



Response to Consultation

**Future Regulation of Electronic  
Communications Networks and Services**

Administrative Charges and WT Licence Fees  
Applicable to Broadcasting Networks and Services

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## **1 Foreword**

This document is part of the series of consultations on the future framework for authorisations under the new EU Directives for electronic communications networks (ECN) and services (ECS). It is a response to consultation on the application of administrative charges and Wireless Telegraphy (WT) license fees to the broadcasting sector (03/78) and builds on the earlier exchange of views concerning the application of administrative charges and fees for spectrum rights-of-use (ComReg's response was issued on 1 May 2003<sup>1</sup>).

In 03/78 published on 18 July 2003, ComReg set out its proposals with regard to the application of administrative charges and WT licence fees within the broadcasting sector. It was acknowledged in 03/78 that this paper could not be issued until the legislation transposing the EU framework into national legislation had been finalised and as the new framework was coming into force on 25 July, the consultation process was therefore briefer than normal. Given the circumstances, these relatively short timeframes, which was commented on by respondents were unavoidable.

I would like to take this opportunity to thank all the respondents who provided substantial submissions within a very tight time frame.

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**Commissioner**  
**Commission for Communications Regulation**

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<sup>1</sup> ComReg Document 03/46 – Future Regulation of Electronic Communications Networks and Services – Fees for Authorisations and Rights of Use

## 2 Executive Summary

In July, ComReg published a Consultation Paper on the Administrative Charges and Wireless Telegraphy (WT) Licence Fees Applicable to Broadcasting Networks and Services (03/78). The paper set forth ComReg's proposals for levying administrative charges and fees for spectrum-rights-of-use following the introduction of the new regulatory EU framework on 25 July 2003. The Paper built on previous consultation papers (02/102 and 01/46) where ComReg's general approach to charging principles for general authorisations and rights-of-use had already been published.

The responses to the consultation were substantial and views were also expressed on general issues of principle. This paper addresses those issues. Section 4 addresses the issues of general principle raised during the consultation while Section 5 addresses the consultation issues in detail. This section provides a summary of ComReg's position on those issues having taken account of the views expressed. A summary of ComReg's final decisions is contained in Appendix 3 to this document.

General issues such as justification for the levy/proposed charges and the potential for ComReg to generate a "profit" were raised. The new legislation permits ComReg to cover the costs involved in the management, control and enforcement of the general authorisation scheme and the licensing schemes. The Authorisation Directive acknowledges that under the general authorisation scheme it is not possible to attribute costs. Any surplus of levy income over related expenditure must be returned to those who paid the levy.

Views were divided on the voluntary scheme to extend spectrum usage rights to satellite operators licensed in a country other than Ireland. Some respondents thought the payment should be mandatory while others thought the voluntary payment was unfair. ComReg's position is that spectrum is a finite resource and regulatory costs are incurred to ensure it is efficiently managed, coordinated and allocated. Where frequencies are shared (both domestically and internationally) costs are incurred to ensure that radio signals from different users and services do not significantly interfere with each other. Satellite networks with downlinks to Ireland but licensed elsewhere contribute to the costs of regulation and this scheme offers such operators an opportunity to contribute to the recovery of these spectrum management costs in return for access recognition.

In relation to administrative charges opinion was again fairly evenly split on the proposals put forward in 03/78. Pay TV operators regarded the proposed charges as too high, not addressing the level playing field with other pay TV platforms and queried why charges were calculated using subscriber numbers when this was not applied to free-to-air broadcasters. The free-to-air broadcasters questioned the basis of the proposed fees and also queried why the pay TV administrative charge was not based on a higher rate per subscriber. These issues are addressed in detail in Section 5. After consideration of all the points made ComReg has decided to maintain the charges proposed in 03/78 which are as follows:

ComReg will levy an administrative charge on operators of ECNs used for pay TV services of €0.50 per subscriber connected to the network.

ComReg will charge RTÉ and the BCI an administrative charge of €100 per transmitter (but not for spectrum fees) in recognition of the ECNs operated by RTÉ and the independent radio and television broadcaster.

ComReg will levy an administrative charge of 0.2% of relevant revenue where an ECS is being provided at the wholesale level.

Comments were made on the proposals for spectrum-rights-of-use fees in 03/78. No objections were raised over the proposal for UHF Deflectors but clarification was sought and given on how the flat rate of €50 per transmitter per annum had been derived. In relation to DTT, most respondents were in agreement that future operators of DTT networks should be subject to a fee for spectrum rights-of-use based on the same rate as that applied to FWA spectrum and MMDS spectrum (03/78). However one respondent thought that this would challenge the viability of DTT.

Views were also divided on the proposed voluntary charge of €0.50 per satellite receiving dish to extend spectrum access recognition rights within Ireland. Clarification was sought and given on why this could not be a mandatory charge at this stage. After considering all of the responses the charges for spectrum rights-of-use are as follows:

ComReg will charge UHF deflector networks a fee for spectrum rights-of-use based on annual rate of €50 per transmitter.

ComReg will charge any future DTT network operators a fee for spectrum right-of-use based on the same rate as applied to FWA and MMDS spectrum (€1,905 per MHz).

ComReg will charge MMDS network operators a fee for spectrum right-of-use based on the same rate as applied to FWA spectrum (€1,905 per MHz).

ComReg will give operators of satellite networks with downlinks to Ireland but licensed elsewhere the opportunity to gain recognised spectrum access rights and contribute to the costs incurred by ComReg in managing the spectrum, in return for an annual charge of €0.50 per satellite receiving dish.

Comments were sought on the overall impact of the measures which was considered to be negative by the respondents. However, ComReg does not agree with this assessment for the reasons given in Section 5.

