



Office of the Director of
**Telecommunications
Regulation**

Service Levels Provided to Other Licensed Operators by Licensees with Significant Market Power

Decision Notice 11/00

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Oifig an Stiúirthóra Rialála Teileachumarsáide

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FOREWORD

I would like to thank all those who responded to this consultation, which is of critical importance to the development of a competitive telecommunications industry. My Office has received a total of nine responses including the SMP operator *eircom*, and eight Other Licensed Operators (OLOs). Therefore, my office has been able to take into account the points pertinent to both the supplier of services and the consumers of the services which are the subject of this consultation in devising the new arrangements outlined here.

The delivery of leased lines is a key service for a liberalised market. Much has been done in the last year, but it is clear that the SLA needs updating to underpin arrangements to respond more effectively to the growing demand for broadband in Ireland. We will also be monitoring progress and carrying out further reviews in respect of delivery of the key services .

Etain Doyle

Director of Telecommunications Regulation.

1. INTRODUCTION

The Director of Telecommunications Regulation (“the Director”) is responsible for the regulation of the Irish telecommunications sector in accordance with national and EU legislation.

Given the rapidly growing telecommunications needs of our economy, Ireland has to maintain the highest standards with regard to the availability and delivery of telecommunications services to users.

The treatment of competitors by the incumbent in terms of the telecommunications services provided to competing operators is a key issue for the development of competition in the market.

1.1 Background

In August 1999, the Director issued a document entitled “Service Levels Provided to Other Licensed Operators (“OLOs”) by Licensees with Significant Market Power – Report on Consultation” (“the Consultation Report”)¹. The paper set out the Director’s position at that time regarding the non-discriminatory treatment of competitors by the incumbent through the use of Service Level Agreements (“SLAs”) between the parties.

In October 1999, the ODTR required *eircom* to publish the terms and conditions under which it provides services to operators. *eircom* subsequently published its “Statement of Service Levels for the Provision of Specified Services to Other Licensed Operators” (“Carrier Services SLA”) in October. These SLAs were effective from 1 November 1999 and covered delivery timeframes, quality levels and maintenance terms for services provided by *eircom*, together with the penalties to be paid by *eircom* to operators in the event of its failure to meet the targets set.

The performance targets were those proposed by *eircom* in the context of its own transformation programme, which set targets for improved delivery performance from 50-60 days to 10 days by 30 September 2000. The SLA provided for the payment by *eircom* of penalties where the performance targets were not met. The penalties were set such that the maximum penalty payable was the installation fee, which would be reached when actual delivery was 1.5 times outside of the SLA standard for delivery. No matter how much later the delivery date was, the penalty did not rise further. It was expected that the *eircom* programme to improve its service over the following 12 months would mean that this maximum penalty would be adequate.

Over the year, the ODTR has had to intervene several times to broker the establishment of several new backlog programmes, for although the Carrier Services unit has made significant efforts, there has been only sporadic improvements in the overall level of service.

¹ Document No. ODTR 99/48 “Service Levels Provided to Other Licensed Operators by Licensees with Significant Market Power: Report on the Consultation.”

Towards the end of August 2000 when it became apparent that the revised leased line targets brokered in July were not being met, the Director followed up on previous correspondence indicating that she would not hesitate to take appropriate action should *eircom* fail to meet its obligations to deliver capacity. On the 28th August 2000 the Director required ² *eircom* to amend its existing mechanism for penalty calculation so that penalty payments would no longer be capped after delivery has reached 1.5 times the SLA delivery standard date. This was achieved through an amendment to the formula to be used for calculating penalty payments. Penalties were the only element of the SLAs affected by the Direction.

In October of last year it was indicated that the ODTR would not review the SLA regime until after one year of operation. The consultation document 00/78 and this Decision Notice form that review process.

Nine organisations responded in writing to the consultation document, as listed (alphabetically) below:

- Cable & Wireless
- Concert
- *eircom* plc.
- Esat Digifone Ltd.
- Esat Telecommunications Ltd / Esat Net Limited and Ocean Communications Ltd (“Esat”).
- GTS
- Meteor Mobile Communications
- NTL
- WorldCom.

The Director wishes to express her thanks to everyone who contributed to the consultation.

In parallel with this consultation process, discussions have taken place between one OLO and *eircom* regarding particular aspects of an SLA regime. The outcome to these discussions was subsequently submitted to the ODTR. In the interests of transparency and maintaining the integrity of the consultation process these proposals were presented to those organisations who had responded during the consultation. The key elements of the proposals have been included in this Decision Notice.

In the interests of promoting openness and transparency, responses to this consultation paper, including the proposals referred to above, are available for inspection on request at the ODTR.

² See ODTR 00/60 - Information Notice - Direction to *eircom* requiring modification to *eircom*'s Service Level Agreement for leased lines (penalty payments)”

Any Decisions made by the Director in this report or any others adopted in the light of this review are to be understood as being without prejudice to the Director's rights and obligations to regulate the market generally. The Director reserves the right to intervene at other times.

1.2 Legislative Background

Both EU and Irish Legislation recognise that, in the interests of developing and sustaining competition in the telecommunications sector, it is important to ensure that new entrants to the market can efficiently utilise networks of SMP operators.

The Leased Line market is a telecommunications services market considered to be of major importance at European level as per Annex I of the Interconnection Directive – 97/33/EC.

eircom is designated as having SMP in the Leased Lines market pursuant to Regulation 5(1) of the European Communities (Leased Lines) Regulations 1998.

The Director is obliged by Regulation 4(1) of the European Communities (Leased Lines) Regulations to ensure that at least one organisation is required to provide leased lines at every point in the territory of the State.

eircom is a notified organisation within the meaning of Regulation 4 of the European Communities (Leased Lines) Regulations 1998.

Condition 18.1 of the General Telecommunication Licence requires the Licensee to deliver to the Director, who may publish and consult on same, copies of all standard-form contracts from time to time issued by the Licensee in connection with the provision of any Licensed Service provided within the Relevant Market, and shall supply a true and complete copy of any particular contract within five days of any written request from the Director.

Condition 18.2 of the General Telecommunications Licence states that the Licensee shall also prepare and deliver to the Director a draft statement setting out the minimum service levels for customers (including Other Licensed Operators) in respect of each category of Licensed Service it offers within the Relevant Market, any exceptions to these and the compensation or refunds it will offer to customers or prospective customers in case service levels are not met. The Director may publish and initiate a consultative process on the draft statement and, after considering the responses received and consulting the Licensee, issue directions to the Licensee specifying any modifications or additions that she considers should be made to the draft statement. The Licensee shall then publish the statement in the agreed amended form, in accordance with any directions as to publication made by the Director and shall forthwith implement the same.

The Director, on 8 August 1999, after considering all replies to Consultation Paper ODTR 99/27, issued her Report (ODTR 99/48) entitled “Service Levels Provided to Other Licensed Operators by Licensees with Significant Market Power”. On 15 September 1999 *eircom* presented to the ODTR its statement on proposed service levels. *eircom* was directed by the ODTR to publish by 15 October 1999 a final Statement of Service Levels for Carrier Services. The published statement became effective on 1 November 1999.

This consultation process herein is without prejudice to the right of the Director from time to time, without the need for consultation, to issue directions requiring modification or addition to the SLA and as to its republication and implementation as provided for in the last sentence of Condition 18.2 of *eircom*'s General Telecommunications Licence.

1.3 What is a Carrier Service?

The broadest possible definition of the term "Carrier Service" is that all retail services of the SMP operator are carrier services, when they are sold to Other Licensed Operators (OLOs). It is considered that such a wide-ranging definition may not be beneficial to the competitive market place and competitive forces are more likely to lead to the best results in terms of service levels to consumers.

However, it is clear that in many cases the SMP operator is the only realistic provider of some critical infrastructure based services, by virtue of the universality of its network. Therefore, a minimum set of retail services have been classed as carrier services, when they are purchased by OLOs from the SMP operator. In principle carrier services should either:

- be used by OLOs as a constituent element of the OLO's retail service, or
- facilitate the addition of value by the OLO to transform the carrier service into a retail service.

1.4 Limit of Scope

This Decision Notice covers only Carrier Services. It does not cover Interconnect Services in the Reference Interconnect Offer ("RIO") which are subject to a separate Service Level Agreement³.

1.5 Format of this Document

This document presents the outcome of the consultation. Specifically, this document:

- outlines the issues addressed by the consultation document;
- summarises the views provided by respondents;
- presents the Director's decisions on each of the issues highlighted in the consultation.

This report contains sections related to the questions raised in the consultation and each section is divided into four parts:

- A summary of the questions together with supporting context.
- A summary of the responses to the question by the OLOs (the customers of Carrier Services).

³ Decision Notice D7/00 (ODTR 00/31) "*eircom*'s Reference Interconnect Offer". See also ODTR 00/63 "Information Notice: Direction to *eircom* requiring modification to *eircom*'s Service Level Agreement for Interconnect Circuits"

- A summary of the position of *eircom* (the supplier of Carrier Services).
- The Director's conclusions and planned next steps.

2. TERMS OF EXISTING SLA

2.1 Carrier Services

2.1.1 Summary of the Consultation Issues

In a competitive market, competition takes place in terms of both price, and the quality of services provided for that price. Both of these elements have a net benefit to the consumer and the Irish economy in general. OLOs are constrained in their ability to compete effectively on quality if they are not provided with sufficient certainty over the quality of services provided to them by the SMP operator, particularly in regard to providing access to an OLO's customers' premises.

Hence, the document ODTR 99/48 identified a range of retail telecommunication services provided by the SMP operator which would be classed as 'Carrier Services' when provided to an OLO and for which Carrier Service SLAs should be provided.

The services identified are.

- basic exchange lines (analogue, ISDN BRA and ISDN PRA)
- national analogue leased lines
- national digital leased lines.

Since the publication of its SLA in October 1999, *eircom* has commenced a 34 Mbit/s digital leased line retail offering. The Director considers that all data rates for national digital leased lines should be subject to an SLA and therefore this product should be included under the existing Carrier Services portfolio.

In questions Q5.1.1 and Q5.1.2, respondents were asked for their views on:

- the content of the Carrier Service portfolio as it currently exists
- any amendments to the portfolio which should be made.

2.1.2 Views of OLO Respondents

The responses from OLOs indicated a broad satisfaction with the scope of the services currently classed as Carrier Services for the purposes of the SLA. Additions to the services already covered reflected the different areas of the market where the OLOs operate. Additions proposed were:

- Greater than 2Mbit/s circuits when there is a retail offering from *eircom*
- STM-1 circuits, when these become available from *eircom*
- N x 64kbit/s circuits
- Unbundled local loops (when available)
- Wholesale DSL (when available)
- Entry of information into directory systems
- Implementation of data into management systems.

2.1.3 Summary of *eircom* Response

eircom stated its understanding of the SLA as being used to ensure that incumbent operators with SMP do not discriminate in the level of service they provide to OLOs when compared to that provided to the retail arm of the SMP operator. Such an assertion leads to the conclusion that the focus of any SLA should be on comparable performance, i.e. the SLA should ensure that both the retail arm and the OLOs receive the same level of service, however good or bad this service is perceived to be.

The services included in the SLA are very broad in scope and cover a number of services which are retail services and which are not, in *eircom*'s opinion, Carrier Services. Hence, *eircom* has focused on leased lines in its response to this consultation. Table 1 overleaf shows a proposed segmentation of leased lines through which *eircom* presents its case to determine exactly which types of leased lines should qualify as Carrier Services, depending on their usage.

Eircom stated that only circuits which are A-ended at an OLO PoP (i.e. "terminating circuits" in its classification) should be classed as Carrier Services. It was felt that this would cover the vast majority of OLO circuit orders and avoid any potential for abusing the ability to order circuits with a guaranteed delivery time for retail customers.

The introduction of local loop unbundling will mean that operators can overlay leased lines on DSL, thereby providing them with the ability to circumvent *eircom* altogether in major centres. Therefore, the remaining circuits ordered by OLOs will be in more remote locations, where *eircom* is the only effective supplier of infrastructure by virtue of its USO status.

In respect of PSTN and ISDN (BRA and PRA) *eircom* proposes that the provision of these services should be excluded from the SLA. It is *eircom*'s view that switched network services such as PSTN and ISDN can be adequately provided through other services. The call origination portion of the service can be implemented using CAC, CSC or CPS and the actual provision of a switched network access line is not necessary to provide this service.

Further, the ODTR has allocated geographic number ranges to a number of OLO's on a nation-wide basis and *eircom* have been requested by OLO's to activate these ranges on *eircom*'s network and is carrying termination traffic destined for these numbers.

On this basis it would appear that OLO's have the facility to self provide switched network access lines or source them from other OLO's, therefore these services cannot be considered to be Carrier Services.

In addition, PSTN is a USO service and *eircom* is obliged to offer this on non-discriminatory terms to all customers – the effect of a regulated, enhanced service proposition (the Carrier Service SLA) on the basis of the customer ordering the service is in conflict with this obligation.

Services which are overlaid on leased lines (e.g. Frame Relay) should not be included as Carrier Services. Similarly, circuits of greater than 2 Bit/s are offered on a "project" basis by *eircom*, with bi-laterally agreed delivery times for the customer. In addition, *eircom* contends that such customers are concentrated in urban areas or

business parks where there is already a large amount of competing infrastructure on which OLOs could install similar products.

