



Commission for
Communications Regulation

Information Notice

Regulatory Guidances for Service Providers on the Provision of LLU

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1 Introduction

The “Regulatory Guidance for Undertakings on the Provision of LLU” (hereafter the “Guidance document”) relates to authorised Undertakings and their dealings with customers and other Undertakings, in the provision of telephony and broadband services in Ireland. Local loop unbundling (LLU) has been a key enabler of infrastructure competition across Europe in the provision of fixed line telecommunications services, in particular broadband internet access.

This document references some of the relevant law which is applicable to the provision of LLU and telephony and broadband, within the remit of and as required by ComReg. This Guideline includes some specific provisions relevant to the wholesale inter-operator relationship and other provisions relevant to the provision of retail services to customers and all end users. Additionally there is reference to some of the relevant law applicable to operators and customers in the context of the provision of services via LLU within the remit of other agencies.

This Guidance is intended as a general guide for industry as to some of the enactments, regulatory decisions and directions that they must meet. However this document does not describe how Undertakings are required to discharge their duties and obligations. This document also makes reference to some non-legally binding publications such as those published by ComReg, which though not binding are still relevant.

The Product

Number Portability is an end user right, and an obligation on all service providers providing a Publicly Available Telephone Service (PATS). This obligation is set out in Regulation 26 of the Universal Service Regulations 2003¹. Geographic Number Portability (GNP) was first introduced in Ireland in 2001² and is the process by which a consumer can port their fixed line, geographic telephone number to another service provider.

Local Loop Unbundling (LLU) is the process according to which Access Seekers can gain access to and control of the Eircom telephone line between the local telephone exchange servicing the end-user and the end-user’s premises – commonly known as the last mile or local loop. In D8/04 ComReg designated Eircom with significant market power (SMP) in the market for wholesale unbundled access to the local loop. As a consequence of the SMP decision certain remedial SMP obligations were imposed on Eircom relating to the provision of LLU services. Local Loop Unbundling (LLU) is the process which enables Other Authorised Operator’s (OAOs) to make use of the physical copper connections between a customer and the local exchange, known as the "local loop". Eircom is obliged to provide access to the

¹S.I. No. 308/2003 European Communities (Electronic Communications Networks and Services)(Universal Service and Users’ Rights) Regulations 2003 (hereafter Universal Service Regulations)

² Introducing Number Portability in Ireland - Decision Notice D1/99 ODTR9924

local loop and associated facilities including co-location. OAOs use Eircom's incumbent infrastructure to deliver a range of voice and broadband services to their customers. In D8/04 ComReg designated Eircom with significant market power (SMP) in the market for wholesale unbundled access to the local loop. As a consequence of the SMP decision certain remedial SMP obligations were imposed on Eircom relating to the provision of LLU services.

There are three different types of LLU; Line Share, Unbundled Local Metallic Path, Geographic Number Portability & Unbundled Local Metallic Path.

Line Share (LS)

LS provides OAOs with shared use of a metallic path between an Eircom exchange facility and a customer's premises. Eircom retains the voice-band frequency spectrum of the circuit and continues to provide PSTN/SB-WLR service and the OAO is able to use the remainder of the frequency spectrum. (See annex for diagram)

Unbundled Local Metallic Path (ULMP)

ULMP provides OAOs with exclusive use of a metallic path between an Eircom exchange facility and a customer's premises. (See annex for diagram)

Geographic Number portability and Unbundled Local Metallic Path (GLUMP)

GLUMP enables OAOs to place one GLUMP order that will facilitate the co-ordinated delivery of a single/multi line ULMP & GNP to the end customer.

Note

For the purpose of this document LLU will refer to LS & ULMP exclusively. The third element of LLU, namely GLUMP is catered for via the following ComReg documents:

1. Information Notice – GLUMP Code of Practice Review, (07/75),
2. Regulatory Guidance document – GLUMP Guidance for Undertakings on the provision of GLUMP, (07/75a)
3. Information Notice – Output of the GLUMP Code of Practice review; provisions not having a legal basis, (07/75b)

Background

On 18 December 2000 the European Parliament and the Council adopted Regulation (EC) No. 2887/2000 on unbundled access to the local metallic path (hereafter referred to as the “LLU Regulation”).

The Eircom Code of Conduct for the Eircom Group with regard to selling practices was a requirement under the General Telecommunications Licence “GTL” (replaced in 2003 by the General Authorisation). Part 3 of the GTL addressed approval of customer contracts and misuse of data amongst other things and applied to SMP

operators only (Eircom was designated with SMP by D 15/99). The ODTR consulted on the requirements under Condition 19 at Part 3 of the GTL as regards selling practices for licensed services within the public fixed telephone and service market, to avoid unfair and anti-competitive practices in 2000 (00/85) and a selling practices Code of Conduct was introduced by Eircom.

In September 2001 an LLU Code of Practice (CoP) was addressed by D8/01 where the ODTR (now ComReg) stated ‘Should the industry wish to agree a Code of Practice specific to inter operator Local Loop Unbundling issues, the Director considers development of this to be a matter for the industry’..

In January 2003 ComReg directed under (03/11) that a *no contact period* of 3 months following the loss of a customer from Eircom to an operator via LLU would apply. The decision document was based on Article 4 (3) of the LLU Regulation (Regulation 2887/2000 of the European Parliament and of the Council on unbundled access to the local loop) which allowed ComReg to intervene on its own initiative in order to ensure non-discrimination, fair competition, economic efficiency and maximum benefit for users and a no contact period directed by that means.

In March 2003 as part of the LLU product launch, industry agreed to adhere to a CoP for LLU that was drafted at the LLU Industry forum and Eircom stated “for the avoidance of doubt this Code, as with the Code of Practice on CPS and NP, will form part of the Eircom 'Selling Practices - A Code of Conduct for the Eircom Group', document”.

The ARO (Access Reference offer) and the operator contracts do not specifically refer to or incorporate the LLU CoP or the no contact decision (03/11). The LLU Code of Practice was never subsequently directed on as a requirement under the new EU framework in 2003 and the no contact decision (03/11) was not continued or redirected as an obligation under the new EU framework in 2003 nor were they considered as remedies in the LLU market review or directed on under D8/04. ComReg has not been asked to enforce any aspect of the LLU Code of Practice or the no contact period nor has it sought to do so.

