Commission for
Communications Regulation

Premium Rate Services
Consultation on Industry Levy

Consultation

Reference:	ComReg 13/53
Version:	Final
Date:	07 June 2013

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

Legal Disclaimer

This Consultation is not a binding legal document and also does not contain legal, commercial, financial, technical or other advice. The Commission for Communications Regulation is not bound by it, nor does it necessarily set out the Commission's final or definitive position on particular matters. To the extent that there might be any inconsistency between the contents of this document and the due exercise by it of its functions and powers, and the carrying out by it of its duties and the achievement of relevant objectives under law, such contents are without prejudice to the legal position of the Commission for Communications Regulation. Inappropriate reliance ought not therefore to be placed on the contents of this document.

Content

Section **Page**

Annex

Page

1 Introduction

1 Premium Rate Services ("*PRS*") are typically goods and services that a consumer can buy by charging the cost to their fixed line or mobile telephone account, whether pre-paid or bill-paid. At present most PRS are provided via premium rate telephone numbers (starting with the prefix 15XX) and short-codes (in the form 5XXXX) but technological developments now result in some PRS being charged to consumer mobile phone accounts without recourse to premium rate shortcodes. PRS usually offer information and entertainment services, some examples of which are digital content such as games and videos delivered to mobile handsets, quiz television services, chat-line services, ringtones, sports alerts, weather alerts, television voting and competitions. However, recent advancements allow consumers to pay for mobile apps and game credits as well as "off-handset"[1] goods and services such as parking fees by charging the cost to their mobile phone account.

2 On 12 July 2010, the regulation of PRS was placed on a statutory footing with the enactment of the Communications Regulation (Premium Rate Services and Electronic Communications Infrastructure) Act, 2010 (the "*PRS Act"*). The PRS Act also amended the Communications Regulation Act, 2002 to 2010 (the "*Principal Act"*), which sets out the Commission for Communications Regulation's ("*ComReg*") objectives, functions and many of its powers.

3 The amendments to the Principal Act resulting from the enactment of the PRS Act included the addition of the following provisions;

a. ComReg's singular statutory objective with respect to PRS is "*to protect the interests of end users of PRS*", and

b. ComReg may make an order imposing a levy on PRS providers for the purpose of meeting expenses properly incurred by ComReg in the discharge of its function in relation to PRS.

[1] "Off-handset" goods and services is a colloquial term used to refer to PRS where no goods or services are delivered to the end users handset and can include, for example, parking fees, vending machine charges or road toll charges.

4 Granting ComReg the power to levy the PRS industry for the purpose of meeting expenses properly incurred by ComReg in the discharge of its function in relation to PRS maintains the funding framework that was in place under the previous co-regulatory regime prior to the commencement of the PRS Act. Under the former PRS framework, the industry was levied to meet the properly incurred expenses of the regulator. Following the commencement of the PRS Act, ComReg decided to maintain the levy arrangements that existed at that time until such time as the regulatory framework had been settled with the introduction of a new Code of Practice ("*Code*"). ComReg published the new Code on 5 April 2012 and the Code came into force, in full, on 25 July 2012.

5 The purpose of this consultation is to set out ComReg's proposals and seek submissions from interested parties in relation to the levy regime that would apply to *specified PRS*[2]. The effect of the proposals outlined in this consultation would be to increase the levy rate so as to ensure ComReg's expenses, properly incurred, are met. The manner in which it is proposed to calculate the levy should also be appropriate for the development new PRS such as those where PRS is used as a means of payment for goods and services. The consultation also sets out ComReg's proposals to update and standardise the levy information that is provided to ComReg in order to further reduce the administrative burden on both ComReg and PRS providers.

6 ComReg now invites responses from all stakeholders to this consultation on the provisions of a new Levy Order that will apply to PRS and, in particular, whether the Draft Levy Order is objective, transparent, and proportionate. In due course, ComReg will publish a Response to this consultation, having carefully considered responses received. If, at this time, ComReg considers it appropriate, it may also publish a Decision in the form of a new Levy Order.

7 Responses to this consultation must be received at ComReg not later than 4.00 pm on Friday, 12 July 2013. Further details are provided in Section 8 below.

[2] Specified PRS are PRS that are regulated and required to be licensed in accordance with Section 6 of the PRS Act. Specified PRS are defined in Regulations and set out in Annex 1 to this consultation.

2 Executive Summary

2.1 Background and Legal Basis

8 On 12 July 2010, the regulation of PRS was placed on a statutory footing with the enactment of the PRS Act. The PRS Act also amended the Principal Act, which sets out ComReg's objectives, functions and main powers and provided that ComReg may impose a levy on PRS providers for the purpose of meeting expenses properly incurred by ComReg in the discharge of its functions in relation to PRS.

9 Under the provisions of the PRS Act ComReg's first obligation was to introduce a new Code with respect to the provision, content and promotion of specified PRS, to be to be followed by PRS providers. ComReg decided to maintain the levy framework that existed at that time until such time as the regulatory framework had been settled with the introduction of the new Code and, therefore, it published an "Interim Levy Order"[3].

10 ComReg published the new Code on 5 April 2012 which came into effect, on 25 July 2012. ComReg, therefore, now considers it appropriate to consult on a new levy framework for PRS. ComReg is particularly aware of the proliferation of mobile handsets, coupled with industry developments, which now allow consumers, notable in other jurisdictions, to use their mobile phone accounts as an alternative means of paying for "mainstream" goods and services such as vending machines, travel tickets and tolls, online game credits and donating money to charities. In short, PRS can be a convenient means for paying for everyday goods and services. ComReg is of the preliminary view that the levy framework proposed in this consultation is objective, proportionate and justified[4] having regard to ComReg's objective to protect the interests of end-users of PRS and the primary purpose of the levy which is for ComReg to meet its expenses properly incurred in the discharge of its functions with respect to PRS.

11 In a previous consultation on the Scope of PRS Regulation[5], which was conducted prior to the commencement of the PRS Act, ComReg committed to consulting on a new levy for PRS and highlighted that the levy raised from the PRS sector is for the purpose of meeting expenses properly incurred by ComReg in the discharge of its functions in relation to the regulation of the PRS sector, in accordance with the provisions of Section 30 of the Principal Act.

[3] SI 339 of 2010 http://www.irishstatutebook.ie/pdf/2010/en.si.2010.0339.PDF
[4] Considering ComReg's powers under Section 30(2A) of the principal Act and ComReg's functions and objectives under Section 10 and 12, respectively of the Principal Act.
[5] ComReg document 10/27 http://www.comreg.ie/_fileupload/publications/ComReg1027.pdf

12 Also in a previous response to consultation[6], ComReg highlighted that the Interim Levy Order only applied to specified PRS[7] that are provided via premium rate numbers and premium rate shortcodes but any new Levy Order would apply to all specified PRS, including those that are provided without premium rate shortcodes or premium rate numbers.

2.2 Market Trends

13 In Section 3 of this paper, ComReg provides details of recent market developments that ComReg considers may indicate the possibility for expansion in the market, which would follow a significant decline over the recent past. The basis for growth indicators is in the proliferation of mobile handsets and the roll-out of “direct-carrier-billing” (“DCB”) PRS in Ireland by mobile network operators (“MNOs”), whereby subscribers can charge the cost of goods and services to their phone account.

2.3 Cost of Regulation

14 Section 4 of this document, sets out ComReg’s projected costs for regulating the PRS sector for the period July 2012 to June 2013. These costs are published on an annual basis by ComReg on its main website www.comreg.ie.

15 ComReg’s activities in the PRS sector are predominantly compliance related, which is driven by issues raised by consumers and identified through proactive monitoring, which requires ComReg to intervene by investigating the promotion and provision of a PRS and determining whether or not the PRS is being provided in accordance with the provisions of the Code.

16 ComReg continuously operates in an efficient manner; the level of expenditure is kept to a minimum and is subject to continual review with a tight budgetary control process to ensure it achieves value for money including the use of competitive tendering processes where external services are required.

[6] ComReg document 10/50 http://www.comreg.ie/_fileupload/publications/ComReg1050.pdf
[7] Specified PRS are those PRS that are subject to PRS regulation (similar to *controlled PRS* in the UK) and as such are required to be licensed in accordance with Section 6 of the PRS Act.

17 At present the levy does not fully meet the costs ComReg incurs while discharging its statutory function in relation to PRS. ComReg reported a levy deficit (i.e. expenditure over income) of €462,000 for the financial year ending June 2011 with a projected deficit of similar magnitude for the financial year ending June 2012. ComReg also forecasts that this trend will continue for the current financial year with the levy income projected to fall some €350,000 short of meeting ComReg's projected costs for the year ending June 2013. In order to meet its costs properly incurred in the discharge of its duties with respect to PRS, ComReg estimates that an increase in the order of 38% in levy income is required.

18 To address this situation, ComReg proposes to increase the levy rate in order to meet its expenses properly incurred in the discharge of its function relating to the regulation of PRS. ComReg also proposes to amend the basis on which the levy is charged. If it transpires that this means of calculating the levy rate does not prove adequate insofar raising sufficient income to cover ComReg's PRS-related expenses, then it remains for ComReg to make appropriate changes to redress the situation, which may include further consultation and subsequent levy orders.

2.4 Main Proposals

19 At present, the levy on the majority of PRS[8] is calculated at 1.8% of the total cost of the PRS (ex VAT). This amount is collected by the relevant network operators, which are, by definition[9], PRS providers and is submitted monthly in arrears to ComReg. Under the provisions of the Interim Levy Order the levy amount is paid equally between network operators and their contractual partners.

20 This consultation document proposes a number of amendments to the existing levy framework, which ComReg considers are objective, transparent and proportionate[10]. The key proposals in this consultation are set out below.

[8] Some low value PRS that are provided over the 1512 and 1520 prefixes are levied at 0.5% but these are addressed separately in the consultation.

[9] Section 3 of the PRS Act refers.

[10] Considering ComReg's powers under Section 30(2A) of the Act and ComReg's objectives functions under Section 12 of the Act.

New Framework for Calculating the Levy

21 ComReg is proposing to introduce a new framework in respect of how the levy is calculated and applied. At present, the PRS levy of 1.8% is applied to the total cost (to the consumer) of the PRS (ex VAT and as explained above this was based on the framework established by RegTel[11]). It is ComReg's preliminary position that the network operator's share ("retention") of the total cost of the PRS is a consistent and representative measure of the margin that all PRS providers receive from a particular PRS. In this regard, it is proposed to calculate the levy with respect to the network operator's revenue share.

22 Publicly available information[12] indicates that, typically, network operators, having deducted VAT, retain a considerable portion of the total cost of a PRS. The amounts that network operators retain ("**retention**") and pay out to other PRS providers ("**outpayment**") depends on individual contractual arrangements, which consider commercial factors such as the nature of the PRS, whether it is voice or SMS-based, and the traffic volume i.e. the number of calls (voice or text) in a particular period. This information is consistent with that available to ComReg, which indicates that similarly, considering the PRS industry as a whole, the retention by network operators is, on average, 33% of the total cost of the PRS ("**industry-average retention**"). As such, a levy rate of 7.5% of the industry-average retention of 33% approximates to a levy rate of 2.5% under the existing levy framework, which is based on a percentage of the total cost of the PRS (i.e. 7.5% of 33% = 2.48%).

23 Therefore, ComReg's proposal that the levy should be calculated at 7.5% of the network operator's retained portion of the revenue from the PRS would represent the necessary increase to the levy that is required for ComReg to meet its properly incurred expenses and is equivalent to a levy rate of 2.5% under the existing levy framework. This proposed 7.5% levy rate of the network operators retained portion of the cost of a PRS, would also apply to DCB PRS from which ComReg has not previously collected a levy.

---

[11] The previous regulator of PRS prior to the commencement of the PRS Act.

[12] Report for PhonepayPlus *UK Phone-paid services market: current conditions and future trends* Analysys Mason December 2008.

Network Operators Own PRS

24 Where a network operator provides its own PRS then it could be assumed that the network operator will retain the total cost of the PRS (ex VAT) as there is no other PRS provider to which the network operator has to make an “outpayment”. However, in such cases, if ComReg were to calculate its levy on the portion of the cost retained by the network operator it would be equivalent to the total cost of the PRS (ex VAT). This would be unjustified and disproportionate, when compared to all other PRS in which the network operator plays a role, where the proposed 7.5% rate would only apply to a portion of the total cost (on average 33% across the industry) retained by the network operator.

25 To ensure that the levy rate is proportionate for network operators own PRS, ComReg is proposing to apply a 2.5% levy rate to the total cost of the PRS (ex VAT). In this manner ComReg proposal is to apply a levy rate to PRS that are provided solely by network operators that approximates to that which applies to PRS that are provided by a number of PRS providers i.e. 7.5% of the industry-average retention of 33% = 7.5% of 33% = 2.48% of the total cost.

