

**UK COMMERCIAL RADIO:  
A NEW WAY TO REGULATE 'LOCALNESS'**

**by  
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“Localism is the most sacred cow of communications regulatory policy. More sacrifices have been laid at the altar of this beast than at that of any other in the history of communications regulation”.<sup>1</sup>

[former FCC Commissioner Glen Robinson]

## 1. BACKGROUND

The UK commercial radio system is, by definition, a ‘local’ system. Between its launch in 1973 and 1989, the commercial radio system had been entirely local, with only one station licensed for each city or town (London was the exception with two). Between 1992 and 1995, three national commercial stations were added, but the remaining 300+ licences all remain local.

Each of these 300+ local licences issued by Ofcom is different from each other, specifying the specific geographic area to be served by the station, and the specific content to be broadcast. The licence is awarded by the regulator to a particular company which, in most cases, has been created solely to hold that licence. Initially, every local station had a different name and a different set of shareholders. It is only relatively recently, through industry consolidation, that groups of stations have come under common ownership. Also, it is only relatively recently that stations in different parts of the country have been given the same name by their owners. Even where a common name has been introduced, those stations still retain distinct licences that may differ from each other in important ways.

Many of the ‘networks’ that are promoted by radio owners to potential advertisers are, to some extent, an exercise in illusion that ignores the differing content requirements of each licence. For example, Global Radio’s four ‘Galaxy’ stations were not designed as a network at all, but are simply a group of stations that have subsequently been given the same name. The licences of three of the four ‘Galaxy’ licences have since been amended to offer the same “rhythmic-based music led service for 15-29 year olds”, but Ofcom still defines the Birmingham licence very differently as a “rhythmic-based music and information station primarily for listeners of African or Afro-Caribbean origin”.<sup>2</sup> This difference in the Galaxy stations’ licensed target audiences has not prevented its owner from launching a ‘six-figure’ marketing campaign in September 2007 that “will target Galaxy’s twenty-something target audience”.<sup>3</sup>

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<sup>1</sup> Robinson, Glen O. (1998) "The Electronic First Amendment: An Essay For The New Age". Duke Law Journal, volume 47. pp.899 & 938 [quoted in: Silverman, David M. & Tobenkin, David N. (2001) "The FCC's Main Studio Rule: Achieving Little For Localism At A Great Cost To Broadcasters". Federal Communications Law Journal. volume 53. no. 3. pp.469-508].

<sup>2</sup> Ofcom licences for ‘Galaxy’ stations in Northeast England, Yorkshire, Greater Manchester and Birmingham, last amended March 2006.

<sup>3</sup> Global Radio, press release, 19 September 2007.

Similarly, GCap Media created 'The One Network' in 2005, which comprises 42 of its local stations. GCap says "the success of the network is built upon delivering localness to listeners on a daily basis", even though the stations all deliver an identical music playlist and are broadcasting an increasing amount of networked programming presented by national celebrities such as Myleene Klass.<sup>4</sup> Each station has a licence that requires different content, but all are being promoted with a national marketing campaign that uses a common logo design and an identical strapline ("Haven't you heard?"), regardless of the particular station's unique content requirements set out in its licence.<sup>5</sup>

Of the 300+ local commercial radio licences regulated by Ofcom, 94% specifically require stations to include 'local news' content.<sup>6</sup> The remainder tend to be stations that specialise in minority interest music genres or stations that serve ethnic minority audiences. Overwhelmingly, the vast majority of commercial radios stations are not only 'local' in terms of their coverage area, but also 'local' in terms of the content they are required to broadcast by their licence.

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<sup>4</sup> GCap Media, press release, 13 September 2007.

<sup>5</sup> GCap Media, press release, 13 September 2007.

<sup>6</sup> Grant Goddard, analysis of 'Format Outline Form OfW 307' of all commercial radio local licences available from the Ofcom web site, November 2006.

## 2. LEGISLATING 'LOCALNESS' IN LOCAL COMMERCIAL RADIO

Although localness has been the bedrock of the commercial radio system since its beginnings in 1973, it was not until The Communications Act 2003 was legislated that specific statutes were introduced that require commercial local radio stations to adhere to 'localness' policies in their programming.

The 'localness' clause (Clause 314: 'Local content and character of local sound broadcasting services') was not included in the Communications Act to deliberately inject greater local relevance into the programming of local commercial radio stations. The government's then Minister for Broadcasting, Dr. Kim Howells MP, was very careful to emphasise that the localness clause "represents no criticism of what local radio is currently doing; it is about encouraging radio operators to preserve and develop precisely the aspects that make local radio good".<sup>7</sup> Howells admitted that the localness requirement was "the quid pro quo for greater liberalisation in the radio market" which allowed foreign [non-European Union] majority ownership of commercial radio for the first time.<sup>8</sup> He predicted that "from the current seventy owners of local radio, the new rules make it possible for us, in time, to have only two dominant owners of local radio in the United Kingdom - both of which, incidentally, could be foreign owned".<sup>9</sup> In this way, the localness clause was primarily intended to prevent potential new foreign owners from 'de-localising' the content of existing local commercial radio stations, as explained by Michael Fabricant MP during the Bill's House of Commons debate:

"What if Clear Channel – a United States organisation for which I have a considerable respect, but which the [UK commercial radio] industry is rather concerned about – were to acquire a number of radio stations and found that it could pull in large audiences, based in the US, and not be all that local? Its presenters could be based in New York, for example, and it could put in pre-recorded local identifications. Everything could be done on a PC-based system. The stations would sound like local radio, even though they were not; and, because they had a good playlist, they might pull in a big audience. Would we not want back-stop powers in such a case?"<sup>10</sup>

As a result, The Communications Act 2003 required that local commercial radio stations broadcast "programmes consisting of or including local material" and "locally-made programmes".<sup>11</sup> The Act defined 'local material' as content that is "of particular interest" to:

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<sup>7</sup> Hansard, House of Commons, Standing Committee E, Communications Bill, 28 January 2003 (morning), column 743.

<sup>8</sup> Hansard, House of Commons, Standing Committee E, Communications Bill, 28 January 2003 (morning), column 743.

<sup>9</sup> Hansard, House of Commons, Standing Committee E, Communications Bill, 28 January 2003 (morning), column 743.

