Commission for
Communications Regulation

Consultation Paper

Rental Price for Shared Access to the Unbundled Local Loop

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All responses to this consultation should be clearly marked:- 'Reference: Submission re ComReg 08/106 as indicated above, and sent by post, facsimile, e-mail or on-line at www.comreg.ie (current consultations), to arrive strictly on or before 18:00 on Wednesday 25 February 2009, to:

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Please note ComReg will publish all respondents submissions with the Response to this Consultation, subject to the provisions of ComReg's guidelines on the treatment of confidential information – ComReg 05/24

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1 Executive Summary

On the 27 June 2008 ComReg made a decision, D3/08[1], to direct Eircom to reduce its current Line Share ("LS") price from €8.41 to a maximum price of €2.94 for an interim period of one year based on the average benchmark price within the EU 15 countries. ComReg had made this decision based on the knowledge that there is significant pent up demand for LS and that competition by direct investment in infrastructure was being held up by what ComReg believe to be an excessive price as it allows for an over recovery of the cost for providing local loop services.

However on 23 July 2008 Eircom issued a statutory appeal[2] against D3/08 pursuant to Regulation 4 of the European Communities Framework Regulations[3]. On foot of this appeal, ComReg decided to set aside its decision of 27 June 2008 in relation to the revised price of LS. ComReg considered the financial cost of the appeal process, the likely burden on ComReg's own resources and the probability that judgement might not be delivered until well into 2009. ComReg was also mindful that the full review was near completion and this was considered in the context that the decisions under appeal was for an interim period of one year only or until such time as a full review of the price was complete.

ComReg, in its decision, made it clear that a thorough analysis of all the economic models for the pricing of LS, while considering other wholesale and retail pricing of Eircom, had not been completed prior to the interim decision being made and that this would be done in the coming months. This analysis is now complete. The analysis and the subsequent proposals are summarised in this consultation document, however for full details please refer to the Tera Report separately published in ComReg Document 08/106a.

The conclusion of the Tera report is that the incremental cost approach is the most appropriate where retail tariffs are fully rebalanced and the full loop cost, as provided for under the forward looking long run incremental cost ("FL-LRIC") price control, is recovered through the current monthly rental price for Unbundled Local Metallic Path ("ULMP). Tera set out the component parts that make up the LS service and analyse the incremental cost associated, deriving an initial estimated price of €0.75 per line per month. This figure is subject to change as it is an initial estimate and may fluctuate based on the responses to this consultation document.

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[1] ComReg Document No. 08/46, Response to Consultation 08/23 and Decision: Rental price for shared access to the unbundled local loop, published on 27 June 2008

[2] The High court, Record No. 2008/110MCA

[3] European Communities (electronic communications Network and Services) (Framework) Regulations, 2003 (S.I. No, 307/2003) as amended by the European Communities (electronic communications Network and Services) (Framework) (Amendment) Regulations, 2007 (S.I. No. 271/2007)

2 Introduction

2.1 The importance of LLU

In Ireland, Local Loop Unbundling ("LLU") is a wholesale service whereby Eircom (the fixed line incumbent) is legally obliged by ComReg to provide access to its local loop to Other Authorised Operators ("OAOs"). The OAOs can use LLU for the provision of a full range of electronic communications services. The local loop is the physical path, usually copper, which connects a local exchange to an end user. It is the most difficult part of a telecommunications network for Eircom's competitors to replicate economically. Because of this, Eircom is legally obliged by ComReg to allow OAOs to gain access to it, in order to allow them to provide electronic communications services to end users.

LLU allows OAOs to compete with the fixed line incumbent to provide a wide range of services to end users. These services currently include:

- Retail line rental.
- Telephony.
- Broadband.
- Voice over internet protocol ("VoIP").
- Video on Demand ("VOD").
- Internet protocol television ("IPTV").

LLU allows OAOs to compete with the fixed line incumbent, not only on the range of services offered, but also on their price, quality and other differentiating characteristics. There is considerable evidence demonstrating that in many countries, where LLU has been a success the take up of broadband, the service being delivered and the prices being paid for high speeds have progressed at a much faster pace than markets that rely on the basic resale of the incumbents wholesale services[4]. It is ComReg's view that an economically viable LLU proposition has the potential to deliver similar benefits to consumers in Ireland also.

LLU is important because it enables OAOs to offer broadband services in areas where it is uneconomical to build local loops, or alternative broadband technologies, without being restricted to the rates offered by Eircom's wholesale Bitstream products[5]. LLU can stimulate and encourage the development of electronic communication services in Ireland because it allows OAOs greater control over their product specification than when using (for example) Eircom's wholesale broadband (Bitstream) products. At the same time, OAOs can leverage the extensive national

[4] Source: European Competiitive Telecommunicatons Association
http://www.ectaportal.com/en/upload/File/Broadband%20Scorecards/Q307/BB_Sc_Q307_prv2.pdf

[5] Bitstream is a wholesale broadband product which Eircom provides to OAOs.

coverage that Eircom's access network provides, allowing competition on a national scale through a mixture of wholesale services from the incumbent.

It must be remembered that LLU has a wider national importance: electronic communication services are essential to the development of the information-based economy in Ireland, which is key to maintaining and attracting international investment. It is also generally recognised that an advanced, thriving electronic communications sector, characterised by healthy competition, is highly important for maintaining and enhancing Ireland's international economic competitiveness. Currently the provision of broadband in Ireland is considered a service which is below par with other countries and could have a negative impact on inward investment in Ireland.

LLU comes in two main forms, full unbundling (also known as unbundled local metallic path or "ULMP") and shared access to the local loop (referred to as Line Share ("LS") in this Consultation document). ComReg determined the price of ULMP in Decision D15/04.[6] This Consultation Document is concerned with the pricing for LS[7] .

A product description of LS is provided in Appendix 1 to Service Schedule 103, Product Description for Line Sharing, of the Eircom Access Reference Offer (**"the ARO"**).[8] It provides that:

'The LS product allows the services provided by Eircom and a digital subscriber line ("DSL") service offered by an Access Seeker, to be integrated over the same two wire metallic path. The points of demarcation for Eircom will be the Network Termination Unit ("NTU") in the customers' premises and the Access Seeker's connection blocks on the main distribution frame ("MDF").

It should also be noted that in parallel ComReg is currently engaged in a full review of the full ULMP monthly rental price. This consultation, however, is focused on reviewing the monthly rental price of LS. The review of the full ULMP rental price is a large scale stand alone project undertaken by ComReg in late 2007 and has to date involved extensive engagement with Eircom on getting an understanding of their actual cost base of the local loop to assist with the building of a bottom up Long Run Incremental ("BU-LRIC") costing model of the entire Access network of the Republic of Ireland. This is an extensive and time consuming task which requires a significant level of engineering, economic and accounting expertise among other

[6] Decision Notice and Direction: Local Loop Unbundling – Review of Eircom's ULMP monthly rental charge; D15/04; Document No.04/110; published on 5 November 2004.

[7] Directive No.2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities, Annex II defines shared access as '…*the provision to a beneficiary of access to the local loop or local sub-loop of the notified operator, authorising the use of non voice band frequency spectrum of the twisted metallic pair; the local loop continues to be used by the notified operator to provide the telephone service to the public.'*

[8] Access Reference Offer from Eircom Ltd; Appendix 1 to Service Schedule 103; Product description for line sharing; page 74, version 1.18.

things. While ComReg is in the latter stages of this project and the initial timetable for completion was late 2008, it is now quite likely that this timeline will extend into 2009 to ensure that the end product is fit for purpose, robust and meets the needs of all stakeholders. However while this exercise is not yet complete, its conclusion will not have an impact on the LS proposal as set out in this consultation. As will be explained below, the price of ULMP, which supports both broadband and narrowband services is irrelevant to the allocation of costs to LS. Rather, as this paper will point out the decision to be made is how a common cost (the cost of a local loop) is to be allocated between narrowband only services and broadband only services.

2.2 ComReg's Obligations and the obligations of the Dominant Operator

ComReg

ComReg's statutory objectives are defined under Section 12 of the Communication Regulation Act 2002[9]. Under Section 12(1) and (2) of the Communications Regulation Act 2002, ComReg's statutory objectives are to *inter alia* to:

- Promote competition
- Promote the interests of users within the community
- Ensure that there is no distortion or restriction of competition
- Encouraging efficient investment in infrastructure and promoting competition.
- Encouraging access to the internet at a reasonable cost to end users

These objectives are analysed in detail in the Tera Report and are considered in full against the proposals being made in this consultation. A summary of this is as follows;

- maximising consumers' welfare;
- ensuring that Eircom recovers its costs with an appropriate degree of efficiency;
- avoiding any cost over-recovery by Eircom;
- encouraging efficient investment in infrastructure and avoiding a risk of deterring investment in alternative infrastructure;
- ensuring that the methodology is practically implementable.

