

Order of the Head of the National Council for Peace and Order

No. 4/2562

Re: Measures to Address Issues in Television Broadcasting Business and
Telecommunications Business

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Order of the Head of the National Council for Peace and Order**No. 4/2562****Re: Measures to Address Issues in Television Broadcasting Business and
Telecommunications Business**

Pursuant to the Order of the Head of the National Council for Peace and Order No. 16/2559, Re: Spectrum Auction for Telecommunications Business, dated 12 April B.E. 2559 (2016), to ensure that the re-auction for telecommunications services in the 895 - 915 MHz / 940 - 960 MHz frequency spectrum bands is carried out with transparency, speed, fairness, and in accordance with the Order of the Head of the National Council for Peace and Order No. 76/2559, Re: Measures to Promote Sound Broadcasting, Television Broadcasting and Telecommunications Businesses for Public Interest, dated 20th December B.E. 2559 (2016), and the Order of the Head of the National Council for Peace and Order No. 9/2561, Re: Measures to Mitigate Impact on Operators of Sound Broadcasting, Television Broadcasting, and Sound Broadcasting and Television Broadcasting Businesses, dated 23rd May B.E. 2561 (2018), to provide assistance to bona fide operators who are unable to pay spectrum license fees within the stipulated time frame.

Whereas, it has now become evident that the issues arising from business competition for television broadcasting and telecommunications services, the readiness problems both in the public and private sectors, as well as the impact from the revenues of bona fide operators, which affect their ability to pay the spectrum license fee within the stipulated time frame, still persist. Therefore, it is necessary to amend the criteria, procedures, and the time frames for the payment of such fees to ensure that these operations can continue without affecting the public's access to and awareness of information. Furthermore, this will help to build confidence among both public and private sector operators and encourage operators to participate in the auction for the 700 MHz and 2600 MHz frequency spectrum bands, which will drive the adoption of 5G technology, thereby enhancing the overall economic stability and efficiency of the country.

By virtue of Section 265 of the Constitution of the Kingdom of Thailand, in conjunction with Section 44 of the Constitution of the Kingdom of Thailand (Interim), B.E. 2557 (2014), the Head of the National Council for Peace and Order, with the approval of the National Council for Peace and Order, hereby issues the following Orders:

Clause 1 This Order shall come into force as from the date of its publication in the Government Gazette.

Clause 2 In the case of any issues regarding the implementation and interpretation of this Order, the Secretary General of the NBTC shall have the authority to make a decision, and the decision of the Secretary General of the NBTC shall be final.

Clause 3 If it deems appropriate, the Prime Minister or the Cabinet may propose to the National Council for Peace and Order to amend this Order.

Part 1

Spectrum Licensee for Telecommunications Business

Clause 4 In this part:

“Licensee” means the person who has been granted a license to use the 890 - 915 MHz / 935 - 960 MHz frequency spectrum bands;

“Order” means the Order of the Head of the National Council for Peace and Order No. 16/2559, Re: Spectrum Auction for Telecommunications Business, dated 12th April B.E. 2559 (2016);

"Notification" means the Notification of the National Broadcasting and Telecommunications Commission, Re: Criteria and Procedures for Licensing the Use Frequency Spectrum for Telecommunications Business in 895 - 915 MHz / 940 - 960 MHz frequency spectrum bands, or the Notification of the National Broadcasting and Telecommunications Commission, Re: Criteria and Procedures for Licensing the Use

Frequency Spectrum for Telecommunications Business in 890 - 895 MHz /935 - 940 MHz frequency spectrum bands.

Clause 5 The Licensee shall continue to make payment for the spectrum auction under the criteria, procedures, and conditions specified in the Order or Notification.

Clause 6 If any Licensee is unable to make the payment for the spectrum auction as specified in Clause 5, the Licensee shall notify Office of the NBTC in writing within thirty days from the effective date of this Order to request the spectrum auction payment in installments.

