



Broadcasting Act 1990

1990 CHAPTER 42

PART I

INDEPENDENT TELEVISION SERVICES

CHAPTER V

ADDITIONAL SERVICES PROVIDED ON TELEVISION BROADCASTING FREQUENCIES

48 Additional services

- (1) In this Part “additional service” means any service which consists in the sending of telecommunication signals for transmission by wireless telegraphy by means of the use of the spare capacity within the signals carrying any television broadcasting service provided—
- (a) on any frequency assigned under section 65(1) (other than a frequency which, in pursuance of section 73(2), is assigned by the Commission to a local delivery service within the meaning of Part II), or
 - (b) on any other allocated frequency notified to the Commission by the Secretary of State.
- (2) For the purposes of this Part the spare capacity within the signals carrying any such broadcasting service shall be taken to be—
- (a) where the service is provided on a frequency falling within subsection (1)(a) above, any part of those signals which is not required for the purposes of the provision of that service and is determined by the Commission to be available for the provision of additional services;
 - (b) where the service is provided on a frequency notified to the Commission under subsection (1)(b) above, such part of those signals as the Secretary of State may specify when making the notification;

and references in this Part to spare capacity shall be construed accordingly.

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- (3) The Commission shall, when determining under subsection (2)(a) the extent and nature of the spare capacity available for the provision of additional services in the case of any frequency, have regard—
 - (a) if it is a frequency on which a Channel 3 service or Channel 5 is provided, to the obligations of the person providing that service as respects the provision of subtitling in accordance with conditions imposed in pursuance of section 35;
 - (b) if it is a frequency on which Channel 4 is provided, to the need for subtitling to be provided in connection with programmes on Channel 4; and
 - (c) if it is a frequency falling within either of paragraphs (a) and (b), to any need of the person providing the service in question to be able to use part of the signals carrying it for providing services (other than subtitling) which are ancillary to programmes included in the service and directly related to their contents.
- (4) A person holding a licence to provide a Channel 3 service or Channel 4 or 5 shall be taken for the purposes of this Part to be authorised by his licence—
 - (a) to provide subtitling as mentioned in subsection (3)(a) or (b); and
 - (b) to provide any such services as are mentioned in subsection (3)(c).
- (5) The Secretary of State may, when making any notification under subsection (1)(b), specify a date beyond which the frequency in question is not to be used for the provision of additional services; and any such notification shall accordingly cease to have effect on that date.
- (6) In this section—
 - “allocated frequency” means a frequency allocated to the United Kingdom for the provision of television broadcasting services;
 - “subtitling” means subtitling for the deaf provided by means of a teletext service; and
 - “telecommunication signals” means anything falling within paragraphs (a) to (d) of section 4(1) of the Telecommunications Act 1984 (meaning of “telecommunication system”).

49 Licensing of additional services

- (1) Subject to subsection (2), the Commission shall do all that they can to secure that, in the case of each of the following frequencies, namely—
 - (a) any frequencies falling within section 48(1)(a) on which television broadcasting services are provided, and
 - (b) any frequencies notified to the Commission under section 48(1)(b),
 all of the spare capacity available for the provision of additional services on that frequency is used for the provision of such services under additional services licences granted by the Commission in accordance with this section.
- (2) The Commission shall do all that they can to secure, in relation to the combined spare capacity available for the provision of additional services on frequencies on which Channel 3 services and Channel 4 are respectively provided, that a single teletext service is provided on that spare capacity; but any such service shall be provided only on so much of that spare capacity as the Secretary of State may approve.
- (3) In relation to so much of any such service as is provided for reception wholly or mainly in Wales, references in subsection (2) to any such combined spare capacity as is there mentioned shall be construed as references to the spare capacity available for

the provision of additional services on frequencies on which S4C is provided; and the Secretary of State shall exercise his powers under section 48(1)(b) and (2)(b) in such manner as he considers appropriate to take account of this subsection.

