

Small-scale radio multiplex licence award: Blackburn, Burnley & Darwen

Background

Ofcom has decided to award a new small-scale radio multiplex licence for Blackburn, Burnley & Darwen to BBD Digital Limited ('BBD Digital').

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 Blackburn, Burnley & Darwen.

Ofcom received three 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: BBD Digital, East Lancs Digital Limited, and Synergy DAB (Blackburn, Burnley & Darwen) 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 Blackburn, Burnley & Darwen was made by a panel of Ofcom decision makers which convened on 5 November 2021. 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, BBD Digital, proposed a three transmitter (Blackburn, Burnley and Accrington) network. Our calculations indicated this would be likely to serve just under 74% of the adult population within the advertised area. We noted the applicant had kept potential interference to other broadcast radio services to a minimum. Our coverage projections showed that mitigation measures would not be required to ensure that the population overlap between the coverage area of the proposed multiplex and local multiplexes remained below 40%, nor to ensure that the predicted coverage outside the advertised area was below 30%. This provided a good level of confidence that limited changes should be needed to finalise the technical plan, and therefore that the predicted coverage was likely to be achieved. 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 BBD Digital would be in a position to establish the service within 18 months of the date of award as required by the legislation. We noted the applicant's detailed business plan and strong finances, and the involvement of three highly experienced commercial radio executives as the company's main shareholders. As noted above, Ofcom's technical assessment indicated the technical plan provided was robust and relatively unlikely to require substantial changes.

In relation to section 51(2)(ca), Ofcom noted that BBD Digital is not proposing to provide its own community digital sound programme service, but it has as participants three entities that are proposing to provide C-DSP services on the multiplex: Blackburn Community Radio, Burnley College

Radio and Radio Hospitals Blackburn. We note that the application also listed Pendle Community Radio as a C-DSP participant, but it has subsequently informed Ofcom that it has now asked BBD Digital to remove it from its application. In considering the licence award, we did not therefore consider Pendle Community Radio to be a participant in BBD Digital's application (nor to be indicating demand or support under section 51(2)(f)). Two of the C-DSP participants already provide analogue community radio services, providing confidence that the proposed services would be provided at launch. We noted that, whilst viewed positively, the extent of participation by C-DSPs is relatively modest in terms of shareholding (albeit one C-DSP provider is additionally a director of BBD Digital).

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 BBD Digital had demonstrated particularly strong demand from prospective service providers, having signed 23 Heads of Terms agreements with such providers, including four planned C-DSP providers.

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.

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 Blackburn, Burnley & Darwen multiplex has been allocated frequency block 8A, which we estimate would enable the proposed multiplex to cover just under 74% 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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