Rate Regulation Mechanisms for Cable and MMDS Television Operators

Consultation paper

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1 Introduction

This paper is being issued in order to obtain views on how best to regulate the prices charged to consumers by the Cable and MMDS Television industry. Under the terms of the Wireless Telegraphy (Programme Services Distribution) Regulations, 1999 (No. 73 of 1999), (the 1999 Regulations), and the Wireless Telegraphy (Wired Broadcast Relay Licence) Regulations, 1974 (No. 67 of 1974), (the 1974 Regulations), the rates charged by licensees, for their basic services and installation charges, are subject to the prior approval of the Director.

The Director is anxious to provide certainty going forward as to the manner in which price adjustments will be handled by her office. The Director included a provision in the 1999 Regulations which enabled her to engage in a public consultation process in relation to the manner in which price adjustments are implemented.

In circumstances where new licences have now been issued to four of the five main operators in the cable and MMDS sector to enable them to move forward into the digital era, the Director now considers that it is appropriate, in order to allow public comment and to provide certainty for both operators and consumers, to engage in a public consultation process on the mechanism for rate regulation which will apply to all licensees under the 1974 and 1999 Regulations.

The consultation period will extend until 28th July 1999 during which time the Director invites written comments on any of the issues raised in this paper. Please see section 5 of this consultation paper on submitting comments on this paper.

2 Background

2.1 Legislative Background

The Director of Telecommunications Regulation, (The Director), has powers to regulate the cable and MMDS industry under section 4 of the Telecommunications (Miscellaneous Provisions) Act, 1996 (No. 34 of 1996), (the 1996 Act).

On 25 March 1999 the Director made new regulations, The Wireless Telegraphy (Programme Services Distribution) Regulations, 1999, in exercise of the powers conferred on her by the 1996 Act referred to above, to enable the cable and MMDS industries to move forward into the digital era. Under Regulation 15(1), "The licensee shall obtain the prior consent in writing of the Director to the prices that he or she proposes to charge for distributing the licensed programme services specified in Part VII, (basic services, being the programme services which a person is obliged to pay for in order to become a subscriber to the cable or MMDS service), of the licence and for installing or providing the means necessary to receive licensed programme services and any subsequent change to any of those prices during any period of exclusivity under the licence".

During the period of exclusivity the Director may also investigate the prices being charged for premium services and after such investigation may direct that such prices be altered. In such event, notice shall be served on the licensee by the Director stating the reasons and the licensee may, within one month thereafter, apply to the Director to reconsider her proposal or to refer to an independent arbitrator appointed by agreement between the Director and the licensee. After the expiration of the period of exclusivity the prior written consent of the Director shall not be necessary for changes in the basic service prices and the Director's powers in relation to regulation of prices shall be restricted to investigation and direction.

For those operators who are continuing to provide a service in analogue only under older licences, the relevant Statutory Instrument in respect of the cable industry is the Wireless Telegraphy (Wired Broadcast Relay Licence) Regulations, 1974. Under these regulations "The licensee shall secure the approval in writing of the Minister (now the Director) for the prices and charges he proposes to levy in respect of connection of, and relay of programmes to, service points connected to the station and for any subsequent variation thereof". This was amended in 1988 to restrict the Minister's/Director's powers to approval of charges in respect of the provision of the basic service only. The relevant Statutory Instrument in respect of the MMDS industry is the Wireless Telegraphy (Television Programme Retransmission) Regulations, 1989. Under these Regulations "The Minister (now the Director) may, from time to time, investigate the charges being applied by a licensee in respect of the service being provided by him under a licence to the subscribers to such a service and may, having considered the results of such an investigation, direct that any such charges be altered with effect from a specified date, and any such direction be complied with by the licensee with, if necessary, an appropriate rebate being allowed to any such subscriber either, at the discretion of the licensee, by means of a cash refund or by means of a discount of equivalent value against future subscription charges".

2.2 Justification for Regulatory Involvement

The justification for rate regulation of prices in the cable and MMDS Television sector is that, under the terms of the licences, each operator enjoys a 5 year period of in-platform exclusivity. It is essential that the interests of consumers are protected by regulating the rates that operators may charge for a basic level of service provided and that the operators comply with the terms of the licence granted. While the advent of DTT and digital satellite services will mean that cable and MMDS operators will no longer have local monopolies on multi-channel television services, the level of competition is not expected to be sufficiently advanced for some years to remove the necessity for rate regulation.

2.3 Developments to Date

Under the system which applied heretofore, cable operators made a formal written submissions for rate adjustment, including financial statements and information on operating costs and capital expenditure. Standard practice has been to allow for inflation in line with movements in the Consumer Price Index (CPI). Increases to allow for capital expenditure have also been agreed from time to time but as an exception rather than the rule. Copyright and satellite costs have also generally been allowed.

