



An Coimisiún um  
**Rialáil Cumarsáide**  
Commission for  
**Communications Regulation**

# Review of RTÉ's Radio and Television Broadcasting Licences

## Response to ComReg Consultation Document 18/64

Response to Consultation

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**An Coimisiún um Rialáil Cumarsáide**  
**Commission for Communications Regulation**

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## Additional Information

Consultation Document	18/64
Submissions to Consultation Document	Annex 1 of ComReg 18/97

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# 1 Introduction

- 1 In July 2018, the Commission for Communications Regulation (“ComReg”) published a consultation (Document 18/64<sup>1</sup>) on its proposal to grant new licences to Raidió Teilifís Éireann (“RTÉ”) in respect of its radio and television broadcasting networks and services listed below, once its current licences expire<sup>2</sup>:
  - Analogue Sound Broadcasting (“ASB”);
  - Digital Sound Broadcasting (“DSB”); and
  - Digital Terrestrial Television (“DTT”).
- 2 ComReg received one submission to Document 18/64, from RTÉ. This submission is set out in Annex 1 of this document.
- 3 This response to consultation sets out ComReg’s assessment and final positions on the matters raised in Document 18/64. In doing so, ComReg has had regard to, amongst other things:
  - its statutory functions and objectives and other relevant legislation as summarised in Annex 2 of this document; and
  - the submission received from RTÉ to Document 18/64
- 4 This paper is structured as follows:
  - **Chapter 2:** RTÉ’s radio and television broadcasting licences
  - **Chapter 3:** Regulatory Impact Assessment (RIA)
  - **Chapter 4:** Next Steps
  - **Annex 1:** Submissions to Document 18/64
  - **Annex 2:** Summary of legal framework
  - **Annex 3:** Draft Regulations
  - **Annex 4:** Technical conditions for ASB, DSB and DTT licences

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<sup>1</sup> Consultation, “Review of RTÉ’s Radio and Television Broadcasting Licences”, 12 July 2018, [ComReg Document 18/64](#)

<sup>2</sup> RTÉ’s ASB licence and DSB licence both expire on 13 May 2019 and its two DTT licences expire on 13 December 2019.

## 2 RTÉ's radio and television broadcasting licences

- 5 This chapter sets out ComReg's assessment and final positions on the matters raised in Document 18/64 where the following two questions were asked

Q. 1 Do you agree with ComReg's ASB and DSB proposals as outlined in this chapter? In providing your view, please also provide supporting evidence.

Q. 2 Do you agree with ComReg's DTT proposals as outlined in this chapter? In providing your view, please also provide supporting evidence.

### 2.1 Radio (ASB and DSB) – Summary of Document 18/64

- 6 Chapter 2 of Document 18/64 discussed RTÉ's radio (ASB and DSB) licences.
- 7 RTÉ's current ASB licence commenced on 29 February 2012 and will expire on 13 May 2019. When its current ASB licence expires, RTÉ will require a new ASB licence in order to continue to lawfully broadcast a free-to-air analogue radio service in the State.
- 8 RTÉ's current DSB licence commenced on 14 May 2009 and will co-terminate with the ASB licence on 13 May 2019<sup>3</sup>. RTÉ established its Digital Audio Broadcasting (DAB) network in 2009 under the same DSB licence. When RTÉ's current DSB licence expires, it will require a new DSB licence in order to continue to broadcast a free-to-air digital radio service in the State<sup>4</sup>.

#### Technical conditions

- 9 The conditions attaching to RTÉ's current ASB and DSB licences are set out in ComReg documents 12/13b, 12/04a and 08/100a.<sup>5</sup> ComReg stated in Document 18/64 that it does not see any reason or need to change the technical conditions that attach to RTÉ's current radio licences (ASB and DSB) and proposed to attach the same conditions to any new ASB and DSB licences granted to RTÉ.

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<sup>3</sup> RTÉ [DSB multiplex Licence](#), available at [www.comreg.ie](http://www.comreg.ie)

<sup>4</sup> RTÉ's DSB network currently achieves 54% population coverage, [statistics](#) from [www.RTE.ie](http://www.RTE.ie).

<sup>5</sup> ASB licence conditions ([12/13b](#)) and technical licence conditions ([12/04a](#)), available at [www.comreg.ie](http://www.comreg.ie), DSB licence and technical conditions are contained in ComReg document [08/100a](#), available at [www.comreg.ie](http://www.comreg.ie).

## Duration

- 10 ComReg, having regard to the close relationship between the analogue and digital sound broadcasting services provided by RTÉ over its ASB and DSB networks, considered it appropriate that any new ASB and DSB licences should again co-terminate. ComReg proposed 10 years as an appropriate term for new ASB and DSB licences and that they should commence on 14 May 2019 and expire on 13 May 2029. Any ASB or DSB licence commencing later than 13 May 2019 would also co-terminate with other ASB or DSB licences – i.e. it would expire on 13 May 2029.

## Fees and the need for new regulations

- 11 The current annual fee for RTÉ's DSB licence is €20,500, subject to an annual Consumer Price Index ("CPI") adjustment. ComReg stated that it considers such a fee to be appropriate for any new DSB licence granted to RTÉ. ComReg also noted that granting the DSB licence requires new regulations made under section 5 of the 1926 Act (subject to Ministerial consent under section 37 of the 2002 Act).<sup>6</sup>

## 2.2 Radio (ASB and DSB) - Summary of respondent's views

### ASB

- 12 RTÉ states that under legislation it must establish and operate sound broadcasting services that have the character of public services. It operates four radio stations<sup>7</sup> which are broadcast nationwide using FM radio spectrum while one station, RTÉ Radio 1, is also currently broadcast on Longwave across the island of Ireland.
- 13 In line with the obligations of the Broadcasting Act 2009 and RTÉ's strategy, RTÉ submits that it fully intends to continue to operate these radio services and to broadcast them using FM spectrum, and that it will therefore require a new ASB licence from 14 May 2019 in order to be able to lawfully do so.
- 14 RTÉ supports ComReg's view that there are no reasons to change the conditions for new ASB licences.

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<sup>6</sup> The current DSB licence is issued under the 2007 Act, which was repealed and revoked by the 2009 Act.