Table 1 : *eircom* Classification of Leased Lines

Leased line:		
Any circuit providing a permanent connection between two points dedicated for the use of a specific customer. They can be further defined by application and by circuit speed.		
T y p e	Interconnect circuit:	A leased line provided for the purposes of providing interconnection between an <i>eircom</i> exchange and the exchange of another licensed operator
	Private circuit:	A non interconnect leased line provided for the purpose of carrying communication for one customer between two end points
	Access circuit:	A leased line provided for the purpose of accessing an <i>eircom</i> switched service such as X25, ATM FR.
	Terminating circuit:	A leased line provided for the purpose of providing access from an end-user customer to a network node of an OLO. The end user customer is designated the circuit 'b' end. The OLO node is designated the circuit 'A' end.
S p e e d	Analogue Circuit:	Circuit conforming to CCITT M1020/M1040 specifications.
	Sub 2Mb digital circuit:	Circuit delivered over <i>eircom</i> managed data platform and operating at circuit speeds of up to but not including 1984kb at increments of 64kbs.
	2Mb circuit:	Circuit operating at a transmission speed of 2048kb including circuits delivering 1984kb service.
	Broadband circuits:	Circuits operating at speeds of over 2048kb.
S p e c i f i c	Channelised circuit:	A circuit operating at a speed of 2048kb which is used for the purpose of carrying multiple nX64kb circuits between an <i>eircom</i> exchange and a customer premises. The benefit to the customer is that the rental charge is lower than that which would apply to multiple individual 64kb circuits
	Reduced charge circuit ends:	Second and subsequent ends ordered at the same time for delivery to the same customer at the same address, at the same date.

2.1.4 Position of the Director

The critical element of the carrier services portfolio that has been the subject of the majority of problems in the industry is the delivery of leased lines. However, leased lines are just one component service covered by the SLA, which includes the provision of basic exchange lines (PSTN, ISDN BRA and ISDN PRA).

While the Director considers there is some merit in *eircom*'s points regarding the universality of the provision of PSTN services she is sufficiently concerned about the history of poor service delivery to the OLOs that she has decided not to remove them from the scope of this SLA. The Director also feels that ISDN services are of importance to OLOs in allowing them to add value to their services, for example by providing back-up to data circuits, or dial-in facilities from remote sites to corporate data services. Hence, the Director has determined to retain PSTN, ISDN BRA and ISDN PRA services within the scope of the SLA.

eircom has presented a detailed segmentation of the leased line market in respect of the leased lines that it provides through carrier services to OLOs. Dealing with these in turn:

- interconnection circuits : are the subject of the RIO and are therefore not within the remit of the carrier services SLA
- “termination” circuits : the Director agrees with *eircom* that the provision of circuits between OLO premises and their customer is essential to ensure that OLOs are able to provide access to their customers and hence this type of circuit must be included in any carrier service SLA.
- “private” circuits : whilst at face value the purchase of a leased line between two customer premises by an OLO may not appear to warrant the status of a carrier service, the Director feels that such a blanket treatment of this issue is not appropriate. Such circuits may form part of a wider offering by the OLO, for example a managed private network, and therefore the OLO will have “added value” to the product as described in the definition of a Carrier Service. Further, the provision of adequate service levels in this respect will benefit providers of managed services by providing such providers with access to leased lines backed up by a suitable SLA. Whether that SLA is provided by an OLO (through the carrier service SLA) or via *eircom*'s retail arm will be for the market to decide. The improvement of SLAs for such services at the retail level is critical to the development of the Irish economy as the quality and availability of telecommunications services is a key determining factor in the location decisions of major inward investors in Ireland.

The Director is concerned that *eircom*'s segmentation does not cover circuits which are from one OLO premises to another. For example, circuits from mobile operator base stations to base station controllers or other network elements. The provision of these circuits is a requirement on *eircom* as the designated universal supplier of such services in Ireland. The decision of an OLO to construct its own infrastructure or lease services from *eircom* is a purely commercial decision for the OLO and is not for the Director to determine. Indeed, in the interests of non-discrimination, if OLOs were required to construct their own infrastructure then they might justifiably insist that competing *eircom* subsidiaries (e.g. eircell) be required to construct their own

infrastructure, separate from that of *eircom*. Further, the lack of a carrier service SLA for these circuits would greatly impact the development of a competitive market and may lead to presumptions (whether justified or not) of anti-competitive behaviour by *eircom*. Therefore, in the interests of clarity and non-discrimination the Director requires that all leased lines ordered by OLOs be the subject of the carrier services SLA.

As a result of the non-discriminatory way in which *eircom* will apply such an SLA, the Director would hope that in time *eircom*'s own retail arm would introduce its own retail SLAs based on the guaranteed level of service it receives from carrier service.

The Director has also determined that circuits currently available on a retail basis from *eircom* in the region between 64kbit/s and 2Mbit/s shall also be the subject of an SLA.

The following services shall not be part of the carrier services SLA at present:

- Unbundled local loops
- Wholesale DSL services
- Entry of information into directory systems.

SLAs for these specific services may be developed as appropriate as part of the relevant consultations on these subjects.

The entry of data into management systems is a procedural issue, which the Director will cover later in her response to this consultation.

The Director requires that all *eircom*'s commercially available leased line services above 2Mbit/s shall be the subject of a carrier services SLA on a non-discriminatory basis, i.e. if the services are only provided to customers on the basis of a mutually agreed delivery date then this should apply to the carrier services SLA. However, the Director wishes to receive information from *eircom* on the average delivery times of such circuits segmented as between those delivered to *eircom* retail, and those delivered to OLOs to ensure that no discrimination has taken place between the two sets of customers.

A late delivery penalty shall still apply to such circuits, based on *eircom*'s ability to meet the promised delivery date agreed between the parties.

2.1 Direction

The Director determines that the services included under the existing SLA Carrier Services classification shall remain and that the following additional services shall be added to the scope of the SLA:

- Leased line circuits between 64kbit/s and 2Mbit/s
- Leased line circuits above 2Mbit/s whenever they become commercial offerings from *eircom*.

2.2 Processes Covered under an SLA

2.2.1 Summary of consultation issues

The following processes are covered under the existing SLA

- service provisioning : the provision of Carrier Services as a result of a request from an OLO
- in-service performance : the performance of the service whilst in operation
- fault management : the SMP operator's performance in managing its maintenance process.⁴

The Director considers that these processes should continue to be covered in an SLA for a particular Carrier Service.

In ODTR 99/48 the Director concluded that two additional processes should be included in the SLA. These were

- Service Alteration
- Service Cessation.

At the time these processes were never defined. The Director considers that these should now be included in the SLA as they have the potential to affect the level of service an OLO can provide to its customers.

In questions Q5.2.1 to Q5.2.4, the Director sought views on:

- whether the original processes were still appropriate
- if any additional processes should be included in the SLA and if the two identified by the Director should be included
- whether the Director has correctly defined Service Alteration and Service Cessation as:
 - Service Alteration: whereby an OLO requests an amendment to the configuration of the service in accordance with the terms and conditions of the contract between the parties.
 - Service Cessation: whereby an OLO requests, in accordance with the terms and conditions of the contract between the parties, the cessation of an existing Carrier Service

2.2.2 Views of OLO Respondents

Respondents had similar views on which attributes of the service provisioning process should be included in the SLA. It is clear from the responses that a lot of work is still required both by *eircom* and the OLOs to sufficiently define and improve the processes and interfaces between the parties. Specifically regarding:

⁴ Note : the process Billing and Payment should not have been included in the Consultation Document.

- Acknowledgement of an order : OLOs felt that delays in even this basic process were symptomatic of the poor information dissemination and management exhibited by *eircom* in relation to the provisioning of Carrier Services.
- Site surveys : there would appear to be no agreed procedure regarding the scheduling and conduct of site surveys by *eircom*. This is particularly important as promised delivery date is often dependent on the conduct of a survey to determine the requirement for infrastructure build.
- Ready for testing : it is clear that the processes currently in place do not provide for an acceptance testing process with the OLOs. There was no comment on the requirement for such a process prior to the issuance of a Completion Notice by *eircom*.
- Issuance of Completion Notices : a number of operators commented that there were often delays or inaccuracies in the issuance of Completion Notices by *eircom*.

There was uniform agreement that service cessation and service alteration, as defined by the ODTR, should be included within the SLA.

2.2.3 Summary of *eircom* Response

Eircom agrees that the Service Provisioning and Fault Management processes should remain within the remit of the SLA. With regard to In-Service Performance, *eircom* states that:

“This should only be included on the basis of a statistically significant population rather than on a circuit by circuit basis. This is because it is operationally impractical to measure the inservice performance of each circuit and would impose an enormous overhead on eircom which would distract from the key operational tasks of service delivery and maintenance. Consequently eircom propose that this measurement be based on a sample of circuits. The sample size can be such that it adequately represents a view of the overall performance.”

Three additional processes are proposed by *eircom*:

- “sign-up” Process : the SLA offering is on the basis of the OLO entering into an explicit written agreement with *eircom* as to the services levels being offered and the mutual obligations of both parties for the delivery of Carrier Services.
- Forecast process : the SLA shall only apply to valid orders made in conformity with the agreed forecast between *eircom* and the OLO. This forecast would be modelled on the Interconnect forecasting regime but based on a 12 month rolling, 3 monthly basis, consisting of anticipated order volumes broken down by OLO node location (A end) and circuit speed. At each 3 monthly forecasting cycle, changes to the forecast for the immediately following 3 month period would be limited to a level of +/- 10% of the forecast submitted at the previous 3 month forecast cycle.

The SLA would apply to order volumes no less than 85% and no more than 115% of the forecasted order volume either in total or at any OLO node location for the current forecast period. In the event that order volumes are less than 85% of the forecast then the SLA would not apply to any of the orders in that forecast period.

In the event that the order volumes exceed 115% of the forecasted order volume then the SLA would not apply to orders in excess of 115% of the forecast volume. Based on the ordering tolerances and the forecasting tolerances this allows OLO's to vary ordering by a compounded 27% from their previous quarter's forecast.

- Access Assurance process : given that by definition orders covered by the SLA (*under eircom's proposal*) have one end at premises not owned by the party ordering the service and based on its experience of access being denied in a significant number of cases *eircom* proposes that the OLO would provide at date of order, an explicit confirmation that all necessary wayleaves and access arrangements have been made so as to allow *eircom* unhindered access to 3rd party premises for the planning, installation and maintenance of such equipment it requires to install to support the ordered service. This confirmation to be way of a signed consent from the 3rd party end user of the ordered service.

In *eircom's* opinion, the contract between the parties provides sufficient provision for the two main issues regarding service cessation:

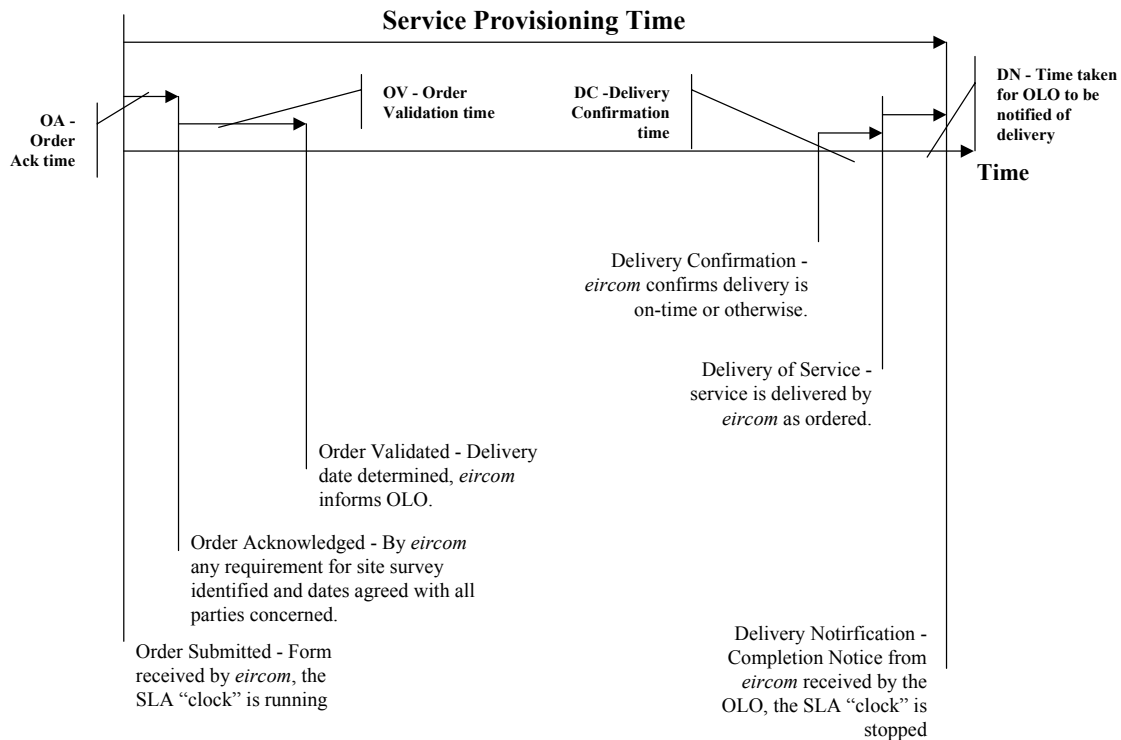
- Premature removal of service : a service is disconnected at a date prior to that requested by the OLO.
- Delayed termination of billing for a service : a service is billed after the date at which it was requested terminated by the OLO.

