



COMMENTS ON

OUR DOCUMENT 11/11

AMENDMENT TO ALL EXISTING MOBILE LICENCES

STATUTORY INVITATION TO COMMENT

5TH AUGUST 2011

1. INTRODUCTION AND BACKGROUND

The Office of Utility Regulation ("OUR") has invited responses to its document OUR 11/11 entitled "Amendment to All Existing Mobile Licences – Statutory Invitation to Comment". Following a review of mobile licences and licensing in 2009 and a consultation by the OUR in May 2010 the OUR published a Final Decision in April 2011 (OUR 11/07).

The Oar's Final Decision in April 2011 detailed the changes to existing 2G and 3G licences, which reduced regulatory intervention on mobile operators, while maintaining the option to regulate to protect a universal service. A further objective is to give mobile operators more choice in the use of radio spectrum for the provision of 2G and 3G services.

Wave Telecom ("Wave") has been liaising with the OUR throughout this process and has made comments which have been incorporated into the draft licence. Wave is however, disappointed that some of comments made to the OUR by email on 13th July 2011 were not incorporated. Where we believe there is merit in changes being made to the draft mobile licence these are reiterated in this response.

2. WAVE COMMENTS

In its email of 13th July 2011 and during subsequent telephone conversations, wave made the following comments, which have not been incorporated into the proposed license text. Wave believe that these comments are important and should be considered again by the OUR as part of this consultation. Wave's comments are made below and follow the numbering used in the proposed licence.

1. Definitions and Interpretation

The draft mobile licence includes defined terms for "Licensed 2G Mobile Telecommunications Services", "Licensed 3G Mobile Telecommunications Services" and "Licensed Mobile Telecommunications Services" as follows:-

"Licensed 2G Mobile Telecommunications Services": means Licensed Mobile Telecommunications Services compatible with the European GSM standard and provided utilising the 900, 1,800 and 2,100 MHz frequency bands assigned to the Licensee for mobile services, with the approval of the Director General, by Ofcom in accordance with the Wireless Telegraphy Act and the relevant ETSI technical specifications;"

"Licensed 3G Mobile Telecommunications Services": means Licensed Mobile Telecommunications Services compatible with the European UMTS standard and provided utilising the 1,800 and 2,100 MHz frequency bands assigned to the Licensee for mobile services, with the approval of the Director General, by Ofcom in accordance with the Wireless Telegraphy Act and the relevant ETSI technical specifications;"

"Licensed Mobile Telecommunications Services": means services (other than satellite services) the provision of which consists, wholly or partly, in the establishment of radio communications to Users, which makes use wholly or partly of a Mobile Telecommunications Network and which has the characteristic of a pan-European, cellular, digital, land based, mobile telephony service compatible with the European standards; Such services are either Licensed 3G Mobile Telecommunications Services or Licensed 2G Mobile Telecommunications Services;"

Wave is of the opinion that the Licence was meant to be generic as per the OUR's decision document 09/06, namely:

"Once this licensing round is complete, all three operators licences will be amended to remove the restriction on the use to which their spectrum allocation in the 900MHz, 1800MHz and 2100MHz bands can be used. Therefore the DG confirms his decision to amend all three mobile operators' licence to remove the restriction on use of spectrum. He will later this year initiate the formal process for amending a licence as required under the Telecommunications (Bailiwick of Guernsey) Law 2001."

"The DG has in a separate paper (OUR 09/05) outlined his decision to remove the current restrictions on the type of mobile service than can be provided using the various spectrum frequencies currently designated for mobile use. This will allow both 2G and 3G services to be provided utilising 900MHz, 1800MHz and 2100MHz."

Wave therefore does not see the need to retain defined terms for "Licensed 2G Mobile Telecommunications Services" and the associated spectrum bands 900, 1800 and 2100 MHz frequencies or for "Licensed 3G Mobile Telecommunications Services" and the associated spectrum bands 1800 and 2100 MHz frequencies as Operators will be able to provide both 2G and 3G and other services such as LTE using 900, 1800 and 2100 MHz.

