



Commission for  
**Communications Regulation**

# **Consultation**

## **The future of Deflector Licensing in Ireland**

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**An Coimisiún um Rialáil Cumarsáide**

**Commission for Communications Regulation**

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All responses to this consultation should be clearly marked:-  
"Reference: Submission re ComReg 12/18" as indicated above, and sent by post, facsimile or e-mail to arrive on or before 2.30 p.m., on April 4 2012, to:

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Please note ComReg will publish all respondents submissions with the Response to this Consultation, subject to the provisions of ComReg's guidelines on the treatment of confidential information – ComReg  
05/24

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# 1 Background

- 1 The original deflector licensing scheme was established in 1999, by the then Office of the Director of Telecommunications Regulation ("ODTR") following a public consultation (ODTR Doc 99/55). The scheme was established under the Wireless Telegraphy (UHF Televisions Programme retransmission) Regulations 1999 (S.I. 348/1999). From the outset, this was viewed as a temporary scheme, intended to regularise the activities of deflector operators who, up until that time, had operated without licences, and therefore illegally. The scheme permitted the provision of deflector services only in those geographic areas where a cable television service was unavailable, and the view was also expressed that the scheme would be wound up upon the introduction of Digital Terrestrial Television ("DTT") which, at that time, was expected to begin roll out in 2001.
- 2 For this reason, the 1999 Deflector Regulations stated that the licences would be of one-year duration, subject to renewal for a maximum of one more year (i.e. up until 31 December 2001) but that they could not be renewed further beyond that date. As DTT did not launch in 2001, the deflector licensing scheme was renewed in 2001, by amendment of the 1999 Deflector Regulations, and it was renewed again in 2003, 2006 and 2009, each time by a new set of Deflector Regulations. The current scheme - in place under the Wireless Telegraphy (UHF Televisions Programme retransmission) Regulations 2009 (S.I. 445/2009) ends on 31 December 2012. All current licences will terminate on that date and they shall not be renewed or extended beyond that date. Regulation 6(4) of the current Deflector Regulations stipulates that no licence may be renewed under those Regulations after 31 December 2012.
- 3 Deflector operators were originally granted licences to enable them to retransmit the four UK national analogue terrestrial channels to their customers. They were required to identify four frequency channels which could be licensed to them for the purpose of providing such a service. Deflector operators are licensed on a "secondary basis" in the UHF band<sup>1</sup> to the national analogue terrestrial television transmission service and the national digital terrestrial television service (DTT). This means that the deflector operators are required not to cause interference to other primary licensed users of the UHF band (such as licensed broadcasters), though they are not in turn protected from such interference as may be caused to them by other primary licensed broadcasters.

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<sup>1</sup> Table of Frequency Allocations - 08/90R3, 19 December 2011.

- 4 RTÉ launched its National Public Service DTT product, 'Saorview', in May 2011 and in October 2011 the Minister for Communications, Energy and Natural Resources announced that 24 October 2012 will be the date of Digital Switch Over (DSO) in conjunction with DSO in Northern Ireland, at which point analogue terrestrial television transmissions will cease in the island of Ireland<sup>2</sup>.
- 5 As of 31 December 2011, there were 14 deflector licensees operating in the State, mainly in the south, midlands and west. Following renewal notification in December 2011, only 6 of these licensees have so far renewed their licences for the calendar year 2012. The number of licensees has decreased in line with what ComReg understands to be a very significant decrease in the number of subscribers to deflector services. It is understood that the reduction in the number of subscribers is mainly due to increased competition from satellite transmission services.

