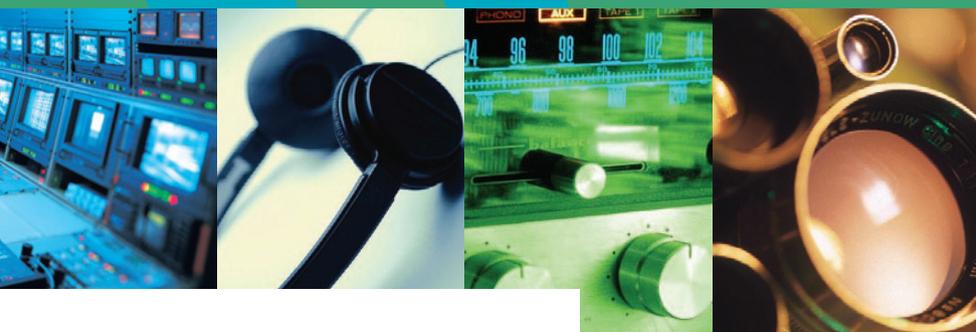




Broadcasting Commission of Ireland
Coimisiún Craolacháin na hÉireann



BCI DTT Multiplex Licensing Policy 2008 Revised Edition

Broadcasting Commission of Ireland

Digital Terrestrial Television Licensing Policy
(excluding DVB-H Technology)

in respect of BCI Multiplexes A, B and C.

Second Edition – April 2008

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Part 1

1.1 – Background

The Broadcasting (Amendment) Act 2007, hereafter referred to as ‘the 2007 Act’, provides for the establishment of **digital terrestrial** broadcasting (both television and radio) in the Republic of Ireland. Specifically, the 2007 Act outlines the legislative framework within which this licensing activity shall take place.

Given that this is a significant piece of new legislation, conferring on the BCI a range of additional functions and responsibilities, it is important to note that the 2007 Act prioritises the licensing and establishment of digital terrestrial **television** (or DTT) multiplexes. For this reason, and reflecting work undertaken by the Commission thus far, this Policy document refers to DTT (fixed and portable reception, excluding DVB-H technology) hereafter referred to as DTT. In this context, it is helpful to examine the recent history of developments in digital broadcasting in Ireland to further contextualise the DTT multiplex licensing process.

Currently, television services are typically received in one of four ways: by analogue signal (through a rooftop aerial); through a cable system; by MMD; or by satellite (through a satellite dish). The European Union has agreed among its members to cease the transmission of analogue television around 2015. The name given to this process is ‘analogue switch off’ (ASO). From that point onwards, terrestrial television will only be available in a digital format. The date of analogue switch-off in Ireland is a matter for the Minister for Communications, Energy and Natural Resources, as provided for under section 11 of the 2007 Act.

At present, digital television is available through cable, MMD and satellite systems, but digital terrestrial television (with which the 2007 Act is concerned) is not available. As a test and trial of DTT services, the Department of Communications, Energy and Natural Resources (DCENR) launched a DTT Pilot Project in 2006, with the initial commissioning of a network of two multiplexes at two transmitter sites¹. In March 2007, the Pilot project was officially launched to the public with a range of content, including all of the national free-to-air (FTA) services, broadcast to approximately 600 test homes.

The 2007 Act requires, as a matter of priority, the BCI to licence three commercial DTT multiplexes in Ireland. The 2007 Act also states that the BCI must use its best efforts to undertake this work within a period of six months from the commencement date of the Act.

It is essential to note that, separately under the Act, RTÉ has been assigned a single television multiplex which it will establish and run independently of BCI-licensed services, in fulfilment of its public service remit. Thus, this BCI DTT licensing policy relates only to the first three **commercial** television multiplexes (that is, multiplexes A, B, and C) it shall licence, and the Commission reserves the right to review, amend, alter or change the policy at a later date.

The purpose of this document is to outline the Commission’s policy positions in respect of DTT in advance of the commencement of the licensing process for multiplexes A, B, and C.

¹ Located at Three Rock, Dublin and Claermont Carn, Co.Louth.

1.2 – Policy Development Process

Consultation is central to the work of the Commission and is considered to be a vital element of the policy development work undertaken for DTT. The Commission recognises a variety of consultative models and formats, used as appropriate, to inform policy development in a process that is as inclusive and transparent as possible.

In order to maximise knowledge in relation to DTT, and to accurately reflect and consider the views of key stakeholders, it was agreed that a targeted approach to consultation was most appropriate in this instance. The primary aim of consultation was to bring together the views of a broad range of DTT stakeholders, and to supplement independent research commissioned by the BCI to support its work in this area.

In line with the agreed approach, the Commission adopted a two-phased model of policy development. The **first phase** took place between **May and September 2007** and included a number of one-to-one, and round-table meetings (as appropriate) with stakeholders. A thematic approach to consultation, which placed emphasis on key issues relating to the licensing, establishment and roll-out of DTT, was adopted. These issues included, but were not limited to: a discussion on learning from the DTT Pilot Project; business and economic issues for the DTT platform; ownership and control issues; content and channel packages; technical issues including the desirability of the development of a national technical specification for DTT and DTT receivers; licence and contract duration and assistive services for consumers with a disability. In addition to those areas of interest identified by the BCI, participants were invited to discuss and explore other issues which they felt were of relevance.

Alongside this work, the BCI commissioned independent research, undertaken by GOS Consulting, a UK-based research agency. The aim of the research was to further inform the Commission's policy on DTT licensing, in the context of developments in other European jurisdictions. The two jurisdictions selected for analysis were the UK and Austria. The rationale for the selection of the UK was that, as our nearest neighbour and given the role of UK channels in Irish viewing preferences, learning from this jurisdiction, which has a lengthy experience of DTT, was relevant. The rationale for the second selection was that Austria has recently launched DTT and is a broadly similar jurisdiction in terms of the penetration rate of cable and satellite services. In addition, as it has a larger (German-speaking) neighbour which presented learning opportunities on similar content access issues to those faced by Ireland, Austria was a relevant and highly useful comparator.

The **second phase** of policy development took place between **October and December 2007**, during which phase the Commission held a consultation forum. This targeted those who participated in Phase 1 work (in addition to those who subsequently identified themselves as having an interest in DTT) in order to enable participants to review and offer comment on a draft policy statement on DTT and to formally express their views on the proposed position of the Commission across a range of policy areas. This forum event took place on November 22nd 2007 in Dublin, and was attended by over 50 representatives from statutory, industry, disability/advocacy and consumer groups. In addition to putting forward a formal position on the day of the forum, participants were also offered the opportunity to make written submissions to the Commission in respect of the BCI's DTT Policy.

As a further means of knowledge-building, the BCI commissioned a piece of economic and market analysis during Phase 2. This work, also undertaken by GOS Consulting, following a competitive tendering process, focussed on providing background economic and business information that may be used to inform the Commission's licensing process for DTT. Thus, this Policy is the result of extensive deliberations by the BCI informed by the input of a diverse range of key stakeholders and by independent expert research.

1.3 – Regulatory Context

Based on an endorsement of the Council of Europe’s premise that the primary task of a regulatory body is to ensure that it functions smoothly by establishing a climate of dialogue, openness and trust in its dealings with broadcasters, the principles set out in this section are those the BCI considers important in formulating and implementing its regulatory policy.

These principles recognise the importance of the BCI being in a position to respond flexibly and adequately to unforeseen and often complex issues that will emerge in the developing and dynamic broadcasting landscape. The objectives of encouragement, promotion and facilitation are to the forefront of the principles focussed upon.

- *Diversity of programming services for the public*

In addition to its statutory obligations under the Radio and Television Act, 1988, and the Broadcasting Act, 2001, the Broadcasting (Amendment) Act, 2007 gives the BCI a mandate to licence digital terrestrial multiplex operators who shall ensure the continued availability of a diversity of services and programming content in a digital era, beyond the point at which analogue television broadcasting ceases. Through this important role, the BCI aims to put members of the public into a position which gives them access to a diversity of programming from a variety of sources in the form of broadcasting services of such number and categories as will best serve the needs of the people of Ireland, bearing in mind their languages and traditions and their religious, ethical and cultural diversity.

- *Flexible and Consistent Approach*

The BCI recognises the need for regulation to be technically literate and well informed about new developments in the marketplace. In the context of a rapidly changing technological environment, as is the case with DTT, this is of particular importance. In a world of converging technologies and markets, it must be able to react to a dynamic and rapidly evolving broadcasting environment.

