

RULES FOR THE CONDITIONS AND PROCEDURE FOR TRANSFERRING OF AUTHORIZATIONS FOR USE OF INDIVIDUALLY ASSIGNED SCARCE RESOURCE

In force since 18.03.2008

Issued by the Communications Regulation Commission

Promulgated in the SG, # 29 dd. 18 March 2008

Chapter One GENERAL PROVISIONS

Art. 1. These rules shall govern the conditions and procedures for electronic communications undertakings, under which the latter can transfer their authorizations for use of individually assigned scarce resource or any part of the rights and obligations covered by authorizations for use of individually assigned scarce resource – radio frequency spectrum.

Art. 2. (1) An undertaking which has been granted an authorization for use of an individually assigned scarce resource may transfer this authorization only with the prior approval by the Communications Regulation Commission (the Commission).

(2) An undertaking which has been granted an authorization for use of an individually assigned scarce resource (radio frequency spectrum) may transfer any part of its rights and obligations covered by this authorization only with the prior approval by the Commission.

(3) An authorization for use of individually assigned scarce resource or any part of rights and obligations covered by an authorization for use of individually assigned scarce resource (radio frequency spectrum) granted through a competition or tender procedure shall not be transferable during the first two years following such granting, unless the undertaking has announced in advance its intention of incorporating a juridical entity, entirely owned by it, which will benefit from the authorization. Upon expiration of this two-year period, the authorizations or any part of the rights and obligations covered by an authorization for use of individually assigned scarce resource (radio frequency spectrum) may be transferred to third parties after approval by the Commission.

(4) The Commission shall, by a resolution, allow the transfer of an authorization for use of individually assigned scarce resource. By the same resolution, the Commission shall terminate the authorization of the ceding undertaking and shall issue a new authorization to the beneficiary.

(5) The Commission shall, by a resolution, allow the transfer of any part of rights and obligations covered by an authorization for use of individually assigned scarce resource (radio frequency spectrum). By the same resolution, the Commission shall alter the authorization of the ceding undertaking and shall issue a new authorization to the beneficiary (alter the authorization if the beneficiary is an undertaking regulated by the Electronic Communications Act /ECA/).

(6) The Commission shall allow the transfer of an authorization for use of individually assigned scarce resource or any part of the rights and obligations covered by an authorization for use of individually assigned scarce resource (radio frequency spectrum)

applying the principles of objectivity, non-discrimination and transparency.

(7) The requirements for granting an authorization for transfer shall be the same for all persons who want to operate the same type of electronic communications through use of individually assigned scarce resource.

(8) Any temporary authorization, issued by the Commission, for use of individually assigned scarce resource (radio frequency spectrum) shall not be transferable.

Art. 3. (1) The Commission shall allow transfer of authorization for electronic communication operations using existing and/or new analog electronic communication networks for terrestrial broadcasting only pursuant to a resolution of the Electronic Media Council.

(2) The scope, range and term of the authorization mentioned in para 1 above shall not differ from the scope, range and term of the license for radio and television activity.

Art. 4. (1) These conditions and procedures shall not be applicable to undertakings with authorization for use of individually assigned scarce resource in the case of a full beneficiary through alteration of the juridical form of the company under Chapter Sixteen, Section III of the Commercial Act.

(2) In the cases mentioned in item 1, the authorization for use of scarce resource shall be automatically transferred to the newly incorporated company which succeeds the transformed company as from the date of entry in the Commercial Registry of such juridical form alteration.

Art. 5. (1) In case of transformation through entering into partnership (in conformity with the Commercial Act) of a company possessing an authorization for use of individually assigned scarce resource, the title bearer of the authorization must request prior authorization by the Commission and present the documents stipulated by Art. 6, para 4, concerning the company which it intends to join up as partner.

(2) In case of transformation through merger (in conformity with the Commercial Act) of a company possessing an authorization for use of individually assigned scarce resource, the title bearer of the authorization must request prior authorization by the Commission and present the documents stipulated by Art. 6, para 4, concerning the company with which it intends to merge.

(3) In case of transformation through detachment, as stipulated by the Commercial Act, of a company possessing an authorization for use of individually assigned scarce resource, the authorization's title bearer must request prior permission from the Commission to transfer its existing authorization to the beneficiary, respectively the newly incorporated company, if this authorization will not stay under the patrimonium of the transformed company.

(4) In case of transformation through division, as stipulated by the Commercial Act, of a company possessing an authorization for use of individually assigned scarce resource, the authorization's title bearer must request prior permission from the Commission to transfer its existing authorization to the beneficiary, respectively the newly incorporated company, defined by the agreement or the transformation plan.

(5) In the case of transfer to a business company, as defined in Art. 15 of the

Commercial Act, from an undertaking which possesses an authorization for use of individually assigned scarce resource, the ceding party, if it wants to transfer the rights granted by the authorization to the beneficiary, should submit an application for transfer of the authorization prior to the actual transfer.

(6) The Commission shall make its pronouncement on the above paragraphs in conformity with the stipulations of Chapter II.

