



## In Focus

### Broadcasting (Radio Multiplex Services) Bill (HL Bill 99 of 2016–17)

The [Broadcasting \(Radio Multiplex Services\) Bill](#) is a private member's bill introduced in the House of Commons by Kevin Foster (Conservative MP for Torbay) on 4 July 2016. The Bill was drafted by the Department for Culture, Media and Sport (DCMS) and completed its stages in the House of Commons without amendment. The Bill is sponsored in the House of Lords by Baroness Bloomfield of Hinton Waldrist (Conservative) and is scheduled for second reading on 24 February 2017. This briefing provides a short overview of the Bill, its key provisions, and a summary of its passage through the House of Commons.

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#### Overview of the Bill

The Bill seeks to enable community radio stations in the UK to broadcast on the Digital Audio Broadcasting (DAB) radio platform. To enable this, the Bill would create powers to modify the current regulatory framework for the licensing of radio multiplex services, and provide for small-scale radio multiplex services.

All DAB radio services in the UK are broadcast as 'multiplexes'. This is where sound signals from a number of individual radio stations are combined together and transmitted as digital data. Unlike analogue radio (FM and AM), the DAB multiplex can be broadcast from many different transmitters using the same transmission frequency. DAB is therefore a more efficient use of radio spectrum than analogue, and enables more radio services to be delivered to listeners.

Radio multiplex services are licensed by Ofcom and, currently, the licences are awarded either for national coverage or for local county-sized coverage. According to Ofcom, the costs of these licences are not economical for stations which seek to serve smaller towns or communities.<sup>1</sup> The Bill would essentially create a third tier in the system of radio multiplexes: new small scale radio multiplexes for sub-county level transmission (or wider transmission where there was no existing local multiplex licensee).

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#### Key Provisions of the Bill

The Bill has one substantive clause, which would insert a new section 258A into the Communications Act 2003 to enable the Secretary of State to provide for small-scale radio multiplex services (clause 1).<sup>2</sup> The Bill provides that the Secretary of State may, by order, define a small scale radio multiplex service as being distinct from existing national and local radio multiplex services (clause 1(2)). Clause 1(3) provides the Secretary of State with the power to modify the regulatory framework for the licensing of radio multiplex services in part 2 of the Broadcasting Act 1996 and part 3 of the Communications Act 2003. Clause 1(4) sets out some specific purposes for which the power may be used. These include:

- Allowing for the exclusion of organisations with any existing licence holders, in either the national or local radio multiplex services, from holding a small-scale radio multiplex licence;

- enabling requirements to be placed on small-scale radio multiplex service licensees to operate on a non-commercial basis to ensure access for small commercial and community radio stations;
- allowing for Ofcom to be able to include conditions requiring that community radio stations have rights of carriage on the multiplex in small-scale multiplex service licences; and
- allowing for Ofcom to reserve a set percentage of capacity on the multiplex for such purposes.

Clause 1(5) concerns the interaction between small-scale radio multiplexes and local radio multiplexes. The sub-clause enables different provisions to be set out in an order, particularly with regard to: considering the effect on existing local multiplex licence holders of granting a small-scale radio multiplex service licence to the same area; and allowing flexibility in the licensing of small-scale multiplexes—such as varying size of the area covered, to ensure that the small-scale multiplex is compatible with the needs of stations seeking digital transmission. Any order made under clause 1 would be subject to the affirmative resolution procedure of both Houses of Parliament to allow for scrutiny in both Houses (clause 1(8)). The Bill applies to the United Kingdom (clause 2).

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## Proceedings of the Bill in the House of Commons

### Second Reading

On 13 January 2017, the Bill received its second reading in the House of Commons. Kevin Foster detailed his reasons for tabling the Bill. He argued that the Bill would give “hundreds of community stations a practical and an affordable opportunity to go digital”, and provide “the chance for more communities to have a unique choice of radio stations that reflects the area in which they live”.<sup>3</sup> All MPs who spoke at second reading did so in support of the Bill.

