



Office of the Director of
**Telecommunications
Regulation**

**Presentation by Etain Doyle,
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to the

**Select Committee on Heritage and
the Irish Language,
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- The Broadcast Bill 1999 -

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Introduction

I would like to take the opportunity to thank the members of the Select Committee for inviting me to discuss the Broadcasting Bill with you.

At the outset I would like to welcome the Bill and express my support for it. This landmark piece of legislation has attracted a wide ranging and thoughtful second stage debate. It is the first Bill in the Broadcasting area since 1988. While the Bill sets out to cover many issues in updating the framework for the regulation of broadcasting content, the most important element from the point of view of my office is that it contains measures to facilitate the introduction of Digital Terrestrial Television (DTT) and amend the functions of the IRTC. With your permission Chairman, I will confine my remarks on the Bill mainly to those areas. My Office made a written submission to this Committee in December last and I would like to take the opportunity to speak a little more about the issues raised in that submission also.

I would like to preface my remarks on specific sections of the Bill by expressing my interest and satisfaction in seeing the concrete measures that are being taken by the cable and MMDS companies licensed by the ODTR to upgrade and expand their services for the digital era. I look forward to the same process in respect of the RTE transmission network with the introduction of DTT. DTT has the unique capability of providing near total universal service. I have noted the importance attached to this by members of Oireachtas, and can assure you that the concern to ensure that households, whether urban or rural, are not excluded from the best in television services is a key priority for me.

DTT

One of the first tasks I undertook as Director of Telecommunications Regulation on assuming office in 1997 was to commission a study by NERA and Smith into the future of television transmission. One of the conclusions of that study was that Digital Terrestrial Television could exist side by side with the competing cable, MMDS and satellite platforms. It falls to my Office to licence the various delivery platforms and not surprisingly therefore I have a particular interest in how the Bill provides for the introduction of DTT.

It might be helpful if I give some background on Digital Terrestrial Television. Digital technology, because it involves compression techniques, presents an opportunity to deliver far more television services with improved picture quality and sound. It also presents the opportunity to use the remaining space in the multiplex for the delivery of multimedia services.

There are a number of strands to DTT. Firstly, broadcasters who decide to go digital will need to produce programme services in digital form and to a greater extent than at present in wide screen format. This may in some instances require upgrading of existing studio facilities. This element of digitisation is outside of the area of responsibility of my Office and will not be included in any regulatory regime introduced by me.

There are, however, two further elements of DTT which deal with how the broadcaster's studio output is delivered to the end consumer. These are the operation of the digital multiplexes in which the discrete programme services are digitally combined into a single bitstream in preparation for transmission and the activity of transmission itself. These activities fall within my area of responsibility and will therefore be regulated by my Office. The two activities do not necessarily have to be carried out by the same entity. In Ireland's case however they will be, as the Bill

provides that the operation of National multiplexes and transmission will be carried out by the designated company (Digico).

The operation of digital multiplexes can in a way be looked on as the retail end of the business. The multiplex operation involves the company in combining the output of the various broadcasters in the multiplexes. Some of the output of the multiplexes will be free to air, but some will not. It will be a matter for Digico to market its product to prospective customers in competition with the other platforms, which are attempting to attract the same consumers. Digico's income from the multiplex operation side of its business will come from subscriptions to its various bundles of programme services. Consumers will, if they want to avail of digital services, need either an integrated digital television set or a set top box which will convert the digital signal so that it can be viewed on an analogue television.

In contributing to the report of January 1999 on Digital Broadcasting by the Joint Committee on Heritage and the Irish Language I stated that I saw the Irish consumer as the client of my Office. With this in mind, it makes absolute sense, from a regulatory point of view, that the operation of digital multiplexes on a DTT platform be regulated in the same way as are the competing platforms which are currently regulated by my Office, namely cable and MMDS. The satellite services currently available in Ireland originate outside of the State and are regulated in their country of origin.

