Commission for
Communications Regulation

Response to Consultation, Further Consultation and Draft Direction

Rental Price for Shared Access to the Unbundled Local Loop

Document No:	**05/22**
Date:	**21 March 2005**

All responses to this consultation and draft direction should be clearly marked:- "Reference: Submission re ComReg 05/22" as indicated above, and sent by post, facsimile, e-mail or on-line at www.comreg.ie *(current consultations)*, to arrive on or before 5.30pm, Monday, 18 April 2005, to:

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

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1 Foreword [by John Doherty]

Local loop unbundling (**'LLU'**) is key to stimulating the take-up of broadband in Ireland. It encourages infrastructure investment by competing operators and allows those competing operators to offer innovative services, both in terms of quality and price, which can be differentiated from those offered by eircom.

The availability of a fit for purpose LLU product at appropriate prices is a key priority for ComReg and ComReg is taking all necessary steps to ensure operators can avail of this product. ComReg has been reviewing all aspects of LLU, both in terms of processes and prices. This paper forms part of that ongoing review and is a response to ComReg's Consultation Document No. 04/111 (**'Document 04/111'**). In Document 04/111, ComReg identified that the current methodology for deriving the price for shared access would lead to an over recovery of costs by eircom. ComReg suggested that the price for shared access should be based only on the incremental costs of that service.

Responses to Document 04/111 were varied and ComReg is using this paper to address some of the concerns raised by respondents. In this document, ComReg is proposing to allow eircom to recover only the incremental costs of providing shared access to the local loop. ComReg presents a number of reasons why it believes that this is appropriate but is also providing interested parties with an opportunity to comment further. This paper underlines ComReg's belief that the current price for shared access to the local loop is allowing eircom to over recover its costs to the detriment of competition and consumers. The proposals in this document would lead to a significant decrease in the wholesale price for shared access to the local loop and ComReg believes that it would stimulate competition, thereby benefiting end users.

Views on this proposal are sought by 5.30pm on Monday, 18 April 2005.

John Doherty
Commissioner

2 Executive Summary

This document follows on from Document 04/111 and is part of ComReg's ongoing review of LLU.

In ComReg Decision No. D8/04[1] (**'the SMP Decision'**) eircom was designated with significant market power ('SMP') in the market for wholesale unbundled access to the local loop. As a consequence of this, certain remedial 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 forward looking long run incremental costs (**'FL-LRIC'**) pursuant to the SMP Decision and Regulation 14 of S.I. No. 305 of 2003 the European Communities (Electronic Communications Networks and Services) (Access) Regulations 2003 (**'the Access Regulations'**) which transposes Directive 2002/19/EC of the European Parliament and the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities.

In accordance with the above mentioned SMP obligations, Document 04/111 sought the views of interested parties as to whether it would be appropriate for ComReg to revisit the methodology underlying the pricing of shared access to the local loop and, whether it would be appropriate to price this service on the basis of incremental cost only. In Document 04/111, ComReg outlined its view that unless the pricing methodology for shared access to the local loop was revisited, eircom would over recover the costs associated with the local loop. In this document, ComReg sets out its views on responses to Document 04/111 and provides further opportunity for comment on its proposal. It also sets out the proposed text of the direction that would be implemented if ComReg proceeds as proposed. The background to this document is described in section 3 of this document.

Section 4 of this document sets out ComReg's belief that having recently determined the long run incremental cost (**'LRIC'**) cost of the monthly rental for unbundled metallic paths as €14.65[2], and in light of the current retail line rental of €19.98, that eircom is now fully recovering the LRIC cost of the access network. Therefore any price for shared access above the incremental cost of providing the service will lead to the over-recovery of costs by eircom.

