CAPITAL RADIO PLC

RESPONSE TO THE GOVERNMENT'S CONSULTATION ON MEDIA OWNERSHIP

25 January 2002

Capital Radio plc

Response to the Government's Consultation on Media Ownership

Executive Summary

Capital Radio continues to support the Government's overall vision for the media landscape of the future and welcomes this specific consultation on plurality, diversity and the need for ownership rules. We agree with the Government's view that to encourage competition and economic growth requires being as deregulatory as possible. However, the media must also continue to perform its critical role to safeguard public debate and opinion.

The principal objectives of the new legislation are:-

- To create the most competitive market possible, whilst ensuring plurality of voice and diversity of content; and
- To construct a framework which is robust but adaptable to a rapidly changing technological and economic environment.

Our proposals, as set out in this response, should encourage a dynamic and flexible media industry yet also preserve plurality, diversity and quality for the public.

- **Diversity - Content Regulation**
  The principle of diversity has traditionally been maintained though regulation of content, rather than ownership controls. Capital Radio believes that the loosening of ownership restrictions will stimulate diversity by allowing further consolidation, providing more scope for investment, and enabling companies with greater financial strength to create a wide range of complementary services beyond the "middle ground". We believe that the relaxation of ownership restrictions should be accompanied by the maintenance of positive content regulation. We support the continuation of the format description, but with an emphasis on light regulatory interpretation.

- **Plurality – Media Ownership**
  We understand the need to maintain plurality of ownership amongst the media industry as a whole, but also believe that there should be sufficient freedom to allow single ownership of services where appropriate in order to encourage diversity of content.

- **Nationwide ownership of Independent Local Radio Licences**
  We support the proposed abolition of the existing points system in respect of UK-wide ownership. We agree with the Government's view that it should be left entirely to the Competition Authorities, taking advice from OFCOM, to

determine accumulation of radio interests on an UK-wide basis.

- **Accumulation of Radio interests in Local areas**
  We note that the Government is attracted to the original proposal submitted by the CRCA and The Radio Authority for a "new points system" to regulate local radio ownership. We are encouraged by the Government's invitation to comment on whether this "could deregulate further".

  The CRCA has subsequently revised its proposal - the new points system would operate to ensure that there is a minimum of two local commercial operators in addition to the local BBC service, within a local marketplace (originally it was proposed that there should be a minimum of three local commercial operators in addition to the local BBC service). Whilst we support the revised CRCA proposal on behalf of the industry, Capital Radio strongly believes that this could be deregulated further.

  The ownership of local radio licences should be regulated in a manner consistent with that of ITV licences and national radio licences. We note the Government's proposal to allow for the single ownership of the London ITV licences, and the proposed abolition of the 15% limit on share of TV audience which would pave the way for a single ITV company across the whole of the UK (subject in each case to competition law). We believe that, in this context, to require a minimum of three (or even two) local commercial radio operators, in addition to local BBC services as well as the national commercial and national BBC services, is unduly prohibitive. We believe that a new points system should not be introduced, and that the Competition Authorities should deal with local radio ownership in the same manner as they would deal with ownership of national radio licences, and regional ITV licences (as proposed in the Government's Consultation Paper, paragraphs 6.3.5 and 6.2.3 to 6.2.6). In addition, local radio licences contain specific requirements for local content which would be maintained and should preserve diversity in local markets (in the same manner as for national radio licences).

- **National Radio Licences**
  We support the proposal to remove the disqualification on holding more than one national analogue licence, and agree that existing format controls would ensure the continuation of diversity in the market.

- **Digital Radio**
  We are encouraged that the Government is of the view that a new ownership regime for digital radio should be as "liberal and transparent as possible". In some parts of the UK, the number of radio stations broadcasting on digital radio is already greater than those broadcasting in

analogue. With future technological advances and the release of further digital spectrum the number of digital services will increase significantly, thus negating any requirement for specific ownership restrictions above and beyond competition law.

The current system for regulating ownership of digital radio multiplexes should remain – there is no present specific restriction on the ownership of the local digital radio multiplexes (merely a restriction upon the number of consortia in which a radio operator can participate). We see no reason why this should change.

- **BBC**

  The scale of competition provided by the BBC cannot be ignored when planning for UK media regulatory change. Both the OFT and OFCOM should take into account the effect of the BBC in respect of market influence, market distortion and economic effect. We also believe that it is essential to have a clear definition of the BBC's public service obligations and ensure that this complements, rather than competes with, the commercial sector. In particular, the BBC should be broadcasting niche services which the commercial sector cannot financially support, rather than strive to reach mainstream audiences.

