

Small-scale radio multiplex licence award: Edinburgh

Background

Ofcom has decided to award a new small-scale radio multiplex licence for Edinburgh to Edinburgh DAB Limited ('Edinburgh DAB').

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

Ofcom received two applications in response to its notice inviting applications for this locality by the closing date of applications which was 23 November 2020. These were from Edinburgh DAB and Muxcast Two Limited. A copy of the con-confidential parts of the applications 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 plan required to be submitted as part of all applications. Decisions were made by a panel of Ofcom decision makers which convened on 23 April 2021. They carefully considered the applications, 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), the successful applicant (Edinburgh DAB) proposed two transmitters to provide a service to the area that was advertised. Ofcom calculations indicate that this would result in around 91% of the adult population in the advertised area being able to receive the service. According to Ofcom's coverage predictions, the amount of coverage outside the advertised area was relatively high. Ofcom has previously stated that overspill outside the advertised area should be as limited as reasonably possible and, in any event, should not exceed 30% of the population within the advertised area. This did not appear to reflect an attempt to target other areas, but was instead a by-product of seeking to maximise coverage within the advertised area in the context of relatively high population densities just outside that area. We considered relatively minor alterations to the technical plan would be required to ensure the overspill remains below 30%, and this would also ensure that the overlap between the population covered by the small scale multiplex and that covered by the Edinburgh local radio multiplex service remains below 40%. We estimated these required alterations would reduce the coverage of the Edinburgh small-scale radio multiplex service only slightly, from around 91% of the adult population in the advertised area to at least 85%.

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. We considered the successful applicant benefited from directors possessing considerable relevant experience, had clearly costed its proposals and demonstrated that it has the financial resources to establish the service, and would be in a position to establish the service within 18 months of the date of award as required by the legislation.

In relation to section 51(2)(ca), Ofcom noted that the successful applicant has as a participant, SAM Radio Limited, which is proposing to provide a community digital sound programme service in the advertised area, and was last year awarded a community radio FM licence for Edinburgh (although it has yet to launch this service). However, with SAM Radio holding only 1% of shares in Edinburgh DAB, Ofcom considered that SAM Radio would be likely to have limited influence over decision making by the successful applicant, and it was therefore a positive point but not a deciding factor in the award decision.

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 felt that Edinburgh DAB had provided solid evidence of support from a range of prospective DSP service providers in the form of signed heads of terms agreements, and this was a particularly positive aspect of the application. It was noted that none came from potential or actual C-DSP service providers aside from SAM Radio, which is a participant in the applicant company. However, the licence will ensure capacity is reserved solely for six C-DSP services, and we would expect the successful applicant actively to engage with those interested in providing community radio services in the coverage area to ensure they have every opportunity to access the reserved capacity.

In relation to section 51(2)(g) and based on the evidence received, Ofcom was satisfied that the successful 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.

May 2021