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LICENCES FOR LOCAL DELIVERY SERVICES

GENERAL NOTES FOR THE GUIDANCE OF FRANCHISE APPLICANTS

Independent Television Commission

LICENCES FOR LOCAL DELIVERY SERVICES

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OF FRANCHISE APPLICANTS

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PART I - INTRODUCTION

1.01 The local delivery franchise awarded by the Independent Television Commission is the successor to the cable franchises awarded by the Cable Authority. It is granted under the terms of Part II of the Broadcasting Act 1990. It licenses the provision by means of a system capable of serving more than 1000 homes, using either cable or a microwave video distribution system (MVDS) or both, of a service consisting of the delivery of television and radio channels, though certain services (eg broadcast relay alone) are exempt from licensing.

1.02 Depending upon the circumstances, the award of a local delivery franchise will involve the issue of two different licences and sometimes a third:

a) a local delivery service licence granted by the ITC under the Broadcasting Act 1990; and

b) a licence for the running of a telecommunication system issued by the Department of Trade and Industry under the Telecommunications Act 1984; and

c) (if the service is to involve the use of MVDS) a licence issued by the Radiocommunications Agency under the Wireless Telegraphy Act 1949.

1.03 The application made to the ITC will also be considered by the Department of Trade and Industry, the Office of Telecommunications and the Radiocommunications Agency when they are consulted by the ITC as to whether any telecommunication system proposed to be used by the applicant in the provision of his service would be acceptable to the relevant licensing authorities and would be capable of being established in accordance with the timetable indicated.

1.04 These general notes will be supplemented in the case of each individual franchise by a franchise specification which will set out the area for which applications are invited, the deadline for applications, the available frequencies for MVDS, the minimum tender price, the appropriate fees and other information specific to that franchise.

1.05 The detailed notes which follow are divided into four parts:

Part II - the licensing requirements and the franchising process.

Part III - regulation under the Broadcasting Act and the conditions and restrictions under which the ITC's licences will be granted.

Part IV - the Department of Trade and Industry's licensing of telecommunication systems.

Part V - the Radiocommunications Agency's licensing of wireless telegraphy systems.

1.06 These notes do not purport to explain all the relevant provisions of the Broadcasting Act 1990 and cannot be taken as modifying the effect of the statute. Applicants should assure themselves that they understand how the provisions of the Act will affect them and the business they intend to undertake. While guidance is also given about licensing under the Telecommunications Act, it should be noted that such licensing would reflect the particular applicant's proposals and the details could differ between applicants. Applicants are strongly urged to speak to the DTI (0171 215 1763) about their proposed systems at an early stage.

PART II - THE LICENSING REQUIREMENTS AND THE FRANCHISING PROCESS

What needs a licence

2.01 A local delivery service licence is required for a service which embraces all the following elements:

a) the use of a cable or MVDS system, or a combination of the two, and

b) available in an area of more than 1000 homes in the United Kingdom, and

c) delivering for simultaneous reception in two or more of those homes a television service other than BBC, ITV, Channel 4 or S4C.

2.02 For the removal of doubt, a local delivery service licence is not needed:

a) in respect of any system available to 1000 homes or fewer: cable systems of this kind require only a licence under the Telecommunications Act 1984, application for which should be made direct to the Office of Telecommunications (Oftel).

b) in respect of a service which delivers only the terrestrial television broadcasting channels and any sound-only service (whether or not a terrestrial broadcasting service).

c) where a cable diffusion licence is already in force for the service concerned.

Services provided in category (b) above are subject to a class licence issued under the Telecommunications Act 1984.

Identification of franchise areas

2.03 The ITC will be guided in its franchising programme by the interest expressed to it in new local delivery franchises and the areas they might cover. While the ITC reserves the right to advertise areas different from those suggested to it by prospective applicants, it does not presently envisage advertising areas for which no interest has been expressed by a potential applicant.

2.04 The ITC will undertake its franchising programme on the basis of granting one licence in any one area. It does not propose for the foreseeable future to grant franchises which will be in competition in the same area, nor will it wish to grant local delivery franchises covering areas which are already the subject of a cable franchise. Prospective applicants should note the statements contained in the Government's 1991 White Paper, 'Competition and Choice: Telecommunications Policy for the 1990s' concerning British Telecom and the conveyance or provision of entertainment services to the home.

