

STATUTORY INSTRUMENTS

S.I. No. 287 of 1999

REGULATIONS

entitled

**Wireless Telegraphy (Fixed Wireless Point to Multi-point Access Licence) Regulations,
1999**

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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), pursuant to section 6(3) of the Wireless Telegraphy Act, 1926 (No. 45 of 1926), and with the consent of the Minister for Public Enterprise, pursuant to subsection 8 of the said section 4 and the Transport, Energy and Communications (Alteration of Name of Department and Title of Minister) Order, 1997 (No. 299 of 1997) hereby make the following Regulations:

Citation

1. These Regulations may be cited as the Wireless Telegraphy (Fixed Wireless Point to Multi-point Access Licence) Regulations, 1999.

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 Acts” means the Telegraph Act, 1869 and Wireless Telegraphy Acts, 1926 to 1988;

“Apparatus” means apparatus for wireless telegraphy operating in the frequency bands designated by the Director 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;

“Apparatus Record” means a list maintained by the Licensee specifying the premises at which each part of the Apparatus is installed and used;

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

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

“the Director” means the Director of Telecommunications Regulation;

“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;

“Licensed Services” means the telecommunications services authorised by a Telecommunications Licence;

“Licensee” means the holder of a Licence;

“Licensing Regulations” means the European Communities (Telecommunications Licenses) Regulations, 1998 (SI No 96 of 1998);

“Radio Point to Multi-point Systems” means radio systems operating at frequencies above 1 Gigahertz, in bands designated by the Director 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);

“Telecommunications Licence” means a licence under section 111(2) of the Act of 1983 in respect of which the Licensee has been and is designated by the Director as a person entitled to provide telecommunications services using FWPMA

“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.

Application for Licences and Form of Applications and Licences

4 (1) An Application shall be in writing in such form as may be determined by the Director from time to time.

(2) A person who makes an Application under paragraph (1) of this Regulation shall furnish to the Director such information as the Director may reasonably require for the purpose of his or her functions under these Regulations and, if the person, without reasonable cause, fails to comply with this paragraph, the Director may, in accordance with section 8(4)(c) of the Licensing Regulations, refuse to grant a licence to the person.

(3) In accordance with the provisions of Regulation 8 of the Licensing Regulations, the Director may grant a Licence to any person, including to such person or persons as may be selected by the Director pursuant to the competition held by the Director for that purpose in 1999.

(4) Subject to Regulation 8 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 Director 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 thereafter, notify the Director 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 Director 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 provision of these Regulations, every Licence shall, unless previously surrendered by the Licensee, or unless or until it is revoked by the Director, 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 –
 - (a) That the Licensee is the holder of a Telecommunications Licence.

- (b) That the Apparatus shall be used only for the purpose of the provision of Licensed Services using FWPMA and a FWPMA Network operated by the Licensee.
- (c) That the Apparatus Record is kept up to date and is made available to the Director within two working days of any request therefor by the Director;
- (d) That the Apparatus shall be used only at a place specified in the Apparatus Record;
- (e) That the Apparatus shall be used only on such radio frequency spectrum as may be specified in the Licence and that such radio frequency spectrum shall be used in an efficient manner.
- (f) That the Apparatus shall comply with national or European Community legislation regarding type approval, electromagnetic compatibility and the safety of electrical equipment.
- (g) That the Licensee shall observe good radio site engineering practices in accordance with ETSI Technical Report, ETR053, and any revisions thereof.
- (h) That, where the Director -
 - (i) is satisfied that the use of any of the Apparatus is causing, or is likely to cause, interference with any other apparatus for wireless telegraphy; and
 - (ii) gives to the Licensee or sends to the Licensee, at the address specified by the Licensee, a notice requiring that the Apparatus or the use thereof be modified or adjusted before such day and in such manner as may be specified in the notice or that the use thereof shall cease on and from such day, or during such period or such hour(s) on such day(s), as may be specified in the notice, the Licensee shall ensure that the notice is complied with.

