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UNOFFICIAL
TRANSLATION

Blue Ocean Wireless (UK) Ltd.
Unit 8 Fulcrum 4,
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UNITED KINGDOM

Viite
Ref.
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Asia
Ärende
Subject

Application of Blue Ocean Wireless (UK) Ltd

DECISION OF THE FINNISH COMMUNICATIONS REGULATORY AUTHORITY (FICORA) ON GRANTING A RADIO LICENCE FOR GSM 1800 BASE STATIONS ON BOARD VESSELS

1. APPLICATION AND PROCEDURE

Blue Ocean Wireless (UK) Ltd. has on 15 May 2009 applied for a radio licence for GSM service on board vessels using a stand-alone GSM ship network.

An opportunity has been reserved for the applicant on 1.6.2009 to comment on the draft decision by 22.6.2009.

2. CONTENT OF THE APPLICATION AND GROUNDS

Blue Ocean Wireless (UK) Ltd. has applied for the following:

"In accordance with FICORA regulations, and with ECC/DEC(08)/08, Blue Ocean Wireless requests authorization to use frequencies in the 1800 MHz GSM band (1710 – 1785 MHz uplink; 1805 – 1880MHz downlink) for GSMOBV services on Finnish flag vessels for use in Finnish territorial seas and high seas when no exemption from licensing is provided by ECC decision ECC/DEC(08)08. The use of GSMOBV has been demonstrated as safe for operation by ECC interference studies. Blue Ocean Wireless would undertake to operate within these technical parameters and follow the guidelines of safe operation established in the Decision to ensure that no harmful interference can be caused."

3. GROUNDS OF THE DECISION

3.1. Applicable legal provisions

By virtue of section 7 (1) of the Act on Radio Frequencies and Telecommunications Equipment (Radio Act, 1015/2001) FICORA grants in a radio licence the right to use frequencies, on application.

The purpose of the Radio Act is laid down in section 1. The provisions applicable to radio licence matters are included in section 1, points 1, 2 and 4. When considering

applications, promoting efficient, appropriate and interference-free use of frequencies, a fair availability of radio frequencies and efficient communications market must be taken into account.

Under section 8 (1) of the Radio Act FICORA may attach conditions to a radio licence that are necessary for ensuring efficient and appropriate use of frequencies, efficiency in the communications market and preventing or removing interference in radiocommunications.

The provisions of section 10 of the Radio Act apply to granting a radio licence. If an application meets the requirements laid down in section 10 (4) a radio licence must be granted, i.e. 1) the licence or frequency reservation applied for pertains to a frequency band which, in the regulations on frequency usage issued by the Finnish Communications Regulatory Authority, has been allocated for the use referred to in the application; 2) it is possible to allocate technically appropriate radio frequencies within the frequency band for use or reservation by the applicant; 2 a) the radio transmitter's conformity has been confirmed; and 3) the Finnish Communications Regulatory Authority has no justifiable cause to suspect that the applicant will violate the provisions and regulations concerning radiocommunications or the radio licence conditions. Furthermore this is provided that no conditions laid down in subsections 5-6 prevent granting of a radio licence. Under sections 10 (5-6) of the Radio Act a radio licence may be denied if there is an unpaid sum concerning the applicant's previous radio licence or frequency reservation that pertains to the same type of equipment as the new licence or reservation being applied for, and the overdue amount is other than insignificant, or if the applicant aims to provide telecommunications requiring a licence as referred to in section 4 of the Communications Market Act or to pursue television and radio broadcasting that requires a licence as referred to in section 7 of the Act on Television and Radio Operations, and the applicant does not have the necessary licence.

FICORA is of the opinion that the application meets the requirements laid down in section 10 (4) of the Radio Act for granting a radio licence. Neither are there any impediments referred to in section 10 (5) of the Radio Act for granting a radio licence.

By virtue of section 4 (1) of the Communications Market Act (393/2003) a licence is required to provide a network service that uses radio frequencies in a mobile network practicing public telecommunications. According to the Government Bill (HE 112/2002) related to this provision "the provision is in line with the current state and complies with the obligations imposed on member states in Article 9 of the Framework Directive and Article 5 of the Authorisation Directive. It is suggested that radio frequencies would only be regulated when necessary due to the insufficiency of frequencies. ... In the Government Bill public telecommunications means telecommunications with services to a set of users that is not subject to any prior restriction."

