



Department for  
Digital, Culture  
Media & Sport

# Small Scale DAB Licensing consultation: Government response

13 October 2018

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## Background

The government launched a consultation outlining proposals to create a framework for small scale DAB licensing on 4 January 2018. This followed the successful passage of the Broadcasting (Radio Multiplex Services) Act 2017 (the “2017 Act”) which received Royal Assent in April 2017.

The consultation ran for 8 weeks and closed on 28 February 2018. In total, we received 87 responses from a wide range of respondents, including:

- Community Media Association, the body representing community radio
- Radiocentre, the trade body for commercial radio;
- National and local commercial radio companies;
- MPs;
- Commercial radio stations;
- Community radio stations;
- Licensed multiplex operators of the small scale DAB trials;
- National and local radio multiplex operators;
- Technical and other types of consultants working with radio sector;
- Academics;
- Members of the public.

We are grateful for the responses provided by the individuals and stakeholders who have engaged in this consultation.

A full list of respondents can be found in Annex A, excluding those who requested anonymity. We have also published 86 of the 87 responses received in a separate document (one respondent did not give their consent to their responses being published and therefore have not been included).

If you have any further comments about the consultation process or this response, please write to:

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## Overview of consultation responses

1. The consultation on small scale DAB licensing received 87 responses in total. DCMS received representations from a wide variety of individuals and organisations within the radio industry and from members of the public from across the UK. The majority of the respondents chose to answer specific questions, although some did not answer any questions at all but instead gave general views on the overall proposals set out in this consultation.
2. The consultation sought views on the key requirements for the licensing and regulation of new small scale (DAB) multiplexes and overall there was a consensus among respondents on several of the consultation questions. The first aspect considered was the principle of reserving capacity on small scale multiplexes for community radio stations. On the whole respondents expressed very strong support for the proposal to require Ofcom to reserve capacity on small scale multiplexes for community radio services in exercising their power to grant licences. Although no consensus emerged on the issue of setting an upper limit to the amount of reserved capacity, overall slightly more respondents were in favour of setting an upper limit than against fixing one. However, many respondents commented that Ofcom should be allowed some flexibility in the application of a limit for each small scale multiplex to take local circumstances into account. A majority of respondents supported the idea of allowing small scale multiplex operators to offer any unused reserved capacity for community stations to other radio services on a temporary basis.
3. Most respondents welcomed the Government's proposal to allow Ofcom to offer a new community category of digital sound programme licence (C-DSP) for community stations choosing to broadcast on a digital platform. Respondents acknowledged the value of the benefits (e.g. access to reserved capacity) which would be associated with this type of licence. However, a small number of respondents, including the Community Media Association (CMA), expressed a concern about whether the benefits linked to a new C-DSP licence, as set out in the consultation paper, would be sufficiently attractive to outweigh the associated restrictions for potential applicants, who instead might opt for an ordinary DSP licence; and highlighted the need for other interventions if community radio was to make a success of the new opportunities.
4. In the consultation document we considered the merits of requiring small scale multiplex operators to adopt only a not for profit business model. We argued that restricting them to just one form of ownership model might act as a barrier to entry and investments and limit the future development of the small scale multiplex tier. The not for profit only approach was strongly supported by the CMA during the passage of the private members' Bill. The majority of consultation respondents - from all parts of the radio industry - expressed support for allowing a mixed model ownership (both commercial and not for profit) approach for small scale radio multiplexes. A small number, including the CMA, disagreed and felt that a not for profit only model would be a better approach. The consultation paper also looked at concerns about the risk of small scale multiplex operators setting unreasonably high carriage fees. There was backing from respondents for the consultation proposal to address this by requiring Ofcom to collate and publish small scale multiplex operators' rate card fees on the Ofcom website. Respondents could see the merits of setting a measure which is designed to promote a higher degree of price transparency.

5. We have noted concerns expressed by some parts of the radio industry about the risk of a future concentration of ownership of small scale DAB multiplex licences. The consultation sought views on proposals for certain restrictions to address this risk, starting with a suggestion to limit ownership to a single licence. We argued that this would be too restrictive and not support the innovation and investment needed for the development of small scale DAB. Overall there was a strong consensus among respondents for not limiting small scale multiplex ownership to a single licence again on the grounds of the risk of excluding investment. This view was expressed by respondents from all parts of the radio industry including community radio stations. The CMA, however, took a different view and argued that principles which have served community radio well such as single licence ownership and not for profit model should be used for small scale multiplexes.
6. However, we did recognise the need for some restrictions on ownership to avoid the development of local monopolies in areas where there is interest from existing local multiplex operators. Therefore the consultation sought views on specific proposals for ownership restrictions that would apply to existing national/local multiplex operators and for new entrants. Overall, the responses to these proposals differed by the type of respondent. Some community radio respondents expressed strong opposition to any involvement in operating small scale multiplexes by the existing national or local DAB multiplex operators.
7. The CMA's response primarily argued for a not for profit model and a single licence only approach. However, the CMA added that if existing national or local multiplex operators are allowed to be involved they should be restricted to a 25% stake in a small scale multiplex up to a maximum of 3 licences, with a maximum 50% holding by national and local operators in any one small scale multiplex. In contrast several commercial radio organisations stated that existing local multiplex operators had relevant management knowledge, technical skills and operational experience which could be used to support the development of small scale multiplexes.
8. Arqiva and Bauer Media Group were concerned that the consultation proposals on ownership restrictions and lack of carriage restrictions on DSP or C-DSP licensed stations could result in national or regional competitors emerging from the small scale multiplex tier. In order to address this risk both organisations suggested there should be an absolute limit to the number of small scale multiplex licences that an operator can own. A few other respondents also suggested the total number of licences that an entity could hold should be limited.
9. The consultation also asked for views on carriage restrictions. Overall respondents expressed support for applying no restrictions on DSP licence and new C-DSP licence holders from taking carriage of services on different small scale-multiplexes.
10. Determining the size of small scale multiplexes was another key aspect considered in the consultation and views were sought on proposals for delineating the boundaries of small scale multiplexes. Overall, respondents expressed clear support for a two step approach for determining the size of small scale multiplexes. Many respondents agreed with the proposal to allow Ofcom flexibility to delineate mini-mux areas in square kilometres up to a maximum cap for locations where there is no existing local DAB multiplex. The balance of opinion among respondents was just in favour of the proposal for a 40% upper limit in areas currently served by a local multiplex. Many respondents felt population coverage would be a more appropriate metric for Ofcom to use rather than geographic area and

would be consistent with how the radio industry measures audiences. A key theme to emerge from the responses was that when advertising licences Ofcom should be allowed some flexibility in applying an upper limit to take local circumstances into account. The responses provided by current multiplex operators emphasised the potential disruptive impacts that small scale multiplexes could have on existing local DAB multiplexes, especially in rural areas. But were not able to point to examples from the trials even though these services have been available since 2015.

11. The consultation asked for views on the duration of small scale multiplex licences. Overall there was a consensus among respondents for longer licence periods of 7 years or more. Respondents felt this would provide the multiplex operators and service providers with stability and certainty. This would support long term planning and underpin confidence to invest in new small scale DAB networks. On balance respondents did not think there would be merit in varying the length of licences based on underlying demand. Several respondents noted that offering longer licence periods as the norm would provide operators in all types of areas with sufficient stability and certainty. Some respondents said it would be important to keep the licensing system simple and others thought it would be difficult for Ofcom to assess underlying demand in every area.
12. The BBC's potential involvement in small scale DAB was considered in the consultation. Overall many respondents could see the merits of allowing the BBC to take capacity on small scale multiplexes to supplement coverage for its radio services. They cited several potential positive benefits of this approach. However, in their response the BBC indicated that they did not expect to take capacity on any small-scale multiplexes or hold any licences.
13. Finally, a majority of respondents agreed with the consultation proposal that Ofcom should not be required to review the impacts of granting a small scale multiplex licence on the corresponding local multiplex. Whilst a minority disagreed. Further analysis indicated responses were divided along industry lines with community radio, consultants and small scale multiplex trial operators indicating there should be no duty placed on Ofcom. These respondents argued that small scale multiplexes and the radio services carried on them would be complementary rather than competitive to local multiplexes. In contrast Arqiva and other local multiplex owners were concerned about the potential disruptive impacts from small scale networks and the future viability of local multiplexes.
14. The next phase is for DCMS to begin the detailed work to develop the new legislative structure and to bring forward detailed secondary legislation. We intend to incorporate specific proposals set out in the consultation document, although there is a need for further work and discussion about some aspects with stakeholders in the radio industry, and to refine the upper size limit of multiplexes to take account of Ofcom's spectrum planning work. However, in light of this consultation we are making some modifications to the proposals.

**Question 1 - reserving capacity for community stations.** We will require Ofcom to reserve capacity on small scale multiplexes for community radio stations. These will be "hard" reservations that are only available for eligible community stations (C-DSP licence holders). Ofcom will set the reservation, as a proportion of multiplex capacity based on Ofcom's assessment of current or likely needs. Overall, we believe this approach is the best way to ensure community radio stations can gain access to a digital platform. We believe a "hard" reservation will

also act as a strong incentive for small scale multiplex operators to set affordable fees for community stations in order to utilise the reserved capacity. We recognise there is risk that some reserved capacity could go unused due to a lack of demand from community stations and to address this we will seek a power to allow Ofcom to be able - after a period of time - to vary the level of reserved capacity, following a request by the operator for a licence variation.

**Question 2 - setting an upper limit on reserved capacity.** We believe it is important to provide community stations with a reasonable opportunity to broadcast on small scale multiplexes. Therefore we have concluded that rather than setting a maximum level for the amount of reserve capacity, as a starting point we will set a minimum level of three community stations in each licensed area. Thereafter Ofcom will have flexibility to set the level of reservations area by area, based on the minimum, taking account of current and anticipated demand.

**Question 3 - allowing small scale operators to temporarily offer unused reserved capacity to other radio services.** Although there was support for the principle of offering unutilised space to temporary services, we noted concerns that this could keep out community stations and agree that it could potentially create a strong incentive for multiplex operators to set carriage fees that may be unaffordable for community stations, especially in areas where reserved slots are attractive to commercial services. In opting for a “hard” reservation (see Q1), we will not be taking our earlier proposal forward.

**Question 6 - restrictions on holding small scale multiplex licences.** We have reflected on the views expressed and DCMS will propose a number of mostly small modifications to those proposed; details here will be finalised when laying the SI.

- Existing Holders or part holders of national multiplex licences - reduce shareholding to 30% of an entity that holds a small scale radio multiplex licence to encourage more consortia models but increase the maximum number of licences to 6. We think this deals with concerns about the size of influence whilst allowing groups with subsidiary heritage local radio stations to be active in their support of small scale multiplex projects in their locality.
- Holders or part holders of local multiplex licences - to maintain the 50% limit on shareholdings but place an absolute limit on the number of small scale licences which an organisation can have any interest in to no more than to 25% of all small scale multiplexes licensed at a given time - we will retain the exclusion in areas covered by a local multiplex where the operator has an interest (to ensure competition and choice).
- Organisations with no interest in any national or local multiplex licence - to have no shareholding requirements but, in view of concerns expressed about the risk of concentration, to also limit the number of licence which an organisation can have any interest in to 25% of all small scale multiplexes licensed at a given time; these limits will help to ensure plurality amongst licensees and should deal with concerns about the risk to regional or quasi national structures.
- Step aside rule to retain the step aside proposals in favour of community radio backed proposals and applied to consortia with members that have any interests in national multiplex licences but will consider whether this

needs to a requirement set in the Order or under Ofcom detailed guidance setting out award criteria.

