



Commission for
Communications Regulation

Conditions

Basic Telecommunications Licence Conditions

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Basic Telecommunications Licence

1. Definitions and Interpretation

- 1.1. In the Licence and the Conditions the expressions set out below have the meanings given to them below (and other grammatical forms of the expressions have corresponding meanings):

“1983 Act”: means the Postal and Telecommunications Services Act, 1983;

“1996 Act”: means the Telecommunications (Miscellaneous Provisions) Act, 1996;

“Affiliate”: means any company controlling, controlled by or under common control with the Licensee;

“Conditions”: means Conditions 1 through 8 as otherwise supplemented or amended from time to time;

“Declaration” means the declaration submitted or to be submitted by the Licensee as part of its application for the Licence, confirming that the information in the application form completed by the Licensee is accurate and that the Licensee will comply with the Conditions and all lawful directions of the Commission;

“Commission”: means the Commission for Communications Regulation;

“Licence”: means the authorisation granted by the Commission to the Licensee pursuant to Section 111(3) of the 1983 Act to provide Licensed Services subject to the Conditions;

“Licence Application Fee”: means the fee specified by the Commission in the Declaration and payable by the Licensee prior to and for the grant of the Licence;

“Licence Commencement Date”: means the date on which the Commission confirms that the Licence is in force or, if earlier, the date on which the Licensee may otherwise commence the provision of Licensed Services under Section 111(3)(e)(iv) of the 1983 Act;

“Licensee”: means the person making the Declaration or any person to whom the Licence is lawfully transferred or sub-licensed in accordance with Condition 2.2;

“Licensing Regulations”: means the European Communities (Telecommunications Licences) Regulations, 1998;

“Licensed Services”: means the establishment and/or operation of any Telecommunications Network and/or the provision of any services to the public consisting wholly or in part of the transmission and/or routing of signals on a Telecommunications Network, other than:

- (i) services to which Section 4(A) of the Telegraph Act 1869, as inserted by the European Communities (Telecommunications Infrastructure) Regulations, 1997 relates;
- (ii) the reception and/or origination of Programme Services and their conveyance over a Telecommunications Network;
- (iii) Mobile and Personal Communications Services;
- (iv) Voice Telephony services or any other service, network or system requiring the allocation to Users of numbers from the National Telecommunications Numbering Resource;
- (v) the establishment and/or operation of a Public Telecommunications Network; or
- (vi) the establishment and/or operation of a Mobile and Personal Communications System;

“Mobile and Personal Communications Services”: means services other than satellite services whose provision consists, wholly or partly, in the establishment of radiocommunications to a mobile user, and makes use wholly or partly of a Mobile and Personal Communications System;

“Mobile and Personal Communications System”: means a system consisting of the establishment and operation of a mobile network infrastructure, whether or not connected to public Network Termination Points, to support the transmission and provision of radiocommunications services to mobile users;

“National Telecommunications Numbering Resource” means the resource administered by the Commission which sets out the sequence of numbers or other characters which shall be used to route telephony traffic;

“National Numbering Scheme”: means the scheme administered by the Commission which sets out the sequence of numbers or other characters which shall be used to route telephony traffic to specific locations;

“Network Termination Point”: means all physical connections and their technical access specifications which form part of a Public Telecommunications Network and are necessary for access to and efficient communication through that public network and which are individually identified by numbers allocated from the National Numbering Scheme;

“Other Licensed Operator”: means any person who, for the time being, has the benefit of a licence granted under Section 111(2) or 111(3) of the 1983 Act;

“Programme Services”: means any service involving compilation of sound and/or visual programme material intended for reception by the public which comes within the scope of services provided over wired broadcast relay systems (cable) and/or television programme retransmission systems (MMDS) licensable in accordance with relevant regulations under the Wireless Telegraphy Act 1926;

“Public Pay Telephone”: means a telephone available to the general public for the use of which the means of payment are coins and/or credit/debit cards and/or prepayment cards;

