

## **Orange response to UK broadband application for licence variation**

### Executive summary

Orange welcomes the opportunity to respond to Ofcom's consultation on UK Broadband application for licence variation.

UK Broadband has requested for its licence to be amended in the following two ways:

1. to allow technology and application neutrality, and
2. to increase the allowed power levels to the eirp limits specified by ECC/DEC/(07)02.

The proposed power increase, coupled with Ofcom's proposed licence variations, would mean that the UK Broadband licence would be fully competitive with our own 3G licence. UK Broadband would be the owners of 20MHz of mobile spectrum, for the provision of mobile voice and data at a cost of £6.955m ie £0.35m/ MHz. As you are aware, Orange, and the other mobile operators paid over £21bn for access to 3G spectrum in 2000 ie £43.75m/ MHz.

Orange believes that further consideration of the licence cost is required if the licence is to be varied in the manner described to enable the provision of mobile services by UK Broadband. In addition, Ofcom should take account of the forthcoming expansion band award which will determined the market rate for Wimax spectrum.

Orange believes that Ofcom must be clear in its policy on the change of use of spectrum to provide mobile services. Unless, the current 2G spectrum holders are able to change the use of their licences to provide other services using other technologies, then there should be no change of use by other licence holders to provide mobile services.

## Background

UK Broadband is the holder of a national broadband fixed wireless access (BFWA) licence as a result of acquiring 15 regional 3.5GHz Public Fixed Wireless Access (BFWA) licences in June 2003.

UK Broadband's licence authorises it to establish, install and use radio and transmitting and receiving stations and / or radio apparatus as described in the licence schedule. The schedule describes the Radio Equipment as Public Fixed Wireless Access transceivers including Access Point Transceivers (known as Hub Stations, Central Stations and Base Stations), Customer Premises Equipment (known as Terminal Stations) and Radio Relay Repeaters forming part of the network. Such equipment is for transmission between fixed points ie for fixed applications. However, the licence does not impose any limitation on the technology that the Licensee may use.

UK Broadband has requested for its licence to be amended in the following two ways:

3. to allow technology and application neutrality, and
4. to increase the allowed power levels to the eirp limits specified by ECC/DEC/(07)02.

We note that UK Broadband currently uses a broadband wireless product based on the 3<sup>rd</sup> generation standard TD-CDMA (developed by 3GPP). UK Broadband now wishes to switch to Wimax, a technology which will not be constrained by the licence. However, amendments will be needed to the licence to make it application neutral.

## Effect of the proposed licence variations

The licence variations that UK Broadband has requested would allow it to operate in a number of ways that are currently prevented by the conditions in its licence:

- UK Broadband would not be limited to providing connections to fixed locations. It could provide connections to portable or mobile user terminals, as well as to fixed locations, anywhere within the UK,
- the increased in-band EIRP limit would enable UK Broadband base stations to serve portable or mobile terminals, and
- the increased power limit would also reduce the number of base stations required to serve a given number of customers within a given coverage area.

## Ensuring a level playing field between operators providing the same service

Orange is extremely concerned by Ofcom's seemingly limited economic analysis into the licence amendment of UK Broadband. Whilst Orange welcomes new competitors into the market, thereby increasing the diversity of choice to customers, we strongly believe that the provision of the same services by different operators must be on the same, or similar, cost base. As previously submitted, Orange reiterates its position that Ofcom must ensure that the liberalisation of UK Broadband's licence must not be allowed to distort competition in the UK.

Under the current proposals, and Ofcom's own analysis, it is clear that UK Broadband would be in a position to offer broadband mobile services to customers on a national basis, similar to 3G mobile services, using a member of the IMT family. Indeed, recent press reports indicate that UK Broadband intends rolling out mobile voice services across the UK over its wireless broadband network, and that UK

Broadband is only waiting for the completion of this consultation exercise before rolling out voice services. Orange does not believe that Ofcom has taken such a move into account in its consultation document.