As an evolving product although historically the LLU Code of Practice was not utilised because the product was not really active as the product is utilised going forward ComReg considers it appropriate to provide guidance on the applicable legislation in the area. In September 2007 ComReg undertook a review of the LLU Code of Practice in line with the review of other codes of practice having completed its review of the GLUMP Code of Practice.

Regulatory Guidance Document

The Guidance document highlights the key legal obligations which operators are required to meet in providing service to customers. The Guidance document is intended to replace the previous LLU Codes of Practice.

The Guidance document is of itself intended as a reference for Undertakings, drawing on the legal and regulatory obligations some of which may fall under the remit of ComReg and other agencies, including the Office of the Data Protection Commissioner and the National Consumer Agency.

The prior LLU Code of Practice also dealt with a number of product specific features and required operators to engage in, or desist from, specific activities in relation to the inter-operator processes and end-user communications in the provisioning of telephony and/or broadband service to customers through LLU.

The original LLU Code of Practice was an industry agreed document and in some instances contained provisions not having an independent legal basis outside of the Code.

ComReg proposes that while the Guidance document will give Undertakings some legal certainty on the key obligations which are enforceable for instance by ComReg and other agencies, there are other provisions which lack legal certainty but ComReg is of the opinion that such provisions would be of value to industry to improve the customer experience of the LLU product.

The Output Document

The Output document includes provisions from the original LLU Code of Practice and the original GLUMP Codes of Practice (following a review of same) that are thought not to have any independent legal basis and accordingly could not be contained in the Guidance documents for GLUMP or LLU³. However many of these provisions in the Output document were developed and agreed by Industry as part of the original LLU & GLUMP CoP, as industry felt that these provisions had value and assisted in the efficient delivery of services.

A link to the Output document as well as the Guidance document is available on ComReg's website www.comreg.ie.

Status of Guidance document

This Guidance is of itself unenforceable but any legal duties mentioned herein exist independently of this document and continue to exist and be enforceable of themselves. If there is a conflict between this Guidance document and any legal requirements, the latter shall prevail. It is not intended that this document vary the law. Compliance with this document does not guarantee compliance with the law and this Guidance is not a substitute for legal advice.

DISCLAIMER

The contents of this document are for information and guidance purposes only. This list of legal provisions and the other elements of the document are intended to be

³ LLU and GLUMP are intrinsically linked.

illustrative of some of the relevant law pertaining to Undertakings in the provisioning of LLU. It does not purport to set out a comprehensive list of all of legal obligations or to give a complete statement of the law. No legal advice is being given here nor should be presumed. Nothing herein should be construed as a representation by, or on behalf of, ComReg as to its understanding or interpretation of any of the provisions of the law or as to the interpretation of any law and ComReg gives no warranty as to this document or its use.

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- (ii) indirect loss and consequential losses

that Undertakings, third persons or any person, organisation or entity might incur as a result of:

- (i) statements such as negligent statements, negligent misstatement, innocent misrepresentations, fraudulent statements, inaccuracies or omissions in the contents of this document;
- (ii) reliance on or compliance with this Guidance;
- (iii) inaccuracy or inappropriateness of this Guidance;
- (iv) inconsistency of this Guidance with any law; or
- (v) ensuring compliance by any person with this Guidance; or
- (iv) doing or failing to do any other matter or otherwise by reason of this document or its contents.

This Disclaimer extends to and includes the headings and Appendices.

2 Objectives of the Guidance

The main objectives of these Guidance are:

- To highlight to Undertakings some of the most important legislative provisions and regulatory directions pertinent to the provision of telephony and broadband services pertaining to the provision of LLU;
- To highlight some of the legislative provisions that exist in relation to the requirement for pre-contractual information pertaining to customers contracts;
- To increase customer confidence in their dealings with Undertakings, and increase competitiveness of the market to the benefit of both customers and Undertakings;
- To highlight where some legal obligations and duties lie and to endeavour to relate some duties with the applicable enforcement agency where possible;
- To benefit customers and Undertakings by encouraging adherence to legal requirements from industry.

2.1 General Authorisation consultation

ComReg plans to consult on proposed amendments to the General Authorisation, in particular the Consumer Protection Rules (Condition 18⁴). It is expected that this consultation will be completed in 2008. Two elements from the LLU Code of Practice (CoP) review will be proposed for inclusion in Section 18:

- (i) The use of the Customer Authorisation Form (CAF) or equivalent authorisation process such as Third Party Verification (TPV);
- (ii) The provision of an Anti-slamming letter.

It is also proposed to include under Section 18 the following:

- (iii) The requirement for the UAN (Customer Account Number) to appear on the customer bill.

In the interim ComReg expects that these elements which are previously agreed and/or observed by industry will be adhered to by Undertakings.

⁴ Consumer Protection Rules, General Authorisation 03/81

3 Legal Requirements

When providing services to customers, Undertakings are subject to a range of existing legal requirements some of which may fall for consideration by various agencies, such as statutory enforcement agencies, or other agencies such as the ASAI. Some legal requirements are of course enforceable contractually between parties through the courts or through another alternative dispute resolution process and/or by the relevant enforcement agency.

This document collates some of the key legal provisions pertinent to LLU and the provision of telephony and broadband services in that context and endeavours to denote the competent agency or agencies.

The legal requirements that fall within ComReg's remit is discussed in the next section in addition to some of the key legal provisions within the competence of other agencies. For ease of reference a table of some of the relevant law and the relevant agency in each case is also detailed in Appendix 2. The list of agencies, while not exhaustive, includes the following at the time of printing:

- (i) ComReg
- (ii) Others, including in particular:
 - the National Consumer Agency (NCA)
 - the Office of the Data Protection Commissioner (ODPC)

See Appendix 2 for further details.

