



An Coimisiún um
Rialáil Cumarsáide
Commission for
Communications Regulation

Review of RTÉ's Radio and Television Broadcasting Licences

Consultation

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1 Introduction

- 1 The Commission for Communications Regulation (“ComReg”) is responsible for regulating the electronic communications sector in the State in accordance with European Union (EU) and Irish law and this includes managing the radio frequency spectrum which is a national resource.
- 2 The Broadcasting Act 2009¹ (“2009 Act”) concerns “broadcasting services”² as defined therein. Amongst other things, the 2009 Act provides that Raidió Teilifís Éireann (“RTÉ”) and the Broadcasting Authority of Ireland (“BAI”) ³ shall hold certain licences in respect of the various radio and television broadcasting services which they provide and that ComReg shall grant such licences. This consultation concerns RTÉ’s radio and television licences.
- 3 RTÉ currently holds licences in respect of the following broadcasting networks and services:
 - Analogue Sound Broadcasting (“ASB”);
 - Digital Sound Broadcasting (“DSB”); and
 - Digital Terrestrial Television (“DTT”).
- 4 RTÉ’s ASB licence and DSB licence both expire on 13 May 2019 and its two DTT licences expire on 13 December 2019. This consultation concerns ComReg’s proposal to grant new licences to RTÉ in respect of its ASB, DSB, and DTT networks and services, to take effect once its current licences expire.
- 5 This paper is structured as follows:
 - **Chapter 2:** Radio (ASB and DSB)
 - **Chapter 3:** Television (DTT)
 - **Chapter 4:** Regulatory Impact Assessment (RIA)
 - **Chapter 5:** Submitting Comments and Next Steps

¹ The [Broadcasting Act 2009](http://www.irishstatutebook.ie), available at www.irishstatutebook.ie.

² Broadcasting Services include ASB (FM/AM/LW), DSB (DAB/DAB+), and DTT (DVB-T) services

³ The 2009 Act provides that ComReg shall issue broadcasting licences to the BAI, if requested by the BAI, for the provision of ASB, DSB and DTT services. ComReg currently issues ASB licences, on request from the BAI, on a case by case basis. ComReg note that the BAI have not requested a licence for DSB or DTT services since the introduction of DSB and DTT licensing.

2 Radio (ASB and DSB)

2.1 Legislation

- 6 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).⁴
- 7 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.
- 8 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.
- 9 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.
- 10 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

- 11 Section 114(1) sets out RTÉ's principal "objects" which include the following:
 - (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,*

⁴ For more information see Annex 1 of ComReg Document [16/50](#): Summary of legal framework and statutory objectives relevant to management of radio spectrum available at www.comreg.ie

- 12 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 ...”

- 13 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.

- 14 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.*
- 15 Section 135(1) of the 2009 Act⁵ 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.

Wireless Telegraphy Act 1926

- 16 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.⁶ 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 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.

⁵ 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).

⁶ Subject to the required consent of the Minister for Communications Climate Action and the Environment in accordance with section 37 of the 2002 Act.

2.2 ASB - Current RTÉ licence and conditions for new ASB licences

- 17 RTÉ's current ASB licence commenced on 29 February 2012 and will expire on 13 May 2019 along with its DSB licence. 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. The licence and technical conditions attaching to RTÉ's current ASB licence are set out in ComReg documents 12/13b and 12/04a respectively.⁷
- 18 ComReg does not see any reason or need to change the conditions that attach to RTÉ's current ASB licence and proposes to impose the same conditions in any new ASB licence granted to RTÉ as contained in documents 12/13b and 12/04a⁸.

2.3 DSB - Current RTÉ licence

- 19 RTÉ's current DSB licence was issued under the 2007 Act⁹ and is of a 10 year duration – it commenced on 14 May 2009 and will expire on 13 May 2019¹⁰. 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 State¹¹.
- 20 The current DSB licence is subject to an annual fee of €20,000¹², indexed to inflation.¹³ Certain technical conditions¹⁴ are also imposed under the DSB licence, as appropriate to the particular frequency rights of use assigned thereunder.¹⁵

⁷ ASB licence conditions ([12/13b](#)) and technical licence conditions ([12/04a](#)), available at www.comreg.ie

⁸ See Annex 2

⁹ The current DSB licence is issued under the 2007 Act, which was repealed and revoked by the 2009 Act and therefore no new licences can issue under the regulations made under the 2007 Act and ComReg must now make new regulations in accordance with the 1926 Act and 2009 Act.

