



Commission for  
**Communications Regulation**

Response to Consultation

## **Future Regulation of Electronic Communications Networks and Services**

Arrangements for General  
Authorisations

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## **1 Foreword**

At the beginning of June, ComReg published a paper which set out, in advance of the final transposing legislation, ComReg's proposals for the conditions to attach to the future provision of electronic communications networks and services i.e. the conditions of a General Authorisation. The paper also consulted on a number of related issues.

The regulations have now been published by the Minister and provide the legislative basis for ComReg to finalise arrangements.

This paper addresses issues arising from the consultation in June and together with related papers published today, provides guidance for operators on their rights and duties under the General Authorisation scheme.

**Etain Doyle,  
Chairperson of the Commission.**

## 2 Executive Summary

In June, ComReg published a Consultation Paper on arrangements for General Authorisations. That paper published ComReg's proposals for the conditions to a General Authorisation. In addition, the paper discussed a number of related issues.

Responses to the consultation were taken into account when ComReg finalised the General Authorisation and views were also received in connection with the associated issues. This paper addresses those issues. Section 4 addresses the consultation issues in detail. This section provides a summary of ComReg's position on those issues, having taken account of the views expressed.

The categorisation of particular networks and services was raised. The legislation does not specify types of networks and services covered by the new framework other than to describe them as electronic communications networks (ECNs) and electronic communications services (ECSs). ComReg has issued a Guidance Note on General Authorisation (Doc No 03/83) which categorises ECNs ECSs under a number of headings. The purpose of this document is to provide guidance for operators on their rights and duties under the General Authorisations scheme. If operators are unclear about their obligations under the legislation, they should provide full details to ComReg for the purpose of establishing their status.

In relation to broadcasting activities, ComReg has decided for the purposes of the general authorisation there is no need to distinguish between broadcasting transmission and broadcasting distribution. The notification form and the guidance notes will use the heading "Broadcast Networks". Such networks include terrestrial transmission networks, deflectors, MMDS, satellite and cable. Operators are free to provide further details of the characteristics of their network on the notification form.

In connection with networks, ComReg believes the provision of a network means the establishment, operation, control or making available of such a network. The activities are separate and need not be combined to constitute provision of an ECN. Entities providing a service that mainly consists of transmission services on ECNs used for broadcasting are providing an ECS.

ComReg has indicated that the retail broadcasting services will not be treated as an ECS for the purpose of the new framework. The impact of this that consumers of broadcasting services will not be afforded the same level of rights as consumers of other telecommunications services at the retail level. However ComReg will continue to ComReg intends, however, to pass on to the operators concerned for direct action, any complaints it receives from the public in relation to the broadcasting sector.

The position of Virtual Private Networks was discussed in the consultation and ComReg's position is that the provision of a Virtual Private Network falls within the definition of an ECS.

ComReg does not consider that it is practical to define all circumstances where ECNs could be considered as “Public” in the context of interconnection right. It will not, for the present, establish binding criteria for the determination of whether a network is a public communications network and therefore automatically entitled to negotiate interconnection. Individual indicators, while discussed in Section 4, should not be regarded as providing a conclusive determination of the status of a network but, taken in combination, may assist in reviewing individual networks. In the light of experience or any other views or opinions that may be expressed, ComReg may consider further indicators.

The public register of providers of ECN and ECS will be compiled of details which operators supply when making notifications. ComReg intends that the public register will be made available on its website and that users can sort the data by operator name, network and or service. ComReg intends to review the operation of operation of the public register within 12 months and will consider modifications at that stage. The notification form is published as ComReg 03/82 and Guidance on the completion of the form and operation of the public register is given in ComReg 03/83.

### 3 Introduction

Document 03/61 followed on from previous consultations in addressing the arrangements for the future regulatory framework for the provision of communications networks and services. That paper published a draft general authorisation, draft notification format and discussed a number of associated issues.

The Minister for Communications, Marine and Natural Resources has now made regulations which transpose the relevant EU Directives and provide the legal basis for the new regulatory framework. The text of the regulations may be accessed at the Department's web site [www.dcmnr.ie](http://www.dcmnr.ie).

