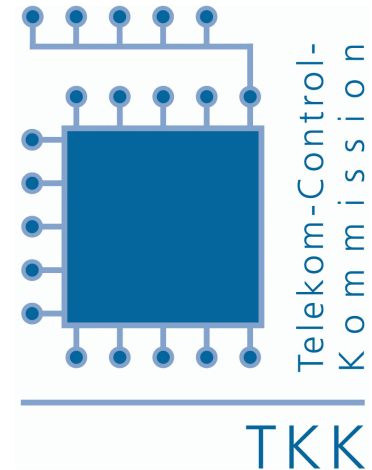


**Telekom-Control Commission**  
**Mariahilferstrasse 77-79**  
**A-1060 Vienna, Austria**

**F 5/04**



**Vienna, July 7, 2004**

**Tender Documentation for Frequency Allocations in the  
3.5 GHz Frequency Range**

***NON BINDING TRANSLATION***

***NON BINDING TRANSLATION***

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## 1 Introduction

The Telekom-Control Commission is carrying out a procedure to allocate frequencies in the 3.5 GHz frequency range in accordance with § 55 of the Austrian Telecommunications Act of 2003. Five regions consisting of three frequency packages each and one region consisting of two frequency packages will be allocated, with each frequency package consisting of several duplex frequency channels (see Section 2.2.).

### 1.1 General Conditions under Austrian Law

This invitation to tender is being carried out on the basis of the Austrian Telecommunications Act of 2003 (TKG, BGBl. I No. 70/2003). In addition, the regulations regarding procedure in Austria are applicable, especially the General Administrative Procedures Act of 1991 (AVG, BGBl. No. 51) in its current version (BGBl. I No. 10/2004).

The Telekom-Control Commission's responsibility for allocating frequencies under § 55 TKG 2003 is set forth in § 54 Par. 3 No. 2 in conjunction with § 117 No. 10 TKG 2003. Under § 54 Par. 3 No. 2, the regulatory authority is responsible for frequency allocation as well as for changing and revoking allocations for those frequencies which are subject to a determination in the frequency usage plan under § 52 Par. 3.

This determination was made in the Ordinance of the Federal Minister of Transport, Innovation and Technology as an amendment to the Frequency Utilization Ordinance (BGBl. II No. 134/2004). The Telekom-Control-Commission's responsibility is based on this determination.

The frequency allocation procedure carried out by the regulatory authority is governed by § 55 TKG 2003.

#### 1.1.1 Frequency Allocation Procedure

Under § 55 Par. 1 TKG 2003, the regulatory authority is to allocate the frequencies placed under its authority to the applicant which fulfills the general prerequisites under Par. 2 No. 2 (§ 55 Par. 2 No. 2 TKG 2003) and ensures the most efficient use of frequencies. This will be determined by the amount of the spectrum fee offered. The frequency allocation procedure is divided into two stages:

1. Once the applications have been submitted, the regulatory authority will check whether the prerequisites have been met in accordance with § 55 Par. 2 No. 2 TKG 2003 (cf. Section d)). Those applicants who do not fulfill the prerequisites will be excluded from the frequency allocation procedure in accordance with § 55 Par. 8 TKG 2003. The rules for determining the standing high bid in the course of the auction will be defined by the Telekom-Control Commission in accordance with § 55 Par. 9 TKG 2003 and sent to the applicants at the latest 2 weeks before the start of the auction. The Telekom-Control Commission plans to publish a draft of the auction rules on the web site of the Austrian Regulatory Authority for Broadcasting and Telecommunications ([www.rtr.at](http://www.rtr.at)) in August 2004, and to send the Rules of Procedure to all applicants as soon as possible after the application deadline.

2. The second stage of the frequency allocation procedure will be carried out in the form of an auction (cf. Section 2.7).

#### Allocation Procedure Schedule

The table below contains the most important dates in the allocation process. The exact time of the auction will be announced to the applicants once the Telekom-Control Commission has made its decision on this matter.

Activity	Date	Reference
Publication of invitation to tender	July 7, 2004	
Questions answered by Telekom-Control Commission		Section 5.4
Deadline for questions	July 19, 2004 / 10:00 am (local time)	
Questions to be answered by:	August 2, 2004	
End of tender submission period	September 9, 2004 / 12:00 pm (local time)	
Decision on admission to auction	Scheduled for September 20, 2004	Section 2.6
Auction procedure	October/November 2004	Section 2.7
Date of frequency allocations	Within 14 days of end of auction procedure	Section 2.8

TABLE 1: ALLOCATION PROCEDURE SCHEDULE

Figure 1 gives a general overview of the steps involved in the allocation procedure.