As Ofcom states in its consultation document, UK Broadband's licence is for an initial term of five years up to a maximum term of fifteen years, which can be extended every five years. UK Broadband has recently informed Ofcom that it wants to extend the term for an additional five years from July 2008. The licence fee payable for each five years is £6.955m. This fee of £6.955m is based on the auction price for a fixed wireless access licence ie the provision of a service to a fixed point.

The proposed power increase<sup>1</sup>, coupled with Ofcom's proposed licence variations, would mean that the UK Broadband licence would be fully competitive with our own 3G licence. UK Broadband would be the owners of 20MHz of mobile spectrum, for the provision of mobile voice and data at a cost of £6.955m ie **£0.35m/ MHz**. As you are aware, Orange, and the other mobile operators paid over £21bn for access to 3G spectrum in 2000 ie **£43.75m/ MHz**.

It could be argued that in order for Ofcom to fulfil its duty to secure optimal use of spectrum an additional licence fee should be charged to UK Broadband to reflect an increased value of the spectrum arising from the changes. Failure to do so would risk UK Broadband utilising the spectrum in a sub-optimal manner. It seems surprising that Ofcom is prepared to amend the UK Broadband licence at this time. Next year, possibly prior to July 2008, will see an award of expansion band spectrum for the use of IMT2000 and Wimax. Surely, it would be more appropriate to wait until this award is complete so that a market value can be placed on UK Broadband's licence as a result of the price established for spectrum for Wimax use.

**Orange believes that further consideration of the licence cost is required if the licence is to be varied in the manner described to enable the provision of mobile services by UK Broadband. In addition, Ofcom should take account of the forthcoming expansion band award which will determined the market rate for Wimax spectrum.**

#### Consideration of all forms of spectrum liberalisation

Ofcom is currently undertaking a review of the liberalisation of the 2G spectrum, with a consultation anticipated in September 2007. Until it is clear how the 2G licence will be liberalised, it cannot be possible to consider alternative spectrum liberalisation – which will be providing the same services. Once again, Ofcom seems to be attempting to set policy on individual pieces of spectrum instead of clarifying the overall policy on all spectrum, ensuring a level playing field.

Ofcom's current view in the consultation document is that:

*'In general, the effect of spectrum liberalisation could be either to increase or to decrease the value of spectrum licences because there are effects in different directions. On the one hand, liberalisation increases flexibility for the licensee and enables the spectrum to be a more fungible input. On the other hand, liberalisation in general reduces barriers to entry and so tends to increase competitive pressure. Even if there were an increased value of the licence (which T-Mobile and Orange refer to as a windfall benefit), there would not necessarily be a*

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<sup>1</sup> 29dBW/MHz downlink

*distortion of competition, as this would depend on the detailed nature of the impact and the circumstances. For example, less direct effects on pricing strategies and competition can be expected if the impact is a change in fixed costs and in some circumstances there might be no effect. For the reasons set out above, Ofcom's view is that the potential for detrimental impacts on competition from making the licence variation is limited'.*

Orange does not believe that this is a sufficient analysis to conclude that there is limited impact on competition from the licence variation. Ofcom must ensure that it undertakes a rigorous analysis of the appropriate cost to be incurred by UK Broadband in order to amend its licence.

In its previous submissions on this subject, Orange has stated that it believes that a failure to impose a licence fee to reflect the increased value of the licence would constitute a state aid if the effect of the failure was to confer an advantage on the licensee over other licensees in a similar position.

If Ofcom is determined to continue to apply its current policy to UK Broadband, ie enabling the provision of new technology and new service at no increased cost, Orange will expect the same treatment when its 2G spectrum becomes liberalised. In any event, Ofcom must clarify the position with respect to 2G liberalisation before moving forward with its current proposals for UK Broadband.

**Orange believes that Ofcom must be clear in its policy on the change of use of spectrum to provide mobile services. Unless, the current 2G spectrum holders are able to change the use of their licences to provide other services using other technologies, then there should be no change of use by other licence holders to provide mobile services.**

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