

Response to consultation questions

Question 1: Do you agree with the planning principles and methodologies that we will use in our work to refine the coverage area plan for small-scale DAB?

1. The UK's digital radio market has made significant progress in recent years, with an expansion of choice and digital penetration delivering clear benefits to listeners at both a national and local level. Despite this, there are risks to the ongoing maintenance of these benefits, such as difficulties in establishing new services on a commercially sustainable basis, and headwinds in the receiver supply chain. Recent gains should not be taken for granted.
2. Given the importance of ongoing sectoral development, and given also the inherent scarcity of broadcast spectrum as well as the finite nature of Ofcom's licensing resources, new radio licensing proposals should be calculated to maximise consumer and citizen benefits. This means that proposals should be based on compelling audience research, whilst also being appropriately flexible as to take account of evolving government policy, market developments and consumer behaviour.
3. We note the following specific concerns:
 - a. The proposals set out in Ofcom's consultation appear to be based primarily on considerations of technical achievability, rather than an assessment of consumer or citizen interest;
 - b. Ofcom has not presented evidence of demand from radio audiences in support of its planning approach. For instance, we are not aware of consumer research having been conducted to demonstrate the likely consumer and citizen impacts of a major UK-wide rollout of small-scale DAB multiplexes;
 - c. The expressions of operator demand that are guiding Ofcom's approach (including expressions made by Wireless) predate subsequent industry developments that have fundamentally altered the UK local radio market. In particular, Bauer has acquired Celador, UKRD, Lincs Group and Wireless Group's GB ILR portfolio (currently subject to uncertainty amidst the CMA's Phase 2 investigation), and Quidem has entered into a brand licensing agreement with Global Radio. Many of the radio services within these groups would have been key beneficiaries of the small-scale DAB initiative. However, with these stations potentially soon to be integrated into national networks operated by Bauer and Global, the cornerstone of support (financial and otherwise) for these small-scale multiplexes has materially diminished;
 - d. There is no assessment of the costs and benefits of the planned approach to allow conclusions to be drawn as to whether it constitutes an optimum use of scarce spectrum, and Ofcom resources, compared with alternative radio licensing policies utilising remaining spare frequency blocks;
 - e. The proposals do not reflect the desirability of market flexibility and an ability to respond to changes in consumer behaviour during the extended time period that would need to be allocated to the licensing programme;
 - f. DCMS is currently embarking on a review of the future of radio which will consider the listening and platform trends, and resulting policy implications to support the development of the radio and audio sector – a review in which Ofcom is a participant, contributing expert

analysis and research. It is likely that new policy priorities will emerge from this review, and that it will yield new insight as to the impact of new technology and consumer behaviour;

- g. As envisaged in Ofcom's planning proposals, small-scale DAB will require significant spectrum, and Ofcom internal resources, to deliver. This means that if it proceeds as envisaged, the programme will have a significant impact on use of Ofcom resources, and scope to pursue other radio licensing options (including alternative DAB licensing options such as those highlighted in our response to question 4).
4. Given all of these significant and material factors, we propose that Ofcom's plans should be paused and re-evaluated afresh, to ascertain whether they will maximize net consumer and citizen benefits in the years to come.
5. Aside from these fundamental questions as to consumer and citizen benefit, Wireless also has technical concerns about the planning approach. As Ofcom points out in paragraph 2.4 of its consultation document, existing national and local multiplexes are either full, too expensive, and/or offer coverage that is too wide for the editorial needs of community radio stations. 'Small-scale DAB' (using a combination of open source, software-defined technologies and low power transmission) is ideally suited to meeting a requirement for more affordable, localised coverage. However, the polygons presented in Section A1 of Ofcom's consultation document do not show any meaningful level of consistency either in terms of scale, or network efficiency, or in terms of the editorial principles used to define them.
6. For example, it is not clear what basis Ofcom has used to define the "Skye & Lochalsh" polygon, given this is an area of more than 5,000 km² and certainly cannot be characterised as 'small-scale'. Further, given the challenging terrain of this area, the number of transmitter sites needed to cover this area would be substantial, making the viability of such a network extremely challenging. There are numerous other examples in the plan of polygons with similarly large geographic coverage areas, which is confusing for a plan devised to utilise low power technology to enable a cost-effective digital migration pathway for not-for-profit services.
7. Elsewhere, the principles used to define high population polygons in Ofcom's proposed coverage area plan such as "North London" (3.6 million adults), "South London" (2.8 million adults) and "West London" (2.3 million adults) lack consistency in terms of providing geographically targeted multiplex options that are differentiated to the existing local layer. Given these high populations, it is very difficult to argue that these plans reflect "small-scale" principles.
8. London, unlike other parts of the United Kingdom (with the sole exception of the central belt of Scotland), is unique in having more than one existing local DAB multiplex, providing pricing tension not evident in other DAB markets. Furthermore, there is currently space available for services seeking carriage on these London multiplexes. Given, therefore, that both the {availability of capacity} and the {affordability of capacity} features of the London DAB market do not need correcting for, licensing these areas in this small-scale plan is inconsistent with the stated policy objectives of this initiative.
9. Extending this point outside London, the 40% coverage threshold has been selected with no reference to the needs of community radio, nor is it referenced against any explicit consumer benefit.

