



Office of the Director of
**Telecommunications
Regulation**

RESPONSE TO CONSULTATION

Licensing Regional or Locally Based
Digital Television Delivery-
Response to Consultation

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Oifig an Stiúirthóra Rialála Teileachumarsáide

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Contents

1	Introduction.....	2
1.1	Background.....	2
1.2	Consultation.....	3
1.3	List of Respondents.....	3
1.4	Format of the Document.....	4
2	Consultation Issues: Regional/Local DTT.....	5
2.1	Licensing Regional/Local DTT.....	5
2.2	Rollout of National DTT.....	6
2.3	Type of service proposed.....	7
2.4	Licensing Considerations.....	10
2.5	Licence Conditions.....	10
2.6	Application Process.....	12
3	Consultation Issues: Spectrum considerations.....	14
3.1	12GHz Band.....	14
3.2	UHF Bands IV/V.....	16
4	Consultation Issues: Spectrum Availability.....	17
4.1	Spectrum availability.....	17
4.2	Licensed area/Coverage area.....	18

1 Introduction

The Director of Telecommunications Regulation (“The Director”) and her Office (“The ODTR”) are empowered by legislation to regulate the telecommunications and broadcasting transmission markets in Ireland in accordance with EU and national legislation.

Under the terms of the Broadcasting Act, 2001 (the 2001 Act) the Minister for Arts, Heritage, Gaeltacht and the Islands may designate the parties to which the Director will award licences for the operation of six multiplexes and for digital transmission for the provision of DTT in Ireland. The Act also provides that the Director may issue further licences for the transmission or multiplexing of programme material or other data in digital form.

In this context the Director issued a consultation paper on Licensing Regional or Locally Based Digital Television Delivery (ODTR 01/69) exploring the role that regional or local DTT operators may have in providing Digital TV in the Irish market. The Director invited views on the issues arising from the introduction of regional/local DTT.

1.1 Background

The Broadcasting Act 2001 and the Wireless Telegraphy Acts 1926-1988 form the statutory basis for the licensing of DTT. It should be noted that the new EU Directives on Communications Liberalisation on which negotiations appear close to conclusion, may have an impact on such licensing in the future. Separate papers will be issued on these developments in 2002 and the implications have not been taken into account at this time.

Under the 2001 Act, the Minister of Arts, Heritage, Gaeltacht and the Islands will designate a “Multiplex” and a “Transmission” company that will operate on a national basis. Following designation, the Director is required by the Act to issue the companies with licences under the Wireless Telegraphy Acts, 1926-1988. The companies have not yet been chosen, but the Director understands that the Minister is expected to nominate companies in the early part of 2002 and this paper has been prepared on this basis.

Under the 2001 Act the Director may grant further licences- to existing licensees or anyone

else- under the Wireless Telegraphy Acts, 1926-1988 for the multiplexing or transmission of programme material or other data in digital form.

1.2 Consultation

The Director published in August 2001 a consultation paper *Licensing Regional and Locally Based Digital Television Delivery* (ODTR 01/69) seeking views on the possibility of licensing regional or local digital television services.

This document summarises the responses received during the consultation period and outlines the conclusions reached, taking account of the submissions received and other relevant legal and technical considerations.

1.3 List of Respondents

Eighteen responses were received to the consultation paper. The respondents included 6 community deflector operators, 2 satellite operators as well as telecommunication and broadcast operators and other interested parties as listed below:

Mason Communications

Hyper-Lan Limited

It'sTV

Colm Ward

Manus Elliott

Southcoast Community Television

Midlands Community Television Ltd.

RTE

Telespazio

John McLoone

Crown Castle International

Coastal Multi Systems

John Gallagher

British Sky Broadcasting Ltd

IBEC's Telecommunications and Internet Federation (TIF)

Chorus Communication

Thomas Gildea T. D.

Satellite Action Plan Regulatory Group

The Director wishes to express her thanks to everyone who contributed to the consultation. With the exception of material marked confidential, the written comments of respondents are available for inspection at the ODTR's office in Dublin.