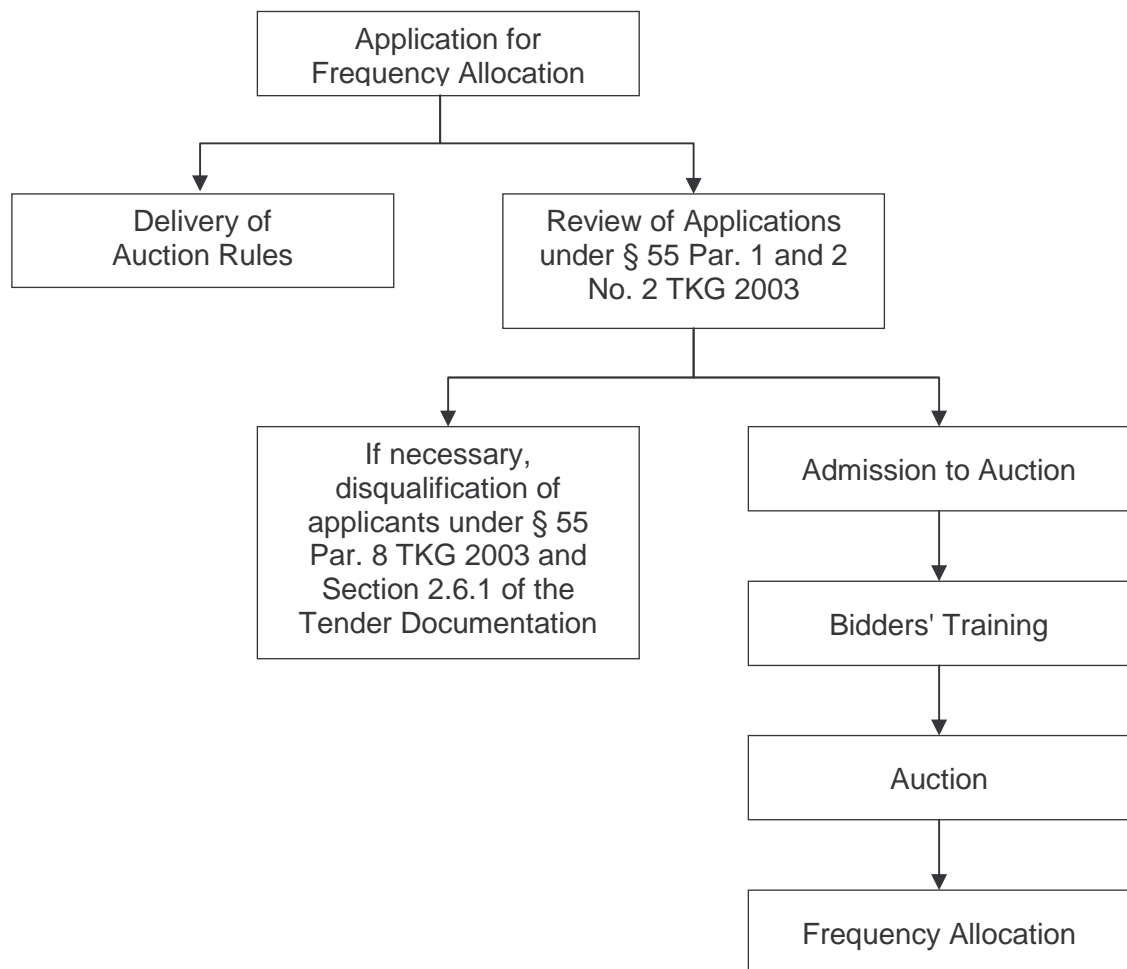


FIGURE 1: PROCEDURE STEPS

## 2 Frequency Allocation Procedure

### 2.1 Steps in the Procedure

As mentioned in Section 1.1, the frequency allocation procedure is divided into 2 stages. In the first stage, the regulatory authority will check whether the applications fulfill the criteria stipulated in § 55 Par. 2 No. 2 TKG 2003 (in accordance with § 55 Par. 1 in conjunction with Par. 2 No. 2 TKG 2003) Those applications which do not fulfill the prerequisites pursuant to § 55 Par. 2 No. 2 TKG 2003 will be excluded from the frequency allocation procedure in accordance with § 55 Par. 8 TKG 2003. In addition, the first stage will involve a review of the applicants for each region to determine whether they are affiliated with each other through groups of companies. If applications for the same region are received from such affiliated companies, the company that submitted its application for the given region first will be admitted to the frequency auction.

The second stage of the frequency allocation procedure will be carried out in the form of an auction.

### 2.2 Objects of the Auction

Five regions with three frequency packages each and one region with two frequency packages will be allocated in the auction (cf. Section 3). The division of regions is described in the next section.

#### 2.2.1 Regions

The regions have been divided up according to the criteria of sociodemographics, geographical business considerations and technical demands. The regions are numbered 1 to 6. For the most part, the borders of the regions are identical to those of Austrian districts. Only in the case of Regions 1 and 2 were municipality borders used for the purpose of delineation. The figure below shows the division of regions. The specific delineation of regions is shown in Appendix A.

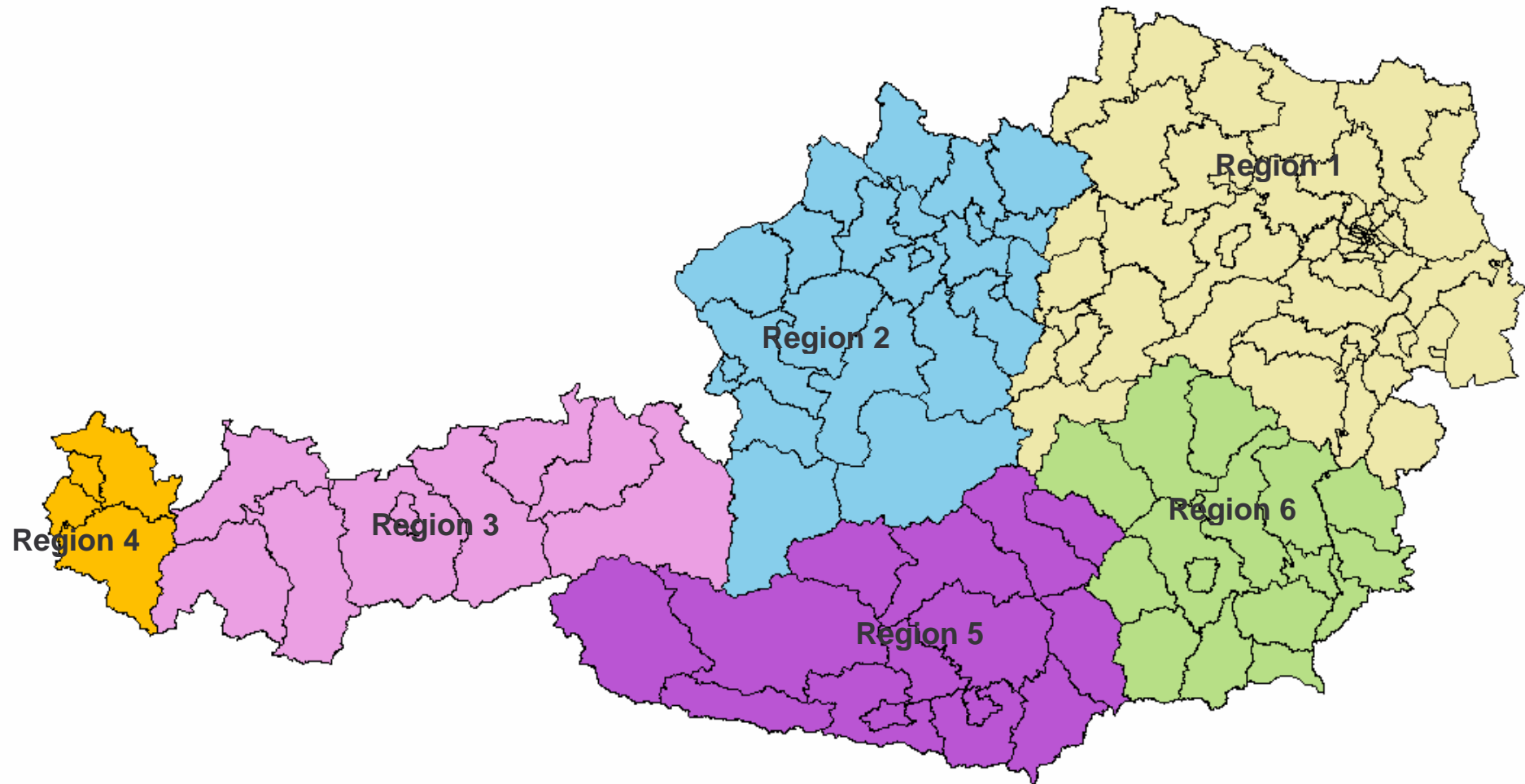


FIGURE 2: DIVISION OF REGIONS



### 2.2.2 Frequency Packages

The frequencies will be auctioned off in the form of concrete frequency packages. The packages are only available in specific regions (cf. Table 2)

The available spectrum is divided into three packages (A, B and C) in Regions 1, 2, 3, 5 and 6 and into two packages (D and E) in Region 4.

