



# **Renewal of the MMDS licences in force at 18 April 2014 in the 2.6 GHz band from 19 April 2014 to 18 April 2016**

Response to Consultation and Decision

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# Content

<b>Section</b>	<b>Page</b>
Executive Summary .....	5
1 Introduction.....	6
2 Background .....	9
2.1 Review of the operation of existing MMDS licences in the 2.6 GHz band.....	9
2.2 Extent of new 2.6 GHz spectrum usage rights .....	11
2.2.1 ComReg's position as per Consultation 12/132.....	11
2.3 Timing of new 2.6 GHz spectrum usage rights.....	12
2.3.1 ComReg's position as per Consultation 12/132.....	12
3 Regulatory Impact Assessment .....	15
3.1 ComReg's draft RIA as per Consultation 12/132.....	15
3.2 Summary of responses received.....	15
3.3 ComReg's response.....	16
3.4 ComReg's position .....	18
4 ComReg's proposal.....	19
4.1 ComReg's proposal as per Consultation 12/132.....	19
4.2 Summary of responses received.....	20
4.2.1 Summary of respondents' reasons for renewal longer than ComReg's proposal .....	21
4.2.2 Summary of respondents' reasons for renewal shorter than ComReg's proposal .....	22
4.3 Analysis of responses received.....	23
4.3.1 Analysis of reasons for renewal longer than ComReg's proposal.....	24
4.3.2 Analysis of reasons for renewal shorter than ComReg's proposal .....	26
4.3.3 ComReg's reasons and justification for a 2 year renewal of licences in force at 18 April 2014 in the 2.6 GHz band .....	27
4.4 ComReg's final position .....	27
5 Decision.....	29
6 Next Steps.....	32

## Executive Summary

The Commission for Communications Regulation (“ComReg”), in its capacity as manager of Ireland’s radio spectrum, has consulted on the future use of the 2.6 GHz (2500 to 2690 MHz) spectrum band, which is currently licensed in the State for the provision of pay-TV services, re-transmitted and distributed using apparatus for Multipoint Microwave Distribution Systems (“MMDS”).

The original rationale for issuing MMDS licences was to enable television viewers, in mainly rural areas that were not served by a cable television service, to receive a multi-channel TV service (other than by free-to-air means). At that time there was no alternative source of TV for viewers in rural areas, however, today there are other options such as free-to-air digital terrestrial TV (Saorview) and pay and/or free-to-view satellite services.

On 18 April 2014, all MMDS licences in force are due to terminate and the existing rights of use to 2.6 GHz spectrum are due to expire with those licences. On 6 December 2012, ComReg published a consultation and draft decision paper (Consultation 12/132) in which it set out its proposal to renew those MMDS licences in the 2.6 GHz band, which are still in force on 18 April 2014, for an additional period of two years from 19 April 2014 until 18 April 2016. This would be carried out in accordance with the Wireless Telegraphy (Multipoint Microwave Distribution System) Regulations 2003 which provides for such possible renewal for a maximum period of 5 years.

There are possible alternative uses of the 2.6 GHz band, including next generation mobile broadband (NGMB) services. ComReg engaged Aegis Systems limited and Plum Consulting to review the technical feasibility of sharing the 2.6 GHz band between MMDS and NGMB and to analyse the costs and benefits to Ireland of an early release of the band for non-broadcasting purposes as an alternative to renewing the current MMDS licences to 2019. Aegis and Plum’s report (ComReg Document 11/80a) was published in November 2011. Consultation paper 12/132 included a response by Aegis and Plum to comments received in relation to its earlier report and also set out ComReg’s preliminary position on the issues raised.

ComReg, having considered all relevant information before it, including submissions received from all interested parties including the incumbent MMDS licensee and certain of its customers, intends to renew all MMDS licences in the 2.6 GHz band which are in force on 18 April 2014 for a further period of two years, so that all such licences may remain in force until 18 April 2016 at which date they will expire together with all associated spectrum rights of use. This paper sets out and explains ComReg’s decision and the basis for it.

# 1 Introduction

- 1.1 On 6 December 2012, the Commission for Communications Regulation (“ComReg”) published a consultation and draft decision paper on its proposal to renew the Microwave Multipoint Distribution System (“MMDS”) licences in the 2.6 GHz band which are still in force on 18 April 2014. ComReg proposed renewing the licences for a period of two years, from 19 April 2014 until 18 April 2016 (Consultation 12/132).<sup>1</sup>
- 1.2 This paper sets out ComReg’s response to Consultation 12/132 and its final decision to renew all MMDS licences in the 2.6 GHz band which are in force on 18 April 2014 for a further period of two years, until 18 April 2016, at which date all such licences and all associated spectrum rights of use shall expire.
- 1.3 The 2.6 GHz (2500 to 2690 MHz) band is currently licensed in the State for the provision of pay-TV services re-transmitted and distributed using apparatus for MMDS. The existing rights of use to 2.6 GHz spectrum are set out in the MMDS wireless telegraphy licences (“MMDS licences”) which were granted under the *Wireless Telegraphy (Multipoint Microwave Distribution System) Regulations 2003* (S.I. 529/2003) (“2003 Regulations”).
- 1.4 The 2003 Regulations provide that all MMDS licences in force on 18 April 2014 are due to expire on that date. However, the 2003 Regulations also provide that ComReg shall review the operation of all such licences and subject to such terms and conditions as may be specified by it, ComReg may renew any such licences which are in force on 18 April 2014 for a further period of up to 5 years. Whilst the possibility for renewing the MMDS licences must be considered, ComReg is also aware that expiry of the MMDS licences gives rise to the possibility of making new spectrum rights of use available in the 2.6 GHz band.
- 1.5 ComReg will undertake a competitive award process for the 2.6 GHz band, so that when the existing MMDS licences expire new rights of use can issue on a service and technology neutral basis (by means of new licences). As a result, holders of the new rights of use may choose to provide any service capable of being delivered using 2.6 GHz spectrum. For instance, they could distribute television programming content, subject to complying with the relevant technical conditions and with **any** necessary broadcasting content authorisations, or they could adopt some other use.

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<sup>1</sup> ComReg Consultation 12/132 – Future of the 2.6 GHz radio spectrum band “Publication of Consultation and Draft Decision on proposal to renew the MMDS licences in force at 18 April 2014 in the 2.6 GHz band from 19 April 2014 to 18 April 2016”, which was published on 6 December 2012.

