



Office of the Director of
**Telecommunications
Regulation**

Telecommunications Licences

Consultation Paper

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1. Introduction

The Director of Telecommunications Regulation ("the Director") is carrying out a wide range of consultations in preparation for a fully liberalised telecommunications sector after 1st December 1998. A key issue for the liberalised market is the licensing regime that will apply after 1st December. The Director has already either completed or launched the following three consultations which are relevant in this area:

Licensing Principles Consultation (completed)

- Telecommunications Licensing Principles Consultation Paper - ODTR 98/21
- Telecommunications Licensing Principles Report on Consultation Process - ODTR 98/31R

Significant Market Power Consultation (underway)

- Significant Market Power in Telecommunications; A Consultation Paper - ODTR 98/25
- Significant Market Power in Telecommunications: A response to the Consultation: (To be published)

Licence Applications Consultation (underway)

- Telecommunications Licence Applications; Consultation Paper - ODTR 98/37

Written comments have been received and assessed in the first two of the above consultations, the deadline for comments on the Licence Application Consultation has only recently expired. In addition, the Director held an update meeting on Friday 18th September at which interested parties were asked to provide any additional views or input into the overall process of preparing for full liberalisation in the telecommunications sector.

The Director wishes to include all relevant comments received through all aspects of the consultation process in the development of the new regulatory regime. Therefore, the comments and feedback received from earlier consultations, along with the feedback received at the update meeting on 18th September have been taken into account in preparing this latest consultation paper on pro-forma licences for telecommunications service providers and operators. As a result, some of the contents of this consultation paper develop and refine certain aspects of earlier papers, particularly the draft application procedures. Readers of both papers will therefore note some differences between the positions set out in the various consultation documents.

This is not a legal document; the Director is not bound by this document and may amend it from time to time. This document is without prejudice to the legal position or the rights and duties of the Director to regulate the market generally.

2. Structure of the Paper

This paper is structured as follows:

- Section 3 details the consultation procedure and timetable;
- Section 4 briefly describes the proposed licences and their operation;
- Appendices 1 and 2 present draft pro forma licences including terms and conditions. The draft conditions are annotated with explanations of the purpose of the conditions.

Respondents are requested to comment on the proposed terms and conditions themselves, and on the purpose of the conditions, as explained in certain cases by the annotation. Comments are welcome on whether or not the conditions are appropriate, whether they achieve the objective explained in the annotation (where relevant) and on any omissions in the draft conditions.

3. Consultation Procedure and Timetable

The consultation period will run from Wednesday 23rd September to Wednesday 7th October 1998. Written comments should be submitted before 5.00pm on October 7th to:

Maeve O'Reilly
The Office of the Director of Telecommunications Regulation
Abbey Court
Irish Life Centre
Lower Abbey Street
Dublin 1.

The Director regrets that a longer period could not be made available for comment and appreciates the responses to date in the overall consultation process as well as the work and effort involved to respond to this consultation paper in this short timeframe. The Director intends to issue her response to the consultation, in the form of published licence terms and conditions by the middle of October. Interested parties will then be asked to apply for licences.

4. Proposed Licences - Structure

In the ODTR report on the consultation process on Telecommunications Licensing Principles, four categories of telecommunications operator and service provider were identified. These categories were designed to form the basis for the licensing structure. The licences in turn were intended to be modular in nature. Hence a class 2 licence was intended to include all of the conditions in a class 1 licence, plus some additional conditions specific to class 2. Class 3 in turn would have contain all class 2 conditions plus some additional conditions specific to class 3, and finally class 4 licences would have contain all class 3 conditions with some further conditions specific to operators having been designated as having Significant Market Power. In addition, any operator designated as having Universal Service Obligations would have additional conditions attached to its licence.

Having considered these categories in further detail and having considered comments from various parties, including the valuable feedback received at the update meeting on September 18th, the Director continues to believe that this modular approach is the most appropriate one for the telecommunications licensing regime from 1st December 1998.

However, it is clear from comments received that the complex range of legislation and, in particular the definitions in this area, have caused some confusion in the categorisation of activities in the telecommunications sector and consequently in the development of proposed licences. It is considered that the categories can be further simplified and reduced, leading to fewer classes and therefore a simpler licensing regime. The Director also considers it appropriate to broaden out the scope of activities that can be carried out under a class 1 licence issued under the declaration procedure. The number of classes of licence has therefore been reduced to two. These are described below, along with a description of the changes since the identification of four classes.

In the licensing regime, the Director will rely on the provisions of relevant EU and national legislation. This ensures that the licence texts are as concise as possible. For example, interconnection conditions are addressed in relevant regulations and are not repeated in the pro-forma terms and conditions. It must be noted that in some cases legislation is still in preparation, for example the Irish Regulations transposing Directive 98/10/EC have not yet been signed. Therefore some provisions of the licences address issues which are also addressed in pending legislation. Every effort has been made to ensure consistency with future legislation, but this cannot be absolutely ensured until published legislation is available.

4.1. Limitations on scope

The licensing regime that is considered in this paper does not address a number of areas. The scope specifically excludes the following:

- Mobile services¹: these are currently covered by separate licensing arrangements. The Director anticipates reviewing mobile licences once arrangements for the liberalisation of the voice telephony market are in place;
- Broadcasting services: these services require separate licences. Work in this area is currently being undertaken in parallel by the Director;
- Telephony services and networks provided for own use or any other service excluded under section 4(A) of the Telegraph Act of 1869: provision of these service does not by law require a licence and the Director will not license such providers.

4.2. Class 1 Licence – Basic Telecommunications Licence

This licence to be granted under section 111 (3) of the Postal and Telecommunications Services Act, 1983 will follow the form of a declaration.

¹ Satellite telecommunications services are excluded from this definition and would be licensed under regime addressed in this paper

Applicants will be required to supply the information set out in the Application Form for a Basic Telecommunications Service Provider Licence - Class 1, as set out in the Consultation paper on Licence Application procedures, subject to any amendments following the completion of that consultation. The applicant will also be required to sign a declaration form stating that it will comply with the conditions applicable to a class 1 licence. These conditions will be those set out in appendix 1 to this paper (subject to amendments following the consultation).

The licence will be for five years and will allow the licensee to provide telecommunications services to the public and establish and operate telecommunications networks where neither of these activities requires the allocation to users of numbers from the national numbering plan. Thus the Director proposes to broaden the scope of this class of licence to include certain telecommunications network providers. For example, network operators who require carrier access codes or carrier selection codes, but who do not require numbers for allocation to users may operate under a class 1 licence. An Internet service provider not requiring numbers from the national numbering plan is an example.

The full pro-forma text of the proposed Class 1 Terms and Conditions is at appendix 1. The conditions fall into the following three broad categories:

Condition	Comment
1	Sets out the definitions which in turn define the scope of the licence
2 – 4	Sets out the scope and the characteristics of the Licence, the provisions relating to enforcement and the terms and conditions relating to suspension, revocation or foreshortening of the licence
5 – 9	Public service conditions, fair trading conditions, conditions related to public call apparatus, interconnection and facilities sharing.

Table 4.1

Question 4.2.1.: Is this broadening of the scope of the Class 1 appropriate?

Question 4.2.2.: Are the proposed terms and conditions appropriate?

4.3. Class 2 Licence – General Telecommunications Licence

Class 2 licences will be individual licences² issued under section 111(2) of the 1983 Act. The Director proposes to include in this class all operators and service providers who wish to provide services requiring numbers including public voice telephony services or public telecommunications networks. The draft pro-forma licence conditions for licences in this category are set out in appendix 2.

The full pro-forma text of the terms and proposed Class 2 Licence is at appendix 2. The terms and conditions include all of the conditions of the Class 1 licence plus the additional conditions set out in table 4.2 below:

² The licence is individual in the sense that it is granted to a named person. However, it is proposed that all such licences (as set out in Appendix 2) will initially have standard and identical terms and conditions although some conditions will not be activated unless SMP status is designated. Notwithstanding this proposal the Director reserves the right (see section 4.4) to have individual terms and conditions should the need arise.

