

STATUTORY INSTRUMENT

S.I. No. 340 of 2003

**Wireless Telegraphy (Third Generation and GSM Mobile Telephony Licence)
(Amendment) Regulations, 2003**

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

Citation

1. These Regulations may be cited as the Wireless Telegraphy (Third Generation and GSM Licence) (Amendment) Regulations, 2003.
2. The Principal Regulations and these Regulations may be cited together as the Wireless Telegraphy (Third Generation and GSM Licence) Regulations, 2002 and 2003 and shall be construed together as one.
3. These Regulations will come into force on 25 July 2003.
4. The Principal Regulations are amended as follows by substituting regulations 2 to 12 with the following regulations;

“Interpretation

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

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

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

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

“Authorised Undertaking” means an undertaking deemed authorised under Regulation 4 of S.I. 306 of 2003

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

“Apparatus” means apparatus for wireless telegraphy operating in the 1900 MHz, 2000 MHz and 2100 MHz frequency bands for the purpose of the provision of a Third Generation mobile telephony service and in the 900 MHz and 1800 MHz frequency bands for the purpose of the provision of a GSM mobile telephony service and, in relation to a Licence, means apparatus to which the Licence relates;

“Authorised Officer” means a person appointed under Regulation 7 of these Regulations to be an authorised officer;

“EURIBOR” means the rate at which euro interbank term deposits are offered within the European Monetary Union zone by one prime bank to another, and in relation to any payment a reference to the prevailing EURIBOR means the rate prevailing at close of business on the date on which payment falls due;

“GSM and TACs Regulations” means the Wireless Telegraphy (GSM and TACS Mobile Telephony Licence) Regulations, 1997 (S.I No. 448 of 1997);

“GSM mobile telephony service” means a service consisting of the provision of a mobile telephony service of the kind referred to in the Annex to Council Recommendation 87/371/EEC of 25 June 1987*, that is to say, a pan-European, cellular, digital, land-based, mobile telephony service provided in either the 900 MHz frequency band and a 1800 MHz cellular, land based, public mobile telephony service of the kind referred to in the European Commission Communication of 23 November 1994, and conforming with the standard known as GSM and with the GSM Technical Specifications of the European

* OJ No J 196, 17/7/87, p. 35

Telecommunications Standards Institute, published by the National Standards Authority of Ireland and capable of providing international roaming capability;

“Licence” means a Licence under section 5 of the Act of 1926, to keep, have possession of, install, maintain, work and use Apparatus in a specified place in the State granted to the Authorised Undertaking under Regulation 4 of S.I 306 of 2003 authorising the provision of a mobile telephony service, and “A Licence” and “B Licence” have the meaning described in the tender documents published by the Office of the Director for Telecommunications Regulation in December 2001 as documents ODTR no. 01/99 and no. 01/100;

“Licensee” means the holder of a Licence;

“Mobile telephony service” means a GSM and Third Generation mobile telephony service;

“Principal Regulations” means the Wireless Telegraphy (Third Generation and GSM Licence) Regulations (S.I 345 of 2002);

“UMTS Decision” means Decision No. 128/1999/EC of the European Parliament and of the Council of 14 December 1998¹ on the co-ordinated introduction of a third generation mobile and wireless communications system in the Community and

“Third Generation mobile telephony service” means a mobile and wireless communications system based on a standard within the IMT-2000 system capable of supporting innovative multimedia services beyond the capability of second generation systems such as GSM, and capable of supporting the characteristics referred to in Annex 1 of the UMTS Decision.

(2) In these Regulations, a reference to an enactment or regulation may be construed as a reference to the enactment or regulation as amended or extended by or under any subsequent enactment or regulation.

¹ Official Journal L017, 22/01/1999 p. 0001 – 0007.

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

Application for Licences and Form of Applications and Licences

3. (1) An Application for a Licence will be made to the Commission and shall be in writing in such form as may be determined by the Commission.

(2) A person who makes an Application under paragraph (1) of this Regulation shall furnish to the Commission such information as the Commission may reasonably require for the purpose of its functions under these Regulations and, if the person, without reasonable cause, fails to comply with this paragraph, the Commission may, refuse to grant a Licence to the person.

