

STATUTORY INSTRUMENTS

S. I. No. 73 of 1999

**WIRELESS TELEGRAPHY (PROGRAMME SERVICES DISTRIBUTION)
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), as adapted by the Transport, Energy and Communications (Alteration of Name of Department and Title of Minister) Order, 1997 (S.I. No. 299 of 1997), and, pursuant to subsection (8) of the said section 4, with the consent of the Minister for Public Enterprise, hereby make the following Regulations.

Citation and commencement

1. These Regulations may be cited as the Wireless Telegraphy (Programme Services Distribution) Regulations, 1999.

Interpretation

2. (1) In these Regulations -

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

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

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

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

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

“force majeure event” means any of the following:

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

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

distribution in that licence year, by the licensee, of the licensed programme services;

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

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

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

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

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

“licence year” means a period of 1 year beginning on the date of commencement of the licence and each subsequent period of 1 year

beginning immediately after the end of the previous period of 1 year occurring during the licence term ;

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

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

- (a) television broadcasts (within the meaning of the Wireless Telegraphy (Television Programme Retransmission and Relay) Regulations, 1991 (S.I. No. 252 of 1991)) that originate in another Member State of the European Communities and that fall within the fields coordinated by Council Directive 89/552/EEC¹ of 3 October 1989 as amended by Council Directive 97/36/EEC² of 30 June 1997;
- (b) a television programme service (within the meaning of the Regulations referred to in paragraph (a)) that originates in a state (other than a Member State of the European Communities) being a party to the European Convention on Transfrontier Television done at Strasbourg on the 5th day of May, 1989 and that complies with the terms of the Convention;
- (c) a programme service, other than a programme service to which paragraphs (a), (b) or (d) relate, approved of , for the time being, by the Director;
- (d) a programme service that originates in the State, other than a programme service to which (a), (b) or (c) relate, authorised, for the time being, by law;

“licensee” means a holder of a licence;

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

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

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

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

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

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

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

“subscriber’s feeder” means:

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

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

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

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

(2) In these Regulations,

- (a) a reference to a Regulation or a Schedule is to a Regulation of, or a Schedule to, these Regulations, unless it is indicated that reference to some other enactment is intended.
- (b) a reference to a paragraph or subparagraph is to the paragraph or subparagraph of the provision in which the reference occurs unless it is indicated that reference to some other provision is intended.
- (c) a reference to an enactment or regulation shall be construed as a reference to the enactment or regulation as amended or extended by or under any subsequent enactment or regulation.

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

Licences to which these Regulations apply

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

Addresses for notices

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

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

Form of licence

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

Continuance in force of licence

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

Renewal of licence

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

(2) Where the Director makes a determination under paragraph (1), not to renew a licence, he or she may, by notice in writing served on the licensee, require him or her, from the date of receipt of the notice until the expiration of the licence

term, to comply with such measures relating to the upkeep of the system as may be specified in the notice.

Licence fees

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

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

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

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

(5) Where a statement of gross revenue is furnished by the licensee in accordance with paragraph (4), and 3.5% of such revenue differs by any amount from the sum of the fees paid by the licensee in accordance with paragraph (3) in respect of the 4 quarters which comprise the year to which the statement relates -

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

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

Interest

9. If a fee or any part thereof payable by the licensee under Regulation 8 is not paid by the licensee within 7 days of the date on which it falls due under that Regulation, then interest shall be payable by the licensee at the rate per annum

standing specified for the time being in section 26 of the Debtors (Ireland) Act, 1840 (1840 c.105), on the fee or part thereof in respect of the period between the date when such fee or part fell due and the date of payment of such fee or part.

Payments to Director

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

Restrictions on a licensee

11. A licensee shall not -

- (a) receive any money or other consideration from any subscriber in respect of the distribution by the licensee of the licensed programme services, other than the charges for distributing the licensed programme services referred to in Regulation 15 (excluding value added tax, the licensee's usual charges for installing or providing apparatus for receiving the licensed programme services distributed by the licensee under the licence and payments for pay per view services) and payments for pay per view services);
- (b) place any restriction on the make or type of apparatus for wireless telegraphy which may be used to receive licensed programme services;
- (c) connect to a headend a system outlet in a place not within the licensed area, unless with the prior consent in writing of the Director;
- (d) refuse to supply licensed programme services to a member of the public within the licensed area if, in the opinion of the Director, the refusal is unreasonable;
- (e) without the prior consent in writing of the Director (such consent not to be unreasonably withheld), assign the licence or any of the powers, duties or functions conferred by it or lease, or let the licence or otherwise transfer to another person the benefit or any benefits of the licence. Any consent to transfer granted by the Director under this subparagraph, may be subject to such further conditions as the Director may reasonably considers appropriate in the circumstances;
- (f) use any frequency channels for the purpose of the system other than frequency channels which have been approved of by the Director for use for such purpose;
- (g) where he or she is the holder of a licence in respect of a television programme retransmission system, install, or agree to the installation of, a system outlet for such a system] in any area to which a licence