4 General Requirements

4.1 End-User (Retail) Contracts

Content of End-User Contracts

Retail contracts offered to end-users by any Undertaking providing connection or access to the public telecommunications network are required to comply *inter alia* with Regulation 17 of S.I. No. 308/2003 European Communities (Electronic Communications Networks and Services)(Universal Service and Users' Rights) Regulations 2003 (hereafter Universal Service Regulations) and with all relevant directions and decisions issued by ComReg. ComReg is charged with responsibility for enforcing such requirements. Undertakings should be familiar with and comply with all law including under common law and under statutory provisions of the law. The following sections highlight some of the main areas of law which may also be relevant and Undertakings should observe its provisions to the extent that they are applicable to a particular contract and end-user.

4.1.1 *Service Provider Contact Details*

An end-user contract shall specify the identity and address of the supplier in the contract as required under Regulation 17 of the Universal Service Regulations. All relevant directions and decisions issued by ComReg must also be met.

The provisions of the S.I. 207 of 2001, “Protection of Customers in Respect of Contracts Made by Means of Distance Communications” (hereafter the Distance Selling Regulations), (hereafter the Distance Selling Regulations) and the Company Law Act 2007, may also be relevant and Undertakings should observe its provisions to the extent that they are applicable to a particular contract and end-user.

4.1.2 *Pricing Information and Charges*

Particulars of prices and tariffs and the means by which up to date information on all applicable tariffs and maintenance charges must be specified in the end-user contract as required under Regulation 17 of the Universal Service Regulations. All relevant directions and decisions issued by ComReg in this regard must also be met.

Undertakings are further required to be bound by the Directions of Document No. 03/86 which provides that in accordance with Regulation 18 of the Universal Service Regulations Undertakings shall provide a direct link from the homepage of their website into the tariff information section of their website and provide printed tariff information in response to a reasonable consumer request.

In addition ComReg Decision D11/04 (04/86) requires that all Undertakings providing a PATS service, or individual elements of such a service, shall observe the requirements and adhere to principles set out in the ComReg Code for Tariff Presentation. This Code requires the presentation of accurate and comprehensive tariff information that is accessible to the consumer.

The Distance Selling Regulations and the provisions of the Consumer Protection Act 2007 may also be relevant and Undertakings should observe its provisions, to the extent that they are applicable, to a particular contract and end-user.

4.1.3 *Refund arrangements*

Any compensation and refund arrangements which apply if contract service quality levels are not met must be specified in the contract in accordance with Regulation 17 of the Universal Service Regulations.

The indicative and non-exhaustive list of Unfair Terms contained in S.I. No. 27/1995 European Communities (Unfair Terms in Customer Contracts) Regulations, 1995 (hereafter Unfair Terms Regulations), may also be relevant and Undertakings should observe its provisions to the extent that they are applicable to a particular contract and end-user.

4.1.4 *Modifications and Changes to Contract*

An Undertaking shall, not less than one month prior to the date of implementation of any proposed modification, notify its subscribers to that service of the proposed modification in the conditions of the contract for that service, and their right to withdraw without penalty from such contract if they do not accept the modification. An end-user in such circumstances may withdraw from his or her contract with the Undertaking or provider, without penalty if he or she does not accept a proposed modification: Regulation 17 of the Universal Service Regulations.

The indicative and non-exhaustive list of Unfair Terms contained in the Unfair Terms Regulations may also be relevant and Undertakings should observe its provisions to the extent that they are applicable to a particular contract and end-user.

4.1.5 *Quality of Service*

End-user contracts must specify the services provided, the service quality levels offered and time for the initial connection to take up the service: Regulation 17 of the Universal Service Regulations.

The (i) Sale of Goods and Supply of Services Act 1980, (ii) the Distance Selling Regulations and (iii) the indicative and non-exhaustive list of Unfair Terms contained in the Unfair Terms Regulations, may also be relevant and Undertakings should observe its provisions to the extent that they are applicable to a particular contract and end-user.

4.1.6 *Maintenance*

The types of maintenance service offered must also be specified in the end-user contract; in addition maintenance charges should be set out: see Regulation 17 of the Universal Service Regulations. See also “Guidance for the inclusions of a minimum set of requirements in contracts with end users”: ComReg Document No. 03/129. Note however that that document (03/129) does not contain legally binding provisions.

The provisions of the Distance Selling Regulations may also be relevant and Undertakings should observe its provisions to the extent that they are applicable to a particular contract and end-user.

4.1.7 *Duration, Renewal and Termination*

The duration of the contract, conditions for renewal and termination of services of the contract must all be specified: see Regulation 17 of the Universal Service Regulations.

The following may also be relevant and Undertakings should observe the provisions, to the extent that they are applicable, to a particular contract and end-user.

- (i) The Distance Selling Regulations
- (ii) The indicative and non-exhaustive list of Unfair Terms contained in the Unfair Terms Regulations
- (iii) S.I. No. 224/1989 — European Communities (Cancellation of Contracts Negotiated Away From Business Premises) Regulations, 1989, (hereafter DoorStep Sales Regulations) .

4.1.8 *Pre-Contractual Obligations and Notification of Terms Generally*

In addition to obligations in relation to the content of end-user contracts, Undertakings have duties to provide relevant contractual information in advance. They also owe duties as regards fairness and adequacy of notification of terms of the contract. Such duties under common law ought to be observed to the extent that they are applicable. Under statute law the provisions of the following may also be relevant and Undertakings should observe its provisions to the extent that they are applicable to a particular contract and end-user.

Sale of Goods and Supply of Services Act 1980
The Distance Selling Regulations,
The Unfair Terms Regulations

Post-contractual obligations may also apply, for example under common law and under the Distance Selling Regulations and should observe its provisions to the extent that they are applicable to a particular contract and end-user.

4.2 **Emergency Services**

Undertakings offering a Publicly Available Telephone Service (PATS) shall take all reasonable steps to ensure uninterrupted access to emergency services (see Regulation 19 of the Universal Service Regulations) and shall also ensure its end users are able to call the emergency services (on both 112 and 999) free of charge in accordance with with Regulation 22 of the Universal Service Regulations and with all relevant directions and decisions issued by ComReg.

Under Regulation 22 (2) of the Universal Service Regulations an Undertaking operating public telephone networks shall, as soon as practicable, make caller location information available to authorities handling emergencies, to the extent technically feasible, for all calls to the single European emergency call number “112” and any national emergency call number that may be specified by ComReg.

