

Determination of 30.1.2008

**DECISION**  
**ON THE LIMITATION OF THE NUMBER OF RIGHTS TO USE**  
**FREQUENCIES RESERVED FOR DIGITAL TERRESTRIAL TELEVISION**  
**BROADCASTING AND THE DEFINITION OF THE RESPECTIVE**  
**ALLOCATION PROCEDURE**

**1. Background**

On 24 May 2005, the European Commission adopted a communication entitled “accelerating the transition from analogue to digital broadcasting” in which the community policy objectives were set with respect to this transition and 2012 was proposed as the deadline for the cessation of analogue transmissions in all Member States.

Subsequently, the European Parliament adopted a resolution on 16 November 2005 on the transition of broadcasting from analogue to broadcasting in which it reiterated this position and “*encourages the Member States to keep the period of simulcasting as short as possible in order to avoid high broadcasting costs, a temporary aggravation of the problem of capacity scarcity and delay in the switchover.*”

In the same resolution the European Parliament further calls on Member States “*to ensure that policy interventions carried out to secure and accelerate digital switchover are transparent, justified, proportionate and non-discriminatory*”.

Furthermore the Council of Transport, Telecommunication and Energy of 1 December 2005 recognised the importance of the analogue-digital switchover

and specifically invited Member States, as far as possible, to conclude this process by 2012.

The use of the spectrum by the broadcasting service is governed by international frequency plans which are adopted at the level of the ITU (International Telecommunication Union) or the CEPT (European Conference of Postal and Telecommunications Administrations). The plan currently in force (GE06) for VHF and UHF was recently drawn up in Geneva by a Regional Radiocommunications Conference of the ITU, which involved the whole of Europe, Africa, the Middle East and some countries from Asia.

Besides drawing up the plan of frequencies for digital terrestrial broadcasting, this Conference defined that the analogue/digital switchover period – during which the analogue television stations will have right of protection – will terminate in 2015 for the UHF band (as set out in the Resolution of the European Parliament of 16 November 2005), and in 2020 for the VHF band, only in certain countries of Africa and the Middle East.

## **2. Objective**

The definitive setting of a timetable for the cessation of terrestrial analogue broadcasting in the European area requires, on the one hand, that in Portugal alternatives be previously available to continue to ensure that the national population has access to television services and, on the other, that all users who currently access television services are equipped with the means necessary to continue to have access to such services, particularly in digital format, following the cessation of terrestrial analogue television transmissions.

Realising the second condition depends above all, although not exclusively (given that it must be reinforced with the offer of attractive services, as well as with publicity and awareness campaigns) on the initiative of the users themselves. The first condition depends on the general availability of television offers, and better if more diversified.

### **3. Technological options**

In Portugal the cable, satellite and terrestrial platforms are currently the only ones that can be broadly considered as the main means of access to the television services (as alternatives or as compliments), even though other options are starting to emerge with a reduced but growing influence, specifically based on xDSL/IP and FWA technologies, among others.

Of all, the terrestrial platform is the only one providing free, unconditional access to television programme services held by concessionaire or licenced operators.

Given the deadlines concerned and state of maturity of the available solutions, the cable, satellite and terrestrial platforms are those which consequently (as has been seen in all other European countries) currently have the profile to support the continuity of the offer of television programme services for the national population as a whole, with conditions which are, at a minimum, equivalent to the current ones, following the cessation of terrestrial analogue television transmissions.

### **4. State of the cable and satellite platform**

The cable platform is already available in many areas of the country, with more than one operator co-existing in some geographical areas. The analogue-digital switchover of this platform is a gradually performed process which falls into distinct phases depending on the area of the country and on the operators.

Furthermore, certain operators also provide a digital service via satellite (DTH) as a complement to their cable television service.

It can therefore be assumed that, potentially, the possibility already exists of access to television programme services with unrestricted access with subscription or restricted access, increasingly in digital format, in practically the

entire country, with the market ensuring the respective analogue-digital switchover.

## **5. State of the terrestrial platform**

There is a very large number of households with access to television programme services only through a free unrestricted form, supported by the terrestrial analogue broadcasting service.

Given the intention that this system be deactivated, it is important to ensure that its users continue to be able to access at least the same television programme services. Without seeing, for such purpose, spontaneous sign up to existing offers of unrestricted access with subscription or of restricted access, this requires the provision of another offer to be created in the meantime with conditions that are comparable to those of the current terrestrial analogue service (i.e. of unrestricted free access), but in digital format. All cases require the use of appropriate reception equipment.