within the meaning of the Wireless Telegraphy (Wired Broadcast Relay Licence) Regulations 1974 (S.I. No. 67 of 1974), or a licence in respect of a system for the distribution of licensed programme services by means of a wired broadcast relay system to which these Regulations, relates, except—

- (i) with the prior approval of the Director and the agreement of the licensee under those Regulations, or
- (ii) in any case where the Director is of the opinion that the licensee under those Regulations has unreasonably refused to provide a service under that licence, with the consent of the Director.

Competition

12. The licensee shall not engage in any practice or enter into any arrangement that has the object or effect of preventing, restricting or distorting competition in the distribution of licensed programme services in respect of which a licence or licences are in force. If a finding is made by a Court or other competent authority, that the licensee has engaged in any such practice, or entered into any such arrangement, the Director may, in respect of any such finding, invoke the powers conferred upon her pursuant to Regulation 18.

Messages unintentionally received

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

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

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

Information and inspections

14. (1) A licensee shall -

- (a) furnish to the Director such information relating to the distribution of the licensed programme services as the Director

may, from time to time, by notice in writing served on the licensee, require;

- (b) keep all or any records which the Director, from time to time, informs the licensee that he or she requires to be kept;
- (c) within 1 month of the expiration of the 6th month after the date of commencement of the licence and within 1 month of the expiration of each subsequent period of 6 months, beginning immediately after the end of the previous period of 6 months, occurring during the licence term, furnish to the Director a report in such form as may be specified:
 - (i) specifying in relation to the date of the report the total number of system outlets to which the licensed programme services are distributed, the total number of devices incorporating specialised decoding means where subscribers are provided with such, the total number of subscribers to an analogue transmission system and the total number of subscribers to a digital transmission system operated in accordance with the licence; and
 - (ii) reporting, in relation to the period of 6 months immediately preceding the month in which such report is furnished, on the quality of the distribution of the licensed programme services;
- (d) upon becoming aware of the occurrence of any insolvency related event or, of any event likely to materially affect his or her ability to comply with the provisions of the Regulations, or the conditions set out or referred to in the licence, notify the Director of that fact;
- (e) within 28 days after the occurrence of any of the following events notify the Director of such an occurrence:
 - (i) any change in the persons having control of the licensee, or in the directors of the licensee or in the directors of any body corporate having control of the licensee; and
 - (ii) any change in the persons having any interest in the licensee or in a body corporate having direct or indirect control of the licensee such that a person or group of persons acting together
 - (I) has acquired an interest of more than 20% in aggregate in the licensee; or

- (II) having (or having had) an interest of more than 20% in aggregate in the licensee, has increased or decreased that interest;

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

- (f) (i) where the licensee is incorporated in the State:
 - (I) within 7 days after the date upon which it is required to be filed with the Registrar of Companies, pursuant to section 127 of the Companies Act, 1963, furnish the Director with a copy of the annual return of the licensee or any person who controls the licensee ;
 - (II) within 7 days of its circulation to the shareholders of the licensee, furnish the Director with a copy of the annual report and accounts of the licensee or any person who controls the licensee;
- (ii) where the licensee is not incorporated in the State, furnish the Director with a copy of any returns, reports, accounts, or other information required to be prepared by the licensee, or any person who controls the licensee, in accordance with any laws under which the licensee is incorporated or, at the request of the Director, a document to the like effect of any of the documents referred to at subparagraph (i), at such times and in such forms as the Director may specify from time to time in a notice served on the licensee;
- (g) on request from an authorised officer, permit the authorised officer at all reasonable times to inspect any records which the Director requires to be kept or which are kept by the licensee in connection with the distribution of the licensed programme services;
- (h) on request by an authorised officer, make available any test equipment or apparatus necessary to facilitate testing by the authorised officer of the system.