**Question 8 - 40% limit in areas already served by a local multiplex.** We noted comments asking whether population or geographic area would be used to determine the size of small scale multiplexes. The methodology will be based on population. Following detailed discussion with Ofcom we have concluded that a 40% upper limit (based on population coverage) is appropriate. It should be noted that in planning terms for small scale multiplexes this will be used as a maximum limit and not as a norm.

15. The next stage is to work with Ofcom on the detailed arrangements and to bring forward an Order amending the relevant legislation as soon as Parliamentary time allows. The Order will:

- create a new category of small scale DAB multiplex licence.
- place requirements on new small scale multiplex licences to make a certain proportion of capacity on small scale DAB multiplexes available to community radio stations holding new C-DSP licences.
- require Ofcom to set this proportion based on an assessment of current and anticipated demand - this will allow new C-DSP licence holders - once introduced - to benefit from reservations.
- set a minimum reservation for 3 community stations in each licensed area.
- allow Ofcom to vary the amount of reserved capacity above this level for a licensed area depending on Ofcom's assessment of local need.
- not extend the reservation of capacity to small commercial stations.
- create a new C-DSP category of digital sound programme licence for community stations broadcasting on digital. C-DSP licence holders will need to commit to the same social value requirements as existing community stations. They will similarly need to be constituted as not-for profit vehicles for social gain. All community stations wanting to access reserved capacity on a small scale multiplex will therefore need a C-DSP licence.
- allow C-DSP holders to access reserved spectrum on one small scale multiplex in the geographical area they are based in ('home area')
- enable both commercial and not for profit entities to hold a small scale multiplex licence.
- place a duty on Ofcom to collate and publish information on carriage charges.
- place restrictions on the level of shareholding and number of small scale multiplex licences for national and local multiplex operators.
- place restrictions on local multiplex operators taking a small scale licence (or having an interest in the licence) in the same area.
- not restrict DSP and C-DSP licence holders from taking carriage on different small scale multiplexes (though C-DSP licence holders will only be entitled to access reserved spectrum on one 'home' multiplex)
- give Ofcom the flexibility to determine the size of small scale multiplexes but set a 40% limit as the general maximum based on the population served by the corresponding local multiplex.
- set out 7 years as the length for small scale multiplex licences with a renewal for 5 years.



- not exclude the BBC from being able to take carriage on small scale multiplexes. But exclude the BBC from the system of reservations which apply to local DAB multiplexes.
16. The Order will also include detailed provisions such as the criteria for awarding multiplex licences where these are different from the provisions of the 1996 Act. In relation to carrying out its functions, it should be noted that Ofcom would comply with the statutory instrument and, where this provides discretion, exercise that discretion in line with its general duties under the Communications Act 2003.

## Ofcom's role and duties in securing carriage for community radio on small scale radio multiplexes

Q1. We would welcome views on whether reserving capacity on small scale radio multiplexes for community radio stations is the best way of securing carriage for these types of services on mini-muxes. Do you agree with the principle?

### Summary of consultation responses

17. During the passage of the Broadcasting (Radio Multiplex Services) Act 2017 (the 2017 Act), the Community Media Association (CMA), the representative body for the community radio industry, argued for a number of restrictions on operators to ensure that community radio services would have access to small scale radio multiplexes. The consultation document asked whether in exercising their power to grant small scale radio multiplex licences, Ofcom should have the ability to reserve capacity on a small scale radio multiplex for existing and new community radio stations. The question received a high number of responses and overall there was a very strong level of support expressed for the proposal - 64 respondents agreed and 5 disagreed.
18. Support for the proposal to reserve capacity for community radio stations was stated by all types of consultation respondents: community radio services, large commercial radio groups and small commercial stations, small scale DAB trial multiplex operators, national and local multiplex operators, consultants and members of the public. A number of respondents mentioned the importance of any reserved capacity being available at an affordable price/cost for community radio stations. Some responses stated that reserved capacity should be of a sufficiently good technical quality with a minimum bit rate for each station. For DAB several respondents mentioned 128kbits/sec bitrate. For DAB+ 48kbps, 64kbps and 96kbps respectively were cited as appropriate bit-rates. Several respondents suggested that reserved capacity for community stations should be available on a "use it or lose it basis" for a limited amount of time; with 6 months, 1 year and 2 years respectively put forward as relevant periods. A few respondents suggested that capacity should also be reserved for the small local commercial stations within the coverage footprint of a small scale multiplex.

"We support the proposal to reserve capacity on small scale multiplexes for community radio stations. If existing FM community stations are to be allowed to progress to digital, reserving capacity for them on their local small scale DAB MUX would appear to us to be the most logical way to provide this upgrade path" - Community Radio

"Yes I believe this is a good way of securing community radios with limited funds can ensure they get onto the DAB multiplexes. I would go further and say within the contract it should say that all community radio stations licensed in the DAB coverage area must be allowed to go on the system as long as they want to." – Community Radio

"Whilst we agree that it is sensible to reserve capacity for community radio, we suggest that this should only happen if there is also reserved capacity for existing smaller commercial stations that do not have an appropriate route to DAB...we recommend that appropriate capacity should be reserved at the time of award and that the operator should be able to re-allocate it if it is not taken up within 12 months of the multiplex launch - ILR

“A balance needs to be struck between the needs of community radio stations and the economic viability of the multiplex operators. We suggest that, at the time when a multiplex licence is offered, or when applications are invited from a geographical region, Ofcom should also invite expressions of interest from community services wishing to obtain DAB carriage.” Small Scale DAB trial multiplex operator

“There should be reserved capacity for locally originated Ofcom licensed community services on FM/AM or those operating under the proposed C-DSP licence services and targeting communities of place and specialist interest or focused on minority communities and languages and also genuinely locally originated commercial services not available on another digital terrestrial broadcast platform” – ILR.

19. Opinions on who should qualify for reserved capacity differed. Several respondents stated capacity should only be reserved for existing licensed community stations in a small scale multiplex area. The amount of capacity to be reserved should be based on a prior assessment by Ofcom of those existing FM/AM community stations. In contrast other respondents stated that reserved capacity should be open to any station qualifying for a C-DSP licence (see Q4), whether these are existing Ofcom licensed FM/AM community radio stations or new entrants.

“Yes. However it is not appropriate to set the amount of reserved capacity based on the number of analogue community radio stations already licensed in the relevant area.” - Consultant

“We welcome the principle of reserving capacity for community radio stations on small scale DAB multiplexes. We believe that DAB digital radio has a significant benefit to enable community stations to reach new audiences, as well as retaining existing audiences as they migrate from analogue to digital platforms..... We suggest that reserved capacity be open to any organisation that would be eligible to hold a C-DSP licence” - SSDAB trial mux operator

20. The CMA did agree that reserving capacity is one method which could be used to secure guaranteed carriage for community radio stations. However, the CMA considered the best way of securing carriage for community stations on small scale multiplexes is for these new networks to be operated by not-for-profit consortia which publish commitments on how they will be run and are regulated by Ofcom to ensure adherence to these duties. Four other respondents did not support the proposal. One was concerned about the viability of small scale multiplexes if community stations did not take up reserved capacity quickly; another did not think the proposal was an effective safeguard for community radio; a third thought offering community stations a price discount would be a better approach; another said reserving capacity on mini muxes should be set on a case by case basis.

### **Government response**

21. As outlined in the consultation document the government supports allowing Ofcom the ability to reserve capacity for community radio services on small scale multiplexes. We have noted the strong support expressed by respondents for this proposal and the need to formalise requirements to ensure that community radio is an integral part in the development of new small-scale networks. We believe the CMA's proposals to restrict licences to only not-for-profit vehicles would provide these protections, but the clear

evidence from the small scale DAB trials is that the mixed model with community and small commercial stations working collaboratively has been successful and that restricting commercial operators is likely to result in less demand for small scale multiplex licences. We do agree with the CMA that there is a need for some ownership restrictions to mitigate against potential concentration (discussed at Q6).

22. Capacity on small scale multiplexes is likely to be limited by the amount of spectrum available and in some cases demand for capacity by radio services may exceed supply. Therefore we recognise it is important to strike the right balance between ensuring small scale multiplex operators can be viable and offering existing community radio stations a feasible route to broadcast on a terrestrial digital platform and therefore the need to keep the system of reservations simple.
23. We have noted the concerns from some commercial stations and the points made about preferential treatment for community radio. However, we are not persuaded that small commercial stations need similar protections. Small scale DAB will not generally meet the needs of larger commercial stations that require either national or regional coverage and so in most cases, there should be capacity on small scale multiplexes for existing and new small commercial stations. We are also concerned about the additional complexity involved in extending a system of reservations to commercial radio.
24. We have also noted the concerns expressed about the price of carriage, the amount and quality of capacity reserved for community radio services. We recognise that the ability of community stations to pay market rates for carriage is a potential barrier. Therefore, we think that setting a “hard” reservation rule where the reservations on a small scale multiplex will only be available to community radio services (C-DSP licence holders) would have a number of important benefits. We believe it will act as a strong incentive for small scale multiplex operators to set affordable fees for community radio stations in order to utilise the reserved capacity (in contrast an operator choosing to set prices at unaffordable levels will generate no income from the reserved capacity). We believe the “hard” reservation measure along with the proposed transparency requirements for Ofcom to collate and publish rate cards (discussed later at Q5) and the growth in capacity from the launch of mini muxes should operate to limit the scope for any price gouging by new small scale multiplex operators.
25. We recognise that the “hard” reservation approach, with capacity only available to eligible community stations, carries a risk that some reserved capacity could go unused and lie empty. In order to address this risk, we think that Ofcom should be allowed to build in a simple mechanism in the licensing regime to vary the level of reserved capacity on a small scale multiplex, following a request by the operator for a licence variation. This mechanism would allow an operator, in areas of low demand from community radio services, to apply for a reduction in the amount of reserved capacity and provides an appropriate safeguard where there is no genuine demand for carriage from community stations.
26. We believe the licensing regime would need to specify some clear boundaries when dealing with this aspect. For example in order to allow demand to become established and work out we think that reservations should be protected for a minimum period of time before Ofcom is able to consider an application from a multiplex operator for a licence variation. In granting a request, Ofcom will need to be satisfied that unused capacity is due to a lack of genuine interest rather than as a result of unreasonably high carriage fees set by the multiplex operator. To do this Ofcom will have to consider representations from

community stations who have made requests to take carriage on the multiplex but were not able to agree commercial terms. In circumstances where too little capacity has been reserved Ofcom would also have the ability to set a variation to increase the amount, but only at the point at which the small scale multiplex licence is renewed. We think increasing the amount within a licence period would undermine certainty for the multiplex operator.

27. We have noted the comments about the quality of the reserved capacity community stations. This is primarily a technical matter and Ofcom would need to reserve sufficient capacity to ensure that the audio quality of the services is of a sufficient quality consistent with reasonable expectations for the majority of listeners.

