

# PARLIAMENTARY DEBATES

HOUSE OF COMMONS  
OFFICIAL REPORT  
GENERAL COMMITTEES

Public Bill Committee

## BROADCASTING (RADIO MULTIPLEX SERVICES) BILL

*Tuesday 31 January 2017*

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CLAUSES 1 and 2 agreed to.  
Bill to be reported, without amendment.

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**Saturday 4 February 2017**

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**The Committee consisted of the following Members:***Chair:* MARK PRITCHARD

- |   |   |
|---|---|
| † Argar, Edward ( <i>Charnwood</i> ) (Con)                          | † Morton, Wendy ( <i>Aldridge-Brownhills</i> ) (Con)  |
| Bingham, Andrew ( <i>High Peak</i> ) (Con)                          | † Murray, Ian ( <i>Edinburgh South</i> ) (Lab)        |
| † Brennan, Kevin ( <i>Cardiff West</i> ) (Lab)                      | † Nicolson, John ( <i>East Dunbartonshire</i> ) (SNP) |
| Brock, Deidre ( <i>Edinburgh North and Leith</i> ) (SNP)            | † Pursglove, Tom ( <i>Corby</i> ) (Con)               |
| Colville, Oliver ( <i>Plymouth, Sutton and Devonport</i> )<br>(Con) | † Smyth, Karin ( <i>Bristol South</i> ) (Lab)         |
| † Cunningham, Mr Jim ( <i>Coventry South</i> ) (Lab)                | † Throup, Maggie ( <i>Erewash</i> ) (Con)             |
| † Davies, Mims ( <i>Eastleigh</i> ) (Con)                           | † Turley, Anna ( <i>Redcar</i> ) (Lab/Co-op)          |
| † Foster, Kevin ( <i>Torbay</i> ) (Con)                             | Glenn McKee, <i>Committee Clerk</i>                   |
| † Hancock, Matt ( <i>Minister for Digital and Culture</i> )         | † <b>attended the Committee</b>                       |

## Public Bill Committee

Tuesday 31 January 2017

[MARK PRITCHARD *in the Chair*]

### Broadcasting (Radio Multiplex Services) Bill

4 pm

**The Chair:** Welcome to this Public Bill Committee. Before we begin, there are some housekeeping points. Will colleagues ensure that their phones are turned to silent? As colleagues will be aware, tea or coffee are not allowed in these sittings.

**Kevin Brennan** (Cardiff West) (Lab): Just gin.

**The Chair:** Indeed. Thank you for that. I do not see any, but help yourselves to the water.

No amendments have been tabled, so we will begin with a debate on clause 1. I suggest that Members make any remarks they have about clause 2 during that debate. In other words, we will have a general debate about the contents of the Bill on the question that clause 1 stand part. If the Committee is content with that suggestion, I will put the question on clause 2 once we have completed consideration of clause 1 on the basis that those provisions will have been debated.

#### Clause 1

##### SMALL-SCALE RADIO MULTIPLEX SERVICES

*Question proposed,* That the clause stand part of the Bill.

**Kevin Foster** (Torbay) (Con): It is a pleasure to serve under your chairmanship, Mr Pritchard. I thank the members of the Committee for agreeing to serve on it and for their attendance on what is a significant day for Parliament. It is worth saying that the Bill is significant in the impact it will have, and it is worth reminding the Committee that this is the first stage of a three-part process.

First, hopefully the Bill will become an Act and set out a legislative framework to enable small-scale digital radio multiplex services. The second stage—I am delighted to have the Minister on my right—would be a consultation on the orders necessary to create the detail of that legislative framework. Finally, on the basis of that, there would be individual licence applications to Ofcom to put individual multiplexes into operation.

The Bill comes at a timely moment, when we are seeing more and more commercial radio stations and literally hundreds of community stations. At the moment, they are virtually exclusively on analogue frequencies due to the problems they encounter in going on to DAB from the current licensing structure and system. That also means that, sadly, some areas do not have a local digital broadcasting service; they have only the national multiplexes. That is why I think the Bill is so important, and hopefully the Committee will agree to its making progress today, to give those stations an opportunity to go on to DAB.

Members of the Committee will be pleased to hear that I will not rehearse all the arguments we heard on Second Reading. I will be clear that no part of the clause requires anyone to go on to DAB and there is no requirement to provide for anyone to go on to DAB.

**Maggie Throup** (Erewash) (Con): I am concerned about my local community radio station, Erewash Sound. Will my hon. Friend clarify whether the Bill applies just to community stations, or does it also include small commercial radio stations?

