



Office of the Director of
**Telecommunications
Regulation**

Television Transmission Licensing For Cable and MMDS Systems

Report on the Consultation

Document No. ODTR 98/63

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Section 1 - Introduction and Purpose of Document

1.1. The purpose of this document is as follows:

- To set out, in an open and transparent manner, a statement of the process that has occurred to date regarding the grant of new cable/MMDS licences;
- To provide the text of draft regulations and licences prepared by the Director in respect of cable and MMDS services;
- To indicate the next stages of the process to be followed by the Director.

1.2 The process to date is described in the Sections below. As indicated in Document ODTR 98/20, MMDS and Cable Companies were invited to make submissions to the Director so that she might decide whether it might be appropriate to offer them new licences in place of their existing ones, the terms of such new licences to be consistent with the policy expressed in the document. In summary, following the submission of business plans by a number of existing licensees, the Director issued letters to those companies on 3rd December 1998 which set out how she proposed to take matters forward. That letter also set out the principles (see Appendix 1) on which new regulations and licences would be based. These principles are considered by the Director to be equitable and reflect, where possible and reasonable, concerns raised during the various stages of consultation.

1.3 To date, one company has agreed to proceed on the basis of the principles as set out and a second has indicated conditional acceptance. However, a number of matters were raised and draft regulations which reflect the Director's final views, having considered the issues involved are now appended (see Appendix 2). These are now provided for reference to all interested parties. It should be understood that while the regulations are published here in draft form, their enactment is subject to the consent of the Minister for Public Enterprise.

- 1.4 The Director notes the desirability from a consumer's viewpoint of being able to establish a new licensing framework promptly and without recourse to legal disputes which could cause significant delay. The Director is keen to see an early acceptance by the industry of the terms set out in the draft regulations.
- 1.5 The Director is therefore inviting the relevant existing licence holders to indicate by 11th January 1999 their willingness to surrender existing licences in favour of the new regime as set out in the draft regulations. In the event of licensees not doing so, the Director will initiate or continue (as appropriate in each case) legal action to establish what rights, if any, existing licensees have in respect of exclusivity or renewal under the existing licences or the extent to which such rights may constrain the establishment of an appropriate regulatory framework for the industry. In such circumstances, the Director will also consider how best to protect the interests of consumers within the relevant licenced area.

Section 2 – Background

NERA/Smith Report

2.1 In August 1997, the Director of Telecommunications Regulation commissioned National Economic Research Associates (NERA) and Smith System Engineering (Smith) to prepare a report which would assess economic, spectrum management and other technical aspects of future broadcasting policy in Ireland. That Report was published as a consultation document – ODTR 98/12 on 13 March 1998 and comments were invited to be received no later than 21 April 1998.

Document No. ODTR 98/20

2.2. The Director, having taken account of the report by NERA/Smith and the comments received thereon, in July 1998 published her view of the framework for the future as Document No. ODTR 98/20 entitled “The Future of TV Transmission in Ireland – The Way Forward”.

Below are listed some of the key conclusions:

- **Competition:** the Director wishes all consumers to be able to chose between appropriate platforms. Exclusivity is not justified.
- **DTT:** The Director will reserve spectrum for the introduction of DTT.
- **MMDS and Cable:** MMDS and Cable companies have been invited to submit business plans to her which she would review and against which she will consider awarding new or modified licences on appropriate terms including, for example, duration. The licences would be designed to provide for consumer protection in terms of roll out, quality of service, etc., and for a period of stability to meet digital development needs and will replace existing licences.

- **Deflectors:** The Director is not satisfied as to the long-term appropriateness of deflectors as a means of rebroadcasting on which reliance can be placed. She is nevertheless aware of their current market position. She is minded to provide for the short-term licensing of deflector operations subject to considerations outlined in Document No. ODTR 98/20.

2.3 It was indicated in Document No ODTR 98/20 that it was important to ensure the development of technologically up to date retransmission systems and of digital broadcasting in particular and to ensure that such development should commence as soon as possible. Existing licences held by cable and MMDS operators do not permit the carriage of digital television services. The Director would not be minded to authorise such services for existing licencees unless the principle of competition can be established.

2.4 The claims by a number of existing licensees to entitlement to exclusivity and renewal of existing licences impose a constraint on the planning and introduction of DTT and on the extent to which modernisation of current systems can be encouraged. The Director is also aware of the limitations to service provision arising from the structure of current licences and the effects which this has on consumer benefits. Accordingly the Director considers it appropriate that a new licensing framework would address consumer protection issues and would also require licensees to ensure a full roll out of digital services. The fact that MMDS has not rolled out to the extent expected has left a segment of the television retransmission market being served by deflectors. The Director has indicated that she is minded to provide for licensing such operations by way of short term licences or licences revocable with a short period of notice where development of national platforms required additional spectrum. However such a licensing scheme requires the resolution of legal issues surrounding current cable and MMDS licences.

2.5 Given the considerations described above and the present state of transmission services in Ireland, and the spectrum requirements of non-cable television delivery, the Director considered it appropriate in the first instance

to give the current MMDS and cable licensees the opportunity to present business cases for new or amended licences in their franchise areas. It was considered that a process whereby current licensees might accept fresh licences on new terms in place of existing ones would meet the needs of consumers in terms of availability of new technology and consumer protection while allowing existing licensees to develop their business from the current stage of development. The preparation of business cases was requested to facilitate early decisions on the granting to current licence holders of new licences for the future. It was anticipated that licensees with less than 1,000 subscribers would not generally be in a position to provide digital services and the Director indicated that separate provision would be made for such licensees.

- 2.6 Submissions were received from five licensees and, with two exceptions, were made to the Director on the basis they were without prejudice to the claims of such licensees that they were entitled to exclusivity and renewal of current licences. The licensees submitting plans were Cablelink, Casey Cablevision, CMI, Irish Multichannel and Suir Nore.
- 2.7 In her invitation of 31 July to licensees to present submissions the Director afforded them an opportunity to pose questions in relation to the process to facilitate them in their preparation of the business cases. Replies to over 250 questions were provided on 26 August to the five companies which had indicated their intention to submit business plans
- 2.8 In September, to provide an opportunity for interested parties to provide comments and to assist the process of formulating business plans, the Director published indicative draft licence terms for new cable and MMDS licences along with draft technical conditions for digital cable and digital MMDS systems and draft conditions for the operation of Conditional Access Systems. These were published as ODTR Documents Nos 98/33-36. A total of six responses were received and the main issues raised together with the current position are set out in Appendix 2 and 3.

2.9 To assist in the review of the business plans the Director engaged KPMG (London) to advise on the financial aspects of the plans and to assist her to come to conclusions as to the terms which might reasonably be offered. The Director discussed with the European Commission her proposals in respect of granting new licences to existing licensees.

Section 3 Review of Submissions

- 3.1 Business plans were submitted in late September by five companies and after examination the ODTR identified a number of matters which required further clarification. Following receipt of further material from the five companies, they were also given the opportunity to make oral presentations. All five companies availed of the opportunity in early October and further questions from the operators were addressed at these presentations. These presentations also afforded the ODTR the opportunity to clarify other matters which had arisen following the initial examination of the business cases.
- 3.2 The Director was not satisfied that the business plans as presented provided a basis for her to issue new licences to the existing licensees. The Director appointed Mr. John Forrest to act as a facilitator in the licensing process. Mr. Forrest attended all the oral presentations and subsequently met with the companies to identify more clearly issues of concern to both the companies and the Director to see whether agreement might be reached having regard to regulatory requirements on one hand and the stated position of the companies on the other.

Section 4 Decision of the Director

- 4.1 Following consideration of the business plans, the presentations made, the discussions involving the facilitator and consideration of investment requirements to meet the regulatory requirements of the ODTR, the Director decided that the five operators who submitted business plans should be offered the opportunity to take up new licences in place of their existing ones. This was done by way of letter issued by the Director on 3rd December 1998. Taking account of plans for roll out of services and advice in relation to the necessary conditions to ensure the availability of financing for associated investment, the Director concluded that a period of exclusivity within platforms is warranted. A period of five years is considered by the Director as appropriate as a shorter period would be unlikely to attract financing while a longer period might discourage innovation.