Condition	Comment
1	Sets out the definitions which in turn define the scope of the licence – Similar to Class 1 Conditions
2 – 5	Sets out the scope and the characteristics of the Licence, the provisions relating to enforcement and the terms and conditions relating to suspension, revocation or foreshortening of the licence – Similar to Class 1 Conditions but will also contain a trigger that will activate additional SMP conditions (conditions 13 – 23)
6 – 10	Public service conditions, fair trading conditions, conditions related to public call apparatus, interconnection and facilities sharing – Similar to Class 1 Conditions
11 – 12	Conditions relating to the use of numbers, and quality of service– Specific to Class 2
13 – 20	Conditions relating to access, retail price control including adhering to published prices and discounts and special offers, cross subsidies, separate accounts, alterations to the network, private circuits and IRUs, and selling practices. – Apply to any operator designated by the Director as having SMP in the national fixed telecommunications market
21 – 23	Conditions relating to relations with customer bodies, undue preference and unfair discrimination and linked sales – Apply to any operator designated as having SMP in a relevant telecommunications market (note operators with SMP in the fixed market will be subject to conditions 13 – 20 and 21 – 23).
24+	Conditions relating to universal service – Apply to any operator designated as having a Universal Service Obligation

Table 4.2

Below we consider specific conditions of note, especially where thinking has developed and refined since the initial consultation paper.

4.3.1 Conditions Specific to Class 2 Licences

The conditions that are attached to class 2 licences relate specifically to the type of services which are authorised under a class 2 licences.

Numbers: certain conditions are included that relate to the efficient use of the Irish numbering space, including a right for the Director to claw back unused number blocks.

Quality of Service (QoS): A limited set of QoS standards are considered necessary due to the fact that the licence permits the provision of public voice telephony services. Members of the public who avail of such a service expect a certain basic level of quality, for example in relation to fault reports per access line per year, initial network connection and time to repair faults, etc.

Given the fundamental role this level of communication plays in modern society, it is considered important for consumers that this minimum level of quality is met. The QoS standards will be based largely on published standards such as those provided by ETSI.

Facility Sharing: Following earlier consultations, the Director is of the view that facility sharing is appropriate where circumstances require. She considers it a matter for licensees to negotiate facility sharing in the first instance and is cognisant of her role in relation to disputes over such sharing. The Director's dispute resolution functions, as set out in the European Communities (Interconnection in Telecommunications) Regulations, SI No 15 of 1997, provides an appropriate forum for dealing with disputes over access to facilities at "pinch points" such as bridges or entrances to shared industrial premises.

However, for environmental, town and country planning reasons, the Director considers it appropriate that some degree of co-ordination be developed in relation to trench sharing. In particular, where a Licensee intends to open public roads for the purposes of laying telecommunications infrastructure, the Director considers that there should be an obligation to publish notice of the intention to open the road and not unreasonably to refuse to co-ordinate road openings with other interested parties. A condition is therefore included in the draft pro-forma licence to this effect.

The Director considers that this condition, in conjunction with her role in relation to dispute resolution, and the legislation on infrastructure which the Minister for Public Enterprise intends to introduce, will form an appropriate framework for the management of facility sharing issues.

4.3.2 SMP Conditions in Class 2 Licences.

The draft Class 2 Licences is in a modular format. Conditions in the licence apply depending on relevant designation by the Director of Significant Market Power in a relevant telecommunications market:

- Conditions 1 – 12 apply to all Class 2 licensees.
- If a licensee is designated as having Significant Market Power in the fixed telecommunications market, conditions 13 – 23 will apply in addition to conditions 1 – 12.
- If a licensee is designated as having Significant Market Power in another relevant telecommunications market, conditions 21 - 23 will apply as well as conditions 1 – 12.

Designated licensees will be subject to these licence terms for as long as they enjoy SMP.

Note that this paper addresses the terms and conditions for fixed telecommunications licences only. Mobile licences are specifically excluded from this paper and therefore SMP on either the mobile market or SMP by a mobile operator in the national market for interconnection are not addressed at this time.

4.3.3 Conditions relating to Universal Service Obligation in Class 2 Licence

Additional conditions will apply to any licensee designated as having a Universal Service Obligation. Designated licensees will be subject to these conditions for as long as the USO remains in force. Draft terms and conditions are not included in the pro-forma licences attached to this consultation paper. Pending transposition of Directive 98/10/EC, it is not possible to clearly define the scope and terms of USO and this will therefore be done separately.

Question 4.3.1: Is this broadening of the scope of the Class 2 Licence (i.e. the inclusion of providers of public voice telephony services and public telecommunications network operators under one licence text) appropriate?

Question 4.3.2: Is this revised modular approach to licensing appropriate?

Question 4.3.3.: Are the proposed terms and conditions appropriate?

Question 4.3.4.: Is the allocation of additional conditions to SMP operators appropriate?

4.4 Future enhancements to the pro-forma Licences

The Director favours a transparent and consistent licensing regime and therefore intends to maintain consistency between licences in the telecommunications market. There may be circumstances where amendments to the pro-forma licences will be necessary. The Director reserves the right to amend or tailor the licences as appropriate. The Director may amend all licences in a relevant class or may tailor individual licences if that is considered necessary. The statutory procedure for amendments of licences will apply.

5 Conclusion

In conclusion, respondents are requested to comment on the matters set out in section 4 of this paper, particularly the simplification of the proposed licensing regime and the consolidation of certain "classes" of activity under one "Class" of Licence.

Respondents are also requested to comment on the conditions in the draft pro-forma licences as set out in the Appendices, the intent and objective of those conditions as set out in the annotations, and the appropriateness of those conditions. Comments on any additional conditions, which respondents believe should be included, are also requested.

/ENDS

Appendix 1
Draft Pro-forma Class 1 Licence Conditions

Basic Telecommunications Licence

**CLASS 1
CONDITIONS³**

1. Definitions and Interpretation

- 1.1. In the Licence and the Conditions the expressions set out below have the meanings given to them below (and other grammatical forms of the expressions have corresponding meanings):

“1983 Act”: means the Postal and Telecommunications Services Act, 1983;

“1996 Act”: means the Telecommunications (Miscellaneous Provisions) Act, 1996;

“Affiliate”: means any company controlling, controlled by or under common control with the Licensee;

“Conditions”: means Conditions 1 through 9 as otherwise supplemented or amended from time to time;

“Director”: means the Director of Telecommunications Regulation;

“Licence”: means the licence granted by the Director to the Licensee to which these Conditions apply;

“Licence Commencement Date”: means the date on which the Director confirms that the Licence is in force or, if earlier, the date on which the Licensee may otherwise commence the provision of Telecommunications Services under the 1983 Act;

“Licensee”: means the person making the declaration to which these Conditions are attached;

“Licensed Programme Services”: [to be defined in relation to services licensed under relevant cable and MMDS regulations to be made under the Wireless Telegraphy Act, 1926];

³The applicant will not apply for a Class 1 licence; instead the Declaration procedure will be followed in this case. These Conditions will be attached to the Declaration filed by the applicant.