Previously published documents that relate to this Response to Consultation:-

*ComReg Document 03/78 – Consultation Paper; Future Regulation of Electronic Communications Networks and Services – Administrative Charges and WT Licence Fees Applicable to Broadcasting Networks and Services*

*ComReg Document 03/61 – Consultation Paper; Future Regulation of Electronic Communications Networks and Services - Arrangements for General Authorisations*

*ComReg Document 03/46 –Response to Consultation; Future Regulation of Electronic Communications Networks and Services – Fees for Authorisations and Rights of Use*

*ODTR Document 02/102 – Consultation Paper; Future Regulation of Electronic Communications Networks and Services Charging Principles for Authorisations and Rights of Use*

*This document is without prejudice to the legal position or the rights and duties of ComReg to regulate the market generally. Any views expressed are not binding and are without prejudice to the final form and content of any decisions which ComReg may make.*

### 3 Introduction

Document 03/78 followed on from previous consultations in addressing the arrangements for the future regulatory framework for the provision of communications networks and services. That paper focused on the broadcasting sector and built on the earlier exchange of views concerning the application of administrative charges and fees for spectrum rights-of-use (ComReg response to consultation, 03/46, issued on 1 May 2003). The Minister for Communications, Marine and Natural Resources has now signed regulations transposing the relevant EU Directives into Irish Law which provide the legal basis for the new regulatory framework. The text of the regulations may be accessed at the Department's web site [www.dcmnr.ie](http://www.dcmnr.ie).

All comments were welcome and 9 responses were received as follows:

- BCI (Broadcasting Commission of Ireland)
- BSkyB (British Sky Broadcasting)
- Chorus Communication Ltd
- European Satellite Operators Association (ESOA)
- Eutelsat
- Independent Broadcasters of Ireland (IBI)
- Ntl:
- RTÉ
- TV3

ComReg wishes to thank everyone who contributed to the consultation. In accordance with the policy set out in 03/32 "ComReg Consultation Procedures"<sup>2</sup> and as indicated in the consultation paper, all responses received are available for inspection (except for material supplied on a confidential basis) at ComReg's office. This paper deals principally with the issues raised in the course of the consultation.

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<sup>2</sup> ComReg Document 03/31 Future Regulation of Electronic Communications Networks and Services -ComReg Consultation Procedures

## 4 General Principles

ComReg's general approach to charging principles for authorisations and spectrum rights-of-use was first set out in a consultation document issued in November 2002 (ODTR No. 02/102) and a summary of responses, together with further proposals, was published in May this year (ComReg No. 03/46). It became clear from a review of the responses to the latest consultation published in July (03/78) that there was some confusion over what costs ComReg was entitled to recover under the new framework, what would happen with any "profits" and the distinction between administrative charges and licence fees associated with spectrum rights-of-use. This section deals with issues commented upon which were not directly related to the matters on which submissions were invited. In view of the special circumstances these general issues are considered below.

### 4.1 Background

The Authorisation Directive<sup>3</sup> includes a number of provisions relating to administrative charges to be imposed on undertakings providing a service or a network under the General Authorisation (Article 12) or to whom a right-of-use has been granted (Article 13). The Directive recognises that administrative charges levied by National Regulatory Authorities may not be sufficient to meet the associated costs. It recognises that the balance may be obtained from spectrum-related fees that cover the administrative costs of managing the spectrum and reflect the need to ensure the optimal use of spectrum. Recital 32 to the Directive states (by way of clarification) that: "in addition to administrative charges, usage fees may be levied for the use of radio frequencies or numbers as an instrument to ensure the optimal use of such resources." The recital goes on to state that "such fees may for instance be used to finance the activities of national regulatory authorities that cannot be covered by administrative charges."

Section 30(1) of the Communications Regulation Act 2002<sup>4</sup> as amended by Regulation 19 of the Authorisation Regulations<sup>5</sup> now permits ComReg to impose a levy on providers of ECS and on providers of ECN. Section 30(6) of the 2002 Act also provides for the collection of fees under a number of transferred legislative provisions, including inter alia, the Wireless Telegraphy Acts and Regulations made under the Act. For the avoidance of any doubt on the basis of ComReg's powers to impose fees in connection with Wireless Telegraphy licences, Regulation 20 of the Authorisation Regulations explicitly gives ComReg such power.

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<sup>3</sup> DIRECTIVE 2002/20/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 7 March 2002 on the authorisation of electronic communications networks and services

<sup>4</sup> Communications Regulation Act, 2002 (No 20 of 2002)

<sup>5</sup> European Communities (Electronic Communications Networks and Services)(Authorisation) Regulations, S.I. No. 306 of 2003



ComReg stated in 03/78 that it did not propose any major changes in its general approach to the application of administrative charges and fees for wireless telegraphy licences. ComReg acknowledged that changes in the scope of the authorisation scheme would inevitably result in changes to the amounts paid by certain entities and that it anticipated that the income generated from administrative charges and wireless telegraphy licence fees in the broadcasting sector will be substantially less than heretofore.

One of the key changes introduced by the new regulatory framework was to extend the scope of coverage beyond telecommunications networks and services, to include all electronic communication networks and services in a technologically neutral way. As a consequence there is an argument for treating networks used for TV distribution in the same way as the rest of the telecommunications industry which would imply a harmonisation of the basis for fee and charges. However, as noted in 03/61, convergence apparently did not extend to consumers of retail broadcasting services, and it was decided for the time being not to treat the provision of access to end users at the retail level as an electronic communications service to which ComReg's regulatory powers under the new framework relate.