¹⁰ RTÉ [DSB multiplex Licence](#), available at www.comreg.ie

¹¹ RTÉ's DSB network currently achieves 54% population coverage, [statistics](#) from www.RTE.ie.

¹² A 50% discount was applied to the fee for the first three years of the licence, in recognition of the start-up phase for DSB.

¹³ Digital Sound Broadcasting Licence Fees Regulations 2009 (S.I. 80/2009) made pursuant to section 6(1) of the Broadcasting (Amendment) Act 2007

¹⁴ Technical conditions include equipment characteristics relating to system engineering, system standards, system performance and safety.

¹⁵ These conditions in [ComReg Document 08/100a](#) apply to all such stations in the LF, MF, VHF band III and L band; including Digital Audio Broadcasting (DAB), DAB+ and Digital Radio Mondial (DRM) technologies. See ComReg Consultation ([ComReg Document 08/79](#)) and ComReg Response to Consultation ([ComReg Document 08/100](#)), available at www.comreg.ie.

2.3.1 Proposed conditions for new DSB licences

21 This section sets out the conditions which ComReg proposes to attach to any future DSB licences granted to RTÉ.

Duration

22 RTÉ's current DSB licence is of 10 years duration¹⁶ and ComReg set the duration of RTÉ's current ASB licence, issued in 2012, so as to co-terminate with its DSB licence. ComReg, having regard to the close relationship between the analogue and digital sound broadcasting services provided by RTÉ over its ASB and DSB networks, considers it appropriate that any new ASB and DSB licences would again co-terminate. For ASB and DSB new licences that would commence on 14 May 2019 ComReg is of the preliminary view that 10 years would be an appropriate term, meaning that such new licences would expire on 13 May 2029. For any ASB or DSB licences issued with a commencement date later than 13 May 2019, their licence duration should facilitate co-termination with other ASB or DSB licences.

Fees and the need for new regulations

23 The current annual fee for RTÉ's current DSB licence is €20,500, subject to an annual CPI adjustment. ComReg considers such a fee to be appropriate for any new DSB licence granted to RTÉ, again subject to annual CPI adjustment. The fee would be in respect of the rights of use for radio frequencies assigned to RTÉ under the DSB licence and ComReg, in order to grant the DSB licence, would first have to make new regulations under section 5 of the 1926 Act (subject to Ministerial consent under section 37 of the 2002 Act).¹⁷

Technical

24 ComReg does not see any reason or need to change the technical conditions that attach to RTÉ's current DSB licence¹⁸ and proposes to impose the same conditions in any new DSB licence granted to RTÉ.

¹⁶ Response to Consultation, [ComReg Document 08/100](#) available at www.comreg.ie.

¹⁷ The current DSB licence is issued under the 2007 Act, which was repealed and revoked by the 2009 Act.

¹⁸ ComReg document 08/100a, available at www.comreg.ie.

2.4 ComReg's licensing proposals

25 Following the completion of this consultation process, ComReg would propose to take the followings actions:

- (i). To issue a "public service broadcasting licence" to RTÉ 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). To 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). To 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 would also seek to make new regulations under section 6 of the 1926 Act, setting the form and duration 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 the licence fee.¹⁹ A draft of these regulations is set out in Annex 1.

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.

¹⁹ 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 Television (DTT)

3.1 Legislation

26 This section sets out provisions of the 2009 Act and the 1926 Act that are relevant to licensing RTÉ in respect of its national Digital Terrestrial Television (DTT) broadcasting network.

Broadcasting Act 2009

27 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.

28 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 Communications²⁰ 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).

Wireless Telegraphy Act 1926

29 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.²¹ 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.

²⁰ 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.

