



Office of the Director of
**Telecommunications
Regulation**

Television Deflector Licensing

Report on the Consultation

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TABLE OF CONTENTS

Foreword by Director.....	3
Section 1 - General Approach.....	4
Section 2 – Spectrum Issues and Licensing Terms.....	10
2.2 Areas of Operation of Deflector Services.....	10
2.4 Frequencies Available.....	12
2.6 Issues in relation to interference.....	14
Application Requirements.....	15
2.8 Suitability of applicant	15
2.10 Restricted Application Process	16
2.12 Duration of licences.....	17
2.14 Technical Conditions	21
2.16 Application Fees	21
2.18 Licence Fees	22
2.20 Security	23
Section 3 - Summary of Overall Proposals	25
3.2 Provisions to apply to licences	25
3.3 Provisions to apply to application process.....	26
Appendix 1 Persons/Bodies who Submitted Comments	28

This document sets out the Director’s current position on the regulatory framework and licensing regime to be adopted with regard to deflector operators. This document is without prejudice to the rights and duties of the Director to regulate the market generally or to the exercise of the Director’s discretion. The principles set out herein are without prejudice to the final form and content of any licences the Director may issue.

Foreword by Director

I am pleased to publish this report on deflector licensing, reviewing the responses and outlining my proposed scheme for licensing deflectors in the interval prior to the introduction of DTT.

We received 23 responses to the consultation from licensed and other operators in the broadcasting sectors and their representatives, and from individuals. These have been very useful to us in considering the key issues involved and setting the shape of the scheme. I wish to thank everyone for taking the trouble to respond.

My key concern in developing our programme on broadcasting transmission is to facilitate consumers now and into the future. The future is digital television with its vast range of programming and increased picture quality, and the opening up of some e-commerce and Information Society opportunities to all.

The main cable/MMDS companies are at work, developing their new digital products in line with their new licences. The framework for DTT is also advancing, and in this context I am pleased to note the publication in June of the Broadcasting Bill by the Minister for Arts, Heritage, Gaeltacht and the Islands.

With the development of DTT on the one hand and cable/MMDS on the other, competitively priced choice of digital services is no pipedream for consumers, but a reality that is being realised rapidly.

Digital is coming in the near future, but a relatively significant number of consumers today need to be catered for with properly licensed multi-channel services. Together with the regulation specifically addressed to the Carrigaline case, which I am now sending to the Minister for Public Enterprise for her consent, the scheme outlined here represents the last element in resolving the long-standing licensing difficulties for the sector.

The text of a regulation for the general scheme is in preparation, and will be sent shortly to the Minister for Public Enterprise, as her consent is needed before a licensing scheme can be brought into effect. Subject to this, we envisage moving quickly over the coming months to complete arrangements.

Etain Doyle
Director of Telecommunications Regulation
September 1999

Section 1 – General Approach

Background

- 1.1 The Director of Telecommunications Regulation (“the Director”) is responsible for the management of the radio spectrum which includes, *inter alia*, the licensing of television delivery platforms. Following the establishment of the Office of the Director of Telecommunications Regulation (ODTR) in 1997, the Director reviewed the options for the future delivery of television services and published the report prepared for her by NERA/Smith “The Future Delivery of Television Services in Ireland”, Document No. ODTR 98/06. Following public consultation on that report, the Director concluded that Digital Terrestrial Television (DTT) and Cable/MMDS platforms should be facilitated, to deliver digital television and related services into the future. The Director also indicated at that stage that she was minded to provide for the short-term licensing of deflector operations (ODTR 98/20). Since then, a new licensing framework has been established for cable and MMDS, providing for both analogue and digital programme services, following a consultation process which was reported upon in Document No. ODTR 98/63. Work is also progressing on a framework for DTT licensing. The establishment of a comprehensive regime which will provide for competitive national delivery of advanced digital services is therefore nearing completion.
- 1.2 In May 1999, a consultation paper was issued on deflector licensing. A total of 23 responses were received from or on behalf of deflector operators, cable/MMDS licence holders, broadcasting interests, public representatives and individuals – see Appendix 1. The Director wishes to thank everyone who responded to the consultation. All comments have been carefully reviewed for this report.
- 1.3 The purpose of this document is as follows:
- To report on the outcome of the consultation in relation to the Director’s proposals as set out in ODTR 99/32 – “Consultation on deflector licensing”.
 - To provide an updated statement of the Director’s policy on the issues.
 - To indicate the next steps which the Director intends to take.