- 1.6 Consultation paper 12/132 addressed submissions from interested parties on the future use of spectrum in the 2.6 GHz band. The paper also set out ComReg's review of the operation of MMDS licences, as required by Regulation 8(1) of the 2003 Regulations, and it included a Draft Decision on ComReg's proposal to renew the current MMDS licences for a period of 2 years, from 19 April 2014 until 18 April 2016.
- 1.7 ComReg also stated, in Consultation 12/132, that it agreed with the findings of the report by Aegis and Plum (Document 11/80a) which concluded that sharing of the 2.6 GHz band between MMDS and alternative services was not likely to be feasible and that the better solution, from a national economic perspective, would be to release rights of use in the 2.6 GHz band on a service and technology neutral basis, as early as possible. This remains ComReg's view, having taken into account all of the responses to Consultation 12/132, and it is one of the grounds for ComReg's decision to renew all MMDS licences for a period of two years.
- 1.8 ComReg stated in Consultation 12/132 that it recognised that the process of releasing new rights of use in the 2.6 GHz band would take some time. ComReg informed interested parties that the details of any future potential award of rights of use in the 2.6 GHz band would be addressed in a separate consultation. In particular, ComReg identified the following main matters which would affect the earliest possible commencement of new rights of use in the 2.6 GHz band:
- Consulting on all relevant matters for any potential award including such as the potential for a joint award with other suitable spectrum bands having regard to international trends and future demands for spectrum. ComReg notes that rights of use to the 2.3 GHz spectrum band for example might usefully be considered in this regard;
  - Achieving a practical timetable for awarding new rights of use to 2.6GHz spectrum (and any other spectrum band), consulting and settling on same. This may involve stakeholder workshops and/or time to test any functionality intended to achieve an efficient award outcome; and
  - Conducting the competitive award process itself.
- 1.9 A draft RIA was published alongside Consultation 12/132, on possible timing options as to when new rights of use to 2.6 GHz spectrum in the State could be made available on a service and technology neutral basis. The final RIA is published herein.
- 1.10 In Consultation paper 12/132, ComReg expressed its then preliminary view that it would be technically and economically preferable to release the 2.6 GHz band on a service and technology basis as early as possible, but that because

that process was likely to take some time it would be appropriate to renew existing MMDS licences for a period of 2 years, after which those licences and the corresponding spectrum rights of use would expire altogether and new rights of use to 2.6 GHz spectrum would be made available, on a service and technology neutral basis. ComReg invited comments on this proposal and the following interested parties submitted responses:

- BT Ireland (“BT”);
- eircom and Meteor Mobile Communications Ltd (“eircom Group”);
- Hutchinson 3G Ireland Ltd (“H3GI”)
- Telefónica Ireland Ltd (“Telefónica”);
- UPC Ireland Ltd (“UPC”); and
- Vodafone Ireland Ltd (“Vodafone”).

1.11 All of the non-confidential versions of the above responses are set out in Document 12/132s, which is published alongside this document.

1.12 This document is structured as follows:

- **Chapter 1** is an introduction;
- **Chapter 2** sets out a summary of background information relevant to the Final Decision;
- **Chapter 3** sets out a summary of ComReg’s draft RIA and considers and addresses submissions received in respect of same. .
- **Chapter 4** sets out a summary of ComReg’s proposed decision, considers and addresses submissions received in respect of same, and concludes with ComReg’s final position;
- **Chapter 5** sets out ComReg’s Decision to renew the MMDS licences for two years following their expiry on 18 April 2014; and
- **Chapter 6** sets out next steps in relation to the future of the 2.6 GHz band.

1.13 Two annexes support the above chapters:

- **Annex 1** summarises ComReg’s statutory functions, objectives and duties relevant to the management of the radio frequency spectrum; and
- **Annex 2** contains ComReg’s final Regulatory Impact Assessment (final “RIA”).



## 2 Background

- 2.1 All MMDS licences in the 2.6 GHz band which are in force on 18 April 2014 are due to expire on that date. However, the Wireless Telegraphy (Microwave Multipoint Distribution System) Regulations 2003 (“2003 Regulations”) provide that ComReg shall review the operation of all such MMDS licences and, subject to such terms and conditions as may be specified by it, ComReg may renew any such licences which are in force on 18 April 2014 for a further period of up to 5 years, i.e. until 18 April 2019.
- 2.2 Consultation 12/132 considered the possibility of renewing the MMDS licences for some period of time, and the possibility of creating new rights of use in the 2.6 GHz spectrum band. Chapter 2 of Consultation 12/132 set out the background material in relation to ComReg’s review of the operation of the current MMDS licences along with its consideration of possible future uses and potential licensing options for the 2.6 GHz band. Chapter 2 also set out overviews of the following:
- the supporting legal framework;
  - the European context as it relates to the 2.6 GHz spectrum band and the EU’s views on MMDS use in the band; and
  - the operation of the existing MMDS licences setting out ComReg’s approach to that review.
- 2.3 These overviews are not repeated in full in this paper and interested parties are referred to Chapter 2 of Consultation 12/132. ComReg would however note that nothing received in the responses to Consultation 12/132 would cause it to alter, in any significant manner, any of its views as set out in Chapter 2 of Consultation 12/132.

### 2.1 Review of the operation of existing MMDS licences in the 2.6 GHz band

- 2.4 Since May 2010, ComReg has issued nine relevant documents on the future use of the 2.6 GHz spectrum. In reaching its final decision on the future renewal of existing MMDS licences, as set out herein ComReg, has had regard to all of these documents, together with all of the responses to same. These documents are as follows:
- **Document 10/38** Information Notice – Call for input on potential uses and future licensing options of the 2.6 GHz spectrum band;

- **Document 10/58s** Publication of submissions to ComReg Information Notice 10/38 – Views on future uses and licensing options of the 2.6 GHz spectrum band;
- **Document 11/80** Consultation Paper – Future of the 2.6 GHz radio spectrum band – Consultation sought views on extending the termination date of three MMDS licences in force in the 2.6 GHz band in Dublin, Galway and Waterford to 18 April 2014 and an update on the possibility of sharing the band between MMDS and any other services capable of using 2.6 GHz spectrum;
- **Document 11/80a** Consultancy report – Technical and economic study on Multipoint Microwave Distribution Systems and Next Generation Mobile Broadband Services in the band 2500 to 2690 MHz;
- **Document 11/80s** Submissions to Consultation 11/80;
- **Document 12/09 (Decision No. 3 of 2012)** Decision to extend the termination date of three MMDS licences in force in the 2.6 GHz band in Dublin, Galway and Waterford to April 2014 so that they would terminate on 18 April 2014 (the same date of expiry of the other seven MMDS licences in force in the band);
- **Document 12/132** (“Consultation 12/132”) Consultation and Draft Decision on proposal to renew the MMDS licences in force at 18 April 2014 in the 2.6 GHz band from 19 April 2014 to 18 April 2016;
- **Document 12/132a** Annexes 1 & 2 to Consultation 12/132; and
- **Document 12/132b**: Annex 3 to Consultation 12/132 - Aegis Systems Limited and Plum Consulting Response Document.

