

RADIOCENTRE RESPONSE TO OFCOM CONSULTATION ON LICENSING SMALL-SCALE DAB

Introduction

1. Radiocentre welcomes Ofcom's consultation on the licensing of small-scale DAB (SSDAB) across the UK, which provides the prospect of widespread and affordable access to digital radio for smaller commercial and community services. With digital listening continuing to grow it is increasingly important that radio stations have the opportunity to broadcast on DAB, ultimately boosting the range of choice and content for listeners.
2. Up until the emergence of this technology, many smaller analogue radio stations (broadcasting on FM or AM frequencies) have been unable to broadcast digitally on the DAB platform. This is typically due to transmission costs that reflect multi-transmitter networks which can make it unaffordable for some operators and the fact that existing local DAB multiplexes often cover much larger geographical areas than smaller stations wish to serve. The evolution of SSDAB, based around a single, low-powered transmitter and 'open-source' software multiplex, opens up the prospect of lower-cost access to DAB for smaller stations.
3. This is undoubtedly a positive development and Ofcom's assessment of the trials is that they have been successful and achieved their objectives. However, they are likely to have been more successful still if they benefitted from better coverage areas and transmission solutions. These are crucial factors in ensuring the viability and sustainability of multiplexes. However, the coverage limitations being imposed in many of the proposed licensed areas or 'polygons' - and the fact that this is at the expense of further roll-out of local DAB multiplexes - means commercial radio can only offer qualified support for a proposed expansion of digital radio in the UK based on this plan.
4. The risk with such an approach is that it could be seen as repeating some of the mistakes of recent years in the allocation of FM spectrum, much of which has been used to expand community radio rather than strengthen local commercial radio services. Given this context, it is unclear whether the proposed method of implementation for SSDAB truly offers the most efficient use of spectrum.
5. With regard to the SSDAB licensing framework itself, this is largely defined by the legislation and the detailed Order¹ that sets out Ofcom's duties and processes and has now been agreed by Parliament. During the passage of this legislation one of the main concerns expressed by Radiocentre (as outlined in response to the original DCMS consultation²) was to ensure the full participation of commercial radio operators, while understanding that Government wishes to avoid undue concentration of ownership. Overall we are pleased that this aspect of the licensing framework has taken these concerns into account and now strikes a reasonable balance.
6. This response has been prepared on behalf of the commercial radio sector as a whole. It follows extensive consultation and stakeholder meetings with Radiocentre members and input from broadcasters and multiplex operators across the UK, whose views are reflected below.

¹ Small-Scale Multiplex and Community Radio [Order](#) 2019

² Radiocentre [response](#) to DCMS consultation on Small-Scale DAB Licensing, Feb 2018

Planning for small-scale DAB

Question 1: Do you agree with the planning principles and methodologies that we will use in our work to refine the coverage area plan for small-scale DAB?

Question 2: Do you agree with our proposed approach to the required technical licence conditions for small-scale radio multiplex services, and the proposed amendments to the Digital Radio Technical Code?

