

STATUTORY INSTRUMENTS

S. I. No. 529 of 2003

**WIRELESS TELEGRAPHY (Multipoint Microwave Distribution System)
REGULATIONS 2003.**

Published by the Stationery Office, Dublin.

**To be purchased through any Bookseller or directly from the
Government Publications Sales Office, Sun Alliance House, Molesworth
Street, Dublin 2.**

Price: €3.05

(Prn. 1149)

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), 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) and 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. These Regulations may be cited as the Wireless Telegraphy (Multipoint Microwave Distribution System) Regulations, 2003.

Interpretation

2. (1) In these Regulations, unless the context otherwise requires –
 - “Act of 1926” means the Wireless Telegraphy Act, 1926 (No. 45 of 1928);
 - “Act of 2002” means the Communications Regulation Act, 2002 (No. 20 of 2002);
 - “Authorisation Regulations” means the European Communities (Electronic Communications Networks and Services)(Authorisation) Regulations 2003, (S.I. No. 306 of 2003);
 - “Authorised Officer” means a person appointed under Regulation 14 of these Regulations to be an authorised officer;
 - “Digital Roll-Out Plan” means the digital roll-out plan specified in Part 5 of the licence;
 - “Commission” means the Commission for Communications Regulation established under the Act of 2002;
 - “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 or
- (c) strikes or other industrial action (unless the action affects only the licensee);

“Framework Regulations” means the European Communities (Electronic Communications Networks and Services)(Framework) Regulations 2003 (S.I. No. 307 of 2003);

“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;

“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;

“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 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

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

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

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 that originates in the State authorised for the time being by law ;

“Licensee” means a holder of a licence;

“Multipoint Microwave Distribution System” means a system of wireless telegraphy apparatus used for the retransmission of programme services on a point to multipoint basis at frequencies of 1 gigahertz or above;

“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;

“Protected Area” means an area defined in Part 11 of the licence;

“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 as regards a multipoint microwave distribution system, a feeder connecting a subscriber’s antenna and downconverter to a system outlet or, where the latter is not used, directly to the subscriber's equipment.

“System”, in relation to a licence, means a system of wireless telegraphy apparatus 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 2 of the licence;

“System Outlet”, in relation to a licence, means apparatus for connecting a subscriber’s feeder to a receiver lead;

- (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 Multipoint Microwave Distribution System for the distribution of licensed programme services or for such other purposes as are specified in the licence.

Licence Application

4.
 - (1) An application for a licence shall be in the form specified from time to time by the Commission and subject to such open, transparent, non-discriminatory, and proportionate conditions as the Commission sees fit.
 - (2) The Commission may refuse to grant a licence to person who fails to notify under Regulation 4 of the Authorisation Regulations

Addresses for notices

5.
 - (1) Every licensee shall on the grant of his or her licence furnish in writing to the Commission the address and, where appropriate, fax number and e-mail address, to which notices and other documents under these Regulations may be delivered or sent by post or by telecommunications services, to him or her by or on behalf of the Commission and shall, as occasion requires,

likewise furnish any change of address or fax number or e-mail address, and such notice or document delivered to, or sent by post, or by such telecommunications services, to such address or fax number or e-mail address so furnished shall be deemed for the purposes of these Regulations to have been duly served by the Commission.

- (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, or the sender's facility for the reception of electronic mail generates a message confirming receipt of the electronic mail.

Form of licence

6. 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

7. 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, and subject to any amendment or suspension thereof, continue in force until 18 April 2014 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

8. (1) The Commission will, after 18 April 2010, 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 Commission 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 Commission, renew any such licences which are in force on that date for a further period of up to 5 years from 19 April 2014.

(2) Where the Commission makes a determination under paragraph (1), not to renew a licence, it 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

9. (1) A fee shall be payable by the holder of a licence in respect of a multipoint microwave distribution system for each licence year or part thereof, in which the licence continues in force.
- (2) The annual fee shall be calculable by the following formula;
- $$X/Y \times (\text{€}1,905 \times N \times BW);$$
- Where;
- X is the number of homes passed for that licence year or the final figure, both as defined in Part 5 (1) of the licence;
- Y is the number of homes having one or more televisions in the State as published by the Commission in its quarterly key data report on the Irish Communications Market in respect of the final quarter of each calendar year;
- N is the number of approved frequency channels, under Regulation 10(3), available for use in the licensed area by the licensee;
- BW is the amount of spectrum used by each frequency channel measured in megahertz (MHz).
- (3) The fee will be payable from the coming into operation of these Regulation until the anniversary of the grant of the licence on a pro rata basis and thereafter annually in advance on the anniversary of the grant of the licence.
- (4) The fee specified in this Regulation shall be paid to the Commission by way of banker's draft or by such other means and on such terms as the Commission may decide.
- (5) 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.
- (6) 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.