2.5 In addition to the above, in Section 2.4 of Consultation 12/132 ComReg set out five other considerations that it would have regard to in its review of MMDS licences in the 2.6 GHz band, namely (paragraph 2.19 of Consultation 12/132):

1. Feasibility of sharing the band, noting that this would affect the extent of any new spectrum rights that might be available for award in the future.<sup>2</sup>
2. Estimates of the likely net economic benefits of release of the band on a service and technology neutral basis in 2014 compared to delaying

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<sup>2</sup> Document 11/80a is Aegis and Plum’s report on “Technical and economic study on Multipoint Microwave Distribution Systems and Next Generation Mobile Broadband Services in the band 2500 to 2690 MHz.” (see Section 1.0 for a discussion of issues presented).

its release until 2019 and renewing the existing MMDS licences in their current form for that period;

3. Relevant EC Decisions;
4. EU's perspective on MMDS (as set out by the Radio Spectrum Committee<sup>3</sup>); and
5. International developments in relation to the uses of the 2.6 GHz band.

2.6 Based on this approach, ComReg conducted its review of the operation of the existing MMDS licences and set out its proposal to renew all of the of MMDS licences in force on 18 April 2014 for two years, from 19 April 2014 until 18 April 2016, after which the MMDS licences would expire altogether as would all associated spectrum rights of use.

## **2.2 Extent of new 2.6 GHz spectrum usage rights**

### **2.2.1 ComReg's position as per Consultation 12/132**

- 2.7 Chapter 3 of Consultation 12/132 began by referring to ComReg's earlier question, in Document 11/80, in which it sought the views of interested parties on the possible allocation of 2.6 GHz spectrum using a technology and service neutral competitive process.
- 2.8 ComReg stated its view that a key consideration in responding to this question was whether it would be possible to share the 2.6 GHz spectrum between the existing MMDS service and any possible new services and, if so, what type of sharing arrangements might apply.
- 2.9 ComReg further stated that exploring these sharing issues would provide information on the potential extent of new rights of use to 2.6 GHz spectrum. For example, ComReg stated that if sharing was feasible then it might consider licensing both MMDS and NGMB in the 2.6 GHz band, but if sharing was not feasible then it would have to decide whether, after April 2014, the band should continue to be licensed for MMDS for a period of up to five years, or be made available immediately on a service and technology neutral basis.
- 2.10 Chapter 3 presented ComReg's assessment of, and response to, the views submitted by interested parties in respect of these sharing related issues. ComReg noted therein that its assessment of the feasibility of sharing the 2.6

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<sup>3</sup> The Radio Spectrum Committee ("RSC") is responsible for specific technical measures required to implement the broader Radio Spectrum Policy of the European Union. The RSC is composed of Member State representatives and chaired by the European Commission.

GHz band would form one part of its overall review of the operation of the existing MMDS licences and its ultimate decision as to whether to renew those licences for a further period of up to 5 years.

2.11 ComReg set out its preliminary position on the feasibility of sharing the 2.6 GHz band between next generation mobile broadband (“NGMB”) and MMDS services, in the timeframe up until April 2019, in paragraph 3.45 of Consultation 12/132 by noting, amongst other things, that:

- The potential benefits of channel sharing which could accrue in that narrow timeframe needs to be balanced against the cost and time taken to conduct necessary studies in order to implement sharing, and the practicalities of introducing methods to mitigate interference between different services in a shared 2.6GHz band; and
- Aegis and Plum’s views that further technical and economic analysis might only be justified if there is a real interest amongst stakeholders compared to the status quo.<sup>4</sup>

2.12 Having assessed Aegis and Plum’s initial analysis together with the views by respondents in respect of same, and having also considered Aegis and Plum’s follow-up report, ComReg remains of the view that the case for co-channel or adjacent channel sharing in the 2.6GHz band is so limited for technical reasons as to not be feasible. This is particularly the case given the relatively short time period remaining for the MMDS licences which, for the reasons set out elsewhere in this paper, will now expire on 18 April 2016. ComReg has therefore determined that it will not implement a framework which allows for sharing of spectrum in the 2.6GHz band before the existing MMDS licences terminate. This means, in effect, that the 2.6 GHz band will continue to be used exclusively for the provision of MMDS services until the current MMDS licences and the MMDS licensing regime end, in April 2016.

## **2.3 Timing of new 2.6 GHz spectrum usage rights**

### **2.3.1 ComReg’s position as per Consultation 12/132**

2.13 Having noted in Chapter 4 of Consultation 12/132 that the potential for sharing the 2.6GHz band was so limited as to not be feasible, ComReg stated that the possibility of renewing the current MMDS licences for a period of up to 5 years must be considered in the context of possible alternative uses of the 2.6GHz band. ComReg further stated that consideration of this issue required it to

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<sup>4</sup> See section 3.3 of Document 12/132b for Aegis and Plum’s preliminary conclusions on the sharing issues.

assess and weigh the likely economic benefits of releasing 2.6GHz spectrum on a service and technology neutral basis, with effect from April 2014, against delaying its release until some later date (for example up until April 2019).

2.14 ComReg took note of the analysis by Aegis and Plum of the economic benefits of releasing the 2.6 GHz band earlier as compared to delaying its release until 2019 (set out in Document 11/80a).<sup>5</sup> Aegis and Plum identified a base case and two scenarios on which to conduct its analysis:

- Base Case: Renew all MMDS licences up to 2019;
- Scenario 1: End all MMDS licences in 2014; and
- Scenario 2: Renew all MMDS licences from 2014 to the midpoint between 2014 and 2019.

2.15 Chapter 4.2.1 of Consultation 12/132 set out an overview of the views of the six respondents who commented on the economic analysis by Aegis and Plus. ComReg summarised their views, noting that four of the six (eircom Group, Vodafone, TO2 and H3GI) agreed with the methodology and approach taken by Aegis and Plum while two (UPC and L.A. Services) did not. ComReg also invited Aegis and Plum to analyse and comment on the six respondents' views and Aegis and Plum prepared a separate response Document 12/132b which was released alongside Consultation 12/132.

2.16 Chapter 4.2.2 of Consultation 12/132 set out a detailed overview of the views expressed by Aegis and Plum in Document 12/132b which is not repeated herein save to say that ComReg noted, in paragraph 4.22 therein, that Aegis and Plum did not consider that any of the respondents had presented information or an argument which would cause it to move away from, or amend, any of its conclusions as set out in Document 11/80a. Aegis and Plum thus considered that its original conclusions remained valid.

2.17 Chapter 4.3 of Document 12/132 set out ComReg's views on the issue of timing of new 2.6 GHz spectrum usage rights<sup>6</sup> and stated that ComReg agreed with Aegis and Plum's overall conclusion that the benefits of early release of 2.6 GHz spectrum would outweigh the costs. Chapter 4.4 set out the reason why ComReg did not agree with UPC's submitted arguments against holding a competitive process for new rights of use to 2.6 GHz spectrum in 2014.

