



Commission for
Communications Regulation

Response to Consultation

Future Regulation of Electronic Communications Networks and Services – Fees for Authorisations and Rights of Use

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Contents

Introduction.....	4
1 Background.....	6
1.1 The EU Directives.....	6
1.2 Current approach to regulatory fees and charges for electronic communications services in Ireland.....	7
1.3 What changes are required?.....	8
1.4 Regulatory objectives.....	9
1.5 Responses received to the consultation.....	9
2 Response to Consultation.....	11
2.1 Approach to Recovery of Costs.....	11
2.1.1 Key Issues for Consultation.....	11
2.1.2 Views of Respondents.....	11
2.1.3 ComReg’s Position.....	12
2.1.4 Conclusion.....	14
2.2 Fees for Private Networks.....	17
2.2.1 Key Issues for Consultation.....	17
2.2.2 Views of Respondents.....	17
2.2.3 ComReg’s Position.....	18
2.3 Implications for Broadcast Transmission Networks.....	18
2.3.1 Key Issues for Consultation.....	18
2.3.2 Views of Respondents.....	19
2.3.3 ComReg’s Position.....	20
2.4 Application of charges to promote efficient spectrum use.....	29
2.4.1 Key Issues for Consultation.....	29
2.4.2 Views of Respondents.....	30
2.4.3 ComReg’s Position.....	33
2.5 Charges for numbering resources.....	33
2.5.1 Key Issues for Consultation.....	33
2.5.2 Views of Respondents.....	34
2.5.3 ComReg’s Position.....	34
3 Proposed approach to apply bandwidth based charging on a selective basis to support spectrum management objectives.....	35
3.1 Introduction.....	35
3.2 Description of ComReg’s suggested approach to introducing bandwidth related charges in the 18GHz and 23GHz bands.....	36
4 Responding to the Consultation.....	39
5 Summary of Issues for Consultation.....	40

Foreword

This consultation is another in the series of consultation on the future framework for authorisations under the new EU Directives for electronic communications and services. This paper is the second round of detailed consultation on the future charging principles for Authorisations and Rights of Use under the new EU Directives for electronic communications networks and services.

The response to the consultation has given rise to further issues for consultation, principally in relation to proposals in respect of bandwidth based charges for fixed radio links. I would urge all interested parties to respond to the issues raised in this consultation so that the final decision may be taken against a full range of views.

Etain Doyle

Chairperson

Commission for Communications Regulation

Introduction

On 25 July 2003 the legal basis for the provision of electronic communications networks and services will change throughout the European Union as a new family of Directives is due to be implemented. Last November, the ODTR¹ issued a consultation paper (02/102) on the Charging Principles for Authorisations and Rights of Use under the new EU Directives for electronic communications networks and services. This document briefly reports on the views respondents have given, presents ComReg's position on the various issues and documents the actions which ComReg intends to take as a result of this consultation. Further views are also sought on a suggested approach to applying bandwidth-based fees in congested areas for fixed radio links in certain frequency bands and geographic areas.

Decisions will need to be implemented within the national legislative framework to be put in place by the Minister for Communications, Marine and Natural Resources. The particular impact of this is that while ComReg may now indicate the manner in which it envisages that particular conditions may be implemented, or the scope of the regulatory requirements in relation to individual types of networks or services, these cannot be finalised until the Directives are transposed in to Irish law.

The arrangements proposed for telecom companies are very similar to those that currently apply and will not have a material financial impact on them. In relation to broadcasting distribution, final decisions must await the transposition/ decision on national legislation. However it is clear that the 3.5% to 5% Licence Fee currently charged in respect of Cable/MMDS will change.

Accordingly this paper sets out the principles which ComReg believes are appropriate to follow when formalising arrangements, but is subject to the provisions of the

¹ On 1 December 2002 the Commission for Communications Regulation was established (under S.I. No. 510 of 2002) and the establishment of the Commission had the effect of dissolving the ODTR and transferring the functions of the Director to the new Commission (ComReg).

Regulations to be made by the Minister. Draft regulations were published for a public consultation, which has now closed and can be viewed on the website of the Department of Communications, Marine and Natural Resources at <http://www.dcmnr.gov.ie/files/cmAuthorisation.doc>

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.

1 Background

1.1 The EU Directives

Following a major review of regulation of the telecommunications sector carried out in 1999, the EU Commission developed its proposals for a new framework for the electronic communications sector. Following public consultation, these proposals were developed into four Directives and one Decision, which were published in the Official Journal in April 2002². The provisions of the Directives are to be applied from 25th July 2003 in all Member States. The Directives and Decision are as follows:

- The **Framework Directive** sets the overall context and defines overall principles and approaches.
- The **Authorisation Directive** describes the mechanisms through which services and networks may be provided, including the conditions which may be applied to operators.
- The **Access Directive** describes how networks and service may be accessed and how interconnection between public network and service providers will be regulated.
- The **Universal Service Directive** considers how universal service will be protected and regulated and also addresses consumer rights.
- The **Spectrum Decision** concerns spectrum management issues.

² Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive);

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);

Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive);

Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive)

Decision No 676/2002/EC of the European Parliament and of the Council of 7 March 2002 on a regulatory framework for radio spectrum policy in the European Community (Radio Spectrum Decision);

All published in the Official Journal: L 108 Volume 45, 24 April 2002 and are available at http://www.europa.eu.int/information_society/topics/telecoms/regulatory/new_rf/index_en.htm

The Minister for Communications, Marine and Natural Resources has responsibility for the enactment of legislation to transpose the Directives into Irish law and has published his proposals for legislation. However, the precise legal framework may not be finalised for some time. Therefore, any proposals or decisions made by ComReg in advance of legislation are without prejudice to final decisions which can only be taken when legislation is enacted. Nevertheless it should be noted that:

- the Communications Regulation Act 2002 specifies regulatory objectives contained in the Directives and
- the general principles relating to recovery of NRA costs and the application of fees for rights of use of radio spectrum and numbering resources are set out in the Directives.

1.2 Current approach to regulatory fees and charges for electronic communications services in Ireland

The legal basis for the imposition by ComReg of Regulatory Fees is detailed in the Communication Regulations Act, 2002. This Act provides for the imposition by ComReg of a Levy on providers of communications services in order, inter alia to meet expenses properly incurred by ComReg in the discharge of its functions under the Act. The Act also provides for the collection of fees relating to the use of radio spectrum by ComReg, under the Wireless Telegraphy Acts, 1926 – 1988 (the WT Acts).

The fee regime currently operated by ComReg is based partly on recovery of administrative costs and partly on the application of specific fees associated with the use of radio spectrum. Currently, there are five specific categories of regulatory fee, namely:

- Telecommunications levy made under the 1996 Act (administrative fee) which is currently 0.2% of licensees' relevant turnover and applies to providers of telecommunications services licensed under the Postal and Telecommunications Services Act, 1983

- Postal and Telecommunications Services Act 1983 licence fees, which are one-off fees to cover the administrative costs for the granting and management of telecommunications licences.
- Spectrum access fees, which have been charged on a one-off basis for 2G mobile spectrum and are being applied over a number of years for 3G mobile spectrum.
- Wireless Telegraphy (WT) licence fees (a mix of administrative fees and spectrum charges, depending on the type of licence), which are recurring annual fees relating to the use of particular spectrum bands or specific WT apparatus.
- Television Distribution licence fee, levied on the operators of cable and MMDS networks and UHF deflectors under the WT Acts, which is currently 3.5% of licensees' relevant turnover. It should be noted that such networks are outside the scope of the current Licensing Regulations.

