

## FCC Once Again Declines to Intervene In Format Dispute - US Broadcasters Have it Easy Compared to Much of the World

By David Oxenford

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US broadcasters often complain about FCC regulations on programming, but they don't realize how easy they have it compared to much of the rest of the world. I recently spent several days in one of the former Soviet Republics discussing broadcast regulation with broadcaster representatives, employees of the country's regulatory agency, and members of citizen advocacy groups. What seemed most surprising to those in this developing capitalist country was the fact that, in the US, **broadcasters can change formats at will to react to marketplace conditions**. This is not a freedom enjoyed in much of the rest of the world - even in Western Europe or in Canada. We've written many times (see, for instance our article [here](#)) that the FCC does not consider format issues - even where there are citizens complaints about a proposed change in format or a sale of a station that will probably lead to such a change. In fact, just last Friday, the FCC again reached that same conclusion, finding that it will not prevent a sale because the sale will result in a format change. The FCC has determined that format choices are a business decision protected by the First Amendment, so broadcasters are free to change at will, without the government interfering in these programming decisions.

In the country that I visited, their regulatory agency issues station licenses with strict format restrictions. The agency even regulates networks (both broadcast and cable) to make sure that their programming meets the needs of the communities that they are intended to serve and that the programmers comply with various regulatory and structural requirements. Unlike in the US, where there may be penalties when a company violates the limited program restrictions that are in place (e.g. political broadcasting, children's television obligations, indecency rules), in many countries, even the decision as to what kind of entertainment programming to offer is subject to government review. This country is certainly not unique in regulating broadcasting in that way. In looking at the website of **Ofcom, the regulatory authority for the United Kingdom**, you can see how closely formats are regulated. One recent request for public comment (which could not be approved on an expedited pro forma basis as it was deemed to raise significant questions requiring public input before a decision could be made), proposed the following change in the format of a radio station:

## Current Character of Service

A RHYTHMIC-BASED MUSIC AND INFORMATION STATION PRIMARILY FOR LISTENERS OF AFRICAN OR AFRO-CARIBBEAN ORIGIN, BUT WITH CROSS-OVER APPEAL TO YOUNG WHITE FANS OF URBAN CONTEMPORARY BLACK MUSIC AND AT LEAST 26 HOURS A WEEK OF IDENTIFIABLE SPECIALIST MUSIC PROGRAMMES (TO INCLUDE REGGAE, RnB AND HIP HOP RHYTHMIC-BASED (e.g. DANCE, CLUB etc).

## Proposed Character of Service

A RHYTHMIC-BASED MUSIC-LED SERVICE FOR 15-29 YEAR-OLDS SUPPLEMENTED WITH NEWS, INFORMATION AND ENTERTAINMENT. THE SERVICE SHOULD HAVE PARTICULAR APPEAL FOR LISTENERS IN THEIR 20s AND AT LEAST 12 HOURS A WEEK OF IDENTIFIABLE SPECIALIST MUSIC PROGRAMMES.

Can you imagine a requirement that the FCC look at each proposal of a radio station to make programming changes along the lines set out above? Some US stations make these kind of changes routinely, trying to fine tune their programming to provide the best service that they can to the public. Stations in the US do the research to determine what programming they will broadcast, and how to insure that programming will reach the biggest and best audience - and the station's decisions are not subject to second guessing by the government. In some of these other countries, the government does the research to determine what format it thinks is best for the public. While we had more regulation in the past - these systems are obviously far different from what we do in regulating formats today.

Until the 1980s, US broadcasters had to broadcast a specific amount of news and public affairs programs, and could not run more than a specified number of commercials without the FCC giving extra scrutiny to their renewal application. At license renewal time, competitors could come in and argue that they would better serve the community than would the current licensee. Even requests for allotments for new stations were subject to protest if it could be shown that they would have an adverse impact on the economics of the existing stations. Up until about 50 years ago, the FCC considered format promises in awarding new licenses. But our system never had the detailed micromanaging of formats that is common in much of the rest of the world. Perhaps because of our First Amendment, we take a much more hands-off role in the regulation of broadcasters - for the most part allowing the market to decide how stations serve their audience. And, as a result, we probably have the most diverse offering of

broadcast formats, and certainly the greatest number of broadcast outlets, available anywhere in the world.

In these days of rapid technological change, there is probably even less need for strict programming rules, as the market has far more opportunities to exert itself through various digital delivery systems that provide opportunities to reach the public. And those opportunities will only expand in the future. So, while some in this country seem to even now demand more detailed review of broadcasters, one wonders why the system that has served us so well for so long can't just be allowed to function as it has in the past. We will no doubt write more about these issues in the future, but the contrast with foreign practices provides a very interesting basis for comparison as to how good broadcasters here in the US have it, at least with respect to programming regulations.

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