



Office of the Director of
**Telecommunications
Regulation**

Broadcasting Bill 1999

**A Submission to the Select Committee
on Heritage and the Irish Language**

by

**the Office of the Director of
Telecommunications Regulation**

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Oifig an Stiúrthóra Rialála Teileachumarsáide
Office of the Director of Telecommunications Regulation
Abbey Court, Irish Life Centre, Lower Abbey Street, Dublin 1.
Telephone +353-1-804 9600 *Fax* +353-1-804 9680
Web: www.odtr.ie

1. General Remarks

The Director of Telecommunications Regulation is pleased to have been given the opportunity by the Select Committee on Heritage and the Irish Language to present the views of her Office on the Broadcasting Bill, 1999.

The Director welcomes the Bill which, inter alia, provides a framework for the proposed new company to manage Digital Terrestrial Television (DTT) in Ireland. Digitalisation by using data compression to fit a number of programme services into a digital multiplex enables far more programme services to be delivered over the airwaves thus providing more choice to consumers. DTT will provide a competing platform to cable, MMDS and satellite for the delivery of television programming and data by means of digital technology to Irish homes. The Director believes the introduction of a further element of competition into the market will provide additional benefits to consumers. In addition to an increase in the number of programme services which will be available to many viewers, it will also provide an entry point for many households into the world of e-commerce and other interactive services.

From an operational perspective, the introduction of DTT will involve firstly the operation of digital multiplexes in which the programme output of various broadcasters will be combined into a single digital bitstream, and secondly, the transmission of the digitised signal to viewers throughout the country. The role of the ODTR in the introduction of DTT will be to license the transmission network and the digital multiplexes. While the Bill envisages that the designated company ("Digico") will be the sole provider of DTT at a national level, it will be entering a marketplace already served by cable, MMDS and satellite, all of which will provide digital services.

The ODTR, given the disparate nature of the multiplex operation and transmission activities and in order to provide the necessary transparency and flexibility intends to license them separately under the Wireless Telegraphy Acts. This approach is consistent with that taken in the case of competing platforms - cable and MMDS - which are licensed in this jurisdiction. The Office issued a consultation paper in October of this year setting out in some detail its proposals for the two licences and inviting comment from interested parties.

The Director recognises the wide range of issues dealt with in the Bill, most of which are outside her remit and which she does not propose to comment on in detail. A number of the provisions relate to the licensing by her office of DTT and competing platforms. The Director believes that a number of amendments to the Bill, as published, would be required to enable her to carry out her functions effectively in this area. These are detailed in Part 2 of these observations. The Director's comments on relevant provisions are shown in italics. The subsections in question follow and proposed additions to the text are underlined.

Summary

By way of summary, the ODTR considers that:

- There needs to be clarification as to the objectives of the designated company;

- The designated company should hold licences for its analogue operations directly and not through RTE;
- Given the disparate nature of the functions of multiplex operation and transmission and in order to provide the necessary transparency and flexibility, the multiplex operation and transmission functions of the designated company should be kept separate and each function should be separately licensed under the Wireless Telegraphy Acts;
- The question of whether the IRTC has authority to authorise the retransmission in Ireland of sound broadcasts originating outside the State needs to be clarified and if any lacuna exists in this respect, it needs to be filled;
- Cable and MMDS operators should be treated as competing platforms to DTT. This means that all should be treated alike, in particular as regards “must carry” obligations;

2. ODTR Observations and Suggested Amended Provisions

Section 5: Designated Company

The establishment, operation and maintenance of multiplexes should be expressly listed as a principal object of the designated company.

The designated company (Digico) will also be required to transmit analogue signals, both television and sound, for broadcasters until the switch off of analogue. The ODTR’s understanding is that the Bill is not intended to cater for and does not address responsibility for digital audio broadcasting. In order to avoid possible uncertainty or ambiguity, it is suggested that the analogue nature of certain services to be included in the objects of the company be made explicit.

- (4) The principal objects of the designated company shall be stated in its memorandum of association to be
- to transmit analogue broadcasting services on behalf of the Authority, Teilifis na Gaeilge and the television programme service contractor, being services that the Authority, Teilifis na Gaeilge and that contractor provide under the *Broadcasting Authority Acts, 1960 to 1999*, the Act of 1988 or this Act, as the case may be,
 - to transmit, by digital terrestrial means, in accordance with arrangements under this Act entered into by it with the persons concerned, broadcasting services comprising compilations of programme material supplied to it by persons for that purpose,
 - to establish, operate and maintain digital multiplexes;
 - to transmit analogue sound broadcasting services on behalf of the Authority and sound broadcasting contractors, being services that the Authority and

- such contractors provide under the *Broadcasting Authority Acts, 1960 to 1999*, or the Act of 1988 or this Act, as the case may be,
- (e) to promote the development of multimedia services; and
 - (f) to promote the development of electronic information services, including those provided by means of the Internet.

