



Reference: Licence no.

Bern, dd.mm.yyyy

Annex V

Licence no.

Granted by the Federal Communications Commission

in favour of

The licensee
Address

concerning

Use of the frequency spectrum auctioned on dd.mm.yyyy for the provision of mobile telecommunications services in Switzerland

Contents

1.	Basis	3
1.1.	Subject of the licence	3
1.2.	Legal basis	3
1.2.1.	Legal basis of the licence	3
1.2.2.	Legal basis for use of the licence	3
1.3.	Amendment of the legal basis	4
1.4.	Annexes	4
1.5.	Term of the licence	4
1.6.	Transfer of the licence	5
1.7.	Amendment and revocation of the licence	5
1.7.1.	Power of intervention of the licensing authority	5
1.7.2.	Amendment of the licence upon request	5
1.8.	Relinquishment of the licence	5
1.9.	Surveillance measures and administrative penalties	5
1.10.	Information published by OFCOM	5
2.	Rights and obligations of the licensee	6
2.1.	Right to use the assigned frequencies	6
2.2.	Frequency coordination	6
2.3.	Utilisation obligations	6
2.4.	Construction and operation of the radio network	6
2.4.1.	Base station data to be provided to OFCOM	6
2.4.2.	Radio interference and special precautions	6
2.4.3.	Confederation measurement stations	6
2.5.	Obligation to disclose information	7
2.6.	Indication of relevant regulations beyond the Telecommunications Act	7
2.6.1.	Spatial planning, protection of nature and the countryside; joint-use of equipment	7
2.6.2.	Immission protection	7
2.7.	Fees	7
2.7.1.	Auction price and licence fees for radiocommunication licenses	7
2.7.2.	Administration fees for the administration and technical supervision of the frequency spectrum	8
	Annexes (not included in this specimen licence)	9
	Right of appeal	10

1. Basis

1.1. Subject of the licence

By virtue of the present licence, the licensee is granted the usage rights to the mobile radio frequencies which it purchased at the auction conducted on dd.mm.yyyy. The auctioned frequencies are to be used to provide mobile communications services in Switzerland by means of "MFCN" cellular IMT networks¹. Within the framework of the harmonised standard ETSI EN 301 908, the licensee is free to select the technology (technology neutrality).

The rights and obligations of the licensee are in accordance with the provisions of the licence and its annexes, as well as to the statutory provisions applicable to the licence.

1.2. Legal basis

1.2.1. Legal basis of the licence

The following provisions in particular are applicable to the present licence:

- Telecommunications Act of 30 April 1997 (TCA; CC 784.10)
- Ordinance of 9 March 2007 on Frequency Management and Radiocommunication Licences (OFMRL; CC 784.102.1)
- Ordinance of 7 December 2007 concerning Fees in the Telecommunications Sector (OCTS; CC 784.106)
- DETEC Ordinance of 7 December 2007 concerning Administrative Fees in the Telecommunications Sector (DETEC Telecommunications Fees Ordinance; CC 784. 106.12)

1.2.2. Legal basis for use of the licence

In exercising the conceded rights to use the frequency spectrum, the licensee must respect the other implementing provisions of the TCA, in particular the provisions of the Ordinance of 9 March 2007 on Telecommunications Services (OTS; CC 784.101.1) as well as the Ordinance of 25 November 2015 on Telecommunications Installations (OTI; CC 784.101.2).

Other relevant legislation beyond the scope of the Telecommunications Act includes:

- Federal Act of 18 March 2016 concerning the Monitoring of Post and Telecommunications Traffic (MPTA; CC 780.1)
- Ordinance of 15 November 2017 concerning the Monitoring of Post and Telecommunications Traffic (MPTO; CC 780.11)
- Ordinance of 15 November 2017 concerning Fees and Reimbursements for Monitoring of Post and Telecommunications Traffic (OFRMPTT; CC 780.115.1)
- Federal Act of 1 July 1966 concerning the Protection of Nature and the Cultural Heritage (LPNCH; CC 451)
- Ordinance of 16 January 1991 concerning the Protection of Nature and the Cultural Heritage (PPNCH; CC 451.1)
- Federal Act of 22 June 1979 concerning Spatial Planning (Spatial Planning Act, SPA; CC 700)
- Spatial Planning Ordinance of 28 June 2000. (SPO; CC 700.1)
- Federal Act of 7 October 1983 concerning Environmental Protection (Environmental Protection Act, EPL; CC 814.01)

¹ Mobile/Fixed Communications Networks within the meaning of the CEPT-ECC

Reference: Licence no.