Interest

10. If a fee or any part thereof payable by the licensee under Regulation 9 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.

Restrictions on Licensee

11. A licensee shall not -

- (1) Place any restriction on the make or type of apparatus for wireless telegraphy which may be used to receive licensed programme services;
- (2) Without the prior consent in writing of the Commission (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 Commission under this subparagraph, may be subject to such further conditions as the Commission considers appropriate in the circumstances.
- (3) Use any frequency channels for the purpose of the system other than frequency channels which have been approved of by the Commission for use for such purpose.
- (4) Where he or she is the holder of a licence in respect of a multipoint microwave distribution system in the 2500 megahertz to 2686 megahertz, install, or agree to the installation of, a system outlet for such a system in any protected area. The Commission will not protect any system outlet installed in a protected area from harmful interference.

Information and Inspections

12. Notwithstanding the information required by the Commission under Regulation 18 of the Authorisation Regulations a licensee shall-

- (1) provide to the Commission, such information as the Commission considers necessary to verify compliance with the conditions of the licence or part thereof;
- (2) provide to the Commission such information as the Commission considers necessary to allow for the effective management of the radio frequency spectrum;
- (3) provide assistance to persons appointed by the Commission and holding such qualifications as may be specified by the Commission, for the purposes of performing a technical audit of the system to which his or her

licence relates. Any such audit shall relate to such matters and be in such format as the Commission may so direct and will be notified to the licensee, by notice in writing.

- (4) When the Commission has requested that a technical audit be carried out by the licensee pursuant to paragraph 3 of this Regulation, the licensee shall furnish the full written report to the Commission not later than 60 days after the request under paragraph 3.

Sanctions for Breach of Licence

13. (1) Where the Commission finds that a licensee does not comply with one or more of the conditions of the licence conferred on it, the Commission shall notify the holder of those findings and give the licensee a reasonable opportunity to state its views or remedy any breaches within,
 - (a) one month after notification,
 - (b) a shorter period agreed by the holder or stipulated by the Commission in the case of repeated breaches, or
 - (c) a longer period decided by the Commission.

The Commission may publish, in such manner as it thinks fit, any notification given by it under this Regulation subject to the protection of the confidentiality of any information which the Commission considers confidential.

- (2) Where, at the end of the period referred to in paragraph (1), the Commission is of the opinion that the person concerned has not complied with the condition or direction, the Commission may, subject to Regulation 16(15) of the Authorisation Regulations apply to the High Court for such order as may be appropriate by way of compliance with the condition or direction. The Court may, as it thinks fit, on the hearing of the application make an order compelling compliance with the condition or direction or refuse the application. An order compelling compliance shall stipulate a reasonable period for the person to comply with the condition or direction.
- (3) Where the Commission has given a notice under Section 44 of the Act of 2002 in respect of a failure by a person to comply with a condition of the licence the Commission shall not make an application for an order under this Regulation to the High Court to compel compliance by the person with the condition.

Licence revocation

14. (1) Without prejudice to Regulation 13, the Commission may, in cases of serious and repeated breaches of the conditions of the licence revoke the licence;
 - (a) if the licensee notifies the Commission that he or she does not intend to distribute the licensed programme services in the licensed area;
 - (b) if the licensee agrees with the Commission in writing that the licence should be revoked;
 - (c) if the Commission 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 Commission with information that was false or withheld any material information requested; or
 - (d) where, in the opinion of the Commission, such revocation is required for the purpose of complying with any laws for the time being in force;
- (2) Prior to any such revocation, the Commission 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.

Powers of Authorised Officers

15. 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.
 - (1) 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 (2) shall, if so requested by any person thereby affected, produce such certificate to that person for inspection.

- (2) 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.