In respect of Service Alteration, *eircom* argues that there is not a sufficiently well defined process to allow for such alterations to be covered by an SLA. At the moment they are conducted on a "by appointment" basis.

2.2.4 Position of the Director

The following diagram provides a common description of the Service Provisioning process, which is the key element of the SLA under discussion in this document.

Figure 1 : Director’s Understanding of the Service Provisioning Process



The following sub-processes are identified:

- **Order Submission** : the forwarding of an order to *eircom* on an official order form. The SLA “clock” begins when the order form is received by *eircom*.
- **Order Acknowledgement** : the acceptance of an order form by *eircom* and acknowledgement to the OLO that the order has been received and is being processed. If this date is missed then the Order Submission date is taken as the date of issuance of the order by the OLO.
- **Order Validation** : confirmation, or otherwise, that an order is deliverable by *eircom* within the standards set down in the SLA. Where appropriate this step shall include a site survey. At the end of the Order Validation Step three events are allowable:
 - The order is determined to be within the definition of a “standard” order and a delivery date is set in accordance with the appropriate SLA.
 - The order is determined to be a “non-standard” order under the allowable exceptional circumstances determined by the Director. In these cases a delivery date shall be agreed with the OLO and this date shall be taken as the delivery date for the purposes of SLA compliance calculations.
 - The order is not an “exception” but it contains an “earliest” delivery date requested by the OLO, which is after the “standard” date. In these cases, as the OLO has provided *eircom* with additional warning of the required order

the “earliest” delivery date shall be taken as the “standard” delivery date for the purposes of SLA compliance calculations.⁵

- Delivery Confirmation : prior to the delivery date *eircom* shall confirm in writing to the OLO as to whether the promised delivery date will be met. This will enable OLOs to better manage their customers’ expectations.
- Delivery of Service : the provision of the purchased service by *eircom*.
- Delivery Notification : provision of a Completion Notice by *eircom* to the OLO.

The SLA delivery timeframes quoted for each of the sub-processes have been reviewed by the Director in light of the comments from the industry.

An order is deemed to be completed on receipt of a correct Completion Notice and working service by the OLO. The OLO has 2 working days to accept the circuit as completed as specified. During this period the service delivery “clock” is stopped. If the OLO cannot accept the circuit because it is faulty the “clock” starts again until such time as the circuit is accepted.

If the OLO does not inform *eircom* of its acceptance or otherwise of the circuit, it will be deemed to be accepted by the OLO for the purposes of any SLA penalty calculation.

In order to further clarify the process and ensure that all parties have the appropriate understanding of their roles and responsibilities, the Director proposes the publication of an Operations & Maintenance (O&M) manual for Carrier Services, building on the work undertaken for the RIO O&M manual.

The manual shall cover the following:

- The processes identified in Figure 1, and any other processes necessary for the efficient administration of :
 - The provisioning of services
 - The management of faults on services
 - The cessation of services
 - The alteration of services
- The interfaces between the parties and the documentation that will be passed and via which methods.
- Escalation procedures, contact names and telephone numbers which shall remain current.
- The responsibilities of both parties and grounds under which an SLA can be suspended should an OLO fail to undertake its responsibilities as defined.
- The circumstances under which orders would be identified as “non-standard” causing alternative provisions of the SLA regime to apply (See Appendix A).

⁵ For the avoidance of doubt – Point A as defined in Section 5.2.4, shall still come “A” days after this “earliest” delivery date.

In order to ensure that all parties “sign-up” to the processes the ODTR intends to convene an industry forum over the coming weeks to conclude a mutually acceptable drafting of the O&M manual by 16th January 2001. The ODTR believes that the industry itself is best positioned to establish mutually agreed processes, particularly given the relationship of processes with internal systems. However, the ODTR will closely monitor the situation to ensure that speedy progress is made and that the outcomes of the forum reflect a mutually agreed position having regard to the views of all the parties involved. In addition, in the interests of expediency any processes agreed in advance of the final reporting deadline of 16th January will, subject to the approval of the Director, be immediately incorporated into the SLA regime.

The ODTR requests eircom and the OLOs to exchange respective draft proposals for processes and procedures under the SLA regime no later than 3rd December next. These will facilitate the identification of common ground or otherwise in advance of the first forum meeting and will permit its efficient operation in the short time available. The ODTR should also be provided with copies of the proposals.

The ODTR will convene and facilitate the first meeting of the forum (the date of which will be communicated to the industry in the coming days) and will maintain an active role throughout via interim briefings with the parties concerning progress being made. All minutes and documentation generated by the forum will be provided to the ODTR

By the 16th February the forum will produce a final report for presentation to the ODTR and will include a full description of the processes and procedures, where agreed between the parties. Where there are areas where agreement has not been reached, the reasons for the disagreement shall be provided with a sufficient level of detail to allow the Director to make a determination on the outstanding issues in accordance with her powers under EU and National law.

However, until such time as the industry forum agrees any amendments to the processes determined by this consultation, those items determined by the Director in this report shall be binding on *eircom*.

It should be noted that the SLAs cannot be amended without the prior approval of the Director. The Director reserves the right to direct *eircom*, without prior consultation, to amend all or parts of its published SLA as and when they are resolved by the industry forum, or even without such a resolution, under Condition 18.2 of *eircom*'s licence.

The Director does not believe that a forecasting process as outlined by one operator in relation to Carrier Services is necessary or appropriate at this time.

However, the Director considers that there is merit in discussing whether an outline forecasting regime may be appropriate. However, these discussions should only take place once eircom has gained the confidence of the OLOs in terms of its ability to deliver according to the principles and processes set out in this Decision Notice.

As the Director has determined that all PSTN, leased lines and ISDN lines provided to OLOs shall be the subject of the SLA there is no requirement for an “Access Assurance” process as defined by *eircom*.

The Director agrees that Service Cessation should be adequately addressed in the contract between the parties. The Director requests that OLOs make her aware of any

instances where premature cessation of services by eircom has a significant detrimental impact on customer satisfaction. She wishes to monitor such cases closely such that the inclusion or otherwise of the Service Cessation attribute into the SLA can be reviewed in due course.

Service Alteration shall be included in the SLA. However, there are a number of permutations of alterations which the Director would wish the forum to more closely define. The Director proposes the following principles shall be followed and further described by the forum:

- Alterations to services where the physical location of one terminating point is changed from a specific site to another shall not be deemed to be an alteration, but a cessation or one service instance and an order of an alternate circuit.
- Alterations to services where the physical location of one terminating point is change within a specific site shall be deemed to be subject of a Service Alteration SLA.
- Alterations to services where new infrastructure build is required to reach a site shall follow the SLA for the provisioning of the new service.
- Alterations to services where no new infrastructure build is required, but changes to terminating equipment are necessary shall be the subject of a Service Alteration SLA.
- Alterations to services which can be achieved through “soft changes” e.g. opening channels on a fully provisioned ISDN BRA, shall be the subject of a Service Alteration SLA.

The Director will make a specific Direction on the SLAs for each of these items later in this report. However, the burden of defining exactly which alteration cases fall within the categories above is placed on the industry forum.

Direction 2.2

The Director has determined that the Service Alteration process shall be subject to the SLA.

In relation to the Direction above the Director has proposed some principles under which it will operate and expects an industry forum to refine these principles, as part of a programme to develop an O&M manual for carrier services. This manual shall cover all the processes and interlinkages between *eircom* and the OLOs for the delivery and maintenance of carrier services. *eircom* and the OLOs shall be responsible for producing respective drafts of this manual for discussion at the first forum meeting.

2.3 Attributes Guaranteed in the SLA

2.3.1 Summary of consultation issues

The following service level attributes are currently guaranteed by the SMP operator for processes addressed under the SLA.

- Acknowledgement of order:
- Notification of Order Completion date:
- Ready for Testing date (where required)
- Order completion date
- Maximum response time

With the exception of the “Maximum Response Time” attribute (see below) the Director considers that the above attributes for the Service Provisioning Process should continue to be included in an SLA.

Two SLA commitments for measuring *eircom*'s performance in relation to fault management are possible, namely

- Maximum Response Time (guaranteed under the existing SLA)
- Maximum Repair Time.

The market for services has developed such that the provision of a “maximum response time” is no longer seen as adequate. Customers are using telecommunications services for ever more critical applications and are therefore relying on their suppliers for greater levels of certainty regarding fault repair. Indeed, *eircom* itself has a “maximum repair time” measure for analogue exchange lines.

Having regard to the operation of the SLAs over the last year the Director feels that it is appropriate to review the question of employing the Maximum Repair Time attribute.

In questions Q5.3.1 and Q5.3.2 respondents were asked whether the correct attributes for the SLAs had been identified and if Maximum Repair Time should be substituted for Maximum Response Time in light of the developments in the market over the last year.

2.3.2 Views of OLO Respondents

The OLO responses indicated a requirement for all attributes of the SLA to be subject to an SLA. The rationale provided being the currently poor level of information and communication between the parties. The OLOs felt that *eircom* would be more inclined to adhere to the delivery process and provide the specific information when requested if there were an SLA with penalties on *eircom* for non-compliance.

Maximum repair time was thought to be the most appropriate fault management attribute as this was readily understood by the industry and customers. In addition, better information updates on the progress of fault management is requested so that customers could be kept informed and their expectations could be managed.

2.3.3 Summary of *eircom* Response

eircom agreed with the OLOs that the following attributes should be subject to the SLA:

- Order Acknowledgement
- Notification of Completion Date
- Order Completion.

eircom noted that there is no “Ready for Testing” date as such within its service provisioning process. Therefore, this should be removed from the SLA.

In *eircom*’s opinion, maximum repair is not an appropriate measurement as *eircom* cannot, under any circumstances, give such a guarantee. *eircom* summarised its reasons as:

- (a) there is no such a thing as a typical fault
- (b) customers/operators can make arrangements to minimise the impact on their business in the event of a fault
- (c) the bulk of *eircom*’s plant is external and therefore subject to damage by 3rd parties, weather etc.
- (d) *eircom*’s own suppliers will not give such guarantees
- (e) the complexity of the applications and services which use telecommunication is increasingly complex and involves multiple suppliers.

2.3.4 Position of the Director

The Director has determined, based on the evidence and comments provided by the industry, that all of the service level attributes discussed in Section 3.2.4 of this consultation document shall be the subject of a guarantee and penalty regime when the processes covered have been fully defined to the satisfaction of the parties involved and the ODTR. Until such time, the Director’s position as defined in this

document shall be taken as the definition of the carrier service SLA, including the guarantees and penalties that shall apply.

The following process will be the subject of a guarantee and penalty regime (where a penalty regime is specified), based on the processes discussed earlier in this report:

- Acknowledgement of order
- Order Validation – specifically the notification of a delivery date
- Delivery Confirmation
- Delivery of the Service
- Receipt of correct Order Completion Notice
- Maximum repair time
- Service Alteration.

The Director has decided to alter the “maximum response time” attribute to “maximum repair time”, despite the arguments presented by *eircom*.

Taking each of *eircom*'s points in turn:

- (a) there is no such a thing as a typical fault : *eircom*'s retail arm provides an SLA on the correction of faults in the telephony service. Therefore, carrier service must be able to provide certainty of fault repair, despite the lack of consistency of fault type. Hence, the Director has decided that such a facility should be available to all operator's on a non-discriminatory basis. The repair time guaranteed to OLOs for leased lines should be much less than that for ISDN services, because of the business criticality of these services to the OLOs themselves and their customers and the lower volumes present in the market.
- (b) customers/operators can make arrangements to minimise the impact on their business in the event of a fault : where the OLO is dependent on *eircom* for the provision of access services, it is unable to make such a provision and is dependent on the structure of *eircom*'s local access network. Hence, argumentation applied to point (a) is also valid in this case.
- (c) the bulk of *eircom*'s plant is external and therefore subject to damage by 3rd parties, weather etc. : a number of eventualities may be covered under the exclusion terms of any SLA, force majeure being one.
- (d) *eircom*'s own suppliers will not give such guarantees : see point (a).
- (e) the complexity of the applications and services which use telecommunication is increasingly complex and involves multiple suppliers : OLOs should not be penalised for any limitations in *eircom*'s contract management procedures.

As part of the O&M manual, *eircom* shall provide a list of appropriate exceptions for the maximum repair time SLA. However, the ODTR shall approve the draft of these exceptions, such that when the first draft is published the ODTR can direct *eircom* that such exceptions shall be applicable until such time as the Director determines otherwise, based on the outcome of the industry forum or from time to time as required.

2.3 Direction

The Director has determined a revised set of service level attributes to be:

- Acknowledgement of order
- Order Validation – specifically the notification of a delivery date
- Delivery Confirmation
- Delivery of the Service
- Receipt of correct Order Completion Notice
- Maximum repair time
- Service Alteration.

She requires the *eircom* publishes a set of agreed “exception” clauses for the maximum repair time attribute.

3. SLA “STANDARDS”

3.1 The Standards to be met by *eircom*

3.1.1 Summary of the Consultation Issues

The requirement for ‘standard’ SLA times were set last year on the basis of *eircom*’s transformation programme targets.

