



Independent  
Broadcasters of Ireland

**Response to**

**BAI Consultation Document**

**Draft Broadcasting Services Strategy**

**September 2011**

## **Executive Summary**

This document contains the response of the Independent Broadcasters of Ireland (IBI) to the consultation document issued by the BAI on the Broadcasting Services Strategy. The BAI Broadcasting Services Strategy will prescribe and guide the future licensing activities of the regulator.

This strategy is of extreme importance to IBI members. The greatest asset that broadcasters have is access to the airwaves and the strategy will define the key structures by which independent radio licences will be issued in the coming years.

The Broadcasting Act 2009 seeks to ensure that the financial viability of all broadcasters is given due attention by the BAI and its statutory committees. It states that in performing its functions, the Authority and its statutory committees *must ensure that measures taken will produce regulatory arrangements that are both stable and predictable*. Regulatory stability and predictability are critical to a sustainable operating environment for independent radio operators. Radio broadcasters operate in a fiercely competitive environment and the revenue gathered from advertising and sponsorship determines staffing levels, investment in equipment and technology and funding for programming. The downturn in the Irish economy has impacted the operations of every commercial radio broadcaster in Ireland and it is impossible to predict when this financial picture will improve.

***The viability of independent radio stations must be the central, predominant and principal consideration for the BAI at all times when considering the final draft of the Broadcasting Services Strategy, the licensing plan that will flow from it and also the resulting policies to be enacted.***

The IBI submission outlines approaches to ensure licences operators experiencing financial difficulties can continue to broadcast. These include that the permitted level of ownership remain at its current 25% level to maintain and protect the viability of radio stations with financial difficulties.

The consultation document refers to the Broadcasting Act 2009 and the requirements it contains for the BAI. The IBI contends that as with all regulation there is a large degree of flexibility built into the Broadcasting Act. These are unprecedented times in our economy and in our industry. The BAI in interpreting the Act must do so for the benefit of both broadcasters and audience so that the sector continues to provide Irish radio listeners with choice, diversity and quality of listening experiences.

**Accordingly the intention to implement a charge on broadcasters for a sound broadcasting licence should be removed in its entirety from the Broadcasting Services Strategy.**

Certain aspects of the BAI's work are determined by the Broadcasting Act 2009 but they are in a position to choose the methods of implementation. Policies and the resulting practices are at the discretion of the BAI and thus should facilitate and not constrain broadcasters. The commitment to modify certain regulatory practices is welcomed and the views of broadcasters as to the operational opportunities this presents should be taken into consideration prior to a decision being taken.

Despite only being in existence for 22 years, independent broadcasting has been an unparalleled success in Ireland. Despite the difficulties currently being experienced by commercial broadcasters the IBI has no doubt that independent broadcasting will continue to play a strong role in the lives of the people of Ireland.

## **About the Independent Broadcasters of Ireland**

The Independent Broadcasters of Ireland (IBI) represents the 2 national, 4 regional, 1 multi-city and 27 local commercial radio stations throughout Ireland. The mission of the IBI is to promote a strong and vibrant radio sector which reflects the preferences and needs of the listening public. Within our membership there exists a diverse collection of radio stations – significant diversity in ownership, target audience, location and franchise area. These independent broadcasters make a significant contribution to the Irish economy not only in economic terms but also to the social and cultural aspect of the economy.

Listenership to independent broadcasting in Ireland has never been stronger. In excess of 67% of the Irish population, 2.442 million people, tune into independent radio on a daily basis, which clearly shows the value listeners place on our programming. Independent radio provides a valuable public service to Irish radio listeners and is funded entirely from the sale of advertising and sponsorship at no cost to the General Exchequer.

The sustained success of Independent Broadcasting over the past 22 years reflects the talent, expertise and commitment of the operators. It is a direct result of radio stations putting the listener at the centre of their business. Giving the listener what they want to hear – high quality programming – results in increased and retained listeners, which in turn attracts financial revenue streams from advertising and sponsorship. The commercial operations of the business are intrinsically linked to the delivery of quality programming and striking the right balance between the two is central to every broadcaster's long term viability and success.

The IBI is focused on the future and monitors sectoral developments with a view to representing the interests of independent radio sector on issues which will determine the future of broadcasting, and to engage fully with the Regulator and other stakeholders in all matters. Ireland has a proud tradition of radio broadcasting and the IBI aims to ensure that independent broadcasters are to the fore in shaping the future of the Irish broadcasting industry.

