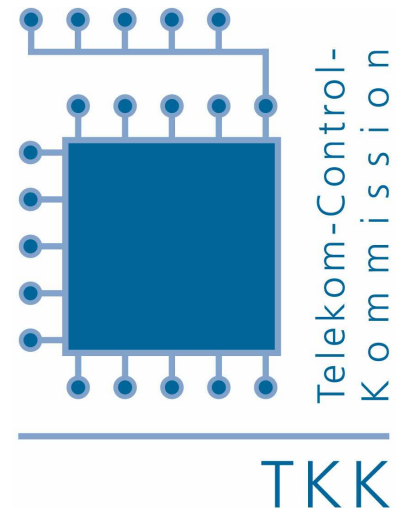**Telekom-Control Commission**
Mariahilferstrasse 77-79
A-1060 Vienna, Austria

F 5/04

Vienna, August 2004

Non-Binding Draft of Auction Rules:
Rules of Procedure under § 55 Par. 9 TKG 2003
Auction Procedure for Frequency Allocations
for Wireless Local Loop Systems
in the 3.5 GHz Frequency Range

The auction rules are given below in the form of a legally non-binding draft. Individual rules, especially parameters regarding the minimum bidding increment and activity rules, may still be changed at a later time.

1   General information

The auction will be carried out in an open, ascending, simultaneous, multiple-round format.
A total of 17 concrete frequency packages in six regions will be auctioned off. Those applicants who were not excluded from the frequency allocation procedure under § 55 Par. 8 of the Austrian Telecommunications Act of 2003 (TKG 2003) or due to the regulation concerning affiliated companies shall be admitted to the auction. The maximum amount of spectrum which a bidder can acquire is limited by the bidding eligibility applied for by that bidder (provided s/he has not been excluded from the auction).
The auctioneer is the Telekom-Control Commission or a member appointed by the Commission. The Telekom-Control Commission may also appoint employees of RTR's Telecommunications Division to carry out the auction.

2   Collusion and discontinuation of the procedure

2.1   Collusion

Any and all forms of cooperation among the applicants or their stakeholders, be it direct or indirect, with the intention of influencing the events or results of the auction (i.e., collusive behavior) are prohibited. If applicants cooperate in a collusive manner before or during the auction procedure, they may be excluded from the remainder of the procedure (§ 55 Par. 9 TKG 2003). The auctioneer shall have the right to take all appropriate measures to prevent collusive behavior.
Likewise, threats to competitors or the public announcement of bids or bidding strategies – even prior to the auction procedure – may result in exclusion from the procedure.

2.2   Discontinuation of the procedure

The Telekom-Control Commission shall have the right to discontinue the auction procedure if it detects collusive behavior among applicants and an efficient, fair and non-discriminatory procedure can not be carried out (§ 55 Par. 12 No. 1 TKG 2003), or if other significant reasons are found which endanger the proper execution of the auction procedure. In such cases, the Telekom-Control Commission will decide whether the procedure is to be discontinued in accordance with Section 5.9 of the Tender Documentation or if a new auction date is to be set.

3 Auction rules

3.1 Eligibility to participate

3.1.1 Those applicants who were not excluded from the frequency allocation procedure under § 55 Par. 8 TKG 2003 or due to the regulation concerning affiliated companies shall be admitted to the auction.

3.2 Objects of the auction

3.2.1 A total of 17 frequency packages in six regions will be allocated in the auction (cf. Section 2.2 of the Tender Documentation). These frequency packages will be labeled as follows for the purposes of the auction procedure:

Region	Frequency package				
	A 2x21 MHz	B 2x28 MHz	C 2x21 MHz	D 2x35 MHz	E 2x42 MHz
1	1A	1B	1C	-	-
2	2A	2B	2C	-	-
3	3A	3B	3C	-	-
4	-	-	-	4D	4E
5	5A	5B	5C	-	-
6	6A	6B	6C	-	-

3.2.2 Each of the frequency packages has been given a rating according to sociodemographic and technical criteria (see Section 2.2.2 of the Tender Documentation) This rating will be referred to as the *lot rating* in the course of the procedure; the ratings of each package are given in the table below.