PRS accessed via 1512 and 1520 prefixes

26 A different levy rate currently applies to PRS that are accessed via 1512 and 1520 prefixes. ComReg considers that the proposed levy framework, where the levy rate is based on the network operators retained portion of the total cost of the PRS will cater for all PRS such as those accessed via 1512 and 1520 prefixes. Accordingly, ComReg considers that PRS accessed via these prefixes should no longer be subject to a different levy rate (of 0.5%) to other PRS but should instead, for the purposes of proportionality and as a way of simplifying the levy process, be charged at the same rate and in the same manner as all other PRS. This proposal would ensure that the levy rate is proportionate and non-discriminatory, as it applies in the same manner across the industry.

Division of the Levy between relevant PRS Providers

27 While ComReg proposes that the levy amount payable is calculated as a percentage of the amount that the network operator retains, it is not ComReg’s intention nor is it a requirement of the Draft Levy Order that the entire burden of the levy would fall on the network operator. However, ComReg also proposes that network operators would, in accordance with current established practices, retain the responsibility to collect and submit the levy to ComReg. ComReg further proposes that it is no longer necessary for it to stipulate how network operators and other PRS providers should share the cost of the levy and considers that such matters are, at this time, best left to commercial negotiations.

Donation to Charitable Organisations

28 Fundraising through the use of PRS has become common and increasingly popular for charitable organisations. ComReg is currently considering whether to consult on designating discrete shortcode and premium rate number ranges to be used solely for the purposes of PRS that facilitate consumers making a payment to charitable organisations. It appears that such discrete and predefined number ranges may benefit consumers by allowing them to identify the nature and purpose of the PRS and may also assist network operators for billing and accounting purposes.

29 In circumstances where the network operator retains a portion of the cost to the end user, then under the proposed levy framework, the levy that would apply is calculated as a percentage of the network operator's retention. However in circumstances where a network operator may decide to forego its "normal" retention, then ComReg's proposal would mean that the net impact of the levy would be zero (0) as the network operator's retention would be zero (0).

Reporting Levy Information

30 Finally, ComReg is inviting submissions to its proposals to amend the current levy reporting practices. Currently network operators (fixed and mobile) submit returns, monthly in arrears, to ComReg setting out the relevant volumes and tariffs of the specified PRS that are provisioned on their networks and pay the relevant levy amount to ComReg. While ComReg proposes to maintain the requirement for network operators to collect and submit the levy to ComReg, it is also proposing that the levy amounts should be calculated and submitted to ComReg at quarterly intervals rather than on a monthly basis. This proposal is intended to bring the PRS levy reporting structure into line with the general telecommunications levy and also to further reduce the administrative burden on network operators, while retaining the current established practice whereby network operators collect the levy on behalf of all PRS providers and submit it to ComReg.

31 ComReg is also inviting submissions regarding the information that is provided in the levy reports which are submitted to ComReg by the various network operators. In the main these reports are similar but there is merit in standardising the information and the layout which is provided. The purpose of the proposed amendments is that greater efficiency can be achieved by automating the levy reporting and calculation process, through IT development by ComReg in due course. ComReg is also seeking submissions on the medium and file format in which that levy reports should be provided.

3 Background and Legal Basis

3.1 ComReg's Objectives and Functions

32 The application of the PRS levy, as set out in the Principal Act is for the purposes of meeting expenses properly incurred by ComReg in the discharge of its functions in respect of PRS, which are set out in Sections 10 and 12, respectively, of the Principal Act.

Functions of Commission

10.—(1) The functions of the Commission shall be —

[..]

(cb) to ensure compliance by premium rate service providers with their obligations in relation to the provision, content and promotion of premium rate services,

(d) to carry out investigations into matters relating to—

[..]

(ii) the provision, content and promotion of premium rate services,

(2) The Commission may carry out an investigation referred to in subsection (1) either on its own initiative or as a result of a complaint made by an end user or an undertaking.

(3) The Commission shall have all such powers as are necessary for or incidental to the performance of its functions [under this or any other Act.

Objectives of Commission

12.—(1) The objectives of the Commission in exercising its functions shall be as follows—

[..]

(d) to protect the interests of end users of premium rate services.

[..]

> *(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.*

33 ComReg's power to raise a levy comes from the Principal Act and Section 30(2A) of that Act provides that;

> "*(2A) For the purpose of meeting expenses properly incurred by the Commission in the discharge of its function in relation to premium rate services, the Commission may make an order imposing a levy on premium rate service providers.*"

In practical terms an order means a statutory instrument ("SI") which would impose a levy on PRS providers.

3.2 PRS Levy Background

34 Prior to the transfer of regulatory responsibility for the PRS sector to ComReg with the enactment and commencement of the PRS Act in July 2010, PRS providers were subject to a levy, imposed by the then regulator, RegTel. The purpose of this levy was to fund RegTel's activities, which were limited, by definition, to regulating PRS that were provided over a premium rate number (i.e. a number with the prefix 15XX) or a premium rate shortcode (i.e. a five-digit shortcode in the 5XXXX range).

35 A levy of 1.8% was applied to the cost of regulated PRS, less VAT (note: a rate of 0.5% was applied to lower cost PRS that were provided on the 1520 or 1512 access codes). Each network operator collected and submitted the levy to RegTel on a monthly basis by deducting the relevant amount before dividing the remainder (i.e. the total cost to the consumer less VAT and the levy), according to contractual commercial terms, between itself and the PRS provider.

36 In addition to calculating and collecting the levy, Network Operators also submitted a report, monthly in arrears, to RegTel, which provided details on the volumes of traffic across premium rate numbers (or ranges of numbers) and premium rate shortcodes.

3.3 Changes Introduced under the PRS Act

37 The PRS Act introduced a new definition of PRS, which is broader than what existed under the RegTel regime and the consequence of this new definition is that certain PRS, which were not previously regulated by RegTel, are now regulated by ComReg and, therefore, would also be subject to any new PRS levy.

38 ComReg consulted on the "Scope of Premium Rate Services (PRS) Regulation" in April 2010 and published its response to this consultation on 9 July 2010 in ComReg document 10/50[13]. ComReg set out[14] those PRS that would be subject to PRS regulation and such PRS are defined as *specified PRS*[15]. ComReg also highlighted that some PRS that were not previously subject to regulation by RegTel, would, by virtue of the change in how PRS are defined in the PRS Act, now be regulated by ComReg and, therefore, would be subject to pay a levy once a levy consultation process had concluded.

39 ComReg's position with respect to PRS that were not previously subject to a PRS levy was articulated in paragraphs 6.16 to 6.19, inclusive, of document 10/50, as follows;

"Section 16 of the Act amends section 30 of the Communications Regulation Act 2002, as amended and provides that ComReg may impose a levy on PRS providers for the purpose of meeting expenses incurred by ComReg in the discharge of its functions to regulate PRS. It is standard policy for ComReg to consult on any Levy Order that it issues, however it is also reasonable that ComReg would not wish to allow for a "levy holiday" during the period in which that consultation is being conducted. For this reason, ComReg intends to continue the levy framework currently operated by RegTel until such time as a consultation on the levy can be completed.

ComReg will, therefore, issue an Interim Levy Order that will maintain the existing levy mechanism with the following exceptions;

(i) those PRS that are currently subject to RegTel's levy, but will be exempted from regulation, based on ComReg's definition of specified PRS.
(ii) those PRS that will be subject to PRS regulation based on ComReg's definition of specified PRS but are not currently subject to RegTel's levy, will also not be subject to the Interim Levy Order.

[…]

ComReg also considers it fair and proportionate that "new" services that will become subject to regulation as a result of a change in the regulatory regime, based on ComReg's definition of specified PRS, should not be subject to a PRS levy until such time as a consultation has been concluded.

[13] Available http://www.comreg.ie/_fileupload/publications/ComReg1050.pdf
[14] Communications Regulation (Licensing of Premium Rate Services) Regulations, 2010 (SI 338 of 2010) http://www.irishstatutebook.ie/pdf/2010/en.si.2010.0338.PDF
[15] The definition of *specified PRS* is set out in Regulation 3 of the latest regulations, SI 111 of 2012, which came into force on 5 June 2012 and attached at Annex 1.

In summary, those PRS set out in sub-para (i) above will not be subject to the "final" Levy Order to be published following a levy consultation, however those PRS set out in sub-para (ii) above will, in time, be subject to the "final" Levy Order."

40 As such, ComReg clearly indicated that *specified PRS*, which were previously not subject to regulation by RegTel would now be subject to regulation and, pending a levy consultation would also be subject to the new PRS Levy Order. The introduction of a new Levy Order, following this consultation, will regularise the situation that currently exists, whereby PRS that do not use premium rate shortcodes are not subject to the levy but the levy does apply to similar or identical PRS that are charged with the use of premium rate shortcodes. One particular category of PRS that would not have been subject to regulation by RegTel but, because of the change in definition introduced under the PRS Act, is subject to regulation and will be subject to the new Levy Order are PRS that are charged directly to consumer's mobile phone accounts, without recourse to premium rate numbers or shortcodes. Such PRS are, typically, referred to as "*direct-carrier-billing*" ("DCB"), "*direct-to-bill*" (D2B), "*direct-on-bill*" or "*charge to mobile*". For the purposes of consistency, such PRS will be referred to as "*direct-carrier-billing*" or DCB in this document.

41 In addition, another such category of PRS may be where a network operator provides "on-portal" or "own portal" services, which ComReg takes interprets to mean PRS that are provided by a network operator solely to their own customers and not customers that are subscribed to other networks. For the purposes of this consultation, such PRS are referred to as "own services" and are defined as any premium rate service provided solely by the undertaking (network operator[16]) that directly receives payment from the end user for the premium rate service.

42 ComReg also addressed the matter of "on-portal" PRS in its consultation on the scope of PRS. ComReg's preliminary position was that such MNO "on portal" PRS will be classified as *specified PRS* if the price charged is in excess of the €0.25 cent price threshold. However, ComReg also proposed that MNO "on-portal" PRS provided by subscription services will be specified PRS regardless of price charged (i.e. the €0.25 cent price threshold will not apply).

43 Having considered the responses received, ComReg set out its final position in paragraphs 3.92 to 3.94 of document 10/50, as follows;

"Responses received to this question both agreed and disagreed with ComReg's preliminary position. The absence of evidence of consumer harm is not surprising as, to date, MNO "on-portal" services have been outside the

[16] Network Operators are Undertakings as defined by Section 2 of the Principal Act.

remit of RegTel and, therefore, no complaints relating to such services have been recorded by RegTel.

MNO's host third-party content on their portals and there is no evidence to suggest that on-portal sites are a lower risk to consumers. In addition, commercial relationships between customer and provider (i.e. the MNO) and general consumer law provisions are not considered sufficient to protect users of on-portal PRS. ComReg does not consider that the existence of a customer and provider relationship provides satisfactory grounds to exempt "on-portal" PRS from regulation as harm can still be caused and such services should be subject to the provisions of the Code and the licence. Further, ComReg is also cognisant of its obligation to regulate in a non-discriminatory manner and therefore considers it necessary to include "on-portal" specified PRS.

Therefore, ComReg's position is that MNO "on-portal" PRS will be specified PRS if the price charged is in excess of the €0.25 cent price threshold. However, ComReg notes that MNO "on-portal" Services provided by subscription service will be specified PRS regardless of price charged (i.e. the €0.25 cent price threshold will not apply)."

44 The matter of scope of PRS regulation is not for consideration in this consultation and ComReg believes that its classification of *specified PRS* continues to be appropriate for the Irish PRS market at this time. ComReg is committed to ensuring that regulation is reasonable, proportionate and non-discriminatory and will, therefore, keep market developments under consideration and will, if and when it is considered appropriate, consult again in the future on the scope of what PRS are required to be licensed[17].

45 ComReg's first priority, as required under Section 15(1) of the PRS Act, was to publish, as soon as practicable, a new Code to be followed by PRS providers. As set out above, in order to provide some certainty to industry at this time, ComReg decided to maintain the existing RegTel levy structures pending the finalisation of a new Code at the conclusion of the consultation process. Accordingly, ComReg published an Interim Levy Order[18] in July 2010 maintaining the status quo for levy payments.

