



Response to Consultation

**Future Regulation of Electronic
Communications Networks and Services – Fees
for Authorisations and Rights of Use
(Response to further Consultation questions)**

Fees for Rights of Use – Fixed Radio Links

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1 Foreword

This document is part of the series of consultations on the future framework for authorisations under the new EU Directives for electronic communications networks (ECN) and services (ECS). It is a response to a further consultation on future charging principles for Authorisations and Rights of Use and builds on the earlier exchange of views concerning future charging principles (ComReg's response to that consultation was issued on 1 May 2003¹).

I would like to take this opportunity to thank all the respondents who responded to this consultation and thus assisted in the development of these issues.

Etain Doyle
Chairperson
Commission for Communication Regulation

¹ ComReg Document 03/46 – Future Regulation of Electronic Communications Networks and Services – Fees for Authorisations and Rights of Use

2 Executive Summary

Late last year, ComReg published a Consultation Paper on Fees for Authorisations and Rights of Use under the new framework (02/102). The paper was the first round of detailed consultation on future charging principles and outlined broad principles for levying administrative charges and fees for spectrum rights of use following the introduction of the new regulatory EU framework on 25 July 2003.

ComReg issued a response on many of the issues in May 2003 (03/46). The response to the consultation gave rise to further issues for consultation (principally in relation to charges for fixed radio links) and ComReg indicated that it would deal with these issues separately. This paper deals with this issue and builds on previous consultation papers (02/102 and 03/46) where ComReg's general approach to charging principles for general authorisations and rights-of-use had already been published.

These issues are addressed in detail in Section 4. After consideration of all the points made:

ComReg will implement bandwidth based charges in the Dublin area with effect from 1 July 2005.

ComReg will not charge an application fee with effect from 1 July 2005 in respect of Point to Point or Community Repeater applications.

The above proposals will require the consent of the Minister for Communications, Marine and Natural Resource and ComReg will shortly be submitting Regulations to the Minister, for his approval.

Depending on the response of operators, it is anticipated that these measures are expected to be broadly revenue neutral for ComReg, but will promote spectrum efficiency and help facilitate new market entry.

Previously published documents that relate to this Response to Consultation:-

ComReg Document 03/46 –Response to Consultation; Future Regulation of Electronic Communications Networks and Services – Fees for Authorisations and Rights of Use

ODTR Document 02/102 – Consultation Paper; Future Regulation of Electronic Communications Networks and Services Charging Principles for Authorisations and Rights of Use

This document is without prejudice to the legal position or the rights and duties of ComReg to regulate the market generally. Any views expressed are not binding and are without prejudice to the final form and content of any decisions which ComReg may make.

3 Introduction

This document is the Commission's response to the comments received on the further issues for consultation raised in ComReg document 03/46. The Commission is grateful for the responses received and has taken these into account in developing its approach to setting fees for rights of use for radio frequencies. A number of respondents commented on the broader issues (outside the scope of this consultation) raised in document 03/46 and these were considered in ComReg document 03/78².

This is the latest in a series of ComReg documents relating to the charging principles for general authorisations and rights of use for radio frequencies, under the new EU framework for electronic communications networks and services which took effect on 25th July. A previous consultation (02/102) addressed the broad principles underlying ComReg's approach to administrative charges and spectrum fees, and in its response (03/46) ComReg confirmed its approach to funding generally.

Twelve responses were received to the consultation document and are listed below. Five respondents specifically addressed the additional consultation issues; they are marked with an asterisk:

- BSkyB
- Chorus Communications*
- Eircom*
- Esat BT*
- ESB Telecom
- Independent Broadcasters of Ireland
- RTE*
- SapReg
- SES-Global
- Today FM
- TV Three
- Vodafone*

² ComReg Document 03/78 Future Regulation of Electronic Communications Networks and Services – Administrative Charges and WT Licence Fees Applicable to Broadcasting Networks and Services

ComReg wishes to thank everyone who contributed to the consultation. In accordance with the policy set out in 03/31 “ComReg Consultation Procedures”³ and as indicated in the consultation paper, all responses received are available for inspection (except for material supplied on a confidential basis) at ComReg’s office.