(3) The Commission may grant a Licence in accordance with the provisions of Regulation of the Authorisation Regulations.

(4) Subject to Regulation 6 of these Regulations, a Licence shall be in the form specified in the Schedule to these Regulations with such variation (if any) (whether by addition, deletion or alteration) as the Commission may determine from time to time or in any particular case.

Duration and Renewal of Licences

4. (1) A Licence that has not been renewed shall (unless it has been revoked) be in force for the period of one year from the date on which it comes into operation and, unless renewed, shall then expire.

(2) Notwithstanding paragraph (1) of these Regulations where the licensee is a holder of a licence under these Regulations that licence shall not be renewed on the 21st anniversary after the first grant of the licence and shall then expire.

(3) A Licence may be renewed from time to time by the Commission under paragraph (4) of this Regulation.

(4) On application in writing by or on behalf of a Licensee to the Commission before the expiration of his or her Licence, the Commission may, by notice in writing given to the Licensee or sent to the Licensee at the address of the Licensee specified in the Licence or notified to the Commission by the Licensee in accordance with the Licence,

renew the Licence for the period of one year from the day following the expiration of the last previous period during which it was in force. 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.

(5) Notwithstanding paragraphs (1) of this Regulation, a provision contained within any Licence issued for the use of apparatus in the 900 MHz and 1800 MHz frequency bands that is granted or renewed on or after the 16th day of May, 2010, shall, where the Licensee was the holder of a Licence containing such a provision under the GSM and TACS Regulations, expire on the 15th day of May, 2011.

Conditions of Licences

5. It shall be a condition of a Licence:

1. that Licensee will ensure that it complies with the geographical and technical conditions contained within the Schedules one – 3 to this licence;
2. that Licensee will ensure that it makes payments of the spectrum access fees as outlined in the Regulations;
3. that licensee will ensure it complies with all the commitments contained within Schedule 5 of the licence being made by the licensee in the course of a comparative evaluation selection procedure;
4. that the Licensee may not, without the consent of the Commission (which shall not be unreasonably withheld) assign the Licence or any of the powers, duties or functions conferred by it or otherwise transfer any of the rights or obligations conferred by it;
5. that the Licensee shall ensure that non-ionising radiation emissions from each radio installation associated with the mobile telephony network operated by the Licensee for the purposes of the Service are within the limits specified by the guidelines published by the International Commission for Non-Ionising Radiation Protection (“ICNIRP”). and that it complies with any radiation emission standards adopted and published from time to time by ICNIRP, any standards of the European Committee for Electrotechnical Standards and any standards which may from time to time be specified by the European Union and that a mobile telephony system operated by the Licensee is not installed or operated at a location in a manner such as to be the cause

of the aggregate non-ionising radiation emissions exceeding the limits specified by the guidelines published by the ICNIRP and that it complies with any radiation emission standards adopted and published by ICNIRP or its successors from time to time, any radiation emission standards of the European Committee for Electrotechnical Standards and any radiation emission standards specified by national and EC law;

6. that if the address of the Licensee changes, the Licensee shall, as soon as possible, notify the Commission in writing of the change;
7. that the Licensee complies with any special conditions imposed under section 8 of the Act of 1972 and subject to which this Licence is deemed by subsection (3) of that section to be issued.

Enforcement, amendment, revocation and suspension

6 (1) The Commission may amend the Licence from time to time where objectively justifiable and in a proportionate manner. Any amendment shall be made subject to and in accordance with the Authorisation Regulations, and any other requirements under applicable national or European Community law.

(2) Where the Commission is of the opinion that, in the interest of the efficient and orderly use of apparatus for wireless telegraphy or radio frequency spectrum, it is desirable to do so, it may amend the licence in accordance with the Authorisation Regulations.

(3) Without prejudice to paragraph (1) of this Regulation, at the request of the Licensee, the Commission may, if it considers it appropriate to do so, amend the Licence by adding to, deleting from or altering the radio frequency spectrum specified in the Licence on which the Apparatus may be used. Any such amendment shall be effected by notice in writing from the Commission specifying the amendment and given to the Licensee or sent to the Licensee at the address specified in the Licence or notified to the Commission pursuant to the Licence.

