Commission for
Communications Regulation

Submissions to Consultation

Consultation on Proposals for Local Loop Unbundling Pricing Methodologies

Submissions received from respondents

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An Coimisiún um Rialáil Cumarsáide
Commission for Communications Regulation
Abbey Court Irish Life Centre Lower Abbey Street Dublin 1 Ireland
Telephone +353 1 804 9600 *Fax* +353 1 804 9680 *Email* info@comreg.ie *Web* www.comreg.ie

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Non - Confidential

Response of BT Communications Ireland Ltd to ComReg Consultation for Local Loop Pricing Methodologies for Ireland 10th September 2008

1.0 Introduction

LLU is an important product to BT Communications Ireland Ltd and we welcome the opportunity to provide comments. Please find BT's response to this consultation in Section 2 below.

2.0 Detailed Response

Q. 1. Do you agree or disagree that there are only four possible methodologies (see Figure 5) for the setting of cost oriented LLU prices? Please explain your response in detail.

While it is possible to envisage other methodologies LRIC or LRAIC based methodologies are widely understood and accepted in regulatory economics, and enjoy the support of a considerable academic literature. FDC is also part of established accounting practice and BT therefore broadly supports the options set out in Figure 5.

Q. 2. Which of the 4 possible methodologies for the setting of cost oriented LLU prices would you recommend, (a) HCA, (b) CCA, (c) TD LRAIC or (d) BU LRAIC, to be the most appropriate methodology for ComReg to use as part of the modeling exercise of the Eircom Access Network? Please explain your response in detail.

In BT's view, HCA should not be the basis for setting the LLU tariffs as this methodology will not reflect prices of a competitive market as it links prices to historical decisions on investment or network designs which are likely to have been superceded. It follows that setting tariffs on the basis of HCA is offers no incentive to either achieving static or dynamic efficiencies,

Some of these drawbacks are addressed by applying a CCA valuation of the asset base. However, if the CCA adjustments only relate to price variations of inputs, this by itself may not ensure that costs were efficiently incurred to a standard of 'reasonableness'.

Some deficiencies may persist in the cost base even when the conversion is made to CCA. In Ireland an attendant practical difficulty in that that eircom does not at present prepare CCA accounts for the Access network.

BT would normally advocate a top-down cost estimation supplemented if necessary by a bottom-up estimate. BT understands that it is currently very difficult for ComReg to undertake a top-down estimate and under these circumstances; BT supports the careful use of BU-LRAIC.

BT notes ComReg's preference for adopting the BU-LRAIC approach in support of the objective of estimating the efficient forward-looking cost of LLU, and agrees that efficiency assumptions may be incorporated into a BU-LRAIC model. However, the BU-LRAIC approach necessarily involves decisions about the optimal network design, technology mix and cost efficiency which could produce a model removed from the real-word characteristics of networks as in actual operation at the present.

This deficiency could be compounded by developments over the period during the period of application in which the LLU tariff is in force which are not foreseen or estimated accurately in the model e.g. introduction of NGA.

Q. 3. Do you agree or disagree that the two possible methodologies for setting the monthly LLU rental charge, in Ireland, are CCA or BU-LRAIC? Please explain your response in detail.

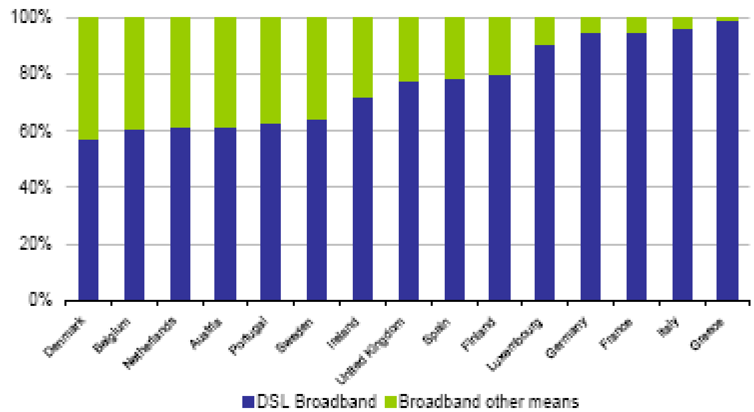
In BT's view, the absence of CCA accounts for the access network presents a serious difficulty to setting the monthly rental charge on this basis, and would therefore urge ComReg to include the preparation of such accounts in any future revision of the Accounting Separation obligation.

The lack of CCA accounts presents an obstacle to the creation of a TD-LRAIC model. This obstacle is not beyond resolution, but in the circumstances it would be pragmatic in this instance to set the tariffs on the basis of a BU-LRAIC model. This will have the benefit of allowing an assessment of asset valuations based on their modern equivalent basis.

Figure 7: LLU pricing methodologies and share of DSL and alternative technologies in EU15 countries in July, 2007

	DK	BE	NL	AT	PT	SE	IE	UK	SP	FI	LU	DE	FR	IT	GR
Top▼/HC/FDC					X					X				X	
Top▼/CC/FDC								X	X				X*		
Top▼/CC/FL-LRAIC			X												
Bottom▲/CC/FL-LRAIC	X	X		X		X	X					X			

Not available



Source: NRA's websites, Communications Committee Working Document Subject: Broadband access in theEU: situation at 1 July, 2007

Q. 4. Do you agree or disagree with the summary as set out above (Figure 7) in relation to the methodologies used in EU15 countries for the purpose of setting cost-oriented LLU prices? If not, please explain why. If there is any additional information which should be brought to ComReg's attention and you are aware of it, please include it in a detailed response.

BT would caution against making comparisons between specific accounting methodologies and outcomes such as competitive market shares when many factors will affect the latter. For all costing methodologies, there will be an inevitable margin of uncertainty and error in application at any point in time.

Q. 5. Do you agree with the proposition that, in general, where there is evidence that operators with their own alternative local loops (cable, FWA, etc.) have made, or have plans to make significant investments, that the preferred methodology in the EU 15 is BU LRAIC? Please explain your response in detail.

As a general observation, BT would prefer a single methodology across the entire network. Having variable methodologies which change according to perceptions of likely competition risks pre-empting the market itself if the consequence is to have prices higher or lower as a direct result of the change in the methodology.

Having two systems would also likely entail significant difficulties in reconciliation of aggregate accounts given the common costs which would straddle across areas of monopoly and competition. As noted above, BT can see merits in both top down and bottom-up estimates but given that eircom does not have CCA accounts, the former is essentially excluded at the current point in time as a possibility.

Q. 6. Do you agree with the proposition that, in general, where there is evidence that operators based on alternative local loops (cable, FWA, etc.) have not made significant investments to date and have no plans to do so that the preferred methodology in the EU 15 is CCA? Please explain your response in detail.

Please see our response to question 5.

Q. 7. Do you agree or disagree that Option 1 *(Apply CCA everywhere if alternative infrastructure is not likely to be available in a substantial area) is* not appropriate in Ireland given the investment in alternative platforms to date? Please explain your response in detail.

Please see our response to question 5.

Q. 8. Do you agree or disagree that Option 2 *(Apply BU-LRAIC where alternative access infrastructure will probably become available and competitive and apply CCA elsewhere.)* will most likely lead to geographically de-averaged prices? Please explain your response in detail.

BT suggests that a distinction can be made between on the one hand outcomes which arise out of different methodologies being applied in different areas and a conscious decision to de-average costing information and tariffs based on a specific methodology.

BT is not opposed to de-averaging in principle but if undertaken, this should be done in a consistent fashion across all related wholesale products if it is to achieve the necessary efficiency in the marketplace.

BT recognises that regulators may have a number of objectives which may conflict with respect to de-averaging. It is important to have transparency on decision making and reasons for adopting a policy with respect to de-averaging. Implementing differing methodologies may cause some practical difficulties as ComReg notes [5.20].

Q. 9. Do you agree or disagree that Option 3 (*Apply BU-LRAIC everywhere if it is likely that alternative access infrastructure will become available and competitive everywhere (or almost everywhere)* provides an appropriate incentive for investment in alternative infrastructure? Please explain your response in detail.

BT is broadly supportive of what ComReg is proposing but suggests that a single methodology is adopted.

Q. 10. Do you agree or disagree that ComReg should calculate the LLU price in accordance with the cost orientation principle taking into account the fact that some lines are more likely than others to be unbundled in the medium term? Please explain your response in detail.

Please see our response to Question 8.

Q. 11. Do you agree or disagree with ComReg's preliminary view that the "medium term" for LLU should be 2 to 3 years from the date of any decision on LLU pricing? Please explain your response in detail.

BT agrees with ComReg's proposal to set the pricing for 2 to 3 years recognising that there will inevitably be a trade-off between certainty and flexibility to changing market circumstances. In normal circumstances BT would advocate a slightly longer period of around 4 years. However given the nascent nature of the product and the WUA market in Ireland a shorter period is acceptable

BT is generally in favor of ceilings to prices (which may be index-linked) including where services are part of wider tariff baskets.

Q. 12. Do you agree that a price should be specified for the duration of the "medium term"? Please explain your response in detail.

BT supports the approach of pricing for the medium term and ensuring that there is absolute clarity in the marketplace. In this context, BT draws a parallel with the unsatisfactory situation which developed with respect to PPC Main Link Charges where the industry understood that one prices prevailed in the market only to find the incumbent claiming years later of their alleged freedom to significantly increase the regulated price without notice, consultation or agreement.

Q. 13. Do you agree or disagree with ComReg's preliminary preferred option, to calculate the costs by giving x% weighting to those exchange sites which may be unbundled by OAOs and also taking into consideration Eircom's NGN plans and 1-x% weighting to the other exchange sites where unbundling is unlikely to take place? Please explain your response in detail.

A key principle for BT is regulatory certainty and pricing stability over the medium term. However, if the incumbent were to make significant changes to their network over the coming years - as they have generally indicated through the industry presentations - then we need agile regulation to address such changes.

BT does not have sufficient knowledge of the relevant information to make an informed response to this Question.

Q. 14. Do you agree or disagree with the proposal to complement ComReg's preliminary preferred option by excluding very long loops, as described under Option C above, where there is no possibility that they could support broadband within the timeframe of this review? Based on your experience in the market, what is the maximum copper line length to support broadband? Please explain your response in detail.

We agree with ComReg's proposal that where there is indisputable evidence that broadband cannot be provided it is not appropriate to include the costs of such loops. DSL is accepted to work over a copper pair of up to approximately 6 km. After that distance the usable bit rates drop significantly and it can difficult to maintain synchronization with the network. However, technical progress may make such a distinction less relevant in the future and as a principle BT has some concerns on making adjustments which could induce volatility in prices.

Q. 15. Do you agree or disagree that there may be circumstances that might justify the review of the LLU price prior to the expiration of the suggested price control period? Please explain your response in detail.

BT can see some circumstances which might justify review prior to expiration of the control period but believes these should be very exceptional e.g. introduction of NGA and for the sake of stability it would be better to set the prices correctly at the beginning and avoid further intervention. Price shocks (sudden increases in price which have not been anticipated) are definitely to be avoided.

Q. 16. In order for ComReg to make fully informed decisions in relation to the above proposals please provide as much detail as possible on investment plans (i.e. Eircom or where you are an existing operator who has unbundled or have intentions to unbundle), both Core NGN and unbundling by exchange site over the medium term. Please provide both quantitative and qualitative detail where possible. (ComReg acknowledges the commercial sensitivity of this information and all responses will be held in the strictest confidence).

BT has unbundled 50 (soon to be 53) exchanges in total and is enabling many of these exchanges with its NGN technology to supports downstream bits rates of up to 24Mbit/s and a wide variety of customer applications and innovations. BT can provide additional information in confidence.

Q. 17. Do you agree or disagree with ComReg's preliminary view that LLU prices should be set in Ireland for a two to three year period from the effective date of any decision regarding LLU prices? Please explain your response in detail.

Please see our response to question 11.

Q. 18. Do you agree or disagree that LLU prices should be stable over the period of the agreed price control, or should they increase annually by the rate of CPI? Are there any other options that ComReg should consider? Please explain your response in detail.

It is also noticeable in Ireland that only LLU is subject to CPI price increases. As a principle BT considers that it is not unreasonable for prices to move in line with general inflationary pressures which are economy-wide. However, BT does not believe that *automatic* increases by the rate of CPI are necessarily justified – the merits of such a proposal are entirely case-specific to the individual circumstances.

BT is of the view that at this point in time, eircom has significant scope to become more efficient and to attain operational savings through a reduction in faults and re-working as well as offering the same processes to industry as it offers to itself. There is a danger that a CPI Plus regime will not incentivise eircom efficiency and reasonable justification is needed for whatever value of 'X' is chosen in any price cap regime applied.

In the longer term, BT believes that eircom would save considerable costs from using one set of processes to offer equivalent solutions rather than two as at present. As eircom rolls out its NGN and NGA platforms, it will have the opportunity to introduce equivalence and achieve economies of scale and scope across unified ordering platforms.

Q. 19. Do you agree or disagree that SLU is unlikely to be used outside the footprint of the cable network in the medium term? Please explain your response in detail

BT agrees that it is unlikely that SLU will be deployed outside the footprint of the cable network in Ireland for the following reason. The only application to make SLU viable for a non-volume deployment (i.e. outside cable footprint) is the niche market of a business park of high value business customers. However, to support SLU the operator would have to extend fibre to their cabinet in the local business park and obtain power. Once fibre has been brought to the business park, it is highly likely that connection to the incumbent's network would be avoided and direct fibre access to high value customers provided.

Q. 20. Do you agree or disagree that BU-LRAIC provides an appropriate incentive for investment in local infrastructure for SLU? Please explain your response in detail.

BT to date has not found it viable to invest in SLU in Ireland due to the high costs of obtaining backhaul to a SLU location which may only be able to serve around 400 customers and where the incumbent already has SMP market share.

BT would need much greater detail to be able to make an informed judgment as to whether or not BU_LRAIC would provide an incentive for SLU investment.

Q. 21. In order for ComReg to make fully informed decisions in relation to the above proposals please provide as much detail as possible on investment plans (i.e. Eircom or where you are an existing operator who has unbundled or have intentions to unbundle), both Core NGN and unbundling by street cabinet over the medium term. Please provide both quantitative and qualitative detail where possible. (ComReg acknowledges the commercial sensitivity of this information and all responses will be held in the strictest confidence).

Please see our response to question 16.

Q. 22. Do you agree or disagree with ComReg's preliminary view that SLU prices should be set in Ireland for a two to three year period from the effective date of any decision regarding SLU prices? Please explain your response in detail.

BT has found that the conditions in Ireland to deploy SLU have not been achieved on the current copper network; however changes brought about by Next Generation Access may alter the viability of SLU although at this stage it is not clear whether it will make it more or less viable.

It maybe helpful at this time to set SLU prices to assist prospective SLU seekers to evaluate their proposals. However, it is highly likely in the next two to three years that the SLU product may change significantly as access fibre and power become available at the incumbent's cabinet and the costs and viability of SLU may change significantly. This might be an exceptional development justifying review of a price control within the control period itself.

