



Response to Draft BBC Charter and Agreement From the Commercial Radio Companies Association

Introduction

The Commercial Radio Companies Association (CRCA) represents commercial radio stations in the UK, and welcomes the opportunity to submit comments on the draft BBC Royal Charter and Framework Agreement.

CRCA welcomes the clear statement in the Government's White Paper that the BBC "must be able to operate alongside other providers – not overshadow them" and is pleased that there will be a duty on the Corporation "to have regard to competition issues in ensuring the delivery of the BBC's public purposes."

CRCA recognises that the proposed overall governance framework is unlikely to be changed during the remaining Parliamentary process. This submission does not, therefore, reflect the full range of CRCA views on the White Paper. Rather, it seeks to draw attention to particular areas within the Draft Charter and Agreement where we believe greater clarity is required, or where we believe parity between commercial radio and the BBC is required. Either way, we believe the improvements we suggest go some way to supporting the White Paper's requirements that the BBC Trust "must exercise rigorous stewardship of public money" and "have regard to the competitive impact of the BBC's activities on the wider market".

In summary:-

- To avoid confusion, and to signal the new regime, the Chairman of the BBC Trust should be referred to as that, not as Chairman of the BBC.
- Places on the BBC Trust should be reserved for individuals with competition and regulatory expertise.
- The Trust must publish protocols about how it will have regard to the competitive market.
- The Trust's policy on the movement of staff between the BBC executive and the Trust should be made available for external consultation.
- The descriptions of some of the BBC's radio services are wholly inadequate, providing nothing more than a general description of almost every commercial radio station in the country.
- Every BBC local radio service should be separately described in the Agreement, should have its own Service Licence and should publish an Annual Statement of Programme Policy.
- The threshold test of BBC content characteristics is too low.
- The term Public Value Test is confusing, as it places too great an emphasis on one of its two components, namely the Public Value Assessment, and does not recognise the equally important Market Impact Assessment.
- The Agreement does not stipulate sufficiently clearly what constitutes a 'significant' change to a service.
- Consultation periods on all relevant Trust decisions must be meaningfully long.

- Representation from relevant industries should be sought for the Joint Steering Group on Market Impact Assessments.
- The Secretary of State's procedural veto should be extended to include changes to existing services.
- The BBC should be required to make the most efficient use possible of the radio spectrum.
- The BBC should be subject to the same Party Political Broadcast requirements as commercial radio.
- There should be an appeals process for Trust decisions.

THE DRAFT CHARTER

1. Chairman of the BBC (clause 11)

- 1.1 We believe it is wrong for the Chairman of the BBC Trust to be referred to as the Chairman of the BBC. This label does nothing to describe the new relationship which should exist between the chairman of the BBC Trust and the BBC at an operational level, and instead simply implies that nothing has changed. This is a confusing and misleading message to give to licence fee payers, BBC executives and staff, and commercial broadcasters alike.
- 1.2 It is apparent that the Chairman of the BBC Trust-designate is finding it difficult to abandon his cheerleading role for the Corporation, as evidenced by his categorical defence of Radios 1 and 2's competitive programming at a recent Westminster Media Forum seminar.
- 1.3 We recommend that the Chairman of the BBC Trust be always referred to as just that. The new title will serve to remind all concerned, including the Chairman himself, that new relationships and working practices should be in place.

2. Trust members for the nations (clause 15)

- 2.1 The Draft Charter currently designates four positions on the Trust for "suitably qualified" representatives for each nation. CRCA recommends that a similar requirement be imposed to recruit suitably qualified competition law and regulatory specialists.
- 2.2 While the need for this form of expertise is recognised in the White Paper, CRCA believes it should be enshrined into the Charter in the same manner as that for representatives of the nations.

3. Role of the Trust – general duties (clause 24)

- 3.1 CRCA supports the Charter's contention that the Trust "must act in the public interest," and more specifically:
 - (a) *represent the interests of licence fee payers;*
 - (c) *carefully and appropriately assess the views of licence fee payers;*
 - (e) *have regard to the competitive impact of the BBC's activities on the wider market;*

(f) ensure that the BBC observes the highest standards of openness and transparency;

- 3.2 CRCA is concerned, however, that while requirements for Protocols are specified for (c) (in article 27) and (f) (in article 28), no such Protocol is required for (e).
- 3.3 Commercial radio broadcasters believe it would be appropriate for the Trust to make public, via a draft Protocol open to consultation, how it would ensure that the BBC fulfils its requirement to have regard to the competitive market (e).
- 3.4 Such a Protocol ought to make clear, for example, how the Trust would deal with a request, for example, from a commercial broadcaster to subject a change to an existing BBC service (including, but not limited to, an increase in an individual service's expenditure) to a Public Value Test.
- 3.5 Furthermore, consultation on such a protocol would be an essential process for the Trust to implement if it is to inspire confidence in its transparency and objectivity.

