



ÚDARÁS  
CRAOLACHÁIN  
NA hÉIREANN

BROADCASTING  
AUTHORITY  
OF IRELAND

# Draft Broadcasting Services Strategy

Consultation document  
August 2011



**Draft BAI Broadcasting Services Strategy**

**Public consultation**

**August 2011**

## The Broadcasting Authority of Ireland

The Broadcasting Authority of Ireland (“the BAI”, “the Authority”) is the body responsible for the regulation of broadcasting in Ireland. Its functions and responsibilities are set out in the Broadcasting Act 2009 (“the 2009 Act”). Section 26 (1)(a) of the Act requires the BAI to prepare a strategy for the provision of broadcasting services in the State. The Draft Broadcasting Services Strategy presented in this document outlines the Authority’s proposed approach to, and a framework for, the licensing of broadcasting services that are additional to those provided by RTÉ, TG4 and any future services that may be provided by the Houses of the Oireachtas and the Irish Film Channel.

In developing the Draft Broadcasting Services Strategy the BAI has had regard to its Strategy Statement 2011-2013, including the BAI’s Vision on Behalf of the Public which states:

*The BAI will facilitate the development of a responsible, vibrant and responsive Irish broadcasting sector which will:*

- *deliver diversity in content, programming, information and entertainment to viewers and listeners living in Ireland*
- *offer high quality and innovative indigenous broadcasting content to Irish audiences, in the Irish and English languages*
- *encourage on-going dialogue with viewers and listeners*
- *maintain plurality of ownership, content and viewpoint.*

Further information on the objectives and functions of the BAI can be found on the Authority’s website at [www.bai.ie](http://www.bai.ie).

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## Introduction

This consultation document is concerned with the development by the BAI of its **Broadcasting Services Strategy** (“the Strategy”). The Strategy as proposed details the BAI’s vision for the provision for radio and television services in Ireland over the coming 10-15 years. The Strategy as proposed outlines the BAI’s vision regarding the optimum mix of broadcasting services and identifies a number of factors that may facilitate and constrain the achievement of this vision. The Strategy sets out how the BAI will apply its statutory functions and regulatory practices, in order to facilitate the realisation of that vision over the lifetime of the Strategy.

The Strategy will inform the BAI’s approach to the development of a licensing plan.<sup>1</sup> The Licensing Plan will set out the number, nature and scope of radio and television broadcasting contracts that the Authority proposes to enter into on the recommendation of the BAI Contract Awards Committee. This latter activity falls outside of the scope of the Broadcasting Services Strategy but will be undertaken later in 2011. The plan will be amended and updated as required during the lifetime of the Strategy.

The Strategy, when finalised, will be forward-looking, reflecting the fact that the broadcasting environment is continually changing and evolving. As a result, while the Licensing Plan to be developed will cover the period up to the completion of the term of the present Authority (September 2014), the vision articulated in this Broadcasting Services Strategy extends beyond this timeframe. The Licensing Plan will be developed upon completion of this consultation process.

## Consultation Document

This consultation document presents the Strategy over six sections as follows:-

**Section 1** -Introduction

**Section 2** -The Broadcasting Services Strategy

**Section 3** –Overview of Current Landscape

**Section 4** –The Authority’s Vision for an Optimum mix of Broadcasting Services

**Section 5** -Context for Realising the Vision

**Section 6** -The BAI’s Approach to Realising its Vision

The BAI is now inviting views on the proposed content of the Strategy as part of a public consultation process. The submissions received on foot of this public consultation, and feedback received from a Stakeholder Conference being held in tandem with this consultation, will inform the BAI’s decisions in respect of the final Strategy.

Each part of the Strategy is now presented. Information on how to respond to the consultation is provided at the end of this document.

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<sup>1</sup> This licensing plan is required under Section 29 (2) (g) of the Broadcasting Act 2009.

## 1. Introduction to the Broadcasting Services Strategy

The introduction to the Strategy sets out in broad terms the objectives and functions of the Broadcasting Authority of Ireland. The rationale for the development of the Strategy and how that Strategy will inform the work of the BAI are detailed briefly. These are examined further in the remainder of the Strategy. There is no consultation question arising in respect of this section.

### **Section One – Introduction**

The Broadcasting Authority of Ireland (“the BAI”, “the Authority”) is the body responsible for the regulation of broadcasting in Ireland. Its functions and responsibilities are set out in the Broadcasting Act 2009 (“the 2009 Act”). Section 26 (1) (a) of the Act requires the BAI to prepare a strategy for the provision of broadcasting services in the State. The Broadcasting Services Strategy outlines the Authority’s approach to, and a framework for, the licensing of broadcasting services that are additional to those provided by RTÉ, TG4 and any future services that may be provided by the Houses of the Oireachtas and the Irish Film Channel.

The Broadcasting Services Strategy informs the Authority’s approach to the development of a Licensing Plan as required under Section 29 (2) (g) of the Act. The Licensing Plan will set out the number, nature and scope of contracts that the Authority proposes to enter into on the recommendation of the Contract Awards Committee. This latter activity falls outside of the scope of this Broadcasting Services Strategy but will be undertaken later in 2011. The plan will be amended and updated as required during the lifetime of this Strategy.

## 2. The Broadcasting Services Strategy

Section Two introduces the Strategy and links it to the Broadcasting Act 2009 and to the BAI Strategy Statement 2011-2013. It identifies the aims of the Strategy bringing in references to the strategic goals of diversity and plurality. It positions the provision of high quality, innovative and relevant content to Irish audiences as being central to the Strategy. It also describes the Strategy as forward-looking and the role of the BAI's vision for the optimum mix of broadcasting services in the context of the Strategy. There is no consultation question in respect of this part of the Strategy.

### **Section Two – The Broadcasting Services Strategy**

The Broadcasting Services Strategy is one of the key means by which the Authority fulfils its key statutory objective of endeavouring to ensure that the number and categories of broadcasting services in the State will best serve the needs of the people of the island of Ireland, bearing in mind their languages and traditions and their religious, ethical and cultural diversity. It also supports the provision of open and pluralistic broadcasting services in Ireland. The BAI Strategy Statement 2011-2013 outlines the mission, vision, values and strategic goals of the organisation. The Broadcasting Services Strategy is consistent with, and reflects, the principles set out in the Strategy Statement.

One of the key aims of the Broadcasting Services Strategy is to facilitate the development of a responsible, vibrant and responsive Irish broadcasting sector which serves the needs of the people of the island of Ireland, taking into account the increasing cultural diversity of audiences. Diversity in content, programming, information and entertainment to viewers and listeners and the provision of high quality, innovative and relevant content to Irish audiences are central to this public purpose objective. Maintaining plurality of ownership, content and viewpoint in broadcasting services is also considered essential in this regard. The BAI encourages and cultivates excellence in programme-making, journalism and broadcasting performance by promoting a responsible broadcasting environment based on shared values and high standards. Investment and innovation in the sector are also supported and encouraged.

The Broadcasting Services Strategy is forward-looking by nature, reflecting the fact that the broadcasting environment is continually changing and evolving. Thus, while the Licensing Plan to be developed will cover the period up to the completion of the term of the present Authority (September 2014), the vision articulated in this Broadcasting Services Strategy extends beyond this timeframe.

In developing the Broadcasting Services Strategy, the BAI had regard to the existing broadcasting landscape and the current mix of broadcasting services available in Ireland. This strategy document outlines the Authority's vision for the optimum mix of broadcasting services. The document also identifies factors that facilitate and constrain the achievement of the vision and sets out how the Authority will apply its statutory functions and regulatory practices, in order to facilitate the realisation of that vision over the lifetime of the Strategy.

### 3. Overview of Current Landscape

Section Three of the Strategy provides an overview of the current broadcasting landscape. This section provides commentary on the television and radio landscape from both audience and economic perspectives. In addition, this section provides an historical background to the evolution of television and radio in Ireland since the 1980s, when licensed independent radio and television first emerged. More detailed information on current broadcasters is provided in the Appendix to the Strategy. There is no consultation question on this part of the Strategy.

#### **Section Three - Overview of Current Landscape**

The current broadcasting sector in Ireland is defined by a mix of public service, commercial, community and niche television and radio services. In the case of television, there is also a significant impact from a range of UK-licensed services. In developing the Broadcasting Services Strategy, the Authority has had regard to a number of factors, including its existing commitments whereby contracts for BAI-licensed operators have expiry dates which extend from 2013 to 2021, the type and nature of services currently provided for audiences, and likely developments in the broadcasting environment.

The attached **Appendix** provides more details of the services currently operating in Ireland.

A brief overview of the television and radio sectors in the context of their evolution and current audience and economic performance is outlined hereunder.

#### ***The Irish Television Sector***

The Irish Television Sector for many years consisted of two services provided by the public service broadcaster, RTÉ. Irish audiences in large parts of the country also had access to the main UK-licensed services which were retransmitted on cable services. In the mid 90s, two further Irish services were introduced – the Irish language public broadcaster, TG4 and national commercial broadcaster, TV3. TG4 provides a valuable Irish language service to the island of Ireland while TV3 provides the only privately-owned alternative to the public broadcasters and is important from the perspective of diversity and plurality in the television broadcasting sector. Since the late 1990s, a small number of additional commercial and community channels have been introduced. The commercial channels, 3e, City Channel and Setanta Ireland, provide additional choice to Irish audiences on cable and satellite systems, while three community television services have also emerged serving communities in Dublin, Navan and Cork. The period since the late 1990s has also seen an explosion in the availability of other services on cable and satellite digital systems, most of which are licensed in the UK.

While RTÉ 1, RTÉ 2 and TV3 achieve significant viewership among Irish audiences, there is significant fragmentation in all other respects. TG4 and the other commercial services achieve modest viewership levels, reflective of their niche status and of the huge number of competing services. As the number of additional services continues to grow, the maintenance of current levels of viewership to Irish channels will be a significant priority.

The television advertising market has also seen great fluctuations over the last number of years. The early years of the century saw significant growth for all broadcasters. However, the recent economic downturn has resulted in a severe reduction in advertising spend and this has impacted on all television broadcasters in Ireland. In addition, the large number of UK channels selling opt-out advertising has resulted in greater fragmentation of the revenue available from airtime sales.

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The drop in advertising revenue, coupled with the reduced availability of investment funding and the increased cost of servicing debt, has provided serious challenges in attempting to maintain quality and programming and contractual commitments. Similarly, the level and availability of grants and other public funding for community broadcasters have also been reduced. This may impact on the development of further community television services in the coming years.

In conclusion, the television sector in Ireland is in a reasonably good position from the perspective of the diversity of services available. Irish television is also considered to be of good quality in the provision of programme content to audiences. Nevertheless, the economic downturn has had a significant impact on the ability of the sector to grow and it is unlikely that this situation will change in the immediate future.

### ***The Irish Radio Sector***

The Irish radio sector has evolved significantly since the establishment of the first licensed independent broadcasters in 1989. Initial policies of the regulator sought to ensure that there would be a local radio presence across the entire country. A national commercial radio service was also considered essential to provide competition to the public broadcasting services provided by RTÉ. Following a slow start, the sector became well established and by the late 1990s, the development of further services was advanced.

At national level, the sector now consists of six radio services, four provided by RTÉ, two licensed by the BAI. They provide a mix of speech and music-driven services as well as Irish language and classical music services. The local radio sector consists of a mix of music-led and broad-based music and speech services. The music-led services tend to be located in urban areas while the broad-based services primarily serve single or dual-county franchise areas.

Regional stations were developed in the South East, South West, North West and Midlands/North East and these provide services to younger audiences who are also catered for by local services in Dublin and Cork. There are also a number of niche music services, mainly based in Dublin but with one covering a multi-city franchise area.

Radio listenership in Ireland has been consistently high over the years and is relatively high in European terms. Listenership to broad-based local radio services is particularly strong but, equally, national and regional services and well established music services have a strong core listenership. Some of the niche services have struggled to attract significant share of audience, although they have provided diversity and choice of content to audiences in their franchise areas.

Similar to the television sector, there have been significant falls in advertising revenue since 2008. Longer established stations have been in a better position to maintain relatively strong financial positions but the downturn has had a significant impact on the newer stations.

The community radio sector is also prominent in Ireland and a strong network of stations has developed since the first services were licensed on a pilot basis in 1995. Policy developments in this area are considered to be strong in comparison to other European jurisdictions and broadcasting legislation also gives formal recognition to the sector in the context of the overall mix of services. The most important dimension of the community radio sector is the involvement of local communities in all aspects of the service and this has been recognised through the development and implementation of a separate policy for the sector by the regulator. Like the other sectors, community radio faces challenges on the economic front, particularly as there has been a reduction in the level of public funding available to support such services. However, the introduction of 100-day temporary contracts in the Broadcasting Act 2009 should support the development of new services over the duration of the Broadcasting Services Strategy.

Up to forty temporary or special event sound broadcasting contracts are awarded per year by the BAI covering college festivals, training for students, annual events and trial community services as referenced above.

Finally, institutional sound broadcasting services remain a part of the mix of services providing a valuable service to listeners, particularly those in hospitals.

#### 4. Authority's Vision for an Optimum Mix of Broadcasting Services

This section of the Strategy provides a high level perspective of the Authority's vision for the optimum mix of radio and television services over the coming years. This section acknowledges the current economic conditions but also makes clear that these conditions comprise just one of a number of considerations informing the Strategy. This section also details the objectives of the Strategy and details the Authority's thinking on the desirable mix of radio and television services that should be available to serve audiences.

##### **Section Four - Authority's Vision for an Optimum Mix of Broadcasting Services**

The ultimate purpose of the Broadcasting Services Strategy is to ensure that Irish audiences are served by a diverse range of broadcasting services and that open and pluralistic broadcasting services exist in Ireland. The BAI is cognisant of the reality of the economic situation which cannot be ignored. However, the immediate circumstances cannot be the basis for the development of the Strategy which will have implications for the next 10-15 years. The BAI will be ambitious in its vision and look beyond current realities, while not failing to recognise them. It is central to the vision of the BAI that there is choice and diversity for audiences and an expectation that all audiences will be served. The vision is encapsulated as follows:

*The people of Ireland will be served by a vibrant broadcasting sector consisting of a mix of public service, commercial and community broadcasters who provide content and programming that caters for and reflects the diversity within Irish Society.*

*At the core of this optimum mix is a range of national, regional, local and community broadcasting services complemented by an additional mix of niche services. Such services may be provided by commercial or not-for-profit business models to provide a diverse range of content and programming choices to Irish listeners and viewers.*

The Broadcasting Services Strategy has a number of specific objectives as follows:

- To ensure that services licensed by the BAI serve the needs of Irish audiences, bearing in mind their languages and traditions and their religious, ethical and cultural diversity;
- To ensure that services licensed by the BAI offer a variety of content to audiences in Ireland reflecting their diverse interests;
- To promote the provision of high quality programming on services licensed in Ireland and to foster creativity and innovation in the Irish broadcasting sector;
- To achieve plurality in viewpoint, outlet and source within the Irish broadcasting sector;
- To review and modify, where appropriate, current regulatory policies and practices in order to ensure that measures taken are proportionate having regard to the BAI's statutory objectives;
- To produce regulatory arrangements that are stable and predictable for all stakeholders.

**Contd.**

With regard to television, the Authority is of the view that a national, commercial television service is vital to the achievement of diversity and plurality in the sources and content of news and other programme content available to serve audiences. The Authority also recognises the important role that public service television channels play in the overall mix. The Authority will facilitate and encourage applications from other parties wishing to establish television services on cable, satellite and digital terrestrial television platforms, particularly from community television groups.

With regard to radio, the Authority considers that national, local and community radio services are essential components of the radio landscape in Ireland, while regional radio fulfils the provision of youth-orientated services at present. The Authority is open to exploring other service types including niche radio services and the regulatory basis upon which such services might be licensed, developed and sustained.

### **Consultation Question**

1. This section of the Strategy details the BAI's vision for the Irish radio and television sector in the coming years. What are your views on the vision and objectives, as articulated by the BAI?

## 5. Context for Realising the Vision

This section of the Strategy identifies the various factors which may constrain and support the BAI in realising its vision for the Strategy. Four factors are identified in the Strategy. They are: Legislation, Policy and Practice, Economic, and Technology.