²¹ Subject to the required consent of the Minister for Communications Climate Action and the Environment in accordance with section 37 of the 2002 Act.

Broadcasting Licensing Regulations

30 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.

31 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.

3.1.1 EU Decision on the 470-790 MHz band

32 Recital 12 of the 2017 EU Decision on the 470-790 MHz band²² references the Pascal Lamy Report 2014²³ 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)

²² [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.

²³ [Pascal Lamy Report 2014](#), available at www.ec.europa.eu.

33 The DCCAIE, in a 2014 report titled “Future Use of UHF Spectrum for Broadcasting in Ireland”, refers to a possible review of future spectrum use in the UHF band as recommended in recital 12 of the 2017 EU Decision.²⁴ The outcome of any such review by 2025 would apply only to licences issued after the conclusion of the review, so as to reduce any potential for regulatory uncertainty. Such a review would also take into account the possible outcome of the World Radio Conference 2023 (WRC-23) which includes the following item in its preliminary agenda²⁵ (Resolution 810(2.5)):

- “to review the spectrum use and spectrum needs of existing services in the frequency band 470-960 MHz in Region 1 and consider possible regulatory actions in the frequency band 470-694 MHz in Region 1 on the basis of the review in accordance with Resolution 235 (WRC-15)”.

3.1.2 Simulcast Period and International Coordination

34 A “Simulcast Period” was agreed between the Minister for Communications Climate Action and Environment and UK authorities, to run from 4 September 2019 to 4 March 2020.²⁶ Its purpose is to ensure uninterrupted DTT services to consumers during the period in which RTÉ migrates its DTT network out of the 700 MHz band. ComReg, in 2017, also completed technical coordination work with the UK²⁷, France²⁸ and WEDDIP²⁹ to provide for migration of the DTT network from the 700 MHz band by June 2020³⁰.

Facilitating Simulcast Period

35 In relation to the two current RTÉ DTT licences, ComReg will amend both licences so as to provide for operation of current and new frequencies (i.e. simulcast) as coordinated with the UK as part of the migration of DTT services from the 700 MHz band in line with the 2017 EU Decision. These amended licences will facilitate the Simulcast Period as defined by DCCAIE in the letter of entrustment²⁶ provided to RTÉ up until the 13 December 2019 (expiry of current licences).

²⁴ The DCCAIE Report on “[Future Use of UHF Spectrum for Broadcasting in Ireland](#)” available at www.dccae.ie.

²⁵ ITU 2023 [preliminary agenda 2023](#), available at www.itu.int.

²⁶ [Letter of Entrustment to RTÉ](#), dated the 22 December 2016 sets out a Simulcast Period commencing 04 September 2019 and ending on the 04 March 2020.

²⁷ ComReg has signed an MoU with the UK in March 2017, available at www.comreg.ie.

²⁸ ComReg has signed a bilateral agreement with France in April 2016, available at www.comreg.ie.

²⁹ ComReg has signed a bilateral agreement as part of the Western European Digital Dividend Platform (WEDDIP) relating to the 700 MHz migration process in April 2016 which makes provision for 7 member countries to implement the migration of DTT services out of the 700 MHz band.

³⁰ The [EU Implementation Decision](#) states that all members will make available the 700 MHz band for terrestrial systems capable of providing wireless broadband electronic communication services by 30 June 2020.

- 36 ComReg would apply the same licensing approach to facilitate the Simulcast Period to any new DTT licences issued to RTÉ. In addition to permitting RTÉ to use the new frequencies it would also permit RTÉ to use the frequencies as permitted under its *current* DTT licences until the end of the Simulcast Period, which will run until 4 March 2020. Once the Simulcast Period has ended, RTÉ would no longer be permitted to utilise the 700 MHz band for DTT and all of RTÉ rights of use for radio frequencies in the 700 MHz band shall be deemed to have expired in full.

3.2 RTÉ's current DTT licences

- 37 The technical conditions attaching to RTÉ's current DTT licences were considered and explained in ComReg Response to Consultation 07/90.³¹ In advance of the expiry of RTÉ's two current DTT licences in December 2019, ComReg is reviewing, through this consultation process those conditions to determine whether they are still objectively justified and proportionate and whether some or all of the same conditions ought to be attached to any new DTT licence granted to RTÉ.

