Response to Consultation and Draft Direction

Response to Consultation Paper on the application of retention rates in the Number Translation Code market

Document No:	**03/141**
Date:	**3 December 2003**

All responses to this consultation should be clearly marked:- "Reference: Submission re ComReg 03/141" as indicated above, and sent by post, facsimile, e-mail or on-line at www.comreg.ie (current consultations), to arrive on or before 16 December 2003, to:

Ms Elaine Kavanagh
Commission for Communications Regulation
Irish Life Centre
Abbey Street
Freepost
Dublin 1
Ireland

Ph: +353-1-8049600 Fax: +353-1-804 9680 Email: Elaine.kavanagh@comreg.ie

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

Contents

1 Foreword

A consultation paper was issued on the 18 September 2003 seeking the views of interested parties on an issue related to the current regime of calculating retention rates in the fixed interconnect market. Specifically that in line with our current understanding, certain calls by CPS(Carrier Pre Select), CS(Carrier Select) and CA(Carrier Access) customers to non geographic numbers, known as Number Translation Codes (NTCs) hosted by eircom may potentially inadequately reimburse the CPSO(Carrier Pre Select Operator). This may mean that CPSOs are hampered in competing in certain calls markets, including calls to the Internet.

Three responses were received from the following parties;

- Eircom
- Esat BT
- MCI

Set out in this document are extracts from the responses received to the questions asked in consultation document 03/113.

The Commission wants to thank all the respondents to the consultation for their help in assisting the review of the application of retention rates in the Number Translation Code Market. The responses are available for inspection at the ComReg office, excluding confidential material that respondents specifically asked to be withheld.

John Doherty

Chairperson, Commission for Communications Regulation

2 Executive Summary

The Consultation paper proposed changes to the current NTC charging regime in the case of a call by a CPSO customer terminated on a non geographic number hosted on eircom's network. In general, where a call to a non geographic number originates/crosses but does not terminate on a particular network that network operator is allowed a share of the total revenues from the call which is known as a retention. In practice all operators have up to now received the same retention, based on eircom's costs, known as the regulated retention. This regulated retention was intended to reimburse eircom for calls to non geographic numbers hosted off its own network. Because the hosting operator is deemed to own the retail revenue eircom must pass on these revenues but may retain the regulated retention in order to cover its own costs. The regulated retention is reviewed and agreed by ComReg.

In practice this regulated retention has been used in circumstances which were not originally envisaged. The issue of how a non SMP operator was to be reimbursed for a call to a non geographic number hosted on eircom's network which crosses its own network was never formally addressed. At the time the Director concluded that termination rates were best set by commercial negotiation in the first instance. The current practice is to use eircom's own costs as a proxy for the OAO's. While this works well in general, in the particular call cases 2 and 3 considered by this consultation process eircom's costs take no account of the reality that a CPSO must also pay an origination charge to eircom. Using eircom's costs as a proxy means that a CPSO, in this case, will never recover its origination charge.

In this draft direction, ComReg proposes to direct that a CPSO's regulated retention, in the circumstances referred to above, be calculated based on the regulated retention, but adjusted so as to include an allowance for its origination costs.

3 Principal Issue of Consultation

These changes would apply to calls to eircom services as set out in the Reference Interconnect Offer (RIO) price list for services, potentially No's 105-122. These call types follow particular call routing pathways and certain similar calls transiting the eircom network.

ComReg regulates the charges eircom raises for the work it undertakes in carrying calls which are terminated on OAO hosted NTCs. This type of call is shown diagrammatically in Section 6 Appendix A, Case 1. Cost elements allowed for are:

- call conveyance *[In these scenarios this is equivalent to call origination]*
- billing
- credit control
- cash collection
- and bad debt

The sum of these parts is the Regulated Retention. The balance of the retail revenue from the customer less the Regulated Retention is the "Settlement" which is paid to the OAO hosting the service provider. i.e Settlement = Retail Revenue - Regulated Retention. In this scenario therefore, *eircom* collect the retail revenue, subtract the Regulated Retention and the balance is passed to the OAO as a Settlement.

This regime has up to now proved simple to implement and practical to operate. The context is one of a service provider being hosted on the eircom network with calls conveyed via a CPSO[1]. In this case it is the CPSO that is entitled to a retention. However the difficulty arises because the practice has been to base the retention on eircom's costs by using the regulated retention. This particular amendment arises because cost recovery for CPSOs appears to be incomplete because the cost of call origination to the CPSO is ignored.

When the scenario is that the customer is a CPSO customer and the service provider is with eircom i.e. as shown at Appendix A Case 2, the same Regulated Retention is currently applied. In this case the CPSO collects the retail revenue from the customer and because this is a CPS call it pays eircom a normal CPS origination charge. In addition, because the service provider is hosted by eircom, it also pays over the retail revenues less the Regulated Retention, this settlement being at the same rate as is used in Case 1. i.e. the calculation is Settlement = Retail Revenue – Regulated Retention. Because the CPSO pays an origination charge to eircom its net receipt on the transaction amounts to the regulated retention less an origination charge. In effect it recovers an amount relating only to billing, credit control, cash collection and bad debt. There appears to be no recovery of network related costs. This is illustrated below.