It should be noted for the avoidance of doubt that "Broadcasting transmission services to deliver broadcast content to end users" is a relevant wholesale market according to the European Commission's Recommendation and therefore is clearly an activity which falls within the scope of the new framework. ComReg will levy an administrative charge of 0.2% of relevant revenue where an ECS is being provided at the wholesale level. As noted earlier the regulations made by the Minister transposing the EU Directives into Irish law, clarified that, ComReg now has the legal authority to recover its administrative costs from the providers of ECSs and ECNs.

## **4.2 Administrative Charges**

ComReg stated in 03/46 that it was satisfied that broadcasting transmission networks and services were covered by the new framework and that administrative charges should be applied in a broadly uniform way to all providers of electronic communications networks and services. It was recognised that there are certain differences in the nature of the services that should be reflected in the regulatory approach. This position was restated in 03/78 and it was further explained that except where the provision of a transmission service is subject to a separate transaction, revenue cannot be directly attributed to the authorised elements of each broadcaster's activities. A levy on relevant turnover remains the preferred option. ComReg, however, came to the view that that in certain cases a proxy measure may be necessary.

### *Views of Respondents*

Two Respondents to the consultation expressed an opinion that ComReg had failed to justify the proposed charges and had not been sufficiently clear on which of the functions (expressed in Article 12 of the Authorisation Directive) applied to them.

One respondent suggested that monitoring compliance would be the only applicable obligation.

A respondent also commented that the flat rate of €0.50 per subscriber connected was an inappropriate basis for ComReg to apply an administrative charge as if customer numbers increase, the charges in total will rise but the cost borne by ComReg will not rise thus producing a “profit” for ComReg.

#### *ComReg’s Position*

Regulation 19 of the Authorisation Regulation (S.I. No. 306 of 2003) amends Section 30 of the Communications Regulation Act 2002 and states that the expenses of the Commission in relation to the discharge of its functions in relation to electronic communications shall cover the administrative charges which will be incurred in *“the management, control and enforcement of the general authorisation scheme, the licensing scheme for the licence concerned, the schemes for the grant of rights of use for numbers and specific obligations, and may include costs for international co-operation, harmonisation and standardisation, market analysis, monitoring compliance and other market control, as well as regulatory work involving preparation and enforcement of any orders under section 3(6) (inserted by section 11(c) of the Wireless Telegraphy Act 1972) of the Wireless Telegraphy Act 1926 or regulations under section 6 of that Act relating to apparatus for wireless telegraphy for the provision of an electronic communication network or service and administrative decisions, such as decisions on access and interconnection”*.

As stated in 02/102, ComReg (and its predecessor the ODTR) incurs a variety of costs in performing its regulatory duties. Some of these are directly related to the administration costs of particular rights-of-use. Other costs cannot be so easily attributed and must be recovered by some other equitable means. This is also acknowledged in recital 31 of the Authorisation Directive which states: *“With a general authorisation system it will no longer be possible to attribute administrative costs and hence charges to individual undertakings except for the granting of rights to use numbers, radio frequencies and for rights to install facilities. Any applicable administrative charges should be in line with the principles of a general authorisation system. An example of a fair, simple and transparent alternative for these charge attribution criteria could be a turnover related distribution key. Where administrative charges are very low, flat rate charges, or charges combining a flat rate basis with a turnover related element could also be appropriate.”* ComReg intends to apply income arising from the levy to its expenses properly incurred in all aspects of the discharge of its functions in relation to ECNs and ECSs and will not attribute costs to individual undertakings except in relation to the rights-of-use of radio frequencies.

It should be noted, that under the Levy Order any surplus of levy income over related expenditure must be returned to those who paid the levy. This is a requirement of Section 30 of the Communications Regulation Act 2002 as amended. This provision will also apply to providers of ECNs and ECSs in the broadcasting area who will for the first time be covered by the Levy Order. ComReg is also mindful of its obligations under Regulation 19 of the Authorisation Regulation to publish, in

relation to the levy order, an annual overview of its administrative costs and of the total sums of the charges collected.

### **4.3 Spectrum Rights-of-Use**

#### *4.3.1 Satellite Operators*

Proposals were outlined in the previous consultation papers (ODTR 02/102, ComReg 03/46 and 03/78) to introduce a voluntary scheme that would extend spectrum access recognition rights to satellite operators who are licensed in a country other than Ireland and whose operating footprint falls on Ireland.

#### *Views of Respondents*

Three respondents disagreed with the voluntary nature of the proposed charge for recognition rights for satellite operators while Irish operators faced mandatory charges. A fourth respondent was in agreement with the principle behind the proposed charge but felt the charge was too low and that it should also apply to free to air satellite services. Three other respondents objected to the proposals on various grounds ranging from the detrimental effect it could have on satellite businesses, to satellite spectrum being an issue for European Community management rather than national management and to the proposals being potentially illegal and discriminatory against satellite operators and favouring indigenous transmission systems. Clarification was also sought on whether or not the charge of €0.50 would be applicable to each satellite operator providing direct-to-home (DTH) services and an explanation for why this should be an annual charge rather than a once off payment.

#### *ComReg's Position*

ComReg is of the view, as stated in earlier consultations, that where broadcasting transmission services are being provided to Irish content providers for the transmission of their services to Irish end users, an ECN exists and an ECS is being provided irrespective of the platform. Where the ECS is being provided normally for remuneration, notional or otherwise, this is subject to an administrative levy of 0.2% as is the case with other ECSs. This is a separate issue from the voluntary, annual payment by each satellite operator of €0.50 per dish for recognised spectrum access rights.