1.4 Format of the Document

The consultation paper outlined the possibility for providing television services on a regional or local basis in the 12 GHz and UHF bands and views were invited on the following issues:

- Regional/Local DTT
- Spectrum considerations
- Spectrum availability

The document is split into four sections. Section 2, 3 and 4 deal with issues raised in the consultation paper. The consultation issues will be dealt with by taking account of the points raised by the respondents in each topic. For each topic a summary of consultation issues is followed by the views of respondents and finalised by a position of the Director.

2 Consultation Issues: Regional/Local DTT

The consultation paper outlined the possibility for providing television services on a regional or local basis in the 12 GHz and UHF bands and views were invited on the following issues:

- Licensing Regional/Local DTT
- Rollout of National DTT
- Types of services proposed
- Licence Conditions
- Application Process

2.1 Licensing Regional/Local DTT

2.1.1 Summary of Consultation Issues

In the consultation paper the Director explored the possibility of licensing DTT services on a regional/local basis. In particular she sought views on whether to offer licences for such services and if there were any parties interested in providing such services. Moreover she enquired about the concept of regional and local geographic areas.

2.1.2 Views of the Respondents

Nine of the thirteen respondents who expressed a view on this subject declared an interest in providing DTT services on a local/regional basis. Services proposed varied from the operation of digital multiplexes and DTT transmission to the provision of services such as the Internet and interactive TV. The majority were community deflector operators who are currently providing local analogue deflector services. The terms and conditions attached to a licence and the attractiveness of the business case were thought to be critical for the successful provision of DTT on a local/regional basis.

The majority of respondents agreed that licences should be offered for regional/local digital services. However, reservations were expressed in relation to the impact licensing such services may have on the viability of national DTT. Finally, one respondent was of the opinion that regional/local services should not be licensed because it would preclude the rollout of national DTT and suggested that remaining unused spectrum in UHF should be allocated to the national operator.

Opinions varied as to what constitutes a regional and a local area. The nature and size of a respondent's business were reflected in the answers. The definition of a local area ranged from a small parish of 50 to 150 homes up to a collection of towns, a city or even a county. A region was defined as being a combination of adjacent counties or alternatively, a complete province covered by a main national DTT transmission site and all the transposers that are fed from it. Another respondent was of the opinion that the country should be divided in to 4 or 5 regions (with several main stations included in one regional area).

2.1.3 Position of the Director

The Director is satisfied that there is some interest in providing local and regional DTT services. The parties who expressed an interest in the UHF band were mainly existing deflector operators. Southcoast confirmed its interest in providing regional/local DTT at 12GHz.

The Director is of the opinion, however, that licences for these services should only be offered if they do not constrain the spectrum needed for the development of national DTT. National DTT should have priority access to spectrum for the provision of television programme services. In addition, local or regional DTT should not result in a reduction in availability of national analogue and DTT services due to interference.

The Director notes the range of opinions on how regional and local areas should be defined. If there is very substantial demand for licences or they are to cover large areas, or the definition of certain boundaries would isolate other areas leaving them without the possibility of regional/local DTT, it would be important to set out an overall programme for boundary definition. This issue will arise anyway in the context of non-exclusive licensing for cable/MMDS from next year. If practical take-up is limited at this point, it may be appropriate to proceed by way of a consultation on the boundaries and related matters proposed by a prospective licensee(s).

2.2 Rollout of National DTT

2.2.1 Summary of Consultation Issues

The Director asked if there were concerns that licensing regional/local DTT in the UHF band

could prejudice the timely rollout of national DTT due to a lack of spectrum availability in an area.

2.2.2 Views of the Respondents

Opinions differed on the likely impact that local/regional DTT may have on the rollout of national DTT. The majority of respondents thought that licensing regional/local DTT would have an effect on national DTT. It was argued that during the period of simulcasting, any significant allocation of spectrum to regional/local DTT was likely to have a negative effect on the national DTT rollout.

Others supported the view that the new regionally or locally based services would have an influence in the market by creating more competition, resulting in less market share for the national DTT platform. However, some thought the economic effect on the national DTT operations would be relatively small when compared with competition from existing platforms such as cable, MMDS and satellite. Finally, one respondent suggested that regional/local DTT could help to improve national DTT penetration.