[17] Section 7 of the PRS Act provides
7.—(1) The Commission shall make regulations specifying—
(a) the class or type of premium rate services which require to be licensed under section 6,
(b) conditions (including the basis and circumstances upon which refunds may be made to end users) to be attached to licences to be observed by the holders of licences,
(c) that certain conditions do not apply to certain classes or types of premium rate services or premium rate service providers, and
(d) the information that licensed premium rate service providers shall, upon request, provide to the Commission.
[18] SI http://www.irishstatutebook.ie/pdf/2010/en.si.2010.0339.PDF

46 The new Code was introduced in full on 25 July 2012 after a comprehensive consultation process. With the Code now in place, ComReg is consulting on the provisions of a new levy order, as it said it would, the provisions of which will apply to all *specified PRS* i.e. PRS that are required to be licensed, in accordance with Section 7 of the PRS Act, and subject to regulation.

3.4 Market Trends

47 As set out in further detail in Section 4 below, the PRS market in Ireland contracted over recent years. There are, however, indications that the market has now stabilised, albeit at a smaller size than when it was at its peak five years ago. There are also indications internationally that recent market developments provide some grounds for a prediction that the PRS market may expand in the coming years. The basis for growth indicators is in the proliferation of mobile handsets and the roll-out of "*direct-carrier-billing*" ("DCB") by mobile network operators ("MNOs") whereby subscribers can charge the cost of an increasing variety of goods and services to their phone account. Such purchases via DCB are sometimes referred to as "micro-payments".

48 Although there is limited DCB currently available in Ireland, ComReg is aware of the introduction of DCB by network operators in other jurisdictions, which suggest the potential for growth in the PRS market in the coming years. Such DCB may include the following;

- Cinema
- Parking
- Tolls
- Content
- Games
- Movies
- Apps
- Physical goods
- Vending
- Postage
- Fast Food
- Taxi charges
- Classified ads
- Car history check
- Charitable Donations
- TV Voting
- Anti Virus Software

49 Recent research[19] indicates that the number of payments made using a mobile phone is increasing rapidly. Subscribers around the world are increasingly using personal mobile devices for broadband and to pay for services and goods. The global market is expected to grow from USD ($) 200 billion in 2012 to exceed USD ($) 800 billion in 2017. Revenues from mobile content alone (such as mobile phone apps, for example), monetised through DCB, is expected to rise from USD $2 billion last year (2012) to more than USD $13 billion by 2017, according to a new report from Juniper Research[20].

50 It should be noted that while the concept of using "mobile money" to pay for goods and services is widely adopted in developing countries[21], in the developed world, DCB is competing against established alternative mobile payment methods (such as debit cards and credit cards) which charge the vendor rates of approximately 2% on the total cost of the transaction.

51 However, even in developed economies, teenagers, for example, represent a significant section of the population without bank accounts and DCB can provide them with a convenient payment method for goods and services, particularly digital content such as mobile apps.

52 The predicted growth in DCB revenue during the next 10 years may have the potential to replace the revenue that premium rate SMS currently provides and DCB may become an alternative to credit card and bank-based payment methods. However, while it is evident that the ubiquity of mobile handsets offers an opportunity for new revenue streams for network operators, it is unlikely to happen without network operators investing in their DCB systems so that they can compete with other mobile payment options (DCB is competing against established alternative mobile payment methods (such as credit cards) with charge rates of almost 2% compared with rates greater than 10% currently charged by network operators)[22].

3.5 Elements that Comprise the Cost of PRS

53 The various elements that comprise the total cost of a PRS are graphically illustrated in Figure 1 below and for the purposes of ComReg's proposals regarding how the levy should be calculated, set out in section 5, the following terms will apply;

---

[19] *Direct carrier billing: giving CSPs a share of the mobile payment market;* Analysys Mason March 2013.

[20] *Mobile Content Business Models - OTT & Operator Strategy & Forecasts 2013-2017*; Juniper Research March 2013.

[21] e.g. In sub-Saharan Africa – 16% of all adults (and 31% of adults with bank accounts) have used mobile banking to receive money or pay a bill in the past 12 months (source *Direct carrier billing: giving CSPs a share of the mobile payment market;* Analysys Mason March 2013).

[22] *Direct carrier billing: giving CSPs a share of the mobile payment market;* Analysys Mason March 2013.

a. “**Revenue**” is the sum received by a network operator (Undertaking[23]) in respect of or attributable to the provision of a PRS (ex VAT), including any sum that may be due to third parties, arising out of the provision of the PRS;

b. “**Retention**” or “**network revenue**” is the sum retained by a network operator having paid all sums due to third parties, arising out of the provision of the PRS;

c. “**Outpayments**” are sums payable by network operators to third parties in respect of revenue generated by PRS;

d. “**Own service**” is any PRS provided by a network operator or through any associated company or any connected company or person.

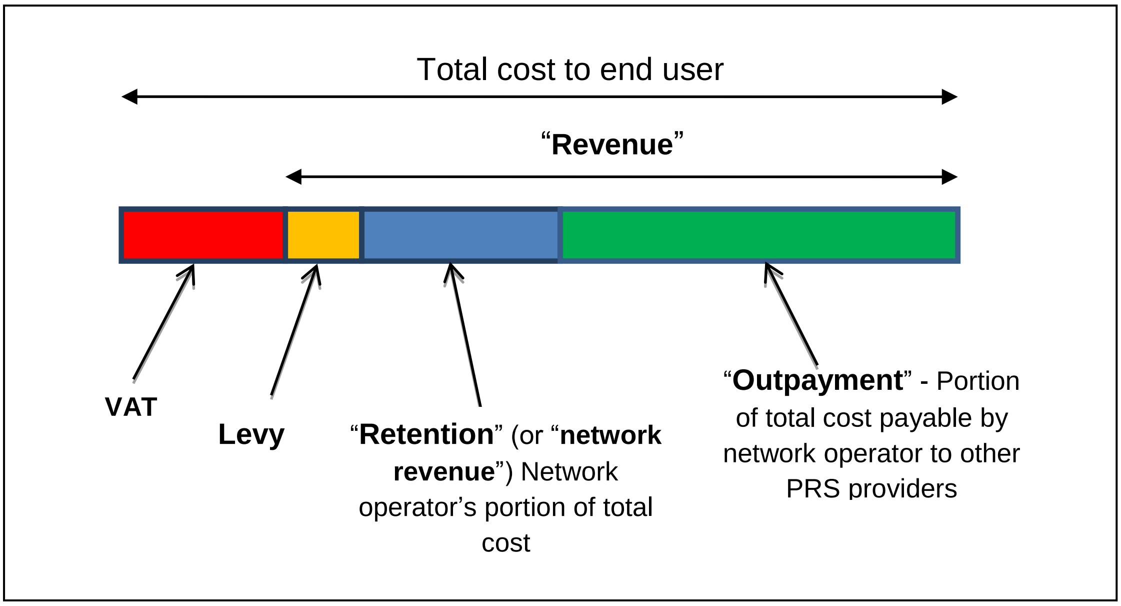

Figure 1 – Defining the elements of the cost of a PRS

Network Operators Own Services

54 It is, however, possible that a network operator that directly receives payment from the end user for a PRS is the sole provider of the PRS. For the purposes of ComReg’s proposals, set out in section 5 below, it is necessary to highlight to the differences between “own PRS” and other PRS, where there are a number of defined PRS providers involved, in how the cost of a PRS is divided.

55 In these circumstances there would, in effect, be no “outpayment” and the network operator that provides the PRS would retain the full cost of the PRS, ex VAT and the levy. This scenario is illustrated in Figure 2 below;

[23] “Undertaking” has the meaning assigned to it by Section 2 of the Principal Act.

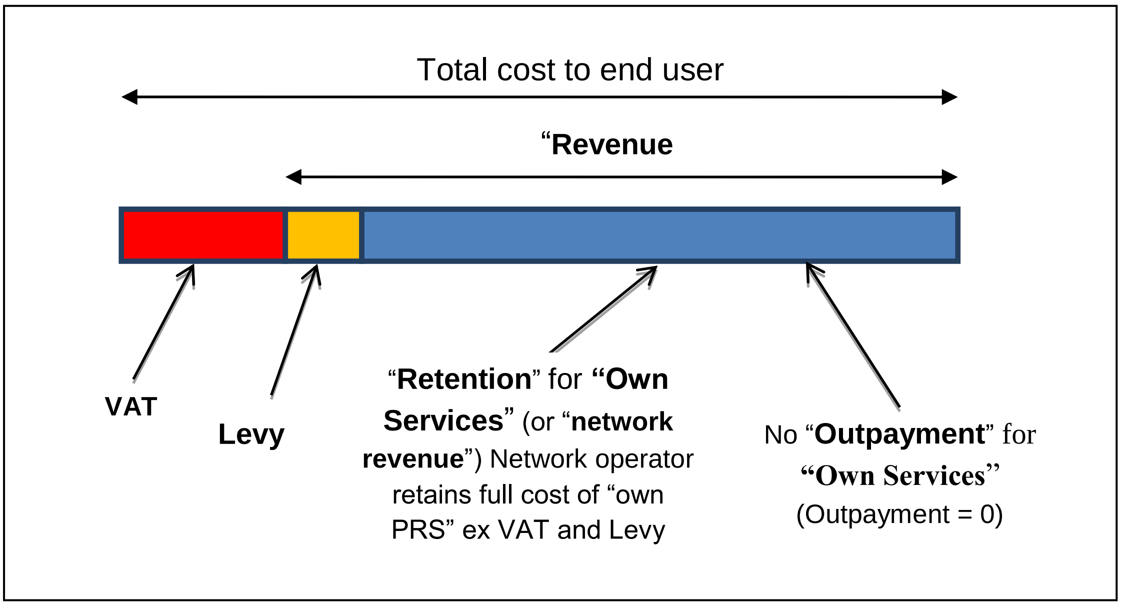

Figure 2 – Elements of the cost of a Network Operators "Own PRS"

56 Some network operators own PRS include, for example,

a. Vodafone's "*Super IOU*" which allows Vodafone pre-pay subscribers to avail of a €4 overdraft top up. The €4 credit advance is deducted from their next top up and end users are charged €0.30 for the service.

b. Meteor's Music Store, which enables Meteor's customers to access music content made available to them by Meteor (e.g., via Meteor Mobile Internet and similar portals) by way of downloading to a mobile phone, personal computer, personal digital assistant or other access device (an Access Device) and charging the cost to their mobile phone account.

4 Cost of Regulation

4.1 Control of Expenditure

57 ComReg operates in an efficient manner in relation to PRS regulation and the level of expenditure is kept to a minimum. ComReg applies continuous and rigorous scrutiny of its costs and its financial statements are audited by the Comptroller and Auditor General. ComReg is also under a specific statutory duty[24] in carrying out its functions to seek to ensure that measures taken by it are proportionate having regard to the objectives set out in section 12[25] of the 2002 Act.

58 ComReg must, however, meet its statutory requirements, which may result in both PRS providers and ComReg, incurring costs that did not exist prior to the enactment of the PRS Act. For example, ComReg is required to operate a licensing scheme for PRS providers, in accordance with Section 6 of the PRS Act, which places an administrative burden on both PRS providers and ComReg. ComReg has strived to minimise this burden and costs by making the process as efficient as possible by developing its "*eLicensing*" system, which manages the licensing of PRS. ComReg will continue to seek efficiencies in its processes and procedures without reducing its ability to fulfil its statutory obligations.

59 Other statutory requirements, which did not exist prior to the enactment of the PRS Act, and which add to the overall cost of regulation include, but are not limited to,

a. the increased scope of PRS as per the legislative framework, which has increased the monitoring, compliance and licensing scope of ComReg, which needs to be resourced,

b. the requirement for ComReg to consult with PRS providers, other interested persons and, as it considers relevant, other regulatory bodies in the State on any new provisions of the Code[26],

c. the requirement, on some occasions, to liaise with and consult regulatory bodies in other EU jurisdictions and the EU Commission before taking any enforcement actions against a PRS provider, established in another member state.

[24] Section 12(3) of the Principal Act.
[25] Section 12(3) of the Principal Act states "*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.*"
[26] Also the requirement to notify any new provisions of the Code to the EU Commission.

60 ComReg requires appropriate staffing and expertise to carry out its regulatory functions[27], which include conducting investigations to ensure compliance by PRS providers with their obligations in relation to the provisions, content and promotion of PRS. End users raise approximately 12,000 PRS-related issues with ComReg annually, which accounts for approximately one-third of all issues raised with ComReg (ComReg also regulates the electronic communications and postal sectors). ComReg currently has 6 full-time members on its PRS team working solely on PRS issues with additional use of legal staff, customer care staff, and other technical expertise where required. ComReg considers this level of staffing is the minimum that is required to meet its statutory objective[28] to protect the interests of end users of PRS.

61 ComReg does not have the powers to impose fines on non-compliant PRS providers and, therefore, all PRS providers are currently subject to the same levy rate, irrespective of whether they attract and require more regulatory resources than others and in this regard, ComReg’s resourcing and corresponding levy is proportionate to the size, scale and activities of the entire PRS sector in Ireland.