In addition to the public notice of the publication of the consultation, copies were provided to all telecom licensees, licensees engaged in broadcasting activities and holders of community repeater licences. All comments were welcome and 14 responses were received as follows:

- Appear Networks/Enigma Consulting
- BSkyB
- Chorus Communication Ltd
- Coastal Multi Systems Ltd
- E-net Ltd
- Esat Telecommunications Ltd.
- ESB Telecom
- ntl:
- Meteor
- RTE
- Southcoast Community TV
- TV3
- Vodafone Ireland Ltd.
- Colm Ward (deflector licensee)

ComReg wishes to thank everyone who contributed to the consultation. In accordance with the policy set out in Doc 03/32 "ComReg Consultation Procedures" and as indicated in the consultation paper, all responses received are available for inspection (except for material supplied on a confidential basis) at ComReg's offices

This paper deals principally with the issues raised in the course of the consultation and Section 4 addresses the issues. A number of associated documents are being published in conjunction with this report and these provide further detail on future arrangements. These documents are:

- Conditions of General Authorisation (Doc No 03/81)
- Notification Form for General Authorisation (Doc No 03/82)
- Guidance Note on General Authorisation (Doc No 03/83)

## Response to Consultation – Arrangements for General Authorisations

- Wireless Telegraphy Licence future applicability of licence conditions (Doc No 03/84).
- Consultation Paper on Administrative and Wireless Telegraphy fees applying to broadcasting related activities (Doc No 03/78)

## 4 Consultation Issues

### 4.1 Networks and services within scope of general authorisation

The consultation provided an indicative listing of different electronic communications network (ECN) and electronic communications service (ECS) headings which it considered as being covered by the definition of networks and services set out in the Directives and the Regulations. The tables also included, for guidance purposes, a non-exhaustive listing of examples under each heading.

While there was general agreement on the headings used, issues were raised concerning the classification of specific examples of particular networks or services. The consultation paper indicated that ComReg did not consider it practical to itemise each specific network type and service category which comes within the definition. The diversity of comments underlines the appropriateness of the indicated approach. Accordingly, the purpose of the headings and illustrative examples is for the completion of guidance notes and a pro-forma notification form. The legal rights and obligations associated with ECN/ECS are as set out in the Regulations and are not affected by the content of guidance notes as issued by ComReg.

#### **Conclusion 4.1**

ComReg will provide, in guidance notes, a non-exhaustive listing of categories of ECNs and ECSs. If operators are unclear about their obligations under the legislation, they should provide full details of their intended operations to ComReg for the purpose of establishing their status.

#### *4.1.1 Dark Fibre Networks*

One respondent considered that Dark Fibre Networks do not constitute an ECN because they do not include transmission equipment necessary for the conveyance of signals and was simply a neutral medium. In reviewing the point made in relation to the issue, ComReg refers to the definition of an ECN set out in the Framework Directive and the Framework Regulations:

“electronic communications network” means **transmission systems and, where applicable, switching or routing equipment and other resources which permit the conveyance of signals** by wire, by radio, by optical or by other electromagnetic means, including satellite networks, fixed (circuit- and packet-switched, including Internet) and mobile terrestrial networks, electricity cable systems, to the extent that they are used for the purpose of transmitting signals, networks used for radio and television broadcasting, and cable television networks, irrespective of the type of information conveyed”

ComReg agrees that dark fibre alone would not constitute an ECN as the definition of ECN requires a transmission system which in this case would be used to light the fibre. However, ComReg recognises that an entity which intends to build and operate a fibre based ECN providing services to third parties may notify ComReg of its intention and have any rights associated with an authorised person.



**Conclusion 4.1.1**

Dark fibre without transmission equipment does not constitute an ECN.

## 4.2 Broadcasting Networks and Services

### 4.2.1 Transmission/Distribution

A number of respondents raised issues regarding the regulation of broadcasting activities. In particular, the distinction between broadcasting transmission and broadcasting distribution was questioned. ComReg had made the distinction as a follow on to the current regulatory regime whereby terrestrial transmission of radio and television signals is categorised as “transmission” while cable and MMDS operations are categorised as “distribution” and deflector operations are categorised as “retransmission”. Having considered the views expressed, ComReg has decided that such a distinction is not required in the context of a general authorisation. Accordingly, the notification form and the guidance notes now refer to broadcast networks and broadcast services. These terms are explained in the guidance notes as including the activities contemplated in the consultation paper.

