



Minutes of Meeting of the Authority of Broadcasting Authority of Ireland

Date 3rd Feb 2014 **Time:** 9.30a.m. **Venue:** Radisson St. Helen's, Stillorgan,
Co. Dublin

Minutes

Attendance

- Authority:** Bob Collins (Chairperson), Larry Bass, Michael Moriarty, Colum Kenny, Séamus Martin, Siobhán Ní Ghadhra, Michelle McShortall, Maria Moloney, Paula Downey (items 2-8).
- Executive:** Michael O'Keeffe, Celene Craig (items 1, 2, 4-8), Stephanie Comey, Margaret Tumelty, Aoife Clabby, Brian Furey (items 1 & 2a), Louise McLoughlin (items 1&2a), Anne O'Brien (items 2d-3), Clare O'Sullivan (items 2d-3).

1. Minutes of Previous Meeting and Matters Arising

Minutes of the previous meeting of the Authority, held on 16th December 2013, were approved by the Members and signed by the Chairperson.

a. Appointment of New Authority Member

The Chairperson welcomed Mr. Séamus Martin to the Authority, following his appointment on 28th January by the Minister for Communications, Energy and Natural Resources. The Chairperson clarified a number of Members' questions regarding the circumstances of the resignation of Mr. John Waters from the Authority.

b. The Saturday Night Show: Rory O'Neill Interview

Members were informed that in excess of two hundred pieces of correspondence had been received relating to the interview with Rory O'Neill on RTÉ's Saturday Night Show. It was noted that any relevant complaints arising out of the correspondence would be considered by the Compliance Committee. Members discussed the actions taken by the broadcaster to resolve the issues arising, subsequent to the broadcast. The Members considered whether matters of public policy relating to freedom of expression might be reviewed by the Authority, in light of its statutory objectives, pursuant to section 25 of the Broadcasting Act. It was agreed that such matters could be considered once again following completion of a consideration of any complaints by the Compliance Committee. If such was the case, it was noted that the Authority would require a legal view on whether it had locus standi in considering the matter.

c. Review of Commercial Digital Terrestrial Television (DTT)

The Chief Executive informed the Members that the Review of Commercial DTT had been published on the 7th January.



d. BAI Strategy Statement

Members were informed that the new three-year Strategy Statement was scheduled to be launched in mid-late February.

2. Policy

a. Code of Programme Standards: Outcomes of Phase 1 & 2 of Review

Members were presented with an Executive note outlining the work undertaken to date on the statutory review of the Code of Programme Standards and were asked to consider proposals for the next steps in the process.

In considering the proposals, Members took account of the outcomes of the first two phases of the review which included: consideration of the operation of the Code to date; a review of matters pertaining to programme standards in other jurisdictions; the completion of an attitudinal survey to provide an updated understanding of public opinion; and, a legal review of the current Code. It was noted that the revised Code would include four new areas not contained in the existing Code; specifically privacy, incitement to crime, undermining the authority of the State and broadcast services that promote the interests of the organisation.

Having considered the outcomes presented, the Authority was satisfied that:

- Overall, the current Code was appropriate;
- While it continued to address those types of content that cause harm and offence, there were some new areas to be considered for inclusion;
- Matters of context remained relevant and appropriate;
- Understanding of the Code by viewers and listeners might be better facilitated through a re-structuring of the existing Code and a simplification of the language;
- With regard to the new areas to be included in the Code, a less prescriptive approach was favoured in order to facilitate the development of precedent;
- While acknowledging that some matters relating to privacy were addressed in the Code of Fairness, the subject of privacy needed to be addressed in the Code of Programme Standards for all types of programming, including news and current affairs.

Having agreed the foregoing, the Authority was satisfied to approve the remaining steps in the revision of the Code. It was noted that a draft Code would be presented for Members' consideration at the meeting on March 10th.



b. Access Rules Statutory Review: Proposed Approach

Members considered an Executive note outlining a proposed approach to the statutory review of the Access Rules, including a proposal that access targets for the new RTÉ digital channels be included as part of the public consultation process for the new Rules.

Following discussion, the Authority was satisfied to approve the approach and timeframe, as outlined. It was noted that further consideration would be given to the Access Rules at the April meeting of the Authority.

c. RTÉ International: Ministerial Request

Members considered correspondence received on behalf of the Minister, requesting the BAI to carry out a sectoral impact assessment (SIA) on the proposed introduction, by RTÉ, of a new service which will offer Irish video content internationally on an on-demand basis. The Authority was satisfied to carry out the SIA, as requested, and reviewed the proposed approach to the assessment and the timeframe for delivery. Members discussed the specification for the SIA and agreed that consideration would need to be given to the issue of rights held, at an international level, by independent producers.

d. TV3 Submission re UTV Section 71 Application

The Chief Executive provided Members with an overview of a submission received from TV3 expressing serious concerns regarding the announced intention of UTV to apply to the BAI for a content contract under section 71 of the Broadcasting Act. [REDACTED]

The Members had a detailed and wide-ranging discussion in relation to the submission received and related regulatory matters. It was agreed that there were a number of issues raised by TV3 which were not within the remit of the BAI.