Section 6: Licences to be Granted to the Designated Company for the Purposes of Analogue Terrestrial Transmission

The licensing regime proposed in the Bill, with the designated company having the benefit of rights and obligations in a licence held by RTE, is a very unsatisfactory arrangement. RTE would continue to be the formal licensee, with its rights and obligations vested in a separate legal entity. The ODTR believes that the designated company should hold the requisite licences directly. In order to ensure the necessary continuity, the preferred way of doing this would be by a requirement that the licences held by RTE be transferred to the designated company at the appropriate time. Given that the legal basis for the broadcasting licence is the Broadcasting Acts, it is necessary to ensure that the designated company can validly hold licences under that legislation.

- (1) On the commencement of this section, and subject to sub-section (3), the licences held by the Authority at the time of such commencement, being licences granted to it under the *Broadcasting Authority Acts, 1960 to 1999*, or the *Wireless Telegraphy Acts, 1926 to 1988* shall be transferred by the Director to the designated company
- (2) This section applies to licences specified in a direction in writing given by the Minister, after consultation with the Minister for Public Enterprise and the Director for the purpose of this section.
- (3) Where any licence to be transferred or granted to the designated company is a licence granted under the *Broadcasting Authority Acts, 1960 to 1999*, those Acts are to be read as giving the Director the power to grant the licence to the designated company for the purposes of this section.

Section 7: Licences to be Granted to the Designated Company for the Purposes of Digital Terrestrial Transmission

*The ODTR believes that the multiplex operation and transmission functions of the designated company should be kept separate, given the disparate nature of the functions of multiplex operation and transmission and in order to provide the necessary transparency and flexibility. Each function should be separately licensed under the *Wireless Telegraphy Acts*.*

*It is therefore proposed that the designated company should hold a digital multiplex licence (the "DTT licence") and a separate transmission licence, both licences to issue under the *Wireless Telegraphy Acts*. It is desirable that the ODTR should license the DTT operator on a similar basis as cable and MMDS operators, since they are competing platforms.*

The ODTR believes that subsection (4) should be deleted. As it stands, it imposes an undesirable and unnecessary lack of flexibility on programme service providers and multiplex/transmitter operators. (The technical reasons for this view are set out in the Appendix to this submission).

In relation to sub-section 5, the ODTR believes that the allocation of multiplexes to particular parties is not appropriate for inclusion in a licence to be issued by the ODTR. The requirement that the designated company should allocate multiplexes in a particular way should be imposed directly by statute. Similar observations apply in relation to sub-section 8.

Sub-section 10 should be amended to make it clear that the use of the multiplexes for the provision of electronic information services may be limited by and under any legislation and other binding measures. It should be noted that, under the current international regime on broadcasting spectrum usage as applied by the Director under her statutory powers, while a broadcasting channel may include video audio and data this is a uni - directional path only, i.e. a "forward path". The carriage of data is ancillary to the carriage of programme material and will only be permitted on this basis. Sub-section 10 will accommodate changes in this regime as and when they occur.

The ODTR considers that Sub-section 11 should be completely redrafted to require the Director to grant a licence to the designated company under the Wireless Telegraphy Acts.

In terms of the conditions to be attached to the DTT and transmission licences, the Director enjoys sufficient powers under Section 6 of the Wireless Telegraphy Act of 1926 to make the appropriate regulations. Accordingly, it is suggested that Sub-sections 12 and 13 should be omitted.

Sub-section 14 should be deleted. As drafted, this sub-section suggests that the "multiplex worth" of capacity/payload for the Authority and the half "multiplex worth" each for TV3 and TnaG could be shared across many multiplexes. From a spectrum standpoint, it is the view of this Office that this would not be an advisable proposition as e.g. the situation could potentially arise whereby a consumer could have very good reception on say RTE 1 and have a poorer quality reception on Network 2, if they were being carried on different multiplexes. This would be difficult for the consumer to understand as both services are broadcast by RTE. Additionally, it would not be feasible in any future situation where there might be a number of multiplex operators.

See also attached Appendix regarding payload.