To this end, the BCI aims to develop and operate a flexible, yet consistent and comprehensive, licensing and regulatory scheme for DTT, capable of responding to technological and market developments, as well as national and local conditions. Its goal is regulation that shall encompass flexibility and adaptability to the needs of change, to prevent it being overtaken by technology or appearing to be too rigid, inconsistent or arbitrary.

- *Adequate regulation based on current conditions*

Under the 2007 Act, the BCI is responsible for the licensing and regulation of the DTT multiplex operators (with the exception of RTÉ), marking an extension to its previous remit which extended only to the licensing of broadcasters and content. In this context, the BCI remains committed to fair, reasonable and non-discriminatory access, and to regulatory standards and practices which accord with EU law, and ensure effective competition in both existing and emerging markets. In this regard, the BCI aims to maintain and further build on its positive working relationship with other regulators (e.g. telecommunication and competition regulators) in order to achieve an overall coherence and co-ordination in regulation.

- *Openness and Dialogue*

It is the intention of the BCI to ensure that the regulatory regime functions smoothly by establishing a climate of dialogue, openness and trust in its dealings with all stakeholders involved in the DTT platform. Reflecting this key objective, the Commission has engaged in consultation activities in support of the policy development process for DTT.

- *Clear & Informed Decision-making*

The BCI understands the need to institute a comprehensive and clear licensing regime and to avoid unnecessary delays in decision-making. To facilitate the Commission in reaching informed decisions, the BCI commissioned independent research on DTT, which has acted to build both its knowledge and its capacity in respect of DTT.

1.4 – Legislative Context

The framework for the Broadcasting Commission of Ireland’s licensing policy for DTT is set out in the provisions of the Broadcasting (Amendment) Act, 2007. In summary, the principal objective of the legislation is to make further provision, in addition to the terms of existing legislation, for the transmission by digital terrestrial means of television and radio content and other data. This is done by way of repeal of certain provisions of the 2001 Act in respect of the appointment of a multiplex operator/s and the conferral on the BCI, the RTÉ Authority and ComReg of a range of additional functions.

A second key objective of the Act is to provide the legislative framework for the switch-off of television broadcasting by analogue means.

The central provisions of the 2007 Act which are summarised below, are of particular relevance to DTT and the work of the Commission. The full text of the Broadcasting (Amendment) Act, 2007 is appended to this document for further information.

Section 3: Additional Functions of RTÉ

Section 3 makes provision for RTÉ to establish, maintain and operate one or more national multiplexes, and to establish and maintain broadcasting services of a local, community or regional character. RTÉ will be obliged on a national multiplex to provide carriage for its own television services and for TG4.

The Minister for Communications, Energy and Natural Resources, shall, at the request of the BCI and following consultation with RTÉ, require the Authority to make provision on a multiplex for the carriage of TV3. If necessary, the Minister may direct RTÉ to employ a specific amount of digital capacity for TV3 and/or TG4. RTÉ may also carry other programme material and data.

Section 4: Additional Functions of the BCI

Section 4 sets out additional functions for the BCI, specifically to arrange for the establishment, maintenance and operation of multiplexes, including national multiplexes, in addition to any multiplexes established, maintained and operated by the RTÉ Authority – **subsection (1)**.

The BCI shall enter into contracts with multiplex contractors enabling them to establish, maintain and operate multiplexes in a specified area. – **subsection (2)**.

The BCI shall be obliged to ensure that contractors comply with their legislative and contractual obligations – **subsection (3)**.

Subsection (4) provides that it shall be a duty of the BCI to endeavour to arrange, *as a matter of priority*, for the establishment, maintenance and operation of *three national television multiplexes*, capable, as far as is reasonably practicable, of being transmitted to the whole community in the State.

The BCI has a duty, further to **subsection (5)**, to endeavour to arrange for the broadcasting on a multiplex of any terrestrial television broadcasting service in Northern Ireland notified to the Commission by the Minister.

The Commission is given “all such powers as are necessary for or incidental to the performance of its functions” under the Act – **subsection (6)**.

Section 5: Duties of ComReg re DTT Multiplexes

This section sets out a number of duties of ComReg in respect of the issuing of digital terrestrial television multiplex licences and effectively provides for the **allocation of digital television multiplex licences** to the RTÉ Authority and the BCI, to include:

- on request from the Authority, the issue of a single television multiplex licence to RTÉ for transmission, as far as is practicable to the whole community in the State – **subsection (1)**.
- on request from RTÉ, and after consultation with the Minister and the BCI, the issue of one further television multiplex licence, also, as far as is practicable, to be capable of being transmitted to the whole community in the State **sub-section (2)**.
- on request from the BCI, the issue by ComReg of four television multiplex licences, which should be, as far as is practicable, capable of being transmitted to the whole community in the State **sub-section (3)**.
- consultation between ComReg and the BCI regarding the issue of additional licences for television multiplexes, for transmission as far as practicable to the whole community in the State **sub-section (4)**.

Section 7: Regulations Prescribing Fees

In accordance with regulations made under this section, licences issued under the Broadcasting Authority Act 1960, the Radio and Television Act 1988, the Broadcasting Act 1990 and the Broadcasting (Amendment) Act 2007 shall be subject to the payment of such fees as prescribed by ComReg.

Section 8: Applications for Multiplex Contracts

In accordance with **sub-section (1)**, in order to secure the orderly establishment, maintenance and operation of multiplexes, the BCI shall, as soon as may be after the coming into place of the Act and thereafter having regard to available frequencies, invite applications for multiplex contracts and may enter into such contracts subject to the Act.

Sub-section (2) requires the BCI, within six months after the section comes into force, to endeavour to invite applications for multiplex contracts for the establishment, maintenance and operation of the three national television multiplexes referred to in section 4(4).

The Commission is required to invite such applications for contracts by way of public notice in a national newspaper and shall specify the maximum coverage area and may specify the minimum coverage area – **sub-sections (3), (4) and (5)**.

Section 9: Determination of Applications for Award of Multiplex Contracts

This section sets out a non-exhaustive list of the criteria to which the BCI shall have regard in considering applications and in determining the most suitable applicant, if any, for the award of a contract.

Section 10: Terms and Conditions of Multiplex Contracts

This section provides that the Commission may attach such terms and conditions to multiplex contracts as it considers appropriate. **Subsection (2)** specifies a number of terms and conditions which may be included, such as the period of the licence; the terms of renewal; provisions in respect of the assignment of the contract; conditions regarding the range and type of programmes to be supplied via the multiplex; the level of coverage to be achieved in the specified area; the promotion of equipment capable of receiving the programming offered by the multiplex contractor and technical conditions.

Subsection (3) specifies conditions that shall apply regardless of whether the BCI includes them in a multiplex contract, such as: prohibition on assignment of a contract, the alteration of the Memorandum and Articles of Association of the company and a prohibition on changes in the ownership and control of the company without the prior approval of the BCI.

The BCI is also required to have regard to the **section 9 (2)** criteria in situations where there is a material change in the ownership of a multiplex contractor – **subsection (4)**.

Subsection (4) also provides that a multiplex contract shall provide that the Commission may suspend, reduce the term or terminate the contract if the multiplex contractor provided false or misleading information to the BCI prior to the making of a contract; or for serious or repeated breaches of contract or statute by the multiplex contractor.

Fees may be payable by the multiplex contractor to the Commission, including fees payable by the Commission to ComReg.

Multiplex contracts shall be open to inspection by members of the public, **subsection (5)**.

Section 11: Analogue Television Switch-off

Under this section, the Minister is given the power to issue a policy direction regarding the date, or dates, after which ComReg may no longer grant analogue television licences under the 1960 Act or the 1988 Act – **subsection (6)**.

However, before doing so, the Minister is obliged, *inter alia*, to consider reports from the Commission and RTÉ reviewing the extent of the availability of multiplexes in the State, the availability in the State by digital means of RTÉ 1 and 2, TV3 and TG4, the ownership or possession in the State of equipment capable of receiving RTÉ 1 and 2, TV3 and TG4 by digital means and the likely future extent of such availability and ownership/possession – **subsections (1) and (2)**.

Before making a report under this section, the BCI is obliged to consult with the holders of multiplex contracts, digital content contracts, TV3, ComReg and other persons as it sees fit and reflect in the report representations made to the BCI. The Minister may also undertake his own consultation as he sees fit.

