

Small-scale radio multiplex licence award: Harlow

Background

Ofcom has decided to award a new small-scale radio multiplex licence for Harlow to Xtra 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.

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

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

By the closing-date of 30 June 2023, Ofcom had received one application for Harlow. This was from Xtra DAB Limited (“Xtra DAB”). 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 Harlow was made by a panel of Ofcom decision makers which convened on 12 April 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 Xtra DAB are summarised below.

In relation to section 51(2)(a), the applicant proposed using two transmitters to provide its service. Ofcom calculations indicate that this would result in approximately 70% 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 under 40% of the population in the licensed areas of each of the overlapping Essex, London and Herts, Beds & Bucks local radio multiplexes, and overspill outside the advertised area was predicted to be well under 30% of the population of the advertised area. Ofcom therefore considered no mitigations were required to comply with these thresholds. However, Ofcom considered mitigations were likely to be necessary to address hole-punching and that this was likely to reduce coverage materially, to just over 54%. Decision makers considered this to be a modest level of coverage, with limited service in areas with significant population towards the south and west of the advertised area including Epping and the Lee Valley area. However, sites appear to have been chosen principally to focus on the towns of Harlow and Bishops Stortford, and coverage in those areas was predicted to be robust even with necessary mitigations. Decision makers therefore considered coverage to be sufficient to justify making a licence award.

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 evidence of funding provided in the application was rather limited, but subsequent clarifications gave a greater level of confidence as to availability of sufficient resources. Participants had relevant experience in the radio sector, albeit not in the Harlow area and therefore greater effort may be required to develop the relationships with local stakeholders which can help facilitate the establishment of the service. However, an experienced technical contractor had been engaged for installation. Overall, decision makers had an adequate 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 has one participant, Xtra Media Group Limited, proposing to provide a C-DSP service in the locality. Decision makers noted that this would be a completely new service (Radio Xtra Harlow), and that Xtra Media Group is not an existing community analogue radio licensee nor does it operate any existing service in the Harlow area. However, it does

already provide radio services online and on other small-scale multiplexes, albeit the latter are DSP rather than C-DSP services. It is unclear whether Xtra Media Group would need to establish a studio in the locality for its proposed new Harlow C-DSP service, and thus decision makers considered there was at least an element of doubt as to the likelihood of the service coming to fruition. Nevertheless, the participant's interest is substantial with a majority shareholding in Xtra DAB.

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. As well as the participant mentioned above, one further prospective programme provider, an existing hospital radio service (Radio Forest), had expressed interest in providing a C-DSP service. However, the prospective provider has a focus on Epping and, as coverage is predicted to be limited in that area under the submitted technical plan, decision makers noted that there appears to be a significant risk this may not be suitable for the intended service. 13 prospective providers of other DSP services had also expressed an interest. Decision makers noted that this represented a reasonable level of demand and support overall in the context of an area with relatively low population compared with others in the South East England 'macro area' and little current community radio provision, with a reservation of capacity for three C-DSP services (which is the statutory minimum).

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. Decision makers noted the good level of evidence the applicant had provided in this respect.

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 Harlow multiplex has been allocated frequency block 8B, which we estimate would enable the proposed multiplex to cover 54% 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