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<sup>5</sup> In particular, ComReg noted that if the MMDS licences end in 2014, this would offer significant net benefits relative to scenarios where MMDS licences were extended up to 2019, based on Aegis and Plum's estimates the net benefits of release of the band in 2014 to range from between €16.5 to €41.4m (figures quoted relative to delaying the release of the band until 2019).

2.18 ComReg expressed the preliminary view, in Chapter 4.4 of Consultation 12/132, that the better option, from a national economic perspective, would be to release the 2.6 GHz band on a service and technology neutral basis as early as possible. In expressing this view, ComReg noted, amongst other things (paragraph 4.39 to 4.41), the following:

- Aegis and Plum's estimate that the net economic benefit to the Irish economy ranged between €16.8 and €41.5 million for a release of the band in 2014, as compared to scenarios where release was delayed.
- Information currently available to ComReg does not lead it to believe that the future of this spectrum band is one that should be confined to the existing spectrum usage rights;
- Awards of the 2.6 GHz band internationally demonstrate a strong leaning towards allocating spectrum usage rights on a service and technology neutral basis; and
- Recent evidence suggests potential demand for additional capacity spectrum bands in the State (e.g. demand in the recently completed Multi-band Spectrum Award ("MBSA")).

2.19 In summary, ComReg's preliminary view was that it would be technically and economically preferable to release the entire 2.6 GHz band on a service and technology neutral basis as early as possible.

2.20 ComReg was also of the preliminary view that the process to award new spectrum rights of use in the 2.6 GHz band would likely take some time to implement and for this reason ComReg proposed to renew the existing MMDS licences in the band so as to prevent the spectrum from lying fallow. The proposal, in Chapter 5 of Consultation 12/132, was to renew the existing MMDS licences under the 2003 Regulations for a period of 2 years, after which the licences and the corresponding spectrum rights of use would expire altogether and new rights of use to 2.6 GHz spectrum would be made available on a service and technology neutral basis.

## 3 Regulatory Impact Assessment

3.1 This Chapter considers the submissions related to ComReg's draft Regulatory Impact Assessment (RIA) as set out in Annex 2 of Document 12/132a. ComReg's final RIA can be found in Annex 2 of this document.

### 3.1 ComReg's draft RIA as per Consultation 12/132

3.2 In Chapter 5 of Consultation 12/132, ComReg conducted a draft RIA in accordance with ComReg's RIA Guidelines in order to assess the proposed timing as to when current MMDS licences would end and the 2.6 GHz band be re-released on a service and technology neutral basis. The two options considered in the draft RIA were:

- Option 1: All MMDS licences **terminate in April 2014**, with no renewal granted (i.e. the band would be available on a service and technology neutral basis from 2014 onwards); and
- Option 2: All MMDS licences **are renewed**. If licences were to be renewed then the crucial issue would be the duration of such renewal, noting that ComReg has discretion to renew licences for any period of up to five years (19 April 2014 up until to 2019).

3.3 ComReg set out its preliminary view that Option 1 was, on balance, the better option and the reasons informing this preliminary view were set out at Annex 2.0 of Consultation 12/132.

3.4 ComReg also set out its view that there were a number of practical implications associated with its preferred option and, as a consequence, that it would be likely that the time it would take to develop and complete a competitive process for new rights of use for the 2.6GHz band would be such that those new rights of use would not come into effect before April 2016. These practical considerations were set out in section 5.4 of Consultation 12/132 and they are summarised in Chapter 4 below.

### 3.2 Summary of responses received

3.5 While all six respondents to Consultation 12/132 commented on ComReg's indicated preferred timing as to when the 2.6 GHz band could be made available on a service and technology neutral basis, three of them (BT Ireland<sup>7</sup>,

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<sup>7</sup> BT Ireland raised a concern that "...taking three years to complete the auction and re-allocation process is unreasonable and contrary to Decision 2008/477/EC making ComReg's Decision open to appeal". ComReg responds that this concern has been considered in paragraph 2.12 in Consultation 12/132 and finds no reason to alter its position.

- H3GI and eircom Group) did not comment on the draft RIA or issues relevant to the draft RIA.
- 3.6 Telefónica agreed that it would be technically and economically preferable to release the band on a service and technology neutral basis and expressed the view that this should be done as early as possible. Telefónica further stated that *“ComReg has carried out a Regulatory Impact Assessment on whether to allow licences to terminate in 2014 or not, however no analysis as to the duration of the extension required has been presented.”*
- 3.7 Vodafone also agreed with Option 1, stating as follows: *“Vodafone is in general agreement with ComReg’s assessment of the full range of economic, and other factors associated as part of the draft RIA, and with the conclusion that Option 1 (termination of existing MMDS Licences in April 2014) should be favoured over option 2 (renewal of MMDS licences for a period up to 2019).”* However Vodafone also stated that it does not agree that existing MMDS licences should be renewed for a period of two years, until April 18 2016 (see Chapter 4 below).
- 3.8 UPC disagreed with ComReg’s analysis but acknowledged ComReg’s intent in the matter. UPC restated some of its earlier concerns about the impact the decision will have on UPC, being the incumbent holder of all MMDS licences in the 2.6 GHz band. UPC expressed the view that *“ComReg has made unviable any further investment plans by UPC in its MMDS network, thus an important opportunity for Ireland to secure an enhanced competitive environment for – Pay TV services on a nationwide basis has been lost”*.
- 3.9 UPC also expressed the view that a significant number of people, particularly in rural Ireland, will no longer have a choice of pay-TV provider and that BSkyB would become the *de facto* monopoly provider of pay-TV services throughout the State. UPC also expressed the view that *“ComReg has not given sufficient consideration to the impact this decision will have on UPC’s customers and this would appear to be at odds with two of ComReg’s key regulatory functions which include the promotion of competition and the protection of Irish consumers.”*

### **3.3 ComReg’s response**

- 3.10 Both Vodafone and Telefónica generally favour Option 1 though ComReg notes their stated concerns regarding the proposed two-year renewal of the existing MMDS licences, which both respondents consider excessive. The proposed renewal of the MMDS licences for two years was not discussed or considered as part of the draft RIA as it arose out of consideration of the practicalities of putting a competitive process in place to assign new 2.6 GHz rights of use, and the likelihood that this competitive process will not be completed by April 2014.



