[AT] ORF Must Hand Back Radio Frequencies

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In 2004, the *Bundeskommunikationssenat* (Federal Communications Office), after giving due notice, withdrew from *Österreichische Rundfunk* (ORF) the rights to use four broadcasting frequencies in the Linz region, which were used by the LINZ 2 - Freinberg transmitter. This decision was taken on the grounds that the transmission capacities concerned were not technically necessary for the provision of a broadcasting service, since the Linz region was already adequately covered by the LINZ 1 - Lichtenberg transmitter. The minimum technical requirements for a satisfactory service, as defined in a recommendation of the International Telecommunication Union, were met by the LINZ 1 - Lichtenberg transmitter for the whole region covered by the withdrawn transmission frequencies.

In a complaint to the *Verwaltungsgerichtshof* (Administrative Court), *ORF* did not dispute this fact, but argued that, as well as minimum technical requirements, quality criteria such as protection ratio and signal distortion should be taken into account. *ORF* claimed that these factors had led to a deterioration in the quality of programme reception, as a result of which it could not fulfil its legal obligation to provide a suitable broadcasting service.

The complaint was rejected on the grounds that the first-instance regulatory body *KommAustria* was obliged to withdraw the previous user's right to use transmission capacities and invite tenders for the frequencies concerned if it found that a particular area was covered by more than one service. The *Verwaltungsgerichtshof* admitted that the LINZ 2 - Freinberg transmitter would have to cover the Linz region if this was the only way that the ORF channels could be received in accordance with minimum technical quality standards. However, a minor deterioration in reception quality was not sufficient to justify the provision of more than one service. Rather, the deciding factor should be whether the use of additional transmission capacity is necessary to provide satisfactory reception quality in the area concerned. In this particular case, however, there was only a "minimal" loss of reception quality in a relatively small area.

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http://www.vwgh.gv.at/Content.Node/de/presse/pressemitteilungen/2006/2004_04_0219.pdf

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