<sup>7</sup> RTÉ operates 4 radio stations – RTÉ Radio 1, RTÉ 2fm, RTÉ lyric FM and RTÉ Raidió na Gaeltachta

## DSB

- 15 RTÉ DAB digital radio multiplex currently broadcasts nine radio services<sup>8</sup> providing coverage to 54% of the national population predominantly in the Cork, Limerick and greater Dublin areas.
- 16 RTÉ intends to continue to operate its current DAB multiplex with no current plans to extend coverage. RTÉ therefore indicates that it will require a new DSB licence from 14 May 2019 in order to continue to lawfully operate the DAB multiplex.

## 2.3 Radio (ASB and DSB) - ComReg final position

17 From RTÉ's submission to Document 18/64, ComReg notes that:

- RTÉ intends to continue to provide ASB and DSB radio services and will therefore require new ASB and DSB licences from 14 May 2019; and
- RTÉ considers that there is no reason to change the ASB licence conditions and provides no comment on ComReg's DSB licence proposals.

18 Noting the above, and having considered all relevant material, ComReg is of the view that its proposals as set out in Document 18/64 remain appropriate.

### ComReg final position

19 ComReg will take the followings actions:

- (i). Issue a "public service broadcasting licence" to RTÉ at its request and pursuant to section 121 of the 2009 Act which provides that the powers conferred on RTÉ by virtue of section 114 (4) (a) and (b) of the 2009 Act shall not be exercised save under such a licence.
- (ii). Issue to RTÉ, at its request and pursuant to section 133 of the 2009 Act, a DSB licence in respect of the establishment, maintenance and operation of a single sound broadcasting multiplex, which shall in so far as it is reasonably practicable, be capable of being transmitted by digital terrestrial means to the whole community in the State.
- (iii). Grant to RTÉ, under section 5 of the 1926 Act and on payment of the applicable fee, licence(s) to keep and have possession of apparatus for wireless telegraphy in the State for the purposes of operating its analogue and digital radio broadcast networks. For the purpose of granting such a licence, ComReg will seek to make new regulations under section 6 of the 1926 Act, setting the form of the licence, the circumstances and manner in which the licence may be

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<sup>8</sup> RTÉ simulcasts the four FM stations plus five digital radio services: RTÉ Pulse, RTÉ 2xm, RTÉ Gold, RTÉ Junior Radio and RTÉ Radio 1 Extra.



suspended or revoked, the terms and conditions to be observed by RTÉ as holder of the licence, and in particular set:

- a. a maximum duration of 10 years for any new licence issued to RTÉ for the provision of radio services; and
- b. a fee of €20,500, subject to annual CPI adjustment, to any new DSB licence issued to RTÉ. The first CPI indexation shall take place on 14 May 2020 and shall occur annually thereafter on that same date.

A draft of these regulations is set out in Annex 3; and

- (iv). Attach the technical conditions as contained in ComReg Documents 12/04a and 08/100a as revised, to any new ASB and DSB licence issued to RTÉ.

## 2.4 Television (DTT) - Summary of Document 18/64

20 Chapter 3 of Document 18/64 addressed RTÉ's digital terrestrial television ("DTT") licences. On 14 December 2007, ComReg issued a 12-year DTT licence to RTÉ and in 2011 ComReg issued a second DTT licence to RTÉ, of 8 years duration so that it would co-terminate with the first licence.

21 The conditions attached to RTÉ's two DTT licences are set out in Document 07/90a.<sup>9</sup> These include an annual fee for each licence of €114,000, indexed to inflation using CPI.

22 When its current DTT licences expire, on 13 December 2019, RTÉ will require new DTT licences in order to continue to lawfully broadcast a free-to-air television service in the State. To facilitate issuing new DTT licences to RTÉ, ComReg set out the following proposals.

### Technical conditions

23 The technical conditions attaching to RTÉ's DTT licences are set out in Document 07/90b<sup>10</sup>. In Document 18/64, ComReg stated that it did not envisage making any changes to these technical conditions.

### Duration

24 In 2007, ComReg issued a 12-year DTT licence to RTÉ and later issued a second DTT licence set at 8 years duration so that it would co-terminate with the first. Both licences will expire on 13 December 2019.

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<sup>9</sup> Licence Conditions for DTT, ComReg document [07/90a](#).

<sup>10</sup> ComReg document [07/90b](#) specifies characteristics for the operation of a Digital Video Broadcasting Terrestrial (DVB-T) transmission network under a Digital Terrestrial Television (DTT) Licence. Available at [www.comreg.ie](http://www.comreg.ie)

- 25 Section 132(1) of the 2009 Act provides that ComReg, upon request by RTÉ, shall issue a single television multiplex licence to RTÉ and section 132(2) provides that ComReg, upon request by RTÉ and following consultation with the Minister for Communications and the BAI, shall issue a second television multiplex licence to RTÉ. Further, Article 4 of the 2017 EU Decision requires that “*Member States shall ensure availability at least until 2030 of the 470-694 MHz (‘sub-700 MHz’) frequency band for the terrestrial provision of broadcasting services, including free television ...*” ;
- 26 In Document 18/64, ComReg proposed that new DTT licences should be of 12 years duration and should co-terminate. This means that any DTT licence commencing later than 14 December 2019 would expire on 13 December 2031 (i.e. on the same expiry date as all other DTT licences). ComReg’s view was based on a number of considerations, including that a 12 year period was a reasonable timeframe for RTÉ to recoup its investment in its DTT network and that this timeframe would ensure there are no long-term barriers to a co-ordinated approach to organising the use of the spectrum band - this is particularly important where a co-ordinated approach may be necessary in future, in order to introduce new and innovative services.

### Fees

- 27 ComReg stated in Document 18/64 that the annual fee for RTÉ’s current DTT licences is appropriate for any new licence. This means new annual fee will be €117,100, subject to CPI indexation.