Digico will also have a transmission remit. It will take over the RTE transmission network and, while I acknowledge that some local radio services have their own transmission systems, Digico, for all intents and purposes, will be the monopoly provider of national transmission services, both television and radio. Regulation of transmission falls within the remit of my Office. Accordingly, a transmission licence will be required by Digico. Because of the disparate nature of the multiplex operation

and transmission functions, my Office would intend to licence them separately under the Wireless Telegraphy Acts, which is the legislation under which equivalent systems are licensed. The Bill should acknowledge this and I understand that the Minister may be open to consider introducing an amendment at committee stage to provide for separate licences.

My Office circulated a consultation paper on the licensing of DTT in the autumn of last year. The intention of the paper was to contribute to the debate on Digital Terrestrial Television, set down the principles which my office felt should apply to the regulation of DTT and elicit the views of interested parties. I might say that a significant number of responses were received from a wide range of interested parties. I note and appreciate the support for the consultation process expressed by the Minister in her response to the second stage debate on the Bill. Further progress in relation to the final report on my Office's consultation and putting a regulatory framework in place for DTT will, of course, depend on the progress of the Bill through the Oireachtas and the shape of the Bill as adopted.

Section 5

If I might turn for a moment to Section 5 of the Bill.

There appears to be some misunderstanding, particularly in the independent radio sector, as to the nature of the six multiplexes which the Bill indicates are to be operated by Digico. The situation is that the multiplexes in question are meant for the carriage of digital television, with residual capacity being available for multimedia services. These are not the multiplexes by which digital audio broadcasting (DAB) is to be made available in Ireland. The debate on DAB is at the very early stages. Ireland has been allocated spectrum for two digital audio multiplexes. No decision has been made as to how and when those multiplexes will be allocated nationally.

Accordingly, it would be premature to address the issue in the current Bill. In order to allay any uncertainty, might I suggest that, in Section 5, the analogue nature of certain services to be provided by Digico be stated. My Office submitted a draft text to the Committee in December in which this issue is addressed.

Section 6

Section 6 provides that the rights and obligations of RTE under the licences it currently holds from my Office should be vested in Digico. This is a very difficult situation insofar as were the Bill to be adopted in its current form, the licensee and the party which would have rights and obligations under the licences, would be different entities. The problems in ensuring compliance with licence conditions are obvious. A far more satisfactory situation would apply if the licensee and the party having rights and obligations under the licences were one and the same. The Wireless Telegraphy Act under which RTE holds a number of licences is not specific as to who can hold a licence. The Broadcasting Authority Acts however, under which RTE holds its Transmission licence, currently provide only for the issue of a licence to RTE. As the intent of the Bill is that Digico should operate the RTE licences, and as it makes sense that if Digico operates the licences it should also hold the licences, I will need power to award licences under the Broadcasting Authority Acts to a party other than RTE. Again my Office, in December, submitted a draft text for this section to the Committee for its consideration.

Section 7

I have already spoken at some length about the rationale for having separate licensing of the multiplex operation and transmission. Section 7 requires amendment to accommodate this. Indeed, this section is central to the regulation of DTT from a

technical perspective. In the circumstances, my Office has provided detailed comment and suggestions in relation to the text. With your indulgence Chairman, because of the critical importance of the Section to the even-handed regulation of this platform and other competing platforms, I will briefly comment on the various subsections of this section:

Sub-Section (1)

This subsection should be omitted. As drafted this subsection is a definition subsection consisting of just two definitions, “multiplex” and “payload”. My Office has suggested separately to the Minister’s Department that the definition of “multiplex” be transferred to Section 2 of the Bill (the interpretation section). In addition, I have suggested in the ODTR submission to the Committee that subsection (4) of this section should be omitted. In those circumstances a definition of “payload” would not be required. The current subsection could then be omitted.

Sub-Section (2)

In circumstances where the operation of digital multiplexes and transmission are separately licensed, this section should provide for the award of a “digital multiplex licence” under the Wireless Telegraphy Acts.