The dominant operator

In ComReg Decision No. D8/04 ("the SMP Decision") Eircom was designated with SMP in the market for Wholesale Unbundled Access to the Local Loop. As a consequence of this, certain SMP obligations were imposed on Eircom. Accordingly, Eircom is obliged to offer cost oriented prices for LLU (both fully unbundled and shared lines) services and associated facilities on the basis of FL-

[9] Communication Regulation Act 2002, 27 April 2002

LRIC pursuant to the SMP Decision. This is also in accordance with Regulation 14 of the European Communities (Electronic Communications Networks and Services) (Access) Regulations 2003 ("the Access Regulations[10]"). The Access Regulations transpose Directive 2002/19/EC of the European Parliament and the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities ("the Access Directive"[11]).

ComReg believe that the price control obligation set out in D8/04 and as proposed in ComReg D15/04 is not being satisfied by the previous pricing decision for setting LS, as set out in the Office of the Director of Telecommunications Regulation ("ODTR") [12] Decision D8/01[13] in 2001. In D8/01, the then Director of the ODTR set a benchmark price for the full LLU monthly rental due to a breakdown in the information gathering exercise with Eircom. In parallel the LS price was set based on the full LLU benchmark price using an economic rational that said 50% of fixed common costs should be allocated to LS plus other incremental costs. This paper did not however explain how this would work in practice which has created an anomaly which has existed ever since. As broadband was virtually non existent at the time LS was not of the significance it is now. The analysis from Tera consultants now claims that the 50:50 allocative approach is not appropriate. While it has taken some years for the broadband market in Ireland to develop and competitive pressures to take hold, the consequences of that decision are now quite clear when existing retail and wholesale prices of Eircom are considered end to end. This is explained further in the next section.

ComReg is carrying out a new Market Analysis for the market for Wholesale Unbundled Access to the Local Loop. The new Market Analysis, ComReg Document No. 08/104[14], is referred to as Wholesale Physical Network Infrastructure Access ("WPNIA"). It is important to note that if the final determination shows that Eircom no longer has SMP in the WPNIA market or that an obligation of price control or cost orientation is no longer necessary then no related regulated price will be imposed, pursuant to the conditions of ComReg Document No. 08/104. However given the length of time it takes to carry out a public consultation process, ComReg believes it is prudent to consult on the LS price now, and define the expected application of the proposed cost orientation obligation for LS if necessary.

[10] S.I. No. 305 of 2003 the European Communities (Electronic Communications Networks and Services) (Access) Regulations 2003.

[11] Directive 2002/19/EC of the European Parliament and the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities.

[12] ODTR is the predecessor of the Commission for Communication Regulation ("ComReg").

[13] Local Loop Unbundling – Eircom's Access Reference Offer (ARO); Decision Notice D8/01; Document No. ODTR01/27R, dated September 2001.

[14] Market review: Wholesale physical network infrastructure access (Market 4): Response to ComReg Document 08/41 and Draft Decision, Document 08/104, 23 December 2008

Q. 1. Do you agree or disagree that in order for ComReg to meet its objectives it must review the current pricing and act on the conclusions of the expert report commissioned? Please explain in detail your response.

Q. 2. Do you agree or disagree that the existing obligation of cost orientation is not being met by the existing charging mechanism adopted by Eircom? i.e. 50/50 allocation of common costs of the local loop to LS. Please explain in detail your response.

3 Line Share Pricing

3.1 Methodology for current LS pricing

The existing methodology for calculating the LS monthly rental charge was set out in Decision Notice D8/01. Under this treatment the underlying cost of the entire local loop was to be shared equally between voice and data with lines rented under LS being effectively treated as half lines.

Under this methodology the cost of LS is governed by the following formula:

(Full LLU-A)/2 +A

Where:
Full LLU is the price of a fully unbundled loop; and
A is the allowance for carrier billing and administration.

This currently equates to:

(€16.43-€0.39)/2 +€0.39 = €8.41

The Director of the ODTR at the time of setting this price stated that no local loop had actually been unbundled due to a number of issues, primarily to do with the lack of co-operation from Eircom. The Director, in D8/01, stated that "*On pricing, some progress has been made, but there are still very substantial gaps indicating non-compliance in the material provided by Eircom, despite repeated requests and the clear direction of 30th April as the date by which these would be finalised. In the circumstances, I consider that I must act to determine pricing and my conclusions are set out in Section 6 of this Decision Notice*."

The decision on full LLU and LS at the time was made without the full knowledge of what Eircom's costs were and how they should be recovered in order to meet their obligations. ComReg has, through previous consultations, tried to redress this issue in relation to LS, however this has been met with considerable resistance from Eircom, including, recently, an appeal. Most recently, ComReg issued documents 08/23 and 08/46, the latter document included a direction to Eircom to set the price of LS based on a European benchmark on an interim basis. This was appealed by Eircom whereupon ComReg set aside the direction in order to allow it to prioritise the current paper. ComReg has also used the responses to those papers to inform its current deliberations.

The most important and fundamental consideration is that the cost of a local loop on a bottom up long term incremental cost ("BU-LRIC") basis is already fully recovered through the price charged for narrowband access services whether via retail access, single billing wholesale line rental ("SB-WLR") or via full unbundling. This has been confirmed by ComReg in the previous consultation on LS and also in the consultation on retail narrowband access price cap control carried out in 2007.

The current anomaly created by Decision D8/01 and the subsequent take up of the LS service has created, on one hand, a price which represents an over recovery of cost, when narrowband access revenues are taken into account. On the other hand, Eircom itself appears to operate under no such disadvantage since its wholesale broadband prices do not appear to reflect any such cost input, as discussed below. It is not possible for ComReg to give a definitive view on the cost stack for providing broadband services as Eircom do not provide separately audited Bitstream accounts to ComReg.

However, ComReg is concerned that current circumstances could be alleged to be conducive to the creation of a margin squeeze. In assessing the appropriateness of the existing methodology, one consideration is that Eircom's own broadband products appear to be relatively cheap compared to the price of LS. For example the price of Eircom's 1mb/s wholesale broadband product is €9.48[15] per month as compared to €8.41 for LS. The responses from some operators in the previous consultation Document No. 08/23 made such allegations. One of ComReg's objectives under the Communications Regulation Act 2002 is to promote competition including ensuring that there is no distortion or restriction of competition. However, any such issue of a possible margin squeeze will be dealt with separately and not through this paper.

While these issues may not have been as much a cause for concern when there was very little demand for LS, this is no longer the case as there is clear evidence of increasing demand for LS. Regardless of the level of this demand however, the underlying principle should be recognised; the cost orientation obligation should be respected and no over recovery should occur. As noted in the Tera Report, regulated prices that are set either too low or too high can give the wrong investment signals to competitors and could lead to serious distortion of the market place. As such more technical and economic models are typically used to ensure such distortions do not take place. The current full LLU price of €16.41 has evolved from an Eircom BU LRIC model which produced a cost for a sample of the Access network, including 100% allocation of common costs. However, when looking at LS pricing, no adjustment has been made by Eircom for cost allocation changes, where LS connections have seen growth[16]. As such it is not possible to see how Eircom is applying Decision D8/01 in practice.

Furthermore, at the time of ComReg Decision Notice No.D8/01, in 2001, there were 1,900,000 fixed lines[17] in Ireland, but there was a very limited retail broadband subscriber base. In contrast the market dynamic in 2008 is very different. There are 2,082,192 fixed lines in Ireland, of which 1,618,896 are direct access paths, with a Digital subscriber Line ("DSL") broadband subscriber base of 611,594[18].

[15] Eircom Wholesale Bitstream Price List 3.9
http://www.Eircomwholesale.ie/dynamic/pdf/bitpricelistv3.9_v2.pdf

[16] ComReg's view is supported by a 120% increase in the number of new LLU Line Share connections over the period December 2007 to August 2008 based on ComReg data collected in quarterly report questionnaires.