[1] CPSO should be taken to include CS Operator and CA Operator throughout this document

The net amount received by the CPSO in this scenario is

Retention	Origination + Billing etc
Less Origination paid	(Origination)
Net amount received by CPSO	Billing etc

No monies are retained for the costs associated with the CPSO's network utilised during the call. For this particular type of call from a CPS customer to a non geographic number it appears that CPSOs may be inadequately remunerated for carrying the calls across their network. It was pointed out in one of the responses to the consultation that the two origination charges in the calculation above may be different and a margin created because of the differential. However, as discussed in more detail below this will only happen in certain circumstances and will be very unlikely to allow full cost recovery.

It is also worth noting that there is no circumstance where a similar problem would arise for eircom i.e for a call which transited its network having been originated and terminated on OAO networks. In all such circumstances eircom would recover on a net basis all of its costs, including the cost of conveyance.

Under Call Case 2 in Section 6 the cost of the call to the sum of all the network operators involved in the call would be higher than the broadly equivalent call shown in Case 1. More network elements are required for Case 2 than Case 1 and this is a necessary feature of CPS and other forms of indirect telephony.

This type of call (Case 2) has generated considerable concern amongst CPSOs already because of the low (in certain circumstances, negative) net remuneration available. As a consequence, call types with low retail revenues have tended to be categorised as 'CPS excluded'. Amongst the internet access codes, 1891 has always been excluded from CPS; since introduction, 1892 has, so far, also been excluded. As ISPs have been moving their traffic from geographic numbers (CPS included) to 1892 (currently CPS excluded) CPS operators have witnessed sharp declines in their overall traffic. Any increase in the level of retention for such calls could be a significant factor in a reappraisal of the current excluded calls status of internet access calls.

ComReg views the difficulties caused by current arrangements as a serious matter. It appears likely that the ability of a CPSO to compete on an equal basis with eircom's retail arm is diminished unfairly by the exclusion of certain call categories from CPS. ComReg does not believe that CPSOs should be forced to carry particular calls at a loss simply in order to match eircom retail's service offering. It would appear that current arrangements are discriminatory in favour of eircom retail. ComReg therefore believes that CPSOs should recover their costs for the carriage of all such calls. This would encourage CPSOs to carry such calls, rather than exclude them from CPS, and thus ensure that their traffic levels and revenues reflect their market share, while enhancing the service provided by CPS to customers. It is not anticipated that a change in the remuneration arrangements for these calls would result in any detriment to consumers.

4 Summary of Responses to consultation

4.1.1 Summary of consultation issues raised

In the consultation, ComReg set out some specific aspects of the perceived operation of the NTC market in two call case diagrams in which can be seen in Section 6 (Case 1&2). We then asked whether CPSOs were inadequately remunerated. In the scenario of Call Case 2 the question arises as to what level of charge would provide an appropriate recompense. ComReg's proposal, which would make the smallest change to the existing current charging regime, would be for the CPSO to adjust the existing retention to take account of the call origination charges that it pays eircom. While recognising that this is by no means the only possibility, ComReg proposed that this change be introduced to the relevant interconnect charges if it were determined that a change to the existing levels of charge is appropriate. ComReg was interested in hearing other suggestions and proposals which could also address this apparent anomaly.

The following questions were put to industry;

Q. 1. Do respondents agree that the above description of existing charging arrangements in relation to calls to OAO hosted NTCs accurately captures the essence of the current position? Please confirm, and/or offer amendments and additional explanation.

Q. 2. Do respondents consider that the existing arrangements provide for reasonable returns on the costs incurred in carrying the traffic in Call Case 2 for the CPSOs involved in carrying such calls?

Q.3. Do respondents agree with the approach outlined above bearing in mind issues such as ease of implementation and operation. If this approach is not considered to be appropriate please give reasons and suggest alternative approaches which might be adopted with explanations supporting the approach.

Q.4. If new arrangements are instituted, from what date should these apply?

4.1.2 Response to Question 1

Two of the three respondents agreed that the description of existing arrangements in relation to OAO hosted NTC's accurately captures the essence of the current position.

However the third operator said "No. There are a number of omissions and fundamental errors. There is no analysis of NTC calls from CPSO indirectly connected customers to services hosted by service providers connected to OAO networks. CPSO networks incur transit costs, and do not incur call origination costs, in conveying NTC traffic across own networks."

One Operator noted that it would be necessary to differentiate between different call types under the NTC regime as follows;

"We believe that there would need to be "two levels of retention" in the new regime. In essence, eircom would have two pricing tables for their NTC termination rates. Table One would be the termination rate for calls originating directly from OAO networks and Table Two would be termination rates originating on CPSO networks i.e the normal termination rate minus call origination rate. We assume that this would be a practical and simple solution."

This respondent also supplied what they claimed to be a more accurate and complete description of routing and charging arrangements.

