£10,000	£3,500
D	0 – 400k	£5,000	£1,000

- 2.24 In accordance with section 104B(4)(c) of the 1990 Act, we will refund the cash deposit upon the subsequent receipt of an application for the licence. To qualify for a refund of the cash deposit paid, the identity of the licence applicant, whether a body corporate or an individual, must be the same as that of the party which previously submitted the declaration of intent to apply, or there must be, in our view, a significant formal connection between the two entities. Failure to submit a valid licence application (i.e. one which complies fully with the requirements set out in the notice of licence advertisement), having previously submitted a declaration of intent to apply, will result in the forfeiture of the cash deposit as well as the application fee.

- 2.25 Ofcom's current tariff of cash deposits, to accompany declarations of intent to apply for a given licence when re-advertised, is as follows:

MCA population*	FM	AM
2m – 4.5m	£100,000	£66,700
1m – 2m	£60,000	£40,000
400k – 1m	£40,000	£26,700
100k – 400k	£20,000	£13,300
25k – 100k	£10,000	£6,700
under 25k	£1,000	£670

- 2.26 The methods by which application fees and cash deposits must be paid, and by which the latter will be refunded where relevant, will be set out in the notice of 'pre-advertisement' inviting declarations of intent to apply.

'Fast track' applications

- 2.27 A 'fast track' re-licensing procedure will be adopted if the existing licence holder is the only party to submit a declaration of intent to apply, and has previously confirmed its intention to submit any uncontested re-application on the basis of maintaining the existing Format.
- 2.28 This procedure will require the submission by the licensee of sufficient information to enable us to ascertain that the existing licence holder should be re-awarded a licence for the applicable period (see paragraph 2.5) from the date of expiry of the present licence. This information will include the identity and composition of the licensee, and a statement confirming that the licensee will continue to provide the service described in its Format.
- 2.29 A period of around six weeks, following our announcement of the outcome of the 'pre-advertisement' process (see paragraph 2.18 above), will normally be allowed for the completion and submission of a 'fast track' application. We will aim to decide the licence award within one month of receipt of the application.
- 2.30 The cash deposit will be refunded upon receipt of an existing licensee's 'fast track' application, subject to the requirements set out in paragraph 2.24.

Licence re-advertisement

- 2.31 As set out above, a local analogue commercial radio licence will be re-advertised under section 104 of the Broadcasting Act 1990 if we so determine (see paragraphs 2.1 – 2.4), and:
- any of the circumstances detailed in paragraph 2.8 apply, or;
 - if, as a result of 'pre-advertisement', a declaration of intent to apply is received from any prospective applicant in addition to, or rather than, the existing licensee.
- 2.32 When a licence is re-advertised, it is open to any party, regardless of whether or not a declaration of intent to apply had been submitted in response to the notice inviting such declarations of intent (if the licence has been 'pre-advertised'), to submit an application for the licence. Those applying for a licence who have not previously submitted a declaration of intent will be required to pay the application fee but no cash deposit. In reaching a decision on the award of a licence which has been 'pre-advertised', we will have no regard as to whether or not an applicant has submitted a declaration of intent at the 'pre-advertisement' stage.
- 2.33 As noted in paragraph 2.24, the cash deposit will be refunded to any applicant who has previously submitted a declaration of intent to apply for the licence. As also noted above (see paragraph 2.22), an applicant who has previously paid the application fee at the time of submitting a declaration of intent to apply will not be required to make any further payment at the time of application.
- 2.34 Full details of each licence, and guidance regarding the submission of applications and how we will assess them, will be included in each notice of advertisement of a re-advertised licence.
- 2.35 In general, we intend to follow the same process for re-advertised licences as we have followed for the new local analogue commercial radio licences we have advertised and awarded. However, there will be some minor modifications.

- 2.36 In particular, in order to allow for a more streamlined licensing process in the interests of both applicants and Ofcom, the prescribed format of the application will incorporate some modifications from that previously used for the new licences we have advertised. As well as there being some separate questions for existing licensees and new applicants to reflect their differing status, we also intend to apply strictly-enforced word limits in respect of the responses to some questions, in order to constrain the length of applications. Prospective applicants should also note that the Format template which applicants will be required to complete will be re-designed in order to reflect the changes resulting from the Future of Radio consultation.
- 2.37 For licences which are re-awarded following a full re-advertisement process (whether or not there is competition for the licence), no Format changes will be permitted in the first two years of the licence period. This is consistent with existing policy in respect of new licences we have granted.

Licence re-advertisement timetable

- 2.38 Full details of our planned timetable for the re-advertisement of existing local analogue commercial radio licences can be viewed at <http://www.ofcom.org.uk/radio/ifi/rbl/car/readvertisement/timetable/>. The timetable is normally updated approximately every six months.

Annex 1

Section 104B of the Broadcasting Act 1990

104B Special application procedure for local licences

(1) Where—

- (a) a local licence is due to expire (otherwise than by virtue of section 110), and
- (c) OFCOM propose to grant a further licence to provide the service in question,

OFCOM may if they think fit publish a notice under subsection (2) instead of a notice under section 104(1).

(1A) In subsection (1)(c) the reference to the service in question, in relation to a case in which it is a pre-transfer local licence that is due to expire, is a reference to the equivalent local service for which a licence is capable of being granted at times on or after the radio transfer date.

(2) A notice under this subsection is a notice—

- (a) stating that OFCOM propose to grant a further licence to provide a specified local service,
- (b) specifying the area or locality in the United Kingdom for which the service is to be provided,
- (c) inviting declarations of intent to apply for a licence to provide the service,
- (d) specifying the closing date for such declarations, and
- (e) specifying—
 - (i) the application fee payable on any declaration made in pursuance of the notice, and
 - (ii) a deposit of such amount as OFCOM may think fit.

(3) A declaration of intent made in pursuance of a notice under subsection (2) must be in writing and accompanied by the application fee and deposit specified under subsection (2)(e)(i) and (ii).

(4) Where OFCOM receive a declaration of intent in accordance with the provisions of this section from a person other than the licence holder in relation to the service in question, they shall—

- (a) publish a notice under section 104(1),
- (b) specify—
 - (i) in relation to persons who have made a declaration of intent in accordance with the provisions of this section, no further application fee, and

(ii) in relation to all other applicants, an application fee of the same amount as the fee referred to in subsection (2)(e)(i), and

(c) repay the deposit referred to in subsection (2)(e)(ii) to every person—

(i) who has made a declaration of intent in accordance with the provisions of this section, and

(ii) who duly submits an application in pursuance of the notice referred to in paragraph (a).

(5) Where OFCOM receive a declaration of intent in accordance with the provisions of this section from the licence holder in relation to the service in question, and no such declaration from any other person, they shall—

(a) invite the licence holder to apply for the licence in such manner as they may determine (but without requiring any further application fee), and

(b) on receiving an application duly made by him, repay to him the deposit referred to in subsection (2)(e)(ii).