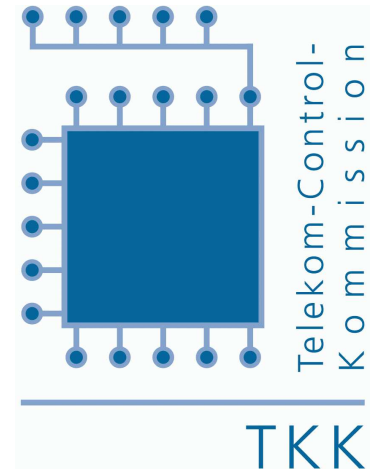


**Telekom-Control Commission**

**Mariahilferstraße 77-79**

**A-1060 Vienna, Austria**

**F 1/09**



**Vienna, April 22, 2009**

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

**NON-BINDING TRANSLATION**

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# 1 Introduction

The Telekom-Control Commission is conducting a procedure to allocate frequencies in the 3.5 GHz band in accordance with Art. 55 of the Austrian Telecommunications Act 2003 (TKG 2003). One frequency package in each of eight regions will be awarded, with each frequency package consisting of several duplex frequency channels (see Section 2.2). Some of the packages comprise different frequency ranges (each of which can be used in different areas of the region; see Section 3).

## 1.1 General conditions under Austrian law

This invitation to tender is being carried out on the basis of the Austrian Telecommunications Act 2003 (TKG 2003, Federal Law Gazette I No. 70/2003 as amended by Federal Law Gazette I No. 133/2005). In addition, Austrian procedural rules and regulations are also applicable, especially the General Administrative Procedures Act of 1991 (AVG; Federal Law Gazette No. 51 as amended by Federal Law Gazette I No. 5/2008).

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

This determination was made in the Ordinance of the Federal Minister of Transport, Innovation and Technology amending the Frequency Utilization Ordinance (Federal Law Gazette II No. 307/2005 as amended by Federal Law Gazette No. 121/2008). The Telekom-Control Commission's responsibility is based on this determination.

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

### 1.1.1 Frequency allocation procedure

Under Art. 55 Par. 1 TKG 2003, the regulatory authority is to allocate the frequencies placed under its authority to the applicant who fulfills the general prerequisites under Par. 2 No. 2 (Art. 55 Par. 2 No. 2 TKG 2003) and ensures the most efficient use of the frequencies. This will be determined by the amount of the frequency license 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 Art. 55 Par. 2 No. 2 TKG 2003 (see Section 4). In accordance with Art. 55 Par. 8 TKG 2003, those applicants who do not fulfill the prerequisites will be excluded from the frequency allocation procedure. 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 Art. 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 October 2008, 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 (see Section 2.7).

## 1.2 Allocation procedure schedule

The table below contains the most important dates in the allocation procedure. 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	April 22, 2009	
Questions for the Telekom-Control Commission:		Section 5.4
Deadline for receipt of questions	May 15, 2009 / 10:00 am (CET)	
Questions to be answered by	June 2, 2009	
End of tender submission period	July 13, 2009 / 12:00 noon (CET)	
Decision on admission to auction	Scheduled for July 27, 2009	Section 2.6
Auction procedure	August/September 2009	Section 2.7
Date of frequency allocation	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.