ComReg proposes that it would be appropriate to amend the methodology for pricing the monthly rental of shared access so that only the incremental costs of providing the service will be recovered. This will avoid the problem of over recovery in a transparent and practical manner. On the basis of the information currently available, ComReg is of the opinion that the incremental cost of providing the service would

[1] Designation of SMP and Decision on Obligations – Market Analysis: Wholesale unbundled access (including shared access) to metallic loops and sub-loops; Document 04/70; D8/04; published on 15 June 2004.

[2] 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.

equate to a price of €0.39 per month. Submissions are sought in this document as to whether this price does indeed provide for the recovery of the incremental costs only.

In addition to avoiding the problem of over recovery, ComReg believes that charging on the basis of the incremental costs will be positive for competition, will encourage infrastructure investment by competing operators, will bring benefits to end-users in terms of both choice and price, and will not unfairly disadvantage broadband providers utilising alternative infrastructures.

The views of the respondents to Document 04/111 are addressed in section 5 of this document. The key points made by each respondent are summarised here. In this section, ComReg also responds to the key points made by the respondents. Finally, section 6 of this document contains a draft direction.

The Appendix lists the questions posed by ComReg in this document.

3 Introduction

This document forms part of ComReg's ongoing review of LLU.[3] The 'local loop' is the copper pair connecting an individual telephone subscriber to the nearest point of interconnection with the main telephone network at the local exchange. This 'last mile' of network is accepted to be the most difficult for new entrants to replicate. LLU means that the network owner is required to provide access to this copper pair, so that new entrants can offer their services across the local loop. This allows new entrants to provide a full range of services directly to the customer, including the new range of broadband services (such as high-speed internet access) whether or not the incumbent operator also offers such services. As a result, LLU has the potential to increase the range of competing services available to businesses and consumers.

As part of the implementation of the new regulatory framework, ComReg conducted a review of the market for 'wholesale unbundled access (including shared access) to metallic loops and sub-loops'. In the SMP Decision, ComReg designated eircom with SMP and imposed a number of remedial SMP obligations on eircom, including the obligation that prices must be cost oriented.

LLU comes in two main forms, full unbundling (also known as unbundled local metallic path or **'ULMP'**) and shared access (also known as line share). ComReg has recently determined a rate of €14.65 per month for ULMP (see Decision D15/04).[4] This document is concerned with the other important LLU service - shared access to the local loop.[5] ComReg believes that the monthly rental charge for shared access to the local loop is an important influence on the take-up of LLU.

A product description of line sharing is provided in Appendix 1 to Service Schedule 103, Product Description for Line Sharing, of the eircom Access Reference Offer (**'the ARO'**).[6] It provides that:

[3] Designation of SMP and Decision on Obligations – Market Analysis: Wholesale unbundled access (including shared access) to metallic loops and sub-loops; Document 04/70; D8/04; published on 15 June 2004.

Decision Notice: Directions to eircom: local loop unbundling – Requirement to respond to industry request for developments to LLU processes and product range; D1/05; Document No: 05/04; published on 18 January 2005.

ComReg are also in the process of reviewing the Co-location pricing methodology.

[4] 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.

[5] 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."*

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

"The Line Sharing product allows the services provided by eircom and an 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 MDF…"

Ireland is at the lower end of the scale for broadband rollout compared with its European counterparts.[7] One reason for this is that the take-up of local loop unbundling using shared access has been very disappointing and has not had any substantial impact on the market. ComReg believes that, amongst the factors contributing to the low take up in Ireland is the comparatively high price of this service. It is also worth highlighting that other European countries have also recently reviewed their pricing structures for line share. France for example introduced the line sharing product at a monthly rental of €1.80[8] (compared to the current price in Ireland of €9) and it has seen a dramatic increase in the take-up of LLU.[9]

On 12 November, 2004, ComReg published Document 04/111 which sought the views of interested parties as to whether it would be appropriate for ComReg to revisit the methodology underlying the pricing of shared access to the local loop. In Document 04/111, ComReg set out its view that, unless the pricing methodology was amended, eircom would over recover costs associated with the local loop.

