

Part II

Background and evidence

3 The regulation of commercial radio

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Introduction

3.1. In this chapter we consider the regulatory framework within which commercial radio operates including the rules governing the ownership of several licences by the same company. We then discuss the changes expected to be made in the Communications Bill, particularly to the ownership rules. Finally, we consider the potential future impact of digital audio broadcasting (DAB) and other new technologies.

The allocation of radio spectrum

3.2. Radio spectrum is a scarce commodity with many alternative uses. The Radiocommunications Agency (the Agency), an executive agency of the DTI, is responsible for the management of the non-military radio spectrum allocated to the UK under international agreements. It is one of the five regulatory agencies that are to merge to form OFCOM towards the end of 2003. To date, spectrum has been allocated mainly by administrative decision. Since 1999, the Agency has begun to use administrative incentive pricing to encourage the efficient use of spectrum. Further moves towards spectrum pricing are provided for in the Communications Bill. The Communications Bill also provides for the sale of holdings of radio frequencies, which is referred to as 'spectrum trading'.

3.3. Among the allocations that the Agency has made are the successive ranges of frequencies allocated to the RA for use by commercial radio stations. The Agency told us that the demand for spectrum for analogue sound broadcasting in the FM band remained so strong that it was increasingly difficult to find frequencies for new services. Although new digital technology will make more efficient use of the spectrum available (more services will be able to use the same frequencies), demand is still expected to outstrip supply for the foreseeable future in most regions of the UK. The Agency told us that it was considering the future use of spectrum that will become available in the L-band (1,452–1,467.5 MHz) by 2007. This might enable some further blocks of frequencies to be made available for digital radio to relieve very high frequency (VHF) spectrum limitations. International negotiations on recommended standards for digital radio in the high-frequency band are taking place. This may, in the longer term, allow some replanning of the shortwave, medium frequency and low-frequency bands.

3.4. The system of regulation necessitated by the scarcity of spectrum in the UK results in a radically different structure of the radio industry from that in the USA. We were told that some US urban areas had over 50 radio stations with considerably more independent owners of these stations than those in the UK. This difference partly reflects the longer period over which commercial radio has been operating in the USA and the absence of a major public broadcaster such as the BBC. The main reason is, however, that there are fewer constraints on frequencies in the USA, where urban areas are further apart, reducing interference between a broadcaster and its nearest radio stations. Available frequencies in the UK are also constrained by proximity to broadcasters in Continental Europe, which limits the frequencies available to the UK under international agreements.

The role of the Radio Authority

3.5. The Independent Broadcasting Authority (IBA), which had been responsible for both radio and television, was abolished as a result of the Broadcasting Act 1990 (the 1990 Act). This paved the way for the establishment of two new sectoral regulators: the Independent Television Commission and the RA. The RA's function under the terms of the 1990 Act, as amended by the Broadcasting Act 1996 (the 1996 Act), is to regulate independent radio services. It has no role in the regulation of the BBC's radio services.

3.6. The RA is empowered to plan and manage the use of the radio spectrum allocated to commercial radio and to ensure that the relevant frequencies are used effectively and efficiently. It also participates in the overall process of spectrum management, under the auspices of the Agency, to protect UK commercial radio services from interference from other services (broadcast and otherwise) and vice versa.

3.7. The RA has three main tasks: to plan frequencies; to appoint licensees with a view to broadening listener choice; and to regulate programming and advertising. The RA is responsible for monitoring the obligations of its licensees under the 1990 Act and the 1996 Act. The RA can apply sanctions to licensees who break the rules. Sanctions include broadcast apologies and/or corrections, fines and the

shortening or revocation of licences. Appendix 3.1 sets out extracts from the 1990 and 1996 Acts that govern the RA's main licensing functions.

3.8. The RA licenses and regulates all commercial radio services. These comprise national, local, cable, satellite and restricted services, on both analogue and digital platforms. Restricted services include all short-term, freely radiating services (for example, special event radio) and highly localized permanent services such as hospital and student radio. Appendix 3.2 describes the types of licence and how each is awarded.

3.9. The 1990 Act requires the RA, after wide consultation, to draw up, review and enforce codes which set standards and practices on advertising and sponsorship, programming and engineering. Appendix 3.3 outlines the RA's codes of practice and technical standards. The RA is also required under the 1990 and 1996 Acts to draw up and enforce the rules on ownership of radio licences.

3.10. The RA develops policies for the independent radio industry and its listeners, in accordance with its statutory remit to ensure the provision of high-quality services offering a wide listening choice.