Further to **subsection (7)**, ComReg may vary a term or condition of a licence issued under section 4(3) of the 1988 Act in respect of the provision of services by analogue means in respect of the renewal of the television programme service contract (TV3) by the BCI or in respect of any new contract entered into by the BCI in respect of the television programme service under the 1988 Act.

1.5 –Policy Aim and Objectives

Aim of Policy

To take all regulatory measures, within the Commission’s remit, to enable, as far as possible, the establishment, maintenance and operation of a viable digital terrestrial television platform in the State, in advance of analogue switch-off.

Objectives of Policy:

- To provide the framework for the fulfilment of the Commission’s functions, duties and obligations in respect of digital terrestrial television multiplexes (BCI Multiplexes A, B and C) under the Broadcasting (Amendment) Act, 2007.
- To increase the potential and opportunity for the licensing of broadcast content available to the public in furtherance of the Commission’s statutory duties, strategic goals and objectives.
- To facilitate further consumer choice in respect of the platforms from which the public receive broadcasting services and other audio-visual content.
- To maximise platform and economic opportunities for broadcasting services and content providers by potentially increasing the availability of services and content to audiences, while facilitating business opportunities in the media sector.
- To provide an enhanced video, audio and interactive television experience for terrestrial television users.

Part 2

BCI Policy Provisions

This part of the document details specific policy provisions under three key headings: economic and business matters; technical requirements and, content provisions. Each shall be addressed in turn.

1 – Economic and Business Matters

In assessing the various economic and business issues for the development of the DTT platform, eight key elements have emerged. They are:

- 1.1 – The concept of a driver for the platform, or ‘DTT Champion’;
- 1.2 – The business model/s for DTT in Ireland;
- 1.3 – The role of RTÉ in the DTT platform;
- 1.4 – Ownership and Control of multiplex contractors;
- 1.5 – The awarding of more than one multiplex to a single operator, and conditional applications;
- 1.6 – BCI contract duration;
- 1.7 – BCI fees and;
- 1.8 – “Mobile” TV (DVB-H)

1.1 – DTT Champion

As outlined earlier in this document, the construction of the Act envisages the platform as being ‘divided’ between various multiplex operators – RTÉ on the one hand and one or more BCI-licensed contractors on the other. The Act does not detail the means by which a single DTT driver or ‘Champion’ shall emerge. In this context, it is essential that a distinction between **public awareness-raising/public education** and **promotion** be drawn.

With regard to the **promotion** of the DTT platform, it is the view of the Commission that a ‘DTT Champion’ is highly desirable, if not essential, to the success of the platform. As an independent regulator, however, it is the view of the Commission that it is not appropriate for the BCI to take a role in the promotion of any one platform (including the DTT platform) over others. Given the importance of a coherent approach to the promotion of the platform, it is the Commission’s expectation that the successful applicant/s for commercial DTT licences shall, in co-operation with RTÉ, work to promote the DTT platform.

Applicants to the BCI’s DTT licensing process shall be required to outline, as part of their application to the Commission, proposals for such promotion/co-operation both at the commencement of the project and over the duration of the DTT multiplex contract. Further, applicants shall be required to outline their proposals for the funding of such activity. This information shall be considered by the Commission in determining the most suitable applicant/s for the award of contract/s.

It is the view of the Commission that the BCI has a role in **public awareness-raising/public education** concerning DTT, acting in concert with other public and statutory bodies such as DCENR and ComReg. An implementation plan for this co-ordinated activity will be developed by the Commission, in conjunction with other relevant statutory bodies, with the aim of providing public information and education in the short- to medium-term as the process of digital switchover commences.

1.2 – Business Model/s for the DTT Platform

The Commission recognises that any one of a number of business models and consumer propositions may be appropriate in the operation of DTT multiplexes in an Irish context. It is the view of the Commission that flexibility in this regard is required, so as to allow applicants to structure their own business model for DTT, in accordance with good economic principles, for consideration by the Commission.

The Commission shall not prescribe any singular business model but shall require applicants to provide a significant level of detail in respect of the business and financial aspects of their proposals.

1.3 – Role of RTÉ in the DTT platform

A number of roles are open to RTÉ and/or its subsidiary body RTÉ NL in the successful establishment and roll-out of DTT in Ireland. The Commission acknowledges that the manner in which RTÉ progresses the implementation of its additional functions under the 2007 Act is a matter entirely for RTÉ as an independent statutory body, consistent with its public service broadcasting remit and its reporting responsibilities to the Minister for Communications, Energy and Natural Resources. The Commission also acknowledges the co-operation of RTÉ in the development of the BCI's DTT Licensing Policy.

However, RTÉ's DTT activities and its wider interests in relation to the DTT platform are nonetheless of interest and relevance to all potential applicants for BCI-licensed multiplex contracts. In this context, the Commission strongly supports continued dialogue between RTÉ, potential applicants/contractors, and the BCI, in the interests of the orderly establishment, maintenance, and operation of television multiplexes in the State.

The Commission urges RTÉ to make clear its intentions in respect of the roll-out of its functions under the 2007 Act, at the earliest opportunity. Furthermore, as a potential provider of service/s to the wider DTT platform, the Commission considers it essential that information in respect of the provision of any such services is made available to any or all interested parties in a timely manner, and on a fair, reasonable and non-discriminatory basis.

1.4 – Ownership and Control

The BCI is required to have regard to a number of criteria when assessing applicants for multiplex contracts. For example, **Section 9 (2) (a)** requires the Commission to consider the character of the applicant. **Section 9 (2) (b)** requires the Commission to have regard to the experience, expertise and resources available to the applicant. Further, **section 9 (2) (h)** provides that the Commission shall have regard to any other matters which it considers to be necessary to secure the orderly establishment, maintenance and operation of multiplexes. In addition, **section 4 (6)** states that the Commission shall have all such powers as are necessary for or incidental to the performance of its functions under the Act.

1.4.1 – Character of the Applicant, Experience, Expertise and Financial Resources

In its consideration of the provisions of **section 9 (2) (a)** concerning the character of an applicant and the provisions of **section 9 (2) (b)** concerning the adequacy of the experience, expertise and financial resources available to an applicant, the Commission shall apply the provisions of the *BCI Ownership and Control Policy (as amended, 2008)*.

1.4.2 – Assignment of Multiplex Contract(s)

The Commission shall not apply any specific moratorium on changes in the ownership and/or control of multiplex contractors appointed under the 2007 Act. Contractors shall, however, be subject to statutory and contractual provisions in relation to any changes proposed.

1.4.3 – Media Concentration

The Commission considers it appropriate, in the context of its statutory powers and duties, to have regard to media concentration considerations in determining the most suitable applicant for the award of a multiplex contract; such considerations being **important?** to promoting diversity in viewpoint, outlet and source, in the opinions expressed in programme delivery and content, and in the sources of information available to the public.

The Commission shall not adopt an unduly prescriptive approach in considering an applicant's proposals. The Commission shall have regard, generally, to: 'the desirability of allowing any person, or group of persons, to have control of, or substantial interests in, an undue amount of the communications media in the area covered by the multiplex contract'.

The terms 'control', 'substantial interests', 'undue amount' and 'communications media' are defined in the current *BCI Ownership and Control Policy (as amended, 2008)*.

1.5 – One or more multiplex contracts to a single operator and conditional applications

Where appropriate and within the scope of the statutory provisions, with the aim of allowing applicants flexibility in determining their own business model for DTT, it is the position of the Commission that an applicant shall be free to submit one or more applications for a multiplex contract, should they wish to do so. A separate application will be required for each available contract. However, this does not preclude an applicant from applying for more than one multiplex contract with a view to operating them jointly. In order to allow for applicants with an interest only in providing such a joint operation, the Commission will consider applications in which the applicant makes their application for any one contract conditional upon securing one or more other contracts (a "Conditional Application").

The specific information requirements for the submission of applications in this regard (including conditional applications) shall be outlined in detail in the *BCI Guide to Submissions*.

1.6 – BCI Contract Duration

The duration of each BCI contract for DTT multiplexes A, B, and C shall be 12 years.

The Commission may be willing to consider an extension to the term of the contract in the event that analogue switch-off occurs at a point significantly beyond 2012. This shall be subject to agreement between the BCI and ComReg in respect of the licence term.