(e) distribute such programme services as are required to be distributed under the licence;

(f) within 1 month of the expiration of the sixth month after the date of commencement of the licence and within one month of the expiration of each subsequent period of six months beginning immediately after the end of the previous period of six months occurring during the licence term furnish to the Director a report in such form as may be specified:

(i) specifying in relation to the date of the report the total number of system outlets to which the licensed service is distributed, [the total number of output ports of devices incorporating specialised decoding means where subscribers are provided with such], the total number of subscribers to [an analogue transmission system] and the total number of subscribers to [a digital transmission system] operated in accordance with the licence;

(ii) reporting, in relation to the period of 6 months immediately proceeding the month in which such report is furnished, on the quality of the distribution of the licensed services.

(g) upon becoming aware of the occurrence of any insolvency related event or of any event likely to materially affect his or her ability to comply with the terms or conditions of the licence, notify the Director of that fact.

(h) within 28 days after the occurrence of any of the following events notify the Director of such an occurrence:

(i) any change in the persons having control of the licensee, or in the directors of the licensee or in the directors of any body corporate having control of the licensee; and

(ii) any change in the persons having any interest in the licensee or in a body corporate having direct or indirect control of the licensee such that a person or group of persons acting together -

(III) has acquired an interest of more than 20% in aggregate in the licensee; or

(IV) having (or having had) an interest of more than 20% in aggregate in the licensee, has increased or decreased that interest.

(h) in case the licensee is incorporated in the State:

(III) within 7 days after the date upon which it is required to be filed with the Registrar of Companies, pursuant to section 127 of the Companies Act, 1963, furnish the Director with a copy of the annual return of the licensee;

(IV) within 7 days of circulation to the shareholders of the licensee, furnish the Director with a copy of the annual report and accounts of the licensee;

- (ii) in case the licensee is not incorporated in the State, furnish the Director with a copy of any returns, reports, accounts or other information required to be prepared by the licensee in accordance with any laws under which the licensee is incorporated or, at the request of the Director a document to the like effect of any of the documents referred to at subparagraph (i), at such times and in such forms as the Director may specify from time to time in a notice served on the licensee.

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

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

Price control

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

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

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

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

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

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

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

Technical audits

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

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

Consumer interests

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

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

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

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

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

(5) The licensee shall ensure that the licensed programme services distributed in accordance with the licence comply with any requirements with regard to electronic

programme guides notified to the licensee from time to time by the Director and with any other laws for the time being in force.

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

Sanctions for breach of licence

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

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

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

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

and may publish the notice.

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

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

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

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

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

Licence revocation

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

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

the licensee in the new circumstances, the Director would not award the licence to the licensee because of the change;

- (e) where, in the opinion of the Director, such revocation is required for the purpose of complying with any laws for the time being in force; or
- (f) if any insolvency related event occurs in respect of the licensee.

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

Authorised officer

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

Prevention of interference

21. If the Director -

(a) is satisfied that the use of the system or any part thereof is causing or is likely to cause interference with any wireless telegraphy apparatus used for the purpose of any safety of life service or for any purpose on which the safety of any person or of any vessel, aircraft or vehicle may depend, and

(b) serves on the licensee a notice requiring that the use of such system or part as may be specified in the notice cease forthwith, or on or before such date and time as may be so specified,

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

Compliance

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

Variation of licence

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

(a) with the consent of the licensee; or

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

Limitation of licence

24. (1) A licence does not grant to the licensee any right, interest or entitlement other than the right to keep, have possession of, install, maintain, work and use the system to distribute licensed programme services in the licensed area.

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

Force majeure events

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

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

SCHEDULE

WIRELESS TELEGRAPHY ACT, 1926

PROGRAMME SERVICES DISTRIBUTION LICENCE

1. The licensee specified in Part I of this licence is hereby authorised to keep, have possession of, install, maintain, work and use the system specified in Part II to distribute the licensed programme services in the area described in Part III.

2. (1) Subject to paragraph 9 (3), the Director shall not, prior to _____, _____, grant a licence to any third party, to keep, have possession of, install, maintain, work or use any equivalent system to distribute a licensed programme services in the licensed area.

(2) For the avoidance of doubt, nothing in this licence shall be construed as prohibiting the Director from -

- (a) granting, on or after the date specified in subparagraph (1), a licence to any third party to keep, have possession of, install, maintain, work or use any equivalent system to distribute licensed programme services in all or part of the licensed area; or
- (b) granting, prior to the date specified in subparagraph (1), a licence to any third party to keep, have possession of, install, maintain, work or use a system other than any equivalent system to distribute a licensed programme services in all or part of the licensed area.

