

NOTIFICATION OF A THREE YEAR EXTENSION OF LICENCE PERIOD – DIGITAL TERRESTRIAL NETWORK FOR TELEVISION¹

1) Introduction

In its handling of Report (White Paper) no. 46 (1998-99), cf. Recommendation no. 53 (1999-2000), the Storting decided to support the establishment of a terrestrial network for distribution of digital television (DTT) in Norway. In White Paper no. 57 (2001-2002) the Storting also handled the matter of DTT and gave its approval to the general principles for awarding a DTT licence. In addition the Minister of Culture and Church affairs referred to the matter of DTT in the oral report on the Norwegian Broadcasting Corporation (NRK) given on 28 February 2002.

With reference to the above the Ministry of Transport and Communications and the Ministry of Culture and Church Affairs invited to tender for an authorisation and a licence to operate and build a digital terrestrial television network in Norway on 28 June 2002. The establishment of the network implies a frequency authorisation pursuant to Section 6-2 of Act no. 83 on Electronic Communications (the Ecom Act) of 4 July 2003, in addition to a licence for facilities for broadcasting pursuant to Section 2-2 of Act no. 127 of 4 December 1992 on Broadcasting (the Broadcasting Act).² The Ministry of Transport and Communications and the Ministry of Culture and Church Affairs are licensing authorities pursuant to the Ecom Act and Broadcasting Act respectively.

There was only one application for the DTT licence, Norges Televisjon AS (NTV) – a 50/50 joint venture between NRK AS and TV 2 AS.

NTV's application was considered to be in accordance with the terms in the invitation to tender text. All the same NTV's application implied several requirements to be met by the regulating authorities. These requirements significantly affected the established cultural policy to such an extent that the Ministry of Culture and Church Affairs decided to put forward a Report (Report no. 44 (2002-2003)) on the matter to the Storting, in order to clarify the requirements. The clarifications were most notably related to the applicable criteria concerning regional analogue shut-off. One of the final requirements in NTV's applications was that an analogue shut-off must be authorised once the DTT rollout is completed in a given region.

In Recommendation no. 128 (2003-2004) of 19 February 2004 ("the Recommendation") the Storting made some of the terms from the original invitation to tender stricter:

- The coverage requirement of the first multiplex was increased to 95 pct. In the original invitation there was no explicit coverage requirement, but NTV declared in its application that they intended roll out a network with 92 pct coverage.

¹ In case of discrepancies, the wording in the original notification (in Norwegian) shall take precedence over this English version.

² For simplicity this Notification refers to these two separate legal documents as "The Licence and/or "The DTT licence."

- The Storting demanded that the licensee as part of its operation should offer the viewers “additional digital value.” In the application NTV only committed itself to roll out one multiplex. Based on the Recommendation from the Storting the Ministries requires that multiplex two is rolled out to the same extent as multiplex one, except for coverage in the satellite shadow areas.
- In the Recommendation the Storting demanded that the future licensee should upgrade its customer support system as it was outlined in the application

The processing of NTV’s application for the DTT licence is not yet completed.

2) Application for a prolongation of the licence period

By letter of 10 February this year NTV applied for a prolongation of the licence period from 12 to 15 years on the grounds that the Storting had altered the licence terms and criteria to NTV’s disadvantage, cf. Report no 44 (2002-2003) and Recommendation S. no. 128 (2003-2004). On the whole the altered terms will lead to a significant increase in costs and expose NTV to greater risk in comparison with the company’s initial offer in its application. NTV therefore sees the need for a longer payback period in order to fund the extra costs stemming from the altered terms.

3) Notification, announcement of interest and possible renewed invitation to tender

The Ministry of Transport and Communications and the Ministry of Culture and Church Affairs consider that a three year prolongation constitutes a reasonable *quid pro quo* in view of the stricter terms imposed upon NTV – after original invitation to tender – through the Recommendation and the following process. The original licence period was 12 years.

Although a three year prolongation (or extension) is considered a mere *quid pro quo*, it is all the same regarded as such a significant alteration of the terms in the original invitation that there is a need to notify the matter to the general public and other potential interested parties.

It is hereby notified that the Ministry of Transport and Communications in the coming consideration of the licence application from NTV will refer to a 15 year licence period (i.e. 15 years from the date the licence is awarded), cf. the Ecom Act section 6-4 and the Authorisation Directive³ Art 14. The Ministry of Culture and Church Affairs will accordingly refer to same prolongation period for the licence to be granted in accordance with the Broadcasting Act.

If there – as a result of this notification – are other interested parties wishing to tender for the licence on the same terms as the original invitation to tender with later adjustments, the Norwegian DTT licence will be awarded anew by means of a beauty contest. A renewed invitation to tender will though require a pre-stage where external parties must announce their interest to tender, so that that the ministries can make a reasonable assessment of whether or not there is a basis for such a renewed invitation. This announcement process is undertaken primarily to document the financial and administrative foundation of potential interested

³ Directive 2002/20/EC

parties. The following documentation must be submitted by the interested party before the notification deadline:

- *A description of the interested party's competence and experience.* The interested party shall submit a description of its track record in broadcasting services to the public, including operational and financial matters in relation to such business.
- *A description of the interested party's financial conditions.* The interested party shall describe its business plan and submit a plan for market introduction of services. As part of the business plan all the relevant aspects of the project financing shall be documented, including the conditions for such funding. The interested party shall also document its financial capacity through existing equity and/or debt capital in addition to documentation of its access to capital markets for such funding – alternatively the existing shareholders must document their commitment to additional funding of the project. This documentation shall include a specific plan for the financing of network rollout and operation throughout the entire licence period, including a technical description of the planned network, a description of coverage both geographically and population-wise, in addition to rollout schedule, and the estimated costs related to the fulfilling of the rollout plans.
- In the event that the interested party is an existing enterprise, *an audited account* (profit and loss account, balance sheet and cash flow statement) *for the last three years* shall be submitted. This also applies for parent companies or other companies or affiliates upon which the interested party bases its financial resources and qualifications.

An announcement of interest according to the above must be received by the Ministry of Transport and Communications no later than 2 May 2005.

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