



Commission for  
**Communications Regulation**

## Information Notice

### **Submission re Review of Radio Licensing**

**ComReg Response to Department of Communications,  
Marine and Natural Resources Consultation Paper on  
Review of Radio Licensing in Ireland**

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## **1 Introduction**

This document sets out the response of the Commission for Communications Regulation (ComReg) to the consultation paper issued by the Department of Communications, Marine and Natural Resources (DCMNR) on Radio Licensing in Ireland. The purpose of the review is to examine all aspects of radio licensing in Ireland including what is licensed, the processes through which licences are awarded and to make recommendations for the future. ComReg welcomes this timely consultation and fundamental review of radio licensing.

ComReg is the statutory body responsible for the regulation of electronic communications networks and services and is responsible for radio spectrum management. As Ireland's spectrum manager, ComReg welcomes this opportunity to review its effective usage and any initiatives to further exploit its potential. This response focuses on those issues which directly relate to ComReg's statutory role and functions.

## 2 ComReg's Role

ComReg is the national regulatory authority (NRA) responsible for the regulation of electronic communications networks and services including those used for radio and television broadcasting. ComReg's legislative role regarding radio spectrum can be summarised as follows:

- A core objective of ComReg in exercising its function is to '***ensure the efficient management and use of the radio spectrum***'.
- In so far as the promotion of competition is concerned, ComReg is mandated to take all reasonable measures to achieve its objective including '***encouraging efficient use and ensuring the effective management of radio frequencies***'.
- ComReg is also required to draw up and publish a '***strategy statement reflecting its statutory functions***' regarding the '***management of radio frequency spectrum***'.<sup>3</sup>

Radio spectrum is a finite natural resource that is used for a number of critical applications from broadcasting and mobile phones to aeronautical and maritime navigation. In the future we are increasingly likely to listen to the radio on our mobile phone and watch TV on our hand held personal organiser. Broadcast networks will provide the high-speed data channel for multimedia requirements, a natural progression from today's picture phones. In anticipation of this convergence, recent European Directives have changed the focus from licensing radio equipment to granting rights to use spectrum.

Radio spectrum does not recognise county or national borders and the use of radio spectrum by one user can interfere with other users. ComReg enables and coordinates access to the spectrum while keeping interference at a minimum to maximise effective use of the national resource. ComReg is responsible for managing who has access to spectrum within Ireland but also has a duty to ensure that such use does not compromise other legitimate users in other national territories.

At a global level, spectrum management is governed by the Radio Regulations under the auspices of the International Telecommunications Union (ITU). The Radio Regulations provide the overall global framework for spectrum use, including the International Frequency Allocation Table which allocates spectrum to broad categories of service such as fixed, mobile, broadcasting or radio navigation. At an international level, ComReg negotiates to ensure that Ireland receives its fair share of access to spectrum. This is vital to securing Ireland's continued economic growth and development. The allocation of spectrum to particular categories of service, such as broadcasters or mobile, is co-ordinated at international level, while the assignment of frequencies to individual users is managed generally at national level.

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<sup>1</sup> Section 12 (1) (a) (i) of the Communications Regulation Act 2002.

<sup>2</sup> Section 12 (2) (a) (iv) of the Communications Regulation Act 2002.

<sup>3</sup> Section 31 of the Communications Regulation Act 2002.

Spectrum used for broadcasting is currently assigned to Radio Telefís Éireann (RTÉ) under the Broadcasting Authority Act 1960 and to the Broadcasting Commission of Ireland (BCI) under the Radio and Television Act, 1988.

### 3 General Comments

The Department of Communications, Marine and Natural Resources commissioned Ox Consultants to conduct an extensive review of radio licensing in Ireland. The purpose of the review was to examine all aspects of radio licensing including what is licensed, the processes through which licenses are awarded and to make recommendations for the future. Some of the conclusions reached and recommendations made relate to spectrum management.

ComReg welcomes strategic and critical reviews of how to ensure best use is made of this important national resource. Indeed, ComReg is currently conducting its own strategic spectrum review and expects to consult on this early next year.<sup>4</sup> This review will include an analysis of the economic impact of the various services and applications which use radio spectrum. The review will consider possible future technologies and the implications for convergence. In the consultation ComReg will present a variety of possible options for authorising such services with the objective of maximising the effective and efficient use of spectrum in Ireland. The findings of this spectrum review will feed in to ComReg's next strategic statement in compliance with Section 31 of the Communications Regulation Act, 2002<sup>5</sup>.