Having considered the responses to Document 04/111, ComReg remains of the view that its proposal is sound. However, a number of issues were raised in the response to Document 04/111 and this document sets outs ComReg's response to those issues. This document therefore, also provides interested parties with a further opportunity to comment on ComReg's reasoning, as well as on the detail of the proposal to set the price at €0.39 per month.

This proposed price is based on ComReg's understanding of the incremental costs of the service and views are sought in relation to its reasonableness and appropriateness.

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[7] Refer to www.cullen-international.com

[8] Offre d'Àccès à la Boucle Locale de France Télécom – Offre destinée aux exploitants autorisés de réseaux ouverts au public ; publiée le 20 octobre 2004.

[9] The charge of €1.80 is not directly comparable to the price of line share in Ireland as the cost of fault repair is included within the French price but charged for separately in Ireland. If one were to make a like for like comparison, the French figure would in all likelihood need to be significantly reduced.

By July 2004 July 2004 there were approximately 0.75M shared lines in France.

4 Determining the price of shared access to the local loop

Where a line is unbundled using shared access, a situation will arise where two different operators share the copper pair from a customer's premises to the Main Distribution Frame (**'MDF'**) for the simultaneous provision of their different services. Thus, one operator may use the copper pair to provide standard voice services, while the other uses it to provide broadband services via DSL (digital subscriber line). The costs of the local loop do not vary depending on whether one or two services are provided. These costs would be incurred in their entirety if only voice services were provided or if only broadband services were provided; and they are not increased if both services are provided. The question to be determined is how such common fixed costs should be attributed between the services using the line.

ComReg had concluded in Decision Notice D8/01 that the price of shared access to the local loop should be half the cost of the metallic local loop plus the cost of carrier billing and administration. When ComReg issued D8/01 the retail line rental price was €15.07 per month and there was in place a retail price cap regime that constrained eircom's ability to increase the retail line rental. In February, 2003, ComReg amended the retail price cap and removed the sub - cap on retail line rental. Subsequently, eircom increased retail line rental by 23% to a current price of €19.98 per month (excluding VAT).

In Decision Notice D15/04, ComReg determined that the LRIC cost of the local loop is €14.65 per month. Taking into account the costs additional to the local loop required to provide retail access services (such as the line card, fault repair, and retail costs) ComReg believes that eircom's retail line rental charge now fully recovers the costs of providing the local loop. It follows that if eircom were to recover any costs from shared access to the local loop other than the incremental cost of providing the service, there would be an over recovery of cost.

This would clearly not be an acceptable situation. eircom needs to be able to recover the correct costs for the local loop but, cannot be permitted to charge more than once for the same costs. As take-up of broadband services increases, the impact of the over recovery will be increasingly evident. ComReg issued Document 04/111 because it now believes that in current circumstances using this methodology has undesirable effects, including the over recovery of costs by eircom.

In order to prevent such over recovery (by what is in effect, double charging) two alternative approaches could be envisaged. In either case, the line sharers would pay enough to cover the incremental costs resulting from their connection to the local loop (including billing, other administrative costs and any other incremental costs that can be identified). In one alternative, line sharers would pay for part of the costs that are common to voice and broadband services, the amounts paid being refunded in some manner to other users; in the other case, the line sharers would not contribute to such common costs.

If line share product was to contribute something towards the common costs (as was envisaged in D8/01) and double charging is to be prevented, the amounts involved would need to be refunded to other line users in some way. There is at present no mechanism for reducing other wholesale and retail prices to offset any income above incremental cost gained from broadband services. Although it would in theory be possible to conceive of a mechanism that reduced prices for other local loop services (such as PSTN access, ISDN access, partial private circuits, ULMP etc) by x amount as the contribution to common costs from line share increases by y, this would involve addressing a number of practical difficulties.