Note:

When providing information to customers about emergency access numbers, Undertakings should refer to the European harmonised ‘112’ emergency code as well as the original ‘999’ code.

The provisions of paragraph 4.1.8 herein may also be relevant and Undertakings should observe its provisions to the extent that they are applicable to a particular contract and end-user.

4.3 **Directories, Directory Inquiry & Operator Assistance**

Under Regulation 4 of the Universal Service Regulations the designated Undertaking shall ensure that a comprehensive directory of subscribers is made available to all end-users or that a comprehensive telephone directory inquiry service is made available to all end-users.

Under Regulation 21 (1) of the Universal Service Regulations an Undertaking providing a PATS service shall ensure that customers can have an entry in a directory and a directory inquiry service set out in Regulation 4.

Under Regulation 21 (2) of the Universal Service Regulations an Undertaking that assigns telephone numbers shall meet all reasonable requests to make

available, for the purposes of directory inquiry services and directories, the relevant information.

Also under Regulation 21 (3) of the Universal Service Regulations an Undertaking providing a connection to the public telephone network to end-users shall ensure that all such end-users can access operator assistance services and a directory inquiry service, in accordance with Regulation 4.

The provisions of paragraph 4.1.8 herein may also be relevant and Undertakings should observe its provisions to the extent that they are applicable to a particular contract and end-user.

Data protection and privacy laws including the Data Protection Acts 1988 to 2003 and the European Communities (Electronic Communications Networks and Services)(Data Protection and Privacy) Regulations 2003 S.I. No. 535 of 2003 (hereafter the Data Protection and Privacy Regulations) should be complied with to the extent that they are applicable.

4.4 **National Directory Database (NDD)**

Under Regulation 14 of the Data Protection and Privacy Regulations an Undertaking referred to in Regulation 21(1) or 21(2) of the Universal Service Regulations shall, for the purposes of Regulation 13(2)(b) or 13(4)(b) of the Data Protection and Privacy Regulations, record or cause to be recorded in the NDD, a request to the operator or notified to the relevant Undertaking, that the subscriber does not consent to unsolicited calls for the purpose of direct marketing or to such calls by means of an automated calling machine or a facsimile machine to a line of that subscriber.

See also sections 4.8 and 4.9 below.

4.5 **Calling Line Identification**

Undertakings should ensure that rules in relation to calling and connected line identification are observed. Undertakings are obliged to comply with these obligations as set out in Regulation 8 of the Data Protection and Privacy Regulations 2003 and with all relevant directions and decisions issued by ComReg and the ODPC.

4.6 **Number Portability**

Number Portability is an end user right, and an obligation on all Undertakings providing ('PATS') under the Universal Service Regulations. Undertakings providing a PATS service should ensure that subscribers can retain his or her number independently or the Undertaking providing the service. Undertakings are obliged to comply with this obligation as set out in Regulation 26 of the

Universal Services Regulations and with all relevant directions and decisions issued by ComReg.

4.7 **Complaints Procedure**

As per Regulation 17 of the Universal Service Regulations the method of initiating procedures for settlement of disputes, in accordance with Regulation 28 of the Universal Service Regulations, must be specified in any end-user contract. Regulation 28 provides that without prejudice to any legal rights of action which may apply, an Undertaking shall implement a code of practice for handling complaints from end-users in respect of an alleged contravention of these Regulations. It sets out several matters which such a code of practice shall include.

Undertakings are further required to be bound by the Directions of ComReg Document No. 03/89 which provides that all Undertakings subject to Regulation 28 (1) of the Universal Service Regulations shall amend their code of practice (required by ComReg decision notices D13/01 and D06/01) for handling complaints from end users to include a specific provision to allow for reimbursement of payments and payments in settlement of losses incurred in the event of a complaint.

The provisions of the following may also be relevant and Undertakings should observe these provisions to the extent that these regulations are applicable

- (i) The Unfair Terms Regulations;
- (ii) The Consumer Protection Act 2007
- (iii) The Distance Selling Regulations,

4.8 **End-User Information**

S.I. No. 305/2003 European Communities (Electronic Communications Networks and Services)(Access) Regulations 2003 (hereafter the Access Regulations), and specifically Regulations 5 (6) and 5 (7) there under, are relevant and must be observed.

Regulation 5 (6) of the Access Regulations provides that: “*Without prejudice to Regulation 18 of the Authorisation Regulations, an Undertaking that acquires information from another Undertaking before, during or after the process of negotiating access or interconnection arrangements shall use that information solely for the purpose for which it was supplied and shall respect at all times the confidentiality of information transmitted or stored.*”

Regulation 5 (7) of the Access Regulations provides that “*An Undertaking shall not pass any information referred to in paragraph (6) on to any other party, in particular, other departments, subsidiaries or partners of the Undertaking for whom such information could provide a competitive advantage.*”

Condition 17 of the General Authorisation Condition, (pursuant to Regulation 8 of the European Communities (Electronic Communications Networks and Services) (Authorisation) Regulations, 2003 (S.I. No. 306 of 2003)) should also be observed to the extent that it is relevant⁵.

Condition 17.1 provides that “*The Authorised Person shall safeguard the privacy and confidentiality of any electronic communication messages associated with the Authorised Services in accordance with any applicable national and European Community law in force from time to time*”.

Condition 17.2 provides that “*The Authorised Person shall not make use of network or traffic data, traffic profiles or any other data of any nature, which are not otherwise lawfully publicly available and which become available to the Authorised Person directly or indirectly either as a result of entering into interconnection arrangements or otherwise as a result of carrying electronic communications messages, in such a way which, in the reasonable opinion of the Commission, would unduly prefer the interests of any business carried on by the Authorised Person or an Affiliate or place persons competing with that business at an unfair disadvantage.*”

Undertakings shall also comply with all relevant directions and decisions issued by ComReg and legal requirements relating to data protection and privacy rights of data subjects and subscribers including legal requirements contained in the Data Protection and Privacy Regulations, such as exist under Regulations 6 and 9.