4.1.3 Commission's Position

On review of the various call types outlined by the third operator referred to above, ComReg does not see their relevance to this consultation with the exception of what one respondent describes as Scenario 5 (and which is illustrated in this paper as call case 3 in Section 6). However in relation to this scenario, the CPSO is in the same situation as it is in the Call Case 2 diagram presented by ComReg in the original consultation. The amount to be retained in either case would be the same since the costs should be the same. The issues discussed in relation to call case 2 would also apply directly to this scenario.

The issue as to whether eircom's origination or transit rates are the best proxy in this case is discussed as part of the responses to question 2 below.

ComReg cannot see that any respondent has demonstrated any fundamental errors in ComReg's analysis. The reponses to the consultation do not support the view that the charging arrangements in place are reflective of the actual costs incurred by CPSO's or allows for a reasonable margin on these call types.

ComReg considers the suggestion of one respondent that there should be two levels of retention and therefore settlement – one the existing table and the second applying to tromboned calls (cases 2 and 3 in section 6) is sensible.

4.1.4 Response to Question 2

Two operators do not consider that existing arrangements currently cover the costs incurred in carriage of traffic for CPSOs to eircom or OAO NTC's. They have stated that CPSO's often have negative margins for CPS NTC arrangements due to the current settlement rate and the call origination fee.

Another operator commented as follows:
"There was agreement that interconnect arrangements for NTC's must allow all network operators involved in conveying calls from customer to service provider to recover efficiently incurred costs of conveyance, billing, cash collection and credit management."

However this operator believed that under the current regime there was sufficient cost recovery to allow CPSO's to also have a positive margin. They believed that the differential between the call origination charge included in the retention calculation and the call origination charge levied by eircom allowed for a positive margin. A worked example was provided to show that this differential, which arose because of the different average routing of CPS calls as compared to calls which terminated on non-geographic numbers, was greater that the conveyance element of eircom's transit charges.

The same respondent also commented that the average conveyance costs would rise as a result of the proposed change.

This respondent provided worked examples in order to demonstrate that a positive margin was earned by CPSO's. ComReg reviewed these workings and the subsequent technical revision by the respondent in detail. The workings presented showed that a margin per minute plus a small negative margin per call was earned by CPSO's .

It was noted by one respondent that ComReg has indicated in the Consultation Paper that the changes proposed will not "result in any detriment to consumers" and the respondent takes this to mean that although average conveyance costs will increase there will be no increase in retail call charges. If the retail call charges are fixed, and the retention claimed by the network operator(s) rises, then for the cost equation to hold true the settlement on the service provider must fall.

4.1.5 Commission's Position

ComReg believes that the responses support the view that there is insufficient return to allow OAOs to recover their costs for this type of call case.

The current regime is based on the assumption that the incumbent's Long Run Incremental Cost Accounting costs for originating an NTC call are a reasonable approximation to the LRIC costs that an OAO would incur for originating an NTC call. The critical respondent contends that if the NTC call is a CPS call, the role of the CPSO is to transit the call and not to originate it. It argues that since the call origination rate for NTC's originating by the incumbent is greater than the average call origination rate for CPSO calls (due to differences in routing) a margin is generated which is adequate if it approximates to the incumbent's transit rate. This was demonstrated in workings supplied by the respondent. However ComReg notes that only "pure conveyance" costs were included in the transit charge being compared and other costs, which form part of transit charges such as billing and carrier administration, were not taken into consideration. It was also noted through the review of these workings that a positive margin was demonstrated on a per minute charge basis with a negligible net margin on a per call basis.

The incumbent's transit conveyance rates are lower than either their origination or termination charges because the incumbent operates a vertical network hierarchy allowing them to perform certain call routings such as transit at a lower cost. This possibility is not open to OAO's, all of whom operate flat networks, with no hierarchy, a situation which is unlikely to change. Consequently it is not appropriate to take the incumbents transit charges as the appropriate analogy for CPSO trombone call conveyance. Rather than the incumbent's NTC call origination charges which reflect the use of their hierarchical network, that network from bottom to top should continue to serve as the appropriate analogy for the use of OAO's flat networks.

The principle that OAO's should be recompensed for NTC call origination at the same rate that the incumbent is remunerated should stand unchanged. The incumbent's costs of originating a CPS call is on-charged to the CPSO's and forms part of the CPSO's costs for carrying that call. These costs should be recognised and recompensed.

The respondent which considered that average conveyance costs would rise if ComReg's proposal were implemented, and that the settlement on Service Providers would therefore fall, appears to have fundamentally mis-understood the issue being discussed in this consultation. Nothing in this consultation affects the costs actually being incurred by CPSO's. The issue is where and how these costs are to be recovered.

The effect of ComReg's proposal would be to increase the CPSO's share of revenues in these particular circumstances and reduce that of the operator terminating the call giving a more accurate recognition of costs. It is open to the terminating operator to take this change into consideration when negotiating commercial and contractual arrangements with service providers.

4.1.6 Response to Question 3

One operator had the following comments;
"we do agree with the concept of call origination cost recovery; however, it seems unfair that larger OAO's cash collection and operational cost recovery should reflect that of an efficient new entrant. We are willing to consider the ComReg proposal given the necessity for ease of operation and implementation going forward."

Another operator had the following comments;

"The current retention and the current price point regime does not allow competition at the retail level."