Q. 23. Do you agree or disagree that SLU prices should be stable over the period of the agreed price control or should they increase annually by the rate of CPI? Are there any other options ComReg should consider? Please explain your response in detail.

In accordance with the reasoning detailed for setting LLU prices, see answer to Q.18.

Q. 24. Do you agree, or disagree that the approach proposed by ComReg, in developing an expanded revised BU model, is a reasonable one given the length of

time that has elapsed since the last model was constructed and the availability of more sophisticated tools for building a model of the Eircom access network? Please explain your response in detail.

BT fully supports ComReg's proposal to update the BU model to reflect accurately the current costs in the market and also to take advanced of more sophisticated modeling tools.

End

2 Smart Telecom Holdings Limited

Smart Telecom - LLU pricing Methodologies - Consultation Reply

Smart

John Quinn
Director of regulatory affairs
Smart Telecom Holdings Ltd
3300 Lake Drive
Citywest Business Campus
Dublin 24

Mr. Liam Burke
Commission for Communications regulation
Lower Abbey St
Dublin 1

September 2008

LLU Pricing Methodologies – Consultation reply

Dear Liam,

Smart Telecom welcomes Comreg’s consultation on “Proposals for Local Loop Unbundling Pricing Methodologies”.

Main Points :-

- **Smart Telecom is Ireland’s largest provider of LLU services.**

- **Smart Telecom offers next generation services over LLU including Voice, Data, TV and Business services.**

<<SNIP – CONFIDENTIAL>>

<<SNIP – CONFIDENTIAL>>

<<SNIP – CONFIDENTIAL>>

- **We look forward to Comreg’s decision and future direction on this matter.**

Kindest Regards,

John Quinn

Answers to consultation questions – PUBLIC VERSION

Q. 1. Do you agree or disagree that there are only four possible methodologies (see Figure 5) for the setting of cost oriented LLU prices? Please explain your response in detail.

We agree that there are only four possible workable <<SNIP – CONFIDENTIAL>>

Q. 2. Which of the 4 possible methodologies for the setting of cost oriented LLU prices would you recommend, (a) HCA, (b) CCA, (c) TD LRAIC or (d) BU LRAIC, to be the most appropriate methodology for ComReg to use as part of the modeling exercise of the Eircom Access Network? Please explain your response in detail.

The method we would recommend is the BU LRAIC methodology as this method is based on analytical models, which include up to date technologies and efficient costs. <<SNIP – CONFIDENTIAL>>

Q. 3. Do you agree or disagree that the two possible methodologies for setting the monthly LLU rental charge, in Ireland, are CCA or BU-LRAIC? Please explain your response in detail.

We agree that the two most appropriate models in Ireland are CCA or BU-LRAIC. <<SNIP – CONFIDENTIAL>>

Q. 4. Do you agree or disagree with the summary as set out above (Figure 7) in relation to the methodologies used in EU15 countries for the purpose of setting cost-oriented LLU prices? If not, please explain why. If there is any additional information which should be brought to ComReg's attention and you are aware of it, please include it in a detailed response.

We agree with the summary set out. As each country will have a different combination of variants which will result in their choice of methodology. It has been shown without doubt that there is no case for “one size fits all” given the level of competition, Government policy, state investment etc in each given state in the past.

Q. 5. Do you agree with the proposition that, in general, where there is evidence that operators with their own alternative local loops (cable, FWA, etc.) have made, or have plans to make significant investments, that the preferred methodology in the EU 15 is BU LRAIC? Please explain your response in detail.

The BU model enables the incumbent to recover its investment and to continue maintaining its network. <<SNIP – CONFIDENTIAL>>

Q. 6. Do you agree with the proposition that, in general, where there is evidence that operators based on alternative local loops (cable, FWA, etc.) have not made significant investments to date and have no plans to do so that the preferred methodology in the EU 15 is CCA? Please explain your response in detail.

We agree with this approach, as set out in 4.85 it states that operators who choose this methodology hold less than 25% of the broadband market.

Q. 7. Do you agree or disagree that Option 1 *(Apply CCA everywhere if alternative infrastructure is not likely to be available in a substantial area)* is not appropriate in Ireland given the investment in alternative platforms to date? Please explain your response in detail.

We agree that this approach would be inappropriate, as proven by the experience in Ireland. As there is both cable and wireless already available in a substantial area in Ireland this method would be of no benefit nor give any further incentive for investment in alternative access infrastructure.

Q. 8. Do you agree or disagree that Option 2 *(Apply BU-LRAIC where alternative access infrastructure will probably become available and competitive and apply CCA elsewhere.)* will most likely lead to geographically de-averaged prices? Please explain your response in detail.

It is very difficult to predict how this would play out though by default and design we would agree that this is the most probable, though not guaranteed, outcome.

Q. 9. Do you agree or disagree that Option 3 (*Apply BU-LRAIC everywhere if it is likely that alternative access infrastructure will become available and competitive everywhere (or almost everywhere)* provides an appropriate incentive for investment in alternative infrastructure? Please explain your response in detail.

We agree that option 3 provides an appropriate incentive for investment in alternative infrastructure. Our rationale is broadly in line with that set out by ComReg and based on practical experience.

Q. 10. Do you agree or disagree that ComReg should calculate the LLU price in accordance with the cost orientation principle taking into account the fact that some lines are more likely than others to be unbundled in the medium term? Please explain your response in detail.

We agree that price should be based on cost orientation. <<SNIP – CONFIDENTIAL>>

Q. 11. Do you agree or disagree with ComReg's preliminary view that the "medium term" for LLU should be 2 to 3 years from the date of any decision on LLU pricing? Please explain your response in detail.

We fully support this view and approach and that in setting a medium term view it allows any remedial action to be taken based on actual experience.

Q. 12. Do you agree that a price should be specified for the duration of the "medium term"? Please explain your response in detail.

We agree that the price should be specified for the medium term as defined. This answer should be read in the context of answer 11 above.

Q. 13. Do you agree or disagree with ComReg's preliminary preferred option, to calculate the costs by giving x% weighting to those exchange sites which may be unbundled by OAOs and also taking into consideration Eircom's NGN plans and 1-x% weighting to the other exchange sites where unbundling is unlikely to take place? Please explain your response in detail.

We generally support this view. <<SNIP – CONFIDENTIAL>>

Q. 14. Do you agree or disagree with the proposal to complement ComReg's preliminary preferred option by excluding very long loops, as described under Option C above, where there is no possibility that they could support broadband within the timeframe of this review? Based on your experience in the market, what is the maximum copper line length to support broadband? Please explain your response in detail.

We support the view that very long lines must be excluded. <<SNIP – CONFIDENTIAL>>

Q. 15. Do you agree or disagree that there may be circumstances that might justify the review of the LLU price prior to the expiration of the suggested price control period? Please explain your response in detail.

We agree that there are circumstances that may trigger a price review prior to the expiration of the control period. There is little clarity in Ireland yet on the extent of eircom's NGN plans, in particular in relation to NGA (Next generation access) technologies and plans. Regardless, it would be wise to protect all parties to allow for a review based on experience and application of any new price control.

Q. 16. In order for ComReg to make fully informed decisions in relation to the above proposals please provide as much detail as possible on investment plans (i.e. Eircom or where you are an existing operator who has unbundled or have intentions to unbundle), both Core NGN and unbundling by exchange site over the medium term. Please provide both quantitative and qualitative detail where possible. (ComReg acknowledges the commercial sensitivity of this information and all responses will be held in the strictest confidence).

<<SNIP – CONFIDENTIAL>>

Q. 17. Do you agree or disagree with ComReg's preliminary view that LLU prices should be set in Ireland for a two to three year period from the effective date of any decision regarding LLU prices? Please explain your response in detail.

We fully support the preliminary view. <<SNIP – CONFIDENTIAL>>
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Q. 18. Do you agree or disagree that LLU prices should be stable over the period of the agreed price control, or should they increase annually by the rate of CPI? Are there any other options that ComReg should consider? Please explain your response in detail.

Prices should remain stable over the period unless CPI exceeds a predefined threshold to a high or extreme order, for example 10% in the previous 12 month period.

Q. 19. Do you agree or disagree that SLU is unlikely to be used outside the footprint of the cable network in the medium term? Please explain your response in detail

There have been many studies on the viability of SLU and in particular VDSL technology. <<SNIP – CONFIDENTIAL>>

Q. 20. Do you agree or disagree that BU-LRAIC provides an appropriate incentive for investment in local infrastructure for SLU? Please explain your response in detail.

We agree with this approach for a number of reasons:-

- It creates the best incentive to encourage investment
- It is a common policy for both LLU and SLU
- It allows eircom to cover costs

Q. 21. In order for ComReg to make fully informed decisions in relation to the above proposals please provide as much detail as possible on investment plans (i.e. Eircom or where you are an existing operator who has unbundled or have intentions to unbundle), both Core NGN and unbundling by street cabinet over the medium term. Please provide both quantitative and qualitative detail where possible. (ComReg acknowledges the commercial sensitivity of this information and all responses will be held in the strictest confidence).

<<SNIP – CONFIDENTIAL>>

Q. 22. Do you agree or disagree with ComReg's preliminary view that SLU prices should be set in Ireland for a two to three year period from the effective date of any decision regarding SLU prices? Please explain your response in detail.

As with full LLU, we fully support the preliminary view. <<SNIP – CONFIDENTIAL>>

Q. 23. Do you agree or disagree that SLU prices should be stable over the period of the agreed price control or should they increase annually by the rate of CPI? Are there any other options ComReg should consider? Please explain your response in detail.

As with full LLU, we believe prices should remain stable over the period unless CPI exceeds a predefined threshold to a high or extreme order, for example 10% in the previous 12 month period.

Q. 24. Do you agree, or disagree that the approach proposed by ComReg, in developing an expanded revised BU model, is a reasonable one given the length of time that has elapsed since the last model was constructed and the availability of more sophisticated tools for building a model of the Eircom access network? Please explain your response in detail.

We believe that the most appropriate approach to take is to use the model which most accurately reflects the true costs incurred by eircom for providing a service. This is simply logical. ComReg should use the best models and tools to hand to derive a cost model and should reflect this in the control applied. Therefore we agree with the approach outlined by ComReg given the time elapsed since the original model and the new information now to hand.

3 Magnet Networks Limited

Introduction

Magnet Networks welcomes the LLU Pricing Methodology review being undertaken by Comreg. As a significant investor in LLU in Ireland Magnet is committed to working with the various industry participants, including Comreg, eircom, Government and other OAO's to develop an efficient LLU market. Despite the slow progress made by the industry in developing an efficient market, and the resulting missed opportunity presented by the rapid adoption of broadband in the Irish market, Magnet believes there remains a significant opportunity in the medium term for companies who have invested in LLU. To this end Magnet supports Comreg's recent consultation and the broad thrust of their arguments.

Of relevance to our submission, Magnet has also invested in alternative broadband technologies, including direct Fibre to the Home deployments as well as our FWALA licences. Specifically Magnet's investment in FTTH is recognition of the medium term limitations of the copper infrastructure. While copper presents an efficient means to connect to a sizable market – assuming the underlying process is efficient – Magnet has recognised that in the Long Term fibre is the access method of choice. We raise this issue as the Pricing Methodology consultation paper seeks opinions on whether the impact of LLU pricing models on alternative technologies should be taken into account.

With regards to the consideration of the impact of LLU pricing on alternative technologies Magnet wishes to note that from its own experience the justification for the deployment of a FTTH development is independent of the availability of LLU. Specifically Magnet has and continues to develop FTTH in areas where there are unbundled exchanges. Magnet strongly recommends that the choice of LLU pricing methodology should be made based on the likelihood of achieving the lowest possible line cost without regard to theoretical impact on alternative technologies. As the largest FTTH network owner in Ireland and the UK we do not see a correlation between the availability of LLU at a marginally lower price and a disincentive to roll out FTTH – or vice versa.

FTTH is built on the back of a business model that foresees multiple revenue streams being realised over the one line more specifically TV, Multi-room viewing, security, highspeed (>24Mb) broadband, Video on Demand and voice services. The existing copper infrastructure cannot support these services in the same multitude as fibre. Copper has its limitations and Magnet recognises this. While the cost of deploying FTTH is higher than LLU, the revenue streams are greater as well as future proofed.

In the recent consultation on the Broadband Market the initial conclusion put forth by Comreg was that FTTH and cable were not related market to LLU and a small but significant change in the price of LLU would not result in a shift to or from those alternative technologies. Magnet assumes therefore that Comreg will not consider the impact of the LLU pricing review on these alternative technologies and therefore will seek the model which provides the lowest price outcome for LLU on an independent basis.

Magnet supports price stabilisation and long run clarity for investment purposes. To that end it supports longer periods between price reviews.

Magnet notes Comreg's recognition that LLU will only be deployed in urban areas which have sufficient scale and customer potential to overcome the economic hurdles presented by the process – including line charges, fault charges, unbundling costs as well as affordable backhaul. Magnet is supportive of Comreg's suggestion that the costs to be included in the review should only include exchanges that have the potential to be unbundled in the time frame covered by the review.

Q. 1. Do you agree or disagree that there are only four possible methodologies (see Figure 5) for the setting of cost oriented LLU prices? Please explain your response in detail

Magnet Networks agree with the fact that there is only 4 possible methodologies

Q. 2. Which of the 4 possible methodologies for the setting of cost oriented LLU prices would you recommend, (a) HCA, (b) CCA, (c) TD LRAIC or (d) BU LRAIC, to be the most appropriate methodology for ComReg to use as part of the modelling exercise of the Eircom Access Network? Please explain your response in detail

Magnet Networks believe the following:

1. HCA is not a suitable methodology for this marketplace.
2. CCA utilises historic data which may not be suitable when assessing the current market as the information that is utilised has to be acquired from eircom and the reliability of this information may be questioned.
3. TD-LRAIC utilises the incumbents accounting which has inbuilt inefficiencies and unlike CCA that accounts for these inefficiencies by recalculating costs to a current value.
4. BU-LRAIC this is the most efficient and ensures that eircom recovers investment cost within reason and it avoids utilising eircom's accounting records.

Q. 3. Do you agree or disagree that the two possible methodologies for setting the monthly LLU rental charge, in Ireland, are CCA or BU-LRAIC? Please explain your response in detail

Magnet Networks over believes that Comreg has made an accurate assessment that there are really only two possible methodologies namely CCA or BU LRAIC. Both of these methodologies try and take into account the inefficiencies that have arisen through time or discount inefficiencies to provide the most cost effect and efficient local loop.

Q. 4. Do you agree or disagree with the summary as set out above (Figure 7) in relation to the methodologies used in EU15 countries for the purpose of setting cost-oriented LLU prices? If not, please explain why. If there is any additional information which should be brought to ComReg's attention and you are aware of it, please include it in a detailed response.

As Magnet Networks are not aware of the methodologies used in other countries then it agrees with Comreg's summary.