4. BBC Trust Unit (clause 44)

- 4.1 CRCA welcomes the commitment that the BBC Trust Unit will be "administratively separate from the rest of the BBC's organisation" and the recognition that specific arrangements will need to be made with regard to the transfer of staff between the Trust Unit and the rest of the BBC.
- 4.2 CRCA believes rules on the transfer of staff, including the stipulation of a minimum time limit between transfers, are vital in ensuring the Trust establishes and maintains a position of independence. Such is the importance of these provisions that CRCA believes that appropriate specific arrangements and rules should be developed by external consultants and made public, possibly for external consultation.

Draft Framework Agreement

5. List & description of the UK public services (clause 12)

- 5.1 The descriptions of BBC radio services contained in this section are, in some cases, wholly inadequate. For example, all but a handful of commercial radio stations in the UK would meet the descriptions set out for either Radio 1 or Radio 2. Given that the 'characteristics' of BBC content (see our comments on clause 15 below) are also a meaningless threshold, and that so little of these stations' output delivers on the new public purposes, we believe this part of the Agreement is simply a licence for the BBC to do just about anything with its popular music stations.
- 5.2 We question why the summary description of BBC Radio 1 does not include live music, something which has been long trumpeted as one of the station's key purposes. Similarly, we are troubled by the inclusion of a subjective term such as 'the *best* new music'. Best by what standards? Popularity? Furthermore, we believe that Radio 1 should not simply play new music, but introduce it. We recommend adding 'a commitment to live music' to Radio 1's description, and

replacing 'a commitment to the best new music' with 'introduce its audience to new music'.

- 5.3 Radio 2's description is still more concerning. It does not, for example, reflect any demographic targeting, despite BBC managers' constant attempts to assure us that the station still targets older listeners. There could be no less specific description of music policy than 'a broad range of popular and specialist music'. Despite its alleged importance to the station¹, there is no mention of live music. In addition, whereas speech on Radio 1 has to be 'significant', there is no such requirement of Radio 2.
- 5.4 The description of 6Music, which requires music from 'outside the *current* mainstream' would not prevent that station from broadcasting popular music from within the *previous* mainstream i.e. becoming a golden-oldies station, competing head to head with stations like Capital Gold or Classic Gold. We recommend removing the word 'current' from this description. We also have concerns regarding the word 'popular' as it ambiguously refers to the popular music genre, and also music which is popular.
- 5.5 In contrast to Radio 4, which broadcasts occasional programmes with musical content and is therefore 'speech-based', BBC7 is a speech-only service and should therefore be described as such. In the context of a one-sentence service description, it may also be more appropriate to describe Radio 4 as a 'speech' service.
- 5.6 Whilst we recognise that, given the Government's decisions regarding the future regulation of the BBC, it would not be appropriate for Ofcom to draw up these service descriptions, we believe their expertise in crafting language which accurately describes the services which radio (and television) stations provide would be valuable in the process of finalising both the wording of clause 12 of the Agreement, and in drafting Service Licences. We reiterate that Ofcom should not draw up the licences, but believe that the Trust should seek their advice regarding appropriate terminology and consistency of language between Service Licences and Formats (which will provide greater clarity for consumers and licence fee payers, and greater certainty for industry).
- 5.7 We are extremely concerned that the BBC is only required to provide 'a number of local radio services for audiences in different parts of England'. This vagueness implies that the actual number is either insignificant, fluid, or both.
 - 5.7.1 In reality, the number of services is extremely important, both to licence fee payers and to the commercial radio sector.
 - 5.7.2 The Agreement must stipulate precisely how many local BBC Radio stations are to be supplied. This gives certainty to licence fee payers that the future of their existing services is secured and certainty to commercial operators that any proposed new services will be subject to appropriate scrutiny and a Public Value Test. It will also provide clarity about the firm number of stations to be delivered within a clearly defined budget.

¹ See, for example, Lesley Douglas's oral evidence to Lord Burns seminar on BBC Charter Review, October 2004

- 5.7.3 Only by setting out the number of services in the Agreement can we be certain that every station will have its own Service Licence. If the new Service Licence regime is to deliver anything approaching parity between the regulation of local commercial radio and local BBC radio, it is essential that every individual BBC local radio station has its own Service Licence, just as every local commercial radio station has its own Format.
- 5.7.4 The fact that there are a number of similarities between many local BBC radio services in different parts of the country may be used as a reason for issuing one single Service Licence for all local BBC radio in England. This would not, however, be justifiable, as the similarities which also exist between some local commercial radio stations in common ownership in different parts of the country do not exempt them from having individual Formats.
- 5.8 In order to achieve consistency with other parts of the Agreement, we believe the word 'material' in clause 12(6) should be replaced with the word 'significant'.

