

Correspondence from an interested party of 14 October 2016 and ComReg's response to same

ComReg reference: CBSA(16)053

Date: 21 November 2016

1. Introduction

ComReg received correspondence from an interested party which related to 3.6 GHz Band transition matters. In accordance with paragraph 3.35 of the Information Memorandum (IM) (Document 16/71), ComReg is publishing this correspondence with its associated response on an anonymous basis on the ComReg website. The non-confidential version of the letter from the interested party is contained in section 2. ComReg's response to same is contained in section 3 of this document.

2. Anonymised non confidential version of correspondence from an interested party of the 14 October 2016

Commission for Communications Regulation,
Abbey Court, Irish Life Centre,
Abbey Street,
Dublin 1.

14/10/2016

CONFIDENTIAL

Concerns regarding 3.6 Ghz transition.

Dear Commissioner and Mr. Ritchie,

This letter does not relate to the 3.6 GHz Spectrum Auction, but rather to transition issues that may arise as a result of the assignment state of auction. [REDACTED] ComReg's [REDACTED] in document 15/140(7.64) [REDACTED]

This process allows the Existing Licensees to inform ComReg of any technology constraints associated with its existing systems and such details can be then taken into consideration by ComReg in the setting of the specific frequency assignments in the transition plan.

In 15/140(7.12) ComReg states that

With regard to the collection of information, ComReg noted that whilst the precise nature and extent of transition activities would only be known until the outcome of the proposed award process, it was nevertheless important to collect information from Existing Licensees in advance of the award process so as to inform ComReg's transition proposals and rules.

To my knowledge no request for any such information has been made.

ComReg also states 15/140(7 .13) that transition rules would be set "in advance of the award process", I am currently not aware of the setting of any such rules.

Under the proposed arrangements for the assignment stage of the auction a bidder may request a specific frequency assignment. There is no mention made of the potential for such an assignment to disrupt existing customer services nor for such an assignment to impact on transition arrangements.

I would therefore urge that ComReg put arrangements in place in advance of the auction to prevent opportunistic bidder behaviour. Absent such safeguards a situation may arise where thousands of consumers would be left without a service or with limited choice of provider, even though arrangements could have been made to accommodate both an existing FWALA operator and a Winning Bidder. Such a situation would clearly run contrary to ComReg's stated intention and obligation to minimise customer disruption.

I also take the opportunity of raising a procedural matter in relation to the license application process for TULs.

With respect to FWALA licenses, the process is that the applicant pays in advance of evaluation of the application. The application is then evaluated and ComReg either issue or decline.

██████████

I would ██████████ request that you make available a facility whereby existing FWALA operators ██████████ may make a bulk application for TULs. In the event that only a proportion of the licenses could be provided then the operator would have the option of withdrawing the entire application without financial penalty.

I would appreciate if you would acknowledge receipt of this letter but that the contents are considered confidential ██████████

sincerely,

██████████

3. ComReg's Response re Issues raised in the correspondence of the 14 October 2016

Issue 1: Request for information

Following extensive consultation on the future of the 3.6 GHz Band, where ComReg considered submissions from various interested parties including holders of 3.6 GHz Band FWALA licences ("Existing Licensees"), as well as information collected from Existing Licensees by means of a questionnaire sent to all Existing Licensees in January 2015, ComReg finalised its decisions on the 3.6 GHz Band Award Process in Document 16/57 and, further, set out its rules for implementing these decisions in the IM.

The information collected in response to this questionnaire and the submissions of respondents to ComReg's consultation documents on the Award Process indicated the complexity of any likely Transition Activities - the exact nature and scope of which would depend on the outcome of Award Process.

Issue 2: 3.6 GHz Band Transition Rules

In light of the above, ComReg designed Transition Rules to facilitate a timely and orderly Transition to the outcome of the Award Process and, importantly, these rules provide for the formulation of a Transition Plan after the completion of the Assignment Stage when the outcome of the Award Process is known.

The Transition Rules are set out in Section 3.8 of the IM. Bidders in the Award Process and Existing Licensees which apply for a Transition Unprotected Licence ("TUL") (see Section 2.7 of the IM) will be obliged to comply with these rules. For Existing Licensees who are not obliged to abide by these Transition Rules, their spectrum rights of use will be respected until licence expiry.

In formulating a Transition Plan, Existing Licensees and Winning Bidders will firstly have the opportunity to submit a Transition Plan Proposal (either individually or collectively) to ComReg. In submitting the Transition Plan Proposal, the relevant parties will be required, among other things, to identify all Transition Activities to be undertaken and to provide milestone dates for each activity. Following this, the Transition Plan will be finalised by ComReg in consultation with Winning Bidders and Existing Licensees.

While there are likely to be many factors to consider in finalising the Transition Plan, considerations such as not unduly delaying the availability of spectrum and mitigating consumer disruption would be expected to form part of ComReg's considerations.

Issue 3: Assignment Stage of the Award Process

In relation to the issue raised regarding the Assignment Stage of the Award Process, ComReg wishes to clarify, for the avoidance of doubt, that any Transition Activities will not be considered prior to completion of the Assignment Stage. As set out in paragraphs 3.165, 4.162 and 4.166 of the IM, the purpose of the Assignment Stage is to determine the specific frequencies to be assigned to Winning Bidders in relation to the frequency-generic B-Lots. A-Lots do not need to be taken into account in the Assignment Stage as the frequencies associated with A-Lots are fixed.

The Assignment Stage of the Award Process relates to new 3.6 GHz Band rights of use to be issued following the Award Process, and does not concern the rights of use for radio frequencies assigned to Existing Licences.

Issue 4: Application Process for Transition Unprotected Licences

In relation to the TUL application process, ComReg draws attention to certain provisions of the Wireless Telegraphy (3.6 GHz Band Licences) Regulations 2016¹ ("the Regulations") in that regard. First, Regulation 4(3) provides that an application for a TUL shall be in such form as may be determined by ComReg and that ComReg may grant a TUL upon receipt of an application submitted in accordance with these Regulations following payment by the applicant of the relevant fees prescribed in Regulation 8. The exact details of how the TUL fees will be applied will be set out in the TUL application form which ComReg will finalise in due course. In addition, Schedule 5 of the Regulations specifies the form of a TUL, which provides for the inclusion of multiple FWALA service areas under the one TUL. Although ComReg has not yet determined the final format of the TUL application form, ComReg envisages putting in place an application process that is as efficient and user-friendly as possible.

It should be noted that the outcome of the Award Process and the Transition Plan will determine what service areas, frequency assignments etc. will be available to each TUL applicant. As such, any successful application for a TUL will have to be consistent with same.

/End.

¹ S.I. No. 532 of 2016, Wireless Telegraphy (3.6 GHz Band Licences) Regulations 2016