This paper concerns itself solely with charges to be levied on electronic communications networks, services and users of spectrum. It does not address the funding of postal regulation.

Any surplus of telecommunications administrative income (i.e. levy) over related administrative expenses must be refunded to industry. In practice this has not happened because related expenses have exceeded the levy income. Most of the Office's income has come from WT licence fees, which may in part be applied to cover any costs that are not covered by the administrative levy. Any overall surplus on WT fees after costs have been recovered must, on the request of the relevant Minister, be paid over to Government.

1.3 What changes are required?

ComReg believes that its approach to cost recovery and the application of fees for the right to use radio spectrum is broadly in line with the requirements of the new EU framework. Furthermore, the overall level of costs compares favourably with those in other administrations in similar

markets. ComReg does not therefore anticipate any significant change in its overall approach to setting administrative charges and spectrum fees as a result of implementing the new framework.

However, there will be changes to the scope of ComReg's regulatory remit under the new framework, to the extent that certain providers of electronic communication services which are not currently subject to licensing (e.g. Internet Service Providers, resellers) will come within the scope of the new general authorisation regime, and hence may be subject to an administrative charge.

The consultation also highlighted a number of specific areas where the new framework provides an opportunity to review current charging policies and to address in more detail charging principles, some of which were considered in earlier consultations. These include:

- The approach to recovery of ODTR/ComReg costs
- Application of Congestion and/or Incentive Pricing to encourage efficient use of spectrum
- Pricing of radio spectrum based on its economic value
- Charges in relation to broadcasting networks, services and spectrum

1.4 Regulatory objectives

In reviewing charging principles, ComReg is seeking to reflect its broader regulatory objectives as detailed in the Communications Regulation Act 2002, which include maintaining and developing sustainable competition in the communications markets, ensuring transparency and clarity in how fees are set and promoting the optimal use of scarce radio spectrum.

1.5 Responses received to the consultation

Relevant comments were welcomed from all operators, users or other interested parties. Fourteen responses were received to the consultation document; the respondents are listed below:

- Association of Licensed Telecommunications Operators (ALTO)
- Broadcasting Commission of Ireland (BCI)

- Chorus
- eircom
- Esat BT
- ESB Telecom
- Independent Broadcasters of Ireland (IBI)
- NTL
- O₂
- RTE
- SES Astra
- Brent Smith (telecommunications consultant)
- TV3
- Vodafone

ComReg wishes to thank to everyone who contributed to the consultation. A copy of the non-confidential elements of the responses is available for inspection at ComReg's offices.

The following chapter addresses the main themes of the consultation, namely:

- the approach to recovery of ODTR/ComReg costs
- fees for private radio networks
- implications for broadcast transmission networks
- application of charges to promote efficient spectrum use
- charges for numbering resources

In each case, the key issues are outlined, a summary of the responses is presented and the position of ComReg is stated.

Chapter 3 describes ComReg's proposal for the introduction of bandwidth based fees in congested areas for fixed link spectrum and invites views on the proposal.

2 Response to Consultation

2.1 Approach to Recovery of Costs

2.1.1 Key Issues for Consultation

Views were sought on how the ODTR / ComReg should recover the costs incurred in carrying out its regulatory duties, in particular whether such costs should continue to be recovered in part by a levy on the turnover of licensed operators and in part by means of fees for rights of use for radio spectrum. The balance between these two components of cost recovery was also addressed and a proposal made to retain the turnover-related levy at its current rate of 0.2%.

Question 1. *Do you agree that the ODTR's costs which are not recovered from particular users of spectrum as described in Question 4 below should be recovered in part through a turnover related administrative charge and in part through fees for spectrum rights of use?*

Question 2. *Do you consider that the current balance between levy and licence fee income (as used by the ODTR) is appropriate?*

Question 3 *Do you agree with the proposed structure for administrative charges?*

2.1.2 Views of Respondents

Of the seven respondents who expressed a firm view on the proposal to recover costs partly through a turnover-based levy and partly through spectrum fees, five were broadly in favour. Two respondents were opposed to the proposal, one a public telecommunications operator (PTO) and one a private operator. The PTO argued that activities and industry sectors giving rise to costs for ComReg should be more directly linked to charges, to avoid cross-subsidisation, while the private operator was concerned that levies may not provide an incentive to improve efficiency and would lead to increased prices to users.

One broadcaster who supported the proposal in principle added the proviso that an exception should be made in the case of free-to-air broadcasters. Another broadcaster, whilst not adopting a specific position on the proposal, expressed concern that free-to-air broadcasters were not in a position to pass on increased fees to end-users. This respondent also suggested that regulatory fees applied by ComReg should take account of any fees levied by other regulatory agencies. Another PTO respondent suggested that costs relating to spectrum should be applied only to spectrum users.

Among those who supported the application of a levy and spectrum fees, there was broad agreement that the current balance between the two elements was appropriate. However, one respondent, a PTO, argued that the current balance denied the industry the opportunity to benefit from refunds on budget surpluses, while another questioned the adequacy of the information provided in the consultation document. A majority of the respondents (seven of the eleven who expressed a view) agreed with the proposed structure for administrative charges, as outlined in the consultation document. Of those who did not agree, three were PTOs and one was a private operator. One of the PTOs considered that the perceived imbalance between the levy and spectrum fees should be corrected before any decision is made on fee levels, while the second PTO and the private operator were both opposed in principle to turnover-related levies. The third PTO felt that more information would be required to provide a definitive answer.

2.1.3 ComReg's Position

Having considered the responses and in line with the broad thrust of the majority of respondents, ComReg remains of the view that the application of a turnover-related levy is the most equitable way to recover the costs associated with a general authorisation regime. The application of a levy means regulated entities are not subject to high costs upon entering the market, which could create a barrier to entry. By recovering part of ComReg's costs from the surplus revenue generated by fees for rights of

use of spectrum, the levy can be maintained at a consistent and reasonable level, reducing uncertainty in the level of costs faced by operators.

The current levy of 0.2% of turnover is comparable to that applied by other European regulators such as Spain, Sweden and Austria, whilst the actual annual payment is typically substantially lower, reflecting the smaller size of the national market. Where the alternative of a flat fee is applied on regulated entities, this can place a significant burden on smaller operators and new market entrants. ComReg continues to be of the view that competition and choice are best promoted by a regulatory regime that encourages market entry and apportions the cost of regulation according to the revenue earned from the regulated market. The current telecommunications levy achieves this objective and at the current rate of 0.2% of relevant turnover ensures that fees for all providers are reasonable by international standards.

ComReg notes the points made by some respondents about the level of detail relating to regulatory costs. However it believes that current disclosure is reasonable and compares well with other European NRA's. Under the new EU framework, in common with other European NRAs, ComReg will be publishing a yearly overview of its administrative costs and of the total sum of administrative charges collected. ComReg is also obliged under the recent Policy Direction issued by the Minister for Communications, Marine and Natural Resources to ensure that:

“the costs incurred by it in effectively carrying out its functions in relation to the electronic communications market and the management of the radio frequency spectrum are minimised, consistent with best practice in other Member States of the European Community, and, subject to any different conditions that may exist, should not be out of line with the cost of regulation in such Member States”.

