

An application by MuxCo Wales Limited ("MuxCo"), the holder of the local radio multiplex licence for Mid & West Wales, to extend the licensed area<sup>1</sup> for its service to include Swansea, has been refused by Ofcom.

This application was submitted by MuxCo in accordance with section 54A of the Broadcasting Act 1996 ("the 1996 Act"). This section requires Ofcom to consult on any such requests before it makes a decision, and so a public consultation was held between 30 January and 28 February 2017.

Ofcom received three responses to the consultation – one from the holder of the Swansea local radio multiplex licence, Switchdigital (S&S) Limited ("Switchdigital"), opposing the request, and two other responses from individuals who were in support of the request. The three responses, along with a subsequent response from MuxCo and the consultation document, are at:

<https://www.ofcom.org.uk/consultations-and-statements/category-3/local-dab-change>

### Statutory considerations

Under section 54A(6) of the 1996 Act, Ofcom may approve a request to extend the licensed area of a local radio multiplex service only if it is satisfied that doing so would not unacceptably narrow the range of programmes available by way of local digital sound programme services to people living in the area currently served by the local radio multiplex service in question (i.e. Mid and West Wales, in this particular case).

MuxCo's proposal would result in no change to the current range of local digital sound programme services available in the Mid & West Wales area, and so Ofcom was satisfied in relation to that statutory criterion.

### Policy considerations

Where Ofcom is satisfied that the request meets the terms of the statute, the decision whether or not to agree to it is at Ofcom's discretion.

Ofcom has published a general policy for exercising our section 54A powers. It includes that we are likely to grant requests to exercise those powers if we are satisfied in relation to the following criteria:

- doing so would be calculated to maintain or promote the development of digital sound broadcasting in the UK otherwise than by satellite;
- the licensee's proposed coverage plans are satisfactory;
- the licensee has the ability to maintain the licensed service, and;

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<sup>1</sup> A licensed area is the area in which a local radio multiplex service is required to be available and within which its broadcast signals are protected from interference. A multiplex service may not necessarily be available in every part of its licensed area, as the actual coverage of the multiplex will be determined by its transmission arrangements.

- there are sufficient safeguards in place to protect the rights and interests of stations carried on the multiplex and the rights and interests of other multiplex operators (and the stations they carry).

The underlying aim of the policy is that a sustainable local structure for DAB will be realised, allowing a migration to universal, local DAB transmission, with the consumer benefits of greater choice of, and competition in, services and the extension of those services into un-served areas, and the additional functionality on DAB. We therefore had this in mind when considering whether we could be satisfied, in light of all the information available including the representations in response to the public consultation, that the four policy criteria above were satisfied in this case.

In considering MuxCo's request in relation to the first of the policy criteria listed above, Ofcom took account of the fact that the request, if approved, would not result in local DAB coverage being extended into an un-served area as there is no proposed change to the coverage of the Mid & West Wales multiplex. Indeed, in its application for the change MuxCo stated that the purpose of its request was to "formally incorporate coverage [of the city and county of Swansea] that the multiplex already delivers". Since the proposal would not provide a service in an un-served area as the Mux Co service is already being transmitted in the Swansea area, its provision would not in itself enhance consumer choice in terms of the services available in the Swansea area (listeners would continue to receive the services they are able to receive currently) or result in an increase in competition in that area.

Also in its response to the consultation, Switchdigital argued that the proposal to make a formal change to MuxCo's licensed area, if approved, could operate to harm the development of DAB broadcasting because it would increase the cost to Switchdigital, whose service was specifically designed and licensed for the Swansea area, of improving the coverage of its own multiplex in that area (if it chose to do so) as in that event Switchdigital would be required to deploy an additional transmitter to avoid causing interference to the Mid & West Wales multiplex. Whilst we acknowledge that Switchdigital might have to deploy an additional transmitter in these circumstances, we do not attach great weight to this argument since the coverage of the Swansea multiplex in the area which MuxCo is seeking to add to its licensed area is already very extensive, and consequently, it does not seem very likely that Switchdigital would seek to enhance its coverage there.

As stated above, the underlying aim which Ofcom is seeking to facilitate when considering requests such as this one from MuxCo is a sustainable local structure for DAB with the consumer benefits of greater choice of, and competition in, services. MuxCo stated in its request that approval of the change would "make the multiplex more attractive to potential service providers thereby enhancing the multiplex's financial viability". In its response to the consultation, Switchdigital argued that any increase in the attractiveness of the Mid & West Wales multiplex to potential service providers would be at the expense of its own Swansea multiplex. However, neither party provided any evidence to support their respective positions, and therefore Ofcom was unable to reach a conclusive view on whether and if so, how the proposed extension would, or could be likely to, impact on the enhanced attractiveness or otherwise of the Mid & West Wales and Swansea multiplexes.

