



Commission for
Communications Regulation

Direction

'In-Situ' Transfer of Leased Lines

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1 Foreword

The availability of competitively priced leased lines is a prerequisite in an information based economy like Ireland's. As a technology that is utilised by both SMEs and large corporate users alike it is important that they have confidence that the services they can avail of represent the best in both price and quality. ComReg's aim has been to ensure through the promotion of competition that these objectives can be met and sustained.

Developing a process that would allow for leased lines to be transferred on an in-situ basis would be of significant benefit to businesses by allowing 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 to allow customers the ability to select from a range of competing providers and thereby help to 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.

ComReg issued this direction in draft form (See Draft Direction 'In Situ' Transfer of Leased Lines, document number 03/123) in light of the fact that an in-situ transfer process is of interest to both consumers and the industry. This allowed interested parties to comment on the features of such a process in an effort to ensure that the process adopted 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 Overview of the Current situation

This may be 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. They would then subsequently receive service over the second leased line.

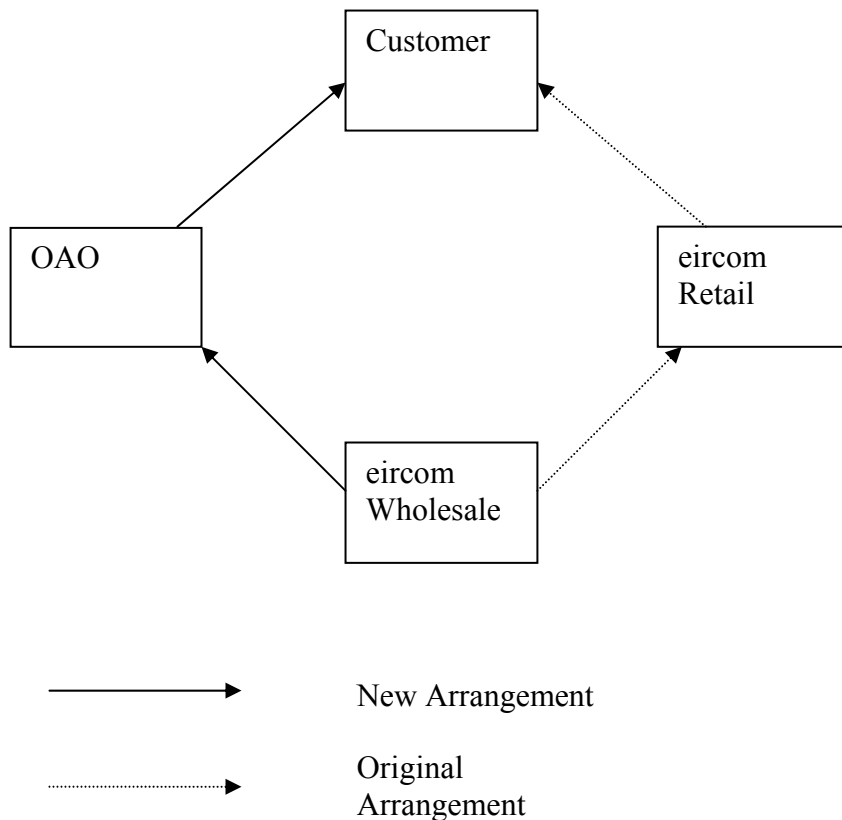
Under the current situation Operator X will pay the full installation charge for the new leased line (even though the infrastructure is already in place) and the customer will typically suffer a break in service i.e. the transfer will not be seamless. ComReg considers that this current process is inefficient, 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 Outline of the proposed in-situ transfer process

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 the process 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 an efficient transfer were to be carried out 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 eircom initially 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 original eircom offer

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. This would also result in the both expensive and unnecessary duplication of infrastructure and services by eircom to the detriment of the efficient provisioning of leased lines.