### Section Five - Context for Realising the Vision

There is a range of factors which may constrain and support the BAI in realising its vision for the optimum mix of broadcasting services. These include legislative, policy, economic and technological factors and they are elaborated on briefly hereunder:

**5.1 Legislation** – The Broadcasting Act 2009 facilitates the provision of public, commercial, community and other broadcasting services and requires the Authority to develop a Broadcasting Services Strategy and Licensing Plan to enable such provision. It permits the Authority, through the Contract Awards Committee, to enter into contracts for the provision of services utilising both competitive and open licensing mechanisms.

Constraining factors include, prescriptive licensing processes for certain types of services required under the 2009 Act, the requirement to limit media concentration, various news and current affairs obligations, the imposition of regulations on advertising and programming, and the requirement to include a range of contractual conditions on broadcasters, including the imposition of a levy on their commercial income.

**5.2 Policy & Practice** – The BAI (and its predecessor, the BCI) has developed a series of policies and practices principally derived from the legislation, which may facilitate and constrain the realisation of the vision.

These include the nature of the limits imposed on the ownership and control of broadcasting services, the use of the derogation mechanism in respect of the 20% news and current affairs requirement on radio services, the maximum advertising limits applicable to broadcasters which are not defined by the 2009 Act, the restrictions imposed under programming and advertising codes, the requirements imposed on applicants for licences, both in the application process and during contract negotiations and the manner in which services are subsequently regulated from a compliance perspective.

**5.3 Economic** – The BAI has increased the advertising minutage limits for commercial television and introduced product placement rules on television in order to increase opportunities for maximising revenue. The development of new revenue streams through sponsorship, interactive and online activities is also facilitated. Funding is made available through the Broadcasting Funding Scheme to support the making of high quality programmes.

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The most significant constraining factor at present is the economic downturn which is impacting on commercial revenue levels, availability of investment funding and the ability of services to maintain quality and programming and contractual commitments. The downturn has created a more difficult environment for new operators to enter the broadcasting sector and has had a limiting effect on the development of additional services, particularly in the television sector. A reduction in the amount of public funding to the community broadcasting sector has also restricted development here.

**5.4 Technological** – The availability of carriage and content on DTT, cable and satellite platforms offers the potential for an increased range of television services for Irish audiences. Spectrum continues to be available in most parts of the country to support further analogue FM radio services. Developments in technology will allow for the provision of different commercial and programme content to specific areas without the need for local or regional studios. The concepts of programme automation and a greater degree of networking can now be facilitated. Increased broadband access is likely to facilitate the development of online content access, thereby reducing the dependency on traditional television platforms.

The main technological constraints on the achievement of the BAI's vision centre on economic factors such as the cost of access to platforms. On the radio side, spectrum is also limited in respect of any proposed additional large-scale analogue services.

### **Consultation Question**

2. What are your views on the various factors identified in the Strategy as those which may constrain and/or support the BAI in realising its vision for the Strategy? Are there any additional factors that should be considered?

## 6. **BAI's Approach to Realising its Vision**

Section Six of the Strategy outlines the manner in which the BAI will apply its functions to support the achievement of the vision presented in the Strategy. In summary, the Strategy addresses six functions as follows:

- i.* Licensing
- ii.* Ownership and Control
- iii.* Regulation of Services
- iv.* Costs of Making an Application
- v.* 20% News and Current Affairs Requirement (Radio only)
- vi.* Review of Regulatory Policies and Practices

This section reflects significant new elements to the licensing, contracting and compliance processes for certain types of services, mainly radio, introduced in the 2009 Act. These include the introduction of a fast track process in the licensing of radio services, allowing applicants in certain circumstances to include proposals for a cash sum as part of their bids, and the requirement for a formal scoring mechanism.

These elements of the Strategy are now presented and a number of questions are detailed for your consideration and response.

### **i. Licensing**

This section of the Strategy details the different types of licensing processes that the Authority can engage in further to the provisions of the 2009 Act.

Before the enactment of the 2009 Act, the licensing processes for commercial and community sound broadcasting contracts were undertaken on a planned competitive basis. All other licensing applications were considered via an open licensing process i.e. a licensing process could commence upon receipt of an application. This occurred in the case of temporary licensing and digital content contracts.

This Strategy proposes to introduce a more open licensing process for new community radio services. Such an approach has operated successfully to date in the case of community television services under section 72 of the 2009 Act. Under the proposed new approach, community groups who have successfully operated at least one 100-day section 68(1)(b) temporary community sound broadcasting service in the previous two years can submit a proposal for a contract demonstrating the group's readiness to operate a full-time service. If this is satisfactory, the Authority will consider starting a licensing process for the relevant service. At this point in the process, a licence would be advertised in the manner prescribed in sections 64, 65 and 66 of the 2009 Act.

A more planned, competitive approach to licensing will be in place for commercial radio services in the interests of diversity and sustainability and the efficient use of spectrum.

### **Section 6.1 - Licensing**

Part 6 of the 2009 Act sets out the range of broadcasting service and content provision contracts that the BAI may enter into as follows:

1. Commercial Sound Broadcasting –Section 63
2. Community Sound Broadcasting – Section 64
3. Temporary and Institutional Sound Broadcasting – Section 68
4. Content Provision (Television and Sound Broadcasting) - Section 71
5. Community Content (Television) – Section 72
6. A Television Programme Service (TV3 and 3e) – Section 70

The BAI's licensing activities will aim to achieve the objectives of serving audience needs and offering a variety of content to viewers and listeners. Contracts for the relevant broadcasting and content provision services will be awarded using a combination of competitive and open licensing processes. The mechanisms by which this will be achieved are identified hereunder:

- The BAI will develop a Licensing Plan for the provision of commercial sound broadcasting services. Competitive licensing processes will be operated in respect of all such contracts. Guides to Submissions for applicants will be developed which will include, among other things, the information to be provided by all applicants under the relevant statutory headings (programming, financial etc.), the scoring mechanism to apply, including greater or lesser weighting that might apply to any of the criteria, and whether single or periodic cash payments should be made in respect of certain broadcasting contracts, as permitted under Section 66 of the 2009 Act. Licensing and contracting processes will allow for obligations of contractors to be revisited in the event of an economic upturn.
- A more open approach to licensing generally will be operated in respect of community sound broadcasting services. Community radio groups who have successfully operated at least one 100-day section 68(1)(b) temporary community sound broadcasting service in the previous two years can submit a proposal for a contract demonstrating the group's readiness to operate a full-time service. If this is satisfactory, the Authority will consider starting a licensing process for the relevant service.
- Open licensing processes will apply in respect of digital television and/or radio content provision, and temporary and institutional sound broadcasting contracts. The BAI will encourage particularly the development of new services to be carried on the digital terrestrial television platform.
- This Broadcasting Services Strategy does not address the position of the television programme services, TV3 and 3e, which are licensed further to Section 70 of the 2009 Act, as the current contract runs until 2018 with a potential extension until 2023.

## Consultation Questions

3. Having regard to the relevant statutory provisions, what is your view on the appropriateness of the licensing approaches proposed in this section of the Strategy? Would other licensing approaches be more appropriate in respect of the different types of broadcasting services?
4. What steps might the BAI take to encourage the development of new services including those that could be carried on the digital terrestrial television platform?

### ii. Ownership and Control

The BAI's Ownership and Control Policy (2010) is concerned with, among other things, ensuring that a company or individual does not own or control an undue amount of broadcasting services or media in Ireland. It is also concerned with ensuring that the owners of commercial broadcasting services are of good character and have the experience and expertise to operate the service.

The BAI applies a separate ownership and control policy for the community radio and television sector primarily via the Community Radio Policy. A key concern of this policy is ensuring that ownership and control of a community radio or television service is grounded in the community served.

The BAI is reviewing both policies in tandem with the development of the Broadcasting Services Strategy. This is deemed appropriate at this time given the expiry of the majority of local radio contracts in 2013 and 2014. A copy of the Ownership and Control Policy (2010) applying currently to commercial broadcasters and the Community Radio Licensing Policy are included at Appendices 2 and 3.

Section 6.2 of the Broadcasting Services Strategy provides a broad overview of the Ownership and Control Policy (2010) for commercial broadcasters and situates this policy and the Community Radio Policy in the context of the Strategy. In particular, this section details a commitment to review these policies and sets out some of the areas of the policies that the BAI believes require consideration as part of the review. At this point in time, the BAI is open to all views on any aspect of either policy.

#### **Section 6.2 - Ownership and Control**

The BAI's three-year Strategy Statement speaks of plurality being vital to the health of Irish democracy and is clear that rules regarding the ownership and control of broadcasting services represent an important element in achieving plurality in the Irish media. The BAI currently applies the Ownership and Control Policy (2010) in respect of all commercial broadcasters with a separate policy operating in respect of community broadcasters.

**Contd.**

There is a range of provisions in the Ownership and Control Policy (2010) which give effect to the various statutory provisions relevant to ownership and control. These rules are designed to provide clarity to stakeholders and cover the following areas:

- Definition of the statutory terms of “control”, “substantial interests in” and “communications media”
- Character, experience and expertise
- Undue number of sound broadcasting services
- Undue number of sound broadcasting services in a specified area
- Undue amount of communications media in a specified area
- Assignment of contracts

The BAI will review the Ownership and Control Policy (2010) and the Community Radio Policy in parallel with the development of this Broadcasting Services Strategy to ensure that its provisions remain appropriate, while adhering to the objectives of plurality in viewpoint, outlet and source.

In reviewing its policies the Authority will focus in particular on the following:

#### Ownership and Control Policy (2010)

- *Definitions of “control” and “substantial interests in”*  
The Authority’s policy includes definitions of terms included in the 2009 Act but not defined in the Act i.e. “control” and “substantial interests in”. The Authority is open to reviewing these definitions.
- *“Undue number of sound broadcasting services”* – at present, the Authority’s policy permits an entity to control, or have substantial interests in, 15% of the total number of commercial sound broadcasting services. The policy also provides that this can increase to 25% in certain limited circumstances. To date, however, no entity has held more than 20% of the total. The Authority will consider whether the current policy thresholds remain appropriate in the context of its strategic objectives and the current media environment or whether the maximum permitted threshold should be reduced to 20% reflecting the current operational position.
- *“Character, expertise and experience”* – in assessing the character of an applicant for a broadcasting contract, the Authority applies the ordinary meaning of the word and considers, in particular, if the applicant is a fit and proper person to hold a contract. The BAI applies a number of tests in making a decision in this regard. The Authority will review the nature and frequency of the tests with a view to ensuring that contracts are held by persons who are fit and proper not only at the point at which a contract is awarded or amended but also on an on-going basis. The Authority is also open to reviewing the tests it applies in assessing experience and expertise.
- *“Undue amount of communications media”* – the Authority applies two tests in assessing whether an entity has control of, or substantial interests in, more than a reasonable share of the amount of the communications media in a specified area. These are a test of “*substitutability*” and a test of “*dominance*” in the context of opinion forming power applying the audience share model. These tests are also applied when assessing whether an entity holds an undue number of sound broadcasting services in a specified area. The Authority will consider whether these tests and their application remain appropriate in the context of its strategic objectives and the current media environment.

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- “Concrete Indicators of Diversity” – the Authority will consider the potential for introducing into its Policy the concept of concrete indicators of diversity within media organisations e.g. the extent to which both the policies and practices of the media organisation model inclusiveness (including employment and staff policies) and reflect a full range of audience interests, the range of sources of news, information and viewpoints available to the broadcaster, the track record of the broadcaster with regard to fairness, impartiality and objectivity in news and current affairs provision, the commitments included in a broadcaster’s Programme Policy Statement, and its track record in relation to compliance with these.
- *Consumer and Competition Bill 2011* – the Authority will consider the impact of the provisions of the Bill and how best the statutory provisions might be reflected in its Policy, if the Bill was to be enacted as published.
- *Assignment of Contracts* – the current policy includes a two-year moratorium on the assignment of new contracts in certain circumstances and makes specific provision for the consideration of programming matters when considering control change proposals. These provisions will also be reviewed as part of this process.

#### Ownership and Control - Community Broadcasters

- *Community broadcasters*– the Authority will consider whether its various media ownership and control policies (including its policy in respect of community broadcasters) should be formulated into a single policy, reflecting, *inter alia*, its statutory remit and its Strategy Statement 2011-2013.

The BAI commits to review its Ownership and Control Policy at least once every four years or sooner if considered necessary.

### Consultation Questions

5. *Definitions of “control” and “substantial interests in”* – What is your view of the Authority current definitions for these statutory terms? Please provide reasons for any proposed changes to the definitions.
6. *“Undue number of sound broadcasting services”* – what is your view on whether the Authority should maintain the existing provision in respect of “undue number” or whether it should change the existing provision in the interests of plurality? Please provide reasons for your views.
7. *“Character”* – do you consider that the current tests applied by the BAI are appropriate in assessing the character of an applicant for a broadcasting contract? What other, additional considerations do you think are appropriate and why? Do you consider it appropriate that a broadcasting contractor should be accountable as to his/her fitness to hold a contract at any time over the licence period?
8. *“Concrete Indicators of Diversity”* – what is your view as to the potential for the introduction of the concept of concrete indicators of diversity in the BAI’s Ownership and Control Policy? If so, what indicators do you consider might be appropriate in this regard?

9. *Community broadcasters* – reflecting the BAI's statutory remit and having regard to the Authority's objectives, as set out in its Strategy Statement, including, in particular, its plurality objectives, do you consider it appropriate that the BAI should seek to reflect all of its policies and practices on ownership and control in a single policy document?
10. *Consumer and Competition Bill 2011* – in light of the proposed role envisaged for the BAI in the Bill, what revisions, if any, do you consider might be necessary or appropriate to the BAI's Ownership and Control Policy?
11. What other changes, if any, do you consider might be appropriate for the Authority to make to its current Ownership and Control Policy and/or to the ownership and control provisions in respect of community broadcasters?

### iii. Regulation of Services

This section of the Strategy is concerned with the way in which radio and television services are to be regulated in general, referring in particular to those matters that are dealt with in broadcasting contracts. This section outlines the BAI's expectations of contractors and also includes its commitment to review the level of regulation currently applied to the different types of broadcasting services and its commitment to be flexible in its approach to regulation.

#### **Section 6.3 - Regulation of Services**

The 2009 Act includes a range of matters which must be addressed in broadcasting contracts. These provisions are designed to ensure that the commitments entered into at application stage are adhered to once a service becomes operational. The BAI expects broadcasters to adhere to the terms of their contracts in keeping with the diversity and plurality objectives of this Strategy.

Nonetheless, the Authority is also mindful of its statutory obligation that regulatory measures are proportionate and produce regulatory arrangements that are stable and predictable. The BAI may consider the possibility of a relaxation of the non-statutory elements of broadcasting contracts and allow commitments to be shaped in such a way that provides contractors with a greater degree of flexibility in their delivery, thereby reducing the administrative burden. The BAI will examine changes proposed by contractors in the context of the evolution of the service and its continuing interest and relevance to the needs of the audience being served. However, it is stressed that any relaxation of commitments will be balanced with the BAI's objectives of diversity and plurality and will not result in any fundamental changes to commitments made at application stage.

The BAI will also consider the appropriate level of regulation for section 71 content contractors and other content services, which are not subject to competitive licensing processes. The BAI will continue the current policy of requiring such services to operate in accordance with minimum statutory requirements with a view to encouraging the development of such services, and thereby, facilitating greater diversity for Irish audiences.

## Consultation Questions

12. What is your opinion of the approach to regulation by the BAI detailed in this section of the Strategy?
13. How might the BAI facilitate greater flexibility for contractors while also ensuring commitments made by a contractor at the application stage are not altered fundamentally?

### iv. **Cost of Making an Application for Commercial Sound Broadcasting Contracts**

The issue of the costs associated with making an application for a commercial sound broadcasting contract have been raised with the BAI by representatives of the commercial radio sector. The costs have been portrayed as a barrier to new applicant groups and the value of some of the information sought within the Guide to Submissions for applications has been questioned. It is the view of the BAI that much of the costs are necessarily incurred as a result of the detailed nature of the statutory application process and are also incurred by applicants' own determination to win a licence. The BAI is of the view that, as a general principle, it will explore ways to reduce costs for prospective applicants. This section of the Strategy addresses this issue and a number of approaches are detailed.

#### **Section 6.4 - Cost of Making an Application for Commercial Sound Broadcasting Contracts**

The costs associated with the application process for licences is sometimes portrayed as a barrier to entry and the value of some of the information sought is questioned by prospective applicants.

