Migration of Broadcasting Services from 700MHz Spectrum Band — Letter of Entrustment

Context
I refer to the Proposal for a Decision of the European Parliament and of the Council on the use of the 470-790MHz frequency band in the Union, which is aimed at ensuring the migration of broadcasting services from the 700MHz band by June 2020.

The timely release of this spectrum is a matter of national importance to Ireland as its subsequent use for mobile broadband services will assist in delivering improved network coverage and speed, particularly in rural areas. On this basis, my Department and ComReg, in cooperation with RTÉ and 2m, have been working to ensure that the necessary measures are taken to facilitate a clearance of the spectrum in accordance with the proposed timeline as set out in the draft EU Decision.

As part of these preparations, I can confirm that 4 September 2019 is the date chosen to begin the coordinated migration of terrestrial broadcasting services from this spectrum band in both jurisdictions. It is important to stress that, at this point, the date of 4 September 2019 is not open to change.

In the case of the UK, this will mean that all broadcasts in the 700MHz spectrum band will cease within a matter of weeks from that date. In the case of Ireland, it will see the beginning of a period of simulcast, which is designed to ensure, to the greatest extent possible, that those households that rely solely on the Saorview DTT service can undertake the necessary preparations without undue interruption to their reception of that service.

As you will be aware, two-thirds of the nearly 190,000 households that rely solely on the Saorview service for their television viewing are based in rural areas. They tend to be older (over 50% are over the age of 60) and a large proportion (over 80%) are either single or no longer have children living at home. Given their age profile, it is probably fair to expect that many will be less technologically aware than households with younger adults and, given their rural location, it is also considered likely that they will be less digitally ‘connected’ in comparison to households in urban areas.
It is the Government’s objective that the cessation of the DTT transmissions in the 700MHz should occur with the least disruption to those households that use Saorview for television reception. It is in this context, therefore, that a period of simulcast is being provided that allows for appropriate information and, if necessary, assistance, to be given to such households prior to the final cessation of broadcasts in the 700MHz band. I can confirm that my Department will be examining what steps need to be taken in regard to the possible provision of such information and assistance nearer the date for migration.

It is considered that the period of simulcast will end on 4 March 2020 and, on that date, all RTÉ DTT transmissions in the 700MHz will be required to cease.

### Obligation to Migrate

As mentioned earlier, the migration of broadcasting services from the 700MHz band is the subject of a proposed Decision of the European Parliament and of the Council and the date identified in that proposal for completion of the migration is end June 2020.

The promulgation of this proposal followed a decision taken at the World Radiocommunications Conference held in Geneva in December 2015 (WRC 2015) on allowing mobile broadband services to use the 700MHz band (i.e. 694-790MHz) and it is fully expected that this Decision will be adopted during the forthcoming Maltese Presidency of the European Council in the first half of 2017 and that the date of end June 2020 will be the date adopted.

In addition, I should mention that, as a part of the engagement between Ireland and the UK on the new DTT spectrum plan below the 700MHz band, ComReg will sign an agreement with the UK in March 2017 for the new plan to take effect. RTÉ’s current DTT licence will expire on the 19 December 2019. The frequency plan will allow DTT to continue to operate below the 700 MHz band and will be reflected in any new licence issued to RTÉ in respect of its DTT service in the future.

It is imperative therefore that RTÉ and 2rn make all the necessary preparations to ensure that they are in a position to switch off the terrestrial broadcasting services currently operating in that band within the timescale indicated.

As you will be aware, section 114(1)(a) of the Broadcasting Act 2009 sets out RTÉ’s object to establish, maintain and operate a national television and sound broadcasting service which shall have the character of a public service, be a free-to-air service and be made available, in so far as it is reasonably practicable, to the whole community of Ireland. The extent and manner in which RTÉ is required to meet this obligation is specified in Section 130(1)(b)(i)(II) of the 2009 Act which requires RTÉ to ensure that the national television multiplex is established:

- “by 31 December 2011, or such later date as may be specified by the Minister by order, is operational, available free-to-air and capable of providing coverage to the same extent as is, on the passing of this Act, available by free-to-air analogue means”.
The date of 31 December 2011 referred to in this provision was subsequently confirmed to RTÉ by Ministerial letter dated 26 February 2010.