Q. 5. Do you agree with the proposition that, in general, where there is evidence that operators with their own alternative local loops (cable, FWA, etc.) have made, or have plans to make significant investments, that the preferred methodology in the EU 15 is BU LRAIC? Please explain your response in detail.

As Comreg notes in paragraph 4.85 some of the countries do not comply with this proposition and thus, making a generic statement is too sweeping and tenuous. Therefore, it would be Magnet's contention that it is undecided whether the preferred methodology is BU LRAIC in Europe.

Q. 6. Do you agree with the proposition that, in general, where there is evidence that operators based on alternative local loops (cable, FWA, etc.) have not made significant investments to date and have no plans to do so that the

preferred methodology in the EU 15 is CCA? Please explain your response in detail

Again, this is the inverse of question 5 and Magnet contents the answer is the same.

Q. 7. Do you agree or disagree that Option 1 (Apply CCA everywhere if alternative infrastructure is not likely to be available in a substantial area) is not appropriate in Ireland given the investment in alternative platforms to date? Please explain your response in detail

Magnet Networks agree that there are already alternative access infrastructure exists i.e. FTTH, cable and some FWA.

Q. 8. Do you agree or disagree that Option 2 (Apply BU-LRAIC where alternative access infrastructure will probably become available and competitive and apply CCA elsewhere.) will most likely lead to geographically de-averaged prices? Please explain your response in detail.

This is a possible option however; as the potential of de-averaged pricing around Ireland would create a technological divide. It would re-enforce the urban/rural divide as well as stifling commercial growth in certain areas. However, on the other hand it would ensure the lowest cost in the popular exchanges. Magnet would suggest maybe utilising this method in conjunction with an incentive to unbundle the less attractive exchanges.

Q. 9. Do you agree or disagree that Option 3 (Apply BU-LRAIC everywhere if it is likely that alternative access infrastructure will become available and competitive everywhere (or almost everywhere) provides an appropriate incentive for investment in alternative infrastructure? Please explain your response in detail

Magnet Networks would suggest that alternative infrastructures should not be considered in deciding the pricing methodology for LLU. In Magnet Networks experience, we have unbundled the Belcamp exchange but yet we put fibre in the Belmayne housing development. Though economically it would have been more prudent to have just allowed the residents to utilise LLU however, we decided to future proof the development and provide it with more products over our network.

Q. 10. Do you agree or disagree that ComReg should calculate the LLU price in accordance with the cost orientation principle taking into account the fact that some lines are more likely than others to be unbundled in the medium term? Please explain your response in detail

Magnet Networks agrees with Comreg in its proposal to calculate LLU pricing in accordance with a cost orientation principle. Due to the economic viability of unbundling these lines taking into account number of useable units on the line e.g. length of line and number of houses on line and position of house on line it is necessary to make apply the cost orientation principle.

Q. 11. Do you agree or disagree with ComReg's preliminary view that the "medium term" for LLU should be 2 to 3 years from the date of any decision on LLU pricing? Please explain your response in detail. Consultation on proposals for Local Loop Unbundling Pricing Methodologies ComReg 08/56

From the outset it would be most prudent to utilise the methodology that ensures the lowest LLU pricing. Magnet Networks feel that LLU pricing and investment in other technologies are mutually exclusive and the LLU price does not affect a company's decision to invest in alternative technologies. Magnet Networks has invested in fibre to the home at a time when there was a boom in residential and commercial building. Due to the slow down in the building industry Magnet Networks fibre investment may well decrease. Wireless investment has taken place as people have been unable to get reliable broadband. Due to the long loops wireless will still thrive as there will still be a relatively large number of people requiring wireless connectivity irrespective of the LLU price.

Q. 12. Do you agree that a price should be specified for the duration of the "medium term"? Please explain your response in detail.

Magnet Networks believe that the price should be set the lowest possible. However, if there is a specified time period, then the pricing should be annually reviewed in light of infrastructure roll out, economic and social changes.

Q. 13. Do you agree or disagree with ComReg's preliminary preferred option, to calculate the costs by giving x% weighting to those exchange sites which may be unbundled by OAOs and also taking into consideration Eircom's NGN plans and 1-x% weighting to the other exchange sites where unbundling is unlikely to take place? Please explain your response in detail

Magnet Networks vehemently disagrees with Comreg's preliminary preferred option. As of yet eircom has not released their NGN plans. If eircom have made these plans available to Comreg, Comreg must remember that these are merely plans and may be unrealistic or unreliable in the time frame set out to roll out their NGN plans.

Q. 14. Do you agree or disagree with the proposal to complement ComReg's preliminary preferred option by excluding very long loops, as described under Option C above, where there is no possibility that they could support broadband within the timeframe of this review? Based on your experience in the market, what is the maximum copper line length to support broadband? Please explain your response in detail.

Magnet Networks agrees with Comreg's proposal to exclude very long loops and it has to be realistic and people at the end of these long loops will just not get a good or reliable service.

From Magnet Networks experience the maximum copper line length that can still support broadband is 3.5km.

Q. 15. Do you agree or disagree that there may be circumstances that might justify the review of the LLU price prior to the expiration of the suggested price control period? Please explain your response in detail

Magnet Networks agrees that there may be circumstances which would justify a review of the LLU price prior to the expiration of the control period. These circumstances would include the degradation of lines and the non-implementation of Eircom of its NGN roadmap and the lack of investment in LLU core infrastructure.

Q. 16. In order for ComReg to make fully informed decisions in relation to the above proposals please provide as much detail as possible on investment plans (i.e. Eircom or where you are an existing operator who has unbundled or have intentions to unbundle), both Core NGN and unbundling by exchange site over the medium term. Please provide both quantitative and qualitative detail where possible. (ComReg acknowledges the commercial sensitivity of this information and all responses will be held in the strictest confidence

As per separate input. **-** Separate input shall remain confidential.

Q. 17. Do you agree or disagree with ComReg's preliminary view that LLU prices should be set in Ireland for a two to three year period from the effective date of any decision regarding LLU prices? Please explain your response in detail.

Once the LLU price is set at its lowest possible rate then the market will adjust and there would be no need for Comreg to ever revisit LLU pricing and this it is moot whether the price is set for a defined period.

Q. 18. Do you agree or disagree that LLU prices should be stable over the period of the agreed price control, or should they increase annually by the rate of CPI? Are there any other options that ComReg should consider? Please explain your response in detail

As per question 17, utilising the most efficient pricing methodology would mean that the price is set at this lowest possible rate and thus the price would be consistently stable. The price should not be CPI linked as this would ensure that an operator can have a consistent business plan and allows for certainty in expenditure and budget planning. It would also allow an operator to budget for their investment in alternative infrastructures.

Q. 19. Do you agree or disagree that SLU is unlikely to be used outside the footprint of the cable network in the medium term? Please explain your response in detail

Currently, Magnet Networks agrees that SLU is unlikely to be used outside the cable footprint however, it should not be ruled out in the medium to long term.

Q. 20. Do you agree or disagree that BU-LRAIC provides an appropriate incentive for investment in local infrastructure for SLU? Please explain your response in detail

Magnet Networks agree that BU LRAIC provides an appropriate incentive in local infrastructure for SLU as it excludes all inefficiencies.

Q. 21. In order for ComReg to make fully informed decisions in relation to the above proposals please provide as much detail as possible on investment plans (i.e. Eircom or where you are an existing operator who has unbundled or have intentions to unbundle), both Core NGN and unbundling by street cabinet over the medium term. Please provide both quantitative and qualitative detail where possible. (ComReg acknowledges the commercial sensitivity of this information and all responses will be held in the strictest confidence).

As per separate input.**-** Separate input shall remain confidential.

Q. 22. Do you agree or disagree with ComReg's preliminary view that SLU prices should be set in Ireland for a two to three year period from the effective date of any decision regarding SLU prices? Please explain your response in detail.

As per question 17, the pricing methodology chosen should ensure the lowest price and thus the price need not be set for a time and it would be a long term pricing structure including SLU.

Q. 23. Do you agree or disagree that SLU prices should be stable over the period of the agreed price control or should they increase annually by the rate of Consultation on proposals for Local Loop Unbundling Pricing Methodologies 73 ComReg 08/56 CPI? Are there any other options ComReg should consider? Please explain your response in detail

As per question 18.

Q. 24. Do you agree, or disagree that the approach proposed by ComReg, in developing an expanded revised BU model, is a reasonable one given the length of time that has elapsed since the last model was constructed and the availability of more sophisticated tools for building a model of the Eircom access network? Please explain your response in detail.

Magnet Networks agrees with Comreg's proposal to expand the revised BU model.

4 UPC Communications Ireland Limited

UPC Ireland response to ComReg's consultation on Proposals for Local Loop Unbundling Pricing Methodologies

Introduction

- UPC Ireland welcomes the opportunity to respond to ComReg's consultation on proposals for local loop unbundling pricing methodologies.
- Our response is limited to more strategic comments on ComReg's proposals. We do not therefore discuss the draft pricing methodologies themselves in any detail.

General comments on infrastructure competition

- Ireland has one of the fastest growing broadband penetrations in the EU. While it is fair to say our starting point may have been lower than other member states, the reality today is that over 85% of the homes in the State can now avail of broadband services via a variety of service providers over a number of platforms.
- While LLU has contributed to this increase in penetration, its contribution should not be over-estimated. The emergence of alternative network providers (cable, FWA providers) that have invested in end-to-end infrastructure have offered real choice to the end user, injected real competition into the marketplace, and have in no small way contributed to the increase in broadband penetration rates. Indeed it is our belief that broadband penetration is highest in those member states where platform competition is at its most intense.
- UPC Ireland recognises ComReg has an obligation to undertake regular market analyses for relevant (product) markets as designated by the European Commission. LLU has been designated a relevant market nationally, therefore any revision to LLU pricing should be on a national basis and not on a regional (eg urban versus rural) basis.
- UPC Ireland would respectfully suggest that ComReg should ensure that any new pricing does not undermine competition or continued investment by alternative network providers who will have to compete with service providers that may benefit from reduced LLU prices with no infrastructure investment costs.
- As with any commercial entity, platform providers – incumbent or otherwise - need to exact a return on their infrastructure investments. Regulatory intervention that reduces a platform operator's ability to recover investment costs may adversely affect future investments by the same provider. It will be important therefore that ComReg strikes a balance between the need to ensure LLU pricing continues to be charged fair, reasonable and non-discriminatory basis and that any proposed reduction in pricing will not undermine future network upgrades by the incumbent or indeed undermine continued investment by non-SMP providers in alternative infrastructure.

Specific comments on the draft consultation

- With reference to Section 3.8 which discusses the UPC Ireland's business presence in the Irish market, it is important to note the following :
    - While our MMDS network is indeed almost national, it should be noted that UPC Ireland does not calculate the number of potential customers based on the actual reach of the network. Rather the company calculates the potential reach of our MMDS service to those homes that have the necessary equipment installed in the home (in a similar fashion to cable where 'homes passed' is determined by the number of homes in cabled areas). It is for this reason ComReg will note we record the total number of 'homes passed' for our combined cable and MMDS network in Ireland as being 863,300 (Q2/ 2008) and not as 1.2million as referenced in ComReg's document.
    - As correctly stated UPC Ireland is not in a position to offer broadband services to its MMDS customer base as we are limited – by our ComReg licences – to offer one-way services over this network. Taking this and the amended calculation of the number of homes passed into account, this would imply our reach is not as "widespread" as the consultation document implies, and this reference should therefore be amended accordingly.

5 Vodafone Ireland Limited

Vodafone Response to the ComReg Consultation on Proposals for Local Loop Unbundling Pricing Methodologies

Introduction

Vodafone welcomes the opportunity to respond to this consultation on proposals for Local Loop Unbundling pricing methodologies. Our views in relation to ComReg's consultation proposals are set out fully in response to the consultation questions below.

Response to Consultation Questions

Q.1. Do you agree or disagree that there are only four possible methodologies (see Figure 5) for the setting of cost oriented LLU prices? Please explain your response in detail.

Yes. Vodafone is not aware of any other significant alternative methodology for the setting of cost oriented LLU prices than those set out by ComReg.

Q2. Which of the 4 possible methodologies for the setting of cost oriented LLU prices would you recommend, (a) HCA, (b) CCA, (c) TD LRAIC or (d) BU LRAIC, to be the most appropriate methodology for ComReg to use as part of the modelling exercise of the Eircom Access Network? Please explain your response in detail.

Vodafone considers that the BU-LRAIC methodology is the most appropriate to use for the setting of cost oriented LLU prices for existing LLU products. This methodology is optimal as prices will be set on the basis of an independent engineering model rather than on the SMP operator's actual costs. However ComReg must have due regard for the possibility that the engineering rules underlying the BU-LRAIC model may not be followed practice in the real world. There is a significant likelihood that the BU-LRAIC model may be over-engineered and that the LLU prices derived from the model may therefore over-estimate the efficient cost of providing these wholesale services.

Vodafone considers that the development of separate BU-LRAIC and TD-CCA models would address this concern. A reconciliation of the results obtained from the application of each of the methodologies, with the output of the TD-CCA approach being used to verify the prices derived from the BU-LRAIC model, would act as a check on any potential over-estimation of the costs of LLU provision for an efficient operator.[1]

Vodafone acknowledges that eircom does not currently prepare CCA accounts for the access network at this time and that a requirement to prepare these prior to a final decision on regulated LLU prices could considerably delay the completion of the ongoing review. We therefore consider that it is appropriate to set prices for existing LLU products on the basis of a BU-LRAIC methodology, but that particular care should be taken to ensure that it is based on optimal engineering rules. ComReg should move to require the preparation of accounts on a CCA basis

[1] In practice the easiest way to do this reconciliation will be to adapt the BU-LRIC model to produce (in addition to BU-LRIC estimates) pseudo-CCA estimates for the purpose of reconciliation alone. This avoids having to develop a TD-LRAIC model.

going forward so that a reconciliation approach using the results of both the BU-LRAIC and TD-CCA methodologies can be used to determine regulated prices in subsequent review periods.

Q3. Do you agree or disagree that the two possible methodologies for setting the monthly LLU rental charge, in Ireland, are CCA or BU-LRAIC? Please explain your response in detail.

Vodafone considers that ComReg's conclusion that the two candidate methodologies for setting the monthly LLU rental charge in Ireland are CCA and BU-LRAIC is correct, with ideally both approaches adopted and reconciled (see answer to Q2). HCA is conceptually incorrect, and development of a TD-LRAIC model would add little to a combination of CCA and BU-LRIC approaches.

Q4. Do you agree or disagree with the summary as set out above (Figure 7) in relation to the methodologies used in EU 15 countries for the purpose of setting cost oriented LLU prices? If not, please explain why. If there is any additional information which should be brought to ComReg's attention and you are aware of it, please include it in a detailed response.

Q5. Do you agree with the proposition that, in general, where there is evidence that operators with their own alternative local loops (cable, FWA etc.) have made or have plans to make significant investments, that the preferred methodology in the EU 15 is BU LRAIC? Please explain your response in detail.