The digital terrestrial platform is therefore at first sight that which allows the current offer of the analogue system to be replicated in digital format, without prejudice to others with more value and potential, specifically the possibility of providing end users with an offer in competition to those provided by other platforms, if necessary through the use of complementary technological means.

## **6. Introduction of DTT and its benefits**

It therefore with this background that the need emerges to create conditions for introduction of DTT in Portugal.

This platform can simultaneously provide a wide range of benefits, including:

- Digital transmission for free unrestricted access, for the national population as a whole to, at a minimum, the television programme services broadcast through the current terrestrial analogue system;
- Impetus, through coverage and popularity of the terrestrial system, to the development of the Information and Knowledge Society;
- Promotion of competition in the electronic communications sector, in particular through the emergence of an alternative platform for access to digital television;
- More efficient use of the radio spectrum and the freeing up of frequencies used for the analogue system, to be concluded, preferably, by 2012, as envisaged for the EU area;
- Creation of conditions that are conducive to the development of new services;
- Potential stimulus for the Portuguese content, application and equipment industry;
- Possible offer of a service with improved sound (e.g. *Dolby Digital 5.1*) and image quality and the introduction of high definition television (HDTV)

## **7. Remit and powers of ICP-ANACOM**

As part of its functions of regulation set forth in the LCE – Law of Electronic Communications (Law no. 5/2004 of 10 February) - and in its Statutes, as approved by Decree-Law no. 309/2001 of 7 December, ICP-ANACOM is charged with managing and planning the radio spectrum in accordance with the criteria of spectrum availability, of guaranteeing conditions of effective competition in the relevant markets and effective and efficient use of frequencies (see art. 15 of the LCE and art. 6, para. 1 pnt, c) of the Statutes).

An essential document providing a framework for the exercise of this charge is the *Quadro Nacional de Atribuição de Frequências* (QNAF – National Frequency Allocation Plan), published annually by ICP-ANACOM. This document contains: 1) the frequency bands and number of channels that have already been allocated; 2) the frequency bands that are reserved and are to be made available in the following year, specifying the cases in which usage rights may be demanded, along with the respective allocation procedure; and 3) the frequencies whose usage rights may be transmitted.

Furthermore, the number of frequency usage rights to be allocated may be limited (see art. 31 of the LCE), but only where necessary to guarantee the efficient use of frequencies, while ICP-ANACOM in this decision shall consider the need to maximise benefits for users and to facilitate the development of competition.

Intending to limit the number of frequency usage rights to be allocated, ICP-ANACOM shall: 1) engage the general consultation procedure set forth in art. 8 of the LEC, hearing, in particular, users and consumers; 2) publish a decision, with due basis, to limit the allocation of usage rights, at the same time defining the allocation procedure, which shall be selection by competition or by comparison, namely auction or tender; and 3) initiate the procedure for the presentation of bids for the usage rights under defined terms.

When there is such limitation of the number of usage rights, the selection procedures and criteria shall be objective, transparent, non-discriminatory and proportionate, and shall take into account the objectives of regulation set out in article 5 of the LCE.

In cases where the allocation of usage rights is subject to procedures of selection through competition or comparison, ICP-ANACOM is charged with approving the regulations governing the allocation of frequency usage rights, except where the usage rights to be allocated refer to frequencies which are being made available for the first time within electronic communications, or

otherwise where such frequencies are intended to be used for new services, in which cases the Government is charged with the approval of regulations (see art. 35 paras 4 and 5 of the LCE).

However, it is important to bear in mind that the recent revision of the Television Law (Law no. 27/2007 of 30 July), whose draft law was presented by the Government due, among other reasons, to it having become “*necessary to define the legal framework governing access to the activity of television, specifically the form of introducing, in phases, Digital Terrestrial Television*” (see Expression of motives of said Television Law).

The new Television Law sets out that “*the public tender for allocation of rights to use frequencies and of licences for the performance of a television activity that consists of the selection and aggregation of conditional access television programme services or free-to-air television programme services subject to a subscription shall be launched by a joint administrative rule of members of the Government responsible for the media and for electronic communications, which shall include the respective subject-matter and regulation*” (see art. 16, para 1 of the Television Law)

This means that the regulation of the allocation of usage rights of part of the frequencies reserved for the service of digital terrestrial television broadcasting for the transmission of television programme services with unrestricted access subject to subscription or unrestricted access (that associated with *Multiplexers B, C, D, E and F* in accordance with the model set out in the following point), is not now approved by ICP-ANACOM, notwithstanding the sounding out of this Authority and *Entidade Reguladora para a Comunicação Social* (ERC - Media Regulator) on such and without prejudice to the remit of ICP-ANACOM to grant, renew, alter or repeal the qualifying document that allocates rights to use radio frequencies or groups of frequencies intended for the provision of unrestricted television programme services subject to a subscription and conditional access television programme services, as set out in said Television Law (art 16, para 8 and art. 18, para 7 of the Television Law).