- 4.2 Licensees will be required to roll out digital services within their licensed areas by the end of the period of exclusivity and appropriate milestones to be met during the period will be specified in the licences. Failure to reach relevant targets will result in exclusivity being withdrawn in respect of relevant areas. In the interests of transparency, licences will be published.
- 4.3 Following consideration of the cases made, investment requirements and the duration of telecommunication licences, licence duration was set at 15 years with the possibility of renewal on terms to be set at the time by the Director for a further five years.
- 4.4 The Director has also indicated that in the event of companies not agreeing to her proposals on new licences that it is essential that any rights of exclusivity or renewal claimed should be tested at law as soon as possible. The Director asked the five companies to indicate by December 18th their willingness to agree to her proposals. One company did so and another also indicated agreement on a conditional basis.

Section 5 - Next Stage

- 5.1 The Director is satisfied that the process of consultation already adopted has ensured an opportunity for all interested parties to make known their views on the course intended to be adopted by her. Having regard to the length of the process already undertaken she believes that it would be inimical to good regulation and to the rights of interested parties to provide for further extended discussion at this stage
- 5.2 In the context of the publication of this report, the Director is now proposing that licensees should respond no later than 11 January 1999 indicating their willingness to surrender existing licenses in favour of the new framework. Following such response, the necessary steps to permit the granting of new licences will be taken. As already indicated, the rights of existing licensees who do not accept new licences will have to be established by legal process.

5.3 The Director's consideration has been lengthy and wide ranging and she is confident that the provisions in the drafts attached provide an excellent basis for the future development of TV transmission.

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.

SUMMARY OF LICENCE CONDITIONS

1. Purpose of Licence

The licence is to keep, have possession of, install, maintain, work and use the System to distribute Licensed Services in the licensed areas. (It grants no other rights.)

2. Nature of Licence

The licence is personal to the licensee. It does not contain any right to assign, transfer or sublease it without the Director's prior written consent. The licensee is responsible for obtaining all other consents, approvals or permissions necessary for the provision of any licensed services. In the event of the transfer of ownership of the company holding the licence, the Director shall be notified within 28 days.

3. Addresses for Notices

Every licensee shall furnish the Director with an address to which notices may be delivered. Notices may be delivered or sent by post or other telecommunications service.

4. Provision of Licensed Services

The licensee shall distribute the licensed services specified in the licence by analogue transmission until the Director shall otherwise direct.

In respect of cable operators, the licence specifies – RTE services, TV3 and TnaG. In respect of MMDS operators, the licence specifies in respect of analogue transmission – TV3, and in respect of digital transmission – RTE services, TV3 and TnaG free-to-air services when those services are available by Digital Terrestrial Television.

The licensee will carry an agreed basic service (including the above “must carry” services) which will also be set out in the licence. Any changes to such service shall be subject to the prior approval of the Director.

The licensee may use the system to deliver licensed services to operators of other systems licensed by the Director, and may use its system to facilitate distribution of licensed services by or on behalf of other system operators.

5. Duration of Licence

The licence will commence on the licence commencement date, and will continue, subject to compliance, until the 15th anniversary of the commencement date of the first licence issued under the regulations.

6. Licence Renewal

The Director may, at the expiration of a period of 11 years after the date of the grant of the first licence granted under the regulations, and after such public consultation as the Director considers appropriate, review the operation to date of all licences, and may renew a licence for a further period of 5 years from the date of expiration of the licence term, on terms to be determined by the Director. (In the event of non-renewal, the licensee will be required to maintain the installation, to deliver the specified minimum service until the date of expiration of the licence term.)

7. Exclusivity

The licences will be exclusive within platform in respect of the licensed areas for the period of 5 years from the date of the grant of the first licence under the regulations. The Director may reduce or remove exclusivity in respect of part or all of the licensed area if the licensee does not comply with the requirements specified in the Digital Roll-Out Plan within six months of the roll out dates specified in the plan.

8. Digital Roll-Out Plan

The licence will require roll out of digital services in accordance with the Digital Roll-Out Plan. The Digital Roll-Out Plan, which will be a part of the licence, will identify the milestones to be met. The “quantifiable” will be network buildout/service provision (homes passed), based on the targets set out in the business plan submitted by the licensee.

9. Licence Fees

These are calculated as set out in Doc 98/33, ‘Indicative Draft Licence terms for MMDS and Cable’, except that they do not apply to payments for pay per view services. The percentage shall be 3.5%.

10. Interest

This shall be payable on licence fees which are due and unpaid from the date upon which they became due. The rate – at present 7% - shall be that provided for from time to time under section 26 of the Debtors (Ireland) Act, 1840 (1840 c.105).

11. Technical Standards

These are substantially as proposed in Docs 98/34, 98/35 and 98/36

12. Consumer Interests

These are addressed substantially as proposed in Doc 98/33, except for rate regulation (see paragraph 13 below), and as follows.

- Licensees must specify a code of practice regarding complaints. The Director may modify it, or direct on its publication or implementation. Records of complaints must be kept for at least a year.
- The licensee shall not restrict the ability of members of the public to lawfully obtain any specialised decoding means required to receive the Licensed Services from a source other than the Licensee.
- The licensee may not unreasonably refuse to provide service.

13. Rate Regulation

The requirements set out are substantially as set out in Doc 98/33 during any period of exclusivity, except that rate regulation will not apply to pay per view services.

The Director shall, before determining the basis on which charges will be fixed for licensed programme services, other than must carry and basic services, hold such public consultation as she considers appropriate.

The Director may, after the period of exclusivity, from time to time investigate a licensee's rates (on the same basis as the Director's current powers under Regulation 12 (1) of the 1989 MMDS regulations - the Wireless Telegraphy (Television Programme Retransmission) Regulations, 1989 (S.I. No. 39 of 1989)).

14. Competition

Licensees are not to engage in anti-competitive behaviour, and must comply with any direction by the Director to this end.

15. Provision of Information to Director

The requirements are as proposed in Doc 98/33, except as follows.

- Audits of any aspect of the licensee's business concerning licensed programme services may be by: (a) an authorised officer; (b) the Licensee; (c) an independent person, to be specified by the ODTR; or (d) an independent person, to be arranged by the Licensee. (The costs associated with any such audit shall be the responsibility of the licensee.)
- Licensees to maintain separate accounts in respect of the distribution of licensed services under the licence.

16. Compliance

The licensee shall comply with any direction, requirement or notice given to him or her by the Director in respect of any matter, which direction, requirement or notice is in the opinion of the Director appropriate, having regard to the functions of the Director.

17. Sanctions for Lack of Compliance

The provisions as to what is to happen in those circumstances are substantially as proposed in Doc 98/33, except that there is now provision for the Director to restore a licence term that had been reduced.

It is also proposed that the Director may suspend or revoke the licence, amend the Service Areas, or reduce the licence term by a period not exceeding two years, for failure to comply with the provisions of the licence. Procedures for this, for notice, appeal etc, are specified.

18. Licence Revocation

The circumstances in which revocation may occur are substantially those proposed in Doc 98/33, except that

- The Director's powers in 98/33 to revoke a licence if she believes the licensee will not distribute the licensed services, or will not comply with the condition on digital roll-out, or is not a 'fit and proper person', have been omitted.
- The following has been omitted: 'If any court makes an order disqualifying the Licensee from holding a licence, the licence will be treated as being revoked with effect from the effective date of that order.'
- *Revocation is possible 'if the Licensee is prevented from performing any of its obligations under the Conditions by a Force Majeure Event for more than 90 days'. (A Force Majeure Event is defined as any of the following '(a) fire, flood, earthquake, elements of nature or act of God; (b) riot, civil disorder or act of war; and (c) strikes or other industrial action (unless the action affects only the Licensee.)'*
- Prior to revocation, the Director shall serve notice on the Licensee identifying the basis of revocation, and shall afford the Licensee a reasonable opportunity to make representations about the proposed revocation.