<sup>10</sup> Hansard, House of Commons, Standing Committee E, Communications Bill, 23 January 2003 (afternoon), columns 73-731.

<sup>11</sup> HMSO, Communications Act 2003 (c.21), section 314:1.

- “persons living or working within the area or locality for which the service is provided”;
- “persons living or working within a part of that area or locality”;
- “particular communities living or working within that area or locality”.<sup>12</sup>

The Act went on to define 'locally-made' programmes as those “made wholly or partly at premises in the area or locality for which that service is provided”.<sup>13</sup> It mandated the then newly created regulator Ofcom to determine the extent to which local radio stations must broadcast 'local material' and 'locally-made' content, and required Ofcom to “draw up guidance” in consultation with station licensees and organisations representing listeners. Such guidance “may be different” for different types of local stations.<sup>14 15</sup>

The Communication Act’s requirement that local commercial radio stations broadcast 'local material' represented a significant departure from previous legislation. The Broadcasting Act 1990 had only required Ofcom’s predecessor, The Radio Authority, to evaluate “the extent to which any such proposed service would cater for the tastes and interests of people living in the area or locality,” but only at the time it initially granted an eight-year licence to a local radio station, and not on an ongoing basis.<sup>16</sup> Until then, local commercial radio stations had been under no obligation to provide ongoing data to the regulator concerning the extent of 'local material' or 'locally-made programmes' within their output.

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<sup>12</sup> HMSO, Communications Act 2003 (c.21), section 314:1.

<sup>13</sup> HMSO, Communications Act 2003 (c.21), section 314:7.

<sup>14</sup> HMSO, Communications Act 2003 (c.21), section 314:1-5.

<sup>15</sup> As an aside, it is pertinent to note that the final version of the Communications Bill presented to the House of Lords had included an additional clause that would have required Ofcom to determine the extent to which each local radio station:

- employed persons “living in or otherwise having connections with the area or locality”;
- provided “opportunities for training and development’ for these employees”;
- used premises within the area “from which the service is provided” or “from which management or control... is exercised”.

However, this entire clause was deleted during the very last days of the Bill as a result of lobbying by the commercial radio industry.

<sup>16</sup> HMSO, Broadcasting Act 1990 (c. 42), section 105:b.

### 3. COMMERCIAL RADIO INDUSTRY REACTION

From the outset, the commercial radio industry decried the inclusion of the new 'localness' requirement within the Communications Bill. The industry's then trade body, the Commercial Radio Companies Association [CRCA], complained that the "wide-ranging power" the Bill gave to Ofcom "could see many decisions regarding localness and community identity swept away from those living and working in the community, and given to a London-based powerhouse".<sup>17</sup>

Ralph Bernard, then Executive Chairman of GWR Group, in his speech to the Westminster Media Forum, had decried the "clumsy way" the Communications Bill intended to regulate localness. Like the CRCA, Bernard argued that the radio industry knew much more about localness than did Ofcom:

"We measure, through our own audience research, whether listeners rate our stations as the best source of local news and information, and our stations consistently beat their competition on this measure. Localness is a key selling point to listeners – it has to be when our competitors are generally regional or national – and advertisers in an area are much more likely to support a radio station that is a vibrant local business with its roots deep in the local community. So we're experts on what makes a local station really hum, which aspects are relevant to our listeners, which events are going to draw a crowd, which local institutions deserve support..... This is something that, if we get it wrong, will cause our stations to lose audience and advertisers faster than any regulatory process could react to".<sup>18</sup>

However, during the parliamentary debate, Simon Thomas MP had countered: "It is possible for local radio stations to ignore what is going on in their own patch by not covering certain issues or individuals. People say that the stations would suffer, but they could have a licence for several years, so it would be some time before they suffered".<sup>19</sup>

In its first consultation on the 'localness' issue in March 2004, Ofcom admitted that the inclusion of the statute within the Communications Act 2003 "was a controversial one".<sup>20</sup> It noted that "localness is, ironically most easily identified in its absence" but suggested that "the major outcome of localness delivery is the feel for an area a listener should get by tuning in to a particular station, coupled with confidence that matters of importance or interest to people in the area will be accessible on air".<sup>21</sup>

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<sup>17</sup> Paul Brown, 'Red Sky At Night'. In: "A Good Bill Better? Reaction To The Report Of Parliament's Joint Scrutiny Committee On The Draft Communications Bill 2002", Westminster Media Forum, London, 2002, p.22.

<sup>18</sup> Ralph Bernard, Address to the Westminster Media Forum on the Communications Bill, 5 December 2002.

<sup>19</sup> Hansard (2003a), House of Commons, Standing Committee E, Communications Bill, 23 January 2003 (afternoon).

<sup>20</sup> Ofcom, "Localness On Local Commercial Radio Stations: An Interim Consultation Document Reviewing Localness Basics", 4 March 2004, p.3.

<sup>21</sup> Ofcom, "Localness On Local Commercial Radio Stations: An Interim Consultation Document Reviewing Localness Basics", 4 March 2004, pp.4-5.

The commercial radio industry's response was damning. The CRCA said it had "consistently stated that it is both unnecessary and unhelpful to attempt to regulate localness on a national basis" because "the localness of stations is already addressed in their individual formats".<sup>22</sup> It concluded that "stations are not 'local' because they are told to be by a regulator" but rather because "if local stations do not meet the demands of their local listeners, they will lose audience and thereby lose revenue".<sup>23</sup>

Ofcom responded to the CRCA's criticisms by implementing its initial draft 'guidelines' for 'localness on local commercial radio stations' but made it clear that they "are not rules or demands as such".<sup>24</sup> Ofcom viewed these guidelines as part of its more general move towards regulating 'outputs' (the output the listener hears) rather than 'inputs' (the resources used to make the output). In its next radio consultation, Ofcom explained its regulatory need to "ensure the range and quality of [radio] services [that citizens and consumers] expect, including local programming" and explained that the regulator had "undertaken audience research to find out what matters to listeners".<sup>25</sup> It also proposed that there would be "more of an onus on stations to demonstrate what they have delivered".<sup>26</sup>

The CRCA welcomed Ofcom's "move towards an output-based regulatory approach" but argued that "stations should be free to deploy their resources as they see fit, in order to meet the requirements of their format and the expectations of their audience".<sup>27</sup> Ofcom seemed to be in agreement that "the emphasis of regulation needs to move away from box-ticking measurement of inputs towards what audiences actually get to hear".<sup>28</sup> The most pertinent comment in this debate was:

"To devise any system of box-ticking against various localness criteria would be fundamentally to misunderstand the nature of local content and its context. Such a system would be likely to create a non-stop conveyor-belt of check-sheets, where any queries about content would probably be impossible to clarify. Moreover, it would be inconsistent with Ofcom's regulation of television output, which is moving away from a box-ticking system."<sup>29</sup>

At first glance, this might appear to be a volley from the CRCA aimed at what it perceived as Ofcom's overly bureaucratic paperwork system. However, interestingly, these words were Ofcom's – the regulator making a bold attempt to redefine its role in commercial radio policy.