³ ComReg Document 03/31 Future Regulation of Electronic Communications Networks and Services -ComReg Consultation Procedures

4 Consultation Issues

4.1 Administrative Charges

4.1.1 Premium fee based on bandwidth

Views were sought on whether or not fixed links in areas of high demand should attract a premium fee based on bandwidth.

Additional Question a

Do you agree with the principle that fixed links in frequency bands and geographic areas where there is a particularly high demand should attract a premium fee based on bandwidth, in order to promote more efficient spectrum utilisation?

Views of Respondents

One of the respondents that expressed a view was broadly in agreement with the suggested approach to bandwidth-based charging, while another acknowledged that links in geographically congested areas are at a premium. Four respondents expressed concern about the level of the proposed bandwidth-based fees and their potential impact on operators' costs, particularly with regard to fixed links that had been relatively recently installed. Two respondents felt that fees should take account of the bandwidth efficiency (i.e. bits per hertz) of links rather than simply reflecting the bandwidth, although one also pointed out that the balance between the higher power such links require and the bandwidth saved should be studied to see if an actual saving in spectrum is achieved. One respondent suggested that efficient spectrum usage and solutions to congestion problems could be achieved by promoting awareness of the level of congestion in certain bands and the availability of new bands, enabling mutually acceptable solutions to be found through consultation.

4.1.2 Application of bandwidth based charging in 18GHz and 23GHz bands

Views were also sought on the application of bandwidth based charging in 18GHz and 23GHz bands in areas of high fixed link use.

Additional Question b

Do you agree with the suggestion to apply bandwidth based charging in the 18GHz and 23GHz bands in areas of particularly high fixed link use, to promote more efficient spectrum utilisation?

Views of Respondents

One of the respondents was broadly in agreement with the proposed approach. Others expressed the view that bandwidth-based charging would increase costs, particularly if applied to links that had been recently installed or already used efficient modulation schemes. One respondent argued that bandwidth-based charging

did not take account of the nature of the material carried, for example video which requires a relatively high data rate.

4.1.3 *Alternative suggestions for the introduction of bandwidth related fees*

Finally views were sought as to alternative proposals on the introduction of bandwidth based charging.

Additional Question c

Do you have any alternative suggestions for the introduction of bandwidth related fees to promote spectrum management objectives?

Views of Respondents

A number of alternative suggestions were provided by respondents. Two respondents suggested that reduced fees should be considered in areas where there is no prospect of congestion or where spectrum is being used efficiently. One of these suggested that this would facilitate cheaper services, e.g. broadband to rural areas. Another respondent suggested that older, more spectrally inefficient equipment should be targeted and that if bandwidth related fees are introduced, the revenue raised should be made available to operators wishing to migrate to more spectrally efficient equipment, or onto wired networks through subsidised funding of new fibre networks in congested areas.

One respondent argued that there should be no increases in charges for existing links and that increases are best imposed when the links are replaced. Another suggested that if bandwidth based fees are to be introduced, they would be more effective if based on allocating channel blocks to operators, so encouraging operators to achieve a higher frequency re-use within their allocated channels.

4.2 Comreg's Position on these issues

Having considered the responses and the current level of demand for fixed links in the Dublin area, the Commission remains satisfied that there is a case for applying fees that reflect the degree of spectrum scarcity and the amount of spectrum resource assigned in individual cases. Hence the Commission is of the view that the bandwidth related fees should be imposed on links in the 18 and 23GHz bands in the Dublin area, as defined by the 10km grid squares 3122 and 3123 (see Appendix A Figure 1.1). However, the Commission agrees that such an approach should take account of the relative efficiency of individual links, in terms of the data traffic conveyed in the assigned bandwidth and the ability to re-use the assigned frequency. A lower fee is therefore proposed to reflect the relative efficiency of individual links in high demand areas. Where the bandwidth efficiency expressed in terms of bits/sec per Hz is greater than 4, a 50% discount is proposed, and where bandwidth efficiency is between 2 and 4, a 25% discount is proposed. A minimum fee of €952 will continue to apply for all links of bandwidth greater than 3.5 MHz.