Powers of Authorised Officers

- 7
- (1) The Commission may appoint such members of the staff of the Commission as it considers appropriate to be authorised officers to act for the purposes of these Regulations.
 - (2) A person appointed under paragraph (1) shall, on his or her appointment, be furnished by the Commission with a certificate of his or her appointment and when exercising a power conferred by paragraph (3) shall if so requested by any person thereby affected, produce such certificate to that person for inspection.
 - (3) For the purposes of the exercise by the Commission of its functions under these Regulations, an authorised officer may exercise the powers conferred on an authorised officer by section 39(3) of the Act of 2002.

Fees

- 8.
- (1) Subject to the methods of payment set out in this Regulation, the fees set out in Regulations 9 to 11 are payable in respect of Licences granted by the Commission pursuant to section 5 of the Act of 1926;
 - (2) Where the licensee was granted an “A” licence the fees set out below for the “A” licence shall be payable to the Commission in the manner set out below and where the Licensee was granted a “B” licence the fees set out below shall be payable to the Commission in the manner set out below;
 - (3) Fees shall be paid to the Commission of Communications Regulation by way of banker's draft or such other means and on such terms (including terms as to the place of payment) as the Commission may decide. Where the date of payment falls on a Saturday, a Sunday or a public holiday payment shall be made on or before the last working day before the date of payment;
 - (4) An amount payable by a person in respect of a fee under these Regulations may be recovered by the Commission from the person as a simple contract debt in any court of competent jurisdiction;
 - (5) If a Licence is suspended or revoked, the Licensee shall not be entitled to be repaid any part of the fee paid by the Licensee under these Regulations but shall still be liable to pay any sums (including interest) outstanding;

- (6) Where payment is not made in due time, interest shall accrue from the due date until the date on which payment is effected at the prevailing EURIBOR plus five percentage points;
- (7) The Commission may revoke the Licence if the bank, financial institution or equivalent that has provided the guarantee under paragraph (2)(ii) of Regulation 9, no longer holds the rating stated, unless the Licensee within a period of two months after the change in rating makes arrangements for the provision of another guarantee.

Spectrum access fees and guarantee for Spectrum in the 1920-1980 MHz and 2110-2170 MHz Frequency bands

9.
 - (1) The following provisions shall apply where the Commission offers a Licence to an applicant on foot of a competitive tender;
 - (2) Where an applicant has received notification of the Commission's intention to award a Licence to that applicant, the applicant shall, not later than 15 days after receipt of such notification:
 - (i) make an initial payment of €12,700,000 for the A Licence, or €44,400,000 for the B Licence, as part payment of the spectrum access Licence fee due under paragraph 8;
 - (ii) make arrangements for a guarantee payable on demand in favour of the Commission, and in a form defined by it, for an amount equivalent to the sum of the instalments under paragraphs 8 to 10 for the first 5 years of the Licence (if the Licence is renewed). The guarantee shall be valid for five years from the date of the award of the Licence. The guarantee shall be issued by a bank, investment bank, financial institution, insurance company or similar, which neither controls, nor is controlled by, the applicant, nor is controlled by a person who controls the applicant, and which is registered in the European Economic Area and has a minimum long-term debt A rating from Standard & Poors or A2 from Moody's Investors Service Limited.

(3) Subject to the provisions of paragraph (4), if the applicant fails to comply with the requirements as set out in paragraph (2), the applicant will not be awarded any Licence.

(4) Where the applicant fails to meet the terms of paragraph (2) within the time limits prescribed, the Commission may, at its discretion, grant the applicant an extension of the time limit in order to allow the applicant to correct the matter.

(5) Where the applicant is granted an extension of the time limit under paragraph (4), interest will be charged on the payment due under paragraph (1), from the date on which the payment was first due until payment is effected, at the prevailing EURIBOR plus 5 percentage points.