2.2.3 Position of the Director

The Director is not minded to offer licences for regional DTT services in the UHF band where this would constrain the rollout of national DTT. A number of respondents suggested that unused spectrum would be scarce during the period of simulcasting. However, the introduction of a single regional/local multiplex could potentially be accommodated in areas where interested parties could identify available spectrum. This could enable the provision of a small number of existing channels in digital form and potentially some local programming (subject to licensing by the BCI), which might attract viewers to convert to digital and thus encourage the rollout of DTT, including the national platform.

2.3 Type of service proposed

2.3.1 Summary of Consultation Issues

As outlined in ODTR 01/69, the Director recognises the possibility of using one frequency channel to deliver local and community based content. The option of licensing, in the long term, a number of frequency channels to directly compete with the designated national multiplex licensee was also explored. If multiple frequency channels systems were licensed,

the Director noted that the number of frequency channels licensed to each operator at a site might be limited.

2.3.2 Views of the Respondents

More than half of the respondents, who expressed their views, suggested that they could deliver community based programmes. Two parties were interested in transmitting and/or multiplexing local content but not in the provision of such content. Other respondents had no interest in providing such services. A view was expressed that there should not be must-carry obligations for particular programme services, but that the choice of channels should be left to market forces.

Some of the respondents pointed out that local programme services would be unlikely to fill an entire multiplex. Two of the eleven who responded to this question, suggested that it should be complemented with local data services. Another two respondents disagreed with the licensing of additional programme services because it might preclude the rollout of National DTT.

In relation to the proposal to limit the number of frequency channels available to any operator, the majority who answered this question felt that such a limitation would facilitate competition. One party suggested that it would be possible to licence 8 channels per operator at 12 GHz instead of the 6 suggested in the consultation paper, while still facilitating two operators in the band. Two respondents considered that it would be anti-competitive to limit the number of channels as they claimed that cable and MMDS do not have such restrictions. Another respondent was of the opinion that limiting channels might be an appropriate way to avoid interference with other spectrum users. Finally, one respondent suggested the number of multiplexes operated by a multiplex company could be limited as it has an editorial control over the content. It was thought, however, that such a limit should not apply to a transmission company.

2.3.3 Position of the Director

Single multiplex systems

Whilst it is not the role of the Director to regulate programme content on digital multiplexes, she welcomed the interest in and awareness of the potential for the provision of local

services. The Director believes that there is likely to be sufficient spectrum available to consider licensing some single frequency channel systems. In the context of any invitation from the ODTR to apply for single frequencies, potential operators should develop proposals for the services to be carried on those frequencies.

In particular, it is important to ensure that local content is available for distribution. Media Lab Europe, local second and third level colleges and Institutes of Technology may play an important role in creating content in parallel with courses in TV, multimedia and film production. Local content providers are required, under the Broadcasting Act, to obtain a local content licence from the BCI. The Director would intend to seek expressions of interest in licensing single frequencies and will be making regulations to licence single multiplex services in 2002.

Multiple multiplex systems

The Director considers that licensing of multiple frequency regional and local DTT operators should not be considered at this time. At least four frequency channels will be in use for analogue national services and when National DTT launches, six frequency channels will be in use for national DTT multiplexes in any given area resulting in a high demand for spectrum.

Many respondents indicated that in order for regional DTT to be viable a licence period of at least 5 years would be required. The availability of individual frequency channels at any one site as part of a multiple multiplex system for such a length of time cannot be guaranteed. At this stage, the requirements of national DTT have not been yet been finalised beyond the initial 18 months launch phase. When the spectrum requirements of the national service have been identified to a greater degree it may be possible to identify residual frequencies which could be used by multiple multiplex operators on a regional and local basis.

The Director remains of the view that if and when regional and local DTT services are licensed only a limited number of frequency channels should be made available to each operator. The Director does not preclude the licensing of such services in the future, or the licensing of further multiplexes to the national DTT multiplex licensee where it would be beneficial to consumers.

The ODTR understands that the process being undertaken by the Minister for Arts, Heritage, Gaeltacht and The Islands and by RTE in order to identify the entities which the Minister will designate for the award of the multiplex and digital transmission licences is still ongoing, but is expected to conclude in early 2002.

2.4 Licensing Considerations

2.4.1 Summary of Consultation Issues

The Director expressed her intention to use the national transmission and multiplex licensing framework as a basis for any possible licensing of regional/local operators.