**Conclusion 4.2.1**

The notification form and the guidance notes will use the headings “Broadcast Networks”. Such networks include terrestrial transmission networks, deflectors; MMDS; satellite and cable. Operators are free to provide further details of the characteristics of their networks on the notification form.

### 4.2.2 Broadcasting networks and services

One respondent expressed the opinion that in order for a person to be considered the provider of an electronic communications network that person must be able to exercise sufficient control over the network in question. Specifically it was suggested that a lessee of ECN capacity has, as such, insufficient control over a network to be considered an ECN provider and that if it subleases some or all of such capacity to third parties it is not itself to be regarded as providing an ECN (or an ECS). This view was offered in the context of leased capacity on the networks used for radio and television broadcasting, but ComReg considers that the issue can be addressed in general terms.

As stated at 4.1.1, article 2 (a) of the Framework Directive defines ECNs as *“transmission systems and, where applicable switching and routing equipment and other resources which permit the conveyance of signals.....including satellite networks, fixed....and mobile terrestrial networks.... electricity cable systems, to the extent they are used for the purpose of transmitting signals, networks used for radio and television broadcasting, and cable television networks, irrespective of the type of information conveyed”*

Article 2 (m) stipulates that the *“provision of an electronic communications network means the establishment, operation, control or making available of such a network”*

The individual activities in Article 2(m) are separate and need not be combined to constitute provision of an ECN. As such, an entity can be considered to be engaged in the provision of an ECN if it makes available appropriate resources that permit the conveyance of signals for radio and television broadcasting. Some level of ‘control’ (though not necessarily physical control) may be implicit in each alternative criterion for what constitutes ‘provision’. However, once it is clear that an entity is ‘making available’ a network for use by another or others, then the entity clearly has the requisite level of control. The determination of specific activities which fall within the definition of “provision of an ECN” is not affected by considerations relating to whether the property or contractual arrangements enabling the entity to make the network available categorise that entity as a ‘lessee’ or as having or not having any other generically named interest in the network.

An ECS as defined in Article 2 (c) of the Framework Directive means “ *a service normally provided for remuneration which consists wholly or mainly in the conveyance of signals on [ECNs], including telecommunications services and transmission services in networks used for broadcasting, but exclude services providing, or exercising editorial control over, content transmitted using [ECNs] and [ECSs]; ...*” As such, entities providing a service that mainly consists of transmission services on ECNs used for broadcasting are providing an ECS, on a clear literal interpretation of Article 2(c).

Further guidance as to the relationship between content and transmission services can be found in section 4.4 of the European Commission’s Recommendation on *Relevant Market Recommendation*. There, the European Commission considers the nature of the potential market relationships in the wholesale ECS market(s) related to the delivery of broadcast content over transmission networks to end-users, noting that operators of transmission networks may seek broadcast content to transmit to their end-users, while programme providers or broadcasters may provide content to a transmission or broadcast network. “Broadcasting transmission services, to deliver broadcast content to end users” is included as a relevant market in the Recommendation and is therefore clearly an activity which falls within the scope of the Directives.

**Conclusion 4.2.2** The provision of a network means the establishment, operation, control or making available of such a network. The activities are separate and need not be combined to constitute provision of an ECN. Entities providing a service that mainly consists of transmission services on ECNs used for broadcasting are providing an ECS.

#### 4.2.3 Retail broadcasting services

One operator complained at the lack of consistency in ComReg’s approach to such services with 03/61 providing the first indication that retail broadcasting services (provision of network access and delivery of content services to end-users at a retail level) would not be treated by ComReg as an ECS. The respondent believed that the regulatory uncertainty which has resulted could have been avoided if ComReg

had engaged with the industry in a more meaningful manner. The respondent also sought a meeting with ComReg with a view to discuss ComReg’s recommendation concerning possible legislative provisions to be made by the Minister for Communications, Marine and Natural Resources.

