



Commission for  
**Communications Regulation**

## Response to Consultation and Decision Notice

### **Payphone Access Charge**

#### **Industry Implementation**

|                     |                                       |
|---------------------|---------------------------------------|
| <b>Decision No:</b> | <b>D19/03</b>                         |
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## **1 Foreword**

The Payphone Access Charge (PAC) is a call charge levied on calls from payphones to 1800 free-phone numbers. The PAC provides payphone operators with revenue for 1800 free-phone calls that would otherwise be carried without charge and is designed to cover the costs incurred by the payphone operator in supplying the service to the general public.

At present, eircom payphones levy the PAC for calls to 1800 free-phone numbers, however, until now other payphone operators have not been in a position to levy the PAC. The industry wide implementation of the PAC will allow other payphone operators to recover the costs of supplying their payphone service for calls to 1800 free-phone numbers.

This paper deals with some of the details and requirements that will be used for the industry wide implementation of the PAC.

**Etain Doyle,**  
**Chairperson of the Commission**

## 2 Introduction

The Commission for Communications Regulation (ComReg) is responsible for the regulation of the Irish electronic communications sector in accordance with European and National law. In recent years, the growth of free-phone traffic in the Irish market has raised the issue of payphone operators being in a position to recover the cost of the use of their public payphones when calls are made to free-phone numbers. The implementation of the Payphone Access Charge (PAC) facilitates the recovery of these costs.

ComReg is committed to facilitating the speedy implementation of the PAC for public payphone operators in the Irish market. ComReg believes that this must be implemented with the co-operation of all of industry and be done in robust way which adheres to the existing principals of interconnection.

ComReg has met regularly with industry representatives and has convened an industry forum to develop a solution for the introduction of the PAC on an industry wide basis. A project plan for the implementation of the PAC has been agreed and its implementation will see the introduction of an interconnection product to facilitate the industry wide charging of a PAC in October 2003.

ComReg issued a public consultation<sup>1</sup> on some of the details of the implementation of the charge, in particular, deciding which payphones are PAC eligible, charging transparency issues and other matters. This document constitutes the response to that consultation.

Details regarding the legislative basis for the PAC are set out in Appendix A.

All comments were welcome and 9 responses were received as follows:

- Silvertel
- Telephone Helplines Association
- eircom Ltd
- Esat BT
- Dome Telecom Ltd
- Smart Telecom
- MCI
- NTL
- Ronan Fennessy

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<sup>1</sup> Payphone Access Charge – Industry Implementation (Document Number 03/73)

ComReg wishes to thank everyone who contributed to the consultation. In accordance with the policy set out in Doc 03/32 “ComReg Consultation Procedures” and as indicated in the consultation paper, all responses received are available for inspection (except for material supplied on a confidential basis) at ComReg’s offices.

### 3 Decision Notice Issues

#### 3.1 Definition of Eligible Payphones

In the consultation paper ComReg proposed the following categories for PAC Eligible Payphones:

- Public payphones located on public highways to which the public has access at all times
- Public payphones located in other external locations which may not be public highways but to which the public has unrestricted access at all times
- Payphones in public spaces such as airports, railways, hospitals and bus stations

ComReg proposed the following categories for non-PAC Eligible Payphones:

- payphones in public houses, restaurants and clubs
- payphones in private premises (e.g. rented accommodation, hostels and hotels)
- payphones in private buildings (e.g. lobbies, canteens etc.)
- payphones in shopping malls
- payphones provided where there is a contractual relationship which involves revenue sharing

- Q. 1. Do you agree with the criteria used in the definition of PAC eligible payphones? If not, please give alternatives and also outline your reasoning. Are there other criteria that may be appropriate?**
- Q. 2. Do you agree that the categories of payphones identified above as being PAC eligible? If not, please state why and suggest alternatives.**

##### 3.1.1 Views of Respondents

Most respondents agreed in principle with the criteria used to define payphones, however, a number of respondents made comment on what they saw as inconsistencies in the categories of payphones identified.

For example, ‘payphones provided where there is a contractual relationship which involves revenue sharing’, also usually cover payphones provided in

shopping malls, airports etc. It is not possible to exclude one and include the other.