#### *What we do*

ComReg on request from the Broadcasting Commission of Ireland (BCI) makes spectrum available for use by Sound Broadcasting Contractors, in addition to the spectrum allocated to RTÉ for its 4 national radio stations (RTÉ Radio 1, 2 FM, Lyric FM and RnaG). To date, ComReg has licensed the BCI for 1 national radio station (Today FM), 26 local independent commercial radio stations, 1 regional station, 1 special interest station, 17 community/ local interest stations, 6 hospital stations and temporary stations when requested. ComReg will continue to make unused spectrum in the radio broadcasting bands available on request to the BCI.

#### *Spectrum Audits*

Ireland is a member of the International Telecommunications Union (ITU) and ComReg negotiates and coordinates Ireland's access to the spectrum at international level. ComReg (in common with all other European and non-European administrations) is notified by the ITU every two weeks of updated details of assignments in the ITU broadcasting plans. An assignment typically includes details of the location of a radio transmitter and the key technical characteristics that relate to interference potential, e.g. operating frequency, power level and height above sea level. As a result, ComReg is regularly updated with information on the assignments which ComReg has requested be registered to Ireland and what has been assigned to other countries. The ITU information is copyrighted. ComReg

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<sup>4</sup> Last review was published in May 2002, Document No: ODTR 02/43 Strategic Management of the Radio Spectrum in Ireland

<sup>5</sup> Section 31 (3) of the Communications Regulation Act 2002 requires ComReg to produce a strategy statement which shall be adopted within 6 months of the establishment day and every 2 years thereafter. ComReg published its first strategy statement on 30 May 2003 (ComReg Document 03/59).

has made requisite assignment extract details publicly available through the BCI licence competition application guidelines and could look to making more of this information (which is very technical by its nature) more widely available..

Ox Consultants recommend the development of a long term plan for the future use of the FM and AM bands. ComReg, while welcoming the development of a long term plan, does not think there is a need for a spectrum audit as already stated administrations are informed of spectrum availability on a twice monthly basis. The ITU information, from a spectrum planning perspective, effectively removes the need for spectrum audits and is made available to the BCI for their planning of future services.

### *Available Spectrum*

From ComReg's assessments of ITU information, ComReg can confirm that up to 25% of the FM spectrum is unused outside Dublin and that assignments in the AM (Medium Wave) Band are also available. There are currently frequency assignments available for an additional local service (covering all or part of a county or counties) in most areas of the country as well as approximately 300 low power small area (such as town/village) stations. These low power assignments, which are mainly in the 106-108 MHz range and mainly in rural areas, could be suitable for community radio. ComReg understands from the BCI that there is some demand on an ongoing basis from communities to operate such stations. However, ComReg and the BCI are of the opinion that this demand can be accommodated other than in the 106-108 MHz sub-band. If the 106-108 MHz frequency block is not used for low power purposes throughout Ireland, 1 or 2 extra local/regional services could be accommodated in any one area. The process of determining the services for which applications should be sought is driven by the BCI expression of interest process.

It is unlikely that a national network, similar to that of Today FM, could be put in place in the 106-108 MHz range. This is because the 5 national networks in Ireland and the 5 national networks in the UK use higher powers than the local/county networks and have been designed to avoid mutual interference. It would be difficult to get agreement to these higher powers in the 106-108 MHz range in Ireland as such powers are not used in the UK in that frequency range. Any proposals to use higher powers would be resisted by the UK on the grounds of potential interference.

### *Policy Objectives*

The Government's core broadcasting policy goals are:

- To create an environment that encourages the maintenance of high quality Irish radio and television services by both independent broadcasters and RTÉ;
- To secure a viable future for high quality public service broadcasting in the Irish market.
- To seek to retain access to a range of quality programming in analogue and digital form, on a universal and free-to-air basis.

ComReg appreciates that there may be a demand for more radio stations. From a technical view point there are relatively few barriers (excluding legal and regulatory barriers) to setting up a small scale radio station. As already stated spectrum is available in the radio

broadcasting bands. ComReg will continue to make spectrum in the radio broadcasting bands available for use by Sound Broadcasting Contractors upon request from the BCI. ComReg would be happy to make provision for the release of all vacant spectrum within the radio broadcasting bands. It is a matter for Government policy, however, whether this would be consistent with national objectives.

The EU Directives on electronic communications networks and services were transposed into Irish law in July 2003<sup>6</sup>. Under this new regulatory framework “Member States shall ensure the effective management of radio frequencies for electronic communication services in their territory”. The Directives are “without prejudice to measures taken at Community or national level, in compliance with Community law, to pursue general interest objectives, in particular relating to content regulation and audio-visual policy.”

