

Small-scale radio multiplex licence award: Berwickshire & North Roxburgh

Background

Ofcom has decided to award a new small-scale radio multiplex licence for Berwickshire & North Roxburgh to Tower 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.

Assessment

On 14 July 2022, Ofcom published a notice inviting applications for licences to provide small-scale radio multiplex services in localities including Berwickshire & North Roxburgh.

By the closing-date of 14 October 2022, Ofcom had received one application for Berwickshire & North Roxburgh. This was from Tower DAB Limited (“Tower DAB”). A copy of the non-confidential parts of the application was made available for public scrutiny on the Ofcom website, and public comments were invited as required under section 50(7), although no comments were received.

Ofcom colleagues assessed the detail of the application, including carrying out an assessment of the technical plan required to be submitted as part of all applications. The decision in relation to Berwickshire & North Roxburgh was made by a panel of Ofcom decision makers which convened on 22 June 2023. They carefully considered the application and professional advice from Ofcom colleagues. They applied the statutory criteria in reaching their decision on whether to award a licence to the applicant. Reasons for their decision to award the licence to Tower DAB are summarised below.

In relation to section 51(2)(a), the successful applicant proposed using three transmitters to provide its service. Ofcom calculations indicated that this would result in just under 63% of the adult population in the advertised licence area being able to receive the service. There is no local multiplex currently licensed in the Scottish Borders area where the advertised area is located, and Ofcom’s coverage predictions indicated that the proposed small-scale radio multiplex service would be available to a negligible proportion (well under 40%) of the population in the licensed area of the Tyne & Wear local radio multiplex service. Ofcom coverage predictions also indicated that overspill outside the advertised area was well under 30% of the population of the advertised area. Therefore, no mitigations would be 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 the proposed level of coverage was good in the context of a physically large and relatively sparsely populated advertised area, including serving key population centres Berwick-upon-Tweed, Selkirk and Eyemouth, although unfortunately predicted coverage was limited around Kelso, Melrose and Galashiels.

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 very limited evidence had been provided regarding availability of funding and the extent to which the three proposed sites were deliverable and affordable within the budget set out by the applicant. As such, the application raised material concerns that the applicant would not be in a position to establish the service proposed within 18 months of the date of award as required by the legislation.

In relation to section 51(2)(ca), Ofcom noted that no persons proposing to provide C-DSP services were participants in the applicant company. Under the legislation, involvement of such persons 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. Expressions of interest were received in relation to six

prospective C-DSP services and eight other DSP services. Decision makers noted that there were limitations in some of the evidence of interest provided, and there were obstacles to some of the prospective services being available as C-DSPs from launch given that they are based outside the area advertised. Nevertheless, there appeared to be a reasonable level of support from community and commercial sectors, as might be expected in an area lacking in current local multiplex provision. Decision makers noted the particular importance of building support following award given the concerns over the applicant's plan for establishing the service as noted above.

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.

In light of the low level of confidence provided by the application in relation to ability to establish the service, decision makers carefully considered whether or not it would be appropriate to award a licence to the sole applicant. In so doing, they noted that the advertised area was relatively under-served by digital radio services because there is no licensed local multiplex in the Scottish Borders. There may be other options in the future to improve the availability of digital radio services in the advertised area such as via re-advertisement of the small scale licence or via licensing a local multiplex service. However, taking into account the likelihood that it will take some time to complete Round Five of small scale multiplex licensing (which involves a large macro-area), and the lack of demand from prospective providers of a local radio multiplex service for the Borders area, it was unlikely to be feasible to progress these options in the next 18 months. Additionally, the technical plan offered good coverage in the context of the area and some demand had been evidenced from DSPs and C-DSPs, and this provided a platform on which to build a more robust launch plan. On balance, decision makers therefore concluded that, notwithstanding material concerns over the evidence provided on ability to establish the service, there was sufficient prospect of a successful launch within the 18 month period provided for by the legislation to justify making a licence award to the sole applicant in the particular circumstances applying to Berwickshire & North Roxburgh.

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.

July 2023