

To:	Mark Caines, Director of Spectrum Policy Ofcom
From:	Stephen Lerner, General Counsel and Regulatory Affairs Director Hutchison 3G UK Limited
Date:	23 June 2017
Subject:	Proposed amendments to the draft Wireless Telegraphy (Licence Award) Regulations 2016 (the "PSSR Auction Regulations") to enable partial re-assignment of frequencies under the existing 3.4GHz licence held by UK Broadband Limited ("UKB")

[NON-CONFIDENTIAL VERSION]

1. Introduction

- 1.1 [CONFIDENTIAL – EXPLAINS WHY THREE IS MAKING THIS PROPOSAL.]
- 1.2 [CONFIDENTIAL – THREE’S PREFERRED APPROACH: A DECISION TO ALLOCATE SPECIFIC SPECTRUM AS A REPLACEMENT FOR UKB’S EXISTING SPECTRUM AHEAD OF THE AUCTION.]
- 1.3 [CONFIDENTIAL – FALL BACK PROPOSAL GIVING THREE/UKB THE OPTION TO ONLY SEEK RE-ASSIGNMENT OF 20MHZ OF ITS SPECTRUM. WHY THIS MIGHT BE DESIRABLE.]
- 1.4 To allow for this possibility would require Ofcom to make amendments to the draft PSSR Auction Regulations. This note sets out the amendments that we believe would be required.
- 1.5 We have used the numbering in the current draft PSSR Auction Regulations issued for consultation on 21 November 2016 but acknowledge that the numbering will be different in the draft to appear with the PSSR statement as some provisions will already have been deleted or amended, including to deal with the fact that UKB’s spectrum is no longer jointly held with UKB Networks Limited. We do not include in this note the amendments already needed to deal with this.
- 1.6 [CONFIDENTIAL – THE ACTIONS THREE/UKB WOULD TAKE TO ALLOW THE PROPOSAL TO BE GIVEN EFFECT IF OFCOM MADE THE PROPOSED CHANGES TO THE REGULATIONS].
- 1.7 [CONFIDENTIAL – POSSIBILITY OF ALLOWING THREE/UKB TO CHOOSE AT THE OUTSET OF THE AUCTION WHETHER TO SEEK RE-ASSIGNMENT OF 0, 20 OR 40MHZ OF ITS SPECTRUM. WHY OFCOM MIGHT CONSIDER THIS DESIRABLE.]

2. Amendments required

- 2.1 Clause 2(1):

“pre-existing licence” means the licence with number ~~1040769XXXXXXX~~ which authorises the establishment, installation and use of wireless telegraphy stations and wireless telegraphy apparatus in the frequency ranges ~~[CONFIDENTIAL – 3480-3500 MHZ OR 3580-3600 MHZ]~~~~3480-3500 MHz and 3580-3600 MHz~~ ~~(b)~~ held ~~jointly~~ by ~~[CONFIDENTIAL – COMPANY NAME]~~;

“pre-existing licence holder” means ~~either UK Broadband~~~~[CONFIDENTIAL – COMPANY NAME] Limited (a company with company registration number 04713634~~~~[CONFIDENTIAL – COMPANY NUMBER]) or UKB Networks Limited (a company with company registration number 08966182)~~;

“replacement licence” is a licence applied for under this award process which authorises the use of frequencies comprised in a block of ~~eight-four~~ 3.4 GHz lots on substantially the same terms, conditions and limitations which apply to the pre-existing licence;

2.2 Footnote (b):

These frequencies correspond to the 3.4 GHz lots numbered ~~[CONFIDENTIAL – EITHER 15 TO 18 OR 35 TO 38]~~ in these Regulations.

2.3 Regulation 6(3):

If a pre-existing licence holder indicates that it will participate in the assignment stage only, so that it is a winning bidder only in respect of ~~eight-four~~ 3.4 GHz lots in accordance with regulation 21, the requirement to pay an initial deposit of one hundred thousand pounds under regulation 4 does not apply to that pre-existing licence holder.

2.4 Regulation 21(b):

A pre-existing licence holder which has applied for a replacement licence—

...

will be deemed to be a winning bidder in respect of ~~eight-four~~ 3.4 GHz lots with an associated base price of zero (“replacement lots”), without having made principal stage bids

2.5 Regulation 22(b):

The 3.4 GHz lots which are available in the award process shall be—

...

the 3.4 GHz lots numbered ~~[CONFIDENTIAL – EITHER 1 TO 14 AND 19 TO 38 OR 1 TO 34]~~, if a pre-existing licence holder has applied for a replacement licence.

