

Guidelines for Contracting Multiplex Capacity

Availability of capacity to run services on Arqiva operated multiplexes

We believe it is generally good to make it widely known when multiplex capacity is available. This opens up the market to a broad range of potential customers and builds confidence that no one is being excluded for improper reasons.

Experience shows that, in many circumstances, it is easy to publicise the availability of capacity. For example, when a multiplex is broadcasting with spare capacity, it is like displaying a virtual “For Sale” sign. Many of the Arqiva operated multiplexes currently have spare capacity.

Sometimes, for example when there is an excess of demand for the capacity that is available or when capacity becomes free after a multiplex has been full, it will help to advertise that capacity is available and ask for Expressions of Interest. An advert will often be via a radio industry website, such as Radio Today, but may sometimes be via other media.

Even when there is no capacity immediately available, it is always open to potential customers to proactively lodge an unsolicited Expression of Interest. With this in mind, when the multiplex is full (and at other times) it should always be clear who potential customers should contact about future capacity. Expressions of Interest should be sent to radio@arqiva.com.

Sometimes, the fact that capacity will become available cannot be made public, because revealing any information would breach a confidentiality undertaking. In this situation, the information will be made public as soon as the confidentiality undertaking allows.

Standard Contract Terms and a Capacity Rate Card

We believe that it is generally good for parties contracting for equivalent capacity at the same time and for the same period to contract on similar terms and at a similar price, unless there are fair reasons for any differences.

Having a rate-card for capacity, and using this as the basis for any discussion, helps ensure that potential customers are treated fairly. This does not mean that every contract must be agreed at the rate-card price, but there need to be good reasons to agree a higher or lower price. Generally, potential customers will be required to enter into a confidentiality undertaking before being sent details of the rate-card.

In a similar way, having a standard contract with standard terms helps ensure that potential customers are treated fairly. Again, this does not mean that amendments will never be considered.

Customers contracting capacity, generally on a long term basis for between four years and the lifetime of the licence, can have confidence that their sub-contract will be honoured and their service will continue to be broadcast. In parallel, Arqiva will seek confidence that the sub-contract will be honoured and this will include asking potential customers for financial information about the track-record of the content provider's company. In some circumstances, a content provider may be required to pay in advance, provide a deposit or commit to a personal or company guarantee. In this respect, although the way that comfort will be provided that a sub-contract will be honoured may vary from case to case, the differences will be for fair reasons.

Process for deciding to allocate capacity

We believe that it is important that capacity is always allocated in a way that is fair and non-discriminatory. But a process that is unchanging and mechanical does not always deliver genuine fairness. We follow general principles, and the process will usually follow one of the templates set out in this section. However, we reserve the right to do something different where, in Arqiva's view, the particular circumstances warrant it provided that the alternative process was still fair.

Arqiva has invested in digital radio multiplexes as a business venture with the intention of making an appropriate profit from contracting its capacity. All decisions about allocating capacity take into account the relevant commercial and regulatory factors:

- Arqiva's commercial interests (which includes a judgement about the ability of a content provider to pay the rate-card price for the capacity and sustain the service throughout the proposed term of the sub-contract);
- The regulatory and legal framework, which includes but is not limited to the Ofcom licence conditions for DAB digital radio multiplexes in the UK.

Examples of things which might be considered as relevant commercial and regulatory factors, and flow from the two headings described above, include:

- the attractiveness of the proposed service to consumers and the ability of the content to attract new listeners to the multiplex and digital radio more generally as well as drive take-up of digital radio equipment by consumers;
- whether the service proposed has appeal to tastes and interests that are distinct from those catered for by existing services on the multiplex or the existing commercial national digital radio multiplexes;
- the commitment offered by the content provider in its investment in content and in its commitment to promote its service and the development of digital radio in the UK;
- the level of commercial risk to be carried in sub-contracting with the potential content provider which might be measured, for example, by certainty of income, and the length of the contract;
- market conditions prevailing at the time the sub-contract is being negotiated.

In most cases during the licence term, a decision to allocate capacity will require a variation to the multiplex licence issued under the Broadcasting Act 1996. In taking decisions about allocating capacity, Arqiva may take into account its expectation about whether or not Ofcom would approve the variation which would be needed.

However, any offer ultimately remains subject to Ofcom's approval of any necessary variation. Details about Ofcom's process and criteria for approving variations can be found at

https://www.ofcom.org.uk/data/assets/pdf_file/0026/10889/dsps_das.pdf

If the amount of capacity available to be contracted (i.e. the unused capacity on the multiplex) exceeds the short term demand, Arqiva will consider allocating capacity to a company which has proactively lodged an unsolicited Expression of Interest. This can be done at any time by completing a Station Information Form. This form can be found at http://www.arqiva.com/resources/documents/linked/Station_Information_Form.doc. In this situation (i.e. when capacity is allocated without advertising or running a formal competitive process) all decisions will be based on the relevant commercial and regulatory factors.

If the existing or expected demand for capacity exceeds the amount of capacity available to be sub-contracted, Arqiva would tend to run a Competitive Process (as outlined below). However, if a company has proactively lodged an unsolicited Expression of Interest, which Arqiva believes is so likely to be selected after a Competitive Process that it would be artificial to hold such a process, then Arqiva may, after considering the Relevant Commercial and Regulatory Factors, allocate capacity without a Competitive Process.