[17] PSTN and ISDN fixed lines

[18] Source ComReg quarterly key data report, Q2 2008

Should a new LS rental price be imposed as a result of this consultation, ComReg intends to revoke previous ComReg Decision Notice D08/01, insofar as it relates to LS Recurring Charges and the methodology for the calculation of LS Recurring Charges for the reasons set out in the Tera Report and set out in this consultation.

Q. 3. Do you agree or disagree that the Full LLU monthly rental price has up to now allowed Eircom to recover the full cost of the Local loop based on FL-LRIC principles? Please explain in detail your response.

Q. 4. Do you agree or disagree that the existing price methodology for LS could act as a barrier to further investment by OAOs to the detriment of competition and overall consumer welfare? Please explain in detail your response.

Q. 5. Do you agree or disagree that the current implementation of the previous ODTR Decision D8/01, insofar as it relates to LS recurring charges and the methodology for the calculation of LS recurring charges, creates an anomaly when compared to the recovery of costs through Full LLU monthly rental charges. Please explain in detail your response.

Q. 6. Do you agree or disagree that the methodology adopted in 2001 is not appropriate in 2008 or going forward to comply with the cost orientation obligation as set out in D8/04. Please explain in detail your response.

Q. 7. Depending on your answer to the above do you agree or disagree that ComReg should withdraw D8/01, insofar as it relates to LS recurring charges and the methodology for the calculation of LS recurring Please explain in detail your response.

4 Cost Recovery

4.1 Tariff rebalancing

ComReg acknowledged in 2007 that there is no longer an access deficit in Ireland, and that Eircom's tariffs are fully rebalanced.[19] This is a critical conclusion when assessing the appropriate costing methodology for LS. In the earlier years of regulation, there was an access deficit which was supported by high retail call prices and high margins on calls. Significant changes have occurred in recent years in the retail market for calls with the successful introduction of competition in the Carrier Pre Select Market. This has reduced the cost of calls to consumers generally and subsequently the traditional high margins made by the incumbent. However, the retail line rental charges from the incumbent have increased by approximately 39% since 2001 (see Figure 1 below) while the cost of the access network has seen a combination of reductions and increases in its cost base, inter alia, through reduced staff numbers, increase in salaries, more efficient technology, more expensive copper, and increased number of lines. However the end result of this as explained in a report by Frontier Economics (as referenced below) to ComReg is that the tariffs charged by Eircom are fully rebalanced and the full cost of the network is recovered through PSTN line rental, either retail or wholesale. The key point of this being that this assessment occurs before LS is considered. As Frontier Economics states, in its report on the Narrowband Access Retail Price Control [20], the resulting consequence of this fact is that the current pricing methodology for LS leads to an over recovery of costs by Eircom. However Frontier Economics noted at the time that the volume of LS orders was immaterial.

Figure 1 – Eircom's PSTN line rental evolution 2001 - current

Period	PSTN Line Rental (ex-VAT)	PSTN Line Rental (inclu-VAT)
Aug 2001	€15.07	€18.24
Aug 2002	€16.02	€19.60
Sep 2003	€18.39	€22.49
Aug 2004	€19.98	€24.18
Sep 2005	€19.98	€24.18
Sep 2006	€19.98	€24.18
Sep 2007 -	€20.96	€25.36

Source: Eircom's ARO price list

As part of the report commissioned by ComReg to analyse the cost of provision of Eircom's narrowband access services, for the purposes of ComReg's retail price cap

[19] *Retail price cap as a potential remedy on fixed narrowband access markets Submission to consultation 07/48* - 15 August 2007.

[20] Frontier Economics - Narrowband Access Retail Price Control: A report prepared for ComReg - http://www.comreg.ie/_fileupload/publications/ComReg0748a.pdf, July 2007.

consultation[21], Frontier Economics, in its report on Narrowband Access Retail Price Control, came to the conclusion that where broadband service has to be delivered in conjunction with narrowband services, an allocation of 50% of common costs of the local loop will lead to a cost over recovery by the incumbent:

> *"The local loop is required to deliver either narrowband or broadband services and the cost is dependent of the combination of services delivered. Thus for subscribers who take both narrowband and broadband services via ADSL, the cost of the local loop is common to both narrowband and broadband services. Under Eircom's current product structure broadband services can only be purchased in conjunction with narrowband services. Hence the decision to purchase narrowband services, either alone or in conjunction with broadband services can be argued to be the driver of local loop costs. For the purposes of the analysis we assume that the total cost of the local loop is recovered from narrowband services.*
>
> *This assumption is consistent with the assumption used to set the price of the Line Share services or Local Loop Unbundling, for which it is assumed that where broadband services are delivered in addition to narrowband services, half of the cost of the local loop are allocated to the broadband services. For these lines the cost of the lines will be over-recovered, however the number of Line Share Lines is very low."*

The prices for retail narrowband fixed access, wholesale narrowband fixed access and local loop unbundling have been set with reference to the same unit cost for the access network derived from a BU LRIC model of Eircom's access network.

As a result Eircom recovers a similar amount from all end users who purchase narrowband fixed access services using Eircom's copper access network, either directly from Eircom or indirectly from OAOs who themselves use WLR or ULMP to deliver services.

This consistency promotes efficiency as an operator with the lowest cost base excluding the access network may have a competitive advantage; there are of course other considerations such as quality of service etc. The alternative of using different cost bases for upstream wholesale services and downstream retail services, as explained in the Tera Report, would distort competition.

It is worth noting that Eircom have also recognised this progress compared to the initial years of regulation of retail tariffs. In early 2008, Peter Cross, Eircom's Chief Financial Officer, confirmed that Eircom's tariffs are now heavily restructured:

> *"In line with the rest of Europe, voice revenues of the Incumbent have been in decline. However, Eircom management has instituted successful measures to mitigate the effect:*

[21] ComReg Document No. 07/76 – Decision Notice and Decision Instrument – D03/07, SMP obligation: Retail Price Cap Remedy Fixed Narrowband Access Markets, published on 1 October 2007

[…]Heavily rebalanced tariff structure weighted towards fixed access charges with low per minute charges”[22]

Q. 8. Do you agree or disagree that based on the information analysed to date by various experts, namely Frontier Economics and Tera on behalf of ComReg that Eircom fully recovers all costs of the Access network through either retail line rental, SB-WLR or LLU monthly charges through FLRIC cost recovery principles.

4.2 Principles of cost recovery

ComReg notes that the “recognised set of cost recovery principles”, as decided by the Independent Regulators Group (“ERG”) is a check-list of factors that may be taken into account in setting charge limits: namely, cost causation, distribution of benefits, effective competition cost minimisation, reciprocity and practicability. These principles have been considered in detail by ComReg’s consultants Tera as follows;

1) The *cost causation* principle states that “*Costs should be recovered from those whose actions cause the costs to be incurred at the margin. The purpose of this principle is to ensure that customers and competitors are provided with the correct price signals when making a purchasing decision*.” Setting the price of LS should be consistent with the principle that customers should pay for the costs which they cause. This principle does not address the issue of how common costs should best be allocated and recovered, which is the central issue of this consultation and this is addressed by Tera in section 5 of the Tera report.

2) The *distribution of benefits* principle states that “*Costs should be recovered from the beneficiaries especially where there are externalities. An externality is a cost or benefit accruing to party B due to a decision by party A that does not take account of the external effects on party B.*” The LS pricing methodology should be consistent with a reasonable distribution of benefits, in particular by facilitating the wider use of broadband services without adding any costs to voice customers. This is addressed by Tera in section 3 of their report.

3) The effective competition principle states that “*The mechanism for cost recovery should not undermine or weaken the pressures for effective competition. This can provide a rationale for moving away from a cost recovery system that solely reflects cost causation and distribution of benefits*”. The LS price methodology should promote competition among service providers, by allowing fuller use to be made of the local loop for the provision of all telecommunication services. Alternative suppliers of infrastructure links will be able to compete with Eircom and suppliers

[22] ASX Release, 17 April 2008, Eircom presentation, Babcock&Brown capital limited. - *http://www.babcockbrowncapital.com/media/347312/587748.pdf*

using LS or PSTN line rental across the full range of telecommunication services. This is addressed by Tera in section 4 of their report.

4) The cost minimisation principle states that "*The mechanism for cost recovery should ensure that there are strong incentives to minimise costs*." The LS pricing methodology should enable costs to be minimised, by preventing over-charging, by avoiding an unnecessarily complex calculation of refunds from broadband customers to voice line rental customers, and by facilitating increased competition. This is addressed by Tera throughout their report.

