

STATUTORY INSTRUMENT

S.I. No. 392 of 2003.

ORDER

entitled

COMMUNICATIONS REGULATION ACT, 2002 (SECTION 30)

(AMENDMENT) LEVY ORDER 2003.

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The Commission for Communications Regulation, in exercise of the powers conferred on it by Section 30 (as amended by Regulation 19 of the European Communities (Electronic Communications)(Authorisation) Regulations, 2003 (No. 306 of 2003)) of the Communications Regulation Act, 2002 (No. 20 of 2002) hereby makes the following order:

Citation and Commencement

1. (1) This Order may be cited as the Communications Regulation Act, 2002, (Section 30) (Amendment) Levy Order 2003.

Amendment of the Principal Order

2. The Principal Order is hereby amended by the insertion of the words “Part 1” before Article 4.

3. The Principal Order is hereby amended by the insertion of the following Part 2 after Article 9:

“Part 2

10. A levy shall apply to the providers of electronic communications services or electronic communications networks specified in Article 12 of this Order.

11. In Part 2 of this Order –

“cable” means a wired broadcast relay system which receives television and sound programmes by means of wireless telegraphy apparatus and then conveys them by wire from the place of reception to services points.

“free-to-air service” means a broadcasting service for the reception of which no charge is made by the person providing the service.

“Multipoint Microwave Distribution System (MMDS)” means a wireless system used for the retransmission of programme services on a point to multipoint basis of 1 Gigahertz or above.

“pay-television” in relation to the making available of a broadcasting service, means any basis for making a charge on a person in respect of the reception by him or her of a broadcasting service.

“Programme Service” means any of the following programme services:

(a) television broadcasts (within the meaning of the Wireless Telegraphy (Television Programme Retransmission and Relay) Regulations, 1991 (S.I. No. 252 of 1991)) that originate in another Member State of the European Communities and that fall within the fields coordinated by Council Directive 89/552/EEC¹ of 3 October 1989 as amended by Council Directive 97/36/EEC² of 30 June 1997;

(b) a television programme service (within the meaning of the Regulations referred to in paragraph (a)) that originates in a State (other than a Member State of the European Communities) being a party to the European Convention on Transfrontier Television done at Strasbourg on the 5th day of May, 1989 and that complies with the terms of the Convention;

(c) a programme service that originates in the State authorised for the time being by law;

“terrestrial” means in relation to the transmission of a broadcasting service, any means of transmitting such a service by wireless telegraphy, other than by means of a cable or MMDS system or a satellite device.

12. A levy is imposed on each provider of:

(a) A radio and television terrestrial transmission network as defined under the Radio and Television Act 1988, as amended, and the Broadcasting Act 1960;

(b) A UHF deflector television network as defined under the Wireless Telegraphy (UHF Television Programme Retransmission) Regulations 1999 and the Wireless Telegraphy (Carrigaline UHF Television Programme Retransmission) Regulations 1999;

(c) A cable television network;

(d) A MMDS (Multipoint Microwave Distribution System) television network;
and

(e) A digital terrestrial television network;

insofar as the network in question is used for the transmission, retransmission or distribution of programme services.

¹ O.J. No. L298 of 17 October 1989, pp. 23-30.

² O.J. No. L202 of 30 July 1997, pp. 60-71.

13. (1) A levy is imposed on each person specified in Article 12 in respect of each levy year in which such person is a provider of electronic communications networks or electronic communications services as referred to in the Schedule.

(2) The levy shall be payable in equal quarterly instalments as specified in Article 4(2) of Part 1 of the Order.

14. (a) A terrestrial transmission network licensed under the Broadcasting Act 1960 or the Radio and Television Act, 1988, as amended, is subject to an annual charge of €100 per transmitter.

(b) A provider of UHF deflector networks is subject to an annual charge of €0.50 per subscriber connected.

(c) A provider of electronic communications networks for cable or MMDS is subject to an annual payment of €0.50 per subscriber connected to the network.

(d) A digital terrestrial television network carrying free-to-air services is subject to an annual charge of €100 per transmitter carrying free to air services.

(e) A digital terrestrial television network, carrying pay-television services is subject to an annual charge of €0.50 per subscriber connected.

15. (1) Every provider of electronic communications services or networks, specified in Article 12 shall, within 2 months of the end of each levy year, submit to the Commission a statement, certified by a person who is qualified under the Companies Act 1963 or 2001, for appointment as auditor of a company, of the number of transmitters in place, or subscribers connected to the network, as the case might be, in that levy year.

(2) No levy shall be payable where the amount payable, as calculated under Article 14 by a provider of electronic communications networks or services is less than €1000 per levy year.

(3) Where the amount paid by a provider of electronic communications services or networks in accordance with Articles 13 and 14 in respect of any levy year is less than the amount payable by reference to the said statement as defined under Article 15(1), the provider concerned shall, within such time or times as may be specified by the Commission in a request in writing, pay to the Commission the balance of the levy so payable.

(4) Where the amount paid by a provider of electronic communications services or

networks in accordance with Articles 13 and 14 in respect of any levy year is more than the amount payable by reference to the said statement as defined under Article 15(1), the Commission shall, as soon as may be after the end of the levy year, repay to the provider concerned the excess amount so paid”.

4. The Principal Order is hereby amended by the deletion of sub-article 8(2) and the insertion of the following sub-article:

“(2) A payment referred to in sub-article (1) and a statement referred to in Article 6 and Article 15 may be delivered or (save in the case of a payment in cash or electronic funds transfer) sent by post to the Commission at Abbey Court, Irish Life Centre, Abbey Street, Dublin 1, or at such other address as may from time to time be notified by the Commission to each provider of electronic communications services or networks at the last address of the provider. A payment made by electronic funds transfer can be made to a bank account specified by the Commission.”

5. The Principal Order is hereby amended by the deletion of the Schedule to the Principal Order and the insertion of the following Schedule:

“SCHEDULE

Providers of electronic communications services and networks to which this Order applies.

Any person who is required to be authorised or deemed to be authorised pursuant to Regulation 4 of the Authorisation Regulations, to provide an electronic communications network or electronic communications service or both.”

Given under the Official Seal of the Commission for Communications
Regulation

this 29 day of August 2003.

Etain Doyle, Chairperson

On behalf of the Commission for Communications Regulation

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation)

This amendment Order provides for a levy on certain broadcast transmission networks who are holders of authorisations under Regulation 3 of the European Communities (Electronic Communications) (Authorisations) Regulations 2003, or otherwise deemed to be authorised under those Regulations for the purpose of meeting expenses incurred by the Commission for Communications Regulation in the discharge of its functions in relation to electronic communications.