The majority of respondents who commented on the definition of PAC eligible payphones advocated a more broad approach. They felt that a restrictive definition would lead to a reduction in the level of payphone services available because, in the absence of a PAC, the service may no longer be a viable proposition. Two of the respondents agreed that a location based approach to the definition of a payphone is not a reasonable means of assessing if the payphone is justified in levying the PAC. Irrespective of the location of the payphone, the basic justification for the PAC remains the same (i.e. PAC provides payphone operators with revenue for 1800 free-phone calls that would otherwise be carried without charge and is designed to cover the costs incurred by the payphone operator in supplying the service to the general public).

An approach suggested by the respondents was to adopt a set of requirements for payphone operators and service providers alike in order to set the rules for the imposition of the PAC. This set of requirements could encompass not only the definition of a PAC eligible payphone, but also set any of the requirements necessary surrounding the PAC facility.

### *3.1.2 Commission's Position*

ComReg agree that a simple and clear approach to the definition of a PAC eligible payphone is desirable. ComReg does not wish to impose a restrictive definition of PAC eligible payphones which could lead to a reduction in payphone services offered. The provision of payphone services to the public is identified in the Universal Service Directive<sup>2</sup> and the European Communities (Electronic Communications) (Universal Service and Users' Rights) Regulations 2003 as a key objective of the new regulatory framework for the electronic communications sector. Section 12 of the Communications Act 2002 also emphasises the importance of the universal service, of which public payphone availability is a component. While eircom is designated as the sole universal service payphone provider, the availability of a PAC may encourage or maintain the provision of payphones by all operators.

The PAC provides payphone operators with revenue for 1800 free-phone calls that would otherwise be carried without charge and is designed to cover the costs incurred by the payphone operator for the installation, operation and maintenance, the line rental etc. of the payphone<sup>3</sup>. In the current situation, where these costs are not recoverable from the users of 1800 numbers or the owners of 1800 numbers, there is a risk that such costs will be subsidised by all users.

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<sup>2</sup> Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive)

<sup>3</sup> See document ODTR 00/33, "Direction to eircom on Payphone Access Charge".

The justification for the PAC should be used in order to define which payphones are PAC eligible. Instead of a rigid definition of a PAC eligible payphone which describes either the payphone itself or its specific location, a more broad definition which seeks to define a PAC eligible payphone by way of its availability and the costs incurred in providing the payphone will be used.

ComReg agrees that an appropriate approach to the industry wide implementation of the PAC would be to adopt a set of requirements for payphone operators and service providers in order to set the rules for the imposition of the PAC. This set of requirements would encompass not only the definition of a PAC eligible payphone, but also set out the requirements necessary for the implementation of the PAC facility. The set of requirements would address the following key issues:

- the definition of a PAC eligible payphone
- requirements for an operator to be eligible to levy the PAC
- requirements for transparency
- a process for fraud management of the PAC facility

Please see later sections in this paper for the second, third and fourth bullet point above.

**Decision No. 1.**

**For a payphone to be PAC eligible;**

- 1. The payphone operator must incur the relevant costs of providing the payphone (i.e. the payphone, the line and call charges, maintenance (See Document ODTR 00/33))**
- 2. The payphone must be a ‘public pay telephone’<sup>4</sup> (i.e. a telephone available to the general public for the use of which means of payment may include coins, credit cards, debit cards or pre-payment cards, including cards for use with dialling codes)**

### **3.2 PAC Charging transparency**

In order to permit all interested parties to check the validity of their PAC charges and as a precaution against fraud it will be necessary to implement measures to ensure the integrity of PAC charges.

ComReg proposed a twofold approach to the issue of charging transparency;

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<sup>4</sup> See S. I. No. 308 of 2003 European Communities (Electronic Communications Networks And Services)(Universal Service And Users’ Rights) Regulations 2003



- all payphone operators wishing to levy a PAC must notify ComReg, via their service provider
- the industry will update and have visibility of a database of PAC Eligible Payphones

ComReg would reserve the right to stop the provider from levying the PAC in cases of abuse.

It was proposed that the eligibility criteria for payphone operators wishing their service provider to levy the PAC on their behalf would consist of some or all of the following;

- payphone operator must supply name, address, contact details etc. to their service provider who will in turn notify ComReg
- payphone operator must have complied with the authorisation regulations<sup>5</sup> and any associated arrangements established by ComReg under the General Authorisation Process
- payphone operator must supply listing of payphones on which they intend to levy PAC

**Q. 3. What should the criteria be for evaluation of Payphone Operators by ComReg so as to be eligible to order from eircom the facility to levy the PAC?**

### *3.2.1 Views of Respondents*

The respondents who expressed a view on this question stated that the criteria ComReg outlined should be an element of the set of requirements that any payphone operator would have to sign up to in order to be able to charge the PAC. Two of the respondents stated that a code of practice should be drawn up to incorporate the requirements.