1.4 As many respondents to this consultation addressed issues covered by the 1998 report, it may be useful to recap the position on deflectors as set out in “The Future of TV Transmission in Ireland – The Way Forward, Document No. ODTR 98/20, published in July 1998. The following conclusions were noted:-

- *Deflector operators provide a service to some 100,000 to 150,000¹ people at present. The ODTR would wish to avoid market disruption. Subject to resolving the matters referred to in Section 3.3, and unless convinced (which she is not at present) that universal access to multichannel television services would be undermined by the continuing activities of deflectors, the Director is minded to provide for licensing deflector operations. This would need to be done by way of short term licences, or licences revocable with a short period of notice, where development of national platforms required additional spectrum capacity. Regulations necessary for the licensing of deflectors would be subject to Ministerial consent.*
- *The Director believes that the cost of the necessary licensing system should, in principle, be borne by those wishing to operate the system. In this context the Director considers it would be appropriate to require such licensees to provide security for costs which might be incurred by her in moving to terminate deflector operations where this became necessary in circumstances such as those described.*
- *DTT would operate in the same frequency bands as the existing analogue services. The ODTR will plan the initial DTT services taking account of the national services. It believes that the accommodation of deflectors must not compromise the development of DTT services and consequently would not take account of such systems in planning.*
- *The Director believes that limitations of deflector systems which include inability to provide universal service, a limited range of services and no guarantee of quality, would make it inappropriate to rely on such systems in an advanced telecommunications sector for Ireland. The development of competing digital platforms and services, the expense of converting to digital and the requirement of spectrum by DTT does not augur well for the longer term viability of deflector operations. The Director would encourage discussions between existing licensees and deflector operators which could result in arrangements to the benefit of consumers. The ODTR is also conscious of the fact that deflector operators have assets, in particular sites and masts which (subject to planning permissions and safety standards) could be used for other purposes. Such use would be subject to private arrangements, but it should be noted that*

¹ There are indications that this number could be considerably smaller.

licensed activities may not take place on any facility still being used for unlicensed activities.

- *The Director received comments suggesting irregularities in the royalty, tax and planning situations of deflector operators and recognises that regularisation, if necessary, would impose additional costs on the parties in question. Nothing in any licence issued by the Director would absolve the licensee from the requirement to obtain whatever additional consents, permissions, authorisations or licences may be necessary for the exercise of the rights conferred by that licence.*

1.5 It may be useful to restate the key objectives of the Director's policy in respect of television transmission:-

- Universal provision of free-to-air national television services
- Universal access to re-transmission of the main UK television services
- Efficient use of the radio spectrum
- Promotion of consumer interests through:
 - facilitation of consumer choice between broadcast transmission platforms
 - competitive development of quality communications infrastructure and services
 - promotion of low cost access to information/interactive services
- Fair competition in the market
- Interoperability of equipment and related services
- Transparency of regulation
- Transparency of commercial practice

It was in the light of these considerations that the Director decided last year that DTT, which is regarded as providing the best guarantee of universal access and most effective competition in the future to cable/MMDS, should be facilitated. The objective is the creation of a market structure which provides for competition and consumer choice between DTT on the one hand and cable/MMDS on the other. Satellite and Internet TV as market players will further extend consumer choice.

Views of Respondents

- 1.6 In response to ODTR 99/32, many of the issues addressed ODTR 98/20 in respect of deflector operators, were addressed again by respondents. Cable/MMDS operators said that the deflector operations should not be licensed as doing so would damage the orderly development of cable/MMDS and would generally be to the detriment of broadband networks. They said that deflectors represented unfair competition and that their unencrypted signals (which might be received at no charge by the public, could undermine the viability of the adjacent cable/MMDS operators). They referred to alleged incidents of intimidation, breaches of the planning laws and other alleged wrongdoing on the part of some deflector operators in the past. Cable/MMDS operators said that if licensing of deflector operators were to take place, this should only be in localities where there is no alternative means of receiving multi-channel television. Deflector operators and some individuals supported the licensing of deflectors, mainly as enabling and responding to, consumer choice. The National Television Association, which represents a number of deflector operators, both operating and dormant, stated that the aim of deflector operators is to deliver the 4 main UK services to those viewers who would not otherwise have access to them. The Association favours the continuation of deflector operations after DTT is available, on the grounds that this will provide competition to DTT. Generally, deflector operators accept that DTT should be introduced, but consider that it should not affect the operations of some deflector operators for a considerable time. (The question of licence duration is considered in section 2.12 below).

Director's Conclusions

- 1.8 In formulating her proposals in relation to the licensing of deflectors, the Director had to weigh the need to make spectrum available for the provision of a DTT service on a nation-wide basis against the aim of ensuring that today's consumers have, insofar as practicable, continued access to a range of TV services.