### New Regulations

- 28 In order to grant to RTÉ new rights of use for radio frequencies in the range 470 – 690 MHz, ComReg must make new regulations under section 6 of the 1926 Act (subject to consent of the Minister under s.37 of the 2002 Act). Such regulations would also set the form and duration of any RTÉ DTT licence, the circumstances and manner in which such licences may be suspended or revoked, the terms and conditions to be observed by RTÉ, and the licence fee (€117,100 per annum subject to CPI indexation). A draft of the proposed regulations was set out in Annex 1 of Document 18/64.

## 2.5 Television (DTT) - Summary of respondent's views

- 29 RTÉ states that it has a statutory duty to operate a DTT service. It established its Saorview service<sup>11</sup> in May 2011, initially operating one DTT multiplex, and expanded to include a second DTT multiplex in 2013. RTÉ submits that its two multiplexes provide near universal coverage to 98% of the population. Saorview has grown to be the largest TV platform in terms of all home reach and is in 661,000 homes across the State, which is 42% of all TV homes (source: Nielsen, January 2018).
- 30 RTÉ states that it intends to further enhance<sup>12</sup> its Saorview service to ensure that Ireland continues to have a strong free to air television service and it therefore intends to continue to operate its two DTT multiplexes, meaning that it will require two new DTT licences from 14 December 2019. RTÉ agrees with ComReg's proposals regarding such licences as set out in Document 18/64.

## 2.6 Television (DTT) - ComReg final position

- 31 ComReg notes that RTÉ intends to continue to operate two DTT multiplexes and that it will require two new DTT licences from 14 December 2019 in order to lawfully do so and that RTÉ otherwise agrees with ComReg's proposals as set out in Document 18/64. Having noted RTÉ's views and having considered all relevant material, ComReg is of the view that its proposals in Document 18/64 remain appropriate.

### ComReg's final position

- 32 ComReg's will take the following actions:
- (i). Issue a "public service broadcasting licence" to RTÉ at its request and pursuant to section 121 of the 2009 Act which provides that the powers conferred on RTÉ by virtue of section 114 (4) (a) and (b) of the 2009 Act shall not be exercised save under such a licence.
  - (ii). Issue to RTÉ, at its request and pursuant to section 132 of the 2009 Act, two DTT multiplex licences to facilitate the continued provision of DTT services by RTÉ following the expiry of the current licences on 13 December 2019;
  - (iii). Grant to RTÉ, under section 5 of the 1926 Act and on payment of the applicable fee, two new spectrum licences issued under the WT Act 1926 for the provision

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<sup>11</sup> Saorview carries the television services of RTÉ, TV3, TG4 and Oireachtas TV and provides the channels free to air at the point of reception.

<sup>12</sup> In the last year, RTÉ noted that it launched a next generation internet connected service for Saorview, called Saorview Connect.

and use of radio spectrum for DTT services<sup>13</sup>. These licences will also facilitate the use of current DTT frequencies up until 4 March 2020, the end of the Simulcast Period.

For the purpose of granting such licences, ComReg will seek to make new regulations under section 6 of the 1926 Act, setting the form of the licence, the circumstances and manner in which the licence may be suspended or revoked, the terms and conditions to be observed by RTÉ as holder of the licence, and in particular set:

- a. a maximum duration of 12 years for any new licence issued to RTÉ for the provision of DTT services; and
- b. a fee of €117,100, subject to annual CPI adjustment, to any new DTT licence issued to RTÉ. The first CPI indexation shall take place on 14 December 2020 and shall occur annually thereafter on that same date.

A draft of these regulations is set out in Annex 3; and

- (iv). Attach the technical conditions as contained in ComReg Document 07/90b as revised, to any new DTT licence issued to RTÉ.

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<sup>13</sup> All “*apparatus for wireless telegraphy*” in the State require a licence granted by ComReg under section 5 of the 1926 Act, through regulations made by ComReg under section 6 of the 1926 Act. Subject to the required consent of the Minister for Communications Climate Action and the Environment in accordance with section 37 of the 2002 Act.

### 3 Regulatory Impact Assessment (RIA)

- 33 ComReg’s published RIA Guidelines<sup>14</sup> state that ComReg will conduct a RIA in any process that may result in the imposition of a regulatory obligation, or the amendment of an existing obligation to a significant degree, or which may otherwise significantly impact on any relevant market or any stakeholders or consumers. The RIA Guidelines also note that in certain instances it may not be appropriate to conduct a RIA and, in particular, that a RIA is only considered necessary in advance of a decision that could result in the imposition of an actual regulatory measure or obligation and where ComReg is merely charged with implementing a statutory obligation then it will assess each case individually and will determine whether a RIA is necessary and justified.
- 34 In respect of this consultation on licensing for public service broadcasting, ComReg considers that a RIA is not necessary given that ComReg is essentially proposing to act in accordance with its prescribed statutory functions and duties under the 2009 Act, 2002 Act, 1926 Act, and the Authorisation Regulations 2011 (as set out above) and in order to give proper effect in the State to Article 4 of the 2017 EU Decision which requires Ireland, as an EU Member State, *“to ensure availability at least until 2030 of the 470-694 MHz (‘sub-700 MHz’) frequency band for the terrestrial provision of broadcasting services, including free television ...”* That being the case, and given that there does not appear to be any substantial regulatory options other than those proposed, a RIA is not considered necessary.

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<sup>14</sup> ComReg document [07/56a](#), available at [www.comreg.ie](http://www.comreg.ie)

## 4 Next Steps

- 35 Annex 3 sets out the draft regulations reflecting ComReg's positions as set out in this response to consultation document. These regulations are subject to the consent of the Minister for Communications Climate Action and Environment and as such ComReg will engage with DCCAIE to finalise these regulations to ensure that they are in place in advance of the expiry of RTÉ's current radio licences in May 2019 and Television licences in December 2019.
- 36 ComReg will issue new ASB and DSB radio licences to RTÉ, as set out in section 2.3 of this response to consultation document, following a request from RTÉ as required in section 114(4) and section 133(1) of the Broadcasting Act 2009, in advance of the expiry of its current radio licences.
- 37 ComReg will issue new DTT licences to RTÉ, as set out in section 2.6 of this document, following a request from RTÉ as required in section 114(4) and section 132(1) of the Broadcasting Act 2009, in advance of the expiry of its current DTT licences.