5) The reciprocity principle which states that "*Where identical or similar services are provided reciprocally, it may be appropriate for the charges also to be reciprocal*", The issue of reciprocity does not arise, since Eircom is currently the only owner of the local loop and designated with SMP in that market.

6) The practicality principle states that "*The mechanism for cost recovery should be practical and relatively easy to implement*". The proposals should be practical, and straightforward to implement. This is discussed in great detail in section 5 of the Tera report.

Q. 9. Do you agree or disagree that the above criteria (and as further set out in the Tera Report) forms a sound basis for assessment when reviewing regulated prices? Please detail in full your response

4.3 The appropriate cost measure

In ComReg Document No. 08/56[23], ComReg consulted on a number of pricing methodologies which a Regulator could adopt going forward for the full LLU price. The recommended approach in that paper is to set the full LLU price based on a Bottom Up FL LRIC approach. There were a number of reasons set out in the paper for this approach when pricing Full LLU. ComReg does take due consideration of the actual costs incurred by the incumbent when setting regulatory prices and engages at length with Eircom to establish what these actual costs are year on year when reviewing prices in general. However it is generally agreed by all regulators that the regulator must be mindful of the risks of setting inappropriate regulatory prices based on historical cost information. Historical Cost Accounts ("HCAs") are prepared by the incumbent and audited to a standard that does not generally give an opinion on the reasonableness of unit prices such as LLU or LS for example. It should also be noted that the audit opinion prepared for Eircom does not allow for a duty of care to be given to the Regulator. Currently the Regulated Accounts of Eircom are summarised into an Access and Core profit and loss and Balance Sheet. There is little desegregation in these accounts to show the true cost of providing LLU, LS or wholesale Bitstream for example. It is also a fact that HCAs are subject to many fluctuations year on year which may not be appropriate or relevant for regulatory

[23] ComReg Document No. 08/56. Consultation: Proposals for Local Loop Unbundling Pricing Methodologies, published on 10 July 2008.

pricing purposes. Such costs as reorganisation costs, redundancy costs, legacy inefficiencies inherent in monopoly companies, exceptional costs which would not tend to reoccur such as a major storm, such occurrences could result in significant additional operating costs at the local loop level. Independent models are built by regulators in an effort to avoid these legacy issues to mirror the forward looking cost of running a network while taking into account normal operating capital and operating costs. One off exceptional costs which may be relevant to regulated prices and which are deemed to be reasonable should normally be spread over a number of years to ensure consistency of pricing.

The review of Current Cost Accounts ("CCA") can also be used as a proxy for a more up to date and efficient network, avoiding the legacy engineering of the old network and being more cost reflective of costs today and going forward. However Eircom currently do not prepare audited CCA accounts for the Access network, as such ComReg cannot assess this against the current BU LRIC price being charged. ComReg will consult shortly on the Accounting Separation obligation applicable to Eircom and as part of this consultation ComReg will discuss whether CCA accounts should now be prepared for the Access network going forward.

However, in the context of LS, the issues mentioned above are not relevant when pricing LS as the full LLU monthly rental price is set so that Eircom recovers all of the costs which an efficient operator would be reasonably expected to incur year on year. The fact that the actual costs incurred in a given year may be more or less than that recovered through the full LLU price set is not relevant, as the HCA method is not the method by which the price control obligation of cost orientation is set.

Q. 10. Do you agree or disagree that HCAs are generally not an appropriate basis on which to set regulatory pricing decisions and that few regulators have used them in the past without detailed analysis and transparency. Please detail in full your response.

Q. 11. If you believe that the HCAs of Eircom are a suitable basis on which to base regulatory pricing decision, do you believe that the current presentation of these accounts allows for the determination of appropriate regulated prices? Please detail in full your response.

4.4 Review and analysis of cost recovery principles in other jurisdictions.

ComReg has considered the methodologies adopted in 18 selected OECD countries (as illustrated in figure 2 below). These countries were chosen as markets comparable with Ireland regarding their economic, technological and broadband penetration, and for which the availability of information and data is appropriate for the purpose of reviewing the methodologies used by NRAs for setting LS prices[24]. ComReg has set out in detail the results of a study by Tera of the decisions taken by other NRAs for comparison purposes[25].

In section 2 of the Tera Report, Tera have analysed the methodologies adopted in the 18 selected OECD countries.

Figure 2 – Overview of methodologies used by NRA for setting LS prices

Country	Which current methodology?	Changes in methodology in the past?
Austria	50%	NO
Belgium	Incremental	Yes, in 2007
Denmark	50%	NO
Finland	50%	NO
France	Incremental	Yes, in 2002
Germany	Incremental	NO
Greece	Incremental	Yes, in 2006
Ireland	50%	NO
Italy	Incremental	NO
Luxembourg	Percentage determined by the incumbent	NO
Netherlands	Incremental	NO
Portugal	Incremental	Yes, in 2002
Spain	Incremental	NO
Sweden	50%	NO
United Kingdom	Incremental	NO
USA	Some allocation	NO
Australia	Incremental	NO
Japan	Incremental	NO

Source: TERA Consultants

It can be concluded that in general two methodologies are used by NRAs in terms of the allocation of common costs of the local loop. The first methodology being a “50:50” allocation of the common costs of the local loop between narrowband and broadband services. The second methodology being an “incremental” cost approach, where all the common costs of the local loop are allocated to the narrowband service and only the incremental costs of providing the LS service are allocated to broadband.

[24] Mexico, Hungary, Poland, Slovakia, Turkey, Czech Republic have not been included since the PPP-GDP/capita is below $30,000, far from the Irish level. Iceland has not been included due to the very small size of the country. South Korea and Canada have not been analysed in absence of information (even if the situation in Canada appears to be very similar to the one in the USA). Switzerland and New Zealand do not propose LS. Finally, in Norway, the same methodology as in Denmark is used.

[25] Directive No.2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities, provides for the use of benchmarking as a form of price control. Article 13 defines “*National regulatory authorities shall ensure that any cost recovery mechanism or pricing methodology that is mandated serves to promote efficiency and* sustainable competition and maximise consumer benefits. In this regard national regulatory authorities may also take into account of prices available in comparable competitive *markets*”.

10 countries adopt an incremental cost methodology and 5 adopt a 50:50 allocation methodology[26].

Four countries changed their methodologies for setting LS prices in recent years:

- Belgium – Up until 2007 a network incentive fee was employed to avoid over recovery of access network cost. The methodology was modified in 2007[27] to an "incremental" methodology, as the "incremental methodology" was deemed, by the NRA, to be the most appropriate in the current regulatory framework and avoids an over recovery of costs by the incumbent.

- France – Up until 2002, the NRA recognised a risk for France Telecom in not recovering its costs and led to the setting of an LS price that would incorporate local loop common costs. However, in 2002[28] the NRA stated that the risk identified in 2001 was no longer relevant and decided that only incremental costs should be included in LS prices.

- Portugal – An allocation of local loop common costs between LS and PSTN line rental was considered up to 2003. In 2003 the NRA adopted an incremental cost methodology[29].

- Greece - In 2006 the NRA changed the methodology[30] used for LS pricing. The LS price was calculated adopting 50% of the Full LLU price. The new methodology adopted an EU benchmark price, which represented a proxy for incremental costs.

In terms of the countries who continue to use a 50:50 methodology, other than Ireland, further research would show;

- Denmark - A discount is offered to the PSTN monthly rental charge for LS end-users to prevent any costs over-recovery.

- Austria – LS in Austria represents circa 0% of total OAO DSL lines, but Full LLU represents 63% of OAO DSL lines[31]. With the relative success of Full LLU, no change to the 50:50 methodology has been considered.

[26] *3 of the 18 selected 18 OECD* countries adopt variations of the two dominant methodologies. The United States and Luxembourg allocate some common costs of the local loop to LS and Greece adopts a benchmark price as a proxy for incremental costs.

[27] IBPT, décision on the "bruo rental fee", 13 June 2007

[28] ARCEP, Decision No. 02-323, 2002

[29] Anacom, Decision on the Access and Interconnection Reference Offers, dated 19/06/2003

[30] EETT, Decision No. 381/1, published on 31 May 2006

[31] EC 13th Implementation Report, October 2007

- Finland – A 50:50 methodology is applied as a remedy in Finland to avoid complexity due to the fact that there 31 OAOs designated with SMP in the market for wholesale unbundled access.

