



# ARKEP

AUTORITETI RREGULLATIV I KOMUNIKIMEVE ELEKTRONIKE DHE POSTARE  
REGULATORNI AUTORITET ZA ELEKTRONSKE I POŠTANSKE KOMUNIKACIJE  
REGULATORY AUTHORITY OF ELECTRONIC AND POSTAL COMMUNICATIONS

## Auction Rules for Allocation of the Rights for the Use of Frequency bands for BWA Services in 3.4 – 3.8 MHz band.

Prishtina, November 2013

## **1. Legal and Regulatory framework (*legal basis*)**

- 1.1. The Regulatory Authority of Electronic and Postal Communications (*hereinafter; the Authority*) Date; 18 November 2013 announces the auction procedure, issuing authorizations for the use (*utilization*) of the bands 3400 - 3600 MHz and 3600 - 3800 MHz for delivery broadband services throughout the territory of the Republic of Kosovo.
- 1.2. The auction is announced and organized in accordance with;
  - 1.2.1. The Law No. 04/L-109 for Electronic Communications (*hereinafter; the Law*), Articles; Article 10, paragraph 10) and Article 51, paragraphs 1) and 2), aiming to;
    - Secure and promote effective competition in the delivery of services and electronic communications networks, associated facilities and other services; as well, as
    - Implementation of the priorities and objectives of the country's economic development and social objectives as determined by priority 1) objectives and 2) the policy document of the electronic communications sector, called '*Digital Agenda 2013 - 2020*';
  - 1.2.2. National Plan of Radio-Frequency, adopted by the Assembly of the Republic of Kosovo (*Ref; Decision No. 04-V-93, Date; 23/06/2011*);
  - 1.2.3. The decision of governing body and the legal Authority, the Board of Authority, initiating and organizing the Auction for (*assignment*) the frequency bands 3.4 - 3.8 GHz for the broadband services, including the initial price; the pre-qualifying criteria; and other defined criteria defined by the Auction rules.
  - 1.2.4. The decision No. 405 (*Ref. Nr. Prot.033/B/13*) to establish the Commission for the administration of the Auction procedures (*hereinafter: the Commission*).
- 1.3. The Rules of the Auction and its accompanying appendix, are published based on this document and represent the only base, and hence, are the only official reference to participate and presenting the offers from participants and submission of bids.
- 1.4. Other correspondences from the Authority will not be part of the Auction documents published by the Authority pursuant to the Auction Rules.

## **2. General Provisions and Auction Subject**

- 2.1. This Rule describes needed procedures for giving the rights for usage of 3400 - 3800 MHz band, by the Regulatory Authority for Electronic and Postal Communications (*further referred to as the Authority*), in the territory of the Republic of Kosovo, as well as establishes auction's principles and procedures

- 2.2. The auction will be held in compliance with the Law of Electronic Communications (*Nr. 04/L-109*), Article 10 (*further referred to as Law*), ensuring and encouraging effective competition, in offering services and networks of electronic communications, accompanying facilities and other services.
- 2.3. The way of allocation of 3400 - 3800 MHz band through the Auction, is determined with the decision of Authority Steering Board in compliance with Law, which has determined auction's commission. (*further referred to as the Commission*).

### 3. The Auction

3.1. Participant in the auction can be a registered business/consortium, which has applied in agreement with the procedures, described in this document and fulfils pre-qualified criteria determined in point 3.2.

3.2. Participant in the auction can be operators which:

3.2.1. Are equipped with general Authorization/License for offering electronic communications services;

3.2.2. Have been active in at least three (3) years in offering electronic communications services. One such thing must be proved by bringing a relevant document by a competent authority;

3.2.3. The income of operator/participant in the last three (3) years of the offering of electronic communications services, have been at least 5,000,000.00 EUR.