The BAI is of the view that many of the costs are inescapable given the provisions of the 2009 Act which requires that applications be assessed under a range of headings, including, in particular, the financial capability of the applicant to operate the service. However, the BAI recognises that this issue is a constraining factor for potential applicants, given the economic conditions that are likely to exist in Ireland in the medium term.

Accordingly, in the interests of reducing the regulatory burden on applicants and potential applicants, the BAI commits to exploring ways of reducing costs for prospective applicants for commercial sound broadcasting contracts. This will be done in a manner that does not in any way compromise the requirement that applications present a robust editorial and financial case or the expectation that they demonstrate how they will serve the needs and interests of their prospective audiences. The BAI will include consideration of the manner in which the current Oral Hearings process is operated in this context. This approach is in accordance with the principles of reducing regulatory burden, proportionality and producing regulatory arrangements that are stable and predictable.

## Consultation Questions

14. Are there additional measures that the BAI should explore in order to reduce application costs? How will these additional measures ensure that the integrity of the application process is maintained?

v. **20% News and Current Affairs Requirement (Radio Only)**

The 2009 Act places specific news and current affairs requirements on sound broadcasters i.e. radio services. However, the 2009 Act also permits the BAI to provide a derogation from these requirements whereby the broadcaster can provide less news and current affairs content than that required by the Act. In doing so, the BAI must have regard to the interests of the audience.

In practice, the BAI currently uses two criteria when considering a request for a derogation. The first concerns the impact of a derogation on the programming provided to the audience served by the broadcaster. The second concerns the contribution the derogation will make to the diversity and quality of news provision in the broadcaster's franchise area.

The BAI is of the view that a more nuanced approach to considering derogations is desirable, for example, with a view to encouraging the development of niche radio services. In this context, the Strategy introduces a third criterion and this concerns the contribution that the proposed derogation would make to the diversity and quality of news and current affairs output for the relevant audiences of niche services or of those services targeting a particular demographic. In addition, the Authority may, in limited circumstances, be willing to consider a request for a derogation during peak-time broadcasting (7am-7pm).

**Section 6.5 - 20% News and Current Affairs Requirement (Radio only)**

The 2009 Act requires all sound broadcasters to devote at least 20% of the broadcast day to news and current affairs programming. There are additional requirements relating to the provision in peak time (7am – 7pm) and a variation also exists in respect of the RTÉ group of services.

The 2009 Act allows the BAI to grant derogations from the requirement if it is satisfied that this would be beneficial to the listeners of the sound broadcasting service.

The BAI considers that the statutory News and Current Affairs requirement makes an important contribution to the achievement of diversity and plurality for Irish audiences. The requirement ensures the delivery of relevant news and current affairs content at national, local and regional levels. This is evident in the strong listenership performance of such programming in the radio sector over the years.

In these circumstances, the BAI considers it important that delivery of the commitment is an essential component of the programme schedules of commercial, public and community broadcasting services.

However, the BAI also recognises that there may be some circumstances where, equally, diversity and quality of output may be served by derogation from the requirement in respect of existing or future niche services or for services targeting a specific demographic.

**Contd.**

The BAI, therefore, will have regard to three influencing factors when considering a request for derogation. These are:

- The alternative editorial and schedule proposals that the contractor submits and the impact that the proposed derogation will have on the audience being served;
- The impact of the derogation on the overall quality of news and current affairs output in the relevant franchise area, and;
- The contribution the derogation will make to the diversity and quality of news and current affairs output for the relevant audience of niche services or of those services targeting a particular demographic.

In general, the BAI will be more likely to grant a derogation from the requirement outside of peak broadcasting hours. However, there might be occasions where a request for a derogation during peak time and for digital content provision contractors will be considered taking into account the above three factors.

### Consultation Questions

15. What is your view of the three influencing factors to which the BAI will have regard when considering a request for a derogation? Are there other influencing factors that the BAI should take into account?
16. Regarding the potential for derogation during peak-time hours (7am-7pm), under what circumstances should the BAI consider granting a derogation? Should any additional influencing factor(s) apply when making such a decision?

#### vi. Review of Regulatory Policies and Practices

This section of the Strategy examines a number of regulatory policies and practices that are currently applied to broadcasters by the BAI. These include policies and practices concerning: -

- the **sharing** by more than one broadcaster **of non-programme functions** e.g. finance;
- **station location** i.e. the requirement that a station locates its main studio in the geographical area served by it;
- **opt-out programming** i.e. the requirement that programming for a particular geographical part of a franchise area is broadcast from a separate studio in that area;
- **opt-out advertising** i.e. the requirement that opt-out advertising is only permitted in circumstances where opt-out programming and an opt-out studio are in place;
- **programme automation** i.e. where there is no presenter live in studio or only limited staff is available (such as overnight) but where content is automated and broadcast using a computer;

- **networking of programmes** i.e. where programming from one broadcaster is replayed or simultaneously aired on another broadcasting service;
- **Policies applying to community broadcasters, other than ownership and control** e.g.
  - the requirement that that no more than 50% of a community broadcaster's income should come from any one source;
  - the requirement that stations only broadcast advertisements which relate to work opportunities, events, businesses and services in the specified area;
  - the requirement to comply with the AMARC community radio charter;
  - the obligation to support community access at all levels and undertake relevant evaluations;
  - the requirement for programming that will add to diversity in the relevant franchise area;

While the Strategy proposes generally to continue to apply existing policies and practices, the BAI is proposing a more flexible approach in situations where it is satisfied that it would assist the delivery of services on a more sustainable basis and where any change would not negatively impact on audiences.

#### **Section 6.6 - Review of Regulatory Policies and Practices**

One of the measures identified as supporting the achievement of the BAI's vision is the exploration by the BAI of opportunities to review and modify current regulatory policies and practices, where appropriate. Economic and market conditions have altered dramatically since 2008 and there are no indications that this situation is likely to improve in the shorter term. Accordingly, and in order to enhance the sustainability of broadcasting services, the BAI may consider a relaxation of certain regulatory policies and practices which would support the delivery of services on a more sustainable basis. However, it is important to emphasise that the Broadcasting Services Strategy has been developed in the context of an overarching commitment to serve audiences and this will be to the forefront of the Authority's thinking in the consideration of any proposals received.

Current regulatory policies and practices are as follows:

- **Sharing of non-programme functions** – The BAI will continue to consider proposals related to the sharing of non-programming functions such as finance, engineering and administration. It may also be open to considering proposals for a further extension of shared services, provided that this does not impact on the delivery of the core programme service. The BAI will have particular regard to the nature of the proposed service when considering such matters.
- **Station Location** – The BAI will continue to require that broad-based local radio and community radio and television services locate their principal studios in the relevant franchise areas. In the case of all other commercial or niche content provision services, the BAI may permit co-location with another service(s) or location of the service outside of the franchise area, provided that such location does not result in listeners or viewers being unreasonably affected by such a development.

**Contd.**

- **Opt-out programming** – Traditionally, the BAI has permitted the broadcast of opt-out programming by services, provided that the material is broadcast from a separate broadcasting studio located in the area from which the opt-out material originates. Developments in technology support the delivery of programming without the requirement to develop additional studios.

The BAI may in future permit the delivery of opt-out programming from the main studio location in circumstances where the granting of such permission would not compromise the focus of the content for the intended audience and would continue to support the principles of diversity and plurality, particularly in relation to serving audience needs.

- **Opt-out Advertising** - The same regulatory approach has applied in the past in respect of opt-out advertising as those which have been applied to opt-out programming.

The BAI will consider circumstances where it might permit opt-out advertising without the requirement for opt-out programming and an opt-out studio. In considering any such proposals, the BAI will have regard to the likely impact on the sustainability of the service as well as the general impact on the sustainability of other services in the franchise area and the wider broadcasting sector.

- **Programme Automation and Networking** - Programme automation and networking of programmes is currently permitted in limited circumstances. Automation usually occurs at late off-peak (through the night) while networking has largely been confined to the provision of national and international news and sport services.

The BAI may permit greater levels of automation and networking in the interests of sustainability of services, particularly those aimed at niche audiences which have greater sustainability challenges. However, the BAI will consider the likely impact on audience needs when considering any such proposals.

- **Policies applying to community broadcasters, other than ownership and control** - The BAI applies a number of policies and practices specifically to the community radio and television sectors. These relate to finance, community access and evaluation, among other matters and have been devised in conjunction with the community sector.

To date, these have worked effectively and have facilitated the development of the community broadcasting sector in Ireland. The Authority is not proposing any changes to these policies as no obvious need has been expressed by the community broadcasting sector.

## Consultation Questions

17. What is your view of the BAI's approach as detailed in the Strategy in respect of the following policies and practices:

- Sharing of non-programme functions;
- Station Location;
- Opt-out programming;
- Opt-out Advertising;
- Programme Automation and Networking;
- Policies applying to community broadcasters, other than ownership and control.

18. Are there other regulatory policies and practices that the Authority could adopt with a view to realising its vision?

## 7. Summary of Consultation Questions

This section of the consultation summarises, for easy reference, the questions included in the preceding sections.

### Section 4

#### Authority's Vision for an Optimum Mix of Broadcasting Services

1. This section of the Strategy details the BAI's vision for the Irish radio and television sector in the coming years. What are your views on the vision and objectives, as articulated by the BAI?

### Section 5

#### Context for Realising the Vision

2. What are your views on the various factors identified in the Strategy as those which may constrain and/or support the BAI in realising its vision for the Strategy? Are there any additional factors that should be considered?

### Section 6.1

#### Licensing

3. Having regard to the relevant statutory provisions, what is your view on the appropriateness of the licensing approaches proposed in this section of the Strategy? Would other licensing approaches be more appropriate in respect of the different types of broadcasting services?
4. What steps might the BAI take to encourage the development of new services including those that could be carried on the digital terrestrial television platform?

### Section 6.2

#### Ownership & Control

5. *Definitions of "control" and "substantial interests in"* – What is your view of the Authority current definitions for these statutory terms? Please provide reasons for any proposed changes to the definitions.
6. *"Undue number of sound broadcasting services"* – what is your view on whether the Authority should maintain the existing provision in respect of "undue number" or whether it should change the existing provision in the interests of plurality? Please provide reasons for your views.
7. *"Character"* – do you consider that the current tests applied by the BAI are appropriate in assessing the character of an applicant for a broadcasting contract? What other, additional considerations do you think are appropriate and why? Do you consider it appropriate that a broadcasting contractor should be accountable as to his/her fitness to hold a contract at any time over the licence period?

8. “*Concrete Indicators of Diversity*” – what is your view as to the potential for the introduction of the concept of concrete indicators of diversity in the BAI’s Ownership and Control Policy? If so, what indicators do you consider might be appropriate in this regard?
9. *Community broadcasters* – reflecting the BAI’s statutory remit and having regard to the Authority’s objectives, as set out in its Strategy Statement, including, in particular, its plurality objectives, do you consider it appropriate that the BAI should seek to reflect all of its policies and practices on ownership and control in a single policy document?
10. *Consumer and Competition Bill 2011* – in light of the proposed role envisaged for the BAI in the Bill, what revisions, if any, do you consider might be necessary or appropriate to the BAI’s Ownership and Control Policy?
11. What other changes, if any, do you consider might be appropriate for the Authority to make to its current Ownership and Control Policy and/or to the ownership and control provisions in respect of community broadcasters?

### **Section 6.3 Regulation of Services**

12. What is your opinion of the approach to regulation by the BAI detailed in this section of the Strategy?
13. How might the BAI facilitate greater flexibility for contractors while also ensuring commitments made by a contractor at the application stage are not altered fundamentally?

### **Section 6.4 Cost of Making an Application for Commercial Sound Broadcasting Contracts**

14. Are there additional measures that the BAI should explore in order to reduce application costs? How will these additional measures ensure that the integrity of the application process is maintained?

### **Section 6.5 20% News and Current Affairs Requirements (Radio only)**

15. What is your view of the three influencing factors to which the BAI will have regard when considering a request for a derogation? Are there other influencing factors that the BAI should take into account?
16. Regarding the potential for derogation during peak-time hours (7am-7pm), under what circumstances should the BAI consider granting a derogation? Should any additional influencing factor(s) apply when making such a decision?

**Section 6.6**  
**Review of Regulatory Policies and Practices**

17. What is your view of the BAI's approach as detailed in the Strategy in respect of the following policies and practices:
- Sharing of non-programme functions;
  - Station Location;
  - Opt-out programming;
  - Opt-out Advertising;
  - Programme Automation and Networking;
  - Policies applying to community broadcasters, other than ownership and control.
18. Are there other regulatory policies and practices that the Authority could adopt with a view to realising its vision?

## **8. Responding to the Consultation**

The BAI invites you to submit your views to the consultation question on or before close of business on **23<sup>rd</sup> September 2011**

Email responses should be sent to: - **bss@bai.ie**. Postal responses should be sent to:-

**Consultation on Broadcasting Services Strategy,  
Broadcasting Authority of Ireland,  
2-5 Warrington Place,  
Dublin 2.**

### **Freedom of Information**

This is a public consultation process and following consideration of submissions by the BAI, all information submitted will be publicly available on request. However, there may be aspects of your submission which you may wish to make in confidence. If this is the case, when making the submission please identify any information which you do not wish to be publicly disclosed and specify the reasons for its sensitivity.

An agreement between the BAI and a respondent to the consultation, regarding confidential information, is without prejudice to the BAI's obligations under the Freedom of Information Act, 1997 and the Freedom of Information (Amendment) Act, 2003. If the BAI receives a request for information submitted in confidence, you will be consulted before any decision is made.

## **Appendix 1**

### **BAI Draft Broadcasting Services Strategy**

## **1. Introduction**

The Broadcasting Authority of Ireland (“the BAI”, “the Authority”) is the body responsible for the regulation of broadcasting in Ireland. Its functions and responsibilities are set out in the Broadcasting Act 2009 (“the 2009 Act”). Section 26 (1) (a) of the Act requires the BAI to prepare a strategy for the provision of broadcasting services in the State. The Broadcasting Services Strategy outlines the Authority’s approach to, and a framework for, the licensing of broadcasting services that are additional to those provided by RTÉ, TG4 and any future services that may be provided by the Houses of the Oireachtas and the Irish Film Channel.

The Broadcasting Services Strategy informs the Authority’s approach to the development of a Licensing Plan as required under Section 29 (2) (g) of the Act. The Licensing Plan will set out the number, nature and scope of contracts that the Authority proposes to enter into on the recommendation of the Contract Awards Committee. This latter activity falls outside of the scope of this Broadcasting Services Strategy but will be undertaken later in 2011. The plan will be amended and updated as required during the lifetime of this strategy.

## **2. The Broadcasting Services Strategy**

The Broadcasting Services Strategy is one of the key means by which the Authority fulfils its key statutory objective of endeavouring to ensure that the number and categories of broadcasting services in the State will best serve the needs of the people of the island of Ireland, bearing in mind their languages and traditions and their religious, ethical and cultural diversity. It also supports the provision of open and pluralistic broadcasting services in Ireland. The BAI Strategy Statement 2011-2013 outlines the mission, vision, values and strategic goals of the organisation. The Broadcasting Services Strategy is consistent with, and reflects, the principles set out in the Strategy Statement.

One of the key aims of the Broadcasting Services Strategy is to facilitate the development of a responsible, vibrant and responsive Irish broadcasting sector which serves the needs of the people of the island of Ireland, taking into account the increasing cultural diversity of audiences. Diversity in content, programming, information and entertainment to viewers and listeners and the provision of high quality, innovative and relevant content to Irish audiences are central to this public purpose objective. Maintaining plurality of ownership, content and viewpoint in broadcasting services is also considered essential in this regard. The BAI encourages and cultivates excellence in programme-making, journalism and broadcasting performance by promoting a responsible broadcasting environment based on shared values and high standards. Investment and innovation in the sector are also supported and encouraged.

The Broadcasting Services Strategy is forward-looking by nature, reflecting the fact that the broadcasting environment is continually changing and evolving. Thus, while the Licensing Plan to be developed will cover the period up to the completion of the term of the present Authority (September 2014), the vision articulated in this Broadcasting Services Strategy extends beyond this timeframe.

In developing the Broadcasting Services Strategy, the BAI had regard to the existing broadcasting landscape and the current mix of broadcasting services available in Ireland. This strategy document outlines the Authority’s vision for the optimum mix of broadcasting services. The document also identifies factors that facilitate and constrain the achievement of the vision and sets out how the Authority will apply its statutory functions and regulatory practices, in order to facilitate the realisation of that vision over the lifetime of the Strategy.

