

Friday 8 August 2008

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

**Re. Freedom of Information Request**

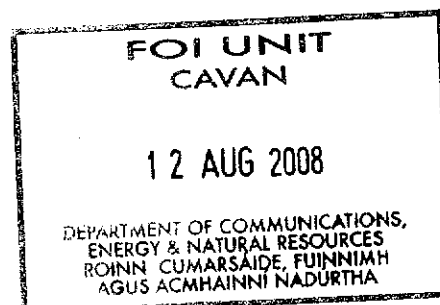
Dear Mary & Seána,


I wish to request under the Freedom of Information Act 1997 and the Freedom of Information (Amendment) Act 2003, the following documents:

- Copies of all types of correspondence between the Broadcasting Unit and TV3 from 1993 to 2000; and
- Copies of all types of correspondence between the Minister's Office and TV3 from 1993 to 2000.

Please see attached the postal order for €15. Should you need to contact me regarding this Freedom of Information request, please do not hesitate to do so.

Yours sincerely,



 Department of Communications, Energy and Natural Resources  
Roinn Cumarsáide, Fuinnimh agus Acmhainní Nádurtha

9<sup>th</sup> September, 2008

FOI Request Reference: FOI/2008/46

Dear Ms

I refer to your FOI request under Section 7 of the Freedom of Information Acts, 1997 and 2003, received in this office on 2<sup>nd</sup> September, 2008 requesting records re. all correspondence between the Broadcasting Unit and TV3 and the Minister's office and TV3 from 1993 to 2000. .

The officer handling your request will be Mr Diarmuid O'Connor, Broadcasting Policy Division, Department of Communications, Energy and Natural Resources, 29 – 31 Adelaide Rd., Dublin 2. He can be contacted at 01 6783095

You can expect to receive your decision by the 30th September, 2008.

If you have not received a decision by that time, you are automatically entitled to appeal to the Department for a review of the matter. This review proceeds on the legal basis that the initial request is considered to be refused once the specified time for responding to it has expired. A request for a review should be addressed to the undersigned at the address shown.

Please note the Department of Communications, Energy and Natural Resources has a policy of posting a summary of non-personal requests and decisions on the Departments website for reference purposes.

Yours sincerely,



Mary Rabbitte  
FOI Unit,  
Department of Communications, Energy and Natural Resources.  
Elm House,  
Earlsvale Rd.,  
Cavan.

Phone: 01 6782903



Áiríocht Cumarsáide,  
Faisnéis agus Ábharthaíocht Rialála  
Bealaí Ársa Eilias 2.

Department of Communications,  
Energy and Natural Resources,  
Dublin 8.

Our Ref: FOI/0046/2008

26 September 2008

Dear Ms

I refer to your freedom of information request of 8 August 2008.

Your request is as follows:

- "Copies of all types of correspondence between the Broadcasting Unit and TV3 from 1993 to 2000; and
- Copies of all types of correspondence between the Minister's Office and TV3 from 1993 to 2000".


Regarding the time period within which you have requested the records, the FOI Act is operational since 21<sup>st</sup> April, 1998 and records created on or since that date can only be released. I understand that you were already notified of this by the Freedom of Information Unit on 12 August 2008. This record is on file ref: S1/66 – D/98 entitled "TV3: Papers from commencement of transmission in September 1998."

I have now considered your request and I have identified one relevant record. I propose to release this record in full and a copy is attached.

If you have any queries in respect of this reply, please ring me at 6783095.

If you are not satisfied with this reply, you have the right to appeal this decision. Should you wish to make such an appeal, you can do so by writing to Mr Frank O'Brien, FOI Unit, Department of Communications, Energy and Natural Resources, Elm House, Earlsvale Road, Cavan. The Appeal is a full and new examination of the matter carried out by a senior member of staff of this Department. Should you want to make such an appeal, please do so in writing, within four weeks.

Yours sincerely

  
Diarmuid O'Connor  
FOI Officer  
Broadcasting Policy Division

FOI Request Reference: 0046 2008

Schedule of Records: Summary of Decision Making

Description of request:

- "Copies of all types of correspondence between the Broadcasting Unit and TV3 from 1993 to 2000; and
- Copies of all types of correspondence between the Minister's Office and TV3 from 1993 to 2000".