- 1.9 Deflectors do not contribute to the development of broadband networks nor do they contribute to Information Society services, all of which may be facilitated by cable, MMDS and DTT. Moreover, because of limited spectrum availability, deflectors will not be able to offer the expanded range of services which will become available as cable/MMDS move into the digital era. They are therefore, most unlikely to be in a position to provide effective competition in the longer term.
- 1.10 The Director has taken note of the comments about alleged wrongdoings on the part of deflector operators in the past. Any such wrongdoing is deplorable. However, the Director is not generally competent to evaluate alleged past occurrences of this kind and could not, on account of them, reasonably refuse to establish a licensing scheme for deflector operators generally.
- 1.11 No facts or information have been presented to the Director which have persuaded her that a short term licensing scheme for deflectors would undermine universal access to television services. Many households currently depend on deflectors for access to multichannel television. The Director remains of the view that a short-term scheme facilitating consumers who would not otherwise have access to multi-channel television, is appropriate in the period remaining before the introduction of DTT and subject to the need to clear spectrum at the relevant time. Indeed, in circumstances where there is at the moment an established demand for deflector services which the Director considers can properly be licensed, it is also important for the purpose of spectrum management, that such operators be effectively regulated rather than be allowed to proceed on an unlicensed basis as is the case at present. Accordingly, the Director has decided to proceed with a scheme as outlined in this report.
- 1.12 It has been suggested that deflector operators should be allowed continue where spectrum might continue to be available after the introduction of DTT. The Director intends to carry out a review of spectrum in the context of the introduction of DTT to consider the extent to which spectrum might be available and the purposes it might best serve, having regard to the development of the market for TV delivery and telecommunications services generally. If, following that review, a licensing scheme for deflectors is considered appropriate, a new licensing framework will be

introduced at that time, which will provide for licensing by a competitive process. Persons who continue unlicensed operations after the introduction of the scheme currently proposed may not be eligible to apply for licences in any such new process.

Further Steps

- 1.13 The next step will involve the preparation of regulations as required by the Wireless Telegraphy Act, 1926 to give effect to the Director's conclusions as outlined in this report. Regulations are made by the Director with the consent of the Minister for Public Enterprise. Subject to the making of regulations, the Director will invite applications and specify in detail the information to be provided in a comprehensive application form. An appropriate period will be allowed for the return of completed applications. The time required for the examination of applications will be dependent on a number of factors including the volume of applications and the extent to which applications are made for frequencies which conflict with those used or planned for use by national services.
- 1.14 The principles which the Director envisages being reflected in the terms of such licences, and the main points of information which the Director is likely to require from applicants are described later in this paper. Although this description cannot be taken as representing that regulations will ultimately be made, or that they will be made in the format outlined, nevertheless, potential applicants may, given the limited time available for this scheme, wish to start preparing the information likely to be required.
- 1.15 Matters raised on the scope and operation of the proposed scheme in the course of the consultation and the Director's conclusions in relation to these are set out in Section 2. A summary of the main features of the Director's overall proposals is set out in Section 3.

Section 2 – Spectrum Issues and Licensing Terms

2.1 This section reviews issues referred to in the consultation paper, firstly in relation to scope, viz:-

- the locations in which deflectors ought be permitted to operate
- the frequencies available
- considerations in relation to interference

and the terms on which licences may be granted viz:-

- application requirements
- duration
- technical standards
- fees and security

2.2 Areas of Operation of Deflector Services

2.2.1 In ODTR 99/32, the Director indicated her intention that deflector operators should not be licensed to operate in areas where cable has been (or is imminently to be) installed except in restricted circumstances, but that she would in principle be prepared to grant licences for localities served by MMDS.

Views of Respondents

2.2.2 Both Cable and MMDS licensees submitted that any licensing scheme should be confined to areas not served by them. As described in Section 1, they argued that the licensing of deflector operators would undermine the development of their systems and, specifically, the modest cost of establishing a deflector service in comparison with the heavy investment to which they have recently committed, would result in deflector operators having an unfair advantage in pricing their service to their subscribers. They also submitted that broadcasting by deflector operators of an unencrypted signal rather than one requiring special access - enabling householders to receive the deflector service without payment - would result in cable/MMDS customers switching to deflector services.

2.2.3 All deflector operators supported the proposition that deflectors should be licensed to operate in areas where MMDS is licensed. Only four submissions addressed the issue in relation to cabled areas. The general view expressed in those submissions

was that no restrictions should apply in relation to cabled areas, mainly because, it was argued, this would provide consumer choice.

- 2.2.4 Among the submissions from various individuals who opposed deflectors, reference was made to the necessity of preventing unencrypted deflector signal entry to cable areas, while some individuals who supported deflectors, favoured the provision of deflector services in both cable and MMDS areas, because of the low charges involved for customers.