3.11. The RA has a duty under the terms of section 85(3)(b) of the 1990 Act to 'ensure fair and effective competition in the provision of such [independent radio] services and services connected with them'. Although the RA has this duty, section 85(4) of the 1990 Act states that 'subsection 3(b) shall not be construed as affecting the discharge by the Director General of Fair Trading, the Secretary of State or the Competition Commission of any of his or their functions in connection with competition'.

3.12. The RA is funded solely by the annual licence fees paid to it by each of its licensees and by application fees.

Awarding licences

3.13. The RA began advertising new licences for the development of independent radio in January 1991. Since then, it has awarded three national licences and 150 new local radio licences (including 16 regional licences); there are currently 264 commercial radio licences in issue. The RA has also licensed around 4,000 short-term restricted service licences (RS licence) (for temporary low-powered radio services). It currently licenses around 86 satellite and 20 cable services, and 111 long-term restricted service stations serving non-commercial establishments such as hospitals and universities. The first (and only) national commercial digital multiplex licence was awarded to Digital One in October 1998. Since then, the RA has awarded 41 local digital multiplex licences and continues to advertise new local multiplex licences.

3.14. The RA awards national commercial radio licences on the basis of cash bids for an initial period of eight years (see Appendix 3.2). Local licences are also awarded for an initial period of eight years, but no cash bids are involved; applicants are judged against the criteria set out in section 105 of the 1990 Act (see Appendix 3.1).

3.15. The statutory framework requires the RA to have regard to a number of factors in awarding licences. In carrying out its licensing functions the RA must do all it can to:

- (a) secure a range and diversity of local services;
- (b) facilitate the provision of services which taken as a whole are of high quality;
- (c) facilitate a wide range of programmes calculated to appeal to a variety of tastes and interests; and
- (d) ensure fair and effective competition in the provision of services.

3.16. While the 1990 Act requires the RA to do all it can to secure the provision of a wide range and diversity of services in the UK, it does not lay down how it should do this. Government statements at the time of the enactment of the 1990 Act made it clear that pushing ahead more briskly with the introduction of new radio services was a key expectation of the new body's role. The types of licence issued by the RA are described in Appendix 3.2. Local licences are the most relevant type for this inquiry.

Local licences

3.17. Local licences¹ are announced on the RA's web site and awarded by open competition. Each year the RA publishes a working list of areas in which it intends to advertise new licences. Areas are included on the working list after the RA has considered the following criteria:

- (a) whether there is evidence that there is a serious potential applicant for the licence;
- (b) whether there is a suitable frequency available (that is, one that does not interfere with, or suffer excessive interference from, other services and can achieve the appropriate coverage for the area intended to be served); and
- (c) the effect on other stations which are already broadcasting in the vicinity.

Before deciding whether another licence should be awarded in an area, the RA takes account of the likely revenue available through advertising and sponsorship. If there is sufficient interest from potential broadcasters, the licence is advertised. The RA commented that it considered a significant response to the advertisement to be evidence of sufficient demand to support another station.

3.18. The RA told us that, once a licence had been awarded, it was most unlikely to seek and then grant additional spectrum to it; it would not accept the argument that a relay transmitter should be designed with sufficient coverage to allow separate programming or commercials.

3.19. If the area in which a prospective applicant is interested in applying for a licence is not included on the RA's working list, the applicant may submit a 'letter of intent' to the RA. The RA uses letters of intent to assess the pattern of demand from prospective applicants. GWR told us that, if an area was not included on the working list, it might take between two and five years for a group to lobby successfully for its inclusion. Once it was on the list it might be a further one to two years before the licence was advertised.

3.20. When making a decision about the award of a licence, the RA is required to consider:

- (a) whether the proposed service will cater for the tastes and interests of the local community (the RA asks for comments from the public in the area concerned to assess local needs);
- (b) whether the proposed service will broaden listener choice;
- (c) whether the applicant has the appropriate financial resources to sustain the service for the eight-year licence period; and
- (d) the level of local support.

Where a licence is being applied for by an existing licensee, already broadcasting in the same area on the same waveband, the RA also has to consider whether such an award would satisfy a radio-specific public interest test (see paragraph 3.45 et seq).

3.21. The RA told us that the period between licence advertisement and award was normally around six to eight months. Most successful applicants began broadcasting within one year of the date of licence award; the interval could be as short as six months.

3.22. 'Localness' features prominently in the statutory requirements and, in its various aspects, must be given considerable attention by the RA when assessing applications for local licences. However, the RA told us that considerations of localness may be of relatively less significance when considering the award of regional licences, where the broadening of choice by way of the format itself assumes greater prominence. Localness may be reflected in the programming proposals and the impression they convey of the applicants' feel for the local audience. Expression of local support is specifically referred to in the legislation.