The franchising process

2.05 In summary, the process provided by the Broadcasting Act entails the following stages:

a) having identified a prospective area as described above, the ITC advertises that area and invites applications for the licence, specifying the frequencies that would be available for MVDS if required; the closing date for the receipt of applications; the application fee to be paid by all applicants; and the minimum price which a successful applicant would be required to pay.

b) applicants submit their applications in accordance with the requirements set out more fully below and specifying in particular the amount of their cash bid for the licence.

c) the ITC publishes the names of applicants and certain details of their applications.

d) the ITC may seek additional information from applicants if that course appears necessary.

e) the ITC will award the licence to the highest bidder provided that

   i) he is a fit and proper person

   ii) his proposed telecommunication system would be acceptable to the telecommunication licensing authorities, and, if appropriate, the wireless telegraphy licensing authorities

   iii) his proposed telecommunication system would be capable of being established in accordance with the timetable indicated by him

   iv) the ITC is satisfied that the applicant would be in a financial position to maintain the service throughout the period of the franchise

   v) the source of funds for the venture is not such that the grant of the licence would be against the public interest

vi) exceptional circumstances do not point to another applicant being preferred. Exceptional circumstances can in particular relate to the extent of the coverage of the franchise area which any applicant may propose if it is substantially greater than proposed by others.

Duration of licence and its renewal

2.06 A local delivery licence will run for 15 years from the date on which the service under the licence is started, subject to the proviso that it will not last longer than a period of 17 years from the ITC's decision on the award of a franchise. The Act provides that at any time after the licence has been in force for 10 years, the licensee may apply for its renewal and this will normally be granted, on financial terms determined by the ITC. If the licensee decides at that point that the ITC's terms are not acceptable, the franchise will be opened to competition and the licensee may submit an application containing what he thinks is the appropriate cash bid.

Tender payments

2.07 The first part of the tender is the percentage of qualifying revenue payable by the applicant over the duration of the licence. On advertising a particular licence, the ITC will specify the percentage(s) of qualifying revenue (PQR) which are to be paid in each of the accounting periods for which the licence is in force. The ITC may set different percentages for different accounting periods and may set the percentage for any period at nil. Once it has set the percentages at the outset, the ITC has no power subsequently to vary them, whatever the changing circumstances.

2.08 The second part of the tender is the cash bid which each applicant is required to make. The bid is expressed as a sum to be paid in the first full calendar year of the licence period. If the licence period commences, for example, in mid 1996, the cash bid would be the amount payable in respect of the calendar year 1997 and so on. The cash bid payable will be the amount shown in the form at Annex 3 which should be based on prices current in the first complete calendar year of the licence, ie 1997 prices in the example above. (The cash bid should also be shown, but in 1995 prices, on the tables at Annex 2.1.) In considering cash bids under Section 76(1) of the Act, the ITC may have regard only to the amount of the cash bid, and not to the calendar year in respect of which, on the applicant's proposals, it would be first payable. The cash bid, indexed for inflation, must be paid in each succeeding year. The appropriate adjustment for inflation will be the percentage change in the retail prices index (RPI) between the month of November in the year preceding the relevant year and the month of November preceding the first complete calendar year.

2.09 Where the cash bid (adjusted for inflation) is more than £100,000, the bid will be paid in equal monthly instalments throughout the relevant year, as will the PQR payments described above. The ITC has no power subsequently to agree to the modification of the bid. Where there are two or more equal highest bids, the ITC will invite those applicants to submit further cash bids.

2.10 The proceeds from tender payments accrue to the Consolidated Fund and do not form part of the ITC's revenues. The ITC has been informed by the Department of National Heritage that the Inland Revenue will treat the cash bid as a revenue expense and that it will therefore be tax deductible. Applicants are reminded, however, that the relevant authority on taxation issues is the Inland Revenue, and not the ITC. Applicants are advised to seek their own advice on taxation and other matters.

Qualifying revenue

2.11 Qualifying revenue is defined in Section 77(2) of the Broadcasting Act 1990. It applies to all revenue received by the licensee, or connected persons, or any person authorised by the licensee under Section 73(5), that is derived from the delivery of programme services listed in Section 72(2).

2.12 The services listed include television and sound broadcasting services, any non-domestic satellite service, any licensable programme service, and any licensable sound service. Revenue earned from advertisements, sponsorship, subscriptions or pay-per-view is defined as qualifying revenue, as are fees received from a programme provider in respect of the inclusion of the latter's programmes in the licensee's service. A detailed account of the definition and determination of qualifying revenue for local delivery licences is given in the second edition of "Qualifying Revenue: Statement of Principles and Administrative Arrangements" published by the ITC after consultation with the Secretary of State and the Treasury.