The Commission has also considered the circumstances in which the adoption of more spectrally efficient equipment is likely to yield the greatest benefit in terms of additional capacity for new links. Since the greatest benefits arise in the case of links occupying the widest channels, the Commission has decided not to revise fees for links occupying bandwidths of 20 MHz or less at the present time. The Commission notes the suggestion made by one respondent that fees should be reduced in areas of low demand, however it should also be noted that fixed link licence fees have not changed for a number of years which represents a substantial reduction over time in real terms.

In view of the concerns expressed about the impact of higher fees on operators of existing links, the Commission has decided to postpone the introduction of the revised fees until 1 July 2005 to allow operators the opportunity to review their deployment of high bandwidth links in the highest demand areas prior to the revised fees taking effect. In view of the postponement and overall reduction in the scale of the fee increase as a result of the discounts proposed for spectrally efficient links, and in order to provide time for operators to plan for the changed structure, the Commission will not phase in the revised fees as originally planned but intends to apply the new fees in full from 1 July 2005.

After taking account of the proposed discount for bandwidth efficient links, the revised fees that will apply to links in the high demand areas will be as detailed in Appendix 2 (revised fees are in bold type), which also provides a comparison with current fee levels and levels proposed in the consultation document 03/46.

ComReg anticipates that the revised fees will initially affect approximately 10% of links licensed in the 18 GHz and 23 GHz bands and will be revenue neutral (depending on the response of operators) for ComReg, based on current frequency assignments. By providing an incentive to utilise the most spectrum efficient equipment in areas of particularly high demand, the Commission expects the proposal to make a significant contribution over time to enhancing the availability of frequencies in the most sought-after frequency bands. The policy will be reviewed after two years with a view to its possible extension to other frequency bands and/or geographic areas where particularly high demand for assignments exists.

<p>ComReg will revise the fee structure for Point to Point Radio Links in the Dublin area in accordance with the fees detailed in Appendix B with effect from 1 July 2005.</p>

ComReg currently charges a fee (€12) for processing Licence applications in respect of Point to Point Radio Links and Community Repeater licences. Such a fee is not charged in respect of any other type of licence. The fee must be paid before the licence can be processed. The income raised by ComReg totalled approximately €10,000 in 2002/3 and the costs of collection and inconvenience for operators are such that it is considered appropriate to discontinue this fee. Hence it is proposed that this fee should not be charged with effect from 1 July 2005.

ComReg will no longer charge an application fee with effect from 1 July 2005 in respect of Point to Point or Community Repeater applications.