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 updated suggestion

On the 13th of June 2003 after almost six months of discussion eircom suggested an alternative approach. This proposal was in turn set out in more detail 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

¹ Full text of Regulation 12 is contained in Appendix 1

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

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 Comments from Interested Parties

3.1 Respondents

Comments were received from the following parties;

- Cable and Wireless
- Communications Workers Union
- Equant Network Systems Ltd.
- NTL
- Vodafone Ireland
- Energis
- Esat BT
- Eircom
- ALTO

The Commission wishes to thank all of the respondents to this draft direction for their help in reaching its decisions. The responses are available for inspection at the ComReg office, excluding confidential material that respondents specifically asked to be withheld.

3.2 Respondents Views

Seven out of the nine respondents supported the proposed draft direction on in-situ transfer of leased lines.

A key additional point raised by these respondents was that the direction was that the direction should also cover a wholesale to wholesale process for in-situ transfer. Some of the respondents also requested that A-end and B-end changes should also be allowed i.e. that one end of the leased line or 'tail' of the leased line changes location, but the rest of the line remains in-situ. In this instance, only the part of the leased line that has changed should attract a proportionate installation charge. Respondents made comments on the timescales and on some of the details involved in how the process would work in practice.

Two out of the nine respondents were not however in favour of the proposed draft direction on In-Situ transfer of leased lines.

These respondents made a series of arguments against the draft direction which are summarised below and subsequently discussed in depth.

1. eircom has responded to the requirement of the market for the introduction of a process to allow for in situ transfer of leased lines.
2. The arrangements, proposed in the ComReg draft direction are without precedent in the EU.
3. eircom will fail to recover its significant costs incurred in meeting the customer demand.
4. The proposal will not promote effective competition and instead of creating incentives for infrastructure investment will only create arbitrage opportunities for service competitors contributing little value in the market. This will lead to targeting of the existing market at the expense of new business and market growth.
5. There is no legal basis for the Draft Direction, and as such ComReg has no power to require eircom to implement the measures proposed.
6. The Consultation Process followed in this instance was flawed and unreasonable. The assertion in the Draft Direction that these matters have been adequately aired between the parties in the past year was rejected. This Draft Direction is in effect a Consultation Document and therefore should at a minimum allow 4 weeks in which to prepare a response.
7. The draft direction constitutes a breach of ComReg's statutory duties under Regulation 6 of the Access Regulations 2003 (and Section 12 of the Communications Regulation Act 2002), which states that ComReg shall, inter alia, promote sustainable competition in the electronic communications market. The sole effect of the Draft Direction would be to enable *eircom's* competitors to abuse the wholesale leased lines offering and exploit its efforts in the retail leased lines market, thereby removing any incentive for operators to provide innovative solutions to customer requirements, or indeed for *eircom* to continue to provide services in this market.
8. ComReg's comparison with CPS and number portability is invalid. The CPS carrier is required to provide an element of its own infrastructure. In the case of eircom Retail Leased Lines, the transferred product represents an end to end Retail service provided entirely over eircom infrastructure. The carrier is not providing infrastructure elements for the customer solution.
9. Industry Structure is very different to that outlined in Draft Direction. In the Draft Direction, ComReg provide a diagram to illustrate the relationships that exist in the market. Both eircom wholesale and retail purchase bandwidth from the eircom network. This bandwidth is then developed into products through the addition of pricing packages, sales propositions, customer solution design and maintenance arrangements. These value add elements are very different for both wholesale and retail.
10. There is no evidence from the information contained in Document 03/123 as to whether or not ComReg intend to carry out a Regulatory Impact Assessment as mandated under Policy Direction 6 pursuant to Section 13 of the Communications Regulation Act 2002.

1. eircom has proposed a process to allow for in situ transfer of leased lines.

eircom have offered to provide in situ transfer of leased lines where the price charged to the gaining party is at full retail price reflecting eircom's retail costs. It is argued that this is at least equivalent to the equivalent process offered by BT in the UK. This new takeover process supports outsourcing or facilities management

applications which eircom argues "...should be the only reason why an operator or a customer would require an in situ transfer of leased lines process." As the transferred leased line is charged at full retail price no arbitrage opportunities exist.