2.4.2 Views of the Respondents

Seven of the twelve respondents, who expressed an opinion on this issue, agreed that the national framework is appropriate for licensing regional/local operators. However, two of these suggested that the framework should be modified to reflect regional/local circumstances. Various reasons were given including the view that it would restrict choice in terms of the regional/local network transmission structure. Another view was that there should be one licence for both the transmission and multiplex services as is the case for cable and MMDS licences.

2.4.3 Position of the Director

The Director is still of the opinion that the national licensing framework (separate transmission and multiplex licences) would form the basis of regional and local DTT licenses. This does not preclude the possibility of one company holding both licences as suggested by some respondents.

2.5 Licence Conditions

2.5.1 Summary of Consultation Issues

The Director outlined indicative licence conditions for the purpose of defining a framework for regional/local DTT. In particular she was interested in the appropriateness of regional or local DTT operators being subject to rollout obligations and whether performance guarantees should be sought.

2.5.2 *Views of the Respondents*

In general, the majority of the respondents agreed with the indicative licence conditions set out by the Director. Five respondents thought that a 5 year licence would be too short to be commercially attractive. The majority suggested that it should be at least 10 years and one respondent was of the opinion that the possibility of renewal for a further 5 years should be available. One respondent suggested that the 12GHz band should be licensed for 15 years, similar to the cable and MMDS platforms.

Some respondents felt that the proposed requirement that operations should commence within six months of the award of the licence was onerous and suggested a period of 1 year to allow for building the transmission network.

While most respondents were in favour of attaching rollout obligations to the licences of regional or local DTT operators, it was also suggested that local operators should not have rollout obligations. Homes passed and network topography were two suggested ways of defining rollout obligations. One respondent was of the opinion that it should be in terms of network topography rather than population coverage, but with an estimation of the latter for identification of the objective. Finally, one respondent proposed that if rollout obligations exist they should be similar to cable and MMDS obligations.

Respondents who argued against rollout obligations thought that they would be inappropriate for urban areas and suggested that since national DTT would have rollout obligations to provide digital television services to the nation there should be no requirement on regional or local operators to duplicate networks.

The majority of respondents who expressed views on this subject agreed that performance guarantees should be sought least licensees fail to comply with rollout conditions. One respondent thought these should be minimal since such operators would be expected to have a smaller revenue base. In contrast, one respondent stated that in the event of a failure to meet rollout conditions, the licence should be revoked and for lesser infringements financial penalties should be sought, though, such penalties should not be more than those which could be imposed on cable and MMDS operators. Finally, less than half of respondents on this issue thought that performance guarantees are neither necessary nor

feasible for regional or local operators.

2.5.3 Position of the Director

The Director notes the views on a possible 5 year licence term. This has implications for regional/local multi-frequency operators in that they could not be guaranteed that spectrum would be available in the long term because of the demands of national DTT and the national analogue networks. During this time four national analogue programme services would be on-air along with six national DTT multiplexes. The availability of specific spectrum for other multi-frequency operators would be uncertain in the medium to long term. The Director is satisfied that rollout obligations based on on-air dates for transmission sites would be appropriate for regional operations. The Director would not expect well-planned regional networks to take more than six months to commence service after licence issue. The purpose behind such a condition is to avoid spectrum hoarding by operators. Her view is that performance guarantees/bonding should apply, suitably tailored to the scale of the operation.

2.6 Application Process

2.6.1 Summary of Consultation Issues

In the event that the Director is satisfied that there would be sufficient interest in providing digital services on a regional and local level an application process was proposed for obtaining a regional/local DTT licence.

2.6.2 Views of the Respondents

Eight of the eleven respondents who commented on the application process agreed in general with the Director's proposal. The remaining respondents were concerned by the interference requirement outlined by the Director. Two of these pointed out that applicants should be asked to demonstrate that they will not cause interference to other spectrum users in particular in the 12 GHz band. It was also suggested that an independent study be conducted by the ODTR to prove that there is no potential for interference. One respondent was of the opinion that an interference assurance may be too onerous a task for applicants. Another respondent suggested more emphasis should be placed on the need to provide a realistic business plan and prove that the necessary funding is available. Respondents who

disagreed with the application process proposed by the Director were of the opinion that community groups should be treated differently from commercial organisations.