1.7 – BCI Fees

Section 10(4) of the 2007 Act provides that a multiplex contractor shall pay the fees, if any, specified by the Commission in the multiplex contract. It is the position of the Commission that fees shall be charged under section 10(4), in addition to fees payable to ComReg. The fee shall be fixed and nominal in nature. A reduced fee shall apply in each of the first three years of the multiplex contract.

1.8 – ‘Mobile’ TV (DVB-H)

In considering whether the three multiplex contracts to be advertised in the first instance should be utilised for the purposes of mobile television, the Commission had regard to a range of factors including:

- Whether the inclusion of mobile television was desirable in the context of the orderly establishment, maintenance and operation of multiplex services;
- The public policy objectives of the legislative provisions and the objectives of the BCI’s DTT policy;
- The licensing possibilities for fixed/portable reception in contrast to the licensing possibilities for mobile reception;
- The relative stages of development of the various digital television technologies and other technical considerations;
- The potential commercial benefits that mobile television might contribute to the viability of the platform;
- The availability of further television multiplex licences in the future which could be applied for mobile television purposes.

Having had regard to all of the above factors, it is the Commission’s position that it shall advertise multiplexes A, B, and C for the purposes of fixed and portable reception (excluding DVB-H technology) only.

2 – Technical Requirements

2.1 – Network Coverage

Further to **section 8 (3)** of the 2007 Act, the Commission is required, *inter alia*, to set out its expectations in relation to the broadcast coverage area for each of its multiplexes. Further to this, **section 5 (3)** states that the three multiplexes to be advertised by the Commission in the first instance shall “*in so far as it is reasonably practicable, be capable of being transmitted by digital terrestrial means to the whole community in the State...*”

Further to **section 8 (5)** of the 2007 Act, the Commission may specify the minimum coverage area.

The Commission stipulates that each multiplex broadcast shall be required to provide a minimum of 90% population coverage at, or immediately following, ASO. In the case of more than one multiplex being licensed to a single entity, the required broadcast coverage area for each multiplex shall be 90% (at, or immediately following, ASO). The Commission encourages applicants for multiplex contracts to provide a greater than the minimum 90% coverage at the outset of transmission and/or over the period of the multiplex contract. The Commission may view favourably, any coverage proposals that exceed the minimum requirement of 90% population coverage.

The possibility of a phased introduction for the commissioning of multiplexes and transmitters supporting the DTT network shall be considered by the Commission. Applicants shall be invited to outline their proposals in this regard in the application process.

Finally, the Commission shall require a successful applicant to make available publicly, transmission coverage maps to avoid confusion in the marketplace, and with a view to facilitating understanding of those areas where DTT will be available.

2.2 – Definition of ‘Predominantly TV’

The 2007 Act, defines a television multiplex as “a multiplex in which the programme material is predominantly television”. The precise level of television programme content required to be carried on DTT multiplexes, therefore, is a matter for determination by the BCI.

It is the position of the Commission that “predominantly” shall be interpreted as requiring a minimum of 80% television programme content, and programme-related content. Multiplex operators may exceed this level if they so wish and shall be invited to outline plans in this regard in the application process.

2.3 – Assistive Services

The Commission is of the view that content carried on the DTT multiplexes should provide, to the greatest extent possible, quality assistive services for persons with disabilities or assistive requirements.

In order to maximise the level of accessible service provision, multiplex contractors shall be required, as part of contractual arrangements, to provide the technical capacity needed to facilitate the range of access services available. In addition, multiplex contractors shall be required to commit to not taking any steps which would otherwise limit the carriage of access services, thus future-proofing this position.

In the context of the DTT multiplex licensing process, it is the Commission's view that it is reasonable to conclude that across the wide range of services potentially available on the platform, it may be unrealistic and impractical to set individual targets on multiplex contractors, therefore, it is the proposal of the Commission that the *BCI Access Rules* (as received and amended from time to time) shall remain the primary means by which access targets for broadcasters are set, and against which they are assessed.

The issue of access services is also linked to the technical specifications for DTT receivers (including Set-Top Boxes). Further details on this are provided in the section which follows.

2.4 – DTT Receivers (including Set-Top Boxes)

In relation to DTT receivers, it is the view of the Commission that the three principles of availability, affordability and interoperability are of central importance. It is the Commission's position that, as a matter of priority, there should be available a sufficient number of affordable DTT receivers and/or set-top boxes in time to meet the launch and roll-out of DTT. The principle of interoperability, in the public and consumer interest, is a compelling one and one which the BCI endorses. Ideally, receivers should, to the greatest extent possible, facilitate interoperability between *all* multiplexes both at the launch of DTT and into the future.

In order to meet consumer needs, it is desirable that there is a range of receivers available, ranging from a basic, low-cost model to higher-end receivers with greater functionality. The importance of having a sufficient number of affordable receivers available in time for the roll-out of DTT cannot be understated and is of as much relevance to marginalised groups (including, but not limited to, the elderly, low-income families and people with disabilities) as it is to mainstream groups. In order to ensure that the public may access DTT as a replacement service for analogue broadcasting, it is essential that a low-cost, basic specification receiver is widely available, on a timely basis.

In order to address this need, it is the Commission's position that the need for a national minimum technical specification for DTT receivers is an urgent priority. It is the Commission's view that, in developing the DTT receiver minimum specification, account must be taken of likely technological developments in DTT, in the short- to medium-term (e.g. high definition).

The BCI shall continue to support the development work of the DTT Pilot Stakeholders Group (PSG) in developing a national minimum technical specification for DTT receivers and is optimistic that work in this regard will successfully conclude in the required timeframe. Nonetheless, and in recognition of the importance of the timely availability of DTT receivers, the Commission reserves its position to adopt a different strategy for the development of a minimum technical specification, should the need arise, in order to meet the required timeframe and objectives for the roll-out of DTT.

At a minimum, the Commission expects that any or all DTT receivers/set-top boxes supporting BCI-licensed multiplex operations shall be capable of receiving and displaying any free-to-air content from RTÉ and/or BCI-licensed multiplexes. Furthermore, interoperability between RTÉ and BCI-licensed multiplexes is considered to be highly desirable by the Commission (e.g. in the context of the provision of EPGs, SI and conditional access). However, the Commission shall take account of applicants' concerns regarding conditional access/security issues in considering applications for BCI multiplex contracts.

The Commission is stipulating that the MPEG 4 HD compression format forms part of the minimum specification for DTT receivers. Also as part of the minimum specification for DTT receivers, receivers shall support MHEG 5-capable middleware applications.

DTT receivers shall, at a minimum provide subtitling. However, other assistive services (such as audio description) are not being mandated at this time due to affordability and availability considerations.

3 – Content Provisions

3.1 – Range and type of content

The Commission shall invite detailed proposals from applicants with regard to the range and type of programme material, and/or compilations of programme material to be provided on a multiplex service. Applicants shall also be required to provide details of content already available to, or secured by, the applicant and/or content expected to be available to the applicant at the commencement of the contract. Furthermore, applicants' proposals for securing content over the full course of the contract shall be required.

Commitments made by an applicant in respect of the secured and continued inclusion of content shall be reflected in contractual obligations to the Commission as set out in **section 10 (2) (e)** of the 2007 Act. Full details on the specific type of information to be submitted, and level of detail required will be outlined in the *BCI Guide to Submissions*.

The Commission shall leave open the potential for proposals to include new content offerings, which may be influenced by the resources available to applicants. This flexibility shall be balanced with the need for some certainty in the public interest, and will be in keeping with the broader regulatory remit of the Commission and the statutory requirements specific to the licensing of DTT.

In considering the range and type of programme content, and/or the compilations of programme material proposed by applicants, the Commission shall have regard, *inter alia*, to the following:

- The diversity of sources of news, information and current affairs offered;
- Viewing patterns of Irish audiences, both current and historic;
- The ratio of indigenous to non-indigenous services and content proposed, and the level of new content not currently available;
- The ratio of free-to-air to subscription content;
- The provision of quality assistive services;
- The extent to which spectrum is utilised efficiently;
- General audio and visual quality issues;
- The extent to which the proposed content has been secured by way of agreement;
- The duration of the period for which any programme arrangements have been secured;
- Proposals in respect of HD content; and
- The extent to which proposals are supported by relevant and appropriate market research.