4.2 Projected Cost of Regulation and Levy Income

62 In its most recent Annual Report[29] ComReg reported that the PRS industry was valued at approximately €60 million in 2010/2011, which was down from €81 million in 2009, as reported by the previous regulator, RegTel, in its last Annual Report for the financial period ended 31 March 2009. In its 2009 Annual Report, RegTel also noted that the market had declined by 14% from the previous year, ended 31 March 2008. The market has therefore declined by approximately 36% over the period March 2008 to June 2011.

63 While this decline is undoubtedly attributable to the general decline in the economy, with consumers being more discerning about how they spend their money, the research[30] that ComReg conducted in 2011 indicated a persistent lack of trust for PRS among a portion of the population, at that time. This finding has negative implications for the wider industry as it impacts on consumers decisions to engage with all PRS.

[27] In accordance with Section 10 of the Principal Act.
[28] In accordance with Section 12 of the Principal Act.
[29] http://www.comreg.ie/_fileupload/publications/COMREGAR10-11.pdf
[30] Quantitative research http://www.comreg.ie/_fileupload/publications/ComReg1151a.pdf and Qualitative research http://www.comreg.ie/_fileupload/publications/ComReg1151b.pdf

64 The impact of the decline in the overall market size is reflected in ComReg's levy income. In its annual report for the financial year ended 30 June 2011, ComReg reported an operating deficit of some €432,000 in the amount raised through the PRS levy and a deficit of similar magnitude is expected for the financial year ending 30 June 2012.

65 In addition, ComReg's Annual Financial Forecast, which it routinely publishes on www.comreg.ie estimates the costs of regulating the PRS sector for the financial year July 2012 to June 2013, to be in the order of €1.3 million[31], which based on current levy income estimates, would again see a levy shortfall in the order of €350,000. In the context of a reduced PRS market size, it is evident that some changes to the levy rate, and potentially to the levy framework, are required in order for ComReg to properly meet its costs.

66 In these circumstances, ComReg considers that it is necessary and justifiable to propose to increase the existing levy while ensuring that the levy rate and framework is proportionate for all types of PRS. In this regard, ComReg sets out and considers a number of options that are available to it in the following section.

[31] It should be noted that this forecast was drafted in the first half of 2012 with the information available at that time.

5 Examination of Issues

5.1 Summary of Issues

67 As set out in Section 4, it is apparent that ComReg needs to increase its levy income if it is to meet the costs it incurs regulating the PRS sector. Consequently, ComReg must examine the most appropriate ways in which to do this. Therefore, ComReg has had to consider the following issues;

1. Examine whether the current basis of calculating the levy should be maintained having consideration for market developments,

2. Whether the same levy rate should apply to all PRS, considering that some classes or types of PRS may have a greater potential for consumer harm, and

3. Following from an examination of the first two issues, what levy rate should apply having regard for ComReg's projected costs.

68 ComReg has examined these issues below and the impact of ComReg's proposals is laid out in further detail in the RIA in section 7 of this paper.

5.2 Issue 1 – The Basis for Calculating the Levy

Current Means of calculating the Levy

69 The current procedure for calculating the levy is illustrated in Figure 3 below;

Terminating Cost to Consumer[32]	Cost to Consumer ex VAT @ 23% (A)	Levy Amount e.g. Applicable Levy Rate of 1.8% (B)	PRS Providers Revenues = (A) – (B)
€1.00	€0.813	€0.813 x 1.8% = €0.0146	= €0.7984

Figure 3 – Current calculation of the Levy Amount

[32] Because of call originating charges, PRS that comprise voice services, which are accessed via premium rate numbers with 15XX prefixes, may cost the end user more than the terminating cost but for the purposes of calculating the levy the levy rate is applied to the cost of the PRS determined by the network which hosts the premium rate number.

70 Currently, the relevant network operator submits the appropriate levy amount with a report to ComReg that sets out the volume of PRS provided on each of the premium rate numbers and shortcodes. After deducting VAT, the PRS levy and its share of the total cost to the consumer, the network operator distributes the remaining revenue to the next PRS provider, with which it is contracted, if any.

71 The 1.8% levy rate has been in force for a number of years and was carried over from the previous regime that existed before the enactment of the PRS Act. Using the example from Figure 3 above, assuming a total cost to the consumer for the PRS is €1 and, for the purposes of this example, the network operator retains the industry-average 33% of the cost of the PRS, then, the disbursement of this cost under the current levy framework is as follows;

	Existing Framework
Cost to the Consumer	€1.000
Less VAT @ 23%	€0.187
“Revenue” subject to Levy	€0.813
Less Levy @ 1.8% of “Revenue”	€0.015
	€0.798
Comprised of "Retention" @ 33% of Revenue	€0.268
"Outpayment"	€0.530

72 However, by focussing solely on the total cost of a PRS, this overlooks the amount that PRS providers may derive from the provision of a service. ComReg is concerned that simply increasing the current levy rate within the existing framework would not be appropriate. It considers that while it may have been appropriate for the PRS industry at the time it was implemented there is now an opportunity for ComReg to introduce a new framework that addresses its needs and better fits the changing structure of the PRS industry.

Alternative means of Calculating the Levy

73 As set out previously in this paper, the current levy income does not meet ComReg’s properly incurred costs of regulating the sector and the projected income shortfall for the current financial period is estimated to be in the order of €350,000. Therefore, in order to meet the costs of the resourcing that is required under a statutory regulatory framework, ComReg is required to increase the levy but proposes to do so in a more proportionate manner than by simply raising the percentage rate that applies to the total cost of the PRS.

74 When the levy is based on the total cost of the PRS, this takes no account of any of the PRS provider's margin, which may be a fraction of the total cost. It is in this context that ComReg proposes aligning the levy to the network operator's margin (retention), which ComReg considers is a consistent representative measure of all PRS provider's revenues.

75 Publicly available information[33] indicates that, typically, network operators, having deducted VAT, retain a considerable portion of the total cost of a PRS. The amounts that network operators retain for themselves ("retention") and pay out to other PRS providers ("outpayment") depends on individual contractual arrangements, which consider commercial factors such as the nature of the PRS, whether it is voice or SMS-based, and the traffic volume i.e. the number of calls (voice or text) in a particular period. This information is consistent with that available to ComReg, which indicates that similarly, considering the PRS industry as a whole, the retention by network operators is, on average, 33% of the total cost of the PRS ("industry average retention").

76 To illustrate how the proposed means of calculating the levy is intended to operate, if the levy rate was set at 5.6% of the industry-average retention (33%), this would be equivalent to the current 1.8% rate of the total cost as set out in the table below;

	Existing Framework	**Proposed Framework**
Cost to the Consumer	€1.000	€1.000
Less VAT @ 23%	€0.187	€0.187
"**Revenue**" subject to Levy	€0.813	€0.813
Less **Levy** @ 1.8% of "**Revenue**"	€0.015	
Less **Levy** @ 5.6% of "**Retention"**		€0.015
	€0.798	€0.798
Less "**Retention**" @ 33% of Revenue	€0.268	€0.268
"**Outpayment**"	€0.530	€0.530

It should be noted that while ComReg proposes to maintain the current arrangements whereby network operators, which are PRS providers by definition, collect and submit the levy to ComReg, it is not ComReg's intention that the entire burden of the levy will fall on network operators but is a sum to be shared by all providers involved in the provision of a PRS.

[33] Report for PhonepayPlus *UK Phone-paid services market: current conditions and future trends* Analysys Mason December 2008.

77 ComReg considers that its proposal to calculate the levy with respect to the network operator's retention should, as well as for existing PRS, also provide a more proportionate manner than currently exists for calculating the levy for new types of PRS, where the network operators may retain a much smaller portion of the total cost. Set out below are the relevant calculations in a scenario where a mobile phone app, costing €1, is bought through a PRS and the network operator's retention rate is, for the purposes of this example, assumed to be 8% of revenue. In this example, the levy rate is again assumed to be 5.6% of retention, which is equivalent to the current levy rate where the industry-average retention is 33%.

	Existing Framework	**Proposed Framework**
Cost to the Consumer	€1.000	€1.000
Less VAT @ 23%	€0.187	€0.187
"**Revenue**" subject to Levy	€0.813	€0.813
Less **Levy** @ 1.8% of "Revenue"	€0.015	
Less Levy @ 5.6% of "**Retention**"		€0.004
	€0.798	€0.809
Less "**Retention**" @ 8% of **Revenue**	€0.065	€0.065
"**Outpayment**"	€0.733	€0.744

78 In this example, under the existing levy framework ComReg's levy would represent 23% of the network operator's retention (i.e. €0.015 / €0.065). However, the proposed levy framework, where the levy rate is related to the network operator's retention, should represent a more proportionate manner of calculating the cost to be borne by PRS providers.

Summary Issue 1

79 Having consideration for the factors set out above and the market trends in section 3 ComReg has set out two options on how the levy should be calculated, as follows;

a. Option A Maintain current practices and calculate the levy as a percentage of the total cost of the PRS, or

b. Option B Calculate the levy as a percentage of the portion of the cost that the network operator, by definition a PRS provider, retains.

80 Considering that ComReg's current levy rate of 1.8% on the total cost of the PRS is estimated to result in an annual deficit in the order of €350,000, approximate calculations indicate that using this model the levy rate would have to be increased to approximately 2.5% in order for ComReg to cover the costs it incurs in the regulation of the PRS.

81 ComReg considers that to continue to calculate the levy based on a percentage of the total cost to the end user (ex VAT) of the PRS, may be disproportionate and as a result render the provision of some PRS, which may have relatively high price, commercially unviable as the total price may not reflect the revenues that the PRS providers derive. In these circumstances where the PRS providers' (including network operators) portion of the cost of the PRS to the consumer may be considerably less that the industry-average retention of 33%, ComReg's current levy rate of 1.8%, before even evaluating the case for a higher rate in the order of 2.5% may be disproportionate. ComReg, therefore, considers that there is merit to directly relating the levy to the revenue derived from the PRS by the network operator and not to the total price of the PRS as currently applies.

82 ComReg considers that network operators, particularly mobile network operators, are critical parties to the provision of PRS and the development of the PRS industry. As such, ComReg considers that its proposal to align its levy to the portion of the PRS that the network operator retains should help to maintain and increase the levy income for ComReg as required, while ensuring that the levy is proportionate to all PRS and the way in which the PRS industry operates and is developing.

83 To this end, it is ComReg's preliminary position is that Option A is preferable and the basis for calculating the levy should be amended. Accordingly, ComReg proposes that the levy payable to ComReg should be directly linked to the share of the revenue that network operators derive from the provision of PRS. ComReg considers that this proposal should ensure that ComReg's levy is not disproportionate with respect to the total cost of the PRS or the revenues that the various PRS providers derive from the provision of the PRS.

Q. 1 Do you agree with ComReg's proposal to base the levy rate as a proportion (%) of the amount retained by network operators ("retention")? Please give reasons to support your view.

5.3 Issue 2 – Should the Same Levy Rate Apply to All PRS

84 While the application of a percentage rate to the cost of the PRS is a straightforward and convenient means of calculating the levy, under the current levy arrangements it results in a higher levy being placed on higher value PRS. Similarly, the proposed arrangements would result in a higher levy being placed on those PRS where the network operator has a high retention.

85 However, it does not necessarily follow that higher value or higher retention PRS will require greater regulatory oversight and intervention. ComReg could, therefore, consider applying the levy based on its assessment of the potential risk that particular types of PRS hold for end users. The aim of such an approach is to apply a higher levy to those PRS that are considered likely to pose a greater risk of consumer harm and, therefore, require greater regulatory resourcing. This approach would represent a departure from the current practice of applying the same levy rate to all PRS, regardless of any assessment for the regulatory resourcing required for particular types or classes.

86 The options available to ComReg are, therefore, to

a. <u>Option A</u> apply the same levy rate to all PRS, or

b. <u>Option B</u> apply different levy rates to certain PRS based on an assessment of the regulatory resourcing required to provide oversight to these services.

87 While further information is set out in the RIA, in summary, ComReg does not consider this Option B to be a viable option due to;

a. the dynamic nature of the PRS industry and the low barriers to entry, which may result in new PRS emerging after a levy has been set,

b. the fact that it would be very difficult for ComReg to conclude where the most risk exists, and

c. these factors could lead to a disproportionate levy being applied to PRS that do not have a high risk of regulatory intervention to prevent consumer harm.

88 For these reasons and those set out in the RIA, ComReg proposes to apply the same levy rate to all PRS.

Q. 2 Do you agree with ComReg's preliminary position that the same levy rate should apply to all PRS? Please give reasons to support your view.