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<sup>6</sup> European Communities (Electronic Communications Networks and Services) (Access) Regulations 2003 S.I. 305 of 2003 transposing Directive 2002/19/EC

European Communities (Electronic Communications Networks and Services)(Authorisation) Regulations 2003 S.I. 306 of 2003 transposing Directive 2002/20/EC

European Communities (Electronic Communications Networks and Services)(Framework) Regulations 2003 S.I. 307 of 2003 transposing Directive 2002/21/EC

European Communities (Electronic Communications Networks and Services)(Universal Service and Users' Rights) Regulations 2003 S.I. 308 of 2003 transposing Directive 2002/22/EC



## 4 Consultation Questions

### 4.1 Policy Objectives for the Independent Sector

The Ox report states that the Irish approach of delegating many aspects of policy development to independent organisations reduces the risk of political interference in media policy. However, the consultants also state that there are certain areas where it would seem appropriate for the Minister to provide policy direction.

**Q ii c. Would it be appropriate for the Minister to have the power to give policy directions to the BCI and ComReg in relation to radio licensing?**

**Q iii d. If so, in relation to what areas and in what circumstances might the Minister give such policy directions?**

As acknowledged in the consultation documents the Minister already has the power to issue policy directions to ComReg under the Communications Regulation Act, 2002. Section 13 (5) of that Act states:

“A direction under *subsection (1)* relating to management of the radio frequency spectrum may include directions relating to—  
(a) the allocation of particular bands of spectrum for specific categories of service, and  
(b) the means by which entitlements to use such spectrum may be assigned (including appropriate fees), and in giving such direction the Minister shall have regard to principles of good frequency management.”

The Communications Regulation Act, 2002 limits the scope of any direction with regards to licensing. Section 13 (7) of the 2002 Act states:

“The Minister shall not give a direction under *subsection (1)* in respect of—  
(a) a person—  
(i) who has applied for, or holds a licence or authorisation, or  
(ii) to whom a licence or authorisation may be, granted by the Commission, or  
(b) the performance of the functions of the Commission in relation to individual undertakings or persons.”

Any direction would have to be mindful of the new framework<sup>7</sup> and the EU Directives on electronic communications networks and services and national legislation (such as the

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<sup>7</sup> European Communities (Electronic Communications Networks and Services) (Access) Regulations 2003 [S.I. 305 of 2003](#) transposing Directive [2002/19/EC](#)

European Communities (Electronic Communications Networks and Services)(Authorisation) Regulations 2003 [S.I. 306 of 2003](#) transposing Directive [2002/20/EC](#)

Broadcasting Act, 2001, Radio and Television Act, 1988 and Broadcasting Authority Act, 1960 etc). ComReg's role under the Radio and Television Act, 1988 is quite limited, the function being related to the availability of frequencies. Section 5 of the Radio and Television Act, 1988 specifies the respective roles of the BCI and ComReg (which acquired the Ministerial function) in dealing with applications for sound broadcasting contracts. Section 5 of the 1988 Act states:

“(1) In order to secure the orderly development of sound broadcasting services and, having regard to the availability of radio frequencies for sound broadcasting, to allow for the establishment of a diversity of services in an area catering for a wide range of tastes including those of minority interests, the Commission (*read BCI*) shall as soon as may be after it has been established and may thereafter from time to time by notice published in at least one national newspaper, invite expressions of interest in the securing of contracts for sound broadcasting services under this Act. Such expressions of interest shall indicate in general terms the type of service that would be provided and shall not be regarded as an application for a sound broadcasting contract.

(2) The Commission (*read BCI*) shall make a report of its findings under subsection (1) to the Minister (*read ComReg*) who, having considered the report and after consultation with the Commission, shall specify the area (which area may consist of the whole or any part of the State) in relation to which applications for a sound broadcasting contract are to be invited and the Commission (*read BCI*) shall comply with such direction.”

In practise, ComReg has, subject to there being spectrum available accepted all the proposals from the BCI regarding areas for sound broadcasting. Under these circumstances it is unclear the circumstances in which the issuing of policy directions to ComReg on broadcasting radio licensing would arise.

#### **4.2 Financial Return and Administration Costs of Independent Sector**

The Ox report states that when the number of available licences is less than the demand the licences have a value to the radio operators. The constraint on competition arising from spectrum (or licence) scarcity or from some operators having more popular formats than others may introduce monopoly/oligopoly profits for the licence holders. The report goes on to say that considering the profitability of the sector, especially in large franchise areas it seems fair that an administrative levy be re-introduced to cover the costs of regulating the sector.

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European Communities (Electronic Communications Networks and Services)(Framework) Regulations 2003 [S.I. 307 of 2003](#) transposing Directive [2002/21/EC](#)

European Communities (Electronic Communications Networks and Services)(Universal Service and Users' Rights) Regulations 2003 [S.I. 308 of 2003](#) transposing Directive [2002/22/EC](#)

**Q x a. Should the State charge for the use of radio spectrum and if so, how?**

**Q x b Is there an offset between financial return and the quality of broadcast output?**

During the run up to the introduction of the new regulatory framework for electronic communications networks and services, ComReg produced a series of consultation papers regarding the recovery of administrative costs and licence fees for spectrum rights of use. 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. ComReg, has used different methods of charging for spectrum for various bands and users and is currently reviewing spectrum charging.