Record No.	Brief Description & Date of Record	File Ref.	No. of Pages	Relevant facts	Findings/ conclusions (Public Interest Considerations, (if applicable))	Grant/refuse /part-grant	Basis of Refusal: Section of Act	Record edited/identity deletions
1	TV3 Position on the Broadcasting Bill 1999.	S1/66-D/98	23			Grant		



**tv three**

**tv three Position –**

**Broadcasting Bill 1999**



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## EXECUTIVE SUMMARY

TV3 Broadcasting Bill 1999

TV3, Ireland's first and only independent television broadcaster, believes that 1999 may emerge as the most significant year in the history of Irish broadcasting since RTE, the public service broadcaster began broadcasting, in 1962. The Broadcasting Bill 1999 addresses some of the issues which are arising as a result of rapid change ushered in by digital technology. However, TV3 believes that it fails to encourage the emergence of a competitive independent broadcasting sector which would increase Irish programming and services available to the Irish viewer. TV3 would welcome amendments to the Bill which would facilitate real competition in the Irish marketplace and potentially reduce the burden on the tax payer.

### IRISH CHANNELS FOR IRISH VIEWERS

*TV3 believe that indigenous broadcasting services in the Republic of Ireland (including those new services which form part of the capacity allocated to the existing indigenous broadcasters in digital) should be assured non-discriminatory carriage on ALL analogue and digital distribution platforms, cable, terrestrial and satellite. This may involve the grouping together of Irish services, and would ensure that the Irish viewer has meaningful access to Irish programming services.*

### DEFINING PUBLIC SERVICE PROGRAMMING

*TV3 would welcome a clear, adequate and specific definition of the public service remit which would involve specific references to the type of public service programmes to be provided and set specific objectively verifiable targets in relation to those types of programmes e.g. number of programmes, timing of scheduling. Such programming would comprise, inter alia, Irish originated programming, Irish coproductions, and non Irish programmes of specific relevance to the Irish viewer. TV3 believes that the Minister should be empowered to detail public service programming obligations where required following appropriate consultation.*

### PUBLIC SERVICE PROGRAMMING FOR LICENCE FEE

*TV3 believes that the Bill should carefully circumscribe the ability of RTE to use the licence fee for any other purpose other than the defined public service remit, thereby simultaneously ensuring that the licence fee payer receives the programming he/she paid for and limits the competitive distortion in the market place created by State Funding.*

*TV3 believes that the Bill must require accounting separation between RTE's public service activities (clearly defined by reference to quantifiable criteria) and its commercial activities. The system employed in 1 area of RTE (the Independent Productions Unit (IPU)) may serve as a useful template to be extended to all public service broadcasters' activities. In order to provide effective oversight, it is suggested that the Comptroller and Auditor General audit the use to which the licence fee is put and report to the Dail ( Public Accounts Committee) annually.*

### RTE AND DIGITAL TERRESTRIAL TELEVISION

*TV3 considers that RTE's participation in the proposed entity to establish and operate digital terrestrial television (aka Digico) is inappropriate, potentially conflicting with its primary role as a public service broadcaster. We believe that digital terrestrial television's establishment and operation and the associated risks are best assumed by private companies geared towards and experienced in risk management and digital television. Such an approach will, inter alia, reduce the potential discriminatory practices which may arise from a content provider/distributor vertically integrated structure and will increase revenues available for investment in local indigenous Irish programming.*

*TV3 also considers that the designated entity (aka Digico) should be subject to regulatory principles similar to those currently applicable to telecommunications and cable networks. Such an approach would ensure fair, reasonable and non-discriminatory access for all service providers and avoid asymmetric regulation for different distribution platforms.*

### THE COMMUNICATIONS INDUSTRY - A SINGLE REGULATOR

*TV3 considers that, in the interests of fair and effective regulation in a converging environment, a single overarching communications regulator should be established covering the entire communications industry as has been introduced successfully in other jurisdictions.*