2.13 Qualifying revenue also includes revenue earned from the use of the telecommunications system and the sale, hire or rent of equipment necessary for the reception of the licensee's local delivery service. Where the telecommunications system and/or associated equipment is also used for the purposes of conveying telephony services or non-licensable services and where customers are invoiced separately for those services, these invoiced amounts will not constitute qualifying revenue. However, if customers are invoiced for a single payment covering all types of service provided, then the ITC will, after discussion with the licensee, make an apportionment of revenue to the licensed service. The licensee, any connected person, or any person authorised by the licensee to provide the licensed service, must establish and maintain separate accounts sufficient to enable the ITC to identify and assess qualifying revenue.

2.14 Installation charges do not form part of qualifying revenue.

2.15 Revenue derived from non-programme services, for example telecommunications services and interactive services such as security and home banking, are not counted for the purposes of qualifying revenue. Where the telecommunications service relates to the conveyance of the local delivery service the associated income would be qualifying revenue. The provisions in paragraph 2.13 relating to jointly-provided services apply.

2.16 Details of the arrangements for ascertaining and collecting tender payments based on qualifying revenue and their accounting treatment is given in the Statement of Principles on Qualifying Revenue.

Fees

2.17 The ITC will charge an application fee which will be on a sliding scale related to the size of the licence area advertised. The amount payable is given in the specification for the area advertised. This will not be returnable to unsuccessful applicants. The scale of fees for 1995 is as follows:

Number of homes in advertised area	£
1,001 - 50,000	7,500
50,001 - 100,000	10,000
100,001 - 150,000	15,000
150,001 - 250,000	20,000
Over 250,000	30,000

2.18 In addition, successful applicants will be required to pay an annual licence fee on grant of the licence to the ITC to enable it to meet its own costs. This will be on a scale (to be reviewed annually) which is related to the size of the licence area. The scale of fees for 1995 is as follows:

Number of homes in licensed area	£
1,001 - 10,000	1,300
10,001 - 20,000	2,550
20,001 - 50,000	3,800
50,001 - 150,000	4,750
150,001 - 250,000	5,600
250,001 - 350,000	6,900
Over 350,000	7,900

This tariff will be reviewed annually.

For details of fees in respect of the licences granted under the Telecommunications and Wireless Telegraphy Acts, see paragraphs 4.11 and 5.13 respectively.

Ownership prohibitions

2.19 Under the Broadcasting Act, certain persons are prohibited from holding local delivery licences or from controlling the companies which do. The prohibited classes are as follows:

a) a local authority

b) a political body

c) a religious body

d) any company controlled or unduly influenced by any of the above or by their officers or associates or in which they hold more than a 5% interest

e) the BBC or the Welsh Fourth Channel Authority or any company in which they hold any interest

f) an advertising agency or any company controlled by such an agency or in which it holds more than a 5% interest

g) a company in which the Channel 3 licensee or a local radio station in the same area holds more than a 20% interest or which holds more than a 20% interest in the Channel 3 licensee or the local radio station

h) a company in which the proprietor of a local newspaper in the same area holds more than a 20% interest or which holds more than a 20% interest in the local newspaper.

Content of applications

2.20 30 copies of each complete application will be required. In addition, a further 30 copies of Part I (Sections A, B and C), which will be available to the public, are also required. Section D will remain confidential to the ITC and its advisors and will not be published. The application documents must be accompanied by the application fee specified by the ITC. Every application must be in the following form.

Part I

Section A

Details of the applicant, or, where a partnership or body corporate, its partners, shareholders and directors and structure or control (there will be a formal ownership questionnaire and declaration to be completed prior to grant of licence). Name, address, telephone and fax number of the person to whom public or press enquiries about the application should be addressed.

Section B

A technical plan indicating:

i) the parts of the franchise area which would be covered by the service, including a detailed A4 or A3 map referenced to the Ordnance Survey grid at 1:25000, 1:50000, 1:100000 or 1:250000 as appropriate showing that coverage area.

ii) the timetable in accordance with which that coverage would be achieved. The timetable should comprise a schedule, list or table showing the final date upon which the coverage proposed would be achieved and the minimum number of dwelling-houses which would then be able to be served. It should also state interim milestones at annual intervals from the proposed start of services showing the minimum number of dwelling-houses to be served on each annual milestone date until that final coverage is achieved. Applicants should note that this timetable will be incorporated in any Broadcasting Act licence subsequently granted to the applicant.