- (4) An additional services licence may relate to the use of spare capacity within more than one frequency; and two or more additional services licences may relate to the use of spare capacity within the same frequency where it is to be used at different times, or in different areas, in the case of each of those licences.
- (5) An additional services licence may include provisions enabling the licence holder, subject to and in accordance with such conditions as the Commission may impose, to authorise any person to whom this subsection applies to provide any additional service on the spare capacity allocated by the licence.
- (6) Subsection (5) applies to any person who is not a disqualified person in relation to an additional services licence by virtue of Part II of Schedule 2 to this Act.
- (7) Any conditions included in an additional services licence shall apply in relation to the provision of additional services by a person authorised as mentioned in subsection (5) as they apply in relation to the provision of such services by the licence holder; and any failure by such a person to comply with any such conditions shall be treated for the purposes of this Part as a failure on the part of the licence holder to comply with those conditions.
- (8) Every licence under this Part to provide a television broadcasting service shall include such conditions as appear to the Commission to be appropriate for securing that the licence holder grants—
 - (a) to any person who holds a licence to provide additional services on the frequency on which that broadcasting service is provided, and
 - (b) to any person who is authorised by any such person as mentioned in subsection (5) to provide additional services on that frequency,
 access to facilities reasonably required by that person for the purposes of, or in connection with, the provision of any such additional services.
- (9) Any person who grants to any other person access to facilities in accordance with conditions imposed under subsection (8) may require that other person to pay a reasonable charge in respect thereof; and any dispute as to the amount of any such charge shall be determined by the Commission.
- (10) In this Part “additional services licence” means a licence to provide additional services.

50 Applications for additional services licences

- (1) Where the Commission propose to grant a licence to provide additional services they shall publish, in such manner as they consider appropriate, a notice—
 - (a) stating that they propose to grant such a licence;
 - (b) specifying—
 - (i) the television broadcasting service or services on whose frequency or frequencies the services are to be provided, and
 - (ii) (subject to the approval of the Secretary of State) the extent and nature of the spare capacity which is to be allocated by the licence;
 - (c) inviting applications for the licence and specifying the closing date for such applications; and

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- (d) specifying—
 - (i) the fee payable on any application made in pursuance of the notice, and
 - (ii) the percentage of qualifying revenue for each accounting period that would be payable by an applicant in pursuance of section 52(1)(c) if he were granted the licence.
- (2) The Commission may, if they think fit, specify under subsection (1)(d)(ii)—
 - (a) different percentages in relation to different accounting periods falling within the period for which the licence would be in force;
 - (b) a nil percentage in relation to any accounting period so falling.
- (3) Any application made in pursuance of a notice under this section must be in writing and accompanied by—
 - (a) the fee specified in the notice under subsection (1)(d)(i);
 - (b) a technical plan indicating—
 - (i) the nature of any additional services which the applicant proposes to provide, and
 - (ii) so far as known to the applicant, the nature of any additional services which any other person proposes to provide in accordance with section 49(5);
 - (c) the applicant's cash bid in respect of the licence; and
 - (d) such information as the Commission may reasonably require as to the applicant's present financial position and his projected financial position during the period for which the licence would be in force.
- (4) At any time after receiving such an application and before determining it the Commission may require the applicant to furnish additional information under subsection (3)(b) or (d).
- (5) Any information to be furnished to the Commission under this section shall, if they so require, be in such form or verified in such manner as they may specify.
- (6) The Commission shall, as soon as reasonably practicable after the date specified in a notice under this section as the closing date for applications, publish in such manner as they consider appropriate—
 - (a) the name of every person who has made an application to them in pursuance of the notice;
 - (b) particulars of the technical plan submitted by him under subsection (3)(b); and
 - (c) such other information connected with his application as the Commission consider appropriate.
- (7) The provisions of this section and sections 51 and 53 shall, in relation to the teletext service referred to in section 49(2), have effect subject to the provisions of Schedule 5 to this Act.

51 Procedure to be followed by Commission in connection with consideration of applications for, and awarding of, licences

- (1) Where a person has made an application for an additional services licence in accordance with section 50, the Commission shall not proceed to consider whether to

award him the licence on the basis of his cash bid in accordance with subsections (3) and (4) below unless it appears to them—

- (a) that the technical plan submitted under section 50(3)(b) is, so far as it involves the use of any telecommunication system, acceptable to the relevant licensing authorities; and
- (b) that the services proposed to be provided under the licence would be capable of being maintained throughout the period for which the licence would be in force;

and any reference to an applicant in section 17 (as applied by subsection (3) below) is accordingly a reference to an applicant in whose case it appears to the Commission that the requirements of paragraphs (a) and (b) above are satisfied.