*TV3 considers, that in the absence of a single regulator, distortions of competition must be reduced through the introduction of proper accountability of public service broadcasters to an adequately equipped executive regulatory authority. RTE and TG4, in respect of content, should fall under the auspices of the IRTC (Broadcasting Commission). The distribution/network regulatory infrastructure should fall under the jurisdiction of the ODTR.*

## WHITHER THE INDEPENDENT BROADCASTING SECTOR?

When students sit down to study the history of broadcasting in the Ireland 20 years hence, they are unlikely to devote time analysing a single year more than 1999. Indeed, it is shaping up to be the most pivotal year in broadcasting since 1960 when RTE was established in legislation. 1999 will see the first full year of domestic television competition for the public service broadcaster courtesy of TV3. 1999 has witnessed the introduction of digital satellite television in Ireland with its 200 channel universe (albeit on a prohibitively expensive scale) courtesy of BSkyB. 1999 will be remembered for a massive upheaval in the cable industry with the renewal of licences for cable companies mapping out digital's introduction, the sale of CableLink to NTL for almost half a billion pounds and consequent windfall for RTE causing a fundamental reevaluation of distribution networks, and the consolidation of the cable industry through acquisition. 1999 will also see the licensing of hitherto illegal deflector systems throughout the country. And whilst all this is going on, the EU in Brussels, through it's Competition Directorate, is causing concern in various Member States by examining carefully the funding of their respective public service broadcasters to ascertain whether or not such funding is compatible with the Treaty of Rome and finding that all is not as it should be. It may well have transferred its attention to Ireland by the end of the year.

The final quarter is expected to see the adoption of Ireland's most comprehensive overhaul of its broadcasting legislation since 1960. It is vital therefore, that, in such a rapidly changing environment, an appropriate legislative and regulatory framework with necessary flexibility is established to foster a vibrant and competitive domestic broadcasting market into the next millennium. TV3, as Ireland's first and only independent television broadcaster, fears that the Broadcasting Bill, as published, fails in this regard. Such fears may be well founded given the breadth of the agenda addressed by the Bill. In particular

- *The highlighting of the importance of the indigenous Irish channels to the Irish broadcasting ecology*
- *The identification of the need to define the remit of public service broadcasters in relation to the public subventions which they receive, which in turn, attempts to address the extent to which their favoured positions is the cause of market distortions, anti-competitive practices and other anomalies in a post monopoly environment*
- *The intention to introduce and impose order on multichannel digital radio, television and other services available to the national audience as a whole.*
- *The recognition of the need to modify the regulatory infrastructure in anticipation of the challenge created by the greatly augmented broadcasting sector and range of related media and convergence amongst these media.*

TV3 has serious concerns that the potential inherent in such an agenda to create the environment for, and stimulate the development and growth of, a healthy and competitive Irish independent broadcasting sector is being jeopardised by the Bill's current formulation. Indeed, TV3 is concerned that the Bill may simply lead to the strengthening of the position of the dominant broadcaster, RTE, and the UK broadcasters who have no requirement to invest in or produce Irish programming which may be less commercially advantageous than other types of programming. This poses a genuine threat to the creation of a vibrant independent broadcasting sector in Ireland where TV3 believes real domestic competition will lead to better quality and quantity of Irish programming. If students of Irish broadcasting are to recognise 1999 as the year when we embraced the future rather than entrenched the past, the Bill must be revised accordingly.

### THE AVAILABILITY OF IRISH CHANNELS TO THE IRISH VIEWER ON ALL PLATFORMS

Since the advent of multichannel homes (over 60% of homes enjoy access to both Irish and UK and other channels), how the viewer accesses the service has been of crucial importance to all broadcasters in Ireland. The facility with which a viewer can watch a channel obviously has a direct effect on the commercial success of that channel. In an Irish environment, with over 50% of viewing migrating to non-Irish channels, TV3 has suffered vis a vis its UK competitors as a result of its relegation on some cable networks to a position which significantly impedes viewer access. Such 'positioning' problems may be exacerbated in the future for not just TV3 but other indigenous broadcasters as a result of cable networks becoming not simply platform providers but also content provider or participants in revenue sharing ventures with the result that the operator will be determined to favourably position those channels in which it enjoys a commercial interest to the detriment of others.