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<sup>22</sup> Commercial Radio Companies Association, "Response To Ofcom Interim Consultation Document Reviewing Localness Basics", April 2004, p.1.

<sup>23</sup> Commercial Radio Companies Association, "Response To Ofcom Interim Consultation Document Reviewing Localness Basics", April 2004, pp.1-2.

<sup>24</sup> Ofcom, "Localness On Local Commercial Radio Stations", guidelines, undated.

<sup>25</sup> Ofcom, "Radio – Preparing For The Future: Phase 1", 16 December 2004, p.12.

<sup>26</sup> Ofcom, "Radio – Preparing For The Future: Phase 1", 16 December 2004, p.13.

<sup>27</sup> Commercial Radio Companies Association, "Response To 'Radio – Preparing For The Future'", March 2006, p.2.

<sup>28</sup> Ofcom, "Radio – Preparing For The Future: Phase 1", 16 December 2004, p.2.

<sup>29</sup> Ofcom, "Radio – Preparing For The Future: Phase 1", 16 December 2004, p.85.

#### 4. THE PRESENT DISAGREEMENT OVER LOCALNESS

Ofcom's latest radio consultation, started in November 2006, revisited the 'localness' issue once more, having failed to find a solution with which the commercial radio industry agreed. It noted that "some of the most successful local stations are those which have the most 'local' content in their programming" and acknowledged that "many local commercial radio stations recognise that localness is the key to their success".<sup>30</sup> It concluded with the truism that "being relevant to the communities they serve is what differentiates [local stations] from national stations".<sup>31</sup>

GCap Media's response to the Ofcom consultation questioned "whether, in the longer term, [localness] is a matter that should be enshrined in legislation or left to individual services to determine".<sup>32</sup> It argued that "broadcasters and service providers will wish to engage with their listeners in ways that their listeners wish" because "if they do not, they will lose audiences and there [sic] business".<sup>33</sup>

Again, Ofcom rejected the radio industry's concerns and suggested a new regulatory regime for 'localness' whereby the minimum number of hours of 'local' programmes is proportionate to the size of the station's service area. For example, FM stations licensed to serve populations over 250,000 would be required to broadcast a minimum of 13 hours per day of locally made programmes, whereas a station serving a population under 100,000 would only be required to broadcast a minimum of four hours per day.<sup>34</sup>

The radio industry's response was scathing. The RadioCentre (the trade body for commercial radio that replaced the CRCA in 2006) argued that Ofcom's proposals on 'localness' "perpetuate a link between local material and locally-produced programming, and thus continue to focus inappropriately on 'inputs' rather than 'outputs'".<sup>35</sup> It pointed out that Ofcom's consultation document "explores issues (over 15 pages) pertaining almost exclusively to where and how programmes are made, rather than the material they contain".<sup>36</sup>

The RadioCentre said it "believes that localness would be supplied by market forces without regulatory intervention".<sup>37</sup> It argued against what it saw as the Ofcom viewpoint:

"The Future Of Radio's view is that normal commercial incentives would mean that the market would not always necessarily supply local programming, at least not ubiquitously. The views of those involved in running

<sup>30</sup> Ofcom, "The Future Of Radio", discussion document, 16 November 2006, p.24, para. 4.17.

<sup>31</sup> Ofcom, "The Future Of Radio", discussion document, 16 November 2006, p.24, para. 4.17.

<sup>32</sup> GCap Media, "The Future Of Radio: A Discussion Document", December 2006, p.4, para.17.

<sup>33</sup> GCap Media, "The Future Of Radio: A Discussion Document", December 2006, p.4, para.20.

<sup>34</sup> Ofcom, "The Future Of Radio: Consultation", 17 April 2007, p.65, para 4.100.

<sup>35</sup> RadioCentre, "Shaping Commercial Radio's Future", 29 June 2007, p.30, para.6.3.

<sup>36</sup> RadioCentre, "Shaping Commercial Radio's Future", 29 June 2007, p.31, para.6.7.

<sup>37</sup> RadioCentre, "Shaping Commercial Radio's Future", 29 June 2007, p.31, para.6.9.

Commercial Radio are not the same as Ofcom's and can be summarised as being that local programming, if left to the market, would indeed be ubiquitous, but it would not be uniform. There would be a normal process of experimentation which would in time lead to the market serving its listeners with localness in a manner which suits them."<sup>38</sup>

RadioCentre argued that the Ofcom proposal for "a system which stipulates the number of hours of locally-made programming to be produced according to station size alone fails to recognise the differing influences on stations' relative importance and viability ...."<sup>39</sup> Most pertinently, RadioCentre commented:

"The Future Of Radio' proposes to retain a standard approach which seeks to secure a certain number of hours of locally-made material, rather than focusing on what matters most to listeners: local material. In our view, this is not required of Ofcom by the legislation, nor is it the right approach for the listener".<sup>40</sup>

In addition to its overall response to Ofcom's wide-ranging 'The Future Of Radio' consultation, the Board of RadioCentre wrote a further letter to Ofcom in October 2007 addressing the specific issue of localness, which it said would have a "defining impact on the health and prosperity of Commercial Radio for the next few years".<sup>41</sup> It reiterated that "there is no evidence of market failure" in regard to localness on commercial stations and restated that it did "not believe that regulatory intervention is required to secure the provision of local material".<sup>42</sup>

However, unlike its earlier formal response in June 2007 which had dismissed Ofcom's proposals for regulating localness out of hand, the new RadioCentre response attempted to negotiate the minimum number of hours of local output that Ofcom had suggested for different sized stations. The RadioCentre Board called this a "very constructive" response and reiterated that "stations will choose [an amount of local output that] is best for their listeners because, in the commercial world, delivering audiences is paramount".<sup>43</sup>

Ofcom's response was swift and sharp. Ed Richards, Ofcom chief executive, noted in the Ofcom Annual Lecture that the localness issue in radio "has proved to be particularly contentious" and went on:

"Some have called for a huge relaxation in relation to localness, some in the industry even call for a complete removal of all regulation. They believe that localness is either no longer valued or that its value is significantly outweighed by its cost. The problem is that the evidence is to the contrary.