ComReg intends to review the level of disclosure in its financial statements in the light of the new Framework.

2.1.4 Conclusion

Having considered the consultation responses and made comparisons with other European NRAs, ComReg does not consider that there is a case for substantial changes to the current approach to cost recovery. Under this approach, a levy is collected from providers of telecommunications services licensed under Section 111 of the Postal and Telecommunications Services Act 1983. Although the current levy of 0.2% of relevant turnover does not in practice fully recover regulatory costs, ComReg does not believe an increase in the rate of the levy would hinder the development of smaller or new entrants in the market.

The scope of the new EU framework is likely to include certain categories of service provider, such as Internet Service Providers or providers of “calling card” indirect access services, which are not currently subject to individual licensing under the current regime. Such service providers would, in principle, be subject to payment of an administrative levy under the new regime. ComReg intends to consult on the terms and conditions of a general authorisation including criteria for determining what categories of networks and services will be required to comply with the notification procedures. It is anticipated that such a consultation will be commenced shortly. If, following the public consultation, ComReg provides that certain services which are not currently licensable will be subject to the notification requirement, such service providers would be subject to the provisions of an administrative levy under the new regime.

Under the current regime, licensees with a relevant turnover of less than €634,869 are subject to a fixed administrative fee of €1,016. The revenue raised from licensees subject to this minimum fee typically accounts for less than 0.5% of ComReg’s total levy revenue. ComReg is keen to minimise the regulatory burden facing those wishing to enter the electronic communications market and believes that this objective would be supported by the removal of the administrative fee requirement from regulated entities whose relevant turnover is less than €500,000.

Regulated entities which require an individual right of use for radio spectrum will continue to be subject to a payment for this right of use, which will include the recovery of the administrative costs associated with issuing and maintaining the right of use.

The current levy is collected quarterly in arrears on the 31 March, 30 June 30 September and 31 December. The levy is based on the relevant turnover of the financial year ending in the levy year. Thus for the current levy year (which runs from 1 July 2002 to 30 June 2003), the levy is based on the relevant turnover for the licensees' financial year ending during the year ending 30 June 2003. For example, if a company has a financial year ending on 31 December, its levy liability for the levy year ending 30 June 2003 will be based on its relevant turnover in the financial year ended 31 December 2002 (i.e. the financial year ending during the Levy year).

The new regime will enter into force on 25 July 2003 and thereafter a levy payment will continue to be collected on a quarterly basis. As the current regime will continue until 24 July 2003, a levy invoice will be issued in late August 2003 for the period 1 July to 30 September 2003 and will be due for payment on 30 September 2003. The levy liability for the period from 1 July 2003 to 24 July 2003 will be calculated as $\frac{24}{365}$ ths of the levy liability for the levy year ended 30 June 2003.

The levy invoice under the new regime covering the period from 25 July 2003 to 30 September 2003 will also be issued in late August 2003 and will be due for payment on 30 September 2003. Thereafter the levy will be due for payment on a quarterly basis, i.e. 31 December, 31 March, 30 June etc. The Levy year under the new regime will run from 1 July to 30 June, as under the existing regime. However, the first 'year' under the new regime will cover the period from 25 July to 30 June 2004.

The levy for the first year under the new regime will be based on the relevant turnover for the regulated entity's financial year ending during the year ending 30 June 2004. As under the current regime, if a

Company has a 31 December financial year, its levy liability for the levy year ended 30 June 2004 will be based on its relevant turnover in the financial year ended 31 December 2003. However, as the first year under the new regime will only cover the period from 25 July 2003 to 30 June 2004, the relevant turnover will be reduced by 24/365ths, to reflect the shorter levy year.

Those organisations that currently pay the levy and which also will be subject to the new regime will therefore receive two levy invoices in late August, one for the period 1 July to 24 July and a second invoice for the period from 25 July to 30 September 2003, both of which will be payable on 30 September 2003.

The 'relevant turnover' for the purpose of determining the levy payment will be the turnover excluding VAT in respect of the provision of electronic communications services. Turnover which is clearly not related to the provision of electronic communications networks or services, e.g. revenue generated from consultancy services etc, will not be subject to the levy.

Revenue generated from other companies holding an authorisation is relevant turnover and is not deductible. In addition revenue generated from the provision of electronic communications networks and services supplied to subsidiaries or other connected undertakings are not deductible from relevant turnover. Any change from these principles would precipitate an increase in the rate applicable.

Those subject to the levy will be required to submit a 'Statement of Relevant Turnover' certified by their auditors within 2 months of the end of their financial year. It will be a requirement that the Statement will also include a reconciliation of the 'relevant turnover' to the turnover per the financial statements.

Those companies that are not currently subject to administrative fees, but will become so under the new regime, will be required to submit an estimate of their turnover for their current financial year, prior to the introduction of the new regime on 25 July 2003. This estimate will be used to calculate the levy liability in early August 2003, in the manner described above. For those which currently pay the levy, their levy liability for the levy period to 25 July 2003 will be estimated based on their liability for the year to 30 June 2003. Once a Statement of Relevant Turnover has been received in respect of the levy, the actual liability will be calculated and an invoice issued immediately for any additional sums due. Where there is a refund due, it will be set against the levy liability of the next quarter. Costs that specifically relate to the licensing and management of radio spectrum will not be recovered via the levy, but included in the fees applied for rights of use of radio spectrum.

2.2 Fees for Private Networks

2.2.1 Key Issues for Consultation

Views were sought on a proposal to apply a single, annual payment rather than a turnover-related levy to operators of non-public private radio networks

***Question 4** Do you agree that, where the costs associated with issuing and maintaining a general authorisation are low (i.e. in the case of non-public networks) and the authorised party is also subject to a charge relating to a right of use of radio spectrum, a single, fixed annual charge should apply? If not, please provide supporting arguments*

2.2.2 Views of Respondents

Of the seven respondents who expressed a firm view, five were in favour of this proposal. The two respondents who did not favour this proposal both had a preference for service-based charging, with fees based on specific tasks such as frequency assignment or investigation of interference. Both argued that a fixed fee did not provide an incentive for the regulator to improve efficiency.

2.2.3 *ComReg's Position*

In view of the majority support for this proposal and in order to minimise the complexity of the licensing regime whilst providing clarity and certainty for private users of radiocommunications equipment, ComReg intends to maintain a single, annual payment for such users. This payment will cover both a spectrum usage element, where applicable, and an administrative charge relating to the management, control and enforcement by ComReg of individual rights of use for radio spectrum and applicable general authorisations conditions. ComReg has taken and continues to take measures to improve efficiency.

ComReg proposes to take a similar approach to public mobile radio networks, such as community repeaters, where the relevant turnover is below the proposed threshold for levy payments of €500,000.