Region	Frequency package	Name	Size	Lot rating
1	A	1A	2 x 21 MHz	200
	B	1B	2 x 28 MHz	240
	C	1C	2 x 21 MHz	200
2	A	2A	2 x 21 MHz	110
	B	2B	2 x 28 MHz	132
	C	2C	2 x 21 MHz	110
3	A	3A	2 x 21 MHz	40
	B	3B	2 x 28 MHz	48
	C	3C	2 x 21 MHz	40
4	D	4D	2 x 35 MHz	28
	E	4E	2 x 42 MHz	32
5	A	5A	2 x 21 MHz	40
	B	5B	2 x 28 MHz	48
	C	5C	2 x 21 MHz	40
6	A	6A	2 x 21 MHz	70
	B	6B	2 x 28 MHz	84
	C	6C	2 x 21 MHz	70

3.2.3   The minimum bids (opening bids) listed in the table below will be required in the first round of the auction procedure.

Region	Frequency package	Name	Size	Opening bid in €
1	A	1A	2 x 21 MHz	40,600.00
	B	1B	2 x 28 MHz	40,600.00
	C	1C	2 x 21 MHz	40,600.00
2	A	2A	2 x 21 MHz	32,300.00
	B	2B	2 x 28 MHz	32,300.00
	C	2C	2 x 21 MHz	32,300.00
3	A	3A	2 x 21 MHz	15,800.00
	B	3B	2 x 28 MHz	15,800.00
	C	3C	2 x 21 MHz	15,800.00
4	D	4D	2 x 35 MHz	5,500.00
	E	4E	2 x 42 MHz	5,500.00

Region	Frequency package	Name	Size	Opening bid in €
5	A	5A	2 x 21 MHz	14,700.00
	B	5B	2 x 28 MHz	14,700.00
	C	5C	2 x 21 MHz	14,700.00
6	A	6A	2 x 21 MHz	28,800.00
	B	6B	2 x 28 MHz	28,800.00
	C	6C	2 x 21 MHz	28,800.00

3.3 Bids and bidding

3.3.1 Each bid shall be submitted for a specific frequency package and considered a binding offer on the part of the bidder to pay the price indicated in the bid.

3.3.2 Bids will be submitted electronically using a software program (cf. Auction software). The submission of bids by telephone will only be permitted in exceptional cases (e.g., technical difficulties). The auctioneer shall be responsible for deciding whether such an exceptional case is warranted.

3.3.3 The bid amount can not be chosen freely; instead, the auction software displays a list of valid offers from which the bid amount can be chosen (cf. Rule 3.8.1).

3.4 Bidding eligibility

3.4.1 Each participant's bidding eligibility determines the maximum number of frequency packages a bidder can be active on in one round. Provided Rule 3.4.2 is not violated, bidders will be allowed to be active on any combination of frequency packages as long as the total of the packages' lot ratings does not exceed their current bidding eligibility. Each participant's bidding eligibility will be expressed as a number with three decimal places.

3.4.2 Bidders will only be permitted to exercise their bidding eligibility 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 be active on one frequency package per region in each round.

3.4.3 The bidding eligibility for the first round of the auction procedure will be determined by the information in each bidder's application (cf. Section 2.3 of the Tender Documentation). In the ensuing rounds, each bidder's current bidding eligibility will be determined by the rules of activity.

3.5 Rules of activity

3.5.1 The activity of a bidder in a given round will be equal to the total lot ratings of all frequency packages on which the bidder is active. Bidders who are not active on any frequency packages and do not exercise a waiver will be disqualified from the auction procedure and not allowed to place any further bids. Bidders who are active on at

least one frequency package or exercise a waiver are referred to as active bidders in this document.

3.5.2   A bidder shall be considered to be active on a frequency package in a given round if s/he either

- holds the standing high bid for the frequency package at the beginning of the round, or
- submits a valid bid for the frequency package in the given round.

The corresponding bids will be referred to as active bids in this procedure.

3.5.3   The auction will be carried out in three consecutive stages with varying minimum levels of activity. Bidders will retain their entire bidding eligibility if they are active on:

- at least 50% of their current bidding eligibility in Stage I,
- at least 80% of their current bidding eligibility in Stage II,
- and at least 95% of their current bidding eligibility in Stage III.

Minimum activity levels will be expressed as an absolute value (in activity points) and rounded up to the next integer. The decision to move on to the next stage will be made by the auctioneer.

3.5.4   If a bidder does not attain the minimum activity level described in Section 3.5.4 and fails to exercise a waiver, his/her bidding eligibility will be recalculated as follows:

- in Stage I, the bidder's activity points will be multiplied by 100/50,
- in Stage II, the bidder's activity points will be multiplied by 100/80,
- and in Stage III, the bidder's activity points will be multiplied by 100/95.

Bidding eligibility points will be rounded off to three decimal places. If a bidder who does not attain the minimum activity level applies for a waiver (assuming the bidder can still do so), his/her bidding eligibility will remain unchanged.