“Licensed Services”: means the establishment and operation of any Telecommunications Network and the provision of any services consisting wholly or partly in the transmission and/or routing of signals on a Telecommunications Network, other than:

- (i) services to which section 4(A) of the Telegraph Act of 1869, as inserted by the European Communities (Telecommunications Infrastructure) Regulations, 1997 (S.I. No. 338 of 1997) relates;
- (ii) Licensed Programme Services;
- (iii) Mobile Telephony Services;
- (iv) Voice Telephony Services;
- (v) the establishment and operation of a Public Telecommunications Network; or
- (vi) the establishment and operation of a Mobile and Personal Communications System;

“Mobile and Personal Communications Services”: means services other than satellite services whose provision consists, wholly or partly, in the establishment of radiocommunications to a mobile user, and makes use wholly or partly of Mobile and Personal Communications Systems;

“Mobile and Personal Communications System”: means a system consisting of the establishment and operation of a mobile network infrastructure, whether or not connected to public Network Termination Points, to support the transmission and provision of radiocommunications services to mobile users;

“Network Termination Point”: means all physical connections and their technical access specifications which form part of a Public Telecommunications Network and are necessary for access to and efficient communication through that public network and which are individually identified by numbers allocated from Irish telephone national numbering scheme administered by the Director;

“Public Call Box”: means apparatus for the provision of voice telephony or other telecommunications services which is accessible to the public, or any class of the public;

“Public Telecommunications Network”: means a telecommunications network used, inter alia, for the provision of telecommunications services between Network Termination Points;

“State”: means Ireland;

“Telecommunications Network”: means the transmission equipment and, where applicable, switching equipment and other resources which permit the conveyance of signals between defined termination points by wire, by radio, by optical or by other electro- magnetic means;

“Voice Telephony”: means the commercial provision for the public of the direct transport and switching of speech in real time between public Network Termination Points, enabling any user to use equipment connected to such a Network Termination Point in order to communicate with another Network Termination Point;

1.2. In the Licence and these Conditions, unless the context indicates a contrary intention:

- (1) references to conditions, paragraphs, subparagraphs and schedules are to conditions, paragraphs, subparagraphs of , and to schedules to, these Conditions as varied from time to time in accordance with these Conditions;
- (2) a document will be incorporated into and form part of these Conditions if it is referred to in these Conditions and a reference to such a document is to that document as varied from time to time;
- (3) headings used for conditions, paragraphs, subparagraphs or schedules are for ease of reference only and will not affect the interpretation of these Conditions;
- (4) references to any law, ordinance, by-law, regulation or other statutory instrument includes any modification, re-enactment or legislative provisions substituted for the same; and
- (5) use of the word ‘includes’ or ‘including’ is to be construed as being without limitation.

2. Nature of the Licence

2.1. For the avoidance of doubt, the Licence is non-exclusive.

2.2. The Licence is personal to the Licensee. Unless it obtains the Director’s written consent, the Licensee must not:

- (1) sub-license or grant any right, interest or entitlement in the Licence to any other person; or
- (2) transfer the Licence to any other person.

- 2.3. If, with the consent of the Director, the Licence is transferred or sub-licensed to a person who already enjoys another licence issued by the Director, she may thereafter elect to apply, in relation to any network operated or services provided by that person, the Conditions under this Licence and/or those under the other licence and Condition 3 shall be construed accordingly.
- 2.4. Nothing in this licence shall absolve the Licensee from any requirement in law to obtain whatever additional consents, permissions, authorisations or licences that may be necessary for the provision of Licensed Services and for the exercise of its rights or discharge of its obligations under this Licence. The Licensee is responsible for all costs, expenses and other commitments (financial and non-financial) in respect of this Licence and the Director shall not bear any responsibility for these or for the Licensee's business results.
- 2.5. The Licensee shall pay the Licence Fee in accordance with the provisions of the Schedule.
- 2.6. The Licensee shall also make any payment required by the Telecommunications (Miscellaneous Provisions) Act, 1996 (Section 6) Levy Order, 1998.

3. Compliance

- 3.1. Notwithstanding any dispute or complaint arising from a decision or direction of the Director, whether as to its reasonableness or lawfulness or for any other reason, the Licensee shall comply with that decision or direction pending final determination of the dispute or complaint by the Court.
- 3.2. The Licensee shall provide documents, records, accounts, estimates or other information requested by the Director, in the form and at the times specified by the Director, for the purpose of verifying that the Licensee is complying with the Conditions, for statistical purposes or to assist the Director to perform any duty or function imposed by national or European Community law. The Licensee shall notify the Director of any change in the ownership or control of the Licensee, any change in the address or telephone number of the Licensee's principal office or on the occurrence of any event described in Conditions 4.1(e) or (g).
- 3.3. The Licensee shall supply to the Director, in relation to itself and any body corporate which controls the Licensee:
 - (1) a copy of its annual return at the same time as it is filed with the Registrar of Companies in accordance with section 127 of the Companies Act, 1963;
 - (2) a copy of its annual report and accounts as soon as possible after they are circulated to the shareholders of the relevant body corporate; and

- (3) where the relevant body corporate is not incorporated in Ireland, any returns, reports, accounts or other information under the laws of any applicable jurisdiction which is, in the opinion of the Director, analogous or equivalent to the above, at such times and in such forms as the Director specifies from time to time.
- 3.4 The Director may, after consulting the Licensee, publish any information provided to the Director under this Licence, insofar as in her opinion this assists with the creation of a liberalised and competitive market.
- 3.5 The Director may require an audit of any aspect of the Licensee's business in order to verify compliance with the Conditions. The Licensee shall fully cooperate with the Director, or any persons appointed by the Director, in the conduct of the audit.
- 3.6 The Licensee shall notify the Director in writing of the date on which it proposes to commence providing the Licenced Service and shall confirm when it has commenced such Services. The Licensee shall also notify the Director if and when it ceases to provide the Licenced Service.

4. Changes to the Licence and Enforcement

- 4.1. This Licence may be suspended or revoked by the Director if the Director is satisfied that:
 - (1) the Licensee has breached any one or more of the Conditions or any provision of applicable national or European Community law, or has failed to comply with any lawful direction issued by the Director, or
 - (2) the Licensee has made any false declaration in relation to the application for this Licence, or
 - (3) it is in the national interest to revoke this Licence, or
 - (4) it is necessary, in her opinion, to do so for the purposes of national or European Community law or policy; or
 - (5) the Licensee has ceased to provide Licensed Services, or
 - (6) a receiving order for bankruptcy has been made in respect of the estate of the Licensee, or

- (7) where the Licensee is a company within the meaning of the Companies Acts 1963 to 1990, an order for its winding up has been made or a resolution for voluntary winding up (within the meaning of those Acts) has been passed by the company otherwise than for the purpose of a merger or solvent reconstruction, or a receiver of the property of the company has been appointed or an examiner to the company has been appointed.

Any suspension or revocation shall be made in compliance with the requirements of Section 111(10) of the 1983 Act.

- 4.2. The Director may from time to time amend this Licence. Any amendment shall be made in compliance with the requirements of Section 111 (2) (e) (iv) and subsection 111 (10) of the 1983 Act, and any other requirements of applicable national or European Community law.
- 4.3 The Director may reduce the term of the Licence if the Director is satisfied that any of the events specified in any part of condition 4.1 has occurred. Where the Director proposes to reduce the term of the Licence, the following procedure shall apply:
 - (1) the Director shall notify the Licensee of the proposed reduction in the Licence term, and shall include in the notification a statement of the reasons for the reduction in term and the process to be followed by the Licensee in responding to the notification, and the Director may publish her proposal;
 - (2) the Licensee may, within twenty one days of receipt of the notification under paragraph (1), make written representations to the Director in relation to the proposed reduction in term;
 - (3) before making a decision on the proposed reduction in term, the Director shall take into account any representations made by the Licensee pursuant to paragraph (2) and any other representations made to her;
 - (4) the Director shall notify the Licensee in writing of the Director's decision regarding the proposed reduction in term, and shall include in the decision notification a statement of the Director's reasons for the decision and specific information about the implementation and practical effects of the decision; and

- (5) the Director, acting in her absolute discretion, may partially or fully restore the original term of the Licence, in the event that the Director decides that the subsequent behavior of the Licensee justifies such a decision and may make the restoration of the original term of the licence subject to such conditions as she considers appropriate. The Director shall provide the Licensee with written notification of the decision, the reasons for the decision and the implementation and practical effects of the decision, and the Director may publish that decision.