Sub-Section (3)

This section, as initiated in the Bill, includes a definition of a multiplex. My comments on subsection (1) suggest that this definition be moved to Section 2 of the bill and the wording for sub-section (3) proposed by my Office reflects this amendment.

Sub-Section (4)

This subsection, which is very prescriptive in nature, should be omitted because of the technical difficulties which enforcing it would cause. There

is a trade-off between payload, geographic coverage and interference immunity. It may not be technically possible that all multiplexes would have the same payload, geographic coverage and immunity from interference. Concentration on payload alone could have a negative effect on the other two variables. My belief is that the balance between those elements should be the subject of proposals by the broadcasters and the multiplex/transmitter operators to my Office.

Sub-Section 5

Might I suggest to the Members of the Committee that, if the legislature requires that multiplex capacity is to be allocated to particular broadcasters, it would be simpler if such a requirement should be made a legal requirement enforceable by law, not a condition of a licence issued by my Office. A similar situation exists in relation to sub-section (8), which deals with the allocation of a multiplex to persons providing broadcasting services in Northern Ireland. You will note that rather complex arrangements are proposed for this matter. A simpler solution would be preferable.

I have no comments in relation to subsections (6), (7) and (9).

Sub-Section (10)

The EU Licensing Directive applies to the licensing of Telecommunications Services. Audio-visual services are exempted from the provisions of the Directive. If it were intended that one or more multiplexes are to be available for the provision of Telecommunications services there would be a problem if the provisions of the Licensing Directive were not complied with in allocating those multiplexes.

I would envisage that only residual capacity across the multiplexes would be made available for non-programme services. This would not fall foul of the

Licensing Directive and would be in line with practice abroad. The proposed wording change in the submission by my Office to the Committee would also cater for any changed situation in the future.

Sub-Section (11)

I suggest that this subsection be availed of to enable me to issue a transmission licence to Digico under the Wireless Telegraphy Acts.

Sub-Section (12) and (13)

I propose to issue the licences to Digico in accordance with regulations to be drafted under the Wireless Telegraphy Act, which is the appropriate Act for that purpose. The provisions of the licences must be in accordance with that legislation. Regulations drafted by me under the Wireless telegraphy Act are, of course, subject to the consent of the Minister for Public Enterprise. I am satisfied that the powers available to me under the Wireless Telegraphy Act would allow me to deal with the issues covered by Subsections (12) and (13). In the circumstances, these subsections are not necessary and should be omitted.

Sub-Section (14)

This subsection should be deleted. It proposes that in allocating multiplex capacity in accordance with subsections (5) and (8) the services could be spread across a number of multiplexes.

It would be preferable from a technical viewpoint if all of the services provided by a particular broadcaster under the terms of subsections (5) and (8) were carried on a single multiplex. If the services of for instance RTE were spread across a number of multiplexes, which might not all have equal

coverage, a situation could arise where a customer would have very good reception of say RTE 1 while having a poorer quality reception on Network 2. Carriage of all of the services on a particular multiplex would avoid this situation.

Functions of the Broadcasting Commission of Ireland

Section 9

My Office is suggesting an amendment to this section to clarify that it also encompasses “sound broadcasting services” and to ensure that any arrangements, which the Commission would enter into, would be subject to the availability of spectrum. A draft text was included in the submission of December, 1999 by my Office to the Committee.

There appears to have been some uncertainty about which was the appropriate authority to approve the retransmission in Ireland of sound broadcasts originating abroad. Both my Office and the IRTC are satisfied that the Broadcasting Commission of Ireland, as the IRTC is to be known in future, is the appropriate agency to deal with such matters under the terms of the Radio and Television Act, 1988. I note that the Minister in her response to the second stage debate on the Bill is of the same opinion. This is an issue which is of direct relevance to a broadcaster such as United Christian Broadcasting to which a number of deputies referred during the course of the debate. If there is any lingering doubt, perhaps the opportunity could be taken in this section to copper fasten the matter.

