

**TELEFÓNICA UK LIMITED RESPONSE TO:**

**“Variation of UK Broadband’s 3.4 GHz licence:  
Ofcom’s consideration of a request to extend the licence term indefinitely”**

**JULY 2014**

## I. INTRODUCTION

1. Telefónica UK Limited (“Telefónica”) welcomes the opportunity to respond to Ofcom’s consultation on Variation of UK Broadband’s 3.4GHz licence, a consideration of a request to extend the licence term indefinitely<sup>1</sup>.
2. Telefónica believes that it is important for Ofcom to take a careful and considered look at the potential implications of the licence variation request from UK Broadband before making a final decision, in light of the potential impact on spectrum efficiency and its effect on market operators and consumers alike.

## II. RESPONSE TO CONSULTATION QUESTION

*Question 1: Do you agree with our proposal to approve UK Broadband’s Licence Variation request to extend the term of its licence indefinitely from 2018? Do you have any other comments you wish to make?*

### *Rollout obligation*

3. Telefónica believes that in order for Ofcom to proceed with the proposal to extend the term of the licence indefinitely, it is appropriate for a rollout obligation to be placed on UK Broadband in order to avoid regulatory risk and ensure that UK Broadband’s justification (and Ofcom’s acceptance of it, should it agree to do so) is met.
4. We note that in the past, the cellular spectrum licences that we (and other operators) have held, have been granted extensions on the basis of greater commitments in relation to rollout and coverage. We believe that this situation is comparable in regard to UK Broadband’s intention to rollout services for consumers.
5. Essentially, the differentiating factor between Option 1 (rejection of the request) and Option 2 (acceptance of the request) in the consultation, centres on the benefits that are accrued by rolling out the services within the time period before the spectrum in the Public Sector Spectrum release (“PSSR”) becomes available. It would therefore be prudent for Ofcom to follow a consistent approach to licence variation and place a rollout obligation on UK Broadband, consistent with the business plan it has submitted and which forms the basis of Ofcom’s decision.

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<sup>1</sup><http://stakeholders.ofcom.org.uk/binaries/consultations/uk-broadband-licence/summary/condoc.pdf>

6. We believe that such an obligation, lasting to 2018, would secure the incremental investment benefits that UK Broadband asserts would be achieved through Ofcom's decision to accept the request for the indefinite licence extension.
7. Any remedy for failure to meet such an obligation must be robust and act as a sufficient incentive for UK Broadband to invest and meet its commitments in respect of rollout.
8. We believe that it would also be appropriate for Ofcom to include an obligation relating to throughput, in the form of a requirement to ensure a sustained downlink speed of not less than 2Mbps is provided. This would also be consistent with Ofcom's previous decision in relation to cellular licences and ensure that the consumer benefits promised are realised.
9. [X]. Such obligations would provide the incentive for UK Broadband to invest and give rise to the consumer benefits claimed (and which is the sole justification for choosing Option 2 over Option 1). This removes a very asymmetric regulatory risk inherent in Ofcom's proposals.

#### *Further licence conditions*

10. Ofcom has duties to ensure the optimal and efficient use of spectrum<sup>2</sup>, it would therefore be appropriate to ensure that it could give effect to efficiency enhancing measures by including proportionate and consistent licence conditions as a condition of acceptance of the request.
11. We believe that every effort should be made to maximise the amount of usable spectrum available for mobile broadband within the band, in order to ensure efficient use. In order to ensure this happens, we believe that synchronisation should be a requirement in order to avoid an outcome of an inefficient, sub-optimal use of spectrum.
12. As Ofcom correctly identifies, in the absence of synchronisation, guard bands would be needed at each boundary between operators and, the greater the number of boundaries, the more spectrum needed for this purpose and the less which could be used to provide services to consumers.
13. [X].
14. We believe that inclusion of an incremental AIP level that would apply to UK Broadband's spectrum, until it is made contiguous; could be an appropriate mechanism, in order to reflect the opportunity cost it would be imposing on others.

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<sup>2</sup> The Communications Act, § 3 (2) (a)

15. However, we agree with Ofcom that UK Broadband's spectrum should be included in the assignment stage of the PSSR award, as suggested by Ofcom in section 7.25 of the consultation document. We believe that this would require licence conditions to be placed on UK Broadband at this point in time. We discuss this further below.
16. Finally, we believe that Ofcom should include a condition which requires UK Broadband to comply with establish open standards. This would ensure consistency with equivalent obligations as provided for in mobile cellular licences and avoid a situation where proprietary standards could be used on a long term basis which may be a sub-optimal outcome. It should also assure a wider choice of devices available to consumers.

#### *Assignment process to deal with UK Broadband*

17. We think there could be a number of ways to deal with this. Firstly we note that in section 5.114 of the consultation document, UK Broadband will be required to have rolled out more costly equipment to deal with a non-contiguous assignment. Therefore, the cost of any subsequent retuning of its network to deal with a re-assignment would be substantially lower than the cost savings that it would accrue from having a contiguous holding going forward. This would also have a positive impact on consumer prices; this is identified by Ofcom in section 5.55 of the consultation document.
18. A re-assignment driven by the PSSR auction would deal with the potential of delay being introduced as part of any trading solution (something that Ofcom also identifies in the consultation). If Ofcom believes there is a real risk of inefficiency and delay then it should act to prevent such a situation. The consequences of not doing so would mean the benefits of contiguity (and therefore spectrum efficiency) for other spectrum holders will be lost, which would also not be in the interest of consumers.
19. [§<].

<p><i>Question 2: Do you agree that if the variation to UK Broadband's 3.4 GHz spectrum licence is approved then fees should be charged on an annual AIP basis?</i></p>
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20. Yes. However, we believe that inclusion of an incremental AIP level that would apply to UK Broadband's spectrum until it is made contiguous; in order to reflect the opportunity cost it is imposing on others.