Vodafone agrees, on the basis of ComReg's analysis of the situation in the EU 15 countries, that where operators of alternative local loop infrastructure (cable, FWA etc.) have significant market share and have, or plan to make, significant investments then the preferred methodology of the regulators in those countries has generally been BU-LRAIC.

Q6. Do you agree with the proposition that, in general, where there is evidence that operators based on alternative local loops (cable, FWA, etc.) have not made significant investments to date and have no plans to do so that the preferred methodology in the EU 15 is CCA? Please explain your response in detail.

Vodafone agrees, on the basis of ComReg's analysis of the situation in the EU 15 countries, that where operators of alternative local loop infrastructure (cable, FWA etc.) have not, and do not plan to make, significant investments, that the preferred methodology of the regulators in those countries has generally been CCA.

Q7. Do you agree or disagree that Option 1 (Apply CCA everywhere if alternative infrastructure is not likely to be available in a substantial area) is not appropriate in Ireland given the investment in alternative platforms to date? Please explain your response in detail.

Vodafone agrees that option 1 is not the optimal approach in Ireland. The application of the BU-LRAIC methodology, based on appropriate engineering rules, will best achieve the objective of setting cost-oriented LLU charges that strike a balance between effectively encouraging the development of alternative access infrastructure and the promotion of competition in the LLU access market.

Q8. Do you agree or disagree that Option 2 (Apply BU-LRAIC where alternative access infrastructure will probably become available and competitive and apply CCA elsewhere) will most likely lead to geographically de-averaged prices? Please explain your response in detail.

Vodafone is unsure whether or not Option 2 would lead to geographic de-averaging of prices. However, there would be clear concern that if price de-averaging did occur it would be undesirable from a social perspective as it would adversely affect the affordability of DSL broadband services for end-users in rural areas and raise Digital Divide concerns. In any event, as ComReg note, geographic CCA data may not be available.

Q9. Do you agree or disagree that Option 3 (Apply BU-LRAIC everywhere if it is likely that alternative access infrastructure will become available and competitive everywhere (or almost everywhere)) provides an appropriate incentive for investment in alternative infrastructure? Please explain your response in detail.

Vodafone agrees that the application of BU-LRAIC everywhere, subject to the qualifications set out in the response to question 2, will allow for the determination of cost oriented LLU prices that maintain the incentives for investment in alternative infrastructure.

Q10. Do you agree or disagree that ComReg should calculate the LLU price in accordance with the cost orientation principle taking into account the fact that some lines are more likely than others to be unbundled in the medium term? Please explain your response in detail.

Vodafone agrees that ComReg should calculate the LLU price on a cost oriented basis while following the principle that LLU prices should be set based only on the costs of those lines for which LLU is likely to be economically feasible in the medium term. The alternative would appear to be to allow over-recovery of costs by the SMP operator which would distort competition in the market.

Vodafone considers that adhering to the principle proposed by ComReg will lead to significant and justifiable reductions in LLU charges from current levels and this should also feed through into considerably reduced prices for wholesale broadband access.

Q11. Do you agree or disagree with ComReg's preliminary view that the "medium term" for LLU should be 2 to 3 years from the date of any decision on LLU pricing? Please explain your response in detail.

Vodafone considers that the medium term should be defined as a period of 3 years from the date of any decision on LLU pricing. This allows sufficient time to determine whether ComReg's assumptions on the likely development of unbundling at exchanges and the expansion of alternative local loop infrastructures are accurate, and whether a revision of the approach is warranted.

Q12. Do you agree that a price should be specified for the duration of the "medium term"? Please explain your response in detail.

Yes. Vodafone agrees that a price should be set for the duration of the medium term (3 year period) as this will provide the necessary high degree of regulatory certainty to operators in their business planning over the price control period.

Q13. Do you agree or disagree with ComReg's preliminary preferred option, to calculate the costs by giving x% weighting to those exchange sites which may be unbundled by OAOs and also taking into consideration Eircom's NGN plans and 1 – x% weighting to the other exchange sites where unbundling is unlikely to take place? Please explain your response in detail.

Vodafone agrees with ComReg's preliminary preferred option as the use of weightings gives due regard to a degree of uncertainty around the number of exchange sites that may be unbundled. A footprint of exchange sites where LLU is considered economically feasible that includes both currently unbundled sites and other sites based on eircom's expected roll-out of its NGN footprint and the plans of OAOs also appears to be the most appropriate option to use.

Q14. Do you agree or disagree with the proposal to complement ComReg's preliminary preferred option by excluding very long loops, as described under Option C above, where there is no possibility that they could support broadband within the timeframe of this review? Based on your experience in the market, what is the maximum copper line length to support broadband? Please explain your response in detail.

Vodafone agrees with the proposal to complement Option B with the approach of excluding very long loops for which the provision of DSL broadband is not possible.

Q15. Do you agree or disagree that there may be circumstances that might justify the review of the LLU price prior to the expiration of the suggested price control period? Please explain your response in detail.

Vodafone considers that the circumstances that might justify the review of the LLU price prior to the expiration of the suggested price control period should be exceptional in nature and clearly set out prior to the commencement of the price control. It is important that regulatory certainty is maximised over the full period of the price control so that all operators can have confidence about their input costs and the conditions governing their investments.

Q16. In order for ComReg to make fully informed decisions in relation to the above proposals please provide as much detail as possible on investment plans (i.e. Eircom or where you are an existing operator who has unbundled or have intentions to unbundled) both Core NGN and unbundling by exchange site over the medium term. Please provide both quantitative and qualitative detail where possible. (ComReg acknowledges the commercial sensitivity of this information and all responses will be held in the strictest confidence).

Q17. Do you agree or disagree with ComReg's preliminary view that LLU prices should be set based in Ireland for a two to three year period from the effective date of any decision regarding LLU prices? Please explain your response in detail.

Vodafone considers that LLU prices should be set for a three year period from the effective date of any decision regarding LLU prices as this will provide regulatory certainty to operators for a sufficient period. A three year period also has superior dynamic incentive properties. There is a stronger economic incentive for the SMP operator to achieve maximum efficiencies over a three year control period than a two year period as the fixed incumbent will be able to retain for itself the benefits of cost reductions beyond those anticipated by the BU-LRAIC model, in terms of increased profits, over the longer price control period. OAOs and their customers would benefit from lower LLU charges in subsequent price control periods.

Q18. Do you agree or disagree that LLU prices should be stable over the period of the agreed price control, or should they increase annually by the rate of CPI? Are there any other options that ComReg should consider? Please explain your response in detail.

Vodafone believes that a CPI-X price control mechanism is the most appropriate approach to setting cost oriented LLU charges over the period of the price control. This mechanism would allow the LLU price to adjust on an annual basis by the change in the CPI in the previous year, adjusted for the effect of any forecasted achievable cost efficiencies in the provision of LLU. Vodafone considers that this approach is superior to a requirement for stable nominal LLU access prices over the control period, as it allows for unexpected high general price increases that would prevent full cost recovery by the SMP operator (which are outside of the control of the SMP operator), but also provides consumers with the benefit of expected efficiency gains (which are within the control of the SMP operator)

Q19. Do you agree or disagree that SLU is unlikely to be used outside the footprint of the cable network in the medium term? Please explain your response in detail.

Vodafone agrees that SLU is unlikely to be used outside the footprint of the cable network in the medium term as the economics of service provision using SLU in areas of lower population density without sufficient sharing of duct and cabinet infrastructure are highly unfavourable. Even in densely populated urban areas, the economics of SLU deployment are likely to remain extremely challenging for OAOs for the foreseeable future.

Q20. Do you agree or disagree that BU-LRAIC provides an appropriate incentive for investment in local infrastructure for SLU? Please explain your response in detail.

Vodafone agrees that BU-LRAIC, based on the appropriate engineering rules, provides the correct incentives for investment in local infrastructure for SLU. The SLU price should be calculated using the same methodology as for LLU.

Q21. In order for ComReg to make fully informed decisions in relation to the above proposals please provide as much detail as possible on investment plans (i.e. Eircom or where you are an existing operator who has unbundled or have intentions to unbundled) both Core NGN and unbundling by exchange site over the medium term. Please provide both quantitative and qualitative detail where possible. (ComReg acknowledges the commercial sensitivity of this information and all responses will be held in the strictest confidence).

Q22. Do you agree or disagree with ComReg's preliminary view that SLU prices should be set based in Ireland for a two to three year period from the effective date of any decision regarding SLU prices? Please explain your response in detail.

Vodafone considers that the SLU price should be set for a three year period from the effective date of any decision regarding the SLU price as this will provide regulatory certainty to operators for a sufficient period. A three year period also has superior dynamic incentive properties. There is a stronger economic incentive for the SMP operator to achieve maximum efficiencies over a three year control period than a two year period as the fixed incumbent will be able to retain for itself the benefits of cost reductions beyond those anticipated by the BU-LRAIC model, in terms of increased profits, over the longer price control period. OAOs and their customers would benefit from lower SLU charges in subsequent price control periods.

Q23. Do you agree or disagree that SLU prices should be stable over the period of the agreed price control, or should they increase annually by the rate of CPI? Are there any other options that ComReg should consider? Please explain your response in detail.

Vodafone believes that a CPI-X price control mechanism is the most appropriate approach to setting cost oriented SLU charges over the period of the price control. This mechanism would allow the SLU price to adjust on an annual basis by the change in the CPI in the previous year, adjusted for the effect of any forecasted achievable cost efficiencies in the provision of SLU. Vodafone considers that this approach is superior to a requirement for stable nominal SLU access prices over the control period, as it allows for unexpected high general price increases that would prevent full cost recovery by the SMP operator (which are outside of the control of the SMP operator), but also provides consumers with the benefit of expected efficiency gains (which are within the control of the SMP operator).

Q24. Do you agree, or disagree that the approach proposed by ComReg, in developing an expanded revised BU model, is a reasonable one given the length of time that has elapsed since the last model was constructed and the availability of more sophisticated tools for building a model of the eircom access network? Please explain your response in detail.

Vodafone agrees that ComReg’s approach is appropriate. A revised BU model will benefit from the availability of superior tools to build a model that more accurately reflects the access network.

The actual BU-LRIC model, including assumptions and all formulae, must be open to full inspection and consultation by stakeholders.

5 Eircom Limited

eircom Ltd.

Response to ComReg Doc. 08/56

Consultation on Proposals for Local Loop Unbundling Pricing Methodologies

DOCUMENT CONTROL

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Table of Contents

I. EXECUTIVE SUMMARY

- This Consultation, together with ComReg's analysis of the Wholesale Unbundled Access Market and the anticipated Bitstream review, are of critical importance to Irish consumers and the Irish economy, in particular given the pre-eminent role that balanced regional development under the Government's National Spatial Strategy will play in national economic recovery.

- eircom believes that this consultation is seriously flawed in both process and content. eircom is concerned that ComReg is seeking to construct an artificial 'price structure' to cater for the perceived demands of eircom's competitors rather than determining the most appropriate way to compensate eircom for use of its network and facilitate competition at a national level having objectively reviewed the conditions for competition on the national market for access services. The following errors in both process and content reflect eircom's concerns.

  - **Process**

- The timing is inappropriate. It prejudges the results of other ongoing consultations (e.g. WUA) and is calling their validity, and the validity of the current consultation, into question.

- The consultation purports to consult on the choice of costing methodologies when ComReg has, in fact, already built a new bottom-up model. eircom notes that ComReg does not appear to have conducted a cost-benefit analysis of the appropriateness of such a wide-ranging exercise.

- No assessment of the impact of ComReg's proposals has been conducted, especially on the recovery by eircom of its costs, and the ensuing consequence in terms of eircom's current national pricing structure.

  - **Content**

  The proposals under consultation are contrary to the central tenets of Government economic and social policy on balanced regional development and are also contrary to established regulatory policy and practice. They necessarily spell the end of geographically averaged pricing.

  This will have the following serious social impacts:-

- **Rural and semi rural communities will be penalised**: rural areas will inevitably be penalised with more expensive retail telecommunications services. This will be a direct result of ComReg's proposals.

- **The proposals undermine the Government's National Spatial Strategy (NSS) and ignore the aim of the National Development Plan** to achieve a better balance of social, economic and physical development across Ireland. In particular this consultation envisages a fragmented regulatory approach to telecommunications infrastructure development within the designated 22 national Hub and Gateway towns, in place of a uniform approach to encourage the step-increase in investment that is required.

- **There will be a significant negative consumer welfare impact**: the consumer welfare impact of requiring eircom to compete with a wholesale service priced to recover levels of network cost below the national average has been either overlooked or ignored by ComReg in this Consultation Paper. The consequential impact on retail and wholesale prices for other services has not been assessed by ComReg in the Consultation Paper. This is a serious omission which will have major impacts on consumers, operators and on the market generally.

- **The costing structure construct proposed by ComReg is artificial and signifies a desire to predetermine or contrive certain outcomes.** The methodology proposed by ComReg is inadequate to determine a cost-oriented price for LLU on the national market for local access and can only be explained by the desire to achieve an artificially low price for LLU. It would appear from ComReg's preliminary finding in the WUA Consultation that the WUA market is national that ComReg is of the view that the conditions for competition are similar across Ireland and that competition would benefit from the provision by eircom of access at cost-oriented price to unbundled loops in the entire geographic market defined on a national basis. This cannot be reconciled with ComReg's proposed methodology excluding certain areas on the basis of whether or not competition exists and/or will develop. A price which does not allow eircom to recover the national average cost of the local access network cannot be considered to be cost-oriented and constitute an inadequate and inefficient price which will result in encouraging LLU in areas already marked by infrastructure-based competition, while removing any incentives for operators to move to those rural areas considered by ComReg to be "unlikely to be unbundled". eircom notes further that very little information is being provided by ComReg on how it would, on an *objective* basis, decide the scope of such areas and that the likelihood, in any event, of making the wrong assessment is very significant.

- **The judgment of the European Court of Justice in *Arcor* does not support ComReg's proposition to use solely a bottom-up costing model.** While the Arcor decision does recognise that NRAs may use either a bottom-up model or a top-down model as appropriate for the purpose of arriving at a cost-oriented price for LLU, it does require, in any case, that the cost-oriented price be determined as much as possible, on the actual costs incurred by an operator. This means that, having chosen to use a bottom up model, ComReg must take adequate account of the limitations of theoretical models and the subjective nature of assumptions made, and mitigate the associated risks. Mitigation should take the form of a series of checks and comparisons with actual financial and operational data to ensure that the network inventory generated by the model is representative of the inventory of equipment operated by the operator, that this inventory is accurately translated into capital cost, that proper account is taken of the operational cost of maintaining the network, and that the aggregate total cost generated by the model generates unit cost stacks that are readily comparable to those observed by the operator in reality, and that any differences can be explained and documented.

- Accordingly, eircom calls on ComReg to:

  - Suspend this consultation until completion of the market analysis of the wholesale unbundled access markets.

  - Clarify whether it genuinely intends to consider other modelling approaches suggested in response to this consultation and how that process will be implemented.