- 3.11 With regard to UPC's submission, ComReg considers that UPC has provided no evidence to demonstrate that it has, or had, any future investment plans to secure an enhanced competitive environment for Pay-TV services, using MMDS technology. As set out in the draft RIA, the continuing decline in MMDS subscriptions, combined with recent price increases by UPC, suggests that the competitive dynamic described by UPC is not observable in the market for Pay-TV services.<sup>8</sup>
- 3.12 With regard to UPC's stated concerns regarding the impact of ComReg's proposed decision on UPC's customers, ComReg considers that it has from the outset given full and proper consideration to the likely impact of its proposed decision on UPC's MMDS customers. Paragraphs 2.94 to 2.106 of the draft RIA (see Annex 2 of Document 12/132a) deal exclusively with the likely impact on UPC's customers. This analysis was in part informed by the Aegis and Plum analysis of the switching costs likely to be incurred by those customers at the end of the current licences.
- 3.13 Furthermore, ComReg is required to consider the effect of its proposed decision on all consumers who could benefit from future utilisation of the 2.6 GHz spectrum on a service and technology neutral basis, and not just existing MMDS customers, which at Q4 2012 had declined to just 45,600 subscribers compared to a high of 114,512 subscribers in 2006. ComReg, therefore, also considered the potential benefit of alternative services, the most likely of which is mobile broadband services.<sup>9</sup>
- 3.14 The issue of whether a satellite pay-TV operator could price discriminate in rural areas was discussed in paragraph A 2.84 of the draft RIA. UPC has not provided any evidence of actual or potential price discrimination for pay-TV services in rural areas and ComReg notes that BSkyB maintains a national pricing scheme in spite of the substantial decline in MMDS subscribers (to 45,600 subscribers from a high of 114,512 subscribers in 2006). This suggests that some viewers consider the possibility of free-to-view digital terrestrial television ("DTT") services in combination with free-to-view satellite services areas as a viable multi-channel TV alternative.

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<sup>8</sup> See paragraph A2.78 in Document 12/132a "A 2.78 ComReg does not consider that the current number of MMDS subscribers is of sufficient magnitude (less than 5% of overall pay-TV viewers) to affect the competitive dynamic in the pay-TV market as competition is mainly driven by the cable and satellite interactions (i.e. via UPC's cable network competing against BSkyB's pay-TV satellite network), while this dynamic is also increasingly affected by bundled pay-TV and broadband services. Added to this mix is the growing impact of DTT and free-to-view satellite TV which dampens the argument that MMDS keeps the competitive tension in the multi-channel pay-TV market."

<sup>9</sup> In this regard, paragraph 2.26 of Document 12/132a concludes that "A much broader range of electronic communications services, likely to be attractive to a larger number of customers can be offered with a service and technology neutral licence than with an MMDS licence which can only support one service."

3.15 ComReg must weigh the short-term disruption to a relatively small user group, specifically UPC's pay-TV customers through its MMDS network, against the potential benefits of re-releasing the entire 2.6 GHz spectrum band as soon as possible to those providers of electronic communications services who value it most, thereby maximising the efficient use of that band to the possible benefit of all users of electronic communications services in the State. In reaching its decision, ComReg has noted that UPC's remaining MMDS customers will likely have to migrate to an alternative platform in any event, as the current MMDS licences would expire in April 2019 at the very latest. It is therefore essentially a question of *when* the remaining MMDS customers shall have to migrate. ComReg, having taken into account all relevant factors, considers 18 April 2016 an appropriate date for all remaining MMDS licences to expire. In setting this date, ComReg has taken into account the requirement for UPC's remaining MMDS customers to be able to obtain their pay-TV service elsewhere, and ComReg notes that a number of substitutable services are available on other platforms at comparable prices. In this regard, it is worth noting that the rationale for the original issuing of MMDS licences was to enable television viewers in mainly rural areas to receive a multi-channel TV service. There were no alternative multi-channel TV services available for viewers in rural areas at that time whereas today there is free-to-air digital terrestrial TV (Saorview) and pay and/or free-to-view satellite services.

### **3.4 ComReg's position**

3.16 ComReg, having considered all responses concerning its draft RIA, is of the view that it has not received any information which would cause it to amend its preference for Option 1, as expressed in Consultation 12/132. ComReg therefore maintains its preference for Option 1, subject to the practical implications set out below. The final RIA is set out in at Annex 2 of this document.

## 4 ComReg's proposal

4.1 In Chapter 5 of Consultation 12/132 ComReg proposed that it would renew all of the existing MMDS licences in the 2.6 GHz band for a period of 2 years beyond their current expiry date of 18 April 2014, after which the licences and the corresponding spectrum rights of use would expire altogether. ComReg has now decided that it intends to proceed in this manner by renewing the MMDS licences for 2 years. This chapter summarises and addresses submissions received on ComReg's proposal and concludes by setting out ComReg's position and Final Decision.<sup>10</sup>

### 4.1 ComReg's proposal as per Consultation 12/132

4.2 For the reasons set out in Chapters 3 and 4 of Consultation 12/132 (as summarised in Chapter 2 above and in this chapter), ComReg set out its preliminary view that it was technically and economically preferable to end the current MMDS licences as soon as possible and re-release the 2.6 GHz spectrum band on a service and technology neutral basis, by means of a competitive award process.

4.3 ComReg, however, also concluded that the 2.6 GHz band could be left fallow for some period of time if the existing MMDS licences were to expire in April 2014. The reason for this was the time needed to develop and complete a competitive award process for the granting of new, replacement rights of use in the 2.6 GHz band, on a service and technology neutral basis. From its experience, ComReg considered that this process was unlikely to be completed until early 2016.

4.4 Section 5.4 of Consultation 12/132 explained the practical reasons why new spectrum rights of use in the 2.6 GHz band could not be made available in 2014.<sup>11</sup> ComReg also expressed its belief that that while the number of MMDS subscribers is in relative terms low (and falling), these remaining subscribers should be afforded a reasonable time to move to another platform, if as a result of the proposed competitive process for new spectrum rights of use it should transpire that MMDS does not continue in the band.

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<sup>10</sup> ComReg noted that this course of action would provide for the availability of the new service and technology neutral 2.6 GHz spectrum rights.

<sup>11</sup> The practical reasons set out by ComReg in Section 5.4 related to it forming its views on (1) The possibility of jointly making rights of use to spectrum in other bands available with any new rights of use to 2.6 GHz spectrum (for example in the 2.3 GHz band); (2) Potential spectrum efficiency measures including any functional/technical and economic considerations that might need to form part of a service and technology neutral competitive process; and (3) The types of conditions attaching to the rights of sue to 2.6 GHz spectrum. In addition ComReg stated that it did not wish to fetter its discretion to consult extensively and properly on all relevant matters for any potential future award.

4.5 ComReg's preliminary view in Consultation 12/132 was that there was merit in allowing the current MMDS service to remain in effect until such time as the future competition for the 2.6 GHz band has been completed and new licences in respect of the 2.6 GHz band have been granted. ComReg thus considered that it was justified and proportionate to leave the current MMDS offering in place until it becomes necessary to end it, which is unlikely to be earlier than April 2016. On this basis, ComReg proposed that it would renew the MMDS licences for two years, until 18 April 2016, in accordance with Regulation 8 of the 2003 Regulations.

