

Small-scale radio multiplex licence award: Darlington & Bishop Auckland

Background

Ofcom has decided to award a new small-scale radio multiplex licence for Darlington & Bishop Auckland to Durham Digital Limited (“Durham Digital”).

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 of application

On 25 January 2022, Ofcom published a notice inviting applications for licences to provide small-scale radio multiplex services in localities including Darlington & Bishop Auckland.

By the closing-date of 25 April 2022, Ofcom received one application for this locality from Durham Digital Limited (“Durham Digital”). 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). No public 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 Darlington & Bishop Auckland was made by a panel of Ofcom decision makers which convened on 9 September 2022. They carefully considered the application and professional advice from Ofcom colleagues, applying the statutory criteria in reaching their decision on whether to award a licence to the applicant. Reasons for their decision to award the licence to Durham Digital are summarised below.

In relation to section 51(2)(a), the successful applicant proposed using two transmitters to provide its service. Ofcom calculations indicated that this would result in approximately 60% of the adult population in the advertised licence area being able to receive the service. Decision makers noted percentage coverage was relatively low, and it was disappointing that some population centres within the advertised area (notably Newton Aycliffe, Crook, Spennymoor and Barnard Castle) are not predicted to receive coverage under the submitted technical plan, and the applicant’s own submitted coverage predictions may be over-optimistic, particularly regarding Newton Aycliffe. However, the use of two transmitter sites means the towns giving the advertised area its name (Darlington and Bishop Auckland) are both predicted to receive good coverage. Our coverage predictions indicated that the proposed small-scale radio multiplex service would be available to substantially less than 40% of the population in the licensed area of the overlapping local radio multiplex services (principally Teesside, with very small coverage overlaps with Tyne & Wear and North Yorkshire), and that signal 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 did not consider that mitigations would be likely to be required to meet interference constraints identified in the notice inviting applications.

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 there were some risks to establishment of the service, including relatively low levels of committed funding and potentially over-optimistic coverage assumptions which may have an impact on the business case. However, confidence in the applicant’s ability to establish the service was reinforced by the expertise and experience of those involved in the application, including in an earlier small-scale multiplex launch. It was therefore considered that the service would have a reasonable prospect of launching within the 18 month period allowed in the legislation.

In relation to section 51(2)(ca), Ofcom noted that the applicant has as participants three organisations proposing to provide community digital sound programme services in the locality (Prince Bishop Community Broadcasting Limited, Prince Bishop Hospital Radio, and Aycliffe Radio CIC). Decision makers noted that Aycliffe Radio refers to the town of Newton Aycliffe which, as

mentioned above, is not predicted to receive coverage under the technical plan submitted. This may present a risk to the service being available on the multiplex when launched. However, the service proposed by Prince Bishop Community Broadcasting Limited (Bishop FM) is an existing community analogue service in Bishop Auckland, and therefore has a very good prospect of appearing on the multiplex at launch. Each of the three participants has a reasonably substantial interest in the applicant (each with a 16.7% shareholding).

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. The three participants noted above expressed an interest in providing community digital sound programme services (noting the obstacles in relation to coverage as noted above), and there was also a healthy level of interest from 13 digital sound programme services, evidenced through heads of terms.

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.

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.

September 2022