2.3 Director's Conclusions

- 2.3.1 Subject to considerations of proper spectrum management, the Director aims to permit provision and use of the widest range of broadcasting services, but as indicated in both ODTR 98/20 and ODTR 99/32, the Director is satisfied that it is appropriate to adopt limited measures so as to facilitate the development of cable to supply digital signals. Save in very limited locations, no case can be made on universal service grounds for licensing deflector operations in areas which are or imminently will be, cabled. Digital cable networks have far greater capacity and can provide a far wider range of services than deflector services and do so with a very limited use of spectrum. Access to the services which cable can provide in urban and semi-urban locations is regarded by the Director as being in the public interest, while lack of such access in such locations could seriously restrict both commercial and recreational opportunities. Accordingly, having regard to these considerations and the high capital costs associated with cable systems, the Director is satisfied that for the period intended for licensing under the scheme here proposed, she should not licence deflector operations in such areas except in the restricted circumstances outlined below.

- 2.3.2 The Director considered the possibility of requiring deflector operators to operate services with secure encryption but decided that to do so would be to impose a disproportionate burden on deflector operators in the context of a short term scheme.
- 2.3.3 There are limited areas where cable service is not provided within areas licensed for cable. In exceptional cases, the Director will consider and may authorise deflector

operations if, in her opinion, cable services are not provided or are not to be imminently provided. In such circumstances the Director's prior written consent will be required and applicants should not expect that such cases will be considered by the Director until she has consulted the relevant cable licensee in each case in relation to the provision or planned provision of cable services.

2.3.4 Accordingly

- Generally licences will not be granted for transmitters whose signal reach is mainly directed at a licensed cabled area.
- The Director will in licences granted by her, require that any overspill of deflector signals into licensed cable areas be minimised. This may be achieved through appropriate location of the deflector station and the station characteristics.
- In exceptional circumstances, following consultation with the cable licensee concerned, the Director may approve a deflector operation in part of a licensed cable area if she is satisfied that cable services are not provided and are not to be imminently provided in that area

2.3.5 MMDS, when equipped for the distribution of digital services, is capable of supplying a substantially wider range and type of services than deflectors, although not as wide as those potentially available through cable and of course, such services do occupy spectrum. Significant capital costs are being incurred in establishing digital capacity for MMDS systems but these do not entail costs of the same scale relating to infrastructure and civil works as is the case with cable systems. The incremental cost to MMDS operators of servicing new subscribers is likewise lower. The Director also has regard to the fact that in many locations licensed for MMDS in the past and now, deflector operators have been providing unlicensed services and MMDS operators have not provided full coverage within their licensed areas. Accordingly, and reflecting her view as already expressed, the Director will not decline to licence deflector operators in respect of locations for which MMDS operators are already licensed on account of such existing licences.

2.4 Frequencies Available

2.4.1 In ODTR 99/32, the Director indicated that applications would only be considered for the allocation of a maximum of four frequency channels. In locations where

fewer than four channels are available, the actual number available would be offered. The Director will not specify which services may be carried on any channels which are licensed, subject to the requirement that they fall within the categories set out in ODTR 99/32.

Views of Respondents

- 2.4.2 Cable and MMDS licensees considered that the allocation of channels for use by deflectors should be consistent with good frequency management and non-interference with cable and MMDS operations. Deflector operators generally considered that the number of frequency channels should not be limited. Some stated that they carried satellite channels in addition to the four UK services. Others suggested that more channels should be made available for the relay of national services which are not otherwise accessible. RTE considered that, pending the availability of DTT and where the national analogue services are not otherwise available, the national channels should be carried by deflectors, and additional frequencies if available, should then be allocated to operators to enable them to carry other programme services.

2.5 Director's Conclusions

- 2.5.1 The reasons for proposing a limitation of four frequencies was explained in ODTR 99/32. The Director wishes to allow flexibility subject to ensuring that the extent of operations licensed does not imperil the prompt termination of all operations as soon as the Director considers this appropriate, to facilitate the testing or introduction of DTT, the roll-out of DTT and of the national services. (Her termination arrangements are discussed at 2.13 below). The Director believes that her proposed approach represents the best use of spectrum balanced against the current and future needs of consumers. The Director is not prepared to offer more than four frequencies. In cases involving the carriage of national services, the Director considers that such frequencies should be brought within the scope of the licences issued by the ODTR in respect of those national services.

2.6 Issues in relation to interference

2.6.1 As indicated in ODTR 99/32, the Director has considered the grant of licences to deflector operators only on the basis that deflector signals would not be protected from interference arising from DTT and other lawfully operated services. Correspondingly, where a deflector transmitter causes (or the Director believes that it may cause) interference to the testing or operation of DTT or the national services, the use of the relevant frequency by the deflector operator will have to terminate.