iii) the technical means by which the coverage of the area would be achieved; that is, whether by broadband cable, SMATV systems, MVDS or a mixture of these. Sufficient information is required in accordance with Parts IV and V of these notes to permit the consideration of whether any system proposed to be used by the applicant in the provision of his proposed service would be acceptable to the licensing authorities under the Telecommunications Act and the Wireless Telegraphy Act and would be capable of being established in accordance with the timetable submitted at subsection B(ii) above. Where detailed information under this subsection B(iii) is provided that is commercially sensitive it may be included as an additional confidential section (which should be bound in Part II together with Section D), cross-referenced from this section, but nevertheless sufficient information must be provide in Part I Section B(iii) to enable a general assessment of the technical means of delivery that is proposed.

iv) the extent if any to which the applicant proposes that the provision of the service should be undertaken by anyone else.

Section C

A statement as to the applicant's cash bid in respect of the licence, in the form at Annex 3.

Part II

Section D

1. For the purposes of this section all tables and other projections should be provided on the basis of complete calendar years (ie, ending 31 December). Where information can be provided for part of a year only, a note on the period covered should be included. All monetary values should be expressed in constant 1995 prices, in pounds sterling.

2. The applicant should provide a business plan and financial projections for the full duration of the licence. These must demonstrate how the applicant expects to sustain the proposed service over the licence period and should include profit and loss, cash flow and balance sheet projections.

3. Details of services which are an integral part of the business but which fall outside of the scope of the local delivery licence (for example the provision of telephony services) should be separately identified wherever possible in the business plan and projections.

4. Details of the basis on which any joint income of costs (and joint or common cash) have been allocated must be provided. Joint income would include, for example, subscription and equipment rental fees which encompass payments for both television and telephone services. Joint costs may include network operating costs, overheads, interest charges, etc.

(a) **Profit and loss projections**

5. Comprehensive annual profit and loss projections should be given for the full period of the licence. A layout which all applicants are asked to use, identifying the minimum level of information required, is given in Annex 2.1.

6. Income from programme services should be broken down according to the nature of the payments received (subscriptions, pay-per-view, etc). Income from other sources, including telephone services, should be separately identified.

7. Full details of, and the basis for, all significant assumptions should be provided including:

(i) Income

- the rate at which the network is built in terms of homes passed in each year of the licence period. Details should also be provided of the communities covered in each year;

- the number of subscribers (penetration per homes passed) in each year of the licence period,

- tariff details, including the prices charged to subscribers for individual and combinations of programmes, for equipment rental and for installation/connection;

- provision for specific bad debts (which are an allowable deduction from qualifying revenue). Applicants should also provide a note on the arrangements he proposes to introduce for debtor control, particularly in relation to individual subscribers.

(ii) Expenditure

- the depreciation policies;

- the dividend policy;

- the handling of pre-operational and development expenditure (see paragraph 8 below);

- staff costs (see paragraph 9 below); and

- the cost of bought-in programmes.

(iii) Interest rates on borrowings and deposits; and special lending arrangements, including any inter-Group loans and caps/floors on borrowing rates.

(iv) Tax rates and capital allowances.

(v) Exchange rates where significant foreign currency expenditures are made or where foreign investment is used.

Notes:

(1) Where the applicant is part of a group, any management or other inter-group charges should be identified. Where the applicant intends to use the resources of an existing licence, details should be given of any contributions to costs which will have to be met.

(2) The applicant should also state whether the projections have been prepared on the basis that the licence will remain in force for the initial fifteen years only or will be renewed.

Pre-operational and development expenditure

8. The applicant should provide in a separate note the proposed pre-operational expenditure in the period up to the commencement of the licence, together with details of the subsequent development expenditure, and its timing, relating to the build programme. This should encompass and identify clearly all capital and operating expenditure necessary to achieve the technical plan proposed under Section B of the application. As a minimum it should include cash flow projections under the following headings:

- capital expenditure on the head-end
- capital expenditure on the cable distribution network
- capital expenditure on any MVDS network
- capital expenditure on other equipment
- premises
- other facilities costs
- staff and related costs associated with design, planning and construction, including payments to subcontractors
- press, publicity and other marketing costs

The total of these cash flow projections should be consistent with the two development-related lines shown on the pro-forma cash flow, under "Other Payments" (see Annex 2.2), ie, fixed assets additions (development) and development expenditure. The proposed accounting treatment of pre-operational and development expenditure should also be indicated and an explanation of any capitalised expenses given.

