

Decision to issue the certificate of the right of use for frequencies allocated to Echostar Mobile Limited for operation of 2 GHz Mobile-Satellite Services on national territory

1. Framework

By determination of 10 November 2011¹, ANACOM approved a decision on the authorization regime governing Mobile-Satellite Services (MSS) systems in the 2 GHz band, in the scope of which the Authority decided to make the provision in the national territory of MSS systems in the 1980-2010 MHz and 2170-2200 MHz frequency bands, by applicants selected under the terms of Decision No. 2009/449/EC, subject to the allocation of a right of use, covering both the satellite component and the ground component (CGC).

Further to the application submitted by **Echostar Mobile Limited (EML)** to ANACOM on 15 April 2014, this Authority, by determination of 12 June 2015,² approved the allocation to this company of a right of use for frequencies for the Mobile Satellite Service (MSS) on national territory, in the 1995-2010 MHz and 2185-2200MHz frequency sub-bands, covering both the satellite component and the ground component (CGC).

In this context, the conditions to which **EML** is subject in the scope of MSS provision and conditions attached to the allocated right of use were established under the draft certificate in annex to the referred determination, which was submitted to the prior hearing of **EML**, under article 100 *et seq.* of the former Administrative Procedure Code (approved by Decree-Law No. 442/91, of 15 November), having been set a deadline of 10 working days for the company to assess the matter in writing.

By determination of 25 June 2015³, ANACOM granted **EML**, upon a request from the latter, an additional period of 10 working days for the company to assess in writing, if it so wished, the draft certificate approved by the referred decision of 12 June.

Having **EML**'s comments been received prior to the deadline, the corresponding prior hearing report was drafted, including a summary of the company's position, as well as

¹ Available at <http://www.anacom.pt/render.jsp?contentId=1104511#.ViTWvG7Pdv0>.

² Available at <http://www.anacom.pt/render.jsp?contentId=1358591#.ViS9527Pdv0>.

³ Available at <http://www.anacom.pt/render.jsp?contentId=1359993#.ViTAlm7Pdv1>.

ANACOM's views thereon. This report substantiates the options taken in this decision, and is deemed to be an integral part hereof.

2. Decision

In the light of the above, the Management Board of ANACOM, pursuant to its Decisions of 10 November 2011 and 12 June 2015, to articles 15, 16, 16-A, 27, 30 and 32, all of the Electronic Communications Law, and under point q) of paragraph 1 of article 26 of its Statutes, approved by Decree-Law No. 39/2015, of 16 March, hereby determines to issue to ***EML*** the **Certificate of the right of use for frequencies for operation of 2 GHz Mobile-Satellite Services on national territory**, in annex to this determination, and deemed to be an integral part hereof.

Lisbon, 12 May 2016.

CERTIFICATE
OF THE RIGHT OF USE FOR FREQUENCIES
FOR OPERATION OF 2 GHz MOBILE-SATELLITE SERVICES
ON NATIONAL TERRITORY

ANACOM No. 2/2016

The Management Board of ANACOM, pursuant to its Decisions of 10 November 2011 and 12 June 2015, as well as to articles 15, 16, 16-A, 27, 30 and 32, all of Law No. 5/2004, of 10 February, as amended and republished by Law No. 51/2011, of 13 September, and subsequently amended (Electronic Communications Law), and under point q) of paragraph 1 of article 26 of its Statutes, approved by Decree-Law No. 39/2015, of 16 March, hereby determines to issue this certificate, which is governed by the following clauses:

Part I

General part

1. Subject-Matter

1.1. This certificate defines the conditions that apply to the right of use for frequencies allocated to “Echostar Mobile Limited” (hereinafter referred to as **EML** for short), with its seat in 25/28 North Wall Quay, Dublin1, Ireland, for the provision of 2 GHz Mobile Satellite Services (MSS), in the 1995-2010 MHz (earth to space) and 2185-2200 MHz (space to earth) frequency sub-bands, without prejudice to compliance with obligations identified in the scope of the Radio Regulations of the International Telecommunication Union (ITU) and in the National Frequency Allocation Table (NFAT).

1.2. The right of use covers the wholesale provision of the satellite component and of the complementary ground component (stations - hereinafter referred to as CGC).

2. Applicable Regime

2.1. The right of use for frequencies shall be governed by the following statutory instruments:

- a) Decision No. 2007/98/EC of the European Commission, of 14 February 2007 (Decision No. 2007/98/EC);
- b) Decision No. 626/2008/EC of the European Parliament and of the Council, of 30 June 2008 (Decision No. 626/2008/EC);
- c) Decision No. 2009/449/EC of the European Commission, of 13 May 2009 (Decision No. 2009/449/EC);
- d) Decision No. 2011/667/EU of the European Commission, of 10 October 2011 (Decision No. 2011/667/EU);
- e) Electronic Communications Law;
- f) Decree-Law No. 151-A/2000, of 20 July, as amended and republished by Decree-Law No. 264/2009, of 28 September, and subsequently amended by Laws No. 20/2012, of 14 May and No. 82-B/2014, of 31 December (Decree-Law No. 151-A/2000);
- g) Other legislation related to the electronic communications sector.