Meanwhile, ICP-ANACOM remains charged with the approval of the procedure for the allocation of the right to use the frequencies for the transmission of television programme services with unrestricted free access, broadcast in analogue mode by terrestrial hertzian wave, held by the licensed or concessionaire operators upon the date on which the Television law entered into force (that associated with *Multiplexer A*, in accordance with the model explained in the following point), which it still has to articulate with the tender in respect of the remaining *Multiplexers*.

In this regulatory context and through use of the radio spectrum, ICP-ANACOM is so charged with creating conditions that enable the analogue-digital switchover of the terrestrial platform, by way of the allocation of frequency usage rights, thereby providing for the continuity of the offer, by the respective television operators, of the television programme services provided today through terrestrial analogue, in comparable conditions, for end users, to those who currently enjoy them.

In acting ICP-ANACOM shall permanently pursue a set of regulation objectives of which, in this context, the promotion of competition in the provision of electronic communications networks, electronic communications services and associated facilities and services has pertinence (see art. 5 para. 1 point a) of the LCE), seeking to guarantee the technological neutrality of the regulation.

Such fact does not prejudice, however, the adoption by ICP-ANACOM, when necessary for the pursuit of the regulation objective set out in law, of suitable measures for the promotion of specific services (see art. 5, para 8 of the LCE). This authority shall therefore, through the mechanisms at its disposal, create conditions that promote the introduction and the development of services – including DTT – which might contribute to providing the end consumer with a broader and more diverse offer of networks and services.



It should be added that ICP-ANACOM may not take decisions which imply the discontinuity of the system underlying terrestrial analogue broadcasting without creating conditions which enable their continuance by digital means, considering, in particular, the social and economic impact of such measures, as well as their positioning in an international context, in which European Union countries have introduced DTT and the majority cite 2012 as the deadline for concluding this switchover.

In conclusion, ICP-ANACOM is charged with deciding on the number of frequency usage rights to be allocated for the service of digital terrestrial television broadcasting under the terms of article 31 of the LCE, as well as with approving the procedure for the allocation of frequency usage rights for the transmission of television programme services with free unrestricted access (that associated with *Multiplexer A*) under the terms of said article 31 of the LCE, and the respective regulation, in the event that the allocation procedure be selection by competition or by comparison, under the terms of article 35, paragraph 5 of the LCE.

In the case of the remaining frequencies (those associated with Multiplexers B to F), with the recent publication of the Television Law, the procedure for the allocation of the rights to use said frequencies shall be that legally defined, namely, public tender, with the respective regulation approved by joint administrative rule of members of the Government responsible for the media and for electronic communications.

## **8. Available frequencies, allocation procedure and model**

In accordance with QNAF 2007, approved by determination of ANACOM of 25 July 2007, a set of radio channels in the frequency band V (582 – 862 MHz) and respective areas of use is reserved for the service of digital terrestrial television broadcasting, under the terms set out in the annexes to the present draft decision.

It is noted that the limited number of radio channels reserved for DTT, arises from the intensive use of the spectrum allocated to the television broadcasting service by analogue terrestrial television broadcasting, which will be maintained until the end of the switchover period, during which analogue and digital transmissions will co-exist.

QNAF 2007 further sets out that these require the allocation of individual usage rights, with the allocation procedure to be followed for such purpose to be defined at a later date.

It is considered that that implementation of DTT in Portugal should, in particular and first and foremost, guarantee the analogue-digital migration of the current television programme services with unrestricted free access, with the continued provision to the general national population of a minimum offer in similar conditions for the user, and also provide an offer of services with unrestricted access subject to subscription or restricted access in competition to the others.

The adopted model should, on the other hand, enable the separation of operations, providing for a deactivation of the terrestrial analogue system that is potentially less dependent on the success of an operation of paid services.

Finally, the development of a model is sought which, while continuing to safeguard these aspects, does not make it impossible that – especially due to economic rationalisation – the market itself comes to set out that the offers complement each other or even integrate, while it also possible that the allocation of rights to use of the frequencies concerned be to a single body.

