Commission for
Communications Regulation

Draft Direction

'In-Situ' Transfer of Leased Lines

Decision No: **Document No:**	 **03/123**
Date:	**17th October 2003**

An Coimisiún um Rialáil Cumarsáide
Commission for Communications Regulation
Abbey Court Irish Life Centre Lower Abbey Street Dublin 1 Ireland
Telephone +353 1 804 9600 *Fax* +353 1 804 9680 *Email* info@comreg.ie *Web* www.comreg.ie

Contents

1 Foreword

Leased Lines are of critical importance in an economy seeking to become an information based society. As a technology that is relied upon by both SMEs and large corporate users alike it is important that they have confidence that the services they avail of represent the best in both price and quality. ComReg's aim has been to promote competition that will ultimately deliver the best to end users in terms of their requirements.

Developing a process that would allow for Leased Lines to be transferred on an in-situ basis would be of significant benefit to businesses and Other Authorised Operators (OAOs) alike. It would give maximum benefits to customers in that it would allow them to avail of the benefits of competition whilst eliminating any disruption or unnecessary expense that they would otherwise experience through switching their supplier of leased lines.

ComReg is cognisant that in order for OAOs to win major business and hence create sustainable competition in the market, the movement of leased lines without the presence of avoidable barriers is a prerequisite. The in-situ transfer of Leased Lines is an efficient means by which a customer with an existing leased line who wishes to change supplier for that leased line, but continue receiving an identical service, can do so with the utmost of ease and minimum expense. Therefore, ComReg intend to direct that eircom introduce, without delay, a process for the in-situ transfer of leased lines. This document sets out the proposal along with the reasons for its introduction and the features ComReg considers the process should have.

ComReg is issuing this direction in draft form in light of the fact that an in-situ transfer process is of interest to consumers and the industry generally. This will allow interested parties to comment on the features of such a process, which will, in turn, ensure that the process meets market needs and is implemented in a speedy manner.

2 Introduction

A number of operators have approached ComReg and eircom concerning an enhanced leased line process for an in-situ transfer of a leased line that would enable a seamless changeover for customers wishing to move to an alternative operator. In the instance where a leased line is to be transferred from one customer to another, (that may be from one end user to another end user or from one end user to another operator) and all of the equipment associated with the leased line is to remain in place, the conditions for such a transfer should be as smooth as possible with minimum cost. ComReg and eircom have had extended discussions on this matter.

2.1 What Happens Now?

This is best illustrated by way of an example.

Customer X, who currently rents a leased line from eircom, wants another provider (Operator X) to supply the leased line. Customer X requests eircom to cease the leased line and at the same time Operator X orders a leased line at the exact same location.

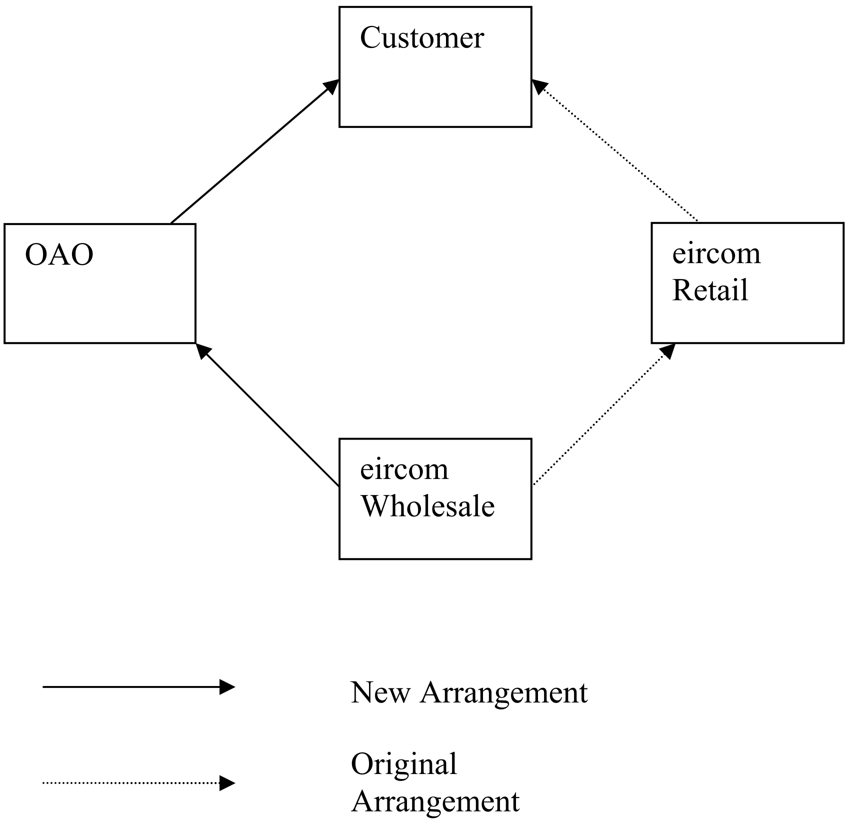
At the moment eircom require Operator X to order the leased line in advance and eircom would provision the leased line (along with the existing one - in other words duplicate the leased line). Customer X would cease service of the first leased line and, after a break in service due to handover to the new leased line, then receive service over the second leased line.