### 3. Overview of Current Landscape

The current broadcasting sector in Ireland is defined by a mix of public service, commercial, community and niche television and radio services. In the case of television, there is also a significant impact from a range of UK-licensed services. In developing the Broadcasting Services Strategy, the Authority has had regard to a number of factors, including its existing commitments whereby contracts for BAI-licensed operators have expiry dates which extend from 2013 to 2021, the type and nature of services currently provided for audiences, and likely developments in the broadcasting environment.

The attached **Appendix** provides more details of the services currently operating in Ireland.

A brief overview of the television and radio sectors in the context of their evolution and current audience and economic performance is outlined hereunder.

#### ***The Irish Television Sector***

The Irish Television Sector for many years consisted of two services provided by the public service broadcaster, RTÉ. Irish audiences in large parts of the country also had access to the main UK-licensed services which were retransmitted on cable services. In the mid 90s, two further Irish services were introduced – the Irish language public broadcaster, TG4 and national commercial broadcaster, TV3. TG4 provides a valuable Irish language service to the island of Ireland while TV3 provides the only privately owned alternative to the public broadcasters and is important from the perspective of diversity and plurality in the television broadcasting sector. Since the late 1990s, a small number of additional commercial and community channels have been introduced. The commercial channels, 3e, City Channel and Setanta Ireland, provide additional choice to Irish audiences on cable and satellite systems, while three community television services have also emerged serving communities in Dublin, Navan and Cork. The period since the late 1990s has also seen an explosion in the availability of other services on cable and satellite digital systems, most of which are licensed in the UK.

While RTÉ 1, RTÉ 2 and TV3 achieve significant viewership among Irish audiences, there is significant fragmentation in all other respects. TG4 and the other commercial services achieve modest viewership levels, reflective of their niche status and of the huge number of competing services. As the number of additional services continues to grow, the maintenance of current levels of viewership to Irish channels will be a significant priority.

The television advertising market has also seen great fluctuations over the last number of years. The early years of the century saw significant growth for all broadcasters. However, the recent economic downturn has resulted in a severe reduction in advertising spend and this has impacted on all television broadcasters in Ireland. In addition, the large number of UK channels selling opt-out advertising has resulted in greater fragmentation of the revenue available from airtime sales.

The drop in advertising revenue, coupled with the reduced availability of investment funding and the increased cost of servicing debt, has provided serious challenges in attempting to maintain quality and programming and contractual commitments. Similarly, the level and availability of grants and other public funding for community broadcasters have also been reduced. This may impact on the development of further community television services in the coming years.

In conclusion, the television sector in Ireland is in a reasonably good position from the perspective of the diversity of services available. Irish television is also considered to be of good quality in the provision of programme content to audiences. Nevertheless, the economic downturn has had a significant impact on the ability of the sector to grow and it is unlikely that this situation will change in the immediate future.

### ***The Irish Radio Sector***

The Irish radio sector has evolved significantly since the establishment of the first licensed independent broadcasters in 1989. Initial policies of the regulator sought to ensure that there would be a local radio presence across the entire country. A national commercial radio service was also considered essential to provide competition to the public broadcasting services provided by RTÉ. Following a slow start, the sector became well established and by the late 1990s, the development of further services was advanced.

At national level, the sector now consists of six radio services, four provided by RTÉ, two licensed by the BAI. They provide a mix of speech and music-driven services as well as Irish language and classical music services. The local radio sector consists of a mix of music-led and broad-based music and speech services. The music-led services tend to be located in urban areas while the broad-based services primarily serve single or dual-county franchise areas.

Regional stations were developed in the South East, South West, North West and Midlands/North East and these provide services to younger audiences who are also catered for by local services in Dublin and Cork. There are also a number of niche music services, mainly based in Dublin but with one covering a multi-city franchise area.

Radio listenership in Ireland has been consistently high over the years and is relatively high in European terms. Listenership to broad-based local radio services is particularly strong but, equally, national and regional services and well established music services have a strong core listenership. Some of the niche services have struggled to attract significant share of audience, although they have provided diversity and choice of content to audiences in their franchise areas.

Similar to the television sector, there have been significant falls in advertising revenue since 2008. Longer established stations have been in a better position to maintain relatively strong financial positions but the downturn has had a significant impact on the newer stations.

The community radio sector is also prominent in Ireland and a strong network of stations has developed since the first services were licensed on a pilot basis in 1995. Policy developments in this area are considered to be strong in comparison to other European jurisdictions and broadcasting legislation also gives formal recognition to the sector in the context of the overall mix of services. The most important dimension of the community radio sector is the involvement of local communities in all aspects of the service and this has been recognised through the development and implementation of a separate policy for the sector by the regulator. Like the other sectors, community radio faces challenges on the economic front, particularly as there has been a reduction in the level of public funding available to support such services. However, the introduction of 100-day temporary contracts in the Broadcasting Act 2009 should support the development of new services over the duration of the Broadcasting Services Strategy.

Up to forty temporary or special event sound broadcasting contracts are awarded per year by the BAI covering college festivals, training for students, annual events and trial community services as referenced above.

Finally, institutional sound broadcasting services remain a part of the mix of services providing a valuable service to listeners, particularly those in hospitals.

#### **4. Authority's Vision for an Optimum Mix of Broadcasting Services**

The ultimate purpose of the Broadcasting Services Strategy is to ensure that Irish audiences are served by a diverse range of broadcasting services and that open and pluralistic broadcasting services exist in Ireland. The BAI is cognisant of the reality of the economic situation which cannot be ignored. However, the immediate circumstances cannot be the basis for the development of the Strategy which will have implications for the next 10-15 years. The BAI will be ambitious in its vision and look beyond current realities, while not failing to recognise them. It is central to the vision of the BAI that there is choice and diversity for audiences and an expectation that all audiences will be served. The vision is encapsulated as follows:

*The people of Ireland will be served by a vibrant broadcasting sector consisting of a mix of public service, commercial and community broadcasters who provide content and programming that caters for and reflects the diversity within Irish Society.*

*At the core of this optimum mix is a range of national, regional, local and community broadcasting services complemented by an additional mix of niche services. Such services may be provided by commercial or not-for-profit business models to provide a diverse range of content and programming choices to Irish listeners and viewers.*

The Broadcasting Services Strategy has a number of specific objectives as follows:

- To ensure that services licensed by the BAI serve the needs of Irish audiences, bearing in mind their languages and traditions and their religious, ethical and cultural diversity;
- To ensure that services licensed by the BAI offer a variety of content to audiences in Ireland reflecting their diverse interests;
- To promote the provision of high quality programming on services licensed in Ireland and to foster creativity and innovation in the Irish broadcasting sector;
- To achieve plurality in viewpoint, outlet and source within the Irish broadcasting sector;
- To review and modify, where appropriate, current regulatory policies and practices in order to ensure that measures taken are proportionate having regard to the BAI's statutory objectives;
- To produce regulatory arrangements that are stable and predictable for all stakeholders.

With regard to television, the Authority is of the view that a national, commercial television service is vital to the achievement of diversity and plurality in the sources and content of news and other programme content available to serve audiences. The Authority also recognises the important role that public service television channels play in the overall mix. The Authority will facilitate and encourage applications from other parties wishing to establish television services on cable, satellite and digital terrestrial television platforms, particularly from community television groups.

With regard to radio, the Authority considers that national, local and community radio services are essential components of the radio landscape in Ireland, while regional radio fulfils the provision of youth-orientated services at present. The Authority is open to exploring other service types including niche radio services and the regulatory basis upon which such services might be licensed, developed and sustained.

## 5. Context for Realising the Vision

There is a range of factors which may constrain and support the BAI in realising its vision for the optimum mix of broadcasting services. These include legislative, policy, economic and technological factors and they are elaborated on briefly hereunder:

**5.1 Legislation** – The 2009 Act facilitates the provision of public, commercial, community and other broadcasting services and requires the Authority to develop a Broadcasting Services Strategy and Licensing Plan to enable such provision. It permits the Authority, through the Contract Awards Committee, to enter into contracts for the provision of services utilising both competitive and open licensing mechanisms.

Constraining factors include, prescriptive licensing processes for certain types of services required under the 2009 Act, the requirement to limit media concentration, various news and current affairs obligations, the imposition of regulations on advertising and programming, and the requirement to include a range of contractual conditions on broadcasters, including the imposition of a levy on their commercial income.

**5.2 Policy & Practice** – The BAI (and its predecessor, the BCI) has developed a series of policies and practices principally derived from the legislation, which may facilitate and constrain the realisation of the vision.

These include the nature of the limits imposed on the ownership and control of broadcasting services, the use of the derogation mechanism in respect of the 20% news and current affairs requirement on radio services, the maximum advertising limits applicable to broadcasters which are not defined by the 2009 Act, the restrictions imposed under programming and advertising codes, the requirements imposed on applicants for licences, both in the application process and during contract negotiations and the manner in which services are subsequently regulated from a compliance perspective.

**5.3 Economic** – The BAI has increased the advertising minutage limits for commercial television and introduced product placement rules on television in order to increase opportunities for maximising revenue. The development of new revenue streams through sponsorship, interactive and online activities is also facilitated. Funding is made available through the Broadcasting Funding Scheme to support the making of high quality programmes.

The most significant constraining factor at present is the economic downturn which is impacting on commercial revenue levels, availability of investment funding and the ability of services to maintain quality and programming and contractual commitments. The downturn has created a more difficult environment for new operators to enter the broadcasting sector and has had a limiting effect on the development of additional services, particularly in the television sector. A reduction in the amount of public funding to the community broadcasting sector has also restricted development here.

**5.4 Technological** – The availability of carriage and content on DTT, cable and satellite platforms offers the potential for an increased range of television services for Irish audiences. Spectrum continues to be available in most parts of the country to support further analogue FM radio services. Developments in technology will allow for the provision of different commercial and programme content to specific areas without the need for local or regional studios. The concepts of programme automation and a greater degree of networking can now be facilitated. Increased broadband access is likely to facilitate the development of online content access, thereby reducing the dependency on traditional television platforms.

The main technological constraints on the achievement of the BAI's vision centre on economic factors such as the cost of access to platforms. On the radio side, spectrum is also limited in respect of any proposed additional large-scale analogue services.

## **6. The BAI's approach to realising its Vision**

This section of the Broadcasting Services Strategy outlines the manner in which the BAI will discharge its functions to support the achievement of the vision for an optimum mix of broadcasting services.

### **6.1 Licensing**

Part 6 of the 2009 Act sets out the range of broadcasting service and content contracts that the BAI may enter into as follows:

1. Commercial Sound Broadcasting - section 63
2. Community Sound Broadcasting- section 64
3. Temporary and Institutional Sound Broadcasting - section 68
4. Content Provision (Television and Sound Broadcasting) - section 71
5. Community Content (Television) - section 72
6. A Television Programme Service (TV3 and 3e) - section 70

The BAI's licensing activities will aim to achieve the objectives of serving audience needs and offering a variety of content to viewers and listeners. Contracts for the relevant broadcasting and content provision services will be awarded using a combination of competitive and open licensing processes.

The mechanisms by which this will be achieved are identified hereunder:

- The BAI will develop a Licensing Plan for the provision of commercial sound broadcasting services. Competitive licensing processes will be operated in respect of all such contracts. Guides to Submissions for applicants will be developed which will include, among other things, the information to be provided by all applicants under the relevant statutory headings (programming, financial etc.), the scoring mechanism to apply, including greater or lesser weighting that might apply to any of different criteria, and whether single or periodic cash payments should be made in respect of certain broadcasting contracts, as permitted under Section 66 of the 2009 Act. Licensing and contracting processes will allow for obligations of contractors to be revisited in the event of an economic upturn.
- A more open approach to licensing generally will be operated in respect of community sound broadcasting services. Community radio groups who have successfully operated at least one 100-day section 68(1)(b) temporary community sound broadcasting service in the previous two years can submit a proposal for a contract demonstrating the group's readiness to operate a full-time service. If this is satisfactory, the Authority will consider starting a licensing process for the relevant service.
- Open licensing processes will apply in respect of digital television and/or radio content provision and temporary and institutional sound broadcasting contracts. The BAI will encourage particularly the development of new services to be carried on the digital terrestrial television platform.
- This Broadcasting Services Strategy does not address the position of the television programme services, TV3 and 3e, which are licensed further to Section 70 of the 2009 Act, as the current contract runs until 2018 with a potential extension until 2023.

### **6.2 Ownership and Control**

The BAI's three-year Strategy Statement speaks of plurality being vital to the health of Irish democracy and is clear that rules regarding the ownership and control of broadcasting services represent an important element in achieving plurality in the Irish media. The BAI currently applies the Ownership and Control Policy (2010) in respect of all commercial broadcasters with a separate policy operating in respect of community broadcasters.

There is a range of provisions in the Ownership and Control Policy (2010) which give effect to the various statutory provisions relevant to ownership and control. These rules are designed to provide clarity to stakeholders and cover the following areas:

- Definition of the statutory terms of “control”, “substantial interests in” and “communications media”
- Character, experience and expertise
- Undue number of sound broadcasting services
- Undue number of sound broadcasting services in a specified area
- Undue amount of communications media in a specified area
- Assignment of contracts

The BAI will review the Ownership and Control Policy and the Community Radio Policy in parallel with the development of this Broadcasting Services Strategy to ensure that its provisions remain appropriate, while adhering to the objectives of plurality in viewpoint, outlet and source.

In reviewing its policies the Authority will focus in particular on the following:

### **Ownership and Control Policy (2010)**

- *Definitions of “control” and “substantial interests in”*  
The Authority’s policy includes definitions of terms included in the 2009 Act but not defined in the Act i.e. “control” and “substantial interests in”. The Authority is open to reviewing these definitions.
- *“Undue number of sound broadcasting services”* – at present, the Authority’s policy permits an entity to control, or have substantial interests in, 15% of the total number of commercial sound broadcasting services. The policy also provides that this can increase to 25% in certain limited circumstances. To date, however, no entity has held more than 20% of the total. The Authority will consider whether the current policy thresholds remain appropriate in the context of its strategic objectives and the current media environment or whether the maximum permitted threshold should be reduced to 20% reflecting the current operational position.
- *“Character, expertise and experience”* – in assessing the character of an applicant for a broadcasting contract, the Authority applies the ordinary meaning of the word and considers, in particular, if the applicant is a fit and proper person to hold a contract. The BAI applies a number of tests in making a decision in this regard. The Authority will review the nature and frequency of the tests with a view to ensuring that contracts are held by persons who are fit and proper not only at the time at which a contract is awarded or amended but also on an on-going basis. The Authority is also open to reviewing the tests it applies in assessing experience and expertise.
- *“Undue amount of communications media”* – the Authority applies two tests in assessing whether an entity has control of, or substantial interests in, more than a reasonable share of the amount of the communications media in a specified area. These are a test of “*substitutability*” and a test of “*dominance*” in the context of opinion forming power applying the audience share model. These tests are also applied when assessing whether an entity holds an undue number of sound broadcasting services in a specified area. The Authority will consider whether these tests and their application remain appropriate in the context of its strategic objectives and the current media environment.
- *“Concrete Indicators of Diversity”* – the Authority will consider the potential for introducing into its Policy the concept of concrete indicators of diversity within media organisations e.g. the extent to which both the policies and practices of the media organisation model inclusiveness (including employment and staff policies) and reflect a full range of audience interests, the range of sources of news, information and viewpoints available to the broadcaster, the track record of the broadcaster with regard to fairness, impartiality and objectivity in news and current affairs provision, the commitments included in a broadcaster’s Programme Policy Statement, and its track record in relation to compliance with these.

- *Consumer and Competition Bill 2011* – the Authority will consider the impact of the provisions of the Bill and how best the statutory provisions might be reflected in its Policy, if the Bill was to be enacted as published.
- *Assignment of Contracts* – the current policy includes a two-year moratorium on the assignment of new contracts in certain circumstances and makes specific provision for the consideration of programming matters when considering control change proposals. These provisions will also be reviewed as part of this process.

### **Ownership and Control - Community Broadcasters**

- *Community broadcasters*– the Authority will consider whether its various media ownership and control policies (including its policy in respect of community broadcasters) should be formulated into a single policy, reflecting, *inter alia*, its statutory remit and its Strategy Statement 2011-2013.