Other respondents sought clarification as to the impact of the general approach to their individual circumstances. In particular clarification was sought as to notification requirements of broadcasting networks which are used for the delivery of services outside the scope of ECS. For the avoidance of doubt and as already stated in section 4.1.1. by definition, electronic communications networks include “networks used for radio and television broadcasting, and cable television networks, irrespective of the type of information conveyed”

It is noted that no respondent disagreed with ComReg’s indicated approach to the treatment of retail services. As outlined in the consultation paper, ComReg’s view that such services fall within the definition of ECS is not shared by the EU Commission. ComReg believes that to continue with its approach would create further uncertainty. Earlier public consultations had addressed the issue of retail services and ComReg could not have engaged in public consultation on its indicated approach at an earlier stage as it was still seeking clarification. The particular impact of ComReg’s approach on the operation of distribution platforms which are currently licensed by ComReg will be the non-application of the consumer/end user rights conditions of the general authorisation. ComReg intends, however, to pass on to the operators concerned for direct action, any complaints it receives from the public in relation to the broadcasting sector.

**Conclusion 4.2.3**

ComReg has indicated that the retail broadcasting services as outlined above will not be treated as an ECS for the purpose of the new framework. The impact of this is that consumers of broadcasting services will not be afforded the same level of rights as consumers of other telecommunications services at the retail level.

The question of any future regulation of such services will fall to be dealt with under other legislation. While ComReg may make recommendations in this regard, any legislative proposals are a matter for the Minister and the Oireachtas.

Electronic communication networks include networks used for radio and television broadcasting, and cable television networks, irrespective of the type of information conveyed.

*4.2.4 Administrative charges and spectrum fees*

Respondents sought clarification on what fees they would be subjected to. The question of fees is addressed in Doc No 03/78 published on 18 July. For ease of reference, the proposed fee structure is set out in Appendix 1. Submissions in relation to the consultation paper are being considered. ComReg intends to issue a response to consultation in the next week and to put an order in place to introduce a new administrative levy structure for the broadcasting sector with effect from 25 July.

### 4.3 Exemption from Notification requirements

ComReg had proposed that it would make an order specifying that ECNs used wholly for own use (including use by connected companies) would be exempt from the requirement to notify. The consultation paper invited views on whether further categories of networks or services should also be exempt.

In general, no respondent raised any objection to the category proposed although clarification was sought on what constituted “connected company” and “wholly for own use” and whether delivery of a service which was not an ECS was considered to be “own use”.

One respondent considered that own use services should be exempt from notification while a further respondent considered that services or networks which are not supplied for a charge could be subject to notification but should not be subject to administrative charges and should be subject to limited regulation.

Finally one respondent considered that ECNs used exclusively to carry IP traffic should also be exempt.

Before discussing the individual responses, ComReg considers it beneficial to reiterate the effect of notification or exemption from notification. Earlier consultations had discussed the principles associated with notification and mentioned two objectives – to facilitate the publication of indices of providers for the information of users and to facilitate the verification of compliance with applicable conditions. The effect of notification would trigger, where appropriate, conditions recorded in part 3 of the General Authorisation. The main conditions which would have an impact on operators is the payment of administrative charges and compliance with requirements regarding users’ rights. The right to interconnect is set out in the Access Regulation. The entities having a right to interconnect is a sub-set of notified authorised persons.

The basic principle behind ComReg’s approach to notification is that a service provider who is providing a service to a third party should, in the interests of competition, be transparent in the manner in which it provides service. Where service is self provided, oversight by ComReg would represent an unnecessary burden on such undertakings. While the concept of self-provision is unambiguous, organisations which incorporate differing operating units as separate companies and therefore separate legal entities would find themselves liable to notify ComReg. ComReg believes that this would also be inappropriate where such separate entities are providing ECN and ECS for the other entities within the group and accordingly is of the view that “own use” in this context should include connected entities. A legal definition will be provided in the exemption order but the basic principle is that connected entities for the purposes of exemption from notification are entities which are under common ownership (either direct or indirect) or are subsidiaries of each other.