Chapter Two

TRANSFER OF AUTHORIZATIONS FOR USE OF INDIVIDUALLY ASSIGNED SCARCE RESOURCE AND PARTIAL TRANSFER OF RIGHTS AND OBLIGATIONS ON EXISTING AUTHORIZATIONS FOR USE OF INDIVIDUALLY ASSIGNED SCARCE RESOURCE (RADIO FREQUENCY SPECTRUM)

Art. 6. (1) An undertaking, willing to transfer its authorization for use of individually assigned scarce resource or any part of its rights and obligations covered by the authorization for use of individually assigned scarce resource (radio frequency spectrum), shall submit an application form to the Commission.

(2) The application form stipulated in para 1 shall contain:

1. Identifying information of the company wishing to transfer the authorization or any part of the rights and obligations covered by the authorization for use of individually assigned scarce resource (radio frequency spectrum);

2. Identifying information of the person wishing to benefit from the transfer of the authorization or any part of the rights and obligations covered by the authorization for use of individually assigned scarce resource (radio frequency spectrum);

3. The number of the authorization;

4. Description of the transfer – as a whole or as any part of rights and obligations covered by the authorization for use of individually assigned scarce resource (radio frequency spectrum).

(3) The undertaking shall attach to the application mentioned in item 1 an up-to-date certificate of entry in the Commercial Register issued not earlier than one month before the date of filing of the application and, in the case of foreign entities, a receipt for payment of the administrative fee for consideration of the application.

The person wishing to benefit from the transfer of an authorization or any part of the rights and obligations covered by the authorization for use of individually assigned scarce resource (radio frequency spectrum) shall attach:

1. up-to-date certificate of entry in the Commercial Register issued not earlier than one month before the date of submission of the application, and in the case of foreign entities – a relevant document, if applicable;

2. a document certifying that the entity has not been pronounced insolvent, that there is no procedure for its pronouncement in insolvency and that it is not in procedure for liquidation;

3. a statement that the sole trader or the juridical entity is not in procedure of obliteration;

4. a document issued by a relevant authority certifying that the natural person, the sole trader or the juridical person has no monetary liabilities to the state under the provisions of the Tax and Insurance Procedure Code, established with an enforceable bill issued by the relevant authority, unless a deferment agreement has been allowed;

5. statement by the manager of the members of the managing body of the beneficiary entity that they are not barred from performing business activity.

(5) The application and the attached documents should be in the Bulgarian language.

(6) The application form stipulated in para 1 must be signed by the entity wishing to benefit from the transfer of the authorization or any part of the rights and obligations covered by the authorization for use of individually assigned scarce resource (radio frequency spectrum);

(7) In case any documents are unavailable and/or invalid documents required under para 2, 3 and 4, the Commission shall accordingly notify in writing the applicant to eliminate the shortcomings within 7 days from receipt of this notification. Should such shortcomings be not eliminated in the specified period, the application will not be considered.

Art. 7. The Commission shall review the justifiability of the request mentioned in Art. 6 and shall come out with a decision within 6 weeks from receipt of the application or from the elimination of shortcomings related to it.

Art. 8. The Commission shall issue permission for transfer of the authorization as a whole or any part of the rights and obligations covered by the authorization for use of individually assigned scarce resource (radio frequency spectrum) if the following conditions have been complied with:

1. the transfer does not violate the competition requirements in the sector of electronic communications with respect to use of individually assigned scarce resource and does not lead to transfer of the authorization or any part of the rights and obligations covered by such authorization for use of individually assigned scarce resource (radio frequency spectrum) to an undertaking which has been deprived of its authorization for use of individually assigned scarce resource for the same type of electronic communications for the period defined by the Commission;

2. the transfer does not lead to any alterations in the conditions for use of the individually assigned scarce resource;

3. the transfer of an authorization for operation of electronic communications by use of existing and/or new analog electronic communications networks for terrestrial analog broadcasting does not involve any change in the public operators' radio and television programs distributed by the undertakings licensed by the Electronic Media Council, which are subject to public law.

Art. 9. (1) An undertaking which has been granted an authorization for use of an individually assigned scarce resource (radio frequency spectrum) may transfer any part of its rights and obligations covered by this authorization to a third party by:

1. transfer of a part of its available radio frequency spectrum in the territory for which it has been granted an authorization;

2. transfer of its available radio frequency spectrum in only a part of the territory for

which it has been granted an authorization;

3. transfer a part of its available radio frequency spectrum in only a part of the territory for which it has been granted an authorization;

4. transfer its available radio frequency spectrum on the territory, for which it has been granted an authorization, for a definite period of time shorter than the term of the authorization;

5. transfer its available radio frequency spectrum on part of the territory, for which it has been granted an authorization, for a definite period of time shorter than the term of the authorization;

6. transfer part of its available radio frequency spectrum on part of the territory, for which it has been granted an authorization, for a definite period of time shorter than the term of the authorization.

(2) The transfer stipulated in para 1 may not be effected by undertakings which have authorizations for use of individually assigned scarce resource (radio frequency spectrum) for provision of electronic communications through electronic communications network for terrestrial broadcasting.

Final Clauses

Single Article. These terms and procedures are adopted on the grounds of Section 122 of the Electronic Communications Act and shall be in force from the date of their promulgation in the State Gazette.