Staffing policy

9. The applicant should also provide in a separate note the proposed arrangements for staffing during both the construction and operation phases. Details on the levels of employment and use of contract staff should be given for each of the major activities such as engineering, sales and marketing, customer service and administration.

(b) Cash flow projections

10. The applicant should provide detailed cash flow projections covering the full fifteen-year term of the licence and any pre-operational period. From the award of the licence until the end

of the second complete calendar year following the coming into force of the licence the projections should be provided on a quarterly basis. Thereafter the projections should be on a calendar year basis until the 31 December following the end date of the licence.

11. The format of the cash flow statement is a matter for the applicant to decide but should include as a minimum the headings set out in the illustrative form shown in Annex 2.2. For each quarter or year the applicant should indicate the maximum level of borrowings drawn under all facilities where the level is not the same as the balance at the end of the quarter or year.

(c) **Balance sheets**

12. Irrespective of his chosen year-end, the applicant must provide projected balance sheets as at the start and end dates of the proposed licensed service, and at each intervening calendar year-end.

Note:

Balance sheets should follow the form required for the purposes of UK audited accounts (in the case of an applicant not incorporated in the UK adjusted balance sheets in this form should be provided). Balance sheets up to and including 31 December 1997 should include the principal notes required for the purposes of UK audited accounts, and for subsequent years those notes which the applicant considers material to an understanding of its financial position.

As a minimum, these notes should show movements in the following categories and include explanatory text where appropriate:

Fixed Assets
property,
network,
other;
investments;
intangible assets.

Creditors
short-term loans,
long-term loans;
corporation tax,
dividends;
finance leases;
other.

Any provisions for liabilities and charges.

(d) **Sensitivity tests**

13. The applicant is asked to conduct five sensitivity tests in the form of revised versions of the Profit & Loss projections and the Cash Flow and Balance Sheet projections. In the first instance, the revised projections should reflect only the effects of the sensitivity test being considered. The applicant should also provide supporting commentary to explain how he would

accommodate any variance arising from the test in his construction plans, profitability, and cash flow.

Each of the following variants to the applicant's main projections should be considered separately:

(i) penetration in each year is only 90 per cent of the base case levels;

(ii) the average revenue per subscriber from all revenue sources (including programme and telecommunications services) is 10 per cent lower than the base case in each year of operation;

(iii) programme costs are 10 per cent higher than the base case in each year of operations;

(iv) a combination of (ii) and (iii) above;

(v) a slower rate of network build results in a one year delay in the connection of the first subscriber. The applicant should explain what subsequent action would be taken, if any, to accelerate the build programme and the consequences of this.

Note:

All percentages are expressed in real terms (ie they should be applied to revenues and costs which are stated in constant 1995 prices).

14. The applicant should provide any other sensitivity tests, with supporting written commentary which he believes may be relevant or of assistance in providing an understanding of his business plans.

(e) Audited accounts

15. If the applicant is an established company, he should provide the audited accounts of the applicant company for the most recently completed financial year. If these are not yet available, audited accounts for the previous financial year, together with any interim financial statement, and draft accounts or management accounts for the most recent financial year should be provided. If the applicant is not an established company he should contact the ITC as early as possible to discuss the applicant's particular circumstances and shareholding structure so as to determine what accounts should also be provided.

Note:

If the applicant's financial position is supported by a guarantee, the latest available audited accounts of the guarantor should also be provided.

(f) Accountant's letter

16. The applicant should provide a letter from a firm of accountants, practising in the UK, providing an opinion that the projections, including the sensitivity tests, have been properly prepared on the basis of the assumptions stated, and that the

accounting policies have been properly and consistently applied throughout the licence period.

(g) **Funding arrangements**

17. The applicant should describe as clearly as possible the flexibility of his funding arrangements, including any alternative arrangements which may be available to him. The following details of his financing structure should be provided:

(i) full details of the equity share capital of the company, including:

(a) the par value of the shares;

(b) the number of authorised and issued shares;

(c) the voting and dividend rights attaching to the shares;

(ii) full details (as above together with conversion and other specific rights) of any other share capital in issue, including all forms of preference shares, convertible loan stock, options, or warrants;

(iii) full details of all borrowing facilities available to the company and the extent to which they are currently drawn down, including, inter alia, overdraft facilities, revolving credit facilities, term loans, mortgage and hire purchase facilities, finance and operating leases, and any inter-company loans from any other member of the same group. The details should include the amount and terms of all borrowings (repayment details, covenants, etc.), any security provided and charges against company (or other group company) assets, and the names and addresses of lenders of and guarantors to any of the facilities; and

(iv) full details of any contingent liabilities and off-balance sheet financing arrangements.