Q2. We welcome views on whether there should be an upper limit placed on the amount of capacity reserved for community radio services. Should this be a single figure applicable across all multiplexes?

### Summary of consultation responses

28. The consultation asked for views on whether there should be an upper limit placed on the amount of capacity reserved for community radio services. Responses to this question were fairly evenly divided. Overall, 30 respondents indicated there should be an upper limit set by Ofcom and 27 were not in favour of fixing a maximum level. Interestingly both sets of respondents thought Ofcom would need to take a flexible approach in setting the amount of reserved capacity for community stations on small scale multiplexes with consideration given to local circumstances, in particular the differing characteristics and levels of demand between urban and rural locations.
29. Of those respondents in favour of setting an upper limit, some said it should be based on an assessment of existing Ofcom licensed community stations in an area. Several respondents proposed a figure for an upper limit and these ranged from 20% to 50% of a small scale multiplex's total capacity. Some thought Ofcom should have flexibility in the applying of the amount of reserved capacity for community stations, based on local demand, up to a predetermined upper limit. Only a few thought applying a blanket figure across all small scale multiplexes would be appropriate.

"Setting an upper limit is reasonable. A one size fits all approach will not work. Using the current numbers of community stations in any one area should be a sufficient guide to setting the upper limit"- Community Radio

"An upper limit should be placed on the amount of capacity reserved but it will be difficult to set a single figure across all multiplexes as demand will vary from region to region. If an average of 2-3 community services per multiplex is used, then an upper limit of 25%-35% could be applied with a similar amount reserved for local commercial services. Flexibility should be built in however to enable case-by-case determination" - Consultant

"Ofcom should be given considerable flexibility to determine, on a licence-by-licence basis, how much capacity on any given mini-mux should be reserved for community radio. However, in order to ensure continuing opportunities for commercial radio operators (and, potentially, the BBC) it would seem to be sensible for there to be a maximum upper limit on how much community radio capacity can be reserved. The

capacity reserved by Ofcom for community radio services on mini-muxes should not be permitted to exceed 40% on any multiplex” – ILR

“We agree that some capacity should be reserved for community (and as previously stated at a protected rate to make it accessible) with the remainder to be available for commercial services. We do not think a blanket percentage of capacity should be applied on a national basis as there is clearly going to be higher demand for community access in some areas” – Community Radio

“Any “reserved route” for community radio services should be limited to a maximum of 20% of the potential services available on any given small scale multiplex. Set at this level, it provides both an appropriate degree of security for said services, whilst also ensuring the necessary flexibility and vital commercial stability/viability for the multiplex itself, as well as ensuring the likely wider choice and range of radio services available for the listener” – ILR

30. Of the respondents who did not think there should be an upper limit to the amount of reserved capacity, almost half argued that Ofcom should take a flexible approach because a “one size fits all” methodology would be inappropriate due to differing circumstances around the country. Instead, they contended that the amount of reserved capacity should be set on a case by case basis, as appropriate for each small scale multiplex. A few respondents stated there should be no limit applied to the number of community stations able to gain access to a small scale radio multiplex.

“We doubt the advisability of settling on a single figure of capacity across all multiplexes. ... demand for service provision is likely to be far less than in a large urban conurbation (and equally less economically attractive for any provider). It would seem inadvisable to create a ‘one size fits all’ provision across all areas served” – Community Radio

“We believe that setting an arbitrary limit on how much capacity is set aside, is likely to prove problematic because demand for space is likely to vary significantly from area to area” –ILR

“I don’t think an upper limit is relevant. Small scale radio multiplexes are there for providing community stations, and in a perfect world 100% of the stations would be local community stations” – Community Radio.

“No. The upper limit should be dependent upon the number of services which could benefit from inclusion in any one area. This should be determined on a case by case basis” – ILR

“There is no reason for an arbitrary limit, rather that the multiplex should support as many genuinely local but sustainable services as there is demand for.... Once operational, the multiplex provider could make available any surplus capacity to new or emerging community groups on a ‘first refusal’ before throwing the net open to networked or commercial services” – Community Radio

## Government response

31. Whilst strong support was expressed for the principle of reserving capacity for community radio stations, no clear consensus emerged on setting an upper limit to this capacity. Similar numbers were in favour and against the idea. Although we have noted the comments about allowing Ofcom flexibility to vary the limit made by both respondents in favour of setting an upper limit and those against. The consultation paper explained that under the proposed arrangements Ofcom would set reservations prior to advertising small scale radio multiplex licences and would be able to vary the figure (i.e. amount of reserved capacity) if there was insufficient demand from community radio stations.
32. In public policy terms we believe it is important that community radio stations have a reasonable opportunity to be carried on small scale multiplexes. In order to achieve this objective we have concluded that, as a starting point, it will be more appropriate to set a minimum level of reserved capacity for community services on small scale multiplexes, rather than a maximum amount.
33. Based on the Ofcom small scale DAB trials, we believe that a reasonable minimum level would be three community stations for each small scale multiplex. Thereafter, having carefully reflected on respondents' views, we believe the right approach is to allow Ofcom flexibility to set the appropriate reservation level area by area, based on the minimum, that reflects current (existing analogue community stations) and anticipated demand (to account for future C-DSP licences) for small scale DAB carriage from the community radio sector. By anticipated, this means looking ahead to assess demand in the following three years from when a small scale multiplex licence is advertised. The amount of reserved capacity for community stations will be set out in the offer of a licence by Ofcom. We agree with the points made that in setting the level of reservation, Ofcom should develop a formula and take account of expressions of interest received. We also agree that Ofcom should have the ability to vary the level of reserved capacity if there was insufficient demand from community radio services.
34. Elsewhere in the consultation, we asked for views about allowing C-DSP and DSP licence holders to take carriage on more than one small scale multiplex and the responses to this proposal were positive. In light of this we think it important to clarify that a community station (C-DSP) would only be eligible for access to reserved capacity on a single ("home") small scale multiplex. Community stations (C-DSP licence holders) deciding to take carriage on other mini muxes would have to use the non-reserved capacity.

Q3. Do you agree with the principle that small scale radio multiplex operators should be able to offer unused capacity reserved for community radio services on a temporary basis?

## Summary of consultation responses

35. The consultation paper asked for views on the principle of allowing small scale radio multiplex operators the ability to offer unused reserved capacity for community stations to other radio services on a temporary basis. Overall a majority of respondents agreed with this principle.

36. Several respondents who expressed support for offering spare capacity on a temporary basis could see this being done for pop up services for short term events. A couple suggested that unused capacity could be used by a small scale multiplex operator to support new formats with new temporary services offering a broader range of programmes to local listeners. Some respondents agreed with the principle but said that safeguards would be needed to ensure that small scale multiplex operators did not force off or price out community radio stations from the reserved capacity allocated to them. Suggested measures included a time limit or notice period for temporary services. The CMA argued that small scale multiplex operators should offer any temporary capacity to stations within the multiplex's coverage area. A few respondents agreed with the principle of utilising spare capacity in this way, but added that after a defined period of time small scale multiplex operators should be allowed to offer reserved capacity that has not been taken up by eligible community services to the wider market on a permanent basis.

“We can see that there is a good business argument for MUX operators to be able to offer unused capacity reserved for community radio services on a temporary basis however we would like to see some safeguards including transparency over the terms of the “temporary” arrangements plus a maximum limit on such temporary arrangements which we suggest should be 12 months” – Community Radio

“We do agree with this principle; however caution would be required with the approach. If no limits on carriage pricing were placed on community radio slots, there could be situation where the community radio station is ‘priced out’ of their reserved capacity and therefore it is awarded to a commercial provider who is able to pay the fee” – Community radio

37. Some respondents who disagreed were concerned that offering unused reserved capacity to other service providers only on a temporary basis would not provide small scale multiplex operators with a sustainable business model. Instead they proposed that the capacity reserved for eligible community radio stations should be offered to them on a “use it or lose it basis”. After a specified qualifying period had expired small scale multiplex operators should be allowed to offer unused reserved capacity to other broadcasters on the open market. These respondents argued that this approach would allow small scale multiplex operators to operate in a more commercially viable way and it would be a more efficient use of spectrum allocated for small scale DAB.

“We would prefer to see a “use it or lose it model” whereby mini-mux operators are able to offer reserved capacity to the market after a reasonable period of time if community and small local commercial stations in the market have not taken up the reserved capacity. We do not think offering unused capacity on a temporary basis will be workable” – National Commercial Radio

“Angel Radio believes that offering capacity to commercial services on a temporary basis is not a long term sustainable model for the operation of the second tier of local DAB multiplexes. Our suggested approach is that if after a predetermined period of time, for example 12 months, if a significant amount of capacity remains available, a multiplex operator should be allowed to apply to Ofcom to enable a commercial radio station, or stations, occupy the capacity permanently. Multiplex operators should demonstrate to Ofcom that they have exhausted all avenues to fill the capacity with community radio broadcasters before offering the space to commercial radio stations” – Small Scale DAB trial multiplex operator



38. Some community radio respondents who disagreed with the proposal were concerned that small scale multiplex operators would offer spare reserved capacity in a way that keeps out eligible community stations.

### **Government response**

39. The consultation revealed some support for the principle of allowing small scale multiplex operators to offer unused reserved capacity to other radio services on a temporary basis. We have noted the concerns raised about the risks of community radio being priced off or forced out of the reserved capacity and the need for safeguards if this approach were adopted. Overall, we were persuaded that allowing unused reserved capacity in this way would not be the best long term approach for community radio stations or small scale multiplex operators. Allowing multiplex operators to make use of unused reserved capacity for other radio services at their own discretion risks making the measure of reserving capacity for community stations ineffective. It could create an incentive for multiplex operators to set carriage fees at a level unaffordable for community radio services in order to ultimately offer the unused capacity to higher paying commercial services. This incentive would be particularly strong in areas where the reserved slots are attractive to commercial services.
40. The mechanism to allow small scale multiplex operators to apply for a licence variation to reduce the amount of reserved capacity for community stations should provide a safeguard where there is a genuine lack of demand from community radio for carriage on small scale DAB multiplexes.

### **Digital community radio licences**

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| <p>Q4. We would welcome views on these proposals and on the interaction with the existing community radio licensing scheme</p> |
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### **Summary of consultation responses**

41. The consultation paper pointed out that currently there is no equivalent digital sound programme (DSP) licence to the existing analogue licence for community radio services. We proposed that in order to address this gap Ofcom should have the flexibility to offer a new DSP licence for community radio stations called a C-DSP licence, and these licences will be for stations that whilst broadcasting in digital, choose to operate in all other respects as a community radio station. Holders of C-DSP licences would have to meet certain obligations, but would also qualify for specific benefits including access to the reserved capacity for community radio services on small scale multiplexes. We also proposed that the term of a C-DSP licence should be indefinite.
42. The question attracted a large number of responses. Overall a strong level of support was expressed for the proposal. A majority of respondents, 55 in total, supported allowing Ofcom flexibility to create a new C-DSP class of licence. A small number of respondents did not. Support for a C-DSP licence was expressed by all parts of the radio industry - community radio stations, commercial radio, small scale DAB trial mux operators, national and local DAB multiplex operators, technical/other consultants and members of the public.