Views of Respondents

2.6.2 Submissions made by deflector operators accepted these stipulations, through one submission suggested that the normal methodology of assessing interference (ITU-R Rec.370) was not appropriate as it did not take local conditions into account.

2.7 Director's conclusion

2.7.1 As referred to in Document ODTR No 99/32, a deflector licence will not confer rights to retransmit to areas where its signals are or become subject to interference from signals from any other lawfully operated services.

2.7.2 As it is not possible to take test measurements at each household while planning services, some form of prediction must be performed to give an indication of the service that may be expected. The planning tool used by the ODTR uses propagation prediction models, to industry standards, which take account of terrain.

2.7.3 On the whole, planning for national services assumes wanted minimum field strength as given in ITU-R Rec. 417. However, with good installations, a lower wanted field strength may be adequate for the purpose of receiving DTT. Accordingly, the use by a deflector of a frequency which causes interference to such a signal will not be permitted.

2.7.4 Technical standards set for cable, MMDS and deflectors are intended to avoid interference between these services. As MMDS operates on a different frequency band, there is no likelihood of interference to it arising from deflector operations while cable, as a closed system, should not suffer interference when operating to its

own standards. There is a possibility that the operation of a deflector transmitter could cause interference to the reception of signals at the headend of a cable/MMDS operator. If this occurs or it seems that it may occur, the Director will require the cessation by the deflector operator of the use of the frequency causing the interference.

- 2.7.5 The Director will provide that the use of a particular frequency must terminate in the circumstances outlined above.

Application Requirements

2.8 Suitability of applicant

- 2.8.1 The Director proposed, because of the envisaged short-term duration of the proposed licensing scheme, that applicants must in particular, be able to show their ability to operate a licensed service during that period. The Director also indicated that she would accept applications from a combination of deflector operators who were situate in contiguous areas.

Views of Respondents

- 2.8.2 A number of responses suggested that compliance with other statutory requirements (taxation, planning, copyright, etc.) should be factors for the Director to take into account. It was also suggested that the technical capabilities of prospective licensees along with their record of deflector operations, should also be factors for consideration. The character of applicants was also considered relevant with the suggestion that priority be given to community organisations.
- 2.8.3 Copyright holders in material being retransmitted (“rights holders”) proposed that a willingness of operators to enter into a licence agreement with the rights holders should be a factor for the Director to consider. One submission suggested that a number of deflector operators may be unable to comply with the financial information requirements outlined as their access to professional financial advice could be limited.

2.9 Director's Conclusions

- 2.9.1 The Director considers that she generally ought not stipulate conditions in licences which require her to assess compliance with requirements which are not themselves within the scope of her authority. It is not for example within the Director's remit to monitor or assess compliance with taxation, planning and copyright requirements. Accordingly, such compliance will not be a condition of granting a licence. However, licensees should be aware that the granting of a licence by the Director does not exempt them from obtaining all other consents and permissions.
- 2.9.2 The Director will require applicants to demonstrate their ability to meet the costs of providing a service under a licence. This will involve the provision of financial forecasts. The format for such forecasts will be developed by the Director and made available when applications are invited. In the meantime potential applicants should anticipate that a statement showing income and expenditure on a quarterly basis for the duration of the licence period will be required, together with expenditure itemised in a number of categories such as maintenance, operations, acquisition of assets, collection expenses, licence fees, copyright payments, taxation etc. The basis for the forecasts will need to be clearly stated and should be linked to information on the number of houses in the proposed catchment area of the operator and the number of subscribers. Potential applicants may wish now to begin to review these issues and investigate the extent to which costs under different headings will arise.
- 2.9.3 With regard to the Director's proposal that she might accept a single application from a combination of deflectors in contiguous areas, she has now decided that where this is desired to be done, a single legal entity should be formed which may provide a single bond and accept a single licence.

2.10 Restricted Application Process

- 2.10.1 The Director indicated that applications under the scheme would be considered at the same time and that licences awarded under it would be valid from a common date. It was also indicated in ODTR 99/32 that having regard to the short duration of the proposed scheme applications would be considered only from those in a position to operate services within one month of the granting of a licence.

Views of Respondents

2.10.2 A variety of responses were received on this issue. No comments were received in relation to the intention to have all applications considered together or that licences should run from a common date. One comment considered that the application process should take the form of the ODTR publishing details of available frequencies and applicants selecting frequencies of their choice and being awarded licences by the ODTR on a first come, first served basis. The requirement that successful applicants be required to provide a service within one month of licence award was queried by two respondents on the basis that this would be too short a time frame, and they suggested that a three month period would be more appropriate.