It is essential that the process of migrating the broadcasting services from the 700MHz spectrum band is undertaken in such a way that maintains extent and manner of RTÉ’s delivery of this object to the greatest extent possible.

Compensation
As you may be aware, the move from the 800MHz band (i.e. Digital Switch-Over) that took place in 2012 provided a number of clear benefits to terrestrial broadcasters (viz. the introduction of digital technologies in place of the previous analogue systems; the ability to provide a greater number of channels and services, etc). On that basis, it was seen as reasonable that relevant broadcasters, including RTÉ, should bear the financial burden involved in clearing the band and in establishing the replacement digital network.

Unlike the 2012 process, however, it is recognised that the benefits to be derived from the 700MHz migration will go primarily to wireless broadband operators, users of their services and to the State. There is no tangible benefit to the broadcasting operators or DTT viewing households from the forthcoming move. In recognition of this, Article 5a of the Draft EU Decision states that “Member States may, where appropriate and in conformity with Union law, ensure that the direct cost of migration or reallocation of spectrum usage is adequately compensated in accordance with national law”.

At the request of the Department, ComReg and its independent consultants, Frontier Economics, have engaged with 2rn in order to estimate the ‘direct cost of migration’ likely to be incurred by 2rn in the move from the 700MHz band, noting that the exact cost of migration cannot be ascertained until such time as 2rn has, in accordance with the procurement rules for public bodies, tendered for the relevant goods and services and, on foot of tenders received, determined the final quantum of its costs. The work done to date between ComReg and 2rn indicates that the total cost to 2rn in migrating from the 700MHz band is to be less than 1000000000.

As part of this work, a mechanism to provide compensation to RTÉ (as the public service multiplex operator) to cover the direct cost of migration from the 700MHz band has been agreed by my Department (copy at Annex 2). This compensation is to be made available in accordance with relevant EU State Aid rules and, in particular, in accordance with the relevant provisions of the following instruments:

- The Communication from the Commission on the application of State aid rules to public service broadcasting (2009/C 257/01);
- The Communication from the Commission on the application of the European union State aid rules to compensation granted for the provision of services of general interest (2012/C 8/02); and
- The Commission Decision of 20 December 2011 on the application of Article 106(2) of the Treaty on the Functioning of the European Union to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest (2012/21/EU).
I hereby confirm, therefore, that, subject to the conditions set out below and in the Annexes to this letter, my Department, in accordance with national law, will fully reimburse RTÉ Transmission Network DAC, trading as “2rn”, in such amount as will cover 2rn’s direct and efficiently incurred cost of migrating its Digital Terrestrial Television (DTT) network from the 700 MHz spectrum band.

I further confirm that my Department is satisfied that payment of any such reimbursement to 2rn is lawful under competition law including, in particular, the State Aid rules as set out in Articles 107–109 of the Treaty on the Functioning of the European Union and in accordance with the relevant provisions of the instruments mentioned above.

This undertaking is strictly conditional upon the Department being fully satisfied as to the following:

- that all relevant costs, directly incurred by 2rn in migrating from the 700 MHz spectrum band, are valid and are incurred in full accordance with the public procurement rules;
- that payment will be made in accordance with the mechanism and phasing agreed with the Department and ComReg;
- that all 2rn revenues and expenditure related to the 700MHz migration will be subject to the procedures set out in the “Accounting and Cost Control Proposals: 700Mhz Migration Project” document submitted to the Department on 12 December 2016; and
- that, in line with the methodology for cost compensation phasing and auditing as set out in section 4 of the Frontier Economics Report, prior to any final phased payment being made, a final reconciliation between forecasts and actual costs will be undertaken to ensure that no over-compensation has taken place and, in the event of any over-compensation being identified as a result of this reconciliation, the identified amount of over-compensation is to be deducted from the final payment amount.