Prevention of Interference

16. (1) If the Commission –
 - (a) is satisfied that the use of the system or any part thereof is causing or represents an immediate and serious threat to public safety, public security or public health, or will create serious economic or operational problems for other providers or users of electronic communications networks or services, 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 Commission.

Compliance

17. The licensee shall comply with any direction, requirement or notice given to him or her by the Commission 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.

Variation of Licence

18. (1) The Commission may amend the rights, conditions and procedures under the licence, where such amendments are made in objectively justified cases and in a proportionate manner.
- (2) Before making any such amendment the Commission shall -
 - (a) give notice in such manner as it considers appropriate, of its intention, giving interested parties including users and consumers to make representations on the proposed amendments within such period (not, except in exceptional circumstances, being less than 28 days from the date of the notice), as may be specified in the notice.

- (b) Have regard to any representations made to it pursuant to subparagraph (a).

Force majeure events

- 19. 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:
 - (1) the licensee shall, as soon as reasonably practicable, notify the Commission 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
 - (2) 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.

Transitional Arrangements

- 20. A licence issued under the Wireless Telegraphy (Programme Services Distribution) Regulations 1999 (S.I. No. 73 of 1999) in force immediately before the commencement of these Regulations will continue in force as if it had run continuously from the date of its issue.

Revocation

- 21. The following are revoked:
 - (1) The Wireless Telegraphy (Programme Services Distribution) Regulations 1999, (S.I. No. 73 of 1999).

SCHEDULE

WIRELESS TELEGRAPHY ACT, 1926

PROGRAMME SERVICES DISTRIBUTION LICENCE

1. The licensee specified in Part 1 of this licence is hereby authorised to
 - (a) keep, have possession of, install, maintain, work and use the system specified in Part 2 to distribute the licensed programme services.
 - (b) keep, have possession of, install, maintain, work and use any apparatus for wireless telegraphy for the purposes of enabling the provision of additional services, otherwise lawfully authorised in the area described in Part 3.
2.
 - (1) The licensee shall distribute such licensed programme services as are specified in Part 6 by analogue transmission:
 - (a) unless the Commission gives prior written consent in writing; or
 - (b) unless the Commission 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 and may facilitate the distribution of such services by or on behalf of the holders of other licences.
3. This licence shall come into operation on the date specified in Part 4 and shall, unless previously surrendered by the licensee or unless or until it is revoked by the Commission, and subject to any amendment or suspension thereof, continue in force from the date specified in Part 4 to the _____ day of _____, ____.
4.
 - (1) The system shall be designed, constructed, installed, maintained and used so that it does not represent a threat to public safety, public security or public health, or pose serious operational problems to other providers or users of electronic communications networks or services.
 - (2) If the Commission 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 Commission and shall otherwise take such measures as may be specified by the Commission in the notice.

5. Nothing in this licence shall authorise the licensee to do any act which is an infringement of any copyright or other legal right.
6.
 - (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.
7. The licensee shall comply with:
 - (1) the technical conditions for analogue transmission systems set out in Part 8;
 - (2) the technical conditions for digital transmission systems set out in Part 9;
 - (3) the conditions for the operation of conditional access systems set out in Part 10;
 - (4) any other technical conditions notified to the licensee in writing by the Commission;

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

12. The provisions of the Wireless Telegraphy (Multipoint Microwave Distribution System) Regulations, 2003, and the conditions set out and referred to in the licence supersede any prior communications with the Commission regarding licensed programme services and nothing in any guidance notes or other prior communications with the Commission shall be deemed incorporated into those Regulations or in to the licence.
13. Definitions;

“Additional Service” means a service that consists of the distribution by the licensee of a service other than programme services or programme associated services by wireless telegraphy by means of the use of the spare capacity within the signals carrying any licensed programme service.

“Commission” means the Commission for Communications Regulation established under the Act of 2002;

“Digital Roll-Out Plan” means the digital roll-out plan specified in Part 5 of the licence;

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

“Licensed Programme Service” means any one or more 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 that originates in the State 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;

“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 1

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Part 2

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Protected Area

GIVEN under the official seal of the Commission for Communications Regulation this day
of **2003**

On behalf of the Commission of 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
 day of **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 for apparatus for wireless telegraphy used for the purposes of distributing programme services and television programme retransmission systems and for the payment of licence fees.