

Introducing Prior Permission For Premium Rate Services Used In Television And Radio Programmes

response to the ICSTIS consultation from

Chrysalis Radio

Background

Chrysalis Radio is the UK's third largest commercial radio company. We own and operate nine analogue regional and local radio stations under our Heart, Galaxy and LBC brands. In addition, we are a key player in digital radio, both as the lead shareholder in the MXR regional multiplex consortium and as the provider of radio services across the UK on DAB, Sky, Freeview, cable and internet platforms. Each of our three core analogue radio brands uses premium rate services, to varying degrees, for listener interaction, competitions and features. Chrysalis Radio is a member of the RadioCentre, the industry body for UK commercial radio, and we support the submission being made by the RadioCente in response to this consultation.

Q1. Do you agree with this definition of Broadcast Premium Rate Services? If not, why not and what would you propose instead?

We agree with the proposed definition of Broadcast Premium Rate Services as being: *"premium rate services which are promoted on television or radio and which provide a facility for interaction or the provision of information, whether in the form of votes, entries, bids or otherwise howsoever."*

We recognise the need for ICSTIS to define broadcast PRS in a way that is flexible and capable of taking into account future uses of PRS by broadcasters that have yet been devised. We support ICSTIS' aim to provide robust and effective protection for consumers, and that the risks involved in PRS are essentially the same, regardless of the programming use to which premium rate services are put.

Q2. What evidence do you have as to how serious and widespread a problem there is in respect of calls received either before lines are announced as open or after lines are ostensibly closed, and what steps could be taken to manage this problem in a way that limits callers from incurring costs without the benefits of receiving the service?

In radio, as far as we are aware, there is no evidence at all of any such problems. This is primarily because, as an industry, we have always been aware of the risks involved in running premium rate services and of our obligations to both regulators and listeners to ensure our competitions and features are run fairly. As a consequence, compliance systems have always been in place to ensure that the situations described in this question do not arise.

There are two stages to any such compliance system. The first involves broadcaster control of programme content. We have programme management systems in place to ensure that competition start and end times are correctly announced, so that listeners are only invited to make a call or send a text at times when they have a genuine and fair

chance to participate. The second stage is the co-ordination with the relevant service provider to ensure that the required call and text handling facilities are activated and deactivated at the correct times. Our experience to date is that this is a straightforward process, and we are unaware of any systemic failures in any of the premium rate features we have broadcast.

Radio is less prone than television to some of the connection and capacity risks identified. As a largely local medium, we do not experience the same level of call or text volumes as national TV competitions. However, in recognition of network capacity issues – in particular the unpredictable nature of network congestion that can slow down the delivery of text messages – we have routinely built in a short time delay between announcing on air the closure of a competition and the actual closing of lines, so that texts sent before the closing time but received after it can still be considered as valid entries.

Q3. Do you agree with our proposed conditions for prior permission in relation to connectivity and capacity? Have we omitted anything that is critical to considering risk?

We agree with the conditions proposed and we are not aware of any critical omissions.

Q4. Do you agree with our proposed conditions for prior permission in relation to conduct as set out above? Have we omitted anything that is critical to considering risk?

We agree with most of the proposed conditions. However, we have the following reservations:

The requirement that lines must be closed at exactly the same time that they are announced as being closed precludes our ability – detailed in our response to Q2 – to build in a delay to allow messages held up by network congestion to be received. This would seem to place consumers at a disadvantage – they may have entered a competition in good time, and been charged for their entry, but for reasons beyond their or our control, their entry would not be received as eligible. For text-based features, it would seem fairer to announce the closure of lines (thereby effectively bringing listener participation to a close) but actually keep lines open for a short period thereafter to allow for the receipt of texts that may have been delayed. (Clearly, this would not apply in the case of entries by voice telephony, which are not subject to the same risk of delayed delivery).

The requirement for third-party verification of competitions where the prize is worth £5,000 or more is a potentially onerous commitment that is likely to be out of proportion to the value of the competition or the potential consumer harm. The text of the consultation (but not the conditions detailed in the table) also suggests third-party *supervision*, which would add further to this burden. We feel that the requirement to maintain accurate records of winners and the methods of selecting them is sufficient to ensure the fairness of competitions with high value prizes. This makes them verifiable by a third-party, without the cost of obtaining such verification for every competition, whether or not the outcome is eventually disputed. If ICSTIS were still minded to require third-party verification for high value competitions, we propose raising the threshold of prize value from £5,000 to £20,000.

