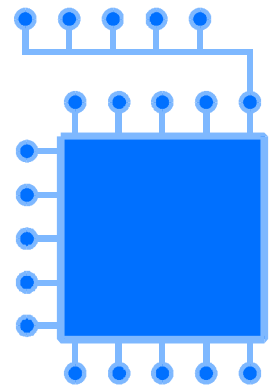


Telekom-Control Commission

Mariahilferstrasse 77-79

A-1060 Vienna, Austria

K 06/02



**telekom
control
kommission**

Vienna, July 19, 2002

Tender Documentation:

**Frequency Allocation Procedure for Voice Communication
Services and Other Public Communication Services using
Independently Operated Mobile Networks
in the GSM 900 and GSM 1800 Frequency Ranges**

NON BINDING TRANSLATION

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1 Introduction

The Telekom-Control Commission is carrying out a frequency allocation procedure for mobile voice communication services and other public communication services using independently operated mobile networks. Six frequency packages (see Section 3.2) in the frequency ranges reserved for GSM are to be auctioned off.

1.1 General Legal Terms and Conditions

This invitation to tender is being carried out on the basis of the Austrian Telecommunications Act (TKG, BGBl. I No. 100/1997) in its current version (BGBl. I No. 32/2002). 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. 65/2002).

The amendment to the Telecommunications Act (BGBl. I, No. 26/2000) which went into effect on June 1, 2000, has brought about a separation of licensing procedures and frequency allocation procedures. Therefore, the regulatory authority now puts the allocation of frequencies out to tender under § 49a Par. 2 TKG, as opposed to the licenses put out to tender before the amendment (§ 22 Par. 2, previous TKG).

The frequency allocation procedure is governed by § 49a TKG, while regulations pertaining to licensing procedures are still found under § 15 TKG.

1.1.1 Frequency Allocation Procedure

Under § 49a Par. 1 TKG, the regulatory authority is to allocate the frequencies placed under its authority to the applicant that fulfills all general prerequisites under § 15 Par. 2 No. 1 and 2 TKG 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 parts:

1. Once the applications have been submitted, the regulatory authority will check whether all prerequisites have been met in accordance with § 15 Par. 2 Nos. 1 and 2 TKG (cf. Section 2). Those applicants who do not fulfill the prerequisites will be excluded from the frequency allocation procedure in accordance with § 49a Par. 6 TKG. 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 § 49a Par. 7 TKG 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) in September 2002, and to send the Rules of Procedure to all applicants as soon after the application deadline as possible.
2. The second part of the frequency allocation procedure will be carried out in the form of an auction. (cf. Section 3.10.2).

1.1.2 Licensing Procedure

Because the provision of mobile voice communications services and other public mobile communications services using independently operated networks is subject to mandatory licensing under § 14 Par. 1 TKG, those applicants who do not have a license to provide 2nd-generation mobile communication services will also be required to submit an application for a license.

Licenses will be awarded once the applicants to whom frequencies will be allocated have been determined (§ 15 Par. 2 No. 3 TKG).

1.2 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 19, 2002	
Questions answered by the Telekom Control Commission:		Section 4.4
Deadline for questions	August 19, 2002, 10:00 am (local time)	
Questions to be answered by:	September 2, 2002	
End of tender submission period	September 19, 2002, 2:00 pm (local time)	
Decision on admission to auction	September 30, 2002	Section 3.8
Auction procedure	October 14, 2002	Section 3.10.2
Date of frequency allocations	Within 14 days after end of auction	