ComReg's position is that spectrum is a finite resource and regulatory costs are incurred to ensure it is efficiently managed, coordinated and allocated. Where frequencies are shared (both domestically and internationally) costs are incurred to ensure that radio signals from different users and services do not significantly interfere with each other. Any indigenous broadcasters (national or local) will already contribute on an annual basis to the ongoing costs of avoiding potential interference with satellite DTH reception through fees collected for spectrum rights of use via a WT or equivalent licence. Satellite networks with downlinks to Ireland but licensed elsewhere contribute to the costs of regulation and this scheme offers

such operators an opportunity to contribute to the recovery of these spectrum management costs in return for recognised spectrum access rights.

The band 11.7-12.5 GHz is allocated to the fixed, fixed-satellite, mobile (except aeronautical mobile), broadcasting and broadcasting-satellite service on a co-primary basis in International Telecommunications Union (ITU) Region 1 (which includes Europe). The European Radiocommunications Committee (ERC) Decision 00 (08) addresses the Fixed Service and Broadcasting-Satellite and says that no new Fixed Service systems should be implemented in the 11.7-12.5 GHz band. The Decision makes no reference to Broadcasting Service. ComReg interprets this as not inhibiting the deployment of Broadcasting Service systems in the band. Broadcasting-Satellite service and the Broadcasting Service are often seen as complementary to each other so it is not unreasonable that both services should co-exist in the same frequency band. It should also be noted that Conference of European Postal and Telecommunications Administrations (CEPT) Decisions do not have mandatory status, implementation of CEPT Decisions by an administration is wholly voluntary and the decision to implement a Decision depends very much on national requirements and priorities. To date Ireland has not implemented this Decision.

#### 4.3.2 RTÉ & BCI

ComReg stated in 03/46 that RTÉ and the BCI can only be charged an administrative levy as the primary legislation under which RTÉ and the BCI are licensed does not allow for spectrum fees to be applied in relation to these licences.

##### *Views of Respondents*

Two of the eight respondents did not agree that RTÉ and the BCI should only pay an administrative charge and not be subject to a spectrum charge in recognition of the ECNs operated by RTÉ and the independent radio and television broadcasters. It was suggested that this resulted in an asymmetry between pay TV and free-to-air operators.

##### *ComReg's Position*

ComReg stated in 03/78 that it had considered the arguments for and against the imposition of a spectrum related fee on RTÉ and the BCI (03/46) as part of establishing a uniform regime for charges for spectrum rights of use for the telecommunications and broadcasting sectors. However, as noted current legislation does not provide for payment of a spectrum related fee in either case.

## 5 Consultation Issues

### 5.1 Administrative Charges

#### 5.1.1 Pay TV Services on ECN Platforms

Views were sought on whether or not a payment of €0.50 per subscriber connected was an appropriate basis for determining the administrative charge payable by operators of ECNs used for pay TV services.

##### *Views of Respondents*

Two of the nine respondents stated that payment of €0.50 per subscriber connected was not an appropriate basis for determining the administrative charge payable by operators of ECNs used for pay TV services. An explanation was requested on the reasoning for the proposed methodology in terms of cable delivery.

Another respondent agreed with the principle of an administrative charge calculated on a per subscriber connected basis but considered €0.50 to be too low. The respondent argued that since a pay TV operator charges a monthly fee of between about €30 and €60, a levy of about €0.04 per month corresponds to about 0.1% of the average yearly payment per subscriber, half the rate of the administrative charge paid by the telecommunications sector. It was stated that the pay TV operator can pass any levy charged by ComReg on to the subscriber, and therefore even a tenfold increase in administrative charge would barely be noticed by the subscriber.

In the case of MMDS, one respondent suggested that the use of subscriber numbers as the determinant for the proposed levy was not appropriate.

##### *ComReg's Position*

ComReg expects each provider of an ECN or an ECS to contribute to the funding of regulation. ComReg is committed to keeping the method of computing levies and fees as simple and transparent as possible. In the case of cable networks part of ComReg's costs can be generally proportionate to the size of the network. ComReg considers that the number of connections to the network is a reasonable proxy for the network size and that this can most easily be assessed in terms of numbers of subscribers. ComReg therefore decided to base the administrative levy on a flat sum per subscriber.

ComReg reviewed the proposal of a higher charge per subscriber based on projected income from retail subscription. However, as previously stated ComReg, does not intend for the time being to treat the provision of access to broadcasting services to end users at the retail level as an ECS to which its regulatory powers under the new framework relate and hence a direct charge related to income derived from the provision of services at the retail level is not appropriate. Therefore, ComReg holds that a flat rate per subscriber is a fair and simple basis to determine the administrative charge.

ComReg also considered an administrative charge for MMDS based on a flat rate per transmitter as proposed for RTÉ and the independent radio and television broadcasters. However, ComReg concluded that it would be potentially disproportionate, would most likely result in a greater charge and would be over complex to assess bearing in mind, the large number of MMDS transmitters and beam benders in operation. It was therefore decided that a levy, calculated on a per subscriber basis, equivalent to cable was simpler and fairer.

**Decision No. 1.**

**ComReg will levy an administrative charge on operators of ECNs used for pay TV services of €0.50 per subscriber connected to their network. ComReg will provide for this in its Levy Order made under Section 30 of the Communications Regulation Act 2002.**

*5.1.2 Free-to-air and Other Terrestrial Services*

Currently, RTÉ and the BCI do not pay to ComReg any administrative charges (or fees in relation to apparatus for wireless telegraphy or use of spectrum). ComReg proposed, therefore to include RTÉ and BCI in the administrative charges scheme, but not to apply any spectrum fees as there was no legal basis for doing so. As it would not be feasible to impose an administrative charge based on numbers connected to the network in the case of free to air broadcasters, ComReg proposed to apply an administrative charge based on a fixed flat rate of €100 per transmitter.

*Views of Respondents*

A number of respondents felt that the proposed charge of €100 per transmitter is considerably lighter proportionately than the administrative charges proposed for MMDS operators who are also subject to a spectrum usage fee. It was suggested that the costs incurred in the management, control and enforcement of the general authorisation should not vary between free-to-view and pay TV services.

