

Towerhouse LLP

Dispute referred to ComReg under and in accordance with the European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2011 (S.I. 333/2011) (the **Framework Regulations**) by Towerhouse LLP on behalf of:

Sky UK Limited (**Sky**)

BT Communications Ireland Limited (**BTI**)

Vodafone Limited (**Vodafone**)

Magnet Networks Limited (**Magnet**)

This dispute reference constitutes a request to ComReg to exercise its powers under Regulation 31 of the Framework Regulations in order to resolve this dispute.

Dispute relating to eircom's Current Generation
Access regulated contract terms

NON CONFIDENTIAL VERSION

16 November 2015

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SECTION I: PRELIMINARY INFORMATION

A. SUMMARY OF THE DISPUTE

1. Introduction and subject matter of the dispute

1.1 Sky UK Limited, BT Communications Ireland Limited, Vodafone Limited and Magnet Networks Limited (together the **Referring Parties**) are in dispute with eircom Limited (**eircom**) over the Service Level Agreements (**SLAs**) offered by eircom to the Referring Parties for repair on Current Generation Access (**CGA**) services. The CGA services include WLR, LLU and bitstream access.

1.2 The Referring Parties hereby refer the dispute to ComReg pursuant to regulation 31(1) of the European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2011 (**Framework Regulations**)¹ and request that ComReg handle, consider and make a determination resolving the dispute pursuant to regulation 31(2).

2. Subject matter of the dispute

2.1 Under a series of regulated contracts, the Referring Parties consume wholesale access from eircom for the services set out in Table 1.

Table 1: Regulated Services

Product	Reference SLA	Description
<u>Local loop unbundling</u> Unbundled Local Metallic Path (ULMP) Lines Sharing (LS) Combined GNP and ULMP (GLUMP)	LLU Standard SLA v13 v1	These services are Wholesale Local Access (WLA) services and are used to provide the physical connection between the home or business premise of an end-user and the local exchange.
Single Billing Wholesale Line Rental (SBWLR)	SBWLR SLA issue 2.8 v 1	This service enables Other Authorised Operators (OAOs) to offer retail line rental services in competition with eircom's own retail services. Line rental is offered along with calls to end-users.

¹ European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2011 (S.I. No. 333 of 2011).

Bitstream Managed Backhaul (Bitstream Access)	ADSL Bitstream SLA v 4	Bitstream IP is an access product based on ADSL technology, which enables an existing telephone line to carry both voice and data at the same time. Bitstream IP allows OAOs to sell their own branded Broadband services nationwide, without the expense and risk of building infrastructure from scratch.
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2.2 ULMP, GLUMP, Line Share, SB-WLR and Bitstream Access are all subject to regulation under regulatory obligations set by ComReg in its decisions in the following market reviews:

- (a) *Retail Fixed Narrowband Access Decision (2007) (2007 RNA Decision)*² and the *Wholesale Fixed Voice Call Origination and Transit Markets Decision (2015) (2015 FACO Decision)*³ for SB-WLR;
- (b) *Wholesale Broadband Access (Market 5) (2010) (2010 WBA Decision)*⁴ for Bitstream Access; and
- (c) *Wholesale (Physical) Network Infrastructure Access Market (Market 4) (2010) (2010 WPNIA Decision)*⁵ for ULMP, GLUMP and Line Share.

(ULMP, GLUMP, Line Share, SB-WLR and Bitstream Access are referred to collectively as the **Regulated Services** and the Reference SLAs are referred to collectively as the **Regulated Contracts**.)

2.3 Under the Regulated Contracts, eircom offers the following SLAs for repair on the Regulated Services. (The SLAs apply equally to each of the products described in Table 2).

² ComReg, *Market Review: Retail Fixed Narrowband Access Markets (D07/61)* (24 August 2007). (**2007 RNA Decision**).

³ ComReg, *Market Review: Wholesale Fixed Voice Call Origination & Transit Networks (D05/15)* (24 July 2015). (**2015 FACO Decision**).

⁴ ComReg, *Market Review: Wholesale Broadband Access (Market 5) (D10/81)* (1 October 2010). (**2010 WBA Decision**).

⁵ ComReg, *Market Review: Wholesale (Physical) Network Infrastructure Access (Market 4) (D05/10)* (20 May 2010). (**2010 WPNIA Decision**).

Table 2: SLAs under the Regulated Contracts

Service Level Agreement (SLA)	
Performance Metric	Performance Target
Repair time: 2 working days	77%
Repair time: 5 working days	92%
Repair time: 10 working days	100%

- 2.4 The Referring Parties consider that eircom’s current SLAs for repair on each of the Regulated Services are not fair, reasonable and non-discriminatory and are therefore in breach of eircom’s SMP obligations. The SLAs offered in the Irish market are significantly worse than those available from incumbent operators in many other EU member states. The Referring Parties consider that even the improved SLAs which they have requested are relatively modest by international standards and they therefore consider that their request is reasonable.
- 2.5 The Referring Parties have made all reasonable efforts to negotiate better SLAs by submitting two Statements of Requirements (**SORs**) to eircom in relation to the SLA for:
- (a) LLU services (on 24 April 2012); and
 - (b) SB-WLR services (on 29 May 2012).
- 2.6 The SORs were initially submitted by BTI but have both been adopted as industry SORs and are supported by all of the Referring Parties.
- 2.7 The matter was regularly discussed in many industry meetings – chaired by ComReg – between 2012 and October 2014. Despite this, eircom failed to produce any proposals which adequately address the Referring Parties’ request for modest improvements to the relevant SLAs.
- 2.8 In a series of industry LLU meetings chaired by ComReg between November 2014 and January 2015, the Referring Parties that were present at the industry forum advised eircom that they regarded the time period which had elapsed as being unacceptable and requested that eircom produce a “Best and Final Offer” (**BAFO**) in response to BTI’s original SORs. This was recorded as an action against eircom in the minutes of the industry meetings.
- 2.9 eircom finally responded to the request for a BAFO on 3 February 2015. Despite this, there is still a substantial gap between the Referring Parties’ very modest access request and eircom’s offer. (That gap is set out in Table 3). In making the BAFO, eircom emphasised that its position had been approved by eircom’s Chief Executive.

Table 3: Requested SLAs vs eircom's offer

Performance Metric	Current Target	Requested Target	eircom's Offer
Repair time: 2 working days	73%	85%	77% by 1 September 2015 80% by 2016 (conditional on reductions in "No Fault Found" levels)
Repair time: 5 working days	92%	95%	No change
Repair time: 10 working days	100%	100%	Reduction discussed

2.10 In the BAFO, eircom offered an improvement to the target SLA for repairs to be completed within 2 working days from 73% to 77% (which took effect from 1 September 2015). This contrasts with the Referring Parties' request that the SLA be increased to 85% (and strongly contrasts with the 100% SLA offered in many other EU member states). The Referring Parties accepted this offer because they regard any improvement in the relevant SLA (however small) as a positive step. However, the Referring Parties reiterate that they do not consider that eircom's offer constitutes a fair and reasonable SLA.

2.11 In addition to this, the Referring Parties remind ComReg that not only are the SLAs for repair in relation to each of the Regulated Services inferior to those available in other EU member states, but they are also inferior to the SLA offered by eircom to its retail customers, which eircom voluntarily agreed with ComReg as part of its universal service obligations in *Provision of Universal Service by Eircom: Quality of Service (PIP 3)*.⁶ In PIP 3, eircom offered the SLAs set out in Table 4.

Table 4: SLAs offered to retail customers under PIP 3

Service Level Agreement (SLA)	
Performance Metric	Performance Target
Repair time: 2 working days	82%
Repair time: 4 working days	95%
Repair time: 5 working days	96%
Repair time: 10 working days	99%

⁶ ComReg, *Provision of Universal Service by Eircom: Quality of Service (14/129)* (5 December 2014).

3. Position of the Referring Parties

3.1 The Referring Parties consider that by:

- (a) Failing to offer better grade repair SLAs for the Regulated Services; and
- (b) Failing to offer repair SLAs that are at least as good as the repair SLAs eircom offers to retail customers under PIP 3,

eircom is contravening the regulatory obligations set by ComReg in the 2007 RNA Decision, the 2015 FACO Decision, the 2010 WPNIA Decision and the 2010 WBA Decision.

3.2 In particular, the Referring Parties consider that eircom is not complying with its requirement to offer and provide network access to the Regulated Services:

- (a) In a fair, reasonable and timely manner. This is defined in each decision to include a requirement on eircom to: (i) conclude legally binding and fit-for-purpose SLAs; and (ii) negotiate in good faith with OAOs in relation to the conclusion of legally binding and fit-for-purpose SLAs. There is no definition of what time period might be regarded as reasonable but, by way of example in the 2015 FACO Decision, this included a new requirement on eircom to conclude SLA negotiations within a six month period;
- (b) On a non-discriminatory basis; and
- (c) In a transparent manner. This is defined to include a requirement on eircom to publish information about the wholesale services (e.g. accounting information, technical specifications, network characteristics, terms and conditions for supply and use, and price). In addition to this, in the 2010 WPNIA Decision and the 2010 WBA Decision, eircom is also required to provide comparative information which identifies and justifies any differences between the wholesale services supplied to OAOs and the services eircom supplies to its own downstream entity.⁷

3.3 The failure by eircom to offer reasonable and fit-for-purpose SLAs directly harms the interests of consumers in downstream markets. This is a consequence of the fact that the Referring Parties all rely on eircom's service quality (either directly or indirectly) in relation to the Regulated Services which are critical wholesale inputs to services supplied in downstream retail markets. For example, ComReg stated in its *Response to Consultation – Eircom's Universal Service Obligation: Quality of Service Performance Targets (D02/08) (May 2008 USO Decision)* that:⁸

“[...] ComReg would firstly note that fault occurrence can have very detrimental consequences for consumers [...] The level of faults that occurs can have a major effect upon consumers' use of communications services [...] The fact that fault

⁷ See, for example, 2010 WPNIA Decision, *Appendix C – Decision Instrument*, section 10.10; and 2010 WBA Decision, *Section 8 – Decision Instrument*, section 10.9.