- **Competition Authorities and OFCOM**

  We support the Government's view in the White Paper (paragraph 2.3) that OFCOM will have powers that are concurrent with those of the OFT, in which they will consult with each other in each case and agree which is best placed to act. The OFT and OFCOM should work closely together to ensure consistency in the use of competition powers and in their approach to competition issues. This will make best use of the specialist knowledge within OFCOM and will assist the OFT in its general competition law functions.

- **Cross-Media Ownership**

  We believe that in the digital world few media properties will be limited to a single medium. If the Government truly wishes to create a strong broadcasting sector in the UK, and also provide genuine commercial competition to the publicly-funded broadcaster, then the cross-media ownership prohibitions must be relaxed. We believe that radio is substitutable with other media, and in this changing environment it is not relevant to overtly restrict the ability of companies to own properties in different media. We continue to support the view that cross-media ownership should be left to competition law, but that the OFT should take into account the views of OFCOM as to the relative value of each media on a case by case basis. This would have the advantage of remaining adaptable to a rapidly changing technological and economic environment, rather than imposing a particular regime enshrined in legislation.

- **Foreign Ownership**

  We agree with the Government's view that without reciprocal arrangements with other nations which would allow UK companies to expand into their media markets, the current prohibitions on foreign ownership should remain in place. However, these prohibitions should apply to both analogue, and unlike the current legislative regime, also digital radio licences. The future of the radio industry will be digital radio – and therefore it is an anomaly if non-EEA entities can own digital radio services regardless of reciprocity.

Capital Radio plc - Background

Capital Radio plc is the leading commercial radio group in the UK. Since we began broadcasting in London in 1973, we have demonstrated a consistent track record in growing our core radio business through long term investment in programming and talent, combined with a commitment to develop and promote radio to its full potential. As a founding shareholder of the Radio Advertising Bureau, Capital Radio has played a major role in making radio the fastest growing advertising medium of the past decade.

Capital Radio pioneered the provision of additional programme content by splitting our AM/FM wavebands, and we are proud of our reputation for finding and developing some of the best-known broadcasting talent in the sector. Our success is based upon the fact that, despite our national status, our radio stations enjoy an intimate relationship with their listeners in each of their local broadcast areas. This relationship, together with a strong local heritage, is Capital Radio's major asset and has provided the foundations for the Company's strong growth.

- Capital Radio operates 19 UK analogue licences, both local and regional across London, the South Coast, the Midlands, Cardiff, the North East, the North West and central Scotland;
- Capital Radio has also secured 30 digital licences on local digital multiplexes as well as one national digital service and is a founder member of the Digital Radio Development Board;
- Capital's analogue stations broadcast to a potential UK audience of around 28.4 million listeners;
- We employ approximately 700 people across our radio broadcasting interests;
- Capital Radio's stations raised £2.7 million last year for local charities.

As an active member of the Commercial Radio Companies Association (CRCA), Capital Radio is very supportive of its response to the Government's consultation on media ownership. However, we welcome the opportunity to participate individually, and would like to comment in particular upon the following areas where our views may differ from those of the industry overall:-

- Accumulation of Radio interests in Local areas;
- Digital Radio;
- Cross-Media Ownership

Placing Radio at the heart of Media Policy

We believe that the relaxation of regulation is crucial if the UK's radio industry is to establish its rightful place in an increasingly global market. Establishing and supporting a new platform such as digital radio is a challenging process which relies upon members of the radio industry, such as Capital Radio, investing significant resources to encourage take-up of this new technology. Similarly, commercial radio competes for talent on a cross-media basis, as well as against the BBC. The commercial radio industry must be strong enough to compete and invest in its future whilst withstanding market cycles such as the current difficult economic environment. In the case of the television industry, the Government has rightly accepted this position with the potential creation of a single ITV company, provided that competition laws are observed. We would like to see a similar flexibility for ownership of national and local radio licences (both analogue and digital).

Diversity – Content Regulation

In our view, reducing plurality of owners will have a positive effect upon the diversity of content on radio stations, especially given that content regulation will remain in force. We believe that the loosening of ownership restrictions will stimulate diversity by allowing further consolidation, providing more scope for investment, and enabling companies with greater financial strength to create a wide range of complementary services beyond the "middle ground". In local marketplaces, there is ample evidence to suggest that common owners of services deliver wider diversity than if those services were held by individual owners. In particular, Capital Radio can draw from its own experience of owning three stations in the London marketplace. Each of our three stations, Capital FM, Capital Gold and Xfm target very different audiences and there is very little crossover in the output between the stations. Quite simply, it is in Capital Radio's commercial interest to provide a wide variety of complementary content, rather than cannibalise its own audience through competition for the same type of listener.

Whilst we support the continuation of the format description, this should be with an emphasis on light regulatory interpretation.