¹Including regional licences.

3.23. There are four categories of licence, ranging from the largest area, category A, to the smallest, category D. Each category of licence is allotted a certain number of points for use in the RA's ownership points system (see paragraph 3.36). A local radio service or local digital sound programme service falls into:

- (a) category A if the number of persons over the age of 15 resident in the coverage area of the service exceeds 4.5 million;
- (b) category B if the number of such persons exceeds 1 million but does not exceed 4.5 million;
- (c) category C if the number of such persons exceeds 400,000 but does not exceed 1 million; or
- (d) category D if the number of such persons does not exceed 400,000.

3.24. The 1996 Act requires the RA to re-advertise all category A local licences in an open competition. Local licences in categories B to D may, however, be subject to a fast-track application procedure. This requires the RA to invite expressions of interest, supported by a cash bond, for the licence. If no other interest is expressed in the licence concerned and the existing licensee is performing satisfactorily, the RA may immediately renew the licence for a further eight years. In cases where a local licence operator has secured a place on a local digital multiplex (see paragraph 3.69), its licence is automatically renewed, on one occasion, for a further eight years.

3.25. The Communications Bill will increase the life of local, national or additional service licences from eight years to 12 years. The holder of a national or local licence will be able to apply for a four-year extension to that licence.

Existing local and regional licences in the Severn Estuary area

3.26. We describe the services provided by the commercial radio stations in the Severn Estuary region in Chapter 5. The longest-established stations are GWR Bristol and Bath, Orchard, Classic Gold 1260 AM, Red Dragon, Capital Gold and Galaxy 101. In the last three years all these licences, other than that of Orchard, have been reawarded under the fast-track process. Orchard was pre-advertised in January this year and no declarations of intent were received; the RA told us that it expected the licence to be reawarded to Orchard shortly.

3.27. In the last three years a further four stations have come on air in the region and another station will come on air later this year. In July 1998, the RA advertised for applicants to operate small-scale local stations within the Bristol and North Somerset Area. It received 13 applications in all, covering Bath (seven), Bristol (three) and Weston-super-Mare (three). The licences were awarded in April 1999. Bath FM was successful in Bath, Kute FM (now Star 107.3) in Bristol and WFM 107 (now Star 107.7) in Weston-super-Mare. These stations began broadcasting in 1999. In September 1999, the RA advertised a new licence for a local service covering Bridgwater and received four applications; in May 2000 this licence was awarded to BCR, which was launched in July 2001. In May 2002 the RA advertised a new licence for a local service covering Yeovil and received four applications; in March 2003 this licence was awarded to Ivel.

Scope for further local and regional licences in the Severn Estuary area

3.28. The RA told us that opportunities to provide new analogue services would continue to diminish in the next three years as spectrum scarcity increased. It issued a policy statement on the scope for further FM stations in March 2003. This included tentative proposals for two additional medium- or larger-scale local radio stations to serve Bristol and either Cardiff or Newport. The RA told us that any decision to advertise such licences would be a matter for OFCOM. Assuming that OFCOM proceeded with either proposal, the new station was unlikely to be established before 2006.

3.29. The RA said that it had also received letters of intent from potential operators interested in establishing new stations in Wells, Devizes, Trowbridge and Clevedon/Portishead. Small-scale permanent licences might be possible in Swindon and Devizes. In each of the other cases, although occasional

RS licences (see Appendix 3.2) had been awarded, the RA did not consider that a frequency would be available for a permanent service.

Digital radio licences

3.30. The 1996 Act made provision for the introduction of DAB services (see paragraph 3.68 et seq). The RA is responsible for awarding DAB licences and for the subsequent regulation of the system (see Appendix 3.6). The licences comprise national multiplex, local multiplex,¹ and sound programme service licences. Digital multiplex provision licences are advertised in open competition. Companies or consortia bid for multiplex licences. The bidder for a multiplex offers a package of channels based on his negotiations with individual radio service providers.

3.31. When assessing applications, the RA considers which proposals cater for the tastes and interests of those living in the locality; the variety of programme services which the multiplex provider intends to offer; the multiplex provider's business plan; investment in infrastructure to provide services as quickly and as widely as possible; and, in the case of national licences, additional investment to encourage the take-up of receivers. Digital sound programme service (DSPS) licences are awarded to the providers of the digital programmes carried on each multiplex after the award of its licence. For local multiplexes emphasis is placed on the content and variety of the services proposed.

3.32. Any analogue radio service that broadcasts on a digital multiplex has its analogue licence automatically extended for a further eight years.