3.2 – Fair and reasonable access for content providers

Where appropriate, applicants for multiplex contracts shall be required to provide fair, reasonable and non-discriminatory access for parties wishing to provide content to the multiplex platform.

The Commission shall, in this regard, invite specific proposals from applicants on how they plan to achieve this objective. Commitments in this regard shall be reflected in contractual agreements between the BCI and the successful contractor/s.

3.3 – High-Definition TV

The Commission shall set no particular requirements in respect of the carriage of HD content, however, it shall seek details of applicant's intentions in the short-, medium- and long-term on the carriage of HD content. Commitments made shall be reflected in the multiplex contract, as appropriate.



Number 15 of 2007

BROADCASTING (AMENDMENT) ACT 2007

ARRANGEMENT OF SECTIONS

Section

1. Short title, collective citation, construction and commencement.
2. Interpretation.
3. Additional functions of Authority.
4. Additional functions of Commission.
5. Duty of Commission for Communications Regulation in respect of digital terrestrial television multiplexes.
6. Duty of Commission for Communications Regulation in respect of digital terrestrial sound broadcasting multiplexes.
7. Regulations prescribing fees.
8. Applications for multiplex contracts.
9. Determination of applications for award of multiplex contracts.
10. Terms and conditions of multiplex contracts.
11. Analogue switch-off.
12. Amendments to section 12 of Act of 2001.
13. Amendments to section 16 of Act of 2001.
14. Amendments to section 28 of Act of 2001.
15. Amendment to section 32 of Act of 2001.
16. Amendments to section 45 of Act of 2001.
17. Repeals.
18. Expenses.

SCHEDULE
ENACTMENTS REPEALED

ACTS REFERRED TO

Broadcasting Act 1990	1990, No. 24
Broadcasting Act 2001	2001, No. 4
Broadcasting Authority Act 1960	1960, No. 10
Broadcasting Authority Acts 1960 to 2001	
Communications Regulation Act 2002	2002, No. 20
Radio and Television Act 1988	1988, No. 20
Wireless Telegraphy Act 1926	1926, No. 45
Wireless Telegraphy Acts 1926 to 1988	



Number 15 of 2007

BROADCASTING (AMENDMENT) ACT 2007

AN ACT TO MAKE FURTHER PROVISION IN RELATION TO BROADCASTING, FOR THAT PURPOSE TO MAKE FURTHER PROVISION IN RELATION TO THE SUPPLY OF PROGRAMME MATERIAL FOR THE PURPOSE OF ITS BEING TRANSMITTED AND THE TRANSMISSION OF SUCH MATERIAL AND RELATED AND OTHER DATA BY DIGITAL MEANS, IN RELATION TO THE COMBINATION OF SUCH PROGRAMME MATERIAL, IN RELATION TO THE BROADCASTING OF CERTAIN SERVICES TO IRISH COMMUNITIES OUTSIDE THE ISLAND OF IRELAND, IN RELATION TO THE DISCONTINUANCE OF CERTAIN BROADCASTING SERVICES TRANSMITTED BY ANALOGUE MEANS, TO CONFER ADDITIONAL FUNCTIONS ON THE COMMISSION FOR COMMUNICATIONS REGULATION, RADIO TELEFÍS ÉIREANN, THE BROADCASTING COMMISSION OF IRELAND AND TEILIFÍS NA GAEILGE, TO CONFER A POWER SUBJECT TO LICENCE ON TEILIFÍS NA GAEILGE, TO AMEND THE BROADCASTING AUTHORITY ACTS 1960 TO 2001 AND CERTAIN OTHER ENACTMENTS AND TO PROVIDE FOR RELATED MATTERS.

[10th April, 2007]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1.—(1) This Act may be cited as the Broadcasting (Amendment) Act 2007.

Short title, collective citation, construction and commencement.

(2) The Broadcasting Authority Acts 1960 to 2001 and this Act may be cited together as the Broadcasting Authority Acts 1960 to 2007.

(3) The Broadcasting Authority Acts 1960 to 2001, and this Act (in so far as it amends or extends those Acts) shall be construed together as one.

(4) This Act shall come into operation on such day or days as the Minister may, by order or orders either generally or with reference to any particular purpose or provision, appoint and different days may be so appointed for different purposes or different provisions.

2.—In this Act—

Interpretation.

“the Act of 1960” means the Broadcasting Authority Act 1960;

“the Act of 1988” means the Radio and Television Act 1988;

“the Act of 1990” means the Broadcasting Act 1990;

“the Act of 2001” means the Broadcasting Act 2001;

“the Authority” means Radio Telefís Éireann;

“the Commission” means the body established by section 3 (as adapted by section 10 of the Act of 2001) of the Act of 1988;

“digital content contract” has the meaning assigned to it by section 12 of the Act of 2001;

“the Minister” means the Minister for Communications, Marine and Natural Resources;

“multiplex” means an electronic system which combines programme material and related and other data in a digital form and the transmission of that material and data so combined by means of wireless telegraphy directly or indirectly for reception by the general public;

“programme material” means audio-visual material or audio material and includes advertisements and material which, when transmitted, will constitute a direct offer to the public for the sale or supply to them of goods or other property (whether real or personal) or services;

“sound broadcasting multiplex” means a multiplex in which the programme material is predominantly sound;

“Teilifís na Gaeilge” means the body established by section 44 of the Act of 2001;

“television multiplex” means a multiplex in which the programme material is predominantly television;

“television programme service contract” and “television programme service contractor” have the same meaning as they have in section 4(2)(b) of the Act of 1988.

Additional
functions of
Authority.

3.—(1) Section 16 of the Act of 1960 is hereby amended—

(a) by substituting the following for subsection (1):

“(1) The Authority shall establish and maintain a national television and sound broadcasting service and shall establish, maintain and operate one or more national multiplexes and may establish and maintain broadcasting services of a local, community or regional character and shall have all such powers as are necessary for or incidental to those purposes.”,

(b) by inserting the following subsections after subsection (1):

“(1A) The Authority shall establish and maintain a television broadcasting service and a sound broadcasting service, which services shall be made available, in so far as the Authority considers reasonably practicable, to Irish communities outside the island of Ireland and the Authority shall have all such powers as are necessary for or incidental to those purposes.

(1B) The television broadcasting service and the sound broadcasting service established and maintained pursuant to subsection (1A) shall have the character of a public service.

(1C) The Authority shall endeavour to ensure that the programme schedules of the television broadcasting service and the sound broadcasting service established and maintained pursuant to subsection (1A) are, in so far as it is reasonably practicable, representative of the programme schedules of the national television broadcasting and sound broadcasting services referred to in subsection (1) of this section and subsection (1) of section 45 of the Act of 2001.

(1D) For the purposes of subsection (1C), *Teilifís na Gaeilge* shall provide to the Authority, in such amounts and at such times as may be agreed between them, programme material representative of the programme schedules of the national television broadcasting service referred to in subsection (1) of section 45 of the Act of 2001.”,

and

- (c) in subsection (3) thereof by the insertion after “The” of “function conferred on the Authority by virtue of subsection (1) of this section to establish, maintain and operate one or more national multiplexes and the”.
- (2) (a) A national television multiplex established, maintained and operated by the Authority under section 16(1) of the Act of 1960 shall provide for the broadcasting by digital means of—
- (i) the national television broadcasting service commonly known as RTÉ One and RTÉ Two,
 - (ii) the national television broadcasting service established and maintained by *Teilifís na Gaeilge* under section 45(1) of the Act of 2001.
- (b) The national television multiplex referred to in *paragraph (a)* shall be established as a matter of priority and shall, in due course, ensure the availability by free-to-air digital means of the national television broadcasting service referred to in *paragraph (a)(i)* to an extent similar to that such as is currently available by free-to-air analogue means.
- (c) Nothing in this subsection shall preclude the Authority from making provision in a multiplex established, maintained and operated by the Authority under section 16(1) of the Act of 1960 for the broadcasting by digital means of programme material and related and other data other than that broadcast as part of a service specified in *paragraph (a)*.
- (3) *Teilifís na Gaeilge* shall make to the Authority such periodic or other payments in respect of any service provided by the Authority for the purposes of *subsection (2)(a)(ii)* as the Minister, after consultation with the Commission for Communications Regulation, the Authority and *Teilifís na Gaeilge*, may direct.