During the year sporadic improvements were achieved in response to ODTR brokered backlog clearance programmes. However, current indications from *eircom* are that delivery periods for leased lines are at about 70 days, no improvement as compared with the situation last year, and some OLOs are reporting much longer periods for many orders.

eircom is clearly not delivering to the 10 day target which came into effect on 1 October. It is not clear that carrier services have a sufficient level of priority within *eircom* or how much attention the rapidly growing proportion of *eircom* business that is represented by the OLOs, including the issue of delivery of leased lines, is getting from the Board of *eircom*. What is realisable cannot be set just having regard to past performance, it must be set having regard to market needs.

The Director proposed a further transition period for the Service Provisioning ‘standard’ which is a compromise between the targets previously committed to (and not met) by *eircom* and the current unacceptable level of service experienced in the market place.

Table 2 : Transition Proposals for Service Provisioning

Service	Service Provisioning “Standard” for Delivery			
	Target at 30.06.00	Target currently in force	Amended target 1.12.00 to 30.04.01	30.04.01 onwards
Ordinary Quality Voice Bandwidth	10 days	10 days	20 days	10 days
Special Quality Voice Bandwidth	20 days	10 days	26 days	10 days
64kbit/s leased line	26 days	10 days	26 days	10 days
2 Mbit/s leased line (unstructured)	30 days	10 days	30 days	10 days
2 Mbit/s leased line (structured)	30 days	10 days	30 days	10 days
34 Mbit/s leased line	n/a	n/a	proposals invited	Proposals invited

Shaded areas shows promises made by eircom in its original Carrier Service SLA.

The Director invited comments (Q5.4.1) on these proposals for a further transition period towards “European Best Practice.” In addition, comments on the proposals for other attributes were also sought, through question Q5.4.2.

3.1.2 Views of OLO Respondents

With the exception of one of the OLO respondents, the majority of respondents accepted the Director's proposal to extend the "transition period" over which *eircom*'s SLA would move toward European Best Practice. However, this agreement was tempered with a requirement that this relaxation should not take place without a more stringent set of penalties in place, at least for this transitional period – in order that *eircom* was not effectively doubly "rewarded" for its current lack of progress.

The standard's set during this transitional period should be 'realistic' in light of the performance that OLOs have experienced to date. A number of OLOs commented, however, that performance had improved marginally since the cap was removed from the penalty regime in August.

One OLO was concerned that by relaxing the targets the ODTR was setting a dangerous precedent and effectively encouraging *eircom* to fail to comply with any other future direction, with the hope of the "reward" of a re-negotiation.

3.1.3 Summary of *eircom* Response

Eircom provided a detailed argument for a revised set of SLA "targets" rather than standards, which is reproduced below:

"Objective of setting target service levels

*The primary objective of the 'Carrier Services' SLA as specified by the ODTR in its Consultation Paper last year is to ensure that OLOs are **not discriminated** against by *eircom*. Specifically that 'carrier services' are delivered on terms and conditions which are no less favourable than that offered and delivered on retail products to *eircom*'s retail customers. A secondary objective alluded to in the course of other market and press communications include a desire to see service levels in Ireland **improve** and move into the top level of service performance compared to other European markets. From a customer perspective a key objective is to develop a degree of **certainty** around likely performance (to facilitate planning, costing etc.), the corollary of this from a supplier perspective is the levels specified should be **'reasonable'** in that they are practically achievable.*

Proposed Approach

**eircom*'s proposal is to include a staged SLA target reduction to 1st May 2001. These are set out below. Any changes to the SLA attributes after this date cannot be determined at this point but can only be assessed in the context of a full market review at that point in time.*

International Benchmarks

The service levels established could also be referenced to European norms, although caution would need to be exercised in this regard as differences in definitions and measurements systems between countries and operators makes performance comparisons difficult to judge. For example it appears that some if not most other telcos (including those operating as OLOs in Ireland) measure delivery lead times in their home market from date of order acceptance/validation and also discount orders delayed by the customer or delivered as part of a project from their performance statistics. The standard terms and conditions offered by at least one other major telco

also indicate that it may only accept or validate an order when the availability of network capacity/infrastructure is confirmed. By contrast the figures reported to the ODTR by eircom are measured from date of receipt of application, include network survey and are not discounted for project orders or customer delay. Certainly eircom's experience as an OLO in other markets would call into question the validity of using some of the published statistics for those markets as a benchmark for eircom performance.

In addition if any benchmark were to be applied it should be related to performance but to the equivalent SLA attributes in SLAs offered by SMP operators in other European countries. In the case of BT, often quoted as the most liberalised in Europe, the standard SLA leadtime for equivalent leased line service offerings to eircom's (kilostream N and Megastream 2) is 30 working days or as agreed with the customer. Further the penalty regime used by BT is capped at 40% of the connection fee and this cap is only reached after the delivery is 60 working days late.

The comparators used by the ODTR are not relevant to SLA attributes and the use of such comparators has the effect of placing an unduly onerous regime on eircom.

Valid Market Conditions

As indicated Carrier Services leased lines are a sub-set of a wider leased line product set, which is in turn a subset of a wider range of services all drawing on the same network and human resources for their provision (including, inter alia, switched telephony, PRA, internet access). Other 'draws' on these same resources in the foreseeable future include LLU, GNP, CPS. while any changes in the terms of the RIO may also impact on the demands placed on these resources.

Therefore delivery of service requires that eircom strikes a balance between all of these competing demands taking account of its regulatory obligations, the availability of resources and the requirement that we must provide a return to shareholders within the pricing regime governed by the ODTR. Eircom cannot commit to an 'open-ended' set of service levels valid in all market conditions and at all levels of market demand. The parameters set out in any SLA can be valid only for a stated level of market demand and a given set of market conditions."

Table 3 : *eircom*'s Proposed SLA Targets

Circuit Type	Parameter	From 1 December 2000	From 1 May 2001
Sub 2mb Circuit/ Analogue	Order acknowledgement	2 working days	2 working days
	Order Validation	8 working days from order acknowledgement	8 working days from order acknowledgement
	Ready for Service	90% within 30 working days of order validation	90% within 20 working days of order validation
2mb circuits	Order acknowledgement	2 working days	2 working days
	Order Validation	15 working days from order acknowledgement	10 working days from order acknowledgement
	Order Confirmation	Min 10 working days prior to due date	Min 10 working days prior to due date
	Ready for Service	90% delivered by due date given at time of order validation of which 60% will be Ready for Service within a due date of 38 working days from order validation.	90% delivered by due date given at time of order validation of which 60% will be Ready for Service within a due date of 28 working days from order validation.

Eircom stated that the service levels outlined in the above table from 1 May 2001 are indicative and are subject to review during April 2001 on the basis proposed. The performance levels suggested from December represent a 31% improvement of historical average performance for sub 2mbit circuits and 41% improvement on historical average performance for 2mbit circuits

eircom agreed that the proposed attributes for Acknowledgement of order and Notification of Order Completion date are realistic. However based on its response Q5.4.1 *eircom* believes that the attributes for delivery should be reviewed and that the order completion date need not be consistent with the relevant timeframe if agreed otherwise with the OLO concerned.

In respect of the attribute of Maximum Response/repair time, *eircom* believes that the appropriate attribute is maximum response time and in this case agrees with the proposed target.

3.1.4 Position of the Director

The Director notes that *eircom* is still accepting that the “procedural” aspects of service delivery should be completed relatively quickly after an order has been received. However, she is mindful that *eircom* has consistently failed to achieve these targets or supplied insufficient data to OLOs in the past. Therefore the Director has decided that the Order Acknowledgement, Order Validation and Order Confirmation attributes shall be guaranteed with a proportionate penalty for non-compliance. As

described in Section 3.2.4, Order Validation shall include the conduct of a site survey where required. However, the Director is also pleased to see *eircom* propose an “Delivery Confirmation” step. This step should be used to inform an OLO of a likely delay in order delivery against the promised delivery date. (The notification of delay by *eircom* shall not be seen as compliance with the service provisioning process as a whole.) The Director has decided that a penalty shall apply to this step, should *eircom* not notify an OLO at least 1 day in advance of late delivery, such that the OLO is able to manage its customer’s expectations.

The proposal by *eircom* for an SLA based on “*x% of circuits delivered within y days*” is unworkable. Such a regime would not allow OLOs to make promises to their customers regarding delivery of circuits. It is unlikely that the OLO’s customers would accept a clause in the contract which states “*if your circuit is within the x% of late deliveries from eircom the penalty payment due from OLO X for the service will not apply.*” Such a clause in the carrier services SLA does not provide OLOs with the appropriate certainty of delivery which would enable them to compete on service quality in the retail environment.

eircom’s response quotes BT’s delivery time for nx64 and 2Mbit/s circuits as being 30 days or by agreement with the customer. Therefore, those determined for the “transition” period are reasonable also. The Director notes that in the most recent report from the UK Comparable Performance Indicator programme, BT was found to deliver in 97.7% of cases within the time it promises to its business customers for directly connected services⁶. A comparable statement cannot be made for the service provided by *eircom* at present.

The Director has determined that the following Service Provisioning timescales (as defined in Section 3.2.4 of this report) shall apply.

Table 4 : Timescales for Service Provisioning

Service	Service Provisioning for “Standard” Deliveries				
	From 01.02.01			From 01.12.00	From 01.07.01
	OA	OV	DC	Service Provisioning	Service Provisioning
ISDN BRA & PRA	2 days	8 days	1 day	26 days	22 days
Ordinary Quality Voice Bandwidth	2 days	8 days	1 day	26 days	22 days
Special Quality Voice Bandwidth	2 days	8 days	1 day	26 days	22 days
64kbit/s – 1984 kbit/s leased lines	2 days	8 days	1 day	26 days	22 days
2 Mbit/s leased line (unstructured)	2 days	13 ⁷ days	1 day	30 days	26 days
2 Mbit/s leased line (structured)	2 days	13 ⁸ days	1 day	30 days	26 days

Where OA = Order Acknowledgement, OV= Order Validation, DC = Delivery Confirmation

⁶ UK Comparable Performance Indicators programme data for January to June 2000.

⁷ Order Validation timeframes will drop to 11 days on 1st July

While the Director has amended the delivery targets from 10 days to between 22 and 30 days it remains her position that eircom must achieve “Best European Practice” delivery timescales as early as possible and in any event within the next year. To that end, the ODTR will be reviewing progress in the delivery situation in other countries and will be tracking eircom’s progress and requiring plans from eircom to ensure that it meets these timeframes.

The standards for the sub-processes for Order Acknowledgement, Order Validation and Delivery Confirmation shall come into force from 1st February 2000, to allow the O&M Forum to sufficiently define and agree these processes.

For “non standard” orders, the Order Validation step is defined as follows:

- The order shall be validated, including the conduct of any required site survey, before the prescribed number of days.
- An agreed delivery date can be provided a further 10 days later, rather than at Order Validation, as in the case of “standard” orders.

“Non standard” orders still have OA and DC times of 2 and 1 days respectively, although the overall Service Provisioning time is on an “as agreed” basis.

“Non standard” orders shall include those for >2Mbit/s circuits.

Maximum repair time shall also have an SLA standard. The Director notes that eircom is using a BT benchmark and notes that BT provides a retail SLA for “restoration” ie maximum repair time, for its leased line services and for switched services through its “Prime” product. Therefore, BT’s carrier services department must be able to guarantee to a level of certainty that this level of service can be met for the classes of services covered by the product. These services include all of those which are the subject of the *eircom* carrier services SLA. The most recent UK Comparable Performance Indicator data shows that for dedicated access services (which includes leased lines and ISDN) BT is able to restore faults within its promised times in 85.7% of instances.

Whilst BT offers restoration times of between 2 and 5 working hours, the Director feels that such targets would be inappropriate given the current state of market development and the restructuring programme within *eircom*. The Director has determined that the following maximum repair times shall apply to carrier services.

Table 5: Maximum Repair Times

Service	Maximum Repair “Standard” Time	
	Amended target 1.12.00 to 30.04.01	01.05.01 onwards ⁸
ISDN exchange lines	16 working hours ⁹	16 working hours
Ordinary Quality Voice Bandwidth	8 working hours	8 working hours
Special Quality Voice Bandwidth	8 working hours	8 working hours

⁸ The Director shall this standard in light of progress made in the *eircom* transformation programme.

⁹ Comparable to the retail SLA offered of 2 working days.

64kbit/s – 1984 kbit/s leased lines	8 working hours	8 working hours
2 Mbit/s leased line (unstructured)	8 working hours	8 working hours
2 Mbit/s leased line (structured)	8 working hours	8 working hours
> 2 Mbit/s leased line	8 working hours	8 working hours

Service alteration has been included as part of the carrier services SLA for the first time. The following standards will apply for this attribute.

Table 6: Service Alteration

Service	Service Alteration “Standard”	
	Amended target 1.12.00 to 30.04.01	01.05.01 onwards ⁹
Alterations to services where the physical location of one terminating point is changed <u>from a specific site</u> to another.	As for the provisioning of the new service	As for the provisioning of the new service
Alterations to services where the physical location of one terminating point is change <u>within a specific site</u> .	10 working days	10 working days
Alterations to services where new infrastructure build is required to reach a site shall follow the SLA for the provisioning of the new service.	As for the provisioning of the new service	As for the provisioning of the new service
Alterations to services where no new infrastructure build is required, but changes to terminating equipment are necessary shall be the subject of an SLA.	5 working days	5 working days
Alterations to services which can be achieved through “soft changes” e.g. opening channels on a fully provisioned ISDN BRA, shall be the subject of an SLA.	8 working hours	8 working hours

3.1 Direction

The Director has determined in Tables 4, 5 and 6 the standards for the carrier services SLA for the following categories:

- Acknowledgement of order
- Order Validation – specifically the notification of a delivery date
- Delivery Confirmation
- Maximum Repair Time
- Service Provisioning - specifically receipt of correct Order Completion Notice
- Service Alteration.