The test of defining whether a network is used wholly for own use is not dependant upon what is carried. As the definition of an ECN does not depend on the services it

provides - “*irrespective of the type of information conveyed*” - ComReg does not consider it appropriate to only take into account the provision of ECS in considering whether a network is required to submit a notification. Accordingly where a network is used to convey signals to or for third parties, notification shall be required irrespective of the signal conveyed. . In such circumstances, the operator should notify as a network provider.

As set out in 03/61, own use services is not an ECS requiring notification. Regarding the remaining issues proposed, ComReg reiterates that notification of itself does not result in additional obligations - obligations are operable by virtue of the characteristics of the network or service involved.

However, in relation to the suggestion that networks only carrying IP traffic should also be exempt from notification, ComReg is unconvinced by the case as set out. In particular, ComReg does not see the basis for the respondent’s concerns. ComReg would advise that whereas operators designated with Significant Market Power under the Framework Regulations have obligations to meet reasonable requests for interconnect, other public communications networks are limited to the right (and an obligation when requested) to negotiate interconnection. Hence, ComReg sees no reason to exempt IP-based networks from notification and believes that to do so could be construed as being contrary to the technology neutral approach advocated by the Framework. ComReg also believes that many of this respondent’s concerns in relation to notification requirements are unfounded and points this respondent to threshold limits exempting notification.

#### **Conclusion 4.3**

For the purpose of categorising whether services are “own use” in the context of establishing whether an ECS service is provided, own use includes situations where services are provided to or by separate legal entities which are wholly owned subsidiaries of each other or have a common ownership.

The same principle shall apply when considering whether networks are used wholly for own use for the purpose of established whether a particular network is subject to a notification requirement.

Where “any” services are provided to third parties over a network for the purposes of the new framework such a network is required to notify.

IP based networks fall within the definition of ECNs and, where not used wholly for own use, are subject to the requirement to notify.

#### **4.4 Virtual Private Networks**

ComReg set out its view in the consultation that VPNs do not exhibit all of the characteristics of an ECN and therefore should be considered as falling solely within the scope of an ECS. This view is based in the fact that a VPN meets all the criteria of an ECS as it is normally provided for remuneration; consists wholly or mainly in the conveyance of signals.

The vast majority of respondents agreed with ComReg’s intended approach to the regulatory treatment of VPNs. There were, however, some queries and one respondent in particular strongly disagreed. The dissenting respondent stated that a VPN is merely a different way to use public telecommunications infrastructure in order to provide remote offices or individual users with secure access to their organisation’s network. In this way, the respondent noted, a VPN can be used by an organisation to achieve the same capabilities of a system of permanent leased lines but at a lower cost. In its critique of ComReg’s analysis however, the respondent claimed, that ComReg had incorrectly focused on the issue of physical infrastructure. Instead, the respondent claimed that *the issue is ... that VPNs do not use dedicated infrastructure*” (emphasis added by respondent). On this basis, the respondent stated that it did not believe VPNs should be excluded from the definition of ECNs.

Elsewhere, another respondent submitted that while it generally agreed with the approach adopted by ComReg, it had some concerns that *“there appeared to be some variance between the treatment of the operators of VPNs and the manner in which broadcasters could be treated if they operate virtual networks”*. In support of this argument, the respondent pointed to the reference in paragraph 5.3.1. of the consultation which put forward the view that in order to be deemed an ECN provider, ownership was not required and that ECN providers could build their network by leasing infrastructure. This point was used by the respondent to submit that if a broadcast ECN provider owns no infrastructure, then it should be no different to a VPN, where the private operator also has no physical infrastructure.

ComReg is unconvinced of the merits of these arguments. In particular, ComReg considers that the debate is somewhat academic in that what is at issue is whether particular regulatory obligations should apply and to whom they should apply. Taking the illustrated analogy of leased lines, the provision of leased lines is a service and is subject to regulatory obligations as a service. ComReg considers that a user of a VPN is not engaged in the provision of a network i.e. *the establishment, operation, control or making available of such a network*, and as such ComReg does not intend to apply any particular regulatory obligations on such users. The network or networks used for the provision of a VPN and access to the VPN are of course subject to regulatory requirements.

