



Commission for  
**Communications Regulation**

## Draft Decision Notice & Direction

### Local Loop Unbundling

#### Review of eircom's ULMP monthly rental charge

<b>Document No:</b>	<b>04/91</b>
<b>Date:</b>	<b>30 August 2004</b>

All responses to this draft decision should be clearly marked:-  
"Reference: Submission re ComReg 04/91" as indicated above,  
and sent by post, facsimile, e-mail or on-line at [www.comreg.ie](http://www.comreg.ie)  
(current consultations), to arrive on or 5:30 28 September 2004  
to:

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Please note ComReg will publish all submissions with the  
Response to Consultation, subject to the standard confidentiality  
procedure.

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## 1 Foreword

In May 2003, ComReg issued Decision Notice D12/03<sup>1</sup> that directed eircom to amend its pricing submission relating to Local Loop Unbundling ('LLU') products and to implement a price of €14.67 per month. That Decision Notice was the subject of judicial review proceedings in the High Court, which were initiated by eircom. ComReg and eircom settled the proceedings. One of the terms of that settlement was that ComReg would initiate a new process for the purpose setting new LLU prices. The then prevailing price of €16.81 was left in place pending the availability of a new price.

In accordance with the settlement, ComReg initiated a new process for setting prices for LLU, and published two consultation papers on methodological issues relating to Long Run Incremental Costing ('LRIC'). These papers addressed the key points of difference between eircom and ComReg. The most important issue was whether eircom's own costs should be used in the calculations, or whether it should be allowed recover only the costs of an efficient operator. ComReg has now issued a response to these consultations (04/90) in which it states that only efficient operator costs should be used where prices are based on the design of a modern efficient network valued at today's prices. The prices proposed in this document are consistent with this principle.

ComReg has also recently published its conclusions arising from its review of the market for wholesale unbundled access to metallic loops (i.e. the market for Local Loops)<sup>2</sup>. eircom was found by ComReg to have significant market power in this market. Obligations were imposed on eircom by ComReg, including obligations relating to cost recovery, price controls and the obligation for cost orientation of prices. ComReg's findings were notified to the European Commission.

The consultation process and bilateral meetings have now concluded. ComReg is now proposing to set a price of €14.65 for Unbundled Local Metallic Path ('ULMP') monthly rental, which is significantly below where eircom have stated that it believes the price should be. This Draft Decision Notice and Direction proposes to direct eircom to amend its Access Reference Offer ('ARO') to reflect this new ULMP monthly rental charge with effect from 1 December 2004. Given the length of time that it has taken to reach a conclusion on this matter and in the interests of certainty, ComReg proposes that the ceiling for this price would remain fixed in real terms until 1 December 2007. ComReg therefore proposes that eircom be allowed to increase the price by no more than the rate of consumer inflation by reference to the consumer price index ('CPI') in each year up to December 2007.

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<sup>1</sup> D12/03 Decision Notice: Local Loop Unbundling – Review of charges; Document No: 03/55R; Date: 28 May 2003.

<sup>2</sup> Market Analysis: Wholesale unbundled access (including shared access) to metallic loops and sub-loops (Response to Consultation Document 03/146 and Draft Decision) Document No: 04/70: 16 April 2004

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In addition to ULMP monthly rental, there are other monthly rental and ancillary charges relating to LLU that now need to be reviewed. This will take place shortly.

**Interested parties should provide their views on this Draft Decision Notice and Direction by 5:30 p.m., Tuesday 28<sup>th</sup> September.**

**John Doherty,  
Chairperson.**

## **2 Review of eircom's ULMP Monthly Rental Charge**

### **2.1 Review of eircom's LRIC model**

ComReg has completed its review of the eircom LRIC model submitted on 19 December 2003.

In two separate consultations, ComReg sought the views of eircom and industry and set out its own preliminary views in relation to specific issues regarding the appropriate inputs to use in the LRIC costing exercise for LLU pricing<sup>3</sup>. ComReg has set out its conclusions with regard to the matters under consideration in both of those consultations in the document entitled *LLU: Responses to Consultations on Operating Costs, Equipment Costs and Network Design Parameters – Responses to Consultation Papers 04/21 and 04/31* ('the Response to Consultation').

### **2.2 ComReg's position**

Arising from the Response to Consultation and the obligations imposed on eircom as a result of the Market Analysis review process<sup>4</sup>, ComReg now proposes to direct that, eircom amend its Access Reference Offer ('ARO') in accordance with the updated ULMP charges listed in Appendix A.

ComReg proposes to direct that, effective from 1 December 2004 the price of the monthly rental for ULMP should be reduced to €14.65. In the interests of providing stability to the market, ComReg proposes that on each of 1 December 2005, 1 December 2006 and 1 December 2007 eircom may increase the ULMP price by no more than the rate of inflation (CPI). ComReg will review the situation during 2007 and depending on market circumstances and cost data available at that time, may direct a new price any time after 1 December 2007. ComReg will review the evolution of the market during this entire period and, in the unlikely event that substantial unanticipated circumstances arise, may issue further directions in relation to this matter.

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<sup>3</sup> (i) Loop Unbundling Costing Consultation Direct and Indirect Operating Expenditure Econometric Modelling Document No: 04/21 Date: 27 February 2004; and (ii) Local Loop Unbundling Costing Consultation Access Network Design Parameters and Costs of Certain Access Network Elements (Document No: 04/31 Date: 18 March 2004.