5. Public Service Conditions

- 5.1. The Licensee shall, in the manner and at the times specified by the Director, publish the standard terms and conditions under which it provides each category of Licensed Services to subscribers. In the absence of any other direction from the Director, the Licensee shall ensure that a statement of all applicable terms and conditions is:
 - (1) filed with the Director; and
 - (2) promptly made available for inspection at the request of any member of the public.
- 5.2 The Licensee shall ensure the accuracy and reliability of any systems, equipment, data or procedures which the Licensee uses to measure or to track the provision of Licensed Services or for the calculation of related charges.
- 5.3 In cases where it establishes to operates a Telecommunications Network, the Licensee shall establish and maintain the capability to intercept messages delivered by the Licensed Services and to provide information regarding the use of the Licensed Services and, in this respect, shall comply with any directions given by the Minister for Public Enterprise to the Licensee under Section 110 of the 1983 Act as applied under section 111(5) of the 1983 Act. In this Condition “intercept” shall be construed in accordance with the meaning assigned to “interception” by section 98 (5) of the 1983 Act.
- 5.4 Except as may be required under Condition 5.3, the Licensee shall not use any facilities or equipment to record or monitor voice telecommunications unless the Licensee has informed the parties of its intention to record or monitor their use of the service. The Licensee shall keep a record indicating the means by which it has informed parties of any recording or monitoring activities. The Licensee shall safeguard the privacy and confidentiality of any telecommunications associated with its services and shall comply with all relevant national and European Community laws from time to time regarding privacy and data protection.

- 5.5 The Licensee shall not attach to a Public Telecommunications Network any unapproved terminal equipment or other equipment which fails to comply with essential interfaces or other essential requirements notified from time to time by the Director.
- 5.6 If required to do so, the Licensee shall make contributions to assist in the funding of universal service obligations in accordance with any directions issued by the Director.
- 5.7 The Licensee shall comply with any direction issued by the Director regarding emergency services and the provision of Licensed Services in times of emergency.
- 5.8 The Licensee shall comply with any direction issued by the Director in relation to the protection of consumer's interests.
- 5.9 The Licensee shall implement an appropriate code of practice for the resolution of customer disputes and in relation to non-payment of bills and disconnection. The Licensee also agrees to participate in good faith in any dispute resolution procedure established by the Director for the resolution of disputes, and to comply with the decisions rendered under these procedures.
- 5.10 The Licensee shall ensure that subscribers have access to directory information services offered by any other licensed operators.

6. Fair Trading Conditions

- 6.1 The Licensee shall not enter into any agreement or engage in any concerted practice with any other undertaking which has the object or effect or preventing, restricting or distorting competition in the State.
- 6.2 The Licensee shall not, whether acting directly or indirectly abuse any dominant position within the State by imposing unfair purchase or selling prices or other unfair trading conditions; limiting production, markets or technical development to the prejudice of subscribers; applying dissimilar conditions to equivalent transactions; placing the other parties to those transactions at a competitive disadvantage; or making the conclusion of service agreements or other contracts subject to acceptance by the other parties of additional obligations which have no legitimate connection to the original contracts.
- 6.3 In determining whether the Licensee has acted in breach of Conditions 6.1 to 6.2, the Director shall have regard in particular to adverse effects on users of telecommunications services.

7. Public Call Boxes

- 7.1. Where the Licensee provides Public Call Boxes, it shall ensure that the following services are available at all Public Call Boxes:
- (1) access to voice telephony and directory information services; and
 - (2) access to emergency calling services without the use of any card or coin.
- 7.2. All Public Call Boxes supplied by the Licensee shall display a notice specifying:
- (1) the minimum charge for connection, call charge information and methods of payment;
 - (2) location of the Public Call Box;
 - (3) a statement that emergency calls can be made without charge;
 - (4) a statement whether incoming calls can be received; and
 - (5) contact information in the event of user complaints.
- 7.3. The Licensee shall be responsible for the installation, repair and maintenance of the Public Call Boxes, and shall ensure that its Public Call Boxes are equipped with apparatus to enable use of the Public Call Boxes by people with hearing aids.
- 7.4. If the Licensee wishes to withdraw from service a Public Call Box installed at a place to which the public has access, it shall , where possible, display a notice to that effect at the Public Call Box not less than 60 days before it is withdrawn.
- 7.5. The Licensee shall comply with all applicable rules, including planning authority or municipal council requirements, in connection with the installation or relocation of Public Call Boxes. The Licensee shall also comply with any valid notice from a land owner or municipal authority requiring it to remove a previously installed Public Call Box.

8. Interconnection

The Licensee shall comply with the Interconnection Regulations (S.I. No. 15 of 1998) insofar as same are applicable to the Licensee, and undertakes to participate in good faith in any negotiations or dispute resolution processes initiated pursuant to the Interconnection Regulations.

9. Facility Sharing

The Licensee shall, in accordance with any directions of the Director, notify the Director and publish its intention to carry out any trenching work on the public highway or in public spaces and not unreasonably refuse any request from another person who is licensed to establish a Telecommunications Network to lay separate ducts in the same trench while it is open, provided he makes a fair contribution to the costs incurred.

/ENDS

PRO FORMA CLASS 2 LICENCE:

General Telecommunications Licence

Under section 111(2) of the Postal and Telecommunications Services Act, 1983

Telecommunications Licence No. XXX

(Name of Licensee)

LICENCE CONDITIONS

Part 1: General Conditions

1. Definitions and Interpretation

1.2 In the Licence and the Terms and Conditions the following expressions have the meanings given to them below (and other grammatical forms of the expressions have corresponding meanings):

“1983 Act”: means the Postal and Telecommunications Services Act, 1983;

“1996 Act”: means the Telecommunications (Miscellaneous Provisions) Act, 1996;

“Affiliate”: means any company controlling, controlled by or under common control with the Licensee;

“Conditions”: means all applicable terms and conditions set out herein forming part of this Licence, as supplemented by Schedule 1 or as supplemented or amended from time to time;

“Director”: means the Director of Telecommunications Regulation;

“Licence”: means the licence granted by the Director to the Licensee to provide Licensed Services (as defined below) subject to the Conditions;

“Licence Commencement Date”: means the date specified in the Schedule;

“Licensee”: means the person identified on the first page of the Licence;

“Licence Fee” means the fee specified in the Schedule payable by the Licensee prior to grant of the Licence;

“Licensed Programme Services”: [to be defined in relation to services licensed under relevant cable and MMDS regulations to be made under the Wireless Telegraphy Act, 1926];

***Note:** The definition of Licensed Programme Services will encompass those services which will fall to be licensed under proposed Cable and MMDS licences under the Wireless Telegraphy Act 1926. The definition will be finalised in the context of the consultation on cable and MMDS licensing.*

“Licensed Services”: means the establishment and/or operation of any Telecommunications Network and/or the provision of any services consisting wholly or partly in the transmission and/or routing of signals on a Telecommunications Network, other than:

- (1) services to which section 4(A) of the Telegraph Act of 1869 as inserted by the European Communities (Telecommunications Infrastructure) Regulations, 1997 (S.I. No. 338 of 1997) relates;
- (2) Licensed Programme Services;
- (3) Mobile and Personal Communications Services;
- (4) the establishment and operation of a Mobile and Public Communications System.

Note: This expression is intended to define what services are licensable under this Class 2 licence. The licensable services are defined very broadly to encompass all types of telecommunications service subject to four specified exceptions; the rationale for the exceptions is as follows:

- *services which come within the scope of Section 4A of the Telegraph Act 1869 do not require to be licensed as telecommunications services under Section 111 of the 1983 Act*
- *Licensed Programme Services will be licensable separately under Cable/MMDS licences to be issued under the Wireless Telegraphy Act 1926*
- *as indicated in the introductory memorandum this consultation paper and draft forms of licence are directed at fixed telecommunications services and networks; licences for mobile and personal communications services and systems will be dealt with separately by the ODTR.*

It should be noted however that, as indicated in Condition 2.4 of the draft form of licence, a licence under Section 111 of the 1983 Act will not obviate the requirement for a licensee to obtain other relevant licences including any relevant licence under the Wireless Telegraphy Act 1926.