⁸ ComReg, *Response to Consultation – Eircom's Universal Service Obligation: Quality of Service Performance Targets (D02/08)* (28 May 2008), p 35. (**May 2008 USO Decision**).

occurrence is detrimental to consumers should of course be self-evident – but survey evidence also suggests that this is true. In ComReg’s surveys of telecoms consumers, faults were repeatedly cited as having highly negative consequences.”

3.4 Finally, the Referring Parties do not accept the validity of the arguments raised by eircom that seek to link eircom’s compliance with its relevant regulatory obligations to

4. Requested resolution of the dispute

4.1 Having exhausted all reasonable commercial endeavours to resolve the dispute, the Referring Parties hereby refer the dispute to ComReg pursuant to regulation 31(1) of the Framework Regulations and request that ComReg handle, consider and make a determination resolving the dispute pursuant to regulation 31(2).

4.2 To resolve the dispute, the Referring Parties request that ComReg make:

- (a) A direction under regulation 36 of the Framework Regulations fixing the terms of the Regulated Contracts by increasing the performance target for each SLA to the levels requested by the Referring Parties as set out in Table 3;
- (b) A determination under regulation 31(2) of the Framework Regulations stating that, under the current terms of the Regulated Contracts, eircom is in breach of the SMP conditions set by ComReg in the 2007 RNA Decision, the 2015 FACO Decision, the 2010 WBA Decision and the 2010 WPNIA Decision, in particular, the requirement to offer and provide network access to CGA services in a fair, reasonable and timely manner; and
- (c) A direction imposing an obligation which is enforceable against eircom by each Referring Party which purchases Regulated Services from eircom, to enter into a transaction between each relevant Referring Party and eircom on the terms and conditions fixed by ComReg (consistent with the approach taken above) within a specified period of not more than two weeks.

B. RELEVANT CONTACT DETAILS AND RELATIONSHIP BETWEEN THE PARTIES

5. Towerhouse LLP

Please refer all correspondence to the Referring Parties to Towerhouse LLP for the attention of:

Representative of the Referring Parties	Paul Brisby, Domhnall Dods Towerhouse LLP 10 Fitzroy Square, London W1T 5HP paul.brisby@towerhouse.co.uk domhnall.dods@towerhouse.co.uk +44 7825 346198
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6. Parties to the dispute

Business name	Sky UK Limited
Address	One Burlington Plaza, Burlington Road, Dublin 4
Telephone	086 380 2022
Contact handling dispute	Paul Brisby / Domhnall Dods (Towerhouse) Client contact: Kevin Barrins, Head of Regulation and Wholesale Contract Manager Sky Ireland
Email	kevin.Barrins@sky.ie
Business Description	Sky provides both broadband internet access services and fixed telephony services to residential customers on a national basis within Ireland.

Business name	Vodafone Limited
Address	Mountain View, Central Park, Leopardstown, Dublin 18
Telephone	086 022 6302
Contact handling dispute	Paul Brisby / Domhnall Dods (Towerhouse) Client contact: Gary Healy, Head of External Affairs & Regulation at Vodafone Ireland
Email	gary.healy@vodafone.com
Business Description	<p>Vodafone is the wholly-owned subsidiary of Vodafone Group. Vodafone has equity interests in 30 mobile operators globally. Elsewhere in the EU, Vodafone is active in the Czech Republic, Germany, Greece, Hungary, Italy, Malta, Portugal, Romania, Spain, the Netherlands and the UK, through its wholly owned or controlled subsidiaries. Vodafone also has relationships with partner networks in over 40 further countries, including some within the EU.</p> <p>Within Ireland Vodafone supplies fixed and mobile services to both residential and business customers.</p> <p>The supply of fixed services to residential customers is reliant on the use of wholesale regulated products either directly supplied by eircom and or through the purchase from BT of products which use eircom LLU.</p>

Business name	BT Communications Ireland Limited
Address	Grand Canal Plaza, Upper Grand Canal Street, Dublin 4
Telephone	086 8375 742
Contact handling dispute	Paul Brisby / Domhnall Dods (Towerhouse) Client contact: John O'Dwyer, Head of Regulation BT Ireland,
Email	john.odwyer@bt.com
Business Description	BT Ireland is a wholly owned subsidiary of BT Group which is head quartered in the UK. and has an international presence in over 170 countries. BT Ireland's business is primarily focused in providing wholesale communication services and retail services to corporate, government and multi-national sector.

Business name	Magnet Networks Limited
Address	IDA Business and Technology Park, Clonshaugh, Dublin 17, Ireland
Telephone	1890 809 000
Contact handling dispute	Paul Brisby / Domhnall Dods (Towerhouse) Client contact: Mark Kellett, CEO Magnet Networks Limited
Email	m.kellett@magnet.ie
Business Description	Magnet Networks provides advanced phone and broadband services to both residential and business customers. Magnet owns and runs its own network and serves thousands of business and residential customers. It is the largest provider of fibre to the home in the country.

Business name	eircom Limited
Address	Incorporated in Jersey and having a branch address at Heuston South Quarter, St. John's Road, Dublin 8
Business Description	<p>On its website, eircom describes itself in the following terms:⁹</p> <p>“eircom is the principal provider of fixed-line and mobile telecommunications services in Ireland with approximately 2 million customers. The company has the most extensive network in Ireland and provides a comprehensive range of advanced voice, data, broadband and ICT services to the residential, small business, enterprise and public sector markets.</p> <p>The Group is currently constructing Ireland’s largest fibre broadband network that will reach 1.9 million homes and businesses in the next five years. Launched in May 2013, the network now reaches 1.2 million homes and businesses and is the cornerstone of eir’s €2.5 billion strategic investment programme.</p> <p>eir’s mobile division operates under the Meteor and eirMobile brands. In 2013, the Group was the first operator to launch 4G services in Ireland. It has spent more than €300m on improved 3G mobile services and high-speed 4G mobile broadband for customers.</p> <p>Open eir is the largest wholesale operator in Ireland, providing products and services to more than 40 wholesale customers and 400,000 end users, across a range of regulated and unregulated markets.”</p>

⁹ <https://www.eir.ie/investorrelations/about/>

SECTION II: THE ISSUES IN DISPUTE

A. BASIS FOR THE COMPLAINT

7. ComReg's powers under regulation 31(1) of the Framework Regulations

7.1 The Referring Parties and eircom are in dispute over the SLAs offered by eircom to the Referring Parties for repair on CGA services.

7.2 This is a dispute falling within regulation 31(1) of the Framework Regulations for the following reasons:

(a) eircom and each of the Referring Parties is an undertaking which provides electronic communications networks or services in Ireland; and

(b) The dispute relates to eircom's obligations under Directive 2002/21/EC on *a common regulatory framework for electronic communications networks and services* (**Framework Directive**) and Directive 2002/19/EC on *access to, and interconnection of, electronic communications networks and associated facilities* (**Access Directive**) because it relates to the terms on which the Referring Parties procure access to wholesale network services to enable the Referring Parties to provide communications services in downstream retail markets.

7.3 As set out in regulation 31(4), ComReg must accept a dispute under regulation 31(1) unless there are other means of resolving the dispute in a timely manner (or unless legal proceedings in relation to the dispute have been initiated by any of the parties).

7.4 Legal proceedings in relation to the dispute have not been initiated by any of the parties. In addition to this, there are no more appropriate means to resolve the dispute because:

(a) As is evident from ComReg's decisions that eircom holds SMP in relation to the Regulated Services, there is an imbalance of negotiating power such that it is unlikely that commercial negotiation would be an appropriate means to resolve the dispute.

(b) The Referring Parties have exhausted every available means of attempting to resolve the dispute. The parties have engaged in protracted commercial negotiations for over two years. This significantly exceeds the six month period ComReg identified as a reasonable timeframe in which to conclude SLA negotiations as identified in the 2015 FACO Decision. ComReg has been actively involved and chaired many of the industry negotiations. eircom has delayed the process throughout and recently attempted to further divert discussion into consideration of "No Fault Found" reporting. In the Referring Parties' view, other forms of dispute resolution such as ADR will continue to delay negotiations and allow eircom to continue to offer SLAs that are not fit-for-purpose and continue to harm consumers in downstream markets.

7.5 Finally, as set out in regulation 31(2), if ComReg accepts the dispute under regulation 31(4), it must make a determination within four months from the date on which the dispute was notified by the Referring Parties.