5.4 Issue 3 – The Appropriate Levy Rate

89 A set out in section 4 above, based on the latest information available ComReg forecasts a levy shortfall in the order of €350,000 for the current financial year (ending June 2013) and in the context of a reduced PRS market size, it is evident that changes are required in order for ComReg to meet its properly incurred expenses.

90 With the introduction of a new levy order, there is a possibility that ComReg's levy income will increase as some MNOs have already introduced DCB PRS, which do not require the use of premium rate shortcodes. Such PRS were, by definition, outside the scope of regulation under the previous regulatory regime that existed before the commencement of the PRS Act. However, although now subject to PRS regulation, this class of PRS is not currently subject to the provisions of the Interim Levy Order, which maintained the *status quo* at the time when the PRS Act commenced in July 2010.

91 PRS provided using this relatively new technology will now be subject to any new levy order when it is finalised at the conclusion of this consultation process. Although ComReg has clearly identified a decline in the PRS market during the period 2008 to 2011, inclusive, ComReg notes that the market has stabilised and the recent introduction of DCB by MNO's provides some scope for increased activity and growth in the PRS market. In any event it should lead to an increase in the levy income as there were PRS that have not previously been levied.

92 It is difficult, however, for ComReg to accurately determine the scale of any such growth – it may be similarly difficult for PRS providers to accurately predict what levels of growth may be achieved and for this reason, the proposed levy rate is calculated with respect to the current market size and ComReg's forecasted expenses. It should be noted, however, that the provisions of the Principal Act[34] state that where there is a surplus of levy income, ComReg can either retain the surplus and offset it against the levy obligations for the following year or proportionately refund to the providers on whom the levy is imposed.

93 Based on the activity in the current PRS market, in order to meet its properly incurred expenses, ComReg estimates that a 7.5% levy rate calculated as percentage of the network operators retention, will be is required.

[34] Section 30(5) of the Principal Act.

94 The following table illustrates the financial comparison between ComReg's current levy framework, which applies a 1.8% levy to the cost to the consumer (ex VAT) and the proposed levy rate and framework, which calculates the levy as 7.5% of network operator's retention rate. This proposed 7.5% rate would, on average, represent a levy increase from the current arrangements of approximately 5 cents (€0.05) in every €10 submitted to ComReg, as illustrated below;

	Existing Framework	**Proposed Framework**
Cost to the Consumer	€1.000	€1.000
Less VAT @ 23%	€0.187	€0.187
"**Revenue**" subject to Levy	€0.813	€0.813
Less **Levy** @ 1.8% of "**Revenue**"	€0.015	
Less **Levy** @ 7.5% of "**Retention**"		€0.020
	€0.798	€0.793
Less "**Retention**" @ 33% of **Revenue**	€0.268	€0.268
"**Outpayment**"	€0.530	€0.525

i.e. under the previous framework PRS providers were levied 1.8% of the total cost, which provided ComReg with a levy of €0.015 per euro cost to the consumer. Under the proposed framework and 7.5% levy rate, this would, on average, result in ComReg receiving €0.020 per euro; an increase of €0.005 cents or €0.05 per €10 cost to the consumer.

Q. 3 Do you agree with ComReg's proposal to apply a levy rate of 7.5 % of the network operator's retention? Please give reasons to support your view.

5.5 Network Operators Own Services

95 As set out in section 3 above, it is possible that a network operator may itself provide a PRS, without the involvement of any other PRS provider. In such circumstances there would, in effect, be no "outpayment" and, as such, the levy rate would apply to a much larger portion of the total cost of the PRS than if the network operator made an "outpayment" to another PRS provider. This scenario is illustrated in the table below

	Proposed Framework
Cost to the Consumer	€1.000
Less VAT @ 23%	€0.187
"**Revenue**" subject to Levy = "**Retention**" for Own Services	€0.813
Less Levy @ 7.5% of "Revenue" i.e. "Retention"	€0.061
"Retention" net of Levy	€0.752

96 In such cases, while the levy would still amount to 7.5% of the retention (i.e. €0.061 / €0.813), it would, however, also amount to 7.5% of the cost to the consumer (ex VAT i.e. €0.061 / €0.813). ComReg considers that this would clearly represent a disproportionately high amount and would discriminate against network operators own PRS relative to those provided by third party PRS providers, where the retention would be less resulting in a lower levy amount.

97 In this regard, ComReg is proposing, for the purposes of determining the levy that should apply to network operators own services, that the current practice of calculating the levy by applying a percentage rate to the total cost of the PRS to the end users (ex VAT) should be retained. In order to broadly equate the levy rate that applies to network operators own PRS with that which ComReg proposes to apply to all other PRS, ComReg further proposes to apply a levy rate of 2.5% to the total cost to the consumer (ex VAT), which is calculated as follows

Industry-average retention rate (33%) x Proposed levy rate (7.5%) = 2.5% of Revenue

Q. 4 Do you agree with ComReg's proposal to apply a 2.5% levy rate to the total cost of the PRS (ex VAT) for network operators own PRS? Please give reasons to support your view.

5.6 Division of the Levy between relevant PRS Providers

98 While it is proposed that the levy is calculated at 7.5% of the network operator's retention, this does not imply that the network operator alone bears the burden of the levy. The provisions of Section 30(2A) of the Principal Act provides that ComReg may place a levy on PRS providers for the purposes of meeting expenses properly incurred in the discharge of its functions with respect to PRS and ComReg proposes, in accordance with current and established practices, that networks will be responsible for calculating and submitting the levy to ComReg. However, the burden of the levy amount can be distributed throughout the PRS "value-chain" according to individual commercial arrangements. In summary, whether a party bears the burden of the levy is not determined by whether that party has been assigned the task of collecting and paying over the revenue.

99 Currently, the Interim Levy Order stipulates that the levy amount is shared equally between the network operator, which collects the levy on behalf of ComReg, and any contractual partner that it is engaged with to provide the PRS. In this manner the PRS levy must be shared equally between the network operator and the “chain” (i.e. group) of other PRS providers, if any, that are involved in the provision of the PRS.

100 If ComReg were to continue to mandate that network operators should bear 50% of the levy amount (in accordance with the current practice) then each network operator has the capacity to negotiate its “outpayment” rates with its contractual partners such that it’s portion of the levy cost is, in fact, borne by the other PRS providers. Conversely, if ComReg were not to mandate that network operators should pay a particular portion of the levy, then it is possible that some network operators may offer more favourable payout terms to some of the PRS providers that they contract with.

101 In this regard, ComReg is aware that PRS providers agree commercial terms with each network operator (also PRS providers, by definition) that it contracts with. These commercial terms may include volume discounts etc. and some PRS providers may consider that it is not appropriate for ComReg to specify aspects of these commercial relationships. Accordingly, ComReg’s current requirement that network operators must bear the burden of 50% of the levy may be seen as an excessive interference or limitation on these commercial relationships and should not be carried forward in the new Levy Order.

102 Therefore, it is ComReg’s preliminary position that, based on the proposed levy framework, it is no longer necessary for it to specify how PRS providers should apportion the levy and that such matters are best determined on an individual commercial basis. This preliminary position therefore implies that the levy should simply apply to a PRS and how this “cost of doing business” is borne is a commercial matter to be negotiated and determined between all of the PRS providers, including network operators that are involved in its provision. In this regard, ComReg is seeking submissions on its proposal to no longer mandate how the levy should be apportioned among the relevant PRS providers.

Q. 5 Do you agree with ComReg's proposal not to prescribe the portion of the levy that should be paid by different PRS providers? Please give reasons to support your view.

5.7 PRS accessed via 1512 and 1520 access codes

103 In July 2010 ComReg published its response to consultation on the "Scope of PRS Regulation[35]", in which it set out those PRS that would be classified as *specified PRS* and therefore subject to regulation and the PRS levy. ComReg decided that PRS that cost less than €0.25 would be exempt from regulation.

104 The National Numbering Conventions[36] set out that the retail cost (including VAT) of calls to premium rate numbers with the 1520 access code cannot exceed €0.30 per minute and the retail cost (Including VAT) of calls to numbers with the 1512 access codes cannot exceed €0.50 per call. Services that are provided over these number ranges, include, for example, discounted international call access, and, typically, operate at prices below the €0.25 threshold that would bring them within the scope of regulation. The result is that the vast majority of PRS that are accessed over the 1512 and 1520 access codes are not classified as *specified PRS*.

105 In July 2010, ComReg also published the Interim Levy Order which maintained the levy framework that was in place under the previous regulator of PRS, RegTel. RegTel had imposed a 0.5% levy on low-value PRS calls to 1520 and 1512 prefixes because it was considered disproportionate to apply the standard 1.8% rate to such low-value PRS.

106 It is clear to ComReg, based on the levy reports received over the past two years, that the overwhelming majority of PRS that are accessed over the 1520 and 1512 prefixes are exempt from paying the PRS levy and, as such, ComReg considers that it may be unnecessary to continue to separate these particular number ranges and apply a different levy rate, and different levy framework, than applies to all other PRS that are accessed via premium rate numbers.

107 ComReg has calculated that because so few PRS provided over the 1520 and 1512 prefixes cost more than the €0.25 threshold for *specified PRS*, the levy collected from these PRS amounts approximately three hundred and fifty euro (€350) per annum. ComReg must balance the administration costs, both for network operators and ComReg, associated with applying a separate levy rate only to these two discrete number ranges, and there appears to be no compelling reason to maintain the practice of a separate levy rate for these discrete number ranges, where it is proposed to apply a single rate, which is proportionate to the network operators retention, to all other PRS.

---

[35] ComReg document 10/50 http://www.comreg.ie/_fileupload/publications/ComReg100.pdf
[36] http://www.comreg.ie/_fileupload/publications/ComReg1117.pdf

108 It is, therefore, ComReg's preliminary position that, excluding network operators own PRS, all PRS should be subject to the same levy framework and single levy rate regardless of the premium rate number ranges and shortcodes used to access the PRS.

Q. 6	Do you agree with ComReg's proposal to apply the same levy rate and framework to all PRS including those provided over the 1520 and 1512 prefixes but excluding network operators own PRS? Please give reasons to support your view.

6 Levy Collection and Reporting

109 As set out in Section 5 above, ComReg proposes to amend the current levy framework by relating the levy rate not to the total cost of the PRS but instead to the portion of the cost that the network operator retains. ComReg, however, also proposes to maintain the existing practice where network operators retain, as appropriate, and submit the levy to ComReg. ComReg would again like to highlight that it is not ComReg's intention that the entire burden of the levy will fall on network operators to pay but the levy is a sum to be shared by all providers involved in the provision of a PRS in accordance with commercial contractual arrangements.

110 ComReg is cognisant that its current and proposed levy frameworks are "transaction-based" and, as such, their appropriateness is premised on a market structure where market participants' revenues are also transaction based. It is possible that the payment and revenue structures utilised by market participants, whether in response to the levy proposals in this consultation, or otherwise, may develop in a manner that would result in a significant portion of network operators PRS revenues being imposed by way of fixed fees on other PRS providers in the value chain and thereby fall outside the scope of the proposed levy.

111 In order to address the above concern, ComReg highlights that it may in the future require network operators to report on all fixed charges as part of its reporting obligation and, upon receipt of this information, ComReg will consider whether it is appropriate to continue to operate a transaction based levy, as proposed. ComReg may also, separate to this consultation, seek information from network operators in respect of other revenues that they derive from broader PRS activities, such as fees associated with provisioning and maintaining premium rate numbers and shortcodes.

112 Fundamentally, ComReg has been granted the statutory power to impose a levy on PRS providers for the purpose of meeting expenses properly incurred by ComReg in the discharge of its function in relation to PRS. In the proposals set out in Section 5, ComReg has attempted to relate its levy to the revenue that a key PRS provider in the PRS value-chain, the network operator, derives. If it transpires that this means of calculating the levy rate does not prove adequate insofar as there is no increased income for ComReg, then it remains for ComReg to make appropriate changes to redress the situation, which may include further consultation and subsequent levy orders. However, ComReg considers that the proposed framework and levy rate are objective, transparent, and proportionate and should meet the costs that ComReg properly incurs in the discharge of its function in relation to PRS.

113 Conversely, and as mentioned in section 5 above, should it transpire that the levy collected is greater than is required by ComReg to meet the expenses it incurred in the discharge of its functions with respect to PRS, then ComReg could exercise its discretion under Section 30(5) of the Act of 2002 so as to either;

a. retain any surplus to offset levy obligations for the subsequent year, or,

b. refund any surplus proportionately to the providers on whom the levy was imposed.

If it transpired that the levy income persistently produces a surplus, ComReg would consult to address that situation should it arise.