### *3.2.2 Commission's Position*

ComReg agrees that the most appropriate mechanism by which a payphone operator may be eligible to levy the PAC is by agreement to a set of requirements that govern the operation of the PAC facility. As far as the authorisation process is concerned, and for the purposes of clarity, a payphone

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<sup>5</sup> These regulations, which transpose the Authorisation Directive adopted by the EU in April 2002, entered into force on 25<sup>th</sup> July 2003.

operator is an authorised person and a service provider is an authorised person with rights of interconnection.

These set of requirements will be referred to as the “Requirements for levying the PAC”.

Note; As far as non-discrimination is concerned, existing obligations apply.

**Decision No. 2.**

**In order to be eligible to Levy the PAC a service provider (and by way of agreement, the payphone operator, see point 7 below) must adhere to the “Requirements for levying the PAC”. The “Requirements for levying the PAC” is to be drawn up and agreed by the PAC Forum, and shall include the following elements;**

- 1. The service provider must notify ComReg of each of the payphone operators for whom they intend to levy the PAC**
- 2. The service provider must supply company name, address, contact details and confirmation of authorisation<sup>6</sup> to ComReg of the payphone operators for whom they intend to levy the PAC**
- 3. Payphone operators and service providers to payphone operators must assist ComReg in ensuring compliance with these requirements**
- 4. ComReg reserves the right to bar the service provider from levying the PAC in cases of abuse (via a process agreed by industry, see section 3.4)**
- 5. Payphones for which the PAC is levied must comply with the definition of a PAC eligible payphone (See Decision No. 1)**
- 6. The PAC must be levied on all calls to free-phone numbers.**
- 7. Service Providers, before levying the PAC on behalf of a payphone operator, shall ensure that the requesting payphone operator agrees to adhere to all the relevant provisions of the “Requirements for levying the PAC”**

**In drawing up the “Requirements for levying the PAC”, in the event that the PAC forum is unable to reach a decision by September 30<sup>th</sup> 2003, the Forum will submit a report to ComReg. ComReg reserves the right to make a decision on any outstanding issues.**

The reasoning behind having a set of requirements that govern the operation of the PAC facility is to ensure the smooth operation of the facility and also that the charge is levied appropriately.

In order to ensure payphone operators abide by the “Requirements for levying the PAC”, service providers should ensure that payphone operators are aware of and adhere to the “Requirements for levying the PAC”. ComReg will then be in a position to enforce the requirements through the relevant service provider (See point 7 in Decision 2 above).

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<sup>6</sup> See Document number 03/83 “Future Regulation of Communications Networks and Services – Guidelines Relating to General Authorisations”

### **3.3 Incoming free-phone call blocking**

When ComReg originally sanctioned the introduction of the eircom PAC (ODTR 00/33) it directed eircom to offer barring for payphone calls to 1800 free-phone numbers operated by OLOs. ComReg considers that that this facility should continue to be available when the PAC is extended to other payphone operators, i.e. a network operator should be in a position to request that free-phone calls from PAC eligible payphones be blocked. In such an environment, a network operator that originates calls from PAC eligible payphones would, on request from its interconnected operator, bar all free-phone calls from all PAC eligible payphones to that interconnected operator.

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| <p><b>Q. 4. Do you have any comments on the above?</b></p> |
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#### *3.3.1 Views of Respondents*

The respondents were in general agreement with incoming free-phone call blocking.

#### *3.3.2 Commission's Position*

Although all respondents agreed with the proposal, in considering this issue, ComReg believes that the possibility of a situation arising where operators are blocking calls from payphones to free-phone numbers on a widespread basis is not in the interests of the either industry or consumers. ComReg therefore wishes the PAC forum to consider the issue and its consequences. ComReg will bring the issue to the attention of the PAC Forum, which should supply a report to the Commission before the implementation date for the PAC facility of October 8<sup>th</sup> 2003. The Commission will review this report and decide on the approach.