## Introduction

The IBI has played a central role in the activities which formed the basis for the development of the BAI's draft Services Strategy and has been actively involved in this consultation process. The IBI was represented both as an organisation as well as by its individual members at the BAI's Consultation Day held in Croke Park on September 15<sup>th</sup>. IBI members presented their considered views on the issues raised to the Chairman John Bowman, members and staff of the Authority and also to the wider media and other interested groups who were present on the day.

The IBI response to this consultation document will provide answers to the questions as set out in the Consultation Document. These are as follows:

1. What are your views on the vision and objectives, as articulated by the BAI?
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?
3. Having regard to the relevant statutory provisions, what is your view on the appropriateness of the licensing approaches proposed in this section (Licensing) 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?
5. Ownership and Control
  - 5.1 Definitions of "control" and "substantial interests in" – What is your view of the Authority's current definitions for these statutory terms?  
Please provide reasons for any proposed changes to the definitions.
  - 5.2 "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.
  - 5.3 "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?

- 5.4 “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?
- 5.5 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?
- 5.6 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?
- 5.7 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?
6. Regulation of Services
- What is your opinion of the approach to regulation by the BAI detailed in this section of the Strategy?
- 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?
7. Cost of Making an Application for Commercial Radio Contracts
- 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?

8. News and Current Affairs Requirements (Radio Only)

What is your view of the three influencing factors to which the BAI will have regard when considering a request for derogation? Are there other influencing factors that the BAI should take into account?

Regarding the potential for derogation during peak-time hours (7am-7pm), under what circumstances should the BAI consider granting derogation? Should any additional influencing factor(s) apply when making such a decision?

9. Review of Regulatory Policies and Practices

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.

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

The considered views, opinions and recommendations in the IBI submission have been informed by key personnel working within the independent radio sector.

## 1. What are your views on the vision and objectives, as articulated by the BAI?

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

The vision adopted by an organisation is a statement outlining a desired future position, either for itself or indeed in this case for a particular element of its work. It defines where the organisation wants to be. The BAI's proposed vision for an optimum mix of broadcasting services reads:

*"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 BAI's vision is that the Irish people be served by a vibrant Irish broadcasting sector which will deliver diversity in content, programming, information and entertainment to viewers and listeners, offer high quality and innovative indigenous content and maintain plurality of ownership, content and viewpoint.

The vision states that the Irish people will be served by a broadcasting sector comprising *public service, commercial and community broadcasters*. Such a statement indicates that there is a clear distinction drawn by the BAI between the content broadcast by RTÉ and by independent broadcasters with the public service element of broadcasting being the domain of RTÉ. To retain this clause and its current wording would be an injustice to independent broadcasters. **Public service broadcasting is an essential service provided by independent radio stations at significant cost which is not recognised by the BAI or supported by Exchequer funding.** The contribution of our members to public service is hugely valued by Irish audiences and this audience endorsement should be a factor in the framing of the Authority's vision. We particularly endorse the statement at Croke Park of BAI Chairman Bob Collins when he stated that Irish audiences are "dramatically" well served by the existing range of services.

The principal aim of the Broadcasting Services Strategy is to facilitate future development of broadcasting in Ireland and, in this context, the BAI's vision is admirable in its aim and reach but more difficult in its execution.

All aspects of the Broadcasting Services Strategy must work towards achieving the different aspects of this vision if the BAI is to be successful in its implementation.

### **BAI's Objectives**

We have no specific opposition to the stated objectives as outlined in the consultation document. It is imperative, however, that these objectives are to the fore when decisions are being taken on the final draft of the Broadcasting Services Strategy and also the workplan that flows from it. Stating an objective is easily done and a clear indication of intent. The challenge will be to ensure that the final draft Strategy supports the attainment of each objective.

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, the BAI must firstly pay due consideration to supporting data that is already at its disposal.

- The quarterly Joint National Listenership Reports (JNLR) provided quantitative evidence that Ireland's independent commercial radio stations are serving the needs and wants of their audiences. To continuously maintain audience reach levels at approximately 69% is proof that the needs of Irish audiences are being served.
- An examination of programme schedules shows the wide range of programmes broadcast by commercial radio stations ranging from Irish language farming, sporting, current affairs, specialist and religious programmes and documentaries
- The number of station outside broadcasts done in every corner of each franchise area with diverse community groups is proof that commercial radio stations have their fingers on the pulse of the audiences that they serve and have successfully integrated themselves into the daily lives of their listeners.

Ensuring that the services licensed by the BAI offer a variety of content to audiences in Ireland reflecting their diverse interests means that the BAI must maintain its current ownership and control policy. No one radio station can offer the level of diversity that will please all of the audience. The only way that this can be achieved is through a suite of radio stations catering for various groups of people and/or various interests. A reduction in the percentage allowed under the BAI's Ownership and Control policy could result in operators who are under financial difficulties having to close thus reducing the listening options for the audience. Consolidation supports diversity of output which ultimately ensures that the audience is better served.