B. BACKGROUND TO THE ISSUES IN DISPUTE

8. Background to the parties and the wider market

8.1 In addition to being the largest supplier of fixed network access services in Ireland, eircom occupies a unique position in the market for fixed electronic communications services in Ireland (as is evident from ComReg's decisions that eircom holds SMP in relation to the Regulated Services). eircom enjoys a number of long-standing and deeply-embedded advantages over its competitors because:

- (a) It has control over its nationwide network, being the only ubiquitous fixed access network in Ireland; and
- (b) It has been a wholesale monopoly provider for many years and therefore in a historically privileged position with respect to the retailing and marketing of its services.

8.2 As a result, the Referring Parties must rely on eircom to provide them with the Regulated Services necessary to provide electronic communications services to consumers either because they serve all customers using wholesale services or because not all customers are directly served by the Referring Parties own networks.

8.3 Each of the Referring Parties compete in various markets in which eircom is both a supplier of an essential access service and also a downstream competitor.

9. The commercial arrangements between the parties [Confidential]

9.1 [CONFIDENTIAL.]

- 9.2 As a dominant supplier of, and downstream competitor to, the Regulated Services, eircom has the ability and incentive to constructively deny or restrict network access by offering the Regulated Services on terms less favourable than those available to its own downstream retail services.¹⁰
- 9.3 Because eircom has both the ability and the incentive to disadvantage its competitors, regulation has been imposed by ComReg to ensure that, amongst other things, eircom provides network access in markets where it has SMP on fair and reasonable terms. Thus, as a practical matter, eircom's ability to behave in ways which harm its competitors should, in theory, be limited by regulation but regulation does not reduce eircom's incentive to disadvantage its competitors.
- 9.4 Therefore, the commercial arrangements between eircom and the Referring Parties are shaped by both parties' view of the regulatory treatment of the issues. eircom is a vertically integrated downstream competitor of the Referring Parties and has the incentive and ability to deny access to critical wholesale inputs by controlling price and non-price terms and conditions. eircom has a commercial incentive to offer terms and conditions of access that are advantageous to eircom and disadvantageous to the Referring Parties and to offer inferior terms to its competitors to the maximum extent that it lawfully can (subject to the constraint of regulation). The Referring Parties' remedy to counter such behaviour is their ability to refer a dispute to ComReg for resolution.
- 9.5 Commercial negotiations have been taking place between the parties in relation to the various regulated contracts as set out in Section II (C).
- 9.6 The Referring Parties note that the Service Levels which form the subject of this Dispute are only one half of the equation and that the Service Level Guarantees (**SLGs**) (i.e. the financial payments made when the levels are not met) are an essential component of any measure designed to encourage improved performance by a service provider such as eircom. Advancing the discussion on the appropriate level of SLGs cannot commence until the appropriate level of the SLAs has been determined. The Referring Parties believe that their request for moderate improvements to the service levels for CGA repair is reasonable and proportionate.

10. The relevant SMP conditions

- 10.1 The Regulated Services are all subject to regulation under regulatory obligations set by ComReg in the following market reviews:
- (a) the 2007 RNA and the 2015 FACO Decision for SB-WLR;
 - (b) the 2010 WBA Decision for Bitstream Access; and
 - (c) the 2010 WPNIA Decision for ULMP, GLUMP and Line Share.

¹⁰ 2010 WPNIA Decision, para 5.71.

10.2 ComReg found that eircom has SMP in each of the relevant markets and imposed SMP conditions on eircom, requiring that eircom offer and provide access to each of the Regulated Services:

- (a) In a fair, reasonable and timely manner. This is defined in each decision to include a requirement on eircom to: (i) conclude legally binding and fit-for-purpose SLAs; and (ii) negotiate in good faith with OAOs in relation to the conclusion of legally binding and fit-for-purpose SLAs. There is no definition of what time period might be regarded as reasonable but, by way of example, in the 2015 FACO Decision, this included a new requirement on eircom to conclude SLA negotiations within a six month period;
- (b) On a non-discriminatory basis; and
- (c) In a transparent manner. This is defined to include a requirement on eircom to publish information about the wholesale services (e.g. accounting information, technical specifications, network characteristics, terms and conditions for supply and use, and price). In addition to this, in the 2010 WPNIA Decision and the 2010 WBA Decision, eircom is also required to provide comparative information which identifies and justifies any differences between the wholesale services supplied to OAOs and the services eircom supplies to its own downstream entity.

10.3 The SMP conditions apply to the offer and supply of the Regulated Services under the Regulated Contracts and apply equally to each term in those contracts.

C. DISCUSSIONS BETWEEN THE PARTIES

11. Overview

11.1 This section provides a consolidated summary of the history of commercial negotiations that have taken place between eircom and the Referring Parties. A breakdown of the core correspondence in the dispute and an index of attachments is set out in Annex 3.

12. The Statement of Requirements

12.1 BTI initiated the process of negotiating improved SLAs for the CGA products in 2012 when it submitted a Statement of Requirements (**SOR**) to eircom. BTI submitted the SOR for local loop unbundling (**LLU**) on 24 April 2012 and submitted an updated SOR which covered SB-WLR on 29 May 2012.

12.2 The SOR was adopted as an industry SOR on 24 April 2012 and is fully supported by all of the Referring Parties. In the SOR, the Referring Parties requested improvements to the SLAs for CGA services as set out in Table 3.

13. eircom's offer

13.1 Almost three years later, on 3 February 2015, eircom provided its final response to the SOR – a response which eircom expressly stated had been cleared and approved by the eircom Chief Executive. In the response, eircom proposed a two-phase approach to amending the SLA:

- (a) In phase 1, eircom proposed increasing the repair metric for faults repaired within two days from 73% to 77% by 1 September 2015; and
- (b) In phase 2, eircom proposed a further increase to 80% by the later of two dates: 1 April 2016 or the point in time at which the industry reduced the level of “No Fault Found” (NFF) to 10%.

14. No Fault Found

14.1 The Referring Parties do not accept that any requested improvement to the SLAs should be conditional on external factors such as NFF. International comparisons indicate that the SLAs offered by eircom lag behind those offered in other EU member states. In addition, the comparison to PIP 3 demonstrates that the wholesale SLA is inferior to that offered by eircom to its retail customers.

14.2 The Referring Parties also question the utility of linking improvements to wholesale SLAs with NFF, given that the concept of NFF is still in its infancy and its definition has not yet been agreed by industry. In the Referring Parties’ view, it is not acceptable to link eircom’s response to the access request to something which is not a settled and accepted industry standard.

14.3 In addition to this, the Referring Parties note that:

- (a) First, the current regulatory pricing regime already allows eircom to recover the costs of NFF through the retail price caps set by ComReg. As ComReg noted in the May 2008 USO Decision:¹¹

“ComReg would point out that in price reviews, including the review of the cost of the local loop and the retail price cap, Eircom was fully compensated for the cost of a modern, efficient network. Therefore, the network should not be generating such a high level of faults. Moreover, given Eircom’s {confidential} [...]

Eircom is therefore already compensated for its fault repair activities. Eircom has communicated to ComReg that it does not agree with the estimate used in calculating the price cap. However, this estimate was identified, consulted on, and then formed part of the final decision as to price cap level, which was, ComReg would note, not legally challenged by Eircom”.

- (b) Secondly, despite the very loose definition of what constitutes NFF, the overall incidence has declined since the price caps were set. As ComReg stated in the May 2008 USO Decision, eircom is already compensated for the expenditure necessary to reduce the level of faults and to bring them into line with “a modern, efficient network [...] Eircom is already compensated, both through the local loop price and the retail

¹¹ May 2008 USO Decision, paras 2.3.5 and 5.4.3.1.

price cap, for such a network and thus it can be argued that this incremental expenditure reflects underinvestment and/or inefficiency in the past”.¹²

- (c) Thirdly, eircom currently charges €100.00 to the OAO for instances where it sends an engineer to repair a fault which is subsequently classed as a “customer fault” (i.e. another form of NFF). This creates the potential for over-recovery by eircom.
- (d) Finally, OAOs are largely dependent on eircom’s fault test systems to determine whether there is a fault, which makes it very difficult for OAOs to reduce NFF. Therefore, if there is a problem with the line tests being inaccurate resulting in inefficiencies, the problem often lies with the initial tests under which the fault was first logged.

14.4 For the reasons set out in section 14, the Referring Parties reject eircom’s attempt to link its response to the access request to eircom’s efforts to reduce the incidence of faults in the network.

15. Negotiations following eircom’s offer

15.1 The Referring Parties were dissatisfied with eircom’s offer because: (1) a substantial gap remained between the Referring Parties’ request in the SOR and eircom’s offer; and (2) eircom failed to outline why it considered the Referring Parties’ request to be unreasonable.

15.2 Following eircom’s offer, the Referring Parties continued to negotiate improved SLAs with eircom in industry meetings but no discernible progress was made.

15.3 On 10 March 2015, the Referring Parties wrote to eircom and highlighted the perceived shortcomings of eircom’s offer by comparing eircom’s offer with the SLA offered by eircom to its retail customers under PIP 3. The Referring Parties argued that, if eircom was capable of achieving the targets set out in PIP 3, it ought to be able to offer SLA targets at least as favourable to its wholesale customers and therefore that the request in the SOR was reasonable.

15.4 On 12 March 2015, eircom indicated in a meeting with the Referring Parties that it still required time to review the SOR and requested greater clarification from the wider industry as to what service improvements were being sought.

