

# **Ofcom 2024/25 Plan of Work**

## **Maxxwave Response**

### **PUBLIC – Non-Confidential**

In summary, Maxxwave calls upon Ofcom to consider the following matters:-

- 1: Reconsideration of the application of the “40% overlap rule” for Small-Scale DAB, using Leicester and Coventry as case studies
- 2: Asking Ofcom to consult upon their application of Clause 42 of the proposed Media Bill 2023
- 3: Asking Ofcom to reconsider their criteria when refusing analogue license requests based upon “lack of spectrum” or “viability of services based upon spectrum”

## **1: Reconsideration of the application of the “40% overlap rule” for Small-Scale DAB, using Leicester and Coventry as a case studies**

In summary, we ask Ofcom to consider deviating from strict interpretation of the 40% rule of the size of a Small-Scale DAB multiplex using the following criteria:-

**1: The overlapping multiplex has operated at or near capacity for some time.** This demonstrates that you are "protecting" something which cannot accommodate any more services and therefore consumers in the peripheral areas are being denied new services. This is clearly the situation in Leicester as Leicestershire DAB have been "full" for 5 years or so and indicate there is a long waiting list. However, in the case of Coventry, the service does have enough capacity for at least two high quality stereo services (and never has run at full capacity) and therefore clearly has not maximised the revenue earning potential. This is referred to in 4.25 of the Ofcom SSDAB consultation statement – the intention of the legislation to protect local multiplexes.

**2: There are not adjacent multiplexes which stations could use to give contiguous coverage.** In Leicester the adjacent SSDAB polygon to the North-East is 15 miles away, and there is at least 8 mile gap all around Leicester in all directions. Leicester doesn't meet up with any other proposed SSDAB multiplex. In the case of Coventry, there are adjacent overlapping multiplexes in all directions (which we believe are all likely to receive applicants, two have already been awarded and one is in Round 6) and therefore stations can simply go onto adjacent multiplexes in order to extend their coverage. This was referred to in 4.27 of the Ofcom SSDAB consultation statement.

**3: It is not possible to cover a wider area by installing a second multiplex due to lack of spectrum.** Before Leicester was advertised, there was some correspondence about splitting Leicester, but due to lack of spectrum this was not possible. Again this is different to Hull, where if they wanted more coverage they could run a second multiplex, both meeting the 40% rule requirements. In Coventry, there are adjacent multiplexes so the area is already effectively “split”. This was referred to in 3.30 of the original Ofcom SSDAB consultation and 4.29 of the Ofcom SSDAB consultation statement.

**4: Consideration should be made of the build-out of the overlapping regional mux.** In Leicestershire, the regional mux has decided not to cover key areas such as Ashby, Market Harborough, Rutland and similar. However in the case of Coventry, the local area multiplex already has considerably expanded beyond Coventry City (after which it is named) and therefore the Coventry SSDAB multiplex as a result enjoys full coverage of Coventry City and several cities surrounding.

**5: Consideration should be made of the geographical area overlap between the regional and SSDAB muxes.** In Leicester/Leicestershire, the SSDAB is around 80km<sup>2</sup> and the regional is approximately 2300km<sup>2</sup> (taken from land area of Leicestershire and Rutland). Therefore the Leicester SSDAB mux is only covering around 3.4% of the land area. In Coventry, a rough calculation gives this land area overlap at around 30%. This was referred to in 3.31 and 3.33 of the original Ofcom SSDAB consultation and we also note Leicester is the smallest SSDAB multiplex in the UK (and possibly the world) by land area.

**6: Consideration should be made of the SSDAB mux coverage and how that relates to an urban area or similar.** As previously stated, in Coventry, it covers the city which the multiplex is named after well and covers more or less all the Coventry Urban Area. In Leicester, it does not cover the Leicester Urban area at all well and does not even fully cover Leicester Unitary Authority. Furthermore the Leicester SSDAB multiplex is the smallest in the country, with barely 2km range. Ofcom in their original consultation recognised small multiplexes are likely to struggle with viability. This was referred to in 3.25 of the original Ofcom consultation.

Within 3.23 to 3.33 of the Ofcom consultation “Licensing Small Scale DAB”, originally Ofcom had proposed to allow exceptions to the 40% rule, recognising that there is flexibility within legislation (3.23). Within the corresponding Ofcom statement to this consultation to this statement we note that Ofcom made reference to Aberdeen and did not consider Leicester.

