

# STATUTORY INSTRUMENT

**S.I. No. 345 of 2002**

## **Wireless Telegraphy (Third Generation and GSM Mobile Telephony Licence) Regulations, 2002**

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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), and with the consent of the Minister for Communications, Marine and Natural Resources, pursuant to subsection (8) of the said section 4 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 make the following Regulations:

### **Citation**

1. These Regulations may be cited as the Wireless Telegraphy (Third Generation and GSM Mobile Telephony Licence) Regulations, 2002.

### **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 1983” means the Postal and Telecommunications Services Act, 1983 (No. 24 of 1983), as amended;

“Acts” means the Wireless Telegraphy Acts, 1926 to 1988;

“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;

“Director” means the Director of Telecommunications Regulation;

“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. 468 of 1997), and/or Wireless Telegraphy (GSM and TACS Mobile Telephony Licence) Regulations, 1999 (S.I. No. 442 of 1999);

“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 the 900 MHz frequency band and/or a 1800 MHz cellular, land based, public mobile telephony service of the kind referred to in the European Commission Communication of 23<sup>rd</sup> November 1994, and conforming with the standard known as GSM and with the GSM Technical Specifications of the European 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 holder of a Licence under section 111(2) of the Act of 1983 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 Director in December 2001 as documents ODTR no. 01/99 and no. 01/100 ;

“Licensee” means the holder of a Licence;

“Licensing Regulations” means the European Communities (Telecommunications Licences) Regulations, 1998 (S.I. No. 96 of 1998), as amended;

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

“Service” means the mobile telephony service authorised by a licence under section 111(2) of the Act of 1983 held by the Licensee;

“UMTS Decision” means Decision No. 128/1999/EC of the European Parliament and of the Council of 14th December 1998<sup>1</sup> 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;

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

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

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

(3) The Interpretation Act, 1937 (No. 38 of 1937), applies to these Regulations.

### **Application for Licences and Form of Applications and Licences**

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

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

(3) The Director may grant a Licence in accordance with the provisions of Regulation 8 of the Licensing 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 Director 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 is expressed to come into operation and, unless renewed, shall then expire.

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

(3) On application in writing by or on behalf of a Licensee to the Director before the expiration of his or her Licence, the Director 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 Director 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.

(4) A Licence that has been renewed shall (unless it has been revoked) be in force for the period of one year from the day following the expiration of the last previous period during which it was in force and, unless renewed, shall then expire.

(5) Notwithstanding paragraphs (1) to (4) 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.

(6) Notwithstanding paragraphs (1) to (5) of this Regulation, a Licence for the use of apparatus in the 1900 MHz, 2000 MHz or 2100 MHz frequency bands that is granted or renewed on or after the nineteenth anniversary of the first issue of a licence under these Regulations shall expire on the twentieth anniversary of such issue.

### **Conditions of Licences**

5. It shall be a condition of a Licence:

(1) that the Apparatus shall be used only for the purpose of the provision of the Service authorised by the licence under Section 111(2) of the Act of 1983;

(2) that the Apparatus shall be used only on such radio frequency channels as may be specified in the Licence;

(3) that the Licensee shall ensure that the Apparatus is not used in a manner that could infringe any privilege which is held by the Minister for Communications, Marine and Natural Resources under the Telegraph Act, 1869;

(4) that, if the Director:-

(a) is satisfied that the use of any of the Apparatus is causing, or is likely to cause, interference with any other apparatus for wireless telegraphy; and

(b) gives to the Licensee or sends to the Licensee, at the address of the Licensee specified in the Licence or notified to the Director by the Licensee in accordance with the Licence, a notice requiring that the Apparatus or the use thereof be modified or adjusted before such day and in such manner as may be specified in the notice or that the use thereof shall cease on and from such day, or during such period or such hours on such days, as may be specified in the notice,

the Licensee shall ensure that the requirements of the notice is complied with;

(5) that the Licensee shall not, without the consent of the Director (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;

(6) that the Licensee shall take all reasonable measures to prevent a communication or information which the Licensee and employees and agents of the Licensee and users of the Service are not authorised to receive from being received by means of the Apparatus;