15.5 On 18 March 2015, the Referring Parties wrote to eircom and clarified the original SOR request (**18 March Clarification**). The 18 March Clarification stated that:

“OAOs are faced with a choice of either agreeing an SLA on the terms offered by eircom or pursuing other avenues (including regulatory dispute mechanisms) to achieve a fit for purpose SLA. If OAOs remain unconvinced that the current performance levels offered by eircom are the best that can be achieved then it would appear to be more pragmatic and expeditious to take the issue forward as a dispute. In light of this we believe that this request for clarification represents a reasonable

¹² May 2008 USO Decision, para 3.41. **Error! Hyperlink reference not valid.**

(and possibly last) opportunity for eircom to avoid a regulatory dispute. Equally, in addressing the concerns raised, eircom may determine that an improved revised offer would be appropriate.”

15.6 On 24 April 2015, eircom responded to the 18 March Clarification and stated that it did not accept that there is a link between the SLA targets offered under PIP 3 and the SLA metrics for CGA products. In particular, eircom stated that:

“The USO performance targets are obligations imposed on eircom by ComReg in accordance with the framework for the provision of universal services under the Universal Service and Users’ Rights Regulations 2011. The performance targets are imposed in the context of eircom’s obligation to meet any reasonable request for access at a fixed location. As noted by ComReg in section 6 of Decision 02/08, “*should Eircom not be designated as the USP beyond [the expiry date of the designation period] then the targets beyond that date will not apply*”. eircom’s designation as Universal Service Provider of access at a fixed location will expire on 31 December 2015.” There are no reasonable grounds on which it can be argued that modest improvements in the wholesale SLAs should be conditional on reduced fault levels, something for which eircom has already been paid via the regulated pricing regime.

15.7 In that response, eircom attempted to rely on ComReg’s statement in the May 2008 USO Decision that:¹³

“In ComReg’s opinion, the targets are not directly linked and equating the wholesale performance and USO performance targets is inappropriate. The wholesale performance targets are negotiated between Eircom and OAOs on a commercial basis, which is quite a different matter to the principles of minimum service, set at a certain quality level associated with the provision of the USO.”

15.8 However, ComReg’s statement needs to be placed in the context of its wider opinion. ComReg also stated in the May 2008 USO Decision that (emphasis added):¹⁴

“[...] it is desirable that the USO performance targets are set as minimum acceptable performance targets and that any wholesale performance targets are at least equal to or possibly better than the USO performance targets.”

15.9 The Referring Parties submit that the correct interpretation of ComReg’s statements in the May 2008 USO Decision is that, while USO targets are set by ComReg and CGA targets are negotiated, it is wholly reasonable to expect that wholesale targets are at least as good and possibly better than USO targets. Therefore, the May 2008 USO Decision does not support eircom’s argument that the Referring Parties’ request in the SOR was unreasonable.

15.10 Throughout the industry negotiations which have followed the submission of the original SOR, industry representatives have sought to emphasise the reasonable nature of the

¹³ May 2008 USO Decision, p 54.

¹⁴ May 2008 USO Decision, p 54.

request which has been made and that the gap between the wholesale and retail SLAs is just one aspect of the case presented by the Referring Parties. eircom has consistently failed to explain the gap between the two types of SLA, despite being offered ample opportunity to do so. eircom's final response was to produce a spreadsheet which lacked sufficient transparency to allow any analysis or comparison to be made. If eircom's argument that the gap between the two types of SLA is reasonable and can be justified then it could have taken the opportunity offered by the Referring Parties to provide the necessary transparency. It has failed to do so.

16. eircom's revised offer: "No Fault Found"

16.1 Throughout negotiations, eircom sought to create a link between negotiations about CGA targets and the level of NFF on faults which the OAOs raised.

16.2 On 22 July 2015, eircom wrote to ALTO and proposed a revised offer which linked improvements to eircom's SLAs to the level of NFF for each OAO (**eircom July 2015 Letter**). Eircom stated (emphasis added):

"eircom Wholesale have proposed a two phase approach to improve the repair performance from the current level of 73% in 2 working days for SB-WLR and LLU to 77% by September 2015 and 80% by April 2016 or when the no fault found (NFF) level is at 10%, whichever is the later [...]

The current Industry non fault performance levels are c23% Broadband and 17% Narrowband (as of March 2015). Eircom Wholesale and industry are working to improve these through a number of workshops, training initiatives and IT developments.

The two phase approach proposed by eircom Wholesale is to allow Operators time to achieve the reductions in the non-fault levels whilst providing an improvement in the short term from September 2015. NFF reduction is a key enabler to offering improved service levels as there is more resource available to focus on valid faults."

16.3 Despite acknowledging the importance of improving performance across the industry on NFF reporting through a collaborative approach, the Referring Parties reject that there is any direct link between SLAs and NFF levels for the following reasons:

- (a) As outlined in the May 2008 USO Decision, ComReg determined that eircom was already being fully compensated upfront for target levels of performance that were considerably higher than what was being delivered.
- (b) As noted above there is, as yet, no agreed definition of what constitutes a NFF incident. It is therefore inappropriate to link the Referring Parties access request to an imprecise and still evolving concept. The two are unrelated. The Referring Parties' access request is reasonable on its own terms.
- (c) Furthermore as was recently noted in eircom's *Industry Update on eircom's Regulatory Governance Model (RGM)* (the **Styles Report**), OAOs have been operating (and continue to operate) with fault tools, fault repair processes and detailed line

information which are inferior to those used by eircom's retail arm.¹⁵ Even if it was acceptable to make an improved SLA contingent on OAOs reducing the incidence of NFF, it is unrealistic to expect OAOs to do so when eircom itself has been unable to do so despite having superior tools and processes (e.g. better diagnostic tools and out-of-hours engineer availability) at its disposal. The concept of NFF as a robust measure is further undermined by the fact that the Referring Parties now understand that the process permits eircom to convert a fault which was initially tested as valid to an invalid fault after the event. Therefore, there is no confidence that a "right when tested" result necessarily means that there was no fault at the time.

- (d) OAOs are unable to achieve the NFF target levels sought when eircom is still not providing customer information to OAOs at the same time it is providing to its own retail arm. (E.g. eircom is still not providing real-time access to the SORTs information for provision faults or the Fault Handling System (FHS) for repairs).
- (e) On 10 July 2015, ComReg published a number of notices of non-compliance against eircom in relation to eircom's failure to comply with transparency and non-discrimination obligations in relation to LS and Bitstream and dealt specifically with fault reporting. The Referring Parties consider that any future discussions on NFF be handled by ComReg through that process.

16.4 In the eircom July 2015 Letter, eircom also re-iterated its earlier argument that there is no link between the SLAs for CGA services and the SLAs set out in PIP 3.

17. Negotiations following eircom's revised offer

17.1 On 30 July 2015, ALTO responded to the eircom July 2015 Letter on behalf of the industry and:

- (a) Accepted the first phase of eircom's revised offer (i.e. the increase in the LLU and SBWLR SLA for repair within 2 working days from 73% to 77%); but
- (b) Rejected the second phase of eircom's revised offer (i.e. the increase to 80% by April 2016 provided that the OAOs reduced the NFF levels below 10%).

17.2 There has been a small number of further industry meetings with eircom at which eircom presented a range of further positions related to service provisioning but nothing has been discussed in relation to the subject of this dispute. There have been no further discussions between the parties in relation to the SLAs which form the subject of this dispute.

¹⁵ https://www.eir.ie/opencms/export/sites/default/.content/pdf/regulatoryinformation/regulatory_governance_model.pdf

18. Summary of arguments raised by the Referring Parties

18.1 Throughout negotiations with eircom, the Referring Parties raised the following arguments about why the requested improvements in repair SLAs are reasonable:

- (a) eircom currently outsources the majority of its field work to a third party. As a result, any risk to eircom can be substantially “backed off” into contracts with third party suppliers who operate in a competitive environment and are required to bid for contracts via a tendering process.
- (b) There has been no improvement on the key time to fix parameters of the fault repair SLAs by eircom since 2010.
- (c) There has been a significant degradation in eircom’s performance against its SLAs in recent years (as evidenced by its Fault Line Index). The higher the level of faults the greater the proportion of OAO customers that experience poor service. eircom also recently negotiated a lower LFI target under the terms of PIP 3.
- (d) From time to time, eircom has demonstrated that it is capable of achieving a much higher performance than prevailing rates.
- (e) As outlined in the May 2008 USO Decision, ComReg determined that eircom was already being fully compensated upfront for target levels of performance that were considerably higher than what was being delivered.
- (f) As a company that has publicly stated its intent to bid for the government’s National Broadband Plan tender, it ought to be able to demonstrate that it can meet reasonable requests to operators in the prevailing pre-NBP environment.
- (g) Eircom itself regards the targets sought by OAOs to be achievable and reasonable as evidenced by the voluntary agreement it reached with ComReg on fault repair timelines in PIP 3.

SECTION III: RESOLVING THE DISPUTE

A. THERE ARE NO ALTERNATIVE MEANS FOR RESOLVING THIS DISPUTE

19. Alternative dispute resolution

19.1 Under regulation 31(4) of the Framework Regulations, ComReg must consider whether there are alternative means for resolving the dispute.

