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Notice of proposed variation of 2100MHz Third Generation Mobile Wireless Telegraphy Act Licences

Telefónica O2 UK Limited (“O2”) welcomes this opportunity to comment on proposals to implement Section 5(3) of The Wireless Telegraphy Act 2006 (Directions to OFCOM) Order 2010 (“The Direction”), published as a Notice on 2nd February 2011 and updated on 2nd March 2011.

The Direction

Section 5(3) of The Direction states:

“3) OFCOM must, provided the holder of a 2100MHz licence consents, vary the licence to provide for all of the following—

(a) by 30th June 2013 the licensee must provide an electronic communications network that is capable of providing mobile telecommunications services to an area within which at least 90% of the population of the United Kingdom lives and with a 90% probability that users in outdoor locations within that area can receive the service with a sustained downlink speed of not less than 768kbps in a lightly loaded cell;

(b) the licence shall continue in force unless or until revoked by OFCOM;

(c) OFCOM may revoke the licence either—

(i) for spectrum management reasons on not less than 5 years’ notice, such notice not to be given before 31st December 2016, or

(ii) in accordance with their powers under the WTA; and

(d) that the licensee is to pay an annual charge for the licence to be determined by OFCOM in accordance with article 6(3) in respect of periods following 31st December 2021.”

Ofcom is required to offer relevant licensees a variation to their existing UMTS2100 licences, but only a variation that implements the SI. Ofcom does not have scope to exercise any discretion as to how to implement the variation. Ofcom must, of course, transpose the SI into a form that fits with the scheme of the licence.

*A **Telefonica** company*



What coverage obligation is Government directing Ofcom to do implement through this variation?

The Government's consultation on the Wireless Radio Spectrum Modernisation Programme¹ outlined the proposal that was consulted on during 2009 at §18:

"The varied 2.1GHz licences would also be liberalised and made tradable and be made subject to additional coverage obligations that require retail services to be provided to at least 90% of the population. This coverage condition could be met through the use of any spectrum available to them." [our emphasis]

Following consideration of industry responses, Government concluded in its response² at §23:

"the Government believes that the proposed coverage of 90% of the population represents an appropriate level of coverage. The coverage condition can be achieved using any spectrum available to the operator."

O2 therefore welcomes the clarification provided by Ofcom on 2nd March and Ofcom's acceptance that:

*"the Governments intention in making Article 5 of the Direction was that the new coverage obligation should be capable of being met using any of the frequencies held by a licensee and not just the frequencies in the 2100 MHz band. Ofcom agrees that this was the Governments intention, as set out at paragraph 23 of the Governments statement on the Direction of March 2010"*³

Ofcom's transposition into the draft licence

The addendum of 2nd March revises Schedule1(4)b as follows:

b) The Licensee shall by no later than 30 June 2013 provide and thereafter maintain, an electronic communications network that is capable of providing mobile telecommunications services to an area within which at least 90% of the population of the United Kingdom lives and with a 90% probability that users in outdoor locations within that area can receive the service with a sustained downlink speed of not less than 768kbps in a lightly loaded cell. Section 43A of the 2006 Act shall apply to any contravention of this provision.

O2 believes that this paragraph is sufficiently clear and precise, especially when read with the text from the Government's consultation and the 2nd March addendum (plus a separate letter informing O2 of that addendum), for MNOs to determine whether it is appropriate to apply for a licence variation of this form. Clarity is required because, in requesting this variation, MNOs are making a commitment to build and maintain (for the foreseeable future) a network of a given size and scale. Furthermore, MNOs will need to clearly understand how compliance will be evaluated (including the applicable bands and technologies) in order to satisfy themselves, from a fiduciary perspective, that they are not exposed to risks of remedial action under Section 43A of the 2006 Act.

¹ <http://www.bis.gov.uk/assets/biscore/corporate/docs/migrated-consultations/digital%20britain%20report-%20a%20consultation%20on%20a%20direction%20to%20ofcom%20to%20implement%20the%20wireless%20radio%20spectrum%20modernisation%20programme.pdf>

² <http://www.bis.gov.uk/assets/biscore/business-sectors/docs/10-737-government-response-consultation-ofcom-implement-spectrum-modernisation.pdf>

³ <http://stakeholders.ofcom.org.uk/consultations/2100-MHz-Third-Generation-Mobile/>



Drafting corrections to the licence template

Schedule 1, paragraph 4(a) refers to Radio Equipment specified in paragraph 10 of Schedule 1. Under the revisions Radio Equipment is now specified at paragraph 9.

Drafting corrections to the description of the compliance test

§4.9 of the Notice provides an overview of the calculation method that will be used to test compliance with the obligation. Bullet 1 needs to be adjusted to allow operators to submit site data for any site at any licensed frequency using any technology (3G or LTE) capable of delivering the required service level. In this way the obligation can be made truly technology neutral.

Yours sincerely

Telefónica O2 UK Limited