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<sup>2</sup> 'Minister Rabbitte announces date for Digital TV Switchover' - Press release DCENR, 14 October 2011

## 2 Discussion

- 6 Originally, deflector services operated by receiving a "spill over" analogue signal from Northern Ireland or Wales at a high site, boosting that signal, and then retransmitting it locally. ComReg understands that today all, or almost all, deflector operators receive a digital signal from a satellite transmission and retransmit it locally, in analogue format.
- 7 In November 2011, ComReg issued an enquiry to the 14 remaining deflector licensees, as to the number of paying subscribers to their services. Of the 7 responses received, 4 deflector operators had a total of 270 paying subscribers between them while the remaining 3 stated that they did not have any paying subscribers. A number of respondents did also note that some households were availing of their service but were not paying for it, however figures were not provided in relation to same.
- 8 At a meeting between officials of ComReg and representatives of deflector operators, in 2009, the operators recognised and accepted that as DTT rolled out they would, in many instances, be left without any spectrum with which to continue to provide their services. The high level of subscribers turning away from a deflector service and onto other platforms was also an issue for them. However, they nevertheless requested that their licences be renewed so that they could continue to provide their services until DTT became a reality in their areas.
- 9 ComReg subsequently introduced the Wireless Telegraphy (UHF Television Programme Retransmission) Regulations 2009 (S.I. 445/2009) in order to continue the deflector licensing scheme up until the end of 2012. The 2009 Regulations expire on 31 December 2012 and no licence granted pursuant to those regulations shall remain valid after 31 December 2012, nor will it be extended, renewed, or otherwise allowed to continue in effect.
- 10 On 14 October 2011 the Minister for Communications, Energy and Natural Resources, Mr Pat Rabbitte T.D., announced that analogue switch off in Ireland would occur on 24 October 2012<sup>3</sup>. After this date all broadcasting services in the State will be in Digital format.

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<sup>3</sup> 'Minister Rabbitte announces date for Digital TV Switchover' - Press release DCENR, 14 October 2011

- 11 As part of the changeover to the more spectrum efficient digital transmission mode, ComReg has consulted on the potential for a "digital dividend" - i.e. the freeing up of valuable spectrum which has long been used for analogue broadcasting but is no longer required for that purpose. Ireland has, in conjunction with other EU Member States, identified the sub band 790MHz to 862MHz (the 800 MHz band) as a digital dividend band which can be used for providing non-broadcasting services such as mobile broadband, for which there is a steadily increasing demand<sup>4</sup>.
- 12 ComReg considers that it is appropriate at this juncture to review the continued licensing of deflector systems in Ireland, and ComReg proposes that the deflector licensing scheme should conclude at the end of 2012, which in effect would mean the end of deflector services in Ireland. This proposal is made having regard to a number of facts:
- the launch of national DTT services in Ireland in May 2011;
  - the Broadcasting Act 2009 provides for spectrum to be available for commercial DTT to the Broadcasting Authority of Ireland (BAI);
  - at ASO, part of the UHF band from 790 – 862 MHz will be released via an auction for other uses;
  - viable alternative services (such as DTH satellite, both subscription and subscription free) are available;
  - the launch of the Saorsat service in early 2012
  - the declining numbers of subscribers to the services provided by deflector operators; and
  - the declining numbers of deflector operators seeking to be relicensed under the scheme.

It is also noted above that deflector licensees now operate by retransmitting digital satellite signals - they no longer operate by retransmitting analogue terrestrial signals from Northern Ireland or Wales.

- 13 In considering whether or not ComReg should terminate deflector licensing upon the expiry of the current regulations, as is proposed herein, or whether to continue the deflector licensing scheme under a new set of Regulations after 2012, ComReg has taken the following factors into consideration;
- The number of active deflector licensees;

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<sup>4</sup> Mobile Broadband penetration stands at 593,208 representing a year on year increase of 9.7%. See ComReg Quarterly Key Data Report 11/98 for Q3 2011.  
[http://www.comreg.ie/\\_fileupload/publications/ComReg1198.pdf](http://www.comreg.ie/_fileupload/publications/ComReg1198.pdf)