This system suffers from a number of problems:

- it concentrates on reviewing the past and provides no incentive for or recognition of efficiencies or improved services to customers
- operators have been unable to plan trends in income from basic services and have considered themselves constrained to take a relatively passive role in the development of services.

In overall terms, the objectives of rate regulation of the cable and MMDS television industries in Ireland should have regard to the need to:

- protect subscribers, ensuring continuity of service and guarding against any unjustified increase in prices for existing services

- encourage improvements in operating efficiency and customer service

- encourage operators to invest in digital networks on an entrepreneurial basis and allow operators to price new services commercially

- be pragmatic and capable of early implementation, ensuring practicality and transparency.

3 Rate Regulation Mechanisms

3.1 Introduction

The purpose of a rate regulation mechanism is to protect the interests of the consumer in situations where the level of competition in a sector is imperfect. The rivalry between competing firms in a strongly competitive sector forces service providers to identify additional services that the consumer will be willing to pay for, acts as a driver for efficiency gains and restricts the level of charges for services provided.

However, the Irish multi-channel TV market is not a fully developed competitive market. The objective of the rate regulation mechanism is, therefore, to establish a mechanism that encourages each operator to act as if it were operating in a competitive market and particularly to prevent excessive prices being charged to customers.

Ideally, any rate regulation arrangement should mimic the effects of competition by stimulating new services and greater efficiency whilst at the same time protecting the customer both by limiting price increases and ensuring an appropriate level and quality of service.

Various methods of rate regulation have been used in the past, such as rate of return regulation that allows the operator to earn a specified rate of return on the capital employed in the business. This mechanism, as will be discussed later, suffers from a fundamental deficiency in that there is no incentive for an operator to minimise costs and seek efficiencies.

A more common mechanism currently adopted for the implementation of the objectives stated above is a formula that links the level of price increase that may be allowed to an appropriate external measure of inflation. In most cases this would be the increase in the CPI in a relevant period. In addition, an X factor is generally used as a lever to ensure that operators continue to seek cost efficiencies over the period of the price control. The X factor can also be used to incorporate other factors such as customer service into the price control formula. Other methods, such as cost based control, are generally variations of the price control mechanism approach or the rate of return approach.

The selected rate regulation mechanism must also be:

- transparent
- easily implemented and readily understood
- fair and equitable to the customer and operators
- in agreement with regulatory principles
- capable of providing a measure of certainty for business planning purposes to operators

- capable of allowing for the impact of unforeseen cost increases/decreases and extraordinary events.

3.2 Rate of Return

Up until the introduction of price control mechanisms in the 1980s, the conventional form of rate regulation was through control of profits and took the form of an allowable rate of return on capital employed for relevant services. Under such an arrangement the operator is required to earn no more than the specified rate of return in each year, the rate of return being set after assessment of the appropriate level of cost.

Under rate of return regulation, prices are adjusted annually by the operator to keep profits at an acceptable level, and there is very little incentive to control costs. There is also the possibility that over-investment may occur. The rate of return is usually based on the weighted average cost of capital (WACC) to the operator which is estimated as the weighted average of the cost of equity (i.e. return required by shareholders in the company) and the cost of debt (i.e. the cost of long-term borrowing).

The WACC is based in part on an estimation of the return which equity investors would require for a company with a risk profile similar to that of the operator. This is generally expressed as the sum of the return that could be earned on a risk free investment and the return that equity investors require arising from the riskier nature of investment in equities in general.

The equity risk premium needs to reflect the inherent risk associated with the company itself. This inherent risk can be measured for quoted companies and is referred to as Beta. The Beta for any company is based on an historical examination of the performance of its share price compared to the overall market. The inherent assumption is that the historical Beta is appropriate for future regulation. The problem for the determination of cable or MMDS operator specific Betas is that the operators themselves are not quoted so that proxies would be required. In general these proxies would most likely be operators quoted on other markets and subject to a different regulatory and economic environment

Further difficulties arise in relation to the assets employed in the business. The economic value of assets may be greater or less than the historical value at which assets are recorded in the financial statements.

Overall, the Director considers that a rate of return mechanism faces the following disadvantages:

- rate of return regulation does not provide an incentive to control costs
- different rates of return would be required for each operator depending on their capital structure
- rates would need to reflect the ongoing capital structure development of each operator
- appropriate risk measures for the equity returns required are not readily available.

Question 3.2.1
Do you agree that Rate of Return regulation is inappropriate to the cable and MMDS sector? If you do not agree, please outline why you consider it to be appropriate and show how the disadvantages referred to above could be overcome.