Having considered the legal advice received in respect of jurisdiction, the Authority was satisfied that no issues arose which required action on the part of the BAI.

It was acknowledged that a less onerous regulatory regime pertained to contracts issued under section 71 of the Act. It was noted that this part of the legislation had been identified as being anomalous by the Chairperson in his presentation to the Joint Oireachtas Committee on Transport and Communications and by the Executive in their dealings with the Department on matters of prospective legislative change. It was agreed that a formal submission would be



made to the Minister, requesting that consideration be given to a legislative amendment which would broaden the levy base, to include contractors licensed under section 71 of the Act.

Consideration was then given to matters of competition and the nature of the service offered by, and the regulatory regime pertaining to, TV3, pursuant to section 70 of the Act, as distinct from a service licensed under section 71. It was agreed that, in any statement relating to the award of a contract under section 71, a clear distinction would be made between the regulatory regimes pertaining to a section 70 and a section 71 contractor respectively.

e. Rule 27: Local and European Election Guidelines

Members considered draft Guidelines, further to Rule 27 of the Code of Fairness, Objectivity and Impartiality in News and Current Affairs, in advance of the forthcoming Local and European Elections, to be held on Friday 23rd May 2014.

Members reviewed the structure of the draft Guidelines, in particular the sections dealing with the statutory requirements, the general considerations and the matter of party political broadcasts. It was noted that no major revisions were proposed to the Guidelines which had previously been drafted.

Members suggested that a specific reference to social media should be included in the document. With regard to section 4.1, '*Broadcasting Personnel*', it was suggested that a minor amendment would be made to clarify the matter of endorsements of election candidates by broadcasters and/or their employees.

With reference to section 4.2, it was agreed that the heading '*Audience Participation*' should be replaced by '*Appropriate Range of Views*'.

Members then discussed the guidelines in relation to party political broadcasts. Being mindful of the high number of independent candidates in the local elections in particular, who cannot avail of party political broadcasts, it was agreed that some additional guidance should be provided to broadcasters on this matter.

The Authority approved the *Guidelines in Respect of Coverage of Local and European Elections*, subject to the amendments suggested. It was noted that the Guidelines would take effect on the 3rd of March.



3. Contractual Matters

a. Contractual Variations

(i) Phantom FM

Members considered a request received from Phantom FM (the Contractor) seeking approval to enter into a branding partnership with Today FM and to rebrand the Phantom FM service as

[REDACTED]

[REDACTED] in considering the request, the Authority had regard to a submission received from the Contractor, together with an Executive analysis of the proposal received.

Members took account of the various elements of the proposed brand partnership, including advertising, service re-brand and marketing to advertisers and audiences, target audience and viability. It was noted that this was the first time that a proposal of this nature had been submitted to the regulator. However, the Authority was advised that the BAI's *Broadcasting Services Strategy* (BSS) identifies criteria against which proposals to network non-programming functions would be assessed. Furthermore, the BSS provides that the Authority would be open to exploring other service types and the regulatory basis upon which such services might be licensed, developed and sustained.

The Members noted that the proposal would not impact on the delivery of the core programme service or target audience, but that the proposed re-branding would impact on the service schedule. Members had reference to the Contractor's JNLR performance to date and noted that the service had underperformed in audience terms. The possibility was considered that the rebranding of the service could result in the further alienation of an already small listenership base.

Members also considered the different nature of the services which would enter into the brand partnership and were satisfied with the Contractor's assertion that the ethos, nature and target audiences of the respective services would not change.

[REDACTED]



Following detailed discussion, the Authority was satisfied that the submission made by the Contractor contained sufficient commitments to deliver on the core programme output and target audience made to the BAI, on the award of the contract. [REDACTED]

The Authority was, therefore, satisfied to approve the branding partnership between Phantom FM and Today FM, as outlined in the submission, subject to the provision of further detail by the Contractor in relation to music genres and market research. [REDACTED]

(ii) Sunshine FM

Members considered an application, received from Star Broadcasting Limited (trading as Sunshine 106.8FM), seeking derogation from the statutory 20% news and current affairs requirement. Members noted that the derogation being sought involved a reduction to 10% news and current affairs content for the total broadcast day and a reduction to 72 minutes, from 120 minutes, in the primetime period. It was further noted that such reduction would be achieved through the removal of certain speech programme blocks in the schedule and the re-assignment of resources to produce news bulletins locally across the day. The Contractor also committed itself to the introduction of sixty-second features on Dublin landmarks, three times per day, during primetime.

