

everything everywhere™

*Everything Everywhere Limited
Response to the Ofcom consultation on*

*Notice of proposed Variation of 2100
MHz Third Generation Mobile
Wireless Telegraphy Act Licences.*

March 8th 2011

Summary

Everything Everywhere welcomes the opportunity to respond to Ofcom's consultation entitled 'Notice of Proposed Variation of 2100 MHz 3rd generation mobile Wireless Telegraphy Act licences' ('the consultation'). Everything Everywhere broadly accepts Ofcom's proposals aside from the points made in response to the questions posed by Ofcom.

We note that Ofcom has not sought to go beyond the matters set out in the Wireless Telegraphy Act 2006 (Directions to OFCOM) Order 2010 ('the direction') in these proposed amendments. In particular it has not sought to draw any conclusion as to whether the payments which will be made for such spectrum post 31 December 2021 will be calculated in the same manner as administered incentive payments otherwise payable on other mobile spectrum or to liberalise this spectrum. Whilst we note that this follows from the wording of the direction it would assist licensees to know whether Ofcom considers that the wording on annual payments is in fact consistent with its guiding principles on spectrum pricing or not. In addition, it is Ofcom policy to liberalise spectrum. The licences will need to be updated in the future to allow LTE and we would assume that this will occur shortly. ECC PT1 is currently revising ECC Decision (06)01 (which harmonises the technical conditions for these bands) to cater for LTE and other technologies. This revision should take place by the end of 2011. Will the licences be liberalised once this has occurred?

In relation to liberalisation of this spectrum Ofcom's document entitled 'Progress on key spectrum initiatives: a review and update of the SFR and SFR:IP' published on 3 April 2008 emphasises that Ofcom does want to proceed on the same course and with the same destination as it indicated in 2005 and this is consistent with liberalising this spectrum.¹ We can fully understand that there are complications with this particular spectrum as it was auctioned, but given the changes which have now been implemented in the Digital Economy Act 2010 and the Government's direction there would seem no good reason why Ofcom should not now proceed with liberalisation.

¹ <http://stakeholders.ofcom.org.uk/spectrum/spectrum-strategy/sfrprogress/>

paragraph 3.19 of that note states:

'liberalisation is a critical part of our spectrum management framework. Without the ability for licensees to change the use they make of the spectrum, the application of market forces will be severely limited and regulatory interventions will continue to be needed.' (paragraph 3.19)

Everything Everywhere's response to the consultation questions is as follows:

Do you have any comments on the proposed variations which Ofcom intends to make to the 3G licences in order to implement the Direction?

Our comments are as follows:

1. In clause 3(c) in line 2 it should be '5 years' notice' and two lines down the word 'the' before 31 December 2016 could also be omitted.
2. Given the concurrent consultation on the Spectrum Trading Regulations which apply to this licence in Clause 4 it would make sense merely to delete the original words and to include the underlined words (deleting the word 'however'). Given that there is no real urgency about the amendment of this licence there seems no point not to do both amendments together given the imminence of the ability to trade this spectrum.
3. In paragraph 6 we assume that the relevant name will be that of the company which actually paid the fee in accordance with the Wireless Telegraphy Act (3rd Generation Licences) Regulations 1999, which in the case of EE will not necessarily be the company name set out on the first page of the licence. If so consequential adjustments may need to be made to the drafting of this clause.
4. Sections 6c and 8c to the licence schedule contain old text relating to TDD use within the base receive or base transmit frequency bands (FDD bands). This is an option within ECC Decision (06)01 (which harmonises the technical conditions for these bands). However ECC PT1 is in the process of updating this Decision and has agreed to remove this option: At its 36th meeting, ECC PT1 agreed that the frequency band

1920–1980 MHz shall no longer be identified for possible TDD operation. The text within the schedule is not clear enough to provide sufficient protection to the FDD spectrum if TDD is deployed. Hence the text in sections 6c and 8c should be removed.

5. In new clause 7 the words ‘or on or before such dates as shall be notified in writing to the licensee’ would appear to give Ofcom the power to amend the initial fee payment date and it should be clear that no payment is required prior to 1 January 2022. If this is to be altered such alteration needs to be either by direction or amendment to primary legislation and not regulations, or other notification, made by Ofcom. If Ofcom is seeking the power to be able to amend any spectrum fee regulations then that should be made more explicit and such regulation should not, once initially made, affect any fees payable in 2022.
6. In the schedule section 7 referring to the ‘ITU Emission Code’ provision should be included for bandwidths greater than 5 MHz. It is noted that an existing UMTS TDD technology uses 10 MHz carriers.
7. In the Schedule section 8 b on TDD use, it is proposed that additional text may be needed to ensure that the 1900 – 1920 MHz band can be used efficiently. The use of the band 1900 – 1920 MHz is addressed in CEPT Report 39 where it is recognised that other measures are needed to realise the efficient and flexible use of this spectrum. The band is also currently being discussed in ECC PT1 in relation to the update of ECC Decision (06)01. Active co-operation and measures between the FDD operations above 1920 MHz and the TDD operations below 1920 MHz may be needed .to ensure that the band can be used efficiently..

8. Operators should have the explicit right to implement carrier deployment not aligned to 5 MHz offsets from block edge provided permissible out of block emission limits are met.

Do you consent to your 3G licence being varied as proposed?

Everything Everywhere Limited requires board approval to the variation of its 2 3G licences and is currently seeking this approval. It will notify Ofcom as soon as such approval is obtained.

Do you have any comments on the proposed process to monitor and measure compliance with the coverage obligation requirement?

[redacted]

Everything Everywhere reminds Ofcom of its previously notified concerns of data supplied to Ofcom being subject to release under the Environmental Information Regulations. Ofcom needs to clearly indicate whether data to be supplied for the purpose of coverage validation would be subject to release under the Regulations.