

6 May 2008

Ms. Claire Waterson
William Fry,
Fitzwilton House,
Wilton Place,
Dublin 2

28
FOI 27/2008

Dear Ms. Waterson,

I refer to the request which you made under the Freedom of Information Acts 1997 and 2003 for records held by this Department:

1. *All correspondence relating to and all reports prepared by Mason Communications Ireland Limited in 2007 for the Department and the Commission for Communications Regulation in relation to the National Broadband Scheme (NBS).*
2. *All documents, including but not limited to, notes of meetings, telephone calls, internal memoranda, information notes and all correspondence held by the Department relating to its consideration of the merits of using satellite technology to provide broadband services in Ireland as part of the NBS.*
3. *All documents, including but not limited to, notes of meetings, telephone calls, internal memoranda, information notes and all correspondence held by the Department relating to its consideration of the use of satellite technology in the context of determining the approach to be taken in the NBS Broadband Mapping and Coverage Process as illustrated in the Indicative Broadband Coverage Map published in May 2007, including a decision to exclude the use of this technology for the provision of broadband services from the mapping process.*
4. *All documents, including but not limited to, notes of meetings, telephone calls, internal memoranda, information notes and all correspondence held by the Department identifying the parties who submitted correspondence to the Department in response to the NBS Pre-Qualification Questionnaire (PQQ) dated 2 May 2007.*
5. *All documents, including but not limited to, internal memoranda, information notes and all correspondence held by the Department identifying the parties who obtained a refund of the €500 fee charged by the Department for obtaining the Information Memorandum and NBS PQQ, in accordance with Section IV.3.3 of Contract Notice 2007/S 86-105759.*
6. *All documents, including but not limited to, internal memoranda, information notes and all correspondence held by the Department identifying the parties who paid the €500 fee charged by the Department to obtain the Information Memorandum and NBS PQQ but did not receive a refund of the fee in accordance with Section IV.3.3 of Contract Notice 2007/S 86-105759.*

I have made a final decision on your request on 6 May 2008. If you have any queries regarding this correspondence you can contact me by telephone at 01 6782553.

The purpose of this letter is to explain that decision. This explanation has the following parts:

1. a schedule of all of the records covered by your request
2. concerning records to which access is granted, an explanation and a statement of the arrangements for this access, its form and the fee required to be paid
3. concerning records to which access is denied, an explanation of the relevant findings; and
4. a statement of how you can appeal this decision should you wish to do so.

This letter addresses each of these four parts in turn.

1. Schedule of records

A schedule is attached at the end of this letter. It shows the documents that this Department considers relevant to your request. It also gives you a summary and overview of the decision as a whole. The schedule describes each document, and indicates whether the document is released in full, released with deletions or not released. The schedule refers to the sections of the FOI Act which apply to prevent release.

2. Access Arrangements

As your preferred means of access to the records was specified as by fax, I am releasing them by means of photocopies, as I consider this an appropriate form of access in this case. Accordingly, the records described as released are now attached.

3. Findings, particulars and reasons for decisions to deny access.

I am withholding all the documents requested by you in parts 1, 2 and 3 of your request under two exemptions. The first exemption is Section 20, which states:

[SU20] 20_(1) A head may refuse to grant a request under *section 7*

(a) if the record concerned contains matter relating to the deliberative processes of the public body concerned (including opinions, advice, recommendations, and the results of consultations, considered by the body, the head of the body, or a member of the body or of the staff of the body for the purpose of those processes), and

(b) the granting of the request would, in the opinion of the head, be contrary to the public interest,

The National Broadband Scheme (NBS) tendering process is currently ongoing, and at an advanced stage, so releasing the requested documents before a decision is made would not be in the public interest.

The second exemption I am relying on is Section 22 (1) (b) , which states:

[SU22] 22. (1) A head shall refuse to grant a request under *section 7* if the record concerned_

(a) would be exempt from production in proceedings in a court on the ground of legal professional privilege,

(b) is such that the head knows or ought reasonably to have known that its disclosure would constitute contempt of court, or is such that its disclosure would constitute contempt of court,

Judicial Review proceedings relating to certain parts of the NBS process are currently before the courts. Releasing the requested documents could possibly interfere with these proceedings, and could lead to contempt of court.

I am part granting documents requested by you in part 4 of your request. By way of explanation, I am releasing documents identifying the parties who submitted correspondence. There are further documents relating to parties requesting certain clarifications from this Department. I am withholding these under Sections 20 and 22 (1), for the same reasons as outlined above regarding parts 1, 2 and 3 of your request.

I am granting in full the documents requested by you in part 5 and 6 of your request.