“Public Telecommunications Network”: means a telecommunications network used, inter alia, for the provision of public telecommunications services (as defined in Section 111 of the 1983 Act) between Network Termination Points;

“SMP” means Significant Market Power as defined in the European Communities (Interconnection in Telecommunications) Regulations, 1998;

“State”: means Ireland;

“Telecommunications Network”: means the transmission equipment and, where applicable, switching equipment and other resources which permit the conveyance of signals between defined termination points by wire, by radio, by optical or by other electro-magnetic means;

“Term”: means, subject to Condition 4 and to the 1983 Act, as amended by the Licensing Regulations, a period of five years from the Licence Commencement Date;

“Users”: means individuals, including consumers or organisations, using or requesting publicly available telecommunications services;

“Voice Telephony”: means the commercial provision for the public of the direct transport and switching of speech in real time between public switched Network Termination Points, enabling any User to use equipment connected to such a Network Termination Point in order to communicate with another termination point.

1.2. In the Licence and these Conditions, unless the context indicates a contrary intention:

- (1) references to conditions, paragraphs and subparagraphs are to conditions, paragraphs and subparagraphs of the Conditions, as varied from time to time in accordance with the Conditions;
- (2) a document will be incorporated into and form part of the Conditions if it is referred to in the Conditions and a reference to such a document is to that document as varied from time to time;
- (3) headings used for conditions, paragraphs and subparagraphs are for ease of reference only and will not affect the interpretation of the Conditions;
- (4) references to any law, ordinance, by-law, regulation or other statutory instrument includes any modification, re-enactment or legislative provisions substituted for the same;
- (5) use of the word ‘includes’ or ‘including’ is to be construed as being without limitation; and
- (6) the masculine gender shall include the feminine and neuter, and the singular shall include the plural, and vice versa, and words importing persons shall include firms or companies.

2. Nature of the Licence

- 2.1. For the avoidance of doubt, the Licence is non-exclusive.
- 2.2. The Licence is personal to the Licensee. The Licensee shall not sub-license or grant any right, interest or entitlement in the Licence. Nor may the Licensee transfer the Licence to any other person save with the prior written consent of the Commission, which consent to transfer shall not be unreasonably withheld where such other person is an Affiliate and is or is intending to provide Licensed Services and would be entitled to apply for and be granted a licence under Sections 111(2) or 111(3) of the 1983 Act to provide Licensed Services. Any consent to transfer granted by the Commission under this Condition may be subject to such further conditions as the Commission may reasonably consider appropriate in the circumstances, including a requirement that the proposed transferee furnish to the Commission a declaration in the same terms as the Declaration.
- 2.3. If at any time the Licensee has or obtains the benefit of another licence under Section 111(2) or 111(3) of the 1983 Act at the same time as it has the benefit of the Licence, the Commission may thereafter, and for so long as the Licensee has the benefit of that other licence and subject to Section 111(2)(f) of the 1983 Act, apply in relation to Licensed Services the Conditions under the Licence and/or those under that other licence, and Conditions 3 and 4 shall be construed accordingly.
- 2.4. Where any Affiliate of the Licensee has been designated as having SMP, such of the Conditions in Parts 3 and 4 of any Class 2 General Telecommunications Licence granted under Section 111(2) of the 1983 Act held by that Affiliate and which apply to the Affiliate for the time being shall, for so long as they are so applicable to the Affiliate, also apply to the Licensee if and to the extent that the Licensee provides Licensed Services in the market in respect of which the Affiliate has been designated as having SMP, and Conditions 3 and 4 shall be construed accordingly.
- 2.5. Nothing in this licence shall absolve the Licensee from any requirement in law to obtain such additional consents, permissions, authorisations or licences as may be necessary for the provision of Licensed Services and for the exercise of its rights or discharge of its obligations under the Licence. The Licensee is responsible for all costs, expenses and other commitments (financial and non-financial) in respect of the Licence and provision of the Licensed Services and the Commission shall bear no responsibility for such costs, expenses or commitments.