In considering the request, the Authority had regard to the submission made by the Contractor, together with an Executive analysis of the submission, further to the three criteria contained in the BSS, against which any application for additional derogation by such services would be assessed.

Following discussion, the Authority was satisfied to approve the application for derogation as outlined in the submission.

(iii) KCLR FM

Members considered an application received from CK Broadcasting Limited (t/a KCLR FM), seeking a temporary change to its programme schedule, resulting in a one-hour increase in its breakfast programme and a consequential one-hour reduction in its morning talk show.



The Authority was not satisfied that the rationale proposed for the change was sufficient, particularly having regard to the short timeframe for which the variation was being sought, in the context of the remaining term of its existing contract. Accordingly, the Authority rejected the application for variation.

b. Ratification of Contract Awards Committee Recommendations

In his capacity as a member of the Contract Awards Committee, Larry Bass recused himself from the item under discussion.

(i) Fast-track & Competitive Licensing Process

Members considered an Executive note detailing the recommendations of the Contract Awards Committee in respect of four radio contracts under the fast-track licensing process; WLR FM, RedFM, Radio Kerry and Cork's 96FM/C103, and one radio contract under the competitive licensing process; Midlands 103. The recommendations in respect of all services were presented for ratification by the Authority. Having had regard to the evaluation reports generated by the Contract Awards Committee in respect of each applicant, the Authority was satisfied to ratify the Committee's decisions in respect of the four contracts awarded through the fast-track process and to enter into contract negotiations with Midlands 103, subject to a number of conditions, as specified by the Committee.

(ii) Section 71 Application

Members considered the recommendation of the Contract Awards Committee that the Authority enter into a content provision contract, with UTV Ireland Limited, for the provision of a general entertainment channel. It was noted that the service would initially include a nightly news and current affairs programme (Monday to Thursday), together with a range of acquired documentary, drama and film content. Members noted that the contract had been applied for under Section 71 of the Broadcasting Act and that the Contract Awards Committee was satisfied that all relevant criteria for evaluation had been satisfied in accordance with the *BAI Guide to Applicants for Content Provision Contracts*.

Members discussed in detail the nature of the service to be provided by UTV Ireland, having regard to earlier discussions on the submission received from TV3 and broader policy issues relating to services licensed under section 71. The potential impact of the service on the performance of TV3 and the likely implications were considered by the Members and concerns were expressed in this regard. The nature of other services licensed under Section 71 of the Act and that proposed by UTV was discussed and Members considered the appropriateness of a uniform application process, regardless of service type, and whether this required review from a policy perspective. With regard to the question of content on the proposed service, it was



accepted that, given the nature of a section 71 contract, the Authority could have no influence on the balance of content contained in the proposal, other than ensuring that the proposed service would comply with AVMS obligations, BAI Codes of Standards and any programming commitments entered into at application stage. Furthermore, it was agreed that additional Irish content and choice for viewers was to be welcomed.

Following discussion, and noting the Authority's role under section 71(4) of the Broadcasting Act, the Authority approved the recommendation of the Contract Awards Committee by a majority vote.

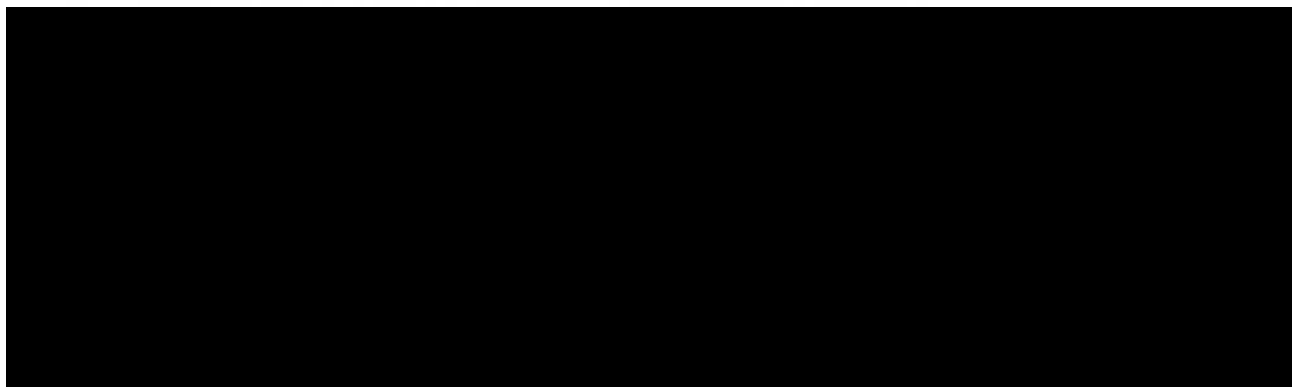
c. Competitive Licensing Process: Submission from Power FM Group