4.6 ComReg sought views on its proposals as follows:

*“Q.1 Do you agree with the analysis set out in this chapter? Please provide reasons, evidence and other relevant material in support of your view.”*

## 4.2 Summary of responses received

4.7 Respondents' comments mainly relate to the proposed two-year renewal period of the MMDS licences. While all respondents agreed that renewal of the MMDS licences for some period is appropriate, there were differing views as to the optimal period of renewal.<sup>12</sup> The various licence renewal periods which each of the respondents considered most appropriate were as follows:

- BT Ireland - 6 months (October 2014)
- Telefónica - 10 months (February 2015)
- Vodafone - 12 months (April 2015)
- UPC – 36 months (April 2017)
- eircom Group - 5 years (April 2019) though subject to a mechanism whereby the renewed licences could be terminated at one year's notice should the competitive award process be completed before the end of the 5-year renewal period

4.8 Some Respondents also sought clarification on the reasons behind ComReg's proposal for a two-year renewal period and expressed views that ComReg's

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<sup>12</sup> HG3I did not express a preference for a renewal duration but instead claims it *“...is concerned that ComReg has not provided a reasonable estimate of when it expects to issue rights of use in respect of the 2.6 GHz band on a service and technology neutral basis.”* It is ComReg's current intention to make new rights of use to 2.6 GHz spectrum available by April 2016 although the exact timing may become clearer following completion of upcoming consultation(s) on the award process for new rights of use to 2.6 GHz spectrum.

stated reasons (as set out in Consultation 12/132) seem to them not to be altogether justified.<sup>13</sup>

#### 4.2.1 Summary of respondents' reasons for renewal longer than ComReg's proposal

4.9 It appears to ComReg that the principal reason why eircom Group, and to a lesser extent UPC, consider that MMDS licences ought to be renewed for a period greater than two years is that they are of the view that the competitive process leading to the award of new licences in the 2.6 GHz band will not be completed by April 2016, so that the 2.6 GHz band would lie fallow for the period between the expiry of the MMDS licences in April 2016 and the subsequent introduction of new replacement spectrum rights.

4.10 These respondents also query whether potential alternative uses of the band could be in place by April 2016:

- UPC submits that ComReg would “... *have numerous issues to resolve including but not limited to the following*
  - *Decision on bands to include*
  - *Decision on competitive award process*
  - *Decision on type of auction, if preferred awards process*
  - *Decision on transition arrangements*
  - *Training of auction participants*
  - *Holding auction*
  - *Monitoring transition*

*.... In fact, UPC understands that the 800, 900 and 1800 MHz auction process has been ongoing since **July 2008**, ... Therefore, UPC believes that the most relevant benchmark available to ComReg to indicate the likely time to complete a multi-band spectrum auction is in fact **five years (and counting)**.”*

- eircom Group submits that “... *This approach, creating interim licence extensions with finite expiry dates, was tried in respect of the 900MHz rights of use of Telefonica and Vodafone in the MBSA process. ComReg's conduct of the MBSA process has demonstrated that issuing interim rights with a finite expiry date is not administratively efficient and creates uncertainty for the licensees. We note the many representations*

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<sup>13</sup> ComReg expands its reasoning in Sections 4.3 below and notes that further clarity will be forthcoming once ComReg sets out its preliminary views on the bands which might be included in any future award and the details of the award.

*made by Telefonica and Vodafone expressing their concern regarding the uncertainty they faced as it became clear that the MBSA process would not be completed in sufficient time. Indeed ComReg has been recently required to undertake a rapid consultative process and to make Regulations with the consent of the Minister for Communications in order to ensure that millions of Irish citizens do not suffer detrimental loss or degradation of their mobile service by issuing a second set of interim licences.*

*As ComReg notes in the consultation paper the MBSA process has been ongoing since July 2009 and in light of that the administrative process in respect of the 2.6GHz band ComReg feels it “could only make new rights of use to 2.6GHz spectrum available by April 2016 at the earliest”<sup>2</sup> [emphasis added]. It is clear that ComReg itself recognises that April 2016 is already extremely challenging. Furthermore, as set out in the consultation paper<sup>3</sup>, there are a number of important questions that must be addressed before any final decisions can be made”*

eircom Group further submits that

*“The most significant question in our view is the extent to which jointly making rights of use to spectrum in other bands available with any new rights of use to the 2.6GHz spectrum, may result in a significantly more efficient outcome than making the 2.6GHz spectrum available in isolation.”*

4.11 UPC also submits the following:

*UPC has invested significant time, effort and capital to improve its brand image and reputation in the Irish market. There are still a considerable number of subscribers to UPC’s MMDS service despite increased and intense competition from other providers such as BSkyB. It is therefore imperative that ComReg allow UPC the maximum time to vacate this spectrum and extend the current proposed deadline to April 2017. To not do so would result in:*

- Unnecessary and disproportionate revenue dilution for UPC through the premature wind down of the service particularly given that UPC believes there is significant risk that the 2.6 GHz spectrum will lie fallow under ComReg’s current timeframe proposals and the potential impact this may have on UPC’s future investment in the Irish business*
- Unnecessarily increasing the brand and reputational damage to UPC arising from the premature withdrawal of its MMDS service. ..”.*

#### **4.2.2 Summary of respondents’ reasons for renewal shorter than**

## ComReg's proposal

- 4.12 BT, Telefónica and Vodafone submit that the MMDS licences should be renewed for periods ranging from 6 months to a maximum of 12 months, all of which are shorter than the 2-year renewal period proposed by ComReg.
- 4.13 These respondents believe that the competitive process for assigning new spectrum rights could be completed prior to 18 April 2016 and that would mean that there would be a long period (up to 1.5 years in their view) in which the 2.6 GHz band, which could be re-released on a service and technology neutral basis, would continue to be used exclusively for MMDS.
- 4.14 In summary, these three respondents seem to consider that ComReg is being overly conservative as to its ability to design and complete a process for awarding of new rights of use in the 2.6 GHz band earlier than April 2016.
- 4.15 One stated reason, common to all submissions that the licence renewal period should be of shorter duration than 2 years, is that ComReg gained relevant experience from the MBSA to conclude the 2.6 GHz award process earlier than 18 April 2016:
- BT Ireland states that *“ComReg has recently conducted a complex auction and therefore has both the experience and expertise to construct an auction for the 2.6 GHz band;*
  - Telefónica states that *“...we know that it will take some time for ComReg to consult on its proposals, take its decision, and implement the licensing process. The MBSA has shown us that it could take eighteen months from the time ComReg publishes its proposals until the assignment is complete”* and *“...Allowing eighteen months for ComReg’s licensing process, and six-months for transition, Telefónica believes there is merit in extending the current MMDS licences to February 2015, but not beyond then”*; and
  - Vodafone states that *“...The experience gained by ComReg in the recent multi-band spectrum award process should also have at least some applicability to any multi-band award process including 2.6 GHz spectrum usage rights, further expediting the award the completion of the steps required for assigning the latter.”*

## 4.3 Analysis of responses received

- 4.16 ComReg notes that all of the respondents are of the view that renewal of the current MMDS licences is required or appropriate, although each expressed different views as to the length of the renewal period, ranging from 6 months to

the maximum period of 5 years permitted by the MMDS Regulations. ComReg addresses these various views in the next sections.