# Annex: 1 Submissions to Document 18/64

A 1.1 ComReg received one submission to Document 18/64. This is from RTÉ and is set out below.



## **RTÉ's response to ComReg's review of RTÉ's Radio and Television Broadcasting Licences** (reference ComReg 18/64)

7 August 2018

RTÉ welcomes the opportunity to respond to ComReg's review of RTÉ's Radio and Television Broadcasting Licences published on 12 July 2018, reference ComReg 18/64. Please note that the contents of this response are not considered to be confidential.

RTÉ's responses to both questions are set out below.

### **Question 1. Do you agree with ComReg's ASB and DSB proposals as outlined in this chapter? In providing your view, please also provide supporting evidence.**

Under legislation RTÉ has obligations to establish and operate sound broadcasting services that have the character of public services. RTÉ operates 4 radio stations – RTÉ Radio 1, RTÉ 2fm, RTÉ lyric FM and RTÉ Raidió na Gaeltachta – that are broadcast using FM radio spectrum across the country. In addition, RTÉ Radio 1 is currently broadcast on Longwave and is available across the island of Ireland.

In line with the obligations of the Broadcasting Act 2009 and RTÉ's strategy, RTÉ fully intends to continue to operate these radio services and broadcast them using FM spectrum. Therefore, RTÉ will require a new ASB licence from 14 May 2019 in order to be able to lawfully broadcast these services. RTÉ supports ComReg's view that there are no reasons to change the conditions in the new ASB licence.

RTÉ has established a DAB digital radio multiplex and currently uses the multiplex to broadcast nine radio services – simulcasts of the four FM stations plus five digital radio services: RTÉ Pulse, RTÉ 2xm, RTÉ Gold, RTÉ Junior Radio and RTÉ Radio 1 Extra. The multiplex provides coverage to 54% of the population of the country, predominantly in the Cork, Limerick and greater Dublin areas.

RTÉ intends to continue to operate the DAB multiplex but has no agreed plans to extend the transmission coverage beyond the current network. Any extension of the current network would be dependent on there being a Government policy and national strategy on the future of DAB broadcasting. In the meantime though, RTÉ will require a new DSB licence from 14 May 2019 in order for RTÉ to continue to lawfully operate the DAB multiplex from the already established transmission network.

**Question 2. Do you agree with ComReg’s DTT proposals as outlined in this chapter? In providing your view, please also provide supporting evidence.**

Under legislation RTÉ has obligations to operate a digital terrestrial television service. RTÉ established Saorview in May 2011 initially operating one DTT multiplex and then following digital switchover, the second DTT multiplex was switched on in 2013, with both multiplexes providing near universal coverage to 98% of the population.

Since then, Saorview has grown to be the largest TV platform in terms of all home reach and is in 661,000 homes across the country, which is 42% of all TV homes (source: Nielsen, January 2018). Saorview carries the television services of RTÉ, TV3, TG4 and Oireachtas TV and provides the channels free to air at the point of reception.

In the last year, RTÉ launched a next generation internet connected service for Saorview, called Saorview Connect. In the coming years, RTÉ intends to further enhance the Saorview service to ensure that Ireland continues to have a strong free to air television service.

RTÉ fully intends to continue to operate the two DTT multiplexes, and therefore RTÉ will require two new DTT licences from 14 December 2019 in order for RTÉ to continue to lawfully operate the DTT multiplexes and provide the Saorview service to audiences.

RTÉ supports ComReg’s view that the two DTT licences should be for a period of 12 years, given the positions on the use of UHF spectrum up to 2030. RTÉ agrees that the two DTT licences co-terminate on the same date and that any new DTT licences that are awarded after 13 December 2019 should also co-terminate on the same date of 13 December 2031.

In conclusion, RTÉ agrees with ComReg’s DTT proposals as set out in the consultation.



## Annex: 2 Summary of legal framework

A 2.1 This Annex contains a summary of the legal framework relative to broadcasting services, including, amongst others, the relevant sections of the Broadcasting Act 2009, the EU Decision on the 700 MHz band and relevant sections of the Wireless Telegraphy Act 1926.

### Legislation

A 2.2 ComReg's powers, functions, duties and objectives in managing the national radio frequency resource are mainly set out in the Communications Regulation Act 2002, as amended ("2002 Act"), the Wireless Telegraphy Act 1926, as amended ("1926 Act"), and in the "Common Regulatory Framework" (including the Framework Directive and Authorisation Directives as respectively transposed into Irish law by the Framework Regulations and Authorisation Regulations).<sup>15</sup>

A 2.3 ComReg's statutory remit in managing spectrum, in summary, is to encourage the efficient use and ensure the effective management of spectrum, to promote competition in the electronic communications sector, to contribute to the development of the internal market, and to promote the interests of users within the Community. ComReg also seeks to ensure that radio frequencies are allocated and assigned based on objective, transparent, non-discriminatory and proportionate criteria.

A 2.4 In addition to the above, certain provisions of the Broadcasting Act 2009 ("2009 Act") apply to spectrum management in relation to radio and television broadcasting including the networks operated by, and the services provided by, Raidió Teilifís Éireann ("RTÉ"), the State public service broadcaster.

A 2.5 In respect of its radio networks and services, RTÉ currently holds an Analogue Sound Broadcasting ("ASB") and a Digital Sound Broadcasting ("DSB") licence. Both licences will expire on 13 May 2019.

A 2.6 The key statutory provisions relating to ASB and DSB licensing are sections 114, 121, and 133 of the 2009 Act and section 5 of the 1926 Act, described below.