- (2) Before forming any view as to whether the requirement specified in subsection (1) (a) is satisfied in the case of an applicant the Commission shall consult the relevant licensing authorities.
- (3) Subject to subsection (4), section 17 shall apply in relation to an additional services licence as it applies in relation to a Channel 3 licence.
- (4) In the application of section 17 in relation to an additional services licence—
 - (a) the provisions of subsection (4) down to the end of paragraph (b) shall be omitted;
 - (b) in subsection (7)(a), the reference to section 19(1) shall be construed as a reference to section 52(1); and
 - (c) subsection (12) shall have effect with the substitution of the following paragraph for paragraph (b)—
 - “(b) the name of every other applicant in whose case it appeared to the Commission that the requirement specified in section 51(1)(a) was satisfied;”.
- (5) If at any time after an additional services licence has been granted to any person but before the licence has come into force—
 - (a) that person indicates to the Commission that none of the services in question will be provided once the licence has come into force, or
 - (b) the Commission for any other reason have reasonable grounds for believing that none of those services will be so provided,
 then, subject to subsection (6)—
 - (i) the Commission shall serve on him a notice revoking the licence as from the time the notice is served on him, and
 - (ii) section 17 (as applied by subsection (3) above) shall, subject to section 17(14), have effect as if he had not made an application for the licence.
- (6) Subsection (5) shall not apply in the case of any person by virtue of paragraph (b) of that subsection unless the Commission have served on him a notice stating their grounds for believing that none of the services in question will be provided once his licence has come into force; and they shall not serve such a notice on him unless they have given him a reasonable opportunity of making representations to them about the matters complained of.
- (7) In this section “the relevant licensing authorities” means the Secretary of State and the Director General of Telecommunications.

52 Additional payments to be made in respect of additional services licences

- (1) An additional services licence shall include conditions requiring the licence holder to pay to the Commission (in addition to any fees required to be so paid by virtue of section 4(1)(b))—
 - (a) in respect of the first complete calendar year falling within the period for which the licence is in force, the amount specified in his cash bid;
 - (b) in respect of each subsequent year falling wholly or partly within that period, the amount so specified as increased by the appropriate percentage; and
 - (c) in respect of each accounting period of his falling within the period referred to in paragraph (a), an amount representing such percentage of the qualifying revenue for that accounting period as was specified in relation to the licence under section 50(1)(d)(ii).
- (2) For the purposes of subsection (1)(c) the qualifying revenue for any accounting period of the licence holder shall consist of all amounts which are received or to be received by him or by any connected person and are referable to the right under his licence to use, or to authorise any other person to use, in that period the spare capacity allocated by the licence.
- (3) An additional services licence may include conditions—
 - (a) enabling the Commission to estimate before the beginning of an accounting period the amount due for that period by virtue of subsection (1)(c); and
 - (b) requiring the licence holder to pay the estimated amount by monthly instalments throughout that period.
- (4) Such a licence may in particular include conditions—
 - (a) authorising the Commission to revise any estimate on one or more occasions, and to adjust the instalments payable by the licence holder to take account of the revised estimate;
 - (b) providing for the adjustment of any overpayment or underpayment.
- (5) Where—
 - (a) the first complete accounting period of the licence holder falling within the period referred to in subsection (1)(a) (“the licence period”) does not begin at the same time as that period, or
 - (b) the last complete accounting period of his falling within the licence period does not end at the same time as that period,any reference in subsection (1)(c) to an accounting period of his shall include a reference to such part of the accounting period preceding that first complete accounting period, or (as the case may be) following that last complete accounting period, as falls within the licence period; and other references to accounting periods in this Part shall be construed accordingly.

53 Duration of licences, and renewal of licences for provision of services on assigned frequencies

- (1) A licence for the provision of additional services on a frequency notified to the Commission under section 48(1)(b) shall not continue in force beyond such date as may be specified by the Secretary of State in relation to that frequency under section 48(5); and a licence for the provision of such services on a frequency assigned under section 65(1)—

- (a) shall, subject to the provisions of this Part, continue in force for a period of ten years, and
 - (b) may (subject to the following provisions of this section) be renewed on one or more occasions for a period of ten years beginning with the date of renewal.
- (2) An application for the renewal of a licence under subsection (1) may be made by the licence holder not earlier than four years before the date on which it would otherwise cease to be in force and not later than the relevant date.
- (3) In its application to a licence for the provision of additional services on a frequency used for the broadcasting of a domestic satellite service—
 - (a) subsection (1) shall have effect with the substitution of “fifteen years” for “ten years” in both places where those words occur; and
 - (b) subsection (2) shall have effect with the substitution of “five years” for “four years”.
- (4) Where an application is made for the renewal of a licence under subsection (1) before the relevant date, the Commission may postpone the consideration of it by them for as long as they think appropriate having regard to subsection (9).
- (5) Where an application for the renewal of an additional services licence has been duly made to the Commission, they may only (subject to subsection (6)) refuse the application if—
 - (a) they are not satisfied that any additional service specified in the technical plan submitted under section 50(3)(b) would, if the licence were renewed, be provided as proposed in that plan, or
 - (b) they propose to grant a fresh additional services licence for the provision of any additional service which would differ in any material respect from any such service authorised to be provided under the applicant’s licence, or
 - (c) they propose to determine that all or part of the spare capacity allocated by the licence is to cease to be available for the provision of additional services in order that it may be used by any relevant person for the purpose of enhancing the technical quality of his television broadcasting service;