6.1 Reporting Period

114 Accompanying ComReg's proposal to maintain the obligation on network operators to report and submit the levy, ComReg proposes to amend the reporting interval from monthly to quarterly, thereby reducing the administrative burden on network operators. ComReg proposes that the network operators' quarterly reports will still include details pertaining to the volumes and tariffs of the specified PRS as they currently do but, following the enactment of a new Levy Order also include details of PRS that are charged on a "direct-to-bill" basis without the requirement for the use of premium rate shortcodes. However, ComReg is inviting submissions regarding the information that is provided and the medium through which levy reports are submitted to ComReg as expanded on further below.

6.2 Reporting Information

115 The reports that are currently provided to ComReg are submitted in spreadsheet format, which permits ComReg to sort the data received. This process is nonetheless time-consuming and even in cases where separate network operators provide the same information, considerable manual input is still required by ComReg as the information is not necessarily provided in the same sequence and format.

116 In order to seek efficiencies in the levy reporting process by minimising the administrative burden on both network operators and ComReg it is proposed to standardise the layout and information that is provided to ComReg. Draft reporting formats are attached at Annex 2 to this document.

117 On the basis that network operators will pass on revenues to their contractual partners involved in the provision of a PRS, ComReg considers that network operators have, readily available, the information that ComReg is seeking in the draft reporting formats, attached at Annex 2. ComReg would also like to highlight that some network operators already provide this information and, therefore, ComReg does not consider that there will be any substantive additional burden other than perhaps to present it in an amended format to establish a consistent reporting process across all industry.

Q. 7 Do you agree with ComReg's proposal to require network operators to submit levy reports and revenues on a quarterly basis instead of the currently monthly interval? Please give reasons to support your view.

Q. 8 Do you agree with ComReg's proposed levy reporting format as set out in Annex 2? Please give reasons to support your view and provide amended report formats that you consider appropriate.

6.3 Reporting Medium

118 The introduction of a standardised levy report format as proposed would also provide the opportunity to further increase the efficiency of the reporting process, through subsequent IT development by ComReg. For example, it may be made possible for network operators to upload their monthly reports in delimited format such as a ".csv"[37] file, thereby reducing the requirement for manual input by both reporting networks and ComReg.

119 In this regard, ComReg would welcome submissions regarding the "automation" of the levy reporting process, to address issues such as the preferred file format, etc.

Q. 9 Do you agree with ComReg's proposal to develop the levy reporting process through the introduction of IT facilities? Please provide reasons to support your view and any submissions or recommendations on what file format the reports should take.

[37] "CSV" (comma separated values) or some other common, simple file format that is widely supported by many software programs to allow simple exporting of data files by PRS providers and subsequent importing by ComReg.

7 Regulatory Impact Assessment (RIA)

7.1 Role of the RIA

120 A RIA is an analysis of the likely effect of a proposed new regulation or regulatory change. The RIA should help identify regulatory options, and should establish whether or not a proposed regulation is likely to have the desired impact. The RIA should also in certain cases suggest whether regulation is or is not appropriate. The RIA is a structured approach to the development of policy, and analyses the impact of regulatory options on different stakeholders.

121 ComReg's approach to RIA is set out in the Guidelines published in August 2007, ComReg Document No. 07/56 & 07/56a. In conducting this RIA, ComReg takes account of the RIA Guidelines[38], adopted under the Government's Better Regulation programme.

122 Section 13 (1) of the Principal Act, as amended, requires ComReg to comply with certain Ministerial Policy Directions. Policy Direction 6 of February 2003 requires that before deciding to impose regulatory obligations on undertakings ComReg must conduct a RIA in accordance with European and International best practice, and otherwise in accordance with measures that may be adopted under the Government's Better Regulation programme. In conducting the RIA, ComReg also has regard to the fact that regulation by way of issuing decisions e.g. imposing obligations or specifying requirements can be quite different to regulation that arises by the enactment of primary or secondary legislation.

123 In this Consultation, ComReg considers that it is acting under a statutory provision in the Principal Act which provides that for ComReg to recover it's properly incurred expenses incurred, in the discharge of its functions relating to PRS, it may make an order imposing a levy on PRS providers. ComReg, therefore, has the authority in law to raise a levy pursuant to Section 30(2A) of the Principal Act and similar levies have been in place prior to and since the commencement of the PRS Act on 12 July 2010. As such, although a RIA may not be required, where ComReg is exercising its statutory powers by making an order to recover its expenses properly incurred in the discharge of its functions relating to PRS, ComReg has, nonetheless, formed certain preliminary views on the proposed framework and rate of the PRS levy. Accordingly, ComReg has prepared a draft RIA in respect of these preliminary views as there were options open to ComReg in forming these preliminary views.

[38] See: http://www.taoiseach.gov.ie/eng/Publications/Publications_2011/Revised_RIA_Guidelines_June_2009.pdf

124 ComReg invites interested parties to review this draft RIA and to submit any comments or information which they believe ComReg has not considered and should consider in finalising its Levy Order. Subject to respondents' views and consideration of any other evidence, this draft RIA will be finalised in ComReg's consultation response and which will in turn inform its decision.

125 In conducting RIA, ComReg takes into account the six principles of Better Regulation. These are:

1. Necessity.

2. Effectiveness.

3. Proportionality.

4. Transparency.

5. Accountability.

6. Consistency.

126 To ensure that a RIA is proportionate and not overly burdensome, a common sense approach is taken. As decisions are likely to vary in terms of their impact, and if after initial investigation a decision appears to have relatively low impact, ComReg would expect to carry out a less exhaustive RIA. In determining the impacts of the various regulatory options, current best practice appears to recognise that full cost benefit analysis would only arise where it would be proportionate, or, in exceptional cases, where robust, detailed, and independently verifiable data is available. This approach will be adopted when necessary.

7.2 Steps involved

127 In assessing the available regulatory options, ComReg's approach to RIA follows five steps as follows:

Step 1: describe the policy issue and identify the objectives

Step 2: identify and describe the regulatory options

Step 3: determine the impacts on stakeholders

Step 4: determine the impacts on competition

Step 5: assess the impacts and choose the best option

7.3 Step 1: Describe the Policy Issues and Objectives

Purpose of the PRS Levy

128 The purpose of the PRS levy is to meet ComReg's expenses properly incurred by ComReg in the discharge of its statutory functions which are set out in Section 10(1) of the principal Act, to

"*ensure compliance by premium rate service providers with their obligations in relation to the provision, content and promotion of premium rate services*" and

"*to carry out investigations into matters relating to the provision, content and promotion of premium rate services*"

129 As set out in this paper, the size of the PRS industry, in revenue terms, has declined considerably in recent years and although it now appears to have stabilised, it has significantly reduced from a peak in 2008. It is in this context that ComReg has to consider how best to apply the levy for the purpose of meeting expenses properly incurred by ComReg in the discharge of its function in relation to PRS.

Issues

130 ComReg is charged with regulating the PRS market and may cover its costs through the application of a levy on the industry. In accordance with regulatory best practice and its statutory obligations, ComReg is cognisant for the levy to be proportionate, justified and applied in a non-discriminatory manner.

131 One of the considerations for ComReg is that it raises its revenues in a manner that is proportionate and does not inhibit or impede the provision of PRS, the availability of which would be in the interests of end users of PRS.

132 ComReg is aware of the advent of new PRS that were, until relatively recently, unavailable to Irish consumers. ComReg considers that it is consistent with its statutory function not to impede developments in the Irish market. For that, and other reasons outlined above, ComReg is seeking to amend its levy structure to ensure that any applicable levy is proportionate for all PRS, both existing and new.

7.4 Identify and describe the Policy Options

133 ComReg has considered the options available to it when imposing a levy on the PRS industry. ComReg is of the view that there are a number of options available as set out below (and as discussed in section 5 of the paper);

- **Issue 1** the basis for calculating the levy. The options available to ComReg are
    - **Option A** Maintain the existing levy framework where the levy rate is applied to the total cost of the PRS, or
    - **Option B**. Amend the current framework, such that the levy rate is applied to the portion of the cost of the PRS that is retained by the network operator.
- **Issue 2** whether the same levy rate should apply to all PRS providers, regardless of the class or type of PRS that they provide. The options available to ComReg are;
    - **Option A** apply a higher levy to those PRS and, by implication, those PRS providers that ComReg may consider are likely to pose a greater risk of consumer harm and, therefore, require greater regulatory oversight and intervention, or
    - **Option B** apply the same levy rate to all PRS providers (i.e. maintain the status quo).
- **Issue 3** ComReg does not consider that it has any option other than to recover it properly incurred costs and the proposed levy rate is calculated on that basis and the current market size.

7.5 Steps 3, 4 and 5: Determine and assess the impacts on stakeholders and competition and choose the best option

Issue 1 – The Basis for Calculating the Levy

Option A Maintain the current basis for calculating the levy

134 ComReg has considered the impact of if leaving the current levy structures in place. This option would require ComReg to increase the levy rate in order to better meet the costs that ComReg incurs in the exercise of its statutory functions. As set out in section 5 above, based on the current market size, absent of any substantive growth, ComReg estimates that if it were to maintain the existing levy framework, the current levy rate would have to be raised to 2.5% of the total price of a PRS (ex VAT), which would represent an increase of the current rate of approximately 39%.

Consumers

135 ComReg is required to consider the potential impact on consumers that such an increased levy rate may have.

136 Maintaining a "transaction-based" levy is consistent with the current provisions of the Interim Levy Order but ComReg is not required to maintain the Interim Levy Order. It is also reasonable to conclude that solely raising the existing levy rate may have a number of possible outcomes, including;

a. PRS providers may pass on the increased levy cost to consumers which may act as a disincentive to some consumers to engage with PRS, and

b. Some existing PRS may, in turn, become commercially unviable if insufficient consumers are willing to pay these higher costs.

137 If the levy rate is raised to such an extent that it is not possible for PRS providers to obtain a viable return for their services and, as a result, the PRS are discontinued, this could reasonably be seen as limiting the choice of PRS that is available to consumers. In addition, if the levy rate is raised to such an extent that it may be disproportionate and therefore impede the introduction of some new classes of PRS, this would also have the effect of limiting the choice available to consumers.

138 Applying the levy rate to the total cost of a PRS does not necessarily reflect the margins that are available to PRS providers. While it is evident that ComReg must increase its levy income, it is ComReg's preliminary position that maintaining the current levy framework, where the levy is applied to the full price of the PRS (ex VAT), is more likely to impact "low-margin" PRS (from a PRS providers perspective) and could, therefore, limit or constrain the choice of PRS that would be available to consumers. As such, there is a possibility that solely increasing the current levy rate within the existing framework could be construed as a measure that would limit or reduce consumer choice.

Industry

139 While the precise impact on PRS providers of any increase in the current levy rate cannot be determined, it is not unreasonable to assume that they may suffer some detriment. If PRS providers chose to pass on to consumers the additional costs resulting from an increased levy rate, the obvious result is that some consumers may chose not to purchase the PRS at the new higher price, resulting in lower sales for the PRS provider. If, on the other hand, PRS providers decide to absorb the increased costs themselves, then their revenues for providing the PRS will be reduced, whether the cost is spread among a number of PRS providers involved in the provision of the PRS or whether a single provider bears the entire increase, would determine the extent of the reduction of revenue.

140 However, under option A, the required increase in the levy rate in order for ComReg to meet its properly incurred expenses is likely to have a disproportionate impact on low-margin PRS (from the PRS provider's perspective) and therefore may result in fewer of such PRS either remaining on the market or coming into the market.

141 It is, therefore, ComReg's preliminary position that a significant increase in the current levy rate, within the existing framework, would not be appropriate at this time.

ComReg

142 It is clear from RegTel's final two annual reports and from ComReg's levy income over the last two years that the PRS industry has declined since reaching a peak in 2008 and, as set out in Section 4 above, the industry has declined by approximately 36% over the period March 2008 to June 2011. According to ComReg's research[39] end users cite expense, lack of interest and lack of trust in PRS as three of the four top reasons for no longer using PRS (the fourth being "*lack of awareness of such services*").

143 Therefore, having consideration for the current economic conditions and consumer attitudes to PRS, it is ComReg's preliminary position that there is a distinct possibility that a significant increase in the levy rate (in the order of 39%, absent any real growth in the market) and maintaining the existing framework, may result in increased costs of PRS to consumers or it may have an impact on the market.

[39] Quantitative Research in Oct 2010 which was published in July 2011 http://www.comreg.ie/_fileupload/publications/ComReg1151a.pdf and Qualitative Research from Feb 2011 http://www.comreg.ie/_fileupload/publications/ComReg1151a.pdf which was also published in July 2011. ComReg has repeated the quantitative research in late 2012, the results of which will be published shortly.

144 Such outcomes could, in turn, make it more difficult for ComReg to meet its costs in the future. It is, therefore, ComReg's preliminary view that retaining the current levy framework and considerably increasing the levy rate is not the best option available to ComReg at this time.