19. Exceptions and limitation on the Licensee's obligations

If a Force Majeure Event arises which prevents the Licensee from performing any of its obligations under the Conditions:

- (1) as soon as reasonably practicable, the Licensee shall notify the Director of the Force Majeure Event, its nature and the obligations it is prevented from performing; and
- (2) those obligations will be suspended, and the Licensee will not be liable to perform those obligations, for so long as the Force Majeure Event continues but in each case only if and to the extent that the inability to perform could not have been prevented by taking steps specifically required under the Conditions or by taking other reasonable precautions and the inability cannot reasonably be circumvented by the Licensee.

20. Variation

As outlined in the consultative paper the licence framework may be altered by the Director, after appropriate public consultation and consideration of representations from licence holders.

Responses to public consultation on draft licence terms and provisions in text

Six responses were received from four licensees and two broadcasting industry companies.

In the Indicative Draft Licence comments were sought on eight main provisions;

- the duration of the simulcasting period
- the licence fee payment mechanism and the application of an interest charge
- local programming content and the provision of Electronic Programme Guides
- the appropriateness of the consumer interest provisions
- the supply of information to the Director
- the compliance procedures
- the renewal proposals
- the sanctions procedures

1. Simulcasting period

Document ODTR No. 98/33 proposed that unless prior written consent had been obtained or unless the appropriate direction had been issued, licensed services were to be distributed;

- (1) by analogue transmission from the licence commencement date until a specified anniversary of that date (to be decided);
- (2) by digital transmission from the specified roll –out dates until the end of the licence term.

Responses

A number of the replies stated that it was inappropriate that specific dates be inserted into the legislation given the uncertainty of the timescale of digitalisation and that flexibility should be provided to operators on the timing of the simulcasting period and on the services to be simulcast.

Provisions in Text

The proposed new licence provides that the “must carry ” channels and the basic programme service shall be distributed by analogue transmission unless licensees have prior written consent or have been authorised to discontinue transmission.

(Condition 4(1) of the licence) Under the 1996 Act, the decision to close down

analogue transmissions would fall to be made by the Director in the interests of efficient spectrum management or by the Minister for Public Enterprise who may issue a policy direction to the Director for the same reason. There are no proposals at the present to close down analogue television services and the spectrum needs of the vast majority of consumers are fully recognised. The “must carry” programme services are envisaged as RTE1, Network 2, TV3 and Telefis na Gaelige and any additional programme services which may be required by law. The transmission of digital services will be in accordance with the licensee’s Roll-Out Plan. **(Condition 9(1) of the licence.)**

2. Licence Fee

Document ODTR No. 98/33 provided that a licence fee based on gross revenue, should be payable for each licence year. (Payments to be made quarterly in advance.) Any reconciliation of under/over payments in relation to the estimate upon which the payments would be made would be dealt with in the subsequent year based on an Auditor’s statement. Provision was also made for the payment of interest in the case of late payments.

Responses

The view which emerged in the responses was that the amount of the fee, should be commensurate with the administrative costs of the ODTR and should not be based on a percentage of gross revenue. The fee should be geared to providing an incentive to operators to offer a wide selection of services and a “fee per customer” was suggested by one respondent to be a more appropriate measure. In relation to interest payments, licensees said that this appeared to be an unnecessary and inappropriate measure and that there were other methods of recovering contract debts.

Provisions in Text

At present a licence fee of 5% of Gross Revenue from basic services is charged in relation to both cable and MMDS licences. The ODTR sees no reason to change the current scale of the licence fee but considers that the means by which it is calculated should reflect changes in the retransmission industry. It is proposed therefore to set the licence fee at 3.5% of Gross Revenue from basic and premium services – this is broadly on a par with the fees generated from 5% of basic services. The ODTR is prepared to implement a mechanism involving payment of licence fees quarterly in arrears in order to better reflect actual cash flow profiles. The payment of interest

on late fees is a necessary requirement in order to counter lost revenue to the ODTR due to late payments. The rate will be set in line with the rate specified in the Debtors (Ireland) Act, 1840- currently standing at 8%. **(Regulations 8 and 9)**

3. Content Requirements

98/33 provided that any local programme services distributed by the licensee comply with relevant legislation on content and any directions notified by the Director and also that any requirements on Electronic Programme Guides (EPG's), be complied with.

Responses

The replies received considered that there should be no additional regulations or specifications issued by the Director regarding content and that it was essentially a matter for the content provider. In relation to EPG's, respondents were of the view that given the innovative stage of EPG's, as a navigational tool, it was inappropriate to include it in a new licence.

Provisions in Text

Given that it is proposed that responsibility for local programming matters will be taken over by the Department of Arts, Heritage, Gaeltacht and the Islands under the draft Broadcasting Bill, no new or additional requirements over or above the Director's responsibilities on local content under current legislation have been included in the new licence. **(Para.(c) of the definition of "licensed programme services in Regulation 2)**

4. Consumer Interest Provisions

In summary, 98/33 provided that:-

- prices, terms and conditions must be published
- the Director's prior approval was required for all prices charged by the licensee during any period in which there is only one licensee in a service area or during any time in which the licensee had significant market power (SMP).
- licensees must establish a complaints procedure and participate in any scheme established by an Independent Complaints Commissioner
- records of written complaints must be kept for a specified period of time
- licensees cannot unreasonably refuse to connect a subscriber to the system

Responses

In the main, respondents considered that there was too high a degree of price regulation being proposed and there was no necessity for price control on discretionary services. The concept of SMP was regarded as inappropriate given the nature of the market. In relation to complaints, a year was considered to be a sufficient length of time to retain written records. In relation to refusal of service, licensees considered that there were a number of grounds on which refusal could be justified e.g. history of non-payment; wilful damage; etc.

Provision in Text

Given the necessity to protect consumer interests, the Director is providing for price regulation on basic services during periods of exclusivity and will retain the power of price investigation in relation to other services during such periods and in relation to all services thereafter. The Director may also engage in a public consultation in relation to the mechanism to be applied to rate regulation. In relation to the other consumer interest issues, licensees will be required to implement a Code of Practice for handling complaints and to participate in any scheme established or authorised by the Director. Additionally, the Director retains the power to decide if a refusal to connect a subscriber to the system is unreasonable (**Regulations 15 and 17**)

5. Supply of Information

Respondents said that the principle of proportionality should apply, that requests for information should not be burdensome and that commercially sensitive information should not be published.

Provisions in Text

In order to fulfil her obligations as Regulator and to ensure compliance with licence requirements, the Director has provided that all information necessary to these functions will be supplied by licensees. (**Regulation 14**) The Director has no interest in requesting information other than what is required to perform her functions.

6. Compliance

In addition to the general provision that licensees comply with any direction or notice given by the Director, 98/33 provided that licensees put adequate arrangements in place to ensure that there was sufficient numbers of staff to ensure compliance and implementation of any notices or directions.

Responses

It was considered that the requirements regarding staff numbers and implementation competencies were matters for the licensee to deal with and not ones for regulation.

Provisions in Text

It was decided to curtail this provision to the general requirement of compliance with notices or directions. Arrangements for ensuring compliance are matters to be instituted by the licensee.**(Regulation 22)**

7. Renewal

98/33 provided that at a specified anniversary of the licence commencement date (to be decided), licensees could apply for renewal of the licence on a once off basis- renewal to be at the Director's discretion. Licensees were asked to comment on the mechanism and the timeframe of renewal.

Responses

Licensees considered that there should be automatic renewal of licences and that tenure of between 10 – 15 years should apply to the renewed licences.

Provisions in Text

The new licence provides that there will be a review of the operation of licences which will include a public consultation process in the eleventh year after the issue of the first licence, following which the Director may agree to renew licences for a further five year period after the original expiry date of the licence on terms to be determined by the Director. If a determination is made in year 11 not to renew a licence, the licensee may be required to comply with directions on the upkeep of the system until the expiry of the licence term.**(Regulation 7)**

8. Sanctions for breach of licence conditions

In summary, 98/33 provided for four categories of sanction against non compliance;

- suspension of licence
- reduction of licence term by a maximum of two years
- amendment of service area
- revocation of licence

Procedures for adequate periods of notice and representations were provided for.

The circumstances which would prompt a decision to revoke were outlined.