### *Spectrum Fees*

With regards to charges or fees associated with spectrum-rights of use, ComReg has (03/46 and 03/78) acknowledged that there are arguments for and against the imposition of a broadcasting “spectrum related” fee. However, there is currently no legislative basis for the application of a spectrum fee for free-to-air broadcasters.

The EU Directives on electronic communications networks and services acknowledge that Member States can 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. 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. Conditions relating to the provision of broadcast content do not fall within the new framework or within ComReg’s responsibility. However, the cost of meeting these content obligations arguably has implications for the charging of fees for broadcasting spectrum and positive programming obligations may be considered as additional costs for broadcasters.

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. A report by Eurostrategies, published in March 2003, on behalf of the European Commission<sup>8</sup>, reported anecdotal evidence from the UK and Sweden which indicated that the cost of meeting the coverage obligation in 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.

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<sup>8</sup> 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.

Given the amount of spectrum occupied by broadcasting, there are also arguments 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.

Arguments for charging for spectrum include the fact that other users of spectrum such as MMDS, mobile and fixed wireless operators are licensed by ComReg under the Wireless Telegraphy Act 1926 and pay fees for the usage of that spectrum. With the convergence of networks and the fact that an increasing number of data services can be delivered across broadcast platforms, 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. However, as stated in ComReg Document 03/46, the decision as to whether or not free-to-air broadcasters should be charged for access to spectrum is, ultimately, a policy matter for Government.

### *Administrative Charges*

The Eurostrategies report stated 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 (Spain is reported to have introduced payments for the frequencies used by digital broadcasters) - not paid for. ComReg incurs considerable expense in relation to spectrum planning, international co-ordination and spectrum management in the broadcasting sector and considers that it should be able to recover its expenditure in relation to regulation of the free to air broadcasting sector. With respect to the independent broadcasting sector, ComReg currently has no direct relationship with the operators who hold contracts from the BCI. ComReg proposes that, as the operators benefit from its regulation of the spectrum, they should contribute to defraying its administrative expenses. Such an arrangement would be in line with most other EU member states, where broadcasters are subject to an administrative charge associated with management of the spectrum. This charge could be collected by means of a levy and would be separate to any charge imposed by the BCI on its own behalf.

The mechanism by which the levy would be collected could be the subject of discussions between the Department, the BCI and ComReg. A potential solution, in view of the fact that ComReg does not have a direct relationship with the operators, would be for the BCI, which holds the licence on behalf of the independent operators, to be empowered to collect the levy from the operators and to return it to ComReg. Other options are also available if it is recognised that the independent broadcasters should contribute to the expenses incurred in regulating the sector.

### **4.3 Digital Radio**

The Ox Report states that a commercial multiplex in the UK carries about 10 stations many of these are simulcast services and are made available by DAB in areas outside of their analogue franchise area. One in five UK adults listens to radio via TV. Ox suggests that a dedicated policy unit for digital platforms be established to identify how viable such platforms would be within the Irish market.

**Q xi a. Is DAB technology sufficiently developed to justify input of resources in terms of policy development in Ireland?**

DAB Digital Radio services based on the Eureka 147 DAB system have been available in the UK for almost a decade but take up has been limited with around 3% of households acquiring a DAB receiver. Services are also operating in Denmark, Germany, Belgium, and Portugal. The initial frequency plan to implement DAB in Europe has been in existence since 1995. As stated in ComReg Document 04/93 the lack of demand for such services and the cost of rolling out a DAB-only network have slowed the introduction of DAB by broadcasters. The relatively high cost of DAB receivers has mitigated, against consumer take up of this service. Endeavours to provide a financially viable DAB service, have included increasing the number of channels per multiplex and in doing so eliminating the key advantage of DAB, that of near CD quality audio.

Given the experience of DAB elsewhere, Ireland could actively consider alternative technologies for delivering digital radio. An alternative option for Ireland could be to leap-frog DAB and implement newer technologies (including DVB-T - the digital television technology) that can deliver a variety of services including television. This could be more attractive to consumers, leading to greater take up of the service. Ideally a single converged receiver capable of receiving any service broadcast in the band, be it audio, television or data would be in the best interests of the consumer and would also facilitate competition and optimise spectrum use.

Aside from DAB, other possible digital terrestrial radio platforms could be considered including Digital Radio Mondiale (DRM), in the MW and LW broadcasting bands. Radio services are also increasingly available on a range of platforms. According to a recent survey commissioned by ComReg 6% of respondent's listened to the radio via satellite TV, 5% via the internet, 4% via cable or MMDS and 3% via the mobile phone.