These attributes and times will be subject to monitoring and review.

4. PENALTIES

4.1 Penalties for Attributes Other Than Late Delivery

4.1.1 Summary of the Consultation Issues

In the current Carrier Service SLA penalties are applied to the following attributes:

- Ready for Testing date (where required)
- Order completion date
- Maximum response time.

Despite *eircom*'s poor delivery performance the Director is of that view that its transformation processes should have progressed sufficiently to permit the management of 'Order Acknowledgement' and 'Notification of Order Completion Date' processes in an efficient manner. The Director considers that, in addition to the three attributes identified above, these attributes could also attract a penalty in the event of non-compliance with the SLA standard.

In Q5.5.1, the Director invited comments on the inclusion of the new attributes to the penalties process and validation of the inclusion of the existing attributes. In addition, proposals for methods of compliance verification were requested.

The consultation document summarised the penalty which is currently included in the Carrier Services SLA for Maximum Response Time.

For Maximum Response Time the Director (in Q.5.6.1) sought comments on whether the existing refund of monthly rental up to a maximum of £1000 was adequate should this attribute be replaced by Maximum Repair Time. In Q5.6.2 respondents which wished to retain Maximum Response Time as an attribute were asked if the current penalty levels were adequate for an unchanged attribute.

4.1.2 Views of OLO Respondents

Virtually all OLOs were of the view that all of the attributes discussed in the consultation paper should attract a penalty of one form or another. A key requirement was to incentivise *eircom* not only to deliver circuits but to do so in a way which provided OLOs with timely and accurate information on the progress of an installation. They were pragmatic about the level of the penalties which should be charged on the more administrative targets, in that:

- They should be proportionate to the relative importance of administrative targets rather than the overall aim of delivering the circuit on time
- They should be capped, a level of between £500 and £1,000 per failure was suggested
- A similar level of penalty (based on a refund of rental) was proposed for delays in fault repair, again a capped value was suggested.

OLOs felt that a capped penalty was appropriate in this case so that these penalties did not conflict with a solution of the overall problem, of delivery of circuits on time.

Therefore, in order to insure that the above penalties did not create a conflict of priorities in *eircom*, the OLOs were prepared to accept a cap in this case.

One OLO favoured an uncapped penalty charge for failure to meet target repair times described thus “*This formula also needs a fixed payment plus the monthly line rental, but should continue to increase for each hour over the target response/repair/update time.*”

4.1.3 Summary of *eircom* Response

eircom does not believe that these attributes should attract a penalty as they do not contribute to the bottleneck nature of the Carrier Services and that management of these items by way of a regulated penalty regime is inappropriate.

4.1.4 Position of the Director

The Director is minded to implement a penalty for each of the attributes highlighted in Section 3.2.4. Although some of these are “administrative steps” she is sufficiently worried by the poor procedures now in place to wish to encourage a more professional “customer focused” approach to information dissemination.

However, she is aware of the risk that such penalties may distract or conflict with any penalty for the overall provisioning process and hence will limit both the value of these other penalties and cap the overall amount payable. This will avoid the danger of the penalty system driving the profile of the circuits delivered, rather than ensuring that all circuits are delivered. The overall Service Provisioning penalty is excluded from any cap and its calculation.

For the following provisioning steps a penalty for non-compliance shall apply to *eircom*, except where non-compliance is either agreed beforehand with the OLO, or as a result of the OLO’s non-compliance with its responsibilities in the process:

- Order acknowledgement
- Order validation
- Delivery confirmation.

In each case, a £500 penalty will be payable for non-compliance. This is proportionate and comparable to the man-day cost of a contracting engineer, ie the potential cost wasted by an OLO in arranging for its engineers to undertake work on the circuit, attend the customer premises or deal with *eircom*’s provisioning team.

The cap for compliance for these administrative procedures of service provisioning; Order Acknowledgement, Order Validation and Notification of Delivery is set at £1,000 per delivery. A penalty for non-compliance with the standards for these attributes shall come into effect from 1 February, 2001.

The following penalties shall apply for failure to achieve “maximum repair time”:

- £500 per instance plus a refund of the rental (rounded up to the nearest day) for the affected service over the out-of-service period above the SLA level.

The penalty for Maximum Repair Time, whilst not capped, will contain sufficient deterrent to encourage compliance with an element proportional to the amount of

inconvenience caused (i.e. it is linked to rental). This penalty shall apply from 1 December 2000.

4.1 Direction

The Director has determined the penalty systems for the following attributes

- Acknowledgement of order : £500 per instance
- Order Validation – specifically the notification of a delivery date : £500 per instance
- Delivery Confirmation : £500 per instance

The total penalty applicable for the above three measures will have a cap of £1,000 per service ordered. The penalties shall apply from 1 February 2001.

- Maximum Repair Time : £500 per instance, plus refund of rental for the out of service period, rounded up to the nearest day. No cap applies to this penalty. The penalty shall apply from 1 December 2000.

4.2 Penalty for Late Delivery

4.2.1 Summary of the Consultation Issues

The consultation document summarised the penalty which is currently included in the Carrier Services SLA for Order Completion.

In the published SLA for Order Completion the following penalty level is applied.

Table 7 : Published SLA Penalty for Order Completion

SLA Attribute	Penalty Applicable	Conditions
Order Completion	<p>For every working day of delay in the provision of a service as against a previously notified date, <i>Eircom</i> shall be liable to pay a sliding scale of penalty such that it will provide a complete refund of the installation charge if the circuit is delivered at a date which is equal to or greater than 1.5 times the contracted delivery time. This will be by reference to the following equation:</p> $\sum_{1}^{n} XnI/D \text{ where}$ <p>“I” is the installation charge “n” is the number of days after the ready for test date “D” are the number of days set as the standard in the SLA “X” is a constant quoted for each type of circuit against the target delivery times¹⁰</p> <p>Maximum Penalty Payable</p> <p>Maximum penalty payable</p> <p>The maximum penalty payable for delays in completion of orders using the formulae set out above shall at no time exceed the maximum connection fee payable under the order attracting the penalty payment.</p>	<p>The OLO¹¹ has not been responsible for any delay in provision of information or site access requested by <i>Eircom</i>.</p> <p>Where a service (service 2) depends on the prior delivery of a separate service (service 1) also ordered from <i>eircom</i> the reckonable delivery time for Service 2 shall only commence on the expiry of the standard lead time of Service 1.</p>

¹⁰ “X” is constant in each equation and is related to the number of days “n” and “D” and will vary according to the values of “n” and “D”.

¹¹ This is taken to mean the OLO or the OLO’s customer, for which the OLO is the agent if it is ordering the circuit on behalf of the end customer.

In Direction ODTR 00/60 the Director required *eircom* to amend the formula for calculating penalties applicable to the leased lines ‘order completion’ attribute. This uncapped penalty formula is:

$$\text{Penalty Applicable} = \frac{2nI}{D} \text{ where}$$

“I” is the installation charge

“n” is the number of days after the ready for test date

“D” are the number of days set as the standard in the SLA

In order to incentivise delivery of leased lines and basic exchange lines and provide a degree of compensation to OLOs for any shortfall in service, the Director believes, as a matter of principle, that penalties should be uncapped. This principle is applied in the SLA for interconnect circuits and is accepted by *eircom*.

The Director set the revised ‘uncapped’ formula (as set out in ODTR 00/60) as a proportionate response seeking *inter alia* to weigh failure to meet agreed deadlines against the need to protect the rights of operators under the SLAs.

In Q5.6.3 – Q5.6.5 respondents were asked to comment on:

- Whether penalties for late delivery should be capped or uncapped
- If uncapped, whether the formula set out in Direction ODTR 00/60 is appropriate, with reasoning or amendments where required
- Whether an uncapped penalty should be applied to all services, not just leased lines.

4.2.2 Views of OLO Respondents

All the respondents to the consultation paper either supported the Director’s uncapped formula, or proposed variations or alternate uncapped mechanisms to arrive at a proportionate penalty for late delivery of circuits. The main variation proposed by one OLO was to increase the numerator in the revised formula to make the penalties more onerous whilst extending the allowable lead times, ie provide *eircom* with a greater likelihood of meeting delivery targets through the transitional SLAs, whilst penalising *eircom* more heavily for failure to take advantage of the transitional period in the appropriate manner – delivering circuits on time to OLOs.

Another OLO noted that the formula should be applied to a process which ended with the production of a Completion Notice by *eircom*, rather than an acceptance test, which is not part of the delivery process.

A third OLO made a detailed proposal for what it felt was a proportionate mechanism, based on a fixed charge plus a sliding scale as originally determined in the Director’s first determination on this subject.

4.2.3 Summary of *eircom* Response

eircom’s view is that only “terminating circuits” leased lines be included as Carrier Services, as discussed in Section 3.1.3 of this report, and proposed a revised capped

penalty formula which it felt was appropriate and proportionate in respect of the exiting delivery difficulties.

eircom does not agree that any formula be uncapped. In the case of BT, Belgacom & Telia such SLAs as exist are capped at a proportion of the connection fee or at the monthly rental.

eircom proposes that the penalty formula as exists in the BT SLA be used in the *eircom* SLA. That is for Nx64kBit/s Leased lines and for 2Mbit/s Leased lines the penalty liability should be as set out below.

Number of working days beyond customer due date provided at order validation.	Percentage of Connection fee Payable
1-25	10
26-40	20
41-60	30
More than 60	40

In *eircom*'s opinion, the ODTR and OLO's current concerns regarding the operation of a capped formula (ie the lack of incentive to install any circuits after the cap is reached and focus on new orders instead) are a function of the SLA leadtimes. The fact that the reduction in the target leadtimes does not match the actual delivery performance has led to a situation where in 100% of cases *eircom*'s service delivery process is operating in the capped region of the current formula.

A move to the regime outlined in Section 4.1.3 of this report would have the effect of lengthening of the target leadtimes and would produce a situation whereby the service delivery process would be operating in the uncapped region thus restoring the incentive effect of an increasing penalty. It should be noted that notwithstanding the existence of the cap, *eircom* states that it has not abused this by way of concentrating on "young" orders with penalty exposure below the cap while ignoring orders which have reached the cap. Rather *eircom* have dealt with its backlog on the basis of customer priorities and oldest order first where possible, as clearly demonstrated to the market and the ODTR.

In *eircom*'s opinion, the uncapped regime referred to for interconnect is materially different to the regime proposed for Carrier Services. Firstly interconnect is a service subject to a rigorous forecasting regime. This provides *eircom* with additional information with which to plan its delivery such as defined circuit "ends" and certainty over quantities and required network build. This regime had been agreed by the Industry and implemented some nine months before the SLA for interconnect was introduced. At the time of the introduction of the Interconnect SLA all OLOs had fully engaged in the forecasting regime. This ensured that *eircom* had sufficient opportunity to make use of the forecast information carry out such initiate such infrastructure build as was necessary to support the delivery of orders for interconnect capacity.

Secondly even though the interconnect penalty regime is uncapped it is not unbounded. The variable portion of the penalty relates the penalty liability to the rental in a manner which provides that *eircom* must be a year late before foregoing a

year's rental as a penalty. In effect such a regime has a doubling effect as in this instance *eircom* would have already foregone a year's revenue by virtue of the delay. Such a regime is proportionate.

Under the current Carrier Services process, the demand for leased lines are unforecasted, and must be provided by *eircom* "...at every point in the territory of the State".

eircom believes that the cases, which will give rise to most delays, are those which are at the periphery of the *eircom* network, in effect the USO element of *eircom*'s leased line obligations. These by definition would also be the circuits with the highest rental.

Given that the leased line service is unforecasted and that *eircom* has no opportunity to limit this liability by advance planning, *eircom* proposes a regime similar to the Interconnect SLA but with the variable part based on connection fee rather than rental. The variable element should have a constant slope unrelated to the target leadtime.

eircom proposes that a linear formula be applied allowing that for each month that the circuit is late a portion of a connection fee be foregone. This proposal would bound the penalty liability in a proportionate manner while at the same time providing an escalator effect and also of mitigating the effects of *eircom*'s Leased line USO obligations.

4.2.4 Position of the Director

The "transitional" SLA determined by the Director has been derived to reach the best compromise between:

- A delivery target which is achievable by *eircom*, given the current progress in its internal transformation programme and the experience in the market to date
- A standard which is generally acceptable to the OLOs given current circumstances.

The critical element that underpins the SLA is that the promises made for delivery are adhered to by *eircom*. A proportionate penalty regime is required that does not unduly penalise *eircom* for late delivery but encourages *eircom* to improve its delivery target towards that required by the SLA. In its response *eircom* has quoted frequently of BT's SLA targets and penalty regime. The Director notes that such a regime is proportionate on an operator that can deliver on its promises on service provisioning in 98% of cases, and where virtually all outstanding circuits are delivered within 5 days of the promised date.

Further, the penalty regime on a poorly performing operator such as *eircom*, should be more stringent where *eircom*'s performance over the "transitional" period deteriorates when compared to that experienced in the market to date.