"The current regime has a number of flaws compared with best practice European models. However, we accept for this Consultation a single issue is being addressed."

"We agree that CPSOs should make a positive margin on all calls that includes taking into account their own network costs. We also agree that a simple approach such as the additional retention of the eircom call origination fee could provide a quick solution to the immediate problem."

One respondent set out in their response what they thought would be the best way forward with the current regime. This has been discussed in 4.1.3.

Another respondent said: "we find the proposal unclear and do not agree that it supports easy implementation or operation. Reasons why the approach is considered inappropriate, and suggested alternatives were discussed throughout the response document."

The same respondent also set out their understanding of the ComReg proposal;
"Currently, when an indirectly connected customer of a CPSO calls an NTC included in the CPS service, eircom charges the CPSO for call origination at one of three levels. If the NTC service hosted is by eircom, or by an OAO other than the CPSO, the CPSO will also incur a transfer charge. It is understood that ComReg proposes that the CPSO will settle on eircom, for calls to NTC services, an amount that is less than the then current industry transfer by the call origination charge levied by eircom for conveying that call to the CPSO network."

However the respondent claimed that it did not understand how the approach outlined might actually be implemented as billing reconciliation would be impossible. It considered that the use of A number analysis would be impossible because of number portability.

4.1.7 Commission's Position

ComReg notes the support of the two respondents for its proposals. The respondent that suggested that billing reconciliation would be impossible due to number portability does not appear to have considered the use of the Number Portability

Database to resolve their issue. Comreg's view is that this respondent overstates the complexity by focussing on the transfer amounts rather than on the retentions. The variation in transfer amounts depending on the number of networks involved is already there (i.e. the amount the service provider receives varies depending upon how many networks and therefore how many retentions have been extracted). ComReg's proposal would necessitate two retentions depending on the source of the call. This should not be an insuperable problem. One simple possible solution would simply to cancel or credit the origination charge in these cases. Difficulties in reconciling amounts received by service providers that are already there could be addressed by the use of numbering databases.

A number of problems arising from difficulties in identifying the originating network will be addressed separately by ComReg in conjunction with industry. ComReg would also like to note that the issue of billing reconciliation would be alleviated were itemised billings put in place.

4.1.8 Response to Question 4

Comments were as follows;

One respondent considered that "OLO/OAO's should be allowed to recover retroactively outside of the BDF (Billing Dispute Forum) context, the call scenarios or types that would have created inefficient network element operational historically".

They also submit that " the situation pertaining to NTC negative cost recovery should be retroactive to market liberalisation, should any operator have suffered as a direct result of a regime imposed on the liberalised market. Influencing such a flawed regime was not appropriate or possible on the part of OLO's/OAO's historically. Call scenarios could include conveyance of NTC's calls over IDA (Indirect Access) either single or two stage, direct connect call origination (over leased bandwidth) or national transit for termination.

One respondent said;
"Additionally we submit that interconnection path cost recovery is an issue, as we would not have been the revenue owner of the call, though the origination or onward conveyance could have been our license obligation in that particular scenario."

"ComReg should require that the new arrangements be instituted within one calendar month. Unless a deadline is imposed then eircom will simply argue that it is too complex and cannot be implemented. eircom should be directed to provide ComReg with the new Table Two rates (i.e the termination rates minus the call origination fee as described above) and with the appropriate RIO schedule/s within two weeks. ComReg should then analyse the rates through the approval process and direct eircom to amend interconnect contracts through negotiations with OAOs with the new Table Two rates and text within a further two weeks. Actual dates should be assigned to all these process points.

"Furthermore, the new Table Two rates should be retrospectively applied back to 1999 and eircom should be directed to provide the relevant CR to OAOs, within one calendar month from the time that ComReg approves the Table Two rate.

"A further issue that would need to be addressed in parallel is a review of the NTC codes that are currently CPS exclusive. If a new regime were determined as described above, then OAOs would want such codes to be deemed CPS inclusive or inclusive on a number by number basis. This would need to be carefully managed in terms of timing to ensure that it was not until such time as a new regime was installed that the exclusive NTCs became inclusive."

Final Response: "Any new arrangements should not apply before February 1st 2004 as cost analysis, billing system changes, and RIO Transit price list changes will all be necessary."

The general view of other respondents was that in order to be fully compensated for all costs incurred under this service, the current regime should be changed and if changed, it should be retroactive. It was also thought that the current NTC regime restricts competition in the retail market place in Ireland. In fact one operator said that competition in the CPS market had stalled at a very low penetration of some 10%. A comment was also made that the current regime is discriminatory in that it permits the incumbent to make a positive margin on all relevant call types but prevents the CPSO's from achieving the same outcome.

4.1.9 Commission's Position

Interconnect contracts would need to be amended as a result of this Draft Direction but, prior to the date of implementation, these had been established through commercial negotiation. The current charging regime has been generally accepted and operates satisfactorily for the majority of call cases and no disputes have arisen as a direct consequence of the issues discussed here. ComReg therefore believes that the new arrangements should be effective from 16 January 2004.