Notes:

(1) Where the applicant proposes to raise new debt, in whatever form, he should provide written evidence that in principle such arrangements are available. This should be in the form of a letter of intent from the principal lenders, covering the following points:-

- the amount, type and duration of the facility;
- the drawdown schedule;
- the approximate costs of the facility, within an indicative range;
- any security or guarantee required in support of the facility;

- full details of any conditions precedent;

- the principal covenants (including specific details of cover ratios);

- details of warranties and undertakings given under the financing agreements and details of events of default; and

- the length of time required to put the facility in place, including details of any due diligence or prior obligations which would need to be met for the financing to be available.

(2) Where the applicant proposes to introduce or to raise new equity finance, he will be required to provide written evidence that arrangements for the provision of new equity are achievable. For example, where existing shareholders are to subscribe for further equity, a board minute approving their investment should be provided, together with a copy of their latest audited accounts. Where the applicant intends to raise new capital in the market, he should provide a comfort letter from financial advisers or stockbrokers confirming that such a capital-raising exercise would be possible assuming no material change in current market conditions. The written evidence should also set out any pre-conditions or other prior obligations to be met.

(3) Applicants who will require to finalise their financing arrangements or obtain shareholder approval in general meeting, following award of the licence, should note that such conditions must normally be met within twelve weeks of the award of the licence.

18. The applicant should state any consents, clearances, permissions and approvals (including EC Merger approval) necessary or appropriate, or other conditions which would need to be met before he could take up the award of the licence.

19. Written confirmation of agreement in principle should be submitted where specified investors have committed to subscribe for more than 5 per cent of the applicant's total financing, covering in particular:

- the amount to be invested;

- the percentage shareholding; and

- any pre-conditions to making the investment.

(h) <u>Working capital</u>

20. The Directors of the applicant (or the equivalent officers) should state that they believe the applicant has sufficient working capital, at least for the first five years following the grant of licence on the basis of the projections provided.

Number of Applications

2.21 No more than one application in respect of a particular local delivery licence may be submitted by any one person in any circumstances. No more than one such application may be submitted by persons who are connected with each other, except where the coverage proposed to be achieved by each such applicant, as indicated in the technical plan submitted by him, differs substantially in scale from that proposed to be achieved by any other applicant who is connected with him. (In this context, the words "connected with" are to be interpreted in accordance with paragraph 3 of Part I of Schedule 2 to the Broadcasting Act, as if the applicant for the local delivery licence was the holder of such a licence).

2.22 In the event that the Commission judges the coverage in such applications to be not substantially different, it would deem each application to be invalid. The applicants would be informed accordingly, and the applications would not be further considered.

PART III - THE ITC'S CONTINUING REGULATION

Performance of obligations

3.01 The ITC and Oftel (the enforcement agency in respect of all Telecommunications Act licences) will need to monitor the development and operation by the licensee of the transmission system proposed in the application. Failure to adhere to the timetable for the coverage of the franchise area will, in particular, represent a breach of the conditions of the local delivery licence.

Programme requirements

3.02 The licence granted to a local delivery operator will not contain any provisions making the licensee responsible for the content of programme services relayed on the system, other than for local advertising avails and for foreign satellite programmes originating outside the European Community or other Member States of the Council of Europe which may from time to time be specified by the Secretary of State for National Heritage. This reflects the need for programme services provided from within the UK to be separately licensed, and the provisions of the EC Directive on Broadcasting and the Council of Europe Convention on Trans-frontier Television requiring services regulated in one Member State to be accepted in others without additional restrictions.

3.03 The effect is that a local delivery franchisee may provide as part of the licensed service any channel licensed by the ITC and any channel originating in a European Community country or in a specified Council of Europe country. Channels from other countries may also be carried, provided that the local delivery operator satisfies himself that the programmes and advertising conform with the ITC's Codes and makes arrangements for recordings to be made and retained so that they may be produced if required within 30 days of transmission.

3.04 It should be noted that local delivery franchisees will need a separate licence for any local programme service that they wish to provide. The arrangements for these licences are set out in the guidance notes to applicants for licences for non-broadcast television services.

3.05 Local delivery franchisees may however insert local advertising (local avails) under their local delivery licence, provided they ensure that advertisements comply with the ITC's Codes on Advertising and arrange for recordings to be made and retained for 30 days for production if required.

