

**STATUTORY INSTRUMENT**

**S.I. No. 79 of 2003**

**Wireless Telegraphy (Fixed Wireless Access Local Area Licence)  
Regulations, 2003**

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The Commission for Communications Regulation, in exercise of the powers conferred on it by section 6(1) of the Wireless Telegraphy Act, 1926 (No. 45 of 1926), transferred by section 4 of the Telecommunications (Miscellaneous Provisions) Act, 1996 (No. 34 of 1996), and by section 9(1) of the Communications Regulation Act 2002 (No. 20 of 2002) and with the consent of the Minister for Communications, Marine and Natural Resources, pursuant to section 37 of the Communications Regulation Act 2002 and the Communications, Energy and Geological Survey of Ireland (Transfer of Departmental Administration and Ministerial Functions) Order 2002 (No. 300 of 2002) as adapted by the Marine and Natural Resources (Alteration of Name of Department and Title of Minister) Order 2002 (No. 307 of 2002), hereby makes the following Regulations

### Citation

1. These Regulations may be cited as the Wireless Telegraphy (Fixed Wireless Access Local Area Licence) Regulations, 2003.

### Interpretation

2. (1) In these Regulations, unless the context otherwise requires:

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

“*the Act of 1972*” means the Wireless Telegraphy Act, 1972 (No. 5 of 1972);

“*the Act of 1983*” means the Postal and Telecommunications Services Act, 1983 (No. 24 of 1983);

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

“*FWA*” or “*Fixed Wireless Access*” means radio access for the provision of telecommunications services between a single base station at a fixed location and multiple subscriber terminal stations at fixed locations where the base station is connected to a telecommunications network;

“*FWA apparatus*” means apparatus for wireless telegraphy used for FWA consisting of a base station apparatus for wireless telegraphy at a specified fixed location and apparatus for wireless telegraphy at fixed locations to which subscriber terminal equipment at fixed locations is connected and which operates in the frequency bands designated by the Commission for the purpose of FWA and in relation to a licence, means apparatus to which the licence relates;

“*FWA apparatus record*” means a record maintained by a licensee pursuant to Regulation 12(1) (b) specifying the premises at which each part of an FWA apparatus is located;

“*application*” means an application to the Commission for the grant of a licence to which these Regulations apply;

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

“*the Commission*” means the Commission for Communications Regulation;

“*functions*” includes powers and duties and references to the performance of functions includes, with respect to powers and duties, references to the exercise of the powers and the carrying out of the duties;

“*harmful interference*” means interference with the working of or interference which otherwise injuriously affects any apparatus for wireless telegraphy in respect of which a licence has been granted under the 1926 Act and is in force or any apparatus for wireless telegraphy lawfully maintained or worked without any such licence or any broadcasting station maintained under Part II of the 1926 Act or under the Broadcasting Authority Act, 1960;

“*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 encumbrance 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 of the jurisdiction under which the licensee is incorporated;

“*licence*” means a licence for Fixed Wireless Access apparatus as defined in the Regulations granted under section 5 of the Act of 1926, and cognate words shall be construed accordingly;

“*licensee*” means the holder of a licence for the time being in force;

“*Licensing Regulations*” means the European Communities (Telecommunications Licences) Regulations, 1998 (S. I. No. 96 of 1998) as amended;

“*minimum loading criteria*” means criteria set down by the Commission to define the minimum usage of the frequency channel used by the FWA apparatus.

“*telecommunications licence*” means a licence under section 111 of the Act of 1983;

“*terminal equipment*” means a product enabling communication or a relevant component thereof which is intended to be connected directly or indirectly by any means whatsoever to interfaces of public telecommunications networks (that is to say, telecommunications networks used wholly or partly for the provision of publicly available telecommunications services);

(2) In these Regulations –

- (a) a reference to a regulation or a Schedule is a reference to a regulation or 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 a reference to a paragraph or subparagraph of the provision in which the reference occurs unless it is indicated that reference to some other provision is intended.

(3) In these Regulations –

- (a) a reference to an enactment shall be construed as a reference to the enactment as amended or extended by or under any subsequent enactment including these Regulations;
- (b) a reference to a Directive of the European Parliament and of the Council shall be construed as a reference to that Directive as amended or extended by any subsequent Directive.

(4) The Interpretation Act, 1937 (No. 38 of 1937) applies to these Regulations.

### Licences to which these Regulations apply

3. These Regulations apply to licences granted under section 5 of the Act of 1926 to keep, have possession of, install, maintain, work and use Fixed Wireless Access Apparatus in accordance with the technical conditions in the First Schedule of these Regulations.