One respondent also claimed that ComReg's proposal was inappropriate for both 1981 numbers and 1893 (FRIACO). It said that for 1891 there were insufficient revenues available to cover all operators' costs in all call scenarios. 1893 was also inappropriate because it is charged on a capacity rather than a usage basis.

The Commission proposes to decide here on the principle of how a CPSO should be reimbursed for these particular categories of call. It proposes to address, with industry, which calls types should be included in CPS as a separate matter after a final determination on this issue has been made.

Altering the status of these internet access calls from excluded to included could involve alterations to the call routing and is deserving of separate consideration.

Draft Direction

eircom are directed to present new submissions for NTC retentions and settlement rates for call cases 2 and 3 shown in section 6 below. These submissions should put into effect ComReg's proposed solution to the current under recovery of OAO costs by ensuring that the net amount retained by the OAO after paying eircom's CPS call origination charge is equal to the regulated retention.

These submissions are to be received by ComReg by 9 January 2004. New charging arrangements will become effective from 16 January 2004 although interim arrangements will have to be agreed between ComReg and eircom to allow for system development and implementation.

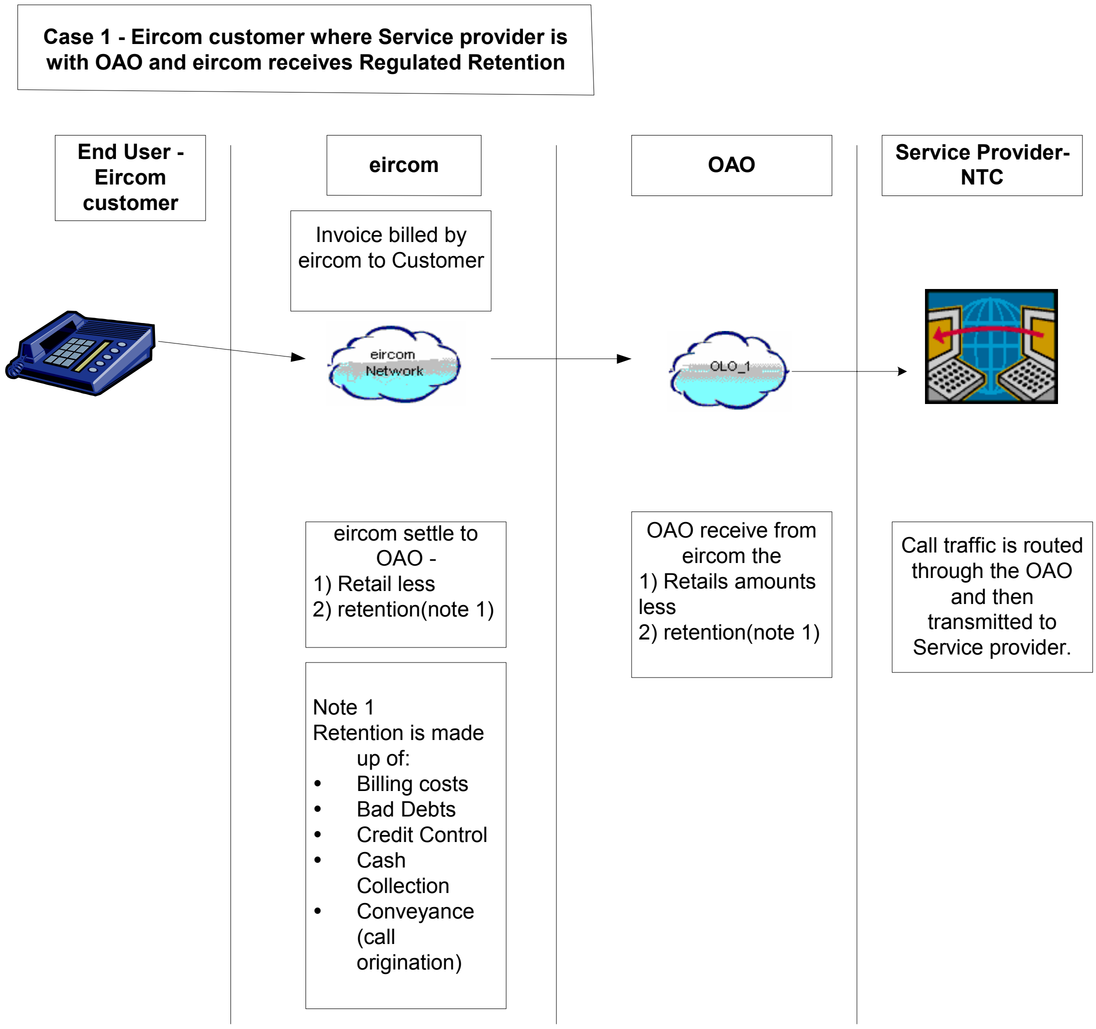
5 Next Steps

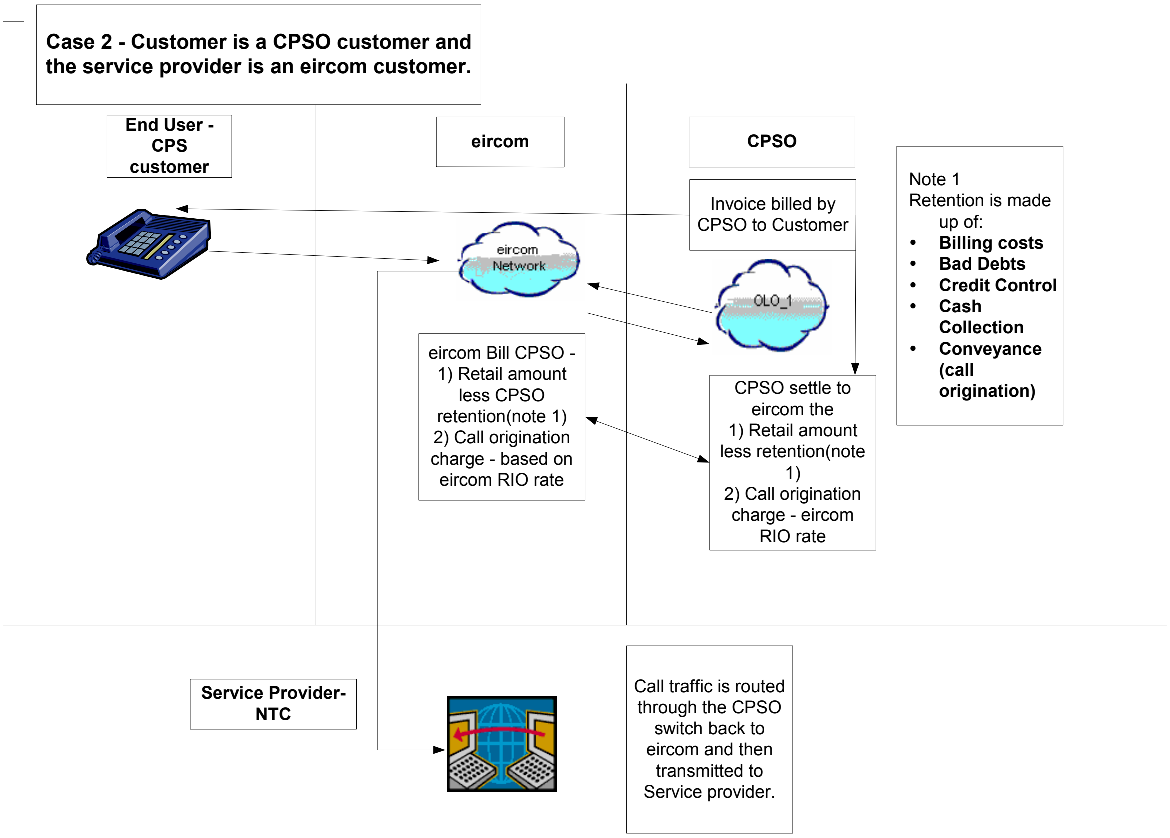
1. Comments on the draft direction should be received by ComReg by 16 December 2003.

2. ComReg will make its final decision and, if appropriate may issue a direction after consideration of these comments.

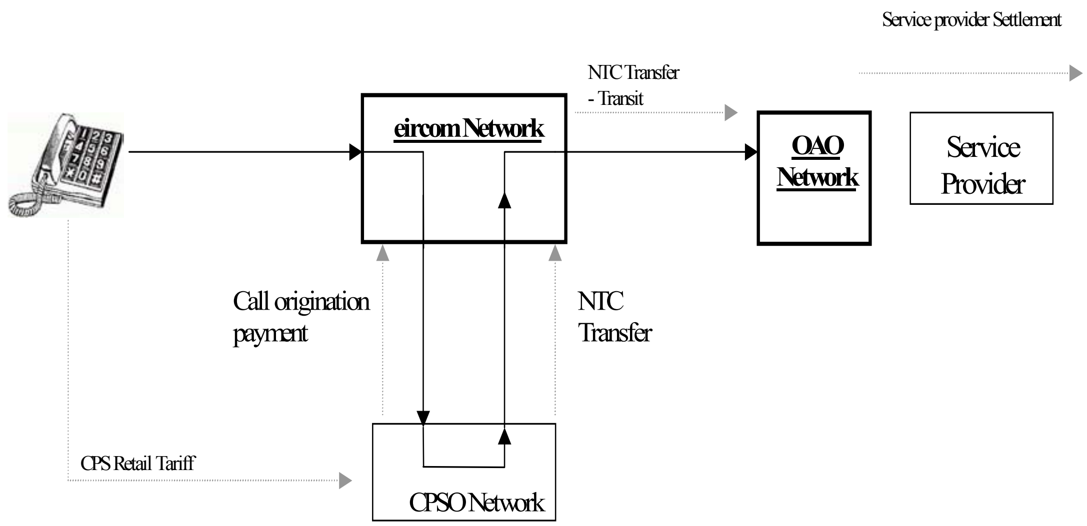
3. ComReg will consult with industry on the particular cases of the Internet Access Codes. Because of the complexities of the issues relating to these codes, the variety of possible solutions, and the desirability of achieving industry-wide consensus, ComReg proposes to address this issue by bringing operators together for constructive debate rather than by written consultation and response.