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<sup>38</sup> RadioCentre, "Shaping Commercial Radio's Future", 29 June 2007, p.33, para.6.23.

<sup>39</sup> RadioCentre, "Shaping Commercial Radio's Future", 29 June 2007, p.36, para.6.35.

<sup>40</sup> RadioCentre, "Shaping Commercial Radio's Future", 29 June 2007, p.34, para.6.25.

<sup>41</sup> RadioCentre, letter to Ofcom, 3 October 2007, p.1.

<sup>42</sup> RadioCentre, letter to Ofcom, 3 October 2007, p.1.

<sup>43</sup> RadioCentre, letter to Ofcom, 3 October 2007, p.3.

What our research tells us is that people continue to want to hear local programming. .... But we are not convinced that the market alone will deliver this if left to its own devices. We recognise very clearly the significant economic challenges faced by the radio sector, but our forthcoming proposals will not involve eliminating the obligation to deliver local programming or its reduction to a negligible level.”<sup>44</sup>

The differing opinions of the two sides – the RadioCentre and Ofcom – were covered in the press by stories headlined ‘Cut Local Shows, Say Radio Giants’ and ‘RadioCentre Calls For Reduced Local Content Quotas’.<sup>45</sup> The result is a complete stalemate over an issue that was instigated by the Communications Act 2003 and to which Ofcom has still found itself unable to implement even an interim solution that is acceptable to the industry. Our opinion is that a new approach to ‘localness’ is required – one that will satisfy the needs of Ofcom to regulate effectively, and satisfy the needs of the commercial radio industry to successfully sustain its business through the attraction of listeners and advertisers.

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<sup>44</sup> Ed Richards, Ofcom Annual Lecture: “Citizens And Consumer In A Converged World”, 16 October 2007.

<sup>45</sup> The Guardian, “Cut Local Shows, Say Radio Giants”, 24 October 2007; Brand Republic, “RadioCentre Calls For Reduced Local Content Quotas”, 24 October 2007.

## 5. TOWARDS A NEW DEFINITION OF 'LOCALNESS'

There appear to be three issues at stake here that need consideration, and these will be dealt with in turn:

### 1. Locally-originated content is not a good proxy for locally-orientated content.

This is such an obvious truism that it should barely need comment. Regulation can insist that a local radio station employs a local presenter based in a radio studio within the transmission area of the radio station, but it cannot ensure that the presenter includes any local content within his/her programmes. As a result, a regulatory requirement that a minimum X hours of programmes per day are produced locally is alone no guarantee that those programmes will contain any local content. Despite this, Ofcom's latest consultation insists at the outset that 'local programming' and 'locally-made programming' are interchangeable terms, without questioning whether the latter is an appropriate proxy for the former.<sup>46</sup> The RadioCentre's response pointed out that Ofcom's proposals "focus on the amount of locally-made programmes, rather than the provision of local material".<sup>47</sup>

It is instructive to look at the experience in the US market, where localness has been a requirement for radio stations considerably longer than it has in the UK. There, it was the 1950 Radio Report & Order that clarified the FCC's localism policies and specified that the broadcast of local programming was the key to promoting localism and determining whether stations aimed to serve particular communities.<sup>48</sup> At that time, the FCC believed that locally *originated* programming would automatically result in locally *orientated* programming that would serve the public interest.<sup>49</sup> As one American commentator on regulation pointed out:

"The FCC saw the local broadcaster as the bedrock of the broadcast system. The local broadcast outlet was assumed to provide its local community with local service, to present programs of interest and concern to that community, to serve as an outlet for local expression".<sup>50</sup>

It was not until the new millennium that economist Philip Napoli, in a study commissioned by the FCC, noted that "the validity of this assumption has gone largely unexamined and must become a central research question for policymakers and policy analysts".<sup>51</sup> He then analysed two weeks of broadcast schedules of 111 commercial television stations across the US, and found no

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<sup>46</sup> Ofcom, "The Future Of Radio: Consultation", 17 April 2007, p.8, footnote 1.

<sup>47</sup> RadioCentre, "Shaping Commercial Radio's Future", 29 June 2007, p.37, para.6.37.

<sup>48</sup> Silverman, David M. & Tobenkin, David N. (2001) "The FCC's Main Studio Rule: Achieving Little For Localism At A Great Cost To Broadcasters". Federal Communications Law Journal. volume 53. no. 3. p.481.

<sup>49</sup> Silverman, David M. & Tobenkin, David N. (2001) "The FCC's Main Studio Rule: Achieving Little For Localism At A Great Cost To Broadcasters". Federal Communications Law Journal. volume 53. no. 3. p.482.

<sup>50</sup> Horwitz, Robert Britt (1989), "The Irony Of Regulatory Reform," Oxford University Press, Oxford, p.157.

<sup>51</sup> Napoli, Philip M. (200X). "Diversity And Localism: A Policy Analysis Perspective", paper [undated], pp.11-12.

significant relationship between the amount of local public affairs programming a station broadcast and whether it was locally-owned or part of a national group. Napoli concluded that “neither local ownership nor local origination guarantees that content will address or appeal to the cultural values or beliefs of the local community”.<sup>52</sup>

These results were similar to those of the Benton Foundation, who conducted an earlier analysis of 13,250 hours of programming broadcast by forty commercial TV stations in five US markets. Over a two-week period, 35% of stations had broadcast no local news, 25% offered neither public affairs programming nor local news, and only two hours of local public affairs programming was broadcast between 6pm and midnight.<sup>53</sup>

As a result of such studies, one US legal article suggested that, if local programming remains an FCC objective, the regulator should conduct a periodic market-by-market analysis of local programming, any apparent lack of which would then trigger a more substantial market review.<sup>54</sup> In the US, the regulation of locally-made programming as a proxy for local content has clearly failed, even in a country where there is considerably greater competition in local markets between broadcasters than exists in the UK.