3.2.4. Payment of the Administrative fee for participation in the amount of 2,500.00 €.

3.3. Frequency spectrum 3410 - 3490 / 3510 - 3590 MHz and 3600 - 3800 MHz has been divided into blocks as shown below:

1) *Division of blocks for 3400 - 3600 MHz BAND*

Channel order number	Frequency Block	Width of Block	Lower Band (MHz)	Upper Band (MHz)	Comments
1 - 4	A	2x20 MHz	3410.0 - 3430.0	3510.0 - 3530.0	National
5 - 8	B	2x20 MHz	3430.0 - 3450.0	3530.0 - 3550.0	National
9 - 12	C	2x20 MHz	3450.0 - 3470.0	3550.0 - 3570.0	National
13 - 16	D	2x20 MHz	3470.0 - 3490.0	3570.0 - 3580.0	National

2) *Division of blocks for 3600 - 3800 MHz BAND*

Width of Block	Frequency Block	Band (MHz)	Frequency Block	Band (MHz)	Comments
10 MHz	A1	3600.0 – 3610.0	K1	3700.0 – 3710.0	National
10 MHz	B1	3610.0 – 3620.0	L1	3710.0 – 3720.0	National
10 MHz	C1	3620.0 – 3630.0	M1	370.0 – 3730.0	National
10 MHz	D1	3630.0 – 3640.0	N1	3730.0 – 3740.0	National
10 MHz	E1	3640.0 – 3650.0	O1	3740.0 – 3750.0	National
10 MHz	F1	3650.0 – 3660.0	P1	3750.0 – 3760.0	National
10 MHz	G1	3660.0 – 3670.0	Q1	3760.0 – 3770.0	National
10 MHz	H1	3670.0 – 3680.0	R1	3770.0 – 3780.0	National
10 MHz	I1	3680.0 – 3690.0	S1	3780.0 – 3790.0	National
10 MHz	J1	3690.0 – 3700.0	T1	3790.0 – 3800.0	National

3.4. The initial price has been determined according to the following table:

Spectrum value for 1 MHz	5 400.00 EUR
Spectrum value for one block 2x20 MHz (40 MHz)	216 000.00 EUR
Spectrum value for one block 10 MHz	54 000.00 EUR
Total spectrum value for 3400 – 3800 (360 MHz) band	1 944 000.00 EUR

During the auction, the price will increase after every round, adding to the value of previous round the value of incremental price, which is € 2,500.00 for blocks 2x20 MHz in 3400 – 3600 MHz band and € 1,000.00 for blocks 10 MHz in 3600 – 3800 MHz band. Valid offers are determined and the participant shall increase the offer, by adding to the minimum offer of round (*the initial price/the highest offer of the previous round plus the incremental price*) the value of one of the valid offers, as below:

- Minimum offer plus 1 offering unit (100 €)
- Minimum offer plus 5 offering units (500 €)
- Minimum offer plus 10 offering units (1000 €)
- Minimum offer plus 20 offering units (2000 €)
- Minimum offer plus 50 offering units (5000 €)
- Minimum offer over 50 offering units will be (Nx5,000 € N=2345...n)

3.5 Rights for usage of frequency band 3400 – 3600 MHz will be allocated to total four (4) winners, whereas number of winners for frequency band 3600 – 3800 MHz is not determined. Every winner can ensure the rights for usage of frequency band, for only one block in 3400 – 3600 MHz band and few blocks but not more than five in 3600 – 3800 MHz band, simultaneously.

3.6 The right for use or duration of authorization for each block in 3400 – 3800 MHz band will be 15 years, from the date of licence/authorization has been granted. Spectrum should be used in efficient and effective way to fulfil customers’ needs, as well as in conformity with Law, Regulations of Authority, and determined conditions in Authorization, for usage of frequency resources, issued by the Authority.

#### **4. Principles of Auction**

- 4.1. Whatever agreement between participants of auction, for participation or non-participation in auction, or any agreement for the strategy of participation in auction, is prohibited.
- 4.2. Illegal agreement implies any kind of verbal or written agreement (*including mutual harmonisation*) between the participants, exchanging information or agreeing on activities, which would impact in the results of auction.
- 4.3. Participants of the auction must present true, complete and accurate information and are responsible for truthfulness of offered information.

#### **5. Representatives and participants in auction**

5.1. Participant in auction can be business/consortium which has applied in agreement with procedures described in this document, has fulfilled criteria determined in point 3.2 of this document, and has ensured and presented bank guarantee.