10. Having operated local DAB multiplexes in markets such as Swansea, Bradford and Stoke, Wireless has first-hand knowledge of the financial and coverage factors that can constrain DAB multiplex and content service viability. Consequently, we have a close understanding of the significant downside risks associated with small-scale licensing in towns/cities constituting the primary population centres for existing multiplexes. We anticipate a strong likelihood that small-scale DAB licensing in such locations will give rise to counter-productive consumer and citizen outcomes.

Question 2: Do you agree with our proposed approach to the required technical licence conditions for small-scale radio multiplex services, and the proposed amendments to the Digital Radio Technical Code?

1. Wireless responded to Ofcom's consultation on proposed changes to the Digital Radio Technical Code in March 2019, and has no further comments to make in respect of the amendments proposed here.
2. We have addressed Ofcom's remarks concerning larger, local DAB multiplexes in response to question 4.

Question 3: Do you agree with Ofcom's proposed approach to setting the level of reserved capacity for C-DSP services on small-scale radio multiplex services?

1. Wireless has no comments to make on Ofcom's approach in setting the level of reserved capacity for C-DSPs on small-scale muxes.
2. However, as Ofcom notes in paragraph 4.4 of its consultation document, the restrictions on the holders of small-scale mux licences are complex. Rather than directing applicants to seek independent advice before applying for licences, policy outcomes may be better served by Ofcom providing comprehensive guidance on this topic ahead of commencing small-scale DAB licensing.
3. This will be particularly useful in resolving some of clarity issues identified above, especially in relation to the distinction to be drawn between this new layer of multiplexes and the existing local layer, and understanding how Ofcom will frame its decision-making where the legislation leaves it to Ofcom to determine material issues, such as what constitutes overlapping to a "significant extent", which will be key in avoiding aggregation and replication of existing commercial local multiplexes.

Question 4: Do you agree with the factors we are proposing to take into account in deciding the order and timescale in which Ofcom will advertise small-scale radio multiplex licences?

1. Given the significant flaws in the plan as currently conceived (highlighted in our response to question 1), demand for these licences must be reassessed before commencing the licensing timetable. We propose that demand assessments should be based on audience interests, rather than would be operators, in order to ensure that the benefits of deploying scarce spectrum are maximized on behalf of consumers.

