

Small-scale radio multiplex licence award: Derby

Background

Ofcom has decided to award a new small-scale radio multiplex licence for Derby to Derby DAB 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

On 14 July 2022, Ofcom published a notice inviting applications for licences to provide small-scale radio multiplex services in localities including Derby.

By the closing-date of 14 October 2022, Ofcom had received two applications for Derby. These were from Subdigital Derby Limited and Derby DAB Limited (“Derby DAB”). 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).

Ofcom colleagues assessed the detail of the applications, including carrying out an assessment of the technical plans required to be submitted as part of all applications. The decision in relation to Derby was made by a panel of Ofcom decision makers which convened on 26 May 2023. They carefully considered the applications, professional advice from Ofcom colleagues and public comments received. They applied the statutory criteria in reaching their decision on whether and to whom to award a licence. Reasons for their decision to award a licence to Derby DAB are summarised below.

In relation to section 51(2)(a), the successful applicant proposed using two transmitters to provide its service. Ofcom calculations indicate that this would result in approximately 79% of the adult population in the advertised licence area being able to receive the service. Ofcom’s coverage predictions indicated that the proposed small-scale radio multiplex service would be available to under 40% of the population in the licensed area of the overlapping local radio multiplexes service (principally the Derbyshire local multiplex with a very minor overlap with the Nottinghamshire local multiplex), and that overspill outside the advertised area was negligible and well under 30% of the population of the advertised area. Therefore, no mitigations would be required to comply with these thresholds. Ofcom also considered that mitigations were unlikely to be required to address any hole-punching or interference issues. Decision makers considered the predicted level of coverage was good, including robust coverage in Derby, although coverage was patchy in the north of the area including around Belper.

In relation to section 51(2)(c), Ofcom considered the applicant’s financial and business plan, technical plan, the timetable for coverage roll-out, and evidence of relevant expertise and experience. Decision makers noted that although projected costs were relatively high, the applicant had provided a robust technical plan, and convincing evidence in relation to funding. Individuals involved in the application also had significant experience in the sector. Overall, decision makers concluded that they had a high degree of confidence in the applicant’s ability to establish the service within the 18 month period allowed by legislation.

In relation to section 51(2)(ca), one participant in the applicant is a prospective provider of a C-DSP service (Derby Sound CIC). Decision makers noted that the shareholding was low at 5% and the provider is not an existing community analogue radio licensee. However, as an existing, community-based online service in Derby, they considered there to be a reasonable prospect of the service being available on the multiplex as a C-DSP from launch of the multiplex.

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 (C-DSP and DSP services) in the advertised area. As well as the participant mentioned above, the applicant had provided evidence of interest from two other prospective C-DSP services, including an existing

community analogue radio licensee (Radio Ikhlas) and Derby's Community Radio CIC (which provides the online service, BaD Radio) as well as from 17 DSP services. Decision makers considered that the applicant had provided robust evidence of having established a good level of support for the proposed multiplex, albeit it would be important to build some further support post-award from the community sector in the context of a reservation of six slots for community radio services in the locality representing an active community sector in Derby.

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. Decision makers noted that the applicant had provided good evidence of active outreach to both commercial and community 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.

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