6 Appendix A – Call Case Diagrams




Case 2 - Customer is a CPSO customer and the service provider is an eircom customer.
End User - CPS customer
eircom
CPSO
Note 1
Retention is made up of:
• Billing costs
• Bad Debts
• Credit Control
• Cash Collection
• Conveyance (call origination)
Invoice billed by CPSO to Customer
eircom Network
OLO_1
eircom Bill CPSO - 1) Retail amount less CPSO retention(note 1) 2) Call origination charge - based on eircom RIO rate
CPSO settle to eircom the 1) Retail amount less retention(note 1) 2) Call origination charge - eircom RIO rate
Service Provider- NTC
Call traffic is routed through the CPSO switch back to eircom and then transmitted to Service provider.

Case 3 – Trombone call



7 Legislative backgound and Statutory Powers Giving Rise to Draft Direction

This Response to Consultation and Draft Direction spans the transition to the new regulatory framework which occurred on the 25th of July 2003. Regulation 38 of the Framework Regulations[2] revokes instruments of the previous regulatory framework. However, Regulation 13 (b) of the Universal Service Regulations[3] deals expressly with the maintenance of carrier pre-selection ('CPS') obligations. It provides that notwithstanding the revocation under Regulation 38 of the Framework Regulations, eircom must continue to comply with any obligations applicable to it on 24 July 2003 relating to carrier selection or CPS imposed under the European Communities (Interconnection in Telecommunications) Regulations 1998 to 2000 until such time as obligations under Regulation 14, 15 or 16 of the Universal Service Regulations are imposed[4]. Obligations under Regulation 14, 15 or 16 may only be imposed following the completion of the market analysis process currently being undertaken by ComReg and where there is a finding of ineffective competition on the relevant market, resulting in the identification and designation by ComReg of one or more undertakings with significant market power ("SMP") on the relevant market.

[2] S.I. No. 307 of 2003 the European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2003 which transposes Directive 2002/21/EC of the European Parliament and the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services.

[3] The Universal Service Directive - S.I. No. 308 of 2003 the European Communities (Electronic Communications Networks and Services) (Universal Service and Users' Rights) Regulations 2003 which transposes Directive 2002/22/EC of the European Parliament and the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services.

[4] SMP operators were mandated to introduce CPS under the provisions of Directive 98/61/EC Directive 98/61/EC of the European Parliament and of the Council of 24 September 1998 amending Directive 97/33/EC with regard to operator number portability and carrier pre-selection. These obligations were implemented in to Irish law under the provisions of S.I. No. 249 of 1999 The European Communities (Interconnection in Telecommunications) (Amendment) Regulations, 1999. Regulation 2 (d) of S.I. No. 249 of 1999 provided for the amendment of Regulation 13 of S.I. No. 15 0f 1998 the by the insertion of the following:-

'(13) Organisations licensed under section 111 (2) (a) (i), (ii) and (v) of the Act of 1983 and designated by the Director as having significant market power pursuant to regulation 5 or any organisation so directed by the Director, shall enable their subscribers, including those using ISDN, to access the switched services of any interconnected provider of publicly available telecommunications services.

(14) An organisation referred to in paragraph (13) shall ensure that a facility to allow subscribers to choose the services referred to in paragraph (13) by means of pre-selection with a facility to override any pre-selected choice on a call-by-call basis by dialling a short prefix is available before the first day of January, 2000.

15) An organisation providing or offering to provide interconnection shall ensure that charges for interconnection related to the provision of the facilities referred to in paragraph (14) are cost-oriented and that direct charges to consumers, if any, do not act as a disincentive for the use of the facilities.'

CPS obligations were therefore imposed directly on organisations with SMP by virtue of S.I. No. 15 of 1998 as amended by S.I. No. 249 of 1999.

Regulation 16 deals specifically with carrier selection and CPS obligations which may be imposed as a consequence of market analysis.

In addition, Regulation 8 (1) of the Access Regulations[5] provides that notwithstanding revocations under Regulation 38 of the Framework Regulations, eircom must continue to comply with amongst other things, any obligations concerning access and interconnection under the European Communities (Interconnection in Telecommunications) Regulations 1998 (S.I. No. 15 of 1998) applicable to it prior to entry into force of the Access Directive until such time as specific obligations pursuant to Regulation 9 are imposed on any undertaking designated under Regulation 27 (4) of the Framework Regulations[6].

In relation to Regulation 13 (b) of the Universal Service Regulations, ComReg has the power under Regulation 31 to issue directions for the purpose of further specifying requirements to be complied with relating to an obligation imposed by or under the Universal Service Regulations.

In relation to Regulation 8 of the Access Regulations, ComReg has the power under Regulation 17 to issue directions for the purpose of further specifying requirements to be complied with relating to an obligation imposed by or under the Access Regulations.

This document is without prejudice to the legal position or the rights and duties of ComReg to regulate the market generally. Any views expressed are not binding and are without prejudice to the final form and content of any decisions which ComReg may make.

---

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

[6] Regulation 8 of S.I. No. 15 of 1998 provides amongst other things that:-

'…(3) An organisation imposing a charge for interconnection shall ensure that charges for interconnection shall follow the principles of transparency and cost orientation imposed by the Directive.