3.6   Waivers

3.6.1   Bidders who do not attain the minimum activity level and would therefore lose part of their bidding eligibility can exercise a waiver if they still have unused waivers at their disposal. In such cases, the bidder's bidding eligibility from the beginning of the round will remain unchanged. Waivers can either be requested by the bidder (proactive waiver) or applied automatically by the auction software (automatic waiver). Bidders are allowed to use only one waiver per round.

3.6.2   Each bidder will be allotted three waivers at the beginning of the auction procedure. Each waiver used will reduce the remaining number of waivers.

3.6.3   A proactive waiver is used when a bidder submits one of his/her unused waivers (cf. Auction software).

3.6.4   Bidders who do not attain the minimum activity level can opt not to use their waivers. In this case, their bidding eligibility will be reduced as outlined in Rule 3.5.4 (cf. also Auction software).

3.6.5   An automatic waiver is used when a bidder does not attain the minimum activity level and does not explicitly opt out of using one of his/her unused waivers (cf. Rule 3.6.4). In such cases, the auction software will apply the waiver automatically (cf. Auction software).

3.7   Standing high bids

3.7.1   The standing high bid for each frequency package will be determined at the end of each round. The highest bid received shall be the standing high bid for the given frequency package. If no valid bids are received in a given round, the high bid from the previous round will remain the standing high bid.

3.7.2   If two or more high bids of the same amount are submitted in the same round, then the bid that was submitted first will be considered the standing high bid.

3.7.3   The obligations arising from a bid shall be considered void as soon as a new standing high bid has been placed for the respective frequency package.

3.8   Valid bids

3.8.1   The bid amount can not be chosen freely; instead, the auction software displays a list of valid offers from which the bid amount can be chosen. This list will contain the following bid amounts:

- the minimum bid
- the minimum bid plus 1 bidding unit (EUR 100)
- the minimum bid plus 5 bidding units (EUR 500)
- the minimum bid plus 10 bidding units (EUR 1,000)
- the minimum bid plus 20 bidding units (EUR 2,000)
- the minimum bid plus 50 bidding units (EUR 5,000)
- the minimum bid plus 100 bidding units (EUR 10,000)
- the minimum bid plus 200 bidding units (EUR 20,000)
- the minimum bid plus 500 bidding units (EUR 50,000)
- the minimum bid plus 1,000 bidding units (EUR 100,000)
- the minimum bid plus 10,000 bidding units (EUR 1,000,000)

If the auctioneer announces three final open rounds as described in Rule 3.11.3, bidding amounts can be chosen freely in those rounds, as long as Rules 3.8.2 to 3.8.4 are observed.

3.8.2   Bids shall only be considered valid when they exceed the standing high bid from the previous round by at least the minimum bid increment. If no bid has been submitted for a specific frequency package, then the opening bid defined in Rule 3.2.3 will be considered a valid bid. The lowest valid bid for a certain frequency package will be shown as the minimum bid for that package.

3.8.3   A bid will only be considered valid if it is a whole multiple of EUR 100.

3.8.4   Likewise, a bid can only be considered valid if it is submitted within the time period defined by the auctioneer for the given round. Exceptions will be made in the case of bidding by telephone.

3.9   Minimum bidding increment

3.9.1   The minimum bidding increment will be between 2% and 15% of the standing high bid, rounded off to a multiple of EUR 100. The minimum bidding increment will be set by the auctioneer at the beginning of each round and conveyed to the to the active bidders as an absolute amount.

3.9.2   The auctioneer plans to reduce the minimum bidding increment in four consecutive phases: from 15% (Increment Phase 1) to 10% (Increment Phase 2), then to 5% (Increment Phase 3) and 2% (Increment Phase 4).

3.10 Information disseminated to the bidders

3.10.1 After the close of each round, the auctioneer will disseminate the following information concerning that round to the active bidders:

- The standing high bid and the identity of the high bidder for each frequency package
- the active bids placed by active bidders [1]

3.10.2 At the beginning of each round, the auctioneer will communicate the following information to each active bidder:

- the current round
- the current stage
- the time period allotted for the round
- the standing high bids and high bidders for each frequency package
- the active bids placed by active bidders in the previous round [2]
- the minimum bid and the minimum increment (as an absolute amount) for each frequency package
- a list of valid bids from which the bidders can choose a bid amount
- the bidders who have been eliminated or disqualified
- the bidder's number of unused waivers
- the bidder's current bidding eligibility and minimum level of activity for that round.

3.11 End of the auction procedure

3.11.1 The auction procedure will come to an end when no valid bid is submitted for any frequency package and no bidder uses a proactive waiver in any one round of the final stage of the auction (Stage III).