We note that it is a matter of historical dispute that the Maxxwave response to the Ofcom SSDAB consultation went missing as it was sent from a mobile phone as one director of Maxxwave at the time was in a coma in an intensive care ward from terminal cancer and the other director was dealing with those issues. We therefore contend that this Leicester scenario was overlooked at the time and with operational experience it is now appropriate to reconsider the application of the 40% rule based upon real-life experiences of Leicester SSDAB, and to reconsider if the conclusions of the 2019 consultation are still appropriate 5 years later in light of operational experience.

Furthermore within 3.24 it is noted that this only applies to overlap with each individual local multiplex. We are aware of some multiplexes which lie straddled across two or more local multiplexes which likely overlap more than 60% of the local multiplex coverage area in total, but as it is straddled across two multiplexes, it only overlaps with 30% of each local multiplex therefore is compliant. In the case of Leicester, as it entirely lies across the Leicester local multiplex, therefore it is in some ways disadvantaged compared to the multiplex that straddles two.

Overall it appears there is no way, other than applying some discretion in respect of the 40% rule to Leicester, that the outskirts of Leicester will ever be covered by SSDAB. Within the “File note on decisions on possible amendments to the Leicester small-scale multiplex ‘polygon’ to be advertised by Ofcom in January 2022”, it does state:-

*We firstly noted that spectrum availability in the East Midlands is very limited. Due to this, it is unlikely to be possible to use two frequency blocks for Leicester and still accommodate the other polygon areas identified in the published Ofcom small-scale DAB plan*

We are fully aware that all multiplexes in the Leicester Area are in high demand, and as the Leicester SSDAB has now been awarded then surrendering the license to re-award two polygons is likely to be impossible.

Furthermore Ofcom is aware there are at least 4 groups in the Leicester area (we can clarify confidentially if required) who for a number of years have been attempting to gain a license and who contend have no legal means to broadcast. One of these 4 stations was on the Leicester SSDAB multiplex and has now come off the multiplex due to lack of coverage.

The most sensible and viable way to cover the entire Greater Leicester Urban area therefore is to consider relaxing the interpretation of the 40% population rule to perhaps 50% population (which is still less than 5% land area).

We therefore ask Ofcom to consider permitting Leicester SSDAB to apply for a power increase and coverage area extension to cover the entire Leicester Urban Area, which will require a consultation, within which Ofcom can also consult upon considering an exception to the 40% population rule. Currently Ofcom has stated they will not even consider such a request.

## **2: Asking Ofcom to consult upon their application of Clause 42 of the proposed Media Bill 2023**

Within the Media Bill 2023, Clause 42 relates to how Ofcom shall issue Local licences.

It states that applications shall be made “in such manner as Ofcom may determine”. We note that Ofcom has a duty to consult, and therefore we ask that Ofcom consults upon what this manner shall be.

Identical wording is used in relation to applications for RSL, DSP and C-DSP licences and in all cases the effect is that applications are accepted at any time, rather than the “license rounds” that are traditionally used for analogue radio services. John Whittingdale and Stephanie Peacock made reference to this whilst the Media Bill 2023 was passing through parliament.

Ofcom has already stated that the competitively awarded license rounds are cumbersome and are the restricting factor preventing applications being made for new analogue license applications.

The 1977 Annan Report and 1988 “Broadcasting White Paper” both are the documents that established the need for the competitive licensing process. Both provide extensive justifications for the current competitive licensing process, based upon an estimated 20 applicants for every single frequency resource that is available.

Particularly in the case of AM, it is very unlikely that even one applicant would come forwards for every frequency resource – we strongly believe even if Ofcom opened up applications “as and when”, as with an RSL license, then the number received would be quite low.

However it is an established principle of spectrum management that radio spectrum must be made available to consumers. This is also an ITU obligation. For this reason countries such as Holland, Italy and others have created a new wave of very light AM licensing services.

Furthermore the principle of access to spectrum for other reasons is established through amateur radio, who enjoy a considerable amount of spectrum worth in excess of £20bn (as recent spectrum auctions have demonstrated), completely free of charge through a “lifetime license”. We only have to look at the arguments being made for retaining Radio 4 Longwave to see that there is demand for such services – potentially groups such as Radio Caroline could run a Longwave service, if they so wished, if this legislation was interpreted in line with the expectations that have been outlined by stakeholders and ministers during the passing of this legislation to date (noting the reading in the Lords has not commenced at the date of submission of this response).

The AM broadcast band has no other use other than radio broadcasting, therefore it cannot be in the consumer interest to not make this available for a new wave of broadcasters in a streamlined manner that will actually reduce the workload upon Ofcom of having to respond to numerous enquiries in relation to new analogue radio licences.