(6) Where, on being granted an extension of the time limit under paragraph (4), the applicant still fails to meet the conditions set out in Paragraph (2), the applicant will not be awarded any Licence.

(7) The Licensee shall at all times ensure that the guarantee referred to in paragraph 2(ii) remains in place subject to the conditions described in that paragraph and shall inform the Commission within three working days if the guarantor loses the credit rating specified. Paragraph (6) of Regulation 8 shall apply if this occurs.

(8) Where the Licensee was granted an “A” Licence, it shall pay the total sum of €50,700,000 in the manner set out in Table A. Where the Licensee was granted a “B” Licence, it shall pay the total sum of €114,300,000 in the manner set out in Table B. For the avoidance of doubt, the sums referred to in this paragraph include the sums referred to in paragraph 2(i).

(9) Once the Licensee has paid the sum referred to in paragraph 2(i) it shall pay a sum of €2,500,000 on the sixth anniversary of the date of notification by the Commission that he or she has been awarded a Licence (in the case of an “A” Licence) or else pay the sum of €3,800,000 on the fourth anniversary of the date of notification by the Commission that he or she has been awarded a Licence (in the case of a “B” Licence).

(10) Thereafter further sums shall fall due for payment on the date falling one year from the date referred to in paragraph 9 until the total amount has been paid. For the avoidance of doubt, and as provided in paragraph 4 of Regulation 8, the

sums due shall remain payable notwithstanding the revocation or suspension of the Licence.

Table A

	Y0	Y1	Y2	Y3	Y4	Y5	Y6	Y7	Y8	Y9	Y10	Y11	Y12	Y13	Y14	Y15	Total Fee
Fee (€m)	12.7	0	0	0	0	0	2.5	2.5	2.5	2.5	2.5	5.1	5.1	5.1	5.1	5.1	50.7

Table B

	Y0	Y1	Y2	Y3	Y4	Y5	Y6	Y7	Y8	Y9	Y10	Y11	Y12	Y13	Y14	Y15	Total Fee
Fee (€m)	44.4	0	0	0	3.8	3.8	3.8	3.8	3.8	3.8	7.6	7.6	7.6	7.6	7.6	8.9	114.3

Spectrum Access Fees for additional spectrum in the 900 and 1800 MHz frequency bands

10. (1) The Commission may offer additional spectrum in the 900 and 1800 MHz frequency bands to a Licensee under the circumstances outlined in the tender documents (ODTR documents 01/99 and 01/100) and as clarified in the Questions and Answer phase referred to in section 3.3 of the above tender documents.
- (2) If the Commission awards additional spectrum to host Mobile Virtual Network Operators the Licensee shall pay a maximum of €8,920,000 for a maximum 2 x 5.2 MHz in the 900 MHz frequency band. If the Commission assigns less spectrum than the amount described in the previous sentence, the fee payable by Licensee shall be reduced pro rata.
- (3) Where a Licensee is not the holder of a Licence under the GSM and TACS Regulations the Commission may award additional spectrum to that Licensee. The following maximum spectrum allocations and the corresponding fees shall apply:
 - a. €12,350,000 for 2 x 7.2 MHz in the 900 MHz frequency band ;

- b. €3,970,000 for 2 x 6.0 MHz in the 1800 MHz frequency band.
- (4) For the avoidance of doubt, the spectrum in paragraph 3 may be divided between several Licensees, and a Licensee may not wish to take the full allocation which may be open to it. If the Commission assigns a smaller amount of spectrum to the Licensee than the maximum provided in paragraph 3, the fee payable by Licensee shall be reduced pro rata.