The American experience suggests that Ofcom would not be successful in implementing a similar proxy in the UK, if its aim is to ensure the broadcast of locally relevant content.

## **2. Neither ‘inputs’ nor ‘outputs’ are suitable regulatory proxies for ‘localness’.**

Ofcom’s latest proposal to implement minimum quotas of locally-produced programming, varying according to the size of the radio station’s service area, seems to wholly contradict two of its earlier assertions. Firstly, its statement that it intends to move away from measuring ‘inputs’ to measuring ‘outputs’, because (as has already been explained and demonstrated by the experience in the US) a requirement to produce X hours per day of content locally does not sure ensure that locally-orientated programming is the result. Secondly, Ofcom’s assertion that it no longer wished to regulate the industry through a regime that merely involved its staff ticking boxes, when a station would satisfy a simple numeric measurement, regardless of whether localness had been effected.

RadioCentre picked up on these two inconsistencies in its formal response to Ofcom. It argued that Ofcom’s proposals “perpetuate a link between local material and locally-produced programming, and thus continue to focus inappropriately on ‘inputs’ rather than ‘outputs’”.<sup>55</sup> And it asserted that “it is inappropriate to seek to secure the provision of local material, which is of

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<sup>52</sup> Napoli, Philip M. (200X). "Diversity And Localism: A Policy Analysis Perspective", paper [undated], p.17.

<sup>53</sup> Benton Foundation & Media Access Project (1998). "What's Local About Local Broadcasting?" April 1998.

<sup>54</sup> Silverman David M. & Tobenkin, David N. (2001) "The FCC's Main Studio Rule: Achieving Little For Localism At A Great Cost To Broadcasters". Federal Communications Law Journal. volume 53. no. 3. p.503.

<sup>55</sup> RadioCentre, "Shaping Commercial Radio's Future", 29 June 2007, p.30, para.6.3.

primary importance to listeners, through quotas on locally-produced programmes".<sup>56</sup>

The paradox here is that both Ofcom and Radiocentre appear to have the same goals – the satisfaction of the radio listener/consumer/citizen in each local radio market. As the RadioCentre's response to Ofcom states most pertinently:

"We conclude that the emphasis within any system implemented by Ofcom under 314 of the [Communications] Act [2003] should have, at its heart, the output which listeners hear, rather than a proxy regulatory tool which simply states how that output is made".<sup>57</sup>

Our suggestion is that, instead of measuring either 'inputs' or 'outputs', Ofcom should measure 'impacts' – the effects of a radio station's output on the population within its local coverage area. This would seem to be entirely consistent with Ofcom's overarching policy to "secure the citizens' interest".<sup>58</sup> It is also wholly consistent with the commercial radio industry's insistence that its listeners are at the heart of its content policies.

To date, Ofcom has used its nationally conducted market research surveys to support its argument, while RadioCenter has used the results from its national audience survey named 'The Big Listen'. Both sides understand that local commercial radios stations differ significantly across the UK according to the size of the market in which a station is based, the number of competitors that exist within that market, and the content prescribed by a station's Ofcom licence. Yet both sides have been seeking nationally applicable solutions to what is essentially a 'local' problem that will differ from one local market to another.

Our suggestion is that localness has to be measured on a market by market basis, as 'localness' will be required in varying amounts and have different characteristics, according to the market. For example, the population of Skye would probably desire very different local content from a local radio station than would the population of Southwark. The citizens in the two areas are not only likely to require different information, but also different amounts of information. Daily life in Skye is likely to be determined largely by local factors, whereas daily life in Southwark is impacted less significantly by purely borough issues. As a result, the satisfaction of demand for local programming in Skye would likely require a considerable amount of local content on a local radio station, whereas satisfaction of demand in Southwark may require the supply of less local content, particularly if other stations in the market are already serving the wider London market.

Our proposed solution is that local consumer market research, conducted on a station-by-station basis in each local market, is the only way to determine what

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<sup>56</sup> RadioCentre, "Shaping Commercial Radio's Future", 29 June 2007, p.40, para.1.3.

<sup>57</sup> RadioCentre, "Shaping Commercial Radio's Future", 29 June 2007, p.35, para.6.32.

<sup>58</sup> Ed Richards, Ofcom Annual Lecture "Citizens And Consumer In A Converged World", 16 October 2007.

precisely 'localness' means to the population within that market, and to determine how successfully (or unsuccessfully) a particular local commercial radio station is in satisfying the demands for local content of the population within its survey area. According to GCap Media's Ralph Bernard (see earlier), regular market research is already part of a radio owner's normal commercial activity to ensure that its product remains pertinent to changing consumer tastes. If other station owners similarly conduct regular market research, all that is needed is the sharing of this market research between station owners and the regulator, combined with some standardisation of the market research executed in each market.

Our suggestion does away with the use of either 'inputs' or 'outputs' as a proxy for localness, and replaces them with measurement of the 'impact' of a local commercial radio station's local output on the population within that station's service area. A more detailed outline of the way this market research could be executed follows towards the end of this document.

### **3. 'Localness' should no longer be considered simply a spatial characteristic.**

The inclusion of a 'localness' statute within the Communications Act 2003 had been motivated by fear of foreign ownership (as explained earlier), which may explain why the drafting of the relevant clauses does not seem to have been particularly far-sighted. Neither does some of the parliamentary debate around the Act seem to have been particularly inspired, such as Paul Farrelly MP's comment that "local should mean local, certainly not regional or national".<sup>59</sup>

As a result, it is unsurprising that a narrow, 20th century, spatial-based definition of 'local' was included in legislation intended to be relevant for the 21st century which had promised "a single coherent approach to the converging world of communications" in "an increasingly global marketplace".<sup>60</sup> It is unfortunate that 'localness', as defined strictly in the Communications Act's terms of "area" and "locality", is less relevant now than ever in an age when global content can be readily delivered to any living room equipped with a basic computer connected to the internet.

