

Small-scale radio multiplex licence award: North East London & South West Essex

Background

Ofcom has decided to award a new small-scale radio multiplex licence for North East London & South West Essex to East London and Essex Digital CIC.

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 North East London & South West Essex.

By the closing-date of 30 June 2023, Ofcom had received two applications for North East London & South West Essex. These were from North East London DAB Limited and East London and Essex Digital CIC (“ELED”). Copies of the non-confidential parts of the applications were made available for public scrutiny on the Ofcom website, and public comment was invited as required under section 50(7).

Ofcom colleagues assessed the detail of the applications, including carrying out an assessment of the technical plans required to be submitted as part of all applications. The provisional decision in relation to North East London & South West Essex was made by a panel of Ofcom decision makers which convened on 19 January 2024. They carefully considered the applications, professional advice from Ofcom colleagues, and public comments received. They applied the statutory criteria in reaching their decision on whether and to whom to award a licence. Reasons for their decision to award a licence to ELED are summarised below.

In relation to section 51(2)(a), the successful applicant proposed using three transmitters to provide its service. Ofcom calculations indicated this would result in just over 91% of the adult population in the advertised licence area being able to receive the service. Ofcom’s coverage predictions also indicated that the proposed small-scale radio multiplex service would be available to well under 40% of the population in the licensed area of the overlapping local radio multiplexes (Essex, Kent, and London). Ofcom therefore considered no mitigations were required to comply with this threshold. However, overspill outside the advertised area was predicted to be substantial and Ofcom considered mitigations would be required, reducing coverage to approximately 86%. No further mitigations were considered likely to be required to address interference. Ofcom considered that this represented a very good level of coverage in the advertised area including most of the largest population centres. However, decision makers noted coverage was less robust around Basildon and, noting the application included as a participant an existing analogue community service based in Basildon, the applicant may wish to give consideration to improvements in this area prior to submitting its final technical plan.

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 individuals involved in the application had significant experience in the radio sector in the local area and, whilst they had more limited experience in multiplex operation, they had engaged a technical contractor which had experience in establishing multiplex services. The financial plan appeared robust, giving decision makers 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), a participant in the applicant, Gateway Community Media CIC, is a prospective provider of a C-DSP service and is an existing analogue community radio licensee based

in Basildon. Whilst, as noted above, there are some limitations in coverage in the Basildon area under the proposed technical plan, decision makers noted the participant appears to have a good prospect of being available on the multiplex at launch. Its beneficial shareholding is relatively modest at 10%, but nonetheless its involvement is viewed positively.

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, heads of terms had been signed with six prospective C-DSPs, each of which is an existing service with a reasonable prospect of being available on the multiplex from launch. Heads of terms were also provided from eight other prospective DSP services. Decision makers considered that this represented a good level of demand and support, particularly from the community sector. It was also noted that the evidence indicated discussions with services that had expressed an interest were reasonably well advanced.

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 North East London & South West Essex multiplex has been allocated frequency block 8A, which we estimate would enable the proposed multiplex to cover 85% 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