The BAI commits to review its Ownership and Control Policy (2010) at least once every four years or sooner if considered necessary.

### **6.3 Regulation of Services**

The 2009 Act includes a range of matters which must be addressed in broadcasting contracts. These provisions are designed to ensure that the commitments entered into at application stage are adhered to once a service becomes operational. The BAI expects broadcasters to adhere to the terms of their contracts in keeping with the diversity and plurality objectives of this Strategy.

Nonetheless, the Authority is also mindful of its statutory obligation that regulatory measures are proportionate and produce regulatory arrangements that are stable and predictable. The BAI may consider the possibility of a relaxation of the non-statutory elements of broadcasting contracts and allow commitments to be shaped in such a way that provides contractors with a greater degree of flexibility in their delivery, thereby reducing the administrative burden. The BAI will examine changes proposed by contractors in the context of the evolution of the service and its continuing interest and relevance to the needs of the audience being served. However, it is stressed that any relaxation of commitments will be balanced with the BAI's objectives of diversity and plurality and will not result in any fundamental changes to commitments made at application stage.

The BAI will also consider the appropriate level of regulation for section 71 content contractors and other content services, which are not subject to competitive licensing processes. The BAI will continue the current policy of requiring such services to operate in accordance with minimum statutory requirements with a view to encouraging the development of such services, and thereby, facilitating greater diversity for Irish audiences.

### **6.4 Cost of Making an Application for Commercial Sound Broadcasting Contracts**

The costs associated with the application process for licences is sometimes portrayed as a barrier to entry and the value of some of the information sought is questioned by prospective applicants.

The BAI is of the view that many of the costs are inescapable given the provisions of the 2009 Act which requires that applications be assessed under a range of headings, including, in particular, the financial capability of the applicant to operate the service. However, the BAI recognises that this issue is a constraining factor for potential applicants, given the economic conditions which are likely to exist in Ireland in the medium term.

Accordingly, in the interests of reducing the regulatory burden on applicants and potential applicants, the BAI commits to exploring ways of reducing costs for prospective applicants for commercial sound broadcasting contracts. This will be done in a manner that does not in any way compromise the requirement that applications present a robust editorial and financial case or the expectation that they demonstrate how they will serve the needs and interests of their prospective audiences. The BAI will include consideration of the manner in which the current Oral Hearings process is operated in this context. This approach is in accordance with the principles of reducing regulatory burden, proportionality and producing regulatory arrangements that are stable and predictable.

## **6.5 20% News and Current Affairs Requirement (Radio only)**

The 2009 Act requires all sound broadcasters to devote at least 20% of the broadcast day to news and current affairs programming. There are additional requirements relating to the provision in peak time (7am – 7pm) and a variation also exists in respect of the RTÉ group of services.

The 2009 Act allows the BAI to grant derogations from the requirement if it is satisfied that this would be beneficial to the listeners of the sound broadcasting service.

The BAI considers that the statutory News and Current Affairs requirement makes an important contribution to the achievement of diversity and plurality for Irish audiences. The requirement ensures the delivery of relevant news and current affairs content at national, local and regional levels. This is evident in the strong listenership performance of such programming in the radio sector over the years.

In these circumstances, the BAI considers it important that delivery of the commitment is an essential component of the programme schedules of commercial, public and community broadcasting services.

However, the BAI also recognises that there may be some circumstances where, equally, diversity and quality of output may be served by derogation from the requirement in respect of existing or future niche services or services targeting a specific demographic.

The BAI, therefore, will have regard to three influencing factors when considering a request for derogation. These are:

- The alternative editorial and schedule proposals that the contractor submits and the impact that the proposed derogation will have on the audience being served;
- The impact of the derogation on the overall quality of news and current affairs output in the relevant franchise area, and;
- The contribution the derogation will make to the diversity and quality of news and current affairs output for the relevant audience of niche services or of those services targeting a particular demographic.

In general, the BAI will be more likely to grant a derogation from the requirement outside of peak broadcasting hours. However, there might be occasions where a request for a derogation during peak time and for digital content provision contractors will be considered taking into account the above three factors.

## 6.6 Review of Regulatory Policies and Practices

One of the measures identified as supporting the achievement of the vision is the exploration by the BAI of opportunities to review and modify current regulatory policies and practices, where appropriate. Economic and market conditions have altered dramatically since 2008 and there are no indications that this situation is likely to improve in the shorter term. Accordingly, and in order to enhance the sustainability of broadcasting services, the BAI may consider a relaxation of certain regulatory policies and practices which would support the delivery of services on a more sustainable basis. However, it is important to emphasise that the Broadcasting Services Strategy has been developed in the context of an overarching commitment to serve audiences and this will be to the forefront of the Authority's thinking in the consideration of any proposals received.

Current regulatory policies and practices are set out as follows:

- **Sharing of non-programme functions** – The BAI will continue to consider proposals related to the sharing of non-programming functions such as finance, engineering and administration. It may also be open to considering proposals for a further extension of shared services, provided that this does not impact on the delivery of the core programme service. The BAI will have particular regard to the nature of the proposed service when considering such matters.
- **Station Location** – The BAI will continue to require that broad-based local radio and community radio and television services locate their principal studios in the relevant franchise areas. In the case of all other commercial or niche content provision services, the BAI may permit co-location with another service(s) or location of the service outside of the franchise area, provided that such location does not result in listeners or viewers being unreasonably affected by such a development.
- **Opt-out programming** – Traditionally, the BAI has permitted the broadcast of opt-out programming by services, provided that the material is broadcast from a separate broadcasting studio located in the area from which the opt-out material originates. Developments in technology support the delivery of programming without the requirement to develop additional studios.

The BAI may in future permit the delivery of opt-out programming from the main studio location in circumstances where the granting of such permission would not compromise the focus of the content for the intended audience and would continue to support the principles of diversity and plurality, particularly in relation to serving audience needs.

- **Opt-out Advertising** - The same regulatory approach has applied in the past in respect of opt-out advertising as those which have been applied to opt-out programming.

The BAI will consider circumstances where it might permit opt-out advertising without the requirement for opt-out programming and an opt-out studio. In considering any such proposals, the BAI will have regard to the likely impact on the sustainability of the service as well as the general impact on the sustainability of other services in the franchise area and the wider broadcasting sector.

- **Programme Automation and Networking** - Programme automation and networking of programmes is currently permitted in limited circumstances. Automation usually occurs at late off-peak (through the night) while networking has largely been confined to the provision of national and international news and sport services.

The BAI may permit greater levels of automation and networking in the interests of sustainability of services, particularly those aimed at niche audiences which have greater sustainability challenges. However, the BAI will consider the likely impact on audience needs when considering any such proposals.

- ***Policies applying to community broadcasters, other than ownership and control*** - The BAI applies a number of policies and practices specifically to the community radio and television sectors. These relate to finance, community access and evaluation, among other matters and have been devised in conjunction with the community sector.

To date, these have worked effectively and have facilitated the development of the community broadcasting sector in Ireland. The Authority is not proposing any changes to these policies as no obvious need has been expressed by the community broadcasting sector.

## **Appendix**

### **Overview of Broadcasting Landscape**

## 1. Television Landscape

The make-up of the Irish television market (August 2011) is as follows:

**Public Service Broadcasters:** RTÉ One, RTÉ Two (HD), RTÉ Jr, RTÉ News Now, RTÉ One+, TG4

**Commercial Broadcasters:** TV3, 3e, Setanta, Chorus TV, City Channel Services

**Community Broadcasters:** DCTV, P5TV, CCTV

**UK Channels:** BBC, UTV, Ch4, Sky and a range of free-to-air or subscription channels, some of which carry opt-out advertising aimed at the Irish market.

Approximately 87% of households in Ireland have access to both Irish and UK television channels. More than three quarters of Irish households pay to receive digital cable or satellite television platforms thereby ensuring access to a large range of Irish and UK channels. More than 50% of viewership is to Irish channels. The introduction of Digital Terrestrial Television will provide more choice to Irish viewers. However, the corresponding switch-off of analogue terrestrial television may also increase the percentage of homes that move to satellite or cable platforms.

## 2. Radio Landscape

The mix of Irish radio services available in August 2011, is as follows:

**Public Service Radio:** RTÉ Radio 1, RTÉ 2FM, RTÉ Lyric FM, RnaG (all national coverage)

RTÉ Radio 1 Extra, RTÉ 2XM, RTÉ Choice, RTÉ Gold, RTÉ Pulse, RTÉ Junior (all via DAB digital broadcasting to approximately 53% of the population).

**Commercial Radio Services:** Today FM, Newstalk (National)

Beat 102-103, Spin South West, iRadio North West, iRadio North East (Regional: Youth Services)

4 FM, Spirit FM (Multi-city services)

**Commercial Radio (Local):**

98FM	Mid West Radio
Clare FM	Northern Sound
Cork 96FM	Radio Nova
C103	Ocean FM
Sunshine 106.8FM	Phantom 105.2
East Coast FM	Dublin's Q102
FM104	Red FM
Galway Bay FM	Radio Kerry
Highland Radio	Shannonside
KCLR 96FM	South East Radio
KFM	Spin 1038
Limerick's Live 95FM	Tipp FM
LMFM	WLR FM
Midlands 103FM	

**Community/Community of Interest/  
Special Interest:**

Athlone Community Radio  
Phoenix FM  
Ballyhoura Community Radio  
Raidió Corca Baiscinn  
Claremorris Community Radio  
Raidió Pobal Inis Eoghain  
Connemara Community Radio  
Ros FM  
Dublin South FM  
Tipperary Mid-West Radio  
Dublin City FM  
West Dublin Access Radio  
Dundalk FM  
West Limerick 102  
Liffey Sound FM  
Community Radio Youghal  
Near FM  
Cork Campus Radio  
South West Donegal Comm. Radio  
Flirt FM  
Raidió na Life  
Wired FM  
Life FM

**Institutional Services:** Cork University Hospital Radio  
Regional Hospital Radio Limerick  
South Tipp General Hospital Radio  
St. Ita's Portrane Radio

**Content Provision**  
**Contracts (Radio – non FM):** UCB Ireland  
DAP all 80's

**Temporary Sound**  
**Broadcasting Services (Radio FM):** Approximately 40 per year

## **Appendix 2**

### **BAI Ownership and Control Policy (2010)**

**Broadcasting Authority of Ireland**

**OWNERSHIP AND CONTROL POLICY**

**(2010)**

## INTRODUCTION

The *Broadcasting Act 2009* (“the Act”) requires the BAI to formulate and apply a policy that takes account of plurality of ownership and control and diversity of content in broadcasting. The BAI must also have regard to certain matters concerning the ownership and control of multiplex contractors.

The BAI believes that it is necessary, in accordance with these provisions and its overall statutory remit, to have a policy on the ownership and control of broadcasting services. . The BAI may enter into broadcasting, content provision and multiplex contracts under the Act. The Act allows for differentiation in the rules that apply to various types of contracts. For this reason, the Authority’s Ownership and Control Policy (2010) will continue to distinguish between services operating under these various contracts. The Authority will continue to have a separate ownership and control policy for non-commercial broadcasting services.

This policy consists of a revision of the *BCI Ownership and Control Policy (2008)* to reflect the key provisions of the 2009 Act pending a more comprehensive review of this policy by the BAI. This policy will be used by the BAI to assess applications for broadcasting, content provision and multiplex contracts. It will also be used to assess requests for variations to the ownership and control structures of these contractors.

The *Ownership and Control Policy (2010)* has been designed to facilitate the continued development of a viable and diverse broadcasting sector that is characterised by a plurality of ownership. The policy is also designed to provide clarity and certainty in respect of the ownership and control of commercial broadcasting and multiplex contractors.

The views of stakeholders, expressed through various consultation processes, reports, fora, etc., have informed the development of this policy. In addition, the Authority’s experience in relation to the regulation of ownership and control matters, and relevant legislative and policy developments have been taken into account. Overall, the Authority believes that this policy balances the needs of a rapidly evolving indigenous broadcasting sector with the statutory requirement to ensure diversity of outlet and source in the interests of listeners and viewers.

The BAI’s *Ownership and Control Policy (2010)* is divided into two sections as follows:

1. Policy Framework
2. Policy Provisions

## 1. POLICY FRAMEWORK

The framework, within which the BAI's *Ownership and Control Policy (2010)* was developed and operates, may be divided into three sections as follows:

- (i) The legislative provisions
- (ii) The guiding principles of the policy; and
- (iii) Other relevant BAI policies.

The key components of each of these elements are outlined below.

### (i) THE LEGISLATIVE PROVISIONS

The Broadcasting Act 2009 provides the statutory framework for the licensing and regulation of broadcasting and multiplex services in Ireland. *The Competition Act, 2002* and the *EU Audio Visual Media Services Directive*<sup>2</sup> ("*AVMS Directive*") also contain provisions that need to be considered in the context of the ownership and control of private commercial broadcasting services in Ireland.

All of the above provide the legislative framework for the *Ownership and Control Policy (2010)* and the relevant provisions are set out below under the following headings:

- (a) Broadcasting Act 2009
- (b) Competition Act 2002
- (c) The AVMS Directive

#### **(a) Broadcasting Act 2009<sup>3</sup>**

##### **(i) Introduction**

*Section 25(1) of the Broadcasting Act 2009* provides that the Authority and the statutory committees, in performing their functions, shall endeavour to ensure-

- (a) That the number and categories of broadcasting services made available in the State by virtue of this Act best serve the needs of the people of the island of Ireland, bearing in mind their languages and traditions and their religious, ethical and cultural diversity;
- (b) That the democratic values enshrined in the Constitution, especially those relating to rightful liberty of expression, are upheld, and
- (c) The provision of open and pluralistic broadcasting services.

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<sup>2</sup> Directive 2010/13/EU of the European Parliament and of the Council 10 March 2010

<sup>3</sup> Available at: <http://www.irishstatutebook.ie/2009/en/act/pub/0018/index.html>

Section 25(2) provides further that the Authority and the statutory committees shall *inter alia*:  
25(2)(c) Promote diversity in control of the more influential commercial and community broadcasting services;

25(2)(d) Provide a regulatory environment that will sustain independent and impartial journalism; and,

25(2)(g) Provide a regulatory environment that will facilitate the development of a broadcasting sector in Ireland that is responsive to audience needs and in particular is accessible to people with disabilities.

**(ii) Statutory Definitions**

The following statutory definitions are particularly relevant for the purposes of this Policy

**“Broadcast”** means the transmission, relaying or distribution by electronic communications network of communications, sounds, signs, visual images or signals, intended for direct reception by the general public whether such communications, sounds, signs, visual images or signals are actually received or not;

**“Broadcaster”** means a person who supplies a compilation of programme material for the purpose of its being transmitted, relayed or distributed as a broadcasting service (whether that person transmits, relays or distributes that material as such a service or not);

**“Broadcasting Contract”** Means a Contract entered into under section 63, 64, 68 or 70 of the Act;

**“Broadcasting Service”** means a service which comprises of a compilation of programme material of any description and which is transmitted, relayed or distributed by means of an electronic communications network, directly or indirectly for simultaneous or near-simultaneous reception by the general public, whether that material is actually received or not, and where the programmes are provided in a pre-scheduled and linear order, but does not include:

- (a) A service provided in a non-linear manner where each user of the service chooses a programme from a catalogue of programmes, or
- (b) Other audio and audiovisual services provided by way of the Internet.

**“Communications Media”** means –

- (a) The provision of a broadcasting service,
- (b) The provision of a broadcasting services platform, or
- (c) The publication of newspapers or periodicals consisting substantially of news and comment on current affairs.

**“Content Provision Contract”** means a contract between the Authority and a person whereby that person may supply a compilation of programme material for the purposes of its:

- (a) Inclusion as part of a multiplex;
- (b) The purpose of its being transmitted as a broadcasting service in the State, part of the State or elsewhere by means of an electronic communications network including a satellite network, a MMD system, a fixed or mobile terrestrial network, a cable television network, an internet protocol television network or any other form of electronic communications network.

**“Electronic Communications Network”** means transmission systems including, where applicable –

- (a) Switching equipment,
- (b) Routing equipment, or
- (c) Other resources.

Which permit the conveyance of signals by wire, by radio, by optical or by other electromagnetic means, and such conveyance includes the use of –

- (i) Satellite networks
- (ii) Electricity cable systems, to the extent that they are used for the purposes of transmitting signals
- (iii) Fixed terrestrial networks (both circuit-switched and packet-switched, including the Internet)
- (iv) Mobile terrestrial networks
- (v) Networks used for either or both sound and television broadcasting, and
- (vi) Cable television and internet protocol television networks

Irrespective of the type of information conveyed.

