

Company Secretary
MLL 40 GHz Limited
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David Willis
Group Director
Spectrum Group
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25 May 2023

By letter and email

cc: [☒ CONFIDENTIAL]

Dear Sir or Madam,

Final decision to revoke the 40 GHz ‘Spectrum Access’ licence held by MLL 40 GHz Limited (“MLL”) ([licence no. 1015293](#))

This notification contains important information about your licence. Please read it carefully.

Purposes of this notification

1. In accordance with [paragraph 7\(10\)](#) of Schedule 1 to the Wireless Telegraphy Act 2006 (the “Act”), **we are writing to notify you that we have decided to revoke the ‘Spectrum Access’ licence authorising MLL to use the 40.75-41.00 GHz and 42.25-42.50 GHz frequency blocks (the “[MLL 40 GHz Licence](#)”)**¹. As set out in more detail below, we consider that this revocation is justified on spectrum management grounds. The revocation will take effect from **1 June 2028**.
2. In accordance with the statutory process for revoking wireless telegraphy licences, Ofcom has decided to revoke the [MLL 40 GHz Licence](#). We took this decision on 24 May 2023, having carefully considered all the representations made by MLL. **We are now giving you notice of Ofcom’s final decision, and our reasons for it.** Please note that, in line with [paragraph 7\(11\)\(a\)](#) of Schedule 1 to the Act, we are sending you this notice within one week of making Ofcom’s decision.

¹ Licence no. [1015293](#)

Background

3. In 2008, MLL Telecom Limited participated in an auction² of wireless telegraphy licences and was awarded a 40 GHz licence which is currently held by MLL 40 GHz Limited (the [MLL 40 GHz Licence](#)).
4. Ofcom has a statutory power to revoke wireless telegraphy licences, where this is objectively justifiable ([paragraph 6A](#) of Schedule 1 to the Act). We also have a general duty not to discriminate unduly between operators, and to ensure that our interventions are proportionate, consistent and targeted only at cases in which action is needed.³
5. Under the terms of the [MLL 40 GHz Licence](#), and in accordance with [paragraph 8](#) of Schedule 1 to the Act, Ofcom may revoke the [MLL 40 GHz Licence](#) “for reasons related to the management of the radio spectrum, provided that in such a case this power to revoke may only be exercised after at least five (5) year’s notice is given in writing to the Licensee”.⁴
6. Under condition 3(h) of the MLL 40 GHz licence,⁵ as initially awarded in 2008, the 5-year notice period for revoking the licence for spectrum management reasons could not expire before February 2023. This condition was subsequently removed because the 15-year initial term had already expired.
7. In accordance with [paragraph 7](#) of Schedule 1 to the Act, if Ofcom proposes to revoke a wireless telegraphy licence, it must:
 - notify the licensee of the reasons for the proposed revocation;
 - specify a period (of at least 30 days) in which the licensee may make representations; and
 - decide whether or not to revoke the licence and notify the licensee of our decision within one month of the end of that period.
8. On Monday 20 March 2023, we gave MLL a notification of proposed revocation (the “**March 2023 Notification**”). In that notification we stated the reasons for the proposed revocation, referring to section 7 (“*Approach to existing licensees in the 40 GHz band*”) of Ofcom’s Statement and Consultation of 13 March 2023 entitled “[Enabling mmWave spectrum for new uses](#)” (the “**March 2023 Statement and Consultation**”). We also specified that MLL had until Friday 28 April 2023 to make representations about the proposed revocation.

Our consideration of the representations made by MLL

9. On 3 April 2023, MLL wrote to Ofcom expressing concerns about Ofcom’s decision to revoke its 40 GHz licence and Ofcom’s (separate) decision to introduce annual licence fees (“**ALF**”)

² The [10 GHz, 28 GHz, 32 GHz and 40 GHz award](#).

³ Section [3\(3\)](#) of the Communications Act 2003.

⁴ Condition 3(f) of the [MLL 40 GHz Licence](#).

⁵ A draft licence was annexed to the [Information Memorandum](#), published 3 December 2007.

in the 32 GHz band.⁶ In particular, MLL said that these decisions have had a material impact to MLL’s business, “SME telecommunications service providers and to the market in general”, “resulting in the impact of stopping gigabyte connectivity innovation at the time the UK government is investing billions in an attempt to increase connectivity across the nation”. MLL asked for a meeting with Ofcom to discuss various proposals, including “[o]ptions to surrender the 40GHz license with immediate effect (removing the 5 year window) in return for delaying the 32GHz ALF for 5 years”.⁷

10. In response to MLL’s request, we offered to arrange a meeting with MLL and provided the following clarification in relation to the ALF payable for the 32 GHz band: “the requirement to pay fees is now set out in regulations, so we are unable to agree a change to the fees or the fee payment date”.⁸ In a subsequent exchange of emails with MLL, we reiterated that “there is no provision in legislation for delaying the 32 GHz ALF” and that “[i]n any event, the 40GHz process is separate to the 32GHz ALF”.⁹ Following this, although we offered to meet with MLL, MLL did not express an interest in proceeding with a meeting. MLL did not provide any further representations in response to Ofcom’s March 2023 Notice.
11. In response to MLL’s representations about the impact of this decision, we note that we took this into account when we decided to begin the statutory process for revoking all of the existing 40 GHz licences, including MLL’s. In particular, we noted that MLL would not face costs of moving any existing services, as it does not have current deployments in the 40 GHz band. We also noted that MLL would lose the opportunity to realise its existing plans for the spectrum because our proposed auction design rules would prevent any existing licensee winning back spectrum in a duplex configuration.¹⁰ The fact that MLL reiterated that our decision will have an impact on its business does not change the reasoning set out in the [March 2023 Statement and Consultation](#).¹¹
12. We do not agree with MLL’s claim that our decision will result in “stopping gigabyte connectivity innovation”. As set out in the [March 2023 Statement and Consultation](#) (paragraph 7.6), we consider that revoking the 40 GHz licences and awarding the entire 40 GHz band alongside 26 GHz “will maximise this spectrum’s potential to deliver benefits for people and businesses in the UK”.
13. Since we have decided to offer a mitigation to another holder of a 40 GHz licence (Mobile Broadband Network Limited)¹², we have considered whether it would be appropriate to

⁶ See our March 2023 statement [‘Ofcom’s decision on licence fees for 10 GHz, 28 GHz and 32 GHz spectrum’](#).