2. Given the scarcity of available spectrum blocks for further DAB development, it is critical that the plan is robust. Ofcom is ideally placed to commission the quantitative market research needed to test the consumer interest of licensing more local DAB and / or small-scale DAB. This consumer-centric study will be a more relevant basis on which to set and embark on a licensing timetable.
3. Without the evidence of the consumer study, Wireless' intuition would be that there is significant pent-up demand to further broaden consumer choice and satisfy tastes and interests of citizens in large metropolitan markets currently served by only one local multiplex. As a consequence, the benefit to consumers of utilising the available spectrum to licence Manchester 2, Birmingham 2, Leeds 2, Sheffield 2, Northern Ireland 2, etc, would far outweigh any lost social gain coming from C-DSP services in these areas. However, in any event, it is critical that Ofcom's decisions are properly informed, given the long term impact these decisions will have on the development of the industry.
4. In terms of the use of spectrum, Wireless also believes that licensing of small-scale and additional local layer multiplexes can go hand in hand. To evidence this, Wireless has developed robust technical plans for a future Manchester 2 multiplex, using Block 10B, which if licensed would have no negative effects on either the existing DAB layer, or any opportunity cost for foregone small-scale use.
5. Wireless has also developed a plan for a further Birmingham 2 multiplex, which shows that using Block 10D at high power would be challenging, however that a new multiplex covering nearly 1 million households could be achieved by using one of the six blocks of 7D, 8A, 8B, 9A, 9B or 9C being earmarked for small-scale. And that rather than posing an opportunity cost to small-scale, 10D could be used at low power in Birmingham to compensate for the loss of one of these blocks.
6. Directly addressing the issue of international coordination, or notably the lack of it for the six spectrum blocks earmarked for small-scale DAB (paragraph 3.46 in the consultation document), this is not a valid impediment for the development of new large urban multiplexes in Birmingham, Manchester, Leeds, Sheffield, etc, given these areas are sufficiently far away from the south coastline and the east of England. And to the extent that international coordination is an issue, and cannot be cleared through the ITU in the normal way, directional antenna and low power can mitigate this issue.
7. A third way therefore does exist, in Wireless' opinion, where consumers can benefit from enhanced choice in large urban markets currently served by only one local mux through the development of new high power local multiplexes, and from the social gain of community C-DSP projects utilising spectrum blocks at low power. The choice is not binary, as appears to be suggested.
8. Failing to undertake the further planning work necessary to properly consider the opportunities to launch new local multiplexes, and to develop a joined-up licensing plan informed by robust data and insight, would arguably be a serious breach of Ofcom's statutory duties.
9. Outside this, it is difficult for Wireless to comment on the appropriateness of rules, such as the waiver of the 20% limit on the number of licences that can be owned by one person, without understanding what the first 20 small-scale areas to be licensed will be, and having more detailed guidance on how Ofcom will use the discretion afforded it by the legislation to prevent replication of the local mux layer via aggregation of small-scale mux licences.

Question 5: Do you agree with our proposed approach for assessing the technical plans submitted in small-scale radio multiplex licence applications?

1. Given the potentially significant flaws identified, it is not clear that the polygons as currently conceived are either the right size, or in the right places. It follows therefore, that Ofcom's proposal that preference will be given to technical plans that fill the planned polygons to the greatest extent is unlikely to constitute the optimum approach.
2. Wireless agrees with Ofcom's emphasis on "prioritising areas with full local radio multiplex services ahead of those where existing local radio multiplex services currently have vacant capacity" (paragraph 5.3 of the consultation document). We also consider that appropriate protections should be incorporated in the processes for approving technical plans that potentially impact upon existing multiplex operators – with resources made available for assessing ACI and other impacts.
3. Outside this, the added flexibility afforded by Ofcom's 30% 'overspill' rule (set out in paragraph 5.28) has the potential to further distort the negative outcomes of the current plan. Furthermore, there appears to be no rational, objective basis to this 30% threshold and why it has been selected by Ofcom.

Question 6: Do you agree with our proposed approach for assessing the ability of applicants to establish their proposed small-scale radio multiplex service?

1. Given the previous public policy considerations directing Ofcom's approach to small-scale DAB, the involvement of C-DSP service providers in the applicant group is not 'desirable', rather it should be an essential requirement. We suggest that - once an optimized small-scale DAB licensing plan has been developed – Ofcom should enhance its emphasis on social gain and community benefit as opposed to profit generation. The regulator should also scrutinise business plans to ensure that applicant multiplex operators are not proposing to pay themselves excessive management fees.
2. C-DSP involvement in the application must be an essential component to any successful licence application, and failure to launch proposed C-DSP services post licence award must be viewed as a material breach of the mux licence, leading to sanction/licence revocation if not remedied.
3. As stated in its response to the DCMS consultation in February 2018, Wireless is not convinced that simply requiring mux operators to publish fee ratecards will lead to fair and effective competition. Additional guidance from Ofcom would be helpful to avoid discriminatory pricing, especially between C-DSP and DSPS licensees.

Question 7: Should Ofcom require that the studio of a C-DSP licensee be located within the coverage area of the small-scale radio multiplex service it plans to broadcast on? Please explain the reasons for your view.

1. Wireless has not formulated a view on this matter.

Question 8: We propose that holders of corresponding analogue community radio and DSP licences apportion their income equally across their licences, unless there are compelling reasons why a different apportionment is reasonable. Do you agree with our suggested approach?

1. Wireless has not formulated a view on this matter.

Question 9: Do you agree with our proposal that a prospective C-DSP service provider will be able to apply for a C-DSP licence once we have invited applications for the small-scale radio multiplex licence upon which their proposed C-DSP service is intended to be provided?

1. Wireless has not formulated a view on this matter.