3.3 Price Control mechanism

The Director has also reviewed the application of a price control mechanism for regulating prices based on using the change in the Consumer Price Index ("CPI") and an "X" factor.

The goal of the price control mechanism is to create an incentive for efficiency and responsiveness to consumer demand. Price control regulation is intended to encourage cable and MMDS operators to be more efficient while at the same time limiting the prices they may charge for services. The price control mechanism is designed to ensure that operators are encouraged to increase their productivity while maintaining and improving their service level to their customers.

The advantage of the price control mechanism form of regulation is that it not only provides controls on the level of prices charged to consumers, but also provides very clear incentives to the operator to minimise costs.

Under the price control mechanism approach, the ceiling or maximum price operators can charge for services is adjusted by a measure of inflation minus an "X" Factor. The advantage of the increase in the CPI as the measure of inflation is that it is widely known and used, including by other regulators and is widely accepted for this purpose. The Director's view is that the CPI is the most appropriate index but she would welcome views on possible alternatives.

Question 3.3.1
Do you agree that the price control mechanism is appropriate to the cable and MMDS sector? Please provide reasons if you do not agree.

Question 3.3.2
Are there other measures of inflation that should be considered?

3.4 Issues to consider in establishing a Price Control Mechanism

A possible approach to setting the "X" factor would be to examine each operator separately taking into account the factors specific to that operator and also taking into account more general factors such as:

- expected productivity growth
- expected growth in market demand
- cost of capital
- the asset base of the operator
- value for money and relative efficiency measures such as subscribers per employee
- economies of scale open to the operator
- franchise area and subscriber base.

This approach to the derivation of an “X” factor would involve the development of detailed financial models of the expected financial performance of each operator that would be suitable for investigation and testing by professional advisors.

This approach would be appropriate for large entities operating in a relatively stable environment. However, the overall size of the sector and the scale of many of the operators within the sector require a more direct and simple approach towards establishing a price control mechanism. The Director is minded to develop a price control mechanism which meets the criteria set out in Section 2.3 above and which reduces the regulatory burden for operators. For this reason it is proposed to minimise the amount of operator specific information that is required. The Director thus favours a price control mechanism that incorporates external indicators such as the CPI and general productivity levels along with simple measures of operator efficiency along with an allowance for capital expenditure. The Director is also minded to exclude smaller operators from a requirement to comply with the application of a mechanism that may not be appropriate to their specific circumstances.

It is assumed in the sections that follow that in setting the “X” factor, a price control mechanism is adopted using the CPI. In addition to the use of CPI, additional indicators are required in order to reflect the circumstances of each operator. The additional indicators required are a measure of general economic productivity and an efficiency factor appropriate to each operator.

Productivity

Productivity is an important factor in an industry which is undergoing major transformation but has not been taken into account when reviewing price increase applications in the past. Productivity is generally calculated as the value of output divided by the number of persons at work. To compare productivity in different years, the differences due to price changes are removed. This is done by valuing output in the different years at the same prices (i.e. outputs at constant prices).

It is proposed that the output and labour inputs for the Distribution, Transport and Communication sector of the Irish economy as compiled by the Central Statistics Office be used to calculate the change in productivity in any year. The Central Statistics Office does not compile separate figures for the communications sector. The table below shows the productivity index for this sector from 1992 to 1997 (the latest years for which figures are available):

Productivity Growth in the Distribution, Transport and Communications sector 1992-1997

	1992	1993	1994	1995	1996	1997
Volume index of Output	100.0	103.8	111.9	119.5	129.8	143.0
Volume index of Input	100.0	102.4	105.8	114.3	118.0	129.0
Index of Productivity	100.0	101.3	105.7	104.6	110.0	110.8
Productivity Growth pa		1.3%	4.4%	-1.1%	5.4%	0.8%

Source: Central Statistics Office

It can be seen that from 1992 to 1997 the cumulative growth in productivity has been 10.8% or an annual average of 2.1%. It is proposed to include a target productivity growth figure of 2% to be deducted from the increase in CPI for each year of the price control mechanism.

Question 3.4.1
Do you agree that general economic productivity should be included within the price control framework? If you do not agree please give reasons for your answer.

Question 3.4.2
Do you agree that the index of productivity growth in the Distribution, Transport and Communications sector is the most appropriate index to use? If you do not agree, which index do you consider to be appropriate and give reasons.

Question 3.4.3
Do you agree that a figure of 2% is reasonable as an approximation of future productivity growth in the sector? If you do not agree please outline the manner in which productivity growth can be included in the price control mechanism.