2.6.3 Position of the Director

As outlined in Document ODTR 01/69, the Director intends to seek expressions of interest in providing services from prospective licensees at 12 GHz and with potential operators of single multiplex services in the UHF band. The Director, in parallel with this process, will engage in a study to assess the prospects for future licensing of television delivery in a non-exclusive market. The Director will also need to be satisfied that the risk of harmful interference is minimised. In the event that demand surpasses the number of available frequency channels in one area, a comparative process will be used to decide on the award of a licence or licences.

3 Consultation Issues: Spectrum considerations

As outlined in ODTR 01/69 spectrum issues will arise with the possibility of licensing television services on a regional or local basis and views were invited on the following bands:

- 12 GHz band
- UHF bands

3.1 12GHz Band

3.1.1 Summary of Consultation Issues

The Director set out the possibility of licensing the 12GHz band to audiovisual services and also enquired about the alternative of licensing this band for other services. The principles behind the implementation of the ERC decision¹ were outlined, which propose is the harmonisation of this band giving priority to satellite reception over fixed services.

3.1.2 Views of the Respondents

More than half of the respondents who expressed an opinion on this issue did not agree with licensing terrestrial broadcast audio-video services in the 12GHz band. One argument was that it would diminish the potential for the deployment of new satellite services when there are many other bands dedicated to terrestrial usage. Another argument expressed was that the introduction of terrestrial services in this band would affect satellite reception, particularly in the vicinity of the terrestrial transmitting stations. Moreover, it was argued that in the medium and longer term it could ultimately destroy the financial viability of the existing multichannel operators creating a monopoly market for the satellite platform.

Less than half of respondents to this issue supported licensing services in the 12GHz band. Whilst one respondent was of the opinion it would provide more competition, there were reservations regarding interference with satellite services.

In response to the issue of licensing the 12 GHz band for other types of services the majority disagreed with the suggestion and pointed out that it should be used primarily for satellite reception. However, three respondents suggested other services such as data, multimedia, video on demand, internet and telephone services should be licensed in this band.

Six of the eight respondents who expressed an opinion were in agreement that Ireland should implement the ERC Decision. One respondent argued that it would be highly prejudicial to the satellite sector if Ireland and other CEPT administrations did not support the harmonisation efforts undertaken on a Pan-European basis. One respondent was of the opinion that the implementation of this decision would not hinder the licensing of terrestrial broadcasting in the 12GHz band.

3.1.3 Position of the Director

The Director intends, in advance of considering the award of licences, to invite parties interested in providing 12 GHz systems to engage in discussions with the ODTR and to review the issues causing technical concern as well as business and customer care matters. In the event of a decision to licence this system it may be necessary to impose power restrictions on the technical characteristics and technical conditions would need to be attached to the licence in order to reduce the potential risk of interference to other services using this band. The ODTR will examine this issue further before deciding to award any licence.

The ERC Decision that encompasses the 12GHz band identifies CEPT priorities for the fixed service, fixed-satellite service (FSS) and broadcasting-satellite services (BSS). It notes that there are high numbers of FSS and BSS terminals already deployed in the 11.7 to 12.5 GHz band and that further GSO or Non-GSO FSS systems are planned which are intended to deploy large numbers of user terminals. In Ireland, Sky DTH is an example of one satellite service in this band. While Ireland has not yet implemented the ERC Decision, the Director's current understanding is, that implementing the ERC Decision would not be incompatible with licensing a 12GHz terrestrial television system.

¹ ERC Decision of 19 October 2000 on the use of the band 10.7-12.5 GHz by the fixed service and earth stations of the broadcasting-satellite and fixed satellite service (space to Earth) (ERC/DEC/(00)08). It is available at www.ero.dk.

3.2 UHF Bands IV/V

3.2.1 Summary of Consultation Issues

The Director discussed the appropriateness of using the same technical conditions for regional or local operators as for the national DTT platform.

3.2.2 Views of the Respondents

The majority who expressed an opinion on this issue agreed that national DTT technical conditions are appropriate for regional or local DTT operators as both share the same UHF spectrum with analogue television services. One respondent was of the opinion that the technical conditions should be modified to suit the particular locations involved. While a further three respondents did not agree with using the national DTT technical conditions for regionally or locally based services as they were too stringent for such operators.