This is not to imply that 'localness' is dead. Perhaps it needs to be more carefully defined in the 21st century 'global village'. The Bill had defined 'localness' in strictly spatial terms that appear at odds with the government's declared intent to adopt regulatory policies suitable for the converged media industries of the twenty-first century. We would argue for a new audience-centred definition of 'localness' in local radio that would shift the focus away from simple geographic location and towards interlocking communities of interest.

The definition of 'localness' in commercial broadcasting has been illuminated in other markets by a considerable amount of research and debate, particularly

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<sup>59</sup> Hansard, House of Commons Debate, 3 December 2002, column 848.

<sup>60</sup> HMSO (2002) "The Draft Communications Bill: The Policy". Cm 5508-III, Summary & 3.1.2.

in the US and in Australia. One Australian commentator proposed a new definition of 'localism' that moved away from simplistic benchmarks:

"The phenomenon which I call 'new localism' involves going beyond parochialism: it is a localism based on context .... Old localism would argue that everything that happened in Bourke [New South Wales] was fine and those outside failed to understand. New localism would argue that Bourke is a community the same as, and yet different to, many other communities. Ian McNamara's [weekly ABC radio show] 'Australia All Over' is an example of new localism. There is nothing about it that concedes to specific localities and yet, to the listener, it sounds local. This is the challenge: to produce a sense of localism which is also good".<sup>61</sup>

In the US, the FCC report (cited earlier) analysed local content and found that neither local ownership, nor locally-made programming, guaranteed local content would be broadcast. Its author argued that:

"Programming that caters to the cultural or political interests or concerns of a particular community could very well be produced outside the geographic boundaries of the community..... new technologies may also be facilitating alternative definitions of communities - communities whose parameters are not tied to geography. Instead, these communities may be defined in terms of their shared values, agendas, or interests. As communication technologies facilitate a definitional expression of the community concept, as well as alternative means by which traditional communities can be developed and strengthened, the limitations of a strictly geography-based approach to local programming become clear. If the concept of community is to remain an essential element of the localism principle, then policymakers' conceptualization of local programming must move beyond a program's point of origin and address the nature of the content provided".<sup>62</sup>

A new definition of 'localness' is required because both sides of the broadcaster/listener relationship now have instant access to the global market, thanks to new technologies. One American media academic commented:

"Traditionally, it has been easy to define the community that the media outlets served. It was simply the town or city where the media outlet was located plus the surrounding area. Localism meant reaching those people with programming. The local community was finite, geographically defined, and physically near to the media outlet. Editors and station owners

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<sup>61</sup> O'Brien, James (19XX) "Life At The Outpost - Working In Country Radio" Rural Society 2 (4) The Centre for Rural Social Research, Charles Stuart University, Wagga Wagga, Australia.

<sup>62</sup> Napoli, Philip M. (200X). "Diversity And Localism: A Policy Analysis Perspective", paper [undated], p.18.

lived in the community, often hired local people, joined the local churches, clubs and organizations. Today, however, defining localism has become a complex problem. In this ever-shrinking world, defining the local community takes on a new significance. How does one define its local community when even a newspaper or radio station in a small hamlet can suddenly 'go global'?"<sup>63</sup>

The US public radio system 'National Public Radio' represents a practical example of the adoption by a broadcaster of a new form of 'localness' at an early stage. As early as the mid-1990s, one US media academic suggested that "the conception of localism in US public radio is changing from the traditional 'spatial' emphasis to a 'social' conception of community.... Many public radio stations are operating within a 'social' conception, defined by shared interests, tastes and values..."<sup>64</sup> The processes by which public radio in the US decided to adopt a new definition of 'localism' prove enlightening.

Local public radio stations in the US have traditionally carried a mix of nationally networked programmes and locally-produced output. A substantial survey of public radio listeners in 1998 found that "geographic localism is a more compelling concept among many public broadcasters than it is among most listeners", who "are more likely to consider network programming more important in their lives than local programming".<sup>65</sup> The report explained:

"The definition of what is 'local' has changed significantly in thirty years. New communication technologies have created the 'global village', bringing the world's news and culture into our homes as a daily reality. Most of public radio's educated listeners have adapted easily to these changes. They have become, as Bill Siemering [first Director of Programming of National Public Radio] once imagined, 'citizens of the world'. For them, 'community' has transcended geographic boundaries to mean an association of shared beliefs and interests."<sup>66</sup>

Two of the report's findings point directly to this new definition of 'localism' as defined by shared interests and values, rather than by geographic proximity:

- a person's use of local programming does not contribute to their sense of community, but their use of national programming does;
- the personal importance listeners attribute to network programming includes a component of "uniqueness", through which they share a virtual community defined by values, beliefs and interests.<sup>67</sup>

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<sup>63</sup> Aycok, Frank (1999). "Localism In The Era Of Globalization And New Technologies: Implications For The 21st Century" *Transnational Broadcasting Studies*. Adham Center For Television Journalism, American University in Cairo. No. 2. Spring 1999.

<sup>64</sup> Stavitsky, Alan G. (1994) "The Changing Conception Of Localism In US Public Radio" *Journal Of Broadcasting & Electronic Media*, Winter 1994, p.20.

<sup>65</sup> Audience Research Analysis (1999). "Audience '98: Public Service, Public Support: A Question Of Place" Washington DC: Corporation for Public Broadcasting, p.60.

<sup>66</sup> Audience Research Analysis (1999). "Audience '98: Public Service, Public Support: A Question Of Place" Washington DC: Corporation for Public Broadcasting, p.60.

<sup>67</sup> Audience Research Analysis (1999). "Audience '98: Public Service, Public Support: A Question Of Place" Washington DC: Corporation for Public Broadcasting, p.60.