Responses

It was stated that the sanctions appeared excessive and did not allow for minor beaches. Penalties of this nature should be limited to clearly defined circumstances e.g. continued non performance. A minimum period should be allowed to cure the defect.

Provisions in Text

The provisions outlined in 98/33 are confirmed in the new Regulations with the exception that :

- the Director may restore a licence term which had been reduced, the exclusion of the provision relation to revocation under a force majeure event in excess of 90 days.

(Regulations 18 and 19)

Other matters which were raised in the process of consultation included:

Insert Advertising. The Director's view is that such activity may be authorised under the provisions of Paragraph(c) of the definition of Licensed Programme Services contained in Regulation 2. Before doing so the Director would intend engaging in appropriate consultation.

***Additional Spectrum for MMDS.** Requests were made for additional spectrum to enable MMDS operators provide a return path and other services. The services involved are telecommunications services and the provision of spectrum is governed by the licensing Directive which requires competitive processes.*

Rollout plans

To facilitate investment, the Director would be willing to agree a delayed start to rollout plans, provided that delay did not exceed 8 months.

Response to consultation documents on technical conditions for digital cable relay and programme retransmission systems

Under Regulation 23 the Technical Conditions (Parts 9,10 and 11), may be amended or varied from time to time

Definitions

There were proposals to amend the definitions of Programme Services Multiplex, Transport Stream and European Standards Body. On consideration it was decided to amend Programme Services Multiplex, Transport Stream and European Standards Body as follows:

Programme Services Multiplex

A Signal (Which in its baseband form is a DVB transport stream, but is a signal with a bandwidth of 8 MHz when modulated) containing more than one programme service, with associated and other data.

Transport Stream

A data stream corresponding to the relevant ETSI (DVB) standards carrying MPEG2 encoded video and associated or other data.

European Standards Body

A body such as ETSI, the IEC or CENELEC which sets standards for equipment or services.

System Engineering

The provision of “Code type” powers was proposed in relation to the installation. This is not a matter for the Director.

System Standards

From the responses received there was a clear preference that both DVB-C and DVB-T (COFDM) standards be permitted on both cable and MMDS systems. The system standards have according been amended to allow systems using both ETS 300 749/ETS 300 429 and ETS 300 744. The question of the use of the cable network for

a return path was raised. Any company holding an appropriate telecommunications licence may use cable network for telecommunications services covered by licence.

A number of respondents expressed the opinion that higher levels of encoding standard should be permitted and that statistical multiplexing would reduce the bit rate required per programme service. Whilst these opinions are valid it is believed that in the short term Main Profile, Main level will predominate. Provision has been made for services relayed that originate at less than 4.5 MBps (video). Furthermore, where an operator can demonstrate that their system can provide an ITU-R grade 4.5 PAL-I signal at a lower bit rate this will be permitted.

Respondents indicated that cable and MMDS might provide additional multimedia services such as Multimedia Home Platform. These services are essentially of a telecommunications nature and as such are not licensed under the Programme Services Distribution regulations.

The Director notes the importance of taking cognisance of the ongoing work of various standardisation bodies.

System performance

The requirement for 99.99% interference free in cable systems was not believed necessary for cable system. It would be difficult to achieve if this was to take account of the full programme chain from studio to viewer. A figure of 99% in line with the MMDS requirement was proposed. The Director believes that for digital cable systems 99.9% time free from visible degradation is on balance more acceptable. Visible degradation beyond the reasonable control of the programme services distribution operator is not included in this requirement.

In Cable systems Minimum-Maximum carrier levels have been amended to 47-77dB μ V , with a minimum system C/I ratio of 47dB.

Many responses were received concerning the appropriate maximum Field Strength at the edge of MMDS cells. There was considerable concern to ensure the protection of analogue service from interfering digital services. However, digital signals will need

to be protected for a greater percentage of time. It will be in operators' mutual interest to make arrangements to overcome any difficulties. This will require further detailed study.

Further field trials will be needed to determine appropriate Protection Ratios for analogue-analogue and analogue-digital interference. The maximum EIRP will be set at 22dBW. The maximum EIRP for Effective Antenna Heights above 200m shall be reduced by 1dB for every 25m of height above 200m.

Frequency tolerance/stability of has been amended to take account of COFDM standards.

MMDS Spurious emissions should be in accordance with spectrum masks in ETS 300 749 or ETS 300 744. Outside the allocated channel bandwidth emissions should be attenuated by at least 60 dB at 1MHz from the channel edge.

Frequency Matters

Where interference is caused by a cable system to a licensed radio due to the faulty operation of the radio system a respondent indicated that cable operators would be obliged to pay for a solution to the problem. This obligation is not fair and reasonable and has been amended.

Receiver Characteristics

A number of responses proposed that MMDS down-converter characteristics need not be specified. However in the interest of consumers and radio spectrum users the Director has included down-converter requirements.

Protection and Co-ordination

The protection ratios of different systems have been amended to account for COFDM and QAM systems. However further detailed study and trials will have to be undertaken. Problems are not expected between MMDS and services in the 2.4-2.5 GHz unless the two systems are co-sited.

Response to consultation documents on conditions for Conditional Access Services

Definitions

There were proposals to amend the definitions of Programme Services Multiplex and European Standards Body. A proposal to amend Set Top Box has not been accepted.

Programme Services Multiplex

A signal containing more than one Programme Service with associated and other data.

European Standards Body

A body such as ETSI, the IEC or CENELEC which sets standards for equipment or services.

Condition 1, Standards

Responses expressed concern at the requirement to include a Common Interface socket for multicrypt in the Set Top Box, believing that the choice of encryption system should be left to the operator. Due to the different modulation standards used on different platforms the inclusion of the Common Interface socket does not guarantee interoperability. The Director accepts these points and agrees that, as in the past set top boxes have been provided by the platform operator, rental provided the consumer with adequate protection.

Condition 2, Service Obligations for CA service Providers

This condition had implied that network capacity or conditional access would have to be provided to third parties on request. The condition has been amended to omit any element of compulsion. Instead the condition is redrafted to ensure the offer of CA services on a fair, reasonable and non-discriminatory basis. Co-operation between the Service provider and the programme service provider or multiplex provider is encouraged.

Condition 3, Cost Effective Transcontrol

This condition has been amended to ensure that the CA service provider shall cooperate with and assist in providing all information and assistance necessary to facilitate cost effective transcontrol

Condition 4, Prohibition on Linked Sales

This condition has been amended to clarify the intentions. It was not intended to prevent the offer of cheaper CA service in respect of quantity of service provided.

Condition 5, Interoperability has been deleted.

**DRAFT WIRELESS TELEGRAPHY (PROGRAMME SERVICES
DISTRIBUTION) REGULATIONS, 1998.**

I, Etain Doyle, Director of Telecommunications Regulation, in exercise of the powers conferred on me by section 6 (1) of the Wireless Telegraphy Act, 1926 (No. 45 of 1926), and section 4 of the Telecommunications (Miscellaneous Provisions) Act, 1996 (No. 34 of 1996), as adapted by the Transport, Energy and Communications (Alteration of Name of Department and Title of Minister) Order, 1997 (S.I. No. 299 of 1997), and, pursuant to subsection (8) of the said section 4, with the consent of the Minister for Public Enterprise, hereby make the following Regulations.

