

# Small-scale radio multiplex licence award: Eastbourne, Newhaven & Lewes

## Background

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Ofcom has decided to award a new small-scale radio multiplex licence for Eastbourne, Newhaven & Lewes to East Sussex Digital Radio 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.

South East England, of which this locality is part, was designated as a 'macro area' because there was insufficient spectrum available to enable Ofcom to award a licence in all localities advertised. Ofcom therefore adopted a two-stage process. Firstly, we provisionally decided whether and to whom to award a licence in each individual locality applying the statutory criteria. Secondly, having reached a provisional view in relation to each area, we assessed whether there was sufficient spectrum to award licences in all areas where acceptable applications had been received. The notice inviting

applications set out that, if there was insufficient spectrum to enable us to make an award in all areas, we would give priority to areas where more capacity was reserved for community digital sound programme services (as specified in the notice) and, where there were equal numbers of reserved slots, to areas with more existing licensed community analogue services whose coverage area overlaps substantially with the proposed small-scale multiplex.

## Assessment

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On 30 March 2023, Ofcom published a notice inviting applications for licences to provide small-scale radio multiplex services in localities including Eastbourne, Newhaven & Lewes.

By the closing-date of 30 June 2023, Ofcom had received one application for Eastbourne, Newhaven & Lewes. This was from East Sussex Digital Radio Limited (“ESDR”). Copies of the non-confidential parts of the application 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 application, including carrying out an assessment of the technical plan required to be submitted as part of all applications. The provisional decision in relation to Eastbourne, Newhaven & Lewes was made by a panel of Ofcom decision makers which convened on 1 March 2024. 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 sole applicant. Reasons for their decision to award a licence to ESDR are summarised below.

In relation to section 51(2)(a), the applicant proposed using three transmitters to provide its service. Ofcom calculations indicate that the three sites would result in just over 80% of the adult population in the advertised licence area being able to receive the service. Of these three sites, the applicant made clear that it was unable to confirm the site principally serving Lewes would be available. Ofcom therefore based its assessment on the two remaining sites. A minor mitigation was required for international constraints which resulted in just under 75% of the adult population 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 any of the overlapping Sussex local radio multiplex, and overspill outside the advertised area was predicted to be comfortably under 30% of the population of the advertised area. Ofcom therefore considered no mitigations were required to comply with these thresholds. Decision makers noted this represented a very good level of coverage in most major population centres, albeit as noted above unfortunately this would not extend to Lewes unless the applicant was able to overcome issues with its potential third site.

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, due to overlapping interests in other Sussex applications, it was possible corporate changes would be needed prior to grant of a licence, and this may present some risk to establishing the service. However, there was good evidence of people being involved with experience of the radio industry in Sussex, and an experienced technical contractor had been engaged. Overall, decision makers had a good level of confidence in the applicant’s ability to establish the service within the 18 month period allowed by legislation.

In relation to section 51(2)(ca), the applicant had two participants who are prospective providers of C-DSP services, Seahaven FM Broadcasting Limited and Hailsham FM Limited. Decision makers noted that both prospective C-DSP services are existing analogue community radio services in the locality

with an excellent prospect of being available on the multiplex at launch, and that their level of interest (20% shareholding in total) was reasonably significant.

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 provided evidence of interest from two prospective C-DSP services, both provided by participants as noted above, and 19 other DSP services. Decision makers considered that this represented a good level of demand from the commercial sector, but that further outreach would be required in the community sector noting the reservation of capacity for at least five such services in the locality.

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.

A panel of Ofcom decision makers convened again on 6 June 2024 to consider whether there was sufficient spectrum to award licences in all localities in the South East England 'macro area' where an acceptable application had been received and, if not, in which areas to confirm the provisional decision to make an award. Under the spectrum plan that was agreed at this meeting, the Eastbourne, Newhaven & Lewes multiplex has been allocated frequency block 9B, which we estimate would enable the proposed multiplex to cover 74% of the population in the coverage area advertised by Ofcom.

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.

The South East England macro area is very congested in terms of spectrum availability. The final frequency plan for the macro area was optimised based on the technical plans submitted by all successful applicants, and therefore material changes to any of those plans would have an impact on interference to other licensed multiplexes in the macro area. Consequently, there will be very limited scope for licensees to build transmitter networks that do not closely match those submitted in their licence applications, together with any mitigations we have proposed to limit interference and overspill. Any revised final technical plans which would negatively impact the ability of other small-scale radio multiplex services to be established with the coverage proposed in their applications will be rejected.

*June 2024*