Office of the NBTC shall consider dividing the total spectrum auction payment that the Licensee is required to pay into ten installments, with one installment per year, each installment being of equal amount. The year in which the Licensee won the frequency auction under this Order or Notification shall be counted as the first installment year. Once Office of the NBTC has determined the amount to be paid for each installment, the Licensee shall make the payment for each installment starting from the year B.E. 2563 (2020) onwards. The installment due in B.E. 2563 (2020) shall be paid together with the compensation for the previous installment.

During the installment payment of the spectrum auction payment as specified in paragraph two, the Licensee shall provide a letter of guarantee from a financial institution classified as commercial banking under the Financial Institution Business Act, B.E. 2551 (2008), to secure the payment of the outstanding auction amount. Additionally, the Licensee must comply with the criteria, procedures, and other conditions as specified in the Order or Notification.

Clause 7 In the case where the Licensee fails to pay the outstanding spectrum auction according to the installment as specified within the stipulated time frame, the Licensee shall pay an additional amount equal to the product of the overdue spectrum auction amount and an interest rate of 15 percent per annum, calculated on a daily basis. If the payment is not made within the stipulated time frame, it shall be considered that the

Licensee violates the conditions of the license, and the NBTC may consider suspending or revoking the license.

Part 2

Spectrum Allocation for Telecommunications Business

Clause 8 Office of the NBTC shall allocate the frequency spectrum that has been recalled under Clause 11 for the use in telecommunication businesses by giving priority to those holding licenses to use the 890-915 MHz/935-960 MHz frequency spectrum bands in accordance with the criteria, procedures, and conditions prescribed by Office of the NBTC. The provisions of Section 45 paragraph one of the Organization to Assign Radio Frequency and to Regulate the Broadcasting and Telecommunications Services Act, B.E 2553 (2010), as amended by the Organization to Assign Radio Frequency and to Regulate the Broadcasting and Telecommunications Services Act (No. 2), B.E. 2560 (2017) shall not apply.

In the case where a spectrum licensee in the 890-915 MHz/935-960 MHz frequency spectrum bands does not wish to be allocated of the frequency spectrum as specified in paragraph one, it shall be considered a violation of conditions, and the licensee shall pay the outstanding frequency auction in full under Clause 5. Office of the NBTC shall proceed to organize an auction for the said frequency spectrum through the spectrum auction.

Part 3

Spectrum Licensee for Providing Digital Television Services

Clause 9 In this part, "Notification" means the Notification of the National Broadcasting and Telecommunications Commission, Re: Criteria, Procedures, and Conditions for the Spectrum Auction for Providing Digital Television Services in the National Commercial Service Category, B.E. 2556 (2013).

Clause 10 A spectrum licensee for providing digital terrestrial television services who wishes to return the license granted under the Notification shall notify Office of the NBTC in writing within thirty days from the effective date of this Order. Office of the NBTC shall consider determining compensation for the spectrum licensee, taking into account the benefits the spectrum licensee has received during the operation of the business and the spectrum license fees already paid.

Clause 11 Office of the NBTC shall consider recalling the 700 MHz frequency spectrum band in the range of 694 - 790 MHz frequency spectrum band from spectrum licensees for providing digital terrestrial television services, except the spectrum licensees for providing digital terrestrial television services who wish to return their license under Clause 10 for reallocation for telecommunications business under Clause 8. Office of the NBTC shall also consider determining replacement, remedy or compensation for the licensees whose frequency spectrum is recalled.

Clause 12 The person who is affected by the recall of the frequency spectrum under this Order shall receive replacement, remedy or compensation under the criteria, procedures, and conditions specified by Office of the NBTC as follows:

(1) spectrum licensee for providing digital terrestrial television services;

(1.1) shall be exempted from the spectrum license fees that must be paid for the last installment of the minimum price or starting price, and the last two installments of the price exceeding the minimum price or starting price as specified in the Notification, the following actions shall be taken:

(a) In the case where a spectrum licensee has not paid the spectrum license fees up to the installment that has been exempted under (1.1), the spectrum licensee must pay the outstanding fees in full up to the installment that was exempted under (1.1) Such payment shall be made within one hundred and twenty days from the effective date of this Order;

(b) In the case where a spectrum licensee has overpaid the spectrum license fees beyond the installment that has been exempted under (1.1), the spectrum licensee shall receive a refund of the excess fees.