In the first place, the amounts would need to be calculated after the connections had been made; or if forecasts were used (which would be problematic in an as yet underdeveloped part of the market subject to potentially rapid change) there would need to be ex-post correction factors, all of which would add to the complexity of the regulatory regime and to its costs. Secondly, one would need to decide whether the refund should be made at the retail or wholesale level.

A further consideration is that the effective retail price for line rental would be reduced which would appear to imply a requirement for a reduction in the price of wholesale line rental (which is expressed as a percentage of retail prices). If the rebate were given to all customers, this might seem unfair to those whose lines are shared. On the other hand, to charge different retail customers different rentals for essentially similar services would also be open to criticism.

If a rebate were to be applied at the wholesale level, this would imply a reduction in the price of full unbundling. Having only recently determined on this matter by setting a price of €14.65 to be held constant in real terms up to end of 2007, ComReg is reluctant to upset the stability and consequent renewed interest in full unbundling that appears to have been engendered by its decision.

The alternative to rebates, as set out in Document 04/111, is that the line sharers would be charged only the costs directly resulting from their presence on the local loop. In this case, there is no double-charging, and no need to calculate and allocate specific rebates to the original line users. The line sharers would be charged a lower rate than under the previous policy, and competition between them will lead to lower charges to retail customers for the broadband services offered. Clearly, if the retail customer no longer subscribed to eircom's line rental service, the line sharer would have become the sole user of the line and would pay the full LRIC cost (i.e. the wholesale service would move from line share to ULMP). This proposal therefore has the benefits of ensuring that eircom's charges are cost-reflective, that unnecessary regulatory costs are avoided, and that the Irish economy benefits from a more rapid roll-out of broadband services.

ComReg therefore proposes that only the incremental costs of providing line share should be recovered in the monthly line rental. This will lead to benefits for consumers both directly, in facilitating lower retail charges for broadband services, and in the longer term, in establishing a basis for fair and efficient competition between service providers using different technologies and offering a range of telecommunication services. It is ComReg's understanding that this approach would imply a price of€0.39 per month for line share, which would recover the costs of carrier administration and billing.

It should be noted that the monthly line rental of €0.39 is only one of a number of wholesale charges associated with the line share product. In addition to the connection fee and the cost of renting co-location space in eircom exchanges operators availing of the product also have to pay a separate charge to eircom for the repair of faults. This is an unusual feature of the eircom charging structure, as in most other European countries the cost of fault repair is included in the monthly rental. As a result the effective monthly cost to an alternative operator is significantly higher than €0.39. Obviously the alternative operator has to incur all the costs of its own broadband infrastructure[10] in addition to the wholesale fees it pays.

As discussed in more detail in the following section of this document, some companies that have invested in alternative methods of distribution other than the local loop (including mobile and wireless operators) have objected to the alternative methodology outlined in Document 04/111 on the grounds that it will lead to unfair or inefficient competition for their products from rival companies sharing eircom's local loops and who would pay only the incremental cost. These respondents argue that since their product prices have to recover all the costs of an alternative infrastructure, it is unfair that they should face competitors that need only pay for their incremental costs. However, these companies may offer voice services or both types of telecommunication service under the terms of their licences. eircom needs to recover its costs though a combination of service charges, including retail line rentals and fees for line share. So too do other service providers, equally able to offer voice or data services at rates that in combination must cover their overall costs.

Moreover, the argument put forward by these respondents ignores the fact, discussed above, that a fixed line user must pay for the costs of access, regardless of whatever combination of services they use. ComReg's proposal gives effect to the great benefit of DSL technology i.e. where a customer is prepared to pay for PSTN services, the extra cost of supplying that customer with broadband services (the incremental cost) is relatively low. To ignore this fact is to ignore the benefits of the technology underpinning broadband rollout.

On the other hand, where PSTN services are not used, a fixed broadband customer will pay for the full cost of access. Again, there is therefore no question of unfair subsidy from voice services or of unfair competition.