Analysis

ComReg have welcomed eircom's proposal for a constructive amendment to their existing leased line processes and agree that it may indeed facilitate outsourcing or facilities management businesses. The process as set out only fulfils part of ComReg's expectations as regards seamless transfer with no loss of service and pricing at order handling costs only. The proposal would however envisage that if the contract was won by a competitor that eircom would recover retail costs from a wholesale service. If this were it allowed to happen, it would not satisfy the principals under pinning cost orientation.

2. The arrangements are without precedent in the EU.

Analysis

Eircom's offer for in-situ transfer meets industry demand in process and customer facing aspects. As eircom points out it bears comparison with BT's offer in the UK. Where it is deficient is in seeking to recover retail costs from a wholesale product which ComReg considers to be inappropriate in the Irish, or indeed any, telecommunications market.

3. eircom will fail to recover its significant costs incurred in meeting the customer demand.

Analysis

This point appears to be based on a misunderstanding of the principles of cost recovery. Retail costs are appropriate for recovery from retail contracts and not from wholesale services. Accurate reference to the Leased Lines Regulations, 1998 and their requirement for cost orientation is followed by the wholly incorrect assertion that this involves retail cost recovery through wholesale charges.

The basis of these respondents' concerns appears to be that the Direction would cause leased line customers to move away from eircom more rapidly than at present. Retail costs associated with the establishment of a leased line contract are typically recovered, inter alia by eircom, through a constant cost element recovered evenly through the service price over an assumed average duration of the contract. If the measure were to reduce switching between operators and average contract durations with eircom were to rise, the incumbent's assumed rate of retail cost recovery would prove excessive and it would earn super-normal profits. If, on the other hand, the measure were to reduce switching costs and make it easier for customers to choose amongst competing suppliers, eircom would have a number of options, including becoming more efficient to reduce its costs, or reducing the level of profits it makes on these services. The initial assertion can only be true if the measure serves to

increase competition. If this proves to be the case a range of remedies exist for eircom to address the situation.

4. The proposal will not promote effective competition

These respondents argue that the Direction will only create arbitrage opportunities for service competitors contributing little value in the market. This will lead to targeting of the existing market at the expense of new business and market growth. By encouraging arbitrage it will discourage facilities investment and will discourage eircom itself from facilities-based competition and retail competition. It will discourage investment in alternative backhaul capability and generate parasitic competition. Eircom will not have the incentive or the ability to invest in its leased line network and will lose business to unfair price competition.

Analysis

There are three themes within this line of argument, one of which is that by creating arbitrage opportunities for OAOs these operators will reduce their investment in competing infrastructure investment. ComReg do not consider this to be a reasonable forecast. It is by no means clear that arbitrage opportunities will arise; for this to be so OAOs must be able to contain their own retail costs to the margins currently available between wholesale and retail rates. The assumption that OAO retail costs are minimal is not borne out by the experience of those operators. Responses by other operators indicate that in situ transfer of leased lines will be followed directly by rearrangements designed to transfer capacity onto their own networks. If these expectations are borne out in practice, as anticipated by ComReg, the development of further competition may well act as a catalyst for further investment in infrastructure.

In a similar vein ComReg does not agree with the forecast that eircom will withdraw from retail leased line competition, conversely we would expect the incumbent to increase its efforts to win customers and provide good quality service.

The contention that eircom would not invest in wholesale capacity to support either its own retail activities or OAO operations would appear to be both unsound and impractical. Wholesale capacity is charged out to both internal and external retailers at a rate including an inbuilt return on capital employed equal to eircom's weighted average cost of capital which guarantees an adequate incentive to invest. Current eircom retail leased line prices have been accepted by ComReg as cost justified and the wholesale prices are set at a discount to these levels, the discount being, as one of these respondents points out, a proxy for avoidable retail costs not incurred by the wholesale product.

One of these respondents notes that while the measure appears "prima facie" to be good for competition it is in fact only good for competition for existing leased lines, which it considers to be 'bad competition', while it is not good for 'good competition' which it equates with new business and the expansion of the overall market. ComReg does not consider that existing users of leased lines would wish to be excluded from the benefits of reduced costs and enhanced service levels just

because this was in some way 'bad competition' not justified through the assumption that 'good competition' equals expansion.