“Mobile and Personal Communications Services”: means services other than satellite services whose provision consists, wholly or partly, in the establishment of radiocommunications to a mobile user, and makes use wholly or partly of Mobile and Personal Communications Systems;

“Mobile and Personal Communications Systems”: means systems consisting of the establishment and operation of a mobile network infrastructure whether connected or not to public Network Termination Points, to support the transmission and provision of radiocommunications services to mobile users;

“Network Termination Point”: means all physical connections and their technical access specifications which form part of a Public Telecommunications Network and are necessary for access to and efficient communication through that public network and which are individually identified by numbers allocated from the Irish telephone numbering scheme administered by the Director;

“Public Call Box”: means apparatus for the provision of voice telephony or other telecommunications services which is accessible to the public, or any class of the public;

“Public Telecommunications Network”: means a Telecommunications Network used, inter alia, for the purpose of the provision of telecommunications services between Network Termination Points;

“Relevant Market”: means in cases where the Licensee has been designated as having SMP, the market(s) in respect of which it is so designated;

“Schedule”: means the Schedule attached to this Licence;

“SMP”: means Significant Market Power as defined in the Interconnection Regulations SI 15 of 1998;

“State”: means Ireland;

“Telecommunications Network”: means the transmission equipment and, where applicable, switching equipment and other resources which permit the conveyance of signals between defined termination points by wire, by radio, by optical or by other electro magnetic means;

1.3 In the Licence , unless the context indicates a contrary intention:

- (1) references to conditions, paragraphs, subparagraphs and schedules are to conditions, paragraphs, subparagraphs of , and to schedules to, this Licence as varied from time to time in accordance with this Licence;
- (2) a document will be incorporated into and form part of this Licence if it is referred to in this Licence and a reference to such a document is to that document as varied from time to time;
- (3) headings used for conditions, paragraphs, subparagraphs or schedules are for ease of reference only and will not affect the interpretation of this Licence
- (4) references to any law, ordinance, by-law, regulation or other statutory instrument includes any modification, re-enactment or legislative provisions substituted for the same; and
- (5) use of the word ‘includes’ or ‘including’ is to be construed as being without limitation.

2. Nature of the Licence

- 2.1 For the avoidance of doubt, the Licence is non-exclusive.
- 2.2 The Licence is personal to the Licensee. Unless it obtains the Director's prior written consent, the Licensee shall not:
- (1) sub-license or grant any right, interest or entitlement in the Licence to any other person; or
 - (2) transfer the Licence to any other person.
- 2.3 If, with the consent of the Director, the Licence is transferred or sub-licensed to a person who already enjoys another licence issued by the Director, she may thereafter elect to apply, in relation to any network operated or services provided by that person, the Conditions under this Licence and/or those under the other licence and Condition 3 shall be construed accordingly.

Note: difficulties have been encountered in other jurisdictions where licences are transferred (with consent) and in result it becomes unclear which Licence Conditions apply to the combined network, or any relevant part of it. Because of the simple, modular style of licences, it is expected that the difficulty will not arise. However the Director wishes to ensure that at the time of any such transfer she is in a position to clarify which licence conditions will apply.

- 2.4 Nothing in this licence shall absolve the Licensee from any requirement in law to obtain whatever additional consents, permissions, authorisations or licences may be necessary for the provision of Licensed Services and for the exercise of its rights or discharge of its obligations under this Licence, including without limitation any authorisation under the Wireless Telegraphy Act 1926. The Licensee is responsible for all costs, expenses and other commitments (financial and non-financial) in respect of this Licence and the Director shall not bear any responsibility for these whatsoever.

Note: In cases where the Licensee is authorised to establish a network and wishes to use radio means, a separate licence under the 1926 Act will be necessary. It is also for the Licensee to determine what, if any, other licences may be required for example in relation to planning permissions etc..

- 2.5 The Licensee shall pay the Licence Fee in accordance with the provisions of the Schedule.
- 2.6 The Licensee shall also make any payment required by the Telecommunications (Miscellaneous Provisions) Act, 1996 (Section 6) Levy Order, 1998.

3. Compliance

- 3.1 Notwithstanding any dispute or complaint arising from a decision or direction of the Director, whether as to its reasonableness or lawfulness or for any other reason, the Licensee shall comply with that decision or direction pending final determination of the dispute or complaint by the Court.
- 3.2 The Licensee shall provide documents, records, accounts, estimates or other information requested by the Director, in the form and at the times specified by the Director, for the purpose of verifying that the Licensee is complying with the Conditions, for statistical purposes or to assist the Director to perform any function required by national or European Community law. The Licensee shall notify the Director of any change in the ownership or control of the Licensee, any change in the address or telephone number of the Licensee's principal office or on the occurrence of any event described in Conditions 4.1(6) or (7).
- 3.3 The Licensee shall supply to the Director, in relation to itself and any body corporate which controls the Licensee:
 - (1) a copy of its annual return at the same time as it is filed with the Registrar of Companies in accordance with section 127 of the Companies Act, 1963;
 - (2) a copy of its annual report and accounts as soon as possible after they are circulated to the shareholders of the relevant body corporate; and
 - (3) where the relevant body corporate is not incorporated in Ireland, any returns, reports, accounts or other information under the laws of any applicable jurisdiction which is, in the opinion of the Director, analogous or equivalent to the above, at such times and in such forms as the Director specifies from time to time.
- 3.4 The Director may, after consulting the Licensee, publish any information provided to the Director under this Licence, insofar as in her opinion this assists with the creation of a liberalised and competitive market.
- 3.5 The Director may require an audit of any aspect of the Licensee's business in order to verify compliance with the Conditions. The Licensee shall fully cooperate with the Director, or any persons appointed by the Director, in the conduct of the audit.
- 3.6 The Licensee shall notify the Director in writing of the date on which it proposes to commence providing the Licensed Service and shall confirm when it has commenced such services. The Licensee shall also notify the Director if and when it ceases to provide the Licensed Service.

4. Changes to the Licence and Enforcement

4.1 This Licence may be suspended or revoked by the Director if the Director is satisfied that:

- (1) the Licensee has breached any one or more of the Conditions or any provision of applicable national or European Community law, or has failed to comply with any lawful direction issued by the Director, or
- (2) the Licensee has made any false declaration in relation to the application for this Licence, or
- (3) it is in the national interest to revoke this Licence, or
- (4) it is necessary, in her opinion, to do so for the purposes of national or European Community law or policy; or
- (5) the Licensee has ceased to provide Licensed Services, or
- (6) a receiving order for bankruptcy has been made in respect of the estate of the Licensee, or
- (7) where the Licensee is a company within the meaning of the Companies Acts 1963 to 1990, an order for its winding up has been made or a resolution for voluntary winding up (within the meaning of those Acts) has been passed by the company otherwise than for the purpose of a merger or solvent reconstruction, or a receiver of the property of the company has been appointed or an examiner to the company has been appointed.

Any suspension or revocation shall be made in compliance with the requirements of Section 111(10) of the 1983 Act.

4.2 The Director may from time to time amend this Licence. Any amendment shall be made in compliance with the requirements of Section 111 (2) (e) (iv) and subsection 111 (10) of the 1983 Act, and any other requirements of applicable national or European Community law.

Note: It should be noted that the provisions relating to licence suspension, revocation and amendment at Condition 4.1 and 4.2 above supplement the statutory rights of the Director under Section 111 of the 1983 Act to suspend, revoke or amend any licence. Exercise by the Director of any such right, whether statutory or founded in the licence terms, will be in accordance with applicable legislative provisions and in particular Section 111(10) of the 1983 Act.

4.3 The Director may reduce the term of the Licence if the Director is satisfied that any of the events specified in any part of Condition 4.1 has occurred.

Where the Director proposes to reduce the term of the Licence, the following procedure shall apply:

- (1) the Director shall notify the Licensee of the proposed reduction in the Licence term, and shall include in the notification a statement of the reasons for the reduction in term and the process to be followed by the Licensee in responding to the notification, and the Director may publish her proposal;
- (2) the Licensee may, within twenty one days of receipt of the notification under paragraph (1), make written representations to the Director in relation to the proposed reduction in term;
- (3) before making a decision on the proposed reduction in term, the Director shall take into account any representations made by the Licensee pursuant to paragraph (2) and any other representations made to her;
- (4) the Director shall notify the Licensee in writing of the Director's decision regarding the proposed reduction in term, and shall include in the decision notification a statement of the Director's reasons for the decision and specific information about the implementation and practical effects of the decision; and
- (5) the Director, acting in her absolute discretion, may partially or fully restore the original term of the Licence, in the event that the Director decides that the subsequent behavior of the Licensee justifies such a decision and may make the restoration of the original term of the licence subject to such conditions as she considers appropriate. The Director shall provide the Licensee with written notification of the decision, the reasons for the decision and the implementation and practical effects of the decision, and the Director may publish that decision.

