Office of the Director of
Telecommunications
Regulation

Information Notice

Direction to *eircom* on Payphone Access Charge

Document No. ODTR 00/33 **May 2000**

Oifig an Stiúrthóra Rialála Teileachumarsáide
Office of the Director of Telecommunications Regulation
Abbey Court, Irish Life Centre, Lower Abbey Street, Dublin 1.
Telephone +353-1-804 9600 *Fax* +353-1-804 9680

Web: www.odtr.ie

1. Background

The ODTR was first informed of *eircom*'s intention to introduce a payphone access charge on 31 August 1999. At this time, *eircom* said it would notify OLOs of the charge on 2 September, giving 60 days notice of implementation, and would also waive the charge until 1 December 1999.

Beginning on 21 December, the ODTR received a series of enquiries from OLOs as to whether the charge was permissible. An investigation was initiated and *eircom* was asked to justify the charge.

eircom argued that a PAC was needed because many calls made over eircom payphones are made to 1800 Freefone numbers and, in the absence of a PAC, eircom's payphone business would receive no revenue in relation to this traffic. *eircom* noted that OFTEL has permitted a PAC of STG 8.1p/minute (approx. IR 10.5p/minute) since 1997.

eircom suggested that the PAC should not be considered an interconnection charge, on the grounds that only charges for services where eircom has "bottleneck control" can be interconnection charges. As there are alternative means of reaching 1800 numbers and, moreover, 1800 Freefone service providers can bar calls from eircom payphones, *eircom* claimed that it does not possess "bottleneck control."

At present, *eircom* does not offer barring of payphone calls to OLO 1800 Freefone numbers. One operator, which had requested barring but was refused it, stated that an OLO can distinguish and choose not to receive such calls only if its network has intelligent network facilities. This operator argued that, if a PAC is to be levied, facilities should be provided to allow any interconnecting operator to identify incoming payphone traffic or to request barring.

eircom provided cost information and analysis in support of its view that the PAC should be set at 6.74 pence per minute.

2. Position of the Director

2.1 Nature and appropriateness of charge

The Director agrees that eircom's existing conveyance-based interconnection charges do not compensate the firm for the use of its payphone facilities for calls to 1800 Freefone numbers. It is reasonable for *eircom* to impose an appropriately justified charge on operators, subsidiaries or business units that wish to employ its payphones for such calls.

The analogy drawn by some complainants between the PAC and the concept of an access deficit contribution is not valid. The PAC is an interconnection charge covering the use of facilities for which there is no other source of revenue. Public payphones do not attract retail line rental revenue, and 1800 Freefone calls attract no revenue from the caller. Thus the only way for *eircom* to recover the costs arising from 1800 Freefone calls made over public payphones is to impose a charge on the business unit or OLO that receives call revenue from the call recipient. Annex 1 details the relevant cash flows.

Turning to the nature of a PAC, the Director does not consider that the relevant legislation supports eircom's argument that interconnection services must be "bottleneck" services or those originating from sources that cannot be barred by a service provider. A PAC is a charge for the use of certain *eircom* facilities that may be used in carrying a significant amount of voice telephony traffic. The Director therefore considers that it is clearly an interconnection charge.

The Director accepts the appropriateness of *eircom* imposing a PAC in principle and considers that it is an interconnection charge falling within the terms of the European Communities (Interconnection in Telecommunications) Regulations, 1998, S.I. No. 15 of 1998.

Regulation 8(12)(a) of the Interconnection Regulations stipulates that "charges for interconnection shall be sufficiently unbundled so that an applicant is not required to pay for anything not strictly related to the service requested…" OLOs who do not wish to receive payphone calls to their 1800 Freefone numbers should not be compelled to do so and pay the PAC. *eircom*'s refusal to provide barring of payphone calls to 1800 Freefone numbers of OLOs that do not wish to attract payphone access charges is not consistent with this regulation.