Attention is drawn to the ComReg Directions and Press Releases regarding the NDD⁶. Correspondence to Undertakings with obligations under Regulation 14 of the Data Protection and Privacy Regulations was issued from ComReg enclosing Directions under Regulations 19 (1) of the Data Protection and Privacy Regulations.

The provisions of the Data Protection Acts 1998-2003, the Consumer Protection Act 2007, Irish Constitution (Bunreacht na hÉireann) and the European Convention on Human Rights (hereafter ECHR) may also be relevant.

Undertakings are required under the Data Protection Acts and under the Data Protection and Privacy Regulations to train staff in these areas.

4.9 **Promotion and Commercial Practices**

Undertakings must ensure that their promotional material, statements, commercial and selling practices comply with all applicable legislation and regulatory decisions. The Customer Protection Act 2007 may also be relevant and Undertakings should

⁵ General Authorisation, ComReg Document No. 03/81

⁶ Press Releases ComReg PR210705 and PR121206 available on www.comreg.ie

observe its provisions to the extent that they are applicable to a particular contract and end-user.

In addition the terms of the Data Protection Acts 1988 and 2003 and the Distance Selling Regulations and the Data Protection and Privacy Regulations may also be relevant and Undertakings should observe its provisions to the extent that they are applicable to a particular contract and end-user.

The provisions of the following may also be relevant and Undertakings should observe these provisions to the extent that these regulations are applicable

- i. the Irish Constitution, (Bunreacht na hÉireann)
- ii. the Defamation Act 1961,
- iii. the Companies Acts and company law generally
- iv. S.I. No. 134/1988 European Communities (Misleading Advertising) Regulations, 1988.
- v. The Broadcasting Acts 2001 and 2007 and the Broadcasting Commission of Ireland's statutory Codes.

4.10 **CLFMP7 and Interference and Integrity of Public Communications Networks**

Undertakings shall ensure, in accordance with condition 9.1 of the General Authorisation, that their Electronic Communications Network and parts thereof shall be designed, constructed, installed, maintained, operated and used so as not to cause harmful interference with the lawful use or operation of any Electronic Communications Network.

4.11 **ACCESS & ACCESS ISSUES**

Rights and obligations in relation to interconnection and access are contained *inter alia* under the Access Regulations and under "Market Analysis: Wholesale unbundled access (including shared access) to metallic loops and sub-loops", Document No: 04/70, Decision No: D8/04. Eircom is designated as having Significant Market Power on the markets for "wholesale unbundled access" (including shared access) Wholesale unbundled access (including shared access) to metallic loops and sub-loops to metallic loops and sub-loops for the purpose of providing broadband and voice services. The Access Regulations require the SMP provider to comply with its obligations listed in Regulation 10 to 14 of the Access Regulations, which include obligations of transparency, non-discrimination, accounting separation, access to specific network facilities and price and cost accounting obligations.

⁷ Copper Loop Frequency Management Plan. Operators are required to adhere to the Industry agreed Copper Loop Frequency Management Plan (CLFMP), as agreed under the *LLU* Review Forum. The CLFMP is designed to prevent interference with other services operating in Eircom's local loop.

Decision number D8/04 requires and sets out, at paragraph 4 of the Decision that:

“4.1 Eircom shall have an obligation to meet reasonable requests by authorised undertakings for access to the local loop and access to collocations, or associated facilities, as provided for by Regulation 13 of the Access Regulations.

4.2 Without prejudice to the generality of section 4.1, Eircom shall provide to authorised undertakings, access to the following services and facilities:-

- I. Full unbundled local metallic path (‘ULMP’);*
- II. Shared access line sharing;*
- III. Full sub-loop unbundling;*
- IV. Shared sub-loop unbundling;*
- V. Collocation*
- VI. Associated Facilities;*

Wholesale unbundled access (including shared access) to metallic loops and sub-loops

VII. Technical interfaces, protocols or other key technologies that are indispensable for the interoperability of services or virtual network services related to LLU; and

VIII. Operational support systems or, similar software systems necessary to ensure fair competition in the provision of LLU services.

4.3 Eircom shall continue to offer access to the services and facilities described in this section in accordance with the product descriptions and on the terms and conditions which are specified in the current Version 1.18 of the access reference offer (‘ARO’) and the related manuals published as Industry LLU Documentation on its official website: www.Eircomwholesale.ie

4.4 Eircom shall negotiate in good faith with authorised undertakings requesting access to LLU services and facilities.

4.5 Eircom shall not withdraw access to facilities which it has already granted to authorised undertakings.”

Undertakings are obliged to comply with all relevant directions and decisions issued by ComReg.

The provisions of paragraph 4.8 herein also refer to the Access Regulations and Undertakings should observe its provisions to the extent that they are applicable to a particular contract and end-user.

5 Enforcement & Compliance

ComReg possess jurisdiction for the enforcement of certain provisions that are contained in this Guidance. ComReg does not hold exclusive jurisdiction in relation to the enforcement of all legal requirements contained in this document and whether ComReg has a role as regards enforcement will depend on the act or omission at issue.

Where ComReg is the appropriate enforcement agency, it may take enforcement action as set out in the various Regulations⁸ and the Communications Regulations Act 2002 as amended. For instance Undertakings will be aware that as regards matters which fall within the remit of ComReg, it is within the power of ComReg to monitor compliance with obligations, requirements or directions under the Regulations, and if deemed necessary, to notify the person of those findings and give the person an opportunity to state his or her views. ComReg may publish any notification given by it. If ComReg is of the opinion that a person has not complied with an obligation, requirement or direction under those Regulations, it may apply to the High Court for such order as may be appropriate by way of compliance with the obligation, requirement or direction. See Regulation 32 of the Universal Service Regulations for more detail regarding this example of ComReg's enforcement powers. ComReg also possesses monitoring and investigatory powers to assist in issues of compliance.

The foregoing does not represent an exhaustive list of the types of compliance, enforcement actions or sanctions available to ComReg. Details of ComReg's powers in these matters can be found, in particular, within the terms of the various Regulations referred to and the Communications Regulations Act 2002 as amended by the Communications Regulations (Amendment) Act 2007.