### Broadcasting Act 2009

A 2.7 Section 114(1) sets out RTÉ's principal "objects" which include the following:

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<sup>15</sup> For more information see Annex 1 of Document [18/74](#): Summary of legal framework and statutory objectives relevant to management of radio spectrum available at [www.comreg.ie](http://www.comreg.ie)

*(a) to establish, maintain and operate a national television and sound broadcasting service which shall have the character of a public service, be a free-to-air service and be made available, in so far as it is reasonably practicable, to the whole community on the island of Ireland, ...*

*(i) to establish, maintain, and operate one or more national multiplexes,*

A 2.8 Section 114(4) sets out the principal express powers of RTÉ in pursuance of its objects which powers include the following:

*“(a) to establish, maintain and operate broadcasting stations and to acquire, install and operate apparatus for wireless telegraphy,*

*(b) subject to any regulations under the Act of 1926, which are for the time being in force, to provide for the distribution by means of wired broadcast relay stations of programmes broadcast by RTÉ and such other programmes as RTÉ may decide, ...*

*(j) to arrange with other broadcasting organisations or authorities for the distribution, receipt, exchange and relay of programmes (whether live or recorded), ...*

*(m) to facilitate or assist contemporary cultural expression and encourage or promote innovation and experimentation in broadcasting, ...*

*(p) to establish and maintain an electronic communications network subject to any enactment or rule of law,*

*(q) to establish and maintain an “electronic communications service” meaning a service which consists wholly or mainly of the conveyance of signals on electronic communications networks, subject to the provisions of any enactment or rule of law,*

*(r) to make available the broadcasting services of RTÉ in so far as reasonably practicable by any and all means of transmission, relaying or distribution, whether by way of broadcast (which includes terrestrial sound and television broadcasting networks, cable networks or satellite networks), or by any form of electronic means (which includes fixed terrestrial networks, mobile terrestrial networks, including the Internet and other electronic communications networks) and whether now known or hereinafter invented on a linear or non-linear basis ...”*

A 2.9 Section 121 stipulates that RTÉ’s powers under section 114(4) shall not be exercised save under a “*public service broadcasting licence*” issued to RTÉ or its agent by ComReg.

A 2.10 In respect of its radio networks and services, section 133(1) provides that ComReg shall, upon request, license RTÉ to establish, maintain and operate a sound broadcasting multiplex and section 133(2) provides for the possible licensing to RTÉ of a second sound broadcasting multiplex:

- 1) *[ComReg] at the request of RTÉ, shall issue to RTÉ a licence in respect of the establishment, maintenance and operation of a single sound broadcasting multiplex, which multiplex shall, in so far as it is reasonably practicable, be capable of being transmitted by digital terrestrial means to the whole community in the State.*
- 2) *[ComReg], at the request of RTÉ and after consultation with the Minister and the Authority, shall issue to RTÉ a licence in respect of the establishment, maintenance and operation of one further sound broadcasting multiplex, which multiplex shall, in so far as it is reasonably practicable, be capable of being transmitted by digital terrestrial means to the whole community in the State.*

A 2.11 Section 135(1) of the 2009 Act<sup>16</sup> provides that every multiplex licence shall be issued on payment of such fees (if any) as may be prescribed in regulations by ComReg, with the consent of the Minister.

A 2.12 Section 121 provides that RTÉ's powers under section 114(4) (see Section 2.1) shall not be exercised without a "public service broadcasting licence" issued by ComReg.

A 2.13 Section 132(1) provides that ComReg, upon request by RTÉ, shall issue a single television multiplex licence to RTÉ. Section 132(2) provides that ComReg, upon request by RTÉ and following consultation with the Minister for Communications<sup>17</sup> and the BAI, shall issue a second television multiplex licence to RTÉ. Section 135 provides that fees may attach to any television multiplex licence issued to RTÉ, under section 132(1) or (2).

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<sup>16</sup> For the avoidance of doubt, regulations made by ComReg under section 135 of the 2009 Act are separate and distinct from regulations made by ComReg under section 6 of the 1926 Act (noting that the latter are also subject to the consent of the Minister for Communications Climate Action and the Environment, though pursuant to section 37 of the 2002 Act rather than section 135(1) of the 2009 Act).

<sup>17</sup> The Minister for Communications, Climate Action and Environment (DCCAE) and is responsible for the delivery of policies and programmes in a number of areas including communications and broadcasting.

## EU Decision on the 470-790 MHz band

A 2.14 Recital 12 of the 2017 EU Decision on the 470-790 MHz band<sup>18</sup> references the Pascal Lamy Report 2014<sup>19</sup> which recommends that the 700 MHz band be made available for wireless broadband by 2020 and that the sub-700 MHz frequency (470 - 690 MHz) band be made available for broadcasting services until 2030, subject to review by 2025. The 2017 EU Decision applies to DTT in that it requires all Member States to:

*“allow the use of the 694-790 MHz (‘700 MHz’) frequency band for terrestrial systems capable of providing wireless broadband electronic communications services only under harmonised technical conditions established by the Commission pursuant to Article 4 of Decision No 676/2002/EC by 30 June 2020.” (Article 1); and*

*“ensure availability at least until 2030 of the 470-694 MHz (‘sub-700 MHz’) frequency band for the terrestrial provision of broadcasting services, including free television, and for use by wireless audio PMSE on the basis of national needs, while taking into account the principle of technological neutrality.” (Article 4)*

## Wireless Telegraphy Act 1926

A 2.15 All “*apparatus for wireless telegraphy*” in the State requires a licence granted by ComReg under section 5 of the 1926 Act, through regulations made by it under section 6 of the 1926 Act.<sup>20</sup> The only exception is where the apparatus is of a type that is licence exempt. Apparatus possessed, installed or used for broadcasting services does require a wireless telegraphy licence noting, amongst other things, that such licences are also the legal instruments by which ComReg may grant rights of use for radio frequencies. ComReg, through regulations made under section 6 of the 1926 Act, may also set the form and duration of such licences, the circumstances and manner in which licences may be suspended or revoked, the terms and conditions to be observed by holders of licences, and licence fees.

## Broadcasting Licensing Regulations

A 2.16 Digital Sound Broadcasting Licence Fees Regulations 2009 (S.I. 80/2009) were made pursuant to section 6(1) of the Broadcasting (Amendment) Act 2007

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<sup>18</sup> [Decision \(EU\) 2017/899 of the European Parliament and of the Council of 17 May 2017 on the use of the 470-790 MHz frequency band in the Union](#) available at [www.eur-lex.europa.eu](http://www.eur-lex.europa.eu).

<sup>19</sup> [Pascal Lamy Report 2014](#), available at [www.ec.europa.eu](http://www.ec.europa.eu).

