

Small-scale radio multiplex licence award: Middlesbrough & Redcar

Background

Ofcom has decided to award a new small-scale radio multiplex licence for Middlesbrough & Redcar to Erimux Limited (“Erimux”).

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 applications

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

By the closing-date of 25 April 2022, Ofcom received two applications for this locality which were from Mux One Limited and Erimux Limited (“Erimux”). A copy 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). No public comments were received.

Ofcom colleagues assessed the detail of the applications, including carrying out an assessment of the technical plan required to be submitted as part of all applications. The decision in relation to Middlesbrough & Redcar was made by a panel of Ofcom decision makers which convened on 9 September 2022. They carefully considered the applications and professional advice from Ofcom colleagues, applying 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 Erimux 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 72% of the adult population in the advertised licence area being able to receive the service. Decision makers considered this represented a reasonably good level of coverage, albeit that the focus was clearly on the more densely populated north western part of the advertised area. Our coverage predictions indicated that the proposed small-scale radio multiplex service would be available to significantly less than 40% of the population in the licensed area of the overlapping Teesside local radio multiplex service, and that signal 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 did not consider 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 financial and business plans, technical plans, the timetable for coverage roll-out, and evidence of relevant expertise and experience. Decision makers noted that confidence in the applicant’s ability to establish the service was provided by the applicant’s financial plan, and by a robust technical plan. Additionally, those involved in the application had good levels of relevant expertise and experience. Decision makers noted, in particular, that individuals involved in the application had a strong track record of commitment to the radio sector in Middlesbrough & Redcar. It was therefore considered that the service would have a very good prospect of launching within the 18 month period allowed in the legislation.

In relation to section 51(2)(ca), Ofcom noted that two participants in the applicant proposed to provide community digital sound programme services in the locality. Both (East Cleveland Community Radio Limited and Community Voice FM Limited) are existing providers of analogue community radio services in Redcar and Middlesbrough respectively, and therefore have a particularly good prospect of appearing on the multiplex at launch. Decision makers noted that, whilst the extent of each participant’s interest was relatively modest (a 5% shareholding) they appear to have been closely involved, via common directors, in developing the application.

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. As well as the services proposed by the two participants, the application included expressions of interest (mainly via heads of terms) from six community digital sound programme services. Whilst these varied in apparent readiness to provide a service, some provided existing online services and others at an earlier stage of development, the application demonstrated a promising level of interest in growing the community sector locally via the proposed small-scale multiplex service. The application provided ten sets of heads of terms with other digital sound programme services. Ofcom considered this represented a healthy level of demand for the multiplex service from both community and commercial sectors.

In relation to section 51(2)(g), although relatively limited evidence was provided of contact between the applicant and broadcasters, Ofcom was overall satisfied based on the evidence received 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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