**Kevin Foster:** The Bill states that it

“may...require small-scale radio multiplex services to be provided on a non-commercial basis”.

We need to be clear that multiplex is the infrastructure of broadcast rather than the stations. It would therefore be possible where appropriate for small-scale commercial stations to broadcast via such a system—that would not be prohibited by the Bill—but the detail of that would come in the consultation and the orders issued by the Minister, and I believe that would have to come back to Parliament through the affirmative procedure to be agreed. The Bill is not restricted to community stations—small-scale commercial operators would be able to go on to this system—but its purpose and intention is mostly to target the community sector. In the consultation, some details have been considered about exactly how the orders will be framed so that it does not become a way for larger national operators to avoid their regulatory system.

The clause is mostly about sending a message, in particular in subsection (4) which says:

“An order under this section may in particular”.

There was some debate on this in the Chamber, and I know some letters have been sent to hon. Members on this Committee raising particular points. I make it very clear that it is a “may” in there, not a “must”. The clause is there to give a clear understanding of Parliament’s intention in passing the Bill, and some examples of the things that could be put into such an order and into individual licences. However, the list is not exhaustive and the clause allows the flexibility that will be needed in what could be hundreds of individual circumstances and individual applications for licences under any future order.

If we gave no indication of our intentions and the idea behind the Bill, that would leave it too wide. However, if we turned that “may” into “must”, we could end up with some bizarre outcomes in which we would all have wished an operational licence to go ahead, but we had drawn the legislation too tightly, not giving the Department and the Minister enough flexibility in the orders they wished to bring forward to Parliament for approval.

For me, it is ultimately about helping a sector of our economy grow and flourish. As I said on Second Reading, we also always have to consider the alternative. What if we say no, and decide that the Bill should not proceed? The reality of that would be no change to the current framework for the licensing and regulation of digital radio networks, which is nearly 20 years old and was designed to facilitate the development of the national and large local digital radio networks. We would effectively be looking at the successful trials and saying no, we did not wish them to go ahead. The hon. Member for

Bristol South is in her place; we have seen the success of the trials in 10 locations, including Bristol, bringing new and diverse choices. In particular, stations that were internet only have been able to become broadcast stations. We would be saying no, we did not wish that to happen.

The trial licences are not an appropriate basis for long-term licensing of this new technology. Again, a point was picked up on Second Reading about what would happen. It is almost certain that the new radio stations that have been created—new listener choice—would have to be brought to an end. In short, it would be a huge opportunity missed. It is also worth noting that the complexity of running one of these types of stations has reduced quite significantly as the technology has developed. Again, the clause and the Bill are extremely timely.

I recognise that the Bill has a targeted power to modify primary legislation by statutory instrument but, as I said on Second Reading and mentioned again to the Committee today, this approach is incredibly similar to the way in which Parliament created tailored regulatory regimes in similar instances, for example through the Community Radio Order 2004 and the secondary legislation that was used in 2012 for local television. So there are clear precedents for including the power and, as touched on already, it would be exercisable only by affirmative order, requiring the scrutiny and approval of both Houses.

I do not intend to detain the Committee for too much longer. I hope that Members will find this clause acceptable and wish to support the Bill, so that it can progress and we can give a vibrant area of culture and business a real opportunity to go on to a digital broadcasting network.

**Kevin Brennan:** It is a great pleasure to serve under your chairmanship, Mr Pritchard. I think it may be the first time I have done so, and that makes it even more pleasurable.

As the hon. Member for Torbay will know from the extremely able presentation made by my hon. Friend the Member for Tooting (Dr Allin-Khan) on Second Reading, we support the Bill. We will not vote against it today in Committee and we wish him well with it. It is a great opportunity—one that I have never had—to get a private Member's Bill into law. I hope that the Bill, with the fair wind that the Government are giving it, will make its way into law in due course, once it has been through both Houses. However, it is our duty as Her Majesty's official Opposition to scrutinise any Bill, and particularly a private Member's Bill that has Government support—one that was, indeed, drafted by them; so I have some questions for the hon. Member for Torbay, and possibly for the Minister, if he is inclined to contribute. He may bring insights about some of the thinking behind the Bill. However, I am sure that there will be questions that the hon. Member for Torbay can handle for himself.

I shall say frankly that I am raising issues raised with the Opposition by the Community Media Association. The hon. Member for Torbay will be aware of its thoughts. It wanted amendments to be tabled, but I do not think that they were ready in time. However, after today's clause stand part debate they may prove unnecessary; or the association may want to ask for them to be tabled later in the Bill's progress.