Current DTT Licences

- 38 On 14 December 2007, ComReg issued a DTT multiplex licence to RTÉ, following a request from RTÉ. Its duration is 12 years³² and it expires on 13 December 2019.
- 39 In 2011, ComReg issued a second DTT multiplex licence to RTÉ, again following a request from RTÉ. Its duration was set at 8 years so that it will co-terminate with the first licence on 13 December 2019.
- 40 Non-technical conditions attaching to RTÉ's DTT licences are set out in document 07/90a.³³ In particular, the annual fee for each licence was €114,000, indexed to inflation using CPI³⁴ and a licence duration of 12 years.
- 41 The technical conditions attaching to RTÉ's DTT licences, which relate to operation of transmission networks, are set out in ComReg document 07/90b³⁵.

³¹ ComReg's consultation proposals were set out in ComReg Document 07/65. ComReg's Response to Consultation on the DTT licensing framework is published in ComReg Document [07/90](#), available at www.comreg.ie.

³² In 2007, ComReg concluded that a maximum licence duration of up to 12 years would be appropriate for DTT multiplex licences, as among other things, it would provide prospective multiplex operators with the regulatory certainty needed to invest in the network infrastructure and achieve a return on investment.

³³ Technical Conditions for DTT, ComReg document [07/90a](#), available at www.comreg.ie.

³⁴ Broadcasting Amendment Act 2007 Digital Terrestrial Licence Fees Regulations 2007 ([S.I. 796 of 2007](#)).

³⁵ 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

3.3 ComReg's proposals for new DTT licences

42 Noting that both of RTÉ's DTT licences expire on 13 December 2019, the following sets out ComReg's proposal to issue one or more new DTT licences to RTÉ, and its views as to the duration of any such licence, the licence fees, and the technical conditions³⁶.

3.3.1 Duration

43 For any new DTT multiplex licences issued to RTÉ with a commencement date of 14 December 2019, ComReg is of the preliminary view that these should be 12 years in duration, meaning that these new DTT multiplex licences shall expire on 13 December 2031. In addition, ComReg is of the preliminary view that DTT multiplex licences should co-terminate with respect to their expiry date, meaning that any new DTT multiplex licences issued with a commencement date later than 13 December 2019 should have a licence duration that facilitates co-termination with other DTT multiplex licences. ComReg's view is based on a number of considerations including:

- its statutory functions and objectives in managing spectrum which, in summary, are 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;
- that in 2007, ComReg issued a DTT multiplex licence to RTÉ with a 12 year duration, and that the duration of the second DTT multiplex licence issued to RTÉ was set at 8 years so that it will co-terminate with the first DTT multiplex licence on 13 December 2019 ;
- the obligations under Section 132(1) of the 2009 Act which provides that ComReg, upon request by RTÉ, shall issue a single television multiplex licence to RTÉ and Section 132(2) which provides that ComReg, upon request by RTÉ and following consultation with the Minister for Communications³⁷ and the BAI, shall issue a second television multiplex licence to RTÉ;

³⁶ The BAI, under the 2009 Act, may also request a licence for the establishment, operation and maintenance of DTT services. ComReg would address any such request by the BAI when or if it is made.

³⁷ 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.

- Article 4 of the 2017 EU Decision which 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 ...*”;
- that the licence duration should provide RTÉ with a reasonable time period in which to recoup its investment in its DTT network; and
- that there are no long-term barriers to a co-ordinated approach to organising the use of the spectrum band³⁸ - this is particularly important where a co-ordinated approach may be necessary in future, in order to introduce new and innovative services.

Fees and the need for new regulations

- 44 ComReg considers the current annual fee for RTÉ's current DTT licences remains appropriate for any new DTT licence. This results in an annual fee of €117,100, subject to CPI indexation.
- 45 As noted above, 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). ComReg, through 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 as licence holder, and the licence fee (€117,100 per annum subject to CPI indexation). A draft of these regulations is available in Annex 1.