[10] In a number of European countries the frequency splitter is provided by the LLU supplier, and the costs of that recovered through the monthly rental. In Ireland it is the alternative operator that provides the splitter at its own expense.

5 ComReg responses to specific issues raised by respondents

The following section will provide a summary of the key points made by respondents. It will also respond, where relevant, to specific issues raised by them that have not already been addressed by ComReg in the earlier sections of this document.

ComReg received seven responses in relation to Document 04/111. The following companies and organisations responded: ALTO, eircom, EsatBT, Irish Broadband; UTV Internet and Vodafone. In addition to the above, there was one private individual who responded. Four of the seven respondents warmly welcomed ComReg's consultation and supported the proposed change in the pricing methodology for shared access.

5.1 Views of the respondents

Four respondents expressed similar views advocating a change of methodology. Their views are summarised below. Three other respondents raise concerns about changing the methodology and ComReg addresses their concerns individually at the end of this section.

Views of the respondents advocating a change in methodology

One respondent agrees that the cost of providing the local loop is already recovered and therefore the price charged for providing shared access should be the incremental cost to eircom. This respondent further elaborates on this point by highlighting that eircom's rebalanced line rental charges (voice) already provide for recovery of the cost of access to the public telephone network. Double recovery of these costs should be avoided and accordingly line share should not include any of these costs. If an additional line rental charge was applied for shared access, this respondent indicates that eircom would have to reduce the monthly rental for access to the public telephone network for those customers availing of shared access.

This respondent also states that it was not aware of any additional charges that should be applied to the price of shared access. It does call for a review of other access prices such as those related to wholesale bitstream. In addition to the above, this respondent underlines the fact that the roll out of LLU has been hampered previously by difficult processes and impeding prices and welcomed ComReg's action in this area.

Three other respondents indicate their support of the methodology proposed in consultation Document 04/111. One of these respondents mentions that eircom is required to provide a line to the other authorised operator (**'OAO'**) that is capable of supporting the services that the OAO plans to offer the consumer, rather than those that eircom is prepared to allow competitors to provide. Another respondent welcomes the consultation; however, this respondent indicates that other prices need to be addressed by ComReg in order for a reduced shared access price to have a positive impact on the market. This view is repeated by a fourth respondent that highlights action on line charges alone was insufficient and that ComReg must take steps to reduce the other fees and charges associated with LLU.

This respondent also reiterates its point that the cost of provision of the local loop is already fully recovered by eircom and that accordingly, eircom should not be allowed to over recover its costs. This respondent also underlines its view that ComReg's proposed methodology in Document 04/111 is the most appropriate for calculating the price for shared access.

ComReg view

ComReg notes agreement on the core principle of no over recovery of costs from the above four respondents. These four respondents have also added their support to the principle of line share charges being based on incremental cost. Finally, ComReg would like to draw attention to the other pricing workstreams that are currently underway or recently completed.[11]

View of fifth respondent

A fifth respondent makes a number of observations in relation alleged legal / procedural defects and economic issues. Overall, this respondent is critical of the consultation process. It alleges that there are weaknesses in the ComReg process – e.g. that line share is not defined, that the consultation paper should be withdrawn, that ComReg does not provide a reasonable consultation period, that the ARO has been revisited several times and the issue of line share has never been raised during these reviews, that there is no reference made to previous consultations drafted by ComReg on this topic, that ComReg's obligation to exercise its powers transparently has not been fulfilled that there is a lack of analysis and that the transparency obligation is not fulfilled and that the incumbent's property rights would be impaired.

This respondent also states that ComReg has failed to refer to a recognised set of cost recovery principles which it cites as being frequently used by other National Regulatory Authorities.

[11] Designation of SMP and Decision on Obligations – Market Analysis: Wholesale unbundled access (including shared access) to metallic loops and sub-loops; Document 04/70; D8/04; published on 15 June 2004.

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.