Region	Frequency Package / Bandwidth *)				
	A	B	C	D	E
1	2 x 21 MHz	2 x 28 MHz	2 x 21 MHz	-	-
2	2 x 21 MHz	2 x 28 MHz	2 x 21 MHz	-	-
3	2 x 21 MHz	2 x 28 MHz	2 x 21 MHz	-	-
4	-	-	-	2 x 35 MHz	2 x 42 MHz
5	2 x 21 MHz	2 x 28 MHz	2 x 21 MHz	-	-
6	2 x 21 MHz	2 x 28 MHz	2 x 21 MHz	-	-

TABLE 2: FREQUENCY PACKAGES AND BANDWIDTHS

\*) See Section 3.3.2 for specific information on terms of use.

The individual frequency packages have been assessed according to the frequencies they contain and according to sociodemographic criteria (population, number of households). This assessment will be referred to as the *lot rating* throughout the procedure. This assessment yields the following values for each frequency package and region:

Region	Frequency Package / Lot Rating				
	A	B	C	D	E
1	200	240	200	-	-
2	110	132	110	-	-
3	40	48	40	-	-
4	-	-	-	28	32
5	40	48	40	-	-
6	70	84	70	-	-

TABLE 3: LOT RATING PER FREQUENCY PACKAGE AND REGION

## 2.3 Applications

Using the application form enclosed, all applicants are to submit their applications with the following information:

- Selected regions for which the applicant would like to take part in the auction  
Applicants are to select the regions for which they would like to acquire a frequency package. The applicants are free to submit applications for all regions. Exceptions will be made in the case of affiliated companies. Should two affiliated companies submit an application for the same region, one of the companies will be excluded from the allocation procedure for that region (cf. Section 3.6.1). Only one frequency package per region can be acquired by each applicant.
- Application for bidding entitlement points in the auction procedure

No specific frequency packages can be named in the application. Instead, applicants are to request bidding entitlement points for the auction procedure (cf. Section 2.7). The bidding entitlement must be backed by a bank guarantee. The number of bidding entitlement points applied for is to equal the total lot ratings for the maximum number of frequency packages a bidder would like to acquire (cf. Table 3). The required amount of the bank guarantee is to be calculated by multiplying the bidding entitlement points by EUR 2,000.00. A bidder can bid on any combination of frequency packages, provided that the total of all lot ratings for his/her bids does not exceed the bidding entitlement points applied for. The bidding entitlement can be reduced in the course of the auction procedure on the basis of the bidder's actual activity in the auction (cf. Section 2.7). The maximum bidding entitlement points that can be applied for is 584 (i.e., an application for the largest frequency package in each region). The following examples will shed more light on the issue of bidding entitlement:

Example 1: A bidder applies for 240 points and names all regions. This would enable the bidder to acquire Frequency Package B in Region 1 only (and thus no other frequency package in any other region) or to acquire frequency packages in several other regions up to a total lot rating of 240 points (e.g., Package A in Regions 2, 5 and 6, amounting to a total of 220 lot rating points).

Example 2: A bidder would like to acquire Package C in Regions 1, 2, 3, 5 and 6 as well as Package D in Region 4. The bidder names all regions in his application and applies for a bidding entitlement of 488 points.

Example 3: A bidder would like to acquire Frequency Package A or C in one region but does not know which specific region at the time the application is submitted. The bidder names all regions except for Region 4 in his application and applies for a bidding entitlement of 200 points (i.e., the lot rating of Frequency Package A or C in the region with the highest valuation).

## **2.4 Bank Guarantees**

All applicants are to secure the bidding entitlement applied for by means of an abstract bank guarantee payable at first demand from a bank in good credit standing. The required amount of the bank guarantee is to be calculated by multiplying the bidding entitlement points by EUR 2,000.00. If the bidding entitlement applied for is not completely backed by the bank guarantee, the bidding entitlement will be reduced to the number of points actually secured by the bank guarantee.

The bank guarantee's sole purpose provision is to be for the allocation of frequencies to the applicant in the course of this tender procedure. The guarantee must name the Federal Government of the Republic of Austria as beneficiary and be valid from September 9, 2004 (at the latest) until at least December 31, 2004. The bank guarantee is to be enclosed in the application.

Once the procedure has been completed, bank guarantees will be returned to those applicants to whom the frequency packages applied for were not allocated. The bank guarantees will be

returned to those applicants to whom frequencies were allocated in this procedure once the frequency license fee has been paid in full.

The table below gives an overview of the required amount of the bank guarantee in EUR, broken down by frequency package and region and calculated on the basis of the lot ratings in Table 3.

Region	Bank Guarantee per Frequency Package in EUR				
	A	B	C	D	E
1	400,000.00	480,000.00	400,000.00	---	---
2	220,000.00	264,000.00	220,000.00	---	---
3	80,000.00	96,000.00	80,000.00	---	---
4	----	----	----	56,000.00	64,000.00
5	80,000.00	96,000.00	80,000.00	---	---
6	140,000.00	168,000.00	140,000.00	---	---

TABLE 4: AMOUNT OF BANK GUARANTEES PER FREQUENCY PACKAGE AND REGION

## 2.5 Opening Bids in the Auction

The auction will begin with an opening bid (the minimum bid for the first round) set by the Telekom-Control Commission on the basis of the following legal regulations:

Under § 55 Par. 4 TKG 2003, the tender documents can also include information on the amount of the minimum frequency license fee to be offered. This information is to be based on the amount of the frequency allocation fees which are likely to be charged for the frequencies allocated. The Telecommunications Fees Ordinance (in the version of BGBl. II No. 388/2001) stipulates that the frequency allocation fee is to amount to EUR 98.11 for the allocation of a frequency or frequency pair for one WLL system per sector (radio field) in the case of non-coordination. The table below shows the opening bids per frequency package and region in EUR, calculated on the basis of the expected number of radio base stations and sectors per base station.

Region	Opening Bid for Frequency Package in EUR				
	A	B	C	D	E
1	40,600.00	40,600.00	40,600.00	---	---
2	32,300.00	32,300.00	32,300.00	---	---
3	15,800.00	15,800.00	15,800.00	---	---
4	---	---	---	5,500.00	5,500.00
5	14,700.00	14,700.00	14,700.00	---	---
6	28,800.00	28,800.00	28,800.00	---	---

TABLE 5: OPENING BID PER FREQUENCY PACKAGE AND REGION

## 2.6 Terms of Participation

The applicant must be a physical person or legal entity that is completely capable of entering into legally binding contracts as specified in § 9 of the Austrian General Administrative Procedures Act (AVG). Applicants must have their main residence (for legal entities their place of incorporation) in a country belonging to the European Economic Area.

### 2.6.1 Affiliated Companies

In this invitation to tender, only one application to participate in the frequency auction will be accepted per region from companies that are affiliated with one another under § 244 HGB, § 15 AktG or § 115 GmbHG, or in the form described under § 41 KartG 1988 (directly or indirectly). The same applies when applicants are affiliated with each other in another way which could lead to one applicant directly or indirectly exercising influence over another applicant in a manner that has a substantial effect on competition (e.g., by syndicate agreements, etc.). For the purposes of this invitation to tender, "influence which has a substantial effect on competition" is considered to be present where significant stakes (as specified in §§ 91ff. BörseG) are held, with the exception of purely financial stakes.