### Limitation of licence

4. (1) For the avoidance of doubt, 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 Fixed Wireless Access apparatus.  
  
(2) Nothing in these Regulations shall absolve a licensee from any requirement in law to obtain any approvals, consents, licences, permissions or authorities that may be necessary for the discharge of the obligations or the exercise of entitlements under the licence.

### Applications for licences

5. (1) Any application for a licence to which these Regulations apply shall be in such form as may from time to time be specified by the Commission.  
  
(2) An applicant for a licence shall, if so requested by the Commission, furnish such information as the Commission may reasonably require for the purposes of assessing the application and the Commission may refuse to grant a licence to an applicant who fails or refuses to comply with the request made under this paragraph.

### Addresses for notices

6. (1) Where a licensee is domiciled in the European Union (the “EU”), the licensee shall, on the grant of his or her licence, furnish in writing to the Commission the address and, where appropriate, fax number or e-mail address, or both, within the EU to which notices and other documents under these Regulations may be delivered to him or her or sent by or on behalf of the Commission by post or by any telecommunications service operated in accordance with the Postal and Telecommunications Services Act, 1983 (No. 24 of 1983), and shall, as occasion requires, so furnish any change in such address, fax number, or e-mail address.  
  
(2) Where a licensee is domiciled outside the EU, the licensee shall, on the grant of his or her licence, furnish in writing to the Commission an address in Ireland to which notices and other documents under these Regulations may be delivered to him or her or sent by or on behalf of the Commission by post or by any telecommunications service

operated in accordance with the Postal and Telecommunications Services Act, 1983, and shall, as occasion requires, so furnish any change in such address.

- (3) A notice or document delivered, or sent by post or any such telecommunications service to any address, fax number or e-mail address furnished in accordance with paragraph (1) or (2) shall be deemed for the purposes of these Regulations to have been duly served by the Commission.
- (4) 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 as which the sender's fax system generates the message confirming successful transmission of the total number of pages of the notice or document.

#### Form of licence

7. A licence to which these Regulations apply shall be in the form specified in the First Schedule or in a form to the like effect or to the like effect with such variation, (whether by addition, deletion or alteration) as the Commission may, from time to time, determine in accordance with applicable national or EC law.

#### Continuance in force of licences

8. Subject to these Regulations, every licence shall, unless previously surrendered by the licensee, or unless or until it is revoked or renewed by the Commission, and subject to any suspension thereof, continue in force for such a period (not being more than one year) as may be specified in Part VII of the First Schedule of the licence beginning on the date of the grant of the licence.

#### Renewal of licences

9. (1) Subject to these Regulations, or any other law the Commission may renew a licence to which these Regulations apply.
- (2) Any licence that is renewed under this Regulation shall, subject to this Regulation and unless previously surrendered by the licensee or unless or until it is revoked or subsequently renewed by the Commission, and subject to any suspension thereof, continue in force for such period (not being more than one year) beginning on the date of renewal of the licence as may be specified by the Commission in Part VII of the First Schedule of the licence as amended by the Commission.
- (3) Any application or renewal of a licence shall be made at least 28 days before the date of expiration of the licence and shall be accompanied by-

- (a) such a renewal fee as is specified in the Second Schedule,
  - (b) the FWA apparatus record, and
  - (c) such information as the Commission may reasonably require for the purpose of assessing the applications for renewal and ascertaining the operability of the FWA apparatus
- (4) In considering whether to renew a licence under this Regulation, the Commission shall have particular regard to-
- (a) whether the licensee complied with these Regulations and with any conditions attached to the expiring licence pursuant to these Regulations;
  - (b) the management and efficient use of radio spectrum;
  - (c) the avoidance of harmful interference
- (5) The granting or renewal of a licence shall not be construed as warranting that the licence shall be renewed at any time in the future

#### Licence fees

10. (1) The fees set out in the Second Schedule are hereby prescribed as the fees to be paid on the grant or renewal of a licence to which these Regulations apply for the purposes of section 6(1)(f) of the Act of 1926.
- (2) Any fee paid on the grant or renewal of a licence pursuant to paragraph (1) shall not be refundable in the event of any surrender, revocation, suspension or amendment of the licence.
- (3) Fees shall be paid to the Commission for Communications Regulation by way of banker's draft or such other means and on such terms (including terms as to the date and place of payment) as the Commission may decide. Where the date of payment falls on a Saturday, a Sunday or a public holiday payment shall be made on or before the last working day before the date of payment.