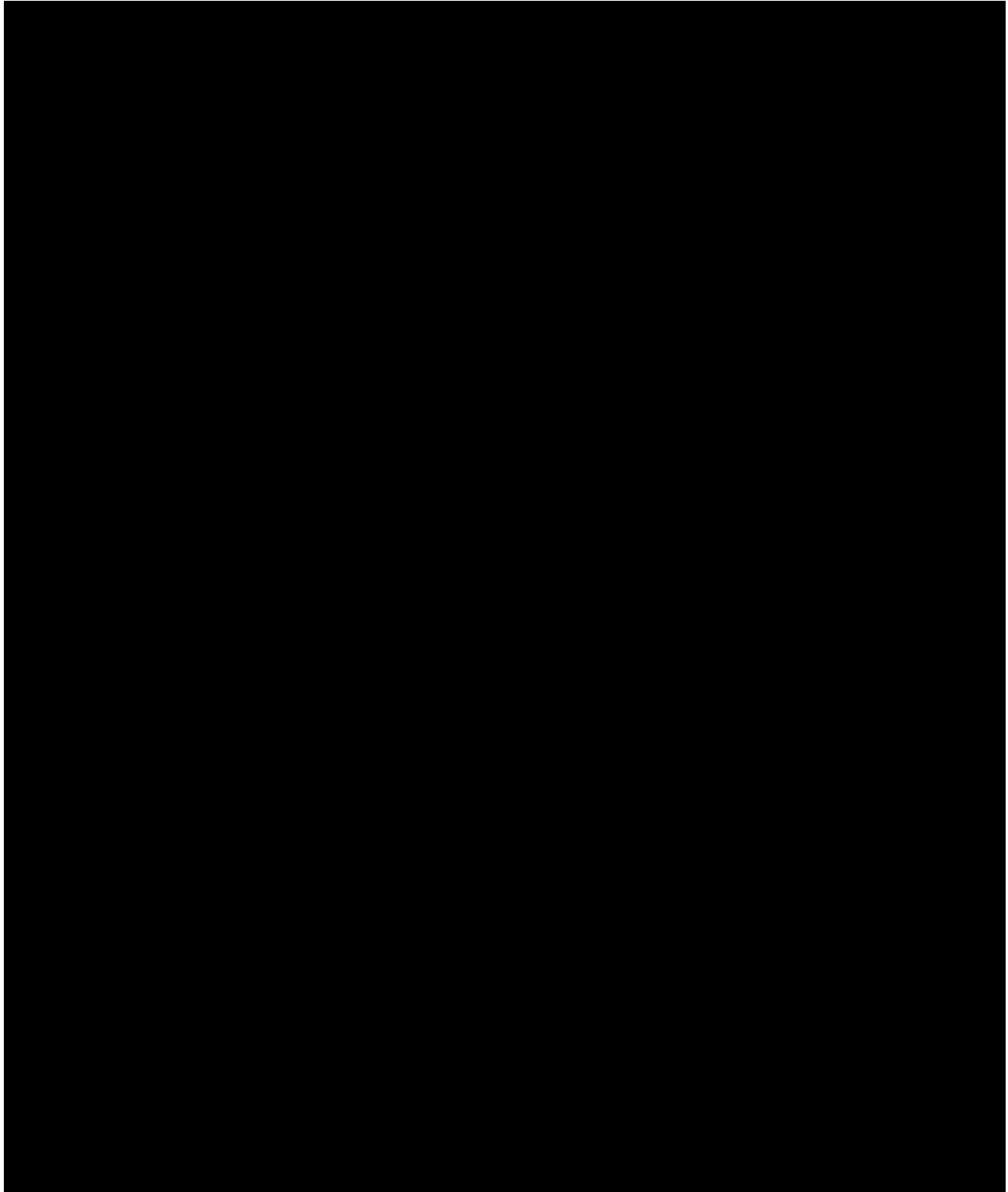
Members were presented with a copy of correspondence received from Mr. Colm Dunphy of the Power FM Group, relating to the licensing process for the south-east regional youth, music-driven, sound broadcasting service. It was noted that Power FM had submitted an Expression of Interest in respect of the service but had not subsequently submitted an application for the licence.