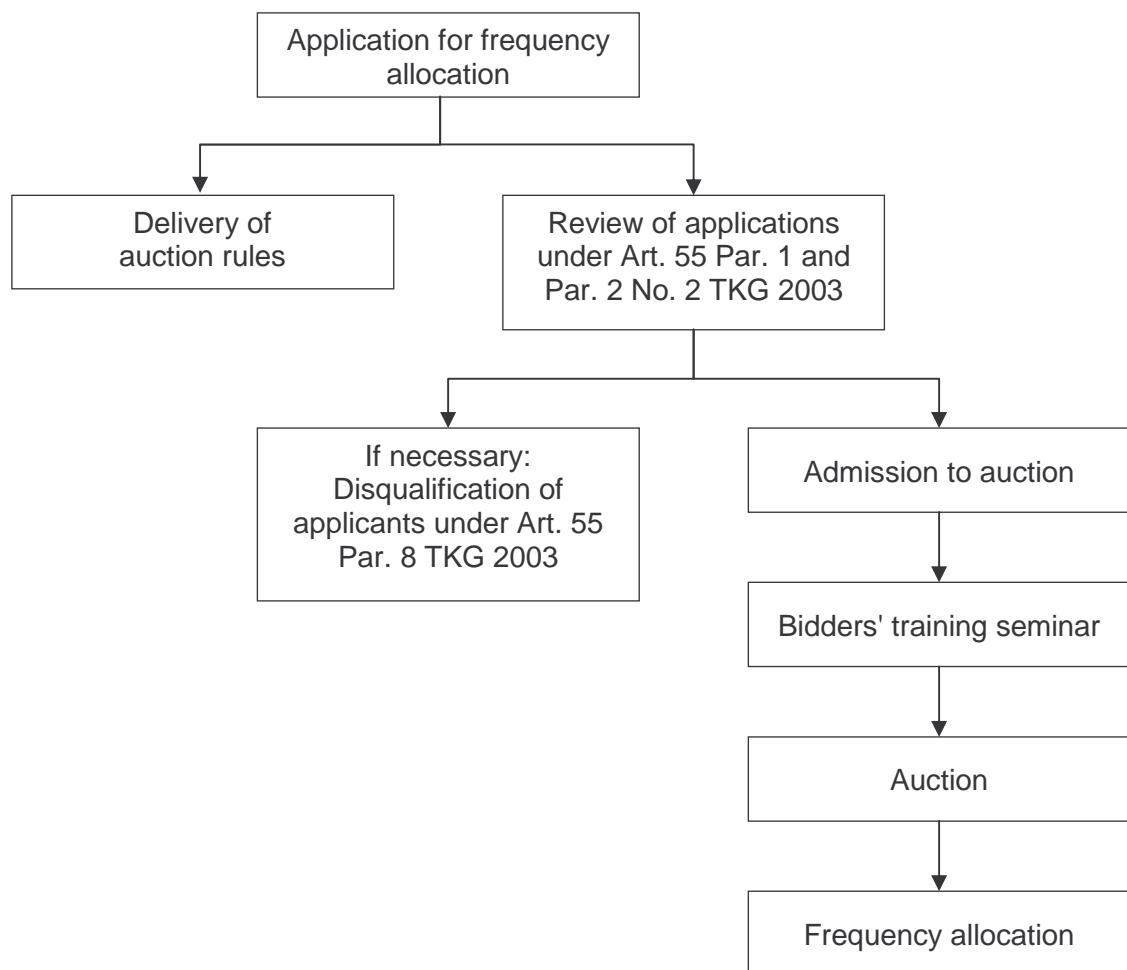


FIGURE 1: PROCEDURE STEPS

## 2 Frequency allocation procedure

### 2.1 Steps in the allocation procedure

As mentioned in Section 1.1, the frequency allocation procedure is divided into two stages. In the first stage, the regulatory authority will check whether the applications fulfill the criteria stipulated in Art. 55 Par. 2 No. 2 TKG 2003 (in accordance with Art. 55 Par. 1 and Par. 2 No. 2 TKG 2003). Those applicants who do not fulfill the prerequisites pursuant to Art. 55 Par. 2 No. 2 TKG 2003 will be excluded from the frequency allocation procedure in accordance with Art. 55 Par. 8 TKG 2003.

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

### 2.2 Objects of the auction

One frequency package in each of eight regions will be allocated in the auction (cf. Section 3). The regions are defined in the next section.

#### 2.2.1 Division of regions

The regions are generally divided according to the borders of Austria's federal provinces, with East and North Tyrol defined as separate regions due to their topography, while Vienna and Lower Austria are combined to form a single region. In this allocation procedure, no frequencies are available for the province of Vorarlberg<sup>1</sup>. A precise definition of each region (districts, municipalities) is provided in Appendix A. The regions are labeled with the letters A to H. The figure below shows the division of regions.

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<sup>1</sup> See also the invitation to tender for Procedure F5/04.



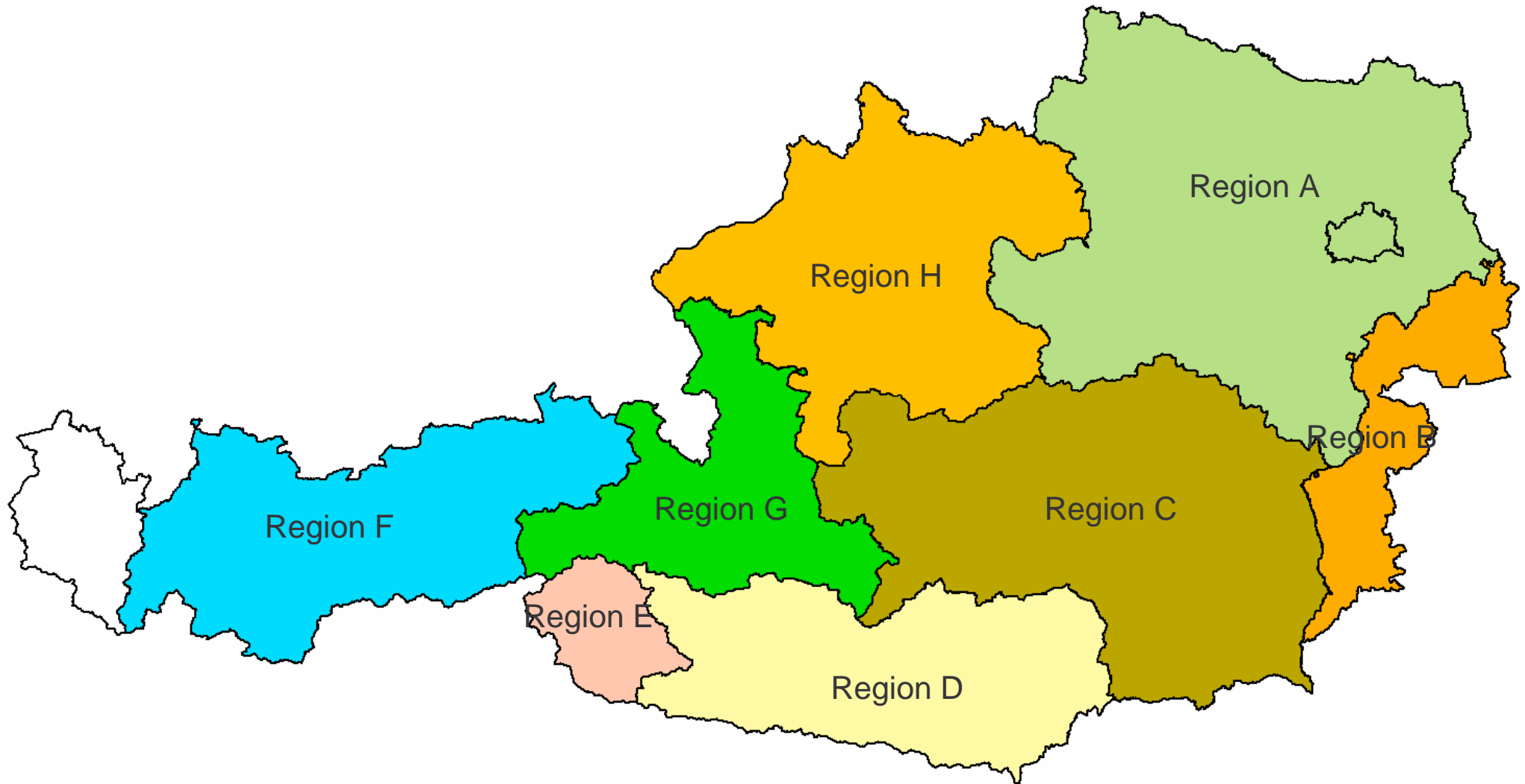


FIGURE 2: DIVISION OF REGIONS

## 2.2.2 Frequency packages

The frequencies will be auctioned off in the form of concrete frequency packages. For specific information on the terms of frequency use, please refer to Section 3.3.

The individual frequency packages have been appraised according to sociodemographic criteria (population, number of households). In the course of this procedure, this appraisal will be referred to as the lot rating. This calculation yields the following values for each frequency package and region:

Region	Frequency package / lot rating
A (Vienna + Lower Austria)	200
B (Burgenland)	15
C (Styria)	75
D (Carinthia)	35
E (East Tyrol)	3
F (North Tyrol)	40
G (Salzburg)	35
H (Upper Austria)	85

TABLE 2: LOT RATING PER FREQUENCY PACKAGE

## 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 in which they would like to acquire a frequency package. The applicants can choose to submit applications for all regions.
- Application for bidding entitlement points in the auction procedure.