3.33. Digital multiplex licences are awarded for a period of 12 years. DSPS licences are indefinite. The three national stations currently broadcasting analogue services had guaranteed places on the national digital multiplex. (When the national radio stations took up this option, their analogue licences were automatically extended for a further eight years.) Although local radio stations do not have guaranteed slots on local digital radio multiplexes, where a local station successfully secures a place on a local digital multiplex it too automatically has its analogue licence renewed for a further eight years.

3.34. Details of the existing DAB multiplexes in the Severn Estuary area and the stations broadcast on them are set out in paragraph 3.72 and Appendix 3.2.

Current commercial radio ownership rules

3.35. The RA told us that the ownership rules were not competition rules but rules intended to ensure plurality of ownership. The rules are designed, inter alia, to ensure that unsuitable persons are not allowed to hold licences and to place limits on the accumulation of interests either in radio or in both radio and newspapers by any one party. The RA is required to ensure compliance with these rules, which are set out in the 1996 Act.

3.36. There is no specific limit on the number of licences to provide local radio services that a company may hold throughout the UK. The overall extent of radio ownership is, however, controlled through a national points system, which is described in Appendix 3.4, and local ownership rules. No company may hold more than 15 per cent of the total number of points allocated under the national points system. Where a company controls a station all its points count against the company's limit. If a company has more than a 20 per cent shareholding, half the station's points are counted. A station's points can thus be allocated more than once.

3.37. The RA presumes de facto control in situations where a company's shareholding in a radio station exceeds 30 per cent. The RA told us that, in considering whether a shareholder controlled a licence, it examined the economic interests of the shareholders. If the majority shareholder had no economic interest, the RA could consider a minority shareholder to be in control of the licence.

¹Including regional multiplexes.

3.38. The 1990 Act stipulates that companies based outside the European Economic Area can hold only minority stakes in UK national and local analogue radio stations. This restriction has tended to discourage US players from becoming involved with UK radio stations.

National commercial radio ownership rules

3.39. No company may hold more than one national commercial radio licence.

Local commercial radio ownership rules

3.40. Although there are currently no restrictions on the total number of local licences that any one person may hold across the UK, such holdings are controlled by the points system. Limits also apply to the provision of local radio services in overlapping areas. No company may hold more than either three licences in any locality that share a potential audience or two such licences on the same waveband, unless the RA determines that such an accumulation is not against the public interest (see paragraph 3.45 et seq). The current detailed rules are that:

- (a) No one person may hold two FM or two AM local radio licences which share a potential audience, unless the RA has determined that in all the circumstances, having regard to certain specified matters (see paragraph 3.45), the holding of the licences in question could not be expected to operate against the public interest within the area concerned.¹
- (b) No one person may hold three local radio licences any of which shares a potential audience with each of the others, unless the licences include both an AM and an FM licence, and the RA has determined that in all the circumstances, having regard to certain specified matters, the holding of the licences in question could not be expected to operate against the public interest within the area concerned.²
- (c) No one person may hold four or more local radio licences any of which shares a potential audience with each of the others.³

3.41. A company may, therefore, provide both an AM and FM local radio service in an overlapping area, but its provision of two local radio services on the same waveband in the same area would be subject to a radio-specific public interest test (see paragraph 3.45 et seq). The public interest test also applies to the provision of three local radio services in the same area (either two FM and one AM service, or two AM and one FM service). Provision of four or more overlapping services is prohibited.

3.42. Two local radio services are said to ‘share’ a potential audience if the potential audience of one service includes more than half the potential audience of the other service.⁴ The coverage area of a local radio service is defined as the area within which its service is capable of being received at a level satisfying the technical standards set by the RA.⁵ This area is known as the measured coverage area (MCA).

3.43. The meaning to be given to ‘area concerned’ varies depending on the proposed transaction being considered. For example, if a company wishes to hold two FM or two AM local licences in the same area, the ‘area concerned’ is defined as the area covered by the combination of both services.

3.44. The Secretary of State has the power to amend these provisions where a digital service is provided in any area.⁶

¹Paragraph 12(1) of Schedule 2 Part III of the 1996 Act.

²Paragraph 12(2) of Schedule 2 Part III of the 1996 Act.

³Paragraph 12(3) of Schedule 2 Part III of the 1996 Act.

⁴Paragraph 12(5) of Schedule 2 Part III of the 1996 Act.

⁵Paragraph 3A(1)(c) of Part I of Schedule 2 of the 1990 Act.

⁶Paragraph 13 of Part III of Schedule 2 of the 1996 Act.