When assessing individual cases, the regulatory authority will also take into consideration whether the applicants are currently in the process of a demerger. In such cases, previous decisions made by competition authorities (on both the national and EU levels) are to be taken into special consideration (e.g., the restrictions imposed in permits regarding the execution of the demerger, etc.).

Should two or more applicants that are affiliated in the manner described above apply for frequencies in the same region, the applicant who submitted the application first will be admitted to the frequency auction.

However, affiliated companies are permitted to submit applications for different regions.

## 2.6.2 Changes in Ownership Structure

Changes in the person submitting an application, or any and all – direct or indirect – substantial changes in the stakes held in a company submitting an application at any point in this procedure require the permission of the regulatory authority. Permission shall be granted in cases where the company's competitive independence is maintained even after the changes are introduced. In all cases, a substantial change is regarded as a change in ownership (exceeding the percentage limits set forth in §§ 91ff. BörseG) or the initial acquisition of a significant stake as defined in §§ 91ff. BörseG, with the exception of purely financial stakes.

The previous paragraph does not apply to changes in ownership structure ordered by authorities for monopoly/cartel affairs or required by the proceedings of such authorities. All applicants are required to inform the Telekom-Control Commission of all proceedings of authorities for monopoly/cartel affairs, both pending and to be expected, relating to their ownership structure and to include in their applications any and all decisions made in this context. All changes in ownership structure carried out in order to fulfill such obligations are to be reported to the Telekom-Control Commission immediately, even after submission of the application.

§ 56 Par. 2 TKG 2003 shall be applied with regard to changes in the ownership structure of companies allocated frequency use rights in a procedure under § 55.

## 2.7 Auction Procedure

The auction will be carried out in an open, ascending, simultaneous, multiple-round format. In accordance with § 55 Par. 9 TKG 2003 (last sentence), the detailed rules governing the auction procedure will be delivered to the applicants participating in the auction at least two weeks before the start of the auction. The Telekom-Control Commission plans to publish a draft of the auction rules on the web site of the Austrian Regulatory Authority for Broadcasting and Telecommunications ([www.rtr.at](http://www.rtr.at)) in August 2004, and to send the Rules of Procedure to all applicants as soon as possible after the application deadline.

### 2.7.1 Admission to the Auction

Applicants will be admitted to the auction if they were not excluded from the frequency allocation procedure under § 55 Par. 8 TKG nor from participating in the frequency auction by official decision in the case of affiliated companies applying for frequency packages in the same region.

### 2.7.2 Auction Procedure: General Information

In the course of this simultaneous, multiple-round procedure, all frequency packages will be auctioned off at the same time. Each bid shall be placed for one specific frequency package. Bidders are generally free to choose which frequency packages they actively bid on within the limits set forth in the Rules of Activity and within the scope of their bidding entitlement. A bidder shall be considered to be bidding actively on a frequency package when s/he holds the standing high bid from the previous round or submits a valid bid in the current round for that package. Bids shall be considered valid when they exceed the standing high bid from the previous round by at least the minimum bid increment. If no standing high bid has been submitted yet, the opening bid shall also be considered a valid bid. The minimum bid increment will be set by the auctioneer at the beginning of each round.

The auction procedure is divided into several phases with varying minimum activity provisions. The auction procedure will come to an end when no valid bid is submitted for any of the frequency packages in a given round of the last phase of the auction. If no valid bids are submitted in an earlier phase of the auction, the auctioneer shall be obliged to continue the procedure by moving on to the next phase, or to end the procedure immediately. After a certain number of rounds (as defined in the Rules of Procedure), the auctioneer furthermore reserves the right to announce that the auction will end after three final rounds. The frequency packages will then be allocated to the high bidders in accordance with their respective standing high bids.

### 2.7.3 Bidding Entitlement

Bidders will only be permitted to exercise their bidding entitlement for the regions which they selected in their applications and for which they were not excluded from the auction procedure due to the regulation concerning affiliated companies. A bidder can only bid actively on one frequency package per region in each round.

The bidding entitlement determines the maximum number of frequency packages on which a bidder can actively bid in one round. Bidders are allowed to bid actively on any combination of frequency packages (in different regions) as long as the total of all of the packages' lot ratings does not exceed the bidder's current number of bidding entitlement points.

For each bidder, the bidding entitlement points for the first round of the auction procedure will be determined by the information in that bidder's application. In the ensuing rounds, bidding entitlements will be determined on the basis of each bidder's activity in the previous round. Bidders who fall below a set minimum activity level will lose part of their bidding entitlement.

### 2.7.4 Rules of Activity

The auction procedure will be carried out in several phases with increasing minimum activity provisions. A bidder shall be considered to be bidding actively on a given frequency package if s/he either

- holds the standing high bid for the frequency package, or
- submits a valid bid in the current round of the auction.

The minimum level of activity is defined as that portion of the bidding entitlement (e.g., 50%) for which a bidder has to remain active in a certain round in order to retain his/her bidding entitlement in its entirety. Bidders who fall below the minimum activity level will lose a portion of their bidding entitlement.

## 2.8 Frequency Allocation

Frequencies will be allocated by the Telekom-Control Commission at the latest within 14 days after the end of the auction procedure.

### 3 Frequency Spectrum

In the course of the frequency allocation procedure for WLL systems, frequency channels in the 3.5 GHz frequency range which have been assigned to the regulatory authority by the Austrian Federal Minister of Science and Transport in accordance with § 51 Par. 3 TKG will be allocated to the applicants.

#### 3.1 Frequency Spectrum to be Allocated

3410 - 3494 MHz (Lower Band) / 3510 - 3594 MHz (Upper Band): 2 x 84 MHz, i.e., the duplex frequencies No. 1 - 12 in 7 MHz channel spacing according to CEPT Recommendation ERC/REC 14-03 Annex B.

#### 3.2 Purpose of Use

The frequency spectrum is intended for wireless local loop (WLL) systems. Wireless local loop systems are digital radio systems for fixed wireless services and consist of radio base stations and subscriber terminals which have a duplex-mode radio connection with a radio base station.

These frequency packages are intended for the wireless connection of subscribers for the provision of public telecommunications services. The use of these frequencies to connect radio base stations is only permissible in cases where subscribers are provided with service via such radio base stations using the frequencies in question.

#### 3.3 Terms of Use

The provisions of the Radio Services Enforcement Order in the version approved by the World Radio Conference will apply to the use of these frequencies. In addition, the following stipulations apply in particular:

##### 3.3.1 Definition of Packages

Frequency allocations will be carried out on the basis of the channel spacing in CEPT Recommendation ERC/REC 14-03 Annex B.