43. Many of the respondents that supported the proposal acknowledged the value of the benefits which would be associated with this class of licence. There was also a sense that it would be an appropriate regulatory tool to reflect the distinct characteristics and social purposes of community radio stations choosing to broadcast in digital. In addition to expressing support for a C-DSP licence several respondents would like to see an increase in the size of the Community Radio Fund. Niocast, suggested it would be beneficial for government to create a 'kickstarter fund' for C-DSP licence holders in order to encourage community radio's transition to the small scale DAB platform.

"As a community radio station we welcome the C-DSP license. On our small scale DAB trial it has been a good experience and within the bounds of affordability for a station run with just volunteers" – Community Radio

"The proposals to offer a new licence called a C-DSP and that licenses follow similar guidelines to the existing analogue community radio licenses is the way to proceed" – Community Radio

"We welcome the proposal for the C-DSP licence for community broadcasters, We currently provide the reporting required by Ofcom for our community FM licence that we trust will simply integrate with this proposed licence...With the prospect of potentially more C-DSP stations launching, we hope that the community fund will be further strengthened to continue to reward the essential grants much needed by existing and new C-DSP community broadcasters" – Community Radio

"In principle, we believe that Ofcom should have the flexibility to be able to offer a new DSP licence for community radio stations called 'C-DSP' licences for stations that, whilst broadcasting in digital, choose to operate in all other respects as a community radio station...We also note that C-DSP licence holders will be able to access the Community Radio Fund. The sector has long-campaigned that the fund hasn't been increased to keep pace with the number of community radio stations which has grown exponentially. To now open this fund to C-DSP licence holders will be seriously detrimental to existing analogue community radio stations" - Niocast

44. Radiocentre and two commercial radio respondents mentioned a loophole in the current licensing arrangements which allows an FM/AM community station to simulcast on digital using a DSP licence and to act in a fully commercial way on the DAB platform. They argued that the introduction of a C-DSP licence would be an appropriate opportunity to deal with this ambiguity. Community station MKFM offered a contrasting view on this subject and argued that under a new regulatory regime existing Ofcom analogue licensed community services should be allowed to use reserved capacity on small scale multiplexes to simulcast a FM/AM service using either a DSP or C-DSP licence.
45. A few respondents did not support the proposal to create a C-DSP licence. These respondents did not think the benefits associated with a C-DSP licence would be sufficiently attractive for community stations to opt take up this type of licence rather than the existing DSP licence. This view was put forward by the CMA, a small scale trial multiplex operator and a couple of community radio stations. One of these respondents suggested that increasing the size of the community radio fund would be a way of addressing this weakness.

## Government response

46. We have noted the strong level of support expressed by respondents from across the radio industry for the proposal to create a new C-DSP licence category. Community radio currently delivers a number of important public policy benefits. We want community radio to continue to deliver these benefits in a potentially all digital future for radio. This new category of licence would support a number of key functions.
47. A new C-DSP licence will be an important way of distinguishing in legal and licensing terms between community radio services and other radio services. The C-DSP licence will be a cornerstone of the system for reserving capacity for community stations on small scale multiplexes and provides an easy way to identify those radio services which are entitled to access reserved capacity on small scale multiplexes (because they will meet the statutory criteria for community radio stations). The C-DSP licence would also be the way for a small scale multiplex operator to determine when approached by a station whether they are allocated reserve capacity or not.
48. As indicated in the consultation paper the duration of a C-DSP licence will be indefinite. This is consistent with the existing approach for DSP licences. From our discussions with them, Ofcom have indicated that the process for awarding C-DSP licences would be relatively simple and low cost, since these digital licences will not be granted via a beauty parade contest, unlike the procedure for analogue community radio licences which have assigned spectrum. Existing FM/AM licensed community stations will have to actively apply for a new C-DSP licence if they want one.
49. We recognise it is important that there is broad support for C-DSP licences from across the community radio sector, something that was evident in the responses to the consultation. Nevertheless we have taken note of the CMA's response to this part of the consultation and have discussed the issue of C-DSP licences further with them in the light of this we propose to use the existing powers in the 2017 Act and section 262 of the Communications Act 2003 to enable Ofcom to offer C-DSP licences.

## Restrictions on holding small scale radio multiplex licences

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| <p>Q5. We would welcome views on this approach and whether it deals with the concerns raised about access to small scale DAB radio multiplexes by community radio services?</p> |
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## Summary of consultation responses

50. In order to facilitate the widespread development of small scale radio multiplexes the consultation paper argued for a mixed model approach to ownership. The variety of circumstances around the country – in particular disparities between urban and rural areas - will require different approaches to ensure the financial viability of a small scale radio multiplex and the radio services broadcasting on the network. Restricting operators to just one form of ownership model would, in our view, act as a barrier to entry and investment and as a limit on the total number of small scale multiplexes eventually launched.
51. Overall there was a strong level of support for the proposal that small scale radio multiplex licences could be awarded to both commercial and not for profit entities. Fifty respondents

from across the radio industry - community radio stations, commercial radio, consultants, members of the public, local multiplex operators and small scale DAB trial mux operators - backed a mixed model approach to ownership. This included 14 respondents from the community radio sector. Many respondents accepted the logic that a mixed model approach to ownership would facilitate the widespread development of a third-tier of digital radio multiplexes. A minority of respondents, 14 in total, disagreed with the proposal. The CMA strongly opposed this proposal on the grounds that small scale DAB should primarily be a platform for community radio.

“The mixed model approach being proposed, is the correct approach. The approach deals with the concerns raised about access to small scale DAB radio multiplexes by community stations because of the requirements set by Ofcom which guarantees reserved capacity for community radio. A fully transparent pricing of carriage fees is the way to go. I believe that the proposal to publish pricing on Ofcom’s website and keep it updated is a good idea” – Community Radio

“We accept the logic of allowing commercial operators for SSDAB multiplexes as well as not for profit ones” – Community Radio

“A mixed approach of either commercial or not for profit operators makes sense. The requirement on OFCOM to require that carriage costs be minimised and made transparent is sensible” – Community Radio

“Quidem believes that restricting mpx ownership to a not-for-profit model would prove counterproductive – potentially holding back the development of a robust small-scale MPX strata” – ILR

“Restricting the sector to just one form of ownership model act as a barrier to entry and limit the innovation and investment necessary to make the future success of the initiative more likely” – ILR

“A mixed ownership model recognises that no two areas are the same and that different approaches to licensing ensures the financial viability of small scale radio. In recognising that there is an element of risk involved in launching and operating a small scale radio multiplex business, restricting operators exclusively to the not-for-profit ownership model would undoubtedly constrain the ability of the sector to attract investment.” - Small Scale DAB trial multiplex operator

52. Seven respondents who disagreed with the mixed model ownership proposal were from the community radio sector, including the CMA. All of them supported a not-for-profit only ownership approach for small scale multiplexes. Some cited a not for profit model as being distinct from the existing local DAB multiplex ownership approach and as having supported the growth of community radio stations. The CMA argued that operating small scale radio multiplexes on a not-for-profit only basis would be the best way to guarantee low carriage fees for service providers and that any surpluses generated the operator would be used to advance community based broadcasting in that locality. Arqiva were concerned the consultation proposals would mean that small scale multiplexes could in effect become “sub-local” commercial multiplexes and this could result in them targeting the urban parts of the local multiplex layer to serve a disproportionately high population and this could incentivise larger local radio stations to move from these local networks.

Arqiva felt this departed from the original intention to provide smaller stations with a route to broadcast on digital.

“Only not for profit organisations should be allowed to operate small scale DAB multiplexes” – Community Radio.

“We believe SSDAB multiplexes should be operated as non-profits, or more accurately as limited profits and that charges should be made public wherever practicable. A multiplex should not exist to maximise its income by selling capacity to the highest bidders regardless as to whether that bidder offer additional choice within the listening area” – Technical services consultant

53. The consultation also sought feedback on a proposal to address a concern about small scale multiplex operators setting unreasonably high carriage fees. In the paper we contended that requirements set by Ofcom which would guarantee reserved capacity for community stations would help to address this point. We argued that another effective mechanism for dealing with the issue - alongside reserving capacity - would be to require a high level of transparency in the fees charged by small scale multiplex operators. We therefore asked for views on placing a duty on Ofcom to collate and publish information on small scale multiplex rate cards on the Ofcom website and regularly update the information.

54. Overall there was strong support for this proposal. A number of respondents felt the proposed measure would be the right approach and taken together with reserved capacity would provide effective protection for community radio services. Some small scale DAB trial multiplex operators were positive about having to publish rate cards and said it is something they currently do. But they also suggested that some flexibility would be needed in the proposed approach to take into account changing circumstances as businesses develop.

“The proposal that applicants publish a rate card for protected community capacity, which is a binding licence commitment, will provide effective protection for community services” - Consultant

“Transparent, publicly available pricing is a vital necessity for SS-DAB multiplexes. We wholeheartedly support it, and believe the suggested system of easy access to frequently updated information would work efficiently, and in operators' favour” – Technical services consultant

“Our experience is that the Niocast (Manchester) channel and installation cost is reasonable (compared with the cost of operating medium wave for example and compared with the FM costs we experienced during our short-term FM licences). Hence we agree that full price transparency is vital, just as it would be for any commercial product in a commercial world. Certainly a centralised price list on the Ofcom website would be welcome” – Community Radio

55. A few respondents disagreed with the proposal because they did not think it would prove to be a sufficiently strong measure for keeping carriage fees low for community stations. As an alternative one community radio respondent thought Ofcom should be involved in setting fees at a level relative to commercial rates. Bauer Media suggested allowing small scale multiplex operators to charge community stations only on a cost plus basis, with the

“plus” set by Ofcom. Wireless Group also suggested using a cost plus methodology for pricing.

“Making charges publicly available will not prove to be a barrier to pricing out small stations. Ofcom should be looking to set a cap on fees chargeable by the operators for this reserved space, setting this as a percentage of the commercial rate e.g. 60% will be the most reasonable way to do it as the commercial rate has to be competitive as they won’t get any takers - it guarantees that a non-profit couldn’t be priced out of the market” - Community Radio

“An alternative approach might be to allow operators only to charge community radio stations on a cost plus basis, with the “plus” percentage being set by Ofcom. This would allow operators freedom to charge market rates for commercial stations, while supporting the community sector, which can least afford the charges. Operators would know when applying for a licence how much capacity they would have to reserve for community stations and could plan accordingly” - Bauer Media Group

### **Government response**

56. We have carefully considered the views expressed by respondents to the consultation. There was strong support for mixed model ownership and recognition of the rationale for proposing this approach. Therefore we believe that small scale multiplex licences should be available to applicants based on a not-for-profit or profit proposal.
57. We think that requiring transparency on carriage fees with the publication of rate cards for radio stations carried will be a useful measure alongside the “hard” reservation of capacity on small scale multiplexes for community services. We believe these measures applied together will prove to be effective mechanisms in mitigating the risk of unreasonably high fees being charged by operators.

