

**Broadband Fixed Wireless Access (BFWA) at 28 GHz:
proposals to amend new and existing licences and for the
next stage of the award process.**

A Consultation Document

October 2002

1. Executive Summary

- 1.1 This consultation document concerns the Government's proposals (i) to remove the "purpose of use" and "use it or lose it" conditions from existing and new 28 GHz licences; and (ii) to offer new licences for award following the closure of the award process.
- 1.2 In November 2000, 28 GHz licences were offered in fourteen regions (three per region) covering the whole of the UK. Sixteen licences were sold in seven of the regions to six operators. In October 2001 the government invited applications for the remaining 28 GHz licences. The invitation was open until 14 October 2002.
- 1.3 The government is considering the framework for a future award process for new 28 GHz licences. It is currently proposing to maintain the framework of the second award process and intends to open the process as soon as practicable after the conclusion of this consultation.
- 1.4 The government agrees with the independent Review of Radio Spectrum Management recommendations that the "purpose of use" and "use it or lose it" conditions should be removed from existing and new licences, subject to consultation.
- 1.5 The European Union Licensing Directive specifies that telecommunications services must be granted through procedures that are objective, non-discriminatory and transparent. Article 8.4 of the Directive permits the amendment of an existing licence in accordance with the Directive if there is an objective justification for doing so.
- 1.6 This consultation document seeks views, from 28 GHz licence holders and those interested in the development of Broadband Fixed Wireless Access (BFWA) within the telecommunications industry (e.g. operators, equipment manufacturers etc.), regional bodies and community groups on the proposals to:
 - Remove the "use it or lose it" obligations from 28 GHz Wireless Telegraphy Act 1949 (WT Act) licences;
 - Remove the "purpose of use" requirements from 28 GHz WT Act licences;
 - Apply a minimum path length policy where licensees provide point-to-point links to other operators; and
 - Maintain the framework of the second 28 GHz award process for a future award process.
- 1.7 Response to this consultation should arrive no later than 17:00 on **Thursday 14 November 2002**, and be addressed to:

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Or fax: 020 7211 0203

- 1.8 Any comments or complaints about the conduct of this consultation should be addressed to:

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189 Marsh Wall
London E14 9SX

Or, alternatively, electronically to: julia.fraser@ra.gsi.gov.uk
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Publication of responses

- 1.9 Respondents to this consultation should note that in the interests of open government:

- Unless confidentiality is expressly requested, individual responses will be placed in the public domain in printed or electronic form, together with the names and contact details of authors. Respondents are requested to make it very clear if they wish to keep some or all of their response confidential.
- Unconditional permission to publish responses will be assumed unless the author expressly states otherwise.
- Any copyright attached to responses will be assumed to have been relinquished unless it is expressly reserved.
- The provisions of the Data Protection Act 1998 will apply to the information supplied.

2. Background

- 2.1 In November 2000, the Government held an award process of spectrum for BFWA in the 28 GHz band that would support two-way broadband services. BFWA enables the development e-business by enabling fast, always-on Internet access and high data rate services. The target market for services delivered by 28 GHz BFWA is generally seen as small and medium sized

companies. BFWA is complementary to other technology platforms, such as asymmetric digital subscriber lines (ADSL), cable modems and satellite delivery, and offers various advantages over them in terms of range, bandwidth and speed of deployment. In the award process sixteen of the forty-two available licences were sold. The companies holding licences are: Energis Local Access Ltd, Your Communications Ltd, Faultbasic Ltd, Broadnet UK Ltd, and Chorus Communication Ltd. Eircom NI Ltd has surrendered its licence.

2.2 In October 2001 the Government invited applications for the twenty-six remaining 28 GHz licences. The award process was opened for a period of up to twelve months. No bids were received when it closed. Under this process, a company could bid for a licence at the reserve price set for the original auction. It would be allocated that licence provided that there was no other bidder. If there was more than one bid for the same licence in a region, all bidders in the region would take part in an auction. Licences would then be allocated to the highest bidders in the auction. Details of the licences and the award process are at Annexes A and B.

