

Small-scale radio multiplex licence award: Ludlow

Background

Ofcom has decided to award a new small-scale radio multiplex licence for Ludlow to Murfin Media (Digital) 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 Ludlow.

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

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 Ludlow was made by a panel of Ofcom decision makers which convened on 16 December 2022. They carefully considered the application and professional advice from Ofcom colleagues, and applied the statutory criteria in reaching their decision on whether to award a licence. Reasons for their decision to award the licence to Murfin Media are summarised below.

In relation to section 51(2)(a), the applicant proposed using one transmitter to provide its service. Ofcom calculations indicate that this would result in just under 57% 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 each of the overlapping local radio multiplex services (Hereford & Worcester and Wolverhampton & Shropshire), and that overspill outside the advertised area was under 30% of the population of the advertised area. Therefore, no mitigations would be required to comply with these thresholds. Ofcom considered mitigations were likely to be required to address potential co-channel interference but, somewhat unusually, the suggested mitigations were predicted to *increase* coverage within the advertised area to around 66% and improve coverage within the town of Ludlow (because they involve use of a directional antenna towards key population centres). Decision makers considered this represented a reasonable level of coverage within a relatively low population area where achieving higher levels of coverage would be likely to require further transmitters, adding to costs and risks to establishing the service.

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 there were risks in relation to establishing the service, including as a result of very low evidence of demand for carriage on the multiplex (see below). However, by proposing a single site solution the applicant had ensured costs were likely to be low, and also recognising it is an established broadcaster in the area decision makers considered overall that there was an adequate prospect of Murfin Media being able to establish the service with the predicted level of coverage within the 18 month period as set out in 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. Heads of terms were provided in relation to just two prospective DSP services (Sunshine Radio and Radio Wyvern, which are associated with shareholders in the applicant). Some evidence was provided of very early stage discussions with third parties. Decision makers noted that, even considering the relatively low population of the advertised area and statutory minimum reservation for three C-DSP services, this represented very narrow and limited evidence of demand, and considered it would be imperative for the applicant to seek to extend interest between award and launch of the service to secure the longer term viability of the service.

In relation to section 51(2)(g) and based on the limited evidence received, Ofcom could not determine that the applicant had not, 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. However, as noted above, there was very little evidence of discussions with third parties having reached an advanced stage. Decision makers noted that, if not addressed promptly following award, this introduced a level of risk in relation to establishing the service and its longer term viability.

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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