TABLE 1: ALLOCATION PROCEDURE SCHEDULE

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

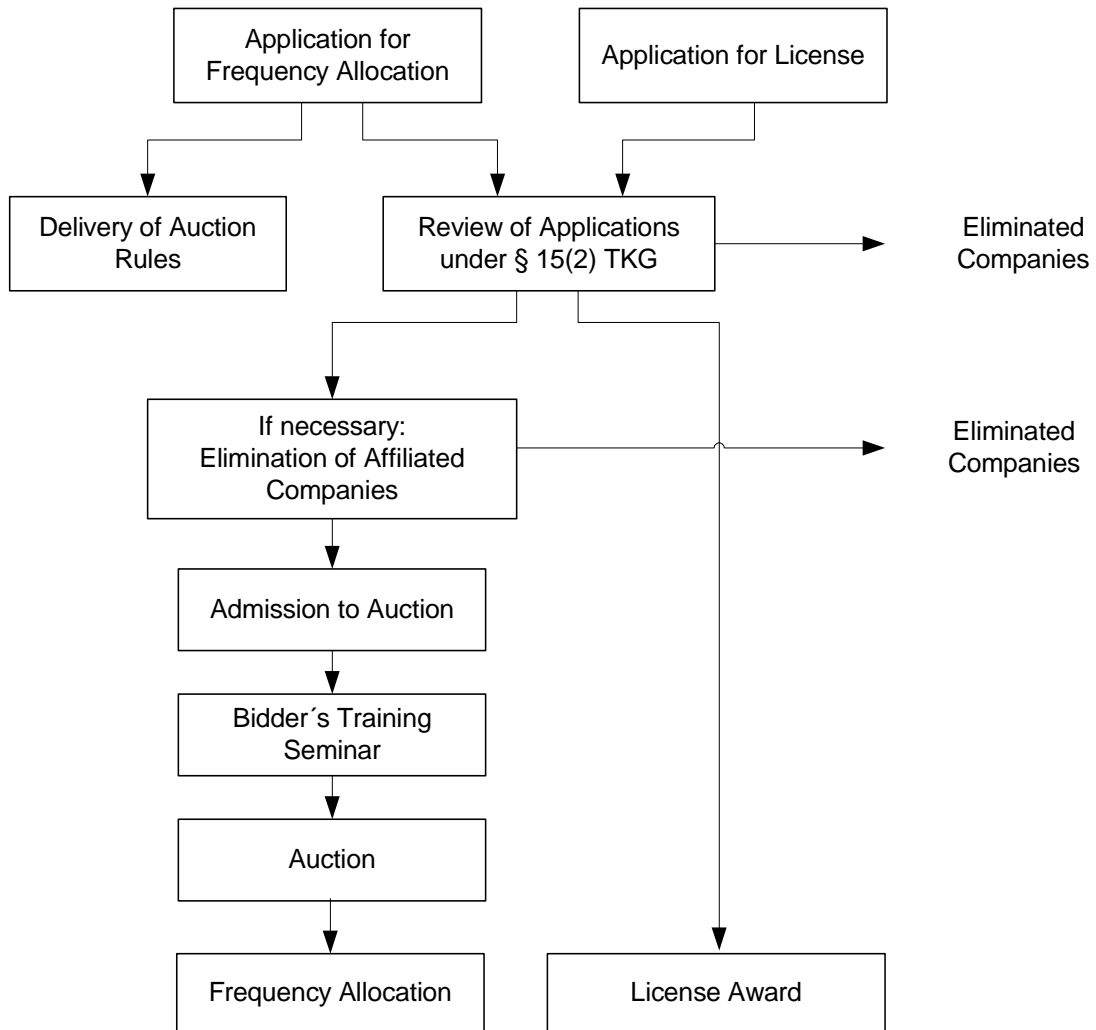


FIGURE 1: PROCEDURE STEPS

2 Application Documents

Under § 49a Par. 1 TKG, frequencies can be allocated to those applicants who fulfill the prerequisites stipulated under § 15 Par. 2 Nos. 1 and 2 TKG. In the course of the licensing procedure for public mobile communication services, fulfillment of the prerequisites specified under § 15 Par. 2 TKG is to be verified as well. In the case of companies applying for frequency allocation without a (previously awarded) mobile communications license, the application for frequency allocation as well as the application for a license are to contain the documents and information specified in Sections 2.1 to 2.4. If a combined application is submitted, this information need only be submitted once.

If an applicant has already been awarded a license to provide 2nd or 3rd-generation mobile voice communication services, then the application only has to contain the documents and information specified in Sections 2.3.2 and 2.4, unless changes have been introduced since the last application was submitted (especially those concerning the company's ownership structure).