2.3 **Implications for Broadcast Transmission Networks**

2.3.1 *Key Issues for Consultation*

Unlike the current telecommunications licensing regime, the new EU regulatory framework applies to all electronic communications networks and services, including broadcast transmission systems but excluding broadcast content. The consultation document therefore sought views on whether broadcast transmission networks and systems should be subject to the same regulatory regime as other networks and services covered by the new framework, and in particular whether a similar approach to administrative charges and fees for spectrum rights of use should apply.

Question 5 *Should operators of broadcast transmission systems be subject to the same regulatory regime as other providers of electronic communication networks or services to the public? In particular should broadcast transmission systems be subject to similar general authorisation requirements to other providers and should they be subject to the same administrative charging regime, i.e. application of a 0.2% levy on turnover.*

Question 6 *Should operators of broadcast transmission networks using radio spectrum be subject to a fee for such rights of use, and if so do you have a view on how such fees should be determined?*

Question 7 *Should satellite service providers have the opportunity to acquire spectrum rights of use similar to those held by operators of terrestrial radio networks, and if so what level of fees should apply to such rights?*

2.3.2 Views of Respondents

With the exception of two of the broadcasting respondents, there was broad support for the proposal that broadcast transmission networks and systems should be subject to the same regulatory regime as other providers of electronic communication networks or services to the public. Eight of the ten respondents who expressed a firm view were supportive of the proposal. A further respondent, a PTO, felt that, while the proposal merited further consideration, further details of specific charges would be required to provide a definitive answer, whilst a broadcaster agreed with the principle but with the caveat that a levy should not be imposed on free-to-air broadcasters.

Those who disagreed were both from the broadcasting sector. One felt that there was a need to distinguish between those who provide communication services for direct remuneration and those that do not, whilst the other thought that it may be best to defer a decision until the funding arrangements for the proposed Broadcasting Authority have been determined.

There was slightly less support for the application of fees for spectrum rights of use to broadcasters, although the majority of those expressing a firm view (five out of eight) were in favour. The three respondents who did not support the proposal were all from the broadcasting sector. One cited social and cultural reasons, and the existence of the universal service obligation for free-to-air broadcasters, claiming that this restricted freedom to vary the amount of spectrum used. Another argued that it is

not possible under the “Television without Frontiers” Directive (TWF) to prevent the reception of TV services from neighbouring countries and that therefore applying a spectrum fee would disadvantage indigenous broadcasters. The third argued that spectrum fees may create obstacles to cross-border provision of services by constituting a discriminatory trade restriction.

With regard to how spectrum fees for broadcasting might be developed, one of the PTO respondents suggested that a levy per MHz should be applied, in a similar manner to fixed wireless access. Another respondent with both telecommunications and broadcasting interests suggested that there should be either a small flat fee or a fee based on the amount of spectrum licensed. A broadcasting respondent observed that applying charges for each transmitter may delay development of additional stations to improve coverage and place an undue burden on local radio broadcasters in areas of difficult terrain.

There was strong support for the proposal that satellite operators should have the opportunity to acquire spectrum rights of use, with eight of the nine respondents who expressed a firm view being in favour. Most of these felt that satellite operators should be treated in a similar manner to terrestrial broadcasters. The one respondent who opposed queried whether the proposal would comply fully with EU internal market rules relating to cross-border services. One PTO who was broadly supportive of this proposal and the application of spectrum fees to broadcasters felt that these were complex issues that would be better dealt with in a separate and more detailed consultation.

2.3.3 ComReg’s Position

2.3.3.1 Administrative Charges

Having considered the responses, ComReg is satisfied that it is in line with the new regulatory framework that it should apply in a broadly uniform way to all providers of electronic communication networks and services. However, ComReg recognises that there are certain differences

in the nature of the services being provided that should be reflected in the regulatory approach. One important point that has implications for regulatory fees is that the new framework does not cover the provision of content³.

Where a network or service provider is also engaged in the provision of content it may be necessary in the future to apply separate accounting to these operations, in order to ensure that any administrative charge calculation is performed only in relation to the transmission or distribution element. ComReg intends to pursue with affected parties how this might best be addressed.

The definition of an “electronic communications service” both in the 2002 Act and in the Framework Directive means “a service normally provided for remuneration which consists wholly or mainly in the conveyance of signals on electronic communications networks, including telecommunications services, publicly available telephone services and transmission services in networks used for broadcasting, but excluding services providing, or exercising editorial control over, content transmitted using electronic communications networks and services”.

Transmission services, including backbone network, provided to other entities are covered by the definition of an ‘electronic communications service’ and hence could be subject to an administrative charge. In regard to cable/MMDS, the provision of capacity to third parties over these networks falls within the definition of an ‘electronic communications service’ and hence could be subject to an administrative charge.

Article 12 of the Authorisation Directive, provides for the possibility of the imposition of an administrative charge on undertakings providing a service or a network under the general authorisation or to which a right of use has been granted. ComReg will incur expenses in administering and

³ EU Directive 2002/21/EC of 7 March 2002

enforcing the new framework in respect of the various platforms and considers it appropriate to recover those costs from operators. In the circumstances, ComReg is of the view that it is appropriate that cable, MMDS, defectors and satellite networks be subject to administrative charges equivalent to those that apply to other electronic communications service providers. ComReg understands that the provision of electronic communications services involving the transmission of TV signals and programmes to end users is covered by the new framework and would intend to levy an administrative charge equivalent to that charged to other providers of electronic communications services, or providers of such services. The draft regulations published by the Department provide only for the imposition of an administrative levy on providers of services (and the retention of licence fees for licences issued under the 1926 Act). ComReg recommends that the final regulations permit the application of administrative charges to networks, including cable, MMDS, defectors and satellite. In the case of MMDS, ComReg intends to apply the administrative charge in addition to the licence fee which applies to the Right of Use granted by the 1926 Licence. The Minister for Communications, Marine and Natural Resources has recently indicated that, in the context of the transposition into Irish law of the European regulatory package, the extent to which the package applied to aspects (excluding content) of the provision of television services in the State by satellite as well as other platforms arose. Such aspects included access to facilities, quality of service and consumer protection. If it emerged that the new regulatory package did not allow for the regulation of those aspects of television service provision in Ireland, he would consider additional legislation to address those other aspects. The legislation would apply to providers of services by either terrestrial or satellite means. Any fee payable under that legislation would, where appropriate, take account of administrative charges paid in respect of the network in question.

The next section discusses fees for spectrum rights of use and administrative charges in particular with regards to RTE and the BCI.

2.3.3.2 Fees for Rights of use of Spectrum

With the exception of cable operators, all providers or distributors of programme services currently licensed in Ireland have a spectrum assignment and will continue to require a spectrum right of use under the new Framework. The services provided by users of broadcasting spectrum can be categorised as:

- Free To Air or
- Pay Services

Free to air services in Ireland are provided by RTÉ and by independent broadcasters who have entered into contractual arrangements with the Broadcasting Commission of Ireland (BCI). The spectrum used by RTÉ is licensed to the Authority in accordance with the Broadcasting Act, 1960 while that used by the independent sector is licensed to the BCI in accordance with the Radio and Television Act, 1988. Pay services currently provided by cable, MMDS and UHF deflector operators are licensed in accordance with regulations made under the Wireless Telegraphy Act, 1926.