The nature of a sanction for breach of an obligation or legal requirement will depend on which particular law or regulatory provision that has been offended, the severity of this, and which agency or authority is charged with enforcing the particular provision i.e. what type of powers that agency or authority possess as regards sanctions, compliance and enforcement. It is also not possible to state what a court might determine. Undertakings should consult with the relevant agencies to apprise themselves of the enforcement procedures of a particular agency.

⁸ European Communities (Electronic Communications Networks and Services)(Data Protection and Privacy) Regulations 2003 [S.I. 535 of 2003](#); European Communities (Electronic Communications Networks and Services) (Access) Regulations 2003 [S.I. 305 of 2003](#); European Communities (Electronic Communications Networks and Services)(Authorisation) Regulations 2003 [S.I. 306 of 2003](#); European Communities (Electronic Communications Networks and Services)(Framework) Regulations 2003 [S.I. 307 of 2003](#); European Communities (Electronic Communications Networks and Services)(Universal Service and Users' Rights) Regulations 2003 [S.I. 308 of 2003](#)

Appendix 1 – Definitions

“Applicable Enactment” means legislation, an act or a regulation/statutory instrument or any other statutory provision includes a reference to the legislation or statutory provision as amended, modified or re-enacted or both from time to time and any subordinate legislation made under the statutory provision and shall include any orders, regulations, instruments or other subordinate legislation made under the relevant legislation

“Publicly Available Telephone Service (PATS)” means a service available to the public for originating and receiving national and international calls and access to emergency services through a number or numbers in a national or international telephone numbering plan, and in addition may, where relevant, include one or more of the following services: the provision of UNDERTAKINGS assistance, directory inquiry services, directories, provision of public pay phones, provision of service under special terms, provision of special facilities for customers with disabilities or special social needs or the provision of non-geographic services or both.

“Service Provider” (Undertakings) means an Undertaking that is engaged in providing telephony services to customers in Ireland by means of a public network, with inbound and/or outbound access to and from the PSTN.

“Public Switched Telephone Network (PSTN)” means the collection of interconnected systems operated by the various telephone companies and administrations (telcos and PTTs) around the world.

“LLU” Local Loop Unbundling (LLU) is the process which enables Other Authorised Operator’s (OAOs) to make use of the physical copper connections between a customer and the local exchange, known as the "local loop".

There are three different types of LLU; Line Share(LS), Unbundled Local Metallic Path(ULMP), Geographic Number Portability & Unbundled Local Metallic Path.

“Line Share” LS provides OAOs with shared use of a metallic path between an Eircom exchange facility and a customer's premises. Eircom retains the voice-band frequency spectrum of the circuit and continues to provide PSTN/SB-WLR service and the OAO is able to use the remainder of the frequency spectrum. (See annex for diagram)

“Unbundled Local Metallic Path” (ULMP) is an in-situ two wire metallic path connection between the Access Seeker’s (AS) block on the exchange side of the Main Distribution Frame (MDF) and the Network Termination Unit (NTU), or Network Terminating Point where no NTU exists, in the customers premises. (See annex for diagram)

“Geographic Number Portability” (GNP) provides a method that enables an end customer of one Undertakings (a ‘Donor’ Undertakings) to become a customer of

another Undertakings (a 'Recipient' Undertakings) while retaining the same geographic telephone number(s). The DO is said to 'export' the number(s) to the RO. Conversely, the RO 'imports' numbers from the DO.

“CLMFP” The Copper Loop Frequency Management Plan ('CLFMP')

“Electronic Communications Network”: means the transmission systems and, where applicable, switching or routing equipment and other resources which permit the conveyance of signals by wire, radio, by optical or by other electromagnetic means, including satellite networks, fixed (circuit- and packet-switched, including Internet) and mobile terrestrial networks, electricity cable systems, to the extent that they are used for the purpose of transmitting signals, networks used for radio and television broadcasting and cable television networks irrespective of the type of information conveyed;

Appendix 2: Some Legal Requirements relevant to the provision of LLU⁹

	<i>Some Obligations</i>	
	Au: Authorisation Regulations; US: Universal Service Regulations; A: Access Regulations; F: Framework Regulations	Agency with Competence
Notification to ComReg	Au Regulation 4 Any person who intends to provide an ECN or ECS shall, before doing so, notify the Regulator of his or her intention to provide such a network or service.	ComReg
Contract Content;	<ul style="list-style-type: none"> ➤ US Regulation 17 An undertaking that provides end-users connection or access or both to the PTN shall do so in accordance with a contract. ➤ Users' Rights to Communications Services (Protecting Users in a Developing Communications Market), Decision Notice D16/03 (ComReg 03/86) ➤ Directions re Tariff Transparency: ComReg Code for Tariff Presentation, Decision Notice D11/04 (ComReg 04/86) ➤ Users' Rights to Communications Services (Protecting Users in a Developing Communications Market), Decision Notice D16/03 ➤ Guidelines for the inclusions of a minimum set of requirements in contracts with end users: Document No. 03/129*. 	ComReg
	<ul style="list-style-type: none"> ➤ S.I. No. 207/2001 — European Communities (Protection of Consumer in Respect of Contracts Made by Means of Distance Communication) Regulations, 2001; 	NCA

⁹ This Table should be read in conjunction with Section 4 of this Guidance document.

	<ul style="list-style-type: none"> ➤ Consumer Protection Act 2007 	NCA
	<ul style="list-style-type: none"> ➤ S.I. No. 27/1995 — European Communities (Unfair Terms in Consumer Contracts) Regulations, 1995; 	NCA
	<ul style="list-style-type: none"> ➤ Sale of Goods and Supply of Services Act 1980; 	NCA
	<ul style="list-style-type: none"> ➤ S.I. No. 224/1989 — European Communities (Cancellation of Contracts Negotiated Away From Business Premises) Regulations, 1989; 	NCA
	<ul style="list-style-type: none"> ➤ Company Act 2007 	ODCE
	<ul style="list-style-type: none"> ➤ S.I. No. 68/2003 — European Communities (Directive 2000/31/Ec) Regulations 2003 (hereafter the E-Commerce Regulations) 	NCA
Emergency Services	<p>US Regulation 19(2) An undertaking providing PATS at fixed locations shall take all reasonable steps to ensure uninterrupted access to emergency services.</p> <p>US Regulation 22(1) Operators offering PATS must ensure that their end-users are able to access free of charge the emergency numbers 112 and 999.</p> <p>US Regulation 22(2) Those operating PTNs (i.e. an electronic communications network which is used to provide PATS) must, as soon as practicable, make caller location information available to authorities handling emergencies, to the extent technically feasible, for all calls to 112 and 999.</p>	ComReg
Number Portability	<p>US Regulation 26(1) Operators offering PATS shall insure that a subscriber to such service can retain his or her number independently of the undertaking providing the service.</p>	ComReg

