

Small-scale radio multiplex licence award: Tynemouth & South Shields

Background

Ofcom has decided to award a new small-scale radio multiplex licence for Tynemouth & South Shields to Mux One Limited.

In considering the applications it receives for small-scale radio multiplex licences, Ofcom is required to have regard to each of the statutory criteria set out in section 51(2) of the Broadcasting Act 1996 as modified by the Small-scale Radio Multiplex and Community Digital Radio Order 2019. These are as follows:

1. the extent of the coverage area (within the area or locality specified in the Ofcom notice inviting applications) proposed to be achieved by the applicant in the technical plan submitted in its application; (section 51(2)(a))
2. the ability of the applicant to establish the proposed service (section 51(2)(c));
3. the desirability of awarding the licence to an applicant that:
 - a. is a person providing or proposing to provide a community digital sound programme service in that area or locality, or
 - b. has as a participant a person providing or proposing to provide a community digital sound programme service in that area or locality; (section 51(2)(ca))
4. the extent to which there is evidence that, amongst persons providing or proposing to provide community or local digital sound programme services in that area or locality, there is a demand for, or support for, the provision of the proposed service; (section 51(2)(f)) and
5. whether, in contracting or offering to contract with persons providing or proposing to provide community or local digital sound programme services, the applicant has acted in a manner calculated to ensure fair and effective competition in the provision of those services. (section 51(2)(g)).

The legislation does not rate these requirements in order of priority, but it may be that Ofcom will regard one or more of the criteria as being particularly important in view of the characteristics of the licence to be awarded and the applications for it.

Assessment of applications

On 1 September 2020, Ofcom published a notice inviting applications for licences to provide small-scale radio multiplex services in several localities, including in Tynemouth & South Shields.

Ofcom received two applications in response to its notice inviting applications for this locality by the closing date of applications which was 23 November 2020, one of which was from Mux One Limited.

Copies of the non-confidential parts of the applications were made available for public scrutiny on the Ofcom website, and public comment was invited as required under section 50(7).

The other application for this locality, from Muxcast Four Limited, was subsequently withdrawn by the applicant prior to Ofcom's formal assessment of the application.

Ofcom colleagues assessed the detail of applications, including carrying out assessments of the technical plan required to be submitted as part of all applications. Decisions were made by a panel of Ofcom decision makers which convened on 12 February 2021. They carefully considered the application, public comments received, and professional advice from Ofcom colleagues, and applied the statutory criteria in reaching their decision on whether and to whom to award a licence. Reasons for their decision are summarised below.

In relation to section 51(2)(a) the applicant proposed using a single transmitter site to provide the service to the advertised area. Ofcom calculations indicate that this would result in just under 85% of the adult population in the advertised licence area being able to receive the service.

In relation to section 51(2)(c), Ofcom considered financial and business plans, technical plans, the timetable for coverage roll-out, and evidence of relevant expertise and experience. We considered the applicant benefitted from directors possessing considerable relevant experience, had sufficient existing financial resources to establish the service, and would be in a position to establish the service within 18 months of the date of award as required by the legislation.

In relation to section 51(2)(ca), Ofcom noted that the applicant does not have as a participant a person proposing to provide a community digital sound programme service in the advertised area. We noted that involvement of such a person is a desirable feature but not a necessity for applicants.

In relation to section 51(2)(f), Ofcom considered evidence of demand or support from persons providing or proposing to provide community or local digital sound programme services in the advertised area. We concluded that there was sufficient evidence of support, demonstrated through written 'expressions of interest' forms from both community and commercial radio stations, to justify the award of a licence in light of Ofcom's duties. These include amongst other things in carrying out our functions to secure the optimal use of electro-magnetic spectrum, and to secure the availability throughout the UK of a range of radio services.

In relation to section 51(2)(g) and based on the evidence received, Ofcom was satisfied that the applicant had, in contracting or offering to contract with persons providing or proposing to provide community or local digital sound programme services, acted in a manner calculated to ensure fair and effective competition in the provision of those services.

It is noted that the award of a licence does not confer on the awardee the right to implement all elements of the technical plan submitted to Ofcom as part of the successful application. Ofcom will treat proposals in that plan, on the basis of which the award was made, as things the successful applicant has committed to achieve within the 18 month period allowed between award and launch. However, for spectrum planning reasons, Ofcom may also require amendments to proposals between award and licence grant.