2.1 Organizational Structure

In order to determine whether applicants fulfill the prerequisites indicated in § 15 Par. 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 3.8.1.

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

2.1.1 Information on the Applicant

- (a) 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 shares, precise information on the stakeholders at the time of application submission 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 audited annual accounts from the last three years;
- (h) A summary of all essential financial data (revenue and profit data) from the last three years;
- (i) 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 4.3). These two parties can be the same person.

- (j) 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 § 15 Par. 2 TKG.

2.1.2 Information on the Applicant's Stakeholders

For each stakeholder, shareholder, or bearer of options, of certificates of entitlement, of preferred stock, of debt capital or of other securities issued by the applicant, the information indicated in lit. 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 owning 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 under § 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
- (e) The audited annual accounts from the last three years;
- (f) A summary of all essential financial data (revenue and profit data) from the last three years;

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.

If a partner (shareholder) belongs to a group of companies, the group's essential financial data is also to be submitted in consolidated form.

2.1.3 Information on Consortia

In the case of consortia or joint ventures, the following additional information will be necessary:

- (a) The role of each member in the consortium and information on the resources, experience and expert knowledge of each member.
- (b) The type of relationship among the members as well as detailed information on:
 - Syndicate agreements, consortium agreements or
 - Joint venture agreements;
 - Declarations of intent;

- Stakeholder agreements.

In addition, the information indicated in Section 2.1.2 is to be included in the application for all consortium members .

2.2 Technical Competence, Quality of Services

Under § 15 Par. 2 TKG, there must be no reason to believe that the applicant will fail to provide the service applied for in compliance with the license to be issued, especially with regard to service quality and coverage obligations.

2.2.1 Construction of the GSM Network

(a) Information on planned infrastructure:

- Overview of network construction, with schedule
- Locations of essential infrastructural elements of radio and core network in electronic format (GIS) and map printouts; essential technical characteristics of each infrastructural element (frequency range, capacity, etc.)
- Connections between infrastructural elements (microwave radio links, leased lines, own lines) in electronic format (GIS) and map printouts; capacity of each connection
- Interconnection with other networks (interconnection points, capacity)

(b) Planned levels of population coverage, with schedule

(c) Short description of planned services and service quality

2.3 Financial Strength

In order to demonstrate the applicants' financial strength, applications are to include the following information:

2.3.1 Business Plan

Applicants are to submit a business plan based on their strategy for the business area(s) in which the requested frequencies are to be used, their overall market assessment as well as their estimate of operative business in the five years after the license is awarded. Applicants are to take into account that the frequency license fee offered in the course of the auction is to be commensurate with the financial situation of the company as described in the application and with the development of business operations to be expected.

If considered useful, additions to the information requested in Appendix A are both permitted and desired.

A bank guarantee is also to be enclosed in the application. Details on the bank guarantee can be found in Section 3.6.

2.3.2 Financing

Furthermore, applicants are to submit evidence that the necessary capital can be raised to cover the frequency license fee, including the following information:

- 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

2.4 Declaration of Completeness

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.

3 Frequency Allocation Procedure

3.1 Steps in the Procedure

As mentioned in Section 1.1.1, the frequency allocation procedure is divided into 2 parts. In accordance with § 49a Par. 1 TKG, the regulatory authority will check whether the applications fulfill the criteria stipulated in § 15 Par. 2 Nos. 1 and 2 TKG in the first stage. Those applications which do not fulfill the prerequisites pursuant to § 15 Par. 2 Nos. 1 and 2 TKG will be excluded from the frequency allocation procedure in accordance with § 49a Par. 6 TKG. In addition, the first stage will involve a review of the applicants to determine whether they are affiliated with each other through groups of companies. In case where affiliated companies apply for admission to the auction, the company that submitted its application first will be admitted to the auction.