- The number of paying subscribers to deflector service;
  - The availability of the UK terrestrial programme services from other platform sources,
  - The need to ensure availability of spectrum for mobile services in the 800 MHz band and for future digital multiplex operators.
- 14 This is set out in detail in ComReg's draft RIA in Annex 2 of this document.
- 15 The availability of broadcasting services in Ireland has changed considerably since the launch of the original deflector licensing scheme in 1999. Deflector operators are licensed to operate outside of areas served by cable TV networks. Whereas consumers in areas without cable TV once lacked a choice of alternative service providers, they now have such a choice via non-subscription satellite services or subscription satellite services. This is in addition to consumers being able to avail of Irish DTT services for free, via the 'Saorview' or 'Saorsat' services.
- 16 Of the 14 deflector operators still licensed up until 31 December 2011, 5 were providing services using spectrum in the 790 - 862 MHz frequency range. To date only 2 of those 5 licensees have renewed their licences. ComReg is currently engaged in a public consultation process on the future use of the 790 - 862 MHz band and ComReg expects to auction this band during this calendar year as part of a multiband release of spectrum for the provision electronic communications services<sup>5</sup> on a liberalised basis. Following the auction, spectrum in the 790 - 862 MHz band will no longer be available to broadcasting services such as deflectors.
- 17 ComReg is obliged, under the terms of the Broadcasting Act 2009, to issue licences to the BAI in respect of four digital television multiplexes, in the event that independent parties should choose to establish their own multiplex networks. ComReg has made provision for frequencies throughout the country for those four multiplexes in developing a spectrum plan for DTT. As a result, and bearing in mind that the 800MHz band will no longer be available for television transmission, the potential for identifying four additional frequencies at specific locations to accommodate the continuance of analogue deflector operators following DSO, is problematic.
- 18 Given all of the above, and the very low subscriber numbers, ComReg proposes that it shall not put in place a new deflector scheme upon the expiry of the existing scheme, on 31 December 2012.

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<sup>5</sup> 11/75 - Multi-band Spectrum Release - Draft Information Memorandum

Q. 1 Do you agree with ComReg's proposal that it shall not put in place a new deflector licensing scheme at the end of 2012? Please provide reasons and any supporting information with your answers.

### 3 Submitting Comments

- 19 All comments are welcome, however it would make the task of analysing responses easier if comments were referenced to the relevant question numbers from this document.
- 20 The consultation period will run from 8 March 2012 to 4 April 2012 during which the Commission welcomes written comments on any of the issues raised in this paper.
- 21 Having analysed and considered the comments received, ComReg will review the responses and publish a report in June on the consultation which will, inter alia summarise the responses to the consultation.
- 22 In order to promote further openness and transparency ComReg will publish all respondents submissions to this consultation, subject to the provisions of ComReg's guidelines on the treatment of confidential information – ComReg 05/24
- 23 Please note that ComReg appreciates that many of the issues raised in this paper may require respondents to provide confidential information if their comments are to be meaningful.
- 24 As it is ComReg's policy to make all responses available on its web-site and for inspection generally, respondents to consultations are requested to clearly identify confidential material and place confidential material in a separate annex to their response
- 25 Such Information will be treated subject to the provisions of ComReg's guidelines on the treatment of confidential information – ComReg 05/24

## Annex: 1 Legal Basis

A 1.1 The original deflector licensing scheme was established in 1999, by the then Office of the Director of Telecommunications Regulation ("ODTR") following a public consultation (ODTR Doc 99/55). The scheme was established under the Wireless Telegraphy (UHF Televisions Programme retransmission) Regulations 1999 (S.I. 348/1999). The scheme permitted the provision of deflector services only in those geographic areas where a cable television service was unavailable, and the view was also expressed that the scheme would be wound up upon the introduction of Digital Terrestrial Television ("DTT") which, at that time, was expected to begin roll out in 2001.

A 1.2 For this reason, the 1999 Deflector Regulations stated that the licences would be of one-year duration, subject to renewal for a maximum of one more year (i.e. up until 31 December 2001) but that they could not be renewed further beyond that date. As DTT did not launch in 2001, the deflector licensing scheme was renewed in 2001, by amendment of the 1999 Deflector Regulations, and it was renewed again in 2003, 2006 and 2009, each time by a new set of Deflector Regulations. The current scheme - in place under the Wireless Telegraphy (UHF Televisions Programme retransmission) Regulations 2009 (S.I. 445/2009) ends on 31 December 2012.