Citation and commencement

1. These Regulations may be cited as the Wireless Telegraphy (Programme Services Distribution) Regulations, 1998.

Interpretation

2. (1) In these Regulations -

“authorised officer” means a person appointed by the Director in writing to be an authorised officer for the purpose of these Regulations;

“digital roll-out plan” means the digital roll-out plan specified in Part V of the licence;

“Director” means the Director of Telecommunications Regulation appointed under the Telecommunications (Miscellaneous Provisions) Act, 1996 (No. 34 of 1996);

“distribute” means receive or originate a programme service and convey it over the system, and cognate words shall be construed accordingly;

“feeder” means a transmission path forming part of a programme services distribution system, which path may consist of a metallic cable, optic fibre or any combination thereof;

“force majeure event” means any of the following:

- (a) fire, flood, earthquake, elements of nature or act of God;
- (b) riot, civil disorder or act of war; and
- (c) strikes or other industrial action (unless the action affects only the licensee);

“gross revenue” in respect of a licence year means the aggregate of all payments (excluding value-added tax, charges for installing or providing apparatus for receiving the services distributed by the licensee under the licence and any payments for pay per view services) paid or payable to the licensee, or to any other person for the benefit of the licensee, for the distribution in that licence year by the licensee of licensed programme services;

“headend” means equipment which is connected to receiving antennas or other signal sources and also connected to the remainder of the system to process the signal to be distributed;

“insolvency related event” in respect of a licensee means any of the following:

- (a) becoming insolvent or holding a meeting with or making a composition or arrangement with creditors or putting a proposal to creditors for a voluntary arrangement for a composition of debts or a scheme of arrangement or taking any preparatory steps in relation to any of the foregoing;

- (b) having a receiver or similar official or other encumbrancer take possession of or be appointed over or having any distress, execution or other process levied or enforced on the whole or any substantial part of the assets of the licensee (and not discharged within 7 days);
- (c) ceasing or threatening to cease to carry on business or becoming unable or being deemed to be unable to pay debts within the meaning of section 214 of the Companies Act, 1963 (No. 33 of 1963);
- (d) having a petition presented or making any other form of application for bankruptcy or winding-up of the licensee or the appointment of an examiner or similar official to the licensee or any preparatory steps being taken in relation to any of them or convening a meeting or taking any preparatory or other steps to convene a meeting for the winding up, bankruptcy or dissolution of the licensee (other than for the purposes of a solvent amalgamation or reconstruction); and
- (e) having any event analogous to any event referred to in paragraphs (a) to (d) occur under the laws under which the licensee is incorporated;

“licence” means a licence under section 5 of the Wireless Telegraphy Act, 1926 (No. 45 of 1926), to which Regulation 3 of these Regulations applies and cognate words shall be construed accordingly;

“licence term” means, in relation to a licence, the period during which the licence continues in force;

“licence year” means a period of 1 year beginning on the date of commencement of the licence and each subsequent period of 1 year beginning immediately after the end of the previous period of 1 year occurring during the licence term ;

“licensed area” means the area in the State in which the licence authorises the licensee to distribute licensed programme services;

“licensed programme service” means any of the following programme services:

- (a) television broadcasts (within the meaning of the Wireless Telegraphy (Television Programme Retransmission and Relay) Regulations, 1991 (S.I. No. 252 of 1991)) that originate in another Member State of the European Communities and that fall within the fields coordinated by Council Directive 89/552/EEC¹

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

of 3 October 1989 as amended by Council Directive 97/36/EEC² of 30 June 1997;

- (b) a television programme service (within the meaning of the Regulations referred to in paragraph (a)) that originates in a state (other than a Member State of the European Communities) being a party to the European Convention on Transfrontier Television done at Strasbourg on the 5th day of May, 1989 and that complies with the terms of the Convention;
- (c) a programme service, other than a programme service to which paragraphs (a), (b) or (d) relate, approved of, for the time being, by the Director;
- (d) a programme service that originates in the State, other than a programme service to which (a), (b) or (c) relate, authorised, for the time being, by law;

“licensee” means a holder of a licence;

“pay per view service” means a licensed programme service consisting of programme material provided at the specific request of individual customers, with charges payable by those customers for the provision of the specifically requested programme material;

“programme service” means a service which consists of sound or visual programme material of any description, or a compilation of both, intended for general or approved reception, whether encoded or not;

“quarter” means a period of 3 months beginning on the date of commencement of the licence and each subsequent period of 3 months beginning immediately after the end of the previous period of 3 months occurring during the licence term;

“receiver lead” means a lead which connects the system outlet to the subscriber's equipment;

“sound programme” means a programme intended for general or approved reception in sound only;

“subscriber’s feeder” means:

- (a) as regards a wired broadcast relay system, a feeder connecting a subscriber’s tap to a system outlet or, where the latter is not used, directly to the subscriber's equipment; and
- (b) as regards a television programme retransmission system, a feeder connecting a subscriber’s antenna and downconverter to a

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

system outlet or, where the latter is not used, directly to the subscriber's equipment

“system”, in relation to a licence, means the system used by the licensee for the distribution of licensed programme services, starting at the headend and ending either at the system outlets or, in cases where the licensee provides subscribers with a device incorporating specialised decoding means, at the output port of such device, and including all other apparatus directly or indirectly connected between those points, as more specifically described in Part II of the licence;

“system outlet”, in relation to a licence, means a device for connecting a subscriber’s feeder to a receiver lead;

“television programme retransmission system” means a multipoint microwave distribution system, i.e. a fixed service system used for the retransmission of programme services on a point to multipoint basis.

(2) In these Regulations,

- (a) a reference to a Regulation or a Schedule is to a Regulation of, or a Schedule to, these Regulations, unless it is indicated that reference to some other enactment is intended.
- (b) a reference to a paragraph or subparagraph is to the paragraph or subparagraph of the provision in which the reference occurs unless it is indicated that reference to some other provision is intended.
- (c) 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.

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

Licences to which these Regulations apply

3. These Regulations apply to a licence to keep, have possession of, install, maintain, work and use a system for the distribution of licensed programme services or for such other purposes as are specified in the licence.

Addresses for notices

4. (1) Every licensee shall on the grant of his or her licence furnish in writing to the Director the address and, where appropriate, fax number, to which notices and other documents under these Regulations may be delivered or sent by post or by telecommunications services operated in accordance with the Postal and Telecommunications Services Act, 1983 (No. 24 of 1983), to him or her by or on behalf of the Director and shall, as occasion requires, likewise furnish any change of address or fax number and such notice or document delivered to, or sent by post, or by such telecommunications services, to such address or fax number so furnished shall be deemed for the purposes of these Regulations to have been duly served by the Director.

(2) Where the service of any notice or document is effected by fax in accordance with paragraph (1) of this Regulation, the service of such document shall, unless the contrary is proved, be deemed to have been effected at the time at which the sender's fax system generates a message confirming successful transmission of the total number of pages of the notice or document.

Form of licence

5. Every licence shall be in the form specified in the Schedule and the licensee shall comply with the conditions set out or referred to in the licence.

Continuance in force of licence

6. Subject to the provisions of these Regulations, every licence shall, unless previously surrendered by the licensee, or unless or until it is revoked by the Director, and subject to any suspension thereof, continue in force from the date of commencement specified in the licence until the expiration of the period of 15 years after the date of commencement of the first licence granted in the form, and subject to such conditions and restrictions as are prescribed in regard thereto by these Regulations and shall then expire, unless renewed.

Renewal of licence

7. (1) The Director, if he or she considers it proper to do so, will, after the expiration of the period of 11 years after the date of the grant of the first licence granted in the form, and subject to such conditions and restrictions as are prescribed in regard thereto by these Regulations, and after such public consultation (if any) as the Director considers appropriate, review the operation of all such licences so granted and continuing in force and may, subject to such terms and conditions as may be specified by the Director, renew any such licences for a further period of 5 years from the expiration of the period of 15 years after the date of commencement of the first licence so granted.

(2) Where the Director makes a determination under paragraph (1) not to renew a licence, he or she may, by notice in writing served on the licensee, require him or her, from the date of receipt of the notice until the expiration of the licence term, to comply with such measures relating to the upkeep of the system as may be specified in the notice.

Licence fees

8. (1) A fee shall be payable by the licensee for each licence year in which the licence continues in force.

(2) The amount of the fee shall be equivalent to 3.5% of the gross revenue paid or payable to the licensee, or to any other person for the benefit of the licensee, in respect of the distribution by the licensee in the licence year to which the fee relates, of licensed programme services.

(3) The fee shall be payable by quarterly instalments, the first of which shall be payable on the last day of the quarter in which the licence commences and each of the remaining instalments shall be payable on the last day of each subsequent quarter occurring in that licence year.

(4) The licensee shall, within 3 months after the end of each licence year, furnish to the Director a statement certified by a person who is qualified under the Companies Act, 1963, for appointment as auditor of a company, of the gross revenue paid or payable to the licensee or to any other person for the benefit of the licensee, in respect of the distribution by the licensee in the preceding year of licensed programme services.