7. Ofcom's proposed approach to spectrum planning and technical standards is outlined clearly and guided by a combination of its statutory requirements; evidence gathered through the trials; and consideration of the potential impact on other local and national services.
8. We particularly welcome the crucial emphasis on minimising any adverse impact on existing users of spectrum and keeping any levels of interference under review. It is also helpful that Ofcom has provided clarification regarding the application of the restrictions on SSDAB multiplex size and the extent of overlaps permitted with existing local multiplexes (40% of the adult population) and that flexibility exists to exceed this level if necessary. As Ofcom notes in the consultation this element of flexibility is written into the legislation, so although there are currently no plans for SSDAB multiplexes that exceed the 40% threshold, the ability to enable marginally higher percentage coverage is important to retain.
9. However, the key issue relating to planning for SSDAB is whether the 'polygons' proposed actually represent the best and most efficient use of spectrum, consistent with the requirements on Ofcom under section 3 of the 2003 Communications Act. While we appreciate that there appears to be a reasonable level of demand for SSDAB from service providers, this assessment is based largely on the non-binding expressions of interest in 2018 and the experience of the trials. In reality, it is difficult to assess the true level of demand across all areas of the UK from 2020 and beyond, or whether many of the proposed licensed areas will be sustainable or in any way commercially viable.
10. While we appreciate that Ofcom is unlikely to engage in full scale re-planning of the 'polygon' areas at this stage, there are several adjustments to the implementation of the new regime that it should consider and could help to address some of these concerns. In particular, it would be helpful if Ofcom permitted the combination of some of these proposed licensed areas in order to provide the applicants with the flexibility to establish a SSDAB multiplex that is appropriate. This approach would of course need to respect the requirement in section 44A of the Order, which disqualifies the holder of a SSDAB licence owning more than one such licence where it overlaps to a significant extent with the same local DAB multiplex. However, there is no such restriction where two adjoining SSDAB multiplexes overlap with different local DAB multiplexes. In which case there is nothing preventing Ofcom from enabling the combination of these areas.
11. In addition to this point of clarification, we believe it would be useful for Ofcom to reconsider its approach to the further licensing of local DAB covering larger areas in regions with a bigger population and higher demand for radio services. Radiocentre has consistently supported calls for Ofcom to investigate whether sufficient spectrum is available to offer additional local DAB multiplexes (alongside SSDAB). We highlighted this in our response to the DCMS consultation on SSDAB in 2018, where we referred to the demand for local DAB in a number of urban areas already exceeding the available capacity.
12. Ofcom has now looked at this issue and has concluded that there are only a small number of areas where sufficient spectrum exists to support both SSDAB and local DAB (para 3.48). It goes on to say that it will only explore these opportunities once SSDAB multiplexes have been licensed.

However, we would not wish to see the further expansion of local DAB being delayed unduly, especially in areas where there are no technical or spectrum reasons for doing so. In addition, Ofcom should leave open the possibility of re-visiting the advertisement of local DAB in other areas if capacity becomes available in due course.

13. Separately, with regard to the technical standards required by SSDAB multiplexes, Ofcom appears to be proposing a slightly less stringent obligation overall by requiring “reasonable standards” in terms of technical quality and reliability. This reflects the new legislation and is likely to be less demanding on the licensees than the “generally high standards” required by local and national multiplexes. While we understand why this change is required it would be useful if Ofcom could provide some indication or guidance on what this different approach is likely to mean in practice.
14. Ofcom is also proposing to amend its Digital Radio Technical Code to require all SSDAB multiplexes to use DAB+ only. Given the level of demand and changes in the radio device market (and in new cars) in recent years and possible demand in some areas we can understand why DAB+ is seen as a preferred option. However many existing digital radio receivers, whether in people’s homes or in existing cars, are not able to receive DAB+ and so this decision could further jeopardise the viability of these services by limiting the potential audience. For this reason, we believe that this decision should not be mandated by Ofcom but left to the discretion of the multiplex operators in each case, particularly as this has been the successful model during the trial period, an approach that has not limited the expansion of DAB+ on these multiplexes.

Small-scale radio multiplex licences: conditions and requirements

Question 3: Do you agree with Ofcom’s proposed approach to setting the level of reserved capacity for C-DSP services on small-scale radio multiplex services?