One respondent commented that while ComReg will need to recover some of its costs from free-to-air terrestrial broadcasters, account should be taken of the specific public service obligations of free-to-air broadcasters. The respondent argued that RTÉ has specific public service obligations with regard to the provision of a national sound and radio broadcasting service to all parts of the island of Ireland, and is already subject to substantial costs associated with capital equipment and network operations.

The same respondent considered that the levy of €100 per transmitter to be an arbitrary figure and that it appeared to be inconsistent with the €50 figure which was proposed for deflector operators. The respondent argued that it would, at the very least, be necessary to vary that charge in accordance with the licensed effective radiated power (ERP) of the transmitter. It was suggested that payments per transmitter of €100 for stations with a licensed ERP of greater than 1 kW and a €50 administrative charge for all other stations would be more appropriate. A number of respondents requested the basis upon which the €100 per transmitter charge had been derived.

One respondent requested clarification on the basis for the proposal to charge the BCI directly for a network that it did not operate or obtain any financial gain from. The same respondent also stated that if a statutory basis was established whereby an administrative charge was paid directly to ComReg by each BCI contractor then, based on the structure outlined in document 03/78, only two contractors would be liable to pay an administrative levy. This would result from the fact that the majority of sound broadcasting contractors operate a small number of transmitter stations and thus would be subject to an administrative charge significantly less than €1,000.

In connection with DTT two respondents expressed the opinion that a distinction should not be made between free-to-view and pay services. They also stated that future digital terrestrial television services should be subject to the same administrative charge for both free-to-view and pay DTT platforms, as well as a spectrum charge. In addition, they felt that the calculation of the administrative charged should be made on the same basis as cable and MMDS services.

#### *ComReg's Position*

ComReg has considered the issue of the difference in the administrative charge proposed for RTÉ and the BCI and that proposed for pay TV operators. While a uniform regime for administrative charges would be desirable this is not practicable due to the complexities of the broadcasting sector. An explanation of why ComReg believes it inappropriate to charge MMDS operators on a per transmitter basis has been explained in section 5.1 of this document. Free-to-air broadcasters on the other hand do not have a subscriber base and ComReg believes that to base an administrative levy charged to RTÉ and the BCI on the total number of radio and television households in Ireland would be disproportionate.

ComReg accepts the point, made by one respondent that account should be taken of the specific public service obligations of broadcasters. ComReg believes that the proposed basis for levying an administrative charge on RTÉ and the BCI recognises these obligations and considers that an administrative charge equivalent to €100 per transmitter is not unreasonable in the context of their obligations.

ComReg decided not to base an administrative charge in proportion to the licensed effective radiated power (ERP) of the transmitter. ComReg repeats its objective of keeping the calculation of the levy simple and transparent. If charges were to be based on transmitter power and interference potential a possible formula<sup>6</sup> would be excessively complex to calculate as each of the over 100 transmission sites would be liable for a different charge. ComReg wishes to avoid this level of complexity in calculating what in effect will not be a significant imposition.

The suggestion that it would be appropriate to charge a levy of €50 in respect of stations with a licensed ERP of 1Kw or less to equate the charge to that proposed by deflector operators ignores the point that it is proposed to levy an administrative charge of €0.50 per subscriber on deflector operators. The €50 per annum per

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<sup>6</sup> Possible Formula: [( Power) x (beam angle/360 degrees) x (1000/Frequency in MHz) x Bandwidth in MHz x Height above Sea Level in metres]x an appropriate charge per MHz

transmitter charge applying to deflectors is a fee for a wireless telegraphy licence. Neither RTÉ nor the BCI is to be asked to pay for their licences under the Broadcasting Acts.

Clarification was requested on the basis for the proposal to charge the BCI directly for a network that it did not operate or obtain any financial gain from. ComReg must act within the regulatory framework and as RTÉ and the BCI are the only two entities to whom licences can be issued under the Broadcasting Authority Act, 1960, (No. 10 of 1960) and Radio and Television Act, 1988 (No. 20 of 1988), ComReg considers that it has no basis for applying an administrative levy to individual BCI contractors.

ComReg considers that, as the requirements of any one sound broadcasting contractor often have a knock on effect on the requirements of other contractors, it is the BCI requirements on the whole which affect the workload within ComReg, not just the requirements of each individual contractor. ComReg believes that the money raised by the administrative charge can go some way towards defraying the costs incurred, including those due to international agreements, which support RTÉ and the BCI in their role of providing radio and TV services to the public. ComReg considers it appropriate in the context of the current regulatory arrangements that the administrative levy be charged to the BCI.

ComReg, having considered the public service obligations and other issues raised, still considers it appropriate to make a distinction between free-to-view DTT and pay DTT. ComReg is also of the view that, for the reasons given earlier, it would be difficult to impose an administrative charge on free-to-view DTT based on subscriber numbers.

**Decision No. 2.**

**ComReg will charge RTÉ and the BCI an administrative charge of €100 per transmitter (but not spectrum fees) in recognition of the ECNs operated by RTÉ and the independent radio and television broadcasters. ComReg will provide for this in its Levy Order made under Section 30 of the Communications Regulation Act 2002.**

**Decision No. 3.**

**ComReg will charge future digital terrestrial television services an administrative charge of €100 per transmitter in the case of free-to-view DTT.**

**ComReg will charge future digital terrestrial television services €0.50 per subscriber connected in the case of each pay DTT platform.**

## **5.2 Spectrum Rights-of-Use**

### *5.2.1 UHF Deflectors*

No submissions on this consultation were received from deflector operators. However of the responses received from other parties, none of the respondents raised



any objections to the proposals for operators of deflector networks. Due to the practical difficulties in applying a spectrum-related fee, where many UHF deflector operations are small in scale and limited geographically, ComReg proposed to adopt a flat rate of €50 per transmitter per annum in relation to the fee for the issue and renewal of a WT licence. This maintains a notional relationship with the amount of spectrum used.

