

Small-scale radio multiplex licence award: Inverclyde

Background

Ofcom has decided to award a new small-scale radio multiplex licence for Inverclyde to UK DAB Networks 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 (“the 1996 Act”) 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 applications

On 1 September 2020, Ofcom published a notice inviting applications for licences to provide small-scale radio multiplex services in several localities, including in Inverclyde.

Ofcom received one application in response to its notice inviting applications for this locality by the closing date of applications which was 23 November 2020, which was from UK DAB Networks Ltd (‘UKDAB’). 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) of the 1996 Act.

Ofcom colleagues assessed the detail of applications, including carrying out assessments of the technical plans required to be submitted as part of all applications. Decisions were made by a panel of Ofcom decision makers which convened on 11 March 2021. They carefully considered the application, 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 are summarised below.

In relation to section 51(2)(a), UKDAB proposed using two transmitters which would provide coverage for just over 87% of the adult population in the licence area advertised, according to Ofcom's analysis. We noted that the applicant had kept the potential for causing interference to other broadcast radio services to a minimum.

According to Ofcom's coverage predictions, coverage overspill outside the advertised area was high, with almost as many people predicted to be able to receive the service outside the advertised area as would be served within it. Ofcom has previously stated that overspill outside the advertised area should be as limited as reasonably possible and, in any event, should not generally exceed 30% by population. In this case, we considered adjustments would be required to the submitted technical plan to reduce overspill to acceptable levels. However, we considered this could be accommodated through relatively modest power adjustments and without significantly impacting coverage within the advertised area. It did not appear to reflect an attempt to target other areas, but rather was instead a by-product of seeking to maximise coverage inside the advertised area which has a relatively small and dispersed population in the context of very high and concentrated population densities located just outside that area.

In relation to section 51(2)(c), Ofcom considered financial and business plans, technical plans, the timetable for coverage roll-out, and evidence of relevant expertise and experience. It was noted that Ash Elford, who owns 75% of UKDAB, has considerable hands-on experience of running two of the small-scale DAB trials, one of which is the trial multiplex for neighbouring Glasgow, and has therefore accumulated considerable knowledge of the costs and risks associated with the launch and operation of a small-scale radio multiplex service, in addition to having familiarity with some of the local stakeholders broadcasting in this area.

In relation to section 51(2)(ca), it was noted that no C-DSP services (prospective or actual) were participants in the applicant company. Under the legislation, involvement of such a person 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 in the advertised area. The decision-makers concluded that there was some evidence of support, although much of this was rather generic and related to support for UKDAB multiplex applications in general rather than Inverclyde in particular; we would have welcomed more concrete evidence of demand and support from service providers for this application. However, we considered the minimum criteria were met to justify the award of a licence in light of Ofcom's duties. These include, amongst

other things, in carrying out our functions to secure the optimal use of electro-magnetic spectrum, and to secure the availability throughout the UK of a range of radio services.

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.

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 require amendments to the technical plan between award and licence grant.

In order to grant a licence following award, as well as agreeing a final technical plan Ofcom will also need to be satisfied the licensee is qualified to hold the licence. As well as the technical challenges noted above, Ofcom was mindful of section 44A(2), which applies where connected small-scale radio multiplex licensees overlap to a significant extent with one and the same local multiplex. Ofcom considers UKDAB to be a “connected person” to Nation Digital Investments Limited, which was last month awarded the new small-scale radio multiplex licence for Glasgow. If the proposed coverage of the Glasgow and Inverclyde small-scale multiplexes are taken together, they would exceed the 40% limit of the permitted overlaps with a local radio multiplex (in this case, the Glasgow local multiplex). In order for it to be granted the Inverclyde licence by Ofcom, UKDAB will need to bring itself into compliance with the small-scale DAB ownership regulations. This could be achieved either by corporate changes, or through changes to its technical plan, (or by corporate and/or technical plan changes in respect of the Glasgow small-scale radio multiplex licence).