(1) Delete:-

- (2)** The Director shall, on a date specified by the Minister, after consultation with the Minister for Public Enterprise, for the purposes of this section, grant to the designated company a digital multiplex licence under the Wireless Telegraphy Act 1926 which shall be known as a "digital terrestrial television licence" and is in this Act referred to as a "DTT licence".

- (3) The DTT licence granted to the designated company shall be expressed to authorise, and shall operate to authorise, the designated company to establish, operate and maintain 6 digital multiplexes.
- (4) **DELETE**
- (5) The designated company shall use the whole or, as the case may be, the part of a multiplex specified in column (2) of the Table to this section solely for the purposes of transmitting programme material supplied to it by the person who is specified in column 1 of that Table opposite the specification of the whole or part of a multiplex.
- (6) **STET**
- (7) **STET**
- (8) The designated company, where the Commission, in accordance with a direction given by the Minister under subsection (9) for the time being in force, requests it to do so, shall use a multiplex or part of a multiplex solely for the purposes of transmitting programme material supplied to it under and in accordance with this Act by a person who provides a broadcasting service in Northern Ireland, being a broadcasting service that is receivable throughout the whole of Northern Ireland and which is provided by terrestrial means.
- (9) **STET**
- (10) Subject to subsection (5) and (8), nothing in this section shall be construed as preventing the designated company from providing electronic information services in accordance with or subject to the requirements (if any) imposed by or under any legislation or other binding measure relating to the provision of the services concerned which is for the time being in force.
- (11) The Director shall grant a transmission licence to the designated company under the Wireless Telegraphy Act 1926.
- (12) **DELETE ALL**
- (13) **DELETE ALL**
- (14) **DELETE ALL**

TABLE

(1)	(2)
The Authority	One multiplex
Teilifis na Gaeilge	One half of one multiplex
The television programme service contractor	One half of one multiplex

Section 9: Additional Functions of Commission

This section provides that the Broadcasting Commission of Ireland should have the function of making arrangements for additional broadcasting services on television and radio. "broadcasting services" and "sound broadcasting service" are separately defined in the Bill. It should be made clear therefore that sound broadcasting services are covered by this section.

Prior to providing the additional broadcasting services or the sound broadcasting services, the Commission should consult the ODTR in relation to the availability of the necessary spectrum.

It is unclear from the text of the provisions regarding the powers of the Commission whether in fact the Commission has power to authorise the retransmission in Ireland of sound broadcasts originating outside the State. The ODTR is unsure whether the Act of 1988 as it stands empowers the Commission to license such sound broadcasts. If the Commission is not so empowered, the ODTR believes that the Bill should contain the necessary empowering provisions. In that event the following para. will require further amendment.

- (1) Without prejudice to the functions conferred on it by the Act of 1988 or any other enactment, it shall be a function of the Commission to make arrangements, in accordance with the provisions of this Act and subject to the availability of spectrum, for the provision of broadcasting services and sound broadcasting services in the State additional to those provided by the Authority, Teilifís na Gaeilge, the television programme service contractor and each sound broadcasting contractor.

PART 4 Sections 30 – 35 This part of the Bill deals with Additional Broadcasting services. It requires a broadcaster who wants his or her programme services to be carried on a number of platforms to apply to the Broadcasting Commission of Ireland for a licence in respect of each platform. This seems to be a cumbersome procedure. Perhaps a simpler procedure under which a prospective broadcaster could get a single licence for all of the platforms required would be better.

Section 32: Distribution of broadcasting services by cable or MMD system

As currently drafted, Section 32 imposes requirements for cable and MMDS operators which are not applied to the DTT operator. DTT, cable / MMDS and satellite will compete against each other for subscribers to multichannel television. Operators of competing platforms should in principle be treated alike. This is, in particular, the case for "must carry" obligations.

Sub-section 1 should be amended to include reference to the national broadcasters as a source of programme material supplied to the cable/MMD licensee, otherwise the source of supply may only be the specified categories mentioned.

The Section draws a distinction between "transmission" and "re-transmission". In keeping with the licensing regime operated under the Wireless Telegraphy (Programme Services Distribution) Regulations 1999, the activities of cable/MMDS licensees could better be described in terms of "distribution". The sub-sections should be redrafted on this basis. Sub-sections 3 and 4 can be redrafted as one. Sub-section 12 should be deleted.