#### *Views of Respondents*

In general, no objections were raised to operators of UHF deflector networks paying a fee for spectrum rights-of-use. However, clarification was sought on how the charge of €50 per transmitter would maintain a notional relationship with the amount of spectrum used.

#### *ComReg's Position*

ComReg can explain the basis through the following calculations based on the assumption, for ease of calculation, that there are one million TV households in Ireland (the actual number is 1.3 million). At a national charge of €1,905 per MHz (roughly €2,000/MHz), a charge of approximately €2 per MHz per 1,000 TV household can be assumed. Each deflector transmitter approximately covers between 1,000 and 10,000 TV households. On this basis a charge of between €2 and €20 should be charged per megahertz. A TV signal occupies eight megahertz per frequency channel, accordingly a charge of somewhere between €16 and €160 per transmitter is appropriate. Deflector service providers are confined to more rural areas of Ireland, and thus a charge of €50 per transmitter is appropriate, as it reflects the lower end of the scale in terms of the number of houses served.

#### **Decision No. 4.**

**ComReg will charge UHF deflector networks a fee for spectrum rights-of-use based on an annual rate of €50 per transmitter. This will be provided for in Regulations made under the Wireless Telegraphy Acts.**

#### 5.2.2 DTT

ComReg proposed that future operators of DTT networks should be subject to a fee for spectrum rights-of-use also based on the rate applied to FWA spectrum (€1,905 per MHz).

#### *Views of Respondents*

Most respondents were in agreement that future operators of DTT networks should be subject to a fee for spectrum rights-of-use based on the same rate as that applied to FWA spectrum (€1,905 per MHz), provided that it is applied consistently to all radio spectrum. In addition, there was recognition of the fact that ComReg's wish to promote new and more spectrally efficient technologies, such as digital terrestrial television.

However one respondent proposed that the spectrum usage fee should not be charged as this would compromise the financial viability of the introduction of DTT. This

coupled with the launching of the BBC “Freesat” would act as a disincentive for Irish free-to-air terrestrial analogue broadcasters to migrate to digital systems.

#### *ComReg’s Position*

A spectrum fee in the order of €60,000 per national multiplex as discussed in consultation paper “Future Regulation of Electronic Communications Networks and Services -Fees for Authorisations and Rights of Use” would result based on a charge of €1,905 per MHz. This spectrum charge, on a national basis, is the same as that proposed for MMDS and FWA.

In proposing a fee for future DTT networks, ComReg did take into consideration the financial implications of imposing a right-of-use charge. However, it was assessed that the associated annual fee of €60,960 per multiplex would not be a significant barrier to entry. The proposed fee aims to establish a more uniform regime for spectrum rights-of-use fee across the broadcasting and telecommunications sectors.

ComReg is also mindful of public service obligations which future DTT operators shall be subject to. Consideration has been made of recital 8 of the Radio Spectrum decision and Article 5(2) and Recital 12 of the Authorisation Directives which allow for factors such as general interest objectives and non-discriminatory treatment being the basis for giving appropriate treatment to broadcasters with public service obligations. ComReg considers that it has already given recognition to the public service obligations in its decision on administrative charges and feels therefore that a more market related approach to the fee for spectrum usage is appropriate.

**Decision No. 5.**  
**ComReg proposes to charge any future national DTT network operators a fee for spectrum rights-of-use based on the same rate as that applied to FWA spectrum (€1,905 per MHz).**

#### *5.2.3 Satellite*

ComReg proposed a flat rate voluntary, annual charge of €0.50 per satellite dish, (a reduction on the €1.00 proposed in (03/46)), to extend recognised spectrum access rights within Ireland to satellite operators who are licensed in another country.

#### *Views of Respondents*

The general consensus among respondents was agreement that operators of satellite networks whose downlinks are received in Ireland but licensed elsewhere should be given the opportunity to obtain equal recognition with co-primary services licensed in Ireland in return for an annual fee. The vast majority of respondents were also of the opinion that the principle of payment per receiving dish is a suitable way of charging satellite operators. However, concern was raised by two of the respondents that the payment was on a voluntary basis, while Irish operators are subject to mandatory charges.

One respondent believed that a higher charge per receiving dish should be applied; this would be justified as satellite service providers work in an international

environment where there are large economies of scale in terms of spreading costs. The respondent argued that satellite subscribers are charged a monthly subscription of between about €30 and €60, depending on the variety of programme services provided. It was the respondent's view that a charge of about €0.04 per month corresponds to about 0.1% of the average yearly income per subscriber, and since this can be passed on to the subscriber, even a tenfold increase in administrative charge would barely be noticed by the subscriber.

Two respondents made the point that satellite spectrum should be managed in a harmonised way throughout the European Community, for political, economic and technical reasons.

#### *ComReg's Position*

ComReg does recognise the need for co-ordination at a community level. However, the proposed fee for providers of DTH satellite broadcasting is to enable ComReg to recoup its costs from the beneficiaries of work done in relation to the relevant part of the frequency spectrum. This would be reflected for in the spectrum charge, which is applicable to terrestrial operators. In principle this is a proportional method to ensure that all beneficiaries of Irish managed spectrum are treated equally regardless whether they are based in Ireland or not. As stated earlier spectrum is a finite resource and where frequencies are shared (both domestically and internationally) costs are incurred to ensure that radio signals from different users and services do not significantly interfere with each other.