### **3.4 Fraud Prevention**

In the case of alleged abuse of the PAC facility, ComReg proposed the following should happen;

- 1) Any information relating to possible fraudulent activities should be highlighted to ComReg
- 2) ComReg will immediately conduct an investigation and inform the relevant parties
- 3) A payphone operator found by ComReg as having abused the PAC facility will result in suspension of their PAC pending the remedy of any abuse.
- 4) The outcome to the investigation may include one of the following; no case to answer therefore no suspension, suspension of PAC pending remedy of an abuse, for repeated abuse or serious abuse suspension of PAC for all

payphones listed for a particular operator, for a specified period or until ComReg is satisfied that abuse will no longer occur.

**Q. 5. Do you agree with the procedure for dealing with fraudulent activity? If not, please give your reasoning and where appropriate detail alternative mechanisms.**

*3.4.1 Views of Respondents*

Most respondents agreed with the steps outlined above. One respondent felt that timelines associated with the steps outlined above should be included.

*3.4.2 Commission's Position*

ComReg wishes to protect all parties involved in the PAC billing chain from potential abuse. ComReg considers that this can be achieved by adopting measures which would seek to limit attempts to use the facility in a manner for which it is not intended and to deal with such situations. This can be accomplished by placing clear responsibility on adherence by all the parties to the processes and also by setting out the procedure for dealing with alleged abuses.

ComReg feels that the requirements mentioned earlier should be used to detail a process for dealing with fraudulent activity that service providers and payphone operators should be obliged to follow.

It should be noted that a breach of the Requirements for levying the PAC is a breach of Decision 2. Accordingly the normal statutory enforcement mechanisms which apply to breaching directions of ComReg apply.

**Decision No. 3.**  
**A process for dealing with inappropriate use of the PAC facility, based on the steps outlined above in section 3.4, shall be included in the “Requirements for levying the PAC” (see Decision No. 2).**

## **4 Next Steps**

### **4.1 Special Free-phone Scheme**

One of the respondents to the consultation recommended that ComReg consider a special free-phone scheme for ‘not-for-profit’ helplines. The proposed scheme would cater for non profit organisations offering free-phone helplines and may, for example, have the following attributes;

- Its own number range within the 1800 number range so as to be recognisable as a non-profit helpline
- It would not incur the PAC
- Blocked at exchanges from being itemised on mobile and landline bills
- Providers may be disposed to offer the service at cost

ComReg is positively disposed towards such a scheme, however, it would not be appropriate to deal with this issue in this paper. The implications of such a scheme will be considered and following this ComReg will deal with the issue as part of its future work programme. This may involve a meeting with interested parties.

### **4.2 PAC Implementation**

The industry agreed PAC project plan will see the introduction of the PAC for payphone operators for their eligible payphones in October 2003. The decisions made in this paper and the subsequent actions required will be incorporated within current project plan for implementation of the PAC by the PAC forum keeping to the implementation deadline of 8<sup>th</sup> October 2003.

This will be phase 1 of the implementation of the PAC facility. Phase 2 of the project will involve adding the technical capability to levy different levels of the charge by different payphone operators. Phase 2 of the project will commence immediately after phase 1 is complete.

## Appendix A – Legislation Relating to PAC

The national legal framework for the regulation of the electronic communications market, formerly known as the telecommunications market, was revoked on the 25<sup>th</sup> of July 2003 by Regulation 38 of the European Communities (Electronic Communications Networks and Services)(Framework) Regulations 2003 and a new set of regulations have been made by the Minister for Communications, Marine and Natural Resources. These regulations establish a new legal framework in the national context for the electronic communications sector. These are:-

- 1 European Communities (Electronic Communications Networks and Services)(Access) Regulations 2003
- 2 European Communities (Electronic Communications Networks and Services)(Framework) Regulations 2003
- 3 European Communities (Electronic Communications Networks and Services)(Authorisation) Regulations, 2003
- 4 European Communities (Electronic Communications)(Universal Service and Users' Rights) Regulations 2003

These transpose the following Directives:-

- Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive)
- Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive)
- Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive)
- Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive)

The consultation and this response to consultation overlap the changeover to the new regulatory framework. The measures taken in this response to consultation establish a number of requirements for those operators which wish to levy the PAC:-

- Decision 1 set requirements for a payphone to be PAC eligible.