Section 10

I welcome the fact that under the terms of this section and sections 30 to 35 responsibility for content regulation is given to the Broadcasting Commission of Ireland.

The regulation of local programming on cable has heretofore been a function of my Office. It is entirely appropriate that all content regulation should reside in a single Broadcasting regulator. My strong belief is that the ODTR is not the appropriate agency for this and that on the other hand the Broadcasting Commission of Ireland has the necessary expertise to perform the function.

Sections 30-35

While recognising that these sections deal with the carriage of additional programme services, I would suggest that the proposed mechanism whereby a broadcaster who wants his or her programme service to be carried on more than one platform is required enter into a separate contractual arrangement with the Broadcasting Commission of Ireland is cumbersome. A simpler procedure under which a broadcaster would enter into a single contractual arrangement in respect of all of the platforms required would be better.

Section 32

The main sources of competition for DTT, which are regulated within the State, are cable and MMDS. In the consumer interest and in view of the need to provide, insofar as is possible, for a level playing field between competing platforms, it is essential that operators in the various platforms be treated alike. "Must carry" obligations are an area of concern. With your permission Chairman I will run through the various subsections which are relevant to my Office.

Sub-Section 1

Licences issued in 1999 by my Office to cable and MMDS companies in relation to digital services refer to the 'distribution' of licensed programme services. No reference is made to either transmission or retransmission. It would be more correct therefore in subsections (1), (2) and (3) to replace the work 'transmit' where it occurs with 'distribute'. Sub-section (4) which repeats sub-section (3) would then not be needed and should be omitted.

In sub-section (1) a cable or MMDS licence holder should be empowered to distribute the services of the Authority, Teilifis na Gaeilge or the programme service contractor (see the ODTR submission of December 1999). The omission of these services from the list of services which cable and MMDS companies are permitted to distribute may just be an oversight and should be rectified.

Sub-Section 6

One of the provisions of this sub-section, as initiated, is that the holder of an MMDS licence from the ODTR shall, if the system is analogue and if requested to do so by the television programme services contractor, (TV3) re transmit (distribute) each free to air service of an analogue nature provided by the contractor (TV3). From an efficient spectrum management perspective, such an imposition would only be valid if the television programme service were not available by some other means. If, for instance, it were available off air in a particular area, it would be a waste of spectrum and would deprive customers of another channel if the service had to be duplicated on analogue MMDS which has limited capacity.

My office suggested an amendment of the section in its December 1999 submission to cater for availability of the programme service from another platform.

Sub-Section 9

In relation to the conferring by the Broadcasting Commission of Ireland of “must carry” status on community channels, my Office believes that because of limited availability of channels on analogue MMDS, that platform should be exempted from the “must carry” requirement.

Similar capacity constraints do not apply to analogue cable or to digital cable or MMDS and accordingly I have no reservations in these areas.

Sub-Section (12)

In view of my earlier comments in relation to the replacement of “transmission” and “retransmission” by “distribution”, this subsection should be omitted.

ODTR Proposal for New Sub-Section (12)

Section 11(4) of the Bill provides for the levying of charges by Digico on broadcasters in respect of the carriage of services including those which are free to air. It is questionable as to why the Bill does not provide for cable and MMDS operators which will be in direct competition with DTT to levy charges in relation to the distribution of “must carry” services on those platforms.

A proposed text to be included as a new subsection (12) was provided in the December 1999 submission from my Office to the Joint Committee.

Teilifís na Gaeilge

Part IV of the Bill deals with the establishment of Teilifís na Gaeilge. It is not clear whether the company will, at its inception, or at any time in the future, have its own transmission network. If it does have, then the question of a transmission licence will arise.

Other Issues

In concluding my remarks may I turn to a number of issues, which while not directly related to the provisions of the Bill have nevertheless been commented on in the context of the Bill.