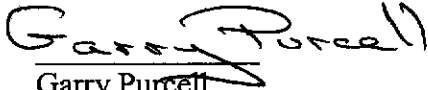
4. Rights of appeal

You may appeal this decision. In the event that you need to make such an appeal, you can do so by writing to the Freedom of Information Unit, FOI Unit, Dept. Communications, Energy & Natural Resources, Elm House, Earlsvale Road, Co. Cavan.

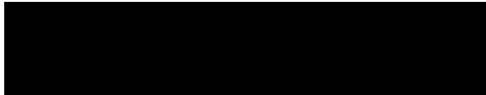
Your correspondence should include a fee of €75 for processing the appeal. Payment should be made by way of bank draft, money order, postal order or personal cheque made payable to Dept. Communications, Energy & Natural Resources.

You should make your appeal within 4 weeks from the date of this notification. However, the making of a late appeal may be permitted in appropriate circumstances. *A week is defined in the Act to mean 5 consecutive weekdays, excluding Saturdays and public holidays (Sundays are also excluded, as they are not weekdays).* The appeal will involve a complete reconsideration of the matter by a more senior member of the staff of this Department.

Yours sincerely,



Garry Purcell
Communications Development Division
Adelaide Road
Dublin 2



Fax

To: Ms Carol Plunkett, William Fry. **From:** Garry Purcell

Fax: 14 (including this cover page) **Pages:** 01 6395333

Phone: **Date:** 6 May 2008

Re: **cc:**

Urgent **For Review** **Please Comment** **Please Reply** **Please Recycle**

Ms Plunkett,

As discussed, I am sending my reply to you as Ms Waterson is out of the office.

Garry Purcell

NBS – List of Requests

No	Company	Contact Name	Email	Tel	Request Date
1	3	Damien Gallagher	Damien.Gallagher@three.ie	0830034242	
2	3 Play Plus	Terry Crowley	terry.crowley@3playplus.ie		
3	Amocom	Lawrence Mulligan	mulliganl@amocom.com		
4	Avanti Communications	Catherine Rose	steve.ritchie@avanti-communications.com	+44 (0) 207 749 1682	
5	Azotel	John O'Hare	oharej@azotel.com	214671600, 870517143	
6	Brisknet	Steve Bluff	steve.bluff@brisknet.ie		
7	BT	Michael Norman	michael.norman@bt.com		
8	Callidus	Mark O'Toole	mark@callidustelecom.com		
9	Clearwire	Brent Smith	brent_smith@clearwire.com		
10	County Broadband SW	Philip Curneen	phil@computronics.ie		
11	Cross Country Broadband	John O'Brien	john@crosscountry.ie	053 92 55 428	
12	Digiweb	Jean-Charles Caillere	jcaillere@digiweb.ie		
13	Eircom	Noel Donnelly Maria Hoolahan Ronan Kneafsey	NDonnelly@eircom.ie mhoolahan@eircom.ie RKneafsey@eircom.ie		
14	E-net	Tom Savage	tom.savage@e-net.ie		21/05/07
15	Ericsson	John Holland	john.holland@ericsson.com	086 833 1908	21/05/07
16	ESB Telecom	David Walshe	david.walshe@esbtelecoms.ie joope.seebus@esb.ie		
17	IFA	Pat Smith	patsmith@ifa.ie		
18	Irish Broadband	Neil Parkinson	Neil.Parkinson@irishbroadband.ie		
19	Last Mile	Cyril Moriarty	cyril@lastmile.ie		
20	Mediasat	Bruce Hannah	bruce.hannah@mediasat.ie		
21	NGN	Emmanuel Kennedy	Emmanuel@ngn.ie	087 9921 601	22/05/07
22	O2	Tom Hickey	tom.hickey@o2.ie	086 806 0022	23/05/07
23	Obelisk	Liam Gillespie Mr. Denis Maguire	lgillespie@obelisk.com dmaguire@obelisk.com		
24	Perlico	Roisin D'Arcy	roisin.darcy@perlico.com		
25	Permanet	Mark O'Raw	m.oraw@permanet.ie		
26	Smart	Garfield	Garfield@smarttelecom.ie		

		Connolly			
27	Sonas Innovation	Fergal	fergal@SONASi.com		
28	UPC	Kate O'Sullivan Ray O'Sullivan	kosullivan@upc.ie rcollins@lgi.com		
29	Wirefree	Stefan Stanislawski	stefan.stanislawski@nordiskmobiltelefon.se		
30	Ice Broadband	Tony Buckley	tony.buckley@icebroadband.com		
31	North West Electronis	Scott Mc Leliand	scott@nwewn.com		
32	Crimson Tide	Laurence D'Arcy	laurence.darcy@crimsontide.ie		
33	Fastnet Broadband	Dan O'Neill			
34	Broadnet Communications	Vincent Kennedy	Vincent.Kennedy@Motorola.com		
35	ARN Telecoms	Kevin Hayes	khayes@aibridges.ie		