5. There is no legal basis for the Draft Direction, and as such ComReg has no power to require eircom to implement the measures proposed.

These respondents argue variously that ComReg does not have a legal basis to make this direction. They state that retail leased lines and wholesale leased lines are separate products governed by separate terms and conditions and that eircom cannot be required to replace a retail contract with a wholesale contract for the same product.

They argue further that the draft direction constitutes a new obligation not covered by the Leased Lines SI of 1998, whose obligations they acknowledge remain in force, and that it cannot therefore be introduced in advance of the analysis of the market called for by the new regulatory framework. While pointing out that this analysis has yet to be completed they assert that eircom will not be the only operator found to have significant market power in the leased line market, that regional markets may exist in Ireland and that the definition of a wholesale leased line will not correlate to that used in the Draft Direction.

They state that with the recent introduction of Partial Private Circuits sufficient wholesale products exist for effective competition in leased lines and that further measures, such as that embodied in the Draft Direction, are premature and destabilising.

They also argue that the provisions of the Leased Lines Regulations, 1998, do not support the transfer of retail customer contracts into equivalent wholesale contracts.

Analysis

ComReg has no wish to anticipate the outcome of the current activities being undertaken to analyse the leased lines market. Until it is complete the provisions of the Leased Lines Regulations, 1998, remain in force. Under these provisions eircom are obliged to provide wholesale leased lines. In the event that a customer ceases a retail leased line with eircom and an OAO orders an identical wholesale leased line to serve the same customer eircom are obliged to provide it. Historically, eircom's practice has been to do so in a manner which both potentially inconveniences the customer and generates needless costs. Their latest offer of an in-situ transfer process seeks to address these issues to some degree, eliminating as it does pointless costs and disruption. What still remains however is for eircom to acknowledge that the resulting wholesale leased line must be charged at a wholesale rate, that no element of retail cost is appropriate and that they must comply with the obligation of cost orientation set out in the Leased Lines Regulations, 1998. Fundamental to this is that retail costs are not appropriate elements of wholesale charges. The Direction is manifestly not a new obligation, rather an explicit requirement to comply with existing obligations.

Furthermore ComReg has an obligation pursuant to Regulation 6 (1) of the Access Regulations to encourage and ensure adequate access, interconnection and interoperability of services in such a way as to promote efficiency, promote sustainable competition, and give the maximum benefit to end-users.

It is the continuing reluctance by eircom to full comply with their obligations which led to the issue of the Draft Direction.

6. The Consultation Process followed in this instance is flawed and unreasonable.

Eircom rejects the assertion in the Draft Direction that these matters have been adequately aired between the parties in the past year. Eircom considers that its offer for an In-situ transfer process is evidence of their engagement in the issue and of their endeavours to provide a constructive resolution.

These respondents argue that this Draft Direction is in effect a Consultation Document and therefore should at a minimum allow 4 weeks in which to prepare a response.

Analysis

During the period since this issue has been under discussion eircom has despite the numerous and varied steps ComReg have taken to ensure clarity and understanding, refused to fully comply with their obligations. Their latest process offer is as outlined previously suitable for outsourcing and facilities management but does not address the initial requirement which was for a wholesale leased line at wholesale prices. Eircom stipulates that outsourcing and facilities management should be the only reasons why an operator or customer would require a leased line transfer process. ComReg can neither agree with nor find a Regulatory basis for this assertion.

7. The draft direction constitutes a breach of ComReg's statutory duties under Regulation 6 of the Access Regulations 2003 (and Section 12 of the Communications Regulation Act 2002), which states that ComReg shall, inter alia, promote sustainable competition in the electronic communications market.

These two respondents state that the sole effect of the Draft Direction would be to enable eircom's competitors to abuse the wholesale leased lines offering and exploit its efforts in the retail leased lines market, thereby removing any incentive for operators to provide innovative solutions to customer requirements, or indeed for eircom to continue to provide services in this market.