Under the current situation Operator X will pay the full installation charge for the new leased line (even though the infrastructure is already in place) and the customer will typically suffer a break in service i.e. the transfer will not be seamless. ComReg considers that this current process is inefficient, resulting in unnecessary work which, in turn gives rise to unnecessary charges and an unnecessary break in service for the customer.

ComReg believes that an in-situ transfer process for leased lines as described below will address the inefficiency of the current process and ensure efficient cost orientation. ComReg notes that eircom already provides in-situ in other cases, for example, PSTN lines.

2.2 What is in-situ

In-situ transfer is the seamless transfer of a leased line with no break in service, where the electrical and service characteristics remain identical. In-situ transfer would occur in a situation where eircom retail provide a leased line to an end customer and that end customer wishes to switch this service to an Other Authorised Operator. Conceptually, the leased line is provided to eircom retail through eircom wholesale before being provided on to the end user. Under in-situ transfer this relationship would simply be rotated so that eircom wholesale provide the leased line to the OAO rather than to eircom retail. This relationship is illustrated in the diagram below.



2.3 What was requested

An operator has requested from eircom the in-situ transfer of leased lines in order to secure a number of important competitive opportunities. This operator has formally made a request to eircom wholesale for the transfer of a leased line from a retail customer of eircom's to this Operator. They require the seamless transfer of this leased line with no break in service where the electrical and service characteristics remain identical. This Operator maintains that if eircom were to be efficient no new infrastructure would be required and that a simple process would be all that was necessary to transfer the leased line from eircom retail to the Operator.

2.4 What it is that eircom offered

In response to the Operator's request eircom stated that they do not operate the transfer process outlined by this Operator and that the provision of a leased line in these circumstances would be carried out according to eircom's standard practice i.e. cease and provide. If the customer were to experience only a minimal break in service the practice of cease and provide would require eircom, following receipt of a request for a new circuit from an operator , to build in parallel a new line to the customer's premises before ceasing the existing line. Therefore the operator would be required to pay the necessary cease and connect charges. In addition the customer would not experience a seamless transfer.

2.5 Disadvantages with the eircom proposal

There are a number of shortcomings with the standard eircom practice of cease and provide in the situation where a customer simply wishes to changeover their existing leased line service to an alternative operator. Firstly the practice of cease and provide would be unduly disruptive to the end customer as their service would typically be interrupted for a period of time. Customers require a seamless transfer of service as any interruption of service adds cost and unnecessary inconvenience to the process for them. This is therefore a barrier to the customer availing of the effects of competition in the leased line market.

In addition to the disruption to customers, the practice would also be needlessly expensive in this instance. The OAO would be charged the standard connection charge, which can be as high as €8,240 per local end, for the leased line which eircom would build to the customer's premises in parallel to the existing leased line.

By adopting the practice of cease and provide where an operator has requested that a leased line be handled on an in-situ basis, eircom would not be acting as an efficient operator. In requiring the OAO to pay unnecessary costs and applying the standard installation process in these circumstances, eircom would be in breach of their cost orientation requirement which is set out in Regulation 12 of the European Communities (Leased Line) Regulations (S.I. 109 of 1998)[1]. As stated above, under eircom's proposal an OAO would be required to pay the standard connection charge under the standard installation process. Eircom is therefore not cost oriented for the delivery of leased lines where the leased line is currently "in-situ" i.e. where the transfer of the leased line is the only efficient option which would not incur unnecessary costs.