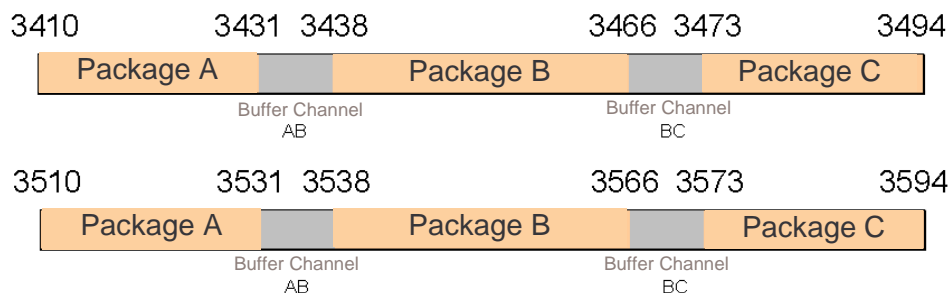


FIGURE 3: OVERVIEW OF FREQUENCY PACKAGES IN REGIONS 1-3 AND 5-6 (FREQUENCIES IN MHz)

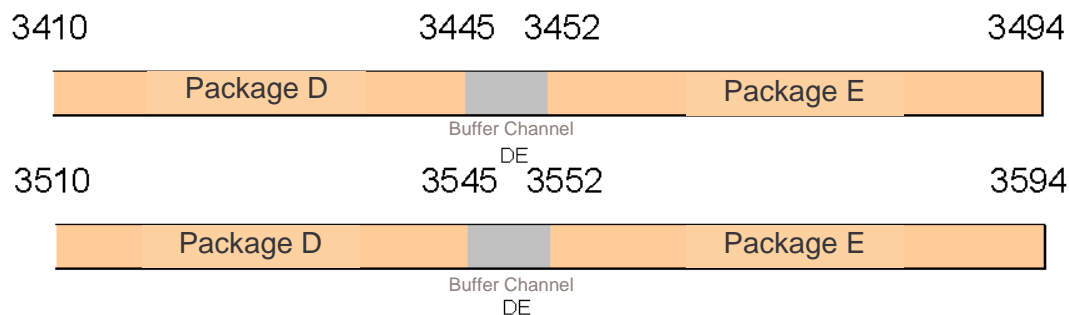


FIGURE 4: OVERVIEW OF FREQUENCY PACKAGES IN REGION 4 (FREQUENCIES IN MHZ)

In Regions 1 - 3 and 5 - 6, the frequency range to be allocated is divided into three frequency blocks (see Table 6 - Table 8); due to the position of the preferred channels (see Section 3.3.6 - 3.3.7) in Region 4, the frequency range in this region is divided into two frequency packages (see Table 9: Definition of Frequency Package D - Table 10: Definition of Frequency Package E

Name	Frequency Package A in Regions 1 - 3 and 5 - 6
Frequency range / MHz	3410-3431 3510-3531

TABLE 6: DEFINITION OF FREQUENCY PACKAGE A

Name	Frequency Package B in Regions 1 - 3 and 5 - 6
Frequency range / MHz	3438-3466 3538-3566

TABLE 7: DEFINITION OF FREQUENCY PACKAGE B

Name	Frequency Package C in Regions 1 - 3 and 5 - 6
Frequency range / MHz	3473-3494 3573-3594

TABLE 8: DEFINITION OF FREQUENCY PACKAGE C



Name	Frequency Package D in Region 4
Frequency range / MHz	3410-3445 3510-3545

TABLE 9: DEFINITION OF FREQUENCY PACKAGE D

Name	Frequency Package E in Region 4
Frequency range / MHz	3452-3494 3552-3594

TABLE 10: DEFINITION OF FREQUENCY PACKAGE E

### 3.3.2 Buffer channels

Table 11 - Table 13 show the buffer channels between Frequency Packages A and B, B and C, and D and E in the respective regions.

Name of Buffer Channel:	Buffer Channel between Frequency Packages A and B in Regions 1 - 3 and 5 – 6
Frequency Range / MHz	3431-3438 3531-3538

TABLE 11: BUFFER CHANNEL BETWEEN FREQUENCY PACKAGES A AND B

Name of Buffer Channel:	Buffer Channel between Frequency Packages B and C in Regions 1 - 3 and 5 – 6
Frequency Range / MHz	3466-3473 3566-3573

TABLE 12: BUFFER CHANNEL BETWEEN FREQUENCY PACKAGES B AND C

Name of Buffer Channel:	Buffer Channel between Frequency Packages D and E in Region 4
Frequency Range / MHz	3445-3452 3545-3552

TABLE 13: BUFFER CHANNEL BETWEEN FREQUENCY PACKAGES D AND E

The buffer channels shown in Table 11 - Table 13 can also be used on the basis of private-law agreements between the license holders for adjacent frequency blocks in a given region. In other cases, these frequencies will serve as buffer channels in order to avoid interference.

### 3.3.3 Basic Technical Features of WLL Systems

The technical features defined in the Radio Interface Description FSB-RR039 shall apply to these WLL systems. A draft of this description can be found in Appendix F, and the document is expected to go into effect once the EU notification procedure has been completed in the fall of 2004.

Technological neutrality: All technologies which comply with the interface description can be used, especially the IEEE 802.16a standard.

Operators are to plan their radio networks with due attention to the principles indicated in ECC Report 33 (Cavtat, May 2003, see Appendix H).

### 3.3.4 Carrier Power, Radiated Power

The maximum RF power levels indicated in the Radio Interface Description FSB-RR039 notwithstanding, the RF power and RF radiated power at regional borders within Austria as well as Austria's national borders is to be limited in such a way that the permitted power flux densities as indicated in Sections 3.3.5 - 3.3.7 are not exceeded.

### 3.3.5 Power Flux Density at Regional Borders within Austria

(1) Within Austria, the spectral power flux density (PFD) generated by a WLL system may not exceed  $-122 \text{ dBW}/(\text{MHz}\cdot\text{m}^2)$  in the adjacent region at a distance of 7.5 km from the border of the region for which the frequency was allocated.

(2) The regulation under Item (1) only applies in cases where frequencies in adjacent regions are allocated to different operators.

(3) Agreements among operators to whom the same frequencies are allocated in adjacent regions to change the maximum power flux density values listed under Item (1) will be permitted.

(4) Operators to which the same frequencies are allocated in adjacent regions will be required to coordinate the construction of radio base stations within 7.5 km of shared regional borders. In this context, the locations of the radio base stations and radio network planning (with regard to the polarization used and/or the sub-frequencies used in the individual sectors) are to be coordinated.

### 3.3.6 Power Flux Density at Austria's National Borders

Near Austria's national borders, the spectral power flux density (PFD) generated by a WLL system must not exceed the following values:

- |                             |  |
|-----------------------------|--|
| (1) Preferred frequency     | $-122 \text{ dBW}/(\text{MHz}\cdot\text{m}^2)$ in the adjacent country at a distance of 15 km from the national border |
| (2) Non-preferred frequency | $-122 \text{ dBW}/(\text{MHz}\cdot\text{m}^2)$ along the national border   |

### 3.3.7 Preferred and Non-Preferred Frequencies

(1) Preferred frequencies are those which can be used without prior coordination with the relevant neighboring countries as long as the conditions indicated under Item 3.3.6 Par. (1) are met.

(2) Non-preferred frequencies are those which can be used without prior coordination with the relevant neighboring countries as long as the conditions indicated under Item 3.3.6 Par. (2) are met.