ComReg, did consider a higher flat rate charge per satellite receiving dish in an earlier consultation, however concluded that the charge which would apply to at least two operators should be brought in to line with the charges proposed for cable and MMDS.

ComReg does not have the legal power to impose mandatory spectrum rights of use charges on a satellite operators licensed in a country other than Ireland. It therefore has decided to give satellite operators the opportunity to pay a flat annual charge on a voluntary basis. However, in a recent press release issued by the Department of Communications, Marine and Natural Resources, the Minister stated that:

*“In the context of the transposition into Irish law of the European regulatory package, the extent to which the package applies to other aspects of the provision of television services in the State by satellite as well as other platforms arises. Such aspects include access to facilities, quality of service and consumer protection.*

*The Minister will bring forward legislative proposals later this autumn to ensure a level playing field among television transmission operators to the maximum extent possible in relation to these issues”<sup>7</sup>*

ComReg supports this proposal.

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<sup>7</sup> “Dermot Ahern Signs EU Electronic Communications Networks and Services Regulations” Dublin, Thursday, 24 July 2003 (<http://www.dcmnr.gov.ie/modules/pressreleases.asp>)

**Decision No. 6.**

**ComReg will give operators of satellite networks with downlinks to Ireland but licensed elsewhere the opportunity to gain recognised spectrum access rights and contribute to the costs incurred by ComReg in managing the spectrum in return for an annual charge of €0.50 per satellite receiving dish.**

*5.2.4 Impact of Measures*

ComReg asked for respondents' assessment of the impact of these measures on their companies.

*Views of Respondents*

The general response was that the imposition of the new proposals for recovering administrative cost and fees for spectrum rights of use would have a negative impact. Two respondents stated that the proposals would be resisted as they "ignore the principle of technological neutrality". Respondents also raised a number of issues such as the justification for different charges for pay TV and free-to-air broadcasters and the voluntary nature of the scheme for satellite operators with downlinks to Ireland but licensed elsewhere.

*ComReg's Position*

Many of the issues raised in response to this question such as the different charges for pay TV and free-to-view operators and the voluntary nature of the satellite scheme have already been addressed in this paper. ComReg's position regarding the regulatory impact of the measures for recovering administrative costs and fees for spectrum rights of use is set out at Appendix 2.

## Appendix 1 - Legislation

The principal legislation governing the Broadcasting sector include, *inter alia*,

Broadcasting Authority Act, 1960, No.10 of 1960 and as amended.

Broadcasting Act, 1990, No. 24 of 1990

Broadcasting Act, 2001, No 4 of 2001

Communications Regulation Act, 2002, No. 20 of 2002

European Communities (Electronic Communications Networks and Services)  
(Authorisation) Regulations, S.I. 306 of 2003

Directive 2002/20/EC of the European Parliament and of the Council of 7 March  
2002 on the authorisation of electronic communications networks and services  
(Authorisation Directive)

Radio and Television Act, 1988, No. 20 of 1988

Wireless Telegraphy Act, 1926, No. 45 of 1926

Wireless Telegraphy Act, 1972, No. 5 of 1972

## Appendix 2 - Regulatory Impact Assessment

### 6.1 Introduction

This Appendix reviews the regulatory impact of the decisions relating to the measures put forward in this paper and the previous consultation 03/78. ComReg has, in undertaking this review, had regard to the general legislative environment including the regulatory objectives as set out by the Communications Regulation Act 2002 Clause 12 and as appropriate, the Ministerial Directions of February 2003<sup>8</sup>. The assessment is set out in general terms, where appropriate, relating to the general objectives of section 12 including the promotion of competition, the development of the internal market and the promotion of the interests of users within the community. It should be noted that this consultation process began in November 2002, in advance of the Ministerial policy direction on RIA.

### 6.2 Legislative Basis for the Measures

As previously, stated Regulation 19 of the Authorisation Regulation (S.I. No. 306 of 2003) amends Section 30 of the Communications Act 2002 and states that the expenses of the Commission in relation to the discharge of its functions in relation to electronic communications shall cover the administrative charges which will be incurred in “the management, control and enforcement of the general authorisation scheme, the licensing scheme for the licence concerned, the schemes for the grant of rights of use for numbers and specific obligations, and may include costs for international co-operation, harmonisation and standardisation, market analysis, monitoring compliance and other market control, as well as regulatory work involving preparation and enforcement of any orders under section 3(6) (inserted by section 11(c) of the Wireless Telegraphy Act 1972) of the Wireless Telegraphy Act 1926 or regulations under section 6 of that Act relating to apparatus for wireless telegraphy for the provision of an electronic communication network or service and administrative decisions, such as decisions on access and interconnection”.

Recital 31 of the Authorisation Directive also states: “*With a general authorisation system it will no longer be possible to attribute administrative costs and hence charges to individual undertakings except for the granting of rights to use numbers, radio frequencies and for rights to install facilities. Any applicable administrative charges should be in line with the principles of a general authorisation system. An example of a fair, simple and transparent alternative for these charge attribution criteria could be a turnover related distribution key. Where administrative charges are very low, flat rate charges, or charges combining a flat rate basis with a turnover related element could also be appropriate.*”

ComReg incurs significant costs in regulating ECNs and ECSs including those in the broadcasting sector and considers it equitable that all operators should make an

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<sup>8</sup> Directions by the Minister for Communications Marine and Natural Resources to the Commission for Communications Regulation under s.13 of the Communications Regulation Act 2002, 21 February, 2003

appropriate and proportionate contribution towards meeting those costs. While ComReg believes that a single method of computing an administrative levy would be most appropriate, it recognises that the characteristics of the broadcasting sector do not permit this and that even within the sector different methods of computation are needed.