5.1.1. In this case the group, along with their application must submit a clear statement that:

- a. all members of the group are jointly and severally liable for the contents of the group’s application and, in the event the group is awarded frequency block, to perform all obligations set forth in conformity to auction;
- b. confirming their participation in the group and that they are not participating singularly and/or in any other group taking part in the same auction procedure; and
- c. all members of the group authorising the leading partner to act on behalf of the group.

5.1.2 Such a group ***shall not be required to assume a specific legal*** form in order to submit the application but the Authority reserves the right, if such requirement is necessary , to request from the selected group to assume such a legal form if the group, is a winner of a block.

5.2. If one shareholder is part of two or more companies (*further tied companies, which means that they have one common shareholder which has over 10% of shares in each of the companies*) then tied companies are disqualified from participation in auction, if one of the companies has previously submitted documents for participation in auction (*only the first one is allowed*).

- 5.3. Every participant in auction must nominate not more than two (2) representatives for participation. Representatives can be lawful or authorized (*further as Representatives*). Participants in auction must verify this fact, by bringing respective documents which prove legitimate power.
- 5.4. Representative's activities during the auction (*also including information provided by representatives*) are compulsory.

## **6. Presentation of requests / applications**

- 6.1. Participant must submit to the Authority one original copy of fulfilled application for participation (*Application is given in Annex 1*) and signed by the participant. You can download the Application from the official website of the Authority in the link; [www.arkep-rks.org/?cid=1,199](http://www.arkep-rks.org/?cid=1,199)
- 6.2. By completing application for registration, the participant agrees that application is in conformity with regulations and conditions, determined by the Authority.
- 6.3. Participant must notify in writing, immediately, of any kind of change of information after registration, if he/she finds out that application holds any incomplete or inaccurate information.
- 6.4. Changes described in paragraph 6.3 must be signed by the participant of auction.
- 6.5. Presentation of request, except with application, must be accompanied with following documents which are integral part of this document:
  - 6.5.1 Full statement of conformity (*given in Annex 3*);
  - 6.5.2 Bank guarantee in agreement with paragraphs 7.1 and 7.2 of this document; (*given in Annex 4*)
- 6.6 Participant must submit only copies of originals of required documents, which must contain the latest information, updated or required additional information.
- 6.7 Participants must submit documents in one of official languages. If documents are in any foreign language, then translated copies must be legitimate (*authorized translations*) in conformity with applied Laws in the Republic of Kosovo.

## 7. Bank guarantee

- 7.1. Participant in auction until the date 09/12/2013 (*the latest deadline for presenting requests/applications*) must present bank guarantee, issued by any bank, registered in the Republic of Kosovo (*given in Annex 4*);
- 7.2. Bank guarantee should be addressed to the Authority (*Regulatory Authority for Electronic and Postal Communications, Nr.12 Pashko Vasa Street, Prishtina, 10000*), as well as signed by the responsible bank person/officer, and contains at least the following information:
- i. Value of € 25,000.00 (*value of bank guarantee determined by the Authority*);
  - ii. Bank Account of the recipient (Bank Account of RAEPC) to whom the payment is addressed;
  - iii. Accurate identification of guaranteeing bank;
  - iv. Recipient (RAEPC);
  - v. Accurate identification of guarantor;
  - vi. Period of validity of guarantee;
  - vii. Effectivity of guarantee, which is given from the date of issue;
  - viii. Conditions for usage of bank guarantee, in particular:
    - a. Reimbursement according to the initial request, without any objections;
    - b. To be unrevoked;
    - c. To be unconditioned;
    - d. Not to be transferrable.
  - ix. One form of profiteer's obligation for the guarantor (*the bank*), which means an request in writing (*reception of the profiteer*) registered, as well as a copy of issued receipt, where the placed date should be date of reception by the bank.
- 7.3. Bank guarantee submitted in accordance with paragraph 7.2 will be returned:
- 7.3.1. when the auction participant who has not won the auction. Return will be within five (5) working days after confirmation/validation of the auction results.
  - 7.3.2. if the Authority Board has not approved the results of the auction, the bank guarantee submitted in accordance with paragraph 7.2 will return to all auction participants within five (5) working days after the relevant decision is taken.
  - 7.3.3. submitted paid guarantee in accordance with paragraph 7.2, but did not participate in the auction;
- 7.4. The Authority does not return the bank guarantee submitted in accordance with paragraph 7.2 in the following cases:

