

Extension of implementation period: terms and conditions

Introduction

Holders of 3.5 GHz area spectrum licences are subject to the following requirements under the terms of their licence agreements.

5.6

The Licensee must demonstrate that it has implemented a continuous and on-going Fixed Wireless Access service in the Licence Area using the Licence by the second anniversary of the Date of Registration.

5.7

The determination of whether or not implementation has occurred is a matter to be determined by the Chief Executive in his or her sole discretion exercising a common sense judgment. However, a Fixed Wireless Access service that has been operating 24 hours per day, 7 days per week (excluding reasonable outages including those for maintenance and construction) for a continuous period starting no later than 18 months after the Date of Registration and which provides a Fixed Wireless Access service to at least 25% of the population in the Licence Area will be considered implemented.

NOTE: Although 24 hour service must commence no later than 18 months after the Date of Registration, 25% population coverage is NOT specifically required until the final date for implementation — ie, two years after the Date of Registration.

5.8

To assist the Chief Executive with his or her determination in clause 5.7, the Licensee must submit to the Chief Executive, prior to the second anniversary of the Date of Registration, a statutory declaration:

1. stating that a Fixed Wireless Access service has been implemented; and
2. detailing the extent of implementation including the period of use, the percentage of population covered by the Fixed Wireless Access service in the Licence Area (and how that is calculated) and average transmitting powers.

5.9

The Chief Executive may request further information from the Licensee to make his or her determination under clause 5.7. The Chief Executive must provide notice in writing to the Licensee of the determination under clause 5.7.

5.10

Without limitation to the terms of this Licence Agreement (including any right or remedy of the Licensor), to the extent that a Fixed Wireless Access service has not been implemented within the Licence Area prior to the second anniversary of the Date of Registration, the Chief Executive may in the exercise of his or her absolute discretion:

1. cancel that particular Licence and terminate this Licence Agreement in respect of that Licence;
2. amend the Licence to accord to the actual level of implementation achieved if the Licensee has commenced the provision of a Fixed Wireless Access service, and create and allocate other spectrum licences within the Licence Area to any person, provided these new licences do not cause harmful interference within the protection area of an amended spectrum licence; or
3. allow an extension of not longer than six (6) months for implementation of a Fixed Wireless Access service.

5.11

The Chief Executive must provide notice in writing to the Licensee of the decision made in 5.10.

The implementation period for 3.5 GHz area spectrum licences allocated in 2006 (Round One) ends in November 2008.

Extension of the implementation period

Under clause 5.10c of the licence agreement, the Chief Executive may grant an extension to the implementation period of up to six months. A number of applications for such an extension have been received from licensees.

The Chief Executive will consider granting a six-month extension to the implementation period on the following terms and conditions.

1. The licence will remain in the ownership and control of the applicant until implementation is completed, in conformity with clauses 6.1 and 6.2 of the licence agreement.
2. The applicant will provide:
 - a statutory declaration confirming that all of the information supplied in the application is true and correct;
 - verifiable evidence of current implementation intentions (for example, copies of confirmed equipment orders, site purchase or leasing agreements);
 - verifiable evidence of current implementation achievements (for example, transmission records provided by an Approved Radio Engineer, customer connection records);
 - an implementation plan and timetable with verifiable milestones.
3. Every application will be evaluated on a case-by-case basis and the Chief Executive's decision will be final.

2. If an extension is granted and implementation is not completed within the six-month extension period the Chief Executive will conduct a review to determine whether or not the licence should be cancelled under clause 5.10a of the licence agreement.
3. Following such a review, the Chief Executive may, in his or her sole discretion, grant a further extension to the implementation period, provided that verifiable evidence of substantial progress towards implementation has been provided by the applicant.