In this context, in order to maximise the benefits for the users and to facilitate the development of competition, while at the same time guaranteeing the efficient use of frequencies, it is the position of ICP-ANACOM that it should limit the access to the frequency usage rights concerned, given that the excessively fragmented use of such, in a possible regime of free access, does not allow the creation of proposals with value that are sufficiently attractive to the user and

with stability for ensuring their economic sustainability, and consequently might jeopardise the first objective, described above, of the analogue-digital migration of the current television programme services with unrestricted free access.

Accordingly, it is the position of ICP-ANACOM, in this respect, that it is appropriate to allocate six rights to use the frequencies for the service of digital terrestrial television broadcasting, specified in Annexes 1 and 2, to support two operations, consisting respectively of:

- One national coverage based on a single frequency network (SFN), which shall be associated with *Multiplexer A*, for the transmission of television programme services with unrestricted free access and in which there shall be reserved transmission capacity for the television programme services held by the licensed or concessionaire operators on the date of the entry into force of the Television Law;
- Two national coverages, which shall be associated with *Multiplexer B* and C, and three partial coverages of mainland territory, which shall be associated with D, E and F, in all cases based on single frequency networks (SFN), for the transmission of television programme services with unrestricted access with subscription or with restricted access.

Given that the number of parties interested in the use of frequencies for the transmission of television programme services with unrestricted free access (associated with *Multiplexer A*) might exceed the offer and that it is intended that that best solution be implemented, in accordance with the previously defined criteria while at the same time satisfying a set of minimum requisites, the position of ICP-ANACOM is to proceed with the allocation of the said rights by way of public tender.

The procedure for the allocation of the usage rights which will be associated with *Multiplexers B* to F shall be that legally defined, namely, public tender (see art. 13, paras 1, point b) and 3 and art. 16, para 1 both of the Television Law).

As mentioned, ICP-ANACOM remains charged with the approval of the regulation of the public tender in respect of the allocation of the right to use frequencies which will be associated with *Multiplexer A*.

Accordingly, this Authority shall simultaneously exercise this charge, doing so also in articulation with the public tender regulation in respect of the remaining Multiplexers (B to F).

In this light and considering that:

- a) By determination of 29 August 2007, the Board of Directors of ICP-ANACOM decided to submit “*the draft decision on the limitation of the number of rights to use frequencies reserved for digital terrestrial television and the definition of the respective allocation procedure*” to the general consultation procedure under the terms of article 8 of Law no. 5/2004 of 10 February, as well as specifically sounding out *Entidade Reguladora para a Comunicação Social* (The Media Regulator), under the terms of its statutory assignments;
- b) The comments received, the respective analysis and the basis of the decision contained in the Report of the consultation of the draft decision on the limitation of the number of rights to use frequencies reserved for digital terrestrial television and the definition of the respective allocation procedure, approved on this same date, constituting an integral part of the present determination:

the Board of Directors of ICP-ANACOM, pursuant to the assignments set out in point c) and f) of article 6 of the Statutes, as approved by Decree-Law no. 309/2001 of 7 December, in pursuit of the objectives of regulation set forth in art. 5 of Law no. 5/2004 of 10 February, in particular in point d) of paragraph 2 of said article 5 and in accordance with articles 15, 16 and 31 of the same Law 5/2004, determines the following:

1. To limit the number of rights to use frequencies reserved for the service of digital terrestrial television broadcasting, as identified in the *Quadro Nacional de Atribuição de Frequências* (QNAF – National Frequency Allocation Plan), for the support of two operations as follows:

- a) One right to use frequencies corresponding to one national coverage, which shall be associated with *Multiplexer A*, in the frequency bands identified in Annex 1 to the present decision, for the transmission of television programme services with unrestricted free access;
- b) Five rights of use of frequencies, to be allocated to only one entity, corresponding to two national coverages, which shall be associated with *Multiplexer B* and *C*, and three partial coverages of mainland territory, which shall be associated with *D*, *E* and *F*, in the frequency bands identified in Annex 2 to the present decision, for the transmission of television programme services with unrestricted access with subscription or with restricted access

2. To define that the procedure for allocating the right of use of the frequencies referred to in point a) of the previous paragraph shall be public tender.