- 7.4.1. withdraw their offers or refuses to sign the protocol to the highest bid (*the bid by the participant*);
- 7.4.2. participant with the highest bid in the next round of offers gives invalid bid (*the amount offered is less than the minimum acceptable bid for round or value of the offer is not valid*);
- 7.4.3. is ruled out from participation in the auction based on 10.4 points and 11:26;
- 7.4.4. does not comply with the rules as defined in section 13.1;

## **8. Consulting with Auction's panel**

- 8.1. Every person can ask for explanation, in writing, for any unclarity regarding the auction, not later than one (1) week before the last deadline, for presentation of requests (*Date 02/12/2013*).
- 8.2. After submission of application for registration, every exchange of information between auction's commission and the participants must be in written.
- 8.3. Requests for expalanatory information must be submitted in written, via mail or electronically through e-mail address; [ankandi@arkep-rks.org](mailto:ankandi@arkep-rks.org). The person who asks questions to the auction's commission, must specify the subject as "*Auction for frequency band 3400 – 3800 MHz*" and specify name of the person (*legal person*) that asks questions and contact information (*e-mail address, mail address and phone number*).
- 8.4. Auction's commission will return answers in writing to all interested parties.
- 8.5. Answers for all expounded questions will be published in official website of the Authority [www.arkep-rks.org](http://www.arkep-rks.org) not identifying the person who has submitted the question.

## **9. Registration**

- 9.1. Participant submits application for registration in closed envelope, personally, in Authority's secretary office, not later than 09/12/2013, at 1200h (GMT+1). The envelope must be identified by containing the subject "*Auction for frequency band 3400 – 3800 MHz*" and the address of Authority (*Nr.12 Pashko Vasa Street, Prishtina, 10000*). Contact number of the Authority for any question or unclarity is +381 (0) 38 234 555. Any change will be published in the official website of Authority.
- 9.2. The envelope shall be identified by restraining the subject '*frequency spectrum auction for 3400 - 3800 MHz*', Authority address (*Nr.12 Pashko Vasa Street, Prishtina, 10000*)



- 9.3. Authorised officer from the commission receives and registers envelopes in a special reception-form, in two (2) copies, identifying the name of participant, date and time when the envelope for registration is received. One copy of reception-form of application/envelope is submitted to the participant.
- 9.4. The envelope submitted after the date and time specified in the paragraph 9.1 is considered not valid. One such envelope will not be opened by the Authority, and will be returned to the participant. In all other cases, presented documents for registration are not returned.
- 9.5. Recognition and presentation of applicants will take place at 16:00PM while the auction will start the next day starting at 10:00AM.

## 10. Confidentiality of information

- 10.1. With presentation of request for registration, the participant agrees that auction's commission will use submitted documents and information by the participant, only for the activity regarding auction.
- 10.2. Information regarding auction and the process of auction are open, with exception of the day of auction, before the auction starts:
  - 10.2.1. number of registered applications;
  - 10.2.2. participants of the auction;
  - 10.2.3. number of submitted applications.
- 10.3. The commission of auction is responsible for protecting and saving confidential information.
- 10.4. A participant who through his activities aims to directly or indirectly, without the approval of other participants, secure information which are not public, and in particular about the strategy and tactics of the auction of other participants, sums/offers that participants aim to offer, are considered as violation on discovering confidential information.
- 10.5. If participant of the auction does not respect restrictions in paragraph 10.4, and this will obviously impact the results of the auction, then, the commission of the auction has the right to disqualify such participant from the auction.

## 11. Auction

- 11.1. Auction for frequency band 3410 - 3490/3510 - 3590 MHz and 3600 - 3800 MHz will start on 10/12/2013, at 12:00 (GMT +1), in Prishtina, Nr.12 Pashko Vasa Street, 10000. Any change regarding date and location, will be published on the official website.