Plurality – Media Ownership

We understand the need to maintain plurality of ownership amongst the media industry as a whole, but also believe that there should be sufficient freedom to allow single ownership of services where appropriate in order to encourage diversity of content.

The scale of competition provided by the BBC cannot be ignored when planning for UK media regulatory change. BBC Radio directly competes with commercial radio for audience. BBC Radio commands over half of all UK radio listening and this shows no sign of diminishing. The BBC accepts that it provides "*competition for audiences, but not for revenues*." However, the BBC does indirectly influence commercial radio's financial success as audience directly drives advertising revenue. The Davies Panel concluded "the broadcasting industry requires a positive force (such as the BBC) to act as a counterweight to the private concentration of ownership; to provide a centre of excellence; to be large enough to influence the market and so to act as the guarantor of quality and wide choice." Therefore, public service broadcasting in general, and the BBC specifically, should be aimed at ensuring a truly diverse market.

The role of competition law

General competition law governs every company and market in the UK. The Competition Authorities have a wide remit to investigate and impose sanctions on companies which are deemed to be abusing their dominant position and the right to prevent consolidation in any market, which may be operating against the public interest.

Ownership regulations within individual markets and industries are only required where there are special circumstances or reasons why a greater degree of "control" is required. Broadcasting has historically been viewed as one such area, as it has been deemed necessary to ensure that there is plurality of voice and diversity of opinion because limited spectrum has restricted access to the market.

The current media market is very different from that of only four years ago. Digital broadcasting is resolving problems of spectrum availability allowing unparalleled access to new markets. The internet, digital radio and fiercely competitive print have opened many new platforms for both consumers and broadcasters. Any new legislation will need to be flexible enough to be able to cope with this rapidly changing environment, without hindering growth.

Nationwide ownership of Independent Local Radio Licences

We support the proposed abolition of the existing points system in respect of UK-wide ownership. We agree with the Government's view that it should be left entirely to the Competition Authorities, taking advice from OFCOM, to determine accumulation of radio interests on an UK-wide basis.

Accumulation of Radio interests in Local areas

We note that the Government is attracted to the original proposal submitted by the CRCA and The Radio Authority for a "new points system" to regulate local radio ownership. We are encouraged by the Government's invitation to comment on whether this "could deregulate further".

The CRCA has subsequently revised its proposal - the new points system would operate to ensure that there is a minimum of two local commercial operators in addition to the local BBC service, within a local marketplace (originally it was proposed that there should be a minimum of three local commercial operators in addition to the local BBC service). Whilst we support the revised CRCA proposal on behalf of the industry, Capital Radio strongly believes that this could be deregulated further.

The ownership of local radio licences should be regulated in a manner consistent with that of ITV licences and national radio licences. We note the Government's proposal to allow for the single ownership of the London ITV licences, and the proposed abolition of the 15% limit on share of TV audience which would pave the way for a single ITV company across the whole of the UK (subject in each case to competition law). We believe that, in this context, to require a minimum of three (or even two) local commercial radio operators, in addition to local BBC services as well as the national commercial and national BBC services, is unduly prohibitive. We believe that a new points system should not be introduced, and that the Competition Authorities should deal with local radio ownership in the same manner as they would deal with ownership of national radio licences, and regional ITV licences (as proposed in the Government's Consultation Paper, paragraphs 6.3.5 and 6.2.3 to 6.2.6). Given, we believe, radio's accepted lower influence upon public opinion (especially for music based formats) than television, we see no reason why radio should be more heavily restricted than the television industry. This is reinforced by the fact that the BBC has approximately 50% of all radio listening in the UK, providing a strong independent voice.

We are concerned with the suggestion that consolidation in local markets might lead to loss of local content and identity – the strength of local radio competition would in reality prevent this happening. In any case, local licences will continue to include specific requirements for local content and therefore specifically preserve diversity. The Government has already accepted this principle with regard to regional ITV licences, and national radio licences where it is explicitly stated in the consultation paper: "national radio licences should continue to offer diverse content and competition to the BBC regardless of their ownership".

National Radio Licences

We support the proposal to remove the disqualification on holding more than one national analogue licence, and agree that existing format controls would ensure the continuation of diversity in the market.

Digital Radio

We are encouraged that the Government is of the view that a new ownership regime for digital radio should be as "liberal and transparent as possible". In some parts of the UK, the number of radio stations broadcasting on digital radio is already greater than those broadcasting in analogue. For example, in London there are now 44 digital programme services and just 26 analogue radio stations available. With future technological advances and the release of further digital spectrum the number of digital services will increase significantly, thus negating any requirement for specific ownership restrictions above and beyond competition law.

The current system for regulating ownership of digital radio multiplexes should remain – there is no present specific restriction on the ownership of the local digital radio multiplexes (merely a restriction upon the number of consortia in which a radio operator can participate). We see no reason why this should change.