Valid PQQ Submissions Contact Details

No	Company/s	Date Received	Contact Name	Contact Email	Address	Telephone
1	Wirefree	05/07/07	Stefan Stanislawski	stefan.stanislawski@nmt.net	Wirefree, 12 Beechgrove, Newtownpark, Castleroy, Limerick	+44 7855 37894
2	Eircom (may change to consortium)	05/07/07	Ronan Kneatsey	rkneatsey@eircom.ie	Eircom, 4 th Floor, Block B, Cumberland House, Dublin 2	01 701 4601
3	BroadNet (Motorola & Azotel Consortium)	03/07/07	Vincent Kennedy	vincent.kennedy@motorola.com	Motorola, Networks and Enterprises, 14 Merton Avenue, South Circular Road, Dublin 8	087 289 2179
4	3 Ireland	05/07/07	Damien Gallagher	damien.gallagher@three.ie	Hutchison 3G Ireland, 3 rd Floor, 6-10 Suffolk Street, Dublin 2	083 003 4242
5	BT, Wirefree & Avanti Consortium	05/07/07	Stuart Wall	stuart.wall@bt.com	BT, Dunderum Office, Dunderum Block C, Dunderum Business Park, Dublin 14	086 858 6554
6	Avanti Broadband	04/07/07	Steven Ritchie	steve.ritchie@avanti-communications.com	Avanti Communications, 74 Rivington Street, London, EC2A 3AY, UK	0207 749 1600
7	Crimson Tide	02/07/07	Laurence D'Arcy	Laurence.Darcy@crimsontide.ie	Crimson Tide, 3013 Lake Drive, Citywest Business Campus, Dublin 24	01 469 3719
8	Clearwire, Motorola Consortium	05/07/07	Brent Smith	brent.smith@clearwire.com	Clearwire, Whelan House, Sth County Business Park, Leopardstown, Dublin 18	01 299 9473 087 745 2858

9	IFA, Motorola Consortium	05/07/07	Pat Smith	patsmith@ifa.ie	IFA, Irish Farm Centre, Bluebell, Dublin 12	01 450 0266 086 861 3347
10	UPC, Enet, BT Consortium	05/07/07	Ray Collins Kate O'Sullivan	rcollins@lqi.com kosullivan@upc.ie	UPC Ireland, Building P2, East Point Business Park, Dublin 3	01 245 8602 01 245 8675
11	Smart, Enet, Last Mile, Permanet Consortium	05/07/07	Garfield Connolly	garfield@smarttelecom.ie	Smart, 3300 Lake Drive, Citywest Business Campus, Dublin 24	01 469 9300

Please note that 3 responses were received after the deadline and were returned unopened to candidates.

List of opened of PQQ Submissions (Opening Date: 6 July 2007)

As specified in Section 2.12 of the PQQ, twelve hard copies and one soft copy (on a virus free diskette or CD-ROM) of PQQ were to be submitted to the Department of Communications by 4 pm (local Irish time) on Thursday 5th July 2007.

No	Company/s	Date Received	Time Received	No of Hard Copies	Soft Copy	Comments
1	Fastnet Broadband	05/07/07	15:42	1	-	Non-compliant
2	Mediasat	05/07/07	10:25	12	-	(Failure to submit 12 hard copies and an electronic copy of PQQ on time. Remaining copies reached the DCENR on 6 th of July.) Non-compliant
3	ARN Telecom	05/07/07	13:10	12	-	(Failure to submit an electronic copy of the PQQ.) Non-compliant
4	Wirefree	05/07/07	14:26	12	✓	(Failure to submit an electronic copy of the PQQ.) Accepted
5	Eircom (may change to consortium)	05/07/07	14:30	12	✓	Accepted
6	BroadNet (Motorola & Azotel Consortium)	03/07/07	14:26	12	✓	Accepted

7	3 Ireland	05/07/07	12:20	12	✓	Accepted
8	BT, Wirefree & Avanti Consortium	05/07/07	15:00	12	✓	Accepted
9	Avanti Broadband	04/07/07	7:40	12	✓	Accepted
10	Crimson Tide	02/07/07	16:25	12	✓	Accepted
11	Clearwire, Motorola Consortium	05/07/07	15:10	12	✓	Accepted
12	IFA, Motorola Consortium	05/07/07	14:53	12	✓	Accepted
13	UPC, Enet, BT Consortium	05/07/07	15:37	12	✓	Accepted
14	Smart, Enet, Last Mile, Permanet Consortium	05/07/07	15:45	12	✓	Accepted