No concrete frequency packages can be named in the application. Instead, applicants are to request bidding entitlement points for the auction procedure (see Section 2.7). The bidding entitlement must be backed by a bank guarantee (or an equivalent instrument; see Section 2.4). The number of bidding entitlement points applied for is equal to the total lot ratings for the maximum number of frequency packages a bidder would like to acquire (see Table 2). The required amount of the bank guarantee is to be calculated by multiplying the bidding entitlement points by EUR 1,500.00. 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 number of bidding entitlement points requested. 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 (see Section 2.7). The maximum number of bidding entitlement points that can be applied for is 488 (i.e., an application covering all regions). The following examples will shed more light on the issue of bidding entitlement:

Example 1: A bidder applies for 200 points and names all regions. This would either enable the bidder to acquire the frequency package in Region A (and thus no other frequency package in another region) or to acquire frequency packages in several other regions up to a total lot rating of 200 points (e.g., the packages in Regions B, C D, E and F, amounting to a total of 168 lot rating points).

Example 2: A bidder only wishes to acquire frequencies in Regions F, G and H. The bidder names these regions in his/her application and applies for a bidding entitlement of 160 points.

## **2.4 Bank guarantee**

All applicants are to secure the requested bidding entitlement by means of an abstract bank guarantee, payable at first demand, from a bank in good credit standing (see Appendix L). The required amount of the bank guarantee is to be calculated by multiplying the bidding entitlement points by EUR 1,500.00. If the requested bidding entitlement 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 must be the official 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 July 13, 2009 (at the latest) until at least December 31, 2009. An original of the bank guarantee is to be enclosed with the application.

Once the procedure has been completed, bank guarantees will be returned to those applicants who do not acquire frequencies in this procedure. As for applicants who do acquire frequencies in this procedure, the bank guarantees will be returned 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 region and calculated on the basis of the lot ratings in Table 2.

<b>Region</b>	<b>Bank guarantee in EUR</b>
A (Vienna + Lower Austria)	300,000.00
B (Burgenland)	22,500.00
C (Styria)	112,500.00
D (Carinthia)	52,500.00
E (East Tyrol)	4,500.00
F (North Tyrol)	60,000.00
G (Salzburg)	52,500.00
H (Upper Austria)	127,500.00

TABLE 3: AMOUNT OF BANK GUARANTEES PER FREQUENCY PACKAGE AND REGION

Instead of submitting a bank guarantee, applicants may choose to secure their bidding entitlement by depositing the appropriate amount in cash or in the form of a savings passbook.

Where the entitlement is secured by a cash deposit, the amount is to be transferred to RTR's account prior to the submission of the application:

Account number: 696 170 109  
Bank ID (BLZ): 12000 (Bank Austria)

IBAN: AT45 1200 0006 9617 0109  
SWIFT/BIC: BKAUATWW

In cases where a savings passbook is submitted, it must be an identified savings passbook issued in the name of the applicant, and the applicant must assign the passbook in accordance with Appendix K.

As in the case of a bank guarantee, once the procedure has been completed the passbooks will be returned to those applicants to whom the requested frequencies are not allocated. The collateral instruments provided by applicants who do acquire frequencies in this procedure will be returned once the frequency license fee has been paid in full. In this context, it is important to point out that amounts deposited in cash will be returned without interest.

Should the bids submitted in the course of the auction exceed the value of the bank guarantees or collateral provided, the Telekom-Control Commission reserves the right to demand additional bank guarantees or collateral.

## 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 Art. 55 Par. 4 TKG 2003, the tender documentation can also include information on 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 (Federal Law Gazette II No. 29/1998 as amended by Federal Law Gazette II No. 82/2008) stipulates that the frequency allocation fee amounts to EUR 99.78 per sector (radio field) for the allocation of a frequency or frequency pair for one digital broadband wireless access system 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 (Vienna + Lower Austria)	34,400.00
B (Burgenland)	10,200.00
C (Styria)	32,600.00
D (Carinthia)	7,800.00
E (East Tyrol)	2,100.00
F (North Tyrol)	14,700.00
G (Salzburg)	7,200.00
H (Upper Austria)	26,600.00

TABLE 4: OPENING BID FOR EACH FREQUENCY PACKAGE

## 2.6 Terms of participation

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

## **2.7 Auction procedure**

The auction will be carried out in an open, ascending, simultaneous, multiple-round format. In accordance with Art. 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 July 2009, 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

Those applicants who are not excluded from the frequency allocation procedure in accordance with Art. 55 Par. 8 TKG 2003 will be admitted to the auction.

### 2.7.2 Auction procedure: General information

In the course of this procedure, all frequency packages will be auctioned off at the same time. Each bid is to 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 is 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 will 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 provisions regarding minimum activity. 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 will 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 also 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 according to their respective standing high bids.

### 2.7.3 Bidding entitlement

Bidders may only use their bidding entitlement for the regions which they selected in the application.

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 defined 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 will 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, frequency channels in the 3.5 GHz band which have been assigned to the regulatory authority by the Austrian Federal Minister of Transport, Innovation and Technology pursuant to Art. 51 Par. 3 TKG will be allocated to the applicants.

### 3.1 Frequency spectrum allocated

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

### 3.2 Purpose of use

The spectrum to be allocated in this procedure is designated for the operation of digital broadband wireless access systems.

Digital broadband wireless access systems are radio systems for fixed or mobile wireless services and consist of (fixed) radio base stations and subscriber terminals which have a duplex-mode radio connection with the base station.

The frequencies are intended for the wireless connection of subscribers for the purpose of providing 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

In general, the provisions of the Radio Services Enforcement Order in the version approved by the World Radio Conference (WRC-07) will apply to the use of these frequencies. In addition, the following stipulations apply in particular:

#### 3.3.1 Frequency packages

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

The frequency band is divided into three frequency blocks. Figure 3 below provides a schematic overview of Frequency Blocks 1 to 3.