To regulate access to digital multiplexes would be over-regulation, particularly in the context of relaxing media ownership rules. The multiplex owner is merely a platform provider, and as such has no role in influencing consumers or providing a source of information or news. Similarly, the multiplex application process ensures that an operator puts forward proposals which involve a bouquet of services to provide an interesting and diverse package for listeners. In a fledgling industry such as digital radio, to over-regulate could result in the Government "picking winners" allowing bidders in subsequent spectrum rounds to be awarded multiplexes with a weak suite of services because of unnecessary ownership regulations barring their competitors from bidding. This will be to the detriment of digital radio consumer take-up in the UK.

We agree with the Government that radio's future should be digital, but local multiplexes have already encountered investment problems as many service providers do not have the financial resources to commit to the necessary long term investment. If digital radio is to succeed, it is likely that it will be those with radio experience who will deliver its success, as those entities will have the confidence to invest substantial sums now in the hope of long-term gain. In return, we believe that the Government needs to award both multiplex owners and digital programme providers the greater certainty afforded where only regulated by competition law.

BBC

The scale of competition provided by the BBC cannot be ignored when planning for UK media regulatory change. Both the OFT and OFCOM should take into account the effect of the BBC in respect of market influence, market distortion and economic effect. BBC Radio has approximately half of all radio listening in the UK, a share of the market which no one commercial operator is permitted to have, and therefore its potential to distort the market is considerable.

We believe that it is essential to have a clear definition of the BBC's public service obligations and ensure that this complements, rather than competes with, the commercial sector. In particular, the BBC should be broadcasting niche services which the commercial sector cannot financially support, rather than strive to reach mainstream audiences.

Competition Authorities and OFCOM

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We believe that radio is substitutable with other media, and in this changing environment it is not relevant to overtly restrict the ability of companies to own properties in different media. We continue to support the view that cross-media ownership should be left to competition law, but that the OFT should take into account the views of OFCOM as to the relative value of each media on a case by case basis. This would have the advantage of remaining adaptable to a rapidly changing technological and economic environment, rather than imposing a particular regime enshrined in legislation.

Foreign Ownership

We agree with the Government's view that without reciprocal arrangements with other nations which would allow UK companies to expand into their media markets, the current prohibitions on foreign ownership should remain in place. However, these prohibitions should apply to both analogue, and unlike the current legislative regime, also digital radio licences. The future of the radio industry will be digital radio – and therefore it is an anomaly if non-EEA entities can own digital radio services regardless of reciprocity, as is currently the case.

Access Radio

Capital Radio, and the commercial radio sector in general, serves the needs of the local communities in which it broadcasts. If the Government determines that there is a need for a third "not for profit" tier of radio, then funding should be found from within the public sector, via the existing BBC licence fee or lottery funds. Funding should not come from commercial radio or advertising. To put this into context, it is perhaps best to differentiate the radio economy between publicly funded and privately funded radio operators.

In our view, the BBC already has a mandate to provide publicly funded broadcasting and whilst the Government should seek to maximise diversity of listener choice, it should do so based on proven consumer demand. To date, there is no verifiable evidence to suggest that the listening public would support a third such tier.

The balance between large and small-scale radio stations is already provided for in the commercial sector – in the past few years, the Radio Authority has licensed more small-scale stations, some of which having a coverage area of less than 20,000 people. These small-scale radio stations, whose financial situation is already fragile, might have to compete with any such third tier radio for audiences. Therefore, great care should be taken not to destroy the smaller local radio stations whose essence is rooted in serving their local communities.

If any third tier radio is to be established, it is vital that this should be included in any regulatory system affecting radio ownership.

Onward sale of Radio Licences

Capital Radio shares the Government's concern as stated in the Consultation Paper that proposals for a moratorium following a new licence award would lead to uncertainty. Assuming that content regulation is to remain in force, the onward sale of a new radio licence should not be to the detriment of the listener, but indeed can often be beneficial as a new owner would have the resource, wherewithal and incentive to invest in the station. The onward sale of radio licences can reward entrepreneurship and risk taking which is vital for sustaining a dynamic radio industry, an objective which the Government is keen to promote. In addition, we recognise the inherent danger of imposing a moratorium – and would draw the Government's attention to the position in France where radio stations were shut-down following implementation of a similar system.

Review of Ownership Rules

We agree with the Government's proposal to review media ownership rules on a regular basis. If these reviews are to provide substantive value, this will require significant consultation and research. Accordingly, we suggest that this should be carried out every three years (rather than two years). In addition, we believe that ownership rules should be reviewed to consider what further deregulation might be possible (rather than simply to re-apply the existing regime).

Capital Radio plc
25 January 2002