Efficiency
The Director has carried out a preliminary review of relative efficiency based on a benchmarking review of each of the major operators. The methods employed in conducting the work entailed a number of benchmarking exercises using data on operators in other countries, together with information on the Irish operators. The overseas operators were selected largely on the basis of size so as to make meaningful comparisons. Countries selected included:

- the Netherlands
- the US
- Denmark
- Sweden
- Belgium
- Poland

The work entailed an assessment of a range of partial indicators of efficiency benchmarking the companies amongst themselves and against overseas companies using various indicators.

The benchmarks that were constructed and analysed include:

- key financial ratios such as turnover per employee and employee cost per unit of revenue

- value for money based on current subscription charges and the number of channels and taking into account scale of operations (as measured by homes passed)

- the current number of subscribers per employee for each operator.

This review took into consideration such matters as:

- the scale of the Irish operators
- current margins based on subscription charges, programme costs and other costs in conjunction with annual reports/accounts.

The preliminary benchmark review highlighted variations in the level of relative efficiency between the operators. While the differences can be explained in some part by the scale effect and technology, it is also clear that some companies have higher staffing to subscriber ratios and smaller programme packages than would be expected based on international benchmarks. The Director is anxious to ensure that customers obtain best value for money in terms of the range and quality of programme offerings and the cost of such offerings. Accordingly, the Director intends to incorporate an efficiency factor into the price control mechanism.

The Director is minded to incorporate an efficiency factor of up to 5% per annum into the price control mechanism in order to encourage greater efficiency into the service offerings provided. The Director will take into consideration the relative efficiency of operators and any improvements in efficiency achieved by operators in considering any price adjustment application. It is expected that subscribers per employee and the subscriptions charged for channels offered will be used as the measures of efficiency. Operators will be expected to demonstrate their relative efficiency in order to obtain the consent of the Director for any price adjustments sought.

Question 3.4.4
Do you agree that relative efficiency is an appropriate indicator for the Director to take into consideration when deciding on any price adjustment application? If you do not agree please give reasons for your answer.

Question 3.4.5
Do you agree that subscribers per employee and subscriptions charged for channel offerings are the appropriate measures of relative efficiency taking into account the need for a simple methodology? If you do not agree please support your answer with alternative approaches.

Provisions in respect of smaller operators
It is recognised that there are several smaller cable operators that do not have sufficient scale to warrant the application of a price control mechanism based on national statistical data. A distinction has already been made between major operators with more than 1,000 subscribers and smaller operators having fewer than 1,000 subscribers in the context of digital licensing. It is considered appropriate to continue this distinction in respect of price control.
For these reasons it is proposed that cable operators with fewer than 1,000 subscribers in total would be able to choose either to have the "X" factor defined for their operation as illustrated above or to make a submission on the basis of the specific nature of the cost increases applicable to their business.

Question 3.4.6
Do you agree that those operators with fewer than 1,000 subscribers in total should have the option to choose the basis on which their application will be assessed? If you do not agree please support your answer with reasons.

Question 3.4.7
Do you consider that there are further factors, which should be taken into account in establishing the price control mechanism? Please give examples to support your answer.

3.5 Recovery of Capital Expenditure

Recovery of capital expenditure

Over the coming years the advent of digital television will require a significant investment by operators in multi-channel networks to convert from analogue to digital. The capital investment associated with the rollout of digital services will be expended not only in respect of television programme services but also in respect of telecoms services such as telephony and internet services.

The Director wishes, in the interests of making new innovative services available to subscribers, to encourage operators to invest in digital networks on an entrepreneurial basis. The Director is of the view that only that element of net capital expenditure relating to basic services will be considered in reviewing any price adjustment application. This will require operators to apportion their net capital expenditure firstly between the investment required to provide television services and other services and subsequently between the investment required for the provision of the basic television programme service and other television related services.

The method to be used for the recovery of this investment would operate as follows:

- the net capital investment, in any particular year, related to the basic package would be recovered by operators over the remaining period of the licence
- in order to spread the cost of the investment in an equitable manner, the Director favours an apportionment of the investment based on using subscriber years as the denominator in calculating the annual amount to be recovered
- subscriber years would be the expected number of total subscribers to the basic package in each year multiplied by the number of years remaining before the expiration of the licence
- The Director is minded to restrict the maximum amount which can be recovered for capital expenditure to 2.5% of the charge net of copyright charges, satellite fees and VAT for basic services.

Question 3.5.1

Do you agree with the proposed manner of allowing the recovery of capital expenditure described above? If you do not agree please outline factors that should be taken into account in arriving at an appropriate manner in which to allow the recovery of capital investment associated with the delivery of the basic package on a digital platform.

Question 3.5.2

The Director is of the opinion that apportionment of capital expenditure for cost recovery purposes should be in the same proportion to projected turnover from each service over the remaining period of the licence. Do you agree? If you do not agree, what alternatives do you suggest?