We propose that the requirement to maintain records for 12 months is limited to competitions where the prize is worth £5,000 or more. Some radio stations run many very small competitions throughout every day, where the prize may be as small as a CD or some station merchandise. Maintaining detailed records for every such competition over 12 months is a heavy bureaucratic burden which appears to us to be disproportionate to the potential harm experienced by consumers.

Q5. Do you agree with our proposed conditions for prior permission in relation to cost and conditions as set out above? Have we omitted anything that is critical to considering risk?

We agree with the proposed conditions. There is a very obvious omission in these conditions which we believe it is also an omission from section 5.7 of the ICSTIS Code, namely the applicability to radio of rules concerning the “display” of cost information. We have interpreted these rules to mean that cost information should be broadcast with every mention of the premium number, but this is not stated in the Code or in the proposed conditions. This is sufficiently critical that we do not feel it should be left open to interpretation. We would welcome greater clarity from ICSTIS as to its precise expectations from radio broadcasters.

We note that rule 5.7.5 of the Code provides an exemption from providing cost information where the call or text cost is less than 50p (with some sensible caveats). We believe this is sensible as it recognises the diminished risk to consumers from calling premium rate numbers where the cost is not substantially different from non-premium rate lines. We believe that this rule should similarly be incorporated into the conditions for broadcast PRS.

Q6. Do you agree with our proposed conditions for prior permission in relation to coherence as set out above? Have we omitted anything that is critical to considering risk?

We agree with these conditions.

Q7. Do you agree with our analysis that the same inherent risks for premium rate use in programmes on television also exist in radio?

Q8. Do you agree with our judgement that the definition of Broadcast PRS should specifically extend to radio for the reasons set out above? If not, why not?

Whilst we accept that the proposed conditions for broadcast PRS should extend to radio, we take great exception to the portrayal of radio’s use of premium rate services in this consultation document, and ask that ICSTIS acknowledge that its characterisation of radio’s use of premium rate services is inaccurate.

To our knowledge, ICSTIS is not investigating “a number of complaints involving premium rate usage in radio.” It is our understanding that ICSTIS has investigated two potential breaches of its Code on one of our radio stations – LBC 97.3 in London. Its investigation is not the result of any consumer complaints, but of a sensationalist and misleading report by a television broadcaster. Of the two incidents being investigated, we strongly dispute the validity of one and believe that the sanction imposed by ICSTIS

is disproportionate to both offences. Both cases relate to isolated instances of presenter error, not of any systemic failure nor of any persistent non-compliance. No other radio station, to our knowledge, is being investigated by ICSTIS. It is not true to state that radio has experienced the same issues as TV, but “to a lesser extent.” We have not experienced them to any extent. Your statement that “some in the radio sector are considering how they can satisfy themselves that current and planned services are compliant and we welcome such initiatives” implies – particularly through the use of the word “initiatives” – that radio is addressing premium rate compliance issues for the first time. This is not true. As we – and, we believe, other commercial radio companies – have made clear to you, compliance has been at the heart of all our premium rate activity for as long as we have used premium rate services. When the television issues arose, it was sensible for us to review our compliance systems to ensure that they were robust, and to make them even more effective if we felt we could do so. Most radio companies started their reviews before being asked to do so by ICSTIS. These are not “initiatives” – they are the behaviour of sensible, reputable broadcasters who recognise that consumer confidence in their activities might be undermined by the shortcomings of others. We strongly resent the implication that radio has experienced anything even approaching the scale or nature of the problems experienced by TV.

There are a number of reasons why we believe the risk of significant consumer harm to radio listeners is considerably less than for TV viewers:

- listener interaction is second nature to us. Phone-ins, competitions and listener-based features have been central to radio throughout its history, and for long before the advent of premium rate telephony. Managing these features and ensuring they are fair is something that we have always done as a matter of course. We have built and maintained a strong relationship of trust with our listeners.
- radio programming is live, so errors can be more quickly identified and fixed than is often the case for television.
- almost all commercial radio programming is produced by the broadcaster. This gives us complete and immediate control over our output and eliminates one element of the value chain, making it easier and quicker to resolve any problems.
- most commercial radio is local. As stated above, this means that call and text volumes are usually significantly lower than for features on national TV channels.