Therefore, the Director has decided to implement a penalty for service delivery which has the following characteristics:

- A linear repayment of the connection fee which takes place between the SLA "standard" period and a date which is equivalent to the current average delivery time for the product (up to point A overleaf).

- A further linear payment related to the rental per day period determined for each product (after point B below)
- The penalty is uncapped.

The penalty regime shall alter over the period from 15.09.00 to 1.7.01 to reflect the improvements in service that *eircom* will be introducing through its internal process improvement programmes.

The following diagrams shows how the penalty would operate on a generic service, under the new regime

Figure 2 : Service Provisioning Penalty Mechanism from 15.09.00 to 1.2.01 for a “standard” Delivery

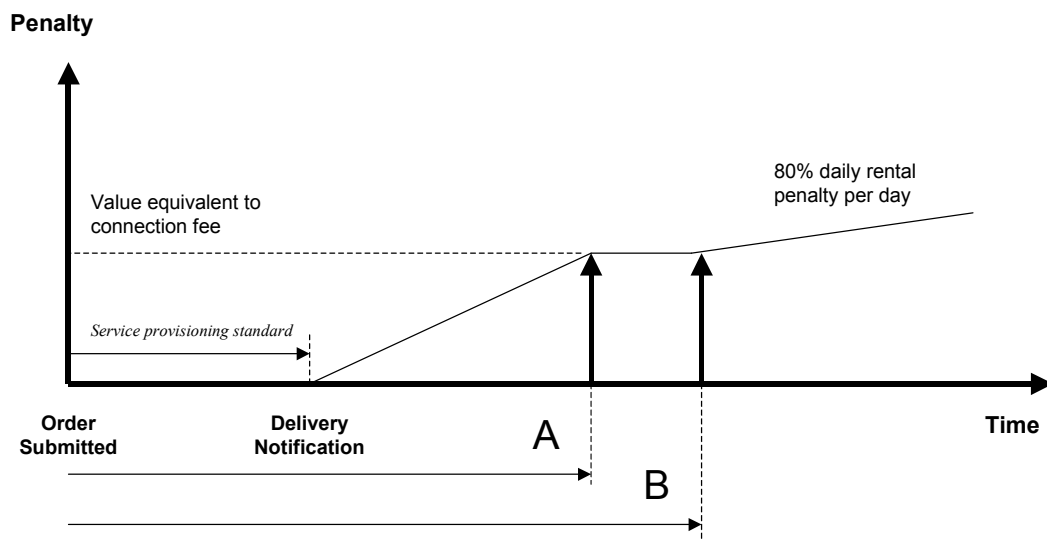


Figure 3 : Service Provisioning Penalty Mechanism from 01.02.01 to 1.7.01 for a “standard” Delivery

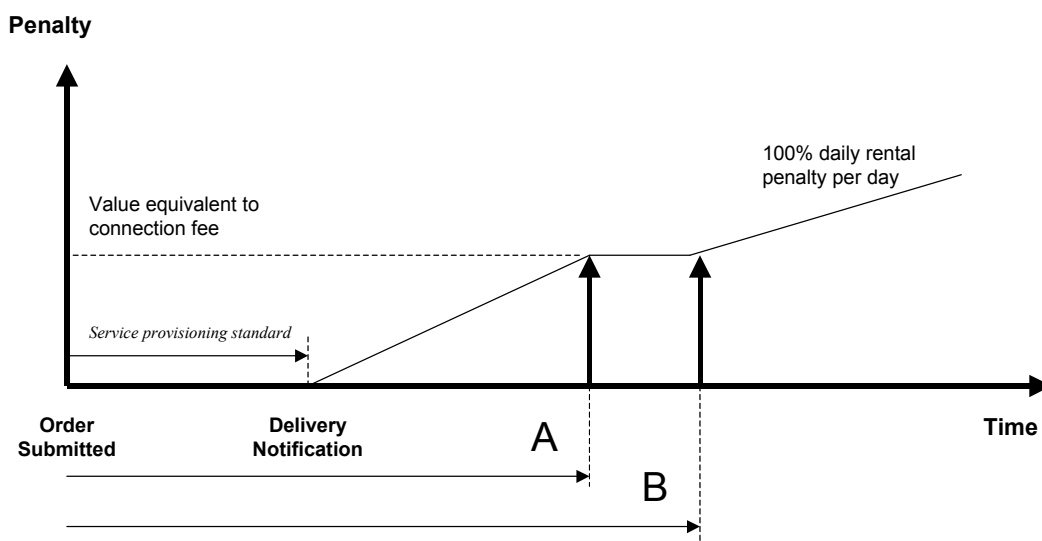
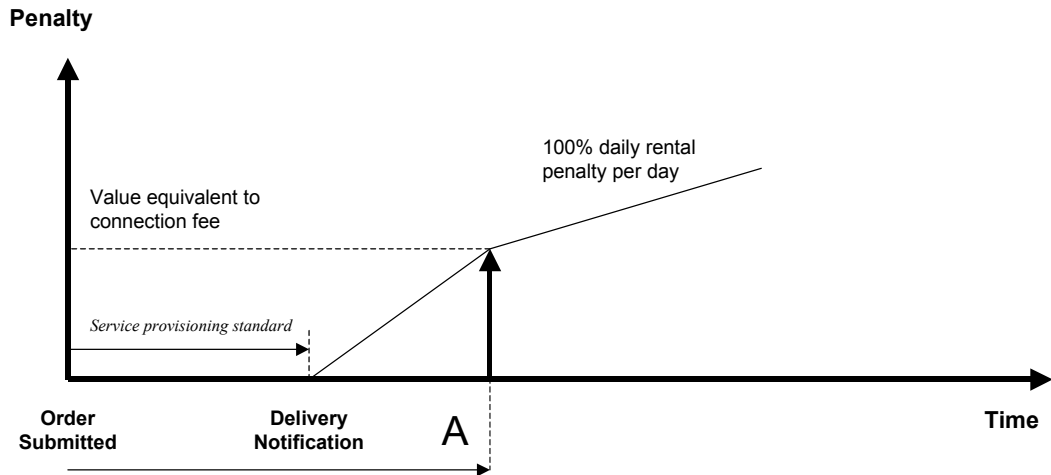
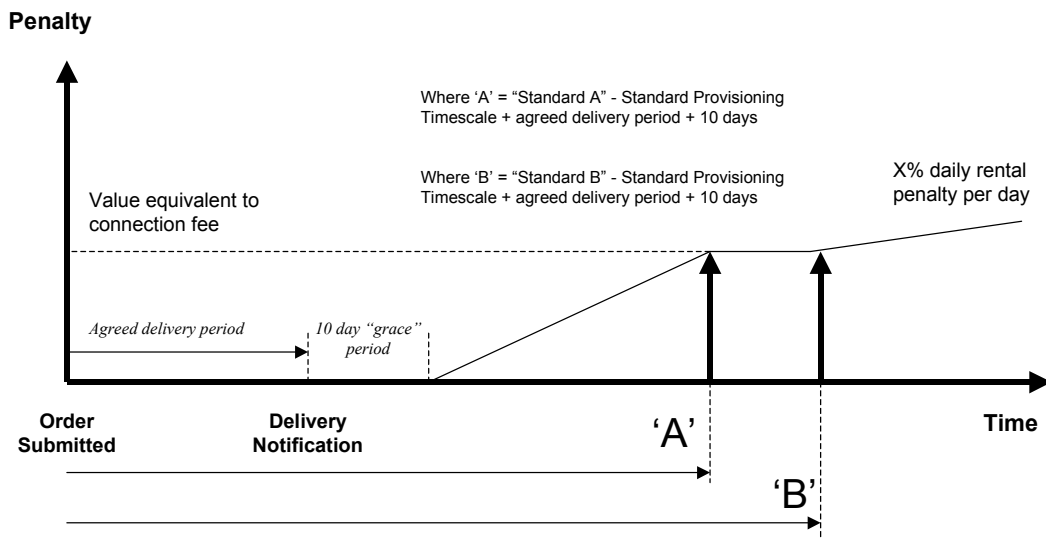


Figure 4 : Service Provisioning Penalty Mechanism from 1.7.01 Onwards for a “standard” Delivery



For “non-standard” deliveries the same regime shall apply, with the exception that an additional “grace” period of 10 days shall be inserted after the agreed delivery date and the point from when penalties are calculated. An example is shown below.

Figure 5 : Service Provisioning Penalty Mechanism from 15.09.00 to 1.7.01 for a “non-standard” Delivery



After the connection fee has been repaid, a penalty equivalent to x% of the payable rental per day is charged, where x is:

- 80% until 1st February 2001
- 100% thereafter.

The following values for A and B have been determined for each carrier service type.

Table 8: Service Provisioning Penalty Algorithm

Service	From 15.09.00 to 1.7.01			From 1.7.01	
	Standard Provisioning Timescale	“A” days after “standard” or “non-standard” delivery date	“B” days after “standard” or “non-standard” delivery date	Standard Provisioning Timescale	“A” days after “standard” or “non-standard” delivery date
ISDN exchange lines	26 days	50 days	60 days	22 days	46 days
Ordinary Quality Voice Bandwidth	26 days	50 days	60 days	22 days	46 days
Special Quality Voice Bandwidth	26 days	50 days	60 days	22 days	46 days
64kbit/s – 1984 kbit/s leased lines	26 days	50 days	60 days	22 days	46 days
2 Mbit/s leased line (unstructured)	30 days	55 days	70 days	26 days	51 days
2 Mbit/s leased line (structured)	30 days	55 days	70 days	26 days	51 days

4.2 Direction

The Director has determined that a penalty system for service provisioning shall apply as set out in Figures 2 to 5 and Table 8.

The Director has determined a penalty system for service provisioning which:

- Is uncapped
- Is proportionate
- Repays the OLO the connection fee within a timeframe that reflects the currently unacceptable delivery timescales being provided by *eircom*.
- Provides a further proportionate and uncapped payment after this “typical” delivery period.
- Encourages *eircom* to reduce its “typical” delivery period to figure closer to the “standards” determined previously by the Director.

5. PROCEDURES

5.1 Application for Carrier Services

5.1.1 Summary of the Consultation Issues

The Director proposed in ODTR 99/48 that the operators themselves were best placed to agree the scope of exemptions or caveats surrounding the SMP operator's compliance with the standards set out in the carrier services SLA. To that end, the Director considers that flexibility is required of all parties involved.

Schedule 1 (See Appendix 2 to the Consultation Paper) of *eircom*'s SLA entitled "Guidelines for Application for the Services" refers to "exceptional circumstances" where the standard time frames for the delivery of each carrier service cannot be met due to the incompatibility of the services ordered with the *eircom* network or due to the volume of services ordered. Q5.8.1 and Q5.8.2 sought input from the industry on whether the process for determining the list of exceptions and caveats worked effectively and whether the result, in terms of the contents of Schedule 1, was acceptable.

5.1.2 Views of OLO Respondents

In general, the OLOs viewed the conditions and caveats attached to the *eircom* SLA to be too vague and open to abuse. OLOs requested that:

- A better defined list of acceptable exceptions be drawn-up and agreed with the industry
- The ODTR monitors the number of 'exceptional' orders which are placed outside of the SLA process by *eircom*, to ensure that the conditions are not being abused
- An arbitration process is available via the ODTR to determine whether a particular circuit is 'exceptional'.

Of particular note is that operators do not wish a request of delivery by a specific date (where that date is later than the SLA target date) to make a circuit automatically an exception. If an OLO is able to provide *eircom* with additional notice of a circuit (i.e. more than the minimum) it should not be penalised by having that circuit removed from the process.

5.1.3 Summary of *eircom* Response

All companies properly licensed by the ODTR to provide telecommunications services in Ireland are eligible to apply for the terms and conditions specified in the SLA. In order to improve the quality of service and the flow of communications between *eircom* and the OLOs, and in recognition of the heavy investment burden and long OEM supplier lead times for network equipment faced by *eircom*, *eircom* proposes that a forecasting regime similar to, but not as rigorous as that applying under the RIO should be introduced.

To qualify for SLA terms the OLO should conform to the following general principles.

1. Provide *eircom* with a 12 month forecast on a rolling 3monthly basis of anticipated order volumes broken down by OLO node location (A end) and circuit speed. At each 3 monthly forecasting cycle, changes to the forecast for the immediately following 3 month period would be limited to a level of +/- 10% of the forecast submitted at the previous 3 month forecast cycle.
2. Provide all orders to *eircom* on the official *eircom* order form indicating
 - circuit speed
 - circuit presentation at a end and b end including timeslots to use
 - circuit end addresses, including location of circuit termination point at each circuit end.
 - customer contact points for each circuit end
 - access arrangements to customer premises at each circuit end (signed rights of access from the b end customer - to cover *eircom* liabilities in respect of delivery and subsequent maintenance - will be required at time of order).
 - billing address
 - written confirmation that NTE accommodation requirements (power supply, modem shelf etc. as specified in the *eircom* product description) will be available at each circuit end.
 - *eircom* cannot validate the order unless this information is provided.
3. Order no less than 85% and no more than 115% of the forecasted order volume either in total or at any OLO node location.
4. The SLA will not apply in the following circumstances:
 - Following survey *eircom* is required to build new network components (either core or access and including but not limited to SDH components). If this exclusion applies it will be advised to customers at the point of order validation.
 - B end customer refuse right of entry to *eircom* or delays installation of the circuit for any reason.
 - The OLO delays installation of the circuit for any reason.
 - One end of the circuit is more than 3km from the nearest *eircom* data network node.
 - In instances where *eircom*'s ability to deliver is constrained by industrial action
 - Force Majeure/Acts of God.
5. Where an order cannot be validated due to insufficient or incorrect information being supplied on the order form from the OLO, or in situations where *eircom* cannot gain access to a customer premises in order to validate service requirements, the order will be cancelled and a new application will be sought from the OLO.