Local Multiplexes

The timing of the introduction of local multiplexes was raised. This is an issue, which can only be addressed when the planning of the national service is complete and it becomes apparent what spectrum is available. I expect that it will be up to two years before this matter is finalised. As was the case for the national service, the ODTR will do the initial work on this at the appropriate time.

Analogue/digital deflectors

Questions are continually raised about the licensing of short term analogue deflector systems and their future in the context of the introduction of DTT.

Deputies will be aware that my Office sought applications for analogue deflector licences late last year. Assessment of the applications received is now being finalised. I intend, by the end of this week, to invite successful applicants to put the necessary arrangements in place to enable my Office to issue the licences.

The necessity for Digico to simulcast in both analogue and digital formats means that the amount of spectrum available to deflectors into the future will be severely

curtailed. The advent of DTT will mean that many deflector systems will not have spectrum to continue operations into the future.

My Office did indicate in its paper “The Future of T.V. Transmission in Ireland – The Way Forward” that following the rollout of the national services in full and with the launch of DTT the amount of spectrum available to deflector operators would be limited. Until the needs of the national services and DTT are known, the amount of residual spectrum, which might be available to deflector operators in the future, will not be known. Even then, the demands of possible competing uses for the spectrum will have to be taken into account.

In the meantime my Office is pressing ahead with the licensing of deflector operators pending the start up of DTT.

Nature and Cost of DTT

The licence issued by my Office in respect of DTT will not be prescriptive in relation to the number of programme services carried. Questions of quantity versus quality have been raised and there are commercial arguments which say that greater choice i.e. more programme services is what will attract consumers. More choice however could affect the technical quality of the service provided. The licence which my Office will issue will set down standards for video and audio quality which will ensure that, in providing additional choice, technical quality will not be jeopardised. At the current stage of technological development, up to 30 programme services and some data could be carried on the six digital multiplexes while not negatively affecting picture and sound quality. The number of programme services actually carried at a given time will depend on the nature of the programmes being shown. Field sports, such as hurling for instance, use a great deal of capacity in the multiplex and so less programme

services can be carried. On the other hand old black and white films or news programmes use less capacity and it might be possible to squeeze in additional programme services. On average, however, a figure of up to thirty services is reasonable.

With regard to television reception unlike analogue where the signal gradually tapers off, with a digital signal there is a cliff effect. You either have a signal or you do not and the signal is consistent for all viewers who have it. The transmission licence to be issued by my Office will contain coverage requirements to ensure widespread availability of digital services in as short a time as possible. The digital terrestrial platform will also be a vehicle to provide some limited telecommunications services such as home banking, home shopping and a limited form of Internet. It will provide many people with an entry to multimedia and herald the advent of convergent technologies via the DTT platform into many Irish homes.

The function of my Office will be to provide appropriate regulation to enable this to happen.

With regard to the cost to the consumer of the services to be provided on DTT, this will be a matter for Digico itself. Given that DTT will have to compete with alternate platforms which already have a customer base, I think it is fair to assume that the cost to prospective consumers will be competitive with those platforms.

Those customers who will not have an integrated digital television will, if they want to receive digital services, need a set top box irrespective of whether they just want to take the free to air services or any subscription services. Many of the players in digital are budgeting on a cost of around £200 for a digital set top box. It will obviously be a commercial decision for each operator as to whether he or she will subsidise the cost of box to subscribers.

The transmission side of Digico will, however, be a monopoly player and I intend under the terms of the transmission licence, to regulate the company's charges to those broadcasters who use the Digico transmission network.

Launch of DTT and analogue shutdown

The launch of DTT is outside the control of my Office except to the extent that the operation will require licences. All I can say about that is that when the final shape of the legislation becomes clear, I will move quickly to provide a regulatory regime. Analogue switch off will depend on the success of DTT and at this stage it is too early to say when it is likely to happen.

Finally, I wish to again thank you Mr. Chairman and the members of the Committee for giving me the opportunity to present the ODTR viewpoint on the Bill and for your attention.

I am more than happy to deal with any questions the members may have.