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

3.2 Objects of the Auction

3.2.1 Frequency packages

Six frequency packages from the ranges dedicated to the GSM public digital cellular mobile communications systems under the Austrian Frequency Utilization Ordinance (BGBl. II No. 364/1998) are to be auctioned off in this procedure. Table 2 shows the channel numbers assigned to the frequency packages. The frequency channels and assigned frequency ranges correspond to the Absolute Radio Frequency Channel Numbers (ARFCNs) defined in ETSI Standard TS 100 910, "Digital cellular telecommunications system (Phase 2+); Radio transmission and reception" (3GPP TS 05.05, Version 8.12.0, Release 1999), Chapter 2: "Frequency bands and channel arrangement."

A guard channel is provided for between each frequency package (cf. Table 2). These guard channels serve to prevent radio interference between operators, thus they are not usually allocated. In cases where a single applicant acquires adjacent frequency packages, the guard channels between them shown in Table 2 will be allocated to the applicant as well. This will also be the case when the operator was allocated one of the packages at an earlier point in time.

Frequency Package	Channel Nos.	Number of channels	Size
1	975-998	24	2 x 4.8 MHz
Guard channel	999		
2	1000-1022	23	2 x 4.6 MHz
Guard channel	1023		
3	1-13	13	2 x 2.6 MHz
Guard channel	14		

4	15-27	13	2 x 2.6 MHz
Guard channel	28		
5	29-39	11	2 x 2.2 MHz
Guard channel	40		
Guard channel	574		
6	575-584	10	2 x 2.0 MHz
Guard channel	585		

TABLE 2: FREQUENCY PACKAGES

3.2.2 Duration of Use

Under § 49 Par. 13 TKG, 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 frequency channels awarded in the course of this procedure will be allocated for a limited time period ending on December 31, 2019, on the condition that the network operated and services provided by the licensee in the last three years allow the Commission to expect a level of quality on par with European standards. Evidence of this level of quality is to be submitted by December 31, 2015. Likewise, frequencies will be allocated on the condition that the applicant possesses a valid license to provide 2nd-generation mobile communications services. Frequency allocations will thus be considered void when the license expires or is revoked for other reasons, as stipulated in § 23 TKG.

3.2.3 Terms of Use

The frequency channels to be awarded in the course of this procedure are intended for the provision of public voice communication services and other public mobile communication services using independently operated telecommunications networks in the GSM frequency ranges. The radio interface is to be implemented in accordance with the GSM standard and all applicable ETSI standards.

Additional terms as well as restrictions of use can be found in Appendix D.

3.2.4 Coverage Obligations

In the case that frequency packages are acquired by an applicant who does not have a license to provide 2nd-generation mobile communications services, the frequencies will be allocated on the following conditions:

The public mobile communication service is to be offered commercially with the following level of coverage:

- 25% coverage by December 31, 2004
- 50% coverage by December 31, 2006

“Level of coverage” is defined as the percentage of the resident population covered in relation to the total resident population. This level of coverage is to be offered using an independently operated network.

The definition of coverage areas will be based on simulation calculations performed by the licensee using recognized simulation tools. The base stations in operation as of the deadline as well as their technical parameters will be taken as the basis for these calculations. Capacity utilization levels for radiocommunication cells and quality parameters that are realistic and based on real measurement data are to be used as input parameters for the simulation calculations. The simulation calculations are to focus on coverage outside of buildings using standard handsets that are available on the consumer market.

The population units (smallest possible covered and non-covered regions) to be used are the census zones for provincial capitals, otherwise the towns specified by the Austrian Statistics Agency (*Statistik Austria*). A census zone will be considered covered if its area center is covered according to the criteria indicated above. A town will be considered covered if its centerpoint (town data is available as point data) 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 (for provincial capitals) and all towns (for the rest of Austria) covered. The resident population covered – expressed as a percentage of the total population of Austria – will be the resulting level of coverage.

Licensees are to submit the following documents to the Telekom-Control Commission in electronic format at the latest two months after the aforementioned deadlines, the reference date for all data being December 31st of the previous year:

- A list of all base stations including geocoded data (GIS format), cells and frequency channels
- Traffic figures and capacity utilization of cells
- Other essential input parameters for simulation calculations
- A map of Austria with base station locations and covered areas (Best Server Plot, GIS format)
- A list of towns and census zones covered
- The level of coverage calculated on the basis of this data

All information is to be submitted in accordance with a data model specified by the Telekom-Control Commission.