Option B – Calculate the levy as a percentage of the network operators retained portion of the cost of the PRS.

145 Under this option ComReg considered increasing the levy revenue and amending the current framework, such that a "transaction-based" levy is also retained but the manner in which the percentage levy rate relates to the cost of the PRS is revised.

Consumers

146 As set out in option A above, any levy increase may have the effect of increasing the cost of the PRS to the consumer. However, there are a variety of PRS, notably available to consumers in other jurisdictions that are not currently available to Irish consumers. As such the levy framework and rate proposed under option B provides, in ComReg's preliminary position, a greater prospect to increase the variety of PRS for Irish consumers than option A. It would also follow that the introduction of any new PRS would, ultimately, result in ComReg receiving an increased levy that would contribute to it meeting its properly incurred expenses.

Industry

147 The impact of an increase in the levy, as noted in option A above, is hard to precisely measure. In accordance with its statutory obligations, ComReg is not required to consider market development or competition within the PRS industry and it is entitled to meet its properly incurred expenses. However, ComReg notes that the levy framework proposed by ComReg under option B should not inhibit the introduction and development of new PRS. The levy is a cost that must be borne by PRS providers but in cases where the PRS providers operate on a low margin, the current levy framework may be seen as disproportionately high as it is linked to the total cost of the PRS.

148 Recent market developments indicate that PRS providers, including network operators, are prepared to reduce their portion of the cost of a PRS in cases where they intend to use PRS as a means of payment for goods and services. In this context and having regard for ComReg's clear requirement to increase its levy income, ComReg is conscious that its levy rate and framework has to be proportionate.

149 It is clear that any amendment to the current levy framework and levy rate will impact on PRS providers existing contractual arrangements. The introduction of a new means of calculating the levy would have a more significant impact on existing contractual arrangements than the implementation of the proposals under option A, which are more straightforward and would solely require the application of a higher levy rate. However, regardless of the impact on existing contractual arrangements, ComReg considers that there are sufficient grounds for amending the current levy framework, which it considers could increase ComReg's levy income in a proportionate manner and provides a greater potential for the introduction of new PRS than option A.

150 ComReg considers that breaking the link between the total cost of the PRS and the levy rate is appropriate at this time. The proposals under option B would result in the levy being linked, on a *pro rata* basis, to the PRS provider's portion of the total cost, as reflected by the network operator's share of the PRS. In this manner, where the network operator is involved in the provision of a low-margin PRS, the levy rate will also reflect this and it should, therefore, not be viewed or considered a disproportionate cost of doing business.

ComReg

151 ComReg is aware from previous Annual Reports published by RegTel and from the levy returns over the past two years that the PRS industry has contracted significantly before recently stabilising. This could reasonably be interpreted as the PRS market reflecting the decline in the general economy as end users are more price-conscious and PRS can be viewed as an unnecessary luxury.

152 Against this backdrop, ComReg has engaged with regulatory authorities in other jurisdictions and it is noteworthy that end users in Ireland do not currently have as broad a range of PRS available to them as end users in other countries. There may be several reasons for this and it is reasonable to assume that the size of the Irish market, the general economy and technological roll-out may all be contributing factors.

153 ComReg's preliminary view is that there is potential for some growth in the PRS market. New services are already available in other jurisdictions and the introduction of the proposed new levy framework, which would see the levy rate "pegged" to the network operator's retention, should result in a proportionate levy for all PRS, whether new or existing. The development of PRS, particularly as an alternative means of payment should, in ComReg's opinion, result in greater consumer choice and convenience.

154 ComReg considers that it has taken a reasonable and proportionate approach in proposing to align the levy rate, not to the total cost of the PRS to the end user but instead to the share of the cost that PRS providers, as reflected by the share the network operator retains. PRS providers, including network operators, may choose to provide new classes of PRS from which they receive a reduced margin than they would currently do, if, for example, there is the potential for relatively high sales volumes. Such developments, which ComReg considers are possible under the proposed levy framework, should, in turn, add to ComReg's levy income.

Issue 2 – Should the same levy rate apply to all PRS?

Option A Apply the different levy rate to some PRS

155 Under this option ComReg considered the implications of amending the levy framework by moving from a "transaction-based" levy to a "resourced-based" one, which is equivalent to a "risk-based" based approach. The aim of such an approach would be to apply a higher levy to those PRS and, by implication, those PRS providers that are likely to pose a greater risk of consumer harm and, therefore, require greater regulatory oversight and intervention.

Consumers

156 If ComReg were to assess its funding requirement on a "resource-based" approach it is clear that those PRS that ComReg deemed to pose greater consumer harm would attract a higher levy. The reverse may also be true and the levy that ComReg may apply to PRS that it considers to contain less potential for consumer harm would be lower.

157 However, in either scenario, whether ComReg were to increase or decrease the levy on certain classes or types or individual PRS, it remains for the PRS provider(s) to pass on to end users any financial benefit or loss that may result from a higher or lower levy rate - it is within the gift of PRS providers not to pass on and instead to retain any financial benefit that may accrue as a result of ComReg applying a lower levy rate to certain classes and types of PRS; PRS providers may also decide to pass on to end users any increased costs that may arise if ComReg were to apply a higher levy rate to other classes or types of PRS.

158 In this regard, it is difficult to accurately assess the impact to consumers if ComReg were to consider introducing a "risk/resourced-based" approach to fund its costs and there is no compelling evidence to suggest that this option would greatly benefit end users of PRS at this time.

Industry

159 Basing the levy on a “resourced-based” or “risk-based” approach may be attractive to certain PRS providers, which provide higher-cost PRS, which may not be considered by ComReg to be a high risk to end users. On the reverse, providers of low-cost PRS could reasonably argue that their PRS hold less potential for consumer harm. According to this logic, low value PRS possess a lower potential for consumer harm and will, therefore, require less resourcing by ComReg.

160 It is clear that this proposal has the potential to be disproportionate on PRS providers if ComReg were to apply marginally incorrect criteria in its risk assessment. ComReg would also be required to continually keep its risk-assessment framework under revision so there would be continuous uncertainty for the PRS providers and their business plans.

ComReg

161 In assessing whether a “resource/risk-based” approach to calculating the PRS levy would be appropriate, in a similar manner to that proposed by the Central Bank[40] in respect of the financial sector, ComReg considered the following factors;

a. The banking and insurance industry is considerably more stable than the PRS sector in terms of the number of regulated entities, which are all within the State. ComReg on the other hand is unaware when a new PRS provider, which ultimately may result in consuming a significant portion of ComReg’s resources, may choose to enter the Irish market.

b. It is ComReg’s preliminary view that the PRS sector is sufficiently fluid to render it almost impossible to continuously evaluate where the greatest risk may arise. There are very low barriers for new providers, which can be located in other jurisdictions, to enter the Irish PRS market and, in the absence of any “track record” it would not be possible for ComReg to assess what level of risk such a provider would hold. In addition, even if ComReg were to apply a levy based on its assessment of the risk a new provider may pose, it would not be possible for ComReg to assess what volume of sales the provider would generate and it may well transpire, if no consumer harm were to occur, that the levy applied by ComReg could be wholly disproportionate to the sales and market share that a new entrant may have.

[40] *Consultation on Impact Based Levies and Other Levy Related Matters - CP 61* Central Bank of Ireland November 2012.

c. It is therefore not possible for ComReg to allocate resources to PRS providers on an ex ante basis and, as such, it is not possible to determine the resourcing level that each PRS provider will require, in a proportionate manner.

Option B Apply the same levy rate to all PRS providers

162 For the reasons set out under option A above, it is not considered to be appropriate, due to the nature of the PRS industry and, in the interests of fairness and proportionality across the industry, to apply different levy rates to individual types or classes of PRS. In this regard, ComReg's preliminary view is that the same levy rate should apply to all PRS providers.

Issue 3 The proposed levy rate

Consumers and Industry

163 It seems evident that ComReg must make changes to the current levy arrangements in order to better meet its costs. Regardless of whether ComReg maintains the *status quo* under option A of Issue 1 or amends the levy framework as proposed under option B, any increase in the *de facto* levy rate will impact on PRS providers and/or end users of PRS as the increase will have to be met by either or both parties.

164 Regardless of an increase in the levy, calculating the levy as a percentage of the network operator's retention should not inhibit the introduction and development of new PRS, which would have the effect of increasing consumer choice and would be in the interests of end users of PRS.

ComReg

165 ComReg is required by statute to protect the interests of end users of PRS and this obligation requires oversight on the industry and the ability to investigate and intervene when required. It is ComReg's preliminary position that it is not sustainable to continue without introducing some changes as this would result in ComReg incurring a significant levy deficit in a similar manner to the last reported period.

166 The case for change to the existing practices is, therefore, required and, while ComReg is empowered to raise a levy to cover its cost properly incurred in regulating the PRS sector, solely raising the existing levy rate is not considered the best approach at this time. ComReg does not consider that this approach would best enable it to recoup its expenses properly incurred and protect the interests of end users. It is for these reasons that ComReg has taken the preliminary view that option A of Issue 1, relating to basis for calculating the levy, is not considered the best option, at this time.

167 For the reasons outlined above, ComReg's preliminary view is that option B of Issue 1, which proposes to calculate the levy as a percentage of the network operators retained portion of the cost is the preferred option available to ComReg at this time as it may provide greater scope for covering regulatory costs from an increased industry base. The proposed levy rate of 7.5% is calculated as that which will allow ComReg to recoup its costs based on the current market size.

Q. 10 Do you have any views on this draft Regulatory Impact Assessment and are there other factors ComReg should consider in completing its Regulatory Impact Assessment? Please explain your response and provide details of any factors that should be considered by ComReg.

8 Next Steps

168 ComReg has put forward a number of specific proposals in respect of the levy framework and levy rate that applies to PRS providers in this document for consideration by interested parties and now invites feedback on the proposals.

169 The responses will be taken into account in ComReg's Response to Consultation document, Decision and Levy Order which will be published following analysis of all submissions made.

170 The consultation period will run from 7 June 2013 to 12 July 2013

171 Responses must be submitted in written form (post or email) to the following recipient, clearly marked “Submissions to ComReg 13/53”:

Commission for Communications Regulation

Irish Life Centre

Abbey Street

Freepost

Dublin 1

Ireland

Phone: +353-1-8049600

Email: retailconsult@comreg.ie

172 All comments are welcome; however it will make the task of analysing responses easier if comments are referenced to the relevant question numbers from this document. In all cases please provide reasons in support of your views.

173 As all responses will be published, those submitted electronically must be unprotected, to facilitate online publication. In submitting any response, please also set out your reasoning and supporting information for any views expressed.

174 Finally, it may be necessary for respondents to provide confidential or commercially sensitive information in their submissions. Confidential information must be clearly identified as such. ComReg will publish all of the responses it receives to this consultation, subject to its guidelines on the treatment of confidential information[41].

[41] See Document 05/24 at http://www.comreg.ie/_fileupload/publications/ComReg0524.pdf

9 Questions

Annex: 1 Specified PRS

A 1.1 *Specified PRS* are PRS that are required to be licensed and therefore subject to the PRS levy. The definition of *specified PRS* is set out in Regulation 3 of the Premium Rate Services (Licensing of Premium Rate Services) Regulations, 2012 (SI 111 of 2012) and for convenience is replicated below;

3. Specified Premium Rate Services

(1) Subject to paragraph (2), the following premium rate services are specified premium rate services that are required to be Licensed pursuant to the Act of 2010 and in accordance with these Regulations:

(a) Class A Services; and

(b) Class B Services.

(2) The following premium rate services shall not be considered to be specified premium rate services that require to be licensed pursuant to the Act of 2010 and in accordance with these Regulations:

(a) a premium rate service which comprises directory enquiry services and relevant value added services that are provided using the number range 118XX; and

(b) on-demand audiovisual media services.

Where a Class A Services is defined as;

*"**Class A Service**" means a premium rate service which is not a Class B Service and which is:*

(a) accessed by a premium rate number and where the price payable by the end user for each call exceeds 25 cent (inclusive of value added tax) other than a premium rate service which is accessed only via an international call; or

(b) accessed other than by means of a premium rate number and the price payable by the end user for each call exceeds 25 cent (inclusive of value added tax) other than a premium rate service which is accessed only via an international call.