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| Q6. We would welcome views on this approach (on the proposed restrictions of holding small scale radio multiplex licences). |
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### **Summary of consultation responses**

58. As well as the ownership model the consultation paper considered the issue of the number of small scale multiplex licences that eligible licence holders may hold at any one time and possible future concentration of ownership. This issue was pressed strongly by the CMA and other community radio stations in representations during the passage of the Broadcasting (Radio Multiplex Services) Act 2017. Their argument was that in order to protect community radio, ownership should be limited to a single small scale multiplex licence and held by a not for profit entity which then renders the question of ownership moot.
59. In the consultation paper we argued that applying a limit of one licence per organisation would be too restrictive and not help to support the innovation and investment required to facilitate the widespread development of small scale multiplex services. In addition, it ran counter to the experience of the trials, the success of which was due in part to the participation of new consortia some of who are participating in the development of small scale DAB in other European countries. However, we recognised that some restrictions on

ownership would be necessary to avoid the development of local monopolies, especially where there is interest from an existing local multiplex operator. The consultation asked for views on specific restrictions for:

- **Existing national multiplex licence holders** – will be able to hold an up to 50% stake in the entity that holds a small scale radio multiplex licence up to a maximum of 5 licences. This will not include (a) an area where the national licensee holds the overlapping local DAB licence or has an interest in the local DAB licence; (b) an area where another bidder (with no interest in a national or local multiplex) has applied for that small scale radio multiplex licence from Ofcom. This means if any other group or consortia bids and Ofcom believes they meet the requirements to award the licence, that they will secure the licence (the” Step-Aside” Rule);
- **Existing local multiplex licence holders (with no interest in national multiplex licences)** - will be able to hold an up to 50% stake in a small scale radio multiplex licence with no upper limits on the number of licences in which they can have an interest. But this will not include areas where a local multiplex licensee [or has an interest in the local DAB licence] already covers wholly or in part which would be served by the small scale DAB multiplex;
- **Individuals/organisations/entities holding no national or local multiplex licence** - no restrictions on the number of licences that an organisation or entity can hold or have an interest in;
- **Restrictions on holding multiple licences in the same area** - restricted to only one small scale licence covering - in Ofcom’s view - substantially the same area. This does not cover intersecting coverage areas

60. Responses to this question were divided along industry lines. Although it should be noted that 20 respondents agreed with the restrictions as set out in the consultation paper.

“We have concerns about the dangers of narrow concentration of multiplex ownership, and believe the consultation document addresses the principal issues by suggesting workable limits on Small Scale multiplex licence holdings” – Consultant

61. Twenty respondents did not think existing national or local multiplex operators should be allowed to own a small scale multiplex licence. Most of these respondents were from the community radio sector and included the CMA. Three small scale DAB trial multiplex operators were opposed to any national or local multiplex operators participating in small scale DAB. Two of them stated the trials had successfully demonstrated it is possible to operate small scale multiplexes without the resources of large companies. Another argued that the introduction of small scale multiplexes should be organised in a way that encouraged new players into the local radio broadcasting market rather than allowing existing national or local multiplex operators to extract profit from stations broadcasting on the mini mux networks.

“National and Local multiplex operators should NOT be able to hold any part or interest in a ssdab licence, otherwise we will be back to square one with small stations including community stations priced out of the market”– Community Radio

“We do not support the limiting of ownership to one licence, however we do believe that some upper limit is likely to be required. We do not believe existing national multiplex holders should be permitted to hold any stake in SSDAB entities. We do not believe existing local multiplex holders should be involved in SSDAB services within the coverage of their existing DAB multiplex, as this would not only reduce competition but create a substantial conflict of interest and again exacerbate the exact situation SSDAB is attempting to solve” – Community Radio

62. The CMA’s preferred approach would be to limit small scale multiplex ownership to a single licence. However, whilst they were opposed in principle to the involvement of the existing national/local multiplex operators the CMA did put forward a view on the ownership restrictions that should apply to them if they are allowed to participate in small scale DAB. The CMA suggested restricting national or local multiplex operators to a 25% stake in small scale radio multiplexes up to a maximum of 3 licences; with a maximum 50% holding by national and local multiplex licence holders in any one small scale multiplex. The CMA also agreed with the “Step-Aside” Rule as set out in the consultation.
63. Commercial radio organisations took a more positive view about the contribution existing multiplex operators could make to the development of small scale multiplexes. In their responses Muxco, Nation Radio, 100% Media and Radiocentre argued against placing ownership restrictions on local multiplex operators. Primarily because local mux operators have built up valuable technical skills, operational experience and management knowledge which could usefully be applied to the development of small scale DAB.
64. Radiocentre expressed concerns about the proposed restrictions on local DAB multiplex owners. They argued that setting a 50% share limit in a small scale multiplex is an arbitrary figure. Radiocentre thought that preventing organisations with any share in an existing local DAB multiplex from holding a small scale multiplex licence in a local (geographic) area likely to be most relevant to them, is too restrictive. Radiocentre stated this would unduly prevent smaller commercial broadcasters with an interest in the local DAB multiplex from being involved in a small scale multiplex in an overlapping area. However, Radiocentre agreed with the proposed restriction for national multiplex licence holders (50% share up to a maximum of 5 licences). But asked for more clarity from DCMS on the companies or entities to which this restriction would apply.
65. In UKRD’s view, the proposed restrictions should not apply to an operator owning 50% or less of a national or a local DAB multiplex licence; but should apply to operators owning more than 50% of a national or local DAB multiplex. UKRD also argued that holding a minority, non-controlling stake in a national or local DAB multiplex should not preclude that entity from investing in small scale DAB in the area in which it is involved. The Wireless Group were predominantly concerned that the proposals on ownership restrictions would limit the ability of its subsidiary local commercial radio stations to fully participate as shareholders in small scale radio multiplex licence applications. Wireless Group argued that the consultation proposals risk preventing local commercial FM services which are valued by the local communities they serve and whose distribution requirements cannot be met by existing local DAB multiplexes from securing a route to broadcasting on a terrestrial digital platform.
66. Global disagreed with the consultation proposals and would prefer to see the existing national and local multiplex operators not involved in the small scale radio multiplex tier. Celedor also expressed a desire to restrict the involvement of existing national and local



multiplex operators in small scale DAB and proposed a maximum 30% share for both in a small scale multiplex.

67. Arqiva were primarily concerned about the risk of a national or regional competitor emerging on the small scale multiplex tier through an eligible operator accumulating a large number of licences. Arqiva suggested the way to control this risk is through focused ownership restrictions such as setting an absolute limit on the number of small scale multiplex licences an entity is allowed to hold - for example 5 licences; or by setting the limit any operator would be allowed to own as a proportion of the total. Arqiva argued this would strike the right balance by allowing small scale multiplex owners to develop some scale and lower their costs while preventing the emergence of a national competitor. Bauer Media Group mentioned a similar concern about the way the proposed restrictions on ownership are set out, which they think could result in the development of quasi-regional or local competitors, in urban areas of high demand such as Manchester, to the existing local multiplex tier. To counter this possibility happening Bauer Media Group suggested that a small scale multiplex operator should be restricted to owning 1 licence within each existing local DAB multiplex area.

“This consultation is clearly seeking to ensure that existing multiplex operators within a specific area cannot leverage their theoretical market power by preventing them from owning a Small Scale multiplex. This, to us, misses a more likely risk; namely that an eligible operator could accumulate any number of Small Scale multiplexes and emerge as a competitive local, national or sub-national operator.” - Arqiva

68. Several respondents suggested applying an absolute limit to the number of small scale multiplex licences that an eligible entity could hold, with 5 being mentioned most often. Only 3 other respondents explicitly agreed with the CMA’s proposal to limit small scale multiplex ownership to a single licence.

### Carriage restrictions

69. The consultation asked for views on applying **no restrictions** on DSP licence and new C-DSP licence holders from taking carriage of services on different small scale multiplexes. Overall support was expressed for this proposal by all types of respondents: community radio, commercial radio, small scale DAB trial mux operators, consultants and members of the public.

“It is a logical approach not to place any restrictions on DSP licence and new C-DSP licence holders taking carriage of services on different small scale multiplexes” - Radiocentre

“The CMA agrees that there should be no restrictions on DSP and C-DSP licence holders taking carriage of services on different small-scale multiplexes” – CMA

“We support the proposal to not restrict the number of multiplexes that DSPS or C-DSP licence holders can obtain carriage on” – Small Scale DAB trial multiplex operator

70. One respondent queried whether community radio stations, aimed at a local audience, should be permitted to take carriage on a number of multiplexes. A community station will not, by and large, have the resources to be able to operate in that way and will not, outside the area covered by their multiplex, have a right to a reservation for carriage on second or

subsequent multiplexes. However, this observation raised an important point about the need for a clarification that the reservation for community radio stations should apply to one small scale multiplex only.

## Government response

71. The question about ownership restrictions drew out a complex set of responses with few respondents agreeing with any other respondents on this issue. There was, however, a much clearer articulation of risks. Arqiva identified a risk of allowing quasi-regional multiplexes to develop shifting the focus of small scale multiplexes away from their local roots and thought stricter ownership restrictions - alongside limitations in coverage area - were clearly needed. The CMA were concerned about the risks of concentration and thought the ownership restrictions should be tightened.
72. From slightly different standpoints, both Global and Bauer thought an exclusion of national multiplex operators was appropriate. However, the Wireless Group, which has an interest in national and local DAB multiplexes, wanted greater flexibility in order to be involved in setting up small scale multiplexes in areas covered by their subsidiary local FM services. Across the smaller radio groups there was an even wider spread of views with some arguing for greater flexibility and others seeking to exclude the larger radio groups, especially those with interests in national multiplexes. Against this background, the fact that a couple of responses from small scale operators, thought that DCMS had got the balance right was, therefore, something of a surprise.
73. We note the very strong desire from across the commercial, community and small scale sectors for DCMS to establish the legal framework for the licensing structure as soon as possible. Drawing all the views together DCMS believes that the proposals set out in the consultation paper should be the basis for the new requirements. Reflecting on the views expressed DCMS plans a number of modest changes to the original proposals.
  - Existing Holders or part holders of national multiplex licences - reduce shareholding to 30% of an entity that holds a small scale radio multiplex licence to encourage more consortia models but increase the maximum number of licences to 6. We think this deals with concerns about the size of influence whilst allowing groups with subsidiary heritage local radio stations to be active in their support of small scale multiplex projects in their locality.
  - Holders or part holders of local multiplex licences - to maintain the 50% limit on shareholdings but place an absolute limit on the number of small scale licences which an organisation can have any interest in to no more than to 25% of all small scale multiplexes licensed at a given time - we will retain the exclusion in areas covered by a local multiplex where the operator has an interest (to ensure competition and choice).
  - Organisations with no interest in any national or local multiplex licence - to have no shareholding requirements but, in views of concerns expressed about the risk of concentration, to also limit the number of licence which an organisation can have any interest in to 25% of all small scale multiplexes licensed at a given time; these limits will help is is to ensure plurality amongst licensees and to deal with concerns about the risk to regional or quasi national structures.
  - Step aside rule to retain the step aside proposals in favour of community radio backed proposals and applied to consortia with members that have any interests in national multiplex licences but will consider whether this needs to a

requirement set in the Order or under Ofcom detailed guidance setting out award criteria .

74. DCMS believes this approach goes some way to drawing the right balance between encouraging large radio organisations to support the small scale DAB and preventing the emergence of new local monopolies and doing so in the least bureaucratic way possible. We recognise there may be a need for some flexibility in the application and will confirm the details of this approach when laying the SI.
75. In light of the strong support expressed by respondents DCMS will bring forward legislation to ensure there are no restrictions on DSP licence holders and C-DSP licence holders from taking carriage of services on different small scale radio multiplexes. But that community stations (C-DSP licence holders) can only qualify for a reservation on one small scale multiplex.