- Sweden - LS as a % of total OAO DSL lines is the highest within the EU, where LS represents 61% of total Swedish OAO DSL Lines, but only 15% of broadband connections[32]. Considering the successful growth of LS, within the DSL market, the NRA has strategically decided to maintain the 50:50 methodology to provide an incentive for OAOs to move up to Full LLU.

Tera have analysed the methodologies adopted in each of the respective countries from both a static and dynamic perspective. Tera concluded, in section 2 of the report, that the preferred option of NRAs is the adoption of the "incremental" cost methodology. The reasons stated by NRAs are that this methodology avoids cost over-recovery, it prevents discrimination, it is compliant with the cost causality principle, it is easier to implement in comparison with other methodologies and it is consistent with the Ramsey-Boiteux optimum[33].

Q. 12. Do you agree of disagree with the above summary, if not please provide any additional information you might have? Please detail in full your response.

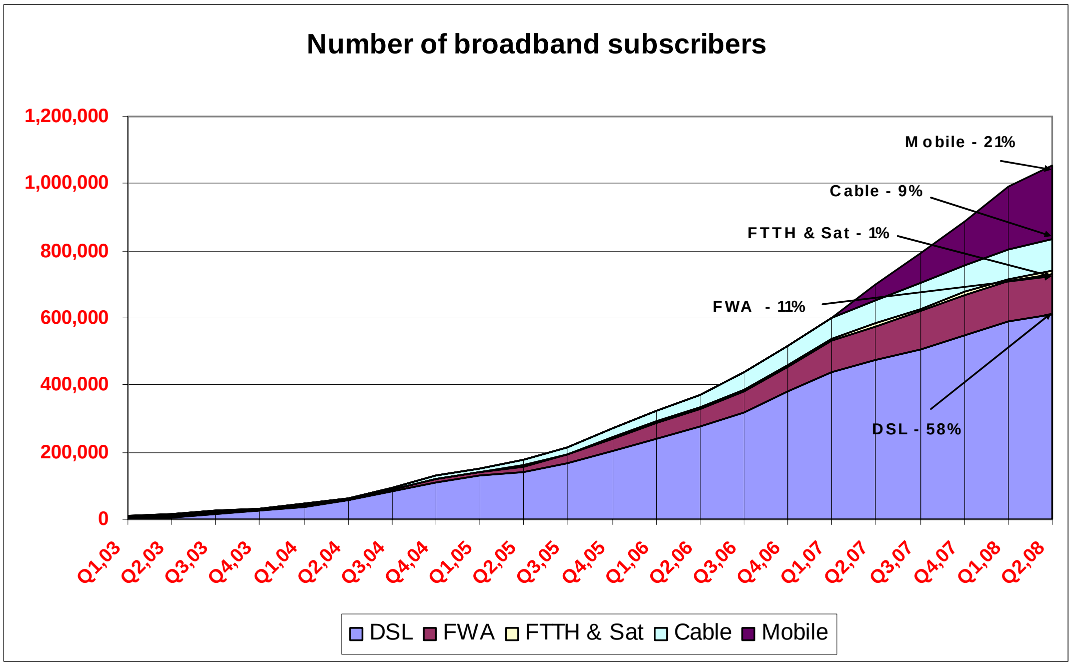
[32] Progress report on the single European electronic communications market 2007

[33] Ramsey-Boiteaux pricing is defined and discussed in detail in section 5.1 of the Tera report.

4.5 Competition

There has been significant growth in alternative infrastructure in Ireland over the last number of years (as illustrated in figure 3) and ComReg is mindful of the need to set regulated prices in such a way that these alternative platforms are not unfairly discriminated against.

Figure 3- Broadband subscribers in Ireland Q1 2003 – Q2 2008



Source: ComRegQuarterlyReports

It is ComReg's view that, in principle, no distortion in inter-platform competition should arise as long as the cost of a fixed loop is recovered in aggregate. In Ireland it is not currently possible for end users to avail of broadband over DSL without paying for line rental together with broadband. For the reasons noted below, ComReg believes that because the total cost of the loop is recovered in a manner consistent with the promotion of inter-platform competition, no distortion of inter-platform competition should result from the new price which is being mandated.

Currently the local access network is costed using an engineering cost model based on a FL-LRIC methodology. In this regard ComReg notes the case of *Arcor AG & Co. KG v Federal Republic of Germany* (Case C-55/06)[34] and the recent ruling of the European Court of Justice ("the ECJ"). The Advocate General Poiares Maduro[35] in this case approved the use of this methodology in circumstances where independent platform competition is an important consideration.

ComReg's conclusion is that currently the local access network is costed in a manner that is conducive to inter-platform competition. Once the total cost of the local

[34] Case C-55/06, European Court of Justice, the case of *Arcor AG & Co. KG v Federal Republic of Germany, 24 April 2008.*

[35] *In paragraphs* 48 and 63 of the Advocate General Opinion delivered on 18 July, 2007.

access network *in aggregate* is recovered from subscribers on costing principles not unfavourable to platform competition it would appear that there can be no distortion of inter-platform competition, caused by lowering the LS price once that resulting price is above the incremental cost of provision.

ComReg has stated in its Strategy Statement, Document No. 07/104[36] that one of its goals is to ensure "*innovation in converging platforms and technologies by creating a supportive and predictable regulatory environment which enables industry and either stakeholders to make informed decisions on future investments, roll-out and deployment of new technologies*".

Under this goal, ComReg is committed to *"encourage both investment in networks and competition by providing appropriate regulatory controls and pricing structure"*. There is evidence of a demand for LS based on the volume of recent orders processed by the incumbent together with representations from industry currently reselling the Eircom Bitstream product. ComReg does not believe that the current price structure of LS is consistent with these goals and could act as a barrier to current and future growth of the LS service, where it is no longer a correct reflection of underlying costs as mandated through ComReg Decision D8/04 and as proposed in ComReg Document No. 08/104.

4.6 Possible impact of LS pricing methodology on other regulated products

ComReg is mindful of the impact a new LS price will have on competition and other regulated products. ComReg must ensure a level playing field and also ensure no margin squeeze is created. There are a number of regulated products which also utilise the local loop and it is important to review possible impacts the current proposed change to the LS pricing methodology on these services could have.

Retail customers typically buy one of two combinations of access products.

- Narrowband fixed access. A service which provides the ability to make voice phone calls and allows narrowband internet access via an analogue line.
- Narrowband and broadband fixed access. In addition to narrowband fixed access a broadband internet fixed access service using DSL technology.

While broadband fixed access alone is technically possible (so called "naked DSL"), in Ireland retail customers must buy broadband fixed access in conjunction with narrowband fixed access.

Wholesale fixed access is provided at two levels in the network, either Eircom equipment is used to provide the fixed access service with the wholesale customer interconnecting with the Eircom network for onward transmission of traffic generated by the customer or the wholesale customer gains access to the local loop and uses its own equipment to provide a service.

[36] Document No 07/104, ComReg Strategy Statement (2008 – 2010), published on 17 December 2007

In the first case there are two potential fixed access services:

- SB-WLR, providing a narrowband fixed access service
- Bitstream access, providing a broadband service (only available when the end customer is also purchasing narrowband access using Eircom equipment).

In the second case there are also two potential wholesale access services:

- Unbundled local metallic path ("ULMP") or Full LLU (not available on lines with WLR or Bitstream access).
- LS (only available when the end customer is also purchasing narrowband access using Eircom equipment)

Figure 4 - four combinations of wholesale services

	Narrowband only	**Narrowband + broadband**
SB-WLR only	yes	no
SB-WLR + Bitstream	no	yes
ULMP	yes	yes
SB-WLR + LS	no	yes

For the purposes of this consultation, ComReg will consider the impact of LS pricing methodology on Full LLU, Bitstream and SB-WLR.

Full LLU

The price of full LLU (ULMP) is based on the results of a BU-LRIC model of Eircom's copper access network[37]. In comparison with LS, full LLU enables OAOs to offer customers a differentiated narrowband and broadband services without having to purchase Wholesale Line Rental (WLR). LS can only be availed of when purchased in combination with WLR. Since the issue is what proportion of the cost of the local access network should be borne by broadband services as against narrowband services, and since ULMP allows for the provision of both broadband and narrowband services, it follows that the price of ULMP will be independent of the price of LS. The converse is also true if one makes the decision that LS should bear none of the cost of the local access network which is reflected in the price for ULMP.