<sup>4</sup> D8/04 Market Analysis: Wholesale Unbundled Access (including Shared Access) to Metallic Loops and Sub-Loops; Document No: 04/70; Date: 15 June 2004.

The relevant legal background and the statutory powers of ComReg giving rise to this Draft Decision Notice and Direction are set out in Appendix B of this Draft Decision Notice.

**Draft Direction**

**eircom is directed to amend its ARO on each of 1 December 2004, 1 December 2005, 1 December 2006 and 1 December 2007 in accordance with Appendix A.**

**The effective date of this direction is X<sup>5</sup>**

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<sup>5</sup> To be determined, if appropriate, when ComReg responds to this consultation.

## Appendix A – Schedule of Charges

The following charges shall be published in eircom's ARO and shall be set as final for the relevant periods listed. All charges are exclusive of VAT and are denominated in euro.

<b>ULMP Charge</b>	<b>Period</b>	<b>€ Price (VAT exclusive)</b>
Monthly rental	Effective from 1 December 2004 to 30 November 2005	€14.65
Monthly rental	Effective from 1 December 2005 to 30 November 2006	No greater than €14.65 adjusted by the change in CPI in the year to 31 October 2005.
Monthly rental	Effective from 1 December 2006 to 30 November 2007	No greater than price from previous period adjusted by the change in CPI to the year to 31 October 2006.
Monthly rental	Effective from 1 December 2007	No greater than price from previous period adjusted by the change in CPI to the year to 31 October 2007

## Appendix B – Statutory Powers and Legal Background Giving Rise to Draft Decision Notice and Direction

### A. Legal Background to Draft Decision Notice and Direction

Under the terms of the settlement of the judicial review proceedings<sup>6</sup> ('the Settlement') between eircom Limited ('eircom') and the Commission for Communications Regulation ('ComReg') it was agreed and consented amongst other things, that ComReg would forthwith initiate a new process for the purpose of agreeing with eircom new LLU prices effective from 1 April 2004 or, in default of such agreement, making a new decision fixing LLU prices to be effective from 1 April 2004.

Having regard to the Settlement, ComReg published two consultation documents, to which eircom and industry responded ('the Consultations'):-

1. Loop Unbundling Costing Consultation Direct and Indirect Operating Expenditure Econometric Modelling Document No: 04/21 Date: 27 February 2004 and;
2. Local Loop Unbundling Costing Consultation Access Network Design Parameters and Costs of Certain Access Network Elements (Document No: 04/31 Date: 18 March 2004.

The purpose of the Consultations was to seek the views of eircom and industry in relation to the costs of an efficient operator, having regard to operating expenditure costs and the costs of certain access network elements.

In parallel to the Consultations arising from the Settlement, ComReg, as required by EU law, has also been engaged in the process of carrying out a detailed review of wholesale and retail markets for the provision of electronic communications services<sup>7</sup>. In the document entitled *Market Analysis: Wholesale unbundled access (including shared access) to metallic loops and sub-loops (Designation of SMP and Decision on Obligations)*. Date: 15 June, 2004 ('the SMP Decision') eircom was designated with significant market power on the market for wholesale unbundled access (including shared access) to metallic loops and sub-loops for the purpose of providing broadband and voice services, under the provisions of Regulations 25, 26 and 27 of the Framework Regulations<sup>8</sup>. The SMP Decision also imposed the *ex ante* regulatory obligations on eircom which are set out in Regulations 10, 11, 12, 13 and

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<sup>6</sup> The High Court, 2003 No. 6822P, eircom Limited, Applicant v The Commission for Communications Regulation, Respondent.

<sup>7</sup> See Directive 2002/21/EC of the European Parliament and the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services.

<sup>8</sup> S.I. No. 307 of 2003 the European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2003 which transposes Directive 2002/21/EC of the European Parliament and the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services.



14 of the Access Regulations<sup>9</sup>. The obligations imposed on eircom under Regulation 14 of the Access Regulations include obligations relating to cost recovery and price controls and the obligation for cost orientation of prices. ComReg may under Regulation 14 of the Access Regulations, require prices to be adjusted. Under Regulation 17 of the Access Regulations ComReg may issue directions to eircom to do or refrain from doing anything which ComReg specifies in the direction, for the purpose of further specifying requirements to be complied with by eircom relating to its obligations under the Access Regulations, including those under Regulation 14 thereof.

### **B. Statutory Powers Giving Rise to Draft Direction**

The Draft Direction contained in this Draft Decision Notice and Direction is issued under Regulations 14 and 17 of the Access Regulations, for the purpose of further specifying requirements to be complied with by eircom relating to obligations imposed on eircom, under Regulations 14 of the Access Regulations, pursuant to sections 9 and 12 of the SMP Decision, having regard to sections 10 and 12 of the Communications Regulation Act, 2002, the relevant terms of the Settlement and having taken into account the responses to the Consultations.

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<sup>9</sup> S.I. No. 305 of 2003 the European Communities (Electronic Communications Networks and Services) (Access) Regulations 2003 which transposes Directive 2002/19/EC of the European Parliament and the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities. These obligations are respectively transparency, non-discrimination, accounting separation, obligations of access to and use of specific network facilities and price control and cost accounting obligations.