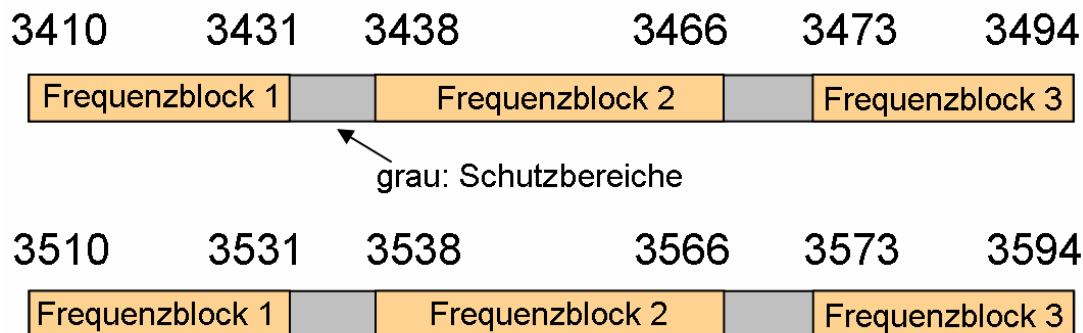


FIGURE 3: OVERVIEW OF FREQUENCY BLOCKS 1 TO 3 AND GUARD CHANNELS 1-2 AND 2-3

Frequency Block 1 is defined in Table 5. This frequency block is available in the areas outlined in Figure 4 (see Appendix A for details).

Sub-packages in Frequency Block 1	Frequency range / MHz
B1, C1, D1, E1, F1, G1A, G1B	3410-3431
	3510-3531

TABLE 5: FREQUENCY RANGES PER SUB-PACKAGE

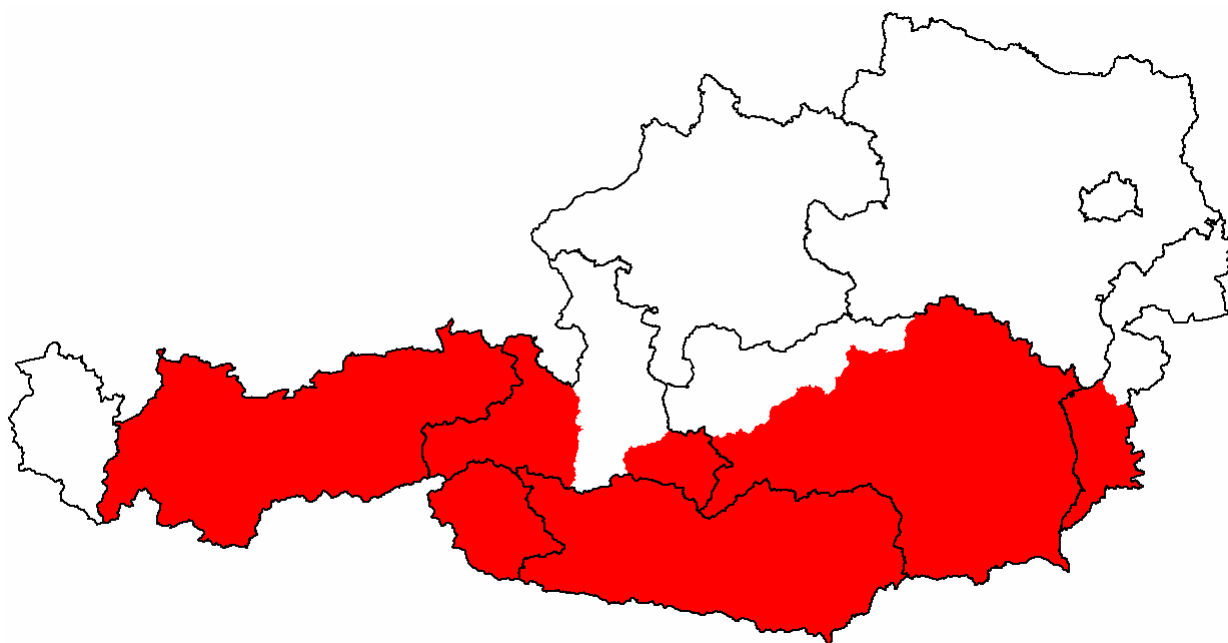


FIGURE 4: AREAS IN WHICH FREQUENCY BLOCK 1 IS AVAILABLE

Frequency Block 2 is defined in Table 6. This frequency block is available in the areas outlined in Figure 5, which are based on the definition of sub-packages in Appendix A.

<b>Sub-packages in Frequency Block 2</b>	<b>Frequency range / MHz</b>
A2, C2, G2, H2	3438-3466 3538-3566