**“Multiplex”** means an electronic system which combines programme material and related and other data in a digital form and the transmission of that material and data so combined by means of wireless telegraphy directly or indirectly for reception by the general public.

**“Multiplex Contractor”** means the holder of a contract entered into under section 131.

**“Sound broadcasting service”** means a broadcasting service which transmits, relays or distributes, by wireless telegraphy, communications, sounds, signs or signals intended for direct reception by the general public whether such communications, sounds, signs or signals are actually received or not.

**“Wireless Telegraphy”** has the same meaning as in the Wireless Telegraphy Act of 1926 which is:

“wireless telegraphy means and includes any system of communicating messages, spoken words, music, images, pictures, prints, or other communications, sounds, signs, or signals by means of radiated electro-magnetic waves originating in an apparatus or device constructed for the purpose of originating such communications, sounds, signs, or signals.

**(iii) Overview of the range of Contracts covered by the Policy**

**Sound Broadcasting Contracts (Section 63)**

The Authority, on the recommendation of the Contract Awards Committee, shall enter into sound broadcasting contracts with persons to provide sound broadcasting services in areas specified by the Authority. Sections 65, 66 and 67 deal with the application and decision making processes for sound broadcasting contracts.

**The Television Programme Service Contract (Section 70)**

The Authority, on the recommendation of the Contract Awards Committee, shall enter into a television programme service contract with a person or persons to provide a television programme service as a free-to-air service. This is currently held by TV3.

**Content Provision Contracts (Section 71)**

The Authority, on the recommendation of the Contract Awards Committee, may enter into a content provision contract with a person whereby that person may supply a compilation of programme material for the purposes of its inclusion as part of a multiplex; or, its being transmitted in the State, part of the State or elsewhere by means of an electronic communications network.

An electronic communications network could be a satellite network; an MMD system; a fixed or mobile terrestrial network; a cable television network; or, an internet protocol television network.

**Multiplex Contracts (Section 131)**

Further to the provisions of Section 131 and 136 of the 2009 Act, it is the function of the Authority to arrange for the establishment, maintenance and operation of television and sound multiplexes, including national multiplexes, in addition to any multiplexes established, maintained and operated by RTÉ. Sections 134, 135, 136 and 67 deal with the application and decision making processes for multiplex contracts.

**(iv) Section 66(2) - Criteria to be applied by the Contract Awards Committee in considering applications for sound broadcasting contracts or for a television programme service contract;**

Section 66(2) requires the BAI, in determining the most suitable applicant for the award of a contract, to have regard, *inter alia*, to:

- (a) the character, expertise and experience of the applicant or, if the applicant is a body corporate, the character, expertise and experience of the body and its directors, manager, secretary or other similar officer and its members and the persons entitled to the beneficial ownership of its shares;

- (b) the adequacy of the financial resources that will be available to each applicant and the extent to which the application accords with good business and economic principles;
  - (g) the desirability of allowing any person, or group of persons, to have control of, or substantial interests in, an undue number of sound broadcasting services in respect of which a sound broadcasting contract has been awarded under Part 6 of the Act<sup>4</sup>;
  - (h) the desirability of allowing any person, or group of persons, to have control of, or substantial interests in, an undue number of sound broadcasting services in the area specified in the notice;
  - (i) the desirability of allowing any person, or group of persons, to have control of, or substantial interests in, an undue amount of the communications media in the area specified in a notice.
  - (k) any other matters which the Contract Awards Committee considers to be necessary to secure the orderly development of broadcasting services.
- (v) **Section 137(2) Criteria to be applied by the Contract Awards Committee in considering applications for multiplex contracts.**

Section 137(2) requires the BAI, in determining the most suitable applicant for the award of a contract, to have regard, *inter alia*, to:

- (a) the character, expertise and experience of the applicant or, if the applicant is a body corporate, the character, expertise and experience of the body and its directors, manager, secretary or other similar officer and its members and the persons entitled to the beneficial ownership of its shares;
- (b) the adequacy of the financial resources that will be available to each applicant and the extent to which the application accords with good business and economic principles;
- (h) any other matters which the Contract Awards Committee considers to be necessary to secure the orderly establishment, maintenance and operation of multiplexes;
- (i) the desirability of allowing any person, or group of persons, to have control of, or substantial interests in, an undue amount of the communications media in the area specified in a notice under *Section 136(3)*.

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<sup>4</sup> Sections 63, 64, 68, 71

**(vi) Section 66 (3)**

In considering the suitability of any applicant for the award of a sound broadcasting contract to provide a sound broadcasting service in respect of an area which includes a Gaeltacht area, the Contract Awards Committee shall have particular regard to the continuance and advancement as a spoken language of the Irish language.

**(vii) Section 66(4)**

In considering the suitability of an applicant for the award of a broadcasting contract, the Contract Awards Committee shall have regard to-

- (a) The overall quality of the performance of the applicant with respect to the provision by him or her of a broadcasting service under any broadcasting contract held by him or her at, or before, the date of the making of the application, and
- (b) Reports of the Compliance Committee.

In this context, the Contract Awards Committee shall examine what it describes as “the track record” of the applicant or, if the applicant is a body corporate, the track record of its directors, manager, secretary or other similar officers and its members and the persons entitled to the beneficial ownership of shares, with reference to the criteria in Section 66(2) of the Act.

Section 66(5) requires the Contract Awards Committee to give reasons for its decision, to an applicant, where it decides to refuse to award a broadcasting contract.

**(viii) Section 69 and Section 138 – Assignment or change of ownership**

Sections 69 and 138 concern the terms and conditions of broadcasting and multiplex contracts respectively, including the assignment of a contract or any interest therein. In essence, it empowers the Authority to prohibit the assignment of a contract or any material change in the ownership of a company, either by specifying a condition in the contract itself, or by making the assignment subject to the previous consent in writing of the Authority, in which case the Authority shall have regard to the criteria set out in Section 66(2) and, where applicable, Section 66(4) in the case of broadcasting contracts; and, section 137(2) in the case of multiplex contracts.

**(b) Competition Act 2002<sup>5</sup>**

Section 23 of the Competition Act, 2002 contains statutory provisions for the control of “media mergers” by the Competition Authority and the Minister for Enterprise, Trade and Employment. “Media Merger” is defined as meaning a merger or acquisition in which one or more of the undertakings involved carry on a media business in the State. The definition of “Media Business” includes ‘a business of providing a broadcasting service or a business of providing a broadcasting services platform’.<sup>6</sup>

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<sup>5</sup> Available at: <http://www.irishstatutebook.ie/2002/en/act/pub/0014/index.html>

<sup>6</sup> Section 23(10) of the Competition Act, 2002

In accordance with Section 23(4), the Minister may, within 30 days of a decision by the Competition Authority to allow a media merger, determine that the media merger may or may not be put into effect or may be put into effect subject to specified conditions. In making a determination, the Minister must have regard to the following “relevant criteria” under Section 23(10):

- (a) the strength and competitiveness of the media business indigenous to the State;
- (b) the extent to which ownership or control of media businesses in the State is spread amongst individuals and other undertakings;
- (c) the extent to which the diversity of views prevalent in Irish society is reflected through the activities of the various media businesses in the State; and
- (d) the share in the market in the State of one or more of the types of business activity falling within the definition of ‘media business’ that is held by any of the undertakings involved in the media merger concerned, or by any individual or other undertaking who or which has an interest in such an undertaking.

Section 23(6) of the Competition Act 2002 allows the Minister to consider submissions or observations from interested parties, such as the BAI, when making a determination in relation to a proposed media merger.

### ***(c) The Audiovisual Media Services Directive<sup>7</sup>***

The AVMS Directive provides the framework for national law applicable to audio visual media services in each of the Member States of the European Union.

Article 2.1 of the AVMS Directive provides that ‘each Member State shall ensure that all audiovisual media services transmitted by media service providers under its jurisdiction comply with the rules of the system of law applicable to audiovisual media services intended for the public in that member state’.

Article 2.3-2.6 set out a number of interlinked criteria to be applied in determining if a media service provider shall be deemed to be established in a Member State. These include: where the media service provider’s head office is located; where editorial decisions are made; where a significant proportion of the work force is located and where the media service provider first commenced operation. The Directive sets down how these criteria are linked and prioritised in instances where they are relevant to a number of Member States. In addition, the Directive allows, satellite capacity use and satellite up-link location to be applied in certain circumstances.

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<sup>7</sup> Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:095:0001:0024:EN:PDF>

## (ii) GUIDING PRINCIPLES OF THE POLICY

The BAI's policy principles are based on an endorsement of the Council of Europe's premise that the primary task of a regulatory body is to ensure that it functions smoothly by establishing a climate of dialogue, openness and trust in dealings with stakeholders. The principles recognise the importance of the BAI being in a position to have the flexibility to respond to a rapidly changing technological and broadcasting environment while supporting a range of diverse services catering for the interests of listeners and viewers throughout the State. The principles and their application to the *BAI Ownership and Control Policy (2010)* are outlined below.

### ***Diversity of programming services for the public***

- In fulfilling its statutory obligations under the Act, the BAI aims to put the public into a position which gives them access to a diversity of programming from a variety of sources in the form of broadcasting services of such number and categories as will best serve the needs of the people of the island of Ireland, bearing in mind their languages and traditions and their religious, ethical and cultural diversity.

### ***The provision of Open and Pluralistic Services***

- In fulfilling its statutory obligations under the Act, the BAI aims to put the public into a position which gives them access to open and pluralistic broadcasting services.

### ***Upholding the Democratic Values Enshrined in the Constitution***

- In fulfilling its statutory obligations under the Act, the BAI aims to ensure that the democratic values enshrined in the Constitution, especially those relating to rightful liberty of expression, are upheld.

### ***Flexible and Consistent Approach***

- The BAI aims to develop and operate a simple, flexible but comprehensive regulatory scheme, capable of responding to technological, market and social developments, as well as national and local conditions. Its goal is regulation that will encompass flexibility and adaptability to the needs of change, to prevent it being overtaken by technology or appearing to be too rigid, inconsistent, arbitrary, or biased.<sup>8</sup>
- The BAI recognises the need for regulation to be technically literate and well informed about new developments. In a world of converging technologies, it must be able to react to the needs of a situation, which is constantly developing, in order to secure the best possible deal for listeners and viewers who are the main clients of regulation.

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<sup>8</sup> This take account of Section 25(3)(d) and (e)

### ***Adequate regulation based on current conditions***

- The BAI takes the view that regulation needs to be capable of facilitating broadcasting as well as setting standards and applying them. The BAI intends to adopt a facilitative approach to regulation, in the light of prevailing conditions, while adhering to its statutory obligations of ensuring pluralism and diversity in the interests of the listener and viewer. It sees its role as being largely confined to formulating basic principles, which will be formalised in actual agreements with broadcasters.
- The BAI is committed to fair, reasonable and non-discriminatory access, and to regulation that accords with EU law and ensures effective competition in both existing and new emerging markets. In that regard, the BAI, while mindful of its cultural remit, aims to work in co-operation with other regulators, e.g. telecommunications and competition authorities, in order to achieve an overall coherence and co-ordination in regulation.

### ***Proportionality<sup>9</sup>***

- The BAI in performing its functions will ensure that measures taken by it are proportionate having regard to its objectives. It will also ensure that these measures are applied across the range of broadcasting services taking account of the degree of influence that the different types of broadcasting services are able to exert in shaping audience views in the State. The BAI will be mindful of the objects, functions and duties of public service broadcasters as set out in Parts 7 and 8 of the Act.

### ***Openness and Dialogue***

- It is the intention of the BAI to ensure that the regulatory regime functions smoothly by establishing a climate of dialogue, openness and trust in dealings with broadcasters.
- In a spirit of openness and co-operation with the sector, the BAI will consider possibilities or opportunities for co-regulation or self-regulation on the part of the sector.

### ***Clear Decision-making***

- The BAI understands the benefit of providing a rationale for its decisions in the interests of certainty and predictability for the sector and for would-be entrants or participants.
- The BAI appreciates the benefit also, in the interests of the sector and the public, of ensuring clarity and certainty in the regime, and of avoiding unnecessary delays in decision-making.

### **(iii) OTHER BAI POLICY PROVISIONS**

The BAI has issued a number of policy documents which are informed by, and inform, the *Ownership and Control Policy (2010)*. These are available at [www.bai.ie](http://www.bai.ie)

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<sup>9</sup> This takes account of Sections 25(3)(a), (b) and (c)

## 2. POLICY PROVISIONS

### (i) *POLICY OBJECTIVES*

The policy objectives are grounded in the statutory provisions, as well as the BAI's regulatory experience in the broadcasting sector to date.

The objectives provide the overall context for the development and implementation of the policy as well as the assessment of ownership and control proposals. The objectives also provide a framework to assist the BAI in responding to new issues emerging in licensing processes and ownership and control developments in the broadcasting sector.

The policy objectives are as follows:

- To promote open and pluralistic broadcasting services, with particular reference to radio and television services;
- To promote diversity in viewpoint, outlet and source, that is, diversity in the opinions expressed, in programming delivery and content, and in the sources of information available to the public;
- To contribute to the upholding of the democratic values enshrined in the Constitution, especially those relating to rightful liberty of expression;
- To contribute to the promotion of diversity in control of the more influential commercial broadcasting services;
- To contribute to the achievement of a regulatory environment that will sustain independent and impartial journalism;
- To assist in providing a regulatory environment that will facilitate the development of a broadcasting sector in Ireland that is responsive to audience needs and in particular is accessible to people with disabilities;
- To ensure that broadcasting and multiplex contracts are held by persons who are of suitable character, and who have available to them adequate expertise, experience and financial resources; and,
- To ensure that the ethos of a broadcasting service is such that it will best serve the needs of the audience it is licensed to serve.

### (ii) *POLICY DETAILS*

The policy details are divided into nine sections as follows:

- (a) Interpretation of terms
- (b) Character, Expertise and Experience
- (c) Financial Resources
- (d) An undue number of sound broadcasting services
- (e) An undue number of sound broadcasting services in a specified area
- (f) An undue amount of communications media in a specified area

- (g) Assignment of Contracts
- (h) Programming
- (i) Competition Act 2002
- (j) Non-EU Entities

### **(a) Interpretation of Terms**

In order to meet its statutory obligations, the BAI first needs to interpret the relevant terms used and then to adopt decision-making criteria to give effect to them in practice.

The 2009 Act requires the BAI to interpret the following statutory terms: '*control*'; and '*substantial interests*'.<sup>10</sup> The statutory definition of '*communications media*' is employed. The BAI gives effect to these terms as follows:

**"Control"** – is in a position proprietorially, financially or in terms of voting rights to determine or direct the policy of the company, with regard in particular to programme output, that is, sourcing, production, supply or delivery to the audience.

**"Substantial interests"** – has sufficient proprietary, financial or voting strength within a relevant company or companies to be able to influence directly or indirectly to an appreciable extent the strategic direction or policy of the company (companies), with regard in particular to programme output, that is, sourcing, production, supply or delivery to the audience.

The above interpretations focus primarily on programme output and reflect the BAI's main concern, in accordance with its statutory remit, with regulating content and with promoting diversity in viewpoint, outlet and source, thereby providing the public with access to a wide range of quality programmes from a variety of sources.

With regard to substantial interests, by way of guidance, the BAI is of the view generally that a "small shareholding" does not constitute a substantial interest. A small shareholding is one to which both of the following criteria apply:-

1. The votes which the holder may exercise at a general meeting of the company do not exceed 10% of the total votes which may be cast at that meeting;
2. The nominal value of the shareholding does not exceed 10% of the nominal value of the entire issued share capital of the company.

A shareholding which does not meet the above criteria ("a large shareholding") may be deemed by the BAI to constitute a substantial interest. Determination as to whether a large shareholding is deemed to be a substantial interest will be made by the BAI on a case-by-case basis with reference to the overall shareholding structure of the relevant company. (Where shares are convertible, the tests set out above will be applied on the basis that conversion has not taken place and on the basis of notional conversion).