### **6.3 The Promotion of Competition**

ComReg believes that the effect of its decisions on the promotion of competition will be neutral to positive. ComReg notes that criticisms that have been made about the lack of a level playing field between pay TV operators based in Ireland and those based overseas. However the new arrangements will substantially reduce the regulatory burden placed on cable and MMDS operators which if passed on to consumers will make them more competitive. Under the new framework satellite operators providing wholesale transmission services will be subject to a 0.2% levy on relevant turnover bringing them more in line with Irish based providers of ECSs and ECNs. It has also been noted previously that ComReg welcomes the Ministerial statement on proposals for new legislation to further level the playing field. UHF deflectors should encounter no real change with these measures. RTE, the BCI and will suffer some financial impact, as RTE and the BCI will be subject to an administrative charge but it is hoped that while the charge will contribute to regulatory costs it will also result in more efficient use of spectrum which could result in turn in more services.

### **6.4 The Development of the Internal Market**

ComReg believes that the effect of its decision on the development of the internal market will be neutral. The basis for the fees is consistent with the terms of the new European regulatory framework. In accordance with the principle of freedom of establishment, no distinction is made between indigenous and foreign-owned broadcasting operators established in the State.

In relation to the proposal to charge a voluntary fee to operators of satellite networks with downlinks to Ireland but licensed elsewhere in return for recognised spectrum access rights within Ireland, ComReg notes the concerns expressed by some operators about possible negative effects on the harmonisation of spectrum use within the Community. For the avoidance of doubt, ComReg wishes to point out that this fee will have no effect whatsoever upon the actual use of the frequency spectrum and will not negatively impact on European harmonisation. However, the fact is that these services generally share the frequencies they occupy with other users and services, and their use must be co-ordinated with that of other services using the band. This imposes costs on the NRA which must be funded. Article 8 (3)(c) of the Framework Directive requires that NRAs contribute to the development of the internal market by, inter alia, "ensuring that, in similar circumstances, there is no discrimination in the treatment of undertakings providing electronic communications networks and services." ComReg's decisions are in line with this principle

## **6.5 The Promotion of the Interests of Users within the Community**

ComReg considers that the new measures promote the interests of users within the community. The impact of the new system for administrative charges and WT licence fees will substantially reduce the regulatory costs to MMDS and cable operators. In the past regulatory charges were pass through charges to end consumers and the adjustment in the level of the charges would be expected to be reflected in the price charged by the operator to each customer. Subscribers to UHF defectors should encounter no real change. RTE, the BCI and satellite operators will suffer some financial impact, however, ComReg considers that the impact will be so low that it will not impact directly on end consumers.



## Appendix 3 – Decisions

For ease of reference, the following is a list of Decisions set out in the above Response to Consultation.

### List of Decisions

Decision No. 1.	13
ComReg will levy an administrative charge on operators of ECNs used for pay TV services of €0.50 per subscriber connected to their network. ComReg will provide for this in its Levy Order made under Section 30 of the Communications Regulation Act 2002.	13
Decision No. 2.	15
ComReg will charge RTÉ and the BCI an administrative charge of €100 per transmitter (but not spectrum fees) in recognition of the ECNs operated by RTÉ and the independent radio and television broadcasters. ComReg will provide for this in its Levy Order made under Section 30 of the Communications Regulation Act 2002.	15
Decision No. 3.	15
ComReg will charge future digital terrestrial television services an administrative charge of €100 per transmitter in the case of free-to-view DTT.	15
ComReg will charge future digital terrestrial television services €0.50 per subscriber connected in the case of each pay DTT platform.	15
Decision No. 4.	16
ComReg will charge UHF deflector networks a fee for spectrum rights-of-use based on an annual rate of €50 per transmitter. This will be provided for in Regulations made under the Wireless Telegraphy Acts.	16
Decision No. 5.	17
ComReg proposes to charge any future national DTT network operators a fee for spectrum rights-of-use based on the same rate as that applied to FWA spectrum (€1,905 per MHz).	17
Decision No. 6.	19
ComReg will give operators of satellite networks with downlinks to Ireland but licensed elsewhere the opportunity to gain recognised spectrum access rights and contribute to the costs incurred by ComReg in managing the spectrum in return for an annual charge of €0.50 per satellite receiving dish.	19

Appendix 4 – Comparison of Old and New Arrangements for Broadcasting Sector

		<b>Administrative Charges per Annum (Levy)</b>	<b>Wireless Telegraphy (Spectrum) Fee per annum)</b>
	<b>Old Charge</b>	<b>New Charge</b>	<b>New Charge</b>
<b>Cable Networks</b>	3.5%	€0.50 per subscriber connected	n.a.
<b>MMDS Networks</b>	3.5%	€0.50 per subscriber connected	X/Y x €1,905/MHz*
<b>Deflector Networks</b>	€176 or 3.5% which ever is >	€0.50 per subscriber connected	€50 per transmitter
<b>Satellite</b>	No charge	€0.50 per dish (voluntary)	n.a.
<b>RTE Terrestrial Network</b>	No charge	€100 per transmitter	n.a.
<b>BCI Contractor's Terrestrial Networks</b>	No charge	€100 per transmitter	n.a.
<b>DTT Networks</b>	3.5%	€0.50 per subscriber (per pay platform operator) or €100 per transmitter carrying FTV services	€1,905/MHz
<b>Transmission Services (terrestrial and satellite)</b>	No charge	0.2% of relevant revenue	n.a.
<p>Entities will be exempt from paying administrative charges that total less than €1000 in the financial year.                      *X/Y=number of homes passed divided by total number of TV households (currently 1.3 million. Source: 03/29b, Irish Communications Market: Quarterly Key Data Report).</p>			