Analysis

As argued above, eircom is adequately remunerated for the investment in its wholesale network capacity and it is the role of ComReg to ensure this. ComReg anticipates that the measure proposed in the Direction will contribute in a small but significant way to the development of leased line competition and that this will in

turn generate additional investment in alternative infrastructure and innovative products and services.

8. ComReg's comparison with CPS and Number Portability is invalid.

Eircom argue that the CPS carrier is required to provide an element of its own infrastructure. In the case of eircom retail leased lines, the transferred product represents an end to end retail service provided entirely over eircom infrastructure. The carrier is not providing infrastructure elements for the customer solution.

Analysis

ComReg referred to CPS and Number Portability in a limited context merely to reference the established practice whereby a gaining operator can inform a losing operator of the customer's wishes to change supplier and the consequential need for the losing operator to facilitate the transfer.

9. Industry Structure is very different to that outlined in Draft Direction

In the Draft Direction, ComReg provided a diagram to illustrate the relationships that exist in the market. eircom would contend that both eircom wholesale and retail purchase bandwidth from the eircom network. This bandwidth is then developed into products through the addition of pricing packages, sales propositions, customer solution design and maintenance arrangements. These value added elements are very different for both wholesale and retail. Eircom provided a counter-illustration indicating the relationships as they see them.

Analysis

This contention appears to be discriminatory, highlighting different treatment of eircom retail and eircom's wholesale customers. It is to counter just such an approach that the measure set out in the Draft Direction was envisaged.

10. There is no evidence from the information contained in Document 03/123 as to whether or not ComReg intend to carry out a Regulatory Impact Assessment

One of these respondents argued that a RIA should be carried out by ComReg as mandated under Policy Direction 6 pursuant to Section 13 of the Communications Regulation Act 2002.

Analysis

As stated previously, the Direction is not a new obligation on eircom, rather an explicit requirement to comply with existing obligations, therefore ComReg does not intend to carry out an RIA under Policy Direction 6 pursuant to Section 13 of the Communications Regulation Act 2002.

3.3 ComReg's Overall Position

ComReg believes that developing a process for the transfer of leased lines on an in-situ basis would be of significant benefit to retail businesses and to other telecommunication service providers alike. Although described previously as a transfer process from an eircom retail customer to an OAO customer, ComReg understands that the same principle could apply in the case of an OAO to OAO transfer or wholesale to wholesale transfer. In fact, in the interests of non discrimination, the process could apply to retail to retail, retail to wholesale, wholesale to retail and wholesale to wholesale transfer of a leased line on an in-situ basis. However, the draft direction which preceded this paper did not describe all the possible forms of in-situ transfer. Therefore ComReg's direction in this paper refers to an in-situ transfer process for 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, i.e. retail to retail or retail to wholesale. In the interests of clarity, this means, a leased line can be transferred from an eircom retail customer to another eircom retail customer on an in-situ basis and also an eircom retail customer can transfer a leased line to an OAO on an in-situ basis (as described in section 2.2).

ComReg would like to address the issue of the other two forms of in-situ transfer namely wholesale to wholesale and wholesale to retail transfer of leased lines on an in-situ basis and give all of industry the opportunity to comment on these forms of in-situ transfer. ComReg will review these comments and, if appropriate, issue a direction (See section 4.2).

ComReg does not envisage the in-situ transfer process allowing for A-end and B-end changes to the line. This would not be consistent with the request in the first instance and the characteristics of such a transfer are quite different (e.g. seamless transfer with no break of service is not possible in this case).

In ComReg's opinion, the process which ComReg have used to make a direction on the in-situ transfer of leased lines has been exhaustive, fair and transparent. It has covered numerous exchanges, discussions and meetings at all levels.

As stated previously, ComReg does not consider and has explained at length why eircom's proposal on the transfer of leased lines from one their retail customer to another is not fit for the purpose for which the Operator originally made their request to eircom for the seamless transfer of a leased line.

4 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.

4.1 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 other telecommunication service providers alike. 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).

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 (eircom to OAO and eircom to eircom) 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.