- Decision 2 requires a service providers who wishes to levy the PAC to adhere to a number of requirements titled ‘Requirements for Levying the PAC’ and to ensure adherence with relevant Requirements for Levying the PAC by payphone operators
- Decision 3 requires the incorporation of procedures to deal with fraud in the future into the ‘*Requirements for levying the PAC*’

Regulation 17 of the European Communities (Electronic Communications Networks and Services)(Access) Regulations 2003 permits ComReg 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 ComReg specifies in the direction. Regulation 17 is a statutory power which gives rise to the current measures. There are a number of relevant obligations to the current requirement directions issued in this decision note, these include but are not limited to:-

- ComReg has an obligation under, regulation 6(1) of the Access regulations to amongst other things, promote sustainable competition and give the maximum benefit to end users. For the reasons outline above in the main body of this response to consultation, it is clear that a PAC charge is promotes long term sustainable competition in the payphone market and gives the maximum benefit to all end-users by avoiding the necessity for users of the 1 800 numbers cross-subsidising non-1 800 numbers.

A further and in the alternative obligation:-

- Section 12(1) of the Communications regulation Act 2002 obliges ComReg to promote competition, and to promote the interest of users in relation to the provision of electronic communications networks, electronic communication and associated facilities. These objectives of section 12 are incorporated into the Access Regulations and other Regulations of the new framework.

A further and alternative legal power for the decision arises under Regulation 6(5) of the Access Regulations which deals expressly with access and interconnection in order to secure the policy objectives in s. 12 of the Communications Act 2002. Regulation 17 may be read in conjunction with regulation 6(5). It covers powers such as the Regulation 17 power to issue requirements directions on its own initiative or at the request of industry. According to Regulation 6(5) regulation 17 powers may be used on its own initiative provided it is justified. The justification for the requirement directions is contained in the main body of the text.

The legislature in s. 12(2) of the Communications Act 2002 also provides that ComReg must take all reasonable measures aimed at achieving the objectives

in s. 12(1)(a) of the 2002 Act, including measures to ensure that there is no distortion or restriction of competition in the electronic communications sector and encourage efficient investment in infrastructure, ensure that in similar circumstances, there is no discrimination in the treatment of undertakings, and ensure that all users have access to a universal service. This provides a further and alternative basis for the measures taken.



## Appendix B – List of Directions and Decisions

For ease of reference, the following sets out a list of Directions set out in this Decision Notice

### List of Decisions

|   |    |
|---|----|
| Decision No. 1.   | 7  |
| For a payphone to be PAC eligible;  | 7  |
| 1. The payphone operator must incur the relevant costs of providing the payphone (i.e. the payphone, the line and call charges, maintenance (See Document ODTR 00/33))  | 7  |
| 2. The payphone must be a 'public pay telephone' (i.e. a telephone available to the general public for the use of which means of payment may include coins, credit cards, debit cards or pre-payment cards, including cards for use with dialling codes)  | 7  |
| Decision No. 2.   | 9  |
| In order to be eligible to Levy the PAC a service provider (and by way of agreement, the payphone operator, see point 7 below) must adhere to the "Requirements for levying the PAC". The "Requirements for levying the PAC" is to be drawn up and agreed by the PAC Forum, and shall include the following elements; | 9  |
| 1. The service provider must notify ComReg of each of the payphone operators for whom they intend to levy the PAC   | 9  |
| 2. The service provider must supply company name, address, contact details and confirmation of authorisation to ComReg of the payphone operators for whom they intend to levy the PAC   | 9  |
| 3. Payphone operators and service providers to payphone operators must assist ComReg in ensuring compliance with these requirements   | 9  |
| 4. ComReg reserves the right to bar the service provider from levying the PAC in cases of abuse (via a process agreed by industry, see section 3.4)   | 9  |
| 5. Payphones for which the PAC is levied must comply with the definition of a PAC eligible payphone (See Decision No. 1)  | 9  |
| 6. The PAC must be levied on all calls to free-phone numbers.   | 9  |
| 7. Service Providers, before levying the PAC on behalf of a payphone operator, shall ensure that the requesting payphone operator agrees to adhere to all the relevant provisions of the "Requirements for levying the PAC"   | 9  |
| In drawing up the "Requirements for levying the PAC", in the event that the PAC forum is unable to reach a decision by September 30 <sup>th</sup> 2003, the Forum will submit a report to ComReg. ComReg reserves the right to make a decision on any outstanding issues.   | 9  |
| Decision No. 3.   | 11 |
| A process for dealing with inappropriate use of the PAC facility, based on the steps outlined above in section 3.4, shall be included in the "Requirements for levying the PAC" (see Decision No. 2).   | 11 |