(7) that, if any such communication or information as aforesaid is so received, the Licensee must take all reasonable care to ensure that employees and agents of the Licensee do not:-

(a) make known its contents, origin, destination or existence or the fact of such receipt, to a person (other than the Director or a member of the staff of the Director); or

(b) reproduce it in writing or otherwise copy it or make use of it;

(8) that the Licensee shall ensure that the installation of the Apparatus is effected, and its maintenance and operation is carried on, in such manner as to ensure that the safety of persons or property is not endangered and that the use of the Apparatus does not interfere with any other apparatus for wireless telegraphy the subject of a Licence under section 5 of the Act of 1926;

(9) that the Licensee shall ensure that the erection and positioning of Apparatus consisting of antennae and support structures for antennae is effected in accordance with law;

(10) 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;

(11) that the Licensee shall ensure that all equipment used on and or associated to the mobile telephony network operated by the Licensee for the purposes of the Service are compliant with the standards outlined in the Radio Equipment and Telecommunications Terminal Equipment Directive (directive 1999/5/EC as implemented by the European Communities (Radio Equipment and Telecommunications Terminal Equipment Access) Regulations, 2001, S.I. No. 240 of 2001) and any standards which may from time to time be specified by the European Union;

(12) that the Licensee shall ensure that access to the Apparatus is restricted to the Licensee, employees or agents of the Licensee and persons authorised by or on behalf of the Licensee to have such access and that the Licensee shall at all times keep meaningful control of the network and equipment;

(13) that if the address of the Licensee changes, the Licensee shall, as soon as possible, notify the Director in writing of the change;

(14) 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 and

(15) that the Licensee shall pay all fees due to the Director in the manner prescribed under these Regulations and shall maintain in place any guarantee required by the Director under Regulation 9.

#### **Enforcement, amendment, revocation and suspension**

6. (1) The Director may amend the Licence from time to time where objectively justifiable and in a proportionate manner. Any amendment shall be made in accordance with Regulation 8(4)(a), and Regulation 8(6), of the Licensing Regulations, and any other requirements under applicable national or European Community law.

(2) Without prejudice to paragraph (1) of this Regulation and paragraph 6 of Regulation 8, the Director may, in accordance with Regulation 8(6) of the Licensing Regulations, suspend or revoke the Licence, or impose specific measures on the Licensee, in any of the following circumstances:-

- (a) where the Application made by the Licensee is or was false or misleading in a material respect;
- (b) where, in the opinion of the Director, such revocation or suspension is required for the purpose of complying with national or European Community law;
- (c) where the Licensee is a company within the meaning of the Companies Acts 1963 to 2001, an order for its winding up has been made or a resolution for voluntary winding up (within the meaning of those Acts) has been passed by the company or a receiver of the property of the company has been appointed or an examiner to the company has been appointed

- (d) where the Licensee is not a company within the meaning of the Companies Acts 1963 to 2001, an equivalent order or procedure has occurred.

(3) Where the Director is of the opinion that, in the interest of the efficient and orderly use of apparatus for wireless telegraphy or radio frequency spectrum, it is desirable to do so, she may, in accordance with Regulation 8(6) of the Licensing Regulations:

- (a) suspend the Licence, in so far as it applies to a particular part of the Apparatus kept at a particular place, specified in writing to the Licensee, for such period as may be specified in the notice; or
- (b) amend a provision of the Licence in such manner as may be specified in writing to the Licensee; or
- (c) revoke the Licence.

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

### **Powers of Authorised Officers**

7. (1) The Director may appoint such member or members of the staff of the Director as she considers appropriate to be Authorised Officers for the purposes of these Regulations.

(2) An Authorised Officer, when exercising any power pursuant to this Regulation, shall, if so requested by any person affected, produce a copy of the warrant of appointment as an Authorised Officer to the person.

