

Small-scale radio multiplex licence award: Banbury & Bicester

Background

Ofcom has decided to award a new small-scale radio multiplex licence for Banbury & Bicester to NOxDAB 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 Banbury & Bicester.

By the closing-date of 14 October 2022, Ofcom had received two applications for Banbury & Bicester. These were from Maxxwave Limited and NOxDAB Limited (“NOxDAB”). 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 Banbury & Bicester was made by a panel of Ofcom decision makers which convened on 28 April 2023. They carefully considered the applications, professional advice from Ofcom colleagues and public comments received. They applied the statutory criteria in reaching their decision on whether and to whom to award a licence. Reasons for their decision to award a licence to NOxDAB 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 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 less than 40% of the population in the licensed area of the principal overlapping Oxford local radio multiplex service (with negligible overlaps with the coverage areas of three other local radio multiplexes), 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 that mitigations were unlikely to be required to address any hole-punching or interference issues. Decision makers considered the predicted level of coverage was good, and in particular included robust coverage in each of the three principal towns in the advertised area (Banbury, Bicester and Brackley).

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 one of the sites identified by the applicant, which would provide coverage in Banbury, was a local church. Whilst there was support from the relevant diocese, it was recognised that, given the importance of coverage of Banbury, it would be important to move forward in resolving potential challenges around planning consent involving a Grade II listed building promptly so as to de-risk launch plans. They also noted that projected costs were relatively high, reflecting the applicant’s three-transmitter technical plan. However, decision makers also noted that individuals involved in the application demonstrated extensive experience of and commitment to the radio sector locally and a robust business plan had been provided. Overall, decision makers concluded that they had a reasonably high level of confidence in the applicant’s ability to establish the service within the 18 month period allowed by legislation.

In relation to section 51(2)(ca), three participants in the applicant are prospective providers of C-DSP services, each with a 12.5% stake. These include a provider of an existing hospital radio service (Radio Horton) and two existing online services (3Bs Radio CIC and Puritans Radio Limited). Decision makers noted that, whilst there was likely to be less certainty that these services would launch as C-

DSPs than would be the case for existing analogue community services, there was nonetheless a reasonable level of confidence that the services would be available on the multiplex as C-DSPs from launch.

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 three prospective C-DSP services referred to above, the applicant had provided evidence of interest from two other prospective C-DSP services, as well as from six DSP services. Decision makers considered that, whilst this included expressions of interest from participants in the applicant, this nevertheless represented a good level of support for the proposed multiplex, particularly from the community radio sector in the context of historically low levels of activity in this sector in the locality.

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.

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