  - Explain how it intends to reconcile geographically de-averaged prices with current Government policy moves to broaden broadband provision.

- Recognise that the implementation of an obligation of cost orientation, as interpreted in the Arcor decision, requires the use of Top-Down data for cross-checking the output of the Bottom-Up model.

II. THE CONSULTATION PROCESS

- **The Objective of the Consultation is Unclear**

- **ComReg appears to have already decided the methodology it is to use.** Most of the consultation document – and nine of twenty-four consultation questions – discuss the economic basis for selecting among the costing methodologies that might be used to inform the cost basis for pricing of Local Loop Unbundling (LLU) services. However, eircom has been engaging closely with ComReg and their consultants for approximately twelve months – at considerable effort and cost – to provide assistance in populating a Bottom-Up cost model. Our understanding is that the model is at an advanced state of completion.

- eircom has previously questioned the process being undertaken by ComReg in this case [redacted]. In particular, eircom considered, and continues to be of the view, that it is inappropriate for ComReg to first build an LLU costs model and then consult on the methodology underpinning the model in view of the fact that the model implies that a specific methodology has already been selected.

- In order for a consultation to be meaningful, the consulting body must be open to a change of methodology or policy if the process were to result in a compelling argument that a different methodology or policy was more appropriate. In view of the considerable resources committed to the current course of action, the purpose of this consultation is to be questioned.

- **ComReg should complete its analysis of the market for unbundled access.** The timing of this consultation is inadequate for a second reason, namely that ComReg has yet to complete the analysis of the market, or markets, that make up Wholesale Unbundled Access (WUA). This analysis may – or may not – find that eircom holds SMP in a market for Unbundled Local Loops. Only if such a finding results from that analysis, and ComReg finds that an obligation of cost-orientation is to figure among the appropriate "ex ante" remedies, will the matter of the current LLU Pricing consultation become relevant. For the avoidance of doubt, this response to the present consultation in no way indicates eircom's agreement that local metallic paths comprise a separate market under WUA and/or that eircom's obligation of cost-orientation remains appropriate.

- In this regard, eircom notes ComReg's reference that "*Eircom has SMP in the market for LLU by virtue of ComReg Decision No. D8/04. Eircom will continue to have SMP until such time as ComReg determines that it no longer has SMP, following a market analysis. Under Decision Notice D8/04, Eircom has a legal obligation of cost orientation, in relation to the price of LLU.*" While eircom does not disagree with this statement as such, eircom would like to point out that inbuilt in the current regulatory framework is the principle of regular and timely review of the competitive conditions prevailing on the markets concerned, so that only remedies are imposed – and continued, explicitly or implicitly – which are appropriate and proportionate to address the market failures identified. A period comprised between 2 and 4 years is generally considered adequate and ComReg itself in the consultation proposes to define the medium term as a period of 2-3 years.[1]

- It has now been over 4 years since the last review of the market for unbundled access and it is more than time to reassess prevailing market conditions and the need for an obligation of cost-orientation. While ComReg indicates that "*the consultation also takes account of changes in the Irish telecommunications market",* eircom would point out that the current Framework and Access Regulations prescribe the procedure which ComReg must follow to take account of such changes: this is the market review procedures set out in Regulations 27 to 35 of the Framework Regulations and Regulation 9 of the Access Regulations. This procedure is mandated precisely to assess issues such as the "*expected competitiveness of alternative access infrastructure in the medium term*" which ComReg proposes to use as the criterion to choose between methodologies. In view of such criterion (with which eircom does not agree), no choice can reasonably be made by ComReg pending completion of the WUA market review.

- It also appears to eircom that ComReg's proposals raise fundamental issues concerning the scope of the geographic market or markets concerned and the market failure sought to be addressed by ComReg's proposal for the implementation of the obligation of cost orientation. eircom submits that issues relating to market definition, market analysis and the justification of remedies for LLU must be reviewed in the context of the WUA Consultation prior to their implementation and that it is not appropriate for ComReg to prejudge the outcome of such analysis. eircom submits in this regard that ComReg's proposals are incompatible with an obligation of cost-oriented imposed in relation to a market that is national in scope.

- In this context, the present consultation on LLU pricing methodologies and the completion of a new BU model strongly suggest that ComReg has prejudged both the outcome of the WUA Consultation and the present Consultation.

- **Impact Assessment**

- As noted in eircom's response to ComReg's consultation on Market Analysis Wholesale Unbundled Access (ComReg Document 08/41 - Paragraph 74), ComReg has failed to conduct a regulatory impact analysis of the remedies proposed in the consultation, including the obligation of cost orientation.

- In particular it is clear from the present consultation that ComReg has not explored the legal, economic and market impact of simultaneously imposing an obligation of cost orientation on a single national market for wholesale unbundled access, whilst calculating prices for unbundled access services on the basis of the costs of servicing sub-sets of that national market.

- **Proposed Timelines**

- eircom had understood that ComReg intended two phases of consultation as part of the current pricing review – the current review on LLU methodologies to be followed by a consultation on the final LLU price to be set. This was confirmed in previous

[1] See Commission Recommendation of 17th December 2007 on relevant product and service markets within the electronic communications sector susceptible to ex ante regulation, and the Explanatory Note, and the Commission Guidelines on market analysis and the assessment of significant market power (2002/C 165/03).

correspondence [redacted]. This seemed the most logical way to proceed, in that, ComReg needed to finalise the methodology before arriving at a price. We are therefore concerned with the following extract from section 1.10 of ComReg's consultation paper – "…*Before that [i.e. a final decision on the methodology] occurs however, it is intended that a further consultation will take place in relation to the implementation and setting of a cost oriented price for LLU. The decisions to be made on foot of this consultation will be incorporated into any final decision in relation to the implementation and setting of a cost oriented price for LLU*". This suggests a parallel process, which eircom does not believe is appropriate, practical or transparent. ComReg's approach should be consistent with that outlined in previous correspondence, i.e. it should finalise the methodology before consulting on appropriate pricing.

- eircom proposes that ComReg proceed as follows:.

(i) Complete the Wholesale Unbundled Access (WUA) Market Review and determine the scope of the geographic and product relevant market and whether eircom has SMP in it. If eircom is found to have SMP, impose appropriate remedies, in light of the nature of the market failures identified.

(ii) If eircom is found to have SMP and subject to an obligation of cost-orientation, resume its Consultation on the appropriate costing methodologies to be used.

(iii) Having decided on the appropriate costing methodology, complete the exercise of building an appropriate cost model, consistent with the methodology chosen.

- eircom submits that this is the most logical and the only correct order in which to complete this process.

III. METHODOLOGIES FOR SETTING LLU PRICES: THEORY AND PRACTICE

- **Theory - Questions 1-3**

Q. 1. Do you agree or disagree that there are only four possible methodologies (see Figure 5) for the setting of cost oriented LLU prices? Please explain your response in detail.

Q. 2. Which of the 4 possible methodologies for the setting of cost oriented LLU prices would you recommend, (a) HCA, (b) CCA, (c) TD LRAIC or (d) BU LRAIC, to be the most appropriate methodology for ComReg to use as part of the modelling exercise of the eircom Access Network? Please explain your response in detail.

Q. 3. Do you agree or disagree that the two possible methodologies for setting the monthly LLU rental charge, in Ireland, are CCA or BU-LRAIC? Please explain your response in detail.

- eircom is unclear as to the reasons why ComReg requires input in relation to questions 1 and 2 in circumstances where ComReg has already decided, as evidenced by Question 3, to consider only (TD-)CCA and BU-LRAIC methodologies. eircom is also unclear why ComReg appears to attach such importance to the number of methodologies available. Notwithstanding this, on the issues generally concerned by Questions 1-3, eircom is of the following view:

The Choice of Methodology

- eircom generally agrees that, in devising a model to set cost-oriented LLU prices, three decisions must be made regarding:

    - the method for the valuation of assets (Historic Costs v. Current Costs);

    - the type of cost model to be used to assess the costs (Bottom-up v. Top-Down);

    - the accounting methodology (Fully Distributed Costs v. Forward Looking Long Run Average Incremental Costs[2]).

    For the reasons explained below, eircom disagrees with ComReg's apparent suggestion in Questions 2 and 3 that a choice of one methodology must be made to the exclusion of the other. eircom submits in particular that the merits and demerits of each of a bottom-up and a top-model model are such as to justify their use in tandem in order to achieve a truly cost-oriented price.

    <u>The Valuation of Assets </u>(Historic Costs v. Current Costs)

- The method for the valuation of assets is one of the key variables in determining the price of an asset-based service such as LLU as the return on, and depreciation of, assets make up a significant portion of the cost stack of an operator. The valuation of assets at **historic cost** accurately reflects the costs incurred by the operator in the past. However, given that in the case of long-lived telecoms assets (e.g. copper,

2 Methodologies based on stand alone cost and marginal cost are also available although they are rarely, if ever, used, because they are considered to provide inappropriate price signals.

trench), these assets may have been deployed in the distant past, and may be either fully depreciated, their net-book value may be significantly below the costs that would be faced by a new entrant. Accordingly, the use of historic cost valuation and net assets when determining prices may result in:

- Mixed investment incentives (no return is provided on depreciated assets, and the return on partially depreciated assets may be insufficient to justify the cost of new assets).

- Poor incentives to replace old assets (if prices have increased, the historic valuation undervalues them, and therefore provides inadequate return).

By contrast, the **current cost** revaluation of an operator's assets helps to create a more realistic proxy for the make or buy decisions faced by new entrants to the market. By pricing the assets concerned at the same rate as an OAO would purchase them, current cost revaluation of assets provides incentives for the operator to invest in new assets and incentives to invest in bypass technologies.

- On this basis, eircom agrees that current costs are the most appropriate for use in this context.

The Cost Model

- The purpose of constructing cost models in support of a cost orientation obligation is to develop an objective and transparent view of the way in which regulated products cause costs to be incurred. It is widely acknowledged however that all models used to project costs are subject to wide variations of output reflecting the subjective assumptions that support them. Bottom-up conceptual models in particular are generally acknowledged to lack the sophistication to simulate accurately the operating costs associated with a network optimised for capital costs that would be incurred by an efficient infrastructure operator.

- Insofar as an operator's actual costs are considered the best source of such data, 'top down' models that use actual financial records as the basis for the analysis are frequently used. Where 'bottom up' models, which use product volumes to derive theoretical networks and associated costs, are implemented, this is generally the result of the unavailability of top down costing data and/or a desire to generate results that reflect levels of efficiency that cannot easily be reflected in top down costing data.

- It should also be noted that, in the case where a specific model has been used for a relatively short period of time (when compared with the long economic life of infrastructure assets), the introduction of a new model causes, of itself, a great deal of regulatory uncertainty. This is particularly the case where the new model radically differs from the model currently in use. It is eircom's view that this is the situation in this case and eircom does not agree, in this regard, that the model proposed by ComReg would simply update the model currently used.

- Regulatory uncertainty works to the ultimate detriment of the very consumers that ComReg is mandated to protect. Specifically, regulatory uncertainty results in delayed or sub-optimal investment decisions by operators, the failure to provide the correct price signals to new entrants and reduced product development, which leads to sub-optimal consumer offerings. eircom believes that it is ComReg's obligation to avoid regulatory uncertainty to the greatest extent possible.

- This is consistent with the best regulatory practice as followed in other EU Member States. For instance, the BU model relied upon by BNetzA in Germany has been in use since 1998. Improvements to this model have been incremental rather than revolutionary, allowing a greater degree of forward planning on behalf of the regulator, the incumbent, and OAOs.

- In the context of the BU models currently used and proposed, eircom further submits that the best approach to avoiding creating such uncertainty is for ComReg to avoid using such a new bottom-up conceptual model in isolation: rather, top-down cost data, appropriately adjusted to current and future developments, which are more stable due to their grounding in "real world" decision making, must be used as a means of assessing the suitability of the results of a bottom-up model and in the price setting process.

The Accounting Methodology

(Fully Distributed Costs v. Forward Looking Long Run Incremental Costs[3])

(i) *LRAIC*

- Long run incremental cost (LRAIC) is defined as the incremental cost of providing a given service from among an operator's portfolio of services, assuming that the average cost is measured over a time frame over which all costs are variable. In order to ensure that all costs are recovered, the calculation of LRAIC can include an allocation of fixed and common costs attributable to a family of products and may include an allocation of fixed and common costs attributable to the full portfolio of products. Various methods exist to allocate these costs (including equi-proportional mark-up).

- Top-down implementations of LRAIC are based on the costs recorded in an operator's financial records, specifically the General Ledger and the Fixed Asset Register (adjusted for current costs). These costs are then allocated across products, and groups of products, using causal, objective and transparent attribution methodologies, in order to determine the costs attributable to each service. The TD-LRAIC model will then assess, using Cost Volume Relationships constructed for the purpose, the costs attributable to changes in the volume of demand for specific products and groups of products. Thus only costs attributable to the specific product (and the costs shared by the group to which it belongs) are included in the LRAIC of the product.

- Because TD-LRAIC-based prices are generated from the published and audited accounts of an operator, TD-LRAIC provides robust levels of assurance that the prices reflect the underlying costs incurred by the operator. Consequently, TD-LRAIC tends to meet the objective of ensuring that the price set is consistent with sending appropriate price-signals to the operator to incentivise them to continue to invest in their network. This will also help to set a price that is consistent with the objective of encouraging investment in bypass assets. However, because prices set using a TD-LRAIC analysis tend to reflect historical investment decisions, such prices may not necessarily reflect the costs of an optimally efficient forward looking operator. It is therefore not uncommon for regulators to mandate adjustments to be made prior to the determination of a price. These adjustments are often performed based on the outputs of a BU modelling analysis.

- Bottom-up implementations of LRAIC start with actual and forecast service demand data. These measures of demand are then used to dimension an efficient network

[3] Methodologies based on stand alone cost and marginal cost are also available although they are rarely, if ever, used, because they would provide inappropriate price signals.

using engineering rules derived from operators and equipment manufacturers. Once an efficient network has been modelled, equipment modularity rules and unit prices are applied to determine the long run incremental cost of each service provided by the network. Compared to TD models, bottom-up models tend to require far less operational and financial data from the operator and therefore tend to be simpler and quicker to implement.

- Because BU models do not start from the accounting records of the operator, their results cannot be reconciled with an operator's statutory and regulatory accounts in the same way as the outputs of TD models. In addition, BU models tend to be poor estimators of the costs associated with the operation and maintenance of networks because it is very difficult to reduce operating activities to a set of easily dimensioned engineering rules. Conceptual Bottom-Up models are very sensitive to a range of objective and subjective underlying assumptions and their outputs therefore require careful validation against costs actually incurred by operators.

- In context of the results generated by BU-LRAIC models, eircom considers that valuation based on GRC is appropriate and proportionate in the current context as it is consistent with the two objectives of promoting competition and encouraging investment in infrastructure. This is because, on a forward-looking basis, competition will be optimally promoted where existing and alternative operators are encouraged to build competing infrastructures. On the other hand, setting rates on the basis of valuation below the GRC of network assets could result in deterring efficient investment.