Annual Spectrum Fees

- 11. (1) The following fees shall apply each time a Licence is granted or renewed for the duration of the Licence subject to Regulation 4(2) where the Commission offers a Licence to a Licensee on foot of a competitive tender.
- (2) Where the Licence relates to Apparatus for use for the provision of a GSM mobile telephony service the Licensee shall pay:
 - (a) in respect of each 200 KHz duplex radio frequency channel in the 900 MHz frequency band specified in the Licence, a fee of €25,395.
 - (b) in respect of each 200 KHz duplex radio frequency channel in the 1800 MHz frequency band specified in the Licence a fee of:
 - i. €12,697 per channel in respect of the first block of 24 channels;
 - ii. €19,046 per channel in respect of the second block of 24 channels;
 - iii. €25,395 per channel in respect of the third block of 24 channels.
- (3) Where the Licence relates to Apparatus for use for the provision of a third generation mobile telephony service the Licensee shall pay:
 - (a) in respect of each 2 x 5 MHz in the 1920-1980 MHz and 2110-2170 MHz bands, a Licence fee of €634,870.
 - (b) in respect of each 5 MHz in the unpaired 1900-1920 MHz and 2020-2025 MHz bands, a Licence fee of €317,435.
- (4) Where the Licence relates to Apparatus for the provision of both a GSM mobile telephony service and a third generation mobile telephony service then the Licensee

shall pay both the appropriate fee set out in paragraph 2 and the appropriate fee set out in paragraph 3 above.

(5) If 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, B is the number of whole months, or parts thereof, for which the Licence is granted and C is the appropriate Licence Fee to be paid.

(6) If a Licence is amended by the addition of a radio frequency channel to those specified in the Licence on which the Apparatus may be used, the appropriate fee as specified in paragraphs (2) and (3) of this Regulation in relation to such channel (reduced to an amount that bears to the full amount of the fee the same proportion as the unexpired period of the Licence on the date of the amendment bears to a year) shall be paid.

(7) The fees set out in paragraphs 2 and 3 shall be subject to a discount of 50 percentage points on the granting and on the first renewal of the Licence.

Licensee to satisfy all Legal Requirements.

12. 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 the service 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 the service and the Commission shall bear no responsibility for such costs, expenses or commitments.

WIRELESS TELEGRAPHY ACT, 1926
WIRELESS TELEGRAPHY (THIRD GENERATION AND GSM MOBILE
TELEPHONY LICENCE) (AMENDMENT)
REGULATIONS, 2003

Licence under section 5 of the Wireless Telegraphy Act, 1926, to keep and have possession of apparatus for wireless telegraphy for the purpose of providing 3G and GSM mobile telephony

The Commission, in exercise of the powers conferred on it by section 5 of the Wireless Telegraphy Act, 1926 (No. 45 of 1926) and section 4 of the Telecommunications (Miscellaneous Provisions) Act, 1996 (No. 34 of 1996) and Section 9(1) of the Communications Regulation Act, 2002 (No. 20 of 2002) hereby grants to the licensee specified authorisation to keep, have possession of, install, maintain, work and use apparatus as specified in the Second Schedule of this licence and subject to the terms and conditions as set out in the Wireless Telegraphy (Third Generation and GSM Mobile Telephony Licence)(Amendment) Regulations, 2003 (S.I. No. 340 of 2003)

The Commission for Communications Regulation, grants the following Licence to:
_____ of _____

1. This Licence will come into operation on the ____ day of ____, 20__, and unless previously revoked or renewed will expire on the ____ day of ____,
2. The Licensee will ensure that it complies with the geographical and technical conditions contained within the First – third schedules to this Licence;
3. The Licensee will ensure that it makes payments of the spectrum access fees as outlined in the Regulations;
4. The Licensee will ensure that it complies with all the commitments contained within Schedule 5 of the Licence being made by the Licensee in the course of a comparative evaluation selection procedure

Schedule 1

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

Schedule 2

The apparatus for wireless telegraphy to which this Licence applies

Schedule 3

Radio frequency channels on which the Apparatus is authorised by this Licence to be used

Schedule 4

Payment of spectrum access fee

Schedule 5

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

GIVEN under the official seal of the Commission for Communications Regulation, this 25 day of July, 2003

Etain Doyle

For and on behalf of the Commission for Communications Regulation

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

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

this 23 day of July, 2003

Dermot Ahern T.D.

Minister for Communications, Marine and Natural Resources

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 solely for the purpose of providing Third Generation and GSM mobile telephony services, for the regulation of such apparatus and for the payment of fees by persons granted Licences for that purpose.