(4) Where a dispute or a difference arises in relation to a charge for interconnection and the Director intervenes under regulation 10 (8), the burden of proving to the Director that charges are derived from actual costs (including a reasonable rate of return on investment) shall lie with the organisation providing interconnection to its facilities.

(5) The Director may direct an organisation to justify its charges for interconnection and, where appropriate, shall direct that charges be adjusted in cases where an interconnection charge does not comply with paragraph (3).

8 Regulatory Impact Assessment (RIA)

This document considers the impact of the proposed direction relating to the application of retention rates in the NTC market as per consultation 03/113.

The proposed direction is examined in terms of their contribution to ComReg's statutory objectives – that is the promotion of competition, the completion of the single market, and the promotion of users' interests, all in proportionate and a technology-neutral manner. An overall evaluation is carried out of the potential impact of the decision on competition.

This analysis looks at the impact of proposals and decisions made by ComReg, and therefore considers the impact of change to the status quo whether of incremental or decremental effect. It should be noted that this is not an analysis of the principles of CPS. ComReg was obliged to implement CPS under previous EU Directives. This paper, therefore, only considers the impact of ***changes*** to the manner in which NTC costs are reimbursed to other authorised operators.

The option which is assessed below is to introduce an additional retention to OAO's in the form of the call origination charge for certain call types as set out in the consultation. The current regime in place allows CPSO's to retain an equivalent rate to that which is also paid over to the incumbent leaving the CPSO with only other costs such as billing, bad debts costs etc as the retained income. For certain call types CPSO's argue that they do not recover the costs of carrying certain NTC calls and may even have negative margins in some cases. ComReg issued a consultation to clarify the problem and on the basis of the responses received agree that the regime is currently unfair to CPSO's and that it may act as an obstacle to entering the CPS market and as such CPSO's are entitled to an additional retained income i.e. the call origination.

Contribution to regulatory objectives

Promotion of competition
The regulatory objectives designed to promote competition address user benefits; the absence of distortion; and the encouragement of investment and innovation.

The direct impact of the measure is that it will allow current CPSO's to recover legitimate costs incurred and will also encourage new entrants to the market, thus increasing competition. The proposed measure will enable OAOs to offer an improved service to their customers which should mean the conditions under which they compete with eircom are more equal to those enjoyed by eircom's own retail arm. .

Development of the Internal Market
The development of the internal market requires the regulator to ensure that there is no discrimination in the treatment of undertakings providing electronic communications networks and services. The proposed measure does not discriminate in terms of treatment, in that all operators will be on a level playing field in relation to costs retained from the incumbent. The potential impact of the measure will vary according to the market position of the operator, but this is to do with the structure of the market and not with the measure proposed.

Promotion of Users Interests
The ultimate beneficiaries will be users of telecommunications services who are likely to benefit soon form an improved service offering from OAOs. Fron the point of view of users this will mean a simpler more transparent service offering. Over a longer time frame users should benefit from increased competition in the industry.

Proportionality
ComReg believes that the measure is proportionate, should be reasonably easily implemented and will deliver benefits sufficiently in excess of the cost of implementation to warrant implementation.

Technology Neutrality
CPS is not limited to a particular access or switching technology. The proposed decision has no implications for technology neutrality.

Overall Impact on Competition
In assessing the overall impact on competition ComReg reviewed the market structure and dynamics from the perspectives of the end user, the service provider and the wholesaler. The main areas of impact are in the commercial agreement between the carrier of the traffic and the service provider. There is no change in the retail price of these call type expected, however the cost structure of the operators will change to reflect more accurately the actual costs incurred in

carrying these calls. As such they will be in a position to make profits and compete in the CPS market more effectively.

Regulatory Risk

ComReg have identified two areas of secondary risk to existing regulatory objectives:

- That services should be affordable, it has been suggested that retail prices could rise
- That as the originating operator of certain call types will not be readily identifiable interconnect bill reconciliation and real time charging applications will be disadvantaged

Addressing the retail price question first we can see that retail prices should not rise in practice as a consequence of the industry consensus on price points for calls to Number Translation Codes (recently reinforced by the introduction of new Premium Rate Services price bands and initial points). Nor should retail prices rise in principle as there is no difference in the costs being incurred by the networks involved in carrying the calls, only in the recognition of those costs. This conclusion may not be true for Internet Access Codes, in particular 1891, and for this reason, amongst others, ComReg intends to undertake further discussion with industry in relation to these codes.

Turning to the second of these issues ComReg accepts that different charging rates will have to be introduced for calls which are currently charged at the same rate and that this could cause initial difficulties with reconciliation and real-time rating. However, we note that this constitutes a special case of a more general problem that is already being addressed by industry, facilitated by ComReg, in parallel with this current consultation and subsequent related discussions.

Cost of Implementation

The incumbent may have to introduce itemized billing to aid in the reconciliation of the various call types in the NTC market.

Conclusions

Overall the measure to implement an additional retention of a call origination charge from the date of direction will ensure a fairer distribution of CPS revenues, will promote competition, will allow OAOs to compete on a fairer basis and is justified and proportionate having regard to the likely benefits and costs.