

Small-scale radio multiplex licence award: South West Sussex

Background

Ofcom has decided to award a new small-scale radio multiplex licence for South West Sussex to Digital Radio West Sussex 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 West Sussex.

By the closing-date of 30 June 2023, Ofcom had received two applications for South West Sussex. These were from West Sussex Digital Limited and Digital Radio West Sussex (“DRWS”). 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) although no such comments were received.

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 West Sussex was made by a panel of Ofcom decision makers which convened on 8 December 2023. They carefully considered the applications and professional advice from Ofcom colleagues. 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 DRWS 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 over 83% 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 area of the overlapping local radio multiplex services (Sussex and South Hampshire), and overspill outside the advertised area was predicted to be negligible and well under 30% of the population of the advertised area. Ofcom therefore considered no mitigations were required to comply with these thresholds. However, Ofcom considered that mitigations may be required to address hole-punching issues, and this could reduce coverage to approximately 65% if necessary. Decision makers noted coverage was good in much of the southern part of the advertised area, with robust coverage of key population centres including Chichester and Bognor Regis. However, the applicant did not plan to serve the north of the advertised area at launch (including Midhurst and Pulborough) while the required hole-punching mitigation would result in slightly patchy coverage between Littlehampton and Worthing. Overall, however, decision makers considered the mitigated coverage was nonetheless reasonable in the context of a geographically large area with some challenging topography.

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, notwithstanding potential mitigations as noted above, the three sites appeared to be well chosen in terms of limiting cost and complexity. The applicant had also provided convincing evidence in relation to funding, involved individuals with experience operating the neighbouring Brighton trial small-scale multiplex and operating commercial services across Sussex, and had engaged an experienced partner for build and launch. Overall, decision makers had a 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), one participant in the applicant, Platform B Limited, is a prospective provider of a C-DSP service, holding 5% of the shares in the applicant in total. Decision makers noted

that the small shareholding represents a relatively modest degree of participation. They also noted that the participant is an existing analogue community radio service in nearby Brighton which is intending to establish an additional Worthing service. Whilst this offers the prospect of an additional community service, it is only possible to have moderate confidence in the likelihood of it being available on the multiplex from launch given the Worthing service does not yet exist and will need to establish a separate studio base in the South West Sussex area to be licensed as a C-DSP service. The involvement of a prospective C-DSP provider as a participant was viewed positively, albeit with the aforementioned reservations.

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 signed heads of terms in relation to two prospective C-DSP services, in addition to Platform B as a participant. Signed heads of terms were provided from 12 other prospective DSP services. Decision makers considered this represented a good level of demand and support overall, albeit the C-DSP service interest was relatively modest in the context of a multiplex with four slots reserved for C-DSP services. Some prospective C-DSP providers had expressed interest in carriage with the other applicant, and it will be important for DRWS to reach out to them between award and launch given their evident interest in providing community services on digital radio.

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 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 West Sussex multiplex has been allocated frequency block 9C, which we estimate would enable the proposed multiplex to cover 65% 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