

Small-scale radio multiplex licence award: Sunderland

Background

Ofcom has decided to award a new small-scale radio multiplex licence for Sunderland to Muxcast 6 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.

Assessment

On 19 April 2024, Ofcom published a notice inviting applications for licences to provide small-scale radio multiplex services in localities including Sunderland.

By the closing-date of 18 July 2024, Ofcom had received two applications for Sunderland. These were from Sunderland Digital Radio CIC and Muxcast 6 Limited (“Muxcast 6”). 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 none was 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 decision in relation to Sunderland was made by a panel of Ofcom decision makers which convened on 15 November 2024. 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 Muxcast 6 are summarised below.

In relation to section 51(2)(a), the applicant proposed using two transmitters to provide its service. Ofcom calculations indicate that this would result in just over 89% 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 under 40% of the population in the licensed area of the overlapping Tyne & Wear local radio multiplex, so no mitigations would be required to comply with this threshold. Overspill outside the advertised area was predicted to be significantly over 30% of the population of the advertised area. However, Ofcom considered the overspill could be brought to within acceptable levels through power reductions at both sites, with relatively limited impact on coverage in the advertised area, which is predicted to remain above 83%. Ofcom considered further mitigations were unlikely to be needed to address interference issues. Decision makers considered the robust predicted coverage provided by the two well-chosen sites within the advertised area represented a significant and important positive factor in the application, set against some limitations in other respects as noted below.

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 the sole shareholder in Muxcast 6, Nation Broadcasting Limited, had a mixed record in establishing previous multiplex services within the 18-month period allowed by legislation, having taken decisions not to launch, or to dispose of their interests in applicant companies, after being awarded the licence. Whilst Nation Broadcasting Limited has also been involved in some successful multiplex launches, this raised some concerns over the applicant’s ability to establish the service in the required timeframe. Set against this, the applicant had provided evidence of availability of funding and, significantly, has a clear incentive to establish the Sunderland service due to the potential benefit of securing carriage on a qualifying multiplex in order to obtain renewal of the licence for Nation Broadcasting’s FM service in Sunderland. Overall, the existence of this incentive gave decision makers a sufficient level of confidence in the applicant’s ability to establish the service within the 18-month period allowed by legislation to justify making a licence award.

In relation to section 51(2)(ca), Ofcom noted that the applicant does not have as a participant a person proposing to provide a community digital sound programme service in the advertised area. Decision makers noted that involvement of such a person is a desirable feature but not a necessity for applicants.

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 from one potential C-DSP service provider (Spark Radio, which is an existing analogue community radio service in the area, although the heads of terms do not specify the type of service it proposes to provide). The applicant provided evidence of support from just three prospective providers of DSP services beyond Nation Broadcasting itself (which proposes to provide six services). Decision makers noted this represented a relatively modest level of demand in the context of the advertised area and reserved capacity for six C-DSP services, and it would be important for the applicant to seek to reach out to other services, including those involved with the unsuccessful applicant, between award and launch in order to support the longer-term viability of the service.

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.

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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