One of the report's researchers, David Giovannoni, addressed a US radio conference with the message: "Listeners tell us we need to rethink our definition of a 'local community' – because most of them don't live there".<sup>68</sup> His words were a rallying call for the adoption of a new definition of 'localism' in broadcasting:

"It used to be [that] the only way to define community was by geographic proximity. That was well before the internet, before television or radio, before telephones or the telegraph - before these inventions annihilated distance and made it possible to talk with like-minded people wherever they lived. Today, community is best understood as an association of shared beliefs and interests. And, in this way, radio audiences are communities. Listeners choose their stations based on sympathies rather than proximities. They connect with their neighbors in psychological space rather than geographical space..... this sense of community is so closely held by listeners that it forces us to re-examine the entire concept of what is local. Localism in psychic space is different than localism in geographic space."<sup>69</sup>

American media academic Philip Napoli, who had been commissioned by the FCC to research 'localism', argues that internet technologies "suggest the possibility of realizing [author Marshall] McLuhan's famous global village, in which all people become part of a large global culture, and regional or cultural differences become less distinct or important".<sup>70</sup> Napoli asks whether "the localism principle can effectively be applied within the context of a media technology that is free of geographic limitations" and "whether these technologies undermine the objectives upon which localism policies are based".<sup>71</sup>

In what could easily pass as a reference to the UK's Communications Act 2003's notion of 'localness', Napoli questions "whether policies designed to encourage the production of local programming are likely to fulfil their underlying political and/or cultural objectives in an environment in which the traditional barriers to reaching global audiences and global content have been dramatically reduced".<sup>72</sup> He goes on to assert that "existing localism policies may rest upon outmoded perceptions of what constitutes a community, as the parameters of a community are increasingly liberated from the confines of geography".<sup>73</sup>

Through these experiences in the US, it becomes clear that regulators such as Ofcom need to implement a new definition of 'localness' that fits the post-

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<sup>68</sup> Giovannoni, David (1998) "Programming Defines Community: A Plenary Session At The Public Radio Program Directors Conference: St. Petersburg, Florida: September 18, 1998".

<sup>69</sup> Giovannoni, David (1998) "Programming Defines Community: A Plenary Session At The Public Radio Program Directors Conference: St. Petersburg, Florida: September 18, 1998".

<sup>70</sup> Napoli, Philip M. (2000) "The Localism Principle Under Stress" Info vol.2, no. 6. December 2000 p.578.

<sup>71</sup> Napoli, Philip M. (2000) "The Localism Principle Under Stress" Info vol.2, no. 6. December 2000 p.578.

<sup>72</sup> Napoli, Philip M. (2000) "The Localism Principle Under Stress" Info vol.2, no. 6. December 2000 p.578.

<sup>73</sup> Napoli, Philip M. (2000) "The Localism Principle Under Stress" Info vol.2, no. 6. December 2000 p.580.

McLuhan media landscape. As early as 1991, in the US, then FCC Commissioner Ervin S. Duggan admitted that the regulator was “upon the verge of broadening the meaning or changing the meaning of localism. It may be perfectly acceptable, and even desirable, to broaden our definition of localism”.<sup>74</sup> It seems imperative that Ofcom instates a similar re-definition of the term.

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<sup>74</sup> Duggan, Ervin S. (1991) "Digital Audio Broadcasting: Getting It Finished And Getting It Right" Remarks before the Annenberg Washington Program [quoted in Napoli (2000)], p.11.

## 6. A PLAN FOR ACTION

As outlined above, we are proposing that a more contemporary definition of 'localness' be adopted in the regulation of local commercial radio. This would:

- put the citizen at the centre of regulatory policy, and move away from using either 'inputs' or 'outputs' as proxies
- measure the 'impact' of commercial radio content strategies on citizens at a local level, market by market
- move commercial radio regulation away from the 'box-ticking' methodology that Ofcom inherited from the previous regulator, The Radio Authority
- adopt a wider definition of 'localness' that does not focus purely on geographical/spatial characteristics.

The adoption of a more widely defined 'localness' does not imply that the original meaning has been discarded completely. As Napoli points out:

"It is important to note that a social concept of localism still contains within it the traditional spatial approach, as geography represents one of a variety of possible manifestations of common interests, shared values, or shared agendas that might constitute a socially constructed community".<sup>75</sup>

A move to put market research at the centre of the regulation of 'localness' shifts the judgements away from the regulator and into the hands of the local population within a station's service area. Such a move should satisfy the arguments of both the commercial radio industry and the regulator that proxies prove inadequate as measurement tools. By putting the citizen/consumer/listener at the centre of the process, the judgements are made by the people who actually listen to the station's output, and not by either station owners or a London-based regulator.

Obviously, the mechanism of the market research would be an important topic for discussion and agreement between Ofcom and the commercial radio industry. It is important that both parties agree upon a joint system and can then implement it without further rhetoric. What follows is merely our suggestion of how such a system could operate.

The overall aim is to demonstrate through market research that adequate local content is being provided by the commercial radio sector and consumed in each market to an extent that satisfies consumer needs. Only if those needs are not being satisfied is there a need for Ofcom to intervene in the market and discuss the needs with the relevant local stations in that market.

Each local commercial radio station should be required to conduct market research at regular intervals. Perhaps the larger the station, the more regular should be the interval. Ofcom would set down parameters for the research:

- quantitative research

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<sup>75</sup> Napoli, Philip M. (2000) "The Localism Principle Under Stress" Info vol.2, no. 6. December 2000 p.582.

- a minimum sample size
- the sample frame to be determined by:
  - the service area of the station
  - the demographic target of the station's licence
  - a station serving two towns (ie Hereford & Worcester) should split the sample according to the respective populations
  - a station serving a city and a hinterland should split the sample according to the respective populations
- quotas for gender and age groups
- research contracted to MRS-qualified research company
- a set of agreed questions

The radio stations would pay for the research themselves. Where an owner has more than one station within a local market, costs could be saved by implementing research simultaneously for a number of stations. Competing station owners within a market could even decide to collaborate on joint research to reduce the aggregate costs. Station owners could decide to integrate the 'localness' research for Ofcom with their own custom research that would tackle their own internal issues (impact of a marketing campaign, change in presenters, for example), thus saving money.

The results of the market research for 'localness' would be shared in their entirety with Ofcom and would be made public via Ofcom's website to demonstrate the transparency of the process. In this way, all parties (the radio industry, the regulator and the public) will be able to see exactly how well each local commercial radio station satisfies the local population's need for local content. In a competitive market, one local station might observe from the published market research that its competitor was not satisfying specific aspects of local content demanded by the population, and could then step in to fill that gap in the market. In this way, Ofcom can help fulfil the obligation to ensure that local content is produced 'in aggregate' in a local market, without normally getting involved in the detailed output of individual stations.