<sup>20</sup> Subject to the required consent of the Minister for Communications Climate Action and the Environment in accordance with section 37 of the 2002 Act.

A 2.17 ComReg has previously made two sets of regulations for DTT services, pursuant to the 1926 Act and the Broadcasting (Amendment) Act 2007 (“2007 Act”):

- Broadcasting Amendment Act (DTT Licence Fees) Regulations 2007 (S.I.796/2007) - prescribed fees for DTT licences issued to RTÉ and to the BCI (now the BAI) under sub-sections 5 and 7 of the 2007 Act.
- Wireless Telegraphy (DTT Licence) Regulations 2008 (S.I.198/2008) – provided for issuing of DTT licences to the BCI under sections 5(3) or (4) of the 2007 Act, including duration and fees.

A 2.18 The above DTT Licence Fees Regulations were made under the 2007 Act, which was revoked and replaced by the 2009 Act, consequently no new licences can issue under those regulations and ComReg must now make new regulations in accordance with the 1926 Act and 2009 Act.

## Annex: 3 Draft Regulations

This annex contains draft Regulations that reflect ComReg’s positions as set out in this response to consultation document. Any final Regulations as may be made by ComReg under section 6 of the Wireless Telegraphy Act 1926 shall be subject to the consent of the Minister for Communications Climate Action and Environment under section 37 of the Communications Regulation Act 2002. ComReg may also make such editorial amendments to any final Regulations as it considers necessary and without further consultation, where such amendments do not affect the substance of the final Regulations.

### **WIRELESS TELEGRAPHY (PUBLIC SERVICE TELEVISION AND SOUND BROADCASTING LICENCES) REGULATIONS, 2019**

The Commission for Communications Regulation, in exercise of the powers conferred on it by section 6(1) of the Wireless Telegraphy Act, 1926 (No. 45 of 1926) and with the consent of the Minister for Communications, Climate Action and Environment pursuant to section 37 of the Communications Regulation Act, 2002, hereby makes the following regulations:

#### **Citation**

1. These Regulations may be cited as the Wireless Telegraphy (Public Service Television and Sound Broadcasting Licences) Regulations, 2019

#### **Interpretation**

2. (1) In these Regulations, except where the context otherwise requires—

“Act of 1926” means the Wireless Telegraphy Acts, 1926 to 2009 (No. 45 of 1926);

“Act of 2009” means the Broadcasting Act 2009 (No. 18 of 2009);

“apparatus” means apparatus for wireless telegraphy as defined in section 2 of the Act of 1926 that utilises radio frequencies for the purposes of providing a broadcasting service.

“Authorisation Regulations” means the European Communities (Electronic Communications Networks and Services)(Authorisation) Regulations, 2011 (S.I. 335 of 2011);

“the Commission” means the Commission for Communications Regulation;

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

“licence” means a licence granted under section 5 of the Act of 1926 to keep and have possession of apparatus for wireless telegraphy for the provision of an electronic

communications network or service and which grants a right of use for radio frequencies;

“licensee” means Raidió Teilifís Éireann or RTÉ;

(2) In these Regulations:

(a) a reference to an enactment or regulation shall be construed as a reference to the enactment or regulation as amended or extended by or under any subsequent enactment or regulation;

(b) a reference to a Regulation or a Schedule is to a Regulation of or Schedule to these Regulations unless it is indicated that a reference to some other enactment is intended;

(c) a reference to a paragraph or subparagraph is to the paragraph or subparagraph of the provision in which the reference occurs unless it is indicated that reference to some other provision is intended;

(d) a reference to a Directive of the European Parliament and Council shall be the Directive as amended or extended by any subsequent Directive; and

(e) a reference to a Decision of the European Commission shall be the Decision as amended or extended by any subsequent Decision.

(3) A word or expression that is used in these Regulations and that is also used in the Act of 1926 has, unless the context otherwise requires, the same meaning in these Regulations that it has in the Act of 1926.

(4) A word or expression that is used in these Regulations and that is also used in the Act of 2009 has, unless the context otherwise requires, the same meaning in these Regulations that it has in the Act of 2009.

(5) A word or expression that is used in these Regulations and that is also used in the Framework Regulations or in the Authorisation Regulations has, unless the context otherwise requires, the same meaning in these Regulations that it has in the Framework Regulations or Authorisation Regulations.

(6) The Interpretation Act 2005 (No. 23 of 2005) applies to these Regulations.

### **Licences to which these Regulations apply**

3. These Regulations apply to licences as may be granted to RTÉ, a public service broadcaster, permitting RTÉ to possess, install, maintain, work and use apparatus in the State for the purpose of providing broadcasting services.

## **Licence applications**

4. (1) An application for a licence made to the Commission shall be in writing and shall be in such form as may be determined by the Commission from time to time and the Commission may grant a licence in accordance with the relevant provisions of the Authorisation Regulations.

(2) An application for a licence shall include such information as the Commission may reasonably require for the purposes of its functions under these Regulations and the Authorisation Regulations and the Commission may refuse to grant a licence where the applicant, without reasonable cause, has failed to comply with a requirement to furnish any such information.

(3) A licence to which these Regulations apply shall be in the form specified in Schedule 1, Schedule 2 and Schedule 3 with such variation, if any, whether by addition, deletion or alteration as the Commission may determine from time to time or in any particular case.

## **Licence duration**

5. (1) A licence shall come into effect on the date on which it is originally granted and without prejudice to the right of the Commission to revoke or suspend the licence, in the event of non-compliance with any of the conditions attached thereto, the licence shall remain in effect until the termination date set out in the licence, whereupon it shall expire.