A key consideration here is the fact that there is no relationship between the Full LLU pricing methodology and LS pricing methodology. In D8/01, the then Director of the ODTR set a benchmark price for the full LLU monthly rental due to a breakdown in the information gathering exercise with Eircom. In parallel the LS price was set based on the full LLU benchmark price using an economic rational. This determined that 50% of the fixed common costs of the local loop should be allocated to LS plus the incremental costs of providing the LS service. Tera in section 3.1.1 confirm that in the majority of the EU15 countries, particularly those

[37] ComReg Decision D15/04 – Local Loop Unbundling, Review of Eircom's ULMP monthly rental *charge.*

applying the incremental methodology, there is a clear differentiation between Full LLU price methodology and LS price methodology.

Bitstream

The Bitstream product is a wholesale product that enables OAOs to provide DSL services to end-users within the whole territory through an interconnection to the incumbent's Internet Protocol ("IP") or Asynchronous Transfer Mode ("ATM") network. In comparison with LS or full LLU, the Bitstream product requires less investment to cover a whole territory since there is no need to deploy equipment within all the exchanges of the incumbent. However, Bitstream offers less differentiation in terms of prices and in terms of products offered.

Bitstream pricing is currently determined on the basis of the retail minus methodology. As per ComReg decision D01/06[38], when setting Bitstream prices, Eircom must ensure that they do not impose a margin squeeze. The level of Bitstream prices should be set so that efficient investments in full LLU and LS are not discouraged. ComReg does not believe that the current proposal will create a margin squeeze; to the contrary it will correct the current anomaly where the current LS price is inconsistent with the 1MB bitstream price; therefore ComReg believe current proposals will not impact on Bitstream prices going forward.

ComReg also believe that OAOs and consumers will benefit from the ability of operators to provide broadband over OAOs infrastructure which will allow differentiation at the service level rather than being constrained to the Wholesale Bitstream offers of the incumbent Eircom. LS may also allow OAOs the choice of giving the customer, which they currently service through SB-WLR and Bitstream, a smoother transition to full unbundling if they so chose to do so.

SB-WLR and PSTN retail service

As discussed in section 2.1 of this consultation paper, since tariffs are fully rebalanced in Ireland, there would be no impact to WLR or the PSTN retail monthly rental charges unless it were decided to allocate some of the cost of the local access network to broadband only services such as LS.

Q. 13. Do you agree or disagree that the proposals of ComReg will not have an impact on infrastructure investment of alternative platforms? Please explain in detail your response.

[38] ComReg Decision Notice D01/06. Retail minus wholesale price control for WBA market, published 13 January 2006

5 Review of cost allocation methodologies

ComReg has stated in previous consultation documents[39] that the allocation of costs common to the local loop is currently entirely allocated to the low frequency narrowband service when set on a FL-LRIC basis. As such the retail price cap set in 2007 for narrowband services already allows for the recovery of the cost of the local loop, and therefore the inclusion of line costs in LS represents an over-recovery of costs based on the current cost orientation obligation in place.

In *Arcor*[40], the Advocate General refers to the *KPN Telecom case* as follows: "*In that judgment, the Court held that costs connected with gathering or supplying basic subscriber data should, in any event, be borne by the provider of a voice telephony service and that they are already included in the costs of and earnings from such a service. Under these circumstances, transferring the cost of gathering and supplying these data to persons requesting access to them, would result in unjustifiable overcharging for the costs in question and, therefore, would be incompatible with cost-orientation. According to the judgment in KPN Telecom,* ***it is inherent in the concept of cost-orientation of charges that it prohibits a party whose charges are required to be set on the basis of cost-orientation to receive remuneration several times for providing the same service."*** **(ComReg emphasis)**

It is therefore one of ComReg's objectives that any decision it makes arising from this Consultation should properly and fairly reflect the principle of cost orientation. To ensure cost orientation is adhered to, the key objective now is to determine the correct methodology for the allocation of the common costs of the local loop.

5.1 Review and assessment of cost allocation methodologies.

In section 5 of the Tera report, 18 selected OECD countries have been analysed through reviewing different papers and consultations published by NRAs, in addition to a survey of relevant economic literature. From this review Tera have arrived at 10 possible methodologies that an NRA could adopt when considering the allocation of common costs of the local loop;

1. Ramsey-Boiteux Pricing;
2. Efficient Component Pricing ("ECPR")
3. Cooperative Bargaining Theory;
4. Shapley Shubik Pricing;
5. Stand alone cost
6. Equi Proportionate Mark-Up ("EPMU");
7. Incremental costs;
8. Network incentive fees;

[39] Consultation documents 04/111, 05/22, 08/23 and 08/34

[40] ECJ, Case C-109/03 KPN Telecom BV v OPTA, 25 November 2004

9. Joint production theory;
10. Ferderal Communications Commission ("FCC") ad hoc method

For each of these 10 methodologies, Tera have completed an assessment of their consistency with the aims and objectives of ComReg. As with all NRAs, ComReg's aims and objectives are defined in the Framework Directive[41]:

Tera have considered ComReg's objectives, pursuant to Section 12 of the Communication Regulation Act 2002 and determined the following 5 categories as the terms of reference for assessing the various allocation methodologies:

1. Maximising consumers' welfare;
2. Ensuring Eircom recovers efficient costs;
3. Avoiding any cost over recovery from Eircom;
4. Encouraging efficient investment in infrastructure and not deterring incentives to deploy alternative infrastructure and
5. Practical implementation.

The assessment of each methodology is explored in the Tera report from section 5.1 through to section 5.10.

5.2 Recommended cost allocation methodology for Ireland

From a theoretical point of view, the best method ("best" in the sense that consumer welfare is maximised) for allocation of the common costs of the local loop to LS should be the Ramsey-Boiteux pricing rule. However the Ramsey methodology requires information about product elasticities which would be very difficult to obtain with any degree of certainty. Tera note that based on the benchmark of the 18 selected OECD countries all the NRAs have decided to adopt either an "incremental cost" methodology or "50:50" methodology.

As the Ramsey-Boiteux methodology is not practically feasible, ComReg has had to consider what the next best options are.

[41] DIRECTIVE 2002/21/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 7 March 2002 on a common regulatory framework for electronic communications networks and services

Figure 5 - Advantages and disadvantages of the 10 allocation methodologies in relation to the achievement of ComReg's objectives

		Maximizing welfare	Ensuring Eircom recovers its costs	Avoiding any cost over recovery	Encouraging efficient investment in infras	Compliance with full LLU	Simplicity
1rst best but too complex	Ramsey Boiteux	Yes	Yes	Yes if reduction in PSTN monthly charge	Yes	Yes	No
Asymmetric methods	Incremental	Yes but lower than Ramsey	Yes	Yes	Yes	Yes	Yes
	Joint production	Yes but lower than Ramsey	Yes	Yes	Yes	Yes	Yes
Symmetric methods	Coop. Bargaining	No	Yes	Yes if reduction in PSTN monthly charge	Yes	Yes	Yes for calc./No for implem. as PSTN monthly charge required
	Shapley	No	Yes	Yes if reduction in PSTN monthly charge	Yes	Yes	Yes for calc./No for implem. as PSTN monthly charge required
	Stand alone	No	Yes	Yes if reduction in PSTN monthly charge	Yes	Yes	Yes for calc./No for implem. as PSTN monthly charge required
Not relevant here	ECPR	No	Yes	No	No	No	Yes
	EPMU	No	Yes	Yes if reduction in PSTN monthly charge	No guarantee	Yes	Yes for calc./No for implem. as PSTN monthly charge required
	FCC ad hoc	Yes but lower than Ramsey	Yes	Yes	Yes	Yes	Not relevant in the EU case
	Incentive fee	No	No	No	No	Yes	No

Source: TERA Consultants

ComReg is proposing to eliminate “ECPR”, “EPMU”, “the FCC ad-hoc approach” and the “incentive fee approach”, as these methodologies are too difficult to implement and too fragile from a logical point of view, and are therefore the least compatible with ComReg’s objectives.

The remaining methodologies can be categorised into two groups:

“Stand alone costs”, “Cooperative Bargaining Theory” and “Shapley-Shubik Pricing”, which can be categorised as the “symmetric allocation family”, represent different theoretical ways that lead to a 50:50 allocation of the common costs of the local loop between PSTN Line rental and LS.

“Incremental” costs and “Joint Production Theory”, which can be categorised as the “asymmetric allocation family”, leads to a lower allocation of the common costs of the local loop to LS and a higher allocation of common costs to PSTN line rental.

