



Office of the Director of
**Telecommunications
Regulation**

Information Notice

Direction to *eircom* requiring modification to *eircom's* Service Level Agreement for leased lines (penalty payments)

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1. Introduction

The ODTR has received a number of informal complaints from operators regarding significant delays in the provision times of leased lines by *eircom*. In July 2000, in response to these complaints, the ODTR brokered a programme with *eircom* to reduce its backlog of leased line circuits. Under this programme *eircom* committed to eliminate its existing backlog on a phased basis and then move to a position where leased lines would be delivered within existing service level agreement timescales. *eircom* provided scheduled delivery dates to all operators for outstanding circuits. Arrangements to monitor delivery under this programme were put in place, including a reporting requirement to the ODTR by *eircom*. While recognising the considerable efforts made by *eircom* Carrier Services to reduce the backlog, the targets agreed by *eircom* for the first milestone date have not been met.

The Director takes the view that *eircom*'s persistent inadequate delivery of services to operators gives rise to serious concerns for the development of effective competition in the Irish telecommunications market and the overall growth in that market that competition will bring. Given the telecommunications needs of our rapidly growing economy, not least in respect of e-commerce, the Director takes a very serious view of this situation

The ODTR has reviewed the delivery performance of *eircom* to date while considering the effectiveness of the existing regime for the calculation of penalties under the Service Level Agreement (SLA) for leased lines. The Director has examined the appropriateness of those penalties in light of *eircom*'s record of late delivery and the informal complaints made to this Office by aggrieved parties.

The Director believes that the penalties currently provided for in the SLAs are no longer adequate and appropriate to ensure effective delivery of services or competition, having regard to the dynamic nature of the Leased Lines market and *eircom*'s poor delivery performance to date in that market.

The Director has therefore directed *eircom* (see section 3 below) to amend its SLAs for leased lines with respect to penalty payments with effect from 15 September 2000.

The Director also expects *eircom* to meet its existing commitments to OLOs under the leased line backlog delivery programme referred to above by the final milestone date.

2. Obligations on *eircom*

eircom holds a General Telecommunications Licence under Section 111(2) of the Postal and Telecommunications Services Act, 1983, as amended ("the 1983 Act"). In Decision Notice D15/99, the Director designated *eircom* as having significant market power ("SMP") in the public fixed telephone networks and services, in leased lines and in the national market for interconnection. *eircom* has a range of obligations relevant to this matter set out in, *inter alia*, conditions 8, 18.1 and 18.2 of *eircom*'s General Telecommunications Licence and the European Communities (Leased Lines) Regulations,

1998.

ODTR Document 99/48 entitled “Service Levels Provided to Other Licensed Operators by Licensees with Significant Market Power – Report on Consultation” sets out the Director’s position on Service Level Agreements between *eircom* and its competitors. In October 1999, the Director required *eircom* to publish the terms and conditions under which it provides services to operators. These SLAs covered delivery timeframes, quality levels and maintenance terms for services provided by it, together with the penalties to be paid by *eircom* to operators in the event of its failure to meet the targets set.

3. Position of the Director

Given *eircom*’s persistent inadequate performance in delivery of leased lines to OLOs, the Director believes that the penalties currently provided for in the SLAs are no longer adequate and appropriate to ensure effective delivery of services or competition.

The Director has therefore directed *eircom* to amend its existing mechanism for penalty calculation so that penalty payments **will no longer be capped** after delivery has reached 1.5 times the target delivery date.

The Director considers the proportionate calculation of penalties should seek *inter alia* to weigh *eircom*’s failure to meet agreed deadlines against the need to protect the rights of operators under the SLAs. However, the use of the present formula for the calculation of uncapped penalties may be inappropriate because it could give rise to the possible application of disproportionate penalties on *eircom*.

For these reasons, the Director considers the following formula to be an appropriate mechanism for calculating the penalties to be paid by *eircom* in circumstances where it fails to comply with its obligations and terms agreed by it under the SLA for national leased lines:

$$\text{Penalty Applicable} = \frac{2nI}{D} \text{ where}$$

“I” is the installation charge

“n” is the number of days after the ready for test date

“D” are the number of days set as the standard in the SLA

The Director considers that the new arrangement for calculating penalties payable by *eircom* in the event of late delivery should apply from 5.30pm on 15th September 2000 in respect of all leased line orders completed thereafter and which are outside their SLA timeframes.

Direction

Pursuant of Condition 18.2 of the General Telecommunications Licence issued to *eircom* by this Office, the Director hereby directs *eircom*, by 5.30pm on the 15th of September 2000, to amend its 'Statement of Service Levels for the Provision of Specified Services to Other Licensed Operators' such that

- penalties payable in respect of national analogue and digital leased lines are uncapped

- the formula to be used for calculating payments is

$$\text{Penalty Applicable} = \frac{2nI}{D} \text{ where}$$

"I" is the installation charge

"n" is the number of days after the ready for test date

"D" are the number of days set as the standard in the SLA

eircom is also directed to formally notify OLOs in writing of these amendments to its leased line SLA by 5.30pm on the 7th of September 2000.

This Direction is without prejudice to the right of the ODTR to issue further directions or requiring modifications or additions pursuant to Condition 18.2 of *eircom*'s General Telecommunications Licence or any other provision of applicable law.