### Determining the sizes of small scale radio multiplexes

Q7. Do you agree with this two-step approach to delineating the size of small scale multiplexes?

Q8. Do you agree with the up to 40% limit in areas already served by a local multiplex; if not, why not and what alternative do you propose?

### Summary of consultation responses

76. The consultation asked for views on the methodology for determining the parameters of small scale multiplexes. The proposal was that when awarding licences Ofcom has flexibility to apply a two-step test for delineating small scale multiplexes from local DAB multiplexes:
- In locations where there is no current local multiplex licensee, Ofcom would have the flexibility to issue small scale multiplex licences instead to cover an area up to a maximum cap in square kilometres. The consultation paper argued this approach would enable local as opposed to national digital radio multiplex broadcasting to be set up for places where there is none at present, such as Cumbria, due to a lack of commercial viability.
  - In areas already served by a local DAB multiplex, small scale multiplexes must only be capable of broadcasting a signal capable of reasonable reception for a given percentage of the surrounding local multiplex. The consultation proposed this could be up to a maximum figure of 40% of the local DAB multiplex area. Where a proposed small scale multiplex licence area spans more than one existing local DAB multiplex area, the percentage will be applied to the cumulative total of the local multiplex areas covered.
77. Just over a half of all respondents agreed (45 in total) with the proposal to allow Ofcom flexibility to use a two-step test. Several respondents thought it would be more appropriate to use population rather than geographic area as the metric for determining the size of a small scale multiplex. Others noted that transmitter power and signal strength should also

be a key consideration in determining small scale multiplex size to ensure there is robust indoor reception and a positive listener experience. These respondents cited a concern that mistakes from the early days of DAB rollout, when there were problems with poor reception for listeners, should not be repeated in the development of small scale multiplexes.

“The two step approach of tackling DAB coverage in more remote areas as well as licensing subsets of existing DAB areas seems appropriate” - Consultant

“Yes, we believe this is a reasonable approach, and that areas which have no existing commercial multiplex and probably could not support such a service should not have undue restrictions on coverage of SSDAB service. A locally operated not-for-profit group may be able to offer suitable geographical coverage which a commercial operator could not. The OFCOM examples of Cumbria and Scottish Borders could easily be extended to many rural parts of Scotland, Wales and parts of England to which no commercial operator would be attracted” – Technical Services Consultant

“A small scale multiplex needs an equivalence of signal strength and listener experience anywhere within the MCA that is equal in all respects to that of local and national multiplexes”- Small Scale DAB trial multiplex operator

“We are generally supportive of the direction of travel proposed in the consultation paper and recognise the need for some assessment to be made on a “size” basis. [but] this should be based upon the population and not the geographical area. [Because] Population densities can vary wildly, particularly in the more rural areas, and to apply a geographical calculation when considering the necessary comparisons with existing local DAB multiplexes would, in our opinion, be an inappropriate methodology to use... any service delivered to market without the appropriate level of coverage or signal strength is potentially devastating for any operator or service provider and will do great damage to the public reputation of the platform itself” – Commercial Radio

78. A dozen respondents disagreed with the proposal. A key reason why they were opposed to the proposal was that the 40% upper limit figure is too large. These respondents did not think it would work in practice because of the level of investment required by a small scale multiplex operator to provide an adequate level of coverage. Several of those who disagreed stated it would be more appropriate to use adult population coverage, up to a predetermined limit, rather than geographic area as the method for determining the size of a small scale multiplex. A few thought the boundaries of small scale radio multiplexes should be based on the footprint of existing second tier local commercial stations and community radio services.

“When advertising and awarding small-scale multiplexes, we believe that Ofcom should take into account the existing MCAs of these services and replicate that on DAB, rather than licensing small-scale multiplexes that are serving areas that do not meet the needs of smaller-local commercial and community radio stations” – Local Multiplex Operator

“No I don’t agree with a two-step approach, ssmux’s should be allowed enough power to cover their local area from one transmitter site, with the option of fill-in relays for difficult reception areas in the locality. The coverage should ideally be the same as would be expected from a local mux. The object here is to cover the UK with this new

tier of ssdab, let's encourage those who are willing to make it happen" – Community Radio

"We do not agree with the "two-step approach to delineating the size of small scale multiplexes". We think that no such general rule is needed. Deciding the size of mux coverage should be done on a case-by-case basis... It makes logical sense that coverage areas should be smaller than any existing local DAB mux - limits beyond that assertion should be proposed by the applicant... Only, where spectrum availability is a problem, should restrictions on the size of a coverage area be prescribed" – Community Radio

79. The consultation asked for views on setting a limit to the size of small scale multiplexes in areas already served by a local DAB multiplex. Our proposal was that this could be set up to a maximum of 40% of the surrounding local multiplex area. Overall more respondents agreed with the proposal than disagreed: 32 v 24. Further analysis indicated responses were divided along industry lines. Although a key theme mentioned by both those who agreed and disagreed was the need for flexibility in its application to take account of local circumstances.

"We agree that an upper limit on the service area for an SS-DAB licence of around 40% of the local DAB licence(s) in the area make sense, so as to ensure that SS-DAB is distinct from local DAB. There needs to be some flexibility in this limit, however, depending on the specific circumstances" – Community Radio

80. Most existing small scale DAB trial multiplex operators thought the proposed approach and 40% maximum figure was reasonable. Niocast and Cambridge Radio stated that ensuring a robust signal should be another important consideration in setting the boundaries of small scale multiplexes. Angel Radio said that Ofcom should have the ability to flex the 40% maximum level upwards in exceptional circumstances. Future Digital Norfolk expected that most mini muxes would in practice be small in size and the parameters should be determined by Ofcom on a case by case basis. Cambridge Radio thought small scale multiplexes should be based on the coverage footprints of existing second tier FM commercial stations and that Ofcom should have the ability to flex the upper limit.

81. The CMA and some community radio respondents also thought an upper limit of 40% was reasonable. However, their expectation was that in practice most small scale multiplexes would be smaller (than 40% of a local multiplex) and the boundaries would be determined by the coverage footprints of existing small commercial and community stations in an area. Some community radio sector respondents expressed a view that the upper limit could be set higher than 40% because they would like to see this third tier of digital radio multiplexes expand.

"CMA is not opposed to an arbitrary 40% limit in areas already served by a local multiplex. The CMA does not envisage a significant number of multiplexes to be licensed at this level and we expect the vast majority of small-scale broadcast service areas, for reasons of scale and cost, to operate in tightly delineated communities and towns" – CMA

"Rather than apply an arbitrary 40% limit, we believe that Ofcom should be given the freedom to flex its approach to licensing to ensure that no commercial radio licence is

left with a smaller coverage area on digital than it enjoys on FM. In practice this would mean that some SSDAB licences would cover an area greater than 40% of the main local multiplex”- Small Scale DAB trial multiplex operator

82. Owners/operators of existing multiplexes were concerned about the proposed 40% upper limit and possible destabilising impacts on the viability and sustainability of local DAB multiplexes, especially in towns/cities and rural areas where demand for carriage from service providers is low. Almost all of them considered the 40% figure proposed in the consultation was not appropriate. Responses from Arqiva, Wireless Group, Muxco, Radiocentre, UKRD and Global contended that adult population coverage served was a more appropriate metric rather than geographic area. Some responses pointed out that depending on the location and configuration, a small scale multiplex covering a relatively small part of a local DAB multiplex geographic area could in fact equate to a far higher level of the population served by the local multiplex. They thought this could prove to be highly disruptive for the local multiplex.
83. To address this concern, Wireless Group proposed that small scale multiplexes should be limited to 25% of a local multiplex, and that Ofcom apply another test, asking whether a proposed small scale multiplex includes coverage of a conurbation that constitutes a primary population centre which that local DAB multiplex is licensed to cover. Where it does so, Wireless Group suggest the application should be automatically barred by Ofcom. Wireless Group also proposed that for urban areas with existing high levels of demand for carriage on a digital radio network, Ofcom should issue a licence for another local multiplex rather than a small scale multiplex.
84. In their response Arqiva expressed a concern that the consultation proposals could lead to a scenario where in order to save costs and boost its profitability a commercial station could choose to switch from the local DAB multiplex to the corresponding small scale multiplex, with the consequential loss of coverage and service for some of the station’s existing listeners. As an alternative approach, Arqiva proposed that the coverage footprint of existing community services and small analogue commercial stations without a route to digital should be the primary consideration used by Ofcom for determining the coverage areas of small scale multiplexes.
85. Muxco also expressed a concern that more lightly regulated small scale multiplexes with lower technical obligations which replicated the core areas of existing local multiplexes might lead to existing stations choosing to move from local multiplexes. To deal with this issue Muxco proposed that the size of small scale multiplexes should be small and operate with minimal numbers of transmitters to meet the needs of an existing audience. Muxco argued that a key determinant to be used by Ofcom should be the footprint of small analogue commercial stations currently without a route to digital. Muxco also felt there should be a restriction on the number of contiguous small-scale multiplexes that a licensee can hold within a local multiplex area. They were concerned about a licensee holding two or more small-scale multiplexes and broadcasting the same mix of stations could replicate the existing local multiplex whilst benefiting from reduced regulation.
86. Nation Broadcasting were concerned that existing local multiplexes are not allowed to be “sliced up” by series small scale networks.
87. Bauer Media Group argued that the large disparities in the population sizes served by existing local multiplexes in different parts of the country meant that it would not be

appropriate to apply the proposed 40% restriction. Bauer proposed an alternative approach, which would be to apply a limit of a cap in square kilometres to the size of small scale radio multiplexes. For urban areas Bauer proposed a cap of around 80 sq.km or an average radius of about 5 km. For rural areas they suggested a higher cap of around 300 sq.km, or an average radius of 10km and that Ofcom should have the discretion to increase this limit in particularly remote areas.

88. Some respondents suggested other figures for an upper limit and these ranged from 25% to 65%. Lower end figures were put forward by existing multiplex operators while some community radio respondents suggested higher figures.

“40 per cent of a DAB multiplex area is too large [this] could give rise to heavily subsidised community services, with little if any social gain, competing for commercial revenues. Small-scale DAB services should never be larger than existing commercial areas, and to keep the present balance between small commercial and community stations, should preferably be somewhat smaller. We would propose a maximum coverage area of no more than 25 per cent of the local DAB area” – Commercial Radio/interest in local multiplexes

“We do not agree with the 40% limit. I think the commercial operators have an unfair advantage over the coverage. We have discovered that the trials cover a very small area and although are a fantastic medium, the coverage is limited. I think the local mini muxes should be allowed more power to cover 65% of the area that is currently covered by existing local operators” - Internet radio/service provider on a small scale DAB trial multiplex

### **Government response**

89. We have carefully considered a wide range of opinions expressed on the question of coverage requirements. This is a complex issue where a balance needs to be drawn between the size of areas to be viable, the potential impacts on existing capacity and the need to have a set of rules that support Ofcom’s broader obligations to maximise the use of spectrum to meet potential demand. We have noted the comments from some respondents asking for clarity about the appropriate metric to use in determining the size of small scale multiplex coverage and agree that it should be based on population rather than geographic area.
90. In terms of planning the size of small scale multiplexes we believe that conceptually a maximum ceiling is appropriate (except in areas not served by local multiplexes). We have considered the consultation responses and believe that a 40% maximum figure balances the need to provide strong indoor coverage whilst limiting the potential impacts on existing local DAB multiplexes. By ceiling we mean that a small scale multiplex area significantly overlaps with the coverage area of any local radio multiplex service if it encompasses more than 40% of the population served by the local multiplex.
91. The coverage of small scale multiplexes will be for Ofcom to determine. We are concerned that legislation should not unnecessarily tie down Ofcom’s hands by setting too firm an arbitrary ceiling. Having reflected carefully on the responses and discussed the issue further with Ofcom, we believe the optimum approach to this question is to define the 40% figure as a maximum. In most cases Ofcom would draw up smaller areas in line with the policy intention for more small scale multiplexes covering smaller areas.