- If, however, some deduction from GRC were to be undertaken, eircom considers that it would not be appropriate simply to deduct accumulated depreciation, as recorded in the cost accounts. Whilst ComReg's proposal in this regard is not fully explained, eircom would be very concerned if an adjustment to reflect historic accumulated depreciation, or any method related to net to gross book value ratios, were to be adopted. A more appropriate deduction from GRC to NRC would recognise the remaining economic useful life of existing assets, not whether these assets have been depreciated for accounting purposes. This reflects the well-established notion that accounting depreciation does not typically yield year-on-year asset values that match the true economic value embodied in the asset. Adoption of such an approach will therefore run the risk of giving rise to inefficient market signals, since the decision as to whether it is economic to invest in infrastructure would be based, not on market values, but on purely accounting adjustments. An approach based on economic depreciation would better reflect the change in the economic value of assets – i.e. the discounted present value of net revenues generated by or attributable to that asset. eircom encourages ComReg to take these considerations into account as appropriate.

(ii) Fully Distributed Cost

- Fully Distributed Cost (FDC – also referred to as Fully Allocated Cost) models determine the unit costs of services by taking the total capital and operating costs incurred by an operator and allocating those costs across the full portfolio of services provided. This equates to a measure of average costs.

- As is the case with TD-LRAIC models, the direct connection to an operator's operational and financial accounting systems ensures that the output of FDC models are directly reconcilable with published statutory statements and that any adjustments that may be required can be properly accounted for in a statement of adjustments that highlights variations with the published statutory accounts.

- The unit cost results of FDC models can vary significantly compared to those of TD-LRAIC models. This is particularly the case where for products that are a minor part of the portfolio and/or where that product exhibits very low variable costs. In these circumstances TD-LRAIC models may generate a unit cost significantly lower than FDC values, unless a mark up for fixed shared and common costs is provided.

- It is critical to note, in this regard, that for products *such as LLU, which is the principal service offered by the Access Network, the results of FDC models and TD-LRAIC models tend to be similar,* particularly when fixed and common costs are included. A FDC model, when adjusted to reflect efficiency and network configuration considerations, can be a very good proxy for the costs and decisions faced by new entrants. As ComReg notes, Ofcom in the UK uses CCA FDC as the basis for determining Openreach's LLU line rental charges.

<u>Complementary Nature of the Models</u>

- To the extent that Questions 2 and 3 suggest that a choice of one methodology must be made to the exclusion of the other, eircom disagrees. Indeed, a common and effective approach to the setting of cost oriented prices is to contrast the results of both top-down and bottom-up implementations to ensure that the deficiencies of both modelling approaches can be mitigated to produce an economically robust answer.

- In this context, eircom broadly supports the use of an analytic BU-LRAIC cost model as part of a suite of models used to set LLU prices in Ireland. However, eircom is of the view that it is not safe to rely on a single model. This is because each modelling approach tends to over or understate some costs which must be recovered from LLU prices. The appropriate approach is accordingly to cross check the results of the BU-LRAIC cost model against Top Down cost information. Such a cross check would not necessitate a reconciliation between the top down and bottom-up models but would require reasonable explanations of any significant variances that might exist between the output of the Bottom-Up model and the equivalent Top Down figures.

- It is important in particular that a full set of costs is used, that is, that adjustments are made so that operator costs match the structure of the model. For example, the cost of providing LLU includes, inter alia, the direct capital costs of deploying the network, the costs of staff providing and maintaining service on that network, the indirect capital costs of facilities used by such staff, and the appropriate share of the common costs of operating an organisation such as eircom that should be allocated to services provided using the access network facilities. The best estimates of these last categories of costs are available from eircom's accounts. However, the levels of cost reported for the current eircom access network will, in general, need some adjustment before they can be used alongside a BU-LRAIC model for direct investment. For instance, if the BU-LRAIC model uses algorithms optimised to minimise investment in copper cable the resulting network could exhibit more joints per working path than is current eircom practice. Such a network would be more prone to faults – and faults at joints would be more difficult to localise. On the other hand a network complying with current Local Authority planning rules may have a higher proportion of underground cable than the network currently deployed by eircom – leading to a lower general fault rate.

- In support of its preference for a BU-LRAIC only model, ComReg indicates that eircom does not prepare Current Cost Accounting (CCA) accounts for the access network. ComReg goes on to infer that this means that TD-CCA information relating to LLU would not be available in time to support this review as the time and effort required to prepare such accounts would be prohibitive. However, this is mis-leading as eircom already carries out a CCA valuation of a large range of asset categories to comply with its obligation to provide an audited set of CCA/LRAIC statements for its Core Network. Given the level of common costs between the Access and Core networks, this means eircom already carries out a CCA valuation of a significant proportion of the assets that pertain to the Access Network. For example, the Core and Access Networks share the duct and pole infrastructure. As a result, both asset groups are valued on a CCA basis for the purposes of the Core Network accounts. Similarly, accommodation and transport assets support both the Core and Access networks and are also re-valued in their entirety when compiling the CCA accounts. In fact, the only significant asset relating to LLU which is not associated with the Core Network is the access copper cables. eircom believes that it would be possible to derive an estimate of the CCA valuation of Access Copper cables within the timeframe of this review. This CCA information together with other LLU cost information available from eircom's top-down accounts would provide a useful cross check on the results of the BU modelling exercise.

- In summary, eircom is of the view that a BU-LRAIC model for direct investment, cross-checked against eircom's actual cost information, may be appropriate to determine the level of direct capital cost to be recovered from LLU prices. The starting point for the other elements of cost to inform the setting of LLU prices should be eircom's cost accounting models – with adjustments for the nature of the network modelled using the BU-LRAIC methodology. Furthermore eircom would point out that the underlying assumptions that drive the output of the BU-LRAIC model should be clearly articulated and justified in the context of eircom's operational experience.

- eircom believes, in this regard, that this position is entirely consistent with the judgement of the European Court of Justice (ECJ) of 24 April 2008 in Case C-55/08, *Arcor AG & Co. KG v. Germany* to which ComReg makes extensive reference (in particular to the Opinion of its Advocate General, M. Poiares Maduro, of 18th July 2007).

The Arcor judgment

- eircom agrees that the judgment of the ECJ in the Arcor case, which concerns the interpretation of the principle of cost-orientation set out in Regulation no. 2887/2000/EC on unbundled access to the local loop, is a valid source of guidance for ComReg as the principles enunciated in the judgment apply mutatis mutandis to the principle of cost orientation set out in the Access Regulations, when imposed in circumstances similar to those of Regulation 2887/2000. eircom, however, believes that ComReg does not give sufficient consideration to the findings of the ECJ and that the conclusions drawn by ComReg from the judgment are incomplete, insofar as they ignore the critical role of eircom's own cost accounts in informing the calculation of cost-oriented prices for unbundled local loop services.

- The following aspects of the decision of the ECJ are particularly important in this respect:

- First, the ECJ makes clear that the principle of cost-orientation bears no specific meaning in and of itself and is not defined in the regulatory framework applicable to the proceedings. In this context, account must be taken, in addition to the wording of the relevant provision, of its context and the objectives pursued by the legislation in laying down the principle of cost orientation.

- On this basis, the ECJ finds that the aim pursued by the application of the principle of cost orientation is the gradual opening up of the market concerned to competition and that the local loop provider must be able through the cost-oriented price to cover the costs already incurred. This means that in setting the price for LLU, the notified operator must take account of quantitative elements which are in line with the costs incurred for the provision of that loop. It must also derive a reasonable return in order to ensure the long term development and upgrade of local access infrastructure.

- In response to the question whether the calculation basis to be used for interest and depreciation should be the replacement value of the assets after the depreciation made prior to the time of valuation, or exclusively the current replacement value, expressed in terms of current daily prices at the time of valuation, the ECJ rejected both Germany's arguments in favour of the systematic use of replacement (current) costs and Arcor's arguments in favour of the systematic use of actual (historic) costs. Instead, the ECJ found that it was for the national regulator to determine its approach in the light of the competitive situation in each market and the relevant policy objectives. *In doing so, the NRAs must take account of actual costs, namely costs already paid by the notified operator and forward looking costs,* the latter being based where relevant, on an estimation of the costs of replacing the network or certain parts of it.

- It is notable, in this regard, that the above principles enunciated in the context of Directive 97/33 and Regulation 2887/2000 are also found in the current framework, namely at Recital 20 of the Access Directive which sets out as follows:

> "When a national regulatory authority calculates costs incurred in establishing a service mandated under this Directive, it is appropriate to allow a reasonable return on the capital employed including appropriate labour and building costs, with the value of capital adjusted where necessary to reflect the current valuation of assets and efficiency of operations. The method of cost recovery should be appropriate to the circumstances taking account of the need to promote efficiency and sustainable competition and maximise consumer benefits."

- In relation to the use of analytical cost models, the ECJ finds that Community law does not preclude NRAs, in the absence of complete and comprehensible accounting documents, from determining the costs on the basis of an analytical bottom-up or top-down cost model. It is interesting to note that the ECJ in reaching this conclusion points to Recommendation 98/322 which provides that although bottom-up models are becoming highly sophisticated, they are as yet imperfect and reconciliation of top-down and bottom-up approaches is advised for the future. Recommendation 98/322, referred to in the Access Directive, continues in force and must accordingly be taken into account by ComReg.[4]

- eircom submits that, in accordance with the Arcor decision, where bottom up models are used for the purpose of implementing an obligation of cost orientation, there is an obligation to take adequate account of their limitations and the subjective nature of assumptions made and to act to mitigate the associated risks. Mitigation should take the form of a series of checks and comparisons with actual financial and operational data to ensure that the network inventory generated by the model is representative of the inventory of equipment operated by the operator, that this inventory is accurately translated into capital cost, that proper account is taken of the operational cost of maintaining the network, and that the aggregate total cost generated by the model generates unit cost stacks that are readily comparable to those observed by the operator in reality, and that any differences can be explained and documented.

[4] See in this regard ¶ 94 of the *Arcor* judgment.

- It follows that the Arcor judgment requires that ComReg, before imposing on eircom the obligation to charge a certain price for LLU, determined through the use of an analytical model such as the one being constructed by ComReg, must reconcile such output of the pricing model against the costs actually incurred by eircom in order to ensure that these costs are effectively cost-oriented.

- **Practice: EU Benchmarking – Questions 4-6**

Q. 4. Do you agree or disagree with the summary as set out above (Figure 7) in relation to the methodologies used in EU15 countries for the purpose of setting cost-oriented LLU prices? If not, please explain why. If there is any additional information which should be brought to ComReg's attention and you are aware of it, please include it in a detailed response.   **Q. 5. Do you agree with the proposition that, in general, where there is evidence that operators with their own alternative local loops (cable, FWA, etc.) have made, or have plans to make significant investments, that the preferred methodology in the EU 15 is BU LRAIC? Please explain your response in detail.**   **Q. 6. Do you agree with the proposition that, in general, where there is evidence that operators based on alternative local loops (cable, FWA, etc.) have not made significant investments to date and have no plans to do so that the preferred methodology in the EU 15 is CCA? Please explain your response in detail.**

- Paragraphs 4.42 to 4.85 of the Consultation Paper include a whistle stop tour of methodologies used in the other Members States of the EU15 countries. eircom is at a loss to understand the objective pursued by ComReg in doing so other than looking for support of a decision already taken to use BU-LRAIC. This is an inappropriate approach, even combined with a pen picture of the competitive environment in each of the countries concerned, to arriving at an appropriate costing methodology.

- This is because the only correct approach to determining the correct costing methodology for an access network in Ireland must start from a market analysis of the WUA market including the current state of competition in the relevant market and the future trend in competition based on the range of technologies likely to be deployed in the WUA market, in Ireland. While eircom accepts that comparison with other countries may provide relevant information, such information is of contextual value only. ComReg's analysis is, on the face of it, too superficial to allow ComReg to draw the conclusion that ComReg presents. eircom notes in particular that no attempt appears to have been made to explain empirical data which diverge from the supposed rule and which accordingly do not support ComReg's theory. eircom notes further that ComReg's conclusions are also invalidated by a number of errors.

- In this regard, eircom does not agree with the summary of the methodologies used for setting LLU prices and is particularly concerned that the case studies used by ComReg where Bottom-Up analytical models are used do not accurately reflect the regulatory background in each jurisdiction.

- We have surveyed information from the regulators in each of Austria, Belgium, Denmark, Germany and Sweden (those cited by ComReg as making use of BU models) and note that the following:

    - In each case where BU models are used the stated reason for them being used is that top down data is either insufficiently accurate, unsuitable or unavailable.

    - For example, in a publicly available presentation, BNetzA says:

    "In case it is not possible to derive the cost of efficient service provision (very often the case), BNetzA can use alternative methods such as bottom-up analytical cost models or benchmarking to calculate the cost of efficient service

provision (the standard remains the same, just the method to calculate it changes, this is often mixed up)".

As mentioned above, such top-down data is available from eircom.

- Contrary to the information presented in the consultation document, PTS (the Swedish regulator) does not solely use a BU model. It uses a hybrid model, which is based on a comparison between a BU analytical approach and the TD information provided by the incumbent.

- Accordingly, and in line with the best-practice adopted by other European regulators, as well as Recommendation 98/322, eircom calls on ComReg to make full use of the TD data available to it for the purpose of cross checking the outcome of the BU model currently under development.

- eircom also submits that the data available to it contradict ComReg's suggestion that "*in general, where there is evidence that operators with their own alternative local loops (cable, FWA etc.) have made, or have plans to make significant investments, that the preferred methodology in the EU 15 is BU LRAIC*".

- In this regard, eircom does not agree that the choice of costing methodology is determined by the extent of alternative access technologies. The extent of cable TV network deployment is a good proxy for the deployment of alternative access technologies. We have combined figures for number of Cable TV homes passed (sourced from Dataxis: Cable 3 Play RGUs Europe, Q1 2008) with household figures (sourced from eurostat) and note that:

    - In Austria, where ComReg says BU is used, 43% of homes are passed by cable. In Denmark, where ComReg also says BU is used c.100% of homes are passed by cable.

    - Meanwhile, in Finland, where ComReg says FDC is used, only 50% of homes are passed and in the Netherlands, where ComReg says TD-LRAIC is used, 90% of homes are passed.

- eircom therefore submits that the degree of investment in alternative access infrastructure does not determine the costing methodology used by regulators.