(2) The maximum duration of any licences granted under these Regulations shall:

- (a) in respect of any licence for a television multiplex be up to 12 years from the date on which it is originally granted. Unless it has been withdrawn or had its duration reduced under Regulation 8(2), a licence for a television multiplex to which these Regulations apply shall in any event expire on 13 December 2031; and
- (b) in respect of any licence for a sound broadcasting multiplex, be up to 10 years from the date on which it is originally granted. Unless it has been withdrawn or had its duration reduced under Regulation 8(2), a licence for a sound broadcasting multiplex to which these Regulations apply shall in any event expire on 13 May 2029;
- (c) in respect of any licence for analogue sound broadcasting, be up to 10 years from the date on which it is originally granted. Unless it has been withdrawn or had its duration reduced under Regulation 8(2), a licence for analogue sound broadcasting to which these Regulations apply shall in any event expire 13 May 2029;

## **Licence fees**

6. (1) The annual licence fee payable to the Commission - for a licence granted under these Regulations permitting the licensee to establish, maintain and operate a television multiplex that is capable, in so far as it is reasonable practicable, of being



transmitted by digital terrestrial means to the whole community in the State – shall be €117,100, indexed to reflect the applicable annual rate of inflation using the Consumer Price Index. The first indexation shall take place on the 14 December 2020 and shall occur annually thereafter on that same date.

(2) The annual licence fee payable to the Commission - for a licence granted under these Regulations permitting the licensee to establish, maintain and operate a sound broadcasting multiplex that is capable, in so far as it is reasonable practicable, of being transmitted by digital terrestrial means to the whole community in the State – shall be €20,500, indexed to reflect the applicable annual rate of inflation using the Consumer Price Index. The first indexation shall take place on 14 May 2020 and shall occur annually thereafter on that same date.

(3) The annual fee for a licence shall be paid before or on the date on which the licence is first granted and shall thereafter fall due on the anniversary of that same date.

(4) No licence shall be granted or renewed without full payment of the applicable fee.

(5) Where any licence fee is payable for a portion of a year it shall be calculated as follows:

$$A \times (B/12) = C$$

where A is the annual licence fee payable under subsection (1) or (2); B is the number of whole months for which that fee is payable (if a fee is payable for a period of less than one month, then, for the purpose of these calculations only, it shall be considered to be payable for a period of one month) and C is the actual fee to be paid to the Commission.

(6) All licence fees shall be paid to the Commission by way of banker's draft or such other means and on such terms (including terms as to the place of payment) as the Commission may decide. Where the date of payment falls on a Saturday, a Sunday or a public holiday payment shall be made on or before the last working day before the date of payment.

(7) Any licence fee or part thereof payable under these Regulations may be recovered by the Commission as a contract debt in any court of competent jurisdiction.

(8) Where a licence is withdrawn, suspended or revoked, the licensee shall not be entitled to be repaid any part of the relevant licence fee but shall still be liable to pay to the Commission any part of that fee (including interest) that is outstanding.

(9) Where a fee or part of a fee is not paid by its due date, the licensee shall pay to the Commission interest on the fee or part thereof that was or is outstanding. Interest shall accrue from the date when such fee or part thereof fell due until the date of payment of such fee or part thereof and shall be calculated at the same rate payable in respect of late payments in commercial transactions pursuant to the European

Communities (Late Payment in Commercial Transactions) Regulations 2012, (S.I. No. 580 of 2012).

### **Licence conditions**

7. (1) The licensee shall:

- i. comply with these Regulations and with the conditions set out in any licence granted under these Regulations;
- ii. ensure that all apparatus licensed under these Regulations is capable of operating within the radio frequencies specified in the licence;
- iii. ensure that all apparatus licensed under these Regulations is worked and used only in the radio frequencies specified in the licence;
- iv. ensure that all apparatus licensed under these Regulations is installed, maintained, and used so as not to cause harmful interference;
- v. ensure that all apparatus licensed under these Regulations complies with the European Union (Radio Equipment) Regulations 2017, S.I. 248 of 2017;
- vi. ensure that all apparatus licensed under these Regulations is at all times operated by persons properly authorised by the licensee and that all reasonable steps are taken to ensure that unauthorised persons cannot access licensed apparatus at any time;
- vii. pay all applicable licence fees as set out in Regulation and in accordance with the provisions therein;
- viii. furnish to the Commission such information in respect of any licence as may be required by the Commission from time to time;
- ix. comply with any rules to prevent spectrum hoarding as may be laid down by the Commission under the Framework Regulations;
- x. comply with all obligations under relevant international agreements relating to the use of all apparatus licensed under these Regulations or the frequencies to which they are assigned;
- xi. upon becoming aware of any event likely to materially affect its ability to comply with these Regulations, or with any conditions set out or referred to in any licence, notify the Commission of that fact in writing no later than 5 Working Days upon becoming aware of it;

(2) The Licensee shall not operate any apparatus licensed under these Regulations, and which constitutes or forms part of any sound broadcasting multiplex or a television multiplex, without the Commission's specific approval in writing in respect of the following:

- (i) characteristic frequency;
- (ii) name and geographical co-ordinates of broadcasting stations;
- (iii) effective radiated power;
- (iv) antenna characteristics; and
- (v) antenna height.

## **Enforcement, Amendment, Withdrawal and Suspension**

8. (1) The Commission shall enforce compliance with the conditions attached to any licence in accordance with the Authorisation Regulations.

(2) The Commission may amend any licence from time to time in accordance with the Authorisation Regulations.

(3) The Commission may suspend or withdraw a licence in accordance with the Authorisation Regulations.

## **Other authorisations and responsibilities**

9. Nothing in these Regulations shall absolve the licensee from obtaining all approvals, consents, licences, permissions and authorisations required to design, construct, install, work any apparatus licensed hereunder.

## **Variation of licence**

10. The Commission may amend, or vary, the terms of a licence following such public consultation as may be deemed appropriate and the licensee shall be given reasonable opportunity to make representations regarding the proposed amendment or variation and the Commission shall consider such representations in making any variation.

## **Limitations of Licence**

11. (1) The licensee shall not transfer or lease a licence or any rights of use for radio frequencies granted thereunder without the prior consent in writing of the Commission (such consent not to be unreasonably withheld). Any consent to a transfer or lease by the Commission under this paragraph may be subject to such further conditions as the Commission considers appropriate in the circumstances.

(2) The licensee shall comply with the provisions of the International Telecommunication Convention and of any international convention or international agreement relating to the use of frequencies to which the State becomes a party during the continuance of a licence.

