



Office of the Director of
**Telecommunications
Regulation**

**Notification re Proposed Amendment to General
Telecommunications Licence:**

**Additional Provisions relating to the right to use Fixed
Wireless Point to Multi-Point Access for the provision of
Telecommunications Services.**

Document No. 99/28

6 May 1999

Oifig an Stiúirthóra Rialála Teileachumarsáide
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Introduction

The Director of Telecommunications Regulation (“the Director”) is responsible for the regulation of the Irish telecommunications sector in accordance with national and EU legislation. As part of her functions, the Director is responsible for the licensing of telecommunications operators.

The Director now proposes to amend the terms of the General Telecommunications Licence. In accordance with section 111(10) of the Postal and Telecommunications Act, 1983, the Director is required to notify all applicants for, and holders of, a licence of the proposed amendment. An applicant or holder may within 21 days of the receipt of the notification make representations to the Director in relation to the proposal. The Director is also required to publish a notice in the *Iris Oifigiúil* of the proposed amendment to the Licence. Interested parties may, within 21 days of the publication of the said notice, make representations to the Director on the proposal.

The reason for this proposal is to facilitate the licensing of Fixed Wireless Point to Multi-Point Access networks and services.

The proposed amendment involves the addition of a new part, Part 5, to the General Telecommunications Licence and is set out below. This Part 5 will only apply to persons appropriately designated by the Director. Designations will be determined by the Director following the conclusion of the current competition for FWPMA licenses.

The current text of the pro-forma General Telecommunications Licence (ODTR Document 98/50R) (which is set out below) may be viewed on the ODTR website (www.odtr.ie) or is available from ODTR.

Interested parties may make representations to the Director in relation to the proposal. In the interests of promoting openness and transparency, the ODTR will make available responses to this paper for inspection on request, excluding information that the Director considers to be of a commercially sensitive nature. Where confidential material is included in responses it should be clearly marked as such and included in an Annex to the response.

All communications should be clearly marked “Reference: Submission re ODTR 99/28” and sent by post, facsimile or e-mail to:

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to arrive on or before 5.00 p.m. on Tuesday 1 June 1999.

This document does not constitute legal, commercial or technical advice. The Director is not bound by it. The Director reserves the right to change any of the information, views or opinions contained in this document. The consultation is without prejudice to the legal position of the Director or her rights and duties under legislation

Part 5: Additional Provisions applying where the Licensee is designated as a person to whom Part 5 shall apply.

25. Definitions and interpretations

25.1 In this Part 5, the expressions set out below have the meanings given to them below (and other grammatical forms of the expressions have corresponding meanings):

“Designated Commencement Date” means the date upon which the Licensee is designated by the Director as a person to whom Part 5 of this Licence shall apply;

“Fixed Wireless Point to Multi-Point Access” or **“FWPMA”** means point to multi-point radio systems operating between terminal equipment at fixed locations and base station(s) at fixed locations. The base station may be connected to a telecommunications network;

“FWPMA Network” means a network for the provision of Fixed Wireless Point to Multi-point Access (FWPMA);

“FWPMA Regulations” means the Wireless Telegraphy (Fixed Wireless Point to Multi-Point Access) (Licence) Regulations, 1999 (S.I. No. ...);

“FWPMA Services” means those telecommunications services provided by the Licensee via FWPMA, as set out in Part I of the Second Schedule.

26. Application of Part 5 of Licence

26.1 The provisions of this Part 5, and the rights and obligations contained therein, apply solely to a Licensee who is designated by the Director as a person to whom the said Part 5 shall apply, and to no other Licensee. A Licensee to whom this Part 5 applies has the right to use FWPMA for the provision of telecommunications services.

27. Term:

27.1 The provisions of this Part 5 will commence on the Designated Commencement Date and unless revoked or amended shall, subject to the conditions and provisions of the 1983 Act, as amended and to the 1996 Act, and such other legislation as has been or may be adopted from time to time, continue for a period not exceeding 10 years from the Designated Commencement Date.