Entrustment of Service of General Economic Interest
Recital (8) of Commission Decision 2012/21/EU states that “It is clear from the case-law that, in the absence of sectoral Union rules governing the matter, Member States have a wide margin of discretion in the definition of services that could be classed as being services of general economic interest.”

The establishment, maintenance and operation of a national television and sound broadcasting service having the character of a public service, being a free-to-air service and being made available, in so far as it is reasonably practicable, to the whole community of Ireland is determined to be a service of general economic interest which has been entrusted to RTÉ under section 114(1)(a) of the Broadcasting Act 2009.

The migration of broadcasting services from the 700MHz band in a manner that maintains, to the greatest extent possible, the extent and manner of the delivery of the above service
of general economic interest is determined to be part of that service of general economic interest and this letter is to be taken as the required act of entrustment in that regard.

In making this assignment, full account has been taken of the provisions of paragraph 52 of Commission Communication 2012/C 8/02 and Article 4 of Commission Decision 2012/21/EU which require that the act of entrustment must at least specify:

(a) The content and duration of the public service obligation;
(b) The undertaking and, where applicable, the territory concerned;
(c) The nature of any exclusive or special rights assigned to the undertaking by the authority in question;
(d) The parameters for calculating, controlling and reviewing the compensation; and
(e) The arrangements for avoiding and recovering any over compensation.

These matters are, accordingly, set out in Annex 1 to this letter.

I confirm that my Department will continue to engage with ComReg, RTÉ and 2rn throughout this process to ensure that process is delivered successfully. At this point, I would like to express my thanks to you for the assistance and cooperation provided by RTÉ and 2rn to date and look forward to your continued support in ensuring the timely completion of this project of national interest.

Yours sincerely,

Denis Naughten, TD
Minister for Communications, Climate Action and Environment

cc. Ms Dee Forbes, Director General, RTÉ
ANNEX 1

REQUIREMENTS UNDER ARTICLE 4 OF COMMISSION DECISION 2012/21/EU

(a) The content and duration of the public service obligation.

The migration of broadcasting services from the 700MHz band in a manner that maintains, to the greatest extent possible, the delivery of the above service of general economic interest is determined to be part of RTÉ’s service of general economic interest in regard to the establishment, maintenance and operation of a national television and sound broadcasting service having the character of a public service, being a free-to-air service and being made available, in so far as it is reasonably practicable, to the whole community of Ireland.

In terms of the scope of the actual service to be provided, the work involved in this service of general economic interest comprises all operational and capital works that arise as a direct result of the need to migrate broadcasting services from the 700 MHz band in Ireland.

The scope of the work is as follows:

- All operational works undertaken in the development and management of the network change project, including work undertaken by consultants and advisors on behalf of 2rn and RTÉ in this regard;
- All capital works undertaken to ensure the successful delivery of the required changes to the network, including the provision of new and replacement equipment at existing and new transmission sites and necessary changes to other relevant network facilities, including the provision of optical fibre connections; and
- All operational and capital works undertaken to ensure the successful delivery of the period of simulcast.

The total period of entrustment for the service of general economic interest entrusted to RTÉ in regard to the 700MHz migration will be approximately three and a half years, beginning 16 December 2016 and to be completed no later than 30 June 2020, i.e. the date by which the 700MHz band should be cleared across the EU in accordance with the draft Decision of the European Parliament and the Council as referenced earlier.

(b) The undertaking and, where applicable, the territory concerned.

The undertaking being entrusted with this service of general economic interest is Raidió Teilifís Éireann (RTÉ), a public service broadcasting corporation established under the Broadcasting Act 2009. The territory concerned is Ireland.
(c) The nature of any exclusive or special rights assigned to the undertaking by the authority in question.

There are no exclusive or special rights assigned to RTÉ as part of this assignment.

