

STATUTORY INSTRUMENT

S. I. No. 642 of 2005

**Wireless Telegraphy (Wideband Digital Mobile Data Services)
Regulations, 2005.**

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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), transferred to the Commission for Communications Regulation by section 9(1) of the Communications Regulation Act 2002 (No. 20 of 2002) and with the consent of the Minister for Communications, Marine and Natural Resources, pursuant to section 37 of the Communications Regulation Act 2002 hereby makes the following Regulations

Citation and Commencement

1. (1) These Regulations may be cited as the Wireless Telegraphy (Wideband Digital Mobile Data Services) Regulations, 2005.

(2) These Regulations come into force on .

Interpretation

2. (1) In these Regulations –

“Act of 1926” means the Wireless Telegraphy Act 1926 (No. 45 of 1926);

“Act of 2002” means the Communications Regulation Act 2002 (No. 20 of 2002);

“Apparatus” means apparatus for wireless telegraphy operating in the 420 MHz and 900 MHz frequency bands for the purpose of the provision of Wideband Digital Mobile Data Services and, in relation to a Licence, means apparatus to which the Licence relates;

“Authorisation Regulations” means the European Communities (Electronic Communications Networks and Services) (Authorisation) Regulations 2003 (S.I. 306 of 2003);

“Commission” means the Commission for Communications Regulation established under the Act of 2002;

“Wideband Digital Mobile Data Services” means a digital service consisting of the provision of high-speed mobile wireless internet access and other data communications provided in either the 420 MHz frequency band or 900 MHz frequency band;

“harmful interference” means interference which endangers the functioning of a radionavigation service or of other safety services or which otherwise seriously degrades, obstructs or repeatedly interrupts any lawfully operating radiocommunications service;

“Licence” means a Licence under section 5 of the Act of 1926, to keep, have possession of, install, maintain, work and use Apparatus in a specified place in the State;

“Licensee” means the holder of a Licence.

- (2) In these Regulations unless the contrary intention appears:
 - (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 a reference to a regulation or schedule of these Regulations;
 - (c) a reference to a paragraph or subparagraph is a reference to a paragraph or subparagraph of the provision in which the reference occurs.

- (3) The Interpretation Acts 1937 to 1997 apply to these Regulations.

Application for Licence and Form of Licence

3. (1) An application for a Licence shall be made to the Commission and shall be in writing in such form as may be determined by the Commission.

(2) A person who makes an application under paragraph (1) of this Regulation shall furnish to the Commission such information as the Commission may reasonably require for the purposes of its functions under these Regulations and the Authorisation Regulations and if the person, without reasonable cause, fails to comply with this paragraph, the Commission may refuse to grant a Licence to the person.

(3) The Commission may grant a Licence in accordance with the relevant provisions of the Authorisation Regulations.

(4) A Licence shall be in the form set out in the Schedule to these Regulations or such other form as the Commission may from time to time determine.

Licences to which these Regulations apply

4. (1) These Regulations apply to Licences to keep, have possession of, install, maintain, work and use apparatus for the provision of Wideband Digital Mobile Data Services having the characteristics set out in Part two of the Licence.

(2) A Licence does not grant to the Licensee any right, interest or entitlement, other than the right to keep, have possession of, install, maintain, work and use the Apparatus.

Licensee to satisfy all legal requirements

5. Nothing in these Regulations shall absolve a Licensee from any requirement in law to obtain any approvals, consents, licences, permissions and authorities as may be necessary for the provision of the service and for the exercise of his rights or the discharge of obligations under the licence. The Licensee is responsible for all costs, expenses and other commitments (financial and non financial) in respect of the Licence and the provision of the service and the Commission shall bear no responsibility for such costs, expenses or commitments.

Duration and Renewal

6. (1) A Licence that has not been renewed shall (unless it has been revoked) be in force for the period of one year from the date on which it comes into operation and, unless renewed, shall then expire.

(2) A Licence may be renewed from time to time by the Commission under paragraph (4) of this Regulation.

(3) Notwithstanding paragraph (1) of the Regulations a Licence shall not be renewed on the 10th anniversary after the first grant of the Licence and shall then expire.

(4) On application by or on behalf of a Licensee to the Commission before the expiration of his or her Licence, the Commission may, by notice in writing given to the Licensee or sent to the Licensee at the address of the Licensee specified in the Licence or notified to the Commission by the Licensee in accordance with the Licence, renew the Licence for a specified period from the day following the expiration of the last previous period during which it was in force. The granting or renewal of a Licence shall not be construed as warranting that the Licence shall be renewed at any time in the future.