and in paragraph (c) “relevant person” means the person providing a television broadcasting service on whose frequency the licensed service has been provided.
- (6) Section 17(5) to (7) shall apply in relation to an applicant for the renewal of an additional services licence as those provisions apply in relation to such an applicant as is mentioned in section 17(5), but as if—
 - (a) any reference to the awarding of a Channel 3 licence to the applicant were a reference to the renewal of the applicant’s licence under this section; and
 - (b) in section 17(7), the reference to section 19(1) were a reference to section 52(1).
- (7) On the grant of any such application the Commission—
 - (a) shall determine an amount which is to be payable to the Commission by the licence holder in respect of the first complete calendar year falling within the period for which the licence is to be renewed; and
 - (b) may specify a different percentage from that specified under section 50(1)(d)
 - (ii) as the percentage of qualifying revenue for each accounting period of his that will be payable by the applicant in pursuance of section 52(1)(c) during the period for which the licence is to be renewed;

and the Commission may specify under paragraph (b) either of the things mentioned in section 50(2).

- (8) The amount determined by the Commission under subsection (7)(a) in connection with the renewal of a licence shall be such amount as would, in their opinion, be payable to them by virtue of section 52(1)(a) if they were granting a fresh licence to provide the additional services in question.
- (9) Where the Commission have granted a person's application under this section they shall formally renew his licence not later than the relevant date or, if that is not reasonably practicable, as soon after that date as is reasonably practicable; and they shall not so renew his licence unless they have notified him of—
 - (a) the amount determined by them under subsection (7)(a), and
 - (b) any percentage specified by them under subsection (7)(b),
 and he has, within such period as is specified in that notification, notified them that he consents to the licence being renewed on those terms.
- (10) Where an additional services licence is renewed under this section—
 - (a) any conditions included in it in pursuance of section 52 shall have effect during the period for which the licence has been renewed—
 - (i) as if the amount determined by the Commission under subsection (7)(a) above were an amount specified in a cash bid submitted by the licence holder, and
 - (ii) subject to any determination made under subsection (7)(b) above; and
 - (b) (subject to paragraph (a)) that section shall have effect in relation to the period for which the licence has been renewed as it has effect in relation to the period for which an additional services licence is originally in force.
- (11) In this section “the relevant date”, in relation to an additional services licence, means the date which the Commission determine to be that by which they would need to publish a notice under section 50 if they were to grant, as from the date on which that licence would expire if not renewed, a fresh licence to provide the additional services formerly provided under that licence.

54 Additional services not to interfere with other transmissions

- (1) An additional services licence may include such conditions as the Commission consider appropriate for securing that the provision of any additional service under the licence does not cause any interference with—
 - (a) the television broadcasting service or services on whose frequency or frequencies it is provided, or
 - (b) any other wireless telegraphy transmissions.
- (2) Before imposing any conditions in pursuance of subsection (1) the Commission shall consult the relevant licensing authorities (within the meaning of section 51).

55 Enforcement of additional services licences

- (1) If the Commission are satisfied that the holder of an additional services licence has failed to comply with any condition of the licence or with any direction given by the Commission under or by virtue of any provision of this Part, they may (subject to

subsection (3)) serve on him a notice requiring him to pay, within a specified period, a specified financial penalty to the Commission.

(2) The amount of any financial penalty imposed on any person in pursuance of subsection (1)—

(a) shall, if such a penalty has not previously been so imposed on that person during any period for which his licence has been in force (“the relevant period”), not exceed 3 per cent. of the qualifying revenue for his last complete accounting period falling within the relevant period (as determined in accordance with section 52(2)); and

(b) shall, in any other case, not exceed 5 per cent. of the qualifying revenue for that accounting period (as so determined);

and, in relation to a person whose first complete accounting period falling within the relevant period has not yet ended, paragraphs (a) and (b) above shall be construed as referring to 3, or (as the case may be) 5, per cent. of the amount which the Commission estimate to be the qualifying revenue for that accounting period (as so determined).

(3) The Commission shall not serve on any person a notice under subsection (1) unless they have given him a reasonable opportunity of making representations to them about the matters complained of.

(4) Section 42 shall apply in relation to an additional services licence as it applies in relation to a licence to provide a Channel 3 service, but with the omission of subsection (7).