(d) The parameters for calculating, controlling and reviewing the compensation;

In considering this requirement, particular regard has been had to Article 4(d) and (e) and to Article 5 of Decision 2012/21/EU. Article 5, amongst other things, stipulates that the compensation paid to an undertaking entrusted with the operation of an SGEI shall not exceed what is necessary to cover the net cost incurred by the undertaking in discharging its public service obligations, including a reasonable profit. Article 5(2) prescribes the methodology for calculating the net cost and Article 5(3) stipulates that the costs to be taken into consideration shall comprise all costs incurred in operating the SGEI calculated on the basis of four generally accepted cost accounting principles, which are listed therein.

In order to ensure that the requirements of these provisions are met, the Office of Communications Regulation, ComReg, engaged independent consultants, Frontier Economics, to conduct a fully reasoned analysis and assessment of 2rn’s proposed efficiently incurred capital and operational costs that arise as a direct consequence of the migration of its DTT transmission network from the 700MHz band. For information, the terms of reference under which Frontier Economics was engaged are as follows:

(i). Seek from 2rn justification and understand the reasoning behind the proposed changes to the Fixed Asset Register and determine whether or not it is attributable to the migration of the DTT transmission network out of the 700MHz band. Some site visits to appropriate DTT transmission facilities operated by 2rn may be required;

(ii). Determine, in terms of the Net Present Value (NPV), the costs to 2rn as a consequence of migrating all of its DTT transmission network out of the 700 MHz band;

(iii). Determine and understand the operational costs (for example, project management costs and public information costs) which result from the migration of the DTT transmission network out of the 700MHz band;

(iv). Consider the potential impact of the cost of migration on tariffs. It is considered that tariffs should not vary as a result of the 700MHz;

(v). As the migration of the DTT transmission network will take place over approximately three years, the total direct costs should allow for margin of error;

(vi). The outcome of the analysis and assessment shall be informed by identified and justified direct costs;
As part of their report, the consultants have provided details of methodology and estimates to the Department of Communications, Climate Action and Energy (DCCAE). It should be noted that the report is to be published on ComReg’s and DCCAE’s website (subject to redaction of any commercially confidential information).

Furthermore, regard has also had to be taken of the requirements of Article 5(9) of Decision 2012/21/EU, which states that “where an undertaking carries out activities falling both inside and outside the scope of the service of general economic interest, the internal accounts shall show separately the costs and receipts associated with the service of general economic interest and those of other services, as well as the parameters for allocating costs and revenues”.

In order to ensure compliance with this requirement, 2rn has, at the request of the Department put in place the procedures set out in the “Accounting and Cost Control Proposals: 700MHz Migration Project” document agreed with the Department on 12 December 2016. The Department is satisfied that they meet the requirements of Article 5(9) of the 2012 Decision.

(e) The arrangements for avoiding and recovering any over compensation.

Having regard to Article 5(1) of Decision 2012/21/EU, the amount of compensation that will be paid to RTÉ will not exceed what is necessary to cover the net cost incurred by RTÉ as a direct consequence of 2rn having to purchase and install new equipment for the sole purpose of having to migrate the terrestrial broadcasting services from the 700MHz band. Ireland is further satisfied that the net cost will be incurred by RTÉ in discharging its public service obligations.

As noted above, Frontier Economics has been engaged to provide an assessment of the reasonable costs that would be incurred by 2rn as a result of migrating from the 700MHz band.

In assessing the reasonable costs that could be incurred, Frontier Economics has developed a methodology to identify the economic costs of bringing forward investments. The methodology is designed to identify the net costs that are incurred as a result of migration, taking into account that in the coming years some investment in RTÉ's network would be made regardless of the migration. Therefore the appropriate method should provide sufficient compensation such that RTÉ is indifferent between migrating from the 700MHz band (with compensation) and staying in the band (without compensation). Where the operator would have incurred costs in the future in the normal upgrading of its network, then the compensation methodology only compensates for the net cost of bringing forward the investment, given RTÉ’s cost of capital.
The analysis by Frontier Economics, inter alia, interrogates the network changes and upgrades proposed by RTÉ to ensure that the proposed changes which are considered in the compensation estimate only relate to the migration from the 700MHz band.