TABLE 6: FREQUENCY RANGES PER SUB-PACKAGE

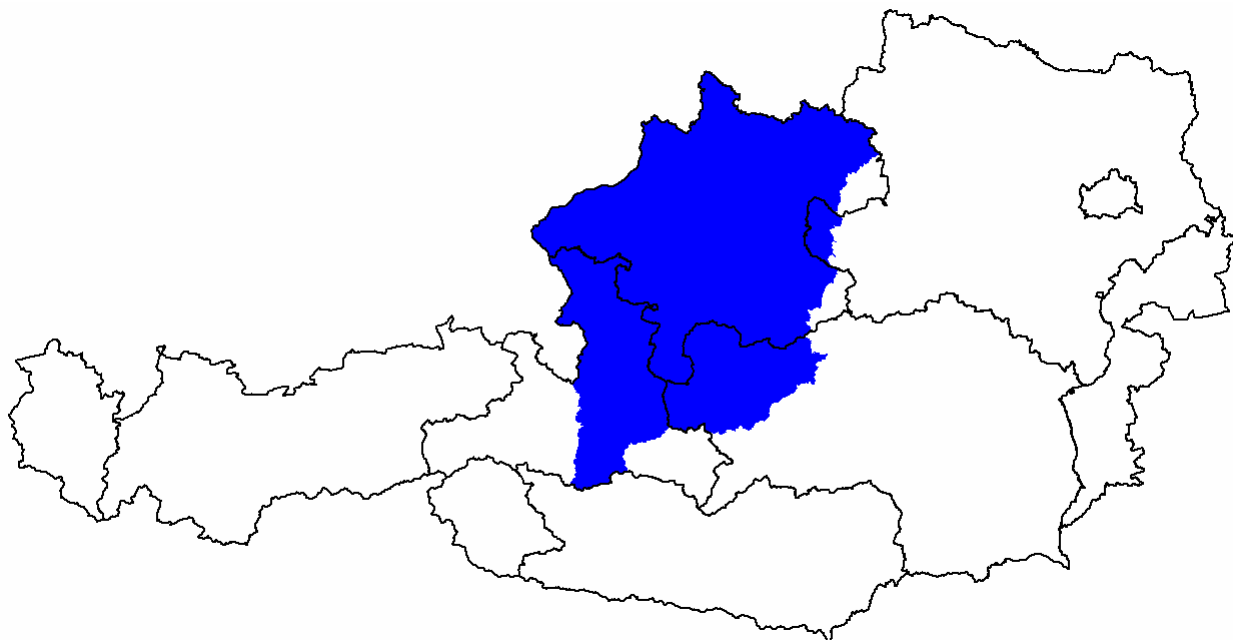


FIGURE 5: AREAS IN WHICH FREQUENCY BLOCK 2 IS AVAILABLE

Frequency Block 3 is defined in Table 7. This frequency block is available in the areas outlined in Figure 6 (see Appendix A for details).

<b>Sub-packages in Frequency Block 3</b>	<b>Frequency range / MHz</b>
A3, B3, C3, H3A, H3B	3473-3494 3573-3594

TABLE 7: FREQUENCY RANGES PER SUB-PACKAGE

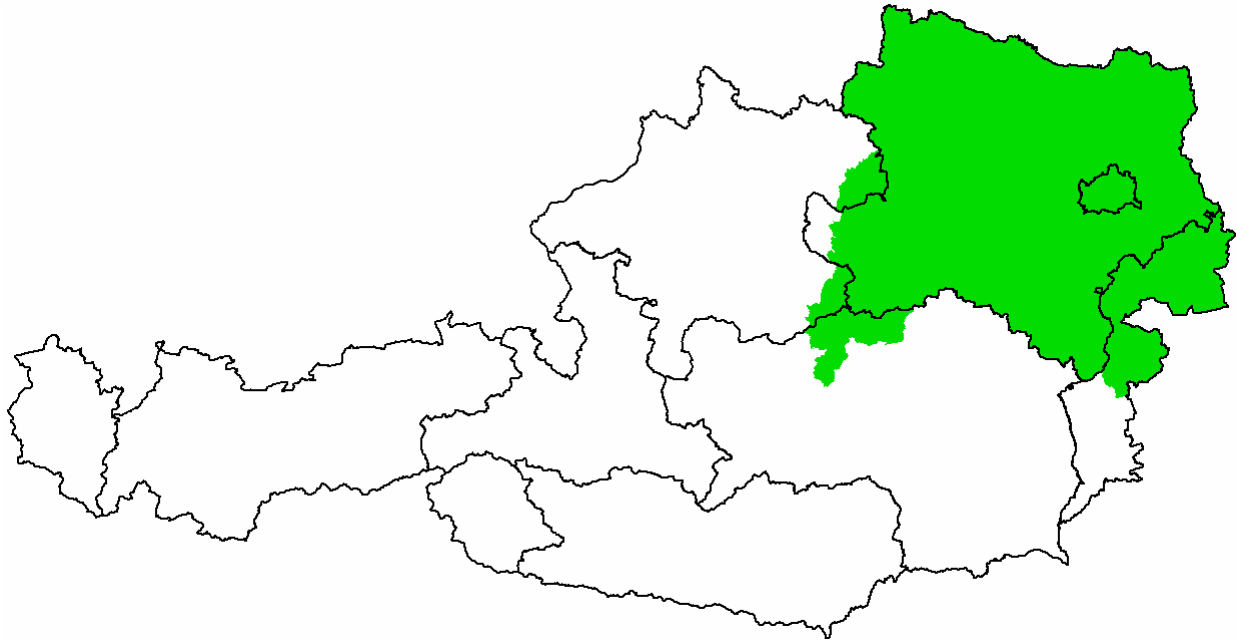


FIGURE 6: AREAS IN WHICH FREQUENCY BLOCK 3 IS AVAILABLE

### 3.3.2 Guard channels

Tables 8 and 9 show the guard channels between Blocks 1 and 2 as well as Blocks 2 and 3.

Guard channel location:	Frequency range / MHz
Between Frequency Blocks 1 and 2	3431-3438
	3531-3538

TABLE 8: GUARD CHANNEL BETWEEN FREQUENCY BLOCKS 1 AND 2

Guard channel location:	Frequency range / MHz
Between Frequency Blocks 2 and 3	3466-3473
	3566-3573

TABLE 9: GUARD CHANNEL BETWEEN FREQUENCY BLOCKS 2 AND 3

The guard channels shown in the tables above can be used on the basis of corresponding private agreements between the holders of rights to adjacent frequencies in each respective region.

In other cases, these frequencies will serve as guard channels in order to avoid interference.

The packages in Regions A to H each comprise 1 to 3 different sub-packages as shown in Table 10. These sub-packages can only be used in certain areas of each region. The regions in which each of the sub-packages can be used are shown in Appendix A and Figure 7.

<b>Region</b>	<b>Sub-package</b>
A (Vienna + Lower Austria)	A2, A3
B (Burgenland)	B1, B3
C (Styria)	C1, C2, C3
D (Carinthia)	D1
E (East Tyrol)	E1
F (North Tyrol)	F1
G (Salzburg)	G1A, G1B, G2
H (Upper Austria)	H2, H3A, H3B

TABLE 10: SUB-PACKAGES AND USAGE REGIONS

Note: The sub-packages do not overlap; for example, Region B consists of Sub-Packages B1 and B3, each of which can be used in different areas of the region.