Licence Fees

7. (1) The fee for a Licence shall be €100,000.

(2) If demand for Licences exceeds supply then Licences may be awarded following an auction in which case Licences may be awarded to the highest bidder or bidders, subject only to a reserve price of €100,000 per Licence.

(3) Licence fees shall not be refundable in any circumstances.

Conditions of Licences

8. It shall be a condition of a Licence that:

(1) the Licensee shall comply with the conditions contained within these Regulations and in Part two of the Licence;

(2) the Licensee shall make payment of the fees as outlined in Regulation 7 of these Regulations;

(3) the Licensee will ensure that non-ionising radiation emissions from each radio installation operated under the Licence for the purposes of the Service are within the limits specified by the guidelines published by the International Commission for Non-Ionising Radiation Protection (“ICNIRP”) and that it complies with any radiation emission standards adopted and published from time to time by ICNIRP, any standards of the European Committee for Electrotechnical Standards and any standards which may from time to time be specified by the European Union and that the wireless telegraphy apparatus operated under the Licence is not installed or operated at a location in a manner such as to be the cause of the aggregate non-ionising radiation emissions exceeding the limits specified by the

guidelines published by the ICNIRP and that it complies with any radiation emission standards adopted and published by ICNIRP or its successors from time to time, any radiation emission standards of the European Committee for Electrotechnical Standards and any radiation emission standards specified by national and EC law;

(4) if the address of the Licensee changes, the Licensee shall, as soon as possible, notify the Commission in writing of the change;

(5) the Licensee complies with any special conditions imposed under section 8 of the Act of 1972 and subject to which this Licence is deemed by subsection (3) of that section to be issued;

(6) the Licensee may not, without the consent of the Commission (which shall not be unreasonably withheld) assign the Licence or any of the powers, duties or functions conferred by it or otherwise transfer any of the rights or obligations conferred by it;

(7) the Licensees complies with obligations under relevant international agreements relating to the use of apparatus or the frequencies to which they are assigned;

(8) the Licensee shall ensure that the use of the apparatus and provision of the service does not cause harmful interference.

SCHEDULE

Regulation 3

Part One

WIRELESS TELEGRAPHY ACT, 1926

Section 5

Wideband Digital Mobile Data Services Licence

Licence No.

_____ **Fee** _____

Licensee _____

Postal Address

In full _____

The Commission, in exercise of the powers conferred on it by section 5 of the Wireless Telegraphy Act, 1926 (No. 45 of 1926) and Section 9(1) of the Communications Regulation Act, 2002 (No. 20 of 2002) grants to the Licensee specified, authorisation to keep, have possession of, install, maintain, work and use apparatus as specified in part two of this Licence subject to the Licensee observing the conditions contained in Regulation 8 of the Wireless Telegraphy (Wideband Digital Mobile Data Services) Regulations, 2005 (S.I. No.642 of 2005)

Date + Stamp

From _____ to _____

Issuing Officer _____

For and on behalf of the Commission for Communications Regulation

Part Two

Statement of authorised Apparatus

To include:

Description of apparatus

Places at which the Licensee is authorised to keep and have possession of the Apparatus.

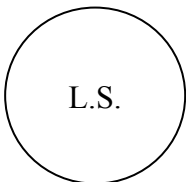
Technical restrictions

Details of spectrum

Rollout plan

Minimum loading criteria

GIVEN under the official seal of the Commission for Communications Regulation, this day of
, 200



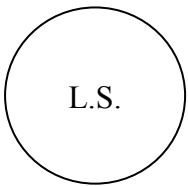
John Doherty

For and on behalf of the Commission for Communications Regulation

The Minister for Communications, Marine and Natural Resources consents to the making of the foregoing Regulations.

GIVEN under the Official Seal of the Minister for Communications, Marine and Natural Resources

This day of , 200



Noel Dempsey T.D.

Minister for Communications, Marine and Natural Resources

EXPLANATORY NOTE

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

These Regulations provide for the issue of Licences for apparatus for wireless telegraphy used solely for the provision of Wideband Digital Mobile Data Services, for the regulation of such apparatus and for the payment of fees by persons granted Licences for that purpose.