- (i) That the Licensee shall ensure that the installation of the Apparatus is effected, and its maintenance and operation is carried on, in such manner as to ensure that the safety of persons or property is not endangered and that the use of the Apparatus does not result in harmful interference with any other apparatus for wireless telegraphy the subject of a licence under Section 5 of the Act of 1926.
- (j) That the Licensee shall ensure that the erection and positioning of apparatus consisting of antennae and support structures for antennae is effected in accordance with law.
- (k) That the Licensee shall ensure that non-ionising radiation emissions from the FWPMA Network 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 he or she complies with any radiation emission standards adopted and published by ICNIRP or its successors from time to time, any standards of the European Committee for Electrotechnical Standards and any standards specified by national and European Community law.
- (l) That the Licensee shall ensure that, save as may be required by law, access to the Apparatus is restricted to the Licensee, employees or agents of the Licensee and persons authorised by or on behalf of the Licensee to have such access.
- (m) That the Licensee shall take all reasonable measures to prevent a communication or information which the Licensee and employees and agents of the Licensee and users of the service are not authorised to receive from being received by means of the Apparatus.
- (n) That, if any such communication or information as aforesaid is so received, the Licensee shall not, and shall endeavour to ensure that employees and agents of the Licensee do not:-
 - (i) make known its contents, origin, destination or existence or the fact of such receipt, to a person (other than the Director or a member of staff of the Director), or

- (ii) reproduce it in writing or otherwise copy it or make use of it.

Enforcement, amendment, revocation and suspension

8. (1) The Director may amend the Licence from time to time where objectively justifiable and in a proportionate manner. Any amendment shall be made in accordance with Regulation 8(4)(a), and Regulation 8(6), of the Licensing Regulations, and any other requirements under applicable national or European Community law.
- (2) Without prejudice to paragraph (1) of this Regulation, the Director may, in accordance with Regulation 8(6) of the Licensing Regulations, suspend or revoke the Licence in any of the following circumstances:
- (i) where a condition of the Licence (including a condition imposed under section 8 of the Act of 1972) is contravened;
 - (ii) where the Licensee fails or refuses to comply with a direction of the Director or hinders or obstructs an Authorised Officer in the performance of his or her functions;
 - (iii) where the Licensee contravenes any of the Acts or any regulations made thereunder;
 - (iv) where the Application made by the Licensee is or was false or misleading in a material respect;
 - (v) where, in the opinion of the Director, such revocation or suspension is required for the purpose of complying with national or European Community law;
 - (vi) where the Licensee is an individual, a receiving order for bankruptcy has been made in respect of the estate of the Licensee;

- (vii) where the Licensee is a company within the meaning of the Companies Acts 1963 to 1990, an order for its winding up has been made or a resolution for voluntary winding up (within the meaning of those Acts) has been passed by the company otherwise than for the purpose of a merger or solvent reconstruction, or a receiver of the property of the company has been appointed or an examiner to the company has been appointed.
- (3) Where the Director 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, he or she may, in accordance with Regulation 8(6) of the Licensing Regulations:-
- (i) suspend the Licence, in so far as it applies to a particular part of the Apparatus kept at a particular place, specified in writing to the Licensee, for such period as may be specified in the notice; or
 - (ii) amend a provision of the Licence in such manner as may be specified in writing to the Licensee; or
 - (iii) revoke the Licence.
- (4) Without prejudice to paragraph (1) of this Regulation, at the request of the Licensee, the Director may, if he or she 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 Director specifying the amendment and given to the Licensee or sent to the Licensee at the address specified in the Licence or notified to the Director pursuant to the Licence.

Powers of Authorised Officers

9. (1) The Director may appoint such persons as he or she considers appropriate to be Authorised Officers for the purposes of these Regulations. Such Authorised Officers shall have the powers and obligations conferred on them by the

Telecommunications (Miscellaneous Provisions) Act, 1996 or such other legislation as may be enacted from time to time.