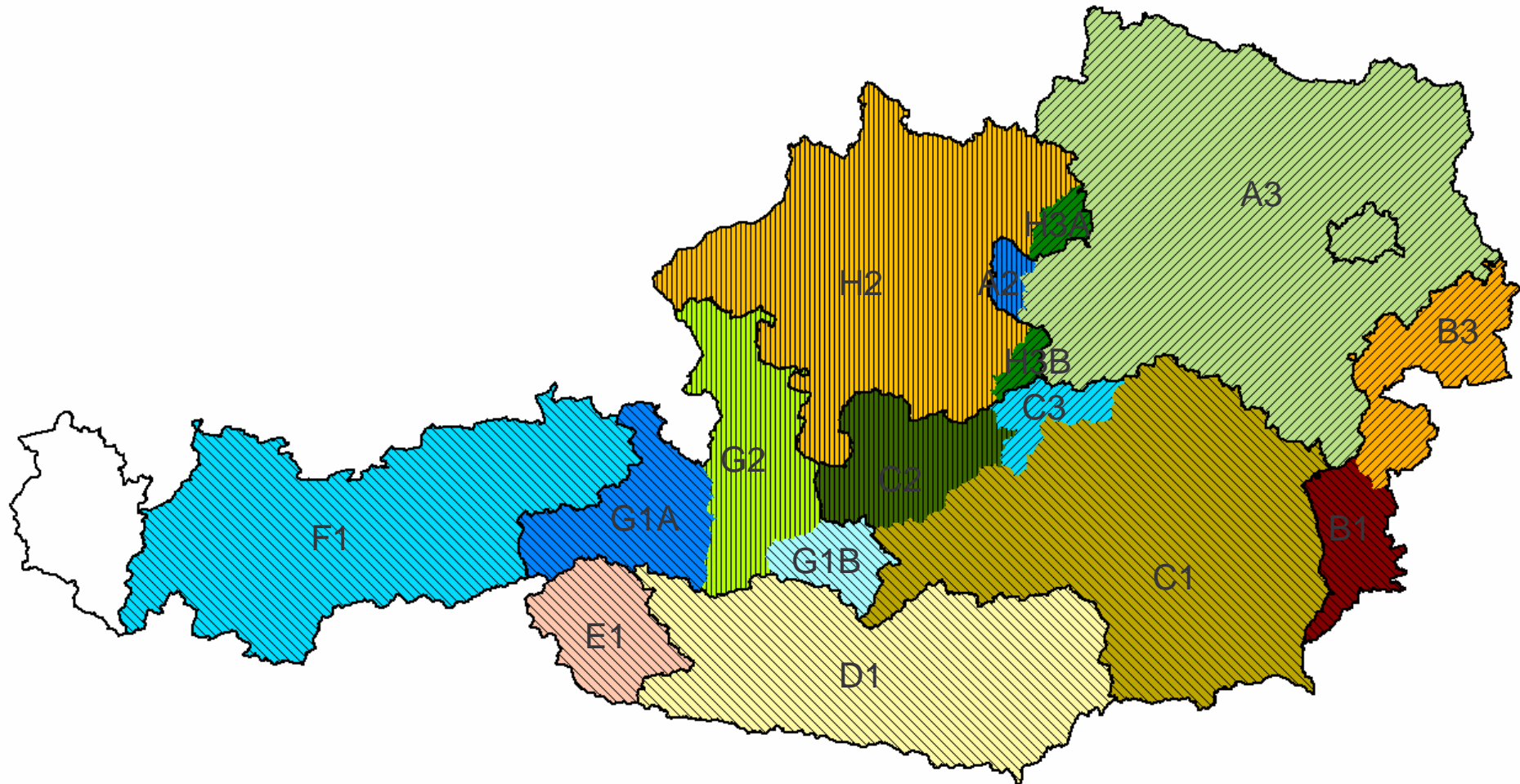


FIGURE 7: MAP OF SUB-PACKAGES AND USAGE REGIONS

### 3.3.3 Fundamental technical features of digital broadband wireless access systems

The technical features defined in Radio Interface Description FSB-RR039 shall apply to these digital broadband wireless access systems. This interface description is provided in Appendix E.

Technology neutrality: Within the framework of Radio Interface Description FSB-RR039 and the Commission Decision on the harmonisation of the 3400-3800 MHz frequency band (C(2008) 1873, see Appendix I), all suitable technologies, including the IEEE 802.16a/m standard in particular, can be used.

The operators will be required to plan their networks with due attention to the principles laid down in ECC Report 33 (Cavtat, May 2003, see Appendix G) as well as ECC Report 76 (Cross-Border coordination of Multipoint FWS in 3.4 to 3.8 GHz, Vilamoura, February 2006) and ECC Report 100 (Compatibility between BWA in the band 3400-3800 MHz and other services, Bern, February 2007).

### 3.3.4 Carrier power, radiated power

The maximum RF power levels indicated in 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 borders between usage regions within Austria

The borders between usage regions are defined by the borders between the sub-packages.

(1) Where frequencies have been allocated in an adjacent usage region in Procedure F5/04, the spectral power flux density (PFD) generated by a digital broadband wireless access system within Austria may not exceed  $-122 \text{ dBW}/(\text{MHz}\cdot\text{m}^2)$  in the adjacent usage region<sup>2</sup> at a distance of 7.5 km from the border of the usage region for which the frequency was allocated.

(1a) Where frequencies allocated in this procedure (F1/09) or in Procedure F1/08 are or were used in an adjacent usage region, frequency usage within Austria must comply with the provisions of the Commission Decision of 21 May 2008 on the harmonisation of the 3400 – 3800 MHz frequency band for terrestrial systems capable of providing electronic communications services in the Community (2008/411/EC).

(2) The regulations under Items (1) and (1a) only apply in cases where frequencies in adjacent usage regions are allocated to different operators.

(3) Operators to whom the same frequencies are allocated in adjacent usage regions will be permitted to enter into agreements to change the maximum power flux density values listed under Item (1) or (1a).

(4) Where frequencies were allocated in an adjacent usage region in Procedure F5/04 or F1/08, network operators to whom the same frequencies are allocated in adjacent usage regions will be required to coordinate the construction of radio base stations within a distance of 7.5 km from shared borders between usage regions. In this context, the locations of the radio base

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<sup>2</sup> Note: In the technical terms of use set forth in Procedure F1/08, the term "region" is used synonymously with the term "usage region". However, this term has been defined differently in this invitation to tender and therefore cannot be used in this document.

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 digital broadband wireless access system must not exceed the following values:

- (1) Preferred frequency                    -122 dBW/(MHz\*m<sup>2</sup>) in the adjacent country at a distance of 15 km from the national border
- (2) Non-preferred frequency        -122 dBW/(MHz\*m<sup>2</sup>) 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 11: PREFERRED FREQUENCIES IN BORDER AREAS:



(3) Spectral power flux density is to be calculated according to the propagation model in ITU Recommendation ITU-R P.452; however, this calculation is 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 Items 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 observed in all cases.

