
STATUTORY INSTRUMENTS

2020 No. 1199

The Wireless Telegraphy (Licence Award) Regulations 2020

PART 7

Negotiation period for the assignment of 3.6 GHz lots

CHAPTER 3

Valid full adjacency agreement and valid partial adjacency agreement

Valid full adjacency agreement

86.—(1) There is a valid full adjacency agreement if either the first situation in paragraph (2) or the second situation in paragraph (3) has occurred.

(2) The first situation is where—

- (a) each winning bidder for 3.6 GHz lots has submitted a full adjacency agreement form (signed on its behalf by two authorised persons) to OFCOM;
- (b) the content of the table on each full adjacency agreement form (outlining the essential aspects of the full adjacency agreement described in regulation 82) is the same on each form received; and
- (c) each winning bidder for 3.6 GHz lots submitted the form to OFCOM during the first phase of the negotiation period and in accordance with the prescribed method for submission.

(3) The second situation is where—

- (a) each winning bidder for 3.6 GHz lots has submitted a full adjacency agreement form (signed on its behalf by two authorised persons) to OFCOM;
- (b) the content of the table on each full adjacency agreement form (outlining the essential aspects of the full adjacency agreement described in regulation 82) is the same on each form received; and
- (c) each winning bidder for 3.6 GHz lots submitted the form to OFCOM during the second phase of the negotiation period and in accordance with the prescribed method for submission.

Valid partial adjacency agreement

87. There is a valid partial adjacency agreement if—

- (a) two or more winning bidders for 3.6 GHz lots submitted a partial adjacency agreement form (signed on its behalf by two authorised persons) to OFCOM;
- (b) each winning bidder which is indicated on the form as being a party to the agreement, submitted the form to OFCOM;
- (c) the content of the table on each partial adjacency agreement form (outlining the essential aspects of the partial adjacency agreement described in regulation 83) is the same on each form received;

- (d) each winning bidder which is indicated on the form as being a party to the agreement submitted the form to OFCOM during the second phase of the negotiation period and in accordance with the prescribed method for submission; and
- (e) each winning bidder which is indicated on the form as being a party to the agreement who submitted the form to OFCOM has also made the additional required bids.

Additional required bids in the case of a partial adjacency agreement

88.—(1) The additional required bids referred to in regulation 87(e) are those described in paragraph (2).

(2) The bids to be made by the winning bidder are an additional 3.6 GHz assignment stage bid of zero pounds for every possible block of numbered 3.6 GHz lots in which the number of 3.6 GHz lots contained in the block is equal to the number of that bidder’s winning principal stage bids for 3.6 GHz lots.

(3) The additional required bids are made by completion of the partial agreement form and its submission to OFCOM.

Consequence of additional required bids

89. If there is a valid partial adjacency agreement, when OFCOM is determining the winning 3.6 GHz assignment stage bids under regulation 97—

- (a) each 3.6 GHz assignment stage bid already submitted by that bidder under regulation 78 or 79, if any, shall be deemed invalid; and
- (b) OFCOM must instead take into account the additional required bids as if they were the valid assignment stage bids made by the bidder concerned.

Rejection of full adjacency agreement forms submitted to OFCOM at a time outside the first phase and second phase of the negotiation period

90.—(1) If a full adjacency agreement form is submitted to OFCOM at a time other than during the permitted times described in paragraph (2) that form (and the agreement which the form purports to describe) shall be rejected by OFCOM.

(2) The permitted times are—

- (a) after the start time of the first phase of the negotiation period and before the first phase of the negotiation period has ended in accordance with regulation 95; and
- (b) after the start time and before the end time of the second phase of the negotiation period.

Rejection of partial adjacency agreement forms submitted to OFCOM at a time outside the second phase of the negotiation period

91.—(1) If a partial adjacency agreement form is submitted to OFCOM at a time other than during the permitted time described in paragraph (2) that form (and the agreement which the form purports to describe) shall be rejected by OFCOM.

(2) The permitted time is after the start time and before the end time of the second phase of the negotiation period.

Only one valid adjacency agreement

92. — Each winning bidder for 3.6 GHz lots may only be party to one valid adjacency agreement.

First form delivered within a negotiation phase by a winning bidder for 3.6 GHz lots to be used by OFCOM

93.—(1) If a winning bidder for 3.6 GHz lots submits more than one full adjacency agreement form to OFCOM during the first phase of the negotiation period, the first of those forms delivered shall be the only form used by OFCOM for the purposes of the determination under regulations 86 and 95 as to whether or not there is a valid full adjacency agreement.

(2) If a winning bidder for 3.6 GHz lots submits more than one adjacency agreement form (whether a partial adjacency agreement form or a full adjacency agreement form) to OFCOM during the second phase of the negotiation period, the first of those forms delivered shall be the only form used by OFCOM for the purposes of the determinations under regulations 86 and 87 as to whether or not there is a valid full adjacency agreement or a valid partial adjacency agreement.

Incomplete or defective adjacency agreement forms

94.—(1) Where, due to the manner of completion, an adjacency agreement form is incomplete or defective but OFCOM believe that they can ascertain the bidder's intention in relation to the content and the essential aspects of the agreement, OFCOM shall ask the bidder to confirm in a notice to OFCOM by a deadline specified by OFCOM that OFCOM have correctly ascertained the bidder's intention in relation to the making of adjacency agreements.

(2) Where the bidder confirms in a notice given to OFCOM by the deadline which is signed by two authorised persons that OFCOM have correctly ascertained the bidder's intention, OFCOM will consider whether there is a valid full adjacency agreement or a valid partial adjacency agreement (as the case may be) under regulations 86 or 87 taking account of the form on that basis.

(3) Where the bidder does not give such confirmation, the adjacency agreement form and the agreement it purports to describe in its entirety shall be rejected by OFCOM.

The end of the first phase of the negotiation period

95.—(1) The first phase of the negotiation period shall end on the earlier of—

- (a) the time notified by OFCOM under regulation 85(1)(a)(ii) as being the end of the first phase; or
- (b) the receipt by OFCOM (after the commencement of the first phase) of a full adjacency agreement form from each winning bidder for 3.6 GHz lots.

(2) After the end of the first phase of the negotiation period OFCOM shall determine if there is a valid full adjacency agreement.

(3) If OFCOM determines that there is a valid full adjacency agreement there shall not be a second phase of the negotiation period and OFCOM shall notify all of the winning bidders of that fact.

(4) If OFCOM determines that there is not a valid full adjacency agreement there shall be a second phase of the negotiation period and OFCOM shall—

- (a) notify all of the winning bidders of that fact;
- (b) notify the winning bidders for 3.6 GHz lots of the reason why it has made that determination; and
- (c) publish on OFCOM's website and notify the winning bidders for 3.6 GHz lots of the start day and time on that day of the second phase, and the end day (and time on that day) of the second phase of the negotiation period (which may be the same or different from proposed the days and times notified under regulation 85(1)(a)(iii)).