For the purpose of sub-paragraph (a) above, the price payable by an end user shall be taken to be the price which the undertaking designated from time to time pursuant to Regulation 7 of the European Communities (Electronic Communications Networks and Services) (Universal Service and Users' Rights) Regulations 2011 (S.I. No. 337 of 2011) would charge for an equivalent call;"

and a Class B Service is defined as

*"**Class B Service**" means any of the following:*

(a) a chatline service;

(b) a sexual entertainment service;

(c) a children's service;

(d) a subscription service;

(e) an internet dialler service;

(f) a charity service or quiz television service, which is:

(i) accessed by a premium rate number and where the price payable by the end user for each call exceeds 25 cent (inclusive of value added tax) other than a premium rate service which is accessed only via an international call; or

(ii) accessed other than by means of a premium rate number and the price payable by the end user for each call exceeds 25 cent (inclusive of value added tax) other than a premium rate service which is accessed only via an international call.

For the purpose of sub-paragraph (f)(i) above, the price payable by an end user shall be taken to be the price which the undertaking designated from time to time pursuant to Regulation 7 of the European Communities (Electronic Communications Networks and Services) (Universal Service and Users' Rights) Regulations 2011 (S.I. No. 337 of 2011) would charge for an equivalent call;"

Annex: 2 Proposed Levy Report Format

A 2.1 ComReg proposes that each network operator would be required to submit levy reports to ComReg on a quarterly basis providing relevant information under the following headings;

a. Transaction-based information that pertains to specified PRS that are promoted and provided by other PRS providers,

b. Transaction-based information that pertains to the network operators own specified PRS,

A 2.2 The type of information available to fixed and mobile networks will differ as voice-PRS, which terminate on fixed networks, may be charged on a per-call or a per-minute basis. Additionally, mobile networks may provide DCB PRS that are provided without premium rate shortcodes. Accordingly, the reporting requirements have been drafted so that each network, fixed or mobile, provides relevant information that is available to them.

Fixed Networks

A 2.3 The information to be provided by fixed networks is set out below and the draft report format is illustrated in Table 1

a. For PRS that are charged on a per minute basis the following details in respect of each premium rate number that is hosted by the network operator;

(i) The premium rate number

(ii) The company to which the number is assigned

(iii) The tariff of the PRS i.e. the terminating cost

(iv) The call volume i.e. the total number of minutes / total number of calls, as appropriate

(v) The revenue derived from the calls

(vi) The network revenue (i.e. network operators retention)

(vii) Levy amount calculated as 7.5% of network revenue (i.e. network operators retention),

b. PRS that are charged on a per call basis, the same information that is set out in paragraph A2.3.a above but where the tariff is on a per call basis.

c. Own-PRS that are charged on a per minute basis, the following information;

   (i) The premium rate number

   (ii) The name of the PRS provided by the network operator

   (iii) The tariff of the PRS i.e. the terminating cost

   (iv) The call volume i.e. the total number of minutes / total number of calls, as appropriate

   (v) The revenue derived from the calls

   (vi) Levy amount calculated as 2.5% of revenue

d. Own PRS that are charged on a per call basis similar information that is set out in paragraph A2.3.c above, but where the tariff is on a per call basis.

Mobile Networks

A 2.4 The information to be provided by mobile networks is set out below and the draft report format is illustrated in Table 2

a. PRS that are charged using premium rate shortcodes, the following details in respect of each premium rate shortcode that is hosted by the network operator;

   (i) The premium rate shortcode

   (ii) The company to which the number is assigned

   (iii) The tariff of the PRS i.e. the cost per SMS

   (iv) Whether the charges are MO or MT based (or both)

   (v) The call volume i.e. the total number of SMS sent over the shortcode

   (vi) The revenue derived from the SMS

   (vii) The network revenue (i.e. network operators retention)

   (viii) Levy amount calculated as 7.5% of network revenue (i.e. network operators retention)

b. PRS that are provided without the use of premium rate shortcodes (referred to as DCB PRS), the following information is required;

(i) The vendor/company with which the mobile network operator is contracted

(ii) The tariff of the PRS i.e. the cost of the PRS

(iii) The call volume i.e. the total number of purchases of the PRS

(iv) The total revenue

(v) The network revenue (i.e. network operators retention)

(vi) Levy amount calculated as 7.5% of network revenue (i.e. network operators retention)

c. Own PRS that are charged using premium rate shortcodes, the following information is required;

(i) The premium rate shortcode

(ii) The name of the PRS (product/service) provided by the mobile network operator

(iii) The tariff of the PRS i.e. the cost per SMS

(iv) Whether the charges are MO or MT based (or both)

(v) The call volume i.e. the total number of SMS sent over the shortcode

(vi) The revenue derived from the SMS

(vii) Levy amount calculated as 2.5% of revenue

d. Own PRS that are provided without the use of premium rate shortcodes (referred to as “direct-to-bill” or “charge-to-mobile” PRS), the following information is required;

(i) The name of the PRS (product/service) provided by the mobile network operator

(ii) The tariff of the PRS i.e. the cost of the PRS

(iii) The call volume i.e. the total number of purchases of the PRS

(iv) The total revenue

(v) Levy amount calculated as 2.5% of total revenue

Table 1 - Fixed Networks

Specified PRS charged Per Minute (> €0.25 per Minute)

Number	Company	Tariff	Call volumes	Revenue	Network revenue	Levy Amount
		Per minute	# minutes	Volume x Tariff	NO's Retention	= 7.5% of Network Revenue
15XX AAAAAA	Company /Vendor 1	€0.30	1234			
15XX BBBBBBB	Company /Vendor 2	€1.00	5678			

Specified PRS charged Per Call (> €0.25 per Call)

Number	Company	Tariff	Call volumes	Revenue	Network revenue	Levy Amount
		Per call	# calls	Volume x Tariff	NO's Retention	= 7.5% of Network Revenue
15XX AAAAAA	Company /Vendor 1	€0.30	1234			
15XX BBBBBBB	Company /Vendor 2	€1.00	5678			

Specified Own Services charged Per Minute (> €0.25 per Minute)

Number	PRS	Tariff	Call volumes	Revenue	Levy Amount
	Name of PRS	Per minute	# minutes	Volume x Tariff	= (Revenue) x 2.5%
15XX AAAAAA					
15XX BBBBBBB					

Specified Own Services charged Per Call (> €0.25 per Call)

Number	PRS	Tariff	Call volumes	Revenue	Levy Amount
	Name of PRS	Per call	# calls	Volume x Tariff	= (Revenue) x 2.5%
15XX AAAAAA					
15XX BBBBBBB					

Table 2 – Mobile Network Operators

Specified PRS Using Shortcodes (> €0.25 per call)

Shortcode	Company	Tariff	MO or MT billed (or both)	Call Volumes	Revenue	Network revenue	Levy Amount
		Cost of the PRS		# SMS	(tariff x volume)	NO's Retention	= 7.5% of Network Revenue
5XXXA	Company/ Vendor 1	€1.00	MT				
5XXXB	Company/ Vendor 2	€1.00	MO				

Specified PRS Not Using Shortcodes (> €0.25 per call)

Method	Company	Tariff	Call Volumes	Revenue	Network revenue	Levy Amount
		Cost of the PRS	# PRS purchased	(tariff x volume)	NO's Retention	= 7.5% of Network Revenue
Direct Billing	Company/Vendor 1					
Direct Billing	Company/Vendor 2					

Network Operators Own Specified PRS Using Shortcodes (> €0.25 per call)

Shortcode	PRS	Tariff	MO or MT billed (or both)	Call Volumes	Revenue	Levy Amount
	Name of PRS	Cost of the PRS		# SMS	(tariff x volume)	= (Revenue) x 2.5%
5XXXC	PRS 1	€1.00	MT			
5XXXD	PRS 2	€1.50	MO			

Network Operators Own Specified PRS Not Using Shortcodes (> €0.25 per call)

Method	PRS	Tariff	Call Volumes	Revenue	Levy Amount
	Name of PRS	Cost of the PRS	# PRS purchased	(tariff x volume)	= (Revenue) x 2.5%
Direct Billing	PRS 1				
Direct Billing	PRS 2				

Annex: 3 Draft Levy Order

S.I. No. of 2013

COMMUNICATIONS REGULATION ACTS 2002 to 2010 (SECTION 30) PREMIUM RATE SERVICES LEVY ORDER 2013

The Commission for Communications Regulation, in exercise of the powers conferred on it by section 30 of the Communications Regulation Acts 2002 to 2010 hereby makes the following order:

Citation and Commencement

1. (1) This Levy Order may be cited as the Communications Regulation Acts 2002 to 2010 (Section 30) Premium Rate Services Levy Order 2013

(2) These Regulations shall come into operation on DD MM 2013

Interpretation:

2. In this Levy Order except where the context otherwise requires:

"Acts of 2002 to 2010" means the Communications Regulation Act 2002 (No. 20 of 2002) as amended and the Communications Regulation (Premium Rate Services and Electronic Communications Infrastructure) Act 2010 (No. 2 of 2010);

“call” means any communication (whether voice, data, text or otherwise) which passes through an electronic communications network, whether initiated by an end user or initiated by or facilitated by a premium rate service provider, and a “caller” shall be construed accordingly;

“Commission” means the Commission for Communications Regulation;

“electronic communications network” has the meaning assigned to it by the Acts of 2002 to 2010;

“electronic communications services” has the meaning assigned to it by the Acts of 2002 to 2010;

“**Network Revenue**” means the sum of revenue less outpayments;

“**Outpayments**” means the amount payable by an undertaking to third parties in respect of revenue received from a premium rate service call;

“**Own Services**” is any premium rate service provided solely by the undertaking that directly receives payment from the end user for the premium rate service;

“premium rate number” means a number that is identified by the distinctive 15XX access code as provided for in the National Numbering Conventions v6.0(ComReg document 08/02), as amended by the Commission from time to time;

“premium rate service” has the meaning assigned to it at section 3 of the Communications Regulation (Premium Rate Services and Electronic Communications Infrastructure) Act 2010;

“**Regulations**” means the Communications Regulation (Licensing of Premium Rate Services) Regulations 2012 (S.I. No. 111 of 2012);

“**Revenue**” means;

(1) in relation to premium rate services that are accessed through the use of a premium rate number, the total sum, excluding VAT, received per call by the undertaking that hosts the premium rate number,

(2) in relation to premium rate services that are accessed through the use of a short code number, the total sum, excluding VAT, received per call by the undertaking that hosts the short code number, or

(3) in relation to premium rate services that are accessed through a mobile electronic communications network without the use of a short code number, the total sum, excluding VAT, received per call by the undertaking that directly receives payment from the end user for the premium rate service.

“short code number” means a 5-digit number that is identified by the format 5XXXX used for text or multimedia messaging, as provided for in the National Numbering Conventions v6.0(ComReg document 08/02), as amended by the Commission from time to time;

“**specified premium rate service**” has the meaning assigned to it at Regulation 3 of the Regulations;

“**undertaking**” has the meaning assigned to it by Section 2 of the Acts of 2002 to 2010.

3. In this Levy Order except where the context otherwise requires:

   (1) a reference to an Article is to an Article of this Levy Order unless it is indicated that reference to some other Order is intended, and

   (2) a reference to a paragraph or subparagraph is a reference to a paragraph or subparagraph of the provision in which the reference occurs, unless it is indicated that reference to some other provision is intended.

Application of Levy Order

4. This Levy Order applies to undertakings which receive Revenue.

Calculation of Levy

5. (1) Subject to paragraph (4), the levy will be applied to Network Revenue from specified premium rate services.

   (2) The levy imposed on an undertaking shall be exclusive of VAT.

   (3) Subject to paragraph (4) the levy rate to be imposed is seven point five per cent (7.5%) of Network Revenue.

   (4) Where an undertaking is providing an own service when the levy to be imposed is two point five per cent (2.5 %) of Revenue.

Payment of Levy

6. An undertaking shall pay to the Commission, quarterly in arrears, within 30 days of the end of each quarter, a sum of money amounting to the levy in respect of that quarter.

Form of Payment

7. (1) A levy, or portion thereof, payable in accordance with the terms of this Levy Order, shall be paid in cash or by cheque, money order, postal order or electronic funds transfer, to the Commission.

   (2) A payment referred to in paragraph (1) (save in the case of a payment in cash or electronic funds transfer) may be delivered or sent by post to the Commission at Abbey Court, Irish Life Centre, Abbey Street, Dublin 1, or at such other address as may from time to time be notified by the Commission to each undertaking.

(3) A request or repayment by the Commission to an undertaking made under this Levy Order may be delivered or sent by post to the applicable undertaking at the last address of the undertaking.

(4) In this Article "last address" in relation to an undertaking means the last address notified to the Commission for the purposes of this Levy Order or the Regulations.

GIVEN under the official seal of the Commission for Communications Regulation this

2013

____

Kevin O'Brien, Commissioner

On behalf of the Commission of Communications Regulation

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

This Order makes provision for a levy on providers of premium rate services for the purpose of meeting expenses properly incurred by the Commission in the discharge of its functions in respect of premium rate services.