Technical licence conditions

- 46 ComReg does not envisage making any changes to the technical conditions which attach to RTÉ's current DTT's licences. The technical conditions which attach to such a licence are published in document 07/90b, and included here as Annex 2 for convenience.

³⁸ For example the migration of DTT services out of the 700 MHz band was a co-ordinated approach in which to facilitate wireless broadband services in this band by 2020 across all EU member states ([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).

3.4 ComReg's licensing proposals

- 47 Following finalisation of this consultation process, and any subsequent actions to enact regulations for the licensing of DTT, ComReg would issue to RTÉ, upon its request and in addition to its “public service broadcasting licence”³⁹, two DTT multiplex licences under section 132 of the 2009 Act to facilitate the continued provision of DTT services by RTÉ following the expiry of the current licences on 13 December 2019.
- 48 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.⁴⁰ In addition to its multiplex licences issued under the 2009 Act, ComReg would also issue to RTÉ two new spectrum licences issued under the WT Act 1926 for the provision and use of radio spectrum for DTT services. The relevant spectrum licence conditions and technical conditions as determined by ComReg would also attach to such licences. ComReg proposes to issue these two new DTT licences with a condition allowing for the use of current DTT frequencies up until 4 March 2020, the end of the Simulcast Period. A draft of these regulations is available in Annex 1.

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

³⁹ a “public service broadcasting licence” would be issued by ComReg to RTÉ 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.

⁴⁰ Subject to the required consent of the Minister for Communications Climate Action and the Environment in accordance with section 37 of the 2002 Act.

4 Regulatory Impact Assessment (RIA)

- 49 ComReg's published RIA Guidelines⁴¹ 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.
- 50 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.

⁴¹ ComReg document [07/56a](#), available at www.comreg.ie

5 Submitting Comments and Next Steps

Submitting Comments

- 51 All input and comments are welcome. However, it would make the task of analysing responses easier if comments were referenced to the relevant question / section / paragraph number in each chapter and annex in this document.
- 52 Please also set out your reasoning and all supporting information for any views expressed.
- 53 The consultation period will run until 17:00 on 9 August 2018, during which time ComReg welcomes written comments on any of the issues raised in this paper.
- 54 Responses must be submitted in written form (post or email) to the following recipient, clearly marked —Submissions to ComReg 18/64:

Mr. Conor Berkeley

Commission for Communications Regulation

One Dockland Central

Guild Street

Dublin 1

D01 E4X0

Email: marketframeworkconsult@comreg.ie

- 55 We would request that electronic submissions be submitted in an unprotected format so that they can be included in the ComReg submissions document for electronic publication.

56 ComReg appreciates that respondents may wish to provide confidential information if their comments are to be meaningful. In order to promote openness and transparency, ComReg will publish all respondents' submissions to this consultation as well as all substantive correspondence on matters relating to this document, subject to the provisions of ComReg's guidelines on the treatment of confidential information⁴². In that regard, respondents are requested to provide both a confidential and non-confidential version of their submission to the consultation, providing supporting reasoning as to why they consider material to be confidential. Alternatively, respondents are requested to place confidential material in a separate annex to their response, again providing supporting reasoning in that annex as to why such material is confidential.

5.1 Next Steps

57 When it has concluded its review of all submissions received and other relevant material, ComReg's intention would be to publish a response to consultation and a draft decision as appropriate.

⁴² Document 05/24 - Response to Consultation - Guidelines on the treatment of confidential information - March 2005, available at www.comreg.ie.

Questions

Section

Page

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..... 11

Q. 2 Do you agree with ComReg’s DTT proposals as outlined in this chapter? In providing your view, please also provide supporting evidence..... 18

Annex: 1 Draft Regulations

This annex contains draft Regulations that reflect ComReg’s preliminary views as of the date of publication of this consultation. 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; 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;
- (c) in respect of any licence for analogue sound broadcasting, be up to 10 years from the date on which it is originally granted;

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: 2 Technical conditions for ASB, DSB and DTT licences

Annex 2 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.