## **Annex: 2 Draft RIA on the Deflector Licensing scheme in the UHF band.**

A 1.3 This Annex sets out ComReg's draft RIA on the deflector licensing scheme and is prepared in accordance with ComReg's RIA guidelines<sup>6</sup> ("ComReg's RIA Guidelines") and having regard to the RIA Guidelines issued by the Department of An Taoiseach in June 2009 ("the Department's RIA Guidelines").

A 1.4 In August 2007 ComReg issued guidelines on its approach to conducting a RIA. The guidelines set out, amongst other things, the circumstances in which ComReg considers that a RIA is appropriate. In summary, ComReg indicated that it would generally conduct a RIA in any process that might result in the imposition of a regulatory obligation, or the amendment of existing regulatory obligations to a significant degree, or which might otherwise significantly impact on any relevant market or on any stakeholders or consumers.

A 1.5 The draft RIA follows the structure described in ComReg's RIA Guidelines and consists of the following five steps:

- Step 1: Identify the issue and identify the objectives
- Step 2: Identify and describe the regulatory options
- Steps 3: Determine the impact on stakeholders
- Steps 4: Determine the impact on competition
- Step 5: Assess the impacts and choose the best option

### **Step 1: Identify the issue and identify the objectives**

A 1.6 ComReg's statutory objectives which are relevant to this RIA are to:

- Ensure the efficient use and effective management of spectrum,
- Ensure that all users including disabled users derive maximum benefit in terms of price choice and quality,
- Ensure there is no distortion or restriction of competition in markets for the provision of electronic communication services.

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<sup>6</sup> 'Guidelines on ComReg's Approach to Regulatory Impact Assessment' – ComReg 07/56a, August 2007.

A 1.7 There are currently 6 licensed Deflector service providers offering services in Ireland. Each deflector licensee is licensed to use 4 channels in the UHF band for the retransmission of UK television services in analogue form. Channels are assigned within the 470 MHz – 862 MHz part of the UHF band. ComReg issues deflector licences on a secondary basis<sup>7</sup> under the Wireless Telegraphy (UHF Television Programme Retransmission) Regulations 209 (S.I. 445/2009). The current licensing scheme ends on 31 December 2012.

A 1.8 The policy issue to be addressed is whether or not ComReg should put in place a new deflector licensing scheme at the end of 2012 to accommodate continued provision of television retransmission services.

A 1.9 The factors relevant to this issue are:

1. Analogue switch off (ASO) is scheduled to take place on October 24 2012,
2. European Commission Decision 2010/267/EU on the harmonised technical conditions for the band 790 – 862 MHz for electronic communications,
3. ComReg is finalising its plans for the auction of the 790 – 862 MHz (the so called “Digital Dividend”) part of the UHF band for electronic communications services in 2012,
4. ComReg’s obligation to provide a minimum of six national digital multiplexes below 790 MHz for public service and commercial DTT services.

A 1.10 In February 2009, the Department of Communications, Energy and Natural Resources (DCENR) published its National Policy framework for identifying the ‘Digital Dividend’<sup>8</sup>. The document set out that the spectrum for broadcasting, post analogue switch-off, required to accommodate the statutory minimum of six nationwide multiplexes should be identified and reserved. The document also stated that additional broadcasting requirements may be considered but not as core requirements. The document also set out to establish a policy framework for identifying the spectrum required for television broadcasting in the UHF band as well as identifying the spectrum that could be released for use by other services. The document set out that following analogue switch-off, in so far as it is possible to do so, Ireland’s UHF DTT broadcasting should be concentrated in the band 470 to 790 MHz. It also added that the Band 790 to 862 MHz (the “800 MHz band”) should, in so far as is possible, be released for use by electronic communications services.

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<sup>7</sup> Not permitted to cause interference and will not be afforded protection from interference from other sources.

<sup>8</sup> ‘Development of a National Policy Framework for identifying spectrum for the Digital Dividend’ – DCENR, February 2009

A 1.11 European Commission Decision 2010/267/EU mandates EU Members States to make available the 790 – 862 MHz band for electronic communications services. This Decision sets out the detailed technical conditions that must apply to any system deployed in this band by. The technical parameters of deflector systems are such that they are not capable of meeting the technical conditions as set out in EC Decision 2010/267/EU. ComReg is currently in engaged in a consultation process which includes, amongst others, its proposals for the implementation of this Decision.