The radio-specific public interest test

3.45. When deciding whether the common ownership of stations satisfies its radio-specific public interest test, the RA must consider:¹

- (a) any reduction in the plurality of ownership of local radio services within the area concerned that would result; and
- (b) the likely effect on the range of programmes and the diversity in the sources of information available to the public in the area concerned and on the diversity of opinions expressed on local radio services received in that area.

3.46. In considering the plurality of ownership of local radio services within an area, the RA takes account of significant minority interests of local radio service licence holders.

3.47. On a relevant change of control, the RA is empowered to vary local licences that were granted prior to November 1996 to include conditions to maintain the character of the service.

3.48. The RA explained its approach to considering the public interest. It took the view that, as this was part of its licensing functions, it had an overarching duty, under section 85(3)(b) of the 1990 Act, to ensure fair and effective competition in the provision of independent radio services and services connected with them. However, this did not mean that it had jurisdiction to consider matters that fell to be considered by one or more of the UK competition authorities.

Changes expected to be made in the Communications Bill

3.49. The Communications Bill provides for the RA to be merged with four other regulatory bodies to form OFCOM. This merger is expected to take effect before the end of 2003. Most of the RA's powers will be transferred to OFCOM in a substantially unchanged form. Licences are to be extended from eight to 12 years. The Communications Bill also includes provision for the regulation of local content. One of the major expected changes concerns the ownership rules.

The new ownership rules

3.50. The Communications Bill will relax the rules governing concentration of ownership of radio licences. The RA told us that it expected the new ownership rules to permit a further consolidation of the independent radio industry, particularly in large cities with many radio stations. The new rules will also permit ownership of radio stations by non-EEA nationals.

3.51. The national ownership points system is to be abolished and replaced by a new system of local points, which is described in Appendix 3.5; a draft order to establish it has been published. The rules apply to a licence and its overlapping areas rather than to a specific town or region. This new system has been designed with the intention that there should be at least two commercial radio operators, in addition to the BBC, in every market with a reasonable range of services (that is, three or more stations). This is referred to as the 'two plus one' rule and is achieved by restricting companies' holdings of local points to 55 per cent of the total for the area concerned (see Appendix 3.5). Rules should provide safeguards in respect of news, a range of information, local employment and avoiding monopoly control over play listing recorded music. The same ownership rules will in future apply to AM as to FM stations.

3.52. Under the Communications Bill a company could be regarded as controlling a radio station if its shareholding exceeded 20 per cent, rather than the 30 per cent level at which the RA currently deems de facto control to exist.

¹Paragraph 12(4) of Part III of Schedule 2 of the 1996 Act.

New ownership rule on cross-media ownership of radio licences

3.53. Although cross-media rules concerning the ownership of independent local radio (ILR) stations by local newspapers or local television interests are to be eased, a stricter points limit will apply to cross-media owners than to other owners. The same calculation is made as in Appendix 3.5 but a regional ITV licence-holder covering the area served by a local radio station, or the controller of more than 50 per cent of the local/regional press in a radio station's coverage area, would be limited to 45 per cent of the points in the area in question, rather than 55 per cent. This rule is intended to ensure that there will be three local media groups in areas where there are three or more radio licences in operation. In areas where there are only two overlapping radio stations, there will be no prohibition on them both being owned by any major local newspaper.

New ownership rule to preventing local monopolies

3.54. To prevent local cross-media monopolies, there is a separate provision prohibiting a company from holding a local analogue radio licence and a regional channel-three television licence and owning more than 50 per cent of the newspaper market in the same local area. This rule applies whatever the number of local licences.

New ownership rule on digital sound programme service licences

3.55. A parallel rule prevents any operator providing more than (a) four local digital sound programme services or (b) 55 per cent of the services on any given multiplex, whichever is the greater.

New transitional ownership arrangements

3.56. In the event that an existing licence holding would not be allowed under the draft order, the holder of the licences would not have to divest its existing holdings. However, should the holder of the licences in question seek to acquire a further licence, the new rules would apply.

The effect of ownership rules in the Severn Estuary area

3.57. In the case of the joint venture between GWR and SRH to form VRSL, the RA told us that GWR and SRH had developed a mechanism that allowed GWR to have a 49 per cent shareholding in VRSL that did not amount to control within the meaning of the 1996 Act. VRSL had been advised to ensure that:

- (a) its managing director and station programme managers were not directors or employees of any GWR Group company;
- (b) news provision for the two Vibe services remained distinct from other GWR local news output and subject to the ultimate editorial control of VRSL officers and staff; and
- (c) advertising, sponsorship and promotions remained subject to ultimate editorial control by VRSL, which would retain power to veto content or scheduling.