3. The licensee shall be responsible for obtaining such way leave and other approvals, consents, licences, permissions and authorities as may be necessary for the installation, maintenance, work and use of the system.

4. (1) The licensee shall distribute such licensed programme services as are specified in Part VI and VII by analogue transmission:

- (a) unless the Director gives prior written consent in writing; or
- (b) unless the Director directs the licensee, by notice in writing served on the licensee, to discontinue analogue transmission of such of those licensed programme services as are specified in the notice.

(2) The licensee may distribute programme services to the holders of other licences whether inside or outside the licensed area to which his or her licence relates

and may facilitate the distribution of such services whether inside or outside that licensed area by or on behalf of the holders of other licences.

5. This licence shall come into operation on the date specified in Part IV and shall, unless previously surrendered by the licensee or unless or until it is revoked by the Director, and subject to any suspension thereof, continue in force from the date specified in Part IV to the _____ day of _____, __.

6. (1) The system shall be designed, constructed, installed, maintained and used so that no avoidable harmful interference with any authorised apparatus for wireless telegraphy, and no avoidable harmful effect on any authorised telegraphic line or authorised telecommunication service is caused.

(2) If the Director is satisfied that the licensee has failed to comply with sub-paragraph (1) of this paragraph and notifies the licensee in writing of that fact, the licensee shall cease to use the system until further notice from the Director and shall otherwise take such measures as may be specified by the Director in the notice.

7. Nothing in this licence shall authorise the licensee to do any act which is an infringement of any copyright or other legal right.

8. The licensee shall maintain separate accounts in respect of the distribution by him or her of licensed programme services.

9. (1) The licensee shall, by the dates specified in the digital roll-out plan, design, construct, install, work and put into use a digital transmission network.

(2) The licensee shall be responsible for obtaining all approvals, consents, licences, permissions and authorities required by law to design, construct, install, work and put into use such a network.

(3) If, within a period of 6 months after the dates specified in the digital roll-out plan, the licensee does not comply with the requirements specified in the plan, the Director may, without prejudice to any other powers or remedies he or she may have under the Wireless Telegraphy (Programme Services Distribution) Regulations, 1999, reduce the period of exclusivity granted to the licensee under paragraph (2) (1) for part or all of the area described in Part III by such period as the Director considers appropriate.

10. (1) The licensee shall publish the prices, terms and conditions for distributing, to a member of the public, licensed programme services and for installing or providing the means necessary to receive the licensed programme services and shall publish any changes to such prices, terms and conditions.

(2) The licensee shall provide copies of those prices, terms and conditions to the Director forthwith and to members of the public on request, in each case free of charge.

11. The licensee shall comply with:
- (a) the technical conditions for analogue transmission systems set out in Part IX;
 - (b) the technical conditions for digital transmission systems set out in Part X;
 - (c) the conditions for the operation of conditional access systems set out in Part XI;
 - (d) any other technical conditions notified to the licensee in writing by the Director;

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

12. The provisions of the Wireless Telegraphy (Programme Services Distribution) Regulations, 1999, and the conditions set out and referred to in the licence supersede any prior communications with the Director regarding licensed programme services and nothing in any guidance notes or other prior communications with the Director shall be deemed incorporated into those Regulations or in to the licence.

13. Definitions;

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

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

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

“licensed programme service” means any 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, other than a programme service to which paragraphs (a), (b) or (d) relate, approved of, for the time being, by the Director;
- (d) a programme service that originates in the State, other than a programme service to which (a), (b) or (c) relate, authorised, for the time being, by law;

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

“licensee” means a holder of a licence;

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

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

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

PARTS

Part I

Licensee

Part II

Licensed System

Part III

Licensed Area

Part IV

Licence Commencement Date

Part V

Digital Roll-Out Plan

Part VI

Programme Services Which Must Be Distributed

Part VII

Basic Programme Service

Part VIII

Addresses for Notices

Part IX

Technical Conditions for Analogue Transmission Systems

Part X

Technical Conditions for Digital Transmission Systems

Part XI

Conditions for the Operation of Conditional Access Systems

Given under my hand

this 25th day of March, 1999.

Etain Doyle
Director of Telecommunications Regulation

The Minister for Public Enterprise hereby consents to the foregoing Regulations.

Given under the Official Seal of the Minister for
Public Enterprise
this 25th day of March, 1999.

L.S.

Mary O'Rourke

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, for the regulation of wired broadcast relay and television programme retransmission systems and for the payment of licence fees.