A 1.12 The advent of DTT and the achievement of a “Digital Dividend” in the 800MHz band causes two issues for deflector operators. Deflector operators that currently use channels in the 790 - 862MHz part of the band will no longer be allowed to do so when the spectrum is allocated to new operators for the provision of electronic communications service. In addition, ComReg has an obligation, under the Broadcasting Act 2009<sup>9</sup> to issue a minimum of four national licences to the Broadcasting Authority of Ireland (BAI) in respect of DTT multiplexes, if requested. ComReg has already licensed RTÉ for two DTT multiplexes in line with its obligation under the Broadcasting Act 2009<sup>10</sup>. The UHF band is a finite spectrum resource and as a consequence, there would be a difficulty in identifying sufficient channels at particular locations in the UHF band below 790MHz to accommodate the requirements for a minimum of six multiplexes for DTT, as well as four channels for analogue deflector transmissions.

A 1.13 The Programme Making and Special Events (PMSE) sector utilises the interleaved UHF spectrum band on a temporary secondary basis for communications at events such as concerts and festivals or programme making. The auction of the 790 – 862 MHz means that this spectrum will no longer be available for PMSE users who will have to be accommodated in the spectrum below 790 MHz.

## **Step 2: Identify and describe the regulatory options**

A 1.14 ComReg has identified the two following regulatory options which may be adopted in order to address the policy issues outlined above, in line with its statutory functions. These options are as follows:

A 1.15 Option 1: Not to put in place a new deflector scheme at the end of 2012 when the current scheme expires thereby freeing up spectrum from early 2013 for other users as outlined above.

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<sup>9</sup> Section 132(3) & (4) of the Broadcasting Act 2009 requires ComReg to licence (by request of the BAI) DTT multiplexes to the BAI.

<sup>10</sup> Section 132(1) & (2) of the Broadcasting Act 2009 provides for the licensing of two DTT multiplexes to RTÉ.

A 1.16 Option 2: To put in place a new deflector scheme at the end of 2012 when the current scheme expires. This new scheme would be on a similar basis to the current scheme and run for a period of up to [three] years, licences under the scheme would be annual licences and could be terminated as the spectrum was needed for other services.

### **Steps 3 & 4: Determine the impacts on stakeholders and on competition**

The stakeholders likely to be directly affected by the options outlined above are;

- The 6 licensed deflector service providers,
- The approximate 270 customers availing of deflector services, and
- The BAI, who is responsible for the award of the four commercial DTT multiplexers.

The stakeholders likely to be indirectly affected by the options outlined above are;

- PMSE users,
- Commercial Digital TV services providers and consumers and
- Mobile broadband service providers and consumers as this spectrum is very suitable for the provision of mobile broadband services.

A 1.17 Option 1 would mean that deflector operators would no longer be able to provide television retransmission services to their limited number of customers. However it would free up spectrum from early 2013 currently used by deflector operators in the UHF band, and ensure the timely availability of spectrum in that band ,for the provision of new mobile broadband services<sup>11</sup> and commercial digital terrestrial television (DTT) to a large number consumers on a nationwide basis. This would have benefits for competition in both the mobile and broadcasting markets.

A 1.18 Under Option 1 the small number of consumers (approximately 270<sup>12</sup>) in a small number of specific geographic locations currently receiving UK terrestrial television programme services via a deflector service provider would no longer have this platform option. However they would continue to have the choice of a number of alternative platforms for reception of UK terrestrial television programme services in the future, principally via free to air or subscription based direct to home (DTH) satellite services.

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<sup>11</sup> The upper part of the UHF Band 790 – 862 MHz (known as the 800 MHz Band) is part of a multiband spectrum award process, the Draft Information Memorandum of same is at ComReg document 11/75.

<sup>12</sup> ComReg carried out a survey of the 14 licensed deflector operators in November 2011 to ascertain the number of paying subscribers using the service. Four of the seven respondents had subscribers.