Decision Notice: Directions to eircom: local loop unbundling – Requirement to respond to industry request for developments to LLU processes and product range; D1/05; Document No: 05/04; published on 18 January 2005.

ComReg are also in the process of reviewing the Co-location pricing methodology.

The fifth respondent further claims that ComReg did not provide any basis for deviating from the original pricing methodology in D8/01. This respondent asserts that Document 04/111's only justification for altering the price is "current market conditions." This respondent asserts that this does not provide a basis for altering the price.

According to this respondent, ComReg gives no principled reason why line share should equate to the incremental cost of the service. It further claims that ComReg makes the assumption that eircom will continue to supply the voice services along the relevant shared line. It raises questions such as: what if eircom cease the voice supply? Must the OAO pay full the LLU price even though its usage of the line remains the same? This respondent also states that ComReg's statement that the loop cost is fully recovered in the ULMP price is misleading, and does not explain why an operator solely taking broadband would not have to contribute to the rental costs (assuming eircom provided voice on the same line).

This respondent also claims that common sense would appear to suggest that the costs should be shared. It asserts that there is no logic to support a view that costs should be allocated to the voice band and not to the non voice band. Finally, this respondent claims that the ODTR had in the past acknowledged a difficulty in allocating common costs and it states that ComReg has not subsequently explained the resolution of this conundrum. This respondent further alleges that ComReg failed to distinguish between price and cost as well as between common costs and shared costs.

ComReg's view

The respondent does not acknowledge that the rebalancing of charges to retail customers for line rental has resulted in a situation in which it is necessary to prevent eircom from over-recovering cost.

The economic arguments put forward by this respondent have been addressed in section 4 of this document above.

The respondent's reference to what it describes as a "recognised set of cost recovery principles" is to 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. ComReg's new proposals are justified when viewed against such criteria:-

- They are 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 the recent consultation paper and present decision.

- They are consistent with a reasonable distribution of benefits, in particular by facilitating the wider use of broadband services without adding any costs to voice customers.

- They will 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 using line share or line rental across the full range of telecommunication services.

- They will 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.

- 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.

- The proposals are practical, and straightforward to implement. If additional evidence is brought forward to show that the estimate of €0.39 as the incremental cost of connecting a line sharing service provider and maintaining the service is too low (or too high) the number can be adjusted accordingly.

In the case where eircom ceases to recover the voice band line rental (at either retail or wholesale level) the OAO must pay in full for the cost of the local loop. As indicated in section 4 of this document, ComReg does not intend that eircom should be unable to recover the LRIC cost of the local loop; and if a line sharer becomes the sole contributor to a line, it would have to pay the full cost. The implications of this have already been discussed.

ComReg has carefully considered the respondent's criticisms relating to alleged legal defects and defects in procedure on the part of ComReg. ComReg does not accept that it has acted in any way unlawfully and ComReg does not accept that the incumbent's property rights are improperly treated by preventing it from recovering the same costs twice.

Sixth respondent

A sixth respondent focuses its response around the view that Document 04/111 favours one platform over all others. This respondent refers to the Forfás Report which highlights the need for inter-platform competition as a key factor for increased broadband competition, and claims that Document 04/111 contradicts this goal. The respondent alleges that the proposed line share price would lead to an increase in false competition as it makes resources available at below their economic value. This respondent believes that such a price would destroy any long term incentive to invest in infrastructure. This could lead to a deterioration of infrastructure by removing incentive to maintain it or invest in competing infrastructure.

This respondent also highlights that as VOIP (voice over internet protocol) emerges as an alternative to fixed line voice, it will be unlikely that traditional voice services will cover the costs of the fixed wire network and therefore, it would no longer be feasible to recover the fixed costs through the voice service.

ComReg's view

Section 4 of this document addresses many of these issues.

ComReg does not accept that the proposals will prevent effective inter-platform competition; on the contrary, they will allow providers of platforms alternative to the local loop to offer a full range of voice and broadband services against competition from services provided through the local loop that in combination will have to recover the cost of the loop, neither more nor less. This is the correct basis for effective competition.