The Telekom-Control Commission will take measurements to verify coverage levels. The costs of this verification process are to be borne by the licensee.

3.3 Ratings of Frequency Packages

Each frequency package is rated according to its size. This value will be referred to as the *lot rating* throughout the procedure. This calculation yields the following values for each frequency package and region:

Frequency Package	Number of channels	Size	Lot rating points
1	24	2 x 4.8 MHz	240
2	23	2 x 4.6 MHz	230
3	13	2 x 2.6 MHz	130
4	13	2 x 2.6 MHz	130
5	11	2 x 2.2 MHz	110
6	10	2 x 2.0 MHz	100
Total			940

TABLE 3: LOT RATING POINTS FOR FREQUENCY PACKAGES

3.4 Applications

Each applicant is to apply for bidding eligibility (in lot rating points) in the auction procedure using the forms provided.

No concrete frequency packages can be named in the application. Instead, applicants are to apply for bidding eligibility for the auction procedure. Each applicant's bidding eligibility must be backed by a bank guarantee provided by a bank in good credit standing. The number of bidding eligibility points applied for is equal to the total lot rating points for the maximum number of frequency packages a bidder would like to acquire. The required amount of the bank guarantee is to be calculated by multiplying the bidding eligibility points by EUR 40,000.-. Bidders can submit bids on any combination of frequency packages within the scope of their bidding eligibility.

3.5 Bidding Eligibility Limit

The maximum number of bidding eligibility points an applicant can apply for is 940 lot rating points.

3.6 Bank Guarantees

All applicants are to secure the bidding eligibility 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 requested bidding eligibility points by EUR 40,000.-. If the bidding eligibility applied for is not completely backed by the bank

guarantee, the bidding eligibility 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 19, 2002 (at the latest) until at least March 31, 2003. The bank guarantee is to be enclosed with the application. Table 4 provides an overview of the bank guarantee amounts required for each frequency package.

Frequency Package	Size	Bank Guarantee in EUR
1	2 x 4.8 MHz	9,600,000.-
2	2 x 4.6 MHz	9,200,000.-
3	2 x 2.6 MHz	5,200,000.-
4	2 x 2.6 MHz	5,200,000.-
5	2 x 2.2 MHz	4,400,000.-
6	2 x 2.0 MHz	4,000,000.-

TABLE 4: BANK GUARANTEE AMOUNT PER FREQUENCY PACKAGE

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

3.7 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. The table below shows the amount of the opening bid for each frequency package (in euros).

Frequency Package	Size	Opening Bid in EUR
1	2 x 4.8 MHz	9,600,000.-
2	2 x 4.6 MHz	9,200,000.-
3	2 x 2.6 MHz	5,200,000.-
4	2 x 2.6 MHz	5,200,000.-
5	2 x 2.2 MHz	4,400,000.-
6	2 x 2.0 MHz	4,000,000.-

TABLE 5: OPENING BID AMOUNT PER FREQUENCY PACKAGE

3.8 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 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. Each company or physical person, including those belonging to consortia, will be admitted to the auction only once.

3.8.1 Affiliated Companies

In this invitation to tender, only one application to participate in the frequency auction will be accepted 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 affects competition considerably (e.g., by syndicate agreements, etc.). For the purposes of this invitation to tender, "influence which affects competition considerably" is considered to be present where a significant stake (as specified in § § 91ff. BörseG) is 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 companies that are affiliated in the manner described above apply for frequencies, the applicant who submitted the application first will be admitted to the frequency auction.

3.8.2 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 are not permitted. 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 mere 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 any and all decisions made in this context in their applications. 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.

3.9 Application Documents

Properly completed written applications must contain all information requested in Section 2. 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.

3.10 Auction Procedure

3.10.1 Admission to the Auction

All applicants who are not excluded from the frequency allocation procedure under § 49a Par. 6 TKG nor eliminated due to company affiliations will be admitted to the auction (cf. Section 3.8.1).