Ofcom therefore needs to consult upon the exact manner in which this clause is to be used, as the discussions in Parliament during this bill (as evidenced in Hansard) clearly support this wording to be used in an identical manner to elsewhere it is used in legislation, such as the RSL, DSP and C-DSP license products.

### **3: Asking Ofcom to reconsider their criteria when refusing analogue license requests based upon “lack of spectrum” or “viability of services based upon spectrum”**

It has clearly been demonstrated across the years that Ofcom has refused a number of services access to analogue spectrum due to the belief that there are not enough frequency resources available to support a radio service, or that those frequency resources will not be “viable”.

Ofcom is aware of several examples (we can provide them confidentially) where Maxxwave customers have been issued FM spectrum that Ofcom initially refused, and these customers are very happily using this FM spectrum several years on without any incident.

In one example the Ofcom coverage maps indicated less than 300 metres coverage from a 200W ERP transmitter, yet the service has operated very satisfactorily with no interference noted for over 4 years now, covering an entire city and having reliable consistent coverage across a 10 mile area.

Ofcom typically refuses spectrum for one of three reasons:-

- 1: The incoming interference will be excessive at all times
- 2: The incoming interference, during adverse atmospheric conditions, will be excessive
- 3: There is not a frequency available that will deliver 54dBuV/m (or 64dBuV/m in the case of community radio) across the service area using the proposed transmitter site without causing harmful interference to other services. (Outgoing interference will be excessive).

“Harmful interference” or “Incoming Interference” is defined by Ofcom with reference to ITU documents and relates to dB protection for certain frequency spacings (100khz, 200khz, etc).

Firstly, in the case of the third situation, where Ofcom determines the outgoing interference to be excessive. We are not particularly asking Ofcom to reconsider this part of their processes – we are not advocating to place any incumbent broadcaster under an increased level of interference. However, we do ask Ofcom to give prospective applicants one opportunity to propose alternative transmission proposals (or shrink their proposed coverage area), giving them the technical reasons for refusal, such that a compromise could be reached rather than simply rejecting an otherwise valid application

There are a significant number of frequency resources available however which have high powered services often around 100 miles away which will support new localised services. The Ofcom “interference limited” RSL assignment process demonstrates this excellently. What we are asking is that this is extended to wider-area services, releasing a number of new FM frequencies for small-scale community radio across most of the UK.

In the case of the first situation, we believe Ofcom is rejecting applications as they are applying the Stereo protection thresholds excessively. It is the case, for example, that 100W ERP would cover a town or city well, without causing outgoing interference to another service, but that Ofcom determine the incoming interference will make the service usable. We ask Ofcom to give the licensee the opportunity to propose either higher power to overcome the incoming interference, to accept a mono protection criteria or accept a degraded quality of service. There are numerous historic licences which have existed for a very long time and in fact are some of the most

successful commercial radio licences in the UK (such as Capital FM London) which do not meet the Ofcom protection criteria across the entire service area and would not be issued today.

In the case of the second criteria, AM licences today only have approximately 50% of the time interference-free reception, not 95% of the time as Ofcom plans to on FM. SSDAB has no percentage of time protection from adverse atmospherics. We suggest that a licensee should be free to accept a service which may be impaired at certain times, as the other alternative is to reject the application completely.

Furthermore the BBC recently did work around protection ratios in WHP349 and concluded that the protection ratios are no longer appropriate as most consumers use portable and car radios for FM, not Hi-Fi FM radios at home in a perfect listening environment as FM protection thresholds were designed for.

FM radio is therefore being held to a far higher standard than DAB, where broadcasters are completely free to determine their coverage area and audio quality through a combination of Encoders, CODECs, Bitrates, Sample Rates and Error Correction profiles. FM is being upheld to a quality far in excess of any DAB service in the UK and Ofcom is acting as the sole arbiter as to what quality a broadcaster will “accept” and viable frequencies and services are being denied on the basis of “insufficient spectrum” which has often been shown to be false.

Whilst the Ofcom Annual Plan is not the place to make detailed technical arguments, we have provided these as demonstrations of where the current Ofcom criteria are preventing stations getting on air and where the analogue radio code is far in excess of digital radio.

We therefore ask Ofcom to consider relaxing their frequency allocation criteria to allow new FM stations on sub-optimal frequencies, as many historic legacy ILR stations have used for (in many cases) over 40 years now and are clearly very viable services.

It is important this is considered in partnership with the Media Bill 2023, as increased spectrum, particularly sub-optimal spectrum, made available on an “on-demand” non-competitive basis will clearly be in the consumer’s interests and significantly ease the demands and burdens on Ofcom for analogue spectrum.