The hon. Member for Torbay is right about the fact that discussions often arise about whether the words "may" or "must" should be used in a measure—or sometimes it is "will". We sometimes spend many happy hours debating that in Committee; but in this instance the Community Media Association may be more concerned about including the words "must not" in clause 1. The first point that the association makes is that it might have been better if the clause instructed the Secretary of State not to make an order in relation to small-scale radio multiplex services, except where the description is of services to be provided primarily for the good of members of the public or a particular community, rather than for commercial reasons.

**The Minister for Digital and Culture (Matt Hancock):** For the record, where in clause 1 is the provision that the hon. Gentleman is referring to? The Bill is essentially one clause; when he says amendment is needed to clause 1, a little more erudition would be useful.

**Kevin Brennan:** I do not want to be ruled out of order; often the Minister seeks to run Committees as if he were chairing them. I think that my remarks so far have been perfectly in order.

**The Chair:** For the benefit of the Committee let me say that so far the shadow Minister's comments have been in order; but I do not think that the Minister was trying to say they were not. He may want briefly to clarify. Let us move on.

**Matt Hancock:** I am sorry; I am unintentionally taking more time than I meant to. I wanted to know what, in clause 1, the hon. Gentleman was referring to.

**Kevin Brennan:** As you will understand, Mr Pritchard, I do not want to refer to an amendment that has not been tabled. You will have noticed that I have not done so; but I have alluded to the view that an amendment could be tabled to clause 1. If that non-existent amendment had been tabled and you had ruled it in order it might be inserted, for example, after subsection (4)(c) of the new section that the clause would add to the Communications Act 2003. In that fictitious world that might be where it would be.

An order under the Bill could

"require small-scale radio multiplex services to be provided on a non-commercial basis"

but the Community Media Association's view is that that is not a sufficient guarantee that the services will be operated primarily for public and community benefit. The association feels that there is a risk that, where a small-scale radio multiplex service is run on a commercial basis, charges to small-scale and community radio content providers could remain excessive, and opportunities to reduce their costs through the sale of spare capacity could be lost.

**Kevin Foster:** Perhaps the shadow Minister would refer to subsection (4)(f), which deals with making "provision about the amount of capacity that may be...reserved". Among the things that could be included in an order produced under the framework is reserving a part of the capacity. I remind the hon. Gentleman that a multiplex

[Kevin Foster]

is about the broadcast infrastructure, rather than particular services. Space could be reserved so that it could be had at a competitive price.

**Kevin Brennan:** That is a helpful intervention. I will go on to indicate the Community Media Association's concerns. It says that a

"commercially operated small-scale radio multiplex operator may be inclined to populate available capacity with content from those providers prepared to pay the highest rate, rather than content of the greatest public value."

It says as an example that

"content providers that have very low fixed costs such as those providing semi-automated predominantly music services may be better placed to afford high costs of transmission, than content providers who invest in original local content including speech and local journalism."

4.15 pm

The Community Media Association would have liked to propose—it certainly seeks the promoter's views about this—that

"small-scale radio multiplex services be required to operate for public and community benefit rather than for commercial reasons in order to favour existing community radio providers or consortia of small-scale local and community media to come together to operate the multiplex."

It says that that

"would not preclude a...local commercial radio service from playing a lead role in establishing a not-for-profit vehicle to hold the multiplex licence and to operate it on such a basis that local radio services, including small-scale commercial radio services, are provided with free or low cost carriage, and that any surpluses generated are invested in local content production."

That is the association's first concern.

Its second concern—again, in another world, this might have been dealt with by adding a new subsection after subsection (4)—is another a "must not" concern. The association would have liked the Bill to say that the Secretary of State must not

"make an order under this section in relation to small-scale radio multiplex services except where the order provides that no individual or body corporate may hold or control more than one small-scale radio multiplex licence at any one time."

In the association's view, it

"would be preferable for no person or entity to be permitted to hold or control more than one small-scale radio multiplex service licence in order to encourage local ownership and the establishment of local non-commercial consortia or a local non-commercial operator (such as a community radio service provider) to become small-scale radio multiplex service owners."

It thinks that it is likely that such a multiplex service

"will have an effective local monopoly in the provision of digital sound broadcasting services for its particular area of coverage. The owner will therefore be in a dominant position in the market for carriage of local digital content and there is a risk that this position could be abused to favour some content providers over others.

Multiple ownership of small-scale radio multiplexes is likely to lead to uniformity of content, a higher proportion of non-local content and the use of multiple small-scale multiplexes for the provision of quasi-regional services or, at the national level, the cherry-picking of the most profitable locations by a limited number of operators."