Promoting the provision of high quality programming on services licensed in Ireland and fostering creativity and innovation in the Irish broadcasting sector is the third stated objective of the BAI. **The greatest assistance that the BAI could offer to promote the provision of high quality programming on commercial radio stations in Ireland would be a complete overhaul of the Sound and Vision Fund.**

The stated aim of the Sound & Vision Scheme was to allow broadcasters to produce programmes which would not normally be financially viable in order to provide a better service to the public. It was an opportunity for broadcasters to increase the amount of public service programming. The reality is that an extremely high number of broadcasters have stopped applying for Sound & Vision funding due to the difficulties inherent in the process. The current Sound and Vision scheme is fundamentally flawed. Problems include an extremely high level of rejected applications in each round, averaging 60% of submissions; and an application system that is an administrative nightmare for Regulator and applicant alike with timing issues at every stage. If the BAI is serious about promoting the provision of high quality programming it needs to work with broadcasters to address the difficulties within the existing Sound and Vision scheme for the ultimate benefit of the listening public.

The BAI states its intention to review and modify current regulatory policies and practices in order to ensure that measures taken are proportionate. In order to successfully carry out this objective the BAI must take into account the views of the broadcasters who have to implement the regulatory policies and practices and are best placed to explain the practical and operational factors both positive and negative. This must be a thorough and indepth consultation where broadcasters are provided with evidence that their responses to the consultation are being acted upon and not a box ticking exercise for the BAI.

A regulatory impact assessment should be undertaken to assess the cost and administrative burden being placed on radio stations, prior to implementing any new policies and practices.

A stable and predictable working environment is required and expected. In real life however it is impossible to create a stable and predictable working environment a fact that is even more exaggerated in the economic climate within which we currently operate. For independent commercial radio operators the working environment is made even less predictable and less stable by virtue of the fact that their final offering is funded by an ever decreasing advertising market over which broadcasters have no control and is provided free of charge to the end user. Unlike other indigenous SME's we cannot pass on costs to our customers. With so much uncertainty in day to day operations, regulatory stability and predictability is essential to independent broadcasters. Producing regulatory arrangements that are stable and predictable

for all stakeholders means that **the BAI must pay particular attention to the external environment and adapt its policies and more importantly its practices to provide steady, constant and expected regulatory arrangements.**

**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?**

### **Context for Realising the Vision**

The context for realising the vision for an optimum mix of broadcasting services is framed by the impact of four factors: legislation, policy and practice, economic issues and matters of technology. The level to which each of these factors will impact the realisation of the vision will be examined.

### **Legislation**

The Broadcasting Act 2009 is a comprehensive piece of legislation. It is neither perfect nor ideal and we strongly agree with the remarks of BAI Chairman Bob Collins in this regard. As with all legislation, once published it is out of date and nowhere is this more true than with broadcasting, where the speed of technological change is so great that legislation cannot keep up.

Despite the shortcomings, both broadcasters and regulator must work within the confines of the legislation as passed by the Houses of the Oireachtas. Legislation by its very nature is also designed to allow flexibility and the Broadcasting Act is no different in this respect. There are certain sections of the Act that are clear and unambiguous and here the Act is restricting, as stated requirements are set out for the regulator. The use of words and phrases such as “The Authority shall” and “with the consent of the Minister” are very specific and do not allow for choice of action. The Act is not always so prescriptive however and wording of parts of the Act also allows an element of choice for the regulator in its actions. Sections of the Act include phrases such as “where directed by the Authority” or “The Authority may” and in such cases the resulting actions, plans or strategies are at the discretion of the BAI.

The flexibility allowed by the Broadcasting Act 2009 and its interpretation by the regulator will be discussed in greater detail and in reference to specific areas at different stages throughout this response.

**However, in the current environment, flexibility of interpretation to support a stable regulatory environment and the financial viability of the sector must be the primary consideration of the BAI.**

## **Policy and Practice**

The wording of the consultation document states that policies and practices are principally derived from legislation. It is indeed true that policies are principally derived by the requirement of legislation however the same cannot be said of policies which are framed by organisations. For example the legislation directs the Authority to prepare broadcasting codes but the interpretation and subsequent implementation of these codes by the Authority is not directed by legislation.

The consultation document contends that the policies and practices of the BAI may “facilitate or constrain” the realisation of its vision. This statement suggests that BAI believes the achievement of its vision is outside its control. The opposite is true however. The realisation of the BAI’s vision will be based on its policies, which it has drafted and approved and the actions which it takes to implement these policies.