Opening of PQQ Submissions

Date: 6 July 2007

Venue: DCENR

Attendance:
 Ken Spratt (DCENR)
 Aneta Scieplek (DCENR)
 Eric Tomkins (ComReg)
 Gordon Mooney (Masons)

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4	Wirefree	05/07/07	14:26	12	✓	
5	Eircom (may change to consortium)	05/07/07	14:30	12	✓	
6	BroadNet (Motorola & Azotel Consortium)	03/07/07	14:26	12	✓	
7	3 Ireland	05/07/07	12:20	12	✓	
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9	Avanti Broadband	04/07/07	7:40	12	✓	

10	Crimson Tide	02/07/07	16:25	12	✓	
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12	IFA, Motorola Consortium	05/07/07	14:53	12	✓	
13	UPC, Enet, BT Consortium	05/07/07	15:37	12	✓	
14	Smart, Enet, Last Mile, Permanet Consortium	05/07/07	15:45	12	✓	
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List of compliant PQQ submissions

No	Company/s
1	Wirefree
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11	Smart, Enet, Last Mile, Permanet Consortium

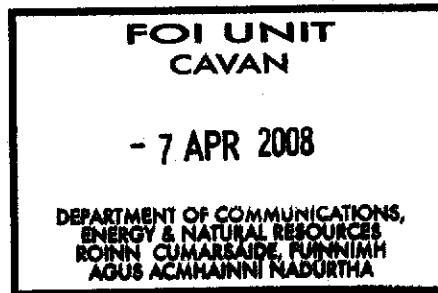


William Fry

Our Ref 019794.0001.CWA

By Post & Fax: 678 2449

Ms Mary Rabbitte
Freedom of Information Officer
Freedom of Information Unit
Department of Communications, Energy & Natural Resources
Elm House
Earlsvale Road
Cavan



4 April 2008

Request for Access to Records under the Freedom of Information Acts 1997 and 2003

Dear Ms. Rabbitte

In accordance with Section 7 of the Freedom of Information Acts 1997 and 2003, I wish to request access to the following records which I believe to be held by the Department of Communications, Energy and Natural Resources (the "Department"):

1. *All correspondence relating to and all reports prepared by Mason Communications Ireland Limited in 2007 for the Department and the Commission for Communications Regulation in relation to the National Broadband Scheme (NBS).*
2. *All documents, including but not limited to, notes of meetings, telephone calls, internal memoranda, information notes and all correspondence held by the Department relating to its consideration of the merits of using satellite technology to provide broadband services in Ireland as part of the NBS.*
3. *All documents, including but not limited to, notes of meetings, telephone calls, internal memoranda, information notes and all correspondence held by the Department relating to its consideration of the use of satellite technology in the context of determining the approach to be taken in the NBS Broadband Mapping and Coverage Process as illustrated in the Indicative Broadband Coverage Map published in May 2007, including a decision to exclude the use of this technology for the provision of broadband services from the mapping process.*
4. *All documents, including but not limited to, notes of meetings, telephone calls, internal memoranda, information notes and all correspondence held by the Department identifying the parties who submitted correspondence to the Department in response to the NBS Pre-Qualification Questionnaire (PQQ) dated 2 May 2007.*

5. *All documents, including but not limited to, internal memoranda, information notes and all correspondence held by the Department identifying the parties who obtained a refund of the €500 fee charged by the Department for obtaining the Information Memorandum and NBS PQQ, in accordance with Section IV.3.3 of Contract Notice 2007/S 86-105759.*
6. *All documents, including but not limited to, internal memoranda, information notes and all correspondence held by the Department identifying the parties who paid the €500 fee charged by the Department to obtain the Information Memorandum and NBS PQQ but did not receive a refund of the fee in accordance with Section IV.3.3 of Contract Notice 2007/S 86-105759.*

My preferred form of access to these records is to have copies sent by fax to (01) 639 5333 marked for my attention. In the alternative please provide copies by post to the below address.

Please find enclosed a cheque in the amount of €15 in respect of the fee for a request under Section 7. I look forward to hearing from you within the time period prescribed under the Acts.

Yours sincerely

Claire Waterson.

Claire Waterson

Direct Dial: +353 -1- 639 5177

E-Mail: claire.waterson@williamfry.ie