In addition to this proposal, *eircom* provides an appendix with a further explanation of the guidelines for excluding a particular order from the process, as requested by many of the OLOs:

“The exceptional circumstances as referred to the within document are circumstances where the time frames mentioned in the within document cannot be adhered to due to the incompatibility of the Services ordered with the Eircom network, due to the volume of the Services ordered, due to any non-standard features of a service request or due to network capacity constraints.

The compatibility of networks shall be considered on an individual basis and reasons will be given as to why the network in respect of which the orders are made is in compatible with the Eircom network.

Examples of exceptional circumstances, where order cannot be met within the time frames set out due to network capacity restraints include but are not limited to the following :

1. *Customer premises related.*
 - *Transmission equipment extension required.*
 - *Transmission equipment upgrade required.*
 - *New or upgraded transmission path required*
 - *New fibre required.*
 - *Radio link required .*
 - *Line upgrade/conditioning required.*
2. *Managed Leased Line Network*
 - *New Managed Leased Line Network edge node required (equivalent to local access)*
 - *New Managed Leased Line Network edge to Managed Leased Line Network core network transmission required.*
 - *New Managed Leased Line Network core network node required.*
 - *Managed Leased Line Network core network node extension required.*
 - *New inter Managed Leased Line Network core node transmission required.*
3. *Wiring infrastructure.*
 - *New Digital Distribution Frame required.*
 - *New Optical Distribution Frame required.*
 - *New Main Distribution Frame required.*
4. *Core Transmission Network*
 - *New core transmission capacity required e.g. VC4 or higher and associated infrastructure.*
 - *New core transmission node extension required.*
 - *Major core transmission node modification/upgrade required.*

- *Where a customer's premises (Installation Site) is more than three kilometres from the local exchange or managed leased line network node.*

Examples of exceptional circumstances, where order cannot be met within the time frames set out due to volume of orders submitted or special/non standard characteristics include but are not limited to the following :

1. *Where there are a large number of orders, requiring delivery, in particular customer sequences with particular characteristics - e.g. diversity or a large number of orders requiring a delivery sequence across a wide variety of orders.*
2. *Where there are more than 5 orders received in from an OLO in a given day the SLA Attributes for shall only apply to the first five orders received on that day. The excess shall be deemed to have been received on the next working day and the SLAs attribute and other shall apply on this basis.*
3. *Where the volume of orders is such that it requires infrastructure build over and above that normally associated with the provision of the Services in a particular area - e.g. orders for a 2Mbit/s leased line are normally provided at the local end by way of HDSL. However, where there are multiple orders for such 2Mbit/s leased lines to the same premises, at the same time, there may be a requirement to build fibre systems. This applies both to single batches of multiple orders and orders for smaller quantities to the same address placed over a short period of time.*
4. *Where the installation site and/or facilities are not available to eircom for survey and/or installation purposes at the date of order.*
5. *Where the customer specifies a date before which service will not be accepted or an exact date on which Service must be delivered.*
6. *Where it is mutually agreed between eircom and the OLO to construct infrastructure beyond the immediate requirements of the ordered service in order to facilitate future deliveries and/or maintenance.*
7. *Where the order is treated as a project delivery, including but not limited to the following*
 - *Where customers order more than 4 leased lines with at least one common circuit end, the order being placed either at the same time or on a planned basis at regular intervals over a period of time or as part of a upgrade to an existing network or as roll-out of a new network.*
 - *Where customers avail of connection fee discounts on bulk orders*
 - *Where customers specify non standard presentation of circuits (eircom standard presentation is G703 for 2mb and x21 for sub 2mb)*
 - *Where data nodes (rather than data modems) are being installed at customer sites which terminate multiple circuit ends. Such nodes being provided either at the customer request or in order to support delivery of subsequent forecast orders and/or support maintenance of multiple circuits.*
 - *Where the bandwidth of circuit ordered exceeds 2mb. (Such circuits, and in particular the access link element, must be designed on a customised basis)*
 - *Where customers request special diversity arrangements either on access or core network elements.*

- *Where customer request that service be provided without interruption to existing services which are delivered over the same network plant or NTE, or specify that such interruption be scheduled for outside of working hours.”*

eircom sites BT’s wholesale SLA as restricting customer orders thus:

“The BT SLA provides that 4 or more circuits at 2Mbit/s or greater ordered within a 20 day window to the same address are excluded from the standard leadtimes.”

5.1.4 Position of the Director

In all cases where an “exception” is identified, *eircom* shall agree a delivery date with the OLO which shall be binding for the purposes of the SLA calculation. This shall be classed as a “non standard” order. The Director has reviewed each of the clauses proposed by *eircom* and included the ones which she is willing to accept, having regard to the minimum, most critical needs of the industry in Appendix A. The O&M forum will be asked to review and propose amendments to these exception clauses in due course, the Director will then direct *eircom* to amend its standard terms and conditions should she agree with the proposals made by the forum.

With regard to the first three points in *eircom*’s main submission, as stated previously the Director does not feel that a forecasting mechanism is appropriate for customer – OLO connections, as this is particularly commercially sensitive information. However, the Director would encourage OLOs to provide *eircom* with advanced warning of network (ie. OLO to OLO connections) developments so that *eircom* can be fully briefed in infrastructure requirements.

With regard to item 4, non-application of the SLA taking each point in turn:

- Following survey *eircom* is required to build new network components (either core or access and including but not limited to SDH components). If this exclusion applies it will be advised to customers at the point of order validation. :- The Director wishes that such circuits shall not be excluded from the SLA, rather any circuits that require a non-standard SLA as a result of being part of the list of “exceptional” circumstances shall have an SLA which is linked to the promised delivery date.
- B end customer refuse right of entry to *eircom* or delays installation of the circuit for any reason:- The Director wishes that such delays caused by such actions shall be recorded by *eircom* and added to the delivery time, the OLO shall be informed of such changes to the delivery time.
- The OLO delays installation of the circuit for any reason:- The Director agrees with this clause where it applies to the OLOs actions, save cases where the action in the OLO agreeing to a later delivery date. The SLA shall be re-calculated based on an agreed later delivery date.
- One end of the circuit is more than 3km from the nearest *eircom* data network node. The Director wishes such “technical” exceptions to be clearly identified in the “exceptional” circumstances detailed in the SLA. Such circuits shall have an agreed delivery date which will be subject to the SLA.

- In instances where *eircom*'s ability to deliver is constrained by industrial action:- The Director would expect such a clause to be a standard part of a contract.
- Force Majeure/Acts of God:- as above.

In respect of item 5, where an order cannot be validated because of insufficient information in the order form, or for failure to provide access for the purposes of a site survey, the Director proposes that the SLA shall be deemed to be non-effective until such time as the situation is remedied. However, the SLA for the overall Service Provisioning process shall still apply, with the "clock" starting once the Order Validation step is complete. As discussed in Section 3.2.4, the aim of this would be to provide incentive to the OLO to perform its functions in the delivery process to the level of quality required for speedy implementation of services.

Many OLOs highlighted vagueness in *eircom*'s terms and conditions. The Director is encouraged that *eircom* has provided a more detailed set of guidelines in its submission. *eircom* has provided examples of exceptional circumstances which would mean that a particular order or group of orders are taken as exceptions to SLA. Firstly, it is the Director's view that any allowable 'exception' shall still have a mutually agreed delivery date that is the subject of the SLA. In Appendix A the Director has summarised the circumstances she is willing to accept as part of the terms and conditions, at this stage. Taking the various clauses in turn:

- Clause 1, where the customer has requested a specific delivery date after the maximum and this has been agreed, the SLA shall still apply. *Eircom* has not provided sufficient clarity of the rationale for any other exclusion under these clauses.
- Clause 2, the Director agrees with *eircom* that there should be a clause regarding the order of more than 5 circuits for a particular customer address, however, the Director feels that this should only apply to a customer address and not the OLO's premises. It would be hoped that *eircom* would engineer sufficient capacity to deal with the demand that an OLO might generate from its points of presence. There is sufficient experience in deregulated markets from which *eircom* could draw, not least in the markets of two of its principal shareholders. By learning the lessons of other deregulated markets *eircom* can overcome the understandable unwillingness of OLOs to make available commercially sensitive data.
- Clause 3, is covered in Section 3.2.4 and should be an explicitly identified in the "exceptional circumstances" term, that will initiate the agreement of mutually acceptable date.
- Clause 4, is covered in the responsibilities of the OLO that will be documented in the proposed O&M manual.
- Clause 5 is unacceptable and is covered explicitly in Section 3.2.4. It is unacceptable that an OLO is penalised for providing *eircom* with the maximum possible notice of an installation.
- Clause 6, a mutually agreed date shall still apply.
- Clause 7, a mutually agreed date shall still apply.

The Director requires *eircom* to provide her with periodic reports on the proportion of circuits that are delivered as “non standard” orders.

5.1 Direction

The Director has determined that:

- It is wholly appropriate that *eircom*’s standard terms and conditions shall include a set of clearly defined clauses which identify “non standard” deliveries.
- Despite their deviation from the standard, *eircom* shall always agree a delivery date for such orders against which the SLAs and any applicable penalty payment can be measured.

The basic list of acceptable clauses is attached to this document as Appendix A, and shall be included in *eircom*’s revised SLA as a result of this consultation process.

The Carrier Services O&M Forum shall refine these clauses for submission to the Director, and subsequent inclusion in a revised SLA, should she direct *eircom* to make such an alteration.

The Director shall monitor the number of “non-standard” orders to ensure that *eircom* is acting in a non-discriminatory manner with regard to the delivery of services to OLOs and its own retail arm

5.2 Escalation

5.2.1 Summary of the Consultation Issues

In ODTR 99/48 the Director proposed that the escalation of disputes between the SMP operator and the OLO with regard to compliance with the SLA shall initially be dealt with between the operators using a published two stage escalation procedure which forms part of the Terms and Conditions for services. In the event that a dispute is not resolved between the parties then the dispute resolution procedures of the ODTR is available at the request of either party. Q.5.7.1 sought views on whether this procedure was working sufficiently at present.

5.2.2 Views of OLO Respondents

By virtue of the reported delays in delivery of circuits, many operators commented that the escalation procedures are patently not working. Whilst in practice they are able to escalate issues within the *eircom* organisation, there is no beneficial outcome as a result.

Some operators requested that the ODTR take some formal oversight of the escalation process, reviewing the effectiveness of the procedure to achieve results.

5.2.3 Summary of *eircom* Response

eircom believes that the current escalation procedures are appropriate and effective. This is based on the paucity of referrals to the ODTR dispute resolution procedures in respect of the SLA.

5.2.4 Position of the Director

The Director is encouraged that escalation of issues can take place within *eircom*. However, the value of an escalation process is in the ability of it to deliver the appropriate response from the organisation. The Director trusts that the transitional regime determined by this consultation will ensure that escalation of issues within *eircom* achieves the appropriate response.

The Director has determined that the Carrier Services O&M forum shall ensure that the escalation procedures in place within *eircom* provide meaningful results and are used in an appropriate manner by all parties concerned.

5.3 Submission of Claims for Penalties

5.3.1 Summary of the Consultation Issues

Schedule 2 (See Appendix 2 of the Consultation Document) of *eircom*'s SLA sets out the current "Guidelines for Submission of Claims for Penalty Credits". The Director considers that an alternative approach similar to that currently being used for Interconnect circuits is more appropriate for the Carrier Service SLAs.

This alternative approach, as set out in Annex D of the RIO, states that "Operators will be notified by *eircom* of penalties due. Penalties will be automatically remitted by *eircom* unless *eircom* and the Operator agree that there is material reason why the penalty should not be paid. In the event that an operator believes a penalty is due and has not been notified by *eircom* then claims for penalties in respect of claimed service failures should be submitted as per Appendix 2."

Q5.9.1 sought the views of respondents on whether a similar regime to that used in the RIO for interconnect circuits was more appropriate, than the "credits" system currently included in the Carrier Services SLA.

5.3.2 Views of OLO Respondents

Whilst the OLOs were in agreement with the Director with regard to the appropriateness of the penalty payment system used for interconnect circuits, many commented that even this system does not work in practice, because of a lack of information flows from *eircom*. In effect the OLOs have to calculate the penalties themselves to ensure that they are receiving all appropriate information and payments from *eircom*.

5.3.3 Summary of *eircom* Response

eircom believes that the current process is proportionate and fair. The imposition of an administrative burden on *eircom* for all orders whether late or not would give rise to additional costs directly attributable to the offering of leased lines to OLOs.

Leased lines offered to OLOs already subject to a "wholesale" discount a decision to force an administrative burden on *eircom* in respect of all leased lines sold only to OLOs whether late or not would require a review of this wholesale discount as the cost basis for handling wholesale orders would have changed.