**If the audience is truly at the centre of all decisions taken by the Authority and all of the work conducted by the Executive then the policies and practices adopted by both the Authority and Executive must facilitate broadcasters and not constrain them.**

## **Economic**

The consultation document’s explanatory note on economic factors that may constrain and support the BAI in realising its vision for the strategy outlines the work already conducted by the BAI to maximise revenues and improve the economic position of broadcasters. Included are product placement rules for television and increased advertising minutage for television. **There is a distinct lack of initiatives to address the diminished financial position of independent radio operators.**

We are in the grip of a prolonged economic recession - the worst that Ireland has ever experienced. Independent broadcasters feel the effects of recession worse than most. Advertising and Sponsorship – the revenue streams which fund broadcasting operations have been decimated. Yet, to retain listeners, and ultimately advertisers, broadcasters must continue to invest in quality output, regardless of their financial position. Radio stations cannot pass the extra costs of running its business to the end user as the consumption of radio is free. The financial losses incurred as a result of the marked decrease in advertising revenues, have been borne by the broadcasters causing increasing concern regarding viability.

The Broadcasting Act 2009 seeks to ensure that the financial viability of all broadcasters is given due attention by the BAI and its statutory committees. It states that in performing its functions

the Authority and its statutory committees must ensure that measures taken will produce regulatory arrangements that are both stable and predictable. This sentiment is echoed in the Broadcasting Service Strategy but it is not enough to include such a statement in a document or to state that the Authority is mindful of the difficulties being experienced by independent broadcasters. **The BAI must be cognisant of the economic downturn and its impact on commercial broadcasters. It must assist and support broadcasters to ensure viability of commercial radio stations and the creation of an environment which will be stable and predictable. This requires action and not just policy statements.**

### **Technology**

Technology has resulted in huge, mainly positive changes in our lives and the pace of technological change continues unabated. The speed of adoption of new technologies by consumers is ever faster yet despite this rate of change, radio has remained a constant. The main impact of technology on the sector is that it is easier to consume radio today than it was. Radio is now more readily and easily available across multiple devices – laptops, pcs, mobile phones, pdas and even on televisions – making it easier for people to listen to radio in more places than ever before.

Digital radio is a much spoken of technological development and there are many arguments for and against the development and introduction of digital radio in Ireland. The BAI must adopt a realistic attitude to Digital Radio. There is an apparent lack of demand from the audience and there is a lack of funding available for investment in digital radio broadcasting.

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

The Broadcasting Strategy focuses on six functions and the IBI will deal with each function separately. The functions are as follows:

### **1. Licensing**

The elements of the strategy that relate to radio licensing outline the procedure involved in the licensing of community radio stations and commercial radio stations.

Regarding the licensing of community radio stations attention is drawn to Section 65 (3) of the Broadcasting Act which states that upon proposing to allocate a community radio broadcasting licence, the Contract Awards Committee may arrange a study to ascertain the interests and wishes of the people in that particular area. There is also an option to conduct a sectoral impact study in the stated area. IBI believes the BAI must conduct both studies before issuing any community radio licence. The results of both of these studies should form an integral part of the decision taken by the Contracts Awards Committee. Diversity must also be considered before awarding a community radio licence. The programmes already available to the audience from national, regional and local radio stations should be examined to ascertain whether there is a lack of programme diversity which could be addressed by a community radio station.

On the issue of commercial radio licences, there are a few areas that need further exploration. The first key area is financial. Diversity and Sustainability are the two key words which appear in the first sentence of the commercial licensing section of the consultation document. Both of these factors should be central to every decision taken on commercial radio licensing. Their importance cannot be over emphasised. The Irish radio audience deserves a diverse list of radio stations to choose from but the audience and also the staff, management and owners of radio stations need to be sure that they can continue to offer the same high quality output to the listener without constant fears of a lack of viability and sustainability.

Since the first independent commercial radio station began broadcasting in July 1989 there has been a concerted effort to entice sponsors and advertisers to independent radio on a local, regional and national level by individual radio stations, station groups and specific national advertising organisations.

IBI members are commercial broadcasters operating in a fiercely competitive environment who do not have access to exchequer funding or a licence fee to boost

their financial position. Being solely reliant on commercial revenue for survival, it is the scale of these revenues which determines staffing levels, investment in equipment and technology and funding for training. All of these considerations impact directly on the quality of output for the listener.

Since 2008 has there been a 30% decline in radio advertising and the introduction of an additional five radio stations to the market.

It is against this financial background that the BAI has announced its intention to introduce an additional charge on broadcasters for a sound broadcasting licence.