Should the OUR wish to restrict the usage of spectrum in frequencies 900, 1800 and 2100MHz we propose the following new wording to replace the specific clauses for Licensed 2G Mobile Telecommunications Services and Licensed 3G Mobile Telecommunications Services detailed above:-

"Licensed 2G and 3G Mobile Telecommunications Services": means Licensed Mobile Telecommunications Services compatible with the European GSM and UMTS standards and provided utilising the 900, 1,800 and 2,100 MHz frequency bands assigned to the Licensee for mobile services, with the approval of the Director General, by Ofcom in accordance with the Wireless Telegraphy Act and the relevant ETSI technical specifications;"

However, it was our understanding that the DG wished to allow technology neutrality in the 900, 1800 and 2100 MHz bands. Limiting the use of this allocated spectrum to be utilised only for 2G and 3G services does not appear to be an efficient use of the allocated spectrum and will restrict licenced operators from using existing spectrum resource to provide next generation services such as LTE. This would seem to be a backward step and at odds with the European Commission and Ofcom's decisions regarding the use of 900 and 1800 MHz spectrum.

Ofcom's spectrum consultation document dated 2nd June 2011 entitled "Consultation and information on technical licence conditions for 800 MHz and 2.6 GHz spectrum and related matters" ¹ states:-

"2.11 In 2009 the European Commission issued a mandate to CEPT to study technical conditions for the introduction of new technologies in the 900 MHz and 1800 MHz bands, with the aim of adding those technologies to the list in the annex of Decision 2009/766/EC. The CEPT project team ECC PT1 studied the coexistence of both LTE and WiMAX with existing GSM and UMTS networks within the 900 MHz and 1800 MHz bands and with systems in adjacent spectrum. CEPT published the results in late

¹ [Consultation and information on technical licence conditions for 800 MHz and 2.6 GHz spectrum and related matters](#)

2010 in two CEPT Reports: CEPT Report 40² sets out the frequency separation for coexistence between LTE/WiMAX and existing GSM or UMTS networks; CEPT Report 41³ provides analysis of the coexistence between LTE/WiMAX and systems in adjacent bands.

2.12 Following the publication of these CEPT Reports, the European Commission has adopted Decision 2011/251/EU⁴, amending Decision 2009/766/EC. This adds technical conditions for LTE and WiMAX into the annex to that Decision, which previously only contained UMTS. The amending Decision also sets a deadline of 31 December 2011 for Member States to implement the technical conditions to allow LTE and WiMAX in these bands.

2.13 In the March 2011 Consultation, we announced proposals to liberalise the use of mobile frequencies at 900 MHz, 1800 MHz for LTE and WiMAX (see paragraphs 2.21 and 5.88). The licences for 900 MHz and 1800 MHz will need to be amended in order to implement the technical conditions in the amended Commission Decision, which are expressed in terms of frequency separations between channel edges of systems in neighbouring frequency assignments. These requirements would be added to the relevant section in Schedule 1 to the licence."

20. Access to Facilities

Clause 20.1 as currently drafted states:-

"The Licensee will use best endeavours to allow Other Licensed Operators to access its infrastructure. The Licensee will prepare a standard Access-to-facilities agreement for use with Other Licensed Operators within three months of any request and a copy of the agreement will be filed with the Director General."

Wave's comment relates to the use of the word "best endeavours" which it believes is unreasonable and should be amended to "reasonable endeavours". Best endeavours means "at any cost" which is not always possible, feasible or reasonable. Wave believes it is more appropriate for the Licensee to be required to use "all reasonable endeavours" rather than "best endeavours". During our conversations on the suggested changes the OUR commented that the licence in general assumed reasonable endeavours. However, Wave's concern is that by specifically stating "best endeavours" then that is a legally defined concept and will be binding on the Licensee.

Clause 20.2 as currently drafted states:-

"Without prejudice to the foregoing, Access provided under Condition 20.1 shall include but not be limited to the sharing by the Licensee of Telecommunications Equipment and Associated Facilities such as housing, masts electricity supply etc with Other Licensed Operators within the Bailiwick."

We do not believe that access to electricity as stated, should be included in this clause as it is not always possible to share an electricity feed, the decision on the logistics of sharing such a feed would be decided by the Electricity company and outside of the Licensees control. It may also be the case that the parties may not wish to share an electricity feed for practical reasons. Consequently, we do not believe it is appropriate for this to be specified in the licence as currently drafted and should be reworded to clarify that the Licensee will not supply but will enable access or facilitate the requirement for an electricity feed where necessary.

² <http://www.ecodocdb.dk/Docs/doc98/official/Word/CEPTREP040.DOC>

³ <http://www.ecodocdb.dk/Docs/doc98/official/Word/CEPTREP041.DOC>

⁴ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:106:0009:0010:EN:PDF>