(4) In the event that Teilifís na Gaeilge does not consider the digital capacity employed by the Authority for the purposes of *subsection (2)(a)(ii)* to be adequate, the Minister may, at the request of Teilifís na Gaeilge, direct the Authority to employ a specific amount of digital capacity.

(5) The Minister shall, at the request of the Commission and after consultation with the Authority require the Authority to make provision in a multiplex established, maintained and operated by the Authority under section 16(1) of the Act of 1960 for the broadcasting by digital means of the television programme service provided under the television programme service contract by the television programme service contractor.

(6) If the Minister makes a requirement of the Authority under *subsection (5)*, the television programme service contractor shall make to the Authority such periodic or other payments in respect of any service provided by the Authority in meeting that requirement as the Minister, after consultation with the Commission for Communications Regulation, the Authority and the television programme service contractor, may direct.

(7) If the Minister makes a requirement of the Authority under *subsection (5)* and the television programme service contractor does not consider the digital capacity employed by the Authority in respect of any service provided by the Authority in meeting that requirement to be adequate, the Minister may, at the request of the television programme service contractor and after consultation with the Commission, direct the Authority to employ a specific amount of digital capacity.

Additional
functions of
Commission.

4.—(1) It shall be the function of the Commission to arrange, in accordance with this Act, for the establishment, maintenance and operation of multiplexes, including national multiplexes, in addition to any multiplexes established, maintained and operated by the Authority under section 16(1) of the Act of 1960.

(2) For the purpose of *subsection (1)* the Commission shall, with persons (in this Act referred to as “multiplex contractors”), enter into contracts (in this Act referred to as “multiplex contracts”) under which the multiplex contractors have, subject to the provisions of this Act, the right and duty to establish, maintain and operate a multiplex in the area specified in the multiplex contract.

(3) It shall be a duty of the Commission to ensure that every multiplex contractor complies with the provisions of this Act.

(4) It shall be a duty of the Commission to endeavour to arrange, as a matter of priority, for the establishment, maintenance and operation of three national television multiplexes, which multiplexes, in so far as it is reasonably practicable, shall be capable of being transmitted by digital terrestrial means to the whole community in the State.

(5) It shall be a duty of the Commission to endeavour to arrange for the broadcasting of any television broadcasting service in Northern Ireland that is notified to the Commission by the Minister, being a service that is receivable throughout the whole of Northern Ireland and is provided by terrestrial means, by digital means under a multiplex contract.

(6) The Commission shall have all such powers as are necessary for or incidental to the performance of its functions under this Act including, in particular, the power to consult with the Commission for Communications Regulation as it sees fit.

5.—(1) It shall be a duty of the Commission for Communications Regulation, at the request of the Authority, to issue to the Authority under section 16(3)(a) of the Act of 1960 a licence in respect of the establishment, maintenance and operation of a single television multiplex, which multiplex shall, in so far as it is reasonably practicable, be capable of being transmitted by digital terrestrial means to the whole community in the State.

Duty of
Commission for
Communications
Regulation in
respect of digital
terrestrial television
multiplexes.

(2) It shall be a duty of the Commission for Communications Regulation, exercisable only at the request of the Authority and after consultation with the Minister and with the Commission regarding the digital capacity requirements of Teilifís na Gaeilge and the television programme service contractor, to issue to the Authority under section 16(3)(a) of the Act of 1960 a licence in respect of the establishment, maintenance and operation of one further television multiplex, which multiplex shall, in so far as it is reasonably practicable, be capable of being transmitted by digital terrestrial means to the whole community in the State.

(3) It shall be a duty of the Commission for Communications Regulation, at the request of the Commission, to issue to the Commission under the Wireless Telegraphy Acts 1926 to 1988, subject to the provisions of this Act, licences in respect of the establishment, maintenance and operation of four television multiplexes, which multiplexes shall, in so far as it is reasonably practicable, be capable of being transmitted by digital terrestrial means to the whole community in the State, in accordance with contracts to be entered into by the Commission under *subsection (2) of section 4*.

(4) The Commission for Communications Regulation shall consult with the Commission regarding the desirability of it issuing to the Commission under the Wireless Telegraphy Acts 1926 to 1988, subject to the provisions of this Act, further licences in respect of the establishment, maintenance and operation of additional television multiplexes, which multiplexes shall, in so far as it is reasonably practicable, be capable of being transmitted by digital terrestrial means to the whole community in the State, in accordance with additional contracts to be entered into by the Commission under *subsection (2) of section 4*.

(5) Nothing in this section shall be construed as preventing the Commission for Communications Regulation, following consultation with the Minister and with the Commission, from issuing under the Wireless Telegraphy Acts 1926 to 1988, other licences authorising the combination, by means of a multiplex other than a multiplex to which *subsections (1), (2) and (3)* relate of programme material and related and other data in a digital form, subject to such conditions as the Commission may consider necessary to impose in a contract entered into under section 12 of the Act of 2001.

(6) During the continuance of any emergency declared under section 10 of the Wireless Telegraphy Act 1926, the Minister may suspend any licence issued under this section and, while any such suspension continues, the Minister may operate any service which was provided under the suspended licence or require such service to be operated as he directs.

Duty of
Commission for
Communications
Regulation in
respect of digital
terrestrial sound
broadcasting
multiplexes.

6.—(1) It shall be a duty of the Commission for Communications Regulation, at the request of the Authority, to issue to the Authority under section 16(3)(a) of the Act of 1960 a licence in respect of the establishment, maintenance and operation of a single sound broadcasting multiplex, which multiplex shall, in so far as it is reasonably practicable, be capable of being transmitted by digital terrestrial means to the whole community in the State.

(2) It shall be a duty of the Commission for Communications Regulation, exercisable only at the request of the Authority and after consultation with the Minister and the Commission, to issue to the Authority under section 16(3)(a) of the Act of 1960 a licence in respect of the establishment, maintenance and operation of one further sound broadcasting multiplex, which multiplex shall, in so far as it is reasonably practicable, be capable of being transmitted by digital terrestrial means to the whole community in the State.

(3) It shall be a duty of the Commission for Communications Regulation, at the request of the Commission, to issue to the Commission under the Wireless Telegraphy Acts 1926 to 1988, subject to the provisions of this Act, licences in respect of the establishment, maintenance and operation of one sound broadcasting multiplex, which multiplex shall, in so far as it is reasonably practicable, be capable of being transmitted by digital terrestrial means to the whole community in the State, in accordance with contracts to be entered into by the Commission under *subsection (2) of section 4*.

(4) It shall be a duty of the Commission for Communications Regulation, at the request of the Commission, to issue to the Commission under the Wireless Telegraphy Acts 1926 to 1988, subject to the provisions of this Act, licences in respect of the establishment, maintenance and operation of one or more sound broadcasting multiplexes, which multiplexes shall, in so far as it is reasonably practicable, be capable of being transmitted by digital terrestrial means to the whole community in an area of the State specified by the Commission, which area may consist of the whole or any part of the State, in accordance with contracts to be entered into by the Commission under *subsection (2) of section 4*.

(5) The Commission for Communications Regulation shall consult with the Commission regarding the desirability of it issuing to the Commission under the Wireless Telegraphy Acts 1926 to 1988, subject to the provisions of this Act, further licences in respect of the establishment, maintenance and operation of additional sound broadcasting multiplexes, which multiplexes shall, in so far as it is reasonably practicable, be capable of being transmitted by digital terrestrial means to the whole community in an area of the State specified by the Commission, which area may consist of the whole or any part of the State, in accordance with additional contracts to be entered into by the Commission under *subsection (2) of section 4*.

(6) Nothing in this section shall be construed as preventing the Commission for Communications Regulation, following consultation with the Minister and with the Commission, from issuing under the Wireless Telegraphy Acts 1926 to 1988, other licences authorising the combination, by means of a multiplex other than a multiplex to which *subsections (1), (2), (3) and (4)* relate of programme material and related and other data in a digital form, subject to such conditions as the Commission may consider necessary to impose in a contract entered into under section 12 of the Act of 2001.

(7) During the continuance of any emergency declared under section 10 of the Wireless Telegraphy Act 1926, the Minister may

suspend any licence issued under this section and, while any such suspension continues, the Minister may operate any service which was provided under the suspended licence or require such service to be operated as he directs.

7.—(1) Every licence under the Act of 1960, the Act of 1988, the Act of 1990 and this Act shall be issued on payment of such fees as may be prescribed by the Commission for Communications Regulation, with the consent of the Minister, in regulations made under this section. Regulations prescribing fees.