19.2 The Referring Parties do not believe that ADR would represent an appropriate means of resolving the dispute.

(a) As is evident from ComReg's decisions that eircom holds SMP in relation to the provision of the Regulated Services, there is an imbalance of negotiating power such that it is unlikely that commercial negotiation would be an appropriate alternative means to resolve the dispute. Based on eircom's SMP in the relevant markets and the fact that it issued a BAFO – which was approved by eircom's Chief Executive – there is no evidence that eircom has either the motive or incentive to agree a fair and reasonable commercial outcome with the Referring Parties.

(b) The Referring Parties have exhausted every available means of attempting to resolve the dispute. The parties have engaged in protracted commercial negotiations for over two years. This significantly exceeds the six month period ComReg identified as a reasonable timeframe in which to conclude SLA negotiations as outlined in the 2015 FACO Decision. ComReg has been actively involved and chaired many of the industry negotiations. eircom has delayed the process throughout and recently attempted to further divert discussion into consideration of NFF reporting. In the Referring Parties' view, ADR will continue to delay negotiations and allow eircom to continue to offer SLAs that are not fit-for-purpose and continue to harm consumers in downstream retail markets.

B. HOW COMREG SHOULD RESOLVE THE DISPUTE

20. ComReg's role in relation to resolving disputes

20.1 Under section 10 of the Communications Regulation Act 2002 (**CRA02**), ComReg is required to investigate disputes by OAOs relating to the "[...] supply of and access to electronic communications services, electronic communications networks and associated facilities and transmission of such services on such networks."

20.2 In exercising its functions under section 10, section 12(1) CRA02 states that ComReg's objectives are to promote competition, contribute to the development of the internal market, and promote the interests of users within the Community.

20.3 Section 12(2) provides that ComReg must take all reasonable measures to achieve the objectives set out in section 12(1), including:

(a) Ensuring that there is no distortion or restriction of competition in the electronic communications sector (section 12(2)(a)(ii)); and

- (b) Ensuring that, in similar circumstances, there is no discrimination in the treatment of undertakings providing electronic communications networks and services and associated facilities (section 12(2)(b)(iii)).

20.4 Under regulation 31(7) of the Framework Regulations, in reaching a decision under regulation 31, ComReg must have regard to its objectives under section 12 CRA02 and regulation 16.

20.5 Regulation 16(2) provides that ComReg must apply:

“[...] objective, transparent, non-discriminatory and proportionate regulatory principles by, among other things –

- (a) promoting regulatory predictability by ensuring a consistent regulatory approach over appropriate review periods,
- (b) ensuring that, in similar circumstances, there is no discrimination in the treatment of undertakings providing electronic communications networks and services,
- (c) safeguarding competition to the benefit of consumers and promoting, where appropriate, infrastructure based competition [...].”

21. Developing a framework for resolving the dispute

21.1 The Referring Parties consider that ComReg must evaluate each dispute on its facts. The facts of this dispute can be summarised in the following way:

- (a) The dispute relates to contractual terms which relate to the quality of service offered by eircom to the Referring Parties and, by implication, by the Referring Parties to their downstream retail customers.
- (b) The dispute does not relate to how the terms operate but what the terms should be.
- (c) The Regulated Services are critical wholesale inputs to the businesses of each of the Referring Parties.
- (d) The terms are set out in the Regulated Contracts.
- (e) eircom is a vertically integrated downstream competitor and has the incentive and ability to deny access to critical wholesale inputs by controlling price and non-price terms and conditions.¹⁶
- (f) eircom has imposed the disputed terms on the Referring Parties.

21.2 The Referring Parties submit that the dispute ought to be resolved in the following sequence:

- (a) Establishing the relevant facts (as set out in Section II (C));

¹⁶ See, for example, 2010 WPNIA Decision, para 5.71. **Error! Hyperlink reference not valid.**

- (b) Establishing the relevant legal duties and regulation on eircom (SMP conditions) as set out in Section II (A) and (B);
- (c) Assessing, based on ComReg’s functions and objectives (as set out in Section III (B)), the principles that will inform the exercise of ComReg’s judgement as to the best and most appropriate outcome to the dispute; and
- (d) Testing possible outcomes against those duties and principles to set terms that reflect the most fair and reasonable outcome and best meet ComReg’s statutory and regulatory functions and objectives.

22. How should ComReg assess whether an SLA is “fair and reasonable”

- 22.1 Under eircom’s SMP conditions, it is required to provide network access to CGA services in a fair, reasonable and timely manner. This is defined to include a requirement on eircom to negotiate in good faith with OAOs in relation to the conclusion of legally binding and fit-for-purpose SLAs.
- 22.2 What constitutes “fair and reasonable” is not defined in the relevant SMP conditions, CRA02 or the Framework Regulations.
- 22.3 The Referring Parties submit that the starting point should be that fair and reasonable terms should reflect those terms that would be voluntarily agreed to, in circumstances where the purchaser and seller were participating in a competitive environment, in the absence of any significant inequality of bargaining positions.
- 22.4 This principle directly addresses the policy imperative behind the setting of SMP conditions, which is to address the imbalances arising as a result of one or more operators having a dominant position with respect to a market for services essential to compete to offer services to consumers. eircom has SMP in the supply of all of the regulated services. The purpose of the SMP conditions is to address eircom’s bargaining power – specifically, the inability of those buying network access to resist eircom’s ability to impose unfair or unreasonable terms and conditions.
- 22.5 To achieve this purpose, regulation – including, in this context, ComReg’s decisions in resolving disputes – must restore balance to this process of negotiation, by addressing the concerns of the Referring Parties where eircom has demonstrated itself to be unresponsive to the legitimate concerns expressed by the Referring Parties. What is ‘fair and reasonable’ is that which achieves this objective.
- 22.6 What is fair and reasonable is also capable of being assessed in the light of relevant evidence – for example, by reference to SLAs offered for equivalent services to other customers or SLAs in other countries by incumbent operators.
- 22.7 In assessing what is fair and reasonable, it is also appropriate to give weight to the terms and conditions offered by eircom in downstream markets.

23. eircom's SLAs under PIP 3

23.1 In this dispute, the Referring Parties believe that there is a very significant gap between eircom's Offer and the SLAs eircom offers to retail customers through PIP 3. The differences in SLA targets is set out in Table 5.

Table 5: Differences in SLA targets

Performance Metric (repair time)	PIP 3	Wholesale	Requested	eircom's Offer
2 working days	82%	77%	85%	80% by 2016 (conditional on reductions in "No Fault Found" levels)
4 working days	95%	Not offered	Not offered	Not offered
5 working days	96%	92%	95%	No change
10 working days	99%	100%	100%	Reduction discussed

23.2 The Referring Parties submit that fair and reasonable SLAs, in the circumstances, must be at least as good if not better than those offered to eircom retail customers under PIP 3. This reflects ComReg's statement in the May 2008 USO Decision that while:¹⁷

"[...] equating the wholesale performance and USO performance targets is inappropriate [...] it is desirable that the USO performance targets are set as minimum acceptable performance targets and that any wholesale performance targets are at least equal to or possibly better than the USO performance targets."

23.3 While the Referring Parties agree with ComReg that wholesale performance targets ought to be better than the retail targets, it is certainly not unreasonable for them to expect that they should be 'at least equal' to those targets.

24. Relevant SLAs in other benchmark countries

24.1 Relevant matters to consider when determining what constitutes fair and reasonable terms in the context of this dispute include international evidence, such as analysis or decisions by other regulators, considering situations where the facts are closely related to the facts of this dispute. For example, the Referring Parties have considered the service levels offered by national incumbent operators in other jurisdictions where the services provided are, in all material respects, identical to the services provided under the Regulated Contracts.

¹⁷ May 2008 USO Decision, p 54.

- 24.2 In other markets, national regulatory agencies and competition authorities have had to determine the terms and conditions of supply of services that are very similar to, or substantially the same as, the regulated services.
- 24.3 In many of those markets, processes have been developed specifically to address the concerns about an incumbent or monopoly operator’s access network advantage and to ensure that the terms and conditions on which network access is supplied are fair and reasonable.
- 24.4 Benchmark countries are set out in Table 6 and indicate that Ireland is beginning to significantly lag its European partners with respect to fault repair performance.

Table 6: SLA for WLR repair and LLU MPF repair

Country	SLA – WLR	SLA – LLU MPF
Ireland	<ul style="list-style-type: none"> • 77% of repair completed within 2 working days • 92% of repair completed within 5 working days • 100% of repair completed within 10 working days 	Same as the SLA for WLR.
UK	<p>Openreach offers four different <u>care levels</u> for WLR repair:</p> <ul style="list-style-type: none"> • Care Level 1: Clear by 23:59 day after next, Monday to Friday, excluding public and bank holidays. (E.g. report Tuesday, clear Thursday). • Care Level 2: Clear by 23:59 next day, Monday to Saturday, excluding public and bank holidays. (E.g. report Tuesday, clear Wednesday). • Care Level 3: Report 13:00, clear by 23:59 same day. Report after 13:00, clear by 12:59 next day, seven days a week, including public and bank holiday. • Care Level 4: Clear within six hours, any time of day, any day of the year. 	Same as the SLA for WLR.
France	100% of repairs by the end of the second working day.	85% of repairs by the end of the second working day.
Italy	<ul style="list-style-type: none"> • 95% of repairs completed within 1 hour of the first full working day, 	<ul style="list-style-type: none"> • 70% of repairs completed within one working day.