3. To amend the current QNAF, in order to reflect the provisions of the previous paragraphs.

## **Annex 1**

The frequencies to be used on the Mainland and in the Autonomous Regions for providing national coverage in respect of *Multiplexer A* are the following:

### **MAINLAND TERRITORY**

Channel 67 - 838-846 MHz

### **AUTONOMOUS REGION OF THE AZORES**

Channel 47 - 678-686 MHz (Ilha de São Jorge)

Channel 56 - 750-758 MHz (Ilha do Pico)

Channel 61 - 790-798 MHz (Ilhas de S. Miguel and Graciosa)

Channel 64 - 814-822 MHz (Ilha do Faial)

Channel 67 - 838-846 MHz (Ilhas da Terceira, S. Maria, Flores and Corvo)

### **AUTONOMOUS REGION OF MADEIRA**

Channel 67 - 838-846 MHz

## **Annex 2**

The frequencies to be used on the Mainland and in the Autonomous Regions for providing coverages in respect of *Multiplexer* B, C, D, E and F are the following:

### **MAINLAND TERRITORY**

#### **NATIONAL**

MUX B ⇔ Channel 69 - 854-862 MHz

MUX C ⇔ Channel 60 - 782-790 MHz

#### **PARTIAL**

MUX D ⇔ Channel 65 - 822-830 MHz

MUX E ⇔ Channel 66 - 830-838 MHz

MUX F ⇔ Channel 68 - 846-854 MHz

The zone covered by these 3 Multiplexers D, E and F is composed of the coastal area of the mainland territory up to around 80km from the frontier marked on the map contained in this annex, whereas it shall be ensured that, in Spanish territory, the interfering field does not exceed 22 dB $\mu$ V/m, at a height of 10m.

The value of the usable minimum field corresponding to the parameters used for network configuration shall, at the maximum, be attained at the test points

specified at the end of this annex, which correspond to the delimitation marked on the map.

#### **AUTONOMOUS REGION OF THE AZORES**

MUX B ⇔ Channel 48 - 686-694 MHz (Ilha de São Jorge)

Channel 57 - 758-766 MHz (Ilha do Pico)

Channel 62 - 798-806 MHz (Ilhas de S. Miguel and Graciosa)

Channel 65 - 822-830 MHz (Ilha do Faial)

Channel 68 - 846-854 MHz (Ilhas da Terceira, S. Maria, Flores and Corvo)

MUX C ⇔ Channel 49 - 694-702 MHz (Ilha de São Jorge)

Channel 58 - 766-774 MHz (Ilha do Pico)

Channel 63 - 806-814 MHz (Ilhas de S. Miguel e Graciosa)

Channel 66 - 830-838 MHz (Ilha do Faial)

Channel 69 - 854-862 MHz (Ilhas da Terceira, S. Maria, Flores and Corvo)