- 2.6. The Licence and the Conditions supersede any prior communications from the Commission relevant to Licensed Services and the Licensee acknowledges that nothing in any guidance notes or other prior communications with the Commission shall be deemed incorporated into the Licence or the Conditions.
- 2.7. The Licensee shall pay the Licence Application Fee and shall not be entitled to provide Licensed Services under the Licence until the Licence Application Fee shall have been paid in full.
- 2.8. The Licensee shall make any payment required by the Telecommunications (Miscellaneous Provisions) Act, 1996 (Section 6) Levy Order, 1998.

3. Compliance

- 3.1. The Licensee shall provide all documents, records, accounts, estimates or other information requested from time to time by the Commission, in the form and at the times specified by the Commission, for the purpose of verifying that the Licensee is complying with the Conditions, for statistical purposes or to assist the Commission to perform any duty or function imposed by national or European Community law. The Licensee shall notify the Commission of any material change in the ownership or control of the Licensee, any change in the address or telephone number of the Licensee's principal office or on the occurrence of any event referred to in Conditions 4.8 (3), (4), (5) or (6).
- 3.2. The Commission may publish any information provided to it under this Licence; in exercising its discretion under this Condition, the Commission shall have regard to the obligations in relation to preservation of business secrets imposed on it under Regulation 7 of the Licensing Regulations.
- 3.3. The Commission may arrange for an authorised officer from its office to carry out an audit, or may require the Licensee to arrange for an independent audit, of any aspect of the Licensee's business involved in the provision or support of Licensed Services to ensure compliance with the Conditions; and the Licensee shall allow the authorised officer of the Commission, or any independent auditor, to attend at, enter, inspect, take copies of and acquire such information as may be required in order to carry out the audit. The cost associated with any independent audit conducted under this Condition shall be the responsibility of the Licensee.
- 3.4. The Licensee shall notify the Commission in writing of the date on which it proposes to commence providing Licensed Services and shall confirm in writing when it has commenced such services. The Licensee shall also notify the Commission if and when it ceases to provide Licensed Services.

3.5. Where, prior to the Licence Commencement Date, the Licensee was lawfully operating a Telecommunications Network or providing telecommunications services, as defined in Section 111 of the 1983 Act (whether under a licence granted under Section 111 of the 1983 Act or as otherwise authorised by law) and where the Commission is satisfied that the Licensee reasonably requires additional time in which to change established procedures or to adapt existing systems in order to comply with the Conditions, the Commission may, on request from the Licensee, agree to defer such of the Conditions as it considers appropriate in the circumstances for a period of not longer than three months. The Commission shall publish notice of the deferment of any Condition made in accordance with this Condition.

3.6. The Licensee shall comply forthwith with any demand made by a person authorised by the Commission under Section 111 (7) of the 1983 Act in relation to any entry, inspection, test, measurement, copying of any record or the giving of information as may reasonably be required by that authorised officer.

4. Enforcement and Amendment

4.1. The Commission may amend the Licence from time to time where objectively justifiable and in a proportionate manner. Any amendment, including any amendment under Condition 4.3(2), shall be made in accordance with Section 111(3)(e)(iii) and Section 111(10) of the 1983 Act, and any other requirements under applicable national or European Community law.

4.2. If the Licensee, whether by act or omission, fails to comply with any Condition or any lawful direction issued by the Commission from time to time, the Commission shall serve written notice on the Licensee (a "Warning Notice"):

(1) specifying how, in the Commission's opinion, the Licensee is failing to comply with the Condition or, as the case may be, direction and requesting that, subject to sub-paragraph (2) below, such failure be corrected by the Licensee; and

(2) affording the Licensee the opportunity to make representations to the Commission in respect of the alleged breaches within 14 days of the date of the Warning Notice. The Commission may, at the request of the Licensee, extend the 14 day period for submission of representations by such longer period as the Commission may consider reasonable in the circumstances.