3.6 Customer Service

A potential difficulty associated with CPI-X type price regulation is that it may lead to operators reducing service levels rather than improving efficiency. The Director is anxious to ensure that there is a financial incentive for operators to develop and maintain a high level of customer service. Failure to reach and maintain a high level of customer service could be taken into account either through the price control mechanism or by means of direct compensation to subscribers by operators.

Incorporating the customer service factor into the price control mechanism would require the establishment of a quality index and quality targets. A quality index would require large amounts of data, values would need to be associated with marginal improvements in quality and relative weightings assigned. Quality targets would need to be established by the operators subject to the approval of the ODTR on behalf of customers and, in order to be manageable, would need to be simple and unambiguous.

The Director favours a system whereby operators compensate subscribers for breaches of customer service levels. In practice this would mean that operators would be required to

- develop a customer charter and circulate it to all their subscribers
- obtain and maintain a recognised quality accreditation
- publish quality of service statistics on a regular basis.

The measures of customer service to be included in the customer charter could include such measures as:

- speed of response to calls
- speed of response to correspondence
- speed of fault correction
- billing and administrative accuracy
- customer complaint resolution
- price increase notifications to customers

Question 3.6.1.

Do you agree that operators should compensate customers for breaches of service levels? If you do not agree, please give reasons.

Question 3.6.2.

Do you consider that customer service should be an element in the chosen price regulation mechanism? If you do not agree please give reasons in support of your answer.

Question 3.6.3.

What further measures of customer service, if any, should be incorporated into the customer charter?

4.0 Administrative Provisions Relating to Price Control Mechanism

4.1 Price Control period

The duration of a price control mechanism is clearly an important issue. If a price control mechanism were to be set for an indefinite period and never reviewed, either excessive profit would build up or the firm would go out of business. On the other hand, too short a period would destroy the important advantage of certainty and incentive to greater efficiency.

The choice of an appropriate price control mechanism period is a balance between the desire to provide a degree of planning certainty for the operators and the need to retain a degree of flexibility for the Director. The Director is proposing a period up to 31 December 2002 before the mechanism is reviewed.

Question 4.1.1

Do you agree that the initial price control mechanism period should be set for 3 years? If you do not agree, please state your reasons and suggest alternatives.

4.2 Annual Submission

It is proposed that the chosen review mechanism would come into operation from 1 October 1999. Operators could apply for a price adjustment on or after that date provided they have not had a price adjustment approved in the previous 12 months. The percentage increase in the CPI since their last review would be taken as the allowable rate increase factor to be included in the formula. Rate changes that are approved but not implemented by the operator within 12 months may not be carried forward for implementation in later years. The Director will give her decision on applications within a period of no longer than 8 weeks, provided all appropriate details are supplied.

Question 4.2.1.
Do you agree with this proposal? Are there any additional aspects of the formula that should be considered?

Question 4.2.2

Do you agree that approved rate increases that are not implemented within 12 months should not be carried forward for implementation in following years? If you do not agree, please state your reasons.

4.3 Scope and Application of the Price Control Mechanism

The price control mechanism only applies to basic programme services on cable and MMDS. It does not apply to premium television services, to telephony or to other services which are provided by the operator. The price control mechanism does not cover new services apart from the basic programme services since to do so would reduce the incentive for the introduction of such new services.

Price control can operate either at the level of the individual service or be averaged across a basket of services. Where the price control mechanism operates on the basis of a basket of services, the operator is free to increase or decrease the individual service elements by more than the allowed overall price control mechanism amount so long as the weighted average increase does not exceed the price control mechanism. It is proposed that the price control will apply separately to the basic rate service, connection charges and commercial rates.

The price control mechanism can apply to the revenue base of the operator or to the cost base. It is proposed to apply the price control mechanism to the revenue base which would automatically ensure that a profit element is built into the mechanism on the assumption that the operators are providing services on a commercial basis. If there are cases where costs are greater than revenues there will be an incentive for such an operator to decrease the cost base.

Question 4.3.1

Do you agree that the price control mechanism should apply separately to the individual services? If you do not agree please give reasons in support of your answer.

Question 4.3.2

Do you agree that the price control mechanism should be applied to the revenue base? If you do not agree please give reasons in support your answer.

4.4 Billing arrangements

The standard mechanism is for operators to charge an annual sum in advance to subscribers. Where operators propose to facilitate subscribers by allowing payment for periods of less than one year the operator will be required to seek the Director's prior approval for such charges.

It is proposed that the subscription amount would be regarded as a loan with a defined number of payments made throughout the year with the payments occurring at the commencement of the relevant periods and having a constant interest rate. The interest rate to be allowed in the calculation of the payment amount in such circumstances will be a rate such as the Dublin Inter Bank Offer Rate (DIBOR) with an allowed margin. The annual percentage rate applied by the operator must be clearly highlighted to subscribers.