Article 5 of the Authorisations Directive acknowledges that specific criteria and procedures may be adopted by Member States to grant rights of use of radio frequencies to providers of radio or television broadcast content services. Article 17 requires that member states shall bring Authorisations already in existence on the date of entry into force of the Directives into line with the provision of the Directive.

In the draft regulations transposing the Authorisation Directive, the Department of Communications makes no reference to licences under the 1960 and 1988 Acts. It refers in Regulation 7 only to licences under the 1926 Act. It would seem, therefore, that the licences under the 1960 and 1988 Acts issued to RTÉ and the BCI will remain extant but will be required to be brought into line with the provisions of the Directive. Both the 1960 and the

1988 Acts are silent in relation to the imposition of a licence fee. The 1926 Act provides for the imposition of licence fees.

While recognising that there are legal issues relating to the introduction of fees under the 1960 and 1988 Acts, there are arguments both in favour and against the principle of charging broadcasters for spectrum.

Arguments against charging fees for broadcast spectrum.

The Directives acknowledge that Member States pursue general interest objectives related to broadcasting, such as universal access for certain programmes, plurality of the media, cultural diversity, freedom of opinion, freedom to receive and disseminate information and ideas, and others.

With a view to achieving these objectives, Member States can and do impose certain measures and conditions on providers of electronic communications networks and services relating to their activity as content providers. For example, an undertaking providing electronic communications networks or services that also provides broadcast content may be subject to conditions attached to the National or European broadcasting legislation (e.g. the Broadcasting Acts or the “Television without Frontiers” Directive 89/552/EC). These conditions relating to the provision of broadcast content, do not fall within the new framework or within ComReg’s responsibility. However, as the cost of meeting these content obligations arguably has implications for the charging of fees for broadcasting spectrum, it is worth reviewing this issue.

Programming obligations A report by Eurostrategies, published March 2003, on behalf of the European Commission⁴, states that in most Member States the rights of use of radio frequencies for broadcasting purposes are provided directly to the broadcasters. Fees are set to recover the cost of administration in the licence-issuing organisation, but the spectrum itself is – with a few exceptions - not paid for. Conditions relating to the transmission of specific

⁴ Assessment of the Member States measures aimed at fulfilling certain general interest objectives linked to broadcasting, imposed on providers of electronic communications networks and services, in the context of the new regulatory framework, prepared by Eurostrategies. March 2003.

content or specific audiovisual services can be attached to the right of use of the radio frequency. The 1960 Act, for instance, obliges RTE to establish and maintain a national television and sound broadcasting service, to originate programming, to collect news and information and to subscribe to news services and any other services as may be conducive to the objects of the RTE Authority. In performing its functions the Authority is obliged to bear in mind the national aims of restoring the Irish language and preserving and developing the national culture. These positive programming obligations may be considered as additional costs for broadcasters. On the other hand, RTE receives the licence fee and is required to be self-supporting but not to make a commercial return. Other free-to-air broadcasters have more limited obligations, which are set in the context of voluntary entry into competitions run by the BCI.

Roll-out In some cases, there are also coverage requirements which entail costs. For example, without a coverage obligation, a broadcaster could limit its coverage to that proportion of the population that can be served on a commercially viable basis. Eurostrategies state that anecdotal evidence from the UK and Sweden indicates that the cost of meeting the coverage obligation in the EU Member States is around a factor of 3 to 4 times higher than that associated with the provision of a commercially viable coverage only (where commercially viable is the level of coverage beyond which the advertising revenue achievable from additional customers does not cover the marginal cost of coverage). In this light, a coverage obligation may be seen as imposing a spectrum obligation rather than a right of use. On the other hand, many national spectrum users and indeed cable operators have roll-out obligations.

Viability Given the large amount of spectrum occupied by broadcasting, there are also fears that the cost to broadcasters of a move towards more market-based pricing for spectrum could lead to a position whereby services become commercially unviable, as they were built on the premise that spectrum was cheap, or indeed free. Different methods have been proposed to value spectrum used in broadcasting, such as administrative pricing, auctions,

secondary trading and valuation based on the revenue generated by the users of the resource.

There is a major distinction between telecoms and broadcasting, which is that the former is generally a point-to point (or one-to-one) service, whereas broadcasting is almost always a point to multipoint service: generally in broadcasting, a single stream of programming or associated data is received by many users, whereas in telecoms it is received by only one user, with a specific payment(s) associated with every user. Extension of a free to air broadcast network to an additional consumer may result in a marginal increase in advertising revenues along with the licence fee. The Eurostrategies report mentioned earlier argues that the additional advertising revenue is likely to be substantially less than the cost of extending the network on a universal basis; on the other hand expansion of a telecoms network generates income not only from the new customer but also from existing customers wishing to contact him/her. Another distinction is that broadcasting is one-way whereas telecoms are two-way. However, these distinctions are becoming blurred with the advent of interactive TV whereby an end user can act to modify the stream being broadcast and thus in some way personalise their experience. As the usage is, nevertheless, in the main, on a different basis, it follows that the underlying benefit of the bandwidth used is not necessarily identical for all users.

Arguments in Favour of a Fee for Spectrum Rights of Use

Convergence A key objective of the new framework is to define a coherent framework applicable to all transmission infrastructures, irrespective of the types of services they carry. The new framework therefore covers all electronic communications networks, associated facilities and electronic communications services, including those used to carry broadcasting content such as cable, terrestrial and satellite broadcasting networks. Content issues are, however, excluded from the framework.

While broadcasters do not pay for spectrum/fees, other players, in particular in the telecoms sector, have to pay for this resource. With the convergence of networks and the fact that an increasing number of data services are being delivered across broadcast platforms in some Member States, there have been claims from within the telecoms sector that broadcasting should no longer have a special status, and that the spectrum it uses should be treated and licensed on the same terms as telecommunications spectrum.

Discrimination It has also been argued that while some broadcasters are subject to content and/or coverage obligations, others use the radio spectrum without being subject to obligations other than those contained within the Television without Frontiers Directive. Another point that has been made is that cable operators, who do not use spectrum, have had to undertake extensive infrastructure and network investments in order to transport the signals.

Spectrum efficiency The radio spectrum is a finite resource although generally not scarce in Ireland. Our geographical location limits the level of international co-ordination required. However, pressure is growing with increased and increasingly diversified demands especially for certain particularly useful bands. It is essential that the radio spectrum is managed effectively to ensure maximum contribution to national infrastructures. Charging for spectrum can have a part to play, in promoting efficiency.

Depending on their suitability for alternative uses, bands in which broadcasting distribution or transmission services are licensed, are likely to have differing scarcity values. The situation may change with any changeover from analogue to digital technology. Approximately 50 frequency channels each of 8 MHz are available for use by the four current national TV services and defectors. In any one area a single TV programme service renders a total of 4 frequency channels unusable. The spectrum required for DTT delivery of the existing Irish TV programme services would be about 25% that currently used for analogue services. Further additional TV programme services and other forms of electronic communications such as internet access could be

delivered bringing the total spectrum requirement up to the same level as currently required for the current analogue TV programme services. If DTT becomes successful, ComReg is not anticipating any reduction in the spectrum demand for DTT compared to existing TV spectrum use. Nevertheless, as current demand does not exceed availability, neither is excess demand for broadcasting spectrum anticipated.