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, 10.1- 10.7 GHz or 24.5-26.5 GHz:
- (i) a fee of IR£600 (€762) per MHz is payable on issue of the Licence;
- (ii) a fee of IR£1,050 (€1,333) per MHz is payable on first renewal;
- (iii) a fee of IR£1,500 (€1,905) per MHz is payable annually thereafter.
- (b) Where the Licence concerned relates to Apparatus used in the frequency band 2.4-2.5 GHz:
- (i) a fee of IR£300 (€381) per MHz is payable on issue of the Licence;
- (ii) a fee of IR£525 (€666) per MHz is payable on first renewal;
- (iii) a fee of IR£ 750 (€952) per MHz is payable annually 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 10(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 (4), 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 Director in accordance with the provisions of the Licensing Regulations.
- (5) The fee specified in paragraphs (1), (2), (3) and (4) of this Regulation shall be paid to the Office of the Director of Telecommunications Regulation by way of banker's draft or such other means and on such terms as the Director 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 Director 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 Director shall bear no responsibility for such costs, expenses or commitments.

SCHEDULE

DIRECTOR OF TELECOMMUNICATIONS REGULATION

**WIRELESS TELEGRAPHY ACT, 1926
WIRELESS TELEGRAPHY (FIXED WIRELESS POINT TO MULTI-POINT
ACCESS LICENCE) REGULATIONS, 1999**

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.

I, Etain Doyle, Director of Telecommunications Regulation, in exercise of the powers conferred on me by section 5(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), hereby grant 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 ____, ____.
2. In the Licence the expressions set out below have the meanings given to them below (and other grammatical forms of the expressions have corresponding meanings):

“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);

* delete as appropriate

“the Acts” means the Telegraph Act, 1869 and Wireless Telegraphy Acts, 1926 to 1988;

“Apparatus” means the apparatus for wireless telegraphy specified in the First Schedule to the Licence operating in the frequency bands designated by the Director for FWPMA using Radio Point to Multi-point Systems for the provision of a telecommunications access network and associated services;

“Apparatus Record” means a list maintained by the Licensee specifying the premises at which each part of the Apparatus is installed and used;

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

“the Director” means the Director of Telecommunications Regulation;

“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 the authorisation herein granted;

“Licensed Services” means the telecommunications services authorised by a Telecommunications Licence;

“Licensee” means the holder of the Licence;

“Licensing Regulations” means the European Communities (Telecommunications Licenses) Regulations, 1998 (SI No 96 of 1998);

“Radio Point to Multi-point Systems” means radio systems operating at frequencies above 1 Gigahertz, in bands designated by the Director 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);

“Telecommunications Licence” means a licence under section 111(2) of the Act of 1983 in respect of which the Licensee has been and is designated by the Director as a person entitled to provide telecommunications services using FWPMA;

“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.

3. The Licensee is hereby authorised to keep and have possession of, install, maintain, work and use, at the places specified in the Apparatus Record, the Apparatus, for the purpose of providing FWPMA.
4. Where the address of the Licensee changes, the Licensee shall, as soon as possible thereafter, notify the Director in writing of the change.
5. Nothing in the Licence shall absolve the Licensee from any requirement in law to obtain any consents, permissions, authorisations or other licences that may be necessary for the discharge of the obligations, or the exercise of the entitlements, of the Licensee under the Licence.
6. It shall be a condition of the Licence:–
 - (a) That the Licensee is the holder of a Telecommunications Licence.
 - (b) That the Apparatus shall be used only for the purpose of the provision of Licensed Services using FWPMA and a FWPMA Network operated by the Licensee.
 - (c) That the Apparatus Record is kept up to date and is made available to the Director within two working days of any request therefor by the Director;
 - (d) That the Apparatus shall be used only at a place specified in the Apparatus Record;

- (e) That the Apparatus shall be used only on such portion of the radio frequency spectrum specified in the Second Schedule to the Licence and that such radio frequency spectrum shall be used in an efficient manner.
- (f) That the Apparatus shall comply with national or European Community legislation regarding type approval, electromagnetic compatibility and the safety of electrical equipment.
- (g) That the Licensee shall observe good radio site engineering practices in accordance with ETSI Technical Report, ETR053, and any revisions thereof.
- (h) That, where the Director -
 - (i) is satisfied that the use of any of the Apparatus is causing, or is likely to cause, interference with any other apparatus for wireless telegraphy; and
 - (ii) gives to the Licensee or sends to the Licensee, at the address specified by the Licensee, a notice requiring that the Apparatus or the use thereof be modified or adjusted before such day and in such manner as may be specified in the notice or that the use thereof shall cease on and from such day, or during such period or such hour(s) on such day(s), as may be specified in the notice,

the Licensee shall ensure that the notice is complied with.