It is proposed to allow the recovery of additional administration costs arising from periodic billing by allowing the operator to apply an additional charge of £1 per additional payment for all subscribers who do not pay annually. The Director would expect companies to minimise their additional administrative costs by applying discounts for customers who make direct debit arrangements.

Question 4.4.1

Do you agree with the approach outlined in respect of multi-period billing? If you do not agree please give reasons in support of your answer.

4.5 Satellite and UK Terrestrial Programming Costs

In the case of operators' programming, standard practice in the past has been to allow these, where they apply to the basic service, to be passed on to domestic subscribers. However, the Director is concerned that every effort must be made to minimise any proposed increases in such costs during negotiations with satellite programming suppliers and rights holders.

Options which are possible are to:

- restrict the level of cost increase which could be passed through to subscribers to the increase in the relevant inflation index in the country of origin
- treat such costs as part of the overall cost base of the operator and allow price increases up to the level of the price control mechanism
- allow full pass through of satellite and U.K. terrestrial programming costs.

The Director favours restricting the increase allowed to the increase in the relevant inflation index in the country of origin.

Question 4.5.1

Do you agree with the approach towards allowing the pass through of satellite and U.K. terrestrial programming costs? If you do not agree please outline alternative options that could be considered which will encourage operators to minimise the level of cost increase for consumers.

4.6 Connection Charges

Connection charges levied by cable and MMDS companies contribute towards the cost of installing the equipment necessary to connect subscribers to the relevant network. In the case of MMDS the charges is in respect of the provision of the receive antenna and associated fixed equipment and cabling. In the case of cable, the charge covers the physical connection of a system outlet in a subscriber's premises to the cable network.

The cost of connecting subscribers varies depending on a number of factors and the general practice in the case of cable was for the operator to apply for consent to a specific fixed charge for "standard" connections where the cost would be fairly equal and for "non-standard" charges where unique features apply. Connection charges for MMDS have not heretofore been subject to prior approval. The Director is minded to review the issue of connection charges and will, in the interim, allow operators to continue to apply the previously approved charges in respect of cable and, in the case of MMDS, the charges which licensees applied prior to the surrender of licences under the 1989 regulations may also continue. The Director's consent to the continuation of these charges is a temporary measure only while the costs involved are investigated. The consent will expire no later than 31 December 1999, at which point the Director will have considered applications by licensees for consent to their proposals for future charges.

Question 4.6.1

What factors should be considered in assessing the level of standard connection charges?

Question 4.6.2

Under what circumstances would standard connection charges be inappropriate and in such cases what factors should apply?

4.7 Commercial Charges

The main thrust of regulation is in relation to residential charges. However, licensees are also required to obtain the Director's consent for charges to other categories of subscribers. The Director is minded to permit a temporary continuation of existing practices in relation to charges for non residential subscribers pending an examination of the issues involved.

Question 4.7.1

What factors should be taken into account by the Director in the regulation of prices for non-residential subscribers?

4.8 Prices for the provision of authorised MMDS service within cabled areas

Within areas licensed for the provision of cable services, MMDS may not be installed without the consent of the Director. This consent may be given only where the cable licensee agrees that MMDS may be installed or where the Director considers that the cable licensee is unreasonable in refusing to provide a cable service.

In cases where the Director gives consent to the provision of an MMDS service within a cabled area, she is minded to restrict the price which is charged for such service to a maximum of the price which applies for the cable service. The reason for this approach is the legitimate expectation of subscribers within a cabled area that they would receive a cable service. MMDS charges are generally higher than those which apply in the case of cable and the Director considers that the application of the MMDS price would therefore be inequitable.

As MMDS generally does not provide the same range of programme services and does not have the same degree of functionality, the Director also considers that a discount from the cable price should also apply. Such a discount would be calculated by reference to the differential in the number and range of programme services between the MMDS service and the cable service.

Question 4.8.1

Do you agree with the Director's proposals in this regard? If you do not agree please provide reasons.

4.9 Market Consolidation

The development of the market for cable and MMDS services over the period of the price control mechanism is difficult to predict and over such a period it is possible that consolidation between operators will take place.

Given the synergies that encourage such consolidations, the Director would expect that over time the service offerings for all affected consumers would rise. In any such consolidation the Director would also wish to ensure that consumers, even in the short term, would be no worse off.

Question 4.9.1

Do you agree with the above proposals? If you do not agree, what mechanisms should be put in place to protect the interests of consumers in the event of possible market consolidation?