The symmetric allocation family can be complex due to the fact that any allocation of the common costs of the local loop costs to the LS service would require a reduction of the incumbent’s PSTN monthly rental charge. ComReg would agree with the majority of NRAs that the asymmetric family and in particular incremental costs represents the most appropriate method of allocation the common costs of the local loop to LS. The incremental methodology has also been endorsed by the independent regulators group (“IRG”)[42]:

[42] *Principles of implementation and best practice regarding LLU as decided by the Independent Regulators Group 18 October 2001 and amended in May 2002.*

"The costs of the line as described could be most easily attributed fully to the voice band. Alternatively these line costs can be split between the voice band and the non-voice band in a way that up to 50% of the line costs are attributed to the non-voice band. In this case there is a need to re-investigate monthly line rentals charged to the end user. It must be ensured that costs of the notified operator are only recovered once, taking into account payments by beneficiaries and end users."

Q. 14. Do you agree or disagree that the above methodologies form an appropriate basis on which to consider the methodology options available to ComReg? Please explain in detail your response.

Q. 15. Taking into account the table above, which methodology do you think is the most appropriate and why, taking into account the regulatory objectives of ComReg as set out? Please explain in detail your response.

6 Recommendation for the setting of the LS price in Ireland

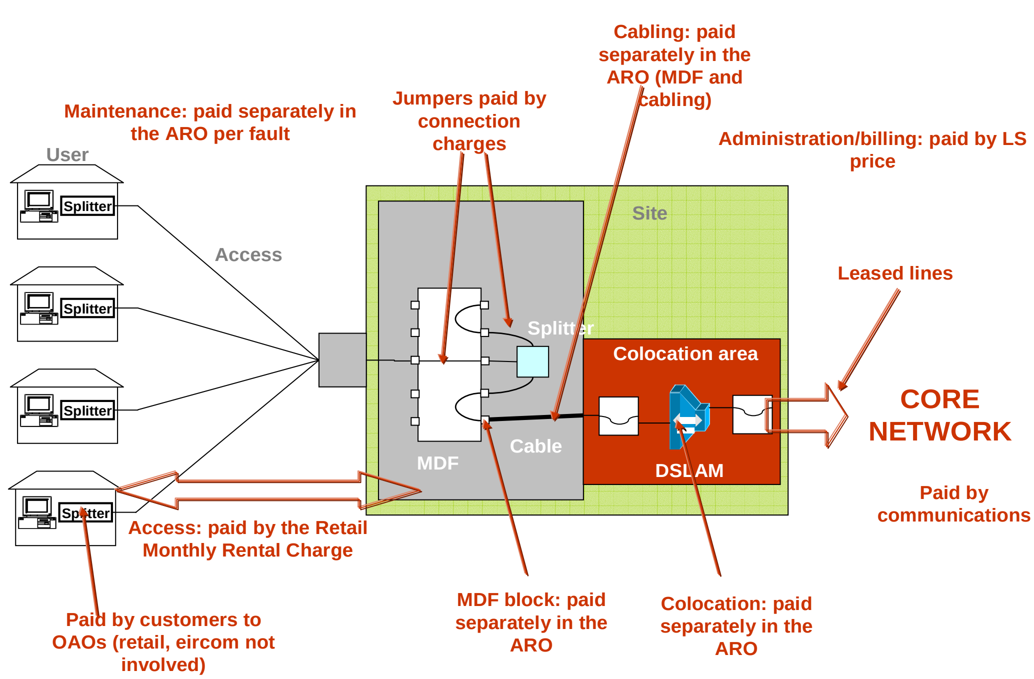
As set out in the previous section, ComReg has concluded that the “incremental” cost approach is the most suitable methodology in determining the allocation of costs of the local loop to LS. ComReg believes the cost of a local loop on a BU LRIC basis is already fully recovered through the price charged for narrowband access services whether via retail access, SB-WLR or via full local loop unbundling. As the cost of the local loop is fully recovered, any allocation of common costs of the local loop to LS would represent an over recovery of the efficient costs of Eircom, therefore no common costs should be allocated to LS. Therefore the only costs allowable for determining the price of LS are the incremental costs of providing the LS service.

This section discusses and assesses the components of providing the LS service and the incremental costs associated with it. In section 6 of the Tera report, Tera identifies and assesses in detail the incremental costs of providing the LS service in Ireland.

6.1 Identifying the incremental costs of providing the LS service.

The provision of LS requires Eircom to complete several tasks, including the installation of cables, removal of jumpers, carrier administration and billing.

Figure 6 - Costs related to LS in Ireland



Source: TERA Consultants

Q. 16. Do you agree or disagree that the above diagram (figure 6) is a fair representation of the costs involved in providing the LS services? Please explain in detail your response.

However, many of these tasks are already recovered by prices listed in Eircom's ARO price list[43]. Connection charges, disconnection charges and line fault charges, which includes LS Line testing and LS fault clearance, are clearly identified in the ARO price list.

Therefore LS monthly rental price should only cover the fixed costs related to the development of the LS product and recurring fees related to the provision of the service. ComReg believes that there are four main cost categories of providing the LS service that should be considered and any associated incremental cost.

1. Pair Gain Removal.
2. Clearing the Additional Faults Reported on Shared Lines.
3. Product development and Management.
4. Wholesale billing and administration.

Q. 17. Do you agree or disagree that ComReg has considered all incremental costs from the list above? Please explain in detail you response.

Pair gain removal

Pair gains relate to a legacy issue inherited by Eircom from the former state company where narrowband lines were provided through shared cables to buildings. However, modern telecommunications requirements now renders these lines redundant for the provision of broadband and must therefore be rectified in order to reverse the way in which the line was provisioned in the first place.

In terms of pair gains, ComReg has two options:

- Determine that lines with pair gain systems are not entitled to be unbundled; or
- Establish the lines with pair gain systems can be unbundled and, in this case, the cost of pair gain removal for LS must be recovered through the LS price.

[43] Eircom's Access Reference Offer Price List – Annex C, Service Schedule 103, Line Sharing Service

It is not possible to quantify how many of these lines are directly relevant for the purpose of LS, however as the overall per line amount may not material; an average cost across all lines could be acceptable. It is estimated that this average cost per line could be approximately €28.00.

Q. 18. Do you agree or disagree that lines with pair gain system should be unbundled? If so, what do you believe is a reasonable cost associated with pair gain removal and how should it be recovered? Please explain in detail your response.

Once the capital cost of the pair gain system is determined, this cost should be depreciated over a period of time and the monthly depreciation charge should represent an incremental cost towards the cost of providing the LS service. This results in a range of costs of facilitating pair gains removal from €0.29 to €0.79. Tera proposes that a 10 year depreciation period is the most appropriate; therefore the incremental cost of pair gain removal is estimated to be €0.36.

Figure 7 – Pair-gain removal costs per line and per month

Depreciation period	42 months With old WACC	42 months With new WACC	120 months With new WACC	180 months With new WACC
Cost per line and per month	0,79€	0,78€	0,36€	0,29€

Source: TERA Consultants

Q. 19. Do you consider that an incremental cost of €0.36 per line per month for pair gain removal is correct and reasonable, if it is established that lines with pair gain systems can be unbundled? Please explain in detail your response, with additional reference to the depreciation period chosen.

Clearing the Additional faults reported on Shared lines

In Eircom's ARO price list, faults are paid separately through the "fault clearance charge". As a consequence, additional faults reported on shared lines should not be paid by OAOs through the LS monthly price but through the "fault clearance charge".

Tera, in section 6.2 of the Tera report, have analysed the type of faults that may occur on LS lines. Tera have gone on to conclude how each fault is cleared and the actual mechanism of how these line testing and fault clearance costs are recovered.

ComReg's conclusion is that the cost of clearing the additional faults reported on shared lines is already recovered through fault repair charges published in Eircom's ARO and therefore the incremental cost of providing the LS service is zero.

Q. 20. Do you agree or disagree that the cost of faults relating to LS are already recovered by Eircom through fault repair charges? Please explain in detail your response.

Product development and management

Product development and management costs relate to the development of, and the associated ongoing cost of marketing, the LS product.

ComReg has no information on the likely cost of the month to month product development and management costs of the LS product. It also has no information on the initial product development, however the product has been available for a number of years and therefore ComReg would not envisage that any such incremental cost should be included in the recurring monthly charge going forward.

Q. 21. Do you agree or disagree that the costs of product development and management should be included in the monthly rental cost of LS? If so, please provide the appropriate costings associated with the LS service?