**The IBI totally rejects this proposal and demands that the proposal to implement a charge on broadcasters for a sound broadcasting licence is removed in its entirety from the Broadcasting Services Strategy.** The Broadcasting Act allows for the BAI to implement a charge on broadcasters for a licence but it also allows for the BAI not to implement the charge, so it is within the remit of the BAI to act.

The independent radio sector already contributes significantly to the costs of regulating the sector through the BAI levy. This proposal would, in reality, constitute an additional levy on independent broadcasters at a time when many radio stations are restructuring operations in the face of falling revenues. To demand a lump sum payment from successful licence applicants now is unrealistic and shows little understanding of the environmental realities in which commercial broadcasters are operating.

If, as outlined in the Broadcasting Act, the amount payable will be suggested by the applicant, this turns a competitive licensing process into an auction for licences. This is not a situation that anyone involved in radio broadcasting in Ireland would want to see develop.

The consultation document states that both licensing and contracting processes will allow for obligations of contractors to be revisited in the event of an economic upturn. Such a statement must be removed from the draft Strategy. It only serves to cause uncertainty amongst broadcasters and is in direct conflict with the BAI's own commitment to a sustainable broadcasting sector.

The licensing process for commercial radio stations has worked well since its introduction. There are some changes to this system which have been introduced by the

Broadcasting Act and some changes which the IBI feel should be introduced for the upcoming licensing rounds.

The IBI lobbied for the inclusion in the Broadcasting Act of a fast-track system for radio licences where the incumbent is the only applicant. The use of a fast-track system would eliminate the time and expense of putting together a licence application while also reducing the administrative burden on the regulator. **Given the high number of franchise areas to be relicensed and the resources this commands from both regulator and applicant, fast-tracking of licences must be adopted by the Contracts Awards Committee as its next step rather than an optional move.**

The Broadcasting Act outlines the stages involved in a person, other than the incumbent, declaring an interest in a commercial radio licence. In addition to writing to express an interest in the licence, a sum of money not exceeding €25,000 must be lodged with the Authority. This is designed to discourage vexatious applications. There is however a greater role for the Contracts Awards Committee to play in discouraging and eliminating vexatious applications. **Each expression of interest should be examined against a set of criteria by the Contract Awards Committee to establish whether the person expressing interest in the licence is of necessary character, expertise and experience to submit a full application.** Such an action would potentially reduce the cost of a full licence application for all interested parties and reduce the administrative burden on the regulator.

**The IBI recommends that the Contracts Award Committee also retains appropriate independent expert advisors to examine technical and financial aspects of the applicant's submission. This would allow the BAI Board to make a fully informed decision based on expert opinion and analysis.**

Page 52 of the Consultation Document states *"the Contracts Award Committee shall examine what it describes as the "track record" of the applicant...with reference to Section 66 (2) of the Act.* It is essential that the Contracts Award Committee not only examine the track record but that it is taken into account in the Committee's deliberations. **The BAI Contracts Award Committee must put in place a system, agreed with industry, which outlines how "track record" will be considered and weighted by the Committee.**

Where there is more than one expression of interest for a commercial radio licence then the full application process takes place. While it is recognised that this is a long and

costly process it is viewed by the commercial radio sector as an important one. It is an open and transparent course of action that allows applicants to present their proposals to both the BAI and other interested parties including, most importantly, the listeners within the franchise area to be served. There are ways to reduce the expense associated with the relicensing process such as hosting oral hearings in the BAI's offices rather than on location in each franchise area and the IBI would not be adverse to such measures being implemented.

The Guide to Submissions for applicants will include information to be provided by applicants. In general there is no issue with the information required and indeed where there is competition for a licence such detailed information is a necessity. **The IBI recommends that a particular weighting be given to incumbent's application to reflect the track record, listenership figures and past commitment to the franchise area.**

## **2. Ownership and Control**

The question of ownership and control is divided into seven separate questions in the consultation document.

### **a. Definitions of "control" and "substantial interest in";**

The BAI's Ownership and Control Policy 2010 provides definitions for both "control" and "substantial interest in".

"Control" – is in a position proprietarily, 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 IBI would not propose any changes to these definitions.

### **b. Undue number of sound broadcasting services**

The tone and wording of the BAI's consultation document suggests that the Authority has already decided to reduce the permitted level of ownership of

radio stations to 20%. As the representative organisation for independent broadcasters, **IBI strongly objects to the decrease in this figure. The permitted level of ownership must be maintained at its current 25%.**

Given the pressures that radio stations are under as a result of the financial climate, a reduction in the maximum ownership levels could have a serious impact on struggling broadcasters who need to merge or find new owners in order to remain broadcasting. Ensuring that such stations remain on air would in turn ensure diversity for the listener through the maintaining of services. Consolidation of services allows stations that are struggling financially, to remain on air, sharing office space and services such as finance, human resources, sales departments and general administration but still maintaining individual broadcasting content.