**Kevin Foster:** I understand the points that are being made. Does the shadow Minister agree that a lot of these matters could be dealt with in the consultation on the order? Clearly, if small-scale multiplexes are not created, we will be left with just the local and national ones, on which many community radio stations cannot operate. If we were very specific and restricted it to just one multiplex, that could create inflexibility across the whole country. There may be a scenario in a wide rural area where it actually makes sense to have more than one multiplex for a particular service.

**Kevin Brennan:** I am sure that the hon. Gentleman is right and that will form part of the detailed consultation. However, it is absolutely right that these arguments are rehearsed and put on the record in Committee, where we scrutinise the Bill line by line, and that he has an opportunity to respond, as he just has on that point.

The Community Media Association goes on to say:

"This would reduce the likelihood of small-scale radio multiplexes encouraging local content provision and be likely to result in higher costs to local content providers, which could also price small-scale local and community broadcasters out of access to the service."

It says that multiple ownership of small-scale radio multiplexes could also

"create the situation where a single point of failure of a multiplex operator could impact on large numbers of local content providers in a market where no alternative provider is available."

In its view, a wider

"ecology of multiplex ownership where each small-scale radio multiplex has a unique owner, will avoid this large scale impact, increasing sector level resilience and contributing to sustainability and risk mitigation."

The association also says:

"Multiple ownership of small-scale radio multiplexes is also likely to reduce competition and innovation in the provision of technical services, with technical service providers likely to seek to become multiplex operators in multiple locations. This would have the perverse effect of transforming innovative technical companies into rent collectors from a captive market. The requirement that no individual or entity hold more than one small-scale radio multiplex licence would have the opposite effect, encouraging competition and innovation on the supply side, opening a new market for technical services and improving choice for the multiplex licensees. Multiplex owners would be free to purchase appropriate technical services from a range of service providers, similar to the current situation that exists with analogue sound broadcasting. This would drive customer-centred development such as improved user interfaces, cloud-based services, added value services, cost competition and increased attention to quality of service".

I do not want to go on too long on that point, but I would be very interested to hear the hon. Gentleman's response or from the Minister if he wants to contribute any thoughts on the points raised by the Community Media Association.

There is a third issue that the association wanted to raise—again, it is a "must not" point:

"The Secretary of State is not to make an order under this section in relation to small-scale radio multiplex services except where the order includes conditions to provide for capacity on a small-scale radio multiplex to be reserved for broadcasting services of a description set out in an order under section 262"—

of the Communications Act 2003. I know that the hon. Gentleman does not agree, but the association believes:

"This does not provide sufficient guarantee to community radio services that they will be guaranteed access to the digital platform where it becomes available. Any risk that community

radio services could face competition from new channels on the small-scale radio multiplex while themselves continuing to be excluded for reasons of cost or because carriage is refused by the small-scale radio multiplex operator would be unfair and unacceptable. Community radio services have made substantial investment in facilities, infrastructure, content and social engagement and have delivered broad social impact which has been evaluated by Ofcom and DCMS as a broadcasting success story”.

We agree with that. The Community Media Association believes:

“It would be contrary to the public interest for a situation to arise where the only licensed services that carry significant social gain obligations are excluded from carriage on the next generation of digital broadcasting. Just as BBC local radio services are guaranteed carriage on the existing local radio multiplexes, community radio should be guaranteed carriage on small-scale radio multiplexes”.

It would be remiss of me to finish without mentioning my own local community radio service, Radio Cardiff, since I understand that on Second Reading everybody took such an opportunity.

**Kevin Foster:** I thank the shadow Minister for doing exactly what he said he would do, which was to give the Bill the thorough scrutiny that we would expect in Committee. This is about setting a framework. Many of the details that the Community Media Association has raised are items that would be considered, clearly, in the detail of the consultations on the orders and in individual licence applications. We do not want to set too rigid a framework by Act of Parliament that could end up with applications that could have made real sense at a local level being stymied.

On whether one person can hold more than one small-scale DAB multiplex licence, the detail of how the new licensing regime should operate will be subject to full consultation and set out in any order. The point of the Bill is to set out what the order to be made under the power can do, not what it must or will do. The wording enables provision on the issue but does not require it or any particular policy option, leaving flexibility for the future.

I understand that ownership of a small-scale DAB licence will be included for consideration in the Government consultation on the detailed licensing and regulatory arrangements. There are likely to be other views on the number of licences that each person can hold, and on the availability of small-scale multiplex licences to commercial organisations. At this stage it is important not to prejudge the consultation or the views of other stakeholders by amending the Bill in this regard.