2.6 Eircom subsequent offer

Eircom did submit an additional proposal to ComReg at a meeting on the 13th of June 2003. This proposal was set out subsequently in a letter of the 25th June 2003. Eircom set out the terms under which they would be prepared to transfer ownership of leased line. This involved eircom transferring retail leased line billing arrangements from eircom to facilities houses providing IT services to corporate customers. The principles which underlined the process eircom proposed were:

1. A methodology for settlement of overdue accounts would be agreed and implemented before any transfer could take place
2. the customer must provide explicit written notification to eircom authorising its request to transfer the network in question
3. Customers must honour any term contracts they have with eircom
4. The transfer would not give rise to any change in the terms and conditions on which the line was provided immediately prior to the transfer, and retail terms will continue to apply to the new "customer"; and
5. any circuit transferred under the proposed process would not be eligible for conversion to a PPC

[1] Full text of Regulation 12 is contained in Appendix 1

ComReg stated both at the meeting and in subsequent correspondence, that this proposal did not constitute a response to the discussion on the transfer of wholesale leased lines. ComReg recognises that this proposal is of benefit to facilities houses or those providing IT services. The proposal was, however, offered at a retail price and therefore did not apply to OAOs. ComReg does not consider that the proposal put forward by eircom regarding the transfer of leased lines to their retail customer as being fit for the purpose for which the Operator originally made their request to eircom for the seamless transfer of a leased line.

3 In-situ Transfer Process

The process envisaged would involve the transfer of the contract for supply of one or more leased lines from a retail customer to another retail customer or to a wholesale customer with those leased lines remaining in-situ with no change of the service provided by the SMP operator.

3.1 Features

ComReg in acting under its obligations under section 12 of the Communications Regulations Act, 2002 (SI 20 of 2002) and in accordance with Regulation 6(1) of the Access Regulations, believes that the in situ transfer process would be of significant benefit to consumers and to OAOs. Accordingly ComReg considers that it should include *inter alia* the following features:

- no interruption of the service
- no physical alteration
- the recipient operator would enter a contract with the customer which would include giving power of attorney to the operator to cease the contract between eircom and the customer (e.g. as currently happens for CPS and Number Portability)
- eircom would supply the recipient operator with a date for cessation of retail billing and commencement of wholesale billing
- if initiated by the customer through their contract with the recipient operator, eircom would invoice the recipient operator with the customer's final bill pertaining to the service being transferred
- the recipient operator would take over all term contracts
- eircom would provide the recipient operator with all details of the existing service provided to the end user (or particular subset of the service relevant to the new contract).

Draft Decision No. 1.

In accordance with Regulation 17 of the Access Regulation, the Commission for Communications Regulation directs that eircom set out its proposals for a cost oriented and efficient in-situ transfer process for leased lines and the corresponding tariffs (pursuant to its obligations under Regulation 12(1) of the Leased Line Regulations). These proposals should be provided to ComReg within three weeks of this direction. The in-situ process will be implemented within one month thereafter.

3.2 Implementation

The introduction of a process for the in-situ transfer of leased lines is of critical importance to competition in the Leased Line market. Discussions have been ongoing for some time between eircom and ComReg on the implementation of such a process. ComReg has outlined at length to eircom the features it envisages as forming the basis for such a proposal. Therefore ComReg requires the introduction of an in-situ transfer process without delay.

Following receipt of the proposals specified in the Direction above, ComReg will convene an industry working group to oversee the implementation of the process and to ensure that it meets industry requirements. This group will complete its work within one month of the receipt of the eircom proposals and the in-situ process will be implemented at that point.

4 Conclusion

ComReg would welcome any comments from interested parties on the proposal and process outlined in section 3 for the in-situ transfer of Leased Lines. All responses to this call for comments should be returned to ComReg by post, facsimile or e-mail on or before 5.30 p.m. on Friday 31 October 2003.