- (i) That the Licensee shall ensure that the installation of the Apparatus is effected, and its maintenance and operation is carried on, in such manner as to ensure that the safety of persons or property is not endangered and that the use of the Apparatus does not result in harmful interference with any other apparatus for wireless telegraphy.

- (j) That the Licensee shall ensure that the erection and positioning of apparatus consisting of antennae and support structures for antennae is effected in accordance with law.
- (k) That the Licensee shall ensure that non-ionising radiation emissions from the FWPMA Network 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 he or she complies with any radiation emission standards adopted and published by ICNIRP or its successors from time to time, any standards of the European Committee for Electrotechnical Standards and any standards specified by national and European Community law.
- (l) That the Licensee shall ensure that, save as may be required by law, access to Apparatus is restricted to the Licensee, employees or agents of the Licensee and persons authorised by or on behalf of the Licensee to have such access.
- (m) That the Licensee shall take all reasonable measures to prevent a communication or information which the Licensee and employees and agents of the Licensee and users of the service are not authorised to receive from being received by means of the Apparatus.
- (n) That, if any such communication or information as aforesaid is so received, the Licensee shall not, and shall endeavour to ensure that employees and agents of the Licensee do not:-
 - (i) make known its contents, origin, destination or existence or the fact of such receipt, to a person (other than the Director or a member of staff of the Director), or
 - (ii) reproduce it in writing or otherwise copy it or make use of it.

- 7
- (1) The Director may amend the Licence from time to time where objectively justifiable and in a proportionate manner. Any amendment shall be made in accordance with Regulation 8(4)(a), and Regulation 8(6), of the Licensing Regulations, and any other requirements under applicable national or European Community law.
 - (2) Without prejudice to Condition 7(1) of the Licence, the Director may, in accordance with Regulation 8(6) of the Licensing Regulations, suspend or revoke the Licence in any of the following circumstances:
 - (i) where a condition of the Licence (including a condition imposed under section 8 of the Act of 1972) is contravened;
 - (ii) where the Licensee fails or refuses to comply with a direction of the Director or hinders or obstructs an authorised officer lawfully appointed by the Director in the performance of his or her functions;
 - (iii) where the Licensee contravenes any of the Acts or any regulations made thereunder;
 - (iv) where the Application made by the Licensee is or was false or misleading in a material respect;
 - (v) where, in the opinion of the Director, such revocation or suspension is required for the purpose of complying with national or European Community law;
 - (vi) where the Licensee is an individual, a receiving order for bankruptcy has been made in respect of the estate of the Licensee;

- (vii) where the Licensee is a company within the meaning of the Companies Acts 1963 to 1990, an order for its winding up has been made or a resolution for voluntary winding up (within the meaning of those Acts) has been passed by the company otherwise than for the purpose of a merger or solvent reconstruction, or a receiver of the property of the company has been appointed or an examiner to the company has been appointed.
- (3) Where the Director 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, he or she may, in accordance with Regulation 8(6) of the Licensing Regulations:-
- (i) suspend the Licence, in so far as it applies to a particular part of the Apparatus kept at a particular place, specified in writing to the Licensee, for such period as may be specified; or
 - (ii) amend a provision of the Licence in such manner as may be specified in writing to the Licensee; or
 - (iii) revoke the Licence.
- (4) Without prejudice to condition 7(1) of the Licence, at the request of the Licensee, the Director may, if he or she 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 Director specifying the amendment and given to the Licensee or sent to the Licensee at the address specified in the Licence or notified to the Director pursuant to the Licence.

FIRST SCHEDULE

The Apparatus.

SECOND SCHEDULE

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

ETAIN DOYLE
Director of Telecommunications
Regulation

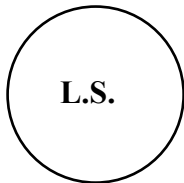
Dated

GIVEN under my hand, this
10th day of September 1999

Etain Doyle
Director of Telecommunications
Regulation

The Minister for Public Enterprise consents to the making of the foregoing Regulations.

GIVEN under the Official Seal of the
Minister for Public Enterprise
this 7th September 1999



Mary O'Rourke, 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.