Appendix 1 – Location of Grid Squares 3122 and 3123

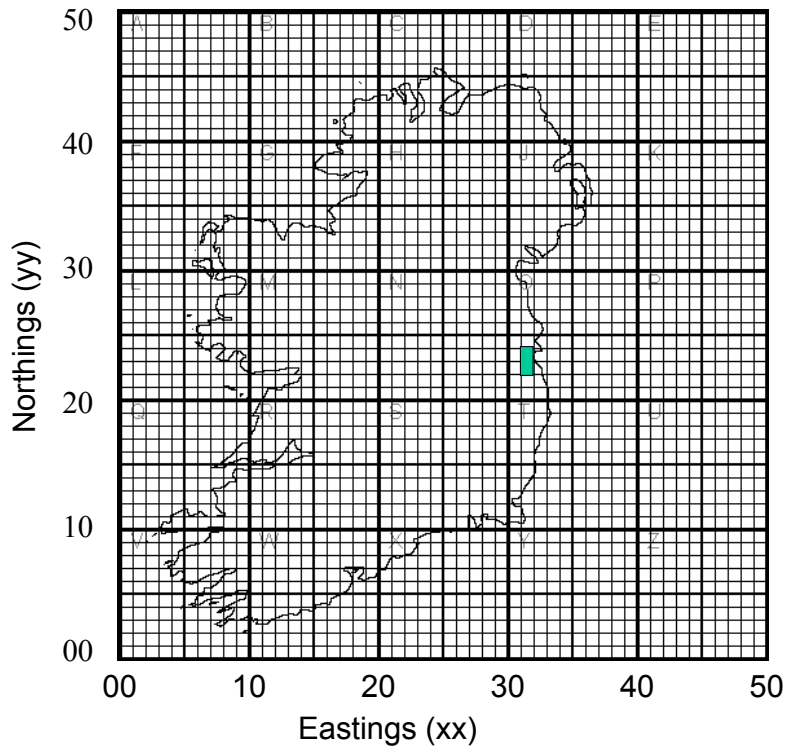


Figure 1.1: Location of Grid Squares 3122 and 3123

Appendix 2 – Revised Fee Structure (for 18 GHz and 23GHz bands in the Dublin area)

Link Bandwidth (B)	Link Data Rate (R)	Current fee €	Full revised fee w/e/f 1 July 2005 €	Basis
$B \leq 3.5$ MHz	Any	762	762	No change
$3.5 < B \leq 20$ MHz	Any	952	952	No change
$20 < B \leq 30$ MHz	$R \leq 2B$ Mbit/s	952	1,714	$952 + 1 \times 762$
	$2B < R \leq 4B$ Mbit/s	952	1,285	$1,714 - 25\%$
	$R > 4B$ Mbit/s	952	952	No change
$30 < B \leq 40$ MHz	$R \leq 2B$ Mbit/s	952	2,476	$952 + 2 \times 762$
	$2B < R \leq 4B$ Mbit/s	952	1,857	$2,476 - 25\%$
	$R > 4B$ Mbit/s	952	1,238	$2,476 - 50\%$
$40 < B \leq 50$ MHz	$R \leq 2B$ Mbit/s	952	3,238	$952 + 3 \times 762$
	$2B < R \leq 4B$ Mbit/s	952	2,428	$3,238 - 25\%$
	$R > 4B$ Mbit/s	952	1,619	$3,238 - 50\%$
$50 < B \leq 60$ MHz	$R \leq 2B$ Mbit/s	952	4,000	$952 + 4 \times 762$
	$2B < R \leq 4B$ Mbit/s	952	3,000	$4,000 - 25\%$
	$R > 4B$ Mbit/s	952	2,000	$4,000 - 50\%$

Note: The Full revised fees above (before the effect of any discount) are calculated based on proposals outlined in Section 3.2 of 03/46¹ i.e. links in the Dublin area of greater than 20MHz bandwidth would be subject to a premium per additional 10 MHz of €762.

The effect of these proposals on the following examples of links currently licensed in the 18 GHz and 23 GHz bands will be as shown below:

Link Bandwidth (B) MHz	Link Data Rate (R) Mbit/s	Current fee €	Full revised fee w/e/f 1 July 2005 €
3.5	Any	762	No change
7, 14	Any	952	No change
27.5, 28	32, 34, 36	952	1,714
28	155	952	No change
55, 56	155	952	3,000

Appendix 3 – Legislation

The principal legislation governing this issue include, *inter alia*,

Communications Regulation Act, 2002, No. 20 of 2002

European Communities (Electronic Communications Networks and Services)
(Authorisation) Regulations, S.I. 306 of 2003

Directive 2002/20/EC of the European Parliament and of the Council of 7 March
2002 on the authorisation of electronic communications networks and services
(Authorisation Directive)

Wireless Telegraphy Act, 1926 Wireless Telegraphy (Radio Link Licence)
Regulations, 1992, S.I. 319 of 1992

Wireless Telegraphy Act, 1926 Wireless Telegraphy (Community Repeater Licence)
Regulations, 1998, S.I. 318 of 1988

Appendix 4 - Regulatory Impact Assessment

4.1 Introduction

This Appendix, in accordance with best practice reviews the regulatory impact of the measures put forward in this paper. ComReg has, in undertaking this review, had regard to the general legislative environment including the regulatory objectives as set out by the Communications Regulation Act 2002 Clause 12 and as appropriate, the Ministerial Directions of February 2003⁴. The assessment is set out in general terms, where appropriate, relating to the general objectives of section 12 including the promotion of competition, the development of the internal market and the promotion of the interests of users within the community. It should be noted that this consultation process began in November 2002, in advance of the Ministerial policy direction on RIA.