3.06 No must carry obligations are attached to local delivery licences. It is for the franchisee to determine which channels he wishes to carry, in accordance with paragraph 3.03 above.

Changes in ownership

3.07 Any significant change of ownership will need to be notified to the ITC and the ITC will need to assure itself that the restrictions on ownership continue to be observed. Subject to this, the ITC does not expect to exercise a restrictive control on takeovers and acquisitions. Significant changes in shareholding must also be notified to the DTI if a licensee is licensed under Section 8 of the Telecommunications Act 1984 and has Code powers.

Variation of licences

3.08 The ITC has power under the Act to vary a licence but must give the licensee a reasonable opportunity to make representations before doing so.

Enforcement of licences

3.09 If a licensee fails to comply with any condition of a licence the ITC has power to impose financial penalties of an amount up to 3% of qualifying revenue for the previous financial year, or, on a second case of breach in the licence period, of up to 5% of qualifying revenue. Where the ITC considers it justified, and where it is satisfied that it would have been reasonably practicable for the licence holder to comply with the condition of which breach has occurred, there is power to revoke the licence.

Provision of information

3.10 Licensees will be required to submit regular accounts and projections, and to make records available, so that the ITC will be in a position to estimate, assess and advise the licensee of the tender payments due.

3.11 Having regard to projections of qualifying revenue provided and updated by the licensee on a regular basis, the ITC will estimate the payment to be made in respect of the percentage of qualifying revenue. The ITC will, however, use its own estimate if it feels it appropriate to do so. Payment will be made by equal monthly instalments. On receipt of audited accounts, and after its own inspections of the accounts and records of the licensee, the ITC will send to the licensee a computation showing its assessment of the full tender amount for the year and any balance due or refundable. Full details of the arrangements will be given in a Statement of Principles on Qualifying Revenue to be published by the ITC after consultation with the Secretary of State and the Treasury.

3.12 Other information, in a form prescribed by the ITC, may be required on a regular basis, or from time to time, including the provision of Income and Expenditure returns at six monthly intervals.

PART IV - LICENSING REQUIREMENT UNDER THE TELECOMMUNICATIONS ACT 1984

Requirement for a Telecommunications Act Licence

4.01 Any system used to deliver a local delivery service is a "telecommunication system" under the Telecommunications Act 1984. As such, anyone running such a system requires a licence under that Act. The Broadcasting Act 1990 has removed the previous exception from licensing under the Telecommunications Act of broadcasting by wireless telegraphy for general reception. Thus, both cable and MVDS systems will require a Telecommunications Act licence.

4.02 Telecommunications Act licences will be issued by the Department of Trade and Industry to whoever is running the system over which a local delivery service is delivered. In most cases this will be the holder of the local delivery service licence itself although it could be to another party if the local delivery licensee has contracted or sub-licensed that other party to run the system.

Duration of licences

4.03 The Telecommunications Act licence for a local delivery system will run in parallel to that issued by the Commission and thus, typically, initially for 15 years. As under the previous regime, however, the Telecommunications Act licence may enter into force before the local delivery service starts, in order to allow the operator to instal his system. In those circumstances the two licences will generally be timed to expire on the same date. A Telecommunications Act licence may still be available if the operator wishes to provide telecommunications services other than local delivery services beyond the date on which authorisation to provide the latter ends.

Terms and conditions of the licence

4.04 The terms and conditions of each Telecommunications Act licence including, in particular, the extent of services authorised and the existence, or not, of powers under the Telecommunications Code, will vary according to the nature of the local delivery system proposed. The following guidelines may be helpful:

(a) Telecommunications Code powers will not be granted in respect of a system unless it could not reasonably be built without them. They are thus unlikely to be granted in respect of SMATV or for those systems relying solely on MVDS;

(b) systems capable of carrying comprehensive two-way services will be licensed to do so.

Authorisation

4.05 The extent of the authorisation to provide telecommunication services will depend on the system. A system capable of comprehensive two-way services will be authorised to provide such services in the same way as a broadband cable franchisee, including the provision of voice telephony services under certain conditions. MVDS systems will be authorised to convey local delivery services by wireless telegraphy. Unlike under the previous regime an operator running a system capable of providing two-way services but covering fewer than 10,000 homes will be authorised to provide all the services that broadband systems have previously been authorised to provide.