Dr Rosena Allin-Khan, Shadow Minister for Culture, Media and Sport, contended that the Bill was “overdue” and “extremely welcome”.<sup>4</sup> However, she also raised concerns about the practicalities of the provisions. These concerns included whether prohibiting those with an interest in national or local multiplex from gaining a small scale DAB licence could negatively impact rural areas, particularly where other operators may not be interested.<sup>5</sup> Dr Allin-Khan also raised concerns from stakeholders—such as Radiocentre, the industry body for commercial radio—that small scale DAB may be operated solely on a non-commercial basis. Consequently, she sought reassurance that “healthy competition” would be promoted “without crowding out existing local services”.<sup>6</sup>

Dr Allin-Khan also raised queries around a trial of small-scale DAB that Ofcom had licensed and began to coordinate in 2015. In September 2016, Ofcom had concluded that the trial—which will continue to 2018—had been successful and that wider roll-out into more geographic areas would be “both technically possible and commercially sustainable”.<sup>7</sup> A number of MPs, including Kevin Foster, had referred to the positive findings of the trial—which were also referred to in the Explanatory Notes to the Bill.

Dr Allin-Khan suggested that the Bill was based upon the findings of the trial. However, she argued that there was a “disparity” between the stated aims of the Bill and the scope of the trial.<sup>8</sup> She contended that the Bill drew specific attention to rural areas where there were no local multiplexes, but was concerned that the trial had not actually taken place in any of those areas. Although she acknowledged that the trial had needed to take place in cities and towns where local multiplexes were already established, she also suggested that the scope of the trial “requires further exploration”. Dr Allin-Khan also expressed concern that, among Ofcom’s conclusions of the trial, “much more detailed planning and optimisation work” would be required to develop a frequency plan which could be implemented in practice.<sup>9</sup>

In reply, Matt Hancock, Minister for Culture, Media and Sport and Digital Policy, addressed each of the concerns raised—in particular, he contended that the Government was committed to going through such

issues, and the technical details that will lead to the orders, in a further consultation.<sup>10</sup> He also argued that the “important matter of rural areas” was addressed in the trial, and in Ofcom’s response to the trial.

## **House of Commons Public Bill Committee**

The Bill was considered in public bill committee on 31 January 2017. There were no amendments tabled to the Bill. A debate therefore took place on the general contents of the Bill, that clause 1 stand part. Mr Foster opened the debate by explaining that he envisaged the Bill as the first stage of a three-part process. First, the Bill would need to become an Act to set out a new “lighter touch” legislative framework to enable small-scale digital radio multiplex services; second there would be a consultation on the orders necessary to create the detail of that legislative framework; and third, there would be individual licence applications to Ofcom to put individual multiplexes into operation.<sup>11</sup>

Kevin Brennan, Shadow Minister for Culture, Media and Sport and Arts and Heritage, re-affirmed Labour’s support for the Bill.<sup>12</sup> However, he raised a number of issues on which the Community Media Association (CMA)—a UK membership association for community media—had intended to table amendments. One concern was that, according to the CMA, the Bill did not sufficiently guarantee that services would be operated primarily for public and community benefit. He argued that, therefore, charges could “remain excessive” and opportunities to reduce costs through the sale of spare capacity on the multiplex could be lost.<sup>13</sup> Another concern raised was the possibility of owning more than one multiplex. According to Kevin Brennan, the CMA argued that this could reduce competition, lead to uniformity of content, and create a “local monopoly” in a particular area of coverage—with a dominant owner who could then “favour some content providers over others”.<sup>14</sup> Mr Brennan also contended that the Bill did not “sufficiently” guarantee that community radio services would be able to access the digital platform where it became available.<sup>15</sup>

In response, Kevin Foster said that multiplex is about the broadcast infrastructure and not about particular services.<sup>16</sup> He therefore contended that reserving part of the multiplex capacity was among the things that could be included in an order produced under the framework. In addition, he said that many matters raised could be dealt with in the consultation on the order—to which Kevin Brennan agreed.<sup>17</sup>

## **Report and Third Reading**

Report stage of the Bill took place on 3 February 2017. At report, Wendy Walton (Conservative MP for Aldridge-Brownhills) moved amendment 1. The amendment sought to ensure a public consultation on the technical details of the Bill, to “be certain” that small community radio stations would not be “excluded in favour of larger stations”.<sup>18</sup> She also spoke to her amendment 2, the aim of which was to ensure that multiplex services would only be used for “the good of members of the public or of a particular community”, rather than for commercial services. Mrs Walton contended that her amendment(s) sought to address the situation where a commercially operated, small-scale radio multiplex operator might be inclined to populate available capacity with content from providers prepared to pay the highest rate, “rather than content of the greatest public value”.<sup>19</sup> Lyn Brown, Shadow Minister for the Home Office for Policing, gave her support to the amendments. Jo Churchill (Conservative MP for Bury St Edmunds), spoke to amendment 3 which sought “guaranteed carriage” for community radio on new small-scale radio multiplex.<sup>20</sup>