4.2 Legislative Basis for the Measures

Regulation 19 of the Authorisation Regulation (S.I. No. 306 of 2003) amends Section 30 of the Communications Regulation Act, 2002 and states that the expenses of the Commission in relation to the discharge of its functions in relation to electronic communications shall cover the administrative charges which will be incurred in “the management, control and enforcement of the general authorisation scheme, the licensing scheme for the licence concerned, the schemes for the grant of rights of use for numbers and specific obligations, and may include costs for international co-operation, harmonisation and standardisation, market analysis, monitoring compliance and other market control, as well as regulatory work involving preparation and enforcement of any orders under section 3(6) (inserted by section 11(c) of the Wireless Telegraphy Act 1972) of the Wireless Telegraphy Act 1926 or regulations under section 6 of that Act relating to apparatus for wireless telegraphy for the provision of an electronic communication network or service and administrative decisions, such as decisions on access and interconnection”.

It should be noted that the recital to the Authorisation Directive (Directive No. 2002/20/EC of the European Parliament and of the Council of 7 March 2002) stated that usage fees (for the use of radio frequencies) may be used to finance the activities of national regulatory authorities that cannot be covered by Administrative Charges.

The Fees relevant to this consultation are detailed in the Wireless Telegraphy Act, 1926, Wireless Telegraphy (Radio Link Licence) Regulations, 1992, S.I. 319 of 1992 and the Wireless Telegraphy Act, 1926 Wireless Telegraphy (Community Repeater Licence) Regulations, 1998, S.I. 318 of 1988. S30.6 of the Communications Regulation Act 2002, provides that ‘All fees and levies mentioned in *Schedule 1* (which includes the Wireless Telegraphy Act 1926) shall be collected by..... and may be retained by, the Commission’.

⁴ Directions by the Minister for Communications Marine and Natural Resources to the Commission for Communications Regulation under s.13 of the Communications Regulation Act 2002, 21 February, 2003

In addition one of the objectives of the Commission (as stated in Section 12 of the Communications Regulation Act, 2002) is ‘to ensure the efficient management and use of the radio spectrum....’.

4.3 The Promotion of Competition

ComReg believes that the effect of its decisions on the promotion of competition will be positive. ComReg believes that in the long term there is a need to promote more efficient spectrum utilisation and where possible simplify the licensing process. The available radio spectrum is coming under pressure in specific areas as a result of increasing demand. If no action is taken it is possible that in the future, it may become difficult to introduce new services due to lack of available spectrum. The new fee structure will enhance the availability of frequencies in the most sought after bands thereby facilitating the promotion of competition.

The proposed fee structure encourages investment in more spectrally efficient technologies, which will free spectrum for re-use and thereby encourage the introduction of new services. It is proposed that the fee structure will take effect from 1 July 2005 thereby giving operators time to review their use of spectrum in these areas and consider the effect of the new fee structure on any investment decisions they make.

ComReg anticipates that the revised fees will initially affect approximately 10% of links licensed in the 18 GHz and 23 GHz bands and will (depending on the response of operators) be revenue neutral for ComReg.

4.4 The Development of the Internal Market

ComReg believes that the effect of its decision on the development of the internal market will be neutral. The basis for the revised fees is consistent with the terms of the new European regulatory framework. In accordance with the principle of freedom of establishment, no distinction is made between indigenous and foreign-owned operators established in the State.

4.5 The Promotion of the Interests of Users within the Community

ComReg considers that the new measures will promote competition and thereby promote the interests of users within the community. The above decisions will provide benefits to those in areas of high population density as the proposals will encourage the efficient use of scarce radio spectrum resources thus ensuring the long-term availability of such resources. In addition the ‘additional cost’ of using spectrally inefficient equipment will make operators consider the development of spectrally efficient resources to support network and service enhancements. Those operators who do not invest in spectrally efficient equipment will consider moving from this frequency band and thereby free up the band for other services /service providers.