(3) Should the spectral power flux density defined under Item (1) or (2) be exceeded by a planned radio system, or if no specifications regarding preferred/non-preferred frequencies have been defined for certain border areas, operators are to coordinate locations individually with the relevant telecommunications administration in the neighboring country via the responsible first-instance Telecommunications Authority.

## (4) Preferred frequencies in border areas:

Border Area	Starting and ending points of the national border to which the preference regulation applies		Numbers of preferred frequency blocks according to 7 MHz channel spacing in CEPT Recommendation ERC/REC 14-03 Annex B
	From	To	
Switzerland (two-country border area)	10°24' E 46°59' N	09°48' E 47°02' N	2, 5, 6, 10, 11, 12
Switzerland and Liechtenstein (three-country border area)	09°48' E 47°02' N	09°40' E 47°23' N	5, 6, 11, 12
Switzerland and Germany (three-country border area)	09°40' E 47°23' N	09°46' E 47°35' N	1, 2, 11, 12
Germany (two-country border area)	09°46' E 47°35' N	13°49' 30" E 48°38' N	1, 2, 7, 8, 11, 12
Germany and Czech Republic (three-country border area)	13°49' 30" E 48°38' N	14°01' E 48°41' 30" N	No regulations regarding preferred/non-preferred frequencies
Czech Republic (two-country border area)	14°01' E 48°41' 30" N	16°47' 30" E 48°43' N	1, 2, 5, 7, 8, 11
Czech Republic and Slovakia (three-country border area)	16°47' 30" E 48°43' N	16°54' E 48°29' N	2, 5, 8, 11
Slovakia (two-country border area)	16°54' E 48°29' N	17°04' E 48°07' 30" N	2, 5, 6, 8, 11, 12
Slovakia and Hungary (three-country border area)	17°04' E 48°07' 30" N	17°05' E 47°52' 30" N	2, 5, 8, 11
Hungary (two-country border area)	17°05' E 47°52' 30" N	16°15' E 46°58' N	2, 5, 7, 8, 10, 11
Hungary and Slovenia (three-country border area)	16°15' E 46°58' N	15°59' E 46°46' N	2, 5, 8, 11
Slovenia (two-country border area)	15°59' E 46°46' N	13°55' E 46°31' 30" N	2, 5, 6, 8, 11, 12
Italy (two and three-country border areas)	13°55' E 46°31' 30" N	10°24' E 46°59' N	No regulations regarding preferred/non-preferred frequencies

TABLE 14: PREFERRED FREQUENCIES IN BORDER AREAS:

(3) Spectral power flux density is calculated according to the propagation model in ITU Recommendation ITU-R P.452; however, this calculation was performed with attention to open-space propagation only.

(4) Domestic network operators will be allowed to conclude agreements with network operators in neighboring countries to change the individual preferred frequency conditions indicated in 3.3.6 and 3.3.7; however, such agreements will require the permission of the respective Telecommunications Authorities.

### 3.3.8 Changes in Use and Additional Restrictions of Use

The telecommunications authority may introduce changes or restrictions of use for individual frequencies or border regions in order to protect existing or planned radio services abroad.

### 3.3.9 Conditions for the Assignment of Transmission Directions

(1) If the Frequency Division Duplex (FDD) technique is used, the following conditions apply to the assignment of upper and lower band frequencies to transmission directions:

- a) Transmission from radio base station to subscriber terminal:  
Transmissions exclusively in the upper band.
- b) Transmission from subscriber terminal to radio base station:  
Transmissions exclusively in the lower band.

(2) If the Time Division Duplex (TDD) technique is used, the regulations regarding spectral power flux density under Items 3.3.5 - 3.3.7 are to be adhered to in all cases.

### 3.3.10 Additional Buffer Distances between Frequency Blocks

(1) Losses of useable frequency spectrum which arise due to any required buffer distances and which are larger than the originally planned buffer distances will be taken from the spectrum of the operator whose frequency use requires the additional buffer distance in terms of frequency and geographical location.

(2) In particular, the operators of radio systems which use the TDD technique are to take suitable measures to remedy any interference or disturbances arising in radio systems which use the FDD technique despite adherence to the spectral power flux density regulations under Items 3.3.5 - 3.3.7.

(3) Operators are advised to coordinate their radio network planning activities in order to avoid frequency losses (see Item 3.3.5 Par. (4)).

### 3.3.11 Protection of Directional Receiver Systems

In order to protect the stationary directional receiver systems of the Telecommunications Authorities (listed in Appendix E), the maximum field strength created by radio transmission systems at the locations indicated must not exceed the value of 105 dB $\mu$ V/m (measured with each system-specific bandwidth).

### 3.3.12 Duration of Use

Under § 54 Par. 11 TKG 2003, all frequencies are to be allocated for a limited time period only. The time period is to be defined according to reasonable business criteria. The frequencies in this procedure will be allocated to the operators until December 31, 2019.

### 3.3.13 Transfer of Frequencies

Under § 56 Par. 1 TKG 2003, operators are permitted to transfer frequency use rights. However, such transfers require prior approval by the regulatory authority. Transfers are to be understood as the sale of frequency use rights (in part or as a whole) as well as the leasing of such rights.

## 3.4 Coverage Requirements

1. Frequency spectrum allocations are subject to the requirement that the operator is able to cover a minimum number of municipalities in each region. A municipality will be considered covered when at least one radio base station is operated in the municipality and the coverage requirements listed under Items 2 to 4 below have been fulfilled. The table below shows the minimum number of municipalities to be covered per region and target date.

Region	Number of Municipalities with a Radio Base Station	
	By December 31, 2007	By December 31, 2008
1	69	138
2	55	110
3	27	54
4	9	19
5	25	50
6	49	98

TABLE 15: COVERAGE REQUIREMENTS FOR MUNICIPALITIES

2. In the minimum number of municipalities defined in Table 15, at least the following cumulative coverage level (defined as the ratio of the resident population covered to the overall resident population) is to be ensured:

- 20% coverage by December 31, 2007
- 30% coverage by December 31, 2008

There are no coverage requirements in the other municipalities.

3. The planned services are to be offered using an independently operated network.

4. A carrier service with a data rate of at least 144 kBit/s is to be offered. Operators of public communications networks are entitled to the shared use of antenna masts and high-voltage power line masts under § 8 Par. 2 TKG 2003. In addition, operators of public communications services are entitled to enter into private-law agreements on sharing antennas as well as the accompanying cables with other operators of public communications networks.

### 3.5 Verification of Coverage Levels

The calculation of areas covered as of the target dates is to be carried out by the respective operator.