MMDS currently occupies the 2.5 GHz band which is also earmarked as an expansion band for 3G. Other services such as wireless access could also, to a limited extent, be accommodated within this band. It is likely, therefore, that there will be an excess demand for spectrum in that band in the medium to long term.

Policy Factors The biggest issue surrounding the charging for broadcast spectrum is public policy. The argument that spectrum is a valuable national resource, the cost of which, to the users, depends on the demand for particular bands and the alternative user to which in they could be put, has been set out previously in this paper. The objections of public service broadcasters, in terms of the costs associated with positive programming and coverage obligations and their ability to pay, have also been set out. ComReg considers that the value of spectrum should be recognised and that its efficient use should be encouraged.

Conclusion

There are two possible approaches to dealing with broadcast spectrum:

- As alternative services could be accommodated in the broadcasting band and as those services pay for the spectrum they currently use, an equivalent charge could be applied to the broadcasting band. As mentioned in section 2.3.2, a suggestion was made that a charge per MHz should be applied in a similar manner to fixed wireless access;
- Based on the unique circumstances relating to broadcasting, spectrum could be made available at a reduced rate or even free of charge to

national free to air broadcasters who have positive programming obligations.

Whether or not national free-to-air broadcasters should be charged for access to spectrum is, ultimately, a policy matter for Government. As mentioned earlier, there is currently no legal basis for the application of a spectrum fee to RTÉ and the BCI. However, ComReg considers it important that the efficient use of spectrum be encouraged, if not through spectrum charging, then through administrative methods. In the case of satellite operators, there is a good case for providing an opportunity for operators to pay a fee where spectrum is “protected” to enable DTH (Direct to Home) satellite reception. (Please see Appendices A and C).

2.4 Application of charges to promote efficient spectrum use

2.4.1 Key Issues for Consultation

The consultation sought views on a number of options for revising the approach to setting fees for rights to use radio spectrum under the new regime. In particular, various options for applying fees that reflect the amount of spectrum used and the degree of congestion (difficulty in accommodating new services in specific frequency bands or geographic areas) were suggested.

Question 8 *Do you agree that a premium should be charged for congested spectrum? Which services ought to be subject to congestion pricing, and what parameters ought to be taken into account in determining the fee? Do you think that the kind of pricing implied in the example above is the appropriate approach?*

Question 9 *Do you have a view on how incentive charging might be applied to radiocommunication services in Ireland, with particular regard to the examples given above?*

Question 10 *Do you have a view on whether an escalating fee, such as the example given above, would support the objective of optimising*

spectrum utilisation? In particular, which services ought to be subject to escalating fees and how long after the initial licence is issued ought a higher fee to apply?

Question 11. *Are you aware of any other approaches to incentive charging that might prove beneficial in achieving optimum spectrum utilisation?*

Question 12 *Do you agree with the Director's proposed approach in relation to spectrum pricing?*

2.4.2 Views of Respondents

i) Congestion Pricing

There was moderate support among respondents for congestion pricing. Of the seven respondents who expressed a specific view, three (two from the broadcast sector and one telecoms operator) expressed support for congestion charges under certain circumstances, while one (a private operator) thought the subject merited further consultation. One of the two broadcasting respondents who expressed a view felt that account should be taken of coverage obligations applied to free-to-air broadcasters which necessitate the use of certain specific sites, while the other thought congestion charging was appropriate for fixed links but not for terrestrial broadcast spectrum. This respondent considered the 100% premium for congested areas suggested in the consultation document to be reasonable, but fees should reflect the fact that there may be no alternative to radio at some sites. The telecoms operator suggested that the differential between congested and non-congested area fees should be no more than 2 and that revised fees should be phased in over a three-year period. This respondent also suggested that allowance should be made for bandwidth-efficient deployment, such as the use of dual polarisation technology.

Those opposed to congestion charging cited a number of reasons. Four respondents, three PTOs and one private operator, argued that congestion charging might be a deterrent to site sharing. Two PTOs expressed concern that, in the absence of cost-effective alternatives to radio,

congestion charging might increase costs and delay the rollout of access and infrastructure networks. Another PTO respondent thought that a consultative approach involving industry dialogue would be a more effective way to tackle congestion and added that if congestion charging were to be introduced it should be done over a realistic timescale of around five years.

A private operator who supported further consultation on spectrum charging suggested that congestion should first be demonstrated and validated by ComReg, and that a geographic component should be included. This respondent also suggested that revenue from congestion charging could be used to reduce the ComReg levy.

ii) Incentive pricing

A number of respondents put forward suggestions on how incentive pricing might be applied. A private operator felt that incentive pricing might be appropriate where there was spectrum scarcity, and that amount of spectrum used, coverage area, congestion and degree of scarcity should be considered in setting fees. Users should not, however, be subject to sudden changes in fees.

One of the PTO respondents felt that bandwidth based incentive charging could be an effective way to encourage efficient use of limited radio spectrum, and suggested that this could entail allocation of a fixed amount of spectrum in each band to an operator based on its current usage. This respondent also considered that some spectrum could be freed up by driving some of the larger users into alternative platforms, where these were available. Another PTO recommended a simple system of charging initially, with other elements added as and when the market requires and subject to a full regulatory impact assessment. This respondent also felt that a capacity based model for incentive charging would be a disincentive to invest in low population areas unless a geographic element were included.

A third PTO respondent suggested that incentive charging should take account of whether an area was congested, whether a sub-optimal bandwidth or frequency band was being used, local population density (in order to avoid penalising users of remote rural hubs), whether a site was shared (in which case a discount should apply) and whether a USO applied. A fourth PTO felt that bandwidth based incentive charging should only apply in congested areas and suggested that exclusive frequency allocations for fixed links might provide operators with greater flexibility and speed of deployment. This respondent also argued that charging on the basis of frequency band would not be applicable in most cases as the circumstances under which particular bands can be used differ depending on the purpose of the link. However there may be a case for charging less for higher bands where there is a lot of capacity to encourage the use of these in preference to lower frequency bands. It was also suggested that the current 3.5 MHz bandwidth fee threshold could be extended to include a wider range of cut-off points.

A broadcasting respondent was opposed to bandwidth based incentive charging on the grounds that this would penalise video transmission which is very bandwidth-hungry. This respondent also thought that area based pricing might be suitable for Business Radio, but not for broadcasters which were obliged to maximise their transmitters' coverage areas to meet universal service obligations.

Only one respondent, a PTO, expressed support for the introduction of an "escalating" fee structure, adding that it could be a complement to the existing link length policy. Other respondents were concerned about the commercial and investment implications of an escalator approach.

iii) Spectrum Pricing

One respondent proposed that in the longer term a detailed econometric model should be developed for spectrum pricing purposes, citing examples of similar models that had been used in countries such as Australia and New Zealand. Other respondents were in broad agreement

with the ComReg proposal not to extend the application of spectrum pricing.

Other Issues

ComReg notes the preference expressed by some respondents for access to exclusive allocations of spectrum for fixed links. Due to the increasingly heavy demand for fixed links and the limited number of channels available, particularly for broadband links (155 Mbps and above), it is not feasible to make spectrum available to individual operators on a fully exclusive basis. However, in line with its current policy, ComReg will continue to endeavour where possible to agree preferred channels with individual operators, in order to facilitate co-ordination between links that are licensed to the same operator.