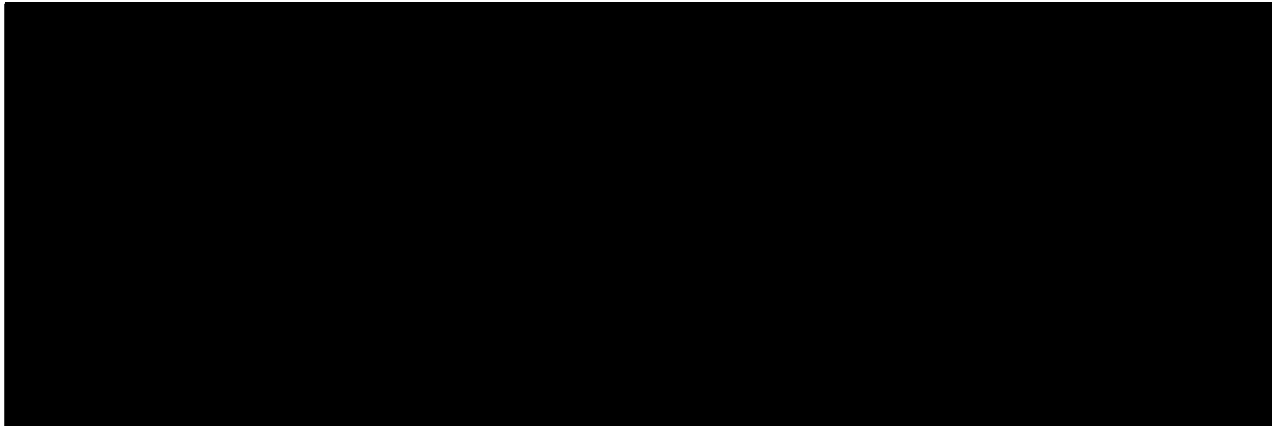
The Authority noted that a number of the allegations made in the correspondence concerned policy and licensing decisions of both the BCI and the BAI. The Authority also noted that a number of the allegations pertained to the actions of individuals within the BCI/BAI. It was the Authority's view that these allegations should be strongly rebutted. Accordingly, the Authority requested that more detailed information be made available for consideration at the March meeting, prior to a response being issued to Mr. Dunphy.

4. Broadcasting Fund

a. Draft Sound & Vision 3 Scheme: Consultation Outcomes







5. Organisational Matters

a. Workplan 2013 Review

Members were presented with a document detailing the outcomes of the 2013 workplan. Members noted and approved the achievement of key deliverables in the year and were satisfied that the document provided by the Executive contained an accurate reflection of work undertaken. Members were asked to revert to the Authority Secretary, in the event that further information or clarification was required.

b. Proposed Workplan 2014-2016

Members were presented with a proposed workplan for the period 2014-2016, which had been developed by the Executive, following Authority consideration and approval of the draft Statement of Strategy at its meeting in November 2013. The Authority was satisfied to approve the document, in principle, subject to any feedback that individual Members wished to communicate, through the Secretary of the Authority. In the event that any feedback was forthcoming, which necessitated an alteration to the workplan, it was agreed that this would be discussed at the March meeting of the Authority.

c. BAI Resources

Members considered the Executive report on BAI resources, updating the Authority on recent developments in respect of BAI staff, and, in particular, in respect of finance staff contracted from agencies. The Authority considered and approved proposals, as set out in the report, to address the immediate situation. Proposals to address the staffing of the finance function in the medium-term were also approved. Members noted that the Executive intended to make a submission to the Department on BAI resources more generally and were strongly supportive of the approach suggested.



d. PSB: Annual Public Funding Review – Tender Process

It was agreed that Bob Collins and Larry Bass would participate on a sub-committee to review and consider the tenders received for consultancy services to assist the BAI in conducting the Annual Review of Public Funding 2013.

6. For Information:

a. Report of Annual Review Meeting with TV3

A report detailing the outcomes of the annual review meeting with TV3 was circulated to the Members. It was agreed that Members could revert with observations to the March meeting, if so desired.

b. Consumer Protection & Competition Bill 2014: Update

Members were provided with an update on recent developments in respect of the Consumer Protection and Competition Bill. In particular, Members were advised that the Department may wish the Authority to comment on the Bill from a policy perspective, once it has been published. Members were further advised that the published Bill would be circulated as soon as it became available.

7. Date of Next Meeting

The next meeting of the Authority will be held on 10th March, 2014, at **9.30am** in the BAI offices.



Bob Collins,
Chairperson

10th March, 2014