Part II

General Conditions

3. *EML* is subject to compliance with the following conditions provided for in points a), d), e), f), g), h), m), n), o), q), r), s) and t) of paragraph 1 of article 27 of the Electronic Communications Law:

- a) Interoperability of services and interconnection of networks;
- b) Maintenance of the integrity of public networks, namely through conditions to prevent electromagnetic interference between electronic communications networks and/or services, in accordance with Decree-Law No. 325/2007, of 28 September, as amended by Decree-Law No. 20/2009, of 19 January;
- c) Terms of use for communications by public authorities to alert the general public of imminent threats and to mitigate the consequences of major catastrophes, as well as terms of use during major disasters or national emergencies to ensure communications between emergency services and authorities;

- d) Security of public networks against unauthorised access according to legislation governing personal data and privacy protection in respect of electronic communications;
- e) Environmental and town and country planning requirements, as well as requirements and conditions linked to the granting of access to public or private land and conditions linked to co-location and facility sharing, including, where appropriate, any financial or technical guarantees necessary to ensure the proper execution of infrastructure works;
- f) Personal data and privacy protection with specific respect to electronic communications, in accordance with legislation governing personal data and privacy protection;
- g) Measures regarding the limitation of exposure of the general public to electromagnetic fields caused by electronic communications networks in accordance with applicable law;
- h) Measures designed to ensure compliance with the standards and/or specifications referred to in article 29 of the Electronic Communications Law;
- i) Installation, at the undertaking's own expense, and provision to competent national authorities of legal interception systems, as well as the supply of decryption or decoding means where these facilities are present, in accordance with legislation governing personal data and privacy protection within the scope of electronic communications;
- j) Restrictions on the transmission of illegal content, in accordance with Decree-Law No. 7/2004, of 7 January, as amended by Decree-Law No. 62/2009, of 10 March, and by Law No. 46/2012, of 29 August, and the transmission of harmful content, in accordance with Law No. 27/2007, of 30 July, as amended by Law No. 8/2011, of 11 April, and by Law No. 40/2014, of 9 July;
- l) Financial contributions to the funding of the universal service in accordance with articles 95 to 97 of the Electronic Communications Law;
- m) Payment of the following fees:
 - (i) The fee due for the exercise of the activity of electronic communications networks and services provider, pursuant to point b) of paragraph 1 of article 105 of the Electronic Communications Law and under the provisions laid down in Administrative Rule No. 1473-B/2008, of 17 December, with all subsequent amendments;

- (ii) The fee due for the assignment of rights of use for frequencies, pursuant to point c) of paragraph 1 of article 105 of the Electronic Communications Law and under the provisions laid down in Administrative Rule No. 1473-B/2008, of 17 December, with all subsequent amendments;
 - (iii) Fees due for the use of radio spectrum, pursuant to point f) of paragraph 1 of article 105 of the Electronic Communications Law and article 19 of Decree-Law No. 151-A/2000, of 20 July, in the amount set out in Administrative Rule No. 1473-B/2008, of 17 December, with all subsequent amendments.
- n) Information to be provided under the notification procedure set out in article 21 and for the purposes set forth in article 109, both of the Electronic Communications Law.

Part III

Conditions associated to the right of use for frequencies

Chapter I

Conditions resulting from the Community selection procedure

4. Common conditions laid down in Decision No. 626/2008/EC

Under Title III of Decision No. 626/2008/EC, and further to the Community selection procedure, **EML** is subject to common conditions provided for in the following points, which for all purposes fall under points a), b), d) and g) of paragraph 1 of article 32 of the Electronic Communications Law.

4.1. As far as the **MSS** is concerned, **EML** is subject to compliance with the following conditions:

- a) To meet all common conditions defined in paragraph 2 of article 7 of Decision No. 626/2008/EC by 1 December 2016;
- b) To meet milestones set out in the Annex to the Document presented at the COCOM meeting held on 11 June 2013, entitled «Roadmap of Measures Toward the Compliance of Selected and Authorised MSS Operators with

Common Conditions of Decision 626/2008/EC, Including Intermediate New Steps and Corresponding Time Limits»;

4.2. As regards **CGC**, **EML** is subject to compliance with the following common conditions defined in paragraph 3 of article 8 of Decision No. 626/2008/EC:

- a) To use the radio spectrum assigned for the provision of CGC of mobile satellite systems;
- b) To use CGC so that they constitute an integral part of a mobile satellite system, are controlled by the resource management mechanism and the satellite communications network mechanism, use the same direction of transmission and the same portions of frequency bands as the associated satellite components and do not increase the spectrum requirement of the associated mobile satellite system;
- c) Independent CGC operation in case of failure of the satellite component of the associated mobile satellite system must not exceed 18 months.

4.3. As regards the **period of validity**:

The right of use is assigned for a period of eighteen years from the publication of Decision No. 2009/449/EC, of 13 May 2009, expiring on 14 May 2027.

Chapter II

Conditions resulting from the Electronic Communications Law

5. Services and systems

For the purpose of point a) of paragraph 1 of article 32 of the Electronic Communications Law, the right of use for the following frequencies:

- 1995 to 2010 MHz for earth to space communications or communications between terminal equipment and complementary ground components (CGC), and
- 2185 to 2200 MHz for space to earth communications or communications between CGC and terminal equipment,

on national territory, is assigned for the wholesale provision of mobile satellite services by systems capable of providing radio services (i) between a mobile earth station and one or more space stations, (ii) between mobile earth stations through one or more

space stations or (iii) between a mobile earth station and one or more CGC used at fixed locations.

6. Effective and efficient use

In accordance with point b) of paragraph 1 of article 32 of the Electronic Communications Law, **EML** must ensure an effective and efficient use of assigned frequencies, in compliance with article 15 of the same Law, subject to the specific conditions of use of frequencies set out in the radio network license to be issued pursuant to Decree-Law No. 151-A/2000.

7. International agreements

Under point h) of paragraph 1 of article 32 of the Electronic Communications Law, **EML** must fulfil its obligations arising from international agreements relating to the use of frequencies, namely those associated to the coordination of the use of frequencies in border areas.

Lisbon, 12 May 2016.