3.2.3 Position of the Director

The Director remains of the opinion that the technical conditions for local and regional DTT in the UHF band should be based on those of the national DTT service. These conditions do not preclude the use of low power transmitters. The Director would suggest that there may be opportunities for local and community groups to work with commercial transmission providers and/or national DTT operators in a spirit of partnership to ensure a speedy provision of national DTT to those areas where there is a demand for the service. The Director proposes to monitor such co-operation in reviewing the rollout of national DTT services.

As international co-ordination would probably be required, there may be constraints imposed on the technical characteristics, such as transmission power and transmitter site height or location, of UHF systems. The situation as regards multiple multiplex systems can best be judged at the time that licensing is being considered. It may, however, be difficult to licence and co-ordinate systems on high sites with the same power as national DTT.

4 Consultation Issues: Spectrum Availability

The Director outlined the issues surrounding spectrum availability for licensing television services on a regional or local basis and views were invited on the following issues:

- Spectrum availability
- Licensed area/Coverage area

4.1 Spectrum availability

4.1.1 *Summary of Consultation Issues*

The Director outlined the status of spectrum availability in the UHF and 12 GHz bands. It was noted that the availability is not uniform throughout Ireland and an opinion on licensing multiple frequency channels in the short term in the UHF bands was expressed. In the 12 GHz band the Director is of the opinion that if these services were licensed they should be responsible for correcting any interference caused to other systems.

4.1.2 *Views of the Respondents*

Seven respondents were of the opinion that multiple frequency channels should not be licensed in the UHF band in the short term. One view was that any spectrum available before analogue switch-off should be made available to the national operator for interactive digital services. Another argument was that any system compromising the coverage of national DTT should not be licensed and priority should be given to national services.

In relation to the Director's proposal to mitigate against interference the majority found it adequate and appropriate. However, two respondents thought that the Director should firstly put in place a framework that avoids potential interference and only then should licensees be responsible for mitigating against interference. The respondents who disagreed with the Director's proposal, argued that it is insufficient to rely on the system operators monitoring the effect of their transmissions on other users of the band. In particular, one respondent had reservations on the ability of potential applicants from a technical and

operational perspective to correct any potential interference to the services of other spectrum users.

4.1.3 Position of the Director

The Director is of the opinion that multiple frequency networks should not be licensed in the UHF band in the short term whilst four analogue programme services and six DTT multiplexes are transmitted nationally.

In the event of licensing the 12GHz system, there may be power restrictions to the technical characteristics and technical conditions will be attached to any licence to reduce the potential risk of interference.

The Director will assess the level of potential interest in and if necessary will prepare regulations for single multiplex systems in 2002.

4.2 Licensed area/Coverage area

4.2.1 Summary of Consultation Issues

The Director explored the possibility of defining a geographical licensed area in the UHF and 12GHz bands. In addition she raised the issue whether a minimum service area should be required of the applicants.

4.2.2 Views of the Respondents

The majority of the views on this matter agreed with the area definition proposal. One respondent suggested that the defined area should be the national territory in order to provide universal service. Another respondent stated that in the UHF band it is technically difficult to define an area but in the 12 GHz system an arrangement similar to MMDS cells should be adopted. Two respondents thought that the licence area should be flexible particularly in areas with difficult terrain.

In relation to licensing a minimum service area, in which licensees are obliged to provide a service, the majority supported the Director's position. Opinions differed on the size of the

area. One operator was of the opinion that it should be large enough and sufficiently populated to sustain the operations. Another argued that any minimum area should be loosely defined. Two respondents did not agree with minimum areas as the geographic terrain impacts on the area served making it difficult to cover 100% of a defined area.

4.2.3 Position of the Director

The Director is satisfied that the definition of a coverage area or licensed area must be appropriate to the technologies used. The Director continues to believe that operators should be obliged to make available a service to all households within the coverage area of a UHF transmitter and within the area licensed for the 12 GHz system, unless in specific cases the opinion of the Director a refusal is reasonable. With regard to possible licence areas for operations at 12 GHz, the Director intends to address the boundary issue in the course of her review of expressions of interest and as suggested in section 2.1.3 may proceed, if necessary, by way of a consultation on the boundaries and related matters proposed by prospective licensees.