(5) Where a statement of gross revenue is furnished by the licensee in accordance with paragraph (5), and 3.5% of such revenue differs by any amount from the sum of the fees paid by the licensee in accordance with paragraph (4) in respect of the 4 quarters which comprise the year to which the statement relates -

- (a) a fee of an amount equal to the difference shall be paid by the licensee on the first day of the second quarter after the end of the licence year in respect of which the statement is furnished, if 3.5% of such revenue is greater than the sum of the fees, and
- (b) an amount equal to the difference shall be deducted from the fee payable by the licensee on the first day of the second quarter after the end of the licence year in respect of which the statement is furnished, if 3.5% of such revenue is less than the said sum.

(6) A licensee who holds more than one licence in relation to which fees are payable under this Regulation, may pay a composite fee equivalent to 3.5% of the gross revenue paid or payable to him or her, or to any other person for the benefit of the licensee, in the year in which the fee is payable, in respect of the distribution by the licensee of licensed programme services.

Interest

9. If a fee or any part thereof payable by the licensee under Regulation 8 is not paid by the licensee within 7 days of the date on which it falls due under that Regulation, then interest shall be payable by the licensee at the rate per annum standing specified for the time being in section 26 of the Debtors (Ireland) Act, 1840 (1840 c.105), on the fee or part thereof in respect of the period between the date when such fee or part fell due and the date of payment of such fee or part.

Payments to Director

10. All fees payable under these Regulations shall be paid to the Director of Telecommunications Regulation, Abbey Court, Irish Life Centre, Lower Abbey Street, Dublin 1, and shall be so paid in cash, by cheque, money order or postal order, or by such other means as the Director for the time being considers appropriate.

Restrictions on a licensee

11. A licensee shall not -

- (a) receive any money or other consideration from any subscriber in respect of the distribution by the licensee of licensed programme services, other than the charges for distributing licensed programme services referred to in Regulation 15 (excluding value added tax, the licensee's usual charges for installing or providing apparatus for receiving licensed programme services distributed by the licensee and payments for pay per view services);
- (b) place any restriction on the make or type of apparatus for wireless telegraphy which may be used to receive licensed programme services;
- (c) connect to a headend a system outlet in a place not within the licensed area, unless with the prior consent in writing of the Director;
- (d) refuse to supply licensed programme services to a member of the public within the licensed area if, in the opinion of the Director, the refusal is unreasonable;
- (e) without the prior consent in writing of the Director, (such consent not to be unreasonably withheld), assign the licence or any of the powers, duties or functions conferred by it or lease, or let the licence or otherwise transfer to another person the benefit or any benefits of the licence. Any consent to transfer granted by the Director under this subparagraph, may be subject to such further conditions as the Director considers appropriate in the circumstances;
- (f) use any frequency channels for the purpose of the system other than frequency channels which have been approved of by the Director for use for such purpose;
- (g) where he or she is the holder of a licence in respect of a television programme retransmission system, install, or agree to the installation of, a system outlet for such a system in any area to which a licence within the meaning of the Wireless Telegraphy (Wired Broadcast Relay Licence) Regulations 1974 (S.I. No. 67 of 1974), or a licence in respect of the distribution of licensed programme services by means of a wired broadcast relay system to which these Regulations, relates, except—
 - (i) with the prior approval of the Director and the agreement of the licensee under those Regulations, or
 - (ii) in any case where the Director is of the opinion that the licensee under those Regulations has unreasonably refused to provide a service under that licence, with the consent of the Director.

Competition

12. (1) The licensee shall not engage in any practice or enter into any arrangement that has the object or effect of preventing, restricting or distorting competition in the distribution of licensed programme services in respect of which a licence or licences are in force.

(2) The licensee shall comply with any direction or notice that may, from time to time, be issued by the Director and served on the licensee for the purposes of preventing any practice or arrangement that has the object or effect of preventing, restricting or distorting competition in the distribution of such services.

Messages unintentionally received

13. (1) If any message which a licensee is not authorised to receive is unintentionally received by means of a headend to which his or her licence relates, the licensee shall not -

- (a) make known, or allow to be made known, its contents, its origin, its destination, its existence or the fact of its receipt to any person other than an authorised officer, or
- (b) reproduce in writing or otherwise, make use of or copy such a message or allow it to be reproduced in writing, made use of or copied.

(2) A licensee shall take all such measures as are reasonably practicable to prevent a message of the type referred to in paragraph (1) being received at any system outlet connected to a headend to which his or her licence relates.

Information and inspections

14. (1) A licensee shall -
- (a) furnish to the Director such information relating to the distribution of licensed programme services as the Director may, from time to time, by notice in writing served on the licensee, require;
 - (b) keep all or any records which the Director, from time to time, informs the licensee that he or she requires to be kept;
 - (c) within 1 month of the expiration of the 6th month after the date of commencement of the licence and within 1 month of the expiration of each subsequent period of 6 months, beginning immediately after the end of the previous period of 6 months, occurring during the licence term, furnish to the Director a report in such form as may be specified:
 - (i) specifying in relation to the date of the report the total number of system outlets to which licensed programme services are distributed, the total number of devices incorporating specialised decoding means where subscribers are provided with such, the total number of subscribers to an analogue transmission system and the total number of subscribers to a digital transmission system operated in accordance with the licence; and
 - (ii) reporting, in relation to the period of 6 months immediately preceding the month in which such report is furnished, on the quality of the distribution of licensed programme services;
 - (d) upon becoming aware of the occurrence of any insolvency related event or, of any event likely to materially affect his or her ability to comply with the provisions of the Regulations, or the conditions set out or referred to in the licence, notify the Director of that fact;
 - (e) within 28 days after the occurrence of any of the following events notify the Director of such an occurrence:

- (i) any change in the persons having control of the licensee, or in the directors of the licensee or in the directors of any body corporate having control of the licensee; and
- (ii) any change in the persons having any interest in the licensee or in a body corporate having direct or indirect control of the licensee such that a person or group of persons acting together
 - (I) has acquired an interest of more than 20% in aggregate in the licensee; or
 - (II) having (or having had) an interest of more than 20% in aggregate in the licensee, has increased or decreased that interest;

For the purposes of this subparagraph, control means the possession, directly or indirectly of the power to direct or cause the direction of the management policies whether through ownership of voting rights, by contract or otherwise;

- (f) (i) where the licensee is incorporated in the State:
 - (I) within 7 days after the date upon which it is required to be filed with the Registrar of Companies, pursuant to section 127 of the Companies Act, 1963, furnish the Director with a copy of the annual return of the licensee or any person who controls the licensee;
 - (II) within 7 days of its circulation to the shareholders of the licensee, furnish the Director with a copy of the annual report and accounts of the licensee or any person who controls the licensee;
- (ii) where the licensee is not incorporated in the State, furnish the Director with a copy of any returns, reports, accounts, or other information required to be prepared by the licensee, or any person who controls the licensee, in accordance with any laws under which the licensee is incorporated or, at the request of the Director, a document to the like effect of any of the documents referred to at subparagraph (i), at such times and in such forms as the Director may specify from time to time in a notice served on the licensee;

- (g) on request from an authorised officer, permit the authorised officer at all reasonable times to inspect any records which the Director requires to be kept or which are kept by the licensee in connection with the distribution of licensed programme services;
- (h) on request by an authorised officer, make available any test equipment or apparatus necessary to facilitate testing by the authorised officer of the system.

(2) (2) The Director may arrange for an authorised officer to carry out an audit, or for the carrying out of an independent audit, or may require the licensee to carry out an audit, or to arrange for an independent audit, of any aspect of the licensee's business concerning the distribution of licensed programme services to ensure compliance with these Regulations; and the licensee shall allow the authorised officer, or any independent auditor, such access to any premises, equipment or any part of the system, or to inspect, take copies of and acquire such information, as may be required in order to carry out the audit. The cost associated with any independent audit conducted under this paragraph shall be the responsibility of the licensee.

- (3) Any information furnished to the Director under these Regulations or under and in accordance with the licence may, if the Director considers it proper so to do, be published by the Director.

