

Small-scale radio multiplex licence award: Liverpool

Background

Ofcom has decided to award a new small-scale radio multiplex licence for Liverpool to Liverpool DAB Limited ('LDAB')

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 Liverpool.

Ofcom received two applications in response to its notice inviting applications for this locality by the closing date of applications of 1 September 2021. These were from LDAB and Liverpool Community SSDAB Limited. A copy of the non-confidential parts of the applications 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 applications, including carrying out assessments of the technical plan required to be submitted as part of all applications. The provisional decision in relation to Liverpool was made by a panel of Ofcom decision makers which convened on 18 January 2022. They carefully considered the applications, 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 successful applicant, LDAB, proposed a two-transmitter network. Our calculations indicated this would be likely to provide just under 79% population coverage within the advertised polygon, although mitigations that will be required to deal with interference to small-scale multiplex areas that may use the same transmission frequency elsewhere may bring this figure down to 70%. Ofcom considered this to constitute a reasonably good level of coverage in the context of the advertised area. The population overlap between the coverage area of the proposed multiplex and existing local Liverpool multiplex was below the 40% limit, and predicted coverage outside the advertised area was under 30%. 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 financial and business plans, technical plans, the timetable for coverage roll-out, and evidence of relevant expertise and experience. Ofcom considered that the applicant would be in a good position to establish the service within 18 months of the date of award as required by the legislation. We noted the availability of the required funding and that the board of directors and shareholders of LDAB have, between them, extensive practical experience of community radio, local commercial radio and digital radio (including small-scale DAB), with day-to-day multiplex management of the multiplex to be provided by the company's two main shareholders, MuxCo and Niocast Digital.

In relation to section 51(2)(ca), Ofcom noted that the applicant has a participant, Missionneed Limited, proposing to provide a community digital sound programme service on the multiplex. Missionneed Limited is the licensee for the analogue community radio service for Knowsley, broadcasting as 'KCC Live'. Participation by a person proposing to provide a C-DSP service is considered a desirable feature under the award criteria, and the fact that KCC Live is an existing analogue service provided a good level of confidence that it will be made available via the multiplex service when launched. Ofcom was cognisant that the applicant also had listed the owners of LCR

FM, an analogue community radio service licensed to serve Liverpool, as a shareholder (and therefore participant) in LDAB. However, the licence-holding company for LCR FM was incorrectly listed in the application as Liverpool Community Radio CIC (the licensee is, in fact, KensingtonVision CIC), an error acknowledged by the applicant in clarification questions. The decision makers instead considered the involvement of directors common to both Liverpool Community Radio and KensingtonVision in relation to evidence of demand and support for provision of the service under section 51(2)(f) below.

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 LDAB had demonstrated a high level of demand for its proposed multiplex from over 30 DSP and C-DSP service providers, evidenced in the majority of cases by signed heads of terms agreements, including support from proposed C-DSPs KCC Live (a participant in the applicant company) and LCR FM, which holds an analogue community radio licence for Liverpool.

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 Liverpool multiplex has been allocated frequency block 7D, which would avoid unwanted interactions with other small-scale DAB services, which removed the need to apply mitigation adjustments. We estimate this would enable the proposed multiplex to cover just under 79% 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.

In order to grant a licence following award, as well as agreeing a final technical plan, Ofcom will also need to be satisfied the licensee is qualified to hold the licence. As well as the technical challenges noted above, Ofcom was mindful of section 44A(1)(h), which applies to circumstances in which the coverage area of a small-scale radio multiplex licence overlaps with the coverage area of an existing local radio multiplex that has connected ownership. LDAB's proposed coverage, as measured by Ofcom, overlaps that of the North East Wales and West Cheshire ('NEWWC') local radio multiplex. Under the legislation, participation in a small-scale radio multiplex by the owners of an overlapping local radio multiplex (regardless of the size of the overlap) is restricted to 30%. However, the owners of the NEWWC multiplex, MuxCo North East Wales and West Cheshire Limited, has a 40% shareholding in LDAB. In order for it to be granted the Liverpool small-scale radio multiplex licence

by Ofcom, LDAB will need to bring itself into compliance with the small-scale DAB ownership regulations. This would be most likely to be achieved via corporate changes, although in theory it would be possible through changes to its technical plan. Ofcom considered that the changes needed were not of a nature that would significantly impact upon LDAB's ability to establish the service.

Following Ofcom's subsequent decision to award the Warrington, Widnes & Runcorn small-scale radio licence to Warrington, Widnes & Runcorn DAB Limited ('WWRDAB') Ofcom is also mindful of section 44A(2), which applies where connected small-scale radio multiplex licensees overlap to a significant extent with one and the same local multiplex. Ofcom considers LDAB to be a "connected person" to WWRDAB, and if the proposed coverage of the Liverpool and Warrington small-scale multiplexes are taken together, they would exceed the 40% limit of the permitted overlaps with a local radio multiplex (in this case, the Liverpool local radio multiplex). In order for it to be granted the Liverpool licence by Ofcom, LDAB will need to bring itself into compliance with the small-scale DAB ownership regulations. This could be achieved either by corporate changes, or through changes to its technical plan, (or by corporate and/or technical plan changes in respect of the Warrington small-scale radio multiplex licence).

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