

20 July 2009

Freedom4 Application for licence variation response

T-Mobile welcomes the opportunity to respond to Ofcom's consultation "Freedom4 application for licence variation."

In this consultation, Ofcom have identified the similarities that exist between Freedom4's spectrum and the spectrum that UK Broadband operates in at 3.5GHz. Therefore given that Ofcom allowed UK Broadband to undertake a similar licence variation in 2007, they evidently consider that Freedom4's request should be authorized along the same lines. However whilst these similarities in spectrum holdings do exist, there are differences between the bands which are significant and a considerable amount of time has passed since the UK Broadband licence amendment was agreed. More importantly, there have been significant changes in the spectrum regulatory landscape since UK Broadband's request was authorised in 2007. These changes and distinctions means that some of the concerns that T-Mobile and other MNOs dealt with, in their responses to UK Broadband's application for a licence change, have taken on increased importance¹, whilst new issues have also come into the forefront. Together this means that Ofcom cannot merely 'rubber stamp' through this request from Freedom4, but rather needs to consider the impact of this change on the totality of the spectrum regulatory environment.

T-Mobile considers that it is prudent for Ofcom to postpone its consideration of this licence variation request until after the resolution of major relevant projects on spectrum matters. These projects include the Government-led Digital Britain process (and the liberalisation of existing mobile licences) and Ofcom's Strategic Review of Spectrum Pricing. It is likely that these projects will end up defining important precedents concerning the liberalisation of spectrum and the associated obligations and fees that come with it. These will be important in determining whether Freedom4's request can be approved.

It would be premature for Ofcom to issue a ruling now on Freedom4's request, to then find out that this ruling is inconsistent with decisions taken regarding other spectrum issues. This would lead to regulatory uncertainty as Freedom4 could end up being permitted this variation initially, only to then discover afterwards that the associated obligations and fees would consequently need to be increased. On the other hand it would be extremely anti-competitive and discriminatory for Freedom4's application to be progressed, without any further obligations or fees, simply due to their request being made during the middle of these major regulatory processes.

¹ See T-Mobile's response to the consultation concerning UK Broadband's licence variation at http://www.ofcom.org.uk/consult/condocs/bb_application/responses/tmobile.pdf