#### Licence and conditions

11. The following are the conditions to be observed by the holder of a licence to which these Regulations apply and subject to which any such licence is deemed to be granted:
- (a) that the apparatus shall be used only for the purpose of the provision of the Service authorised by the licence under Section 111(2) or Section 111(3) of the Act of 1983;

- (b) the apparatus to which the licence relates shall be used only on such radio frequency spectrum as may be specified in the licence and such radio frequency shall be used in an efficient manner;
- (c) that the Licensee shall ensure that the Apparatus is not used in a manner that could infringe any privilege which is held by the Minister for Communications, Marine and Natural Resources under the Telegraph Act, 1869;
- (d) the licensee shall ensure that all radio and telecommunications terminal equipment used on or associated with the Fixed Wireless Access network operated by the licensee for the purposes of the service are compliant with the standards set for such equipment by the European Communities (Radio Equipment and Telecommunications Terminal Equipment) Regulations, 2001 (S.I. No. 240 of 2001) and any other standards that may, from time to time, be specified by the European Union;
- (e) the licensee shall not, save with the written prior consent of the Commission, assign his or her licence or any of the rights conferred by it or lease or let his or her licence or otherwise transfer to another person any benefit of the licence;
- (f) the licensee shall comply with any loading criteria or roll-out plan that may be specified by the Commission in the licence;
- (g) the licensee shall ensure that-
  - (i) non-ionising radiation emissions from the fixed wireless access apparatus operated by the licensee are within the limits specified by the guidelines published by the International Commission for Non-Ionising Radiation Protection (“*ICNIRP*”) and that these comply with any radiation emission standards adopted and published by ICNIRP or its successors from time to time, any radiation emission standards of the European Committee for Electrotechnical Standards and any other radiation emission standards specified by law; and
  - (ii) the fixed wireless apparatus operated by the licensee is not installed or operated at a location in such a manner as to cause the aggregate of non-ionising radiation emissions to exceed the limits specified by the guidelines published by the ICNIRP and that it complies with any radiation emission standards adopted and published by ICNIRP or its successors, from time to time, any radiation emission standards of the European Committee for Electrotechnical Standards and any other radiation emissions standards specified by law;
- (h) the licensee shall ensure that the fixed wireless access apparatus or any part thereof shall be installed, maintained, operated and used in such a



manner as not to cause harmful interference and, in particular, to apparatus for wireless telegraphy 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;

- (i) the licensee shall ensure that the apparatus to which his or her licence relates is installed, maintained and operated in such a manner as to ensure that the safety of persons or property is not thereby endangered.
- (j) the licensee shall, where-
  - (i) the Commission, or its authorised officer, is satisfied that the licensee has failed to comply with subparagraph (g) or (h) of this Regulation; and
  - (ii) serve on the licensee a notice, prohibiting the use, or as appropriate requiring that the use of such apparatus or part thereof, as may be specified in the notice, cease forthwith or, on or before such date and time as may be so specified, and the licensee shall not use or, as appropriate, shall cease to use the apparatus to which the licence relates or part thereof, unless and until such notice has been withdrawn by the Commission, or an authorised officer, and shall otherwise take such measures (if any) as may be specified by the Commission, or any authorised officer, in the notice;
- (k) the licensee shall ensure that, save as may be required by law, access to, and use of, the apparatus to which the licence relates is restricted to the licensee, employees and agents of the licensee and persons authorised by or on behalf of the licensee;
- (l) the licensee shall take all reasonable measures to prevent any message or information which the licensee is not authorised to receive from being received by the apparatus;
- (m) if any message or information that a licensee is not authorised to receive is intentionally received by means of apparatus the licensee shall not-
  - (i) make known or allow to be made known its contents, origin, destination or existence or the fact of its receipt, to any person other than an authorised person or
  - (ii) reproduce in writing or otherwise make use of, or copy such message or information or allow it to be reproduced in writing, made use of or copied;
- (n) the licensee shall-

upon becoming aware of any event likely to materially affect his or her ability to comply with these Regulations, or any conditions set out or referred to in the licence, notify the Commission of that fact;

- (o) the licensee shall observe good site engineering practice in accordance with such guidelines as may be set out by the Commission from time to time in that regard.