Coverage and service obligation

4.06 Coverage may be by cable, MVDS or a combination of the two. A licensee may be required to satisfy reasonable demands for certain telecommunication services, including the conveyance of local delivery services, from anyone within an area in which his system has been built.

Technical and safety requirements

4.07 All licensed systems will be required to satisfy certain technical and safety requirements, including those related to radio interference. Broadband cable systems will also be required to conform to those BSI and other standards which apply to such systems and any attachments to them. They will also be required to be installed in such a way that they can be upgraded to provide voice telephony services without the need to be reconfigured.

Particular conditions applying to broadband cable systems

4.08 In order to be eligible for powers under the Telecommunications Code, licensees running two-way broadband cable systems will need to have further conditions in their licences so that section 8 of the Telecommunications Act can apply. The most important of these are certain requirements to connect to other systems and to allow services carried on those connected systems to be provided via the licensee's own system if a customer so requests.

4.09 Local delivery operators who provide voice telephony services are subject to further conditions such as the obligation to provide 999 and directory information services and to supply suitable apparatus for the hearing impaired.

Other conditions

4.10 Licences for local delivery systems, other than one-way SMATV systems, will also contain conditions such as those on metering systems and numbering which are contained in existing broadband cable licences.

Licence fee

4.11 For 1995 the fee for issue of a licence conferring Telecommunications Code powers would normally be £12,500. Licences not conferring Code powers would normally cost £1,100. The higher fee for licences with Code powers reflects the much greater costs, including in particular the costs of the statutory consultation on the terms of the licence required under the Telecommunications Act. Annual renewal fees will also be charged. Initially (1995) these will be £2,500 in the case of licences with Code powers, and £1,250 for SMATV or MVDS-only licences, or, in each case, a sum not exceeding 0.08% of the annual turnover of the Licensee's Systems Business where that sum is the greater.

Revocation

4.12 Licences may be revoked with the agreement of the licensee or if the licensee persistently breaks licence conditions, becomes insolvent or otherwise ceases to trade or no longer holds a local delivery service licence from the Commission. They may also be revoked if there is a change of ownership or control of the licensee which in the opinion of the Secretary of State is against the interests of national security or relations with a foreign government. Non-payment of an annual renewal fee is also grounds for revocation of a Telecommunications Act licence.

4.13 The Director General of Oftel has powers to modify conditions in licences granted under the terms of the Telecommunications Act, except those relating to the application of the Telecommunication Code, with the consent of the licensee and following statutory consultation. If he wishes to modify a licence condition without the licensee's consent, he can refer the case to the Monopolies and Mergers Commission (MMC).

PART V - LICENSING REQUIREMENTS UNDER THE WIRELESS TELEGRAPHY ACT 1949

Requirement for a Wireless Telegraphy Licence

5.01 Any local delivery service which uses radio to distribute its services to or within any part of the franchise area will require a licence or licences under the Wireless Telegraphy Act 1949 for the establishment and use of the wireless telegraphy transmitting stations. These licences are additional to the licences required under the Broadcasting Act 1990 and the Telecommunications Act 1984.

5.02 Wireless Telegraphy (WT) licences will be issued by the Radiocommunications Agency of the Department of Trade and Industry to whoever establishes and uses the wireless telegraphy stations. As with the Telecommunications Act licence, in most cases the holder of the local delivery service licence will be the WT licensee, though if the operation of the wireless telegraphy stations has been contracted or sub-licensed to a third party it would be the licensee.

Examination of Technical plans

5.03 In accordance with Section 75(2)(a) of the Broadcasting Act, the Radiocommunications Agency will advise the ITC whether the use of radio proposed in the technical plan would be acceptable as a basis for issuing wireless telegraphy licences. The Agency will be happy to discuss informally with applicants any aspects of their proposals for using radio in advance of making their application.

5.04 The reference point for the Radiocommunications Agency's examination of the technical plan will be the extent to which it fulfils the information requirements for applications for wireless telegraphy licences (see paras. 5.06 - 5.09 below). The level of detail provided should, therefore, be sufficient to enable the Agency to consider whether the proposed use of radio has the potential to cause interference to other users of the radio spectrum or faces the risk of being interfered with by others. The Agency accepts, however, that the current state of MVDS technology, the increasing focus on digital developments, the need for more work to build a full picture of the interference potential of MVDS signals, etc, may cause difficulties for applicants in terms of, inter alia, making firm proposals about the way in which transmitting stations, including their characteristics (frequency, power etc), will be disposed in the franchise area. The Agency will take these uncertainties into account when advising the ITC.