

## Small-scale radio multiplex licence award: Warrington, Widnes & Runcorn

### Background

Ofcom has decided to award a new small-scale radio multiplex licence for Warrington, Widnes & Runcorn to Warrington, Widnes & Runcorn DAB Limited ('WWRDAB').

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 Warrington, Widnes & Runcorn.

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 WWRDAB. A copy of the non-confidential parts 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 Warrington, Widnes & Runcorn 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) WWRDAB proposed using two transmitters to provide a service to the Warrington, Widnes & Runcorn area, which our calculations indicated would result in just over 90% of the adult population in the advertised licence area being able to receive the service. Overlaps between the population covered by the proposed small-scale multiplex service and that of the Liverpool, Manchester and Stoke-on-Trent local multiplexes remained well under the 40% threshold, and overspill outside the advertised area was well below 30%, so mitigations would not be needed to address these issues. The risk of potential interference to other broadcast radio services was assessed as low, thus no or limited changes should be needed to finalise the technical plan. Ofcom considered this represented a very good level of coverage within the advertised area. 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 noted some key risks to establishing the service. These included the risk that corporate changes may be required to ensure that the holders of the licence for this multiplex and that for the Liverpool small-scale multiplex are not connected persons (see below). Additionally, Ofcom noted that there may be technical issues to resolve noting the height and power of the St Mary's Church transmitter. However, with finance available through a shareholder's loan and experienced directors who, between them, have experience of both commercial and community radio, as well as operating digital radio multiplexes, Ofcom considered WWRDAB would be in a reasonably good 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 has as a participants two shareholders, Radio Warrington C.I.C. and Halton Community Radio (both existing analogue community radio stations in the area to be served by this multiplex), proposing to provide a community digital sound programme service in the advertised area. Participation by persons proposing to provide a C-DSP service is considered a desirable feature under the award criteria, and

the fact both are existing analogue services provided a good level of confidence that they will be made available via the multiplex service when launched.

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 a good level of demand and support for the new multiplex from 18 potential programme service providers, 16 of which had electronically signed heads of terms (including two C-DSP 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.

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 Warrington, Widnes & Runcorn multiplex has been allocated frequency block 8B, which we estimate would enable the proposed multiplex to cover just over 88% 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 Ofcom will need to be satisfied the licensee is qualified to hold the licence. In awarding this licence, Ofcom was 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 WWRDAB to be a "connected person" to Liverpool DAB Limited, which has been awarded the new small-scale radio multiplex licence for Liverpool. 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 Warrington, Widnes & Runcorn licence by Ofcom, WWRDAB 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 Liverpool small-scale radio multiplex licence).

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