- Ordinance of 23 December 1999 concerning Protection from Non-Ionising Radiation (OPNIR; CC 814.710)
- Federal Act of 24 June 1902 concerning Low- and High-Voltage Electrical Installations (Electricity Act, EA; CC 734.0)
- Ordinance of 25 November 2015 on Low Voltage Electrical Equipment (LVEO; CC 734.26)
- Ordinance of 25 November 2015 on Electromagnetic Compatibility (OEMC; CC 734.5)
- Federal Act of 24 March 2006 on Radio and Television (RTVA; CC 784.40)
- Ordinance of 9 March 2007 on Radio and Television (RTVO; CC 784.401)
- Federal Act of 19 December 1986 against Unfair Competition (UCA; CC 241)
- Federal Act of 6 October 1995 concerning Cartels and Other Restrictions on Competition (CA; CC 251)
- Ordinance of 17 June 1996 concerning Monitoring of Mergers (CC 251.4)

1.3. Amendment of the legal basis

The conditions of the present licence apply subject to any changes to the legal basis applicable to it (cf. Section 1.2 above).

In particular, the administrative fees according to Section 2.7.2 shall be fixed in accordance with the applicable legal basis and may be subject to change in terms of the basis for calculation and the amount. Future rules on network access for third parties are also reserved. Also reserved are future legal obligations² on the provision of telecommunication services at cost-based prices in favour of the official emergency and rescue services (Behördenorganisation für Rettung und Sicherheit - BORS), if no commercial products are available on the telecoms market which meet the requirements formulated by the Federal Commission for Telematics in relation to emergency and rescue (KomTm BORS)³. In any event, the respective versions in force of laws and ordinances shall apply in respect of any legal questions and interpretations.

1.4. Annexes

Annexes I to IV form an integral part of this licence. They may be updated individually and therefore may bear a date later than the licence itself.

1.5. Term of the licence

Licence no. XXXXXXXX, unless challenged, shall enter into force 30 days after issue to the licensee. The licence is valid until 31 December 2033⁴ or until 31 December 2028 for category D.

Commencement of the rights of utilisation for the frequencies in the licence is laid down in the technical network specification (Annex III).

² Based on a revision of the Telecommunications Act of 30 April 1997 (TCA; CC 784.10) or another legal basis (such as, for example, revisions of the Federal Act of 4 October 2002 on Civil Protection and Defence [CC 520.1] or of the Federal Act of 17 June 2016 on the National Economic Supply [CC 531]).

³ This concerns: area coverage, ensuring availability in the event of overloading of the commercial networks and hardening of the network infrastructures plus additional functionalities for emergency and rescue matters. (cf. in this connection the newsletter of the Federal Commission for Telematics "NEWS No. 2, December 2017, KomTm BORS", pages 3 and 4, which can be consulted at:

https://www.babs.admin.ch/content/babs-internet/de/aufgabenbabs/kommsysteme/_jcr_content/contentPar/tabs/items/dokumente/tabPar/downloadlist/downloadItems/120_1513342319873.download/NEWS-Letter-KomTmBORS_Nr-02_de.pdf [Only available in German]

⁴ cf. comment on the licence term of categories B and C in Section. 3.4 of the tender document.

1.6. Transfer of the licence

According to Art. 24d para. 1 TCA, the licence may be transferred in part or as a whole to a third party only with the consent of the licensing authority. This also applies to the economic transfer of the licence. An economic transfer of the licence occurs when a company has obtained control of the licensee in accordance with the law on cartels (Art. 24d para. 1 and 2 TCA).

All changes in the distribution of ownership of the licensee or its shareholders are subject to notification if as a result, the possibilities of influence on the business activity of the licensee change.

1.7. Amendment and revocation of the licence

1.7.1. Power of intervention of the licensing authority

According to Art. 24e para. 1 TCA, the licensing authority may amend or revoke the licence due to changes in actual or legal conditions if the amendment or revocation is necessary to guarantee important public interests. In this case, the licensee shall be appropriately compensated if the transferred rights are revoked or substantially reduced (Art. 24e para. 2 TCA).

1.7.2. Amendment of the licence upon request

The licensing authority may, upon request from the licensee, amend the licence provided that no overriding private or public interests are affected by the licence amendment and that the licence conditions continue to be fulfilled in accordance with Art.23 TCA. There is no legal claim on licence amendment.

1.8. Relinquishment of the licence

The licensee may relinquish its licence at any time.