92. We recognise that the introduction of small scale multiplexes has the potential to have some impacts on existing local DAB multiplexes (discussed in more detail in the analysis on Q.12). We believe that the best way of limiting these impacts is by having a clear policy of seeking to limit the size of small scale multiplex areas in relation to existing local DAB areas and through Ofcom's approach to defining new small scale multiplex areas. However, we also think that the careful timetabling for the rollout of these new digital networks is something that would help to mitigate any effects. On this last point we believe that in terms of inviting applications and issuing licences Ofcom may wish to focus first on the existing trial areas and areas of high demand for DAB services rather than those (mainly rural) areas covered by local multiplexes with smaller populations. It should be noted that in carrying out these functions Ofcom will have regard to its general duties under the Communications Act 2003, including the duty to secure a wide range of radio services.

### Duration of small scale radio multiplex licences

Q9. We would be grateful for views on these options or other options along with reasons for your choice.

Q10. We would also welcome view on the merits of linking licence length with underlying demand in an area for a small scale multiplex licence.

### Summary of consultation responses

93. In the consultation paper we indicated that lower set up costs and operating expenditures for small scale DAB technology meant there is a case for having shorter licence periods for small scale multiplexes compared to the 12 year term for national and local DAB multiplex licences. Potential advantages from this include providing a strong incentive for operators to meet the needs of the small stations carried on the network and reducing the likelihood of Ofcom having to get involved in disputes about charges or the quality of service. However, we also stated in the consultation that we have an open mind about the duration of small scale radio multiplex licences.

94. Accordingly, the consultation asked for views about the length of small scale multiplex licences and in particular whether these should last for (a) 5 years (b) 7 years (c) 7 years plus an option to renew for a further 5 years for licences covering areas serving less populous areas where there is only a single bidder (d) some other period. Overall 57 respondents commented on Q9 and there was a clear consensus in favour of longer licence periods, with 46 responses stating 7 years or longer (see table below). Only half a dozen indicated (a) 5 years. Five respondents commented but did not specify a time period.



| Licence period                              | Number of responses |
|---|---------------------|
| (a) 5 years                                 | 6                   |
| (b) 7 years                                 | 15                  |
| (c) 7 years plus 5                          | 12                  |
| (d) Other                                   | 19                  |
| ...of which 12 years                        | 7                   |
| 10 years                                    | 2                   |
| 8 years                                     | 2                   |
| 7-12 years                                  | 1                   |
| 7+7 years                                   | 1                   |
| 7-10 years                                  | 1                   |
| 5-7 years                                   | 2                   |
| 5+5 years                                   | 3                   |
| Commented but did not specify a time period | 5                   |

95. Respondents mentioned two main reasons for suggesting that longer licence periods of 7 years or more would be appropriate. First that a longer licence period would provide the small scale multiplex licence holder with sufficient time to recoup their initial investment without the need to charge high carriage fees to service providers. Some respondents stated that although the capital outlay for small scale DAB technology is much less than for local DAB multiplexes, the carriage fees for services will be much lower and hence it will still require a long period to recoup the initial investment. Second that the certainty of a longer licence period would provide greater stability for both the small scale multiplex operator and the services carried on the network. This would benefit both sets of parties in terms of long term planning and provide a greater level confidence when making a commitment to invest in the network or in making a decision to take carriage on a small scale multiplex.

“A minimum period of 8 years would provide certainty for both the DSPS holders and the multiplex licence holder. The capital expenditure and maintenance costs would be acceptable to the multiplex licensee over this period any shorter period could result in higher carriage costs to offset the possible loss of licence at the end of say 5 years” – Consultant

“Shorter licensing periods may make it more challenging for MUX operators to become economically viable and will not provide stability for the carried services. We therefore believe that 7 years should be the minimum” –Community Radio

“Long-term planning and security of licence tenure are important considerations for super local commercial radio stations migrating to the DAB platform. We therefore believe that digital licences should be broadly linked to analogue licence lengths.

Specifically, these should be for a minimum 7 years with the option to renew for a further 5 years” - ILR

96. Several respondents including most of the small scale DAB trial multiplex operators and CMA argued for a 12 year licence period. The main benefits cited were the stability, ability to recover initial capital costs at a reasonable rate, offer realistic carriage fees to smaller broadcasters and the confidence to plan and invest in the business.

“We strongly believe that multiplex licences offered should be for as long as possible, 12 years needs to be the minimum period of time. A long licence period is important to enable the recovery of capital costs in establishing the multiplex. Although relative to established commercial multiplexes, Small Scale DAB is low cost to operate, so are the capacity fees received. To expect operators to pay back the capital cost, in addition to operating expenses, within a five year timescale is not compatible with being able to offer realistic capacity fees for smaller broadcasters” – Small Scale DAB trial multiplex operator

“The CMA proposes that in order for DCMS to genuinely commit to a ‘light touch’ regime, the length of small-scale DAB licences should be identical, at 12 years, with those of national and local DAB multiplexes. The experience of community radio broadcasters informs the CMA that five-year licence periods are too short and provide too much uncertainty for sufficient development of a range of broadcast radio services in a locality.”- CMA

97. Four of the six respondents that indicated a 5 year licence period would be appropriate were community stations and 2 chose the figure because it aligns with the current approach for licensing analogue community stations.

“We believe the duration of these licences should match the licence length of FM community radio – five years with options to renew every five years” – Community Radio

98. The consultation also asked for views on the merits of linking small scale multiplex licence length with underlying demand in an area. Overall 47 respondents provided an answer to this question and on balance opinion was against taking this approach. Thirty respondents from across the radio industry (including CMA and Radiocentre) did **not** think there would be merit in linking licence length with underlying demand; whilst 17 respondents thought there would. It should be noted that 40 respondents did not provide a response.

99. Several reasons were given by those respondents who saw no merit in linking the length of licences to demand. One view was that there is no need to adopt this type of approach because offering a long licence period is sufficient in itself to give long term stability to small scale multiplex operators and service providers and to attract applications for mini mux licences. Another view expressed was that it would be better and more cost effective to keep the licensing process for small scale multiplexes simple and linking it to underlying demand in an area would make it unnecessarily complicated. Linked to this some respondents thought it would be difficult for Ofcom to assess the level of underlying demand in a specific area when advertising licences, and that this demand could change over time. Some thought that this approach could be counterproductive because penalising small scale multiplex operators in areas of high demand by offering shorter licence periods would result in these operators charging service providers higher carriage

fees to ensure they recouped their capital investment and to offset the risk of not being able to renew the licence after the initial period expired.

“We do not agree with merits of linking licence length with underlying demand as this could effectively penalise the most popular and successful multiplexes by awarding them shorter terms than those operating in areas with lower demand” – Radiocentre

“The CMA does not believe that any DAB multiplex licence - small-scale, regional, or national- should be offered for a period of less than 12 years, especially if small-scale multiplexes are operating on a not-for-profit basis. To create differential licence lengths for small-scale digital radio introduces additional and unnecessary complexity which is incompatible with the notion of a ‘light touch’ regime” – CMA

“We do not see any obvious merit in linking the licence length to underlying demand, with the exception of offering longer licences in remote locations which require an unusually large coverage area for a small number of potential listeners” – Community Radio

“We would oppose short licence periods for mini-muxes. It is important for service providers – commercial, community or BBC – that there is long-term stability and security in the provision of multiplex services.” –ILR

100. Respondents who supported varying the length of licences with demand thought the approach would benefit rural areas. They stated longer licences in areas with less demand would have two key benefits: help to attract more applications from potential operators when initially advertised; and offering long term stability would provide successful bidders and potential service providers with more confidence to invest in the network.

“A longer period in more rural areas would be of benefit. As there is likely to be less demand and less ability to pay higher carriage costs” - Consultant

### **Government response**

101. We have carefully considered the views expressed about the length of small scale multiplex licences and on whether the length of these licences should be varied based on demand. Based on the responses we have concluded there is a strong case for having longer length licences. We are persuaded by the arguments that both small scale multiplex operators and service providers would benefit from the greater certainty and stability provided by longer licence periods. We also recognise there are significant benefits to industry by keeping the licensing system for small scale multiplexes simple and low cost.

102. We will therefore bring forward legislation that stipulates a 7 years term for all new small scale multiplexes with a renewal for a further 5 years . With this longer period as the norm, we do not believe there is a case for offering even longer licences for rural areas. Under this approach, all licences would come to an end after 12 years and be advertised on the open market including to other applicants at that point. We believe this approach will strike the right balance between encouraging multiplex operators and service providers to work together and giving certainty to potential small scale DAB operators.

## BBC carriage on small scale multiplexes

In terms of the proposals to create additional local multiplexes and to enable BBC services to access small scale DAB multiplexes.

Q11. We welcome views on this approach

### Summary of consultation responses

#### Additional local multiplexes

103. The consultation document highlighted that Ofcom intended to consider the question of new local multiplexes in areas where there is an excess of demand when they consult on the detailed spectrum plan for small scale multiplex services. We received representations from several respondents including service providers welcoming this development. Some suggested that in these areas it might be more appropriate for Ofcom to licence another local DAB multiplex rather than a small scale multiplex.

104. The management of spectrum for digital radio services is the responsibility of Ofcom and we believe decisions about whether to advertise licences for more local DAB multiplexes will be a matter for the regulator. Ofcom have noted the views of the industry on this issue.

#### BBC access to small scale multiplexes

105. The consultation asked for views on allowing the BBC to take capacity on a small scale multiplex (but without any guaranteed reservations<sup>1</sup> or requirements) for supplementary coverage to its national DAB network and local DAB multiplexes. Overall there was strong support for the proposal. In total 47 respondents from all parts of the radio industry could see the merits of the BBC taking capacity on small scale multiplexes to supplement the coverage of its services. These respondents mentioned several key benefits from the BBC's potential involvement in small scale DAB including extending its coverage, offering technical advice to operators and financial support from the carriage fees. Some respondents welcomed allowing the BBC flexibility to take carriage on small scale multiplexes, but added it should be done with certain safeguards, such as ensuring the BBC or a subsidiary cannot own a small scale multiplex licence or that it cannot launch hyper local programme services.

"I welcome this option as it provides for the last 1% of BBC national coverage and the Nation and regional services" – Consultant

"We have no objection to the BBC being able to take space on an SSDAB MUX for an existing "local" service on the same commercial terms as any other radio service provider, for example where they will be filling a "hole" in the local DAB MUX coverage" – Community Radio

"We are content that the BBC should have access to the unreserved, commercial capacity on an SS-DAB multiplex to provide better coverage of existing BBC services.