5.3.4 *Position of the Director*

It is the Director's position that the burden of calculating the applicable penalties shall rest with *eircom*. Each invoice for a carrier services product shall include the appropriate penalty payment/credit, ie:

- The first invoice shall include any credit for late delivery or for failure to complete the Order Acknowledgement or Order Validation steps by the specified dates.
- The periodic invoice shall include any credit for fault management related penalties within the period of the invoice
- The final invoice shall include any penalty relating to service cessation.

The Director is confident that the revised service delivery processes set out in this Decision Notice along with their refinement by the O&M forum will significantly reduce the scope for disputes over penalty amounts due and improve the speed at which payments are actually settled. In any event the Director considers that *eircom* shall settle all penalties payable to OLOs in a period no greater than two months in arrears

However, the Director notes that the OLOs should still check the calculation of the penalty through their own internal assurance procedures.

Recognising that *eircom* will have to introduce internal processes to facilitate the automatic payment of penalties, the current system of penalty payment application shall remain in force until 1st February 2001.

5.2 Direction

The Director has determined that *eircom* shall implement a system for automatic penalty payment by 1 February 2001. Until that time, the current system of penalty payment application shall remain in force.

6. REVIEW OF PERFORMANCE UNDER THE SLA AND OTHER ISSUES

6.1 Review Process

6.1.1 Summary of the Consultation Issues

The Director intends to monitor the overall service delivery performance of *eircom* through the Measuring Licensed Operator Performance programme. Live data under the programme is to be collected by operators from the 1st of January 2001, with results due for publication in the summer 2001. However, the ODTR will have *eircom*'s quality of service statistics early in the second quarter of 2001.

Notwithstanding the above, the Director considers that a full review of Carrier Services and the associated SLAs take place so that any necessary changes may be directed to be made to come into effect on 1 December 2001. In view of the difficulties of the last year, it is proposed that the penalty regime be reviewed to ensure its adequacy in six months from now. These proposals or any others adopted in the light of this review are to be understood as being without prejudice to the Director's rights and obligations to regulate the market generally, in other words, it may be necessary to intervene at other times.

Q.6.1 sought the views of respondents on whether an annual review of Carrier Services and SLAs was appropriate, with a six monthly review of the penalty arrangements.

6.1.2 Views of OLO Respondents

A number of OLOs were keen that there should be a six monthly review of the whole process, especially given that the transitional period proposed by the ODTR would expire in six months time.

The remaining respondents would be satisfied with an annual review.

6.1.3 Summary of *eircom* Response

eircom believes that a regular review of the "market envelope" within which the SLA operates should be carried out between *eircom* and the ODTR. Any material change in the "operational envelope" would give rise to a review of the SLA attributes, Carrier Services etc. as required.

This "market review" should be carried out on a quarterly basis with at a minimum an annual consultative review of the SLA. In the event that the quarterly market review identified substantive changes then this would trigger a review of the SLA.

6.1.4 Position of the Director

Without prejudice to her powers to direct amendments to the SLA regime at any time the Director proposes that a full annual review with 6 monthly interim reviews should be the norm. The next full annual review will take place in November 2001, at the latest, to come into effect on 1 December 2001.

Eircom will move to EU best practice levels for delivery of leased line during 2001. In that context the Director proposes to consult widely with users, relevant state agencies and the industry concerning the standards required for Ireland to be considered a prime location for global investment. This review will start and conclude in early 2001 and will take account of the needs of users for broadband services in Ireland. Following that process an earlier review of the SLA regime (to that scheduled for completion by 1 December 2001) may be necessary.

6.1.5 Reporting Requirements

The Director requires eircom to provide her with periodic reports on items including, but not limited to:

- The carrier services order book size by service
- The proportion of orders by service which have passed their delivery date
- Average delivery times within specified delivery timeframes.
- The proportion of orders by service which have passed the date defined as “typical” using the figure “A” as defined earlier.
- The proportion of “standard” deliveries versus “non-standard” for OLOs and a comparison with *eircom*’s retail arm.
- The level of penalty claims submitted along with the amount of penalty payments made.

Notwithstanding eircom’s publication obligations under the Measuring Licensed Operator Performance Programme the Director may direct eircom to publish details of its delivery performance during the first 6 months of 2001.

6.2 Other Issues Raised by Respondents

6.2.1 Summary of Issues Raised

At the end of the Consultation Document the Director sought the views of the industry on any other pertinent issues relating to the Carrier Services SLAs.

Esat noted that Appendix 2 to ODTR/0078 was not included in the publicly available carrier services SLA which it had received and wished to clarify the status of that Appendix.

6.2.2 Director’s Comments

The Director’s position is that eircom cannot amend the terms or conditions of the SLA without her prior consent. Such a request should also be notified by eircom to the industry.

6.3 Summary of Directions from this Consultation

Through this consultation process the Director has determined her position on the following key issues:

- the following services shall be added to the scope of the SLA:
 - Leased line circuits between 64kbit/s and 2Mbit/s
 - Leased line circuits above 2Mbit/s whenever they become commercial offerings from *eircom*.
- the Service Alteration process shall be subject to the SLA (the Director has proposed some principles under which it will operate and expects an industry forum to refine these principles, as part of a programme to develop and O&M manual for carrier services).
- The Director has determined a revised set of service level attributes to be:
 - Acknowledgement of order
 - Order Validation – specifically the notification of a delivery date
 - Delivery Confirmation
 - Delivery of Service
 - Receipt of correct Order Completion Notice
 - Maximum repair time
 - Service Alteration.
- She requires that *eircom* publishes a set of agreed “exception” clauses for the maximum repair time attribute.
- the standards for the carrier services SLA for the following categories:
 - Acknowledgement of order
 - Order Validation – specifically the notification of a delivery date
 - Delivery Confirmation
 - Service Provisioning - specifically receipt of correct Order Completion Notice
 - Service Alteration.
- the penalty systems for the following attributes
 - Acknowledgement of order : £500 per instance
 - Order Validation – specifically the notification of a delivery date : £500 per instance
 - Delivery Confirmation : £500 per instance
 - The total penalty applicable for the above three measures will have a cap of £1,000 per service ordered. These penalties shall apply from 1 February 2001.
 - Maximum Repair Time : £500 per instance, plus refund of rental for the out of service period, rounded up to the nearest day. No cap applies to this penalty.

- There will be a revised penalty system for service provisioning per figures 2 to 5 and table 8. These penalties shall apply from 15 September, 2000.
- It is wholly appropriate that *eircom*'s standard terms and conditions shall include a set of clearly defined clauses for deliveries which are to be considered as "non standard". Despite their deviation from the standard, *eircom* shall always agree a delivery date for such services against which the SLAs and any applicable penalty payment can be measured.
- The basic list of clauses for the terms & conditions is attached to this document as Appendix A, and shall be included in *eircom*'s revised SLA as a result of this consultation process.
- There shall be a system for automatic penalty payment that *eircom* shall implement by 1 February 2001. Until that time, the current system of penalty payment application shall remain in force.
- a full review of the SLA will take place in November 2001, at the latest, but the Director will monitor the performance of *eircom* over the coming months, through regular reports from carrier services on its performance.

6.4 Summary of Issues for Conclusion by a Carrier Services Operations & Maintenance Industry Forum (CSOMIF)

Whilst the Director has formed an opinion on the following, she is mindful that both the OLOs and *eircom* will need to provide further input to the development of the final position, such that the outcome is best suited to the market conditions and modes of carrier operations:

- Under the auspices of the ODTR, the industry shall agree a Carrier Services Operations & Maintenance Manual. This O&M manual shall include:
 - An agreed list of clauses in the terms and conditions under which the delivery of a carrier service shall deviate from the SLA “standard” and be subject to an SLA based on a mutually agreed delivery date
 - A full definition of the procedures that will take place between the parties for the processes identified in service provisioning and fault management.
- The Director will work with the industry to provide *eircom* with as much notice as possible of leased line requirements for the development of OLO networks.

6.5 Next Steps

The ODTR has concluded an extensive consultation with interested parties and having come to the conclusions set out in this report, this section sets out the further steps which are required to implement these conclusions.

- In accordance with Condition 18 of its General Telecommunications Licence, the Director will be Directing *eircom* to publish an amended statement of service levels by **1st December, 2000**.
- The new SLAs shall apply from 5.30pm on the 15th September 2000, the date the previous Direction (See ODTR 00/60) to *eircom* should have come into effect.
- The Director will review the published Statement to ensure that it conforms with the details as set out in the Decision Notice.
- The ODTR will work with *eircom* and the OLOs to ensure that any outstanding orders placed prior to the 15th September last are delivered without further undue delays.

APPENDIX A – TERMS & CONDITIONS FOR CARRIER SERVICES

Services will be provided within the standard delivery timescales for the specified Carrier Services, subject to the following terms & conditions:

1. All orders to *eircom* shall specify
 - circuit speed
 - circuit presentation at a end and b end including timeslots to use
 - circuit end addresses, including location of circuit termination point at each circuit end.
 - customer contact points for each circuit end
 - access arrangements to customer premises at each circuit end (signed rights of access from the b end customer - to cover *eircom* liabilities in respect of delivery and subsequent maintenance - will be required prior at the time of order).
 - billing address
 - written confirmation that NTE accommodation requirements (power supply, modem shelf etc. as specified in the *eircom* product description) will be available at each circuit end.
 - *eircom* cannot validate the order unless this information is provided.
2. The SLA standard will not apply in the following circumstances, in these cases a delivery date shall be agreed with the customer and this agreed date shall be the subject of the SLA between the parties:
 - Following survey *eircom* is required to build new network components (either core or access and including but not limited to SDH components). If this exclusion applies it will be advised to customers at the point of order validation.
 - B end customer refuses right of entry to *eircom* when an appointment has been made, or delays installation of the circuit for any reason. The “standard” will be extended by the number of days delay incurred as a result. Should the delay last more than 5 days, then the “clock” shall be re-started at a mutually agreed date, to reflect the requirement for *eircom* to reschedule its work for this delivery.
 - The OLO delays installation of the circuit for any reason.
 - One end of the circuit is more than 3km from the nearest *eircom* data network node.
 - In instances where *eircom*'s ability to deliver is constrained by industrial action on the part of *eircom*'s staff.
 - Force Majeure/Acts of God.
3. Where an order cannot be validated due to insufficient or incorrect information being supplied on the order form from the OLO, or in situations where *eircom* is unable to secure an appointment to gain access to the customer's premises, in

order to validate service requirements, the order clock will be stopped cancelled and a new application will be sought from the OLO, the “clock” will be stopped in the service provisioning SLA and for any of the intermediate processes until such time as the situation is resolved.

4. The order is the subject of the following exceptional circumstances but that the SLA's still apply from the revised agreed date:

- 4.1. Customer premises related.

- Transmission equipment extension required.
- Transmission equipment upgrade required.
- New or upgraded transmission path required
- New fibre required.
- Radio link required .
- Line upgrade/conditioning required.

- 4.2. Managed Leased Line Network

- New Managed Leased Line Network edge node required (equivalent to local access)
- New Managed Leased Line Network edge to Managed Leased Line Network core network transmission required.
- New Managed Leased Line Network core network node required.
- Managed Leased Line Network core network node extension required.
- New inter Managed Leased Line Network core node transmission required.

- 4.3. Wiring infrastructure.

- New Digital Distribution Frame required.
- New Optical Distribution Frame required.
- New Main Distribution Frame required.

- 4.4. Core Transmission Network

- New core transmission capacity required e.g. VC4 or higher and associated infrastructure.
- New core transmission node extension required.
- Major core transmission node modification/upgrade required.
- Where a customer's premises (Installation Site) is more than three kilometres from the local exchange or managed leased line network node.

- 4.5. Where there are more than 5 orders received in from an OLO regarding a particular B end site, in a given day the SLA standard shall only apply to the first five orders received on that day. The excess shall be deemed to have been received on the next working day and the SLAs attribute and other shall apply on this basis.

- 4.6. Where the volume of orders is such that it requires infrastructure build over and above that normally associated with the provision of the Services in a particular area - e.g. orders for a 2Mbit/s leased line are normally provided at the local end by way of HDSL. However, where there are multiple orders for such 2Mbit/s leased lines to the same premises, at the same time, there may be a requirement to build fibre systems. This applies both to single batches of multiple orders and orders for smaller quantities to the same address placed over a 5 working day period. This clause shall only apply to non-OLO premises, ie the B-end.
- 4.7. Where it is mutually agreed between eircom and the OLO to construct infrastructure beyond the immediate requirements of the ordered service in order to facilitate future deliveries and/or maintenance.
- 4.8. Where the order is treated as a project delivery, including the following
- Where customers order more than 4 leased lines with at least one common circuit end, the order being placed either at the same time or on a planned basis at regular intervals over a period of time or as part of an upgrade to an existing network or as roll-out of a new network.
 - Where customers specify non standard presentation of circuits (eircom standard presentation is G703 for 2mb and x21 for sub 2mb)
 - Where data nodes (rather than data modems) are being installed at customer sites which terminate multiple circuit ends. Such nodes being provided either at the customer request or in order to support delivery of subsequent orders and/or support maintenance of multiple circuits.
 - Where the bandwidth of circuit ordered exceeds 2mb. (Such circuits, and in particular the access link element, must be designed on a customised basis)
 - Where customers request special diversity arrangements either on access or core network elements.
 - Where customer request that service be provided without interruption to existing services which are delivered over the same network plant or NTE, or specify that such interruption be scheduled for outside of working hours.