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<sup>10</sup> Section 66(2)(g) 66(2)(h) and 66(2)(i) of Act

**(b) Character, Expertise and Experience**

The 2009 Act requires the BAI, when awarding certain broadcasting contracts or multiplex contracts, to have regard to: *“the character, expertise and experience of an applicant or, if the applicant is a body corporate, the character, expertise and experience of the body and its directors, manager, secretary or other similar officer and its members and the persons entitled to the beneficial ownership of its shares”*.<sup>11</sup>

A specific provision in relation to character, expertise or experience of content provision contract holders is not set out in the Act. However, the BAI, as a matter of policy,<sup>12</sup> considers the character of an applicant when considering applications for content provision contracts.

In relation to the composition and structure of an entity, the BAI does not differentiate between either an individual/family, or the corporate status of the applicant i.e. type of legal entity.

In assessing character, the BAI applies the ordinary meaning of the word and considers, in particular, if the applicant, as set out above, is a fit and proper person to hold a broadcasting, content provision or multiplex contract (as appropriate) with reference to the provisions of sections 66 or 137 of the Act (as appropriate) and in the context of its compliance with other relevant statutory and regulatory provisions.

In relation to character, the BAI applies the following tests:

- (i) Has the applicant ever been convicted of an offence involving fraud or dishonesty?
- (ii) Has the applicant ever been restricted or disqualified as a Company Director, or convicted of any offence under the Companies Acts 1963-2006 (as amended) in this jurisdiction or under equivalent legislation in any other jurisdiction?
- (iii) Has the applicant ever been adjudicated a bankrupt, become insolvent or entered into a voluntary arrangement with creditors, or had a receiver appointed to any of his assets, in this or any other jurisdiction?
- (iv) Has the applicant ever been a director of a company to which a receiver was appointed, which went into compulsory liquidation, creditors' voluntary liquidation, examinership or which made any arrangement with its creditors or class of creditors?
- (v) Has the applicant ever been convicted of an offence under any legislation by which Broadcasting and/or Wireless Telegraphy is regulated in this or any other jurisdiction?
- (vi) Has the applicant ever had a licence or contract issued by a broadcasting licensing body or any other statutory body suspended or revoked in this or any other jurisdiction?
- (vii) Is the applicant aware of any reason why it may not be a fit and proper person to be awarded a contract?

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<sup>11</sup> Sections 66(2)(a) and 137(2)(a) of the Act

<sup>12</sup> BCI Television Licensing Policy (2004)

In relation to experience and expertise, the BAI applies the following tests:

- i. Does the Board of Directors of the applicant include sufficient personnel with the necessary experience, expertise and knowledge having regard to the nature of the contract proposed?
- ii. Is the management structure of the applicant adequate and does the membership and make-up of the management team have sufficient experience and expertise having regard to the nature of the contract proposed?

**(c) *Financial Resources and the Extent to which the Application Accords with Good Business and Economic Principles***

In considering applications for the award of contracts, further to the provisions of Section 66(2) and Section 137(2) of the Act, the Authority is required, *inter alia*, to have regard to “*the adequacy of the financial resources that will be available to each applicant and the extent to which the application accords with good business and economic principles*”

This section does not apply to contracts awarded under Section 71 of the Act.

In implementing the above provisions, the BAI will have regard, *inter alia*, to the following:

- Does the applicant have available to it adequate financial resources and does its approach accord with good business and economic principles, having regard to the nature of the service proposed?

**(d) “*An undue number of sound broadcasting services*”**

Section 66(2)(g) of the Act requires the BAI to have regard to: “*the desirability of allowing any person, or group of persons, to have control of, or substantial interests in, an undue number of sound broadcasting services in respect of which a sound broadcasting contract has been awarded under this Part*”.

In order to provide guidance and a degree of certainty for entities, the BAI will continue to provide minimum and maximum thresholds in respect of what it considers an “undue number”. These are designed to ensure that a reasonable range and number of different voices are available to the public.

The BAI shall operate three thresholds:

1. A number equivalent to 15% or less of the total number of commercial sound broadcasting services licensed under the Act is considered an acceptable level for any one entity.
2. A number equivalent to between 15% and 25% requires more careful consideration by the BAI. The BAI will make such consideration with reference *inter alia* to a Compliance Audit, submitted by the entity, in respect of all of its sound broadcasting services over a twelve-month period. This period will commence twelve months in advance of the date on which the application is received. The Compliance Audit will set out the relevant contractor’s compliance with regard to all of the statutory, policy and contractual provisions. Guidelines for the submission of a Compliance Audit are available from the BAI.

3. A number equivalent to over 25% would be unacceptable.

In applying the above thresholds, the BAI will **not** differentiate between whether an entity has ‘*control*’ or ‘*substantial interests*’ in a service when making a determination with regard to the number of sound broadcasting services held by that entity.

**(e) An undue number of sound broadcasting services in a specified area**

Section 66(2)(h) of the Act requires the BAI to have regard to: “the desirability of allowing any person, or group of persons, to have control of, or substantial interests in, an undue number of sound broadcasting services” in a specified area.

In applying its Ownership and Control Policy under the Act, as set out above, the BAI gives effect to the term “**undue number**” as meaning “more than a reasonable number of the range of sound broadcasting services available in the specified area”.

The BAI takes the view that there is no obvious practical matrix for determining what constitutes a “reasonable share” of the sound broadcasting services in all cases. The BAI considers, therefore, the context in which each application is made, on a case-by-case basis, examining:-

- (a) the total number of the sound broadcasting services in the relevant area;
- (b) the share of the total audience<sup>13</sup> of the various sound broadcasting services in the relevant area (the “audience share” model).

The BAI shall apply two tests in order to determine if an individual or entity has more than a reasonable share of the sound broadcasting services:-

- (i) A test of **substitutability** i.e. in assessing the extent to which one sound broadcasting service may be deemed to be a substitute for another;
- (ii) Regarding an applicant’s ability to influence opinion-forming power, a test of **dominance**, applying the applicant’s audience share of the sound broadcasting services (in which it holds a substantial or controlling interest) in the relevant area.

In applying these tests, the BAI shall differentiate between whether an entity has “control of” or “substantial interests in” a sound broadcasting service. It will also have regard to the different characteristics of the sound broadcasting service in question e.g. format and content; delivery mechanism/platform; The nature of the service (national, local, regional) and the target audience.

**(f) An undue amount of communications media in a specified area**

Sections 66(2)(i) and 137(2)(i) of the Act require the BAI to have regard to: “the desirability of allowing any person, or group of persons, to have control of, or substantial interests in, an undue amount of the communications media in” a specified area.

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<sup>13</sup> In the case of radio, “audience” refers to listeners; in the case of television, “audience” refers to viewers; in the case of print media, “audience” refers to readers; in the case of broadcasting services platforms, “audience” refers to subscribers.

Section 71 of the Act does not include a specific provision in relation to media concentration in respect of applicants for other content contracts under that Section. However, the BAI, as a matter of policy,<sup>14</sup> applies this test when considering applications for all Content Provision Contracts.

In applying its Ownership and Control Policy under the Act, as set out above, the BAI gives effect to the term “**undue amount**” as meaning “more than a reasonable share of the range of communications media available in the area covered by the relevant contract”.

The BAI takes the view that there is no obvious practical matrix for determining what constitutes a “reasonable share” of the communications media in all cases. The BAI considers, therefore, the context in which each application is made, on a case-by-case basis, examining:-

- (c) the totality of the communications media in the relevant area;
- (d) the share of the total audience<sup>15</sup> of the various communications media in the relevant area (the “audience share” model).

The BAI shall apply two tests in order to determine if an individual or entity has more than a reasonable share of the communications media:-

- (i) A test of **substitutability** i.e. in assessing the extent to which one communications media may be deemed to be a substitute for another;
- (ii) Regarding an applicant’s ability to influence opinion-forming power, a test of **dominance**, applying the applicant’s audience share of the communications media (in which it holds a substantial or controlling interest) in the relevant area.

In applying these tests, the BAI shall differentiate between whether an entity has “control of” or “substantial interests in” a communications media. It will also have regard to the different characteristics of the communications media in question e.g. type, cost to the user, size and nature of the target audience.

An applicant shall be required to justify its proposals in the context of the above.

#### **(g) Assignment of Contracts Section 69 and Section 138**

Sections 69 and 138 provide that the BAI may prohibit the assignment of, or any material change in, the ownership of an applicant, either by specifying a condition in the contract itself, or by making the assignment subject to the previous consent in writing of the BAI, in which case the BAI shall have regard to the ownership and control provisions set out in section 66(2) and 66(4) or 137(2) of the Act as appropriate.

In the case of broadcasting contracts entered into under Sections 63 and 70 of the Act, the BAI generally looks unfavourably upon proposed changes in ownership structures within a **two-year period** after the award of a contract.

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<sup>14</sup> Television Licensing Policy (2004)

<sup>15</sup> In the case of radio, “audience” refers to listeners; in the case of television, “audience” refers to viewers; in the case of print media, “audience” refers to readers; in the case of broadcasting services platforms, “audience” refers to subscribers.

This policy provision takes account of the competitive nature of the licensing process for these contracts and the resources dedicated to the preparation of applications by each applicant group. The BAI believes this approach is desirable because a change in ownership within a two-year period would be likely to undermine the integrity of the licensing process itself and be unfair to unsuccessful applicants.

The BAI operates a level of flexibility where an application for such change is from an applicant whose contract has been renewed. An application in such case should satisfy the following criteria:

- There were no other applicants for the contract;
- The shareholders who are selling their interest were also shareholders of the applicant over the period of the first contract; and
- The proposed new shareholders have undertaken to comply with all of the contractual obligations arising from the contract concluded between the BAI and the original applicant.

The BAI shall not apply any specific moratorium on changes in the ownership and/or control of multiplex contractors appointed under section 137 of the Act. Contractors shall, however, be subject to statutory and contractual provisions in relation to any changes proposed.

#### ***(h) Programming***

The statutory framework of the Act requires the BAI to have regard to the quality and/or the range and type of programming proposed by applicants.

The BAI believes that it is important, when considering proposals that involve changes at the level of “substantial interests” or “control”, to ask the applicant to set out its proposals in relation to the programming remit of the service. The BAI shall consider these proposals with reference to the following:

- Is the general quality and/or range, type and schedule of programming to be provided appropriate with regard to the audience to be served?
- In the context of services licensed under Sections 63 and 70, does the Programme Policy Statement of the service reflect sufficient commitment to:
  - Serving relevant local communities and communities of interest?
  - The creation of new opportunities for Irish talent in music, drama and entertainment?
  - Programmes relating to Irish language and culture?

#### ***(i) Competition Act 2002***

Section 23 of the Competition Act 2002 (“the 2002 Act”) sets out the respective statutory roles of the Competition Authority (“the Authority”) and the Minister for Enterprise, Trade and Employment (“the Minister”) in respect of media mergers. The definition of a media business includes, *inter alia*, services licensed by the BAI.

Pursuant to this provision, the Minister retains a public interest role in the control of media mergers and, in certain circumstances, may order that a media merger may or may not be put into effect or may be put into effect subject to specified conditions. In reaching a decision, the Minister is required to have regard to a set of "relevant criteria."<sup>16</sup> Consideration by the Minister of such mergers may overlap with consideration by the BAI pursuant to the statutory provisions and the provisions of its *Ownership and Control Policy (2010)*. In addition, the BAI may, pursuant to Section 23(6) of the 2002 Act, make its views known to the Minister regarding any proposed change.

In assessing applications for changes in the ownership and control of an entity, and in making its determination in this regard, the BAI will have regard to the statutory, contractual and policy framework set out in section 1 of this Policy and the role and powers of the Competition Authority and of the Minister pursuant to the provisions of the 2002 Act.

***(j) Non-EU Entities***

In considering ownership and/or control proposals, the BAI requires that non-EU entities shall have established a registered office within the EU. The BAI shall also have regard to the extent to which reciprocal arrangements for investment and licensing are in place with the relevant non-EU state.

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<sup>16</sup> See Section 1 (Policy Framework) for the provisions of the 2002 Act.

**Appendix 3**  
**BAI Community Radio Policy**

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# BCI Policy on Community Radio Broadcasting

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## **Introduction**

This document is intended to inform interested parties nationally and internationally about BCI policy in relation to community and community of interest broadcasting in Ireland. The Irish experience has demonstrated that community stations can develop into a viable distinct strand in Irish broadcasting. However, it also shows that realising this potential requires a substantial level of ongoing commitment and support from relevant support agencies and the communities served by these stations.

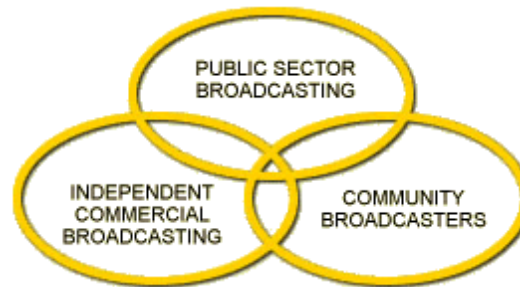
In recognition of the particular challenges faced by the sector, the Commission provides support for a number of specific initiatives through the Community Radio Support Scheme <sup>1</sup>. The scheme is focused on developing the community broadcasting sector nationally by supporting the operation of the Community Radio Forum <sup>2</sup>, and locally by providing development support for licensed stations.

This document is divided into the following sections:-

1. Defining Community Radio
2. The Licensing Process for Community Radio
3. Ownership and Management Structures
4. Funding and Finance
5. Staffing and Training
6. Programming
7. Community and Audience Relations.

# 1. Defining Community Radio

The Commission defines Community Broadcasters as a distinct strand in Irish broadcasting. The other two strands being Independent Commercial Broadcasting and Public Sector Broadcasting. The relationship between these three broadcasting strands is illustrated in this diagram:-



While stations can operate in the intersection between two or, indeed, all three of the strands, each station must fundamentally belong in one of them.

This idea of a distinct strand, constituted of community and voluntary organisations, is not unique to broadcasting or Ireland. There is a long history of voluntary social service activity nationally and internationally, especially in areas such as education and health. While the level of state provision in many countries has increased since the start of this century, the role played by voluntary organisations has not decreased proportionately. On the contrary, growing national and international concern about issues such as unemployment and poverty has resulted in a surge in community and voluntary activity over the past twenty years.<sup>3</sup> In Ireland, the development of the local partnership companies, the National Social and Economic Forum and the Community Development Programme <sup>4</sup> indicates a greater recognition of the role played by community and voluntary organisations.

The Irish experience has shown that stations in the evolving community broadcasting strand have more in common with organisations in the community and voluntary sector than public or commercial broadcasting operators. The experiences of community and voluntary organisations, nationally and internationally, have proven to be rich source of information and ideas for community broadcasters in Ireland. To provide greater clarity in relation to what makes community broadcasting unique the Commission has adopted the following definition of community radio in an Irish context:

**"A community radio station is characterised by its ownership and programming and the community it is authorised to serve. It is owned and controlled by a not-for-profit organisation whose structure provides for membership, management, operation and programming primarily by members of the community at large. Its programming should be based on community access and should reflect the special interests and needs of the listenership it is licensed to serve."**

Since the term community is central to this definition, a framework for assessing and monitoring the community nature of submissions from, and activities of, relevant groups is required. In 1994, the Commission adopted the AMARC Community Radio Charter for Europe<sup>5</sup>, as a statement of the objectives community stations should strive to achieve. The Irish experience has reinforced the relevance of this Charter for community broadcasters in Ireland. The BCI continues to use this Charter as a reference point when assessing submissions from, and the activities of, relevant groups. The Charter is attached as appendix one to this document.

In conjunction with the AMARC Charter, the Commission also uses the following three dimensional framework to assess the community nature of relevant organisations and groups. Stations included in the community broadcasting strand will be expected to:

- describe clearly the geographical community or community of interest served;
- promote and support active participation by this community at all levels in the operation;
- operate in a manner which is in keeping with the ethos or value system which underpins community activity

## **2. The Licensing Process for Community Radio**

Section 5 of the 1988 Radio and Television Act sets down the following procedures which the BCI is bound to follow when allocating licences under this Act:-

- Invite expressions of interest from parties interested in securing contracts for sound broadcasting services by public notice in at least one national newspaper;
- Invite applications by public notice for a contract to provide a service in a specific area as approved by the Commission for Communications Regulation (formerly ODTR).

As part of the decision-making process certain selected applicants may also be invited to make an oral presentation to the Commission before a decision is taken. While this is not a requirement under the 1988 Act, it affords an applicant an opportunity to present its case for a licence to the Commission and, in turn, allows the Commission to question the applicant on the submission in more detail.