- 11.2. If the auction must continue even after the forecasted date in the above paragraph, then the auction will take place during the week days from 09:00 – 15:00. The auctioneers will notify the participants about more particularised details, about the auction.
- 11.3. Auction will be held in official language (*Albanian language*). If any of the participants during the auction must use any foreign language, then the participant must ensure an interpreter/translator and is responsible for accuracy of translation.
- 11.4. Auction is opened by the Auctioneer/Manager of auction who notifies participants about frequency blocks, the initial price, and the value of incremental price of each round, as well as regarding planned processes of the auction.
- 11.5. The commission of auction will open envelopes according to the order in which they are received and must verify if:
  - 1) Participant fulfils pre-qualified criteria for participation in the auction.
  - 2) Participant has followed rules determined by the auction's rule.
  - 3) Informations are accurate.
  - 4) Documents, application and bank guarantee are valid.
- 11.6. If the commission of auction finds out that two or more participants are part of tied companies, then the panel determines a deadline of not more than one hour for participants in the auction, who represent tied companies to decide which of the participants will participate in the auction. If representatives of tied companies cannot decide, then the commission decides to disqualify those participants.
- 11.7. The commission of the auction recognises as participants of the auction, all participants who fulfil the requirements, determined by the auction's rule, and have presented all required documents.
- 11.8. The commission of auction does not recognise as participants of the auction, participants who:
  - 11.8.1. have not fulfilled pre-qualified criteria;
  - 11.8.2. have failed to follow conditions determined by the auction's rule;
  - 11.8.3. have submitted inadequate documents compared to those required;
  - 11.8.4. bank guarantee is not valid;
  - 11.8.5. participants represent tied companies.

- 11.9. If only one participant appears in the auction, then this participant automatically becomes the only winner and is obliged to pay the initial sum/price, plus the incremental price determined by the auction's rule.
- 11.10. Every participant in the auction, during placement of the offers, goes in special and separated rooms, which will be determined randomly.
- 11.11. The format of auction is at the same time multi-rounds, which means that all blocks in 3400 – 3600 MHz band and in 3600 – 3800 MHz band will be simultaneously opened for offers, and participants can bid in parallel for one block in 3400 – 3600 MHz band and several blocks (*not more than five*) in 3600 – 3800 MHz band, and the process will continue in several rounds, until the block is considered closed (*until the winner is determined*).
- 11.12. During the active round, the participant **must present the offer for one block only** in 3400 – 3600 MHz band and/or one or more blocks (*not more than five*) in 3600 – 3800 MHz band and such offer must at least have the initial price, and at least one bidding unit (*further as minimum offer*) the selected block and/or use the rights remaining in the auction (*waiver*) a maximum of three (3) rounds in total. The waiver allows participants to remain active in the auction, while its bid increment is added to the maximum offer preliminary round block. In cases where the participant does not submit the bid or waiver, the commission will apply the automatic waiver remaining for the participants. The participant submits the offer in writing, in closed envelope. If the participant has the highest offer for the selected block, in the next round this participant can bid only for this block. If two or more participants give the highest offer for one block, but with equal value, then in the next round these participants can bid for any of the auction's blocks. Participant who does not have the highest offer, in the next round can bid for any of the blocks.
- 11.13. The initial price for the following rounds is created in such way that to the highest offer for the respective block, of previous round, is added at least the incremental price.
- 11.14. After completion of the actual round, manager of the auction must verbally give the following information:
  - 11.14.1. offers of the actual round, given by each auction's participant;
  - 11.14.2. established offers for every auction's block;
  - 11.14.3. status of auction (blocks) – opened, closed, completed;
  - 11.14.4. the initial price, the incremental price and opening time for the next round.
- 11.15. The auction continues in several rounds, while the participants present the offers.