As noted previously, the demand for local content will vary from market to market, both in quantity and in type. In some smaller markets, it will be incumbent upon the single local commercial radio station to satisfy all those 'localness' needs (the upside is that the one station will have a monopoly over commercial radio revenues in that market). In other more crowded markets, some stations (those offering specialised music genres) might have no 'localness' requirements within their licence, while the remaining stations might serve the population's 'localness' needs between them in different ways. The approach using market research ensures that Ofcom only needs to interfere where the market is not delivering the required outcomes. To a great extent, the system allows commercial radio to regulate itself, which is what it has said it wanted. Only where station owners fail to implement the results of the market research does Ofcom's involvement become necessary.

The market research would determine four different things:

- what does the target audience in the station's service area want most in terms of 'localness'?

- which specific media (newspapers, local TV, radio) best satisfies the population in terms of these needs for 'localness'?
- which radio stations (BBC or commercial, national or local) best satisfy the population in terms of these needs for 'localness'?
- to what extent does the local commercial radio station conducting the survey satisfy the population's expressed needs for 'localness'?

It is important to note that the market research is not seeking to make any judgement on the quality of the station's overall programming, or of the popularity of its presenters. Rather, it is only seeking specific answers on issues of 'localness'. Even, as an extreme example, if the population answers in the research that a local commercial station is not satisfying their 'localness' needs in any way, it should not be implied that the station is incorporating no 'localness' within its output. It may be that the signposting or scheduling of local information is inadequate. This is precisely what we mean when we say our proposal seeks to measure the 'impact' on the population. The mere presence of a local programme on a station is not necessarily delivering 'localness' if none of the local population who are interested in listening are even aware of its existence.

Additionally, it is important that the market research takes into account the economic constraints of the local commercial radio system. Even if the local population in a specific area are unanimous in wanting their small local station to offer, for example, full-length Shakespeare radio plays featuring local actors, it would simply not be feasible. Therefore, the research should offer the respondents a lengthy list of simple local features from which to choose, rather than an open-ended opportunity to be unfeasibly demanding. The market research needs to offer a comprehensive list of relevant local features that could be potentially offered by both urban and rural stations serving both large and small populations. Interestingly, the results would demonstrate to what extent tastes and interests differ across the country.

## 7. CONCLUSION

The challenge of ensuring that the broadcast system incorporates 'localness' into its content is not new by any means. Regulatory systems have existed in many countries for many decades to ensure that locally relevant programming is produced. In the US, the concept of localism was introduced in the Radio Act of 1927 as a response to congressional concern that the nation's first commercial radio stations were becoming too concentrated in large cities, leaving less populated communities without any services:

“Early in its history of broadcast regulation, the [Federal Communications] Commission assumed that local broadcast stations would be the electronic version of the community newspaper. The perception was that, like the local newspaper, the local broadcast station would significantly contribute to local participatory democracy and would operate ‘as a kind of latter-day Mark Twain, who understands the needs and concerns of his community in an imaginative and sensitive way’”.<sup>76</sup>

Between 1927 and 1987, Congress and the Commission implemented the localism doctrine through a number of laws, rules and policies that required local broadcasters to:

- produce local programming and non-entertainment programming (news, weather and public affairs) that met the needs and interests of the station's community;
- interact with, and reflect, stations' communities of licence;
- ascertain the wants of their communities and keep programme logs of listeners' comments;
- locate the broadcaster's main studio facility within the specified geographical area, to be capable of originating and transmitting local programming, and to be staffed by a full-time manager and at least one other full-time employee.<sup>77</sup>

Interestingly, an attempt in the US to require local licence owners to undertake some local research failed because it used the opinions of local institutions as a proxy for the opinions of the local population itself. As a result, the FCC's "community ascertainment" policy, introduced in 1971, produced few benefits:

“That policy outlined concrete requirements a broadcast licensee was obliged to fulfill vis-a-vis local community concerns and the general nature of programming. The licensee was to go out into the community, determine its economic, ethnic, and social composition, and ascertain what specific issues were pertinent and of interest to the community

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<sup>76</sup> Copple, Robert F. (1991) "Cable Television And The Allocation Of Regulatory Power: A Study Of Governmental Demarcation And Roles". Federal Communications Law Journal. volume 44, no.1 [quoted in Silverman & Tobenkin], pp.11-12.

<sup>77</sup> Silverman, David M. & Tobenkin, David N. (2001). "The FCC's Main Studio Rule: Achieving Little For Localism At A Great Cost To Broadcasters". Federal Communications Law Journal. volume 53, no. 3, pp.469-508.

in which it broadcast. Broadcasters ultimately were instructed to go out into the community and interview some 19 specified 'institutions and elements commonly found in the community,' and write a formal report on the results. Again, it is unlikely the ascertainment requirements had much impact on what broadcasters actually aired".<sup>78</sup>

This is a pitfall that should bear serious consideration in any attempt to regulate 'localness' through proxies. Local content is included in broadcasters' output to satisfy the population within the service area, and not to satisfy the institutions or leaders of local institutions. This emphasises the need to interact directly with the citizen/consumer through market research.

An inquiry into localness in Australian Broadcasting commissioned by the then Communications Minister produced the 1984 Oswin Report which, acknowledging the difficulty in defining localism, concluded that:

"stations should be individually operated units located in as many areas as possible, the size of the service area being such as will reasonably permit the station to be commercially viable.... and that the programming provided should cater for the particular needs and interests of the community within the station's service area".<sup>79</sup>

The danger is that a regulatory system for the UK that should be forward-looking for the 21st century appears to be struggling to adopt a system for 'localness' that bears distinct echoes of the FCC's regulation of 'localism' between the 1920s and the pre-internet era. We hope that our proposals go some way towards offering an alternative regulatory structure that could prove more suitable for the challenges facing both the commercial radio industry and the regulator in these turbulent times. Putting the citizen/consumer at the centre of regulatory policy should surely be a positive thing.

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<sup>78</sup> Horwitz, Robert Britt (1989), "The Irony Of Regulatory Reform," Oxford University Press, Oxford, p.248.

<sup>79</sup> "Localism In Australian Broadcasting" (1984) Department Of Communications, Canberra [quoted in: Australian Association Of Independent Regional Radio Broadcasters [AIRRB]. (2000) [untitled], Submission to The Inquiry Into The Radio Industry, The Standing Committee On Communications, Information, Technology & The Arts, Australia, p.12].