6. Characteristics of BBC Content (clause 15)

- 6.1 The Agreement requires that all BBC content should display at least one of the following five characteristics: high quality; challenging; original; innovative and engaging.
- 6.2 The Government's view is that this requirement is "a powerful mechanism for holding the Executive to account" and in turn establish "clear standards against which the Trust's effectiveness can be judged"². CRCA disagrees. As presently drafted, the requirement has no value.
- 6.3 CRCA has previously argued that the requirement would be more effective if all BBC content were to demonstrate at least two or three of the characteristics rather than just one. This remains our firm view. We believe that virtually any programme on virtually any channel (BBC or commercial) could demonstrate that it meets at least one of the characteristics. As the guardian of public money and expectation, the BBC must be subject to higher tests and more rigorous judgement and, unless government demands more as we have suggested, it is settling for second best.
- 6.4 Accordingly, and in addition to the extra hurdle recommended above, we recommend that clause 15(1) be redrafted to read "The content of each of the UK Public Services taken as a whole must be high quality, challenging, original, innovative and engaging".

7. Service Licences (clause 18)

- 7.1 CRCA welcomes the introduction of Service Licences.
- 7.2 CRCA is concerned to note however that the forty English local radio stations will be the subject of a single licence albeit, it is understood (although not stated in the Draft Agreement), with a separate annex

² 3.1.11, White Paper

for each local radio station where it deviates from the generic local radio Service Licence.

- 7.3 Given the diverse range of BBC local radio output, it will not be possible to construct a single Service Licence that accurately captures all forty services. The use of annexes to capture these variations may appear the most administratively effective approach, but as it is likely that each local station will need its own annex, there will be no real reduction in paperwork.
- 7.4 Furthermore, and more importantly, if the annexes are to be meaningful and effective, they will need to have the same status as full Service Licences and with regard to the level of detail they contain will need to mirror those of all other Service Licences.
- 7.5 CRCA therefore recommends that each BBC local radio station has its own Service Licence. This would properly reflect the services' importance to their listeners and their potential impact on commercial radio.
- 7.6 CRCA also recommends that, in addition to scope, aims and objectives (18(1)), Service Licences should also refer to the target demographic of the station/service.

8. Statements of programme policy (clause 22)

- 8.1 We note that only network services will be required to publish a Statement of Programme Policy (SOP). This is inadequate and creates disparity between the commercial radio sector and the BBC.
- 8.2 All commercial radio stations, regardless of their size, must now publish a Public File which must contain at least fourteen types of information, including the news bulletin schedule, examples of recent stories covered, events of charities supported by the station and the station's playlist.
- 8.3 We have noted above that all BBC local radio stations should be subject to individual Service Licences and add here that all services which are subject to a Service Licence must be required to publish an annual Statement of Programme Policy
- 8.4 Importantly this would enable licence fee payers in local areas to understand how their money is being spent within their own area.

9. The Public Value Test (clause 25)

- 9.1 We accept that the term Public Value Test has passed into common parlance. However, we believe it is unfortunate that the overall test shares its name with one of its two components, the Public Value Assessment, particularly given that there is a tension between the two components (the Public Value Assessment and the Market Impact Assessment).
- 9.2 Whilst we believe it would be most desirable for the Public Value Test to be renamed, if this is impractical at this stage, we recommend that there should at least be some debate about the inference that could be drawn from this common naming and a clear statement that government does not intend that the Public Value Assessment should have dominance over the Market Impact Assessment.

10. When the Public Value Test must be applied (clause 26)

- 10.1 CRCA welcomes that a proposed “significant” change to an existing service must be subject to the Public Value Test (PVT). We assume there is a drafting error in 26(1) which we believe should read “which must include introducing a new service”.
- 10.2 Clause 26(2) however recognises that the term “significant” is a “matter for judgement”, in this case by the Trust.
- 10.3 CRCA welcomes the attempt in Clause 26 (2) (a-d) to spell out how the Trust ought to reach a view as to whether a change is “significant” but believes this must be strengthened.
- 10.4 Clause 26 (2) (b) for example stipulates that the Trust must have regard to “the financial implications of the change”. CRCA contends that this should be clarified to make clear, for example, that any proposed increase in expenditure for a particular service year on year, either in real terms or as a proportion of the licence fee overall, represents a “significant” change and therefore be subject to the PVT.
- 10.5 We are concerned that the presumption of the application of a PVT in the case of a Service Licence change is insufficiently strong in 26(3) and leaves too much open to the discretion of the Trust. Since the Trust is currently an unproven entity, populated to-date by individuals who have championed BBC activity, this is unacceptable.
- 10.6 A significant repositioning of a channel, or station's output must also be subject to such a test