Relinquishment does not affect the obligation to pay the auction price (Section 2.7.1). Outstanding amounts remain due. There is no claim to reimbursement for amounts already paid.

1.9. Surveillance measures and administrative penalties

If the licensee commits a violation of the law by infringing international telecommunications law, the TCA, its implementing provisions or it violates the terms of the licence, surveillance measures according to Art. 58 para. 2 TCA may be instigated.

Furthermore, the licence may be withdrawn if essential conditions for granting it cease to be fulfilled (Art. 58 para. 3 TCA).

Any revocation or withdrawal of the licence in accordance with Art. 58 para. 2 or 3 TCA is without compensation. The obligation to pay the auction price (Section 2.7.1) remains unaffected in this case. Any outstanding amounts remain due. There is no claim to reimbursement for amounts already paid.

If the licensee infringes the applicable law, the licence or a decision having force of law, it may also be required to pay an amount up to 10 percent of its average turnover in Switzerland in the last three financial years (Art. 60 TCA).

1.10. Information published by OFCOM

OFCOM publishes a map of the transmitter sites on the internet in accordance with Art. 24f para. 2 TCA. The Office may publish further information in the context of Art. 24f para. 1 TCA or make it accessible in the tender procedure.

2. Rights and obligations of the licensee

2.1. Right to use the assigned frequencies

The licensee is entitled to use the frequency spectrum in accordance with the assignment laid down in National Frequency Allocation Plan (NFAP) or the information defined in the technical network specification (Annex III). The technical network specification is an integral part of this licence. It is based on the NFAP and is periodically examined and adapted if necessary.

2.2. Frequency coordination

When required, in the border areas the field strength values, coordination lines, preferential use of frequencies and radio cell identification resources (including Scrambling Code SC or Preferential Physical Layer Cell Identifier PCI) as well as the calculation methods for frequency coordination may be adjusted with appropriate prior notice. The network description shall be updated accordingly.

2.3. Utilisation obligations

A licensee is obliged to use the frequencies assigned to it by licence within the framework of the present award procedure in the sense of Art. 1 TCA and thereby to provide commercial telecommunications services. Until achievement of the after-mentioned minimum population coverage this must take place via its own transmission and reception units:

1. If the licensed usage rights include frequencies in the ranges 703 to 733 MHz and 758 to 788 MHz (hereinafter 700 MHz FDD frequencies), the licensee is obliged to cover at least 50% of the population of Switzerland with mobile radio services via its own infrastructure by 31 December 2024 at the latest.
2. If the licensed usage rights do not include any 700 MHz FDD frequencies, in accordance with para. 1 the licensee is obliged to cover at least 25% of the population of Switzerland with mobile radio services via its own infrastructure by 31 December 2024 at the latest.

The rights of use granted with the licence may be withdrawn without compensation if the required coverage is not provided within the period prescribed.

In general, the utilisation and coverage obligations may be changed only if the licensee proves that it is not able to meet them for reasons beyond its control. The licensee must prove conclusively that it has made every reasonable attempt to meet its obligations.

2.4. Construction and operation of the radio network

2.4.1. Base station data to be provided to OFCOM

Every 14 days, the operating data for all base stations must be sent to OFCOM. The licensees therefore submit their base station data by periodically uploading it to the database. The format of the data to be uploaded, as well as the detailed procedures, are to be discussed beforehand with OFCOM.

2.4.2. Radio interference and special precautions

If individual base stations operated within the framework of the awarded licence cause radio interference, the licensee is obliged to modify the parameters of the corresponding base station at OFCOM's request or to cease its operation.

2.4.3. Confederation measurement stations

As part of the technical supervision of the frequency spectrum according to Art. 26 para 1 TCA, OFCOM and the Confederation operate several radio monitoring and reception stations. To prevent interference affecting these, base stations which are to be constructed closer than one kilometre (1 km) to such a measurement or reception station must be notified to OFCOM with all technical radio parameters, for coordination purposes. If it turns out that a planned base station could interfere with a

measurement or reception station, it cannot be put into operation. OFCOM shall provide the licensee with a list of the locations of the individual measurement and reception stations.

2.5. Obligation to disclose information

The licensee is obliged to provide OFCOM with the information which is necessary for the enforcement of the Telecommunications Act, the corresponding implementing ordinances and of this licence (Art. 59 TCA and Annex II of this document).

2.6. Indication of relevant regulations beyond the Telecommunications Act

2.6.1. Spatial planning, protection of nature and the countryside; joint-use of equipment

In the case of installations outside building zones, Art. 24 Spatial Planning Act and the relevant case law shall be taken into consideration.