4.10 Convergence

The future development of the Cable and MMDS industry is difficult to predict with certainty but it is likely that additional services will be offered to consumers from operators. On cable, such services may include telephony services, Internet services and other added value services. Similar services, with the exception of telephony, may be available on MMDS. The Director is anxious to ensure that full accounting separation is maintained between the various business streams and that there is visibility of costs between the regulated and any unregulated businesses.

Question 4.10.1

Do you agree that there should be full cost visibility and accounting transparency between the services offered by operators? If you do not agree, please provide reasons in support of your answer.

5 Submitting comments

The consultation period will run from 16 June 1999 to 28 July 1999 during which the Director welcomes written comments on any of the issues raised in this paper. The Director regrets that she will be unable to enter into correspondence with persons contributing comments on this consultation paper. However, having analysed and considered the comments received, the ODTR will review the price control mechanism and publish a report on the consultation.

All comments are welcome, but it would make the task of analysing responses easier if comments were referenced to the relevant question numbers from this document. In the interests of promoting openness and transparency, the ODTR will summarise the comments received in a report on the consultation. The Director appreciates that many of the issues raised in this paper may require respondents to provide a considerable amount of commercially sensitive information if their comments are to be meaningful. Such information will be treated as strictly confidential. Respondents are requested to identify confidential material clearly and if possible to include it in a separate annex to the response. If possible, comments should be submitted in electronic form, by email or on diskette.

All responses pursuant to this consultation should be clearly marked "Reference: Submission re ODTR 99/37" and sent by post, facsimile or e-mail to:

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to arrive before close of business on 28th July 1999.

Office of the Director of Telecommunications Regulation
Wednesday 16th June 1999.

This consultation paper does not constitute legal, commercial or technical advice. The Director is not bound by it. The consultation is without prejudice to the legal position of the Director or her rights and duties under legislation.

Appendix 1

Price control

15. (1) The licensee shall obtain the prior consent in writing of the Director to the prices that he or she proposes to charge for distributing the licensed programme services specified in Part VII of the licence and for installing or providing the means necessary to receive licensed programme services and any subsequent change to any of those prices during any period of exclusivity under the licence.

(2) The Director may, from time to time, review the manner in which paragraph (1) of this Regulation is implemented and may engage in such public consultation (if any) as he or she considers appropriate.

(3) The Director may, from time to time, during any period of exclusivity relating to any licence, investigate the prices being charged by a licensee in respect of the distribution by him or her of licensed programme services, other than those specified in Part VII of the licence, to the subscribers to such services and may, having considered the results of such an investigation, direct that any such prices be altered with effect from a specified date, and any such direction by the Director shall be complied with by the licensee with, if necessary, an appropriate rebate being allowed to any such subscriber either, at the discretion of the licensee, by means of a cash refund or by means of a discount of equivalent value against future subscription charges.

(4) The Director may, from time to time, after the expiration of any period of exclusivity relating to any licence, investigate the prices being charged by a licensee in respect of the distribution by him or her of licensed programme services to the subscribers to such services and may, having considered the results of such an investigation, direct that any such prices be altered with effect from a specified date, and any such direction by the Director shall be complied with by the licensee with, if necessary, an appropriate rebate being allowed to any such subscriber either, at the discretion of the licensee, by means of a cash refund or by means of a discount of equivalent value against future subscription charges.

(5) The Director may, if he or she sees fit, require a licensee to provide a report prepared by a person who is qualified under the Companies Act, 1963, for appointment as auditor of a company for the purposes of conducting an investigation under paragraph (3).

(6) Whenever, as a result of an investigation under paragraph (3), the Director proposes to direct that any prices charged by the licensee concerned be altered, the Director shall serve on the licensee a notice in writing stating the reasons for his or her proposal and the licensee may, within 1 month thereafter, apply to the Director to reconsider his or her proposal or to refer the proposal to an independent arbitrator to be appointed by agreement between the licensee and the Director.

(7) The decision of the Director or the arbitrator on such application or reference, as the case may be, shall be final.

Appendix 2

Consumer interests

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(1) The licensee shall implement an appropriate code of practice for handling complaints in respect of the distribution by him or her of licensed programme services.

(2) Without prejudice to paragraph (1), the code of practice referred to in that paragraph shall make provision for the following matters:

(a) a first point of contact for members of the public;

(b) a means of recording complaints;

(c) a timeframe within which the licensee shall respond to complaints;

(d) procedures for resolving complaints;

(e) retention of records of complaints (including copies of the complaint, any response thereto, any determination by an independent commissioner in respect of the complaint and any documentation considered by such a commissioner in the course of such determination) for a period of not less than one year following resolution of the complaint.

(3) The Director may, from time to time, issue directions to the licensee specifying any modifications or additions that he or she considers should be made to the code or as to the publication, re-publication, implementation or further modification of the code.