According to section 10 (6) of the Radio Act "no radio licence or frequency reservation can be granted unless the applicant has the necessary licence, if the applicant aims to practice telecommunications requiring a licence as referred to in section 4 of the Communications Market Act ...". Pursuant to section 4 of the Communications Market Act e.g. a network service using radio frequencies in a mobile network practicing public telecommunications requires a licence. According to the preparatory works (HE 112/2002) of the Communications Market Act FICORA's interpretation is that the GSM service for a limited user group, such as the vessel's passengers and crew, indicated in the application is not considered public telecommunications referred to in the Communications Market Act. Thus, FICORA's opinion is that Blue Ocean Wireless (UK) Ltd. does not need a licence referred to in section 4 of the Communications Market Act for its GSM service on board vessels. FICORA also refers to the preparatory works of section 4 of the Communications Market Act according to which regulation of the use of radio frequencies is required, when it is necessary due to insufficiency of frequencies. In practice there will be enough ship network frequencies, and so it is not necessary to limit the amount of service providers with a licensing procedure. Therefore, there is

no impediment referred to in section 10 (6) of the Radio Act for granting a radio licence, either.

Pursuant to section 5 of the Government Decree on the Use of the Allocation Table for the Frequency Bands used for Television and Radio Operation and for Telecommunications subject to Licence "The frequency bands 880–915 MHz and 925–960 MHz (900 MHz frequency range) and 1710–1785 MHz and 1805–1880 MHz (1800 MHz frequency range) are those to be used for second generation digital mobile communications (GSM). ... There are three national digital GSM mobile networks in the 900 MHz band as well as in the 1800 MHz band."

According to section 2 of the Radio Act the Act applies to radio equipment on board Finnish vessels and aircraft and in Finnish equipment sent into space, even when this equipment is not within Finnish territory.

Blue Ocean Wireless (UK) Ltd. has applied for a radio licence for GSM 1800 base stations to be situated on board Finnish vessels in Finnish territorial sea and also on the high seas.

By virtue of the Radio Act and its section 2 FICORA may grant a radio licence for GSM 1800 base stations to be situated on board vessels in Finnish territorial sea and in addition on board Finnish registered vessels on the high seas, where the law of the vessel's flag state is applied as stipulated in Article 92 of the UN Convention on the Law of the Sea.

On the basis of the above, FICORA maintains that the applicant may be granted a radio licence as it has applied.

3.2. Validity period of the radio licence and immediate complying with decision

It is justified to grant the radio licence until 31.3.2010. In FICORA's opinion this date is reasonable considering the fact that the European Commission is preparing a decision on GSM 1800 base stations on board vessels.

By virtue of section 40 of the Radio Act an appeal may be made to the Administrative Court against a decision made by FICORA under this act, as provided in the Administrative Judicial Procedure Act (586/1996). In its decision, FICORA may order that the decision be complied with before it has gained legal force.

FICORA orders that this decision must be complied with regardless of appeals unless the Administrative Court orders otherwise.

4. DECISION

4.1. Radio licence decision

Blue Ocean Wireless (UK) Ltd. will be granted the right to use frequencies 1783.3 - 1784.9 MHz/1878.3 - 1879.9 MHz for GSM 1800 base station transmitters on board Finnish vessels in Finnish territorial sea and on the high seas.

The licence expires on 31 March 2010. This decision must be complied with regardless of appeals unless the Administrative Court orders otherwise.

4.2. Licence conditions

Blue Ocean Wireless (UK) Ltd. has to inform FICORA in writing of the vessels registered in Finland with GSM 1800 base station transmitters referred to in this radio licence. FICORA must also be kept informed of any changes.

In Finnish territorial sea the System must comply with the conditions in ECC Decision ECC/DEC/(08)08.

- the System must not be used closer than 2 NM from the baseline¹;
- only indoor v-BS antenna(s) to be used between 2 and 12 NM from the baseline
- DTX² has to be activated on the System uplink;
- the timing advance³ value of v-BS must be set to minimum;
- all v-MS must be controlled to use the minimum output power (0 dBm in 1800 MHz bands);
- within 2-3 NM from the baseline the v-MS receiver sensitivity and disconnection threshold (ACCMIN⁴ & min. RXLEV⁵ level) must be ≥ -70 dBm/200 kHz;
- within 3-12 NM from the baseline the v-MS receiver sensitivity and disconnection threshold (ACCMIN & min. RXLEV level) must be ≥ -75 dBm/200 kHz;
- the v-BS emissions measured anywhere external to the vessel (i.e. at ship perimeter or on its open deck areas) must not exceed -80 dBm/200 kHz (assuming 0 dBi measurement antenna gain).