The licensee shall make all reasonable efforts during the construction and operation of its transmitter sites to enable the shared use of these sites for other location-based purposes outside the building zone. If it depends on a site outside the construction zone, it is additionally obliged to use existing sites belonging to other licensees or other existing buildings or facilities, provided they have sufficient capacity.

The licensee shall inform the Cantons in advance of their network planning. When it does so, it shall provide information on the proposed new sites and any sites already approved, under construction or in service. In the case of structures outside the building zone, the licensee shall provide the information necessary to assess the location constraints according to Art. 24 of the Spatial Planning Act. The licensee is obliged to cooperate when developing coordination processes in order to minimise the impact on the area and landscape and at the same time to comply with the Ordinance on Protection from Non-Ionising Radiation (OPNIR) and to comply with the developed processes. The site data for the assessment of joint-use must be disclosed.

2.6.2. Immission protection

In exercising their rights of use of the frequency spectrum, the licensee must comply with the provisions of the ONIR. In particular the licensee shall ensure that the transmission infrastructures comply with the immission and equipment limits with regard to design, construction and operation. Using a quality assurance system (QAS) the licensee must ensure compliance with the approved values in accordance with the circular of the Federal Office for the Environment (FOEN) dated 16 January 2006 concerning "Quality assurance to comply with the limits of the ONIR for base stations for mobile radio and wireless local loops" and shall document this compliance.⁵

2.7. Fees

2.7.1. Auction price and licence fees for radiocommunication licenses

The auction price for the acquired frequencies amounts to

CHF

The licence fees for utilisation of the allocated radio spectrum for the term of the licence are included in the auction price. The licence fee corresponds to the auction price less the administration fee for the call for tenders and the granting of the radiocommunication licence (Art. 39 para. 4 TCA).

The auction price falls due on entry into legal force of the licence. The payment period is 30 days.

⁵ <https://www.bafu.admin.ch/dam/bafu/de/dokumente/elektrosmog/fachinfo-daten/qualitaetssicherungzureinhaltungdergrenzwertedernisvbeibasisstat.pdf.download.pdf/qualitaetssicherungzureinhaltungdergrenzwertedernisvbeibasisstat.pdf>

Reference: Licence no.

Payment of the auction price must be made via a bank based in Switzerland and approved in accordance with the Federal Act on Banks and Savings Banks (CC 952.0).

2.7.2. Administration fees for the administration and technical supervision of the frequency spectrum

According to Art. 40 TCA and in conjunction with Art. 9 of the DETEC Ordinance on Telecommunications Fees, the licensee is obliged to pay annual administrative fees for the administration and technical supervision of the frequency spectrum. The fee is determined on the basis of the technical network specification (Annex III of the licence).

OFCOM collects the administrative fees yearly in advance.

FOR INFORMATION ONLY

It is hereby decreed:

1. By virtue of licence no. XXXXXXXX the licensee is entitled to use the frequencies purchased by auction conducted on dd.mm.yyyy in accordance with the provisions specified in the licence and the law applicable to it until 31 December 2033⁶ or until 31 December 2028 for category D.
2. The hammer price for the frequency rights purchased by auction is CHF , payable within 30 days from the date the licence enters into legal force.
3. The recurrent administrative fees for the administration and technical supervision of the frequency spectrum will be charged by OFCOM separately.
4. The present decision will be communicated to the licensee in writing by registered mail with advice of delivery and notified to °°°°° AG and °°° AG (limited to one copy licence document no. °°°°°°°° with Annex III in favour of °°°° AG).

Federal Communications Commission ComCom

Stephan Netze
President

Annexes (not included in this specimen licence)

- Annex I: Information concerning the licensee
- Annex II: Notification obligation
- Annex III: Technical network description
- Annex IV: Planning and approval questions

⁶ cf. comment on the licence term of categories B and C in Section 3.4 of the tender document.

Right of appeal

Appeals against this decision may be lodged in writing within 30 days of issue. This period is suspended from the seventh day before Easter up to and including the seventh day after Easter; from 15th July up to and including 15th August and from 18th December up to and including 2nd January. The appeal must be submitted to the

Federal Administrative Court
Postfach
9023 St. Gall

The appeal must include the request, its grounds with evidence and the signature of the complainant or his or her representative. The disputed decision and the documents invoked as evidence shall be attached to the appeal, in so far as the complainant has them to hand.

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