(1.2) The expenses for leasing the digital terrestrial television network (MUX) for the remaining period of the digital television service license. This shall take effect after the conclusion of the mitigation measures under Clause 8 paragraph 1 of the Order of the Head of the National Council for Peace and Order No. 9/2561, Re: Measures to Mitigate Impact on Operators of Sound Broadcasting, Television Broadcasting, and Sound Broadcasting and Television Broadcasting Businesses. In this regard, the support shall be paid by Office of the NBTC to the licensee of the digital television network provider based on the actual amounts agreed upon by the contracting parties but not exceeding the rate approved by the NBTC.

(2) The network provider licensees and the facility provider licensees for providing digital television services shall receive replacement, remedy or compensation for the direct impact resulting from the recall of the frequency spectrum equal to the expenses incurred from upgrading or replacing television network equipment or the direct impact that the network providers suffer from changes in service provision in accordance with the conditions of the network provider license. These expenses must be actual costs incurred.

Clause 13 Office of the NBTC shall consider appointing a subcommittee to provide opinions regarding the determination of procedures and conditions for compensation arising from the return of the license under Clause 10, and the replacement, remedy and compensation to those affected by the recall of the frequency spectrum under Clause 12(2). The subcommittee shall be composed of the Secretary General of the NBTC or a representative from Office of the NBTC as the chairperson of the subcommittee, with a representative from State Enterprise Policy Office, a representative from Office of the Council of State, a representative from Office of the Attorney General, a representative from Office of the National Economic and Social Development Council, a representative from Budget Bureau, and a representative from Office of the National Board of Digital Economy and

Society as subcommittees. The official assigned by the Secretary General of the NBTC shall act as the secretary of the subcommittee.

Clause 14 In the case where a spectrum licensee providing digital terrestrial television services forms a collective organization for the purpose of conducting audience surveys to support the digital television industry, Office of the NBTC shall consider allocating money for the operation of such activity.

Clause 15 Replacement, remedy or compensation under Clause 10, Clause 11, and Clause 12, as well as the implementation under Clause 14, Office of the NBTC shall consider financial support from money received from the spectrum allocation under Clause 8. Except in the case of Clause 12 (1.1) (b), Office of the NBTC shall pay from money received under Clause 12 (1.1) (a), or money generated from the spectrum allocation under Clause 8 or the recall of other frequency spectrum, or the remaining revenue of Office of the NBTC which must be remitted as public revenue, in accordance with the criteria, procedures, and conditions prescribed by Office of the NBTC.

Until the revenue derived from the spectrum allocation under Clause 8 is received, Office of the NBTC shall use the Broadcasting and Telecommunications Research and Development Fund for Public Interest to temporarily carry out the actions pursuant to this Order. Office of the NBTC shall reimburse the Fund when it receives the revenue derived from the spectrum allocation under Clause 8.

Any excess amount from the support under paragraph one shall be remitted by Office of the NBTC as public revenue in accordance with the criteria and procedures prescribed by Office of the NBTC.

Clause 16 For the purpose of managing the public budget, the Ministry of Finance shall not be required to return the excess amount which were borrowed from Broadcasting and Telecommunications Research and Development Fund for Public Interest to use as a portion of the loan for the urgent development projects of water management and road transportation systems under the Resolution of the Cabinet on 26th May B.E. 2558

(2015), and the Notification of the National Council for Peace and Order No. 80/2557, Re: the Amendment of the Law on the Organization to Assign Radio Frequency and to Regulate the Broadcasting and Telecommunications Services.

Ordered on the 11th April B.E. 2562 (2019)

General Prayut Chan-o-cha

Head of the National Council for Peace and Order