28. Rights and Obligations

28.1 The Licensee shall provide the FWPMA Services in accordance with the Second Schedule, on a non-discriminatory basis to all persons requesting services.

- 28.2 The Licensee may refuse to extend or continue the provision of the FWPMA Services to or from the particular Network Termination Points and/or terminal equipment if such extension or continuation would, or would be likely to, cause damage or interference to the FWPMA Network, or the FWPMA Services or any other FWPMA Network, Telecommunications Network, FWPMA Services or telecommunications services.
- 28.3 Condition 2.2 shall not apply to:
- (a) a mortgage or other transaction entered into with a financial institution for the purpose of securing borrowings of the Licensee or a subsidiary, being borrowings for the purposes of the FWPMA Network and FWPMA Services or provision thereof or anything incidental thereto; or
 - (b) a transfer, assignment or other disposal of assets that are intended to be, and are, immediately after their transfer, assignment or other disposal, assigned by way of lease to the Licensee.
- 28.4 The Licensee shall comply with any direction issued by the Director for the purposes of protecting the interests of its Users, having regard to relevant legislation in force from time to time, including, but without limitation, directions regarding conditions and obligations contained in the Second Schedule.

29. Ownership

- 29.1 (a) The Licensee shall not issue or transfer shares without the prior consent of the Director (which shall not be unreasonably withheld).
- (b) A consent under subparagraph (a) shall be subject to such conditions (if any) as the Director may determine and shall specify in writing to the Licensee, and any such condition shall be deemed to be a condition of this Licence.
- (c) The Licensee by itself or through its Board of Directors shall not act to give effect to any change in the beneficial or legal ownership of shares without the prior consent of the Director (which shall not be unreasonably withheld).

30. Suspension, Revocation or Expiration

- 30.1 Upon the revocation of this License, or the revocation or expiration of the licence issued to the Licensee under the FWPMA Regulations, or where the rights and obligations accorded to the Licensee under this Part 5 have been revoked or have expired, the Licensee shall not be entitled as of right, or be deemed to enjoy any equity entitling it to the right to use FWPMA for the provision of telecommunications services. No cause of action shall lie against the Director or the State in respect of any loss or damage suffered by the Licensee by reason of the suspension, revocation of the Licence or the rights and obligations enjoyed under this Part 5.

31. Enforcement and Amendment

- 31.1 Where the Director has served a warning Notice in accordance with Condition 4.2, and where the specified condition or direction by which the Licensee is failing to comply relates solely to a condition or direction under this Part 5, then the sanctions that may be imposed by the Director under Condition 4.3. shall, in such circumstances, relate solely to the revocation, suspension, or amendment by way of reduction of the term, or imposition of specific measures, as may be decided by the Director, of the rights and obligations of the Licensee under the provisions of this Part 5.
- 31.2 Where the circumstances under which the Director may suspend or revoke the Licence under Condition 4.8 relate to the FWPMA Services provided by the Licensee in accordance with this Part 5, the said revocation or suspension may, at the discretion of the Director, refer solely to the rights and obligations accorded to the Licensee under the provisions of this Part 5. In such circumstances, the reference in Condition 4.8 (i) to the Declaration shall be construed to include the Licensee's application for a licence to provide FWPMA.

32. Review of Spectrum

- 32.1 Notwithstanding the rights of the Director under Condition 4.1, the Director may, in accordance with her responsibilities, in particular with regard to the efficient and effective use of the frequency spectrum, conduct a review from time to time of the operating environment of FWPMA having regard to such matters as, inter alia, international developments, new technologies and market requirements. Any review may include an examination of the allocation of spectrum and the terms and conditions of the Licence. Following such a review, the Director may supplement, amend or revoke the rights and obligations of the Licensee under this Part 5.

Second Schedule

Part I: FWPMA Services

Second Schedule

Part II: Service Quality, Performance Standards and Obligations

Second Schedule

Part III: Coverage and Roll-Out Targets

Second Schedule

Part IV: Level of Tariffs

Second Schedule

Part V: Performance Guarantees

Second Schedule

Part VI: Services Offered to End-Users