If the "must carry" obligations in sub-sections 5, 6 and 7 are to be imposed on cable and MMDS operators, they should apply in the same way as "must carry" obligations for the designated company for DTT and it should be possible for all parties – or none - to charge for such carriage. A proposed new sub-section 12 thus entitles the operator to charge the person concerned (see Section 11(4) for the corresponding provision relating to DTT).

In relation to sub-section 6, an amendment is suggested to provide that in order to promote the efficient use of scarce spectrum, the independent television contractor's services need only be carried by MMD licensees where they are not receivable by other means in the area. Must carry in relation to free to air digital services provided by the national broadcasters should apply as otherwise customers might have to acquire separate set top boxes to decode the DTT and digital MMDS signals

In relation to sub-section (9), an amendment is suggested to exclude the obligation of carrying a community service from analogue MMD licence holders. Analogue MMDS licences permit the utilisation of eleven channels, one of which must be used for TV3. Of the remaining ten, a minimum of two is used for premium services leaving eight for the provision of basic services. This would typically consist of the four UK terrestrials and four satellite channels. The imposition of a community channel would reduce the basic package and could dilute the consumer attraction of the service, thereby possibly undermining the commercial viability of the licensee.

(1) A holder of a licence granted by the Director, being a licence that authorises the distribution by means of a cable or MMD system of programme material, shall not distribute, by such means, a broadcasting service unless the programme material, the subject of the broadcasting service, is supplied for such distribution -

(a) by the Authority, Teilifis na Gaeilge or the programme service contractor;
or

(b) pursuant to-

- (i) a local content contract,
- (ii) a community content contract, or
- (iii) a cable-MMD content contract,

or

(c) by an excepted person.

(2) STET

- (3) A holder of a licence referred to in *subsection (1)* who distributes by the means referred to therein a broadcasting service which consists of programme material shall-
- (a) if that service was being distributed by that service is being distributed by him or her;
 - (b) if the distribution of that service begins on or after the commencement of this section, forthwith, after that distribution begins, notify, in writing, the Commission of the fact that that service is being distributed by him or her.

Delete Section 32(4)

(5) STET

(6)The holder of a licence referred to in subsection (1), being a licence that authorises the distribution of programme material by means of a MMD system, shall, if requested to do so by the contractor concerned, enter into arrangements with the television programme service contractor, whereby the holder of the licence shall distribute, by those means-

- (a) in case the MMD system used by that holder is, in part or in whole, an analogue system, each free-to-air service of an analogue nature provided for the time being by the television programme contractor where that service is not otherwise receivable in the area in which that holder for the time being operates,
- (b) in case the MMD system used by that holder is, in part or in whole, a digital system, each free-to-air service of a digital nature provided for the time being by the television programme contractor.

(7) STET

(8) STET

(9) The Commission may require the holder of a licence referred to in sub-section (1), save where the MMD system used by the holder is an analogue system, to distribute as a broadcasting service, by means of the cable system or, as the case may be, the MMD system concerned, the whole or part of the programme material supplied under one or more specified community content contracts the holders of which are members of the local community that is served by the said system and who request the first-mentioned holder to so distribute the whole or, as the case may be, a part of that programme material.

(10) STET

(11) STET

(12) DELETE CURRENT TEXT AND REPLACE. The holder of a licence referred to in sub-section (1) may impose charges on a person in respect of the entering into arrangements under sub-section (5), (6), (7) with that person or on

the holders of a specified community content contract in respect of the distribution of programme material under sub-section (9).

Appendix

Section 7(4) of the Bill

This provision should be deleted as it imposes an undesirable and unnecessary lack of flexibility on programme service providers and multiplex/transmitter operators.

The payload of a multiplex, roughly equivalent to its capacity, is determined by various technical parameters. These include the modulation scheme, the code rate and the guard interval. These parameters will be included in the technical characteristics of any DTT licence to be issued by the ODTR.

The key issues for the ODTR are balancing the provision of payload against geographic coverage and interference immunity. There is in effect a trade off between payload and coverage dependent upon the modulation scheme, the code rate and the guard interval chosen. The greater the payload, the less immunity to interference and the greater the signal strength required to receive the multiplex.

The Director believes that the choice in such matters should be the subject of proposal by the programme service providers and the multiplex/transmitter operator to her Office.

In such circumstances, even if different multiplexes are configured to carry different payloads, the concept of equality between the different multiplexes is maintained by the increase in interference immunity and coverage enjoyed by a multiplex with lower payload.

The choice of guard interval also has implications for the payload of a multiplex; these issues have already been the subject of an ODTR consultation paper. The choice of guard interval by the multiplex operator should only be made by or with the agreement of the Director.