IV. POSSIBLE METHODOLOGIES FOR SETTING LLU PRICES IN IRELAND

ComReg's Objective (¶ 5.1)

- eircom fundamentally disagrees with ComReg's proposal that "*because OAOs" are unlikely to unbundle 100% of exchanges, the price of LLU should reflect only the cost of those lines that are likely to be unbundled over the timeframe of this review"* and rejects any suggestion that eircom's current LLU prices, determined in accordance with a model developed with Industry and ComReg, are not cost-oriented. While eircom agrees with the proposition that there should be no over recovery of costs, in eircom's view a necessary corollary of this principle is the principle that there should be no under-recovery of costs. eircom believes that ComReg's proposals will lead to an under recovery of costs by eircom on a national basis which ComReg appears to have entirely ignored. A regulatory precedent for ComReg's proposal, such as France, can be relied upon only if it is taken into account in its entirety. This means, for France, assessing the consequences of the existence of a universal service fund compensating for, *inter alia,* the costs associated with the obligation of geographic averaging of tariffs. Failure by ComReg to include consideration of this issue and to clarify its position in this context is a serious deficiency in this consultation paper.

- **Answers to Questions 7-9**

Q. 7. Do you agree or disagree that Option 1 *(Apply CCA everywhere if alternative infrastructure is not likely to be available in a substantial area)* is not appropriate in Ireland given the investment in alternative platforms to date? Please explain your response in detail.

Q. 8. Do you agree or disagree that Option 2 *(Apply BU-LRAIC where alternative access infrastructure will probably become available and competitive and apply CCA elsewhere.)* will most likely lead to geographically de-averaged prices*?* Please explain your response in detail.

Q. 9. Do you agree or disagree that Option 3 (*Apply BU-LRAIC everywhere if it is likely that alternative access infrastructure will become available and competitive everywhere (or almost everywhere)* provides an appropriate incentive for investment in alternative infrastructure? Please explain your response in detail.

- eircom does not agree to ComReg's proposal that "*the expected competitiveness of alternative access infrastructure in the medium term should determine which of the methodologies is more appropriate in Ireland*." (¶ 5.10) or that, as ComReg suggests, the *Arcor* judgment supports ComReg's proposal at ¶ 4.39 that "*where there is no risk of deterring investment in alternative technologies, the net replacement costs and the data from the accounting system of the operator should be used (i.e., CCA methodology)*" and "*where such a risk arises, the combination of asset valuation at their GRC and of analytical cost models can be used*".

- On the contrary, the Court in *Arcor* appeared adverse to laying down such general maxims and emphasise that the approach decided by a regulator must be decided *in the light of the competitive situation in each market and the relevant policy objectives*.

Insofar as the opinion of an Advocate General is concerned, it should be noted that it is not binding in any way and is not authoritative for the purpose of interpreting EU law.

- In view of the above, eircom is of the view that a BU-LRAIC model may be used for the purpose of determining the prices for LLU applicable across Ireland, but only where the results of such a model is cross-checked against a those of a top down analysis based on eircom's on financial data.

- eircom refers to its response above to Questions 1-3 and Questions 4-6.

- **Answer to Question 10**

Q. 10. Do you agree or disagree that ComReg should calculate the LLU price in accordance with the cost orientation principle taking into account the fact that some lines are more likely than others to be unbundled in the medium term? Please explain your response in detail.

- eircom strongly opposes ComReg's proposal to set LLU prices on the basis of only part of the costs incurred by eircom in relation to its access network. eircom believes that ComReg's proposal is at odds with the principle of cost-orientation and is entirely inconsistent with eircom's current obligation of access which applies across all of its local network over Ireland, and with ComReg's proposal in the WUA consultation, to continue to define a single national relevant market for unbundled access. eircom submits that ComReg's proposals will not result in a cost-oriented price for LLU because it will not allow eircom to recover the legitimate costs associated with its national local access network.
- eircom further notes that ComReg has not indicated any of the means by which it would propose to determine whether a line is likely to be unbundled or not. eircom believes that such an assessment is to a large extent subjective and operator dependent. eircom is concerned in this regard that ComReg's proposals reflect a desire to predetermine or contrive a specific outcome.

- eircom submits that ComReg's proposal will inevitably lead to the geographic de-averaging of retail tariffs with adverse consequences on the affordability of services in rural and high cost areas and for socially vulnerable groups. This is contrary to clear Government policy on national economic development where specifically through the National Spatial Strategy initiative, industrial, social and economic expansion will be attracted away from the current major areas of concentration, in particular the Dublin region. It is also contrary to ComReg's own objectives (¶. 5.15 of the Consultation Paper refers).

- In this context, ComReg is clearly mistaken when it appears to consider that a single price for LLU across Ireland will frighten away the spectre of the de-averaging of retail prices. Option 3 (¶. 5.25 of the Consultation Paper) is no different from that point of view from Option 2. This is because ComReg fails to give any consideration to the fact that LLU prices are used by eircom, in accordance with the principle of non-discrimination, as an input, either directly or indirectly, to all of eircom's wholesale and retail services, which comprise a local access element. There is no doubt that these exchanges which OAOs consider uneconomic to unbundle are also less economic (that is more costly) for eircom to serve. eircom's current national pricing policy reflects average network costs calculated across the entire network reflected in eircom's current LLU prices. If, however, as a consequence of ComReg's proposals, the national price for LLU does not allow the recovery of the costs associated with the entire local access network, eircom will need to reconsider its pricing policy in order to avoid the under recovery of its legitimate costs.

Emergence of a Rural/Urban Divide for Retail Customers

- A lower LLU price will in all likelihood translate into OAOs offering lower retail prices for both narrowband and broadband services in order to gain market share from eircom and compete with other OAOs including other infrastructure-based operators. This could be achieved by targeting customers connected to unbundled loops (in urban areas) with particular packages priced to reflect the economies achieved both from the natural scale effects of the operator's network investment and the LLU price based on only part of the cost of the access network. In this new competitive urban environment, eircom would have no choice but to review its geographically averaged pricing policy where it is so allowed, namely broadband, and propose various retail offers differentiated on a geographical basis, to reflect the different input price of the local loops concerned and thus be on a competitive level playing field.

- Importantly, however, such an urban/rural divide would not be avoided even if eircom were to maintain geographically averaged pricing. Indeed, if eircom were to maintain a national pricing policy, having regard to the higher average cost incurred in relation to the local access network than its LLU-based competitors, eircom would become uncompetitive in urban areas and lose a significant number of its urban users. As a result, the full national network costs would have to be funded by a smaller subscriber base, disproportionately located in the rural areas not as well served by eircom's competitors. This would necessarily result in price increases for rural users. This means that urban users would benefit from lower prices at the expense of rural users and eircom's obligation to charge for universal services geographically averaged prices will be no protection in this regard.

- There is also no apparent consideration by ComReg of the potential impact of its proposals in the context of its plan (in tandem with the DCENR) to have a retail price cap on broadband services in rural Ireland. The implementation of both these proposals would mean that an LLU provider who may be successful in the NBS tender could not recover its full economic broadband costs anywhere nationally. It would be obliged to follow below-cost retail prices in urban areas driven by below cost LLU while being prevented under NBS regulations to charge in rural areas a price above the market-prevailing rate set in the urban areas. This is inherently unreasonable.

- eircom also notes that ComReg's proposal is tantamount to a self-fulfilling prophecy, in that it would deter any OAO who might wish to deploy LLU in an area of the country which ComReg had deemed to be "unlikely to be unbundled" to do so. This is because such a move would result in an update of the model assumptions to account for the larger number of exchanges likely to be unbundled, thereby resulting in an overall increase in LLU price. Not only would that higher price apply in relation to loops served by the additional exchanges but they would apply across the board, hence the reluctance of OAOs to move in the first place beyond those exchanges "likely to be unbundled". It follows that the proposed implementation by ComReg of an obligation of cost-orientation for LLU prices on the national market for access to unbundled loops is inadequate in addressing the market failure which ComReg identifies.

Impact at the Wholesale Level

- In the current retail-minus regime for bitstream, geographically de-averaged retail prices would automatically translate into geographically de-averaged wholesale offers. ComReg may note that this means that the impact on bitstream price will be most immediately felt by those very OAOs who replace eircom's bitstream services with self-provided bitstream service on selected low cost unbundled loops. De-averaged retail tariffs will imply Bitstream prices disaggregated into two separate sets of rates, with lower bitstream prices associated with the provision of services at exchanges including loops "likely to be unbundled" and higher prices associated with exchanges "unlikely to be unbundled".

- As mentioned above, the prohibition on retail de-averaging from retail product will lead to an increase of retail tariffs, supported mainly by rural users, which would translate through the retail minus regime in higher SB-WLR prices throughout eircom's network.

- De-averaged wholesale tariffs for bitstream and SB-WLR would also follow from ComReg's proposals in a cost-plus regulatory environment. Indeed, the principle of cost orientation as interpreted by ComReg in a context of non-discrimination and technology neutrality would also translate in different prices depending on the type of exchanges, that is, likely or unlikely to be unbundled, and/or whether bitstream is being purchased at all exchanges (in which case a national averaged price would apply).

- Pricing for leased line services delivered over eircom copper pairs will also be affected immediately by the ComReg proposal on setting LLU recovery of copper costs below the national average level. A worked example is included in Annex 1.

The situation in the UK and France

- An urban/rural price divide will not happen only if the cost differences between urban and rural lines are small or if the proportion of rural lines is small.[5] In this regard, the dispersion of population in Ireland and the UK is very different and so is accordingly the proportion of rural lines relative to urban lines.[6] This means that the fact that Ofcom's exclusion of a small percentage of lines in areas where LLU might not be economic has not resulted in de-averaged prices is of no relevance to Ireland.

- Insofar as France is concerned, eircom notes that the broadband environment could not be more different with ADSL representing 95% of broadband connections and mobile broadband virtually nonexistent. It is difficult to see much value in following the approach adopted in France, save for accounting the significant differences existing in the competitive environments, which ComReg does not propose to do.

- In any event, the situation in France does not support ComReg's proposals. ComReg may want to bear in mind that the French NRA found in 2005 that its reason for calculating LLU prices on the basis of a weighted average of the costs associated with lines according to the density of population had not held in practice, and that various factors, including among others local government action, had resulted in exchanges being unbundled regardless of assumptions concerning the economic viability of such proposals. Arcep thus noted that the hypothesis on which the method for calculating

[5] The benefits of de-averaging would not be worthwhile if there was a price only, say 20% higher for 5% of the lines: a 1% increase overall would be easy to implement, and allow the 95% to subside the 5%. However, if the difference in cost and price was large, and the proportion of rural lines was large, de-averaging will emerge. For example, if 40% of lines were excluded from the LLU price model, and these have a loop cost 50% higher than urban areas, then the national price needs to be 20% higher than the urban price.

[6] eircom refers to the report of DotEcon/Network Strategies of 28 August 2008 on Network Access Cost in Ireland.

LLU prices was based, namely that unbundling was unlikely beyond densely populated areas, did not in fact apply. Arcep further noted that progress in unbundling had brought the average cost for unbundled lines close to the average cost for all lines even though unbundling effectively took place mainly in the most densely populated areas. Arcep decided accordingly to calculate the costs for LLU on the basis of 95% of lines with 5% of lines corresponding to the longest lines in the network in less populated areas in relation to which France Telecom was already compensated for additional costs in the context of the universal service fund.

- **Answers to Questions 11, 12, 15 & 17**

Q. 11. Do you agree or disagree with ComReg's preliminary view that the "medium term" for LLU should be 2 to 3 years from the date of any decision on LLU pricing? Please explain your response in detail.

Q. 12. Do you agree that a price should be specified for the duration of the "medium term"? Please explain your response in detail.

Q. 15. Do you agree or disagree that there may be circumstances that might justify the review of the LLU price prior to the expiration of the suggested price control period? Please explain your response in detail.

Q. 17. Do you agree or disagree with ComReg's preliminary view that LLU prices should be set in Ireland for a two to three year period from the effective date of any decision regarding LLU prices? Please explain your response in detail.

- eircom believes that prices should, where and if appropriate, be set for the medium term and reviewed after three to four years in the context of the review of the markets concerned. This approach would provide an adequate level of certainty to both the network provider and the unbundlers while at the same time allowing proper account to be taken of rapidly changing technological and market dynamics, in accordance with the regulatory framework. A period of three to four years also appears to be reasonable and achievable having regard to the complex work programme associated with the review of costing and pricing models for Access Networks.

- Subject to the prices being index-linked for the relevant period, eircom believes that the prices resulting from a solid BU model cross checked against actual costs incurred to account for appropriate levels of operating and indirect costs, should be sufficiently robust to apply through the price control period. While there might be major unforeseen circumstances that could require an early review of the LLU rental price, eircom believes that it would be in the interests of all operators that all know their input costs and prices throughout the price control period for business planning purposes. ComReg should not therefore review the LLU price prior to the expiration of the price control period unless there are major unforeseen circumstances.

- In this regard, were evidence provided that original assumptions are incorrect to a significant degree, then eircom agrees that a price review would be adequate but only in the case where the corrections concern assumptions of such nature that they can be made without conducting a competitive analysis of the markets (e.g., labour costs). eircom fundamentally disagrees however with ComReg's proposal that it would be open to ComReg to change the rules because the new prices do not produce the results anticipated by ComReg in terms of the number of unbundled exchanges.

eircom submits that such a position includes a very significant risk that the interests of one or more operators are mistaken for the public interest and that eircom's interests are prejudiced in an unfair and biased fashion. It would also introduce significant regulatory uncertainty and incentives for regulatory gaming. In this context, eircom believes that ComReg's view as to whether a sufficient number of exchanges have been unbundled cannot justify a price review and that such matters can only be considered within the wider framework of a market review which must in any case under EU law take place every 3 to 4 years (if not less).

- eircom would like to point out that a proposal for a price review of 2-3 years is inconsistent with ComReg's proposal in the WUA Consultation to give entrants buying LLU services a term of 5 years guaranteed access before eircom could upgrade the Access Network for another generation of technology.

  - **Answer to Question 13**

Q. 13. Do you agree or disagree with ComReg's preliminary preferred option, to calculate the costs by giving x% weighting to those exchange sites which may be unbundled by OAOs and also taking into consideration eircom's NGN plans and 1-x% weighting to the other exchange sites where unbundling is unlikely to take place? Please explain your response in detail.

- eircom disagrees with ComReg's preferred option. The net effect is to set an LLU price for unbundled or prospectively unbundled areas, and a different LLU price or cost for rural areas and long lines, which eircom's network arm would charge to eircom's retail arm. eircom would otherwise face an under-recovery of its costs. As explained in detail above in the response to Question 10, eircom strongly opposes any proposal to set the price for LLU on a cost basis which does not account for the entirety of eircom's local access network. While the negative impact on the recovery of costs will be likely more pronounced in relation to Option A, Option B also raises the issue of the recovery by eircom of all its legitimate costs and it will not avoid the creation of a divide between rural and urban areas.

- ComReg does not describe in any detail its preferred option B other than to say that a "*weighting of x% [would apply] to those exchange sites where LLU is likely to be practicable within the above mentioned timeframe and 1-x% to the other areas*". Nowhere in the document 08/56 is there any explanation of how this weighting of x% would be calculated.

- eircom notes that it is next to impossible to make meaningful comments in relation to Option B with no details whatsoever on the proposed value for *x.* The value of x will inevitably have a significant impact on the resulting weighted cost average and the extent to which it diverges from the national cost average. As mentioned above, eircom strongly opposes any costing method which does not allow a recovery of costs.