It is not the case that resources would be made available at below their economic value. Assuming that the €0.39 estimate is accurate, no line sharer will pay less than the incremental costs it imposes.

If the development of VOIP is such that a subscriber ceases to pay for the voice service line rental, the full LRIC cost of the local loop would be recovered from the supplier offering the IP - based service. In the context of fully rebalanced tariffs, the LRIC costs of the loop will always be recovered. Should a customer cease voice services over the local loop then the broad band provider offering access to VOIP services will have to pay the full cost of the local loop (i.e. move from line share to full ULMP).

Seventh respondent

Finally, the seventh respondent reiterates many of the process criticisms elaborated by the previous two respondents – the replacement of the existing methodology under D8/01 allegedly without any new information and that the current methodology should not be changed. This respondent also claims that over - recovery of costs cannot occur. The issue is rather how to allocate common fixed costs between two services. It also argues that the reduced costs could encourage entry by inefficient providers of broadband services as all of the burden of fixed cost recovery falls on the provider of voice services. Such operators it is argued, would not be in a position to contribute to the fixed local loop cost.

This respondent also claims that line faults will be reported not on foot of their impact on the existing voice services but rather on foot of their impact on the line share product. This respondent suggests that this repair cost, even when relating to repair of the copper loop, should be attributed to the line share product.

This respondent states that one of the arguments used by ComReg to justify a further reduction in the shared line price is to avoid a margin squeeze for the presence of competitive Bitstream products that can make the provision of broadband through the shared line not convenient. This respondent argues that the relative convenience of Bitstream might be simply due to the fact that the line share is an inferior product. This respondent also suggests that ComReg has not established the effects of the reduction in the shared line price that would result from the fall of the full local loop unbundling price without changing the allocation methodology.

This respondent further argues that economic efficiency considerations suggest that each service should contribute to the common costs of the local loop. If this is not done, then users of voice services would end up paying too much, which would reduce their consumer surplus (unless voice operators will reduce their margins). Ramsey pricing is then discussed by this respondent as an efficient methodology to allocate common and fixed costs. It focuses in particular on the point that each service should be priced with a mark-up over incremental costs inversely proportional to its respective elasticities of demand. Finally, this respondent states that the replacement threshold for copper used for data services arrives sooner than that used solely for voice. This would lead to a higher depreciation charge being attributed to the line share product as opposed to the voice product. It is also unclear that any assessment has been made of the additional infrastructure and test equipment that may be required to support the full range of remote line test facilities required to allow the shared line to be efficiently managed for carrying data services as well as voice.

ComReg's view

Section 4 of this document has explained that over recovery of the costs of the local loop will occur if retail customers are already paying the full cost in their line rentals, and then a line sharer is required to pay some of the same costs.

It has also been explained why the new charging regime will lead to effective competition. ComReg sees no prospect of inefficient entrants concentrating on broadband services succeeding against the competition offered by suppliers, including eircom, able to offer a combination of voice and broadband services for a combined cost no greater than the cost of the local loop.

The points that are raised by this respondent with regard to faults are not relevant in this context. Lines with broadband services might exhibit a greater number of faults than lines only providing voice services because of the extra complexity, although this might offset by the fact that shared lines will tend to be shorter than average. In any case the costs of line faults associated with shared access are recovered separately on a usage basis and so do not affect the rental price. As to the issue of local access network infrastructure associated with broadband services having a shorter life than local access network infrastructure associated with voice services ComReg has seen no evidence of this being the case.

The respondent refers to the principles of Ramsey pricing. Ramsey pricing principles have many merits although their application is not straightforward. In the case of regulated telecommunications businesses, the requirement for cost based or cost oriented pricing mandated by the access regulations must also be taken into account.