On the other hand, the RA said that SRH had a real economic interest in the operation of the VRSL licence. It had the ability to determine who was managing and programming VRSL and who was selling its advertising.

3.58. When the RA considered the licensing and ownership aspects of the joint venture, it examined these arrangements and the resulting economic interests. Its view was that GWR did not control VRSL within the meaning of the 1996 Act. It therefore concluded that it was not necessary to apply the radio-specific public interest test.

3.59. The RA told us that the level of competition (and potential competition) faced by local commercial stations in the Severn Estuary was unlikely to be altered by the Communications Bill.

Although there was potential for consolidation nationally as media ownership restrictions were relaxed, local rules will remain in force. The RA told us that the new points system in the Communications Bill would not have affected its assessment of the current case. GWR's interests in the area relevant to the present merger would fall below the 55 per cent level where the new ownership rules would constrain it.

Promises of performance and formats

3.60. Applications for national and local radio licences contain a 'promise of performance' that describes the prospective licensee's programming proposals and the character of the service that it is committed to providing. National and local radio companies are required to abide by these individual promises of performance. Each promise of performance changes into a station 'format' around six months after a station comes on air. The format summarizes the output a station undertook to provide when it applied for its licence (for example, how much output will be speech and/or music and what kind of speech and music will be broadcast). A station may not deviate from its format without the consent of the RA.

3.61. Station formats are intended to prevent a licensee from substantially changing the character of the service offered without the RA's approval. The RA does not routinely monitor whether stations are remaining within their formats, but will investigate any complaints it receives. In practice, competing stations are likely to complain if a rival local station changes its programming to attract their audience.

3.62. The RA told us that formats are designed to have some room for manoeuvre. The character of a station depended on many factors, including its presenting style, music output, speech, and news content. A new owner that already operated other stations might wish to highlight or underplay elements of a format in order to fit the station into its 'brand' for the future. From a music point of view, stations with supposedly different formats could then start to sound alike if their play lists began to emphasize the more middle-ground parts of their formats.

3.63. Under section 106 of the Broadcasting Act 1990, the character and coverage of a service can be changed with the RA's consent, provided that either:

- (a) this would not substantially alter the character of the service; or
- (b) this would not narrow the range of programmes available by way of independent radio services to persons living in the area or locality for which the licensed service is to be provided.

Codes of practice

3.64. In their broadcast output, licensees must comply with three codes of practice that the RA is required by statute to produce. These are the programme code, the news and current affairs code and the advertising and sponsorship code. These are outlined in Appendix 3.3.

Compliance and complaints

3.65. In ensuring compliance with station formats and its codes, the RA adopts a more reactive than proactive approach. It regulates by investigating the written complaints it receives, together with some spot monitoring. The RA considers complaints concerning programming, advertising and sponsorship, and transmissions for all non-BBC radio services. Complaints may originate from listeners concerned about, for example, an item of programming or a misleading advertisement. Complaints may also be received from rival stations in the area, or from disappointed rival licence applicants, claiming that the station is in breach of its format.

3.66. Stations are required to keep a tape of their output for 42 days. If the RA decides to proceed with an investigation, it will request scripts or the tape of the output covering the item and then examine these to decide if the item is in breach of any of its codes or the station's format. If a station is found to be in breach of the RA's rules, it is reported in the RA's quarterly complaints bulletin. If the breach is serious enough, the RA has a number of sanctions it can impose. It may fine the station, require a correction or an apology to be broadcast or, in more serious cases, shorten, suspend or revoke the licence.

3.67. Listeners are also able to complain to the Broadcasting Standards Commission (the BSC). The BSC deals with complaints from individuals alleging that a programme has treated them unfairly or unjustly or that their privacy has been infringed; and considers complaints about violence, sexual conduct and taste and decency in programmes and advertisements. After adjudication, the BSC may require the publication of its findings.

Digital audio broadcasting

3.68. Conventional radio stations broadcast an audio signal in an analogue form. The audio signal is superimposed on a carrier wave, which is usually transmitted on a frequency in either the medium or VHF wavebands. Public broadcasts on the medium wave use the amplitude modulation (AM) system in which the audio signal is used to vary slightly (or modulate) the power of the carrier wave. By contrast, conventional public broadcasts on the VHF waveband use the frequency modulation (FM) system in which the audio signal is used to modulate the frequency of the carrier wave. The sound quality of FM broadcasts is much higher than that of AM broadcasts as the system is less affected by interference and atmospheric conditions. The technology to broadcast and receive FM transmissions was developed in the late 1940s, with the FM waveband becoming more popular than the AM waveband in the late 1980s. Of the analogue ILR services in the Severn Estuary area, eight broadcast using FM and two using AM.