Were licensed entities to close, radio station owners close to 20% ownership would be forced to reduce their ownership levels through no fault of their own, in order to remain within the permitted percentage limits.

This decision must also be taken with consideration towards the future. With the suggestion that digital radio could be a commercial reality within the lifetime of the next tranche of radio licenses additional radio stations will be available digitally. Investment in digital broadcasting will be required and should the levels of permitted ownership be reduced, some existing radio station operators would not be in a position to begin broadcasting digital radio services.

There is little to be achieved from reducing the permitted level of ownership. It has served the sector well for twenty-two years and has produced a well developed independent radio industry. If the reason for reducing the figure is because no one has yet reached the permitted level surely that same argument can be used for not changing it.

**c) Character, expertise and experience**

It is important that careful consideration is given to applicants for radio licenses. It could be said that the character, expertise and experience of an applicant should be one of the primary determinants in awarding a radio licence. The radio audience deserves to have a radio station that understands radio broadcasting, understands the audience and the franchise area that it will be broadcasting to and has a proven track record in providing such a service.

The winning of a radio license carries with it a large degree of responsibility, not only to the radio stations shareholders, board of directors and staff but more importantly to the audience who are ultimately the owners of the spectrum. It is the duty of the regulator to ensure that any licences awarded are given to applicants who recognise and appreciate this responsibility.

**Any scoring mechanism used by the BAI to decide on the awarding of contested radio licences should place particular emphasis on the character, expertise and experience of the applicant with a particular weighting being placed on the track record of the incumbent.** This should take into account areas such as the radio station's listenership figures, compliance level and the contribution made by the radio station to the development of the community it broadcasts to.

**d) Undue amount of communications media**

Tests currently conducted by the BAI to ascertain undue amounts of communications media include tests of substitutability and dominance. While the sentiments behind this policy are laudable and commendable, given the current economic climate and the difficult financial position radio stations are currently experiencing the **BAI must adopt a common sense approach when applying this test. Assisting a radio station to continue broadcasting should be the ultimate aim of the regulator.**

In terms of dominance, different measures other than a focus on ownership could be adopted, Additional scrutiny could be applied to a radio station's adherence to its programme policy statement and also a more regular monitoring of the stations output conducted to eliminate the possibility of undue influence on opinion.

Most importantly each case must be dealt with on its own merits, thus allowing the BAI to ensure diversity is maintained and that ultimately it is the audience and their wants and needs that are to the fore in the decision making process.

**e) Concrete indicators of diversity**

The Ownership and Control Policy and the proposed additional elements outlined in the consultation document to ensure diversity of ownership, are

substantial. The examples of concrete indicators of diversity as outlined in the consultation document include areas such as employment and staff policies and commitments in broadcaster's Programme Policy Statement.

It is difficult to envisage how the inclusion of such indicators would assist in ensuring diversity in the market. Indeed the inclusion of an examination of areas such as staff policies would seem more akin to micro management of radio stations rather than an attempt to ensure diversity in ownership. A further examination of programming related matters is adding an additional layer of regulation to something that is already more than adequately regulated. **There is little to be gained from the inclusion of concrete indications of diversity in the Ownership and Control Policy and it must be removed from the draft Final Strategy.**

**f) Consumer and Competition Bill 2011**

The Consumer and Competition Bill 2011 is at a very early stage and thus it is premature to include it in this consultation. IBI recommends that it is removed from the Consultation and that once enacted, the statutory provisions from the Bill would be reviewed in light of BAI policies. The BAI is already committed to reviewing its Ownership and Control policy at least every four years or sooner if considered necessary. This allows ample opportunity to include the provisions of the Consumer and Competition Legislation and any other legislative work that might be relevant.

**g) Assignment of Contracts**

The IBI has no issue with the assignment of contracts provision as set out in the BAI's Ownership and Control Policy 2010. Radio contracts are extremely sought after and applications for radio licences require time, effort and significant resources. An applicant group will not invest resources into a licence application if it does not intend to be ultimately involved in radio broadcasting.

That said no-one can foresee the future and one needs to be prepared for all eventualities. To this end, the applicant group needs an exit strategy which caters for any problems which might arise and the BAI also needs to be prepared for such an eventuality.

### 3. Regulation of Services

**What is your opinion of the approach to regulation by the BAI detailed in this section of the Strategy?**

**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?**

The IBI accepts the need for regulation and its members are compliant not only with the commitments given in their broadcasting contracts but also commitments given in the programme policy statements and also the various codes and guidelines as published by the BAI.