Wholesale Billing and administration

This is quite obviously a cost which would not be incurred by Eircom if LS did not exist. As such it is reasonable to recover a cost associated with this. As previously published in the Consultation Document No. 04/111[44] these costs have been assessed at €0.39 per line per month by Eircom.

[44] ComReg Consultation Document No. 04/111 - Local loop unbundling line share, Consultation on pricing principles, dated 12th November 2004.

Q. 22. Do you agree or disagree that the costs of wholesale billing and administration should be included in the monthly rental cost of LS? If so, please provide the appropriate costings associated with the LS service?

6.2 Recommended incremental cost of providing LS

Section 6.1 set out the component parts that make up the LS service and analysed the incremental cost associated, deriving an initial estimated price of €0.75 per line per month. This figure is subject to change as it is an initial estimate and may fluctuate based on the responses to the consultation document.

Figure 8 – Incremental costs of providing LS in Ireland

Cost Category	Relevant	Cost
Pair Gain Removal	Yes	€0.36
Clearing the Additional faults reported on Shared lines	No	0
Product development and management	No	0
Wholesale Billing and administration	Yes	€0.39
Total		**€0.75**

Q. 23. Do you agree or disagree that ComReg has reasonably assessed the per line incremental costs for providing LS? Please explain in detail your response.

Q. 24. Is there anything else in the attached report from Tera, ComReg Document 08/106a, which you would like to comment on or correct? Please explain in detail any additional points you would like to make.

7 Submitting Comments

All comments are welcome; however it would make the task of analysing responses easier if comments were referenced to the relevant question numbers from this document.

The consultation period will run from 23 December 2008 to 25 February 2009 during which the Commission welcomes written comments on any of the issues raised in this paper.

Having analysed and considered the comments received, ComReg will review the responses to the proposed “Rental Price for shared Access to Unbundled Local Loop” and publish a report in March 2009 on the consultation which will, inter alia summarise the responses to the consultation.

In order to promote further openness and transparency ComReg will publish all respondents submissions to this consultation, subject to the provisions of ComReg’s guidelines on the treatment of confidential information – ComReg 05/24. We would request that electronic submissions be submitted in an-unprotected format so that they can be appended into the ComReg submissions document for publishing electronically.

Please note

ComReg appreciates that many of the issues raised in this paper may require respondents to provide confidential information if their comments are to be meaningful.

As it is ComReg’s policy to make all responses available on its web-site and for inspection generally, respondents to consultations are requested to clearly identify confidential material and place confidential material in a separate annex to their response

Such Information will be treated subject to the provisions of ComReg’s guidelines on the treatment of confidential information – ComReg 05/24.

8 Appendix A – Draft Decision

1. STATUTORY AND LEGAL POWERS

1.1 This Direction is made by the Commission for Communications Regulation:

1. Pursuant to the European Communities (Electronic Communications Networks and Services) (Access) Regulations 2003[45];

2. Pursuant to and having regard to the Significant Market Power (SMP) designation on Eircom contained in ComReg Decision No. [] which found Eircom to have SMP under the provisions of Regulations 25, 26 and 27 of the Framework Regulations[46];

3. Having, where appropriate, complied with Policy Directions made by the Minister[47];

4. Having taken account of the submissions received in relation to Document No.[]

5. Having had regard to the analysis and reasoning set out in ComReg Document No. [] which shall, where necessary, be construed together with this Direction; and

6. Having regard to its functions and objectives under sections 10 and 12 respectively of the Communications Regulation Act, 2002.

2 DEFINITIONS AND INTERPRETATION

2.1 In this Direction:

"Access Regulations" means European Communities (Electronic Communications Networks and Services) (Access) Regulations 2003, S.I. No. 305 of 2003;

"ComReg" means the Commission for Communications Regulation, established under section 6 of the Communications Regulation Act, 2002;

"Line Share" means a methodology whereby the voice frequency service provided by Eircom and the high frequency service provided by the Access Seeker may be integrated over the same two-wire metallic path as more fully described in Annex C, Service Schedule 103 Appendix 1 to Eircom's Access Reference Offer;

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[45] S.I. No. 305 of 2003 the European Communities (Electronic Communications Networks and Services) (Access) Regulations 2003.

[46] S.I. No. 307 of 2003 the European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2003.

[47] Policy Directions made by the Minister for Communications, Marine and Natural Resources on 21 February, 2003 and 26 March, 2004.

"ODTR" means the Office of the Director of Telecommunications Regulation which was dissolved under section 8 of the Communications Regulation Act, 2002 on the establishment day of ComReg;

"**Recurring Charge**" means the Line Share monthly rental charge, as currently set out in the Price List contained in Section 1.3 of Annex C, Service Schedule 103 to Eircom's Access Reference Offer under the heading Recurring Charge;

"SMP Decision" means ComReg Decision No. [] which found Eircom to have SMP under the provisions of Regulations 25, 26 and 27 of the Framework Regulations;

2.2 The provisions of ComReg Decision No. [] and the individual decisions in the Response to Consultation and Decision in ComReg Document No. [] (Decision No. []) shall where necessary be construed as forming part of this Direction.

3 SCOPE AND APPLICATION

3.1 This Direction applies to Eircom Limited and its successors and assigns ("Eircom").

3.2 This Direction is binding upon Eircom and Eircom shall comply with it in all respects.

4 PRICE CONTROL

4.1 The SMP Decision imposed *inter alia ex ante* regulatory obligations pursuant to Regulation 14 of the Access Regulations. The obligations imposed on Eircom under Regulation 14 of the Access Regulations include obligations relating to price control and cost orientation of prices.

4.2 Under Regulation 17 of the Access Regulations, ComReg may issue directions to Eircom to do or refrain from doing anything which ComReg specifies in the direction, for the purpose of further specifying requirements to be complied with by Eircom relating to its obligations under the Access Regulations.

4.3 This Direction is issued pursuant to Regulation 17 of the Access Regulations, for the purpose of further specifying requirements to be complied with by Eircom relating to obligations imposed on Eircom, under Regulation 14 of the Access Regulations and Section 9 of the SMP Decision.

4.4 Eircom is hereby directed to apply no more than a maximum of €0.75 per month as a Line Share Recurring Charge.

4.5 Section 4.4 shall apply to all bills issued by Eircom 30 days after the effective date and to all bills issued at any time thereafter.

5 REVOCATION OF ODTR DECISION D08/01

5.1 Decision D8/01 of the ODTR entitled Local Loop Unbundling – Eircom's Access Reference Offer Decision Notice D8/01 and Document Number ODTR01/27R dated September 2001 is hereby revoked insofar as it relates to Line Share Recurring Charges and the methodology for the calculation of Line Share Recurring Charges.

5.2 Section 5.1 shall take affect 30 days after the effective date.

6 MAINTENANCE OF OBLIGATIONS

6.1 [For the avoidance of doubt, nothing in this Direction shall in any way (either expressly, or by implication) affect the continuing validity of Decision D8/01 of the ODTR entitled Local Loop Unbundling – Eircom's Access Reference Offer; Decision Notice D8/01 and Document Number ODTR01/27R dated September 2001 insofar as it does not relate to Line Share Recurring Charges and the methodology for the calculation of Line Share Recurring Charges.]

6.2 If any section, clause or provision or portion thereof contained in this Direction is found to be invalid or prohibited by the Constitution, by any other law or judged by a court to be unlawful, void or unenforceable, that section, clause or provision or portion thereof shall, to the extent required, be severed from this Direction and rendered ineffective as far as possible without modifying the remaining section(s), clause(s) or provision(s) or portion thereof of this Direction, and shall not in any way affect the validity or enforcement of this Direction.

7 STATUTORY POWERS NOT AFFECTED

7.1 Nothing in this Direction shall operate to limit ComReg in the exercise and performance of its statutory powers or duties under any primary or secondary legislation (in force prior to or after the effective date of this Direction) from time to time as the occasion requires.

8 EFFECTIVE DATE

8.1 This Direction shall be effective from the date of its publication and shall remain in force until further notice by ComReg.

JOHN DOHERTY
CHAIRPERSON
THE COMMISSION FOR COMMUNICATIONS REGULATION
THE [] DAY OF [] 2009

Q. 25. Do you agree or disagree that the above proposed Decision Instrument is clear, unambiguous and practical? Please explain your view and, if relevant, propose alternative wording.

9 Appendix B – Consultation Questions

List of Questions