(2) Regulations made under this section may prescribe in relation to all such licences or any particular class or classes of such licences—

- (a) the fees to be paid on the grant or renewal of such licences, and
- (b) the time and manner at and in which such fees are to be paid.

(3) Every regulation made under this section shall be laid before each House of the Oireachtas as soon as may be after it is made and if either such House shall, within twenty one days on which either such House has sat next after the regulation was laid before such Houses, pass a resolution annulling such regulation, such regulation shall be annulled accordingly but without prejudice to the validity of anything previously done under such regulation.

8.—(1) In order to secure the orderly establishment, maintenance and operation of multiplexes and subject to *subsection (2)*, the Commission shall as soon as may be after this section has come into force and may thereafter, from time to time having regard to the availability of radio frequencies for multiplexes, invite applications for multiplex contracts and, subject to the provisions of this Act, may enter into such contracts. Applications for multiplex contracts.

(2) Without prejudice to *subsection (1)*, the Commission shall within six months after this section has come into force endeavour to invite applications for multiplex contracts in respect of the three national television multiplexes referred to in *section 4(4)*.

(3) Where the Commission invites applications for a multiplex contract it shall by public notice specify the coverage area (which area may consist of the whole or any part of the State) in which the programme material and related and other data shall be broadcast pursuant to such contract (in this section referred to as “the maximum coverage area”) and by such notice shall invite persons interested in establishing and maintaining a multiplex to apply for such contract.

(4) Every notice under *subsection (3)* shall—

- (a) be published in at least one national newspaper,
- (b) specify the procedure to be followed in order to make an application, and
- (c) specify any other matters which appear to the Commission to be necessary or relevant.

(5) The Commission may, in a notice under *subsection (3)*, specify the minimum coverage area in which the programme material and related and other data shall be broadcast under the contract, which coverage area may be less than that of the maximum coverage area specified in the notice.

(6) Notwithstanding *subsection (3)*, where a minimum coverage area is specified in a notice under that subsection the coverage area in which the programme material and related and other data shall be broadcast pursuant to any contract entered into on foot of such notice shall be the minimum coverage area so specified, subject to the requirement that every effort is made by the person to whom the contract is awarded to ensure that the programme material and related and other data is broadcast in as much of the maximum coverage area as is practicable.

Determination of applications for award of multiplex contracts.

9.—(1) The Commission shall, in accordance with the provisions of this Act consider every application for a multiplex contract received by it pursuant to a notice under *section 8* for the purpose of determining the most suitable applicant, if any, to be awarded a multiplex contract.

(2) In the consideration of applications received by it and in determining the most suitable applicant to be awarded a multiplex contract, the Commission shall have regard to—

- (a) the character of the applicant or, if the applicant is a body corporate, the character of the body and its directors, manager, secretary or other similar officer and its members and the persons entitled to the beneficial ownership of its shares,
- (b) the adequacy of the expertise and experience and of the financial resources that will be available to each applicant and the extent to which the application accords with good economic principles,
- (c) the range and type of programme material or compilations of programme material proposed to be included in the multiplex by the applicant and how the applicant proposes to secure continued inclusion of such material,
- (d) in the case of a television multiplex, the proposals by the applicant for promoting the acquisition by persons in the proposed coverage area of equipment capable of—
 - (i) receiving all of the television multiplexes available or expected to be available in that area, including the national multiplex referred to in *section 3(2)(a)*, and
 - (ii) enabling such persons to keep themselves informed of the choice of programme material included in those multiplexes,
- (e) in the event that the Commission has specified a minimum coverage area pursuant to *section 8(5)*, the extent of the coverage area proposed to be achieved by the applicant,
- (f) the technical proposal, including a timetable for implementation, regarding the establishment, maintenance and operation of the proposed multiplex,

- (g) the duty imposed on the Commission under *section 4(5)*, and
- (h) any other matters which the Commission considers to be necessary to secure the orderly establishment, maintenance and operation of multiplexes.

10.—(1) Every multiplex contract may contain such terms and conditions as the Commission considers appropriate and specifies in the contract.

Terms and conditions of multiplex contracts.

(2) Without prejudice to the generality of *subsection (1)*, the Commission may specify in a multiplex contract all or any of the following terms or conditions:

- (a) the period during which the contract shall continue in force;
- (b) whether the contract may be renewed and, if so, the manner in which, the terms on which, and the period for which, the contract may be so renewed;
- (c) a condition prohibiting the assignment of the contract or of any interest therein without the prior consent or approval of the Commission;
- (d) if the multiplex contractor be a company, a condition prohibiting any alteration in the Memorandum or Articles of Association of the company or in so much of that Memorandum or of those Articles as may be specified or prohibiting any material change in the ownership of the company without the prior approval of the Commission;
- (e) a condition requiring the multiplex contractor to provide the range and type of programmes which he proposed to offer in his application for the award of the contract;
- (f) a condition requiring the multiplex contractor to implement any proposals made in his application for the coverage area of the multiplexes;
- (g) following consultation with the Commission for Communications Regulation, a condition requiring the multiplex contractor to implement the proposals made in his application for the award of the contract for promoting the acquisition, by persons in the proposed coverage area of the multiplex, of equipment capable of receiving all of the multiplexes available in that area;
- (h) any condition which the Commission considers appropriate having regard to its duty under *section 4(5)*;
- (i) following consultation with the Commission for Communications Regulation, any condition requiring the multiplex contractor to comply with any technical condition as the Commission for Communications Regulation may require in the exercise of its functions.

(3) If a multiplex contract does not contain a condition of the type specified in *paragraph (c)* or *(d)* of *subsection (2)*, the following provisions shall have effect:

- (a) a multiplex contract, or any interest in a multiplex contract, shall not be assignable, nor shall any alteration be made in the Memorandum or Articles of Association of any company which is a multiplex contractor, nor shall there be any material change in the ownership of such a company, without the previous consent in writing of the Commission, and the Commission may, if it considers it reasonable so to do, refuse such consent stating the grounds for such refusal;
- (b) in considering whether to grant its consent to an assignment of a multiplex contract, a change in the Memorandum or Articles of Association of a company which is a multiplex contractor, or a material change in the ownership of such a company, the Commission shall have regard to the criteria specified in *section 9(2)*.

(4) Every multiplex contract shall—

- (a) provide that the Commission may, at its discretion and on stated grounds, suspend, reduce the term of or terminate the contract—
 - (i) if any false or misleading information was given to the Commission by or on behalf of the multiplex contractor prior to the making of the contract,
 - (ii) if the multiplex contractor has, in the opinion of the Commission, committed serious or repeated breaches of his obligations under the multiplex contract or under this Act,
- (b) provide that a multiplex contractor shall pay to the Commission the fees (if any) specified therein, including any fees payable by the Commission to the Commission for Communications Regulation under *section 7* and any regulations made thereunder, and
- (c) provide that the multiplex contractor shall provide such information (including copies of his accounts) as the Commission may consider it requires in order to enable it carry out its functions under this Act.

(5) Every multiplex contract shall be open to inspection by members of the public at the Commission's registered office and the Commission shall, on request made by any person and on payment of such sum (if any) as the Commission may reasonably require, furnish to that person a copy of that contract.

Analogue switch-off.

11.—(1) For the purpose of considering for how long it would be appropriate for television broadcasting services to continue to be provided by analogue means, the Minister—

- (a) shall keep under review the extent of—
 - (i) the availability of multiplexes in the State,
 - (ii) the availability in the State by digital means of the services specified in *subsection (2)*,

(iii) the ownership or possession in the State of equipment capable of receiving the services specified in *subsection (2)* when transmitted by digital means,

(iv) the likely future extent of such availability and such ownership or possession,

and

(b) shall, at such time or times as he considers fit and, in any case, on or before the second anniversary of the day on which the first multiplex contract is awarded under this Act, require the Commission and the Authority to report to him on the matters referred to in *paragraph (a)*.

(2) The services specified for the purposes of *subsection (1)(a)(ii)* are—

(a) the national television broadcasting service commonly known as RTÉ One and RTÉ Two established and maintained by the Authority,

(b) the national television broadcasting service established and maintained by Teilifís na Gaeilge under section 45(1) of the Act of 2001, and

(c) the television programme service provided under the television programme service contract by the television programme service contractor.