Note: In introducing a condition which makes express provision for licence shortening in specified circumstances the Director is concerned to ensure within the framework of relevant legislation that there exists a clear and effective procedure for addressing breaches of licence conditions in a proportionate manner.

Question C2.4.3.1: Are there alternative or additional conditions which would be appropriate to achieve this objective?

5. Application of Additional Conditions

- 5.1 Unless and until the Licensee has received notification from the Director of an appropriate designation, the conditions set out in Parts 3, 4 and 5 of this Licence shall not apply to the Licensee.

- 5.2 If the Director designates the Licensee as having SMP on a Relevant Market, she shall notify the Licensee of such designation and;
- (1) where the designation relates to the Fixed Telephone Network and Services Market, the Conditions set out in Parts 3 and 4 of this Licence shall apply to the Licensee with effect from 30 days following notification of such designation.
 - (2) where the designation relates to any other Relevant Market, the conditions in Part 4 of this Licence shall apply to the Licensee with effect from 30 days following the notification of such designation.
- 5.3 If the Director designates the Licensee as having Universal Service Obligation, she shall notify the Licensee of such designation and the conditions set out in Part 5 of this Licence shall apply to the Licensee with effect from 30 days following the notification.
- 5.4 Where a designation has been made prior to the Licence award, the relevant conditions shall apply from the date of commencement of the Licence.

Note: As indicated in the introductory memorandum to this consultation paper and in other consultation papers issued by the ODTR (including the Consultation Paper on Licence Application Procedures – document number ODTR 98/37) designation by the ODTR of a licensee as an SMP operator or as an operator with USO obligations will trigger activation of the relevant "dormant" SMP / USO conditions of the licence. Such activation is provided for in the above condition.

6. Public Service Conditions

- 6.1 The Licensee shall, in the manner and at the times specified by the Director, publish the standard terms and conditions under which it provides each category of Licensed Services to subscribers. In the absence of any other instruction from the Director, the Licensee shall ensure that a statement of all applicable terms and conditions is:
- (6) filed with the Director; and
 - (7) promptly made available for inspection at the request of any member of the public.
- 6.2 The Licensee shall ensure the accuracy and reliability of any systems, equipment, data or procedures which the Licensee uses to measure or to track the provision of Licensed Services or for the calculation of related charges.
- 6.3 In cases where it establishes or operates a Telecommunications Network the Licensee shall establish and maintain the capability to intercept messages delivered by the Licensed Services and to provide information regarding the use of Licensed Services and, in this respect, shall comply with any directions

given by the Minister for Public Enterprise to the Licensee under Section 110 of the 1983 Act as applied under section 111(5) of the 1983 Act.

In this Condition “intercept” shall be construed in accordance with the meaning assigned to “interception” by section 98 (5) of the 1983 Act.

- 6.4 Except as may be required pursuant to Condition 6.3, the Licensee shall not use any facilities or equipment to record or monitor voice telecommunications unless the Licensee has informed the parties of its intention to record or monitor their use of the services. The Licensee shall keep a record indicating the means by which it has informed parties of any recording or monitoring activities. The Licensee shall safeguard the privacy and confidentiality of any telecommunications messages associated with its services and shall comply with all national and European Community laws from time to time regarding privacy and data protection.
- 6.5 The Licensee shall not attach to Public Telecommunications Networks any unapproved terminal equipment or other equipment which fails to comply with essential interfaces or other essential requirements notified from time to time by the Director.
- 6.6 If required to do so, the Licensee shall make contributions to assist in the funding of universal service obligations in accordance with any directions issued from time to time by the Director.
- 6.7 The Licensee shall comply with any direction issued from time to time by the Director regarding emergency services and the provision of Licensed Services in times of emergency.
- 6.8 The Licensee shall comply with any direction issued by the Director in relation to the protection of user’s interests, including, but without limitation:
 - (1) regarding the dialling and other tones used on Public Telecommunications Networks; and
 - (2) regarding the provision of such services as may be specified by the Director from time to time, including, but without limitation call barring and calling line identification.
- 6.9 The Licensee shall implement an appropriate code of practice for the resolution of customer disputes and in relation to non-payment of bills and service interruption or disconnection. The Licensee also agrees to participate in good faith in any dispute resolution procedure established by the Director for the resolution of disputes, and to comply with the decisions rendered under these procedures. The Director may from time to time issue further directions requiring modifications or additions to the code and as to its republication.
- 6.10 The Licensee shall ensure that subscribers have access to directory information services offered by it or any other licensed service provider which

has an obligation to provide these services. The Licensee shall also maintain a complete and accurate database of its customers' numbers, make that data available to other licensed service providers and cooperate with other licensed service providers in the supply or compilation of comprehensive and accurate directory information.

Note: The Director is concerned to ensure end users are provided with a specified basic level of service. The conditions included at 6.7 to 6.10 above are intended to achieve this. The Director considers that it may be necessary to specify a minimum set of services which service providers will be required to provide to subscribers including for example selective call barring. Also of particular concern to the Director would be ensuring that service interruption for non-payment of bills is notified well in advance to affected subscribers and is proportionate. It is acknowledged that matters of this nature are addressed to a certain extent in existing voice telephony legislation and in particular in Directive 98/10/EC; however given the evolutionary nature of the relevant legislation in Ireland (Directive 98/10/Cc has yet to be transposed in Ireland) the Director is concerned to leave open the possibility of addressing the issue by way of licence condition as set out above. Any direction made by the Director under licence terms will be consistent with all relevant national and EU legislation in force from time to time.

Question C2.6.1: Is it appropriate that there be an obligation to provide a minimum set of services?

Question C2.6.2: What minimum set of services should be included in the licence?

7. Fair Trading Conditions

7.1 The Licensee shall not enter into any agreement or engage in any concerted practice with any other undertaking which has the object or effect or preventing, restricting or distorting competition in the State.

7.2 The Licensee shall not, whether acting directly or indirectly, abuse any dominant position in the State within the State by imposing unfair purchase or selling prices or other unfair trading conditions; limiting production, markets or technical development to the prejudice of subscribers; applying dissimilar conditions to equivalent transactions; placing the other parties to those transactions at a competitive disadvantage; or making the conclusion of service agreements or other contracts subject to acceptance by the other parties of additional obligations which have no legitimate connection to the original contracts.

7.3 In determining whether the Licensee has acted in breach of Conditions 7.1 or 7.2, the Director shall have regard in particular to adverse effects on users of telecommunications services.

Note: the Director is minded to include Fair Trading Conditions in all classes of licences to replace other, narrowly targeted, conditions of a type which can be found in certain other jurisdictions. In the case of operators with SMP, additional obligations are imposed under the Parts 3 and 4 Conditions.

Question C2.7.1: Are there comments on the appropriateness or effectiveness of this proposed approach?

Question C2.7.2: Are there further targeted licence conditions which may be necessary at this level?

8. Public Call Boxes

8.1 The Licensee shall ensure that the following services are available at all Public Call Boxes which it provides:

- (1) access to voice telephony services and access to directory information services; and
- (2) access to emergency calling services without the use of any card or coin.

8.2 All Public Call Boxes supplied by the Licensee shall display a notice specifying:

- (8) the minimum charge for connection, call charge information and methods of payment;
- (9) the location of the Public Call Box;
- (10) a statement that emergency calls can be made without charge;
- (11) a statement whether incoming calls can be received; and
- (12) contact information in the event of user complaints.

8.3 The Licensee shall be responsible for the installation, repair and maintenance of the Public Call Boxes, and shall ensure that its Public Call Boxes are equipped with apparatus to enable use of the Public Call Boxes by people with hearing aids.

8.4 If the Licensee wishes to withdraw from service a Public Call Box installed at a place which the public has access, it shall, where reasonably possible, display a notice to that effect at the Public Call Box not less than 60 days before the Public Call Box is withdrawn.