National Directory Database	Regulation 14 of S.I. No. 535/2003 — European Communities (Electronic Communications Networks and Services) (Data Protection and Privacy) Regulations 2003	ComReg & ODPC
Information regarding Quality of Service	US Regulation 18(4) The regulator may specify obligations to be complied with by an undertaking providing publicly available ECS requiring such undertaking to publish comparable, adequate and up to date information for end-users on the quality of its services.	ComReg
Directory	<p>US Regulation 4 the designated undertaking shall ensure that that a comprehensive directory of subscribers is made available to all end-users or that a comprehensive telephone directory inquiry service is made available to all end-users.</p> <p>US Regulation 21 (1) an Undertaking providing a PATS service shall ensure that customers can have an entry in a directory and a directory inquiry service set out in Regulation 4.</p> <p>US Regulation 21 (2) an Undertaking that assigns telephone numbers shall meet all reasonable requests to make available, for the purposes of directory inquiry services and directories, the relevant information.</p> <p>US Regulation 21 (3) an Undertaking providing a connection to the public telephone network to end-users shall ensure that all such end-users can access operator assistance services and a directory inquiry service, in accordance with Regulation 4.</p>	ComReg
Access to directory enquiry and operator assistance services	<p>US Regulation 21 (1) an Undertaking providing a PATS service shall ensure that customers can have an entry in a directory and a directory inquiry service set out in Regulation 4.</p> <p>US Regulation 21(2) An undertaking that assigns telephone numbers to subscribers shall meet all reasonable</p>	ComReg

	<p>requests to make available, for the purposes of the provision of publicly available directory inquiry services, directories ... , the relevant information in an agreed format on terms that are fair, objective, cost oriented and non-discriminatory.</p> <p>US Regulation 21 (3) an Undertaking providing a connection to the public telephone network to end-users shall ensure that all such end-users can access operator assistance services and a directory inquiry service, in accordance with Regulation 4.</p>		
Calling Identification	Line	<p>US Regulation 8 of of S.I. No. 535/2003 — European Communities (Electronic Communications Networks and Services) (Data Protection and Privacy) Regulations 2003</p>	ComReg & ODPC
Complaints Procedures		<p>US Regulation 17</p> <p>US Regulation 28 (1) An undertaking that provides end-users connection or access</p> <p>ComReg 03/89 Dispute Resolution Procedures, Decision No. D18/03</p> <p>S.I. No. 27/1995 — European Communities (Unfair Terms in Consumer Contracts) Regulations, 1995;</p> <p>Consumer Protection Act 2007</p> <p>S.I. No. 207/2001 — European Communities (Protection of Consumer in Respect of Contracts Made by Means of Distance Communication) Regulations, 2001;</p>	<p>ComReg</p> <p>NCA</p> <p>NCA</p> <p>NCA</p>
End User Information		<p>Access Regulation 5 (6) and 5 (7) S.I. No. 305/2003 European Communities (Electronic Communications Networks and Services)(Access) Regulations 2003</p> <p>General Authorisation (pursuant to Regulation 8 of the European Communities (Electronic Communications</p>	<p>ComReg</p> <p>ComReg</p>

	<p>Networks and Services) (Authorisation) Regulations, 2003 (S.I. No. 306 of 2003))</p> <p>See Direction & Press Release regarding the NDD, reference PR210705 and PR121206 and associated correspondence from ComReg</p> <p>See generally ODPC electronic publications and Guidance Material which includes section on Telecommunications</p> <p>Data Protection Acts 1998-2003</p> <p>Consumer Protection Act 2007</p>	<p>ODPC & ComReg</p> <p>ODPC</p> <p>ODPC</p> <p>NCA</p>
<p>Promotion & Commercial Practices</p>	<p>The Consumer Protection Act 2007</p> <p>Data Protection Acts 1988 and 2003</p> <p>Distance Selling Regulations</p> <p>Data Protection and Privacy Regulations</p> <p>The Companies Acts</p> <p>S.I. No. 134/1988 European Communities (Misleading Advertising) Regulations, 1988</p> <p>The Broadcasting Acts 2001 and 2007</p>	<p>NCA</p> <p>ODPC</p> <p>NCA</p> <p>ComReg & ODPC</p> <p>ODCE</p> <p>NCA (& ASAI**)</p> <p>BCI</p>
<p>Rights</p>		

Interconnection/Access	<p>A Regulation 5 Operators of public communications networks have the right and when requested by authorised undertakings an obligation to negotiate interconnection.</p> <p>Decision D8/04 document no 04/70, Market Analysis decision of Wholesale unbundled access (including shared access) to metallic loops and sub-loops.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p>
Numbers	<p>F Regulation 22(3) The regulator shall, subject to ensuring the proper management of the national numbering scheme, grant rights of use for numbers and number ranges for all publicly available ECS in a manner that gives fair and equitable treatment to all undertakings providing publicly available ECS.</p>	<p>Yes</p> <p>No</p>
Carrier Selection and Pre-Selection	<p>US Regulation 16(1) Those entities classified as offering PATS may explicitly request access to carrier selection and pre-selection on the network of an operator that has been designated as having significant market power.</p>	<p>Yes</p>
Number Portability	<p>As above. Those service providers who expect to port numbers into their network must also be prepared to port numbers out of their network. This is known as reciprocal portability.</p>	
Directory	<p>As above. Only subscribers of PATS have the rights to be listed in a public telephone directory.</p>	
<p><i>Miscellaneous</i></p>		