15. Ofcom’s approach to eligibility and conditions attached to SSDAB multiplex licences will be guided by a fairly prescriptive set of requirements from the 1996 Broadcasting Act, as modified in some important areas by the 2019 Order.
16. In particular there are a number of detailed restrictions on ownership that Ofcom will be required to consider and apply. Radiocentre outlined its views on the proposed ownership restrictions in its response to the initial Government consultation and during the parliamentary process. Following this process we were pleased that some of the more onerous restrictions on ownership were revised and amended, to enable the involvement of a broad range of different operators and maximise the opportunity for SSDAB to become established across the UK.
17. Another condition outlined in the Order (where it modifies section 54 of the 1996 Act) is the requirement for the licensee to publish information on payments required by radio services for broadcasting on the SSDAB multiplex, in a manner that Ofcom considers appropriate. In response to this Ofcom proposes that SSDAB multiplex licensees publish a current ‘rate card’ of current carriage fees on their website. While we appreciate the legislative requirement to make this information available in some form, it should be sufficient for this to be made available to Ofcom and potential service providers. To do otherwise could risk providing rival operators with unfair insight into the commercial operation of a licence holder in future licence advertisements.
18. On the specific question of reserved capacity for Community Digital Sound Programme (C-DSP) services, this also appears to be defined in part by the Order, in that it requires capacity for a minimum of three such licence holders. Clearly Ofcom has the flexibility to require more than three of these services and rightly highlights that it will take into account the level of demand in different areas. In order to assess this it will consider the level of demand expressed and the number of licensed community radio services in the area (as well as the number of small commercial radio stations not on DAB).

19. While it is correct to consider these as relevant factors in establishing the level of reserved capacity, we would suggest three C-DSP services should generally be considered as the default number of slots reserved. Any variation that proposes to increase reserved capacity beyond this level should only be agreed in exceptional circumstances where the current and existing demand has been demonstrated clearly by the applicant. Other factors, such as apparent demand from the non-binding expressions of interest in 2018 should not be sufficient to go beyond the minimum.
20. On the related question of changing the amount of reserved capacity for C-DSP services (for example, if the demand for C-DSP capacity is not at the level anticipated) it is useful that Ofcom have now outlined how they see such a process operating in practice (p.23). This should act as an incentive for licensees to apply a 'use it or lose it' approach and free up any unused spectrum.

Small-scale radio multiplex licences: advertisement and award

Question 4: Do you agree with the factors we are proposing to take into account of in deciding the order and timescale in which Ofcom will advertise small-scale radio multiplex licences?

Question 5: Do you agree with our proposed approach for assessing the technical plans submitted in small-scale radio multiplex licence applications?

Question 6: Do you agree with our proposed approach for assessing the ability of applicants to establish their proposed small-scale radio multiplex service?

21. The process for advertising and assessing applications for SSDAB multiplex licences is crucial in ensuring confidence in the platform and making sure there is a logical and structured roll out based on clear criteria. Once again most of the key elements (such as the application process and assessment criteria) are laid out in the legislation and much of Ofcom's role in this area will be to carry out and apply these duties as it sees fit.
22. With regard to the sequencing and timescale being proposed to advertise the licences, we agree that it makes sense to advertise the licences in batches and that it should take into account the factors highlighted on p.25 of the consultation document. Elements such as likely demand; geographical spread of licences; maximum consumer benefit and population coverage; and spectrum availability should all be assessed when deciding on which areas to prioritise. In addition to these criteria, we would also suggest that Ofcom takes into account those areas where small analogue commercial radio stations are not already broadcasting on local DAB when considering which areas to prioritise.
23. The only other point we would make regarding the order and timescale would be to repeat our request for Ofcom to reconsider the scope for further licensing of local DAB alongside this roll out if spectrum allows. Waiting for SSDAB multiplexes to be licensed may not always be the right approach and could risk prioritising only smaller and less viable services, which may not be the best use of the spectrum.
24. Once the multiplex licence is advertised, the process of submitting an application form and technical plan appear to be fairly standard and appropriate for the licence available. The core elements required by these technical plans are also outlined in the legislation and relate to the coverage area being advertised, timetable and technical means by which this is achieved. Ofcom's further guidance (p.27-28) builds on this and provides a helpful summary of the minimum information that will be required.