#### Information and inspections

12. (1) A licensee shall-
- (a) furnish to the Commission such information relating to the apparatus as the Commission may, from time to time, by notice in writing served on the licensee, require;
  - (b) keep for such period as the Commission may specify such records, including a record of the premises where any licensed apparatus, or part thereof, is located, as the Commission may, from time to time, require the licensee to keep;
  - (c) on request from an authorised officer, produce his or her licence for inspection by such officer;
  - (d) upon becoming aware of the occurrence of any insolvency related event or, of any other event likely to materially affect his or her ability to comply with these Regulations, or any conditions set out or referred to in the licence, notify the Commission of that fact;
  - (e) within 28 days after the occurrence of any of the following events notify the Commission of such an occurrence:
    - (i) any change in the identity of the persons having control of the licence, or in a case where the licensee is a body corporate, in the identity of the directors of the licensee or of any body corporate having control of the licensee; and/or
    - (ii) any change in the identity of any persons having any interest in the licensee or in any 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% on aggregate in the licensee; or
  - (II) having an interest of more than 20% on aggregate in the licensee, has increased or decreased that interest;

For the purposes of these Regulations, control means the power (whether directly or indirectly) to direct or cause to be directed 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 Commission with a copy of the annual return of the licensee or of any person who controls the licensee;
  - (II) within 7 days of its circulation to the shareholders of the licensee, furnish the Commission with a copy of the annual report and accounts of the licensee or of any person who controls the licensee;
- (ii) where the licensee is not incorporated in the State, furnish the Commission 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 to which the licensee is subject or, at the request of the Commission, 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 Commission may, from time to time, specify in a notice served on the licensee in that regard;
- (g) on request from an authorised officer, permit the authorised officer at all reasonable times to inspect any records which the Commission requires to be, or which are, kept by the licensee in connection with the apparatus;
- (h) on request by an authorised officer, make available any test equipment or apparatus necessary to facilitate the testing by the authorised officer of the apparatus.
- (2) (a) The Commission 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 relating to the operation of apparatus in order to ensure compliance with these Regulations or the licence; and the licensee shall allow the authorised officer, or any independent auditor, such access to any premises, equipment or any part of the apparatus, or to inspect, take copies of and acquire such

information, as may reasonably be required for the purposes of carrying out the audit.

- (b) Any costs associated with an independent audit conducted under this paragraph shall be the responsibility of the licensee.
- (3) Any information furnished to the Commission under these Regulations or under and in accordance with the licence, may if the Commission considers it proper or appropriate so to do, be published by the Commission.

#### Amendment, revocation and suspension of licence

- 13. (1) The Commission may, in a proportionate manner, amend a licence where it is objectively justifiable.
- (2) Without prejudice to paragraph (1) and Regulation 15, the Commission may, after serving notice on the licensee specifying reasons and after affording the licensee a reasonable opportunity to make representations and after having considered any such representations suspend or revoke a licence in any of the following circumstances:
  - (i) where the licensee fails or refuses to comply with any term or condition of the licence including any terms or conditions imposed by virtue of these Regulations;
  - (ii) where the licensee fails or refuses to comply with a direction of the Commission or hinders or obstructs an authorised officer in the performance of his or her functions;
  - (iii) where the licensee contravenes any provision of these Regulations;
  - (iv) where the application made by the licensee for the grant or renewal of the licence was false or misleading in any material respect;
  - (v) where, in the opinion of the Commission, such revocation or suspension is required for the purpose of complying with any law;
  - (vi) in case the licensee is an individual, where a receiving order for bankruptcy has been made in respect of the estate of the licensee;
  - (vii) in case the licensee is a company, within the meaning of the Companies Acts 1963 to 2001, where an order for its winding up has been made or a resolution for a voluntary winding up has been made or a resolution for a 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 or, if the licensee is not incorporated in the State or not registered under the Companies Acts 1963 to 2001, where it is subject to any equivalent procedure;

- (viii) where the licensee notifies the Commission that he or she does not intend to use the apparatus to which the licence relates for a licensed purpose;
- (ix) where the licensee agrees with the Commission that the licence ought to be revoked;
- (x) where the licensee fails to use a licensed apparatus prior to the date of renewal, and for any period of more than 60 consecutive days after that date;
- (xi) in case the licensee is a body corporate, where a change of which the licensee is required to notify the Commission under paragraph (e) of Regulation 12(1) occurs and that change is such that, if the Commission were determining whether to award a licence to the licensee in the changed circumstances, the Commission would not award the licence to the licensee because of that change.