2.11 Director's conclusion

2.11.1 The Director will require that applications be received by a stated date. Any applications received subsequent to that date will be returned. All applications received by the specified date will be considered in accordance with the requirements of the regulations to be made. Given the time frame for the scheme, it does not make sense to provide an extended period to establish operations under the scheme beyond the one month period as proposed.

It should be noted that the examination of the applications will be undertaken with the assistance of external consultants and that, following the offer of a licence, applicants will be given 21 days to arrange security and pay the required licence fee. Failure to comply will result in the offer being withdrawn.

2.12 Duration of licences

2.12.1 In ODTR 99/32, the Director proposed that: -

- (a) Deflector licences should have an expiry date of end December 2000.
- (b) If DTT was introduced earlier in an area where a deflector is licensed, the Director might revoke that licence before the expiry date.
- (c) The Director might extend licences to no later than end December 2001 if the launch of DTT is delayed.

(d) As indicated at Section 1.12, following a spectrum review the Director may introduce a new deflector scheme, but if this is done, licences would be awarded under such a scheme on a competitive basis.

Views of Respondents

2.12.2. Responses to the above proposals were varied. Cable/MMDS operators commented that licensing should only be permissible for so long as no alternative means of receiving multi-channel television services is provided in a particular location.

2.12.3 Some deflector operators suggested that licences should not terminate by any particular date. Their general view was that deflectors should be permitted to remain in operation for so long as spectrum was available even if this was restricted to one frequency channel. A number of operators also offered the view that DTT would not be universally available from its launch date and that unless it was receivable in all areas of coverage by a particular deflector, deflector operations should be permitted to continue. One operator suggested that deflector infrastructure could facilitate the availability of DTT which might not be immediately available in particular areas.

2.12.4 RTE proposed that following the general introduction of DTT, deflectors could continue to be licensed only in areas where the DTT signal fails to reach and the national analogue services are unavailable. In such circumstances, deflectors should be required to carry the national services. RTE envisaged that such an arrangement would be for a limited period pending the full implementation of DTT.

2.13 Director's Conclusion

2.13.1 The Director has considered carefully the comments received. She wishes to facilitate consumers, but it is essential that deflector operations do not impede the testing or introduction of DTT and do not interfere with the roll-out of national services in the UHF band. She has reviewed the technical issues in relation to the testing and roll-out of DTT. She proposes to allow somewhat greater flexibility than she had originally envisaged so as to facilitate customers of deflector operators being able to continue taking that service for as long as possible prior to the introduction of DTT or further roll-out of the national services. When inviting

applications the Director will publish information on the frequency channels currently used and those which are reserved for DTT and further roll out of national analogue services. Applicants will be advised to make application in respect of available, i.e. non-reserved, channels. If applicants apply in respect of a reserved channel, they will have to cite very exceptional reasons in support. Where they are licensed for the use of reserved frequency, there will naturally be an increased likelihood that the Director will terminate the licence in respect of that frequency prior to the stated expiry date of the licence.

2.13.2 The following conditions will govern the duration of licences.

- (a) Licences will be issued with an expiry date of 31 December 2000.
- (b) Generally, licences in respect of reserved spectrum will be terminated at the time of test transmissions for DTT (or national service roll-out).
- (c) Licences in respect of non-reserved spectrum may be suspended, terminated or varied to facilitate DTT test transmissions, or the further roll-out of national services.
- (d) Licences will be terminated when DTT is made available within the area served by the deflector. If a licensee is authorised to operate at a number of sites, termination in these circumstances may, at the Director's discretion, only apply to the affected transmitters.
- (e) If DTT is not available within the area served by the deflector by December 2000, the Director may, at her discretion, renew the licence, provided that the licensee has observed all of the conditions of the licence.
- (f) Licences will not in any circumstances be renewed beyond 31 December 2001.
- (g) If the operation of a deflector transmitter is subject to interference from other lawfully operated services, the deflector will under the terms of their licence, cease to be licensed within the area where the interference is occurring.
- (h) If the interference referred to at (g) is caused by another deflector transmitter, it is incumbent on both deflectors to co-operate with each other with a view to implementing a solution to the interference problem. If the proposed

solution is not within the terms of the licence(s), it must be referred to the ODTR for consideration.

2.14 Technical Conditions

2.14.1 There was general support for the technical conditions proposed in ODTR 99/32. A number of minor suggestions were made.

2.15 Director's Conclusion

2.15.1 No significant amendments are envisaged in the technical conditions as published other than minor editorial changes. The technical conditions will be published with the Regulations and will form part of the conditions which licensees must observe.

2.16 Application Fees

2.16.1 The Director proposed that applications be accompanied with a non-refundable application fee of £200 in respect of each frequency channel at each location for which an application is made. The Director pointed out that such a payment was not likely to be sufficient to meet the costs associated with examining applications but, in the circumstances of the proposed scheme, considered that the amount is appropriate.