The Director considers that eircom must offer barring of payphone calls to 1800 Freefone numbers of OLOs that do not wish to receive such calls if it is to impose a PAC.

2.2 Implementation of charge

Regulation 8(7) of the Interconnection Regulations requires eircom to re-publish its reference interconnection offer when there is any change made. As a PAC is an interconnection charge, its introduction constitutes a change to the RIO.

The Director considers that it is appropriate for eircom to introduce a PAC as part of the forthcoming RIO, due to be republished on the 27th June 2000, provided that eircom confirms that it is prepared to provide barring of calls to OLO 1800 Freefone numbers to those that request it. Any charges imposed on operators should apply to the period from 1 April 2000.

The Director also considers it appropriate to grant OLOs a period of one month, from the date of this direction, to inform *eircom* if their preference is to have payphone calls to their 1800 Freefone numbers barred. In the event that this is the elected option, *eircom* should introduce the facilities necessary to provide the option of barring payphone calls to OLO 1800 Freefone numbers at the earliest practical juncture, and no PAC should be levied by *eircom* during the interim period between 1 April 2000 and the date of the introduction of these facilities.

2.3 Level of charge

In accordance with Regulations 7 and 8 of the Interconnection Regulations, *eircom*'s interconnection charges must be cost oriented and applied in a non-discriminatory manner.

Annex 2 sets out the cost categories that the Director considers it reasonable for *eircom* to recover through a Payphone Access Charge.

Based on analysis of the appropriate levels of cost involved, the Director considers that *eircom*'s proposed charge of 6.74p per minute is not justified, whereas a charge of 5.47p per minute would be reasonable following appropriate adjustments in light of *eircom's* cost orientation obligations.

Direction

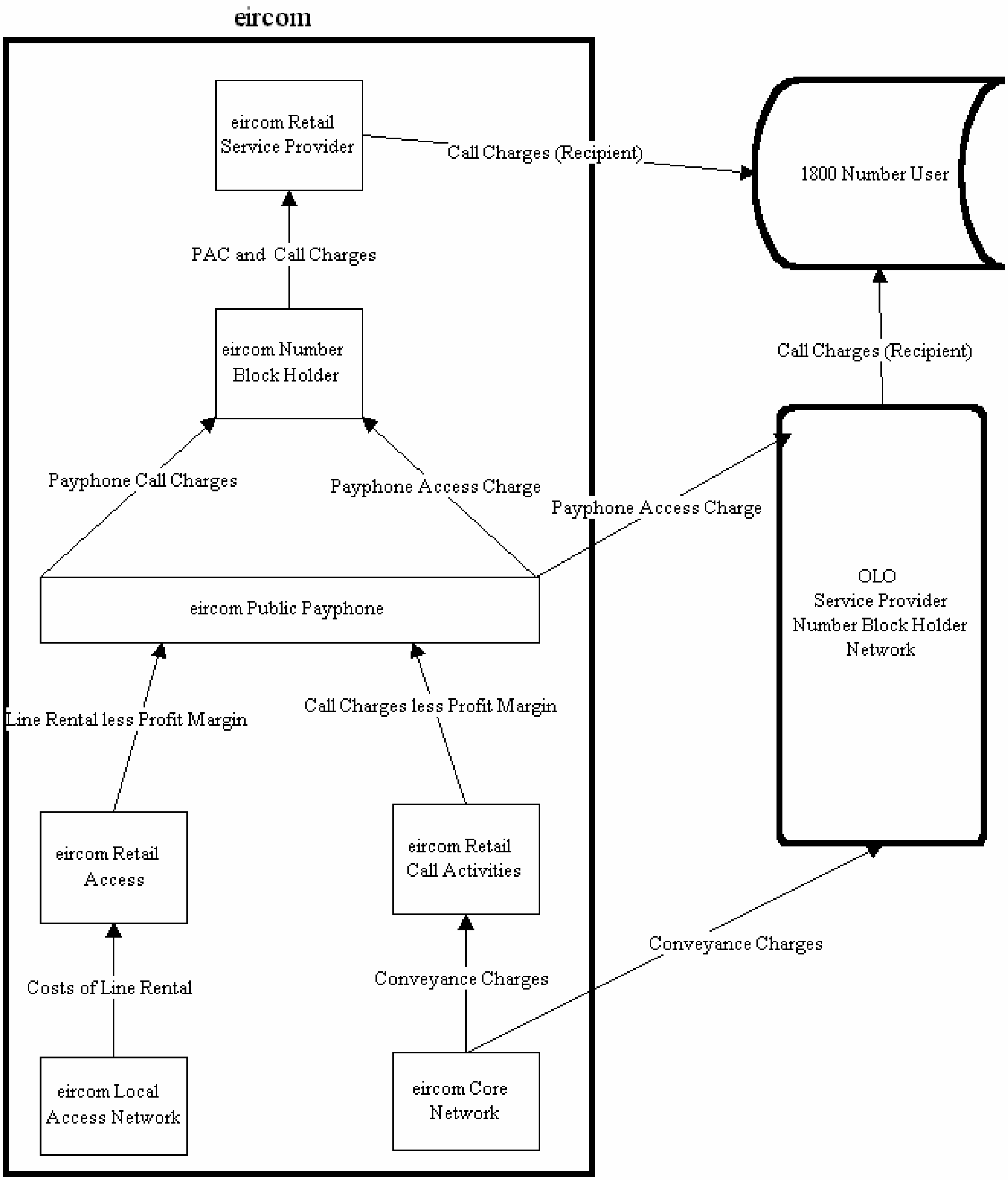
The Director, under Regulation 8(5) of the European Communities (Interconnection in Telecommunications) Regulations, 1998 (SI No 15 of 1998), directs *eircom* to adjust its proposed PAC in line with its cost orientation obligations.