Alternatively, if the existing or expected demand for capacity exceeds the amount of capacity available to be sub-contracted, Arqiva would run a multistage process (described in the bullet points below).

- The first step would be to run an advert describing the capacity available with brief details of any key factors relating to the capacity (e.g. a preferred genre or target audience) and requesting Expressions of Interests to be submitted by email (usually with a deadline for submission of Expressions of Interest);
- Companies making an Expression of Interest would be required to enter into a confidentiality undertaking (i.e. a legal agreement designed to protect both parties' confidential information).
- Companies making an Expression of Interest would be asked to respond to a standard Station Information Form (the "SIF") which would typically include questions relating to content, target audience, company finances, business plan, eligibility to hold the relevant Ofcom licence and preferred contract duration. The SIF would set out further details about the available capacity and the intended process and timetable for its allocation.
- After the given date, Arqiva would consider all of the responses to the SIF, alongside its own prior market knowledge and data from other sources (e.g. from Companies House or Ofcom publications) against criteria shaped by the Relevant Commercial and Regulatory Factors. Some companies might be excluded from the process at this stage as a result of being judged against the criteria. Unsuccessful companies would be informed of the decision. Other companies would continue into the next stage of the process.
- Companies continuing into the next stage, would be sent further information about the opportunity (e.g. standard contract terms) and might be required to respond to further standard questions in writing. Particular issues or questions related to an individual company's application might be discussed one-to-one and clarification or additional information sought.
- Arqiva would then, using criteria based on the relevant commercial and regulatory factors described above, either decide not to offer capacity to any of the applicants remaining in the process or to offer capacity to one company (subject to contract and regulatory approval). Once a contract had been agreed, or earlier if appropriate, unsuccessful companies would be informed.

Throughout this sequence of events, Arqiva would always reserve the right to suspend or amend the process. During a Competitive Process, Arqiva will try to answer questions quickly and accurately, but it will not be able to give advice which might be seen as giving one company an advantage over other applicants.

Complaints process

If an interested party thinks any process for the allocation or subcontracting of capacity has been unfair, we have established routes for such parties to raise issues formally with Arqiva. The process is there to alert us to problems, put things right if something has gone wrong and provide feedback about how this policy is working.

Any party can raise an issue with the person who has been handling their Expression of Interest. This is usually Arqiva's Business Manager for Digital Radio Platforms, Linda Passey

Within Arqiva, parties can escalate a concern to Arqiva's Head of Commercial Broadcast and Radio, Richard Johnson.

A further escalation route is available to any party to raise concerns with the board of the relevant company which holds the licence from Ofcom (see the section Notes and Matters not Covered Elsewhere).

Any of these routes is open to anyone who has provided an Expression of Interest at any point. These escalation routes are in addition to the legal or regulatory options that are always open to parties who consider they may have been treated in ways that are unfair or discriminatory.

Notes and matters not covered elsewhere

In this document "Arqiva" or "Arqiva operated" means each and all of the following companies which are licensed by Ofcom to run DAB digital radio multiplexes in different national or local areas of the UK.

- Now Digital Limited (wholly owned by Arqiva)
- Now Digital (Southern) Limited (wholly owned by Arqiva)
- Now Digital (East Midlands) Limited (Arqiva is the main shareholder but the company is co-owned with Sabras Radio)
- South West Digital Radio Limited (Arqiva is the main shareholder but the company is co-owned with Bauer)
- Digital One Limited (wholly owned by Arqiva)
- Sound Digital Limited (Arqiva is the 40% shareholder and the company is co-owned with Bauer Radio and Wireless Group who both are 30% shareholders)

Arqiva will generally give only very limited feedback to unsuccessful applicants for capacity, beyond informing them of its decisions.

However, records will be kept of the processes followed and the reasons for the decisions that are taken. These will always be available if Ofcom needs formally to review decisions taken about the allocation of capacity.

Throughout this policy, the words "company" or "party" should be taken to include a charity, community interest company or any other legal entity which is able to enter into a contract and is entitled to hold any Ofcom licence which will be required. Generally, the contracting company for capacity will be the same legal entity which holds the relevant Ofcom licence.



Throughout this policy the word “fair” should be taken to mean that something reflects and embodies the commitment to act in a manner calculated to ensure fair and effective competition in the provision of services as required by a DAB digital radio multiplex licence.

Electronic Programme Guide (EPG) Policy

Many of the Arqiva operated multiplexes broadcast an Electronic Programme Guide (EPG). Those DAB digital radios which have the functionality to do so can use this to display programme-related data (which is supplied by the individual content providers).

In supplying this EPG, Arqiva works within the licensing framework set out by Ofcom. It has measures in place to make sure all customers are treated fairly and in line with Ofcom’s EPG Code and other requirements. Arqiva’s EPG data is broadcast in a carousel and does not discriminate between any of its customers. No service is afforded any deliberate prominence over another. Generally, the EPG will be ordered alphabetically by station name, although it is a matter for receiver manufacturers how they display and implement the EPG data.