

Small-scale radio multiplex licence award: Isles of Scilly (re-advertisement)

Background

Ofcom has decided to award a new small-scale radio multiplex licence for the Isles of Scilly to Saltito Media 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 30 March 2023, Ofcom published a notice inviting applications for licences to provide small-scale radio multiplex services in localities including the Isles of Scilly. It is noted that this is the second time a licence for the Isles of Scilly has been advertised. A licence had been awarded to Like DAB Limited in July 2021, but the award had been revoked in January 2023 on the basis Ofcom had reasonable grounds for believing the person to whom it had been awarded would not provide the service within 18 months of award.

By the closing-date of 30 June 2023, Ofcom had received one application for the Isles of Scilly. This was from Saltito Media Limited (“Saltito”). 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), although no comments were received.

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 decision in relation to the Isles of Scilly was made by a panel of Ofcom decision makers which convened on 8 September 2023. They carefully considered the application and professional advice from Ofcom colleagues, and applied the statutory criteria in reaching their decision on whether to award a licence to the sole applicant. Reasons for their decision to award a licence to Saltito are summarised below.

In relation to section 51(2)(a), the successful applicant proposed using one transmitter to provide its service. Ofcom calculations indicate that this would result in approximately 100% 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 a negligible percentage of the population in the licensed area of the overlapping Plymouth & Cornwall local radio multiplex service, and that there was no overspill outside the advertised area. Therefore, no mitigations would be required to comply with the relevant thresholds relating to overlap and overspill. Ofcom also considered no mitigations would be likely to be necessary in relation to compliance with the overall Ofcom spectrum plan. Decision makers noted that coverage was excellent within the advertised area (albeit that the population of the Isles of Scilly is very low compared with other areas where small scale multiplexes are planned).

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 the individuals involved in Saltito’s application were the same as had been involved in the earlier Like DAB Limited application, which had ultimately been revoked due to inability to launch within the 18 month statutory period. However, progress appeared to have been made regarding finalising transmission arrangements and procurement of equipment, providing decision makers with reasonable confidence that the multiplex would be established within the 18 month statutory period.

In relation to section 51(2)(ca), it was noted that that the applicant had indicated that the two individuals who are participants in the applicant company planned to provide a C-DSP service called Scilly Updates, but not via Saltito itself. Technically, however, since a C-DSP licence can only be held by a corporate entity and not an individual, this means the participants themselves cannot be considered to be proposing to provide a C-DSP service but rather they proposed to be involved in such provision via a corporate entity which is not a participant in the applicant. As such, we assessed

that the applicant did not include as a participant a person proposing to provide a C-DSP service. Under the legislation, participation of a person proposing to provide a C-DSP service 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. As noted above, participants in the applicant proposed to be involved in provision of a C-DSP service, and heads of terms were also provided in relation to four DSP services. Decision makers considered this constituted very limited evidence of demand and support, particularly noting that the proposed services were mainly related to the applicant itself and the C-DSP service does not currently exist in any form. It was disappointing that the application provided no evidence of interest from either the existing community analogue service on the Isles of Scilly nor other services targeting Cornwall which are not receivable via digital radio on the islands at present. However, this needed to be put in the context of an advertised area with an unusually low population. The multiplex would extend digital coverage to islands which are not covered by the mainland local multiplex service or national multiplex at present, and therefore at least provide an option for services which might in future wish to consider covering the Isles of Scilly.

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, however, that there was limited evidence of active engagement with prospective providers as indicated by the low level of evidenced demand and support (and no new activity appeared to have been undertaken since the first application from Like DAB Limited).

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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