- 8.5 The Licensee shall comply with all applicable rules, including planning authority or municipal council requirements, in connection with the installation or relocation of Public Call Boxes. The Licensee shall also comply with any valid notice from a landowner or municipal authority requiring it to remove a previously installed Public Call Box.

Note: operators who install public call boxes in public places provide a vital public service to people on the move and people who have not telephone on their own. The Director considers that users have a right to be provided with certain basic services at public call boxes and to understand the charging systems.

QC2.8.1: Should there be a minimum set of services which should be provided or accessible at Public Call Boxes?

Qc.2.8.1: If yes, what services should be included in this minimum set, for example should all Payphones accept freefone calls?

9. Interconnection

The Licensee shall comply with the Interconnection Regulations (SI 15 of 1998) insofar as same are applicable to the Licensee, and to participate in good faith in any negotiations or dispute resolution processes initiated pursuant to the Interconnection Regulations.

10. Facility Sharing

The Licensee shall, in accordance with any directions of the Director, notify the Director and publish its intention to carry out any trenching work on the public highway or in public spaces and not unreasonably refuse any request from another person who is licensed to establish a Telecommunications Networks to lay separate ducts in the same trench while it is open, provided he makes a fair contribution to the costs incurred.

Note: the Director's dispute resolution function in relation to facility sharing, given to her under SI No 15 of 1997, is discussed in Paragraph 4.3.1 of this consultative paper. The Director is of the view, however, that further provision in relation to the coordination of trench work brings environmental benefits and proposes to include this Condition on that basis.

Question C2 10.1: Should this provision apply to proposed trenching work on private lands, subject to any third party obtaining the consent of the land owner?

Question C2 10.2: Should this provision or an appropriate condition be included on the sharing of masts?

Part 2: Additional Conditions applying to Licences granted under Section 111(2) of the 1983 Act

11. Numbering

- 11.1 The Licensee shall use numbers allocated by the Director, whether before or after the Licence Commencement Date, for the sole purpose of terminating telecommunications messages on any Public Telecommunications Network within the State, in accordance with the conditions applicable to their allocation and in accordance with the remaining parts of this Condition 11 and any numbering plans, numbering conventions or directions issued by the Director from time to time.
- 11.2 No Licensee shall acquire any proprietary rights in any number or range of numbers allocated to it or used by its customers. No number or range of numbers may be traded, sold or otherwise transferred by the Licensee.
- 11.3 The Licensee shall manage any numbers allocated to it:
- (1) with a view to conserving numbers as a public resource; and
 - (2) in conformity with the Irish telephone numbering scheme.
- 11.4 The Licensee shall maintain a record of the status of all numbers allocated to it by the Director and shall, on request, make that information available to the Director. The Licensee shall ensure that the allocation of individual numbers or number ranges by the Licensee to subscribers is carried out in an objective, transparent, non-discriminatory and timely manner.
- 11.5 The Licensee shall make any changes in any equipment, facilities or processes required in order to continue to comply with the Irish telephone numbering scheme or any numbering directions issued by the Director. The Director may change the numbers allocated to the Licensee at any time. The Licensee shall comply with any direction of the Director in relation to implementation of number changes and to informing subscribers of such changes.
- 11.6 The Director may take back any numbers or numbering ranges allocated to the Licensee if, in the opinion of the Director:
- (1) the numbers are unused;
 - (2) recovery is necessary as part of a numbering scheme change;
 - (3) the Licensee is found to be in breach of any Condition, including specific numbering conditions;
 - (4) recovery is in the national interest; or
 - (5) recovery is in the interests of an open and competitive market.

- 11.7 The Licensee shall not charge subscribers for allocations of numbers except in accordance with any direction from the Director authorising charges.
- 11.8 The Licensee shall comply with any directions issued by the Director regarding number portability.
- 11.9 The Licensee shall reserve and use the access codes 112 and 999 exclusively for calls to the emergency services.

Note: The obligations in relation to numbering do not appear in Class 1 Licences. Numbers are a scarce resource and experience in other countries has shown that the grant of blocks of numbers to particular licensees can lead to waste where, as is often the case, they are not used. The provisions in this condition are intended to create a balanced regime.

12. Quality of Service and Publication of Performance Data

- 12.1 The Licensee shall comply with all regulations and any directions issued by the Director regarding the quality of the Licensed Services.

Note: this enables the Director to impose quality of service standards on operators of Public telecommunication Services and for voice telephony. The Director's current intention is to rely on European standards such as ETR 138. It is proposed to specify a minimal level of QoS for Class 2 licensees. This will be supplemented by further conditions for licensees having SMP (see Conditions 19-20).

- 12.2 The Licensee shall, as and when required, supply to the Director the results of its own measurements of actual performance against any quality of service requirements specified by the Director in respect of the Licensed Services. The Director may include the figures supplied to him or her in any compilation of the performance of network operators in the State and may publish the compilation.

Note: this enables evaluation of actual performance and publication of comparative performance.

Part 3: Additional conditions applying in the case of an operator designated as having Significant Market Power in the Fixed Telephone Network and Services Market.

13. Access

- 13.1 The Licensee shall, on request from any other person, including any service provider, provide that requesting person with any Licensed Services which the Licensee offers to its customers generally at the time the request is made. The terms for supplying the requested service shall not prohibit the party making the request from reselling the requested service or incorporating the requested service in any other service offered to a customer of the requesting party.
- 13.2 At any time before or after the Licence Commencement Date, the Director may make a direction requiring the Licensee, on request from another licensed telecommunications service provider to make Equal Access available to that service provider on the terms set out in the direction.
- 13.3 In this Condition “Equal Access” means a facility provided to another service provider whereby he can arrange with a customer of the Licensee to choose over which network he will route his national and international calls. The customer’s choice may be made in either of the following ways:
- (1) by pre-selection, that is to say the customer registers with the Licensee the name of the operator which will convey all his calls (but the Licensee may offer a facility to overwrite the preference in the case of any particular call); or
 - (2) on a call-by-call basis using a carrier selection code in accordance with the Irish national numbering plan.
- 13.4 The Licensee may not charge any fee or require the customer to acquire any special equipment as a pre-requisite to obtaining Equal Access or changing his designation of preferred operator.

Question C2.13.1: Is this condition necessary in the light of separate legal obligations on operators with SMP under the ONP and the Interconnection Regulations?

Question C2.13.2: If the condition is appropriate, what should its scope be?

Question C2.13.3: Should the condition apply to SMP operators or all Class 2 licensees?

14. Retail Price Control

- 14.1 Condition 6.1 shall apply as if it also required publication of the current prices for each category of Licensed Services supplied from time to time by the Licensee. Except as provided in Condition 14.3, or as otherwise directed by the Director, the Licensee shall, in respect of each such category of Licensed Services, supply the same only at the prices and in accordance with all the other terms and conditions for the relevant category of services as published by the Licensee under Condition 6.1 and this Condition.
- 14.2 If it comes to the attention of the Director that the Licensee may not be complying with Condition 6.1 as modified in Condition 14.1 above, the Director may require the Licensee to provide a written explanation of the circumstances and written confirmation, signed by a director or senior manager, to the effect that no breach has occurred or that any offer made to a potential customer which was not compliant has been withdrawn.
- 14.3 Notwithstanding Conditions 14.1 and 14.2, where the Licensee intends at any time to introduce:
- (1) new prices for any Licensed Services;
 - (2) any discounts to published prices for volume business or for customers who take additional services from the Licensee or otherwise; or
 - (3) special offers to all or any customers for particular categories of services,

it shall, at least 4 weeks prior to their coming into effect, publish the same and provide full details to the Director who also may publish the same. The Director may require the Licensee to provide a justification for the new prices, discounts or offer and issue a direction to the Licensee not to proceed with the same if, after consulting the Licensee and such other interested parties as she considers appropriate, she determines that they are (i) below cost or (ii) anti-competitive.

Note: The Director is concerned to ensure fair and open operation of the telecommunications market. Given the influence of SMP operators on market operation the Director considers it important that there be an effective means of ensuring that such operators do not use unfair pricing strategies. To the extent that such matters are addressed in legislation (both existing and proposed) the conditions included in licence conditions which relate to pricing, discounts and special offers are intended to be consistent with and to complement the relevant legislative provisions in force from time to time.

