

STATUTORY INSTRUMENTS

S.I. No. 338 of 2003

R E G U L A T I O N S

entitled

**Wireless Telegraphy (Fixed Wireless Point to Multi-point Access Licence)
(Amendment)(no.2) 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 and Commencement

1. (1) These Regulations may be cited as the Wireless telegraphy (Fixed Wireless Point to Multi-point Access Licence) (Amendment) (no.2) Regulations, 2003.
- (2) The Principal Regulations and these Regulations may be cited together as the Wireless Telegraphy (Fixed Wireless Point to Multi-point Access Licence) Regulations, 1999 to 2003 and shall be construed together as one.
- (3) These Regulations come into operation on 25 July 2003
2. The Principal Regulations shall be amended by the deletion of Regulations 2 – 11 with the substitution of the following Regulations;

“Interpretation

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

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

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

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

“Apparatus” means apparatus for wireless telegraphy operating in the frequency bands designated by the Commission for FWPMA using Radio Point to Multi-point Systems for the provision of a telecommunications access network and associated services and, in relation to a Licence, means apparatus to which the Licence relates;

“Application” means an application to the Commission for the grant of a Licence;

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

“Authorised Officer” means a person appointed under Regulation 9 of these Regulations to be an authorised officer;

“Fixed Wireless Point to Multi-point Access”, or “FWPMA”, means Radio Point to Multi-point Systems operating between terminal equipment at fixed locations and base station(s) at fixed locations, and where such base station(s) may be connected to a Telecommunications Network;

“FWPMA Network” means a network for the provision of FWPMA;

“Licence” means a licence under section 5 of the Act of 1926 to which Regulation 3 of these Regulations applies and cognate words shall be construed accordingly;

“Licensee” means the holder of a Licence;

“Principal Regulations” means Wireless Telegraphy (Fixed Wireless Point to Multi-point Access Licence) Regulations (S.I. 287 of 1999);

“Radio Point to Multi-point Systems” means radio systems operating at frequencies above 1 Gigahertz, in bands designated by the Commission for FWPMA, utilising techniques which allow the spectrum to be shared between multiple users, to provide communications between a fixed location and a number of fixed locations. Radio Point to Multi-point Systems do not include Point to Point Systems as defined in the Wireless Telegraphy (Radio Link Licence) Regulations, 1992 (S.I. No. 319 of 1992) and

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

- (2) In these Regulations, 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 Act, 1937 (No. 38 of 1937), applies 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 Apparatus for FWPMA.

Application for Licences and Form of Applications and Licences

4. (1) An Application for a Licence shall be made to the Commission and shall be in writing in such form as may be determined by the Commission.
 - (2) A person who makes an Application under paragraph (1) of this Regulation shall furnish to the Commission such information as the Commission may reasonably require for the purpose of its functions under these Regulations and, if the person, without reasonable

cause, fails to comply with this paragraph, the Commission may, refuse to grant a Licence to the person.

(3) Subject to Regulation 7 of these Regulations, a Licence shall be in the form specified in the Schedule to these Regulations with such variation (if any) (whether by addition, deletion or alteration) as the Commission may determine from time to time or in any particular case.

Notification of change of address

5. Where the address of the Licensee changes, the Licensee shall, as soon as possible, notify the Commission in writing of the change.

Duration and Renewal of Licences

6. (1) A Licence shall (unless it has been or is revoked) remain in force for the period of one year from the date on which it is expressed to come into operation and, unless renewed, shall then expire.

(2) Subject to paragraph (4) of this Regulation, and to the payment of the appropriate fees set out in Regulation 10, the Commission may, by notice in writing given to the Licensee or sent to the Licensee at the address specified by the Licensee, renew a Licence.

(3) A Licence that has been renewed shall (unless it has been revoked) remain in force for the period of one year from the day following the expiration of the immediate previous Licence, and unless renewed, shall then expire.

(4) 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 Commission, be renewable annually from the date of commencement specified in the Licence until the expiration of the period of 10 years after the date of commencement of the first Licence granted to the Licensee.

(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.

Conditions of Licences

7. It shall be a condition of a Licence:

1. that the Apparatus shall be used only for the purpose of the provision of the Authorised Services;
2. that the apparatus shall be used only on such radio frequency channels as may be specified in the Licence;
3. that the licensee shall not, without the consent of the commission (which shall not be unreasonably withheld) assign the licence or any of the powers duties or functions conferred by it or otherwise transfer any of the rights or obligations conferred by it;
4. that the Licensee shall ensure that non-ionising radiation emissions from each radio installation associated with the network operated by the Licensee for the purposes of the Service are within the limits specified by the guidelines published by the International Commission for Non-Ionising Radiation Protection ("ICNIRP"). and that it complies with any radiation emission standards adopted and published from time to time by ICNIRP, any standards of the European Committee for Electrotechnical Standards and any standards which may from time to time be specified by the European Union and that an FWPMA network operated by the Licensee is not installed or operated at a location in a manner such as to be the cause of the aggregate non-ionising radiation emissions exceeding the limits specified by the guidelines published by the ICNIRP and that it complies with any radiation emission standards adopted and published by ICNIRP or its successors from time to time, any radiation emission standards of the European Committee for Electrotechnical Standards and any radiation emission standards specified by national and EC law;

5. that the licensee shall comply with all commitments and obligations contained in Schedule 4 of its Licence;
6. that the licensee will pay the fees set out in Regulation 10 of these Regulations and
7. that the Licensee complies with any special conditions imposed under section 8 of the Act of 1972 and subject to which this Licence is deemed by subsection (3) of that section to be issued.