3.69. DAB¹ is a new way of transmitting radio services and a major technical advance. Instead of the audio signal being transmitted as a varying wave that modulates a carrier wave, as with the analogue systems, sound is processed electronically and converted into numerical data in the form of a series of binary digits. This data is then transmitted on the carrier wave as a bit stream and is converted back into an audio signal by an appropriate receiver. (The difference between conventional radio and DAB thus closely parallels the difference between vinyl long-playing records and compact discs.) Using data compression techniques, several streams of digital information can be transmitted on one DAB frequency at the same time. This is known as multiplexing and the combined signal is termed a multiplex. Each multiplex typically carries signals from eight to ten radio stations. We discuss the prospects for DAB in more detail in Appendix 3.6.

3.70. We consider the licensing arrangements for DAB in paragraphs 3.30 to 3.33. The RA advertised the first digital radio multiplex licences in 1998 and they went on air in 1999. The national multiplex licence (see Appendix 3.2) and the first batch of local licences were advertised in close succession as part of a ‘fast-burn’ approach designed to bring as many new digital services as possible on air at the same time. This resulted in many key areas of the country receiving more than 20 digital radio programme services. There are currently 32 digital multiplexes in operation and the RA is licensing about one additional regional or local digital multiplex a month.

Local digital licences

3.71. A multiplex for six to eight local radio stations is, or will be, available in most parts of the UK, with two multiplexes in major conurbations. In the London area the RA has made three multiplexes available.

3.72. The advertisement of local digital multiplex licences started in November 1998, following the award of the national multiplex licence. The licences awarded in the area covered by the analogue services of GWR and Vibe 101 are as follows:

<i>Licence</i>	<i>Licensee</i>	<i>Awarded in</i>
Cardiff/Newport	Capital Radio Digital	November 1999
Bristol/Bath	Now Digital	June 2000
South Wales/Severn Estuary	MXR Ltd	January 2001
Swindon/West Wiltshire	Now Digital	March 2002

¹DAB transmissions in the UK use the International Telecommunications Union’s Eureka 147 standard.

Capital Radio Digital is owned by Capital, Now Digital is a wholly-owned subsidiary of GWR and MXR Ltd is a joint venture of Chrysalis, Capital, GMG and a number of investors with smaller shareholdings, including Ford. Details of the services carried on each multiplex are shown in Appendix 3.6.

3.73. Applications for a multiplex licence must include proposals for the types of service that it will carry. These are expected to provide a wide variety of programming. Potential multiplex providers therefore have to negotiate with a broad range of individual stations capable of providing all these types of service. After the licence has been awarded, it does, however, permit the successful multiplex operator to change the individual stations providing particular types of service and substitute similar stations provided that the RA approves. GWR told us that, in practice, the agreements with the individual stations were typically for the full 12 years of the multiplex licence. It added that, unless there were reasons to terminate the agreement (for example, a station became insolvent or was in breach of its contract), the multiplex operator was unable to change the individual stations on the multiplex. Any new service provider would have to obtain a DSPS licence (see paragraph 3.31) which noted that it intended to provide a service on the particular multiplex.

3.74. A significant advantage of DAB is the increased range of stations that can be offered. Thirteen BBC and commercial analogue stations are typically audible within the Severn Estuary area. DAB has increased the number of audible stations to 38 in Bristol and Bath, to 25 in Cardiff and to 20 in Taunton and Yeovil. In the long term, improvements in compression technology may allow many more radio stations to be launched, both commercially and by the BBC, within the bandwidth presently allocated to terrestrial radio broadcasting.

Present size of DAB audience

3.75. Although only 135,000 DAB receivers had been sold in the UK by the end of 2002, sales were increasing rapidly and were constrained by the limited availability of sets. Many national digital radio stations can also be received via satellite, cable and terrestrial digital television services. In total, these other platforms provide over 11 million UK households with access to a range of digital radio programmes. Radio Joint Audience Research Ltd (RAJAR) has estimated that about 15 per cent of adults have listened to digital radio stations carried by digital television services. In practice it seems likely, however, that using the television to listen to radio programmes is likely to be limited in most multi-person households as watching television will often receive priority.

Likely scale of audience within the next five years

3.76. GWR told us that DAB was likely to replace analogue radio by about 2015. Its estimates of cumulative UK sales of DAB receivers are shown in Table 3.1.

TABLE 3.1 **Forecast cumulative UK sales of DAB receivers**

<i>Year*</i>	<i>Cumulative sales of receivers</i>
2002	130,000
2003	500,000
2004	1,000,000
2005	2,500,000
2006	4,500,000
2007	8,000,000
2008	13,000,000

Source: GWR.