4.2 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 review the proposal and 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.

As mentioned previously, and in the interest of non-discrimination, ComReg would like to address the issue of the other two forms of in-situ transfer namely wholesale to wholesale and wholesale to retail transfer of leased lines on an in-situ basis. Although a number of respondents have made comments on wholesale to wholesale transfer, ComReg would like to give all industry the opportunity to comment on both the aforementioned forms of in-situ transfer.

ComReg asks interested parties to comment on the following draft decision by Thursday 4th December 2003.

Draft Decision;

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 (OAO to OAO and OAO to eircom) 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.

5 Conclusion

ComReg would welcome any comments from interested parties on the direction in section 4.2 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 Thursday 4th December 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 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.*

Regulation 6(1) of the Access Regulations²

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.*

Section 12 of the Communications Regulations Act, 2002

- 1) *The objectives of the Commission in exercising its functions shall be as follows-*
- (a) in relation to the provision of electronic communications networks, electronic communications services and associated facilities-*
 - (i) to promote competition,*
 - (ii) to contribute to the development of the internal market, and*
 - (iii) to promote the interests of users within the Community,*
 - (b) to ensure the efficient management and use of the radio frequency spectrum and numbers from the national numbering scheme in the State in accordance with a direction under section 13, and*
 - (c) to promote the development of the postal sector and in particular the availability of a universal postal service within, to and from the State at an affordable price for the benefit of all users.*
- (2) *In relation to the objectives referred to in subsection (1)(a), the Commission shall take all reasonable measures which are aimed at achieving those objectives, including-*
- (a) in so far as the promotion of competition is concerned-*
 - (i) ensuring that users, including disabled users, derive*
 - (ii) ensuring that there is no distortion or restriction of competition in the electronic communications sector,*
 - (iii) encouraging efficient investment in infrastructure and promoting innovation, and*
 - (iv) encouraging efficient use and ensuring the effective management of radio frequencies and numbering resources,*
 - (b) in so far as contributing to the development of the internal market is concerned-*

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

- (i) removing remaining obstacles to the provision of electronic communications networks, electronic communications services and associated facilities at Community level,*
- (ii) encouraging the establishment and development of trans-European networks and the interoperability of transnational services and end-to-end connectivity,*
- (iii) ensuring that, in similar circumstances, there is no discrimination in the treatment of undertakings providing electronic communications networks and services and associated facilities, and*
- (iv) co-operating with electronic communications national regulatory authorities in other Member States of the Community and with the Commission of the Community in a transparent manner to ensure the development of consistent regulatory practice and the consistent application of Community law in this field, and*
- (c) in so far as promotion of the interests of users within the Community is concerned-*
 - (i) ensuring that all users have access to a universal service,*
 - (ii) ensuring a high level of protection for consumers in their dealings with suppliers, in particular by ensuring the availability of simple and inexpensive dispute resolution procedures carried out by a body that is independent of the parties involved,*
 - (iii) contributing to ensuring a high level of protection of personal data and privacy,*
 - (iv) promoting the provision of clear information, in particular requiring transparency of tariffs and conditions for using publicly available electronic communications services,*
 - (v) encouraging access to the internet at reasonable cost to users,*
 - (vi) addressing the needs of specific social groups, in particular disabled users, and*
 - (vii) ensuring that the integrity and security of public communications networks are maintained.*
- (3) In carrying out its functions, the Commission shall seek to ensure that measures taken by it are proportionate having regard to the objectives set out in this section.*
- (4) In carrying out its functions, the Commission shall, without prejudice to subsections (1), (2) and (3), have regard to policy statements, published by or on behalf of the Government or a Minister of the Government and notified to the Commission, in relation to the economic and social development of the State.*
- (5) In carrying out its functions, the Commission shall have regard to international developments with regard to electronic communications networks and electronic communications services, associated facilities, postal services, the radio frequency spectrum and numbering.*

(6) *The Commission shall take the utmost account of the desirability that the exercise of its functions aimed at achieving the objectives referred to in subsection (1)(a) does not result in discrimination in favour of or against particular types of technology for the transmission of electronic communications services.*

