

Small-scale radio multiplex licence award: Milton Keynes

Background

Ofcom has decided to award a new small-scale radio multiplex licence for Milton Keynes to MK Digital Media 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 of applications

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

By the closing-date of 25 April 2022, Ofcom received two applications for this locality. These were from MK Digital Radio Limited and MK Digital Media Limited (“MKDM”). 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 assessments of the technical plan required to be submitted as part of all applications. The decision in relation to Milton Keynes was made by a panel of Ofcom decision makers which convened on 3 November 2022. They carefully considered the applications, professional advice from Ofcom colleagues and public comments received, 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 MKDM are summarised below.

In relation to section 51(2)(a), the successful applicant proposed using two transmitters to provide its service. Ofcom calculations indicate that this would, prior to mitigations, result in approximately 86% of the adult population in the advertised licence area being able to receive the service. Our 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 either of the overlapping local radio multiplex services (Northamptonshire, and Hertfordshire, Bedfordshire & Buckinghamshire), 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. However, Ofcom considered mitigations would be required to address co-channel interference into the planned Corby & Kettering small scale multiplex area (which has yet to be advertised). This was anticipated to result in coverage of over 76% within the advertised area. Decision makers considered this still represented a very good level of coverage, noting this would be expected to include not only Milton Keynes as the largest population centre in the advertised area, but also Leighton Buzzard (although the mitigation identified means it would not cover Newport Pagnell).

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 considered that the technical plan was robust, with relatively modest mitigation required, and the applicant’s financial plans and experience of key individuals also provided confidence in relation to ability to launch the service. Overall, although they noted that the forecast set-up costs for the proposed multiplex service were higher than average, decision makers had a good level of confidence in MKDM’s ability to establish the 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 three participants proposed to provide community digital sound programme services via the multiplex. Decision makers noted only one of these had a substantial shareholding (Horizon Radio with 24.4%) while two had a nominal holding of 1%, albeit that they had each appointed directors (Life Radio UK and Roq Raw Radio). Decision makers also noted that none of the prospective services were existing community analogue services, reducing

confidence that all would be available on the multiplex at launch. Nevertheless, with those caveats, the participation of prospective providers was viewed positively.

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. The applicant had provided evidence (principally in the form of signed heads of terms) from eleven prospective C-DSP services (including the three participants mentioned above) and 24 prospective other DSP services. Decision makers noted that some services had subsequently expressed support for the other applicant, and that it may be some existing online services identified would not ultimately make the transition to becoming licensed DSP or C-DSP services. Nevertheless, the applicant had provided comprehensive evidence of significant efforts to engage with local services, including online services with a clear focus on Milton Keynes and Leighton Buzzard, and that it had demonstrated a very healthy level of interest.

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. As noted above, the applicant had provided comprehensive evidence of wide engagement with prospective providers and, whilst third party comments received by Ofcom indicated disagreements within the radio sector in Milton Keynes, this provided confidence MKDM had been and would continue to be open to providers not involved in its application (and this would, as usual, be supported by Ofcom's standard licence conditions in relation to fair and effective competition).

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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