ComReg is not convinced by concerns raised regarding possible variances in the treatment of VPN operators and broadcasters which operate *“virtual networks”*. In particular, ComReg does not agree with the logic behind the respondent’s argument and believes that some of this confusion may arise from the fact that the respondent uses the term ‘virtual network’ when in fact what is being referred to is the making available of capacity on a physical network (i.e. ECN) by a third party. ComReg is of the view that such ‘virtual networks’ are very different from VPNs and as such comparisons in the treatment of VPN operators and broadcasters which operate ‘virtual networks’ are not applicable.

#### **Conclusion 4.4**

The provision of a Virtual Private Networks falls within the definition of an ECS

#### 4.5 Public/private networks

The consultation signalled that ComReg intended to issue guidelines setting out the criteria which ComReg would apply in any dispute regarding eligibility to negotiate interconnection. ComReg duly issued Document 03/62 setting out these tests and stating that in order to qualify for the right to negotiate interconnection, an entity must pass each of the following tests:

- Be an undertaking authorised to provide an electronic communications network in accordance with the Authorisation Directive and Authorisation Regulations
- Be an electronic communications network (ECN) provider
- Provide publicly available electronic communications services (ECS)

The consultation invited views on the definition of a “public” communications network (PCN), for the purpose of the test set out above. The Framework Directive defines a PCN as *“a network used wholly or mainly for the provision of publicly available electronic communications services”*. ComReg had received requests for guidance as to how the words ‘wholly or mainly’ may be interpreted and in the consultation ComReg sought views as to how a public network may be identified. By way of illustration, ComReg set out some suggested factors which might assist identification: these included the relative proportion of capacity or volume of services offered to the public vis-à-vis that offered to subsidiaries or related companies; the level of remuneration required to avail of the service; the volume or profile of potential users; or the contractual terms and conditions which dictate who may avail of the service.

ComReg was disappointed by the low number of comments received on this important question.

One respondent questioned whether any or a combination of the indicators set out by ComReg would be appropriate in making such a determination. It suggested that the key to any determination may be whether or not the network’s use in respect of public services is ancillary to the main use of the network. ComReg agrees that this is indeed an important issue and wishes to point out that the consultation highlighted this as a subject on which it was particularly interested in receiving comments.

Another respondent did not offer specific suggestions on possible criteria, but instead offered its views on when a network should be considered “private” and when it should be considered “public”. This respondent considered that a network could be partially private and partially public. Furthermore, the respondent stated that a network which is “private” should be able to make some facilities available to the public, while still retaining ‘private’ status. This respondent argued that when it is decided that a network is ‘public’, any access and interconnect obligations arising out of this designation should only apply to the specific services provided on this part of the network regarded as ‘public’. The respondent extended this rationale to argue that networks should only be regarded as ‘public’ when the services or network capacity which it provides are ‘publicly available’. However once these services or network capacity are ‘offered’ and ‘accepted’ in a contractual relationship and are therefore no longer available, the network should no longer be regarded as public. Should the services or capacity become available again (due to

customer loss or contract cessation), then the status of the network should revert to ‘public’.

Although the above response did not offer any specific suggestions on identification of a public network, ComReg will address the issues raised to remove any confusion in the marketplace. ComReg is of the view that there is no inconsistency in categorising networks which are partially public and partially private as a “public” or “private” network depending on the purpose (“wholly or mainly”) of the network use. Equally, ComReg believes that networks which are primarily used for private use (i.e. not an PCN) retain their ‘private’ status while providing service to third parties. This however goes to the nub of this issue – namely the right to negotiate interconnection. ComReg would like to make clear that any interconnection rights and obligations which arise from the designation of networks as public communications networks apply to the network carrying the services rather than the services themselves. Hence, the respondent’s argument that obligations should only apply to certain services on the network does not hold. ComReg believes that the respondent’s view that services are no longer ‘publicly available’ when they are contracted for by a customer relies on an overly literal interpretation of the phrase ‘publicly available’.