- 11.16. The commission of auction must disqualify from further participation, participants who:
- 11.16.1. give invalid offers – the offered sum is smaller than the minimum acceptable offer (*the initial price plus the incremental price of the actual round*) or value of the offer is not valid (*valid offers are given in Annex 3*);
  - 11.16.2. give offers for more than one block (*for 3410-3490/3510-3590 MHz band*)
  - 11.16.3. do not give offers at first round;
  - 11.16.4. withdraw the offer already submitted;
  - 11.16.5. refuse to sign the protocol of auction, for the highest given offer.
- 11.17. All blocks remain open for bidding until the bids is closed on each block. Auction ends at the same time in all the blocks after the round in which they have more than one bidder for the block, where bidders not present any new offer or use rights remaining in the auction (waiver).
- Also, the commission may apply the method known as a special rule (*“special stopping rule”*) to close up the auction. In this case, the commission declares and informs participants that the auction will end after a specified number of additional rounds. If the commission decides to apply this rule, then on the basis of received bids in certain final round commission will announce the results and determine that the Auction is completed.
- 11.18. Every participant must sign-in protocol for his/her highest offer.
- 11.19. Participants have the right, once during the auction, to ask for a break of not more than two (2) hours, until the next round.
- 11.20. At the end of each round, the participants will be notified about the offers given by all participants in the auction.
- 11.21. Participant who refuses to sign-in the protocol, for his/her highest offer, is disqualified from the auction and the possibility to win. Subsequent winner will be the participant who had the highest offer according to the order, as well as considering other conditions in conformity with auction’s rules.
- 11.22. In case when there are no subsequent winners (*i.e. the participant has given the highest offer, in any other block in the actual round, and is classified as a winner, then he cannot be a winner of other block too, for which he has bid in the previous round*) then that block remains unsold. If two or more participants have given the highest but equal offers,

then the auction continues, according to the procedures described in the following paragraphs.

- 11.23. Winner of a determined block is participant who has given the highest offer for this block. Every participant in the auction can win only one block (*in 3410 – 3490/3510 – 3590 MHz band*), therefore if the participant can be determined as a winner of the auction for several blocks, then this participant will be announced the winner for the block, for which he/she has given his/her highest offer.
- 11.24. If the auction closes and two or more participants have given the highest but equal offer for the same block, then the auction continues in the written form for these participants. Each of these participants can give an offer of any kind, by choosing themselves the value of bid price on the last offer given. In this case, the winner will be the participant, who has submitted the highest offer according to bid price chosen by them.
- 11.25. The commission can ask for additional information from the participant, regarding participation and conditions of the auction. The participant must provide the required information and present them to the panel in writing within two (2) working days.
- 11.26. If the commission finds proofs that the participant is part of a tied company described in the above paragraphs, ascertains that the participant has presented incomplete or inaccurate information, the information have been changed but the participant has not previously notified the panel, or if the participant refuses to present to the commission the additional required information as described in the above paragraph, then the commission has the right to disqualify such participant from the auction and his/her right to win.

## **12. Results of auction and their approval**

- 12.1. The Board of Authority will be informed within 3 working days about auction results from the closing date of the auction and issue a decision for the right to use radio frequencies for the auction winners.
- 12.2. If there is no winner in the auction, the Board approves that the auction has ended without results.

## **13. The rights for usage of frequency bands**

- 13.1. The winner within the time limit specified by the decision of the Board, but not later than fortyfive calendar days must be paid into the Authority's bank account, the winning bid amount. The paid receipt can be sent electronically via e-mail, submitted in person to the Authority or sent by mail.

- 13.2. If the winner does not follow the rules, determined in the above paragraph, then the Board withdraws the participant from the winner's position, in which case to the same on will not be given the submitted bank guarantee. The new winner will be the participant who had the highest offer, by order. If there is no other participant in that block or two or more participants have the highest, but equal offers, then that block remains unsold.
- 13.3. If the winner has followed all determined rules, then the Authority, within ten (10) working days, issues the Authorization to the winner.
- 13.4. The winner of the auction has the right to use the frequency spectrum, determined in conformity with the Law for Electronic Communications, regulations and decisions of the Authority, National Plan for Radio Frequencies, and rule for determination of auction's rules.
- 13.5. If the winner does not follow rules described in the above paragraph, then the Authority can decide to revoke the authorization or the rights to use radio frequencies, to such operator.
- 13.6. The winner must present to the Authority once a year, within the period from the 1st of January - 15th of February, a report on usage of frequency band 3400 - 3800 MHz (*respective block within this band*), which must contain at least the information set out according to the requirements of the Authority.