Price control

15. (1) The licensee shall obtain the prior consent in writing of the Director to the prices that he or she proposes to charge for distributing the licensed programme services specified in Part VII of the licence and for installing or providing the means necessary to receive licensed programme services and any subsequent change to any of those prices during any period of exclusivity under the licence.

(2) The Director may, from time to time, review the manner in which paragraph (1) of this Regulation is implemented and may engage in such public consultation (if any) as he or she considers appropriate.

(3) The Director may, from time to time, during any period of exclusivity relating to any licence, investigate the prices being charged by a licensee in respect of the distribution by him or her of licensed programme services, other than those specified in Part VII of the licence, to the subscribers to such services and may, having considered the results of such an investigation, direct that any such prices be altered with effect from a specified date, and any such direction by the Director shall be complied with by the licensee with, if necessary, an appropriate rebate being allowed to any such subscriber either, at the discretion of the licensee, by means of a cash refund or by means of a discount of equivalent value against future subscription charges.

(4) The Director may, from time to time, after the expiration of any period of exclusivity relating to any licence, investigate the prices being charged by a licensee in respect of the distribution by him or her of licensed programme services to the subscribers to such services and may, having considered the results of such an investigation, direct that any such prices be altered with effect from a specified date, and any such direction by the Director shall be complied with by the licensee with, if necessary, an appropriate rebate being allowed to any such subscriber either, at the discretion of the licensee, by means of a cash refund or by means of a discount of equivalent value against future subscription charges.

(5) The Director may, if he or she sees fit, require a licensee to provide a report prepared by a person who is qualified under the Companies Act, 1963, for appointment as auditor of a company for the purposes of conducting an investigation under paragraph (3).

(6) Whenever, as a result of an investigation under paragraph (3), the Director proposes to direct that any prices charged by the licensee concerned be altered, the Director shall serve on the licensee a notice in writing stating the reasons for his or her proposal and the licensee may, within 1 month thereafter, apply to the Director to reconsider his or her proposal or to refer the proposal to an independent arbitrator to be appointed by agreement between the licensee and the Director.

(7) The decision of the Director or the arbitrator on such application or reference, as the case may be, shall be final.

Technical audits

16. (1) The Director may, from time to time as occasion requires, by notice in writing, require the licensee to have a technical audit of the system to which his or her licence relates carried out by persons holding such qualifications as may be specified by the Director and any such audit shall relate to such matters and be in such format as the Director may so direct.

(2) When the Director has requested a technical audit pursuant to paragraph (1) of this Regulation, the licensee shall, within 60 days after the request of the Director furnish to the Director, a full report in writing of the audit.

Consumer interests

17. (1) The licensee shall implement an appropriate code of practice for handling complaints in respect of the distribution by him or her of licensed programme services.

(2) (2) Without prejudice to paragraph (1), the code of practice referred to in that paragraph shall make provision for the following matters:

- (a) a first point of contact for members of the public;
- (b) a means of recording complaints;
- (c) a timeframe within which the licensee shall respond to complaints;
- (d) procedures for resolving complaints;
- (e) retention of records of complaints (including copies of the complaint, any response thereto, any determination by an independent commissioner in respect of the complaint and any documentation considered by such a commissioner in the course of such determination) for a period of not less than one year following resolution of the complaint.

(3) The Director may, from time to time, issue directions to the licensee specifying any modifications or additions that he or she considers should be made to the code or as to the publication, re-publication, implementation or further modification of the code.

(4) Without prejudice to paragraph (2) (d), the Director may establish or approve of a dispute resolution procedure and the licensee shall participate in good faith in any such procedure and shall comply with any decision made in accordance therewith.

(5) The licensee shall ensure that the licensed programme services distributed in accordance with the licence comply with any requirements with regard to electronic programme guides notified to the licensee from time to time by the Director and with any other laws for the time being in force.

(6) If specialised means for decoding are supplied by the licensee to members of the public to enable the reception by them of the licensed programme services distributed by the licensee, the licensee shall separately identify any charges imposed for the provision of those means. The licensee shall not restrict the ability of members of the public to lawfully obtain any specialised decoding means required to receive licensed programme services from a source other than the licensee.

Sanctions for breach of licence

18. (1) If the Director has any reason to believe that the licensee has failed to comply with any provision of these Regulations or with any condition set out or referred to in the licence, the Director may serve a notice on the licensee-

- (a) specifying how, in the opinion of the Director, the licensee has failed to comply with the relevant provision or condition, and
- (b) giving the licensee, within 14 days of the date of the notice or such further period as the Director considers appropriate, the opportunity to make representations about the alleged failure to comply.

(2) If, after consideration of such representations, if any, the Director is satisfied that the licensee has failed to comply with the relevant provision or condition then the Director may serve a notice on the licensee -

- (a) specifying how, in the opinion of the Director, the licensee has failed to comply with the relevant provision or condition, and
- (b) stating that unless the licensee takes, within the period specified in the notice, specified steps to remedy the failure, the Director may impose any or any number of the sanctions listed below:
 - (i) suspend the licence;
 - (ii) reduce the licence term by a period not exceeding 2 years;
 - (iii) amend the licensed area; or
 - (iv) revoke the licence;

and may publish the notice.

(3) If at the end of the period specified in any notice under paragraph (2) the Director is satisfied that;

- (a) the licensee has failed to take the steps notified in the notice; and
- (b) it would have been reasonably practicable for the licensee to take those steps,

the Director may, by further notice, impose the relevant sanction specified in the notice under paragraph (2), and may publish such further notice.

(4) Following an application in that behalf by the licensee, the Director may withdraw any notice given under paragraph (2) or (3) by a further notice, if the Director is satisfied that this is appropriate because of the licensee's conduct since the date of the notice given under paragraph (2) or, as the case may be, paragraph (3).

(5) Where the licence term is reduced pursuant to paragraph (3), the Director may, subject to such conditions as the Director considers appropriate, restore the original licence term where he or she considers restoration to be appropriate, having regard, inter alia, to the behaviour of the licensee since the imposition of the sanction of reduction of the licence term. Any decision of the Director in relation to restoration of the licence term shall be notified to the licensee together with the reasons for such decision, and a notice of the restoration of the licence term shall be published by the Director.

Licence revocation

19. (1) Without prejudice to Regulation 18, the Director may revoke the licence in any of the following circumstances:

- (a) if the licensee notifies the Director that he or she does not intend to distribute licensed programme services in the licensed area, or that he or she does not intend to comply with the digital roll-out plan;
- (b) if the licensee agrees with the Director in writing that the licence should be revoked;
- (c) if the Director is satisfied that, in connection with the grant of the licence or in purporting to comply with any provision of the Regulations or any condition referred to or set out in the licence, the licensee provided the Director with information that was false in a material particular or withheld any material information requested;
- (d) if, where the licensee is a body corporate, a change of which the licensee is required to notify the Director under paragraph (1) (e) of Regulation 14 occurs and that change is such that, if the Director was determining whether to award the licence to the licensee in the new circumstances, the Director would not award the licence to the licensee because of the change;
- (e) where, in the opinion of the Director, such revocation is required for the purpose of complying with any laws for the time being in force; or
- (f) if any insolvency related event occurs in respect of the licensee.

(2) Prior to any such revocation, the Director shall serve notice on the licensee specifying the reason therefor and shall give the licensee a reasonable opportunity to make representations about the proposed revocation.

Authorised officer

20. An authorised officer shall, when exercising any power conferred on him or her by these Regulations, if so requested, produce to any person affected a copy of his or her appointment as such authorised officer.

Prevention of interference

21. If the Director -

- (a) is satisfied that the use of the system or any part thereof is causing or is likely to cause interference with any wireless telegraphy apparatus used for the purpose of any safety of life service or for any purpose on which the safety of any person or of any vessel, aircraft or vehicle may depend, and
- (b) serves on the licensee a notice requiring that the use of such system or part as may be specified in the notice cease forthwith, or on or before such date and time as may be so specified,

the licensee shall cease to use the system or part unless and until such notice has been withdrawn by the Director.

