

Small-scale radio multiplex licence award: Congleton & Leek

Background

Ofcom has decided to award a new small-scale radio multiplex licence for Congleton & Leek to Moorlands DAB Limited ('Moorlands DAB').

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.

North west England and north east Wales, of which this locality is part, was designated as a 'macro area' because there was potentially insufficient spectrum available to enable to award a licence in all localities advertised. Ofcom therefore adopted a two-stage process. Firstly, we provisionally decided whether and to whom to award a licence in each individual locality applying the statutory criteria. Secondly, having reached a provisional view in relation to each area, we assessed whether there was sufficient spectrum to award licences in all areas where acceptable applications had been received. The notice inviting applications set out that, if there was insufficient spectrum to enable us to make an award in all areas, we would give priority to areas where more capacity was reserved for community digital sound programme services (as specified in the notice) and, where there were

equal numbers of reserved slots, to areas with more existing licensed community analogue services whose coverage area overlaps substantially with the proposed small-scale multiplex.

Assessment of applications

On 1 June 2021 Ofcom published a notice inviting applications for licences to provide small-scale radio multiplex services in several localities, including Congleton & Leek.

Ofcom received one application in response to its notice inviting applications for this locality by the closing date of applications of 1 September 2021, from Moorlands DAB.

A copy of the non-confidential part of the application was made available for public scrutiny on the Ofcom website, and public comment was invited as required under section 50(7).

Ofcom colleagues assessed the detail of the application, including carrying out an assessment of the technical plan required to be submitted as part of all applications. The provisional decision in relation to Congleton & Leek was made by a panel of Ofcom decision makers which convened on 18 March 2022. 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 to award a licence. Reasons for their decision are summarised below.

In relation to section 51(2)(a), Moorlands DAB proposed a single transmitter site to provide a service to the area that was advertised. Ofcom's calculations indicated that this would result in just under 76% of the adult population in the area being able to receive the service. The applicant's technical plan met the 40% local radio multiplex overlap criterion, and there were no significant hole punching issues identified. However, the proposed technical plan is likely to need adjusting to ensure that there is not undue interference to small-scale multiplexes using the same frequency block elsewhere, and to ensure that coverage outside the advertised area remains below 30%. These adjustments may result in a reduction in predicted coverage to just under 72% of the adult population. Ofcom considered this represented a reasonably good level of coverage within the advertised area, particularly in the context of a proposal involving only one transmitter. Details of the coverage likely to be achieved after completion of the frequency allocation process for the north west England and north east Wales 'macro area' are set out below.

In relation to section 51(2)(c), Ofcom considered the applicant's financial and business plans, technical plan, the timetable for coverage roll-out, and evidence of relevant expertise and experience. Decision-makers noted that there were some risks in relation to establishment of the service including that the applicant's board of directors was relatively light on experience of digital radio, and evidenced demand from DSPs was modest. However, it was also noted that Moorlands DAB plans to use an experienced transmitter contractor to establish the service, and that – being a single-transmitter multiplex – the capital costs involved were relatively low.

In relation to section 51(2)(ca), Ofcom considered there were no C-DSP services (prospective or actual) that were participants in the applicant company. The applicant had sought to secure such participation by including Moorlands Radio CIC (which provides Moorlands Radio as an analogue service and proposes to provide a C-DSP on the same basis) as a corporate director, but Ofcom considered that this did not amount to 'participation' as defined, as the company is not a guarantor or member of the applicant. However, as noted below, Ofcom viewed Moorlands Radio's level of

support as relevant to section 51(2)(f). Under the legislation, involvement of such a person is a desirable feature but not a necessity for applicants.

In relation to section 51(2)(f), Ofcom considered that eleven sets of heads of terms represented a relatively modest level of demand and support from programme services. However, we noted that this including four planned C-DSP services representing good support from the community sector in the context of a reserved capacity for three C-DSP services. Two of these were proposed by Moorlands Radio, including one existing community analogue service, and two were existing online only services, providing some confidence as to likelihood of being carried by the multiplex at launch. Ofcom also noted Moorlands Radio's involvement on the board of the applicant as a positive indicator of demand and support.

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.

A panel of Ofcom decision makers convened again on 7 April 2022 to consider whether there was sufficient spectrum to award licences in all localities in the north west England and north east Wales 'macro area' where an acceptable application had been received and, if not, in which areas to confirm the provisional decision to make an award. Under the spectrum plan that was agreed at this meeting, the Congleton & Leek multiplex has been allocated frequency block 9A, which we estimate would enable the proposed multiplex to cover just under 72% of the population in the coverage area advertised by Ofcom.

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.

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