(4) Without prejudice to paragraph (2) (d), the Director may establish or approve of a dispute resolution procedure and the licensee shall participate in good faith in any such procedure and shall comply with any decision made in accordance therewith.

(5) The licensee shall ensure that the licensed programme services distributed in accordance with the licence comply with any requirements with regard to electronic programme guides notified to the licensee from time to time by the Director and with any other laws for the time being in force.

(6) If specialised means for decoding are supplied by the licensee to members of the public to enable the reception by them of the licensed programme services distributed by the licensee, the licensee shall separately identify any charges imposed for the provision of those means. The licensee shall not restrict the ability of members of the public to lawfully obtain any specialised decoding means required to receive licensed programme services from a source other than the licensee.

Cable Licences 1999 Regulations

Company	Licensed	Number of Channels (Basic Service)	Charges
	Area		
Cable Management Ireland	Arklow	13	IR£112.50
	Ashbourne	13	IR£126.50
	Athlone	13	IR£126.50
	Ballina	13	IR£126.50
	Buncrana	13	IR£ 80.50
	Carlow	13	IR£126.50
	Castlebar	13	IR£126.50
	Celbridge	13	IR£126.50
	Clonard Est.	13	IR£ 91.00
	Donegal	13	IR£ 91.00
	Enniscorthy	13	IR£112.50
	Greystones	13	IR£112.50
	Kildare	13	IR£126.50
	Malahide	13	IR£126.50
	Maynooth	13	IR£126.50
	Mullingar	13	IR£126.50
	Naas	13	IR£112.50
	Navan	13	IR£112.50
	Newbridge	13	IR£112.50
	New Ross	13	IR£112.50
	Portlaoise	13	IR£126.50
	Sligo	13	IR£126.50
	Swords	13	IR£126.50
	Tullamore	13	IR£126.50
	Tullow	13	IR£ 91.00
	Wicklow	13	IR£112.50
Cablelink Ltd	Dublin	15	IR£102.50
	Waterford	15	IR£109.00
	Galway	15	IR£118.50
Casey TV Rentals Ltd	Dungarvan	23	IR£135.00

Cable Licences 1999 Regulations contd.

Cork Communications Ltd*	Cork City & Carragaline,	15	IR£160.00
	Cappoquin Lismore & Tallow	13	IR£160.00
Independent Wireless	Athy	11	IR£ 87.00
Cable Ltd*	Portarlington	11	IR£ 87.00
	Limerick City	13	IR£127.00
	Nenagh	12	IR£ 86.16
	Ennis	12	IR£139.00
	Shannon	13	IR£147.00

* PHL Group

MMDS Licences 1999 Regulations

	Licensed	Number of Channels (Basic Service) *	Charges
Company	**Cells**		
Cable Management Ireland			
Sligo & Donegal	1,2,3 & 6	8+3	IR£129.00
Cablelink			
Dublin	16	9+3	IR£145.00
Waterford	27	9+3	IR£145.00
Galway & Mayo	4,5 & 13	9+3	IR£145.00
Cork Communications			
Cork , Kerry & West Waterford	25,26, 28 & 29	9+3	IR£179.00
Independent Wireless			
Cable Ltd			
East Coast	17,22,& 23	9+3	IR£179.00
Kerry, Clare & Limerick	18,19 & 24	9+3	IR£179.00
Midlands	10,11,14 &15	9+3	IR£179.00
North East	7,8,9 & 12	9+3	IR£179.00

* Channels consist of channels directly retransmitted via MMDS and channels received off air (RTE 1, Network 2 and Telefis na Gaeilge)

Cable Licences, 1974 Regulations

Company	Licensed Area	Number of Channels (Basic Service)	Charges
Suir Nore Relays Ltd	Cashel	13	£103.00
	Clonmel	14	119.00
	Kilkenny	16	£115.00
	Thurles	14	£126.00
	Tipperary	14	£110.00
Berney Crossan	Longford	14	£59
Emmet Electrical Ltd.	Boyle	8	£75.00
Bagenalstown Cable TV Ltd.	Bagenalstown	10	£40.00
Orlynn Park Amenities Ltd.	Orlynn Park, Lusk	11	£25.00
Clane Cables Systems	Clane	13	£90.00
Smyths Audio & Video	Cavan	19	£50.00

MMDS Licences, 1989 Regulations

Company	Licensed Cells	Number of Channels (Basic Service)*	Charges
Suir Nore Relays Ltd./MMDS TV Ltd.	20 + 21	8 + 3	£140

* Channels consist of channels retransmitted via MMDS and channels received off air (RTÉ 1 , Network 2 and Telefís na Gaeilge).