2.4.3 ComReg's Position

ComReg is encouraged by the constructive nature of many of the responses and intends to proceed with a phased review of the fees applied to the use of radio spectrum. Initially this review will focus on point-to-point fixed links, where there have already been instances of congestion (i.e. a lack of available channels) in certain frequency bands and geographic areas. Later phases will consider the scope for extending congestion and/or incentive pricing to other services such as business radio. There are no plans currently to amend the fees applied to spectrum used for provision of public mobile services such as GSM and UMTS.

Details of the proposal for fixed link pricing are presented in the next chapter.

2.5 Charges for numbering resources

2.5.1 Key Issues for Consultation

Question 13 *Do you have a view on whether access to numbering resources should in the future be subject to charges for individual rights of use, and if so what would be an appropriate level of fee to apply?*

2.5.2 *Views of Respondents*

Four of the six respondents who expressed a firm view were against the introduction of charges for numbering resources. One respondent, a PTO, felt that fees should not be imposed at this time and scarcity should be addressed by the numbering audit that has recently been put in place by ComReg. If this fails the matter could be subject of further consultation. Another telecommunications operator suggested that fees should only apply to those who were allocated numbers but were not subject to the administrative charge levy. A broadcasting respondent suggested that the method used by RIPE (the European Internet Numbers Registry) for regulating IP addresses on the Internet should be examined.

2.5.3 *ComReg's Position*

In view of the responses, ComReg does not intend to take any action with regard to fees for numbering resources at this stage but will continue to keep the situation under review and to hold periodic dialogue with affected parties.

3 Proposed approach to apply bandwidth based charging on a selective basis to support spectrum management objectives

3.1 Introduction

Having considered the views put forward by respondents, ComReg agrees that the focus of any new pricing regime should be on supporting ComReg's broader spectrum management objectives, in particular helping to promote the optimal use of spectrum resources. ComReg already has in place a number of measures to promote optimal use, for example its "link length policy" which requires shorter links to operate in higher frequency bands where there is greater spectrum capacity. ComReg will continue to apply such policies as the primary means to ensure its spectrum efficiency objectives are met. Spectrum fees provide a potentially useful further tool that could support the attainment of optimal use in certain circumstances, in particular where there is a high demand for fixed links in specific frequency bands and/or geographic areas. ComReg is therefore considering options for the selective introduction of bandwidth related fees in certain frequency bands and areas, in order to support its spectrum management objectives.

Analysis of ComReg's fixed link licensing database indicates a particularly high concentration of medium haul access and infrastructure links in the Dublin area, as defined by the 10 km grid squares 3122 and 3123 (see Table 3.1). These links are predominantly assigned in the 18 and 23 GHz bands. ComReg is therefore considering a phased approach to introducing bandwidth related fees, focussing initially on links in the 18 GHz and 23 GHz bands that are located in the Dublin area.

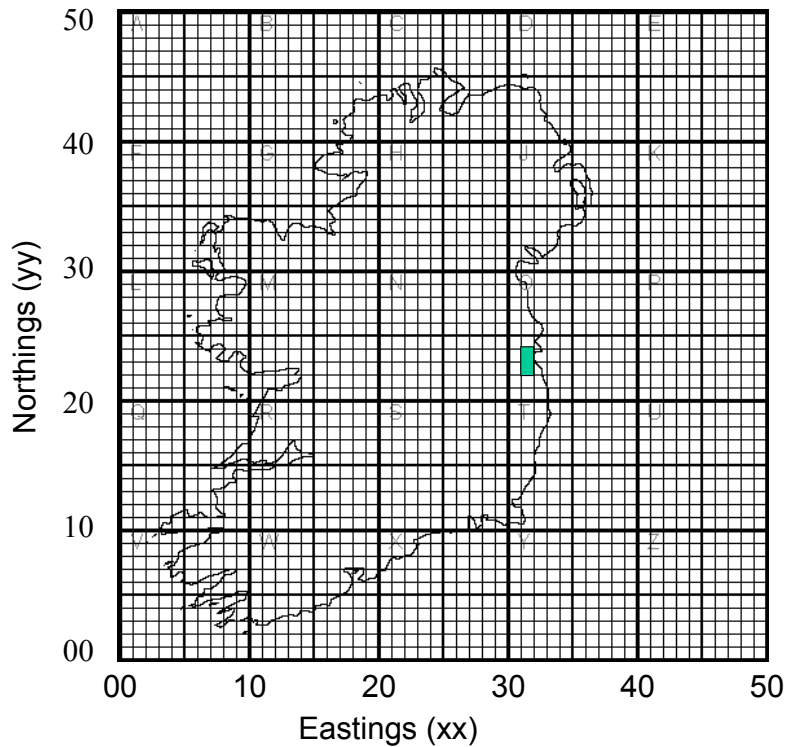


Figure 3.1: Location of Grid Squares 3122 and 3123

3.2 Description of ComReg’s suggested approach to introducing bandwidth related charges in the 18GHz and 23GHz bands

ComReg proposes to apply a bandwidth-based fee in the 18 and 23 GHz bands in the Dublin area. This fee is intended to discourage the use of relatively bandwidth-inefficient equipment, in particular the deployment of links of greater than 28 MHz bandwidth, which can significantly reduce the availability of channels at popular sites.

Under the suggested scheme, links of up to 10 MHz bandwidth in the 18 / 23 GHz bands in the Dublin area would continue to be subject to the current fees, links of between 10 and 30 MHz in the Dublin area would be subject to a premium of €381 per additional 10 MHz, while links of greater than 30 MHz bandwidth in the Dublin area would be subject to a premium per additional 10 MHz of €762 (see Table 3.2).

To mitigate the impact on affected licensees, it is planned to phase in the revised fees over a period of three years. The resulting fees in € over the three year period are indicated in the following table:

Bandwidth (B, MHz)	Current Fee	Year 1 fee	Year 2 fee	Year 3 fee
$B \leq 3.5$	762	762	762	762
$3.5 < B \leq 10$	952	952	952	952
$10 < B \leq 20$	952	1,079	1,206	1,333
$20 < B \leq 30$	952	1,206	1,460	1,714
$30 < B \leq 40$	952	1,460	1,968	2,476
$40 < B \leq 50$	952	1,714	2,476	3,238
$50 < B \leq 60$	952	1,968	2,984	4,000

Table 3.2: Proposed Fee structure for 18/23 GHz – Dublin Area

It is estimated that the suggested approach to bandwidth-based fees may lead to increased fees for of up to 10 % of the fixed links in the 18 GHz and 23 GHz frequency bands. In terms of overall ComReg fixed links revenue, the overall impact will not be material.

ComReg considers that applying higher fees on a geographically selective basis to reflect high concentrations of spectrum demand would be a useful complement to its existing spectrum management policies, by providing a strong incentive for the deployment of spectrum efficient equipment in high demand areas. This will lead to a greater availability of spectrum in those areas.

ComReg does not intend to make any changes to fees for fixed links in other frequency bands at this stage. However, the approach may be extended to other frequency bands and/or geographic areas where a particularly high demand for fixed links becomes apparent. Operators should take this into account when commissioning new fixed links and ensure that the most efficient available technology is deployed for new installations.

