

Small-scale radio multiplex licence award: South Hertfordshire

Background

Ofcom has decided to award a new small-scale radio multiplex licence for South Hertfordshire to South Herts DAB 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.

South East England, of which this locality is part, was designated as a 'macro area' because it was highly likely that there was insufficient spectrum available to enable Ofcom 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

On 30 March 2023, Ofcom published a notice inviting applications for licences to provide small-scale radio multiplex services in localities including South Hertfordshire.

By the closing-date of 30 June 2023, Ofcom had received two applications for South Hertfordshire. These were from Hertfordshire Digital Broadcasting Limited and South Herts DAB Limited (“South Herts DAB”). 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 an assessment of the technical plans required to be submitted as part of all applications. The provisional decision in relation to South Hertfordshire was made by a panel of Ofcom decision makers which convened on 27 October 2023. They carefully considered the applications, professional advice from Ofcom colleagues and public comments received. They applied the statutory criteria in reaching their decision on whether and to whom to award a licence. Reasons for their decision to award a licence to South Herts DAB are summarised below.

In relation to section 51(2)(a), the successful applicant proposed using three transmitters to provide its service. Ofcom calculations indicate that this would result in just over 71% of the adult population in the advertised licence area being able to receive the service. Ofcom’s coverage predictions indicated that the proposed small-scale radio multiplex service would be available to well under 40% of the population in the licensed areas of the overlapping local radio multiplex services (Herts, Beds & Bucks, and London) and overspill outside the advertised area was predicted to be well under 30% of the population of the advertised area. Ofcom therefore considered no mitigations were required to comply with these thresholds. Ofcom also considered that mitigations were unlikely to be required to address any hole-punching or interference issues. Decision makers considered predicted coverage was good, with robust coverage in key population centres including Watford and St Albans, although unfortunately coverage would be much more limited in the north east of the advertised area around Welwyn Garden City.

In relation to section 51(2)(c), Ofcom considered the applicant’s financial and business plan, technical plan, the timetable for coverage roll-out, and evidence of relevant expertise and experience. Decision makers noted that South Herts DAB appeared not to have factored in potential issues over planning permission for antenna installation, and this may mean the timetable for launch is somewhat optimistic. However, there is room for some slippage in the timetable, financial plans were realistic and supported by good evidence of funding, and those involved in the application were experienced within the sector. Overall, decision makers concluded that they had a reasonably high degree of confidence in the applicant’s ability to establish the service within the 18-month period allowed by legislation.

In relation to section 51(2)(ca), two participants in the applicant are prospective providers of a C-DSP service. Decision makers noted both participants – Verulam Community Radio Limited (Mix 92.6) and The Vibe Watford Limited (Vibe 107.6 FM) are existing analogue community radio services in the advertised area so have an excellent prospect of being available on the multiplex at launch. Both

have a 12.5% shareholding which decision makers noted represents a reasonably significant level of involvement (the applicant had stated an intention to allot additional shares to these participants if awarded the licence to increase their shareholdings to 20% each but, since Ofcom would not be in a position to enforce that intention, our assessment was based on the existing stakes).

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 of interest from five prospective C-DSP service providers, including three services from the two participants mentioned above (Verulam Community Radio plans to establish an additional service), plus two existing local online services. Evidence of interest was also provided from 25 prospective DSP services. Decision makers noted that this represented a very good level of demand and support for the proposed service across both community and commercial sectors (albeit noting some services were linked to participants in the applicant itself as opposed to third party 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. Decision makers noted that active outreach was reflected in the good level of demand and support as stated above.

A panel of Ofcom decision makers convened again on 6 June 2024 to consider whether there was sufficient spectrum to award licences in all localities in the South East England '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 South Hertfordshire multiplex has been allocated frequency block 9C, which we estimate would enable the proposed multiplex to cover 71% 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.

The South East England macro area is very congested in terms of spectrum availability. The final frequency plan for the macro area was optimised based on the technical plans submitted by all successful applicants, and therefore material changes to any of those plans would have an impact on interference to other licensed multiplexes in the macro area. Consequently, there will be very limited scope for licensees to build transmitter networks that do not closely match those submitted in their licence applications, together with any mitigations we have proposed to limit interference and overspill. Any revised final technical plans which would negatively impact the ability of other small-scale radio multiplex services to be established with the coverage proposed in their applications will be rejected.

June 2024