(3) An Authorised Officer may:

- (a) enter, at any time, the premises or place where he reasonably suspects that any Apparatus to which a Licence relates is kept or any business relating to a Licence is carried on and there make such inspections, tests and measurements of machinery and apparatus and other equipment found on the premises or at the place and inspection of such records and other information in whatever form kept, so found as he considers appropriate for the purposes of this subsection;

- (b) direct any person on or at a premises or place entered under this subsection to give to the officer such information as he may reasonably require for the purposes of this subsection.
  - (c) take copies of, or of extracts from, any such records or other information in any form found by him or her on the premises or at the place.
- (4) If an Authorised Officer reasonably believes that a danger exists, he may direct a Licensee to:
- (a) modify, in such manner as may be specified in the direction, the operating characteristics of any Apparatus to which the Licence relates;
  - (b) cease operating any such Apparatus during such period as may be specified in the direction.

## **Fees**

8. (1) Subject to the methods of payment set out on this Regulation, the fees set out in Regulations 9 to 11 are payable in respect of Licences granted by the Director pursuant to section 5 of the Act of 1926.

(2) Fees shall be paid to the Office of the Director of Telecommunication 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 Director 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.

(3) An amount payable by a person in respect of a fee under these Regulations may be recovered by the Director from the person as a simple contract debt in any court of competent jurisdiction

(4) 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.

(5) 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.

(6) The Director 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 Director offers a Licence to an applicant on foot of a competitive tender .

(2) Where an applicant has received notification of the Director's intention to award a Licence to that applicant, the applicant shall, not later than 15 days after receipt of such notification,

(a) 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;

(b) make arrangements for a guarantee payable on demand in favour of the Director, and in a form defined by her, for an amount equivalent to the sum of the instalments under paragraphs 8 to 10 for the first five 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 Director may, at her 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 five 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 Director 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 holds an “A” Licence, he shall pay the total sum of €50,700,000 in the manner set out in table A. Where the Licensee holds a “B” Licence, he 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) he shall pay a sum of €2,500,000 on the sixth anniversary of the date of notification by the Director that he 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 Director that he 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
<b>Fee (€m)</b>	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	<b>50.7</b>

*Table B*

	Y0	Y1	Y2	Y3	Y4	Y5	Y6	Y7	Y8	Y9	Y10	Y11	Y12	Y13	Y14	Y15	Total Fee
<b>Fee (€m)</b>	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	<b>114.3</b>

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

10. (1) The Director 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 Director 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 Director 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 Director 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 Director 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 license is granted or renewed where the Director 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 200KHz 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 5MHz in the unpaired 1900-1920MHz and 2020-2025MHz 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% on the granting and on the first renewal of the Licence

### **Licensee to satisfy all Legal Requirements**

12. Nothing in these Regulations shall absolve a Licensee from any requirement in law to obtain any consents, permissions, authorisations or other Licences that may be necessary for the provision of a mobile telephony service or for the discharge of the obligations, or the exercise of the entitlements, of the Licensee under the Licence.

**SCHEDULE**

**WIRELESS TELEGRAPHY ACT, 1926**

**WIRELESS TELEGRAPHY (MOBILE TELEPHONY LICENCE)**

**REGULATIONS, 2002**

**Licence under section 5 of the Wireless Telegraphy Act, 1926, to keep and have possession of apparatus for wireless telegraphy for the purpose of the provision of a mobile telephony service.**

I, \_\_\_\_\_, Director of Telecommunications Regulation, in exercise of the powers conferred on me by section 5(1) of the Wireless Telegraphy Act, 1926 (No. 45 of 1926), and section 4 of the Telecommunications (Miscellaneous Provisions) Act, 1996 (No. 34 of 1996), hereby grant the following Licence to: \_\_\_\_\_ of \_\_\_\_\_

1. This Licence shall come into operation on the \_\_\_\_ day of \_\_\_\_, 20\_\_, and unless previously revoked or renewed shall expire on the \_\_\_\_ day of \_\_\_\_, 20\_\_.

2. In this Licence:-

- “the Act of 1983” means the *Postal and Telecommunications Services Act, 1983 (No. 24 of 1983)*, as amended;
- “the Apparatus” has the meaning assigned to it by paragraph 3;
- “the Director” means the Director of Telecommunications Regulation;
- “the Licensee” means \_\_\_\_\_ of \_\_\_\_\_  
/ having its registered office at \_\_\_\_\_\*
- “the Service” has the meaning assigned to it by paragraph 5(1)(a);

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\* delete as appropriate

3. The Licensee is hereby authorised to keep, have possession of, install, maintain, work and use, at the places specified in the First Schedule to this Licence, the apparatus for wireless telegraphy specified in the Second Schedule to this Licence (referred to subsequently in this Licence as the “Apparatus”).