As outlined in Section 5 of the 1988 Radio and Television Act, expressions of interest are expected to indicate in general terms the type of service that will be provided and are not regarded as an application for a sound broadcasting contract. In considering expressions from those interested in community strand licences, the Commission will have regard to the definition of community radio outlined in section one of this document and the community nature of the relevant group. Expressions of interest for community licences should, therefore, include a clear definition of the community to be served and outline the level of current and expected participation by that community in the station. Groups should also comment on the type of programming service envisaged, how it will meet the communication needs of the community served, and how they propose to resource their station.

Following consideration of the expressions of interest received, the Commission will decide whether to move to application stage. If a decision to proceed is taken, and following the necessary consultation with, and approval of, the Commission for Communications Regulation (Comreg), applications for licences to establish stations to serve communities in specific areas will be invited. A Guide to Submissions outlining the criteria to be used by the Commission when assessing applications will be made available to all interested parties at this stage. These criteria will include the statutory provisions in Section 6 of the 1988 Act and Section 60 of the Broadcasting Act 2001. Both Acts are available on the Commission's web site. A sample Guide to Submissions is also available on the Commission's website.

The number of licences issued will depend on the applicants meeting the required criteria, the availability of frequencies, the resources of the Commission and any other considerations which may be relevant from time to time, such as the totality of services in a specific area. Selected applicants may then be invited to attend oral hearings.

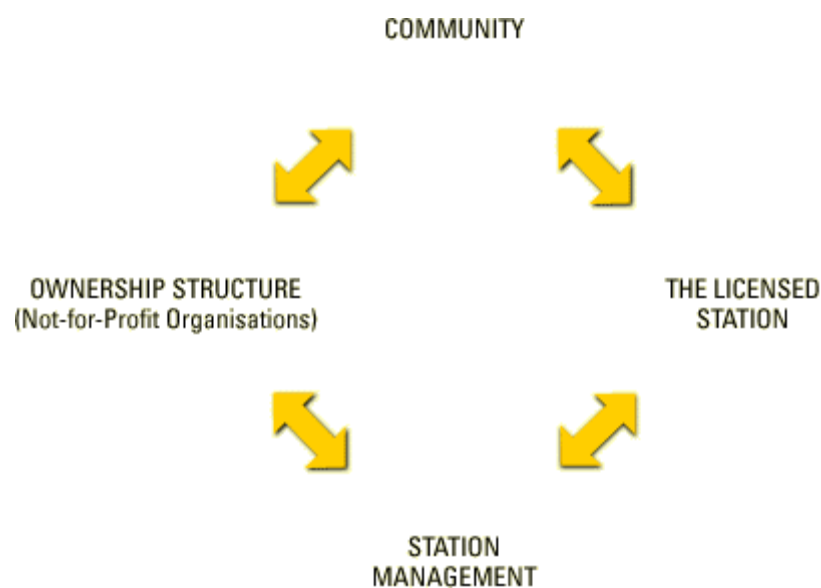
The Commission reserves the right not to award licences in an area where, in the opinion of the Commission, an application is not of a sufficient standard.

If the Commission decides that an application is of sufficient standard, it will award a contract, in principle, subject to agreement on any outstanding issues and the successful conclusion of contract negotiations. The applicant will be notified of this decision in writing and a draft contract will be forwarded in due course. The draft contract will set out the standard terms for a community broadcasting contractor and incorporate the specific commitments given by the applicant during the application process. The applicant may be required to submit additional information or clarification in relation to some of the required information. While the standard licence term for stations in the community strand is generally five years, the BCI retains the right to vary the terms and conditions of each individual contract.

The Commission can also facilitate aspirant community radio groups through the provision of contracts for temporary sound broadcasting services<sup>6</sup>. In instances where the proposed service will act as a pilot for a full community service, the application will be expected to comply with the Commission's policy with regard to community broadcasting services.

### 3. Ownership and Management Structures

The definition of community radio, outlined in section one of this document, provides clear guidelines as to the ownership and management structures which community stations should operate. The definition states that stations should be owned and controlled by not-for-profit organisations. In addition, their structures should provide for membership, management and operation of the station by the community served. The BCI has adopted a proposal developed by the Community Radio Forum that these are best implemented using the following non-hierarchical model.



In this ideal situation, the community served can participate at all levels. The station is accountable to the community and the community are in control of, and therefore responsible for, the station. It recognises that a balance is required at management level between those who are active in the station and the community served. In a perfect situation, there should be no apparent division between the management representatives appointed at either station or ownership level. They are all representatives of the community served. This model also highlights the importance of having a clear definition of the relevant community and of developing structures to facilitate and promote their participation at all levels.

The Irish experience demonstrates that it might be unrealistic in all circumstances to expect groups to establish a separate legal ownership structure, especially in the short term. For this reason, the Commission acknowledges that the definition of community radio, outlined in section one, allows for some flexibility in relation to ownership.

This is only possible in instances where the right of the community served to control the station is not unduly affected. While having ownership vested in the community served is, undoubtedly, the best way to guarantee this, ownership and control are not inseparable.

## **4. Funding and Finance**

Although funding cannot be separated from other areas, it is seen by many as the central focus for any discussion about the development of community broadcasting. The Irish experience demonstrates that although community broadcasting services, as defined here, are viable, funding individual stations is an ongoing challenge for licensed groups and the communities served.

Both the AMARC Charter and the Forum report, "A Community Radio Model for Ireland" <sup>7</sup>, state that community stations should be funded from a diversity of sources. The BCI supports this approach. The Irish experience has shown that it is not only the most realistic, but that it is essential, if stations are to ensure that programming is determined primarily by the community served. In this context, the BCI requires that no more than 50% of a community station's income should come from any one source. Therefore, the community served will always have to take some responsibility for supporting the operation of a community station in their area. A variety of approaches to attracting support from the community served have been developed by Irish stations, including membership fees, sale of services, collections, general fund-raising and on-air commercial activity.

The last of these, on-air commercial activity, has been a central focus of attention for community stations since 1995. It is also a key issue for the BCI since regulating such activity on licensed stations is the responsibility of the Commission. Although securing support through conventional sponsorship and advertising has proved more difficult than community groups had anticipated, the Irish experience suggests that on-air commercial activity will remain an essential funding source for community broadcasters.

The Commission, therefore, allows community stations to broadcast advertisements and sponsorship announcements, subject to the following conditions: -

1. no more than 50% of income is secured from commercial activity;
2. a maximum of 6 minutes advertising/ sponsorship per hour will apply;
3. stations may only broadcast advertisements which relate to:-
  - work opportunities which exist in the specified area
  - events which are to occur in the specified area
  - businesses which are carried on in the specified area
  - services which are delivered in the specified area.

The Commission believes that the possibility of co-ordinated funding for community stations from appropriate statutory sources should be considered. While all licensed stations receive a significant amount of support from a variety of public sector sources, the need for a more focused approach to funding community stations is required.

The Commission endorses the Community Radio Forum's call that the mechanism for this should be clearly defined and that community radio should be included in the support structures in place, and being developed for, community and voluntary organisations generally <sup>8</sup>.

It is the policy of the Commission to support efforts to increase the resources available to community broadcasters and specific initiatives in this area will be reviewed on an ongoing basis in the context of the Commission's statutory remit and its own future funding situation.

The Irish experience has also provided some general information about the resources required to establish and operate a community station. While capital costs are dependent on individual decisions about equipment and premises, the Irish experience suggests that a basic studio in suitable premises can be established for around €20,000 <sup>9</sup>. The Irish experience also suggests that the annual running costs for a community station, which has no paid staff, should be around €40,000. It is estimated that hiring one person and providing the necessary support would require an additional €40,000, bringing the per annum cost to €80,000. Therefore, two general models for community stations have emerged.<sup>10</sup>

Station Type	Annual Running	Cost Staffing Structure
Type One	€40, 000 Approx.	No Full Time Station Paid Staff
Type Two	€80, 000 Approx.	One Full Time Station Paid Staff

## 5. Staffing and Training

The Irish experience has demonstrated that staff in community stations can broadly be divided into four categories. These are:-

- Volunteers
- Those paid using station resources
- Those participating in employment/training schemes
- Others (mainly people paid by a supporting organisation to carry out specific tasks, e.g. accounts)

While the contribution of people in all four categories is significant, the importance of community participation in a voluntary capacity for community stations was reinforced by the Irish experience. The extent to which members of the community served are willing to give of their own time, in a voluntary capacity, to support their station is seen by the Commission as a key indicator of the success of that station. As providing suitable training on a formal and informal level proved critical to progress in this area, it is the policy of the Commission to seek commitments in relation to training from interested groups.

The Irish experience has indicated that two full-time paid staff is desirable if a community station is to achieve its full potential. However, the Commission recognises that in the current funding environment, stations are unlikely to be able to employ more than one full-time person in the foreseeable future. The Irish experience has also indicated that this person should ideally have management skills plus some previous media and community development experience.

The Commission acknowledges the important contribution made by government-backed employment/training schemes to the development of stations in the community strand. These provide valuable human and financial resources which, when used effectively, aid the general development of community stations. The potential benefits for participants are also significant as a number of trainees subsequently obtain full-time employment. Although such schemes are used by a variety of community action projects nationally and internationally, the community radio experience has shown that organisations need to ensure that a balance is maintained between scheme participants and volunteers in all areas of activity.

The number of people included in category four above differs from station to station and this is expected to continue.

## 6. Programming

The Irish experience indicates that the development of a viable community broadcasting service depends on a station providing a new and unique forum for communication between individuals and groups within the community served. The definition of community radio, outlined earlier in this document, states that programming should be based on community access and reflect the special interests and needs of the listeners a station is licensed to serve. The AMARC Charter states that community stations should promote and protect cultural diversity and inform their listeners on the basis of information drawn from a diversity of sources.

The Community Radio Forum endorsed the relevance of this approach to programming in its report "A Community Radio Model for Ireland". In this, the members argued that "community stations should strive to develop new and innovative formats which can act as an ongoing challenge for community broadcasters, as well as being a defining characteristic of the sector". In the context of licensing, the approach to programme content, format and scheduling, and how a station meets the above objectives, will be considered. The Irish experience has shown that community broadcasters are most successful when they endeavour to provide a new service which will add to the diversity of programming available, rather than replicating the format and content of existing services.

It is the policy of the Commission to include in all contracts an approved Programme Schedule and Programme Policy Statement. Policy statements should set out the station's programme philosophy and detail its plans to facilitate and promote community participation. Statements will be expected to include clear commitments in relation to areas such as speech/music ratio, Irish language programming, music policy and externally-produced programmes. Any changes to the agreed schedule or policy statement will require BCI approval in advance.

It is clear from the Irish experience that the level of community participation required to achieve these programming objectives needs to be actively developed and supported. Establishing an awareness within the community of its communication needs and enabling members of the community to address these, is a greater challenge than many groups anticipate.

## 7. Community and Audience Relations

Authoritatively evaluating the relationship between a station and the audience is an important part of any assessment of the performance of a licensed broadcaster. The Irish experience has demonstrated that active community participation and general listenership are equally relevant when assessing a community station's relationship with the community served.

Developing methodologies which recognise this unique dynamic is a challenge facing community broadcasters and other relevant organisations in Ireland and abroad. In recognition of this fact, the Commission engaged an external research organisation, NEXUS Research Co-operative, to examine this issue in 1996. NEXUS concluded that facilitated evaluation workshops could be used to evaluate the impact of a community station. This mechanism had been used previously to evaluate other community action projects. It was seen as particularly relevant, since it not only invited representatives of the community served to evaluate the relevance and performance of the station, but also allowed the station to challenge the community to take responsibility for the implementation of the emerging suggestions.

The methodology was piloted in six stations in 1996 and, while some difficulties were encountered, the initiative was generally considered to have been very successful. The qualitative approach to audience research was endorsed by the Community Radio Forum at a meeting in March 1997. The development of an appropriate quantitative methodology is a challenge which still needs to be addressed and the relevance of the of such methodologies is still a matter of debate.

It is the policy of the Commission to seek information on how prospective licensees intend to approach the issue of community and audience evaluation, including the methodologies they propose to use and the frequency with which these will be applied. The report on the facilitated workshop process is available to all interested applicants. Licensed stations may also be required to participate in future initiatives in this area.

# Appendices

1. The AMARC Community Radio Charter for Europe
2. Footnotes

# 1. Appendix One

## The AMARC Community Radio Charter for Europe

Recognising that community radio is an ideal means of fostering freedom of expression and information, the development of culture, the freedom to form and confront opinions and active participation in local life; noting that different cultures and traditions lead to a diversity of forms of community radio; this Charter identifies objectives which community radio stations share and should strive to achieve.

### Community Radio Stations:

1. Promote the right to communicate, assist the free flow of information and opinions, encourage creative expression and contribute to the democratic process and a pluralist society;
2. Provide access to training, production and distribution facilities; encourage local creative talent and foster local traditions; and provide programmes for the benefit, entertainment, education and development of their listeners;
3. Seek to have their ownership representative of local geographically recognisable communities or of communities of common interest;
4. Are editorially independent of government, commercial and religious institutions and political parties in determining their programme policy;
5. Provide a right of access to minority and marginalised groups and promote and protect cultural and linguistic diversity;
6. Seek to honestly inform their listeners on the basis of information drawn from a diversity of sources and provide a right of reply to any person or organisation subject to serious misrepresentation;
7. Are established as organisations which are not run with a view to profit and ensure their independence by being financed from a variety of sources;
8. Recognise and respect the contribution of volunteers, recognise the right of paid workers to join trade unions and provide satisfactory working conditions for both;
9. Operate management, programming and employment practices which oppose discrimination and which are open and accountable to all supporters, staff and volunteers;
10. Foster exchange between community radio broadcasters using communications to develop greater understanding in support of peace, tolerance, democracy and development.

## 2. Appendix Two

### Footnotes

1. For more information on the Community Radio Support Scheme check the website of the Broadcasting Commission of Ireland.
2. The Community Radio Forum is the representative body for community radio stations in Ireland. All BCI licensed community stations are eligible for membership and the Forum also provides some development support for aspirant groups. Contact details are available from the BCI.
3. In 1994 the Institute for Policy Studies in Johns Hopkins University, Baltimore, USA published the results of a major international study on the role and scope of the non-profit sector in twelve countries across the world. The sample included the USA, UK, France, Germany, Italy, Hungary, Thailand, Japan, Brazil, Ghana, Egypt and India. The study concluded that "the non-profit sector now constitutes a powerful economic force in settings as diverse as highly centralised France and Japan and highly decentralised Germany and the United States. In the developing world and the former communist bloc as well, non-profit organisations are now being recognised as potent mechanisms for stimulating development and fostering civic involvement". (P97) *The Emerging Sector - An Overview*. Salamon and Anheier: Institute for Policy Studies Johns Hopkins University, Baltimore, USA.
4. The Community Development Programme (CDP) was established in 1990 in recognition of the role of community development in tackling poverty and disadvantage. The Programme provides a range of supports, development opportunities and services to community groups and individuals in their areas.
5. AMARC is the World Association of Community Orientated Broadcasters founded in 1983. The European branch of AMARC, AMARC Europe, adopted this Charter in 1994 as a common statement of objectives member stations should strive to achieve. It is included in all community stations' contracts.
6. For more information on the Community Radio Support Scheme check the website of the Broadcasting Commission of Ireland.
7. "*A Community Radio Model for Ireland*" – This was developed by a working group established by the Community Radio Forum in 1996. The document was endorsed by Forum Members in 1997.

8. For example, in 2001 the Department of Social, Community and Family Affairs published '*Supporting Voluntary Activity*' A White Paper on a Framework for Supporting Voluntary Activity and for Developing the Relationship between the State and the Community and Voluntary Sector. Several funding initiative arose from the implementation of the recommendations in the White Paper including funding support for the National Anti-Poverty Networks, the Committee on Volunteering and for national federations and network organisations.
9. It should be noted that this estimate is an indicative one and does not allow for any exceptional costs which could arise in areas such as transmission for stations serving scattered communities or covering rugged terrain.
10. These figures do not include funds received to pay employment/training scheme participants. This is because the number of scheme participants can vary significantly from one station to the next and a specific wages grant is provided to pay the individuals involved. The figures do include the materials grant paid to groups who sponsor these schemes, as this is income that can be used to support general station activity. This is an indicative figure, rent and other costs may vary considerably from station to station.



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