- **Answer to Question 14**

Q. 14. Do you agree or disagree with the proposal to complement ComReg's preliminary preferred option by excluding very long loops, as described under Option C above, where there is no possibility that they could support broadband within the timeframe of this review? Based on your experience in the market, what is the maximum copper line length to support broadband? Please explain your response in detail.

- eircom is opposed to ComReg's proposal to exclude very long loops on the basis that such loops could not support broadband. This ignores the fact that unbundled loops can be and are used for the purpose of narrowband services.
- Long loops can in fact be used for broadband services where additional equipment such as loop extension equipment, bonded pair technology or mini-DSLAMs is provided. While such equipment would have to comply with the CLFMP (which in turn might be modified to allow its use) it is not clear that a boundary for "long lines" can be set without clear reference to the minimum performance targets, and capabilities of emerging technology.
- The capability of a given line to support a particular specification of broadband depends not only on the line length but also on a range of other factors. These factors include cable diameter, material, binder size and presence of other services on adjacent pairs.
- eircom does not use line length when determining if a customer line is capable of supporting bitstream or retail broadband, for a given product specification. Instead, eircom performs measurements designed to estimate the attenuation on the line. Lines with estimated attenuation less than a threshold level pre-qualify for certain services (with a lower attenuation threshold for say 3Mbps service than for 1Mbps). Even then, eircom will sometime find the estimated attenuation is greater than actual, such that some lines which fail pre-qualification can actually support a broadband service.
- In addition, similar issues to those identified in response to Question 10 arise and eircom refers in this regard to its earlier comments.
- eircom also notes further that in France where long lines have been excluded from the cost base used to determine LLU pricing, such lines are the only ones to be excluded and only represent 5% of the lines overall. They have been excluded because France Telecom is compensated through a Universal Service financing mechanism for the additional costs incurred by it for providing services at nationally averaged tariffs on such lines. None of this applies to Ireland and ComReg has singularly failed to consider the issue of the increase in the costs incurred by eircom in maintaining geographically averaged prices where it is not allowed to recover such costs in average.

- **Answer to Question 16**

Q. 16. In order for ComReg to make fully informed decisions in relation to the above proposals please provide as much detail as possible on investment plans (i.e. eircom or where you are an existing operator who has unbundled or have intentions to unbundle), both Core NGN and unbundling by exchange site over the medium term. Please provide both quantitative and qualitative detail where possible. (ComReg acknowledges the commercial sensitivity of this information and all responses will be held in the strictest confidence).

- eircom does not believe that a consultation document seeking voluntary comments on proposals is the appropriate method for ComReg to collect information which it considers necessary to the performance of its functions. ComReg has been granted powers specifically for this purpose. If ComReg believes that operators' investment plans over the medium term are relevant to the issue of access to eircom's network, then such information should have been sought by legal direction and obtained from all relevant operators before the WUA Consultation Paper and this Consultation Paper. eircom would point out that the voluntary nature of participation to consultation means that ComReg may have no visibility of the NGA investment plans of other relevant stakeholders who do not respond to this Consultation Paper.

- In addition, to the extent that ComReg is seeking from operators information which would assist ComReg in defining a subset of loops "likely to be unbundled", then eircom believes that such process creates a regulatory gaming opportunity in that OAOs have an incentive to discover only a minimal number of exchanges in order to achieve as low a price as possible for LLU. This can only be avoided by ComReg requesting from all potential unbundlers complete and accurate information in relation to their plans in the medium term.

- eircom has already made a considerable amount of information available to ComReg in relation to our plans for investments in NGN/NGA. eircom will continue to keep ComReg appraised of developments in this regard.

- **Question 18**

Q. 18. Do you agree or disagree that LLU prices should be stable over the period of the agreed price control, or should they increase annually by the rate of CPI? Are there any other options that ComReg should consider? Please explain your response in detail.

- eircom finds that the total of the forward looking costs modelled on a BU-LRAIC basis for direct investments (from the exchange to the customer, from the cabinet to the customer, and from the exchange to the cabinet), together with the current costs of operating the Access Network both tend to increase over time. This fact together with the projected volumes of lines connecting customers to the eircom Access Network will indicate a further increase in unit costs over the price control period. LLU and SLU rental prices should both be set to track the movement of these unit costs over the control period and eircom believes indeed that CPI is good proxy for such movements. Therefore, LLU and SLU prices should be allowed to increase annually by CPI for the period of the new price control. This approach is consistent with the previous price control mandated by ComReg. An annualised CPI price regime is particularly appropriate in price controls that are intended to be in place for a number of years.

- eircom proposes that the current price control should be extended pending completion of the WUA market review and the determination of the appropriate method for setting LLU cost-oriented prices, if appropriate. For the time being, eircom notes that Decision D8/04 provides that eircom has an obligation to offer cost-oriented prices for LLU services, collocation and associated facilities on the basis of forward-looking long run incremental costs (FL-LRAIC). This obligation was further specified in D15/04, which provides for an annual price increase (not exceeding the change in consumer price index) in the monthly rental price for ULMP on 1st December 2005, 2006 and 2007. In the absence of completion of the WUA market review and any subsequent revision of the LLU price control, if the LLU prices were not to increase by the change in the CPI on 1st December 2008, it would in fact reduce in real terms. eircom believes that this is not consistent with the obligation of cost-orientation to which it is subject. eircom submits therefore that the current price regime should remain in place pending completion of the review for WUA. The annual increase in nominal terms over the last few years is supported by the LRAIC model used to set the price.

V. PROPOSED METHODOLOGIES FOR SETTING SLU PRICES

- Reference is made at ¶6.2 to the report of Analysys Consulting Limited on the viability of SLU published by ComReg. eircom notes that this report concluded that SLU is not as commercially attractive as LLU and that the business case for SLU is challenging even in Dublin where the larger cabinets are to be found. This does not appear to be taken into account in any way whatsoever by ComReg.

  - **Question 19**

Q. 19. Do you agree or disagree that SLU is unlikely to be used outside the footprint of the cable network in the medium term? Please explain your response in detail.

- eircom disagrees that SLU is unlikely to be used outside the footprint of the cable network in the medium term. Indeed eircom sees a number of factors that will make it likely that a new entrant considering SLU investments will specifically target areas beyond the coverage of the current cable network. Many provincial towns have Access Networks where the distribution is substantially cabinetised – with working line numbers such that a high proportion of telephony customers could be reached with high capacity broadband using cabinet launched xDSL technologies. The number of working telephony lines per cabinet in these towns is broadly in line with the range observed at urban cabinets.

- The availability of state funded infrastructure in the form of government MANs in those same towns means that backhaul services can be made available on an economic basis - bypassing eircom duct and exchange buildings. The absence of cable networks offering entertainment services will also result in higher potential market share for the SLU investor. Furthermore all the relevant information is already available to the operators considering this entry strategy. As this information is also available to ComReg through the Access Network cost modelling process, the generalised statement in paragraph 6.13 that "ComReg considers it is unlikely that OAOs will use SLU outside major urban areas" is not based on any proper analysis.

  - **Question 20**

Q. 20. Do you agree or disagree that BU-LRAIC provides an appropriate incentive for investment in local infrastructure for SLU? Please explain your response in detail.

- As mentioned in the response to Questions 1 and 3 above, eircom's view is that the objectives sought to be achieved by regulation include the fostering of efficient investment in infrastructure and the development of competition. Whether this requires that competition be promoted through unbundling, including SLU, is a question which needs to be answered in the context of the WUA Consultation and eircom refers to its response to Consultation in this regard.

- In this context, it is eircom's view that were an obligation of cost-orientation imposed on eircom in relation to the provision of access to its local network, then the price should be determined via a BU-LRAIC model cross-checked against actual costs incurred, using as a cost basis the entire local access network.

- Insofar as SLU prices are concerned, they should, in accordance with the principle of cost-orientation as defined by the ECJ in *Arcor*, be based on the direct capital cost of the distribution network from the cabinet to the customer, modelled using a BU-LRAIC analytic model and adjusted as appropriate for operating costs and indirect expenses.

- **Question 21**

Q. 21. In order for ComReg to make fully informed decisions in relation to the above proposals please provide as much detail as possible on investment plans (i.e. eircom or where you are an existing operator who has unbundled or have intentions to unbundle), both Core NGN and unbundling by street cabinet over the medium term. Please provide both quantitative and qualitative detail where possible. (ComReg acknowledges the commercial sensitivity of this information and all responses will be held in the strictest confidence).

- Please see above response to Question 16.

- **Question 22**

Q. 22. Do you agree or disagree with ComReg's preliminary view that SLU prices should be set in Ireland for a two to three year period from the effective date of any decision regarding SLU prices? Please explain your response in detail.

- Please see above response to Question 17.

- **Question 23**

Q. 23. Do you agree or disagree that SLU prices should be stable over the period of the agreed price control or should they increase annually by the rate of CPI? Are there any other options ComReg should consider? Please explain your response in detail.

- Please see above response to Question 18.

VI. RE.: OVERVIEW OF THE EXISTING EIRCOM MODEL USED TO SET PRICES

- **Question 24**

Q. 24. Do you agree, or disagree that the approach proposed by ComReg, in developing an expanded revised BU model, is a reasonable one given the length of time that has elapsed since the last model was constructed and the availability of more sophisticated tools for building a model of the eircom access network? Please explain your response in detail.

- First, eircom would like to note that the current model is not “eircom’s model” but a model developed in conjunction with ComReg and Industry including under the aegis of IAG2.

- Second, eircom reiterates that the model currently under development by ComReg cannot be described as an ‘expanded revised’ version of the previous model. The previous model was based on samples of eircom’s Access Network required to serve customers at a range of locations across the network. The costs associated with these samples were then extrapolated to the network as a whole to determine the total level of investment. The model under development employs an entirely new, and radically different, geo-marketing based methodology to optimise the layout of the country before commencing separate network configuration algorithms for housing areas and isolated houses

- Whilst eircom acknowledges that there have been developments in modelling tools and geo-location data services in recent years, eircom does not agree with ComReg that the age of the existing model is of itself, sufficient reason to replace it. In addition, in light of the relative cost and effort required to update the existing model, or to updated existing TD-LRAIC methodologies to include the access network, it is unclear why ComReg should chose to embark on the resource intensive development of the new model ahead of the completion of this consultation and the WUA consultation.

Annex 1

Geographic de-averaging of prices arising from the ComReg proposal to price LLU to recover the costs of loops in exchanges that are "likely to be unbundled" – Worked example

ComReg's proposal to set the price for LLU monthly rental to recover only those costs of loops in "exchanges likely to be unbundled" would have consequences on leased line pricing. eircom does not yet have visibility of the average cost per loop that the ComReg model calculates – or the de-averaging of that cost into a lower cost for "exchanges likely to be unbundled", and a higher cost for "exchanges unlikely to be unbundled". For the purposes of this example the following assumptions apply:

- the national average cost is €20 per month per loop
- 50% of lines are in "exchanges likely to be unbundled"
- the average cost in "exchanges likely to be unbundled" is €15 per month per loop,
- So it follows the cost per loop in "exchanges unlikely to be unbundled" is €25 per month.

eircom provides leased line services across the access network with the offerings up to 1 Mb/s provided on two copper pairs using a DSL modem. OAOs purchasing unbundled pairs at "exchanges likely to be unbundled" will be able to purchase pairs and connect their own DSL modems to compete with eircom in the provision of leased line services. So, clearly, eircom must move to distinguishing between low cost and high cost loops in the pricing of leased line services so as to meet this competition.

The first leased line service that will be affected by this cost de-averaging with pricing to meet local competition is the Partial Private Circuit (PPC) element – the End User Link (EUL). This service is priced to recover eircom's costs plus Weighted Average Cost of Capital (WACC) and the "Local End" element of this service is specifically set to recover the copper loop and modem costs. The effect of the de-averaging of copper costs on EUL Local End pricing will be to have two prices – to recover two distinct sets of copper costs. These are tabulated below. The current national price of €549 per annum is set on the basis of the copper cost recovered from the LLU monthly rental. The projected future prices are based on the assumptions stated above.

Table A1: Impacts of de-averaging on PPC EUL prices

Basis for recovery of copper costs from EUL Access	**Copper cost recovery per pair per month**	**Resulting 64 kb/s EUL Local End Annual Rental**
Current LLU price based on national copper costs	€16.04	€549
Future LLU price based on national copper costs	€20.00	€644
Future LLU price based on “exchanges **likely** to be unbundled” copper costs	€15	€524
Future LLU price based on “exchanges **unlikely** to be unbundled” copper costs	€25	€764

This change to PPC tail pricing will also be reflected through to equivalent changes for end-to-end leased line services. Each of these leased line services has two local ends. This will lead to quite substantial differences as between the (higher) price for a low speed provincial leased line where both ends are served from “exchanges unlikely to be unbundled” and the (lower) price for an urban leased line where both ends are served from “exchanges likely to be unbundled”.

7 IFA Telecom

Mr Liam Burke
Commission for Communications Regulator
Irish Life Centre
Abbey Street
Freepost
Dublin 1

September 5 2008

Dear Mr Burke

Firstly can I apologise for the fact that our comments in relation to ComReg's support on Local Loop Unbundling are a few days late. This is a regrettable oversite due to staff being away on holidays. At our last meeting with ComReg we were reassured that the Regulator would do nothing to disadvantage rural Ireland in relation to its responsibilities and in the implementation of evolving policy and market developments.

Whilst IFA/IFA Telecom is all for driving down communication costs, we are very concerned that the ComReg proposal, 1.8 in the Executive Summary, which effectively facilitates lower prices in urban and more densely populated areas. The corollary is that prices in the less densely populated areas will be higher. This is totally unacceptable to IFA and to the 40% of the population who live in less populated rural areas.

Since the foundation of the state, key services required by Irish people have been levied at the same rate whether they were living in a densely urban centre or a more rural setting. Unfortunately over the last number of years, services such as broadband have been denied to many rural Irish homes and businesses and has left them at a distinct disadvantage to urban centres. ComReg's proposal to reduce Local Loop Unbundling charges in urban centres will mean that the incumbent Eircom will still have to provide services in the more rural areas but will have less money to maintain, repair and upgrade rural exchanges if other operators are charged less for accessing the more profitable larger exchanges. This will inevitability lead to further distortion in services and to significant increases in costs for rural homes and businesses relative to those in the most urban centres. I had understood that public policy was to prevent, rather than give support, for an urban vs rural "digital divide" and am therefore surprised and disappointed at the proposal now being put forward by ComReg.

IFA are extremely concerned at any suggestion or proposal being implemented that will discriminate against rural Ireland and we urgently want to meet the Commission for Communications Regulation to highlight these concerns and to seek concrete assurances that rural Ireland is not going to be further disadvantaged by way of services and the cost of same.

I look forward to progressing this matter as soon as possible

Yours sincerely

Derek Deane
Deputy President