

## Consultation response form

### Your response

Question	Your response
<p><b>Question 1: Do you have any comments on Ofcom's proposed Plan of Work 2023/24?</b></p>	<p><i>Is this response confidential? N</i></p> <p><b>Introduction</b></p> <ul style="list-style-type: none"> <li>i. Bedford Radio is the new local radio station for Bedford. We began broadcasting online in 2020, and ran a successful FM RSL in July 2022, providing coverage of the Bedford River Festival and Bedford Fringe Festival. We are currently preparing for our planned launch on SSDAB in 2023.</li> </ul> <p><b>Shortcomings of SSDAB</b></p> <ul style="list-style-type: none"> <li>i. Having previously urged Ofcom to accelerate its roll-out of SSDAB more quickly, in the absence of further FM licensing for community radio, we must report disappointment at how this has worked in practice. Our experience causes us to question whether SSDAB, on its own, is an appropriate and comprehensive long-term solution to the needs of community radio stations.</li> <li>ii. While we do intend to launch on the SSDAB multiplex in Bedford when it begins transmission, its coverage will not be adequate to reach listeners across all of Bedford Borough, which is the area that we wish to serve as a station. While Ofcom's technical assessment of the likely coverage is more extensive than the details given in the bid, the signal is still forecast not to reach a substantial outer portion of the licence area.</li> <li>iii. This limited coverage will pose ongoing problems to us as a station, as some of our prospective listeners will be disappointed to find that they cannot receive Bedford Radio on their DAB equipment, and we will have to devote</li> </ul>

extra resource to publicising alternative ways of listening for this section of our audience. Our own bid for the multiplex included a proposal for three transmitter sites, which we believe would have avoided having such a substantial area lacking in coverage: although we were naturally disappointed not to win the multiplex, the limited level of future coverage, with the difficulties it will create for us, is our major cause for concern.

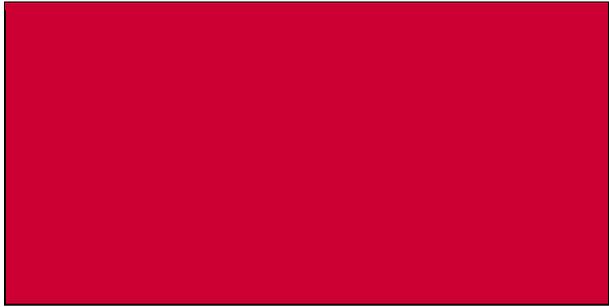
- iv. That said, we are also unconvinced that Ofcom's decision-making process in awarding the multiplex was compliant with its statutory obligations. In justifying its award of the multiplex for Bedford, Ofcom placed particular emphasis on the simplicity of the winning bid (involving a single transmitter site), and the track record of the winning bidder in operating an established community radio station, thus privileging incumbency. We are not satisfied that Ofcom's reliance on these grounds was in line with its statutory obligations.
- v. In respect of the coverage issue, Ofcom is obliged to consider the coverage that the applicant proposes to achieve, and the ability of the applicant to deliver the service. Ofcom rightly notes that it is not obliged to consider one statutory factor above another, so it is in principle within its rights to attach greater importance to ability than to coverage, as it made clear it had done in the Bedford award. But in its award decision for Bedford, it offered no reason for why it had done this, for instance no explanation of why the characteristics of this particular licence made it appropriate to prioritise one factor over another. In the absence of such a justification, the decision appears either to have been arbitrary or to have been taken for reasons outside the bounds of the statutory framework. The reasonableness, and

therefore lawfulness, of this decision appears contestable as a result.

- vi. In respect of incumbency, Ofcom's award decision made clear that it had attached weight to the track record of the winning applicant, implicitly over and above the others (including, but not limited to, Bedford Radio). Ofcom describes its criteria for making award decisions as including whether the applicant is, "a person providing or proposing to provide a community digital sound programme service in that area or locality." However, within this criterion there is no stated distinction between a person providing a service on the one hand, and a person proposing to provide a service on the other: there is therefore no justification for privileging an incumbent service provider over another applicant who proposes to launch a service. The reasonableness of this decision therefore also appears contestable.
- vii. We regret to say that we feel Ofcom may be guilty of a somewhat cynical approach to its decision-making: it will know that small community radio stations will typically be in no position to mount a judicial review of its decision-making, even when they would have grounds for doing so. Knowing that its decision-making is unlikely to face a challenge of this sort may have tempted Ofcom to be lax about acting in line with the requirements placed on it by statute.
- viii. Based on our experience, we are therefore concerned that the roll-out of SSDAB may therefore be hobbled by poor quality decision-making which will leave many communities, as in Bedford Borough, without the radio services that SSDAB was supposed to provide for them.

**Future FM licensing**

- i. In light of the emerging shortcomings of the SSDAB roll-out, we strongly recommend that Ofcom initiates a further programme of FM licensing. This may be a rolling programme following up on its SSDAB licensing, so that in areas where the SSDAB multiplex has been awarded, communities whose needs have not been met can have the gap filled by one or more FM licences.
- ii. We believe such a rolling programme of FM licensing would be appropriate across the country as a whole, irrespective of whether it created scope for one or more further FM licences in Bedford or not. Ofcom has indicated, in correspondence with one of the MPs whose constituency lies within Bedford Borough, that no further FM frequencies are available in our area, due to concerns about interference. The same concerns may preclude the awarding of licences in other areas. However, we understand the Ofcom's policy on protection thresholds is markedly more strict than in many European countries, and that reducing thresholds only very slightly, to bring them in line with practice in other countries, would make frequencies available in many areas.
- iii. We therefore recommend that Ofcom should investigate this issue as part of its planning work for a future programme of FM licensing to follow up the SSDAB roll-out. With this roll-out due to complete within 18 months or so, the research and piloting phase of the new programme should be included in this year's work plan. Ideally, Ofcom should be in a position to award trial licences to explore a modified approach to protection thresholds in 2024 at the latest. Waiting several more years to start this work, until after SSDAB has been fully rolled out, would be unacceptable, leaving many communities facing a long



wait for community radio services to meet their needs.