5.4 Note on phasing of compensation to avoid over compensation

We propose that the compensation is paid in a number of phases. This is to partly reflect the phasing of the costs incurred by 2rn. In particular, 2rn will phase the tendering of equipment in two discreet phases in early 2017 and late 2017.

A phasing of compensation will also ensure that where actual costs incurred diverge from forecast costs, then the final compensation payment can reflect the reconciliation between actual and forecast costs such that 2rn is not over or under compensated (the process to achieve this is described in more detail below).

We have examined the projected cashflow of 2rn to implement the migration. Our proposed profile of compensation payments broadly reflects 2rn’s projected cashflow. This avoids 2rn incurring additional costs to finance investments pending receipt of compensation payments.

Therefore, we consider that the following staged compensation payments should be made:

- Phase 1 early 2017: 60% to reflect tendering and installation of equipment that will be installed in the summer 2017
- Phase 2 late 2017: 30% to reflect tendering and installation of equipment that will be installed in the summer 2018;
- Phase 3 2020: 10% to reflect the final reconciliation between forecast and costs incurred.

In phase 2, the compensation paid will be reviewed to reflect any underspend up to this point.

In order to ensure that the correct level of compensation is paid at phases 2 and 3, ComReg, prior to commencement of phases 2 and 3, will oversee an assessment of the costs which were incurred in the previous phases (i.e., in phase 1 and/or in phase 2). This will include:

- A report from 2rn (potentially provided by its auditors) which identifies all costs incurred in relation to the 700 MHz migration during the previous phase(s). The report will identify whether costs incurred relate to opex or capex, and will enable ComReg to identify whether costs incurred relate to assets which are fully or partially compensated for;
- A report from Frontier\(^1\) which reviews the costs incurred by 2rn to assure ComReg that those costs are as a direct result of the 700 MHz migration and are in line with the migration strategy set out by 2rn (as described in this report). Frontier’s reports will determine the amount of 2rn’s “Allowable Costs” and will describe the compensation methodology\(^2\).

\(^{1}\) Or other suitable party.

\(^{2}\) “Allowable Costs” equal the sum of costs which are fully compensated for incurred as a result of migration and the portion of costs which are partially compensated for using the methodology described in this report.
At phase 2, if Frontier should determine that the Allowable Costs up to that point are less than the amount of compensation that has been paid, this difference will be netted off the compensation payment in that phase\(^3\). Conversely, if at phase 2 Frontier should determine that the Allowable Costs, up to that point, are more than the compensation paid in phase 1, RTÉ will not receive a larger compensation payment in phase 2 than the 30% allocated to that phase\(^4\).

The payment to RTÉ at phase 3 is to act as a balancing payment such that the total compensation paid will equal the total Allowable Costs incurred, subject to the maximum compensation payable of €8.6m (unless otherwise determined by the DCCAE). If, at phase 3, the Allowable Costs incurred in phases 1, 2 and 3 are less than the compensation in phases 1 and 2 (i.e. if there has been an overpayment of compensation) then RTÉ should repay the difference such that the total compensation paid to RTÉ will equal the Allowable Costs.

If, at phase 3, Frontier should determine that the total Allowable Costs are more than the estimate set out in out in this report (€8.6m) RTÉ will not receive more than this amount (unless the DCCAE considers otherwise). Given that the Allowable Costs include a contingency, the DCCAE expects RTÉ to take on the risk that Allowable Costs may exceed the maximum compensation payable (€8.6m).

If, at phases 2 or 3, Frontier should determine that the 700 MHz migration strategy differs materially from the planned strategy (as described in this report) then Frontier may recommend changing the total level of compensation paid accordingly.

\(^3\) For example, if Allowable Costs in phase 1 were €4.6m and €5.6m compensation was paid, then the difference of €1m. will be netted off the phase 2 payment (reducing it from €2.6m to €1.6m).

\(^4\) For example, if Allowable Costs in phase 1 were €5.6m and €5.6m compensation was paid, in phase 2, 2m will not as a result receive higher compensation than planned (i.e. it will receive €2.6m).