Furthermore, it should be noted that, as part of the compensation mechanism established by the Department of Communications, Climate Action & Environment, provision is made at the end of 700MHz migration process for the undertaking of an audit of all costs, expenditures and receipts to ensure that no over-compensation has taken place. This audit will be undertaken by Frontier Economics and ComReg. In the event of any over-compensation being identified as a result of this audit, RTÉ will be required to pay back that amount of over-compensation to the Department of Communications, Climate Action & Environment.

RTÉ and 2rn are required to comply with all methodologies, parameters and procedures mentioned in paragraphs (d) and (e) above and agreed with the Department and ComReg.

A copy of the compensation mechanism is attached at Annex 2 for information.
ANNEX 2

MIGRATION OF BROADCASTING SERVICES FROM 700 MHZ BAND IN IRELAND
OUTLINE OF COST RECOVERY MECHANISM IN RELATION TO COSTS INCURRED BY RTÉ IN
ITS ROLE AS MULTIPLEX OPERATOR

CRM Principles
As the migration of broadcasting services from the 700 MHz band provides no benefit to
those operating or using the Saorview service, it is proposed to establish a Cost Recovery
Mechanism (CRM) that will enable the multiplex operator, RTÉ¹, to recover the costs it
incurs in undertaking this migration.

RTÉ would be the sole beneficiary of funding provided under this cost recovery mechanism.
The type of costs to be covered by this CRM include the following:

- Infrastructure Costs – Costs that RTÉ incurs as a result of 2rn making infrastructure
  changes to the DTT network on its behalf and related programme management costs.
- RTÉ’s Operational Costs – Operational costs incurred by RTÉ in developing, managing
  and participating in the network change project (e.g. the cost of RTÉ staff based on
  the time spent on the project; cost of external services such as consultancy and legal
  services)

The main principle to apply to the operation of the proposed CRM is that only efficiently
incurred incremental costs will be eligible for recovery by RTÉ. As noted above, it is
proposed that this will include relevant capital and operational expenditure.

TREATMENT OF CAPITAL COSTS
In relation to capital equipment (capex) costs that are likely to arise as a result of the need
to migrate broadcasting services from the 700 MHz band, these can be broken down into
two separate categories, i.e. (a) those which are brought forward as a result of the
migration from the 700 MHz band (which are partially compensated), and (b) capex costs
which would not otherwise have been incurred absent the requirement to migrate from the
700 MHz band (e.g. new sites, new leased lines, new antennas) and for which compensation
is to be provided in full.

In relation to case (a) above, a piece of capital equipment that was, for example, installed in
September 2011 with an expected life-span of 13.33 years (i.e. until end 2025) but needs to
be replaced in 2019 as a direct consequence of the proposed migration, it is proposed that
RTÉ would be able to recover the incremental costs involved.

Under this approach, the compensation model would reflect the costs incurred for the new
asset but only to fund annuity payments up to a point in time, when the pre-existing asset
would have reached the end of its asset life (i.e. the compensation would comprise the

¹ It should be noted that, on the basis of the commercial service provision contract between RTÉ and 2rn, all
costs incurred by 2rn in undertaking works to enable the migration of broadcasting services from the 700 MHz,
will be covered by RTÉ.
annuitized cost of new assets up to the point where existing assets would have been replaced). The value of the pre-existing assets and annuity costs associated with the new asset, for any years beyond the normal replacement of the existing asset should be funded through regulated tariffs.

**TREATMENT OF OPERATIONAL COSTS**

In the case of operational costs, all reasonable operational costs efficiently incurred in the migration related activities, including relevant administration, technical/engineering and project management costs, should be capable of being fully recovered by RTÉ.

