

Small-scale radio multiplex licence award: Maidstone, Tonbridge & Tunbridge

Background

Ofcom has decided to award a new small-scale radio multiplex licence for Maidstone, Tonbridge & Tunbridge to West Kent 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 Maidstone, Tonbridge & Tunbridge.

By the closing-date of 30 June 2023, Ofcom had received one application for Maidstone, Tonbridge & Tunbridge. This was from West Kent DAB Limited (“West Kent 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 Maidstone, Tonbridge & Tunbridge 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 West Kent DAB are summarised below.

In relation to section 51(2)(a), the applicant proposed using three transmitters to provide its service. Ofcom calculations indicate that this would result in approximately 77% 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 area of the overlapping Kent local radio multiplex, and a negligible proportion of the populations of other overlapping local radio multiplexes (London, Sussex and Surrey). 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. Ofcom considered mitigations to address interference issues were not likely to be required unless spectrum block 12D was allocated, in which case coverage would materially reduce to approximately 58%. Decision makers noted the higher level of predicted coverage would represent a good level of coverage overall, including key population centres of Maidstone, Sevenoaks, Tonbridge, and Tunbridge Wells. Whilst it was possible that block 12D would need to be used and this would materially reduce coverage (particularly to Sevenoaks), and this was one of the blocks listed when the locality was advertised, the level of coverage in those circumstances would still be adequate and sufficient to justify award of a licence.

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 the application involved individuals with significant relevant experience of the radio sector, particularly within Kent. The applicant had provided evidence of secure funding, albeit one participant (Kent Capacity Co Limited) is a newly established company which is involved in multiple applications in the Kent area creating some potential risk of resources being stretched. Additionally, the need for listed building consent at one site, the Royal Wells Hotel, indicated another potential risk to a timely launch. However, decision makers had an adequate level

of confidence overall 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 proposing to provide a C-DSP service. Decision makers noted that the participant, West Kent Community Radio, has a 35% shareholding representing a significant interest, and is an existing analogue community radio licensee in the locality with therefore a good prospect of being available on the multiplex at launch.

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 participant mentioned above was the only entity expressing interest in providing a C-DSP service, but 14 prospective providers of DSP services had expressed an interest and some of these are based in or near the locality. Decision makers noted that this represented a reasonably good level of demand and support, and that the evidence provided indicated discussions were reasonably well advanced with services. The level of interest in relation to community-oriented services was rather low, and should be a focus for the applicant between award and launch of the service.

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. However, as noted above, the level of interest from the community sector was an area that decision makers considered would merit further attention prior to launch.

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 Maidstone, Tonbridge & Tunbridge multiplex has been allocated frequency block 8B, which we estimate would enable the proposed multiplex to cover 77% 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