3. **“Purpose of use” and “use it or lose it” licence conditions**

3.1 The Review of Radio Spectrum Management by Professor Martin Cave (the Cave Review), in March 2002, made two recommendations that had a direct bearing on 28 GHz. Recommendation 8.4 is explicitly addressed to 28 GHz:

“Current restrictions on the use of fixed wireless access band should be removed so as to allow the deployment of any fixed service.”

3.2 Recommendation 7.2 said:

“The RA should aim to minimise the licence conditions necessary for efficient spectrum use. Existing licences should be amended to remove restrictions which are not needed for reasons of international co-ordination or interference management, and new licences should be issued with the minimum number of restrictions possible.”

3.3 The government’s response to these recommendations, says

“The Government agrees that unnecessary licence conditions should be removed. The Radiocommunications Agency is planning to commission a substantial programme of work, planned to be completed by early 2004, to identify redundant restrictions. The programme will encompass both technical and economic analysis of the consequences of relaxing restrictions on types of service and will also take account of the anticipated introduction of spectrum trading. Meanwhile, the Government is minded, subject to consultation with interested parties, to relax restrictions in existing licences for Broadband Fixed Wireless Access at 28 GHz concerning purpose of use and coverage obligations and to do likewise in relation to the further award of licences in this band. The Radiocommunications Agency is issuing a consultation document with detailed proposals.”

- 3.4 The 28 GHz licence “purpose of use” requirement restricts the licensee to using the spectrum for connecting end users to a telecommunications network, with data rates of at least 2 megabits per second (Mbps) on demand. The licensee is also obliged to establish a network capable of delivering services to 10% of businesses within each of its licence region within eighteen months and by 30 June 2002 for existing licences (the so-called “use it or lose it” obligation). Neither of these conditions is needed for reasons of international co-ordination or interference management.
- 3.5 The main objective in awarding licences at 28 GHz is to secure the timely and sustained provision of BFWA services in the UK. The conditions referred to above were included to further this objective. **The Cave Review concluded that it was not possible to create consumer demand for a service simply by reserving spectrum for it. Giving operators flexibility would allow them to develop those services for which they saw a demand, with the possibility of different services being developed in different parts of their licence regions and/or the service mix changing over time as the market changed.** It also concluded that forcing an operator to deploy services faster than commercial imperatives alone would have done could cause problems for the company concerned, particularly for new entrants to a market.
- 3.6 The Secretary of State considered, at the end of June, the extent of licensees’ service roll out in connection with the “use it or lose it” condition. On the basis of information provided to the Radiocommunications Agency in respect of licensees’ business plans, the Secretary of State exercised her discretion to extend the period for compliance with the condition to 31 December 2003. It is now proposed that the condition should be removed entirely.
- 3.7 Where, as a result of the removal of the purpose of use condition, a licensee provides point-to-point links to other operators the government is considering whether to apply a minimum path length requirement that is consistent with the policy that currently applies to fixed terrestrial point-to-point links (see Agency information sheet RA 143). This policy sets out minimum path length values in each band. It aims to encourage the use of higher frequencies for shorter paths, thus avoiding congestion in the lower bands and conserving spectrum in those bands for the longer, high capacity links which can only be accommodated in them. If the policy is applied to 28 GHz BFWA the minimum path is likely to be 2.5 km for data rates of 2Mbps and above, up to but excluding 140 Mbps and 1.5 km for 140 Mbps and above. The position will be reviewed along with any future review of the policy.
- 3.8 The European Union Licensing Directive specifies that telecommunications services licences must be granted through procedures that are objective, non-discriminatory and transparent. Article 8.4 of the Directive permits the amendment of an existing licence in accordance with the Directive if there is an objective justification for doing so. The government considers that the removal of the “use it or lose it” obligation from the existing 28 GHz licence and the amendment of the “purpose of use” condition constitute amendments that are so objectively justifiable. The Secretary of State has discretion, under

the terms of the licence, to amend the “use it or lose it” obligation, as she thinks fit. The Directive requires that notice must be given of the intention to amend the licence and that interested parties are given the opportunity to express their views on the proposed amendments.

3.9 In the light of the above information, views are sought on the questions set out below:

Q.1 Do you agree that the “purpose of use” clause should be removed from existing and future 28 GHz licences?