## **Revocations**

12. The following statutory instruments are hereby revoked:

- (i). Digital Terrestrial Television Licence Fees Regulations, 2007 (s.i. 796 of 2007)
- (ii). Wireless Telegraphy (Digital Terrestrial Television Licence) Regulations, 2008 (s.i. 198 of 2008)
- (iii). Broadcasting Amendment Act 2007 Digital Sound Broadcasting Licence Fees Regulations 2009 (s.i. 80 of 2009)

**SCHEDULE 1**

**WIRELESS TELEGRAPHY ACT, 1926**

**WIRELESS TELEGRAPHY (PUBLIC SERVICE TELEVISION AND SOUND BROADCASTING LICENCES) REGULATIONS, 2019**

**Wireless Telegraphy Act 1926 Television Multiplex Licence**

The Commission for Communications Regulation in accordance with section 5 of the Wireless Telegraphy Act 1926, grants to the licensee specified authorisation to establish, maintain and operate a Digital Terrestrial Television Multiplex as specified in Parts 1 to 4 to this licence subject to the licensee observing the licence conditions set out hereunder.

**Licensee** **X**

**Address for Notices** **X**

**Commencement and Termination Dates (if applicable):**

This licence shall come into effect on **DD MONTH YYYY** (the “Licence Commencement Date”) and subject to revocation, suspension, or withdrawal shall expire on **DD MONTH YYYY**

Signed: \_\_\_\_\_

For and on behalf of the Commission for Communications Regulation

Date of Issue: \_\_\_\_\_

## **PART 1 – Technical Conditions**

The licensee shall comply with the Technical Conditions for Digital Terrestrial Television as per ComReg Document 07/90b

## **PART 2 - List of transmitter sites**

Licensee	Station Name	County	Network Type	Service Name	Freq. (MHz)	Channel	Coordinates Longitude	Coordinates Latitude	Station Height (m)	Antenna Height (m)	Polarisation (H/V/M)	Power E.R.P. (Watts)	Licence Type	RDS	Franchise Area	Coordination Type	Antenna Pattern (0-360 degrees)
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## **PART 3 – Licensed System**

*Digital Terrestrial Television System*

## **PART 4 – Licence Area**

*National Licence*

**SCHEDULE 2**

**WIRELESS TELEGRAPHY ACT, 1926**

**WIRELESS TELEGRAPHY (PUBLIC SERVICE TELEVISION AND SOUND BROADCASTING LICENCES) REGULATIONS, 2019**

**Wireless Telegraphy Act 1926 Sound Broadcasting Multiplex Licence**

The Commission for Communications Regulation in accordance with section 5 of the Wireless Telegraphy Act 1926, grants to the licensee specified authorisation to establish, maintain and operate a Digital Sound Broadcasting multiplex as specified in Parts 1 to 4 to this licence subject to the licensee observing the licence conditions set out hereunder.

**Licensee** X

**Address for Notices** X

**Commencement and Termination Dates (if applicable):**

This licence shall come into effect on **DD MONTH YYYY** (the “Licence Commencement Date”) and subject to revocation, suspension, or withdrawal shall expire on **DD MONTH YYYY**

Signed: \_\_\_\_\_

For and on behalf of the Commission for Communications Regulation

Date of Issue: \_\_\_\_\_

## **PART 1 – Technical Conditions**

The licensee shall comply with the Technical Conditions for Digital Sound Broadcasting as per ComReg Document 08/100a, as revised

## **PART 2 – List of transmitter sites**

Licensee	Station Name	County	Network Type	Service Name	Freq. (MHz)	Channel	Coordinates Longitude	Coordinates Latitude	Station Height (m)	Antenna Height (m)	Polarisation (H/V/M)	Power E.R.P. (Watts)	Licence Type	RDS	Franchise Area	Coordination Type	Antenna Pattern (0-360 degrees)
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## **PART 3 – Licensed System**

*Digital Sound Broadcasting System*

## **PART 4 – Licence Area**

*National Licence*

**SCHEDULE 3**

**WIRELESS TELEGRAPHY ACT, 1926**

**WIRELESS TELEGRAPHY (PUBLIC SERVICE TELEVISION AND SOUND BROADCASTING LICENCES) REGULATIONS, 2019**

**Wireless Telegraphy Act 1926 Analogue Sound Broadcasting Licence**

The Commission for Communications Regulation in accordance with section 5 of the Wireless Telegraphy Act 1926, grants to the licensee specified authorisation to establish, maintain and operate an Analogue Sound Broadcasting Service as specified in Parts 1 and 2 of this licence subject to the licensee observing the licence conditions set out hereunder.

**Licensee** **X**

**Address for Notices** **X**

**Commencement and Termination Dates (if applicable):**

This licence shall come into effect on **DD MONTH YYYY** (the “Licence Commencement Date”) and subject to revocation, suspension, or withdrawal shall expire on **DD MONTH YYYY**

Signed: \_\_\_\_\_

For and on behalf of the Commission for Communications Regulation

Date of Issue: \_\_\_\_\_



## **PART 1 – Technical Conditions**

The licensee shall comply with the Technical Conditions for Analogue Sound Broadcasting as per ComReg Document 12/04a, as revised

## **PART 2 – List of transmitter sites**

Licensee	Station Name	County	Network Type	Service Name	Freq. (MHz)	Channel	Coordinates Longitude	Coordinates Latitude	Station Height (m)	Antenna Height (m)	Polarisation (H/V/M)	Power E.R.P. (Watts)	Licence Type	RDS	Franchise Area	Coordination Type	Antenna Pattern (0-360 degrees)
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GIVEN under the Official Seal of the Commission for Communications Regulation

[DATE]

[NAME]

Chairperson, Commission for Communications Regulation

The Minister for Communications, Climate Action and Environment consents to the making of the foregoing Regulations.

GIVEN under the Official Seal of the Minister for Communications, Climate Action and Environment.

[DATE]

[NAME]

Minister for Communications, Climate Action and Environment

## **Annex: 4 Technical conditions for ASB, DSB and DTT licences**

A 4.1 Annex 4 is available in ComReg Document 18/64a and contains the published Technical Conditions for licences, which includes:

- Technical Conditions for ASB licences - ComReg document 12/04a;
- Technical Conditions for DSB licences - ComReg document 08/100a; and
- Technical Conditions for DTT licences - ComReg document 07/90b.