(7) *In this section, "national numbering scheme" means the scheme administered by the Commission which sets out the sequence of numbers or other characters used to route telephony traffic to specific locations.*

Regulation 17 of the Access Regulations

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 18 of the Access Regulations

(1) Where the Regulator finds that a person has not complied with an obligation under these Regulations or a direction under Regulation 17, the Regulator shall notify the person of those findings and give the person an opportunity to make representations in relation to the notification or remedy any non-compliance, not later than -

(a) one month after issue of the notification,

(b) such shorter period as is agreed by the Regulator with the person concerned or stipulated by the Regulator in case of repeated non-compliance, or

(c) such longer period as may be specified by the Regulator.

(2) The Regulator may publish, in such manner as it thinks fit, any notification given by it under this Regulation subject to the protection of the confidentiality of any information which the Regulator considers confidential.

(3) The Regulator may amend or revoke any notification under this Regulation.

(4) Where, at the end of the period referred to in paragraph (1), the Regulator is of the opinion that the person concerned has not complied with an obligation or direction, the Regulator may, subject to paragraph (13), apply to the High Court for such order as may be appropriate by way of compliance with the obligation or direction. The Court may, as it thinks fit, on the hearing of the application make an order compelling compliance with the obligation or direction or refuse the application. An order compelling compliance shall stipulate a reasonable period for the person to comply with the obligation or direction.

(5) *An application for an order under paragraph (4) shall be by motion and the Court when dealing with the matter may make such interim or interlocutory order as it considers appropriate.*

(6) *The Court shall not deny interim or interlocutory relief solely on the basis that the Regulator may not suffer any damage if such relief were not granted pending conclusion of the action.*

(7) (a) *An application for an order under paragraph (4) or (12) may include an application for an order to pay to the Regulator such amount, by way of financial penalty, as the Regulator may propose as appropriate in the light of the non-compliance.*

(b) *In deciding on such an application, the Court shall decide what amount (if any) of the financial penalty which should be payable and shall not be bound by the amount proposed by the Regulator.*

(c) *Any financial penalty ordered by the Court to be paid by a person under this paragraph shall be paid to and retained by the Regulator as income.*

(d) *In deciding what amount (if any) should be payable, the Court shall consider the circumstances of the non-compliance, including -*

- (i) *its duration,*
- (ii) *the effect on consumers, users and other operators,*
- (iii) *the submissions of the Regulator on the appropriate amount, and*
- (iv) *any excuse or explanation for the non-compliance.*

(8) *Where the Regulator has evidence of non-compliance with an obligation under these Regulations or a direction under Regulation 17 that represents an immediate and serious threat to public safety, public security or public health, the Regulator may issue a direction to the person concerned requiring that the use of such apparatus or part of it, as may be specified in the direction, cease with immediate effect or, on or before such date and time, as may be so specified.*

(9) *A person to whom a direction has been issued under paragraph (8) shall cease to use the apparatus or part of it to which the direction relates, unless and until such direction has been withdrawn by the Regulator, and shall take such measures as may be specified by the Regulator in the direction to remedy the non-compliance.*

(10) *Where the Regulator has evidence of non-compliance by a person with an obligation under these Regulations or a direction under Regulation 17 that will in the opinion of the Regulator create serious economic or operational problems for undertakings or for users of electronic communications networks or services, the Regulator may issue a direction to the person requiring immediate compliance.*

(11) *A person may make representations to the Regulator concerning a requirement made of the person under paragraph (8) or (10) and the Regulator having considered the representations may confirm, amend or withdraw the requirement.*

(12) *Where a person fails to comply with a requirement under paragraph (8) or (10), the Regulator may, subject to paragraph (13), apply in a summary manner to the High Court for an order compelling compliance.*

(13) *Where the Regulator has brought proceedings for an offence under these Regulations or given a notice under section 44 of the Act of 2002 in respect of a failure by a person to comply with an obligation under these Regulations, the Regulator shall not make an application for an order under this Regulation to the High Court to compel compliance by the person with the obligation.*