

Small-scale radio multiplex licence award: Torbay

Background

Ofcom has decided to award a new small-scale radio multiplex licence for Torbay to TorDab 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 Torbay.

By the closing-date of 14 October 2022, Ofcom had received two applications for Torbay. These were from Torbay DAB Limited and TorDab Limited (“TorDab”). 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 Torbay was made by a panel of Ofcom decision makers which convened on 16 December 2022. 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 TorDab are summarised below.

In relation to section 51(2)(a), the successful applicant proposed using three transmitters to provide its service. Ofcom calculations indicate that this would result in approximately 57% 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 multiplex service (Exeter, Torbay & North Devon), 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 also considered mitigations were unlikely to be required to address co-channel interference and hole punching issues. Decision makers noted that achieving a high percentage coverage was challenging in the advertised area, partly due to topography and partly because there are several significant population centres in the advertised area but some distance from the most densely populated area (Torbay itself). Some of these population centres, towards the south and west, may be covered by a future South Hams multiplex (which is planned but has yet to be advertised). The applicant’s proposals focused on the north and east of the advertised area, providing good coverage within that 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 noted that the applicant had provided a plan which was uncomplicated in the context of a three-transmitter solution, involving well-chosen sites in terms of permissions and deliverability. As noted above, the technical proposal was robust and did not appear to require mitigations. The application also involved experienced individuals with a longstanding commitment to local radio in the area, and included a sensible business plan. Taken together, these elements provided decision makers with a high level of confidence that TorDab would be in a good position to establish its service with the predicted level of coverage within the 18 month period as set out in the legislation.

In relation to section 51(2)(ca), Ofcom noted that the applicant itself and one participant in the applicant company were persons proposing to provide C-DSP services. Decision makers noted that

there was a reasonably good prospect of the participant (South Devon Radio Limited) being carried as a C-DSP service from launch of the multiplex given it is an existing online service and had applied for a C-DSP licence. They also noted that its 51% shareholding was a majority holding in the applicant. They noted that there were more risks over provision of the applicant's own proposed C-DSP service which is not a current service either broadcast or online, although the applicant includes individuals with experience of the radio sector in Devon.

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 two C-DSP services proposed to be provided by the applicant and South Devon Radio Limited, four sets of heads of terms and two other expressions of interest had been received from prospective C-DSP services including existing online services taking the opportunity to expand their availability to digital broadcasting. Expressions of interest had also been provided in relation to 14 other DSP services. Decision makers noted that there was evidently strong demand and support for the multiplex from prospective providers of C-DSP and DSP services in Torbay.

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 positive engagement with a wide range of prospective providers in developing the application, including those that ultimately chose to support another applicant. As with other contested applications, different prospective DSP and C-DSP service providers may be contacted but for various reasons decide to support different applicants. Decision makers noted the value of wide but tailored engagement before an award, and promptly re-establishing discussions after the award decision has been made.

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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