- 4.3. If, after expiry of one month from the date of the Warning Notice, the Licensee shall not have corrected the acts or, as the case may be, omissions specified in the Warning Notice and the Commission, having taken account of any representations made by the Licensee in accordance with Condition 4.2, is satisfied that such acts or omissions constitute a breach of the Conditions or of a lawful direction of the Commission, it may impose any one or more of the following sanctions (the "Sanctions") on the Licensee:
- (1) subject to Condition 4.5, revocation or suspension of the Licence;
 - (2) without prejudice to the generality of Condition 4.1, amendment of the Licence by way of reduction of the Term;
 - (3) imposition of specific measures aimed at ensuring compliance in accordance with Section 111(4) of the 1983 Act.

No sanction shall be imposed by the Commission save in accordance with the procedures set out in Section 111(10) of the 1983 Act.

- 4.4. The Commission may publish notice of its intention to impose any Sanction under Condition 4.3 in such manner as it considers appropriate from time to time.
- 4.5. The Commission shall not take action under Condition 4.3 to revoke or suspend the Licence save in respect of a breach of any Condition or any lawful direction of the Commission which the Commission considers to be material or persistent. For the avoidance of doubt this provision shall not in any way limit the power of the Commission to revoke or suspend the Licence pursuant to Condition 4.8.
- 4.6. Invocation of any Sanction (other than that of revocation) against the Licensee for breach of a Condition or a lawful direction of the Commission shall not prejudice the right of the Commission to initiate procedures to invoke any other Sanction against the Licensee whether in respect of the same or any other breach of the Conditions or lawful direction of the Commission.

- 4.7. If the Term is reduced pursuant to Condition 4.3, the Commission may at its discretion restore the original Term where it considers restoration to be justifiable having regard inter alia to the behaviour of the Licensee since imposition of the Sanction of reduction of the Term. Restoration of the Term may be made subject to such conditions as the Commission may consider objectively justifiable and proportionate in the circumstances of the case. Any decision of the Commission in relation to restoration of the Term shall be notified in writing to the Licensee together with an explanation of the reasons for such decision. Notice of the restoration of Term shall be published by the Commission.
- 4.8. Without prejudice to the foregoing Conditions 4.1 to 4.7, the Commission may suspend or revoke the Licence in any of the following circumstances:
- (1) if the Declaration is or was false or misleading in any material respect;
 - (2) where, in the opinion of the Commission such revocation or suspension is required for the purpose of complying with national or European Community law;
 - (3) where the Licensee has ceased to provide Licensed Services;
 - (4) if the Licensee is an individual, a receiving order for bankruptcy has been made in respect of the estate of the Licensee;
 - (5) 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 otherwise than for the purpose of a merger or solvent reconstruction, or a receiver of the property of the company has been appointed or an examiner to the company has been appointed;
 - (6) if the Licensee shall, in respect of its activities in providing Licensed Services, have been found guilty of an offence under the Competition Act 2002.

5. Public Service Conditions

- 5.1. The Licensee shall, in the manner and at the times specified by the Commission, publish the standard terms and conditions under which it provides each category of Licensed Services to its customers. In the absence of any other direction from the Commission, the Licensee shall ensure that a statement of all applicable terms and conditions is:
- (1) filed with the Commission; and
 - (2) promptly made available for inspection at the request of any member of the public.