	<p>following the day in which the fault was reported (non-residential).</p> <ul style="list-style-type: none"> 100% of repairs completed within the first 3 hours of the second full working day, following the day in which the fault was reported (residential). 	<ul style="list-style-type: none"> 95% of repairs completed within two working days. 																								
Netherlands	<p>KPN offers a 'basic' and 'premium' service and differentiates between over ground and underground lines for the basic service.</p> <table border="1"> <thead> <tr> <th>Basic</th> <th>Over ground</th> <th>Underground</th> </tr> </thead> <tbody> <tr> <td>80%</td> <td>10 working hours</td> <td>1 working day</td> </tr> <tr> <td>95%</td> <td>20 working hours</td> <td>2 working days</td> </tr> <tr> <td>100%</td> <td>40 working hours</td> <td>5 working days</td> </tr> <tr> <th>Premium</th> <th colspan="2">Over ground and Underground</th> </tr> <tr> <td>90%</td> <td colspan="2">8 working hours</td> </tr> <tr> <td>95%</td> <td colspan="2">24 working hours</td> </tr> <tr> <td>100%</td> <td colspan="2">48 working hours</td> </tr> </tbody> </table>	Basic	Over ground	Underground	80%	10 working hours	1 working day	95%	20 working hours	2 working days	100%	40 working hours	5 working days	Premium	Over ground and Underground		90%	8 working hours		95%	24 working hours		100%	48 working hours		Same as the SLA for 'basic' over ground lines.
Basic	Over ground	Underground																								
80%	10 working hours	1 working day																								
95%	20 working hours	2 working days																								
100%	40 working hours	5 working days																								
Premium	Over ground and Underground																									
90%	8 working hours																									
95%	24 working hours																									
100%	48 working hours																									
Portugal	95% of repairs within 28 working hours.	Same as the SLA for WLR.																								

C. PROPOSED REMEDIES

25.1 The Referring Parties request that ComReg make:

- (a) A direction under regulation 36 of the Framework Regulations fixing the terms of the Regulated Contracts by increasing the performance target for each SLA to the levels requested by the Referring Parties as set out in Table 3;
- (b) A determination under regulation 31(2) of the Framework Regulations stating that, under the current terms of the Regulated Contracts, eircom is in breach of the SMP conditions set by ComReg in the 2007 RNA Decision, the 2014 FACO Decision, the 2010 WBA Decision and the 2010 WPNIA Decision, in particular, the requirement to

offer and provide network access to CGA services in a fair, reasonable and timely manner; and

- (c) A direction imposing an obligation which is enforceable against eircom by each Referring Party which purchases regulated services from eircom, to enter into a transaction between each relevant Referring Party and eircom on the terms and conditions fixed by ComReg (as set out in paragraph 25.1(a)) within a specified period of not more than two weeks.

25.2 In relation to the directions set out in paragraphs 25.1, the Referring Parties request that the solutions are implemented in a timely manner and not longer than three months after the date of the directions.

ANNEX 1
OTHER MATTERS

Confidentiality

This submission contains confidential material that would harm our individual clients' interests if it were to be disclosed to anyone other than ComReg.

This is a multi-party dispute submission and includes commercially confidential material of our individual clients. These have been clearly marked and should remain confidential between ComReg, Towerhouse LLP and the individual party.

We will provide a non-confidential version of this submission that can be shared with eircom, provided that eircom agrees to share non-confidential versions of any submission made by it to ComReg in relation to this dispute.

Privilege

Inclusion of any privileged material in this submission is in error. If we have inadvertently accompanied this dispute with a document which is subject to legal privilege, for the avoidance of doubt, it should not be taken as any wider waiver of privilege.

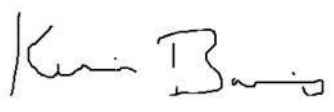
No waiver of rights

This dispute referral does not constitute a waiver of any rights of the Referring Parties. These may include (without limitation) contractual rights.

**ANNEX 2
DECLARATION**

Before making this submission to ComReg, to the best of my knowledge and belief:

- (a) All information and evidence provided in referring this dispute to ComReg is true and accurate; and
- (b) Each of the Referring Parties named below has used their best endeavours to resolve this dispute through commercial negotiation and there are now no alternative means available to them with a reasonable prospect of successfully resolving this dispute.

Signed: 

Company: Sky UK Limited

Position: Head of Regulation & Wholesale
Contract Manager

Date: 16 November 2015

Signed: 

Company: BT Communications Ireland Limited

Position: Head of Regulatory Affairs

Date: 16 November 2015

Signed: 

Company: Vodafone Limited

Position: Head of Network Services
Vodafone Ireland

Date: 16 November 2015

Signed: 

Company: Magnet Networks Limited

Position: Chief Executive Officer

Date: 16 November 2015

ANNEX 3

CHRONOLOGY OF CORE CORRESPONDENCE IN THE DISPUTE AND INDEX OF ATTACHMENTS

Tab	Date	Summary
A	24 April 2012	Statement of Requirements submitted by John O'Dwyer of BT Ireland to eircom.
B	29 May 2012	Supplementary Statement of Requirements in relation to the SB-WLR product.
C	5 November 2014	Minute of LLU meeting 211
D	19 November 2014	Minute of LLU meeting 212
E	3 December 2014	Agenda for LLU meeting 213
F	16 December 2014	Minute of LLU meeting no. 214.
G	28 January 2015	Minute of LLU meeting no. 216.
H	03 February 2015	eircom response to the original SOR: <ul style="list-style-type: none"> • Eircom SLA revised proposal – 'eircom proposal 30Jan15' – summary of the key elements of the proposed SLA. • Updated SLA SoR Response and proposed eircom changes – document outlining the published SLA, the SoR and the eircom proposal. • Marked up version of published SLA with eircom's revised proposal.
I	25 February 2015	Notes of NGA SLA meeting held in ComReg on 18 th February 2015.
J	10 March 2015	OAO analysis of the CGA SLA for discussion in industry meeting on Thursday 12 March 2015.
K	11 March 2015	eircom proposed response to SLA SOR.
L	18 March 2015	Amended Industry comments (submitted by Vodafone) explaining those areas where the OAOs were seeking clarification from eircom on aspects of its response. (18 March Clarification)
M	24 April 2015	Eircom response to industry CGA SLA paper.
N	13 July 2015	Letter from ALTO to Carolan Lennon, eircom Wholesale requesting final response from eircom to avoid a formal dispute.
O	15 July 2015	Email exchange between William McCoubrey of eircom (Meteor) and John O'Dwyer of BT Ireland re time scale for responding to OAOS OR.
P	22 July 2015	Letter from Carolan Lennon to ALTO proposing two phase approach to SLA changes falling short of the levels requested in the SOR.
Q	30 July 2015	Letter from Alto to Carolan Lennon, eircom Wholesale noting eircom's final position, accepting modest increase to SLA with effect from 1 st September but rejecting second phase proposed by eircom.

**ANNEX 4
THE DISPUTED TERMS**

1. ADSL Bitstream SLA

Table 7: Fault Resolution – effective 1 October 2015

Activity Description	Performance Metric	Performance Target	Service Credit for not meeting performance target
Resolution of a Bitstream Fault	Repair time: 2 working days	Target: 77%	See article 1, appendix 3
Resolution of a Bitstream Fault	Repair time: 5 working days	Target: 92%	See article 2, appendix 3
Resolution of a Bitstream Fault	Repair time: 10 working days	Target: 100%	See article 2, appendix 3

2. GLUMP SLA

Table 8: Line Share Faults or ULMP Faults with Line Test Data Supplied by AS – effective 1 September 2015

Activity Number	Activity Description	Performance Metric	Performance Target	Service Credit for not meeting performance metric target
27a	Resolution of Line Share Fault or ULMP Fault with Test Results	Repair Time: 2 working days	Target: 77%	See article 1, appendix 4
27b	Resolution Line Share fault or ULMP Fault with test results	Repair Time: 5 Working Days	Target: 92%	See article 2, appendix 4
27c	Resolution of Line Share Fault or ULMP Fault with Test Results	Repair Time: 10 working days	Target: 100%	See article 3, appendix 4

3. SB-WLR SLA

Table 9: effective 1 September 2015

Activity Number	Activity Description	Performance Metric	Performance Target	Service Credit for not meeting performance metric target
18a	Resolution of PSTN/BRA Line Fault	Repair Time: 2 working days	Target: 77%	See article 1, appendix 4
18b	Resolution of PSTN/BRA Line Fault	Repair Time: 5 working days	Target: 92%	See article 2, appendix 4
18c	Resolution of PSTN/BRA Line Fault	Repair Time: 10 working days	Target: 100%	See article 3, appendix 4

ANNEX 5
EIRCOM'S SMP CONDITIONS

Wholesale (Physical) Network Infrastructure Access (Market 4)

SMP Obligations in relation to Current Generation WPNIA (Sections 6 to 12 of the Decision Instrument)