### 3.3.10 Additional guard distances between frequency blocks

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

(2) In particular, the operators of radio systems which use the TDD technique and/or operate in accordance with the provisions applicable to mobile radio services are to take suitable measures to remedy any interference or disturbances arising in radio systems which use the FDD technique and/or operate in accordance with the provisions applicable to mobile radio services 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 (cf. Appendix E), the maximum field strength created by radio transmission systems at the locations indicated must not exceed the limit of 105 dB $\mu$ V/m (measured at each system-specific bandwidth).

### 3.3.12 Duration of use

Under Art. 54 Par. 11 TKG 2003, frequencies can only be allocated for a limited period of time. The time period is to be defined according to reasonable objective and economic criteria. These frequencies will be allocated to the operator until December 31, 2019.

### 3.3.13 Transfer of frequencies

Under Art. 56 Par. 1 TKG 2003, operators are also permitted to transfer frequency usage 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 in full) 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 with each package. A municipality will be considered covered when the coverage requirements listed under Items 2 to 4 below have been fulfilled in that municipality. The table below shows the minimum number of municipalities to be covered per package and the relevant deadlines for meeting the requirement.

Region	Number of municipalities to be covered	
	by Dec. 31, 2010	by Dec. 31, 2011
A (Vienna + Lower Austria)	58	115
B (Burgenland)	17	34
C (Styria)	54	109
D (Carinthia)	13	26
E (East Tyrol)	3	7
F (North Tyrol)	25	49
G (Salzburg)	12	24
H (Upper Austria)	45	89

TABLE 12: COVERAGE REQUIREMENTS FOR MUNICIPALITIES

2. In the minimum number of municipalities shown in Table 12, the following cumulative level of coverage (defined as the percentage of the resident population covered in relation to the total resident population) must be ensured:

- 20% coverage by December 31, 2010
- 30% coverage by December 31, 2011

There are no coverage requirements in the other municipalities.

3. The planned services are to be offered commercially using an independently operated network.
4. A carrier service with a data rate of at least 384 kBit/s in the downlink and 128 kBit/s in the uplink must be offered.

Operators of public communications networks are entitled to the shared use of antenna masts and high-voltage power line masts under Art. 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 and review 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 a region 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 may take measurements to verify coverage levels. The costs of this verification process are to be borne by the frequency allocation holder.

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 penalty amounts starting on December 31, 2010:

<b>Region</b>	<b>Penalty amount for 0% coverage (EUR)</b>
A (Vienna + Lower Austria)	300,000.00
B (Burgenland)	22,500.00
C (Styria)	112,500.00
D (Carinthia)	52,500.00
E (East Tyrol)	4,500.00
F (North Tyrol)	60,000.00
G (Salzburg)	52,500.00
H (Upper Austria)	127,500.00

TABLE 13: PENALTY 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 actually 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 starting on December 31, 2010 until the operator has reached the required coverage level.

### 3.6 Penalty for early return of frequencies

With regard to frequency administration, the Telecommunications Act 2003 stipulates the objective of ensuring the most efficient possible use of frequencies. Accordingly, Art. 1 Par. 2 No. 2d stipulates that regulatory measures are to ensure the efficient use and effective administration of frequencies. Art. 55 TKG 2003 also reflects this fundamental objective by stipulating that frequencies are to be allocated to the applicant who ensures the most efficient use. Finally, it is also necessary to refer to Art. 54 Par. 12 TKG 2003, which states that a frequency license may be revoked if the licensed frequency is not used for the intended purpose within six months of licensing or if usage is interrupted for more than six months.

The provisions cited above clearly demonstrate that one objective of the TKG 2003 is to prevent the non-use of allocated frequencies, as the frequencies would be removed from the market in such a case.

In order to ensure that these objectives of the TKG 2003 are fulfilled, the regulatory authority has made arrangements for cases in which an allocation holder fails to use allocated frequencies and returns such frequencies to the regulatory authority. The purpose of these regulations is to provide allocation holders with an incentive to return frequencies early so that they can be made available to the market once again in such cases.

If frequencies are returned to the regulatory authority before the coverage measurement date, a penalty will be imposed on the basis of the time at which the frequencies are returned.

Region	before Mar. 31, 2010	before Aug. 31, 2010	before Dec. 31, 2010
A (Vienna + Lower Austria)	-	100,000.00	200,000.00
B (Burgenland)	-	7,500.00	15,000.00
C (Styria)	-	37,500.00	75,000.00
D (Carinthia)	-	17,500.00	35,000.00
E (East Tyrol)	-	1,500.00	3,000.00
F (North Tyrol)	-	20,000.00	40,000.00
G (Salzburg)	-	17,500.00	35,000.00
H (Upper Austria)	-	42,500.00	85,000.00

TABLE 14: PENALTY AMOUNTS FOR EARLY RETURN OF FREQUENCIES

If the frequencies are returned prior to March 31, 2010, no penalty will be imposed. Between April 1, 2010 and August 31, 2010, a penalty of EUR 100,000.00 will be charged; this penalty will be increased to EUR 200,000.00 if frequencies are returned between September 1, 2010 and December 31, 2010.

### 3.7 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 Art. 55 Par. 1 TKG 2003, the regulatory authority is to allocate the frequencies placed under its authority to applicants who fulfill the general prerequisites under Par. 2 No. 2 leg. cit. 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 Art. 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.

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 (or from a comparable register maintained in the applicant's country of incorporation and equivalent to the Austrian 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 in their current version;
- f) A description of the applicant's business activities;
- g) The name of the applicant's authorized recipient, who must fulfill the requirements set forth in Art. 9 of the Austrian Service of Documents Act (ZustG), as well as that of an authorized representative (as defined in Art. 10 AVG) along with his/her telephone and fax numbers as well as postal and e-mail addresses (see also Section 5.3 of this document). These two parties can be the same person;
- h) Any and all other information 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 Art. 55 Par. 2 No. 2 TKG 2003.

Should the information indicated above not be provided in its entirety, the Telekom-Control Commission will request the missing information as it deems necessary for the purpose of

making a decision. In this context, the Telekom-Control Commission may also request additional information as necessary for this purpose.

#### 4.1.2 Information on the applicant's stakeholders, shareholders, etc.

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 under Items a) to d) in Section 4.1.1 (with the required information under Item d) referring to the respective company instead of the applicant) as well as f) and h) is to be submitted wherever applicable.

