

Small-scale radio multiplex licence award: Stoke & Newcastle-under-Lyme

Background

Ofcom has decided to award a new small-scale radio multiplex licence for Stoke & Newcastle-under-Lyme to Alternative Broadcast Company ('ABC').

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.

North west England and north east Wales, of which this locality is part, was designated as a 'macro area' because there was potentially insufficient spectrum available to enable to award a licence in all localities advertised. Ofcom therefore adopted a two-stage process. Firstly, we provisionally decided whether and to whom to award a licence in each individual locality applying the statutory criteria. Secondly, having reached a provisional view in relation to each area, we assessed whether there was sufficient spectrum to award licences in all areas where acceptable applications had been received. The notice inviting applications set out that, if there was insufficient spectrum to enable us to make an award in all areas, we would give priority to areas where more capacity was reserved for community digital sound programme services (as specified in the notice) and, where there were

equal numbers of reserved slots, to areas with more existing licensed community analogue services whose coverage area overlaps substantially with the proposed small-scale multiplex.

Assessment of applications

On 1 June 2021, Ofcom published a notice inviting applications for licences to provide small-scale radio multiplex services in the north west England and north east Wales 'macro area' covering several localities, including in Stoke & Newcastle-under-Lyme.

Ofcom received two applications in response to its notice inviting applications for this locality by the closing date of applications, which was 1 September 2021. These were from ABC and Stoke & Newcastle DAB Limited. Copies of the non-confidential parts of these 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 assessments of the technical plan required to be submitted as part of all applications. A provisional decision regarding Stoke and Newcastle was made by a panel of Ofcom decision makers which convened on 25 February 2022. They carefully considered the applications, public comments received, and professional advice from Ofcom colleagues, and applied the statutory criteria in reaching their provisional decision on whether and to whom to award a licence. Reasons for their decision are summarised below.

In relation to section 51(2)(a), the successful applicant, ABC, proposed a technical plan based on a single transmitter site. Ofcom's assessment indicated that this transmitter could provide coverage of up to just over 62% of the adult population within the advertised area. However, we considered that mitigations that will be required to deal with interference to other small-scale multiplex areas that may use the same transmission frequency elsewhere and with potential hole punching, would be likely to bring this figure down to around 57%. The population overlap between the coverage area of the proposed multiplex and existing local Stoke-on-Trent multiplex was below the 40% limit, and predicted coverage outside the advertised area was under 30%, so additional mitigations would not be required to address these issues. Ofcom noted that the predicted population coverage within the advertised area was relatively modest, with some areas (including parts of Newcastle-under-Lyme) being less well served, although other population centres within the advertised area (including Stoke-on-Trent) would be well served under the applicant's technical proposals. Details of the coverage likely to be achieved after completion of the frequency allocation process for the north west England and north east Wales 'macro area' are set out below.

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. Ofcom considered that ABC would be in a good position to establish the service within 18 months of the date of award as required by the legislation. We noted the applicant's initial equipment installation costs would be met by a donation from a director of the company. We also noted that the company's directors had a wide breadth of experience in radio and related sectors

In relation to section 51(2)(ca), Ofcom considered it to be a particular strength of ABC's application that there was participation by several parties proposing to provide community digital sound programme services (C-DSPs) on the multiplex: nine of the participants in ABC (who are members of

the non-profit company) are proposing to provide their own C-DSP services. Cumulatively, these services hold more than 68% of shares, representing a significant level of involvement. Ofcom did note, however, that these services varied in their existing status (including an analogue community service, operational online services, and services not yet available) and therefore the level of confidence decision makers had that they would be available from the launch of the multiplex was higher for some proposed services than for others.

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. We concluded that ABC had demonstrated relatively strong demand from prospective service providers, having signed 18 heads of terms agreements with such prospective providers, including with the nine participants intending to provide C-DSP services. Letters of intent had been received from two further services, one being a potential C-DSP provider and one being a potential digital sound programme (DSP) service provider.

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. In particular, we noted that, once Ofcom had published the licence advertisement, ABC had widened its outreach by developing a website and social media channels to engage potential stations, and a press release was sent to local and national press contacts.

A panel of Ofcom decision makers convened again on 7 April 2022 to consider whether there was sufficient spectrum to award licences in all localities in the north west England and north east Wales 'macro area' where an acceptable application had been received and, if not, in which areas to confirm the provisional decision to make an award. Under the spectrum plan that was agreed at this meeting, the Stoke & Newcastle-under-Lyme multiplex has been allocated frequency block 8A, which we estimate would enable the proposed multiplex to cover just under 62% of the population in the coverage area advertised by Ofcom.

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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