The population units (smallest possible covered and non-covered regions) to be used are the census zones specified by the Austrian Statistics Office (ÖSTAT). A census zone will be considered covered if its area center is covered according to the criteria indicated above. The resident population covered in Austria will be calculated by adding up the populations of all census zones covered. The coverage level is calculated as the proportion of the resident population covered to the total resident population in the region, expressed as a percentage. Licensees are to submit the following documents to the Telekom-Control Commission in electronic format at the latest two months after the deadlines mentioned in Section 3.4, with the reference date for all data being December 31<sup>st</sup> of the previous year:

- A list of all radio base station locations, including geocoded data (GIS format)
- Map representation of areas covered (GIS format)
- A list of census zones covered
- The level of coverage calculated on the basis of this data

The Telekom-Control Commission will take measurements to verify coverage levels. The costs of this verification process are to be borne by the holder of the frequency use rights. In cases where the operator fails to meet the coverage levels specified in Section 3.4, the operator will be required to pay the following penalties starting on December 31, 2007:

Region	Guarantee Amount for Zero Coverage in EUR
1	400,000.00
2	220,000.00
3	80,000.00
4	40,000.00
5	80,000.00
6	140,000.00

TABLE 16: GUARANTEE AMOUNTS

The values indicated in the table above are based on a coverage level of 0%. If an operator falls short of the required coverage level, the penalty will be reduced in proportion to the coverage level reached.

For example, if an operator succeeds in covering a sufficient number of municipalities but falls short of the required coverage level by 10%, the penalty will be 10% of the respective value indicated above.

This penalty will be due annually after December 31, 2007, until the operator has reached the required coverage level.

### **3.6 Supervisory Rights**

Network operators to whom frequencies are allocated will be required to convey the following data to the Telekom-Control Commission by January 31 of each following year in electronic format and using the data model provided by the Telekom-Control Commission:

- a) Number of subscribers
- b) Overview of current network structure
- c) Coverage areas
- d) Locations (GIS format) of radio base stations and (where applicable) subscriber terminals, essential technical characteristics of these infrastructure elements (frequency range, capacity, transmission power, etc.)

## 4 Application Documents

Under § 55 Par. 1 TKG 2003, the regulatory authority is to allocate the frequencies placed under its authority to the applicant which fulfills the general prerequisites under Par. 2 No. 2. Applications for frequency allocations are to contain the documents and information listed in the following sections:

### 4.1 Organizational Structure

In order to determine whether applicants fulfill the prerequisites indicated in § 55 Par. 2 No. 2 TKG, the Commission will require information on the applicant's organizational structure. This information includes precise indications as to the applicant's legal and financial situation as well as the applicant's ownership structure (up to the ultimate owner). In addition, due attention must be paid to the provisions stipulated in Section 2.6.1.

The applications are to contain the following information (wherever applicable):

#### 4.1.1 Information on the Applicant

- a) Name (company), place of incorporation (address), date and place of establishment, including a current excerpt from the Commercial Register;
- b) Type and number of capital shares, nominal value of capital shares as well as voting and dividend rights associated with any and all types of shares;
- c) Subscribed capital per type of capital share, precise information on the stakeholders at the time the application is submitted as well as any and all foreseeable changes in this respect;
- d) Number, value and rights (including conversion rights) of any and all options, certificates of entitlement, preferred stock or debt capital as well as any other securities issued by the applicant;
- e) The company's articles of incorporation and bylaws in their current applicable version;
- f) A description of the applicant's business activities;
- g) The name of the applicant's authorized recipient (as defined in § 8a ZustG) as well as that of an authorized representative (as defined in § 10 AVG) along with his/her telephone and fax numbers as well as postal and e-mail addresses (cf. Section 5.3). These two parties can be the same person.
- h) Any and all other matters which, if mentioned or omitted, could substantially influence the Telekom-Control Commission's decision in the review to be carried out prior to the frequency allocation procedure in compliance with § 55 Par. 2 No. 2 TKG.

#### 4.1.2 Information on the Applicant's Stakeholders

For each stakeholder, shareholder, bearer of options, of certificates of entitlement, of preferred stock, of debt capital or of other securities issued by the applicant, the information indicated above (under Items a) to f)) is to be submitted wherever applicable. In cases where the applicant has a large number of stakeholders (shareholders), the information indicated is to be provided on all major shareholders. In the case of minority shareholders who own a small portion of the company's capital (up to 5%), general information will be sufficient unless their share is considered a significant stake as defined in §§ 91 f BörseG. In such cases, the Telekom-Control Commission will request further information as it sees necessary.



- a) Name (company), place of incorporation (address), date and place of establishment;
- b) A description of the stakeholder's main business activity;
- c) The stakeholder's relationship to the applicant (e.g., number and type of capital shares or securities held), syndicate / consortium agreements;
- d) Parent company of the group.

In cases where capital shares or other securities issued by the applicant are held for third parties by persons acting as trustees or in another similar function, these circumstances are to be noted in the application and the aforementioned information is to be provided for the actual owner.

#### 4.1.3 Information on Consortia

In the case of consortia or joint ventures, the following additional information will be necessary: The type of relationship among the members as well as detailed information on:

- Syndicate agreements, consortium agreements
- Joint venture agreements;
- Declarations of intent;
- Stakeholder agreements.

In addition, the information indicated in Section h) is to be included in the application for all consortium members.

## 4.2 Technical Capabilities, Quality of Services and Coverage Obligations

Under § 55 Par. 2 No. 2 TKG, there must be no reason to believe that the applicant will fail to provide the planned service, especially with regard to service quality and coverage obligations. In addition, the applicant must possess the technical capabilities necessary to render such services. The information requested in the following sections is intended to aid the regulatory authority in reviewing each applicant's fulfillment of these prerequisites.

### 4.2.1 Description of Planned Services and Service Quality

The following information is required:

- Description of planned services
- Customer groups
- Data rates per customer
- Quality of services (reliability)

### 4.2.2 Planned Radio Communications Network

The following information is required:

- Technology planned for the radio communications system
- Methods of radio communications network planning, coverage areas, number of base stations
- Transmission capacity of the system

### 4.3 Financial Strength

Applicants will be required to prove that they have at their disposal the financial resources necessary to build and operate a radio communications network.

In this context, applicants should pay special attention to the fact that their financial strength and stability are also able to absorb increases in the frequency license fee in the course of the auction.

With regard to financial strength, application documents are to contain the following information:

#### 4.3.1 Business Plan

Applicants are to submit a business plan for the business area(s) in which the frequencies applied for are to be used, based on their strategy, their overall market assessment as well as their estimates of business operations in the three years after frequency allocation. Applicants are to take into account that the frequency license fee offered in the application as well as all frequency license fees offered in the course of the auction are to be in line with the financial situation of the overall company as described in the application and in line with the company's expected business development. The business plan can be structured in any way the applicant chooses. However, the most essential costs and revenues should be visible in the outline.

A bank guarantee is also to be enclosed with the application. Details on the bank guarantee can be found in Section 2.4.

#### 4.3.2 Financing

In addition, applicants will be required to prove that they can raise capital commensurate to the business plan described in the application. For this purpose, the following information is required:

- |                    |  |
|--------------------|--|
| Equity financing - | Schedule and sources of equity capital, including planned issues of company capital  |
| Debt financing -   | Credit lines, available collateral, credit terms and lenders for all loans in the first three years after frequency allocation |

### 4.4 Declaration of Completeness

Properly completed written applications must contain all information requested in Section d). In addition, a Declaration of Completeness (Appendix C) is to be enclosed with the application to confirm that it contains correct and complete indications of all information requested in this tender document as well as all information relevant to the Telekom-Control Commission's evaluation of the objective facts.