Nevertheless, ComReg's proposal is consistent with the basic objectives of Ramsey principles which are to set price signals which minimise economic distortions and thereby maximise economic welfare. ComReg's proposal would allow reduced charges for the new broadband services, the market for which is likely to be price-sensitive, whereas lower charges for voice would be unlikely to increase overall demand.

ComReg believes that its proposal reflects the true economic benefit of DSL technology which can leverage existing voice infrastructure, while also not distorting interplatform competition, since the costs of fixed access network are always recovered.

ComReg is aware that entrants may prefer the Bitstream wholesale offering to line share. By revising the cost allocation rule applied when setting charges for line share, ComReg seeks to ensure that entrants face correct price signals when choosing between Bitstream and line sharing. Since line share allows entrants to offer greater product differentiation than Bitstream, by moving further up the ladder of investment and making increasing use of their own infrastructure, it would be unfortunate if the regulatory environment biased entrants towards Bitstream. If wholesale prices are set appropriately this situation should not arise.

6 Consultation questions and draft direction

Q. 1. In light of the reasoning set out above and in the previous section, do you agree with ComReg's reasoning as to why it is appropriate to allow only the incremental costs of line share to be recovered in its rental price? If you do not agree, please explain clearly the basis for your opinion and address directly the reasoning provided by ComReg.

Q. 2. In light of the reasoning set out above and in the previous section, is the price of €0.39 per month an accurate reflection of the incremental costs of this service? If you believe that it is not, please provide comprehensive supporting data.

ComReg proposes that, if it were to implement its proposal to restrict the costs recovered by the price of line share to the incremental costs of the service, that it would issue the following direction. This direction would mean a reduction in the monthly charge for LLU line share from the current price of €9.00 to €0.39.

DRAFT DIRECTION

1. DIRECTION

eircom is directed to amend its ARO Price List, Annex C, Service Schedule 103, *Line Sharing Service*, Section 1.3 Recurring Charge – LS Monthly Rental by **[DATE]** to reflect a charge of €0.39 per month and to update the published ARO and related manuals on its website accordingly.

2. STATUTORY POWERS GIVING RISE TO DIRECTION

This direction is issued under the provisions of Regulation 17 of the Access Regulations, for the purpose of further specifying requirements to be complied with by eircom relating to its SMP obligations as set out below, which were imposed on eircom by Part 6 of the SMP Decision. The said SMP Decision was made pursuant to Regulations 9 and 14 of the Access Regulations. This direction is made without prejudice to the generality of eircom's obligations, contained in Part 6 of the SMP Decision.

3. RELEVANT OBLIGATIONS IMPOSED ON EIRCOM BY PART 6 OF THE SMP DECISION

- Section 4.1: eircom's obligation to meet reasonable requests by authorised undertakings for access;
- Section 4.2 II: eircom's obligation to provide authorised undertakings access to shared access line sharing;
- Section 7.3: eircom's obligation to keep Version 1.18 of the ARO and the related manuals, published as Industry LLU Documentation, and to keep same updated, on its official website www.eircomwholesale.ie.; and
- Section 9: eircom's obligation to obligation to offer cost oriented prices for LLU services, collocation, and associated facilities on the basis of forward looking long run FL-LRIC, as provided for by Regulation 14 of the Access Regulations.

4. EFFECTIVE DATE OF DIRECTION

The effective date of this direction is **[DATE].**

Q. 3. If ComReg were to implement the above draft direction, do you believe that it would be clear, unambiguous and possible to implement. Please state your reasoning and provide proposed amendments? What (if any) amendments would you propose to the text, that in your view would improve the direction?

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 21 March 2005 to 18 April 2005 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 publish a report on the consultation which will, *inter alia,* summarise the responses to the consultation.

Please note that ComReg will make available at its offices all submissions with the Response to Consultation, subject to confidentiality. 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. Respondents are requested to identify clearly material that is considered to be confidential and, if possible, to include it in a separate annex to the response.

Appendix – Consultation Questions

List of Questions