Responding to the proposed amendments, Kevin Foster said that the Government had provided him with assurances that it “would initiate a full consultation” which would take into account views expressed by community and commercial radio operators.<sup>21</sup> He also argued that there were “likely to be opposing views” as to whether services on the multiplex should include those being run on a commercial basis”, and that he “would not want to prejudge the consultation by closing off this option in the Bill”.<sup>22</sup> In addition, Kevin Foster said that the Government had given him assurances that it would “provide appropriate protections to ensure that licences offered by Ofcom are taken up and the position of

community stations wanting DAB carriage are protected”.<sup>23</sup> He added that he was “loth to set a specific requirement in every single licence to guarantee community access”, but that it was “almost certain” that Ofcom would want to consider how it keeps diversity, or gives opportunity, on a particular multiplex.<sup>24</sup> Amendment I was withdrawn without division.

Third reading immediately followed report stage. In his concluding remarks, Kevin Foster commented that it was appropriate to consider “how we can prevent the provisions from being used by large-scale operators to avoid the national and local multiplex systems”.<sup>25</sup> However, he added:

Were the Bill too strict, though, we would end up with some really quite bizarre outcomes that were never intended. That is why the Bill as it is, unamended, is right. I hope that when it heads to the other place their lordships will recognise that there is a specific reason why we have not put that restriction into the Bill.<sup>26</sup>

Kevin Brennan congratulated Kevin Foster on the Bill, on behalf of Labour, and hoped it would enter into law “without too much further delay”.<sup>27</sup> Rob Wilson, the Parliamentary Under Secretary of State for Culture, Media and Sport concluded the debate by summarising the Government’s support for the Bill in enabling “the creation of an appropriate and low-cost licensing regime for the transmission of digital radio on a small scale” and “to provide a means for all small stations, especially community stations, to go digital”.<sup>28</sup> He added that the Bill “allows us to put in a protection to reserve capacity and exclude large operators”, but he, too, noted that it needs a “very flexible approach”.

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<sup>1</sup> Ofcom, [Small Scale DAB Trials: Final Report](#), 26 September 2016, p 3. For further information, see House of Commons Library, [Broadcasting \(Radio Multiplex Services\) Bill 2016–17](#), 2 February 2017.

<sup>2</sup> [Broadcasting \(Radio Multiplex Services\) Bill \(HL Bill 99 of 2016–17\)](#); and [Explanatory Notes](#), p 4.

<sup>3</sup> [HC Hansard, 13 January 2017, col 591](#).

<sup>4</sup> *ibid*, col 629.

<sup>5</sup> *ibid*, col 625.

<sup>6</sup> *ibid*, col 627.

<sup>7</sup> Ofcom, [Small Scale DAB Trials: Final Report](#), 26 September 2016, p 2.

<sup>8</sup> [HC Hansard, 13 January 2017, col 625](#).

<sup>9</sup> *ibid*, col 625.

<sup>10</sup> *ibid*, col 634.

<sup>11</sup> [HC Hansard, 31 January 2017, col 3](#).

<sup>12</sup> *ibid*, col 5.

<sup>13</sup> *ibid*, col 6.

<sup>14</sup> *ibid*, col 7.

<sup>15</sup> *ibid*, col 6.

<sup>16</sup> *ibid*, col 7.

<sup>17</sup> *ibid*, col 8.

<sup>18</sup> [HC Hansard, 3 February 2017, col 1346](#).

<sup>19</sup> *ibid*, col 1347.

<sup>20</sup> *ibid*, col 1346.

<sup>21</sup> *ibid*, col 1349.

<sup>22</sup> *ibid*, col 1350.

<sup>23</sup> *ibid*, col 1349.

<sup>24</sup> *ibid*, col 1353.

<sup>25</sup> *ibid*, col 1356.

<sup>26</sup> *ibid*.

<sup>27</sup> *ibid*, col 1359.

<sup>28</sup> *ibid*, col 1360.

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