3.11.2 If no valid bids are submitted and no waivers are used in an earlier stage of the auction, the auctioneer shall be obliged either to continue the procedure by moving on to the next stage or to end the procedure immediately.

3.11.3 From the 50th round onward, the auctioneer furthermore reserves the right to announce that the auction will end after three open rounds (cf. 3.8.1). The auction will then end after the three open rounds, and the bidders who submitted the high bids in the third round will be awarded the frequency packages.

3.11.4 The frequency packages will then be allocated to the high bidders in accordance with their respective standing high bids.

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[1]   In cases where a bidder holds the standing high bid for a certain frequency package from the previous round and places a valid bid for the same frequency package in the current round, only the bid from the current round will be indicated.

[2]   In cases where a bidder holds the standing high bid for a certain frequency package from the previous round and places a valid bid for the same frequency package in the current round, only the bid from the current round will be indicated.

4   Auction software

4.1   Fundamentals

Bids will be submitted electronically using an auction software program. The submission of bids by telephone will only be permitted in exceptional cases (e.g., technical difficulties). The auctioneer shall be responsible for deciding whether such an exceptional case is warranted. In such cases, the auctioneer will decide whether the current round is to be stopped and repeated, or the bidder experiencing technical difficulties should be allowed to submit bids by telephone.

4.2   Procedure for auction rounds

From the bidders' point of view, each round will be divided into three phases:
- Bid submission phase
- Break
- Display of results or termination of the round.

Bids can only be placed during the bid submission phase. This phase will begin when the bidding window is displayed at the start of each round. The bidding window will remain active until either the round time has passed or the bidder has performed one of the following actions:

Action	Description
Send bids	The bids entered are transmitted to the auction server and are considered binding.
Suspend	The bidder uses one of his/her waivers (proactively). A message is sent to the auction server to announce that the bidder would like to exercise a waiver. Previously entered bids will not be sent to the server.

Once one of these actions has been performed, the "Break" window will appear. This window will remain active until the auctioneer has closed or terminated the round.

If the auctioneer closes the round, the bids will be processed and the results of the round will be displayed to the bidders. If the auctioneer decides to terminate the round, the "Round terminated" window will appear. In this case, all bids entered will be rendered invalid and the round will be repeated.

4.3   Submission of bids

The bids themselves will be submitted in two steps:
- In the first step, the bidders enter their bids for the desired frequency packages,
- after which they send them to the server (second step).

If a bidder only wishes to confirm standing high bids from the previous round, then s/he can skip the first step and go straight to the second.

Bids can be entered one by one by selecting the desired frequency package and entering the bid amount for that package. The bid amount can not be chosen freely; instead, the auction software displays a list of valid offers from which the bid amount can be chosen. When the bidder triggers the "Send bids" function, all bids entered are sent to the auction server simultaneously and are considered binding on the bidder. It is not possible to send bids one by one during a round, nor is it possible to correct or withdraw bids after sending them.

4.4   Time period allotted per round

The time period allotted per round will be between 20 and 60 minutes; this will be determined by the auctioneer and conveyed to the bidders at the beginning of each round. The time remaining in each round will be displayed on the bidding screen (stopwatch). Bidders that have not submitted their bids 10 minutes before the end of a round will receive a warning to this effect.

A round is considered over when all active bidders have sent their bids or when the time period allotted for the round is over. With the exception of bids submitted by telephone, only those bids which are sent before the end of the allotted round time will be considered valid.

A round is considered closed once the results of the round have been evaluated.

Submission of bids by telephone

The submission of bids by telephone will only be permitted in exceptional cases (e.g., technical difficulties). In such cases, the auctioneer must be informed by telephone immediately. Calls placed after the end of the time period allotted for a given round will not be taken into consideration. The auctioneer will be responsible for deciding whether to interrupt the auction and repeat the round or to allow bids to be placed by telephone. In the latter case, the bidder who encountered the technical difficulties will be given a printed screen shot of the bidding screen, and the auctioneer will call the bidder back to take his/her bid once the given round has ended. Before the binding bid is dispatched, the bidder will receive a printed screen shot, which is to be signed by the authorized bidders.

4.5   Waivers

Bidders who do not attain the minimum activity level and would therefore lose part of their bidding eligibility can exercise a waiver if they still have unused waivers at their disposal. In such cases, the bidder's bidding eligibility from the beginning of the round will remain unchanged. Waivers can either be applied automatically by the auction software (automatic waiver) or requested by the bidder (proactive waiver), as described in the table below.