25. The key elements of the technical plan to be considered by Ofcom will be the detail of the proposed coverage area and how it relates to the proposed 'polygon' area; compatibility with the overall spectrum plan; and overlap with local radio multiplex services (that should generally be less than 40%). We agree that this appears to be a sensible approach to assessing applications. However, as noted above we would urge Ofcom to explicitly state that it will permit the ownership of SSDAB multiplex licences in adjoining areas and the combining of these areas where possible, notwithstanding the restrictions that exist on holding more than one licence that overlaps significantly with an existing local multiplex.
26. On the specific question of the applicants' ability to establish the proposed service Ofcom has said it will focus on ensuring funding is in place; that those involved have relevant expertise and experience; and technical questions have been addressed. We agree that it is very important for applicants for SSDAB multiplex licences to be in a position to run a viable operation, not only to deliver on their licence commitments but also to ensure confidence in the platform as it expands. This was one of the reasons that we supported the approach in the trials (and confirmed in the legislation) to enable commercial operators to be involved in the ownership and operation of SSDAB multiplexes, so that it can benefit from the professionalism, experience and expertise of these operators that has been built up over many years.
27. We have no further comments on the other award criteria, as these are generally prescribed by the legislation and should be self-explanatory. This is also the case regarding licence terms for SSDAB multiplexes, which can be up to seven years with a further renewal period of five years according to the Order. However, we note that there does not currently appear to be any ability for analogue commercial radio services to be extended as a result of simulcasting on SSDAB, as they can if they are broadcast on a relevant local DAB multiplex. However, we would support this approach in future and have asked DCMS to look at ways of introducing this change.

Community digital sound programme licences: conditions and requirements

Question 7: Should Ofcom require that the studio of a C-DSP licensee be located within the coverage area of the small-scale radio multiplex service it plans to broadcast on? Please explain the reasons for your view.

Question 8: We propose that holders of corresponding analogue community radio and DSP licences apportion their income equally across their licences, unless there are compelling reasons why a different apportionment is reasonable. Do you agree with our suggested approach?

28. The location of the studio of C-DSP licence holders has no direct impact upon commercial radio, so we do not offer any detailed comments on this matter. However, we can understand the argument from Ofcom regarding the importance of community radio delivering their key commitments. The statutory obligation of these services to provide social gain and opportunities to participate in a target community distinguishes them from standard DSP or commercial radio licences, so we understand why Ofcom proposes to treat them in a different way. It is also worth pointing out that this approach will not prevent community radio stations that continue to operate a DSP licence from being located outside of the coverage area.
29. With regard to the apportionment of income by community radio operators, we support Ofcom's proposal to require an equal revenue split across analogue and C-DSP licences. To do otherwise would risk extending the loophole that exists which means that some community radio stations are able to circumvent the limits on commercial revenue, by claiming that significant commercial and sponsorship revenue is derived from a DAB licence (which does not have any specific restrictions on revenue). The proposal to extend this principle of equal revenue apportionment to analogue and DSP licences operated by community radio - unless they can explain and provide evidence as to why a different approach is reasonable - is also welcome.

Community digital sound programme licences: application and grant

Question 9: Do you agree with our proposal that a prospective C-DSP service provider will be able to apply for a C-DSP licence once we have invited applications for the small-scale radio multiplex licence upon which their proposed C-DSP service is intended to be provided?

30. The process for the applications and allocation of C-DSP licences does not have a direct impact on commercial radio, therefore we have no specific comments on Ofcom's proposal in this area. If Ofcom believes that its suggested approach will assist in the efficient allocation of C-DSP licences alongside the roll out of SSDAB multiplexes then we are happy to support this approach.

ABOUT RADIOCENTRE

Radiocentre is the industry body for commercial radio. We work on behalf of over 50 stakeholders who represent over 90% of commercial radio in terms of listening and revenue.

We perform three main functions on behalf of our members:

- Drive industry revenue by promoting the benefits of radio to advertisers and agencies through a combination of marketing activity (e.g. events, advertising, PR, and direct mail), research, and training
- Provide UK commercial radio with a collective voice on issues that affect the way that radio stations operate, working with government, politicians, policy makers and regulators to secure the best environment for growth and development of the medium
- Ensure advertising messages on commercial radio stations comply with the necessary content rules and standards laid out in the BCAP Code of Broadcast Advertising and the Ofcom Broadcasting Code.

www.radiocentre.org

October 2019