Ensuring an operating environment that is stable and predictable will greatly assist independent radio broadcasters in the coming years. Regulation that is appropriate is paramount, especially considering the financial difficulties currently facing broadcasters. Options such as an increase in the levels of regulatory flexibility afforded to independent radio stations or the introduction of elements of co-regulation or self-regulation, as is currently in use regarding alcohol advertising and sponsorship, would ease the regulatory pressures on independent radio stations while also reducing the administrative burden on the BAI. **Regulation should be appropriate, effective, focused and targeted and the BAI must ensure that the position of broadcasters coupled with the effect of implementing regulatory decision on broadcasters is central to decisions making.**

The IBI welcomes the possibility of a relaxation of elements of broadcasting contracts and the resulting provision of flexibility and a reduced administrative burden for contractors. Elements of the regulation currently applied is bordering on micro-management of broadcasters and do not serve to benefit anyone. One example of this is the requirement for BAI approval before certain members of management can be appointed to radio stations.

Consultation with the IBI and its members must be conducted prior to any changes being implemented. This will provide an opportunity for constructive dialogue to highlight the areas where flexibility would be beneficial and while it may not provide an

exhaustive list it will ensure improved operational working conditions for both regulator and regulated.

#### **4. Cost of Making an Application for Commercial Radio Contracts**

**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?**

The cost of applications has long been an issue for the IBI and the BAI has committed to exploring ways for reducing this cost. The first step towards reducing the cost of applications is provided for in the Broadcasting Act 2009, namely the fast-tracking of licences for uncontested licences. This provides significant cost savings to both the broadcaster and the BAI. **The BAI must fully utilise the fast-track process and automatically move a sole incumbent applicant directly to contract negotiation stage.**

Costs of applications will remain an issue when there are more than one expression of interest in a given franchise area. To reduce these costs, the BAI must facilitate the submission of Expressions of Interest online with a structured formatted application being provided for applicants. The introduction of a checklist for applicants who have submitted an expression of interest would also reduce both applicant costs and the administrative burden on the regulator. While this would not be as exhaustive as the checklist and scoring mechanism for ultimately choosing the successful applicant, it would weed out applicant groups whom the BAI felt were not best placed to submit a full application. Areas such as finance, character of the applicant group, expertise and broadcasting experience could all be examined to determine whether the group expressing an interest in the licence was in a position to submit a credible application that could result in winning a radio licence.

Should a licence be contested by suitably qualified applicants then a full application process would be conducted. In this situation, it is only right and proper that the full application process is set in motion to allow for transparency and accountability for broadcasters, applicants and regulator. There are ways of reducing costs even with the full application process being utilised, for example holding oral hearings in the BAI offices to reduce hotel costs and travel requirements. Any research required could be

conducted by one research company selected by competitive tender, with the results and the costs shared among the applicants.

The BAI, in its consultation document, states that the costs of applying for a radio licence are prohibitive and can be portrayed as a barrier to entry. Surely, if a potential applicant cannot afford to fund a licence application then it is unlikely that the levels of finance required for operating a radio service would also be available.

## **5. News and Current Affairs Requirements (Radio Only)**

**What is your view of the three influencing factors to which the BAI will have regard when considering a request for derogation? Are there other influencing factors that the BAI should take into account?**

**Regarding the potential for derogation during peak-time hours (7am-7pm), under what circumstances should the BAI consider granting derogation? Should any additional influencing factor(s) apply when making such a decision?**

**The IBI supports the proposal to allow derogation from the 20% News and Current Affairs requirement in the 0700 – 1900 time band and strongly believes that if accepted, derogation should be available to all independent commercial broadcasters as is the case currently with off peak derogation.** Applications for derogation, its implications and implementation should be dealt with by the BAI on a case-by-case basis. Derogation can impact positively on the broadcast output of a radio stations. The audience will continue to receive news and current affairs but it will be tailored to suit what the listener wants and expects. The IBI acknowledges that a separate submission has been compiled by the youth and regional radio stations on this question and supports its members in this regard.

In addition, the IBI recommends that a specific speech requirement is considered, rather than a specific requirement for news and current affairs broadcasting. This would be a more favourable option legislatively and would allow broadcasters to tailor their speech content to the audience they broadcast to, thus providing more appropriate content, which is adapted, customised and in-keeping with the broadcasting style of the station.

## 6. Review of Regulatory Policies and Practices

There are six regulatory policies and practices outlined in the document for review which relate to commercial radio broadcasting. Each shall be dealt with separately.