Compliance

22. The licensee shall comply with any direction, requirement or notice given to him or her by the Director in respect of any matter which direction, requirement or notice is, in the opinion of the Director, appropriate having regard to the functions of the Director.

Variation of licence

23. The Director may, following such public consultation (if any) as he or she considers appropriate, by notice in writing served on the licensee, amend or vary the licence -

- (a) with the consent of the licensee; or
- (b) without the consent of the licensee, provided that the licensee has been given a reasonable opportunity to make representations to the Director regarding the proposed amendment or variation and that the Director has considered those representations.

Limitation of licence

24. (1) 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 system to distribute licensed programme services in the licensed area.

(2) A licensee is responsible for obtaining any other approvals, consents, licences, permissions and authorities required to lawfully use the system to which the licence relates or lawfully distribute licensed programme services.

Force majeure events

25. If a force majeure event occurs which prevents the licensee from complying with any of the provisions of these Regulations or any of the conditions set out or referred to in the licence:

- (a) the licensee shall, as soon as reasonably practicable, notify the Director of that fact, of the nature of the event and of the manner in which and the extent to which the licensee is prevented from so complying, and
- (b) the obligation to comply with the provisions or conditions shall be suspended, for so long as the event continues to occur but in each case only if and to the extent that, the inability to comply could not have been prevented by taking steps specifically required under those provisions or conditions or by taking other reasonable precautions and the inability cannot reasonably be overcome by the licensee.

SCHEDULE

WIRELESS TELEGRAPHY ACT, 1926

PROGRAMME SERVICES DISTRIBUTION LICENCE

1. The licensee specified in Part I of this licence is hereby authorised to keep, have possession of, install, maintain, work and use the system specified in Part II to distribute licensed programme services in the area described in Part III.
2. (1) Subject to paragraph 9 (3), the Director shall not, prior to _____, grant a licence to any third party to keep, have possession of, install, maintain, work or use any equivalent system to distribute licensed programme services in the licensed area.

(2) For the avoidance of doubt, nothing in this licence shall be construed as prohibiting the Director from -
 - (a) granting, on or after the date specified in subparagraph (1), a licence to any third party to keep, have possession of, install, maintain, work or use any equivalent system to distribute licensed programme services in all or part of the licensed area; or
 - (b) granting, prior to the date specified in subparagraph (1), a licence to any third party to keep, have possession of, install, maintain, work or use a system other than an equivalent system to distribute licensed programme services in all or part of the licensed area.
3. The licensee shall be responsible for obtaining such way leave and other approvals, consents, licences, permissions and authorities as may be necessary for the installation, maintenance, work and use of the system.
4. (1) The licensee shall distribute such licensed programme services as are specified in Part VI and VII by analogue transmission:
 - (a) unless the Director gives prior consent in writing; or
 - (b) unless the Director directs the licensee, by notice in writing served on the licensee, to discontinue analogue transmission of such of those licensed programme services as are specified in the notice.
(2) The licensee may distribute programme services to the holders of other licences whether inside or outside the licensed area to which his or her licence relates and may facilitate the distribution of such services whether inside or outside that licensed area by or on behalf of the holders of other licences.

5. This licence shall come into operation on the date specified in Part IV and shall, unless previously surrendered by the licensee or unless or until it is revoked by the Director, and subject to any suspension thereof, continue in force from the date specified in Part IV to the _____ day of _____, ___.
6. (1) The system shall be designed, constructed, installed, maintained and used so that no avoidable harmful interference with any authorised apparatus for wireless telegraphy, and no avoidable harmful effect on any authorised telegraphic line or authorised telecommunication service is caused.
- (2) If the Director is satisfied that the licensee has failed to comply with sub-paragraph (1) of this paragraph and notifies the licensee in writing of that fact, the licensee shall cease to use the system until further notice from the Director and shall otherwise take such measures as may be specified by the Director in the notice.
7. Nothing in this licence shall authorise the licensee to do any act which is an infringement of any copyright or other legal right.
8. The licensee shall maintain separate accounts in respect of the distribution by him or her of licensed programme services.
9. (1) The licensee shall, by the dates specified in the digital roll-out plan, design, construct, install, work and put into use a digital transmission network.
- (2) The licensee shall be responsible for obtaining all approvals, consents, licences, permissions and authorities required by law to design, construct, install, work and put into use such a network.
- (3) If, within a period of 6 months after the dates specified in the digital roll-out plan, the licensee does not comply with the requirements specified in the plan, the Director may, without prejudice to any other powers or remedies he or she may have under the Wireless Telegraphy (Programme Services Distribution) Regulations, 1998, reduce the period of exclusivity granted to the licensee under paragraph 2 (1) for part or all of the area described in Part III by such period as the Director considers appropriate.
10. (1) The licensee shall publish the prices, terms and conditions for distributing, to a member of the public, licensed programme services and for installing or providing the means necessary to receive the licensed programme services and shall publish any changes to such prices, terms and conditions.
- (2) The licensee shall provide copies of those prices, terms and conditions to the Director forthwith and to members of the public on request, in each case free of charge.
11. The licensee shall comply with:
- (a) the technical conditions for analogue transmission systems set out in Part IX;

- (b) the technical conditions for digital transmission systems set out in Part X;
- (c) the conditions for the operation of conditional access systems set out in Part XI;
- (d) any other technical conditions notified to the licensee in writing by the Director;

and with any alterations or additions thereto so notified to the licensee.

12. The provisions of the Wireless Telegraphy (Programme Services Distribution) Regulations, 1998, and the conditions set out and referred to in the licence supersede any prior communications with the Director regarding licensed programme services and nothing in any guidance notes or other prior communications with the Director shall be deemed incorporated into those Regulations or into the licence.

13. Definitions;

“Director” means the Director of Telecommunications Regulation appointed under the Telecommunications (Miscellaneous Provisions) Act, 1996;

“distribute” means receive or originate programme services and convey them over the system, and cognate words shall be construed accordingly;

“equivalent system” means, as regards a licence that relates to a television programme retransmission system, another television programme retransmission system; and as regards a licence that relates to a wired broadcast relay system, another wired broadcast relay system;

“licensed programme service” means any of the following programme services:

- (a) television broadcasts (within the meaning of the Wireless Telegraphy (Television Programme Retransmission and Relay) Regulations, 1991 (S.I. No. 252 of 1991)) that originate in another Member State of the European Communities and that fall within the fields coordinated by Council Directive 89/552/EEC of 3 October 1989 as amended by Council Directive 97/36/EEC of 30 June 1997;
- (b) a television programme service (within the meaning of the Regulations referred to in paragraph (a)) that originates in a state (other than a Member State of the European Communities) being a party to the European Convention on Transfrontier Television done at Strasbourg on the 5th day of May, 1989 and that complies with the terms of the Convention;
- (c) a programme service, other than a programme service to which paragraphs (a), (b) or (d) relate, approved of, for the time being, by the Director;

- (d) a programme service that originates in the State, other than a programme service to which (a), (b) or (c) relate, authorised, for the time being, by law;

“licensee” means a holder of a licence;

“programme service” means a service which consists of sound or visual programme material of any description, or a compilation of both, intended for general or approved reception, whether encoded or not;

“relay” means, in relation to television programme services or television programme services and sound programme services, receive the services by means of wireless telegraphy apparatus and then convey them by wire from the place of reception to system outlets, and cognate words shall be construed accordingly;

“system”, in relation to a licence, means the system used by the licensee for the distribution of licensed programme services, starting at the headend and ending either at the system outlets or, in cases where the licensee provides subscribers with a device incorporating specialised decoding means, at the output port of such device, and including all other apparatus directly or indirectly connected between those points, as more specifically described in Part II of this licence.

PARTS

Part I

Licensee

Part II

Licensed System

Part III

Licensed Area

Part IV

Licence Commencement Date

Part V

Digital Roll-Out Plan

Part VI

Programme Services Which Must Be Distributed

Part VII

Basic Programme Service

Part VIII

Addresses for Notices

Part IX

Technical Conditions for Analogue Transmission Systems

Part X

Technical Conditions for Digital Transmission Systems

Part XI

Conditions for the Operation of Conditional Access Systems