4 Nothing in this Licence shall absolve the Licensee from any requirement in law to obtain any consents, permissions, authorisations or other Licences that may be necessary for the provision of the Service, or for the discharge of the obligations, or the exercise of the entitlements, of the Licensee under this Licence.

5 It shall be a condition of this Licence:-

(1) that the Apparatus shall be used only for the purpose of the provision of the mobile telephony service authorised by a licence under section 111(2) of the Act of 1983 held by the Licensee (referred to subsequently in this Licence as the “Service”);

(2) that the Apparatus shall be used only on the radio frequency channels specified in the Third Schedule to this Licence and that those channels shall be used in an efficient manner;

(3) that the Licensee shall ensure that the Apparatus is not used in a manner that could infringe any privilege that may be held by the Minister for Communications, Marine and Natural Resources under the Telegraph Act, 1869;

(4) that, if the Director:-

(a) is satisfied that the use of any of the Apparatus is causing, or is likely to cause, interference with any other apparatus for wireless telegraphy; and

(b) to the Licensee or sends to the Licensee, at the address of the Licensee specified in this Licence or notified to the Director under subparagraph (n) of this paragraph, a notice requiring that the Apparatus be modified or adjusted before such day and in such manner as may be specified in the notice or that the use thereof shall cease on and from such day, or during such period or such hours or such days, as may be specified in the notice,

the Licensee shall ensure that the requirements of the notice is complied with;

(5) that the Licensee shall not, without the consent of the Director (which shall not be unreasonably withheld) assign this Licence or any of the powers, duties or functions conferred by it or otherwise transfer any of the rights or obligations conferred by it;

(6) that the Licensee shall take all reasonable measures to prevent a communication or information which the Licensee and employees and agents of the Licensee and users of the Service are not authorised to receive from being received by means of the Apparatus;

(7) that, if any such communication or information as aforesaid is so received, the Licensee shall not, and shall endeavour to ensure that employees and agents of the Licensee of the Service do not:-

- (a) make known its contents, origin, destination or existence or the fact of such receipt, to a person (other than the Director or a member of the staff of the Director); or
- (b) reproduce it in writing or otherwise copy it or make use of it;

(8) that the Licensee shall ensure that the installation, maintenance and operation of the Apparatus is such and is effected or carried on in such manner as to ensure that the safety of persons or property is not endangered and that the use of the Apparatus does not interfere with any other apparatus for wireless telegraphy the subject of a Licence under section 5 of the Wireless Telegraphy Act, 1926;

(9) that the Licensee shall ensure that the erection and positioning of Apparatus consisting of antennae and support structures for antennae is effected in accordance with law;

(10) 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 specified by the European Union;

(11) that the Licensee shall ensure that all equipment used on and or associated the mobile telephony network operated by the Licensee for the purposes of the Service are compliant with the standards outlined in the Radio Equipment and Telecommunications Terminal Equipment Directive (directive 1999/5/EC as implemented by the European Communities (Radio Equipment and Telecommunications Terminal Equipment Access) Regulations, 2001, S.I. No. 240 of 2001) and any standards specified by the European Union;

(12) that the Licensee shall ensure that access to the Apparatus is restricted to the Licensee, employees or agents of the Licensee and persons authorised by or on behalf of the Licensee to have such access and that the Licensee at all times keeps overall control of the network and equipment;

(13) that if the address of the Licensee changes, the Licensee shall, as soon as possible, notify the Director in writing of the change;

(14) 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; and

(15) that the Licensee shall pay all fees due to the Director in the manner prescribed under the Regulations and maintain in place any guarantee required by the Director.

**FIRST SCHEDULE**

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

**SECOND SCHEDULE**

The apparatus for wireless telegraphy to which this Licence applies.

**THIRD SCHEDULE**

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

**FOURTH SCHEDULE**

Payment of spectrum access fee

GIVEN under my hand, this            day of            , 2002

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**Etain Doyle**

**Director of Telecommunications 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            , 2002

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**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.