6. SMP OBLIGATIONS IN RELATION TO CURRENT GENERATION WPNIA
- 6.1. ComReg is imposing certain SMP obligations on Eircom in respect of Current Generation WPNIA in the Market in accordance with and pursuant to Regulations 9, 10, 11, 12, 13 and 14 of the Access Regulations, as detailed further in sections 7 to 12 below.
7. OBLIGATIONS TO PROVIDE ACCESS
- 7.1. Pursuant to Regulation 13(1) of the Access Regulations, Eircom shall meet all reasonable requests from OAOs for the provision of Access, including Associated Facilities.
- 7.2. Without prejudice to the generality of section 7.1 and pursuant to Regulation 13(2) of the Access Regulations, Eircom shall provide and grant Access to OAOs to the following particular services and facilities:
- (i) ULMP;
 - (ii) GLUMP;
 - (iii) Shared access to the local loop;
 - (iv) Full sub-loop unbundling, combined with GNP where required;
 - (v) Shared sub-loop unbundling;
 - (vi) Collocation including cabinet collocation;
 - (vii) Migrations.
 - (viii) Ducts; and
 - (ix) Access to building and cabinet space.
- 7.3. Eircom shall continue to offer Access to the services and facilities described in section 7 in accordance with the product descriptions and on the terms and conditions which are specified in the current version of the ARO, as may be amended from time to time and the related manuals currently published on its wholesale website, as may be amended from time to time. To the extent that there is any conflict between the ARO and Eircom's obligations now set out in this Decision Instrument, it is the latter which shall prevail.
- 7.4. Without prejudice to the generality of sections 7.1 to 7.3, Eircom shall:
- (i) Pursuant to Regulation 13 (2) (b) of the Access Regulations, negotiate in good faith with OAOs requesting Access;
 - (ii) Pursuant to Regulation 13 (2) (c) of the Access Regulations, not withdraw Access to services and facilities already granted without the prior approval of ComReg;

(iii) Pursuant to Regulation 13 (2) (e) of the Access Regulations, grant open Access to technical interfaces, protocols and other key technologies that are indispensable for the interoperability of services or virtual network services; and

(iv) Pursuant to Regulation 13 (2) (h) of the Access Regulations, provide Access to OSS or similar software systems necessary to ensure fair competition in the provision of services.

8. CONDITIONS ATTACHED TO THE ACCESS OBLIGATIONS

8.1. Pursuant to Regulation 13(3) of the Access Regulations, Eircom shall, in relation to the obligations set out under section 7, grant Access to Current Generation WPNIA, in a fair, reasonable and timely manner.

8.2. Without prejudice to the generality of section 8.1, Eircom shall:

(i) Conclude, maintain or update, as appropriate, legally binding SLAs which include provision for associated Performance Metrics with OAOs;

(ii) Negotiate in good faith with OAOs in relation to the conclusion of legally binding and fit-for-purpose SLAs;

(iii) Ensure that all SLAs include provision for service credits arising from a breach of an SLA. Agreed service credits shall be a matter for negotiation between Eircom and Access Seekers and recovery of service credits shall be in the first instance, a matter for the individual Access Seeker and Eircom;

(iv) SLAs should detail how service credits are calculated, to include the provision of an example calculation;

(v) Payment of service credits, where they occur, shall be made in a timely and efficient manner.

8.3. Where a request for provision of Access, or a request for provision of information is refused or met only in part, Eircom shall, provide the objective criteria for refusing same to the OAO which made the request.

9. OBLIGATION OF NON-DISCRIMINATION

9.1. Eircom shall have an obligation of non-discrimination as provided for by Regulation 11 of the Access Regulations in respect of Access.

9.2. Without prejudice to the generality of section 9.1, Eircom shall:

(i) Apply equivalent conditions in equivalent circumstances to other undertakings providing equivalent services; and

(ii) Ensure that all services and information are provided to other undertakings under the same conditions and of the same quality as the services and information that Eircom provides to its own services or those of its subsidiaries or partners

9.3. In order that Access Seekers may be in the same position as Eircom's retail or downstream division, the WPNIA services and information shall be provided by Eircom to Access Seekers in sufficient time, that is, the earlier of:

- a) at the same time as the WPNIA service(s) or information is provided to Eircom's retail or downstream division; or
 - b) at least two months prior to any Eircom retail service or facility, which relies on the provision of the WPNIA service(s) or information, being made available on the retail or downstream market, unless otherwise agreed with ComReg.
- 9.4. Without prejudice to the generality of section 9.1, Access to OSS (including the ability to input data to OSS, the time taken by Eircom to process requests via OSS, the quality and completeness of output from OSS, and ease of OSS use) and information shall, in accordance with Eircom's obligations of non-discrimination, be of the same standard and quality as that which Eircom provides to itself.
10. OBLIGATION OF TRANSPARENCY
- 10.1. Eircom shall have an obligation of transparency as provided for by Regulation 10 of the Access Regulations in relation to Access.
- 10.2. Without prejudice to the generality of the obligation in section 10.1, pursuant to Regulation 10(2) of the Access Regulations, Eircom shall make publicly available and keep updated on its wholesale website, an ARO. The ARO shall be sufficiently unbundled so as to ensure that OAOs availing of such services and facilities are not required to pay for services or facilities which are not necessary for the service or facility requested, and the ARO shall include:
- (i) A description of the relevant offerings broken down into components according to market needs;
 - (ii) A description of the associated terms and conditions, including prices;
 - (iii) At least the elements set out in the Schedule to the Access Regulations (Schedule to the Access Regulations entitled: Minimum list of terms to be included in a reference offer for unbundled access to the twisted metallic pair local loop to be published by notified operators).
- 10.3. Eircom shall, unless otherwise agreed by ComReg, make publicly available and publish on its website at least two months in advance, any proposed changes to the ARO and any proposed changes to wholesale prices (including prices for new services and facilities) coming into effect. Eircom shall notify ComReg at least one month in advance of any such publication taking place, that is, three months prior to any changes coming into effect. This period of one month may be varied with the agreement of ComReg. Proposed changes to the ARO and proposed changes to wholesale prices and the application of such prices shall not be implemented without prior notification to ComReg and without prior notification to OAOs.
- 10.4. Pursuant to Regulation 10(5) of the Access Regulations, ComReg may issue directions requiring Eircom to make changes to the ARO to give effect to obligations imposed in this Decision Instrument and, pursuant to Regulation 10(4) of the Access Regulations to publish the ARO with such changes. ComReg may issue directions to Eircom from time to time requiring it to publish information, such as accounting information, technical specifications, network characteristics, terms and conditions for supply and use and prices, pursuant to Regulation 17 of the Access Regulations.

- 10.5. Without prejudice to the generality of the obligation in section 10.1, Eircom shall make public information on its wholesale website, such as accounting information, technical specifications, network characteristics, terms and conditions for supply and use, and prices, in respect of the services and facilities referred to in section 7, as specified by ComReg from time to time and all other information which may be reasonably required by OAOs. Eircom shall continue to publish the information and prices specified in the current Version 1.21 of the ARO as may be from time to time be amended and the related manuals published as Industry LLU Documentation as may be amended from time to time and as currently published on its wholesale website.
- 10.6. Where Eircom offers WPNIA to its retail or downstream division, it shall provide information regarding such WPNIA on its wholesale website, in sufficient time prior to the retail service or facility, which relies on that WPNIA, being made available on the downstream market. For the purposes of this section, sufficient time shall, unless otherwise agreed with ComReg, be a period of at least two months prior to the retail service or facility being made available by its retail or downstream division on the downstream market.
- 10.7. It shall be a condition of Eircom's transparency obligations that Eircom publish Key Performance Indicators (KPIs). The specification of the content of the KPIs will be subject to further consultation by ComReg.
- 10.8. Eircom shall publish all SLAs (and any updates thereto) on its publicly available website.
- 10.9. Eircom shall be obliged to publish on its publicly available website information about Performance Metrics.
- 10.10. Pursuant to its obligation of transparency, Eircom shall, within four months of the effective date, publish on its website sufficient information to identify and justify any differences between the services and facilities set out in the ARO and the comparable services and facilities which Eircom provides to itself. The information shall include all material associated terms and conditions, including relevant processes, and shall be kept updated by Eircom as new services or facilities are developed and deployed or existing services or facilities are amended.

11. OBLIGATION OF ACCOUNTING SEPARATION

- 11.1. Pursuant to Regulation 12 of the Access Regulations, Eircom shall have an obligation to maintain separated accounts. All of the obligations in relation to accounting separation⁶⁰ applying to Eircom and in force immediately prior to the effective date of this Decision Instrument related to the Market, shall be maintained in their entirety. Eircom shall comply with all of those obligations, pending any further decision to be made by ComReg following further consultation in relation to the details of and implementation of accounting separation obligations and, in particular, as regards any decision made by ComReg in respect of Consultation Document Accounting Separation and Cost Accounting Review – Draft Accounting Direction to Eircom Limited Document No.09/75 and any other decision or directions which may be issued by ComReg from time to time.

12. OBLIGATIONS RELATING TO PRICE CONTROL AND COST ACCOUNTING

- 12.1. Pursuant to Regulation 14(1) of the Access Regulations, Eircom shall continue to comply with all of the obligations in relation to cost accounting in force immediately prior to the effective date of this Decision Instrument, until any amendment by ComReg.
- 12.2. Pursuant to Regulation 14(1) of the Access Regulations, Eircom shall maintain appropriate cost accounting systems in respect of products, services or facilities referred to in section 7.
- 12.3. Pursuant to Regulation 14(1) of the Access Regulations, prices charged by Eircom to any other undertaking for Access to or use of those products, services or facilities referred to in section 7 shall be subject to a cost orientation obligation. In particular, Eircom shall continue to comply with ComReg Document No. 08/71 made in respect of ancillary charges in Eircom's Access Reference Offer price list (ComReg Document No. 08/71); ComReg Decision No. D05/09 made in respect of Intra Migration Premium Charge (ComReg Document No. 09/77, Response to Consultation and Decision); ComReg Decision No. D04/09 made in respect of the Rental Price for Shared Access to the Unbundled Local Loop (ComReg Document No. 09/66, Response to Consultation and Decision); and shall comply with ComReg Decision No D01/10 made in respect of Local Loop Unbundling ('LLU') and Sub-Loop Unbundling ('SLU'), Maximum Monthly Rental Charges (ComReg Document No, 10/10, Decision No. 01/10, Response to Consultations and Decision).
- 12.4. Eircom shall have an obligation not to cause a margin/price squeeze.