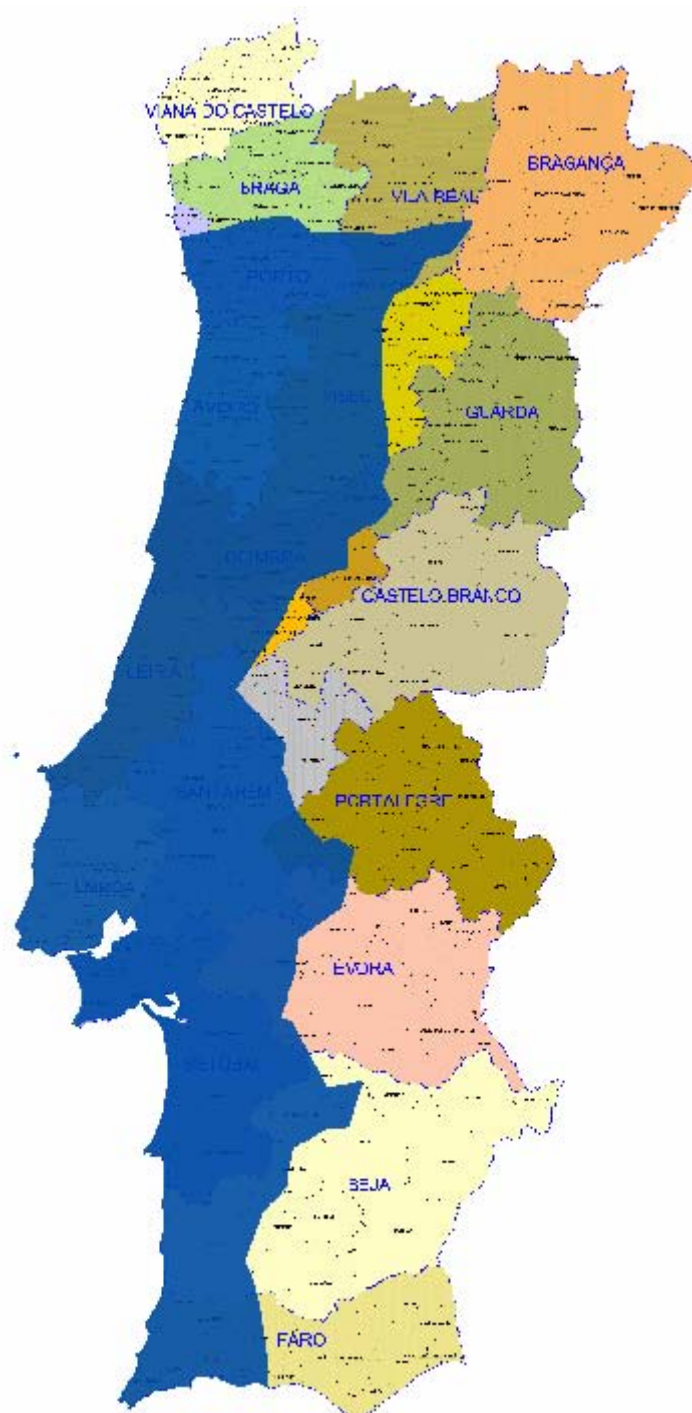
#### **AUTONOMOUS REGION OF MADEIRA**

MUX B ⇔ Channel 63 - 806-814 MHz

MUX C ⇔ Channel 69 – 854-862 MHz



## Zone of partial coverage in respect of Multiplexers D, E and F



Test points in the delimitation marked in the above map:

	<b>Longitude</b>	<b>Latitude</b>
<b>1</b>	008W19 07	37N05 25
<b>2</b>	008W19 08	37N11 27
<b>3</b>	008W21 12	37N22 48
<b>4</b>	008W22 54	37N27 56
<b>5</b>	008W25 18	37N33 03
<b>6</b>	008W20 14	37N43 37
<b>7</b>	008W13 47	37N49 34
<b>8</b>	008W11 24	37N57 57
<b>9</b>	008W03 12	38N02 16
<b>10</b>	007W56 22	38N02 48
<b>11</b>	007W52 34	38N12 31
<b>12</b>	008W02 10	38N10 55
<b>13</b>	008W12 06	38N25 31
<b>14</b>	008W15 53	38N26 19
<b>15</b>	008W11 05	38N36 36
<b>16</b>	008W10 24	38N44 26
<b>17</b>	007W59 00	38N50 55
<b>18</b>	007W54 49	39N03 36
<b>19</b>	008W00 21	39N06 35
<b>20</b>	008W03 29	39N05 30
<b>21</b>	008W10 46	39N12 48
<b>22</b>	008W15 18	39N22 15
<b>23</b>	008W14 16	39N27 40
<b>24</b>	008W28 16	39N39 48
<b>25</b>	008W18 20	39N51 42
<b>26</b>	008W09 13	40N04 00

	<b>Longitude</b>	<b>Latitude</b>
<b>27</b>	007W56 22	40N07 22
<b>28</b>	007W56 43	40N10 05
<b>29</b>	007W56 43	40N13 19
<b>30</b>	007W48 35	40N17 21
<b>31</b>	007W43 37	40N21 07
<b>32</b>	007W46 47	40N25 43
<b>33</b>	007W44 38	40N30 35
<b>34</b>	007W45 17	40N39 14
<b>35</b>	007W46 19	40N44 22
<b>36</b>	007W46 38	40N53 01
<b>37</b>	007W46 14	41N02 12
<b>38</b>	007W42 59	41N07 19
<b>39</b>	007W36 53	41N09 59
<b>40</b>	007W33 16	41N15 23
<b>41</b>	007W26 49	41N16 41
<b>42</b>	007W23 34	41N19 06
<b>43</b>	007W19 12	41N23 40
<b>44</b>	007W31 03	41N22 39
<b>45</b>	007W43 15	41N20 33
<b>46</b>	007W52 56	41N21 07
<b>47</b>	008W06 12	41N20 52
<b>48</b>	008W12 18	41N24 55
<b>49</b>	008W18 02	41N24 55
<b>50</b>	008W23 46	41N23 49
<b>51</b>	008W33 27	41N21 54
<b>52</b>	008W44 11	41N19 58