Q.2 Do you agree that the “use it or lose it” clause should be removed from existing and future 28 GHz licences?

Q.3 Do you agree that the minimum path length policy should apply where a licensee provides point-to-point links to other operators?

4. Further award process

4.1 For the award of licences in the next award process, the government proposes to maintain the reserve prices for licences shown in annex A. Licences will be awarded by a process similar to that for the second award process, which is described in annex B. It is intended that if there is more than one applicant for a licence it will trigger the need for an auction. The further award process would begin as soon as practicable after the conclusion of this consultation.

4.2 The government is not minded to make changes to the licence conditions, other than those mentioned above. This means that the following conditions would apply:

- Licences will remain in force for fifteen years from the date of issue;
- Licences will cover the regions shown in the map at Annex C;
- Each licence will consist of 2x112 MHz channels; and
- Successful bidders will be able to pay either the licence in full on grant of the licence or by instalments. The instalment arrangements would involve payment of one half of the fee on grant of the licence and five equal payments of the remainder on the sixth, seventh, eighth, ninth and tenth anniversaries. The instalments would include an additional sum calculated by reference to a discount rate of 8.65%.

The government will consider any further representations on these issues.

Q.4 Should the government consider making any other changes to the licences and, if so, for what reasons?

4.3 The consultation process closes on Thursday 14 November. We will consider the findings and produce a response in December.

5. Summary of questions

Q.1 Do you agree that the “purpose of use” clause should be removed from existing and future 28 GHz licences?

Q.2 Do you agree that the “use it or lose it” clause should be removed from existing and future 28 GHz licences?

Q.3 Do you agree that the minimum path length policy should apply where a Licensee provides point-to-point links to other operators?

Q.4 Should the government consider making any other changes to the licences and, if so, for what reasons?

Annex A

28 GHz Licences

	Region	Number of licences available	Reserve price
A	London	0	-
B	Manchester & Merseyside	0	-
C	West Midlands	0	-
D	Home Counties – West	3	£2,000,000
E	Home Counties – North	3	£2,000,000
F	East Anglia	3	£2,000,000
G	East Midlands	3	£2,000,000
H	Home Counties – South	3	£2,000,000
I	Yorkshire	1	£2,000,000
J	Northern England	2	£1,000,000
K	The South West	3	£1,000,000
L	Scotland	2	£1,000,000
M	Wales	3	£1,000,000
N	Northern Ireland	1	£100,000

Annex B

The Licensing Process

The licensing process is designed to be as simple as possible for potential applicants. The licences will be available over a period of up to twelve months from the opening date. Each licence in a region may be allocated on a first come first served basis at the reserve price provided there are no other applicants for that licence. However, if more than one applicant applies for the same licence in the same region, then potential applicants will be invited to take part in a further stage. The reserve price will be the opening bid in this further stage.

In more detail, the licensing process for each region is as follows:

Preliminary Stage of the Licence Process

An earliest date for applications will be announced at the time of the publication of the Information Memorandum. From that date any interested company can submit an application for a specific licence region.

Each applicant will have to provide details of their company structure and associations and pay a deposit along with the application.

An application constitutes a bid on a licence and triggers the start of a period of twenty business days during which any company may apply for that or any other licence in that region. Details of regional licence applications will then be posted on the Agency's website. At the end of that twenty day period, no further applications will be accepted for that region during that allocation round.

If there is only one application for each available licence in a region the award process can be quickly completed. The Agency will be able to announce the award of licences shortly after the end of the applications period. Payment for the licence will be required soon afterwards, depending on the payment option that the successful bidder chooses.

If there are two or more applicants for the same licence in a region, then the licensing process will move on to the next - Multiple Round Auction - stage.

Multiple Round Auction Stage

Each of the regions will be auctioned independently of each other so there could be a number of regional auctions spread over a twelve month period. Bids will probably be accepted via fax and the results of each round will be posted on the Agency's website.

The process may be repeated for as long as there remain unsold licences in a region during the 12 month period.

ANNEX C: MAP OF BFWA 28 GHz LICENCE REGIONS

(coloured regions are those where one or more licences remain available)