	<ul style="list-style-type: none"> • Communications Regulation Act 2002 as amended • Competition Act 2002 as amended • S.I. No. 307/2003 — European Communities (Electronic Communications Networks and Services)(Framework) Regulations 2003 • S.I. No. 195/2004 — European Communities (Implementation of the Rules on Competition Laid Down in Articles 81 and 82 of the Treaty) Regulations 2004, as amended • The Future Provision for Telephony Services Under Universal Service Obligations, Document Number 06/32 • Review of the Price Cap on Certain Telecommunications Services, Vulnerable Users Scheme, Document Number 03/48 (and see Vulnerable User Scheme, Document number 03/48) • Users' Rights to Communications Services (Protecting Users in a Developing Communications Market), Decision Notice D16/03 (ComReg 03/86) • Directions re Tariff Transparency: ComReg Code for Tariff Presentation, Decision Notice D11/04 (ComReg 04/86) • Dispute Resolution Procedures, Decision No. D18/03(ComReg 03/89) • Electronic Commerce Act 2000 • National Standards Authority of Ireland Act, 1996 • The Companies Acts, Orders and Regulations 	<p>ComReg</p> <p>ComReg</p> <p>ComReg</p> <p>ComReg</p> <p>ComReg</p> <p>ComReg</p> <p>ComReg</p> <p>ComReg</p> <p>ComReg</p> <p>NCA</p> <p>NSAI</p> <p>ODCE</p> <p>NCA</p>
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	<ul style="list-style-type: none"> • Liability for Defective Products Act 1991 • S.I No. 199 of 2004 European Communities (General Product Safety) Regulations 2004 • S.I. 401 of 2000, European Communities (Liability for Defective Products) Regulations • Directive 2006/24 re Location and Traffic Data • Criminal Justice (Terrorist Offences) Act 2005, • Defamation Act 1961 • The Irish Constitution (Bunreacht na hEireann 1937) • European Convention on Human Rights • Criminal Justice (Terrorist Offences) Act 2005, • The Contractual Obligations (Applicable Law) Act 1991 • Council Regulation no 44/2001 (Brussels I Regulation) • S.I. 52/2002 European Communities (Civil and Commercial Judgements) Regulations 2002 • Criminal Justice (Theft and Fraud Offences) Act 2001 	<p>NCA</p> <p>NCA</p> <p>Agency: Reference Not Applicable</p>
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	<ul style="list-style-type: none"> • The Duty of Care Principal, Law of Negligence and Law of Tort are relevant; there exists a general obligation on individuals and organisations to conduct their affairs in such a way that they do not damage or cause harm to others. • Undertakings must also be cognisant of developments in the law especially as regards as consumer interests. They must also be familiar with any relevant provisions of the Irish Constitution, with relevant case law and equitable principles, while at all times recognising the supremacy of EC legislation and rulings, where appropriate or necessary. 	
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It should also be noted that those entities who wish to be allocated numbers from the national numbering scheme must also abide by the National Numbering Conventions and any and all terms and conditions of use that accompany the said allocation.

This is not an exhaustive list of rights and obligations. Any entity wishing to operate as an ECS or PATS provider should ensure that they have a full understanding of the requirements which they will need to fulfill.

*Document 03/129 is not a legally enforceable document.

** The ASAI is not a statutory enforcement agency

Annex1 Line Sharing & Unbundled Local Metallic Path Diagrams

Fig. 1 – Line Sharing - Diagram

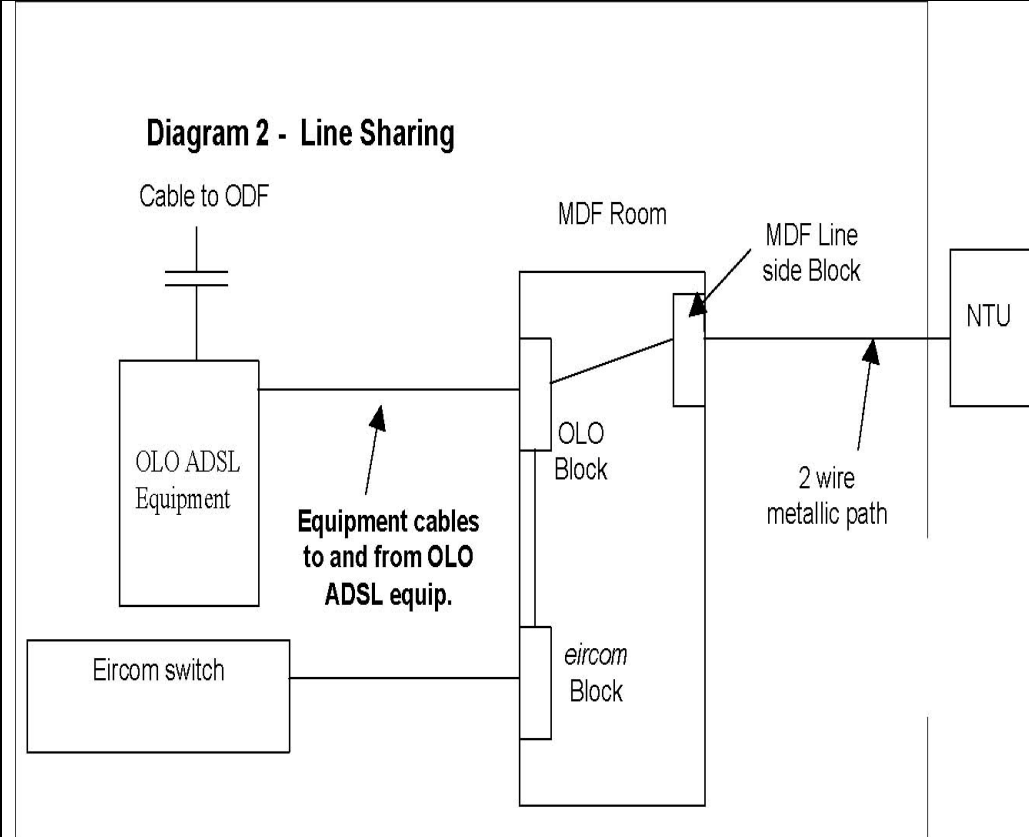


Fig 2 – Unbundled Local Metallic Path - Diagram