15 Prohibition on Cross-Subsidies

- 15.1 Where the Director, after consulting the Licensee and such other interested parties as she considers appropriate, determines that the Licensee is unfairly cross-subsidising or subsidising any category of Licensed Services provided by it from time to time, or the production or distribution of telecommunications apparatus, she may issue a direction to that effect and require the Licensee to cease to do so.
- 15.2 In order to enable the Director to evaluate whether any unfair cross-subsidisation or subsidisation is taking place, the Licensee shall record at full cost in its accounting records any material transfer between a part and any other part of its business, and between itself and any subsidiary company, and observe any directions issued by the Director for this purpose.

16. Separate Accounts

The Licensee shall maintain accounting records in a form which enables the activities of business unit specified in any direction given by the Director to be separately identifiable, and are sufficient to show and explain the transactions of each of those business units; and shall prepare in respect of each calendar quarter accounting statements setting out and fairly presenting the costs (including capital costs), the revenue and the financial position of each of those business units including a reasonable assessment of the assets employed in and liabilities attributable to them. The Licensee shall also comply with any other directions made by the Director in relation to the preparation of accounting statements.

Note: The obligation sought to be imposed under this condition is intended to contribute an open and competitive market.

Question C2.16.1: In respect of what types of business unit should SMP licensees be required to account separately?

Question C2.16.2: What, if any, of such information should be made publicly available?

17. Alterations to the Network

The Licensee shall provide the Director with all additional information required by the Director concerning proposed changes to the Licensee's Telecommunications Network, or any apparatus or any software within the same, being changes which will or may have the effect of requiring any person who has lawfully connected telecommunication apparatus or interconnected any network to modify or replace the same. The Licensee shall also comply with any directions laid down by the Director from time to time for consulting on network changes.

Note: Material changes in the network of an operator with SMP may have an impact on the functionality of interconnected networks or the provision of services over that network and the Director considers that it important that she be in a position to make directions in order to prevent any abuse of a significant market power and in the interests of other operators and service providers. The Director invites comments as to whether this power is needed or whether instead it is sufficient for operators to rely on the Reference Interconnect Offers of operators with SMP, and the provisions of the ONP and Interconnection Regulations.

18. Private Circuits

- 18.1 The Licensee shall comply with its obligations under the Leased Line Regulations (S.I. No 109 of 1998), and undertakes to participate in good faith in any negotiations or dispute resolution process initiated pursuant to the Leased Line Regulations.
- 18.2 The Licensee shall also provide Indefeasible Rights of User in relation to international circuits owned or controlled by the Licensee or an Affiliate unless the Director is satisfied that alternative sources are available at an economic cost or the Licensee has insufficient capacity to meet the request.

Question C2.18.1: What regime, if any, for IRU access is considered appropriate?

Question C2.18.2: Is it considered that the obligation to provide IRU access should apply to SMP operators or to all operators with international capacity?

19 Approval of Subscriber and Customer Contracts

- 19.1 The Licensee shall deliver to the Director, who may publish and consult on the same, copies of all standard-form contracts from time to time issued by the Licensee in connection with the provision of any Licensed Service, and shall supply a copy of any particular contract within three days of any written request from the Director. The Licensee shall abide by any direction issued by the Director in respect of the same.
- 19.2 The Licensee shall also prepare and deliver to the Director, who may publish and consult on the same, a written statement setting out the service levels it proposes in respect of each category of Licensed Services it offers, any exceptions to these and the compensation it will offer to customers or prospective customers in case service levels are not met. The Licensee shall abide by any direction issued by the Director in respect of the same and shall incorporate approved service levels and compensation schemes into relevant customer contracts.

- 19.3 The Director may from time to time, after consulting with the Licensee, issue directions to the Licensee requiring further changes in standard form agreements or service levels and compensation schemes.

Note: The Director proposes that SMP operators be required to publish a standard form service level offer which will guarantee certain minimum levels of service quality including service delivery times. Such offer will also specify appropriate compensation levels in the event that the commitments offered are not met. Responsibility for preparation of such an offer will lie in the first instance with the SMP licensee in question however the Director will reserve the power to review it and to require amendments thereto. Input from operators as to the appropriate form and content of such a service level offer will be vital to successful development and implementation of this concept in the licensing regime in Ireland after 1 December.

Question C2.19.1: What should the scope of a service offering be?

20. Selling Practices

The Licensee shall implement an appropriate code of practice directed to its and its Affiliates' employees and agents concerning selling practices and designed to avoid unfair or anti-competitive practices, and shall submit the same to the Director in draft form. The Director may initiate a consultative process on the draft code and, after also consulting the Licensee, issue directions specifying any modifications or additions that she considers should be made to the draft code. The Licensee shall then publish the final code, in accordance with any directions as to publication made by the Director, externally and also internally to its and its Affiliates' employees and agents. The Director may from time to time issue further directions requiring modifications or additions to the code and as to its republication.

Note: This condition is intended to regulate the selling practices of SMP operators with a view to ensuring that they do not engage in unfair selling practices which would unfairly affect other operators in the market. The Director proposes reserving the power to require insertion or amendment of the terms of such code. Failure to comply with the code will result in breach of a licence condition and the possibility of imposition of relevant sanctions for such breach.

Question C2.20.1: Should this condition apply to all operators or just operators who have been designated as having SMP?

Part 4: Additional conditions for operators with SMP in any Relevant Market, including the Fixed Telephone Network and Services Market

21. Bodies Representing Consumer Interests

The Licensee shall give due consideration to any matter relating to the Licensed Services, or to apparatus supplied by the Licensee which is raised by any body recognised from time to time by the Director as representing the interests of consumers and/or other users of Licensed Services, and shall report to the Director on its dealings with these bodies.

Note: the Director wishes to ensure that operators with significant market power are put under an obligation to work with recognised consumer bodies

22. Undue Preference and Unfair Discrimination

22.1 The Licensee shall not, in respect of a Relevant Market, whether in respect of the charges or other terms or conditions applied or otherwise, show undue preference to, or exercise unfair discrimination against, particular persons or persons of any class or description regarding the provision of any Licensed Services or access to any Telecommunications Network. The Licensee may be deemed to have shown undue preference or exercised undue discrimination if it favours any business carried on by the Licensee or an Affiliate of the Licensee so as to place persons competing with that business or Affiliate at a competitive disadvantage.

22.2 The Licensee shall not show undue preference to or exercise unfair discrimination against any other licensed service provider in respect of the quality of any service or facilities provided by the Licensee to that other service provider. The Licensee may be deemed to have shown undue preference or to have exercised unfair discrimination if it favours a business carried on by it or an Affiliate in relation to the quality of any service or facilities provided to that business or Affiliate as compared with the services or facilities provided to another service provider, so as to place the other service provider competing with the Licensee's business or Affiliate at a competitive disadvantage.

Note: despite the existence of a fair trading clause (Condition 7), the Director considers that, in the case of operators with SMP, there is value in importing an obligation not unduly to prefer or unfairly to discriminate. Experience in other countries has shown that these particular conditions have been heavily relied on.

23. Linked Sales

- 23.1 The Licensee shall not make it a condition of providing any Licensed Services in any relevant Market, that a person should require from the Licensee, or any person specified by the Licensee, any telecommunication service or apparatus other than one that which is specifically requested, unless the Licensee has notified the Director of its intention to do so and satisfied her that there are technical reasons why bundling should occur.
- 23.2 The provisions of Condition 23.1, shall not prevent the Licensee from offering quantity discounts in accordance with any lawful discount scheme.

Part 5: Additional Conditions for operators with Universal Service Obligations

Note: these may include additional conditions on the provision of Universal Service and its funding, roll out, quality of service, directory information services and provision for the disabled and hearing impaired. Exemptions in case of impossibility of performance may also be included.

THE SCHEDULE

The Licence Fee:

Licence Commencement Date:

[Any additional provisions, such as network roll-out or quality of service commitments, unless in Part 5 of the Conditions]

/ENDS