*TV3 believe that indigenous broadcasting services in the Republic of Ireland (including those new services which form part of the capacity allocated to the existing indigenous broadcasters in digital) should be assured non-discriminatory carriage on ALL analogue and digital distribution platforms, cable, terrestrial and satellite (where applicable). Such a provision, which may involve the grouping together of Irish services, would ensure that the Irish viewer has meaningful access to Irish programming services.*

#### ACCOUNTABILITY AND RESPONSIBILITY OF THE PUBLIC SERVICE BROADCASTERS

The advent of TV3 1 year ago presented RTE with national television competition from a wholly commercially funded organisation for the first time. Such competition has been good for Irish broadcasting. Independent broadcasting has boosted the democratic environment in which we live with the introduction of a second news service and the country's first breakfast TV service, increasing the plurality of voice available to the viewer. This augmentation of choice has not occurred at the expense of RTE but rather the market has expanded resulting in the overall growth of Irish audiences for Irish services and indeed, the repatriation of UK channel audiences. Competition in the Irish marketplace has also seen a marked improvement in the quality of service offered by the public service broadcaster, particularly in its news and weather programming. And indeed, the introduction of domestic competition has seen an overall increase in home produced programming with over 20% of TV3's schedule comprising domestic Irish programming.

Clearly the benefits of domestic competition in the Irish marketplace have had a positive effect on the Irish broadcasting landscape. At no cost to the taxpayer, an environment has been established where domestic production has been increased considerably, plurality of voice has been introduced, the overall marketplace has been expanded whereby RTE's advertising revenues are increasing, where choice is growing Irish audiences for Irish services, where employment opportunities are considerably expanded.

But this welcome change is being jeopardised by the Bill's reinforcement of the dominant position of the state broadcaster. The enhancement of the role of the state broadcaster clearly minimises the opportunity to reduce the burden on the taxpayer through the fostering of the independent broadcasting sector. In particular, by its failure to provide a proper accountable basis for RTE's public service broadcasting function, the Bill does nothing to remove the anticompetitive effects currently associated with State funding of RTE. Such action (or inaction) may be judged improper under the Treaty of Rome and attract disruptive intervention and prescription from the European Competition authorities. The mechanism outlined in the Bill which comprises an 'articulation' of a defined mandate for public service broadcasters and the creation of transparent monitoring and accounting mechanisms to ensure that the licence fee is applied only to the fulfilment of its defined remit is inadequate to avoid continued distortion of competition caused by state funding and will be unable to achieve its intended purpose.

*TV3 would welcome a clear, adequate and specific definition of the public service remit which would involve specific references to the type or category of public service programmes to be provided and set specific objectively verifiable targets in relation to those types of programmes e.g. number of programmes, timing of scheduling. Such programming would comprise, inter alia, Irish originated programming, Irish coproductions, and non Irish programmes of specific relevance to the Irish viewer. TV3 believes that the Minister should be further empowered to detail public service programming obligations where required following appropriate consultation.*

*Thus defined, TV3 believes that the Bill should carefully circumscribe the ability of RTE to use the licence fee for any other purpose other than the defined public service remit, thereby simultaneously ensuring that the licence fee payer receives the programming he/she paid for and limits the competitive distortion in the market place created by State Funding.*

*Additionally, TV3 believes that the Bill must require accounting separation between RTE's public service activities (clearly defined by reference to quantifiable criteria) and its commercial activities and full allocation of assets, costs and revenues, on the basis of published criteria, as between the public service and commercial activities of RTE. Such a system should be feasible and it is suggested that the system employed in 1 area of RTE (the Independent Productions Unit (IPU)) may serve as a useful template to be extended to all public service broadcasters' activities. In order to provide effective oversight, it is suggested that the Comptroller and Auditor General audit the use to which the licence fee is put and report to the Dail / Public Accounts Committee annually.*