- 5.2. The Licensee shall ensure the accuracy and reliability of any systems, equipment, data or procedures which the Licensee uses to measure or to track the provision of Licensed Services or for the calculation of related charges.
- 5.3. In cases where it establishes or operates a Telecommunications Network, the Licensee shall establish and maintain the capability to intercept messages delivered by the Licensed Services and to provide information regarding the use of the Licensed Services and, in this respect, shall comply with any directions given by the Minister to the Licensee under Section 110 of the 1983 Act as applied under Section 111(5) of the 1983 Act. In this Condition “intercept” shall be construed in accordance with the meaning assigned to “interception” by Section 98 (5) of the 1983 Act.
- 5.4. The Licensee shall safeguard the privacy and confidentiality of any telecommunications messages associated with the Licensed Services in accordance with relevant national and European Communities law in force from time to time and shall comply with all applicable national and European Communities laws from time to time regarding the protection of personal data.
- 5.5. The Licensee shall not attach to Public Telecommunications Networks any terminal equipment unless it is lawful to do so, or any other equipment which fails to comply with essential interfaces or other essential requirements notified from time to time by the Commission.
- 5.6. The Licensee shall make contributions to assist in the funding of Universal Service Obligations in accordance with any directions issued by the Commission under applicable laws or regulations governing Universal Service Obligations in force from time to time.
- 5.7. The Licensee shall comply with any directions issued by the Commission regarding emergency services and the provision of Licensed Services in times of emergency.
- 5.8. The Licensee shall comply with any directions issued by the Commission for the purposes of protecting the interests of its customers or Users of Licensed Services, having regard to relevant legislation in force from time to time.
- 5.9. The Licensee shall implement an appropriate code of practice for the resolution of customer disputes and in relation to non-payment of bills and disconnection. The Commission may from time to time issue directions to the Licensee specifying any modifications or additions that it considers should be made to the code or as to the publication, republication, implementation or further modification of the code. The Licensee also agrees to participate in

good faith in any dispute resolution procedure established by the Commission for the resolution of disputes.

- 5.10. The Licensee shall use any numbers allocated to it by the Commission in accordance with (i) the conditions applicable to their allocation, (ii) the provisions of the National Numbering Scheme and (iii) any applicable directions or conventions issued by the Commission from time to time.

6. Public Pay Telephones

- 6.1. Where the Licensee provides Public Pay Telephones, it shall ensure that the following services are available at all Public Pay Telephones:

- (1) access to Voice Telephony and directory information services; and
- (2) access to emergency calling services without the use of any card or coin; and
- (3) access to free-phone services.

- 6.2. All Public Pay Telephones supplied by the Licensee shall display a notice specifying:

- (1) the minimum charge for connection, call charge information and permissible methods of payment;
- (2) location of the Public Pay Telephone;
- (3) a statement that emergency calls can be made without charge;
- (4) a statement whether or not incoming calls can be received; and
- (5) contact information in the event of service complaints.

- 6.3. The Licensee shall be responsible for the installation, repair and maintenance of the Public Pay Telephones provided by it, and shall ensure that such telephones are equipped with apparatus to enable their use by people with hearing impairments.

- 6.4. If the Licensee wishes to withdraw from service a Public Pay Telephone it shall, where reasonably possible, display a notice to that effect at the Public Pay Telephone not less than 60 days before it is withdrawn.

7. Interconnection

The Licensee shall comply with the European Communities (Interconnection in Telecommunications) Regulations 1998 insofar as same are applicable to the Licensee, and undertakes to participate in good faith in any negotiations or dispute resolution processes initiated pursuant to those regulations.

8. Trench Sharing

8.1 Where the Licensee proposes to carry out any trenching work on a public highway or in any public place, he shall notify the Commission of his intention and shall publish notice of same in at least one national and one local newspaper of general circulation not less than 21 days in advance of commencement of such works, or as otherwise agreed with the Commission. If the Licensee receives a request from any other Licensed Operator for permission to lay separate ducts in the trenches opened by the Licensee and sharing would not result in any material deviation from the Licensee's timetable for completion of the trenching work or roll-out of its Telecommunications Network, the Licensee shall negotiate in good faith with the other Licensed Operator with a view to agreeing the terms on which such trench-sharing shall take place. Such terms may include a provision that the other Licensed Operator make a fair contribution to the costs incurred in connection with the trenching work.

8.2 Recognising timetable issues of the kind described in Condition 8.1, the Commission may on its own initiative at any time, and shall if requested by the Licensee and the other Licensed Operator concerned in any particular instance, make directions specifying the issues to be covered in any agreement of this type, the conditions that shall apply and the time limits within which the agreement is to be completed.