⁷ See email from MLL to Ofcom of 5 April 2023.

⁸ See email from Ofcom to MLL of 6 April 2023.

⁹ See email from Ofcom to MLL of 13 April 2023.

¹⁰ See paragraph 7.131 of the [March 2023 Statement and Consultation](#)

¹¹ See, in particular, our consideration of the impact of revoking all 40 GHz licences on existing users at paragraphs 7.124-7.162 of the [March 2023 Statement and Consultation](#).

¹² Having considered the representations made by Mobile Broadband Network Limited (“MBNL”), we have decided that, subject to certain conditions, we will offer to grant to MBNL individual temporary fixed link licences starting on 1 June 2028 and expiring on 1 January 2030, in respect of up to 500 fixed links.

offer a similar form of mitigation to MLL and decided that it would not be appropriate as MLL has no deployments in the 40 GHz band.

Our final decision and the reasons for it

14. As specified in our March 2023 Notification, the reasons for this revocation are set out in full in our [March 2023 Statement and Consultation](#) (in particular, section 7). We published the [March 2023 Statement and Consultation](#) following a previous consultation that we published on 9 May 2022 (the “[May 2022 Consultation](#)”),¹³ in which we set out proposals for making the 26 GHz and 40 GHz available for new uses, including 5G.
15. In essence, having considered all responses to the [May 2022 Consultation](#) and the further representations made by MLL, we consider that the best way to achieve our objectives for making mmWave spectrum available for new uses, which are derived from our statutory duties, is to make the entire 40 GHz band available alongside and at the same time as the 26 GHz band by revoking existing licences and allocating new licences for high density areas.¹⁴ We consider that this option is more likely than alternative options we have considered¹⁵ to ensure an efficient allocation of this spectrum, and will maximise this spectrum’s potential to deliver benefits for people and businesses in the UK. We expect an efficient allocation is likely to mean creating the opportunity for operators to acquire large, contiguous spectrum blocks. We consider that we cannot rely on trading to achieve an efficient allocation in this band, and that liberalising the incumbents’ licences would be less likely to secure an efficient allocation than an award. A single auction making the large amounts of spectrum in the 26 GHz and 40 GHz bands available at the same time will, in our view, be the most effective way of securing efficient allocation of this spectrum and maximising its value for society in the coming years. Awarding the full band will also ‘reset’ the band for new uses going forwards, removing constraints from coexistence with fixed links that would severely limit the extent of deployment of mobile services, as well as allowing us to authorise the band differently in high and low density areas.¹⁶
16. In the [March 2023 Statement and Consultation](#) (section 7), we have also explained why we consider that this revocation meets the relevant legal tests set out above.
17. In addition to the reasons set out in the [March 2023 Statement and Consultation](#), we have specified above how we have addressed the representations made by MLL in response to our March 2023 Notification.

¹³ Ofcom’s consultation entitled “*Enabling mmWave spectrum for new uses*”, published on 9 May 2022.

¹⁴ As set out in the [March 2023 Statement and Consultation](#) (paragraphs 3.59 and 3.69), we have decided to make available licences for (i) the top 2.4 GHz of the 26 GHz band (25.1–27.5 GHz) and (ii) the 3 GHz comprised in the 40 GHz band (40.5–43.5 GHz). The wider 26 GHz band includes the frequencies between 24.25 and 27.5 GHz.

¹⁵ The options that we have considered include varying the 40 GHz licences to enable existing licensees to deploy new uses in the band, including mobile. For a more detailed description of these options, see section 7 of the [March 2023 Statement and Consultation](#) (in particular, paragraph 7.25).

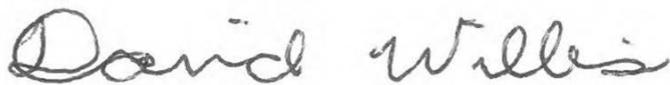
¹⁶ See the [March 2023 Statement and Consultation](#), paragraphs 7.3 and 7.6.

18. In conclusion, for the reasons set out in the [March 2023 Statement and Consultation](#) (section 7) and those set out above in response to the representations made by MLL, we have decided to revoke the [MLL 40 GHz Licence](#). Accordingly, **the [MLL 40 GHz Licence](#) is revoked with effect from 1 June 2028.**

Next steps

19. As set out in the [March 2023 Statement and Consultation](#) (paragraph 7.8), we will offer to grant individual fixed link licences for links already in place at the time of publishing the [March 2023 Statement and Consultation](#), where these are not likely to receive harmful interference from new uses in high density areas. A more detailed description of this approach is set out in the [March 2023 Statement and Consultation](#) (paragraphs 7.170-7.176). We note, however, that MLL has no deployments in the 40 GHz band.
20. Should you have any questions on the matters set out in this notification, please contact Lara.Singer@ofcom.org.uk or Kirsty.Logan@ofcom.org.uk, copying mmWave.allocation@ofcom.org.uk.

Yours faithfully,

A handwritten signature in black ink that reads "David Willis". The signature is written in a cursive, slightly slanted style.

David Willis