In addition, the following is to be indicated/described for each of these parties:

- i) Relationship to the applicant (e.g., number and type of capital shares or securities held), syndicate/consortium agreements;
- j) Group parent company/companies, superordinate group company/companies (where applicable).

In cases where capital shares or other securities issued by the applicant are held for a third party by persons acting as trustees or in other similar functions, these circumstances are to be noted in the application, and the aforementioned details are to be provided for the actual beneficial owner.

#### 4.1.3 Additional description of ownership structure for superordinate companies holding substantial interests

In the event that multiple superordinate stakeholders (e.g., shareholders, bearers of options, of certificates of entitlement, of preferred stock, of debt capital or of other securities issued by the applicant) hold a *consolidated* interest of 25% or more in the applicant (ultimate owner principle) without holding a *direct* stake in the applicant, these interests must be described in the application.

In this context, the information required in Section 4.1.2 of this document is to be provided on each company which holds a consolidated interest of at least 25% in the applicant, regardless of the superordinate level at which this interest is held.

Therefore, the information required in Section 4.1.2 of this document must also be provided for companies which hold a stake of 25% or more in the applicant not through a specific investment in *one* of the companies superordinate to the applicant but through consolidation of *multiple* superordinate interests in *multiple* companies superordinate to the applicant.

In cases where capital shares or other securities issued by the applicant which correspond to an interest of 25% or more – even if these are held indirectly through superordinate interests – 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 details are to be provided on the actual beneficial owner.

The information required in this section can be illustrated using tables or diagrams which show direct and indirect interests as well as the type of control over the applicant (especially the type of interest held). In depicting such interests, applicants are to ensure that these depictions enable the Telekom-Control Commission to identify any economic interrelationships through which one applicant may exert substantial competitive influence on another applicant (or other applicants) directly or indirectly.



Should the information indicated above not be provided in its entirety, the Telekom-Control Commission will request the missing information as it deems necessary for the purpose of making a decision. In this context, the Telekom-Control Commission may also request additional information as necessary for this purpose.

#### 4.1.4 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 4.1.2 is to be included in the application for all consortium members.

Should the information indicated above not be provided in its entirety, the Telekom-Control Commission will request the missing information as it deems necessary for the purpose of making a decision. In this context, the Telekom-Control Commission may also request additional information as necessary for this purpose.

## **4.2 Technical capabilities, quality of services and coverage requirements**

Under Art. 55 Par. 2 No. 2 TKG 2003, there must be no reason to believe that the applicant will fail to provide the planned service, especially with regard to quality and coverage requirements. In addition, the applicant must possess the technical capabilities necessary to provide such services. The information required in the following sections is intended to aid the regulatory authority in reviewing these prerequisites.

#### 4.2.1 Description of planned services and service quality

The following information is required:

- Description of planned services;
- Data rates;
- Quality of services (reliability).

#### 4.2.2 Planned radio communications network

The following information is required:

- Technology planned for the radio communications system;
- Radio network planning methods;
- Number of radio links and/or point-to-multipoint radio systems over time.

### **4.3 Financial strength**

Applicants will be required to demonstrate that they have 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 must also be in line with the amount of the frequency license fee offered.

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

#### 4.3.1 Business plan / balance sheet

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 (3) years after frequency allocation.

The business plan can be structured in any way the applicant chooses. However, the most essential costs and revenues should be clearly visible in this structure (see Appendix J).

In any case, a bank guarantee (original document) or an equivalent instrument is also to be enclosed with the application (see Section 2.4). For further details, please refer to Section 2.4.

#### 4.3.2 Financing

Applicants will also be required to provide evidence that they can raise capital in line with 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, terms and lenders for all loans in the first four years after frequency allocation

#### 4.4 Declaration of completeness

Properly completed written applications must contain all of the information required in Section 4. In addition, a Declaration of Completeness (Appendix B) 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 observed 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 the 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 (referred to as the "application") must be received by the Telekom-Control Commission in a sealed envelope or package labeled "Application for Frequency Allocation – 3.5 GHz" by July 13, 2009, at 12:00 noon local time (CET). Applications received after the deadline will not be reviewed.

Applications for frequency allocation are to be submitted in writing (one original) 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 (Art. 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 in accordance with Art. 9 of the Austrian Service of Documents Act. 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 without delay. In order to facilitate correspondence between the authority and the applicant, applicants are advised to nominate an authorized recipient with his/her main residence in Austria for the sake of efficiency in the procedure.

### **5.4 Clarifications**

For the purpose of preparing their applications, interested parties who have paid the fee of EUR 200.00 for the provision of tender documentation will be allowed to submit questions to the Telekom-Control Commission regarding the tender documentation during a 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) and must be received by May 15, 2009 at 10:00 am local time (date and time of receipt). Questions will be answered in writing by June 2, 2009 (date of dispatch).

The 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 appropriate period specified in each case 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 (Art. 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 Art. 55 Par. 2 No. 2 TKG 2003, and to support in the course of the auction procedure.

### **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 (Art. 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 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 Art. 17 Par. 3 AVG. Likewise, the Telekom-Control Commission reserves the right to allow the inspection of records which are labeled by the applicants as company or trade secrets if damage to the legitimate interests of a party or third party is not expected to arise from allowing such an inspection.

Art. 125 TKG 2003 as well as Austrian Administrative Court Ruling 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 the 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 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 announce the names of the winning bidders after the end of the auction as well as the frequency allocation as public information on the regulatory authority's web site.

### **5.9 Annulment of the invitation to tender, discontinuation of the procedure**

Under Art. 55 Par. 12 TKG 2003, the regulatory authority is authorized to annul the invitation to 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 Art. 55 Par. 2 TKG 2003;
3. none or only one of the applicants who fulfills the requirements under Art. 55 Par. 2 TKG 2003 actually participates in determining the high bid;
4. the procedure results in the applicants requesting less frequency spectrum than the amount 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 frequency allocation decision takes legal effect.

In the 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 on the bank guarantee (or other instrument provided for in Section 2.4) and to collect any unpaid portion of the frequency license fee by means of administrative enforcement.

### **6.2 Spectrum fees**

In accordance with Art. 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 (Federal Law Gazette II No. 29/1998 as amended by Federal Law Gazette II No. 82/2008). 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 the procedure are to be paid on a pro rata basis by those applicants to whom frequencies are allocated (Art. 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.