It should also be noted that the consequences of the recent premium rate issues on TV have not been as noticeable for radio. We have not experienced any noticeable drop in call or text volumes to our premium rate features. Nor have we seen any increase in the number of consumer complaints.

Despite these important differences in both the nature and experience of the two media, we nonetheless believe it would be sensible to include radio in the prior permission proposals.

We recognise that the risks involved in running premium rate services, whilst less acute on radio than for television, are essentially the same. We largely use the same service

providers as TV, often involving similar executions and mechanics. The risks of mistiming competitions, of network congestion, or of simple human error – whether by the broadcaster or the service provider – are also the same. Prior permission provides comfort to both the service provider and the broadcaster that the other party has adequate compliance systems in place, and that both have taken all necessary steps to reduce the risk of consumer harm. We also acknowledge that, were we not included in the prior permission scheme, we would be vulnerable to the perception of complacency, and of being a less effectively regulated medium, potentially to the detriment of consumer confidence in our services.

Given the lack of evidence that there are systemic issues for radio to address, we suggest that the prior permission scheme for radio is reviewed after the first twelve months, to establish if it is making any meaningful difference to premium rate compliance in radio.

Q9. Do you agree with our proposal to require providers of Call TV Quiz Services to continue to obtain prior permission specific to Call TV Quiz Services but that we include in the existing permission certificates for providers of such services the above conditions? If not, why not?

As this relates specifically to television, we have not taken a view.

Q10. Do you agree with our assessment that Broadcast PRS involving auctions should be included with the need to obtain prior permission? If not, why not?

Q11. Do you agree that music channels using premium rate votes to determine playlists from participants should be included with the need to obtain prior permission? If not, why not?

Q12. Do you agree with our analysis that premium rate services involving charitable giving and donations should be included with the need to obtain prior permission? If not, why not?

We agree that all these services using premium rate services carry similar risks to other forms of broadcast PRS, and so we agree with their inclusion in the prior permission regime.

Q13. Do you agree with our assessment as to why we suggest that chat services should be excluded from the prior permission regime proposed in this paper? If not, why not?

This relates specifically to television, and is already subject to prior permission, so we have no view.

We would welcome clarification from ICSTIS as to applicability or otherwise of the system of prior permission for 'live services' to radio phone-ins, particularly in light of the impending re-classification of 0871 numbers as 'premium rate'.

Q14. Do you consider that there are other categories of service which fall within the definition of Broadcast PRS but which should not be required to obtain prior permission?

We can think of no such services.

Q15. Do you agree with our proposals to introduce prior permission for Broadcast PRS where the primary focus of the need to obtain prior permission will be on service providers alone? If not, why not?

We agree with these proposals. We agree that it is sensible to maintain the current system under which service providers are primarily responsible for compliance, notwithstanding the fact that, as information providers (under the ICSTIS Code) and as broadcasters regulated by the Ofcom Code we share responsibility for ensuring that our features are compliant.

Q16. Do you have any suggestions about how the effectiveness of the proposed prior permission regime might be improved?

We would welcome clarification as to how ICSTIS proposes to define “information provider” in the context of the requirement for the service provider to obtain prior permission for each information provider it deals with. We assume that ‘information provider’ means broadcasting company, rather than TV channel or radio station. Thus, for example, each service provider with which we operate premium rate services would require only one prior permission covering all services provided for Chrysalis Radio, rather than one for each of our radio stations.

Q17. What thoughts or suggestions do you have as to whether or not it would be sensible to engage broadcasters and/or production companies (when information providers) directly within the prior permission regime by causing them to accept, in effect, a position where they are directly answerable to ICSTIS for Code and condition breaches?

We would favour a system where ICSTIS identified the likely party at fault and dealt directly with them as a matter of routine. We find it illogical that, where the broadcaster is clearly the party in breach (for example through a failure to broadcast cost information), complaints are still investigated, by default, with the service provider.

Since we are obliged, both by the Ofcom Code and the ICSTIS Code (as information providers) to ensure the compliance of our premium rate services, we are happy to be directly answerable to ICSTIS for any potential failures on our part. Clearly, this is on the assumption that we will not be exposed to the potential ‘double jeopardy’ of being held to account by both Ofcom and ICSTIS for any non-compliance.

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