3.10.2 Auction Procedure: General

The auction will be carried out in an open, ascending, simultaneous, multiple-round format. In accordance with § 49a Par. 7 (last sentence) of the Telecommunications Act (TKG), the detailed rules governing the auction procedure will be delivered to the parties 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) in September 2002, and to send the Rules of Procedure to all applicants as soon after the application deadline as possible.

4 Practical Information

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

4.1 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 this procedure, for the review of compliance with the official allocation decision and for all procedures otherwise associated with the license.

4.2 Applications for Frequency Allocation and Licenses

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 “Frequency Auction” by September 19, 2002, at 2:00 pm local time. Applications received after the deadline will not be reviewed. License applications should be submitted simultaneously with the application for frequency allocation. Applications for frequency allocations and license applications are to be submitted in duplicate hard copies (one original and one unbound copy) in German language, and in electronic format (CD-ROM or diskette, Microsoft WinWord and/or Excel format). Applicants will be allowed to submit a combined application for frequency allocations and licenses, as this will increase the efficiency and economy of the procedure.

Changing or withdrawing applications after the application deadline will not be permitted. This does not apply to changes in the frequency license fee in the course of the auction.

The application may not be longer than 200 pages. However, additional enclosures, such as annual reports and maps, can be attached as necessary. These enclosures will also be accepted in English.

4.3 Authorized Correspondence Recipients

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

4.4 Clarifications

For the purpose of preparing their applications, interested parties who have paid the fee of EUR 500.- 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 are to be sent only by fax (+43 1 58058 9191) or in writing, by August 19, 2002, at 10:00 am local time (date and time of receipt). Questions will be answered by fax or in writing by September 2, 2002 (date of dispatch).

Questions submitted to the Telekom-Control Commission will be collected and forwarded along with the 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.

4.5 Inquiries and Consultants

In this tender procedure, the Telekom-Control Commission may call in consultants in the course of its inquiries and surveys (§ 49a Par. 11 TKG). This also applies *inter alia* (but in no way exclusively) to inquiries related to the clarification issues mentioned in Section 4.4, to inquiries related to the review of eligibility criteria under § 15 par. 2 TKG, and to support in the course of the auction.

4.6 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 information provided by the applicants, the applicants are to label all data they regard as company and 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.

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

4.7 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.

4.8 Publication

The Telekom-Control Commission intends to publish the names of the applicants in the allocation procedure. In addition, the results of the auction will be made available on the RTR web site (www.rtr.at).

4.9 Annulment of the Tender, Discontinuation of the Procedure

Under § 49a Par. 12 TKG, the Telekom-Control Commission is authorized to annul the tender and discontinue the procedure at any stage for important reasons, especially if

1. The Telekom-Control Commission 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 § 49a Par. 1 TKG
3. None or only one of the applicants that fulfill the prerequisites under § 49a Par. 1 TKG actually participates in determining the standing high bid
4. The procedure results in the applicants requesting less frequency spectrum than that which is to be allocated

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

5 Fees

5.1 Frequency License Fee

In the case of frequency allocation, the frequency license fee offered in the course of the auction is to be paid within seven days after receipt of the official decisions on frequency allocations/license awards.

In case of non-payment (including incomplete or delayed payments) of the frequency license fee, frequency allocations and license awards will be rendered void. This fact notwithstanding, 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.

5.2 License Fee

In order to cover the administrative costs arising from the issuing of the license, a fee is to be charged in accordance with § 17 Par. 1 TKG. The amount of this fee was set at EUR 7,267.28 in the Telecommunications Fees Ordinance (TKGV, BGBl II No. 29/1998, Section 2, Chapter C, No. 2). The License Fee is to be paid within 14 (fourteen) days after receipt of the official decisions on frequency allocations/license awards.

5.3 Spectrum Fees

In accordance with § 51 TKG, spectrum fees for the use of frequencies are also to be paid by the network operators. These fees will be prescribed by the Telecommunications Offices when the operation permit is issued.

5.4 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 (§ 49a Par. 11). These costs will be prescribed in the official frequency allocation and license award decisions and are to be paid within 14 (fourteen) days of receipt of the official decisions.