*December.

On the basis that there are about 25 million households in the UK, these forecasts imply that about 18 per cent of households would have a DAB set by December 2006 (assuming no multiple ownership) and about 50 per cent by December 2008.

3.77. GWR also produced the forecasts of the digital and analogue listening hours in Bristol and Bath shown in Table 3.2.

TABLE 3.2 **GWR's estimates of future listening in Bristol and Bath**

	<i>percentage of hours</i>			
	Q4 1999	Q4 2002	Q4 2006	Q4 2008
<i>Stations broadcasting in both analogue and digital</i>				
BBC National	47.4	46.2	38.5	36.5
BBC Local	13.5	15.5	9.9	8.7
National commercial	7.7	6.9	6.5	6.5
Regional commercial	8.0	6.6	7.8	7.8
Local commercial	23.4	24.8	26.7	24.6
Subtotal	100.0	100.0	89.4	84.1
<i>Stations broadcasting only in digital</i>				
BBC National	0.0	0.0	1.7	2.2
BBC Local	0.0	0.0	0.0	0.0
National commercial	0.0	0.0	2.9	5.1
Regional commercial	0.0	0.0	3.1	4.7
Local commercial	0.0	0.0	2.9	4.0
Subtotal	0.0	0.0	10.6	16.0
Grand total	100.0	100.0	100.0	100.0

Source: GWR.

3.78. The RA told us that DAB offered a greater degree of choice to consumers; its introduction should in theory have dramatically altered the radio landscape. In practice, with only 135,000 sets sold in the UK at the end of 2002, the audience had yet to reach the stage when measurements could be published (this might start at end of 2003). DAB still had potential to reshape the radio market, although there was unlikely to be any impact within the next three years. The introduction of new digital services could well have an impact in the longer term.

3.79. Most of the other parties that gave evidence to us thought that it would be more than five years before DAB achieved large audiences in the UK. The price of DAB receivers was an important factor, given that the improvements in quality compared with FM broadcasting may not be important to all listeners. DAB receivers for cars, where radio interference was a particular problem, were likely to be an important initial market.

3.80. DAB is being actively promoted. The Digital Radio Development Bureau (the DRDB), which exists to promote DAB, includes representatives from the BBC and commercial radio stations. The Secretary of State for Culture, Media and Sport has said that 2003 is a crucial year for DAB and has asked OFCOM and the BBC to review its progress with a view to 'keeping the momentum going'. In addition to being a member of the MXR consortium (see paragraph 3.72), Ford is actively promoting DAB car radios.

The likely impact of other new technologies

Future developments of digital audio broadcasting

3.81. DAB technology offers a variety of possibilities for further technical development. Among these are: the introduction of text and data services; the incorporation of DAB chips into mobile phones; on-demand radio services; and limited video programming. As the full exploitation of these possibilities will require new types of receiver, it is unlikely to occur within the next three years.

Internet radio and mobile telephones

3.82. RAJAR has estimated that about 12 per cent of adults have listened to radio stations via the Internet and 2 per cent have listened via mobile telephones. Listening via the Internet tends to be to UK national stations or overseas stations rather than to local radio stations.

Digital radio mondiale

3.83. Digital Radio Mondiale (DRM) is a new international standard for digital broadcasting on the AM waveband. The RA told us that it considered that this system offered some promise in the long term for certain types of application within the UK. However, as these are relatively limited, the RA believed that it would be premature to establish a firm policy on the introduction of DRM at this stage. A major replanning of the frequency band that it would occupy would be required. If analogue AM services were to be phased out when the audience for those services had moved to DAB reception, this might provide an opportunity but this was clearly a long-term prospect.

Our assessment of the overall impact of new technologies within the next five years

3.84. The RA told us that DAB had potential to reshape the radio market, although it was unlikely to have any impact within the next three years. It added that the introduction of new digital services could well have an impact in the longer term. GWR forecast more rapid development. Our assessment is that, although DAB clearly has strong long-term potential, the forecasts of those promoting it (including GWR) may be over-optimistic. It seems likely that DAB will have limited impact, in terms of the size of the audience for DAB-only stations, over the next three to five years. Further, whilst larger numbers may listen to digital radio stations broadcast on satellite, cable and terrestrial digital television platforms, these are normally national digital radio services that do not affect local advertising markets. Nonetheless, DAB is likely to make a significant impact in the future. Other new technologies, particularly Internet radio, have strong long-term prospects but are unlikely to affect the local radio market within the next three to five years.