An appropriately justified charge, which the Director considers should not be higher than 5.47p per minute, may be included in eircom's planned republication of its RIO on 27 June 2000 on the condition that the RIO includes the offering of barring of payphone calls to OLOs that do not wish to receive such calls.

The PAC shall apply from 1 April 2000 to all relevant interconnecting operators. In the event that barring of these calls is requested by an OLO within one month of the date of this notice, no PAC shall be levied by *eircom* during the period between 1 April 2000 and the date that this barring can be offered.

In view of *eircom*'s obligation to adhere to the principle of non-discrimination, this charge should also be applied to any relevant transactions involving *eircom*'s payphone business and its business units or subsidiaries. Of course, insofar as such business units or subsidiaries pass the relevant costs on to eircom's retail customers, the relevant price control regulations and licence provisions apply.

Annex 1: Payphone Access Charge cost flows



Annex 2: Allowable costs for payphone access charge

	% attributed to payphones access	Reasoning
Cost of Sales	0%	Not appropriate, Retail activity – Commercial negotiation by eircom
Operations	70 – 100%	Excludes marketing payroll costs
Other operating costs		Excludes retail activities
Data processing	100%	
Office equipment	100%	
Office supplies	100%	
Payphone kiosk clean	100%	
Training	100%	
Eircell charges	10%	
Network costs		Payroll costs associated with installation and maintenance
Installation	80%	Cost of card readers & coin mechanisms excluded
Maintenance	63%	Cost of card readers & coin mechanisms excluded
Connection fees	100%	Local loop costs
Line rental	100%	Local loop costs
Cost centre allocated costs	50%	Cost of managing the core operation
Bad debts/related overheads	0%	
District and Corporate overheads	50%	Cost of support services - logistics/hr/it/systems etc
Depreciation	53%	Cost of card readers & coin mechanisms excluded
Kiosks		
Information systems		
Accommodation		
District Overheads General		
Transport		