Views of Respondents

2.16.2 Responses received were generally favourable or non-committal. Some cable/MMDS operators objected that the £200 fee proposed was on a different basis to the £20,000 fee paid by them at the time of granting MMDS licences by the Minister for Communications.

2.17 Director's Conclusions

2.17.1 The £20,000 fee payable by MMDS operators under the relevant Regulations was the payment of a licence fee and not an application fee. The amount covered the licence fee for the initial 12 month period. The proposed deflector application fee is not comparable. The Director will require the payment of application fees as outlined in ODTR 99/32.

2.18 Licence Fees

2.18.1 In ODTR 99/32 a licence fee of 3.5% of revenue was proposed, payable on a quarterly basis subject to a minimum fee of £25 per quarter.

Views of Respondents

2.18.2 Comments received from the cable/MMDS industry considered that the full cost of monitoring and of enforcement of regulations should be met from fees paid by deflector operators. A fee based on revenue was argued not to take into account the extent to which non-paying households are likely to access deflector signals with income foregone by the deflectors. Accordingly it was suggested that unless the signal were encrypted, the fee should be based on the number of homes within the reach of the deflector signal.

2.18.3 Some deflector operators suggested that a flat fee of £25 per quarter should apply. Some said that most deflector operations were community based and requested that the Director should consider a reduced fee for such operators.

2.19 Director's Conclusions

2.19.1 The proposed fee of 3.5% is levied on the same basis as applies to cable and MMDS licensees. As stated in ODTR 99/32, it is appropriate that the cost of regulating any segment of the telecommunications sector should, in principle, be borne by that sector itself, but because of the short duration of the proposed licensing scheme, such an approach should not be adopted here for it would result in fees being set at a level which would act as a barrier for all but the largest commercial deflector operators. However, following a review of the minimum licence fee proposed in ODTR 99/32, this has been increased to £35.

2.19.2 It is essential that the arrangements for this short-term scheme are simple and practical and allow for the effective collection of fees. The Director recognises that some operators do not collect regular income at present, and so do not have a regular subscription rate. However, they are going to have to meet a variety of changes in the future (for copyright usage for example) and are likely to have to regularise their charging arrangements on that account. The Director does not consider that it would

be practical to calculate the fees other than in relation to revenue, whether identified on the basis of accounts and subscription fee information which is the preferred basis, or imputed on the basis of members/subscribers or houses in the catchment area.

2.19.3 The Director does not consider that it is appropriate that a reduced licence fee should apply to community based deflector operators. The community ownership of some operators would be expected to be reflected in a lower level of subscription charge so that the amount of the licence fee payable to the ODTR will tend to be lower than for operators who charge a higher fee.

2.19.4 Licensees will be required to maintain details of subscribers and such details may be inspected by the Director for the purposes of verifying licence fee calculations. Operators will be required to provide certified statements as to revenue and details of membership/subscribers and these may be subject to audit by the Director. False statements and non-payment of fees will constitute grounds for revocation of a licence. Late payment of fees, if accepted (which will only be at the discretion of the Director), will be subject to the payment of interest.

2.20 Security

2.20.1 The moderate levels of fees outlined above charged over the short period envisaged, would not generate sufficient funds to enforce the termination of individual deflector operators were that to prove necessary. The Director proposed in ODTR 99/32 that a security bond calculated at between £10,000 and £15,000 should be provided so that the Director's costs in ensuring compliance are met. The security provided would be released to the licensee when the Director was satisfied that operations had definitively terminated when she had requested that this be done.

Views of Respondents

2.20.2 Some respondents suggested that the security sought was too low as it was suggested that there was a likelihood of non-compliance by deflector operators, and a number of deflector operators considered that the security sought was too high for operators of small systems. No alternatives were suggested as to the manner in which security

could be provided other than the possibility of ownership of the transmission equipment being transferred to the Director.

2.21 Director's Conclusion

2.21.1 In formulating her requirements, the Director has tried to balance the need to make proper provision for a contingency event while seeking to ensure that the provisions as to charges and security do not act as a barrier to operators who wish to provide a service. The security to be provided would only be forfeit in the event of failure to cease the use of a frequency channel(s) when directed to do so, or on the expiry of the licence. The Director considers it fairer that each individual licensee should be responsible for providing security, the cost of which they are responsible for controlling, rather than the Director impose heavy charges on licensees generally, which would not allow individual licensees to benefit from their own creditworthiness and compliance. The Director does not consider that transfer of ownership of the transmission equipment to her would provide adequate security since she would not have access to or control of the equipment and would have to incur further costs if she needed to realise its value.