ComReg notes the concerns that some respondents raised about site sharing, but considers that using a fee structure such as that suggested above would over time lead to greater spectrum availability at existing sites in high demand areas by encouraging more efficient spectrum utilisation at such sites.

ComReg considers that the selective introduction of bandwidth-based charging in areas and frequency bands where there is particularly high demand may provide a useful additional tool to promote optimal spectrum use. Comments on the proposed approach described above, are welcomed. It should be noted that ComReg will continue to apply its existing spectrum management policies for fixed links, and to develop these over time, as the main instrument for ensuring optimal use of scarce spectrum resources.

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?

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

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

4 Responding to the Consultation

The consultation period will run from Thursday 01 May 2002 to Friday 6 June 2003. Written comments should be marked “Response to Charging Principles Consultation Paper” and submitted either electronically or in hard copy before 5.00 p.m. on Friday 6 June 2003, to:

Elaine Kavanagh

Commission for Communications Regulation

Abbey Court

Irish Life Centre

Lower Abbey Street

Dublin 1

E-mail: elaine.kavanagh@comreg.ie

All comments are welcome, and should reference the relevant question numbers from this document (for convenience a summary list of the questions is at Section 5) and a summary of proposed charges is set out at Appendices A and B

The Commission expects to publish a report on this consultation. If there are elements of any response that are commercially confidential, then it is essential that these be clearly identified and placed in a separate annex to the main document. They will then be treated in confidence. The Commission regrets that it will not be possible to enter into correspondence with those supplying comments.

5 Summary of Issues for Consultation

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?

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

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

Appendix A

Comparison of Old Fee Structure to New

NON SPECTRUM RELATED CATEGORY	CURRENT	PROPOSED
Telecommunications	Levy on licence holders of 0.2% of relevant turnover	Administrative charge on authorisation holders of 0.2% of relevant turnover. No administrative charge if relevant turnover <€500,000.
Cable	Fee of 3.5% of turnover	Administrative charge.
MMDS	Fee of 3.5% of turnover	Administrative charge and Fee for Spectrum Right of Use (see Appendix B).
Deflector	Fee of 3.5% of turnover	Administrative charge of €1 per subscriber.
Satellite DTH (Direct to Home)	No equivalent	Administrative charge. Optional Fee of Turnover related charge or €1 per subscriber, (see Appendix C).

Appendix B

Comparison of Old Fee Structure to New

SPECTRUM RELATED CATEGORY	CURRENT	PROPOSED
GSM	Spectrum charge €12,700 per channel within blocks of spectrum etc Each operator has a number of blocks of Spectrum	Spectrum Fee – similar to current charge.
GSM – 3G	Spectrum charge €635,000 per block of spectrum per licensee Each operator has a number of blocks of Spectrum	Spectrum Fee – similar to current charge.
Satellite	Spectrum Charge	Spectrum Fee – similar to current charge.
FWPMA	Spectrum Charge	Spectrum Fee – similar to current charge.
Point to Point & Point to Multi-Point	Spectrum Charge	Spectrum fee – similar to current charge as adjusted by bandwidth premium applied to high demand areas.
Business Radio	€22 per Mobile, Base Station etc.	Spectrum fee – similar to current charge.
Community repeater	€1,000 per channel	Spectrum fee – similar to current charge plus Administrative charge. No Administrative charge if relevant turnover < €500,000.
MMDS	No equivalent	Spectrum fee .

Appendix C

Models for Charging for access to Broadcast Spectrum

RTE / BCI

In the event that a fee were to be charged in respect of a national service one option, which would be consistent with applying a uniform regime to the broadcast and telecommunications sectors, would be to apply the same fee basis as currently applies to national fixed wireless access networks in the 3.5 GHz band. This is currently set at €1,905 per MHz. Applying this to the broadcast sector would imply that a national analogue TV service effectively utilising 4 frequency channels in an area, each of which has a bandwidth of 8MHz, and providing national coverage would be subject to a charge of $(€1,905 \times 8 \times 4) = € 60,960$ per annum.

If the same fee basis were to be applied to sound broadcasting, a national FM radio service using a total of 2 MHz of spectrum would be subject to a fee of €3,810 per annum.

In the case of local services, it would seem reasonable to scale the national fee in proportion to the population that can be served by the service. However account should also be taken of the value of the spectrum available to the independent commercial sector, whether it is used or not. Underutilisation of spectrum is effectively denying a broad choice of services to the consumer.

Apart from a few exceptions in border areas, approximately 9 MHz is available exclusively to non national radio services therefore a single fee of the order of $(€1,905 \times 9) = €17,145$ would be payable for all non-national independent stations contracted by the BCI.

Future Digital Systems:

It is expected that a single national DTT multiplex would require the same amount of spectrum as a single national analogue TV programme service. For a single national DTT multiplex (which could carry about 4 TV programme

services), a fee of €60,960 would be payable. A similar sum would be payable if the multiplex were to be used for FWA purposes such as internet access. A national single frequency DAB multiplex requiring only 1.5 MHz, would incur a fee of €4,280.

Commercial Network:

MMDS operators currently use 22 x 8MHz channels. ComReg intends that in the future a charge similar to that applied to FWA spectrum at 3.5GHz would apply nationally i.e. €1905 per MHz. As the MMDS services provided by Chorus and ntl are not national services ComReg considers that a charge based on the required number of homes passed in each case as set down in the operator's licenses (X) as a proportion of total television households (Y) would be appropriate. The spectrum charge to each company would be €X/Y (22 x 8 x 1905).

Satellites:

Satellites currently carrying broadcast services, whose footprint fall on Ireland operate in a band in which terrestrial broadcast services are co-primary. ComReg is minded to allow terrestrial services to commence operations in that band and considers that both services can be accommodated. This would require a degree of co-ordination between the services in order to protect both. Terrestrial operators will be required to pay fees to ComReg both in respect of the spectrum and administrative charges.

In the case of satellite, there is a good case for providing an opportunity for operators to pay a fee where spectrum is "protected" to enable DTH (Direct to Home) satellite reception. The provision which allows for the protection of receive only spectrum upon request from the satellite operator, already exists in the Wireless Telegraphy (Fixed Satellite Earth Station) Regulations 2000 and is on a per dish basis. Satellite operators use large numbers of transponders which have a channel width of between 36 -72 MHz. ComReg understands that approximately 1800MHz of spectrum in the fixed and broadcast satellite bands are in use. If a spectrum fee of €1,905 per MHz were charged, the cost to operators would be in the region of €3.4 million. ComReg

believes, however, that in the interests of proportionality the fee charged to satellite operators should be equivalent to the administrative charge payable by terrestrial operators i.e. 0.2% of the income derived from the transmission of broadcaster's content into Ireland. ComReg is conscious that there may be difficulties identifying the proportion of the income of a DTH satellite operator which applies to the Irish market and as an alternative in the interest of simplicity will consider a flat rate fee of €1.00 per subscriber.

ComReg is of the opinion that UHF deflector networks are, in many instances, of such a small scale as to make it uneconomic to collect a spectrum related fee and proposes to impose a flat rate per subscription administrative charge of €1.00 per subscriber in the case of these operators.