In light of the apparent lack of consensus and clarity on the above issues, ComReg believes it may be useful, at this point, to provide additional guidance on the interpretation of the two key phrases ‘**wholly or mainly**’ and ‘**publicly available**’ used in the definition of public communications networks

In relation to the interpretation of ‘wholly or mainly’, ComReg notes this condition relates to the network carrying the services, rather than the services themselves. Hence to qualify as a PCN, the principal function of the network must be the provision, wholly or mainly, of ‘publicly available’ services. This does not preclude a PCN from providing services which are not public, as long as such offerings are very much ancillary to the network’s main function.

In relation to the interpretation of the term ‘publicly available’, ComReg believes the generally accepted interpretation of a ‘publicly available’ service to be one which is available to anyone who willing to pay for it and to abide by the applicable terms and conditions. Publicly available services have no limit on the volume of potential consumers other than those that arise from technical or capacity constraints.

Using this as a basis, principles may be developed through the application of practical examples. For example a service need not be taken up by a large number of users or be available on a national basis in order to be a ‘publicly available’. Service providers who limit their services to particular high-value offerings or distinct geographical areas may only as a result only have a limited customer base. However these services are still potentially ‘publicly available’ as these providers have not imposed any upper limit on the class of potential customer other than those that may arise from network constraints.

Equally, there may be instances where services may be consumed by a large number of consumers, but yet would not qualify to be ‘publicly available’. This may arise



where a landlord is providing telecom services to his tenants in an apartment block. These services would not be considered to be ‘publicly available’ as admittance to the set of potential customers is not generally open to the public and depends on the existence of a prior relationship between provider and customer.

Where it is not immediately apparent whether the above conditions are satisfied, and ComReg’s interpretation is required, ComReg intends to examine, on a case by case basis, aspects of the service (e.g. manner in which it is marketed, pricing levels, terms and conditions, etc.) which may be indicative of its ‘public availability’ or lack thereof.

**Conclusion 4.5**

ComReg does not consider that it is practical to define all circumstances which could be considered as Public in this context and will not, for the present, establish binding criteria for the determination of whether a network is a public communications network and therefore automatically entitled to negotiate interconnection.

Individual indicators should not be regarded as providing a conclusive determination of the status of a network but, taken in combination, may assist in reviewing individual networks.

In the light of experience or any other views or opinions that may be expressed, ComReg may consider further indicators.

**4.6 Notification – Format and Register**

The consultation paper set out a proposed format of a notification form and indicated that it proposed to make the details publicly available with the exception of contact details for nominated persons. Responses to the format and intended use were uniformly approving subject to issues being raised on the classification of networks and services. As indicated, ComReg has modified the headings of networks and services. The form will also allow the free form entry of details which may be used if an operator considers that the headings do not fully reflect the characteristics of the particular networks and services involved. To facilitate the compilation of the public register, operators should complete a separate entry line for each individual service.

ComReg intends that the public register will be made available on its website and that users can sort the data by operator name, network or service. ComReg also intends to review the operation of the public register within 12 months and will consider modifications at that stage.

**Conclusion 4.6**

The notification form is published as ComReg 03/82

Guidance on the completion of the form and the operation of the public register is given in ComReg 03/83

## Appendix 1 – Proposed Administrative charges and licence fees for the Broadcasting sector

	<b>Administrative charges*</b>	<b>Wireless telegraphy licence fee</b>
Cable networks	€0.50 per subscriber	N/A
MMDS networks	€0.50 per subscriber	$X \div Y \times \text{€}1,905$ per MHz**
Deflector networks	€0.50 per subscriber	€50 per transmitter
Satellite networks	€0.50 per dish (voluntary)	N/A
RTE terrestrial network	€100 per transmitter	N/A
BCI contractors' terrestrial networks	€100 per transmitter	N/A
Digital terrestrial networks	(i) €0,50 per subscriber (pay platform), or (ii)€100 per transmitter (free to view platform)	€1,905 per MHz
Transmission services	0.2% of relevant turnover	N/A

\* Entities will be exempt from paying administrative charges if total liability is less than €1,000 in financial year.

\*\* X = licence requirement of number of homes passed  
Y = total number of TV households (currently 1.3 million)