'Reference: Submission re ComReg approach to In-Situ Transfer of Leased Lines'

FREEPOST
Ms. Carol Donohue
Commission for Communications Regulation
Irish Life Centre
Abbey St
Dublin 1
Ireland
Ph: +353 1 804 9600 Fax: +353 1 804 9680
Email: carol.donohue@comreg.ie

Appendix A – Legislation

Regulation 12 of the Leased Lines Regulations, 1998 (S.I. 109 of 1998)

(1) A notified organisation shall, without prejudice to the principle of non discrimination

specified in Article 8.2 of Council Directive 92/44 as amended by Article 2.8 of Directive 97/51, set tariffs for leased lines that-

(a) follow the basic principles of cost orientation and transparency, and

(b) are independent of the type of application which the users of the leased lines implement.

(2) A tariff for leased lines shall, subject to paragraph (3), contain the following elements-

(a) an initial connection charge, and

(b) a periodic rental charge, that is to say, a flat-rate element.

(3) Where tariff elements other than other than the elements specified in paragraph (2) are applied such tariff elements shall be transparent and based on objective criteria.

(4) (a) A tariff for leased lines shall apply to the facilities provided between the termination points at which the user has access to the leased lines.

(b) Where a leased line is provided by more than one telecommunications organisation, half-circuit tariffs, that is to say, from one termination point to a hypothetical mid-circuit point, can be applied.

(5) A notified organisation shall operate and maintain a cost accounting system suitable for the implementation of paragraphs (1), (2), (3) and (4) and which conforms with the provisions of Article 10.2 of Council Directive 92/44 as amended by Article 2.10 of Directive 97/51.

(6) A notified organisation shall provide the Director with such information as the Director requests for the purposes of complying with Article 10.3 of Council Directive 92/44 as amended by Article 2 of Directive 97/51. .

(7) A notified organisation shall not alter or change its cost accounting system unless the prior approval in writing of the Director to such alteration or change has been obtained.

(8) The Director shall provide the Commission with any information requested for the purpose of Article 10.3 of Council Directive 92/44 as amended by Directive 97/51.

(9) The Director may make a declaration that there is effective competition in a leased line market having regard to the tariffs which comply with this Regulation.

(10) Paragraphs (1), (2), (3) and (4) shall not apply-

(a) to an organisation which does not have significant market power as determined by the Director under Regulation 4 in respect of a specific leased line offering in a specific geographic area, or

(b) where the Director makes a declaration under paragraph (9) that he or she is satisfied that there is effective competition in the relevant leased lines market as evidenced by tariffs which comply with the requirements of this Regulation.

(11) A person who contravenes paragraph (1), (3), (5), (6) or (7) shall be guilty of an offence.

Regulation 6(1) of the Access Regulations[2]

6. (1) *The Regulator shall, acting in pursuit of the objectives set out in section 12 of the Act of 2002, encourage and, where appropriate, ensure, in accordance with these Regulations, adequate access, interconnection and interoperability of services in such a way as to –*

(a) promote efficiency,
(b) promote sustainable competition, and
(c) give the maximum benefit to end-users.

Regulation 17 of the Access Regulations

[2] EUROPEAN COMMUNITIES (ELECTRONIC COMMUNICATIONS NETWORKS END SERVICES) (ACCESS) REGULATIONS, 2003 (SI No 305 of 2003).

17. The Regulator may, for the purpose of further specifying requirements to be complied with relating to an obligation imposed by or under these Regulations, issue directions to an undertaking to do or refrain from doing anything which the Regulator specifies in the direction

Regulation 8 of the Access Regulations

(1) Notwithstanding Regulation 38 of the Framework Regulations, an operator shall continue to comply with any obligations concerning access and interconnection under the European Communities (Interconnection in Telecommunications) Regulations 1998 (S.I. No. 15 of 1998), the European Communities (Voice Telephony and Universal Service) Regulations 1999 (S.I. No. 71 of 1999) or the European Communities (Leased Lines Regulations) 1998 (S.I. No. 109 of 1998) applicable to it prior to entry into force of the Access Directive until such time as specific obligations pursuant to Regulation 9 are imposed on any undertaking designated under Regulation 27(4) of the Framework Regulations.

(2) The Regulator shall give such notice as it considers reasonable to any party affected by the amendment or withdrawal of obligations referred to in paragraph (1) as a result of the imposition of specific obligations