The two other respondents to the consultation considered that the change would help to promote DAB, although only one gave a relevant reason for their view – that it will promote

interest in new services coming on-air which will further increase DAB take-up in West Wales. However, given that the change requested by MuxCo would not have any impact on the coverage being provided by the Mid & West Wales multiplex, and in light of the lack of evidence that the change would have any impact on potential service provision, we were not satisfied the change would be calculated to maintain or promote the development of digital sound broadcasting in the UK otherwise than by satellite.

In considering the second policy criterion, it was noted that MuxCo was not proposing any changes to its existing transmission arrangements, and so we did not have to consider whether any proposed coverage plans were satisfactory.

In relation to the third policy criterion, we noted that MuxCo Wales has operated the Mid & West Wales multiplex since August 2013, and is majority owned by Nation Broadcasting, which has investments in three other local DAB multiplexes and operates several analogue radio stations in Wales. No evidence has been provided to suggest that MuxCo Wales would not continue to be able to maintain its licensed service (i.e. operate the Mid & West Wales multiplex) if its change request was approved, and thus we were satisfied in relation to our third policy criterion.

In considering the fourth policy criterion – whether there are sufficient safeguards in place to protect the rights and interests of stations carried on the multiplex and the rights and interests of other multiplex operators (and the stations they carry) – Ofcom took into account MuxCo’s statement in its application that such safeguards are in place, and its view that there would be “no impact on other local DAB multiplexes in South Wales”. However, we also took account of the response from Switchdigital, who clearly disagreed that the change would not have any impact on other local multiplexes in South Wales.

Both MuxCo and Switchdigital made reference in their submissions to the Local DAB Expansion Plan, an agreement between Government, the BBC and the operators of local DAB multiplexes (i.e. including both MuxCo and Switchdigital) made in 2014 to extend and improve local DAB coverage to make it broadly equivalent to the existing FM coverage of the largest local commercial radio service in each local area. MuxCo stated that as part of “the wider industry discussions” (i.e. the discussions which led to this agreement), “we believe that there are sufficient safeguards in place to protect the rights and interests of other multiplex operators and the services they carry”. However, Switchdigital pointed out that MuxCo had not requested this extension to its licensed area during the negotiations that led to that agreement so the extension was not considered alongside the series of other changes to licensed areas (and frequencies) requested by all local multiplex operators in 2015 to help facilitate the Local DAB Expansion Plan<sup>2</sup> (i.e. what MuxCo referred to as “the wider industry discussions”). Consequently, MuxCo’s belief that the rights and interests of other local multiplex operators were sufficiently safeguarded on the basis of that agreement was based on industry discussions which had not considered the change to the licensed area MuxCo was now proposing.

In light of the above and having considered all the available information and representations made, we do not consider that we have sufficient evidence to be satisfied that there are sufficient safeguards in place to protect the rights and interests of other multiplex operators.

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<sup>2</sup> <https://www.ofcom.org.uk/consultations-and-statements/category-3/extend-dab-coverage>

Finally, before reaching a decision on whether or not to grant MuxCo's request, we also considered whether there were any other factors we should take into account (including any factors specific to the request) which might be relevant to our consideration of this application.

As indicated above, local multiplex licensed areas have in general been designed to reflect the editorial/transmission areas of the main 'heritage' FM services in each local area. The Mid & West Wales multiplex was planned to provide a DAB service which matches (as far as reasonably practicable) the combined coverage of the FM services for each of Ceredigion, Pembrokeshire and Carmarthenshire, while the Swansea multiplex (the licence for which is held by Switchdigital) was planned to match the FM coverage of the original Swansea licence (currently held by The Wave).

In addition, as part of the recent Government Digital Radio Action Plan, Ofcom was asked to plan local DAB coverage to ensure that listeners to local FM services would not lose reception in the event of an analogue switch-off. Our approach to that plan (which was the subject of a consultation) was to match as closely as possible the editorial areas of local analogue services rather than necessarily the areas they reach with a signal.

We do not consider that extending the licensed area of the Mid & West Wales multiplex to include Swansea would be consistent with these core policy objectives, nor our underlying policy aim as set out above, as it would represent the 'formalisation' of overspill coverage rather than an extension of local DAB coverage to better match the coverage of relevant FM services to allow for a migration to universal local DAB transmission.

Accordingly, for the reasons set out above, we have decided not to grant MuxCo's request.