2.21.2 In light of the submissions put forward however the Director has decided that the amount of security will be calculated on the basis of a minimum of £5,000 plus £2,000 for each site subject to a maximum of £20,000 rather than on the basis originally proposed.

Section 3 – Summary of Proposals

3.1 The following is a summary of the Directors main proposals in relation to the proposed licensing scheme. The regulations being prepared which will give effect to the scheme are likely to reflect those terms but will include provisions which have not been set out here in detail and which in some respects may depart from what is set out here.

Provisions to apply to licences

3.2. The following rights and obligations will be conferred by licences:-

- Licences will be issued in accordance with regulations to be made under the Wireless Telegraphy Act, 1926.
- Licences will authorise the operation of a retransmission station(s) in accordance with characteristics to be specified in each licence.
- The licence period will be from the date of issue to 31 December 2000.
- The Director may grant licences authorising the use of four frequency channels only, in respect of any single location.
- The Director may modify the characteristics of one or more of the deflector stations specified in the licence.
- Licences will not authorise retransmissions to an area where there would be interference arising from other lawfully operated services.
- The Director may permit the provision of a deflector service in part of an area which is the subject of a cable licence, if the Director is of the opinion that cable services are not being provided and will not be imminently provided, in the relevant portion of the cable licensed area.
- The Director will require that deflector signals must be minimised to avoid unnecessary overspill into a licensed cabled area.
- Successful applicants will, before the issue of a licence, be required to provide a security against the Director's costs in ensuring cessation of the use of a frequency channel or channels.
- Licence fees will be calculated at a rate of 3.5% of revenue arising from the operation of the service, and will be payable in advance to the Director on a

quarterly basis. The minimum licence fee payable shall be £35 per quarter in advance.

- Non-payment of licence fees by the due date will constitute grounds for revocation of a licence.
- In exceptional circumstances, the Director may accept late payment of fees, but this shall be subject to payment of interest.
- All licensees will be required to maintain a register of subscribers or of households who avail of the service and this register shall be subject to inspection by the Director.
- The Director may revoke a licence before its expiry date if DTT is made available within the area served by a licensee.
- Generally, licences in respect of reserved spectrum will be terminated at the time of test transmissions for DTT (or national service roll-out).
- Licences in respect of non-reserved spectrum may be suspended, terminated or varied to facilitate DTT test transmissions, or the further roll-out of national services.
- Failure to comply with the licence conditions, or any amendments thereof, including technical conditions will constitute grounds for revocation of a licence.
- The Director may renew the period of a licence for a period or periods ending no later than 31 December 2001.

Provisions to apply to application process

3.3 The Director will publish the full details of the application process at a later stage.

It is expected that the following features will apply

- Applications for licences will be invited by the Director following the making of regulations necessary for the granting of licences.
- Applications must be made in the format to be specified by the Director.
- Applications must be made by natural persons or properly constituted legal entities.

- Applications in respect of deflector stations whose signal reach is mainly directed at an area which is licensed for cable under the 1974 or 1999 Cable Regulations will generally not be accepted.
- All applications must be accompanied by a non-refundable application fee of £200 in respect of each frequency channel applied for at each location.
- Applicants will be required to specify the frequency channels for which authorisation is sought.
- At the time of publishing the detailed application procedures, the Director will make available a listing of all frequencies which are currently used or planned for use by national services
- Applications will only be considered from those who would be in a position to operate services within one month of being awarded a licence.
- All applications must be received on or before the closing date to be specified by the Director.
- Any applications received after the closing date shall be returned.
- The Director will be seeking evidence from the applicant that it will be in a position to meet all of the costs involved in operating a licensed service.
- Applicants will be required to provide financial forecasts itemising the revenue and the various costs which are forecast to arise.
- Examination of the applications will be conducted by the Director with the assistance of external consultants.
- If, following an examination of the application, the Director decides to issue a licence to an applicant, the applicant will be offered a licence and will be required to arrange security as outlined in Section 2.21 and pay the appropriate licence fee before the licence may issue.
- If, following the offer of a licence, an applicant has not arranged security and paid the required licence fee, within 21 days, the offer to grant a licence shall lapse.
- If following that grant of a licence, a licensee has not provided a service within 30 days, the licence will lapse.

Appendix 1 Persons/Bodies who Submitted Comments

James Breslin – Deflector Operator
Callan Community TV
Castledermot Community Television Group
Coastal Multi Systems
Comhlacht Phobal Teilifis Thir Chonail Teo
Dunrally Company Limited,
Midlands Community Television
National Television Association
RLO-TV
Southcoast Community TV
Cablelink
CMI
Irish Multichannel
Suir Nore Relays
Richards Butler on behalf of copyright holders
RTE
Senator Enda Bonner
Cllr. Betty Twomey
5 submissions were received from private individuals