Any operation of the System on the high seas must comply with the following:

- the timing advance value of v-BS must be set to minimum;
- all v-MS must be controlled to use the output power of max. 5 dBm in 1800 MHz bands;
- the v-BS emissions measured at the distance of 100 m from the ship hull must not exceed -80 dBm/200 kHz (assuming a 0 dBi measurement antenna gain).

5. LEGAL PROVISIONS

Act of Radio Frequencies and Telecommunications equipment (Radio Act), sections 1, 2, 8, 10 and 40.

Communications Market Act, section 4

Government Decree on the Use of the Allocation Table for the Frequency Bands used for Television and Radio Operation and for Telecommunications subject to Licence (in Finnish), section 5

6. APPEAL

This decision can be appealed to the Helsinki Administrative Court as provided in the Administrative Judicial Procedure Act (586/1996). According to section 6 of the Act, any person to whom a decision is addressed or whose right, obligation or interest is directly affected by a decision may appeal against the decision. The appeal directions are attached to the decision.

¹ Baseline and territorial sea, defined in the UN Convention on the Law of the Sea.

² DTX (discontinuous transmission, as described in GSM standard 3GPP TS 148.008).

³ Timing advance (as described in GSM standard 3GPP TS 144.018).

⁴ ACCMIN (RX_LEV_ACCESS_MIN, as described in GSM standard 3GPP TS 144.018).

⁵ RXLEV (RXLEV-FULL-SERVING-CELL, as described in GSM standard 3GPP TS 148.008).

7. FURTHER INFORMATION

At FICORA further information on this decision can be obtained from Anna von Fieandt-Lehtonen, Legal Counsel, Tel. +358 9 6966 745. The e-mail address follows the format `firstname.lastname@ficora.fi`.

Director

Kirsi Karlamaa

Head of Radio Network Unit

Petri Lehtikainen

ANNEX Directions of appeal

APPEAL DIRECTIONS

WHERE TO APPEAL

If the recipient of this decision is not content with the decision, the decision can be appealed to **the Helsinki Administrative Court**.

HOW TO MAKE THE APPEAL

The appeal must be made in writing. The petition of appeal must include the following details:

- the court of jurisdiction to which the appeal is directed (the Helsinki Administrative Court)
- the decision against which the appeal is made
- grounds for the appeal
- the changes the appellant requires to the decision and their grounds
- the appellant's name, home municipality, postal address and telephone number must be submitted so that the appellant can be informed of notifications concerning the case
- the appellant's signature.

If the appellant's right of action is availed by a legal representative or an agent, or if the compiler of the appeal is a third party, the appeal must also specify this person's name and home municipality. Thus, the compiler must also sign the petition of appeal.

In a Finnish court an appeal is dealt with in the Finnish or Swedish language.

The required written form is also met by an electronic document delivered to the authorities. If a signed document is required in the lodging or consideration of a matter, an electronic signature referred to in section 18 of the Act on electronic signatures meets the requirements for signature. An electronic document delivered to the authorities does not have to be signed, if the document includes sender information and there is no uncertainty about the originality or integrity of the document.

ANNEXES TO THE PETITION OF APPEAL

The following must be attached to the petition of appeal:

- FICORA's decision, original or copy, against which the appeal is made
- certificate of notice or other clarification indicating the beginning of the appeal period
- documents to which the appellant appeals in order to support the appeal unless they have earlier been submitted to authorities
- the proxy of the agent unless the agent is an advocate or a public counsel.

If an electronic document delivered to the authorities includes a clarification of the authority of an agent, the agent does not have to deliver a power of attorney. However, if there is uncertainty about the agent's authority or the scope of the authority, the authorities may order the agent to deliver a power of attorney.

APPEAL PERIOD

The appeal must be made **within 30 days from receiving the notice**. The date of notice is not included in the appeal period. The date of notice is counted as follows:

- If the decision is sent by mail in return for an advice of receipt, the date of notice is shown in the certificate. The advice of receipt shall be attached to appeal documents.
- If the decision is posted as an ordinary letter, it is assumed to have been received within seven (7) days from the posting date, unless evidence of a later date of receipt is represented.
- If the decision has been sent to a party other than the recipient of the decision (substitute notice) by other means, e.g. in return for an advice of receipt, it is assumed that the recipient of the decision will have been informed of the decision on the third day of the date in the advice of receipt.

HOW TO SUBMIT THE APPEAL

The appeal may be sent to the Helsinki Administrative Court in person, by post, in electronic form or by using an agent or a messenger. The sender is responsible for the posting. The appeal must arrive at the Helsinki Administrative Court during office hours within 30 days prior to the end of the appeal period in order that the appeal can be investigated.

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