- A 1.19 A further consideration could be that consumers will be making the change to DTT this year to continue to receive the free to air Irish national stations. As part of that change a proportion may well choose to receive access to the UK stations digitally via satellite either free to air or subscription. This would weaken the already small consumer base for deflectors even further and would lessen the impact of discontinuing the deflector licensing regime.
- A 1.20 Option 1 would also ensure that the interleaved spectrum in the UHF band that is currently used for Programme Making and Special Event (PMSE) licensing continues to be available for that use throughout the country.
- A 1.21 Option 2 would maintain the status quo for the small number of consumers who currently avail of analogue UK terrestrial television programme services via a deflector service provider and for the ever decreasing number of licensed deflector operators<sup>13</sup>.
- A 1.22 The award of the 800 MHz band for electronic communication services would mean that two of the six licensed deflector operators who currently use channels in 800MHz band for the re-transmission of television programme services would, if a deflector licensing scheme were to be put in place after 2012, have to identify channels elsewhere in the UHF band which could be used for the provision of such analogue deflector services. Such an eventuality could, however, be problematic for potential new commercial DTT services and for the continued availability of interleaved spectrum in the UHF band for PMSE.
- A 1.23 Demand for television services via a deflector system has fallen dramatically over the past number of years. Probably as a consequence of the broad choice of platforms now available, subscriber numbers have fallen from approximately 150,000 in 1999 to the current subscriber base of about 270. These remaining consumers can now, following a once off set up cost, avail of free to air terrestrial or satellite services. The continued licensing of analogue deflectors from 2013, as proposed in Option 2, could result in a delay to the availability of spectrum for and consequently the award of licences by the BAI for commercial digital television broadcasting. This could have an impact on competition in the digital broadcasting market.

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<sup>13</sup> 6 have renewed their licences for 2012, from a peak of 31 licensees in 1999 and from 14 licensees in 2011

A 1.24 An attempt to accommodate analogue deflectors in the UHF band below 790MHz, in addition to sufficient provision for DTT, could also impact on the spectrum availability for PMSE use in that part of the band<sup>14</sup>. PMSE is currently accommodated in the interleaved channels on a temporary basis, as necessary. The cost of retuning of any deflector system still in operation above 790MHz is likely to outweigh any benefits that might accrue to the small number of paying subscribers availing of the service.

A 1.25 Deflector operators provide services to a specific geographical location and as such do not compete against one another to provide services to consumers. However the negative impact of Option 2 could reduce competition in both the Digital Broadcasting and mobile markets should the spectrum for the provision of these services not be available.

A 1.26 Overall Option 1 is likely to have a greater positive impact on competition by ensuring the efficient management and use of the radio frequency spectrum.

### **Step 5: Assess the impacts and choose the best option**

A 1.27 Option 1 has a number of benefits, namely, ensuring the timely availability of spectrum in the UHF band to provide DTT and wireless broadband services to a large number of consumers post analogue switch off and the continued availability of spectrum in the UHF band to provide services such as PMSE. These benefits would accrue to a significant number of consumers and are likely to outweigh the costs which relate to the short term disruption of a small number of consumers of deflector services moving to alternative platforms.

A 1.28 Whilst these costs would not arise for the 270 consumers using deflector services with Option 2, there would be a cost to the two deflector operators that would be required to re-tune their equipment out of the 790 – 862 MHz sub band, which, regardless of whether a new deflector licensing scheme is put in place or not, will, in any event be reassigned to mobile broadband from the date of analogue switch off in October 2012. Given the very low number of subscribers availing of the service re-tuning is unlikely to be an economical option for the operators affected. This cost and short term disruption to the 270 deflector customers is outweighed by the benefits of ensuring timely spectrum availability for the provision of DTT and broadband services to a large number of consumers.

A 1.29 Having regard to the factors discussed above, ComReg is of the view that Option 1 is likely to better address the policy issues set out above, in line with its statutory functions.

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<sup>14</sup> 'Development of a National Policy Framework for identifying spectrum for the Digital Dividend' as published by DCENR in February 2009, sets out that in releasing a 'Digital Dividend' in the 800 MHz, there should be continued use of the 'white spaces' (or interleaved spectrum) for PMSE and other such services ancillary to broadcasting.