Use of waiver	Type of waiver	Effects on the termination rule
Bidder does not send bids or the bids are not received by the server, thus causing the bidder to fall short of the minimum activity level.	Automatic waiver	No
The bidder clicks the "Suspend" button. A message is sent to the auction server to announce that the bidder would like to exercise a waiver. Previously entered bids will not be sent to the server.	Proactive waiver	Yes
The bidder clicks the "Send bids" button and falls short of the minimum activity level. The software displays the corresponding warning message. The bidder has the choice of either using a waiver or opting not to use a waiver. In all cases, the bids entered are transmitted to the auction server and are considered binding.	Proactive waiver	Yes

An automatic waiver is used when a bidder who still has a waiver at his/her disposal does not send bids in a given round (or when the bids sent are not received by the auction server) and the bidder would otherwise lose part of his/her bidding eligibility. In such cases, the auction server will automatically use one of the bidder's waivers.

A proactive waiver can be used in two different ways: The bidder can either click the "Suspend" button instead of the "Send bids" button, in which case a message indicating that the bidder would like to exercise a waiver is sent to the auction server. Previously entered bids will not be sent to the server.

In the second case, the auction server checks whether the bidder has fallen short of the minimum activity level when bids are sent to the server. If this is the case, a warning is displayed and the software gives the bidder the choice of:

- using a proactive waiver or
- opting not to exercise a waiver. In this case, the bidder's bidding eligibility will be reduced in accordance with the rules of activity.

In all cases, the bids entered are transmitted to the auction server and are considered binding.

4.6   Termination of a round and interruption of the auction

The auctioneer can interrupt the auction at any time and continue it at a later point. If the auction is interrupted before the end of a round (e.g., due to technical difficulties), the current round will be terminated and repeated at a later point in time. The bids placed in that round will then be considered void and remain unknown (even to the auctioneer). Interruptions will be displayed to the bidders on the bidding screen. The reason for and duration of the interruption will be conveyed to the bidders as well.

5 Logistics of the auction

5.1 Authorized bidders

5.1.1 Announcement of authorized bidders

Each applicant is to send the following information – in writing – to the regulatory authority by September 28, 2004:
The names of at least two and a maximum of six representatives of the applicant who are authorized to be present in the bidding rooms and to place legally binding bids on behalf of the applicant during the auction (cf. Appendix A). The authorization to represent the applicant is to be verified by a current excerpt from the Commercial Register, or by submitting documents granting the corresponding power of attorney.

5.1.2 Presence of authorized bidders

Only those persons who have been authorized and can place legally binding bids for the applicants are allowed to enter the bidding rooms. The number of persons allowed in the bidding rooms is limited to two per applicant. All bids placed using the computer in the bidding room shall be considered legally binding bids for each respective applicant. Applicants are to guarantee that authorized representatives will be present throughout the auction procedure.

5.2 Auction location

The auction will take place on the premises of the regulatory authority at Mariahilferstrasse 77-79, A-1060 Vienna, Austria.

5.3 Equipment

One workstation will be assigned to each team of bidders. Each workstation will consist of a PC and printer. The bidding software necessary for the auction will be installed on each computer, and the operating system used will be Windows NT 4.0. The bidders will not be able to change various settings on the PC. In addition to the bidding software, a program for printing screenshots quickly will be provided as well. A manual for the installed software is included as an appendix to these rules of procedure.

5.4 Communication equipment

Bidders will be allowed to communicate with external parties by mobile telephone. The auctioneer will not provide any communication equipment for this purpose.

5.5 Access to the auction rooms, auction times

During the auction, bidders will have access to their workstations from 8:00 am to 7:00 pm. The IT equipment will be checked between 8:00 am and 8:30 am.

The auction will take place at the following times: Monday to Friday, 8:30 am to 7:00 pm. Two 90-minute breaks per day will be scheduled. Bidders will be informed as to the beginning of these breaks in writing.

The auctioneer reserves the right to change this schedule if necessary or appropriate. Bidders will be informed as to changes of this sort in due course.

The presence of an employee of the regulatory authority in the bidding rooms is allowed at any time. If a person leaves the auction rooms at any time outside of the scheduled breaks, s/he will not be allowed to re-enter the auction rooms until the next day.

6   Bidders' training seminar

The bidders' training seminar is currently scheduled for September 28, 2004, at 10:00 am.
In this seminar, the rules of the auction procedure as well as the software used will be explained to the applicants verbally. In addition, bidders will be given the opportunity to test the software in practical use during the seminar.

7   Schedule and important dates

Action	Date	Reference
Announcement of authorized bidders	September 28, 2004	Section 5.1
Bidders' training seminar	September 28, 2004	
Auction start	October 4, 2004	