2.6 Regulation 75(2):

The 3.4 GHz assignment stage options for the pre-existing licence holder which applied for a replacement licence shall be each of those blocks of numbered 3.4 GHz lots which satisfy the following conditions—

(a) the number of 3.4 GHz lots contained in the block is equal to the sum of the number of additional 3.4 GHz lots, if any, and the number ~~eight-four~~; and

(b) if that pre-existing licence holder were assigned the 3.4 GHz lots contained in the block the following conditions would be satisfied—

(i) each other bidder could be assigned the number of 3.4 GHz lots, contained in a block, that is equal to the number of that other bidder's winning principal stage bids for 3.4 GHz lots; and

(ii) the 3.4 GHz lots not assigned to that pre-existing licence holder or any other bidder would form a single block of numbered 3.4 GHz lots.

2.7 Regulation 75(3):

The 3.4 GHz assignment stage options for a bidder which is not the pre-existing licence holder shall be each of those blocks of numbered 3.4 GHz lots which satisfy the following conditions—

(a) the number of 3.4 GHz lots contained in the block is equal to the number of that bidder's winning principal stage bids for 3.4 GHz lots; and

(b) if that bidder were assigned the 3.4 GHz lots contained in the block the following conditions would be satisfied—

(i) subject to sub-paragraph (ii), each other bidder could be assigned the number of 3.4 GHz lots, contained in a block, that is equal to the number of that other bidder's winning principal stage bids for 3.4 GHz lots; and

(ii) the pre-existing licence holder which applied for a replacement licence could be assigned the number of 3.4 GHz lots, contained in a block, that is equal to the sum of the number of additional 3.4 GHz lots, if any, and the number ~~eight~~four; and

(iii) the 3.4 GHz lots not assigned to that bidder or any other bidder (the "leftover 3.4 GHz lots") would form a single block of numbered 3.4 GHz lots.

2.8 Regulation 98(2):

Where a pre-existing licence holder to which this regulation applies did not win any additional 3.4 GHz lots in the principal stage, any replacement licence granted to that pre-existing licence holder shall authorise the use of ~~40~~20 MHz corresponding to its 3.4 GHz winning option.

2.9 Regulation 98(3):

Where a pre-existing licence holder to which this regulation applies won 3.4 GHz lots in accordance with either regulation 36 or 38 (but not both)—

(a) the replacement licence granted to that pre-existing licence holder shall authorise the use of ~~40-20~~ MHz corresponding to the block which comprises the higher frequencies included in that bidder's 3.4 GHz winning option; and

(b) the 3.4 GHz licence or 3.4 GHz withdrawn lot licence granted to that bidder shall authorise the use of the frequencies corresponding to the block of additional 3.4 GHz lots which comprises the lower frequencies included in that bidder's 3.4 GHz winning option.

2.10 Regulation 98(4):

Where a pre-existing licence holder to which this regulation applies won 3.4 GHz lots in accordance with both regulations 36 and 38—

(a) the replacement licence granted to that bidder shall authorise the use of ~~40-20~~ MHz corresponding to the block which comprises the higher frequencies included in that bidder's 3.4 GHz winning option;

(b) the 3.4 GHz licence granted to that bidder shall authorise the use of the frequencies corresponding to the block which—

(i) includes such number of lots as won in accordance with regulation 36; and

(ii) comprises the frequencies immediately below the block included in the replacement licence referred to in sub-paragraph (a); and

(c) the 3.4 GHz withdrawn lot licence granted to that bidder shall authorise the use of the frequencies corresponding to the block which—

(i) includes such number of lots as won in accordance with regulation 38; and

(ii) comprises the lower frequencies included in that bidder's 3.4 GHz winning option.

2.11 Schedule 4:

~~UK Broadband~~[CONFIDENTIAL – COMPANY NAME] Limited ~~and UKB Networks Limited~~ hereby consents to the revocation of the pre-existing licence, as defined in The Wireless Telegraphy (Licence Award) Regulations 2016 (the "Regulations"), upon OFCOM granting a replacement licence, as defined in the Regulations, for a block of ~~eight-four~~ 3.4 GHz lots to [CONFIDENTIAL – COMPANY NAME]~~/UK Broadband Limited or UKB Networks Limited~~ ~~[[delete as appropriate]]~~ in accordance with the Regulations.

[signed by ~~UK Broadband~~[CONFIDENTIAL – COMPANY NAME] Limited]

~~[signed by UKB Networks Limited]~~

HUTCHISON 3G UK LIMITED

23 JUNE 2017