On the ability to run these projects and the types of company, it was interesting to speak to people involved in one of the trials in Bristol. I think one multiplex ran off a laptop for a weekend, so the costs are very small. The Bill is about creating a framework, as we have seen with community FM radio. One of my local youth centres manages to run an FM station each year on a temporary licence. It is becoming increasingly simple, so there is not the complexity that is sometimes suggested.

It is worth noting that the whole purpose of the Bill is to have a light touch and a framework that allows innovation and change, and not to set too much in stone in an Act of Parliament. I recognise the concerns and I have heard what has been said. The intention of the Bill was not to replicate through the back door what in effect we had for national and existing multiplexes—that is, guaranteed BBC coverage. However, a provision is included that would allow a determination to reserve

capacity. If we specified that something had to be included, in theory we could get away with only 1% of a multiplex. It is better to allow flexibility, rather than having a statutory radio service that is similar to a statutory railway service.

**Kevin Brennan:** I understand the hon. Gentleman’s intention not to be too prescriptive, and there are good reasons for that in many pieces of legislation. Will he, however, reflect further on whether anything could be said or done on Report to alleviate some of the concerns expressed by the Community Media Association, not least because the other side of the experience of legislation is often that when a gateway is left open, the strongest push their way through and dominate the landscape, which we have to avoid?

**Kevin Foster:** I thank the shadow Minister for that helpful and constructive intervention. I will certainly be happy to go into a little more detail about our intentions on Report, and I am sure the Minister will want to go into the Government’s intentions for the consultation, assuming that the Bill makes it through Third Reading. I accept the point that too often, certainly in broadcasting circles, the larger beasts are much more able to bang the drum for themselves.

If we do not pass the Bill, however—I am sure the shadow Minister has reflected on this—the only people in digital radio will continue to be the bigger operators, the national networks and the regional broadcasters to which he referred. That is the difference: if we do not set up this framework, in reality a small-scale community station will not be going on to DAB any time soon. The purpose of the Bill is to create a scenario in which a genuine community radio station can get on to digital broadcasting.

As in my example from Bristol, an FM station could literally be run almost as a garden-shed operation, subject to the relevant licence and regulation, allowing it to take a first step into broadcasting. With DAB and digital media, people have two choices. The first is the internet, and the Bill does not cover internet-only broadcasting because it is not broadcasting as such. The second is a local area multiplex, but the likely broadcasting fees would mean a jump from an operation that can be run out of a bedroom to one with a turnover of almost £1 million a year.

I certainly hear the point and we will explore it a little further on Report. However, the point of the Bill is to open up digital to community radio stations, not to close it down. That is why we need to retain flexibility and not be too prescriptive at this stage. With that, I hope members of the Committee are satisfied that the clauses can stand part of the Bill.

**Kevin Brennan:** To come back briefly, the hon. Gentleman referred to some things that the Minister was going to do in the consultation. He said he thought that that was what the Government were going to do. Perhaps the Minister will intervene and confirm that so that it is on the record from the horse’s mouth.

**Matt Hancock:** I will be brief because it is not my day; the Bill is promoted by my hon. Friend the Member for Torbay. The Government support the Bill and I support everything that my hon. Friend has said. We have heard arguments both on Second Reading and in

[*Matt Hancock*]

Committee in favour of having small independent commercial operations being able to take advantage of this Bill, as well as making sure there is enough protection to allow community stations that are not profit-making to make use of it. We will take all of those arguments into account. The Bill does not set the final position on restrictions for holding small-scale DAB licences and does not contain stipulations about licence ownership or operating on a commercial basis.

**The Chair:** Order. It is easily to forget that an intervention has been made on the shadow Minister, but this is an intervention rather than a contribution to the debate.

**Kevin Brennan:** I can fix that by saying I will now sit down.

**Matt Hancock:** I apologise. I thought I was being called to speak rather than to intervene. Having put all that on the record in my long intervention, there is nothing further that I need to say.

**The Chair:** May I say for the record that I always enjoy hearing the Minister, but it was an intervention and interventions have to be short? I was reluctant to intervene on his comprehensive response, but I am always guided by the good advice of the Clerks. I have learnt always to listen to the Clerks of the House, who know what they are doing, which is certainly not the case with me. I will call Kevin Foster one more time if he wishes to respond to any of that.

**Kevin Foster:** I think we can move straight on. I am happy to endorse the Minister's remarks.

*Question put and agreed to.*

*Clause 1 accordingly ordered to stand part of the Bill.*

*Clause 2 ordered to stand part of the Bill.*

*Bill to be reported, without amendment.*

4.33 pm

*Committee rose.*