#### Harmful interference

14. Notwithstanding any other provision of these Regulations, the Commission or any authorised officer may, where he or she is of the opinion that apparatus to which the licence relates or part thereof, is causing, or is likely to cause harmful interference and, in particular, to apparatus for wireless telegraphy used for the purpose of any safety of life service or for any purpose on which the safety of life service or for any purpose in which the safety of any person or of any vessel, aircraft or vehicle may depend, serve on the licensee a notice, prohibiting the use, or as appropriate requiring that the use of such apparatus or part thereof, as may be specified in the notice, cease forthwith or, on or before such date and time as may be so specified, and the licensee shall not use or, as appropriate, shall cease to use the apparatus to which the licence relates or part thereof, unless and until such notice has been withdrawn by the Commission, or an authorised officer, and shall otherwise take such measures (if any) as may be specified by the Commission, or any authorised officer, in the notice.

#### Directions and notices

15. (1) The licensee shall comply with any direction, requirement or notice given to him or her by or on behalf of the Commission pursuant to these Regulations in respect of any matter which direction, requirement

or notice is, in the opinion of the Commission, appropriate having regard to the functions of the Commission under these Regulations.

- (2) Without prejudice to the generality of subparagraph (1), the licensee shall comply with any direction, requirement or notice given to him or her by or on behalf of the Commission in respect of the use or the cessation of use of any frequency channel, or in respect of an amendment to any characteristics used in the operation of apparatus to which the licence relates, as particularised in Part III of the licence

#### Authorised officers

16. (1) The Commission may appoint such members of the staff of the Commission as it considers appropriate to be authorised officers to act for the purposes of these Regulations;
- (2) A person appointed under paragraph (1) shall, on his or her appointment, be furnished by the Commission with a certificate of his or her appointment and when exercising a power conferred by paragraph (3) shall if so requested by any person thereby affected, produce such certificate to that person for inspection.
- (3) For the purposes of the exercise by the Commission of its functions under these Regulations, an authorised officer may exercise the powers conferred on an authorised officer by section 39(3) of the Act of 2002.

## **FIRST SCHEDULE**

Wireless Telegraphy Act, 1926

Wireless Telegraphy (Fixed Wireless Access Local Area Licence) Regulations, 2003

### **Licence under section 5 of the Wireless Telegraph Act, 1926, to keep, have possession of, install, maintain, work and use Fixed Wireless Access Apparatus**

1. The Commission, in exercise of the powers conferred on it by section 5 of the Wireless Telegraphy Act, 1926 (No. 45 of 1926) and section 4 of the Telecommunications (Miscellaneous Provisions) Act, 1996 (No. 34 of 1996) and Section 9(1) of the Communications Regulation Act 2002 (No. 20 of 2002) hereby grants to the licensee specified in Part I of this licence authorisation to keep, have possession of, install, maintain, work and use apparatus as specified in Part III of the First Schedule of this licence and in accordance with the technical conditions described in Part IV of this First Schedule of this licence subject to the terms and conditions as set out in the Wireless Telegraphy (Fixed Wireless Access Local Area Licence) Regulations, 2003 (S.I. No. 79 of 2003) in particular, Regulations 11, 12 and 15 thereof
2. This licence shall commence on the date specified in Part VII and unless previously surrendered by the licensee or unless or until it is revoked or renewed by the Commission, and shall subject to any suspension thereof, continue in force until the date specified in Part VII of the First Schedule as the termination date.
3. The licensee shall comply with the technical conditions set out in Part IV of this First Schedule and with any alterations or additions thereto notified to the licensee in writing by or on behalf of the Commission.
4. The licensee shall comply with the loading criteria set out in Part V of this First Schedule.
5. The licensee shall, by the dates specified in any roll-out plan set out in Part VI of this First Schedule install, work and put into use the Fixed Wireless Access apparatus.

**PARTS**

**PART I**

**Licensee**

**PART II**

**Addresses for Notices**

**PART III**

**Description and Characteristics of Fixed Wireless Access Apparatus**

**PART IV**

**Technical Conditions for Fixed Wireless Access Apparatus**

**PART V**

**Minimum Loading Criteria, if applicable**

**PART VI**

**Roll-out Plan, if applicable**

**PART VII**

**Licence commencement and termination dates**



## SECOND SCHEDULE

Licence fees to be paid on grant of and on each renewal of a licence under these Regulations are as set out in the following table:

Required Bandwidth	Licence Fee (€)
Up to 7MHz	1500
Over 7MHz and up to 14MHz	2000
Over 14MHz and up to 28MHz	2800

Where a licence is granted for a portion of a year the licence fee to be paid by the licensee shall be calculated as follows:

$$A \times (B/12) = C$$

Where A is the relevant annual licence fee set out in this Schedule; B is the number of whole months for which the licence is granted (if a licence is granted for a period of less than one month then, for the purpose of these calculations only, the licence shall be considered as a licence granted for a period of one month); and C is the appropriate licence fee to be paid.