

# Small-scale radio multiplex licence award: Newry

## Background

Ofcom has decided to award a new small-scale radio multiplex licence for Newry to UlsterMUX 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 Newry.

By the closing-date of 14 October 2022, Ofcom had received two applications for Newry. These were from Newry Community SSDAB Limited and UlsterMUX Limited (“UlsterMUX”). 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 Newry was made by a panel of Ofcom decision makers which convened on 27 January 2023. 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 to award the licence to UlsterMUX are summarised below.

In relation to section 51(2)(a), the successful applicant proposed using five transmitters to provide its service. Ofcom calculations indicate that this would result in just under 78% 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 well under 40% of the population in the licensed area of the overlapping Northern Ireland local radio multiplex service, and that overspill outside the advertised area was well under 30% of the population of the advertised area. Therefore, no mitigations would be required to comply with these thresholds. Ofcom considered some mitigations may be required to address potential hole punching issues, but these would be likely to result in a fairly small reduction in anticipated coverage to around 74%. Decision makers noted that the advertised area was particularly challenging to cover, both due to the topography of the area, and because a very substantial proportion of the population lives outside the city of Newry itself, including in Banbridge, Warrenpoint and smaller towns and villages. In that context, a key feature of the application was that as well as achieving a good extent of coverage in a difficult area to cover, it reached communities across the advertised area, extending the scope for new services in the area.

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 recognised that, whilst the applicant proposed very good coverage in challenging circumstances, this necessitated a relatively complex plan in order to achieve the reach promised. Decision makers noted that a transmission partner had not been identified and that the difficulties of establishing the service within the strict 18-month timescale allowed in the legislation should not be underestimated. However, individual participants in the applicant had good technical experience, transmitter sites were sensibly chosen, and decision makers considered there was a reasonable prospect of the multiplex launching within the statutory period, provided the applicant progressed its plans promptly following award.

In relation to section 51(2)(ca), it was noted that no prospective C-DSP services were participants in the applicant company. 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 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. The applicant had provided heads of terms from two prospective C-DSP services, both of which had applied for C-DSP licences (Bounce Digital, and Raidió Rí-Rá), as well as ten heads of terms and two other expressions of interest from prospective DSP services. Decision makers considered this represented a reasonably good level of demand and support in the context of an area with relatively low population and a modest reservation of capacity for four C-DSPs, and discussions appeared reasonably well advanced in most cases (albeit this did not include an expression of interest from the existing analogue community service in the area, Iur FM).

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 engagement with a wide range of prospective providers in addition to those that ultimately decided to express support at the point of application.

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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