### **4.3.1 Analysis of reasons for renewal longer than ComReg's proposal**

- 4.17 ComReg agrees with UPC that there are a variety of issues to consider before it may grant new spectrum rights of use in the 2.6 GHz spectrum band. For that reason, ComReg will be consulting on the competitive award process which will lead to the eventual release of new licences in the 2.6 GHz band. ComReg intends to begin that consultation process now that it has made its final decision, as set out herein, to renew the existing MMDS licences for two years. Proceeding in this order removes uncertainty as to the future of the existing MMDS licences, by clarifying that all such licences shall expire on 18 April 2016, and it sets a realistic timeframe as to when new rights of use in the 2.6 GHz band shall come into effect and that this shall not happen earlier than April 2016.
- 4.18 As set out in the quoted passage at paragraph 4.10, eircom Group expressed the view that interim licences with finite expiry dates were granted as part of the MBSA process and it submits that this approach was not administratively efficient and created uncertainty for the affected licensees. ComReg does not agree that the granting of certain interim licences as part of the MBSA process was inefficient or that it created uncertainty. ComReg considers it was an administrative action and necessary in the particular circumstances of that project. Further, ComReg considers that the specific circumstances necessitating the granting of interim licences to two licensees in the MBSA process are not comparable to the factual circumstances in this project. ComReg also notes that the legal framework is quite different in this instance as the 2003 Regulations expressly require and mandate ComReg to review the operation of all such MMDS licences and provide that ComReg may renew any such licences which are in force at 18 April 2014 for a further period of up to 5 years subject to such terms and conditions as ComReg may specify.
- 4.19 In relation to eircom Group's specific proposal that the MMDS licences be renewed for 5 years with a clause that ComReg could, on 1 year's notice, terminate the licences, ComReg responds as follows:
- ComReg's analysis, in particular its review of the existing MMDS licences and the likely benefits from a national economic perspective of releasing the band as soon as practicable, does not support delaying the release of the band until 2019 in the present circumstances; and
  - eircom Group's proposed approach creates uncertainty not only for potential new users of 2.6 GHz spectrum but also for the licensee's



existing MMDS customers. ComReg intends to allocate new rights of use to 2.6 GHz spectrum to those who value it most, in order to ensure efficient use of the band. ComReg believes that this approach will set a reasonable period of notice for all potential users to prepare for that allocation process.

4.20 In addition, and in relation to both UPC and eircom Group's views on the duration of ComReg's Multi-band spectrum award ("MBSA") setting a benchmark timetable for the potential time for the 2.6 GHz process, ComReg notes that:

- It is not reasonable to assume that the timetable of one award should apply without exception to every other future award. Further at this juncture it seems to ComReg to be unreasonable to make judgements between the relative complexities of an award that has yet to be developed and previous awards as the substance and circumstances may well be different; and
- ComReg believes that it has gained experience from all award processes it has carried out to date (not just the MBSA) and that as the 2.6 GHz award process may be relatively less complex than the MBSA it is more reasonable to consider that the process of assigning new 2.6 GHz spectrum rights would be shorter than might otherwise be the case.

4.21 In relation to UPC's claim that the renewal to April 2016 is "*entirely inadequate*" and that the "*speed of wind down of UPC's current MMDS business necessitated by ComReg's proposed April 2016 date risks causing significant brand and reputational damage to UPC and unnecessary revenue dilution.*" (page 3 of UPC non-confidential submission to Consultation 12/132) ComReg considers that:

- the number of MMDS consumers continues to decline. The most recent subscriber data available to ComReg shows that the number of paying MMDS subscribers, as of Q4 2012, is 45,600 which is 2,300 fewer than when Consultation 12/132 issued in December 2012. Therefore, in ComReg's view, its analysis regarding the impact of terminating the existing licenses on UPC MMDS customers is entirely relevant<sup>14</sup>;
- ComReg has considered all of UPC's arguments previously and holds that UPC's response to consultation has provided no new evidence to support its claims; and
- in view of the fact that there was no previous commitment that the incumbent licensee's MMDS licences would be renewed at all, a

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<sup>14</sup> <http://www.lgi.com/PDF/press-release/Liberty-Global-2012-Press-Release-FINAL.pdf>

reasonable expectation would have been that they would expire in full in April 2014. In those circumstances, ComReg believes UPC's argument that terminating the licences in April 2016, as opposed to April 2014, would result in "*significant brand and reputational damage to UPC*" due to the "*speed of wind down of UPC's current MMDS business necessitated by ComReg's proposed April 2016 date*" to be flawed. ComReg believes that it is reasonable to allow a two year extension of the licences and that it is a matter for the licensee to manage any potential reputational impact, bearing in mind that the licences were always of limited duration and nothing has changed in that regard.

4.22 In summary, ComReg finds no new technical or process/other information why potential new spectrum rights of use to the 2.6 GHz band cannot be made available in the timeframe up to 18 April 2016.

### **4.3.2 Analysis of reasons for renewal shorter than ComReg's proposal**

4.23 In response to the respondents' claims for a renewal period shorter than ComReg's proposal, ComReg makes the following points:

- First, ComReg considers respondents' views to be somewhat speculative as the industry respondents did not provide any concrete evidence or facts that would lead ComReg to conclude that its assessment of the timeframe needed to issue new licenses set out in the consultation document were unreasonable. ComReg believes that as the authority responsible for designing and conducting the award and based on its previous experience, its assessment of the timeframe and resources needed to be allocated to this process are reasonable;
- Second, respondents assumed that ComReg does not have any flexible options in the event that there was a change to the proposed date. As respondents will be aware, ComReg has incorporated a range of innovative features into its previous competitive award processes to address timing issues in relation to the availability of spectrum rights and it is reasonable to assume that it could similarly create features in its assignment of 2.6 GHz spectrum rights should this be required.

4.24 As stated in paragraph 4.20, ComReg accepts that the experience gained in other award processes could speed up the process of assigning 2.6 GHz spectrum rights. However, ComReg must consider each potential spectrum award on its own merit and has already indicated in Consultation 12/132 its intention to consult extensively and properly on all relevant matters for any future award of new rights of use to 2.6 GHz spectrum, and/or potential joint award including rights of use to spectrum in other bands (paragraph 5.51 in

Consultation 12/132). Wherever possible, insofar as they are consistent with its statutory functions, objectives and duties, particulars of the MBSA that might simplify and progress the 2.6 GHz award to an earlier conclusion will be considered by ComReg.

### **4.3.3 ComReg's reasons and justification for a 2 year renewal of licences in force at 18 April 2014 in the 2.6 GHz band**

4.25 In their various submissions respondents assert that ComReg should provide further detail on its reasons and justifications to renew any existing MMDS licences in force at 18 April 2014 in the 2.6 GHz band.