11. Time Limits on Public Value Tests (clause 28)

- 11.1 It is vital that, in all areas of the Trust’s activities, consultation periods are long enough to be meaningful.
- 11.2 In order for proper responses to be made, sufficient time must be allowed for respondents to gather data or conduct research to inform their submissions. We recommend that Ofcom’s standard of 12 weeks be applied.

12. Joint Steering Group (clause 29)

- 12.1 CRCA supports the establishment of a Joint Steering Group. In particular we believe the inclusion of independent members will be highly beneficial to the process of setting the terms of reference for Market Impact Assessments.
- 12.2 We recommend that a representative from one of the industries likely to be affected by the proposed new service or service change be appointed to the Group for the duration of that particular project
- 12.3 This practice would enhance industry confidence in the process and would ensure that the most up-to-date market issues were being considered as part of the Group’s deliberations.

13. Public Value Assessments (clause 31)

- 13.1 CRCA is concerned that the Public Value Assessment remains insufficiently rigorous and objective. It believes clarification is necessary as to how “the value which licence fee payers would place

on the proposed change as individuals” is to be captured and measured (Clause 31 (2) (a)). Similar concerns apply to 31(2) (b) and (c).

14. Procedural Veto (clause 33)

- 14.1 We note that the Secretary of State has a procedural veto in the case of the launch of new services. However, we question why this has not been extended to include significant changes to existing services and recommend that this should happen.
- 14.2 Since the process for the approval of new services is the same as that for significant changes to existing services, and since a change to an existing service might actually have as much (or more) of an impact on the market as a new service, we believe this distinction should not have been made.

15. Spectrum (clause 44)

- 15.1 Unlike commercial broadcasters, the BBC manages its own spectrum allocation.
- 15.2 In light of this, we believe the BBC should be required to ‘secure the most efficient use possible of the radio spectrum that is available for use by the BBC’. To assist this, and to provide independent and expert scrutiny of the matter, we recommend that Ofcom is invited to undertake audits of the BBC’s use of spectrum.
- 15.3 We recommend consideration of switching off all BBC analogue national radio transmissions at the time of digital switchover since they will be universally available to all UK citizens via DAB, DTT and/or digital satellite transmissions. We recommend that this process should start with BBC Radio 3 handing back 91-93FM. This is because of the station’s relatively small audience and the propensity of that audience to adopt the new digital technology. Already, 20% of Radio 3’s listeners own a DAB set, making them 82% more likely to own a DAB radio than the average person³. Retaining all of Radio 3’s part of the FM spectrum for the sake of 1.6m listeners (a figure that is likely to decrease) may not, in future, meet the Government’s objective of spectrum efficiency.

16. Party Political Broadcasts (clause 48)

- 16.1 We are concerned to note that, despite its generous public funding and public purpose remit, especially in relation to sustaining citizenship and civil society, the BBC has less onerous obligations in respect of party political broadcasts than does commercial radio.
- 16.2 All national commercial radio stations are required to carry party political and referendum campaign broadcasts. The same requirement should be made of the BBC
- 16.3 It is inappropriate to leave the matter to the discretion of the Trust, particularly since this clause does not set out any requirements regarding the reach of campaigns.

³ RAJAR Q4, 2005

- 16.4 BBC national radio services should be required to adhere to the same Electoral Commission rules as national commercial radio.
17. Training (clause 82)
- 17.1 The Communications Act 2003 introduced significant new administrative burdens on commercial radio stations with regard to reporting provision of training and skills development. This is currently being regulated by the Broadcast Training Skills Regulator (BTSR).
- 17.2 The BBC has voluntarily agreed to meet the same standards as commercial radio in reporting its training.
- 17.3 We therefore recommend that this arrangement be formalised in the Agreement by requiring the BBC to have regard to the standards enforced by the BTSR when establishing its own training procedures.
18. The need for an appeal process
- 18.1 CRCA is surprised that no process exists to appeal against a decision of the Trust. It is common legal and regulatory practice for parties affected by a decision to have the right of appeal and we can see no justification for its absence within the new Charter
- 18.2 It is particularly important that an appeals process is established given that the Trust is an unproven entity and in light of the level of subjectivity left to the Trust by the Charter and Agreement.

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