**OUTLINE OF MECHANISM**

At the start of the project, the Department of Communications, Climate Action and Environment (DCCAE) and ComReg will inform 2rn and RTÉ of the CRM methodology as outlined above.

The following is an outline of the steps to be taken in the process leading to the multiplex operator (RTÉ) being able to recover the relevant Capital and Operational costs:

1. DCCAE, together with ComReg and its consultants (Frontier Economics), agree with RTÉ and 2rn the scope of the work to be undertaken to migrate DTT out of the 700 MHz band.

2. Relevant channel changes etc. are agreed for each transmission site as a result of the spectrum planning work undertaken by the Communications Regulator (ComReg) and 2rn.

3. 2rn and RTÉ agree the capital works that needs to be undertaken (in the context of the agreed scope of work) at each transmission site to enable the migration to take place and, on this basis, agree an efficient network design which is to be reviewed and approved by the ComReg consultants. Once approved, this agreed network design, together with approved operational costs identified at 4., will form the basis for the initial cost estimates to be prepared by 2rn.

4. 2rn and RTÉ agree an indicative detailed budget covering all expected operational costs, including administration, technical/engineering and project management costs, and submit this budget to ComReg and its consultants for review (as to its reasonableness and appropriateness) and subsequent approval.

5. Once approved, the agreed network design and the agreed operational costs will, together, form the basis for the initial cost estimates to be prepared by 2rn.

6. Based on the initial cost estimates prepared by 2rn, agreement is reached between DCCAE and RTÉ on providing advance payments to enable RTÉ to have the work undertaken, taking account of 2rn cash flows and the need to fund deposits on equipment orders. Recognising that the accuracy of individual site estimates is likely to vary, payments will be set on the basis of the level of total network expenditure as opposed expenditure on a site by site basis.
7. As funding is to be provided based on the total estimate of the allowed compensation, the agreement at 6. will include provision for (a) in the case of capital equipment, undertaking milestone reviews at each juncture which will involve assessing confirmed supplier prices and actual costs incurred at network sites (where early intervention is occurring), and (b) in the case of operational expenditure, undertaking regular reviews of detailed accounts of costs incurred to be supplied by RTÉ/2rn as and when requested with supporting documentation (e.g. these would include all staff costs on a grade per day basis) to ensure they reasonable and appropriate (or not) for payment.

8. In order to ensure that there is a transparent separation between the costs and receipts associated with the 700MHz migration project and those of other services, 2rn/RTÉ shall put in place the internal accounting arrangements, as well as the parameters for allocating costs and revenues, as set out in the report entitled “Accounting and cost control 700 MHz migration project” agreed with the Department on 12 December 2016.

9. 2rn issues requests for tender from relevant suppliers, as per the agreed network design.

10. Upon the appointment of a preferred supplier or suppliers by 2rn, details of the replacement equipment being proposed by each supplier will be submitted by 2rn to ComReg. The details submitted by 2rn will include 2rn’s reasoning on why the replacement equipment chosen is technically efficient and a ‘reasonable cost’. ComReg will examine the equipment suppliers proposals, together with 2rn’s proposal to ensure that the equipment replacement is appropriate and necessary from the following perspectives:

- technical/engineering – examine the preferred supplier’s proposals, together with 2rn’s reasoning on why the equipment is technically efficient, to determine whether the replacement equipment is as a consequence of 700 MHz migration;
- and
- cost – review the preferred supplier’s proposals that the replacement equipment is a ‘reasonable cost’.

11. ComReg will calculate the value of the incremental costs incurred and confirm to DCENR.

12. A necessary step prior to completion of the overall 700MHz migration project will comprise a reconciliation of costs incurred and monies received to ensure that no over-compensation has occurred, in accordance with EU rules. The methodology for undertaking this reconciliation is set out in section 4 of the Frontier Economics Report. For the avoidance of doubt, in the event of any overcompensation being identified, RTÉ will be required to repay the overcompensation in full.