(3) If the Commission or the Authority is required to submit a report under *subsection (1)(b)*, they shall submit the report within six months of the date of the requirement.

(4) Before making any report under *subsection (1)(b)*, the Commission shall consult with—

(a) the holders of all television multiplex contracts,

(b) the holders of all digital content contracts,

(c) the television programme service contractor,

(d) the Commission for Communications Regulation, and

(e) such other persons as the Commission considers fit,

and the Commission shall include in their report a summary of any representations made to them by the persons consulted.

(5) For the purpose mentioned in *subsection (1)*, the Minister shall, on requiring reports under *subsection (1)(b)*, consult with—

(a) such persons as appear to the Minister to represent viewers as the Minister considers fit, and

(b) such other persons as the Minister considers fit,

regarding the matters referred to in *subsection (1)(a)* and also, if the Minister considers fit, regarding the likely effects on viewers of any of the services referred to in *subsection (2)* ceasing to be broadcast by analogue means.

(6) The Minister may, at any stage or following consideration of a report under *subsection (1)(b)*, issue a policy direction under section 13 of the Communications Regulation Act 2002 regarding the date or dates after which the Commission for Communications Regulation may no longer grant licences under section 16(3) of the Act of 1960 or section 4(3) of the Act of 1988 in respect of the provision of any of the services referred to in *subsection (2)* by analogue means.

(7) The Commission for Communications Regulation may under section 7(1) of the Act of 1988 vary a term or condition of a licence issued under section 4(3) of that Act to ensure that—

- (a) any contract for the provision by analogue means of a service referred to in *subsection (2)(c)* that is renewed by the Commission shall contain a condition that after a date specified in the contract the service may no longer be provided by analogue means, and
- (b) any new contract entered into by the Commission for the provision of such a service by analogue means shall contain such a condition or, if no such date has been decided upon, a condition that the service may no longer be provided by analogue means after a date to be announced by the Minister in due course.

(8) The Authority shall endeavour to ensure that all viewers of services referred to in *paragraphs (a) and (b) of subsection (2)* provided by analogue means are made aware, in general terms, of the digital switchover date or dates, the reasons for it or them, the consequences, and practical information on how such viewers can receive such services by digital means after that date or those dates.

(9) For the purpose of *subsection (8)*, “digital switchover date or dates” means the date or dates after which the Commission for Communications Regulation may no longer grant any licences specified in *subsection (6)*.

(10) The Authority shall on or before the second, fourth and sixth anniversaries of the date of commencement of this section report to the Minister on the progress made by the Authority in the broadcasting of programme material and related and other data in a digital form by means of the national multiplexes established, maintained and operated by the Authority under *subsection (1) of section 16* of the Act of 1960.

(11) The Minister shall cause copies of each report made to him or her under *subsections (1) and (10)* to be laid before each House of the Oireachtas.

Amendments to
section 12 of Act of
2001.

12.—Section 12 of the Act of 2001 is hereby amended—

- (a) in *subsection (1)* by the substitution for “for the purpose of any arrangements to be entered into by him or her under *paragraph (a) or (b) of section 14(1)*” of “for inclusion as part of a multiplex”, and
- (b) in *paragraph (b) of subsection (2)* by the deletion of “by the designated company”.

13.—Section 16 of the Act of 2001 is hereby amended—

Amendments to
section 16 of Act of
2001.

- (a) in subsection (7) by the substitution for “transmitted by the transmission company pursuant to arrangements under section 14(1) and” of “included as part of a multiplex, within the meaning of the *Broadcasting (Amendment) Act 2007*, and transmitted by”, and
- (b) by the substitution for subsection (9) of the following subsection:

“(9) The Commission may give a direction to—

- (a) a multiplex contractor, within the meaning of the *Broadcasting (Amendment) Act 2007*, requiring that contractor to include as part of a television multiplex, within the meaning of that Act, the electronic programme guide or guides prepared under the programme guide contract referred to in subsection (8), and
- (b) each holder of a licence referred to in section 37(1) requiring him or her to transmit the said guide or guides,

and the said contractor and each such holder shall comply with such a direction.”.

14.—Section 28 of the Act of 2001 is hereby amended—

Amendments to
section 28 of Act of
2001.

- (a) by substituting the following for paragraphs (c) and (d) of subsection (8):
 - “(c) exercising all or any of the powers conferred on it by subsection (2) (other than paragraphs (bb) and (bbb) (inserted by this Act) thereof) of section 16 of the Act of 1960,
 - (d) providing, pursuant to its powers under the Broadcasting Authority Acts 1960 to 2001, any service (other than a broadcasting service) for the benefit of the public,
 - (e) providing a service under subsection (1A) of section 16 of the Act of 1960, and
 - (f) the establishment, maintenance and operation of one or more national multiplexes pursuant to subsection (1) of section 16 of the Act of 1960.”,

- (b) by substituting the following for subsection (10):

“(10) Without prejudice to sections 25(1) and 26 of the Act of 1960, the Authority shall, as soon as may be after the end of each financial year, make a report to the Minister of the use it has made with regard to, respectively, the television broadcasting service and the sound broadcasting service referred to in subsection (1) and the television broadcasting service and sound broadcasting service referred to in subsection (1A) of section 16 of the Act of 1960, of the moneys paid to it under section 8 of the Act

of 1976 in that year for the purpose of the activities, during that year, referred to in paragraphs (a), (b) and (c) of subsection (2) and paragraphs (d) and (e) of subsection (8).”,

and

(c) by substituting the following subsections for subsection (11):

“(10A) The Authority shall on or before the third and fifth anniversaries of the date of commencement of this section carry out a review of the provision of the television broadcasting service and sound broadcasting service referred to in subsection (1A) of section 16 of the Act of 1960.

(10B) The Authority shall make a report to the Minister of each review carried out by it under subsection (10A).

(11) The Minister shall cause copies of each report made to him or her under subsection (10) and (10B) to be laid before each House of the Oireachtas.”.

Amendment to section 32 of Act of 2001.

15.—Section 32 of the Act of 2001 is hereby amended by substituting the following for subsection (1):

“(1) The function conferred on the Minister by section 25(1) of the Act of 1960 with respect to directing (whether on the Minister’s own motion or at the request of the Minister for Finance) the Authority to keep special accounts includes a power (exercisable on the Minister’s own motion or at the request of the Minister for Finance) to direct the Authority to keep a special account showing the manner, with regard to, respectively, the television broadcasting service and sound broadcasting service referred to in subsection (1) of section 28 and the television broadcasting service and sound broadcasting service referred to in subsection (1A) of section 16 of the Act of 1960, in which the moneys paid to it under section 8 of the Act of 1976 in the year concerned have been appropriated for the purpose of the activities of the Authority, during that year, referred to in paragraphs (a), (b) and (c) of subsection (2) and paragraphs (d) and (e) of subsection (8) of section 28.”.

Amendments to section 45 of Act of 2001.

16.—Section 45 of the Act of 2001 is hereby amended—

(a) by inserting the following after paragraph (j) of subsection (8):

“(k) to establish, maintain and operate broadcasting stations and to acquire, install and operate apparatus for wireless telegraphy.”,

and

(b) by inserting the following after subsection (8):

“(9) (a) The powers conferred on Teilifís na Gaeilge by virtue of paragraph (k) of subsection (8) of this section shall not be exercised save under licence issued by the Commission for

Communications Regulation and in accordance with any conditions attached by the Commission for Communications Regulation to such licence.

- (b) During the continuation of any emergency declared under section 10 of the Wireless Telegraphy Act 1926, the Minister may suspend any licence under this subsection and, while any such suspension continues, the Minister may operate any service which was provided by Teilifís na Gaeilge under the suspended licence or require such service to be operated as he directs.
- (c) A copy of every licence under this subsection shall be laid before each House of the Oireachtas as soon as may be after the issue of the licence.”.

17.—The enactment mentioned in the *Schedule* is hereby repealed Repeals.
to the extent specified in the *third column* of the *Schedule*.

18.—The expenses incurred by the Minister in the administration Expenses.
of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas.

SCHEDULE

Section 17.

ENACTMENTS REPEALED

Number and year	Short title	Extent of repeal
No. 4 of 2001	Broadcasting Act 2001	In section 2 the definitions of “digital multiplex licence”, “DTT licence”, “multiplex”, “the multiplex company” and “the transmission company”
		Sections 5 to 9
		Sections 13 to 15

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