4.26 As discussed in this chapter, while respondents to the consultation have expressed differing views as to the optimal extension period for the current MMDS licences, ComReg is satisfied that it has not received any technical and process/other information which would warrant it to reconsider its proposal given that the principal issue revolves around the timeframe for it to conduct and complete a competitive award process for new rights of use to 2.6 GHz spectrum.

4.27 ComReg believes that it would be in a position to make the new 2.6 GHz spectrum rights available in April 2016 taking into account various considerations such as:

- Considerations in Consultation 12/132, Document 12/132a and 12/132b in particular the draft RIA at Annex 2.0 in Document 12/132a, which is set out in final form in this Document at Annex 2.0;
- Views and analysis of respondents submissions to Consultation 12/132;
- Appropriate period for consumers to transition to alternative suppliers of digital TV;
- Reasonable time for it to consult and commence an appropriate award process for same including using experience obtained from other award processes; and
- ComReg's demonstrable ability to create innovative solutions to address changes to the timing in relation to the availability of spectrum rights which could if required apply to the award for 2.6 GHz spectrum rights.

## **4.4 ComReg's final position**

4.28 Having carefully considered all of the relevant material before it, ComReg considers that in the interest of spectrum efficiency the 2.6 GHz spectrum band should continue to be utilised in the period up to 2016 during which period it intends to formulate and finalise the necessary procedures to conduct a service

and technology neutral competitive process. Cognisant of this, ComReg sets out its Decision to renew the exiting licences up to April 2016.

- 4.29 ComReg, having reviewed the operation of all ten licences granted under the Wireless Telegraphy (Multipoint Microwave Distribution System) Regulations 2003 which are currently in effect and all of which are due to expire concurrently at midnight on 18 April 2014, has determined that it shall renew each of the ten licences for a further period of two years upon the licences reaching their current expiry date, so each renewed licence shall continue in force until the 18 April 2016 whereupon it shall expire altogether and in full and all spectrum rights of use assigned under the licence shall expire on the same date.
- 4.30 Accordingly, ComReg confirms its intention to commence consulting on details of a competitive award process for new rights of use to the 2.6 GHz spectrum band, to be awarded on a service and technology neutral basis, with the intention that these would commence at expiry of the renewed licences (being April 2016).

# 5 Decision

## DECISION

### 1. DEFINITIONS AND INTERPRETATION

In this Decision, save where the context otherwise admits or requires, the following terms, words and expressions shall bear the meanings set out below.

Save where the context otherwise admits or requires, a word importing the singular shall be read as also importing the plural, and a word importing the plural shall be read as also importing the singular and the Interpretation Acts, 1937 to 1997, apply:

**“Authorisation Regulations”** means the European Communities (Electronic Communications Networks and Services) (Authorisation) Regulations, 2011 (S.I. No. 335 of 2011);

**“Communications Regulation Act 2002”** means the Communications Regulation Act 2002, (No. 20 of 2002), as amended;

**“ComReg”** means the Commission for Communications Regulation, established under section 6 of the Communications Regulation Act 2002;

**“Framework Regulations”** means the European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2011 (S.I. No. 333 of 2011);

**“Licence”** means a licence under section 5 of the Wireless Telegraphy Act, 1926 (No. 45 of 1926), to which Regulation 3 of these Regulations applies and cognate words shall be construed accordingly;

**“Multipoint Microwave Distribution System”** means a system of wireless telegraphy apparatus used for the retransmission of programme services on a point to multipoint basis at frequencies of 1 gigahertz or above;

**“Programme Service”** means a service which consists of sound or visual programme material of any description, or a compilation of both, intended for general or approved reception, whether encoded or not;

### 2. DECISION-MAKING CONSIDERATIONS

ComReg has made this Decision having regard to:

- (i) the contents of, and the materials referred to in, as well as the materials provided by respondents in response to, and in connection with, the following ComReg documents, which shall, where appropriate, be construed with this Decision:
  - a. 10/38,
  - b. 10/58s,
  - c. 11/80,

- d. 11/80a,
- e. 11/80s,
- f. 12/09,
- g. 12/132,
- h. 12/132a,
- i. 12/132b.

(ii) the consultants' reports commissioned, and the advice obtained, by ComReg in relation to (i) above;

(iii) the powers, functions, objectives and duties of ComReg, including, without limitation those under and by virtue of:

- a. Regulation 8 of the Wireless Telegraphy (Multipoint Microwave Distribution System) Regulations 2003<sup>15</sup>
- b. the Communications Regulation Act 2002, and, in particular, sections 10, 12 and 13 thereof;
- c. the Framework Regulations, and, in particular, Regulations 16 and 17 thereof;
- d. the Authorisation Regulations, and, in particular, Regulations 9, 10, 11, 12, 15 and 19 thereof;
- e. Sections 5 and 6 of the Wireless Telegraphy Act, 1926;
- f. the applicable Policy Directions made by the Minister under Section 13 of the Communications Regulation Act 2002;

and

noting that it has given all interested parties the opportunity to express their views and make their submissions, as well as having evaluated the matters to be decided, in accordance with its obligations pursuant to, *inter alia*:

- g. Regulation 12 of the Framework Regulations; and
- h. ComReg's Guidelines on its approach to Regulatory Impact Assessment (ComReg Document 07/56a) and the RIA Guidelines issued by the Department of An Taoiseach in June, 2009.

### 3. **DECISION**

ComReg hereby decides that it will renew each of the ten MMDS licences for a further period of two years upon the licences reaching their current expiry date, so each renewed licence shall continue in force until the 18 April 2016 whereupon it shall expire

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<sup>15</sup> S.I. No. 529/2003

altogether in full and all spectrum rights of use assigned under the licence shall expire on the same date.

**4. STATUTORY POWERS NOT AFFECTED**

If any section, clause or provision (or portion thereof) contained in this decision instrument is found to be invalid or prohibited by the Constitution, by any other law or judged by a court to be unlawful, void or unenforceable, that section, clause or provision (or portion thereof) shall, to the extent required be severed from this decision instrument and rendered ineffective as far as possible without modifying the remaining section(s), clauses(s) or provision(s) (or portion thereof) of this decision instrument, and shall not in any way affect the validity or enforcement of this decision instrument.

Nothing in this decision shall operate to limit ComReg in the exercise of discretions or powers, or the performance of functions or duties, or the attainment of objectives under any primary or secondary legislation applicable to ComReg from time to time.

**5. EFFECTIVE DATE**

This Decision is effective from the date of publication and shall remain in force until further notice by ComReg.

Signed:

Kevin O'Brien

Commissioner, Commission for Communications Regulation

## **6 Next Steps**

- 6.1 ComReg will commence its deliberations on the design of a competitive award process for the 2.6 GHz spectrum band and commence consulting with interested parties on same later this year.