<sup>1</sup> Under s.49 of the Broadcasting Act 1996, Ofcom must reserve appropriate capacity on local DAB multiplexes for BBC local radio services. The 2017 Act specifically allows for this requirement to be set aside for small scale multiplexes.

The BBC should not be able to: a. launch additional hyper-local services; b. nor should the BBC or any subsidiary company be eligible to hold an SS-DAB licence” – Community radio

“We would welcome the opportunity of allowing BBC access to the new tier of multiplex provision, encouraging the sharing of the BBC’s editorial and technical expertise with a diverse range of new voices and the next generation of programme makers, engineers and technologists”- ILR

“Quidem supports the inclusion of existing BBC services on the small-scale DAB platform. We believe BBC participation will strengthen both the consumer proposition and the robustness of the small-scale DAB business model. We believe that access should be restricted to existing BBC services” – ILR

106. Nine respondents did not think the BBC should have access to small scale DAB. Of these five were community radio stations and they felt the BBC already had sufficient resources and digital platforms for the distribution of its radio services.

“I do not like the idea of allowing the BBC to take spare capacity on the local DAB multiplexes; they already dominated the radio dial and have the means to build their own infrastructure. Any spare capacity should be taken up by new services operating on a small scale basis” – Community radio

107. The BBC had a different view on the issue compared to the majority of radio industry respondents. The BBC stated that they did not expect they would require capacity on small scale multiplexes for BBC services or to hold any licences for these multiplexes.

### **Government response**

108. We have noted the generally strong support from respondents for the BBC to have access to small scale multiplexes. We think the BBC has slightly misunderstood the question which was related to whether, in the absence of a reservation for BBC services on small scale multiplexes (provided for on local multiplexes under s49 of the Broadcasting Act 1996), there should be any restriction on the BBC taking carriage on mini muxes. We can see the benefits of the BBC choosing to use small scale services where there is no BBC national or local DAB coverage, particularly in Wales, Scotland and Northern Ireland. We have therefore concluded that the legislation should allow the BBC the option to take carriage on small scale radio multiplexes if the BBC require this at some future point. However, decisions on whether to take carriage for BBC services on small scale multiplexes is entirely a matter for the BBC to determine.

## Ofcom duty to consider commercial impacts on local multiplexes

Q12. We would welcome views on the implications of this approach

### Summary of consultation responses

109. Finally, the consultation covered whether Ofcom should have a duty to consider the commercial impacts on local DAB multiplexes. We did not think it would be an appropriate or proportionate approach. We argued that proposals limiting the size of a small scale multiplex and restrictions on the ownership of licences were strong enough reasons for not requiring Ofcom to consider the impact of granting a small scale multiplex licence on the corresponding local DAB multiplex licence holder.

110. Overall there was support for our position. Forty-seven respondents agreed with the consultation proposal that Ofcom should not be required to review the impacts of granting a small scale multiplex licence on the corresponding local multiplex. This compared to 11 respondents who disagreed.

111. Further analysis indicated that responses were divided along industry lines. Respondents from community radio, some technical/other consultants and the small scale multiplex trial operators agreed with the consultation proposal (no requirement on Ofcom to consider the impacts on local multiplexes). These respondents expressed several reasons for holding this view. Some thought that small scale multiplexes and the community stations and small commercial services carried on these networks would be complementary to the radio services currently broadcasting on local DAB multiplexes. Therefore these networks and services do not pose a competitive threat to local DAB. Others stated the characteristics of small scale services - i.e. small and serving localised audiences, meant that they would not be competing directly with existing larger local multiplexes.

112. Several respondents said the development of a third tier of small scale multiplexes would benefit the market as a whole. One thought the additional services likely to broadcast on small scale multiplexes would offer listeners greater choice of programming. A number of respondents questioned whether it was part of Ofcom's role to protect existing local multiplex operators from competition. Another expressed a view that as the broadcasting regulator Ofcom was qualified to assess the technical capability and impacts of small scale multiplexes but not the effects on financial viability.

"We strongly support the approach suggested by the DCMS. If anything, Small Scale DAB multiplexes can be helpful in growing services to a point where they can migrate to commercial local multiplexes, such as Chris Country for example. We expect to see more services migrate to commercial local, and potentially even national multiplexes from Small Scale DAB multiplexes in the coming years" – Small scale multiplex trial operator

"Forty-one of the local multiplexes have been on-air for more than a decade (and fourteen for about 4-5 years), and this seems to be ample time for these predominantly monopoly suppliers to have established affordable carriage agreements with existing analogue broadcasters. It may be that the establishment of this licensing process encourages a local multiplex operator to reassess their rate card, enabling community and small commercial services to get onto their multiplex, and remove the demand for

new multiplexes in their area. The establishment of new multiplexes seems to pose little existential risk to existing local multiplexes” - Consultant

“We feel the commercial impact of a new small scale multiplex network on existing local DAB multiplex operators will generally be quite modest. -Consultant

“We see no reason to consider the commercial impacts on local multiplexes as the SSDAB MUX operators will be providing very different scale of services in the same way existing Community Radio stations are on a different scale to “local” commercial stations which as now largely regional or national in practice” – Community radio

“It’s time all this protecting of these big boys stopped, and we are all on a level playing field. As I stated earlier they have never worried about small stations being on their multiplexes and soon kick those off who are priced out of their consortiums, to them it’s all about maximum profit not what the local listener might benefit from” – Community radio

113. Arqiva and local DAB multiplex owners thought there was a need to ensure the future viability of existing local multiplexes is not undermined by small scale DAB. They cited the long term nature of investment decisions and contracts involved in running local DAB multiplexes and the potential disruption to the existing ecology from a low cost entrant. These respondents therefore felt that Ofcom should have a duty to assess the economic impacts of issuing a small scale multiplex licence on the corresponding local DAB network, especially in rural areas. A couple were concerned about the potential threat of some radio services opting to move off the local DAB tier and broadcasting across several small scale multiplexes. One respondent thought Ofcom’s approach to issuing small scale radio multiplex licences should be similar to granting analogue community radio licences, when Ofcom must have regard to the need to ensure that a community radio service does not prejudice unduly the economic viability of any other local commercial radio service.

“Ofcom must be given a duty to assess the likely impact on the relevant local multiplexes and those licence holders of any Small Scale licence application. It should ensure that the risk of any such adverse impact is minimised...Radio services are currently delivered over a complex ecology of national and local, BBC and commercial multiplexes. Multiplex operators make fine judgements on long term investments in their networks based on similarly long-term contractual agreements with customers - Arqiva

“This does not mean that full impact assessments are required whenever a small scale multiplex is licensed. This would risk being too onerous and could slow down the licensing timetable. However, it is appropriate for the licensing of new small scale multiplexes to be phased in gradually, with the possibility of licensing rounds in order to give Ofcom the opportunity to consider any impact that there might be on local DAB or the market overall. It will be especially important to tread carefully in rural markets that have existing local DAB multiplexes with spare capacity, as these are likely to be particularly vulnerable to changes in demand”– Radiocentre

“We believe that Ofcom has a significant duty to consider the effect of granting small-scale radio multiplexes on existing local DAB multiplexes. This is especially important for local multiplexes operating in more rural areas of the UK where existing demand for capacity is low and where local multiplexes operate on a more break-even basis” – Muxco

## **Government response**

114. We were generally persuaded by the arguments put forward by community radio and smaller commercial stations that the characteristics of small scale multiplexes and services carried on them will in most cases be complementary to rather than competitive with local DAB multiplexes and that therefore the risk of new small scale multiplexes to existing local multiplex was limited. However, in rolling out small scale multiplexes, we believe Ofcom should consider, in setting the the timetable for the rollout of small scale multiplexes, focusing first on existing trial areas and areas of high demand for DAB services rather than more areas covered by local multiplexes with smaller populations.



## Next steps

115. Following the publication of this response, DCMS will progress work to develop the detail of the new arrangements with a view to seeking legislation when parliamentary time allows. The proposals will require changes to the Broadcasting Act 1990, the Broadcasting Act 1996 and the Communications Act 2003. Under the Broadcasting (Radio Multiplex Services) Act 2017, these changes can be made by secondary legislation and using powers in s262 of the Communication Act 2003.

116. The next phase is for DCMS to develop the new legislative structure and to bring forward detailed secondary legislation. We intend to incorporate specific proposals set out in the consultation document, although there is a need for further work and discussion about some aspects with stakeholders in the radio industry. Our intention is to bring forward the draft Order as soon as Parliamentary time allows. In the meantime, DCMS has already asked Ofcom to extend the 10 existing small scale DAB multiplex trial licences until 31 March 2020 (with earlier termination provisions if it proves possible to award a new non-trial licence in the same area before this date).

## **Annex A: List of respondents**

A total of 87 responses were received from members of the public, and individuals and organisations working within a variety of sectors. Of the respondents, one has requested anonymity and therefore has not been listed.

1. Neil Kipling
2. Ian Gowers
3. Rodney Maxwell
4. Paul Holmes
5. Peter Allridge
6. Colin Marks
7. David Dbs
8. Steve Fox
9. Alec Thomas
10. Martin James
11. Penistone Community Radio
12. Graham Phillips
13. Takeover Radio
14. Dave Hurford
15. Radio Verulam
16. Phonic FM
17. Chris Dawson
18. Biggles FM
19. Maxxwave
20. Moss Media
21. Coast Digital Radio
22. UKRD
23. BBC
24. Heart of the Nation Broadcasting
25. 6 Towns Radio
26. The Source FM
27. Martin Steers
28. Uckfield FM
29. Seahaven FM
30. Marc Webber
31. Kingdom FM
32. Digital Radio Mondiale Consortium
33. Lincs FM Group
34. Radio Woking
35. Broadcast Radio Limited
36. Awaaz FM Southampton
37. OX4FM
38. Winchester Radio
39. Paul Boon
40. Toby Perkins MP (Peak FM)
41. Lisa Nandy MP (Wish FM)
42. Cambridge Radio Limited
43. Hospital Broadcasting Association
44. Great Yorkshire Radio
45. Radio Exe
46. Muxco
47. Tone FM
48. John Goodman
49. Celador Radio
50. Global
51. Mark O'Reilly
52. Niocast Digital
53. Services Sound and Vision (SSVC)
54. Colonel J G Robinson Brigade of Gurkhas
55. Buchan Radio
56. Resonance 104.4 FM
57. Quidem Radio Group
58. The Flash
59. Bauer Media Group
60. Alternative Broadcast Company
61. KM Media Group
62. Nation Broadcasting
63. DigiLink Connect
64. Wireless Group
65. DC Thomson Media
66. 100% Media Group
67. Brighton and Hove Radio Ltd
68. Radiate ideas
69. Radiocentral24
70. Daniel Rose
71. UDAB
72. Future Digital Norfolk
73. Radio Reverb
74. Radiocentre
75. Arqiva
76. Community Media Association
77. MKFM
78. Commtronix
79. Chris Green MP
80. Angel Radio
81. Flame CCR
82. Andrew Hilbert
83. Andrew Bush
84. Dr Paul Groves
85. Will Jackson
86. Brian Lister