Amendment, Revocation And Suspension

8. (1) The Commission may amend the Licence from time to time where objectively justifiable and in a proportionate manner. The Commission may amend the Licence in accordance with the Authorisation Regulations and any other requirements under applicable national or European Community law.
- (2) Where the Commission is of the opinion that, in the interest of the efficient and orderly use of apparatus for wireless telegraphy or radio frequency spectrum, it is desirable to do so, it may amend the Licence in accordance with the Authorisation Regulations.
- (3) Without prejudice to paragraph (1) of this Regulation, at the request of the Licensee, the Commission may, if it considers it appropriate to do so, amend the Licence by adding to, deleting from or altering the radio frequency spectrum specified in the Licence on which the Apparatus may be used, and that any such amendment shall be effected by notice in writing from the Commission specifying the amendment and given to the Licensee or sent to the Licensee at the address specified in the Licence or notified to the Commission pursuant to the Licence.

Powers of Authorised Officers

9. (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.

Fees

10. (1) Subject to paragraph (2) of this Regulation, the following annual fees are hereby prescribed in relation to Licences for the purposes of section 6 of the Act of 1926:
 - (a) Where the Licence concerned relates to Apparatus used in the frequency bands 2.0-2.3 GHz, 3.4-3.6 GHz or 10.1- 10.7 GHz:
 - (i) a fee of €762 per MHz is payable on issue of the Licence;
 - (ii) a fee of €1,333 per MHz is payable on first renewal;
 - (iii) a fee of €1,905 per MHz is payable annually thereafter.
 - (b) Where the licence concerned related to Apparatus used in the frequency band 24.5-26.5GHz, a fee of €500 per MHz is payable on issue of the licence on each subsequent renewal thereafter.

- (2) Where the Licence is granted for a portion of a year then the Licence fee to be paid by the Licensee shall be calculated as follows:

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

where A is the appropriate annual fee as set out in Regulation 9(1), B is the number of whole months for which the Licence is granted, and C is the appropriate Licence fee to be paid.

- (3) Where a Licence is amended in accordance with Regulation 8(3), the appropriate fee specified in paragraph (1) of this Regulation in relation to the additional radio frequency spectrum shall be paid at the time of the amendment. If the Licence amendment is granted for a portion of a year then the additional Licence fee to be paid by the Licensee in respect of the additional spectrum during that period shall be calculated as follows:

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

where A is the appropriate annual fee, to be charged for the additional spectrum, as set out in Regulation 10(1), B is the number of whole months for which the Licence amendment is granted, and C is the appropriate Licence fee to be paid.

- (4) Additional fees may be levied by the Commission in accordance with the provisions of the Authorisation Regulations
- (5) The fee specified in this Regulation shall be paid to the Commission for Communications Regulation by way of banker's draft or such other means and on such terms as the Commission may decide.
- (6) Where a Licence is suspended or revoked, the Licensee shall not be entitled to any repayment of any part of the fee paid by the Licensee under this Regulation.

- (7) An amount payable by a person in respect of a fee under this Regulation may be recovered by the Commission from the person as a simple contract debt in any court of competent jurisdiction

Licensee to satisfy all Legal Requirements.

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

WIRELESS TELEGRAPHY ACT, 1926
WIRELESS TELEGRAPHY (FIXED WIRELESS POINT TO MULTI-POINT
ACCESS LICENCE) (Amendment) (No.2) REGULATIONS, 2003

Licence under section 5 of the Wireless Telegraphy Act, 1926, to keep and have possession of apparatus for wireless telegraphy for the purpose of providing Fixed Wireless Point to Multi-point Access.

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 authorisation to keep, have possession of, install, maintain, work and use apparatus as specified in the Second Schedule of this licence and subject to the terms and conditions as set out in the Wireless Telegraphy (Fixed Wireless Access Point to Multi-point Licence)(Amendment) (no. 2) Regulations, 2003 (S.I. No. 338 of 2003)

The Commission for Communication Regulation, hereby grants the following Licence to:
_____ of _____ / having its registered office at

1. The Licence shall come into operation on the ____ day of ____, ____, and unless previously revoked or renewed shall expire on the ____ day of ____, 20
2. The Licensee shall ensure that it complies with the Technical and Geographical conditions contained in Schedules 1 – 3 of this licence;
3. The Licensee shall ensure that it complies with all of the commitments contained within the Fourth Schedule of the Licence being made by the Licensee in the course of the comparative evaluation selection procedure;

Schedule One
The Apparatus.

Schedule Two

Portion of radio frequency spectrum on which the Apparatus is authorised by this Licence to be used.

Schedule Three

Places at which the Licensee is authorised by this Licence to keep and have possession of the
Apparatus

Schedule Four

Commitments which the Licensee made in the course of a competitive or comparative selection procedure.

Given under the official seal of the Commission for Communications Regulation

This 25 day of July 2003

Etain Doyle

On behalf of the Commission for Communications Regulation

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

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

this 23 day of July 2003

Dermot Ahern, T.D.

EXPLANATORY NOTE

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

These Regulations provide for the issue of licences to keep and have possession of apparatus for wireless telegraphy for the purpose of using FWPMA for the provision of telecommunications access network and services.