

Your response

Question 1

Question 1: Should Ofcom exercise its discretion to consent to the application to vary the Winchester small-scale multiplex licensed area, with regard to the statutory and policy considerations set out in this document?

Your response

Our response is set in the context of small-scale DAB licensees and service providers who are struggling with poor coverage and need Ofcom's urgent intervention.

Yes, we believe Ofcom should exercise its discretion and vary the Winchester small-scale DAB licensed area.

- Ofcom is empowered to vary licences.
- This variation will not unacceptably reduce the number of community/local DSPs (as there are none on air at present).
- Ofcom should relax its strict adherence to the 40% overlap, which is just guidance.
- Ofcom should reassess what constitutes '*significant interference*'.

With regard to the statutory framework, we see that Ofcom is already empowered under section 54A(2) (b) and (c) of the Broadcasting Act 1996 to change (reduce or extend) small-scale DAB areas.

Sections 54A(3), (4) and (5) are just procedural and reasonably set out the terms under which changes will be considered.

In crafting Section 54A(7), the legislators intentionally included the word '*unacceptably*' when they wrote '*..Ofcom may vary the licence in accordance with the application only if they are satisfied that doing so would not unacceptably reduce the number of community or local digital sound programme services...*'. For us, this gives Ofcom the freedom to amend any licensed area - even if it results in a reduction in available C-DSP and local DSP services, so long as it is deemed to be '*acceptable*'.

Given the above statutory framework, it's clear that Ofcom has the power to vary licences. In fact, we believe it has a duty to vary licensed areas where it will deliver net better coverage and ensure the survival of a small-scale DAB licence.

With regard to policy, paragraph 2.9 of the consultation refers to overlap with any relevant local multiplex(es) remaining not greater than 40% (in line with the policy intention of section 50(2A)(c) of the BA1996 to limit such overlaps). The actual wording in 50(2A)(c) is "*where the area or locality overlaps with the coverage area of a local radio multiplex service, the desirability of ensuring that the population of the overlapping area is less than 40 per cent of the population of the coverage area of that local radio multiplex service*". Again, **the legislators have included the word '*desirability*' to give Ofcom the discretion to not apply the 40% restriction. Disapplying a strict adherence to the 40% overlap is going to be crucial if Ofcom is going to save small-scale DAB.**

Para 2.9 recognises the risk of an increased level of outgoing interference but, again, gives Ofcom the freedom to make that assessment based on the interpretation and application of the word '*significance*'. **We believe that a reinterpretation of what constitutes '*significant interference*' would allow for an increase in radiated powers and deliver improved signal strength in small-scale DAB licensed areas.**

Para 2.10 (c) cautions on whether an increase of overlap (or new overlaps) with the coverage of other small-scale radio multiplex services is excessive. Whilst extending coverage to a material extent into a key population centre served by another small-scale multiplex should be avoided, we believe that the overlap between small-scale multiplexes should be actively encouraged so that there are no dead zones - where services that are carried on multiple ensembles drop out.

Contiguous coverage should be a fundamental consideration in the provision of small-scale DAB as a cellular broadcast network.

Para 2.11 a) and d) asks;

- a) whether the change in transmission arrangements would be calculated to maintain or promote the development of digital sound broadcasting?

Not approving the change will result in there being no small-scale DAB platform for the area. Therefore, without the multiplex there is no chance of maintaining let alone promoting the development of digital sound broadcasting.

- d) whether there are sufficient safeguards in place to protect the rights and interests of stations carried on the multiplex and the rights and interests of other multiplex operators (and the stations they carry).

Any safeguards that may have been in place did not protect the stations that were carried on the multiplex prior to this application. Their interests are probably best served by there being a multiplex for the area.

Question 2

Question 2: With reference to our impact assessment, do you agree with our assessment of the potential impacts of approving this application?

Your response

We believe that Ofcom's assessment, of the potential impacts, **does not address all the issues of approving this application**. As this consultation is likely to set a precedent on the approval of future applications, we believe that such assessments should also take into consideration:

- The circumstances surrounding the demise of the original licensed area and associated learnings from that.
- An assessment of the new licensee - applying the same criteria that is used when an area is first advertised.
- The real-world discrepancy between Ofcom's predicted coverage and actual coverage.
- Improved coverage that is required in other small-scale DAB licensed areas which would not result in an extension to the licensed area.

- An acknowledgement that the 40% guideline for overlap is discretionary and solely based on desirability.

Paras 3.1 and 3.2 do not address the root causes of why the previous licensee was unable to make this multiplex work. Without such understanding of why the operation failed it is not possible to say whether a new licensee will be able to sustain the service. It is important, (in this case and for existing & future licensees) to fully understand whether the failure of this licensed area was caused exclusively by high operating costs or whether poor coverage contributed and, therefore, too few programme services were willing to join or stay on the multiplex. **We believe it is essential that an impact assessment should consider the circumstances leading to the demise of the original licensed area to fully understand the viability of the new licensed area.**

In para 3.4 Ofcom states that *“the appropriate comparison for the purposes of assessment remains between the service as required by the existing licence and the proposed technical plan”*. We understand why Ofcom might take this view, but the truth is that the multiplex has been of air for many weeks, and it would appear to us that, in this instance, **the appropriate comparison is between no service and the proposed technical plan.**

Paras 3.5 and 3.6 address the issue of the population. Ofcom reports that the proposed change results in a net increase in coverage of approximately 10,000 over the original coverage plan. This comes at a cost to around 8,500 people who will lose coverage in and around Winchester and 12,000 people (para 3.11) outside the original licensed area and most inside the neighbouring Southampton polygon) who will gain coverage. Whilst extending the area may be an unintended consequence of saving this licence, **there are existing small-scale DAB licensees whose poor coverage provision could be improved through a variation to their licence, without any extension to their area.**

Para 5.6 states *“Indoor coverage will be assessed in terms of the number of households within the licence area that receive a field strength of at least between 63 and 68 dB μ /m in suburban areas and 70 and 75 dB(μ V/m) in a dense urban area. The lower of these pairs indicate a useful service and the latter a robust one. These signals are being received at 10m above ground level.”*

Para 5.7 goes on to states *“Ofcom will in general count all of the population ... where the minimum median field strengths above are achieved.”* In so doing, Ofcom has chosen to use the weakest figure - 63 dB μ /Vm - opting for the *“useful suburban”* over the ‘robust’ figures - *“robust suburban”* at 68 dB μ /Vm or *“robust urban”* at 75 dB μ /Vm. **It would seem that this artificially inflates the population of a licensed area – an important consideration as Ofcom continues to rigidly enforce a strict interpretation of the 40% overlap.**

We note also that signals are being measured at 10m above ground level – the average height of a chimney pot in the UK - when, anecdotally, most domestic radio listening is done downstairs.

Real world experience has shown that Ofcom’s coverage predictions are far too optimistic and, in our experience, do not translate to actual coverage in the car or at home. It may be the case that, given the above, the predicted indoor coverage in Eastleigh will not actually result in listeners being able to receive the multiplex. In many licensed areas that have already launched, the 63 dB μ /Vm indoor coverage, as shown on the Ofcom coverage maps, is at best only receivable in a car and not on a portable radio, inside a residential building at 1.5m kitchen sink height. **The discrepancy between the predicted coverage and the actual coverage is worrying and appears to be undermining confidence amongst small-scale DAB licensees and services providers.**