## 5 Practical Information

The following sections contain information on the deadlines to be adhered to as well as other essential issues in the allocation procedure.

### 5.1 Rights to Application Documents

In submitting an application for frequency allocation, the applicant irrevocably agrees to allow the Telekom-Control Commission to use – without restriction – all information and documents received in connection with the application for the purposes of the allocation procedure, for the review of compliance with the official allocation decision and for all procedures otherwise associated with frequency allocation.

### 5.2 Applications for Frequency Allocation

Please send applications to:

Telekom-Control Commission  
Mariahilferstrasse 77-79  
A-1060 Vienna  
Austria

The application for frequency allocation ("application") must be received by the Telekom-Control Commission in a sealed envelope or package labeled "Application for Frequency Allocation" by September 9, 2004, at 12:00 pm (noon) local time (CET). Applications received after this deadline will not be reviewed.

Applications are to be submitted in writing (one original and two copies) in German language as well as in electronic format (CD-ROM or diskette in Microsoft Word and/or Excel format).

Changing or withdrawing applications after the application deadline will not be permitted. This does not apply to post-submission corrections to the amount of the frequency license fee offered in the application (§ 55 Par. 6 TKG 2003).

The application may be no longer than 100 pages in a 12-point font; there is no font requirement for Appendix J. However, additional enclosures, such as annual reports and maps, can be attached as necessary. These enclosures will also be accepted in English.

### 5.3 Authorized Recipient

Applicants are required to name an authorized recipient in their applications (cf. Section 4.1.1). An unrestricted authorization of the recipient must be signed by official representatives of the company and included with the application documents. In cases where the recipient is changed, a new unrestricted authorization is to be sent to the Telekom-Control Commission immediately.

#### **5.4 Clarifications**

For the purpose of preparing their applications, interested parties who have paid the fee of EUR 200 for the provision of tender documentation will be allowed to pose questions to the Telekom-Control Commission regarding the tender documentation during the question-and-answer period. The Telekom-Control Commission reserves the right to decide whether questions are answered in each individual case.

Questions to the Telekom-Control Commission can be sent by e-mail only to [rtr@rtr.at](mailto:rtr@rtr.at) by July 19, 2004 at 10:00 am local time (date and time of receipt). Questions will be answered in writing by August 2, 2004 (date of dispatch).

Questions submitted to the Telekom-Control Commission will be collected and forwarded, along with their answers, to all potential bidders without disclosure of the names of the parties who posed the questions.

If the Telekom-Control Commission considers it necessary or appropriate to pose questions to applicants, the applicant irrevocably agrees in submitting the application to reply to such inquiries and submit the requested additional information within the period specified by the Telekom-Control Commission.

#### **5.5 Inquiries and Consultants**

In this tender procedure, the Telekom-Control Commission may call in consultants in the course of its inquiries and surveys (§ 55 Par. 11 TKG 2003). This also applies (but in no way exclusively) to inquiries related to the clarification issues mentioned in Section 5.4, to inquiries related to the review of eligibility criteria under § 55 Par. 2 No. 2 TKG 2003, and to support in the course of the auction.

#### **5.6 Inspection of Records**

Upon request, all applicants will be allowed to inspect records to the same extent. No separate appeals against the refusal to allow an inspection of records will be permitted (§ 17 AVG).

The Telekom-Control Commission acknowledges the fact that in the course of this procedure a large amount of information will be provided and that the inspection of these records may damage the legitimate interests of parties to the procedure or those of third parties. In addition, the procedure may involve information which, if viewed by one of the parties, could endanger the fulfillment of the regulatory authority's duties or frustrate the purpose of the procedure. The Telekom-Control Commission thus reserves the right to deny parties the right to inspect such parts of the records.

In order to ensure the confidentiality of the sensitive information provided by the applicants, the applicants are to label all data regarded as company or trade secrets accordingly in their applications. In addition, a copy of the application is to be submitted in which the company and trade secrets have been omitted; in this version of the application, it must be made obvious that those elements have been removed. The Telekom-Control Commission furthermore reserves the right to deny parties the right to inspect other records pursuant to § 17 Par. 3 AVG. Likewise, the Telekom-Control Commission reserves the right to allow the inspection of records which are labeled as company or trade secrets by the applicants if damage to the legitimate interests of a party or third party is not expected to arise from allowing such an inspection.

§ 125 TKG 2003 as well as the Austrian Administrative Court's ruling (Zl. 2002/03/0273) of February 25, 2004 shall be applied with regard to company or trade secrets.

The applicants undertake to use any information on other applicants obtained in the course of this procedure exclusively for the purposes of this procedure.

## **5.7 Review and Information Obligations**

All applicants are requested to carry out a review of the information provided in the tender documents and in the attachments themselves and to notify the Telekom-Control Commission of any and all additional (e.g., technical) remarks or corrections.

## **5.8 Publication**

The Telekom-Control Commission intends to publish the names of the applicants in the allocation procedure. In addition, the applicants admitted to the auction, the bids submitted in each round of the auction as well as the frequencies allocated thereafter will be made available to the public on the Telekom-Control Commission's web site.

## **5.9 Annulment of the Tender, Discontinuation of the Procedure**

Under § 55 Par. 12 TKG 2003, the regulatory authority is authorized to annul the tender and discontinue the procedure at any stage for important reasons, especially if

1. the regulatory authority identifies collusive behavior on the part of the applicants and an efficient, fair and non-discriminatory procedure can not be carried out;
2. none or only one of the applicants fulfills the prerequisites pursuant to Par. 2;
3. none or only one of the applicants that fulfill the prerequisites under Par. 2 actually participates in determining the standing high bid;
4. the procedure results in the applicants requesting (in total) less frequency spectrum than that which is to be allocated.

None of these circumstances justify any claim to remuneration, government authority liability claims notwithstanding.

## 6 Fees

### 6.1 Frequency License Fee

The successful applicants are to effect payment of the frequency license fee determined in the course of the auction within one week after the official frequency allocation decision takes legal effect.

In case of non-payment (including delayed or incomplete payments) of the frequency license fee, the frequency allocation will be rendered void. Notwithstanding the condition mentioned above, the Federal Republic of Austria shall have the right in such cases to draw the bank guarantee and to collect any unpaid portion of the frequency license fee by means of administrative enforcement.

### 6.2 Spectrum Fees

In accordance with § 82 Par. 2 TKG 2003, spectrum fees for the use of frequencies are also to be paid by the network operators. These fees are defined in the Telecommunications Fees Ordinance (BGBl II 29/1998) in its current applicable version. These fees will be prescribed by the Telecommunications Offices when the operation permit is issued.

### 6.3 Consultancy Costs

In the course of the procedure, any and all costs arising from experts or consultants called in by the Telekom-Control Commission at any point in this procedure, are to be paid on a *pro rata* basis by those applicants to whom frequencies are allocated (§ 55 Par. 11 TKG 2003). These costs will be prescribed in the official frequency allocation decision and are to be paid within 14 days of receipt of the official decision.