### a. Sharing of non programme functions

**The sharing of non programme functions must be permitted.** The sharing of non programming functions provides radio stations with cost savings which allow for further investment in other areas of the radio station thus ultimately benefitting the audience.

### b. Station location

This is a requirement that a radio station's main studio is located in the geographical area that it serves. As has been mentioned before in this response, it is the audience that are at the heart of what broadcasters does therefore broadcasting from amongst the audience being served is vital.

### c. Out-put programming

The policy on out-put programming requires that programming for a particular geographical part of the franchise area must be broadcast from a separate studio in that area. This requires broadcasters to invest resources in outlying studios that might not be operational for long periods of time. This is an unnecessary regulatory and financial burden. **Broadcasters must be allowed to broadcast targeted geographical programming from its main studio, which is required to be located in the franchise area.**

### d. Opt-out advertising

The current policy for opt-out advertising is that it is only permitted in circumstances where opt-out programming and an opt-out studio are in place. The IBI as an organisation is not in favour of opt-out advertising but recognise that within our wider membership there are varying views on this topic.

### e. Programme automation

Programme automation forms part of the operations of every radio station in the country. The pre-recording of programmes has been central to radio since its inception. It is a method used to ensure a station is broadcasting top quality programmes, it is used to broadcast overnight, and it is a method to allow flexibility in a live environment without adversely affecting the schedule. Programme automation is a necessity for radio stations who are broadcasting 24 hours a day, 365 days a year. Radio stations will not make a decision that will result in an adverse reaction from its audience. Radio stations are aware that the personality of the programme presenter is one of the key reasons why an audience tunes into or indeed turns away from a given station at a given time. As a result programme automation, while used by radio stations will never become the norm. **Imposing policies or restrictions on programme automation will only serve to make an issue out of something that is not nor has never been an issue for either radio station or regulator. They should be removed from the Broadcasting Services Strategy.**

**f. Networking of Programmes**

**Networking of programmes, where programmes are shared, simulcast or replayed by another broadcaster, must be facilitated by the BAI. It opens up a wealth of programme from other sources to radio stations that they would otherwise not have access to.**

Networking of news and sport bulletins and reports has become the norm in independent commercial radio and due to geographical, financial and human resource issues, it is not something that could or should be reduced or changed.

There is a strong element of self regulation surrounding the networking of programmes. The USP of each independent is their staff and their connection to their communities. These are factors that are not only difficult to replicate but are closely protected by station management.

Considering this, it is easy to understand why there is a reluctance to provide programmes for other radio stations to broadcast and also why there is a reluctance to broadcast programmes made by other stations. This element of self-regulation by the radio stations on the networking of programmes reduces the requirement for strong and heavy regulation.

Every application for the networking of programmes should be taken on a case by case basis by the BAI. It is difficult to assess the financial position of radio stations into the future and how the possibility of networked programmes would ease the financial strain and assist with viability and such a position would have to be given due consideration.

## **Conclusion**

The BAI's Broadcasting Services Strategy will have a significant impact on the independent commercial radio stations through the relicensing of franchise areas and the regulation by the BAI of the services provided by the broadcasters. The independent broadcasting sector in Ireland is delivering an important public service to its audience every day. The Broadcasting Services Strategy should ensure audiences continue to be well served by independent commercial radio stations. It must also strike a balance to ensure that broadcasters are regulated but not stifled, governed but not restricted and most importantly allowed operate in the commercial reality they are faced with. Ultimately the Broadcasting Services Strategy must ensure the very viability of the independent radio sector.

The IBI warmly welcomes the commitments given in the consultation document for the Broadcasting Service Strategy to examine methods for decreasing the regulatory and administrative burden on commercial radio stations. The regulator's knowledge and understanding of the financial pressures being experienced by commercial radio stations and its willingness to take account of the viability of independent commercial radio stations when deciding on policy, is welcomed. The BAI must ensure that viability of commercial radio stations is central to every decision made and action taken.

Independent commercial radio stations impact on people's lives in every part of Ireland on a daily basis. They are a source of news, a resource for local and community groups and organisations, they provide companionship, entertainment and are even turned on in an empty house to be used as a deterrent for burglars! The licence to broadcast is the very first step for every commercial broadcaster towards continuing to play such an integral role in the lives of the people to whom they broadcast.

The members of the IBI look forward to the Licensing Plan which will flow from the final draft of the Broadcasting Services Strategy. The proposed changes to regulation, relicensing and operations as outlined in this consultation document will, we believe, have a positive effect on both broadcasters and regulator and will ultimately benefit the radio audience in Ireland.

The IBI remains, as always, available to discuss the contents of this submission in any detail that may be required.