ANNEX 6
REQUESTED STATEMENT OF REQUIREMENTS (SOR)



BT SOR to update
the LLU SLA 2404201 Industry Discussion



SB WLR SLA

ANNEX 7
THE REGULATED CONTRACT SLAs

The relevant product SLAs are available on the Open Eir web site at www.openeir.ie

They are embedded here for ease of reference



ADSL Bistream SLA
v4.docx



LLU Standard SLA
v13 v1-2.docx



SB WLR SLA Issue
2.8 v1.docx

Annex 6 : Part 1: BT SOR to update the LLU SLA 24042012

BT SOR to update the Eircom LLU SLA

This is a formal Statement of Requirement for Eircom to update their Service Level Agreement (SLA) for Local Loop Loop Unbundling.

Reasons for this request

1. To improve the service offered to end customers.
2. It was 2008/2009 when the last major review was commenced and numerous service improvements have been made which should now be reflected within the SLA.
3. To improve the competitiveness of all parties using the Eircom network.
4. We also note that the SLA parameters for Sub-Loop Unbundling are missing and we are seeking for these to be included in the SLA.

Use of Eircom Template.

The Eircom SLA update of the 23rd April 2012 for Soft Migrations is being used as the template for our comments to assist clarity. This front page has been added to ensure that it is clear this document is a discussion paper within the industry body.

Discussion: BT is happy to engage in a constructive industry discussion through the LLU industry group to progress this SOR.

History

Version	Author	Comment
Industry Draft A	John O'Dwyer	Initial comments to update the Eircom SLA

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eircom **wholesale**

Service Level Agreement

Provision and Repair of Unbundled Local Metallic Path (ULMP), Line Sharing (LS), Combined GNP and ULMP (GLUMP) and Sub-Loop Unbundling

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Issue 11

Effective from xx/xx/2012

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SERVICE LEVEL AGREEMENT

Revision history

Version	Date	Revised by	Revision details
10.0	01 October 2011	eircom Wholesale	Industry Review
11.0		eircom Wholesale	Industry Review

Associated documents

Title	Location
Premium Repair SLA	www.eircomwholesale.ie
Premium Repair LLU Product Description	www.eircomwholesale.ie
LLU Prioritised Repair Product Description	www.eircomwholesale.ie
LLU IPM	www.eircomwholesale.ie

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SERVICE LEVEL AGREEMENT

1. Introduction

This SLA is effective from xxx 2012 and shall remain in effect until amended following agreement of the parties to such amendment, or following determination by ComReg.

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1 This document details the service levels to which eircom commits with regard to the provision and repair, of Unbundled Local Metallic Path (ULMP), Line Sharing (LS) products, Combined GNP and ULMP (GLUMP) and Sub Loop Unbundling (SLU), hereafter referred to as ULMP, LS, GLUMP and SLU. The services are at all times provided subject to the terms and conditions as set out in the Access Reference Offer, Annex C, Service Schedule 102, 103 and 106.

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2 The services include the provision and repair of ULMP, LS, GLUMP and Sub Loop Unbundling paths ordered pursuant to an Agreement being in place between eircom and the Access Seeker ordering the services.

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3 The services described in the SLA are subject to the industry agreed Inter-operator Process Manuals (IPMs) that define the detailed operational process associated with the provision of ULMP, LS, GLUMP and SLU. The IPMs are a representation of how the SLA parameters are supported in practice and must be read in conjunction with the SLA.

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4 The definitions in Annex A of the Access Reference Offer will apply unless explicitly stated.

5 The fault repair service levels set out in the SLA are applicable to ULMP, LS, GLUMP and SLU products available at eircom exchanges (and cabinets for SLU) where an Access Seeker has collocation facilities in place.

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Metrics

eircom shall be responsible for monitoring and measuring performance metrics and shall report on the agreed metrics to the operator on a monthly basis for provision and a quarterly basis for repair. Provisioning performance reports will be provided within 10 Working Days of the end of the month. Repair performance reports will be provided within one month of the end of the reporting quarter. An outline to guidelines for payment of penalty credits is provided in Appendix 2. A worked penalty calculation example can be found in Appendix 6.

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The six month periods for both Web service and reporting have expired hence the new 10day period should apply for reporting and there should be an SLA around Web services.

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SERVICE LEVEL AGREEMENT

2. Provisioning and Repair Process Definitions

Definitions

Working Day: As defined in the ARO.

Line Fault: An LLU line fault is defined as a fault reported by a customer of an OAO, where the fault results in disrupted or degraded service.

Repair Time: The duration between the time a fault is received and accepted by eircom in accordance with the fault reporting procedures and the time the fault is closed by eircom with the Access Seeker identified as the last Unconfirmed Clear, less parked time.

Unconfirmed Clear: On completion of a repair, a fault ticket receives an Unconfirmed Clear status and the ticket is parked. The clock is stopped until:-

- it is accepted as cleared by the Access Seeker and therefore becomes a "Confirmed Clear Permanent"
- or 2 working days from the Unconfirmed Clear notification to the Access Seeker has elapsed in which case the fault becomes a "Confirmed Clear Permanent" by default
- or the clear is legitimately rejected by the Access Seeker and the repair clock is restarted.

Valid Faults: all faults other than those excluded faults in accordance with Appendix 1, and eircom defined non-faults (clear codes 00-99), customer internal wiring faults and CPE faults, as described in the IPM.

Confirmed Clear Permanent: If a Fault Clear, has either been accepted by the Access Seeker or 2 working days has elapsed from Unconfirmed Clear notification, the fault ticket is given a Confirmed Clear Permanent status. In addition, a final clear code is associated with the fault ticket and it is permanently closed.

However, if the Access Seeker responds with a rejection of the repair, within 2 working days, the ticket is un-parked, the clock is re-started and repair work recommences. On completion of the repair, the Unconfirmed Clear status is applied again, the Access Seeker is notified and the process above is repeated.

Parked Time: The times during which the SLA clock is stopped which include; -

- time not covered by the relevant SLA
- or during out of hours periods where resources being made available on a reasonable endeavours basis are unavailable
- or circumstances as outlined in Appendix 3.

3. SLA Schedule

The SLA schedule is set out in the following tables. Where limitations apply to any activity in this SLA, these are detailed after the table to which they apply. The party with the obligation in all instances is eircom.

All Performance Targets will apply at an Operator level per metric and service credits are not payable for metrics that are achieved.

In the event of query or dispute, the relevant dispute process will be followed.

4. Service Level Summary for Provisioning Process Points

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SERVICE LEVEL AGREEMENT

Table 2: ULMP, LS, GLUMP and SLU Standard Validations Timeframes

Activity Number	Activity Description	Performance Metric	Performance Target	Service Credit for not meeting Performance Metric Target
4	Order Validation PU - Acceptance or rejection of an order for ULMP	Advice of acceptance of the order within 4 working hours of the request being recorded on the UG	99% of request in accordance with performance metric	EURO 12.70 per account affected per Working Day or part thereof of delay.
5	Order Validation PUI - Acceptance or rejection of an order for ULMP	Advice of acceptance of the order within 4 working hours of the request being recorded on the UG	99% of request in accordance with performance metric	EURO 12.70 per account affected per Working Day or part thereof of delay.
6	Order Validation PLS - Acceptance or rejection of an order for Line Share	Advice of acceptance of the order within 4 working hours of the request being recorded on the UG	99% of request in accordance with performance metric	EURO 12.70 per account affected per Working Day or part thereof of delay.
7	Order Validation PLB - Acceptance or rejection of an order for Line Share	Advice of acceptance of the order within 4 working hours of the request being recorded on the UG	99% of request in accordance with performance metric	EURO 12.70 per account affected per Working Day or part thereof of delay.
8	Order Validation CHP- Acceptance or rejection of a order for Change Pins	Advice of acceptance of the order within 8 working hours of the request being recorded on the UG	99% of request in accordance with performance metric	EURO 12.70 per account affected per Working Day or part thereof of delay.
9	Order Validation PUS - Acceptance or rejection of a New Line or Spare Path Order	Advice of acceptance of the order within 8 working hours of the request being recorded on the UG	99% of request in accordance with performance metric	EURO 12.70 per account affected per Working Day or part thereof of delay.
10	Order Validation Convert - Acceptance or rejection of a Convert order	Advice of acceptance of the order within 4 working hours of the request being recorded on the UG	99% of request in accordance with performance metric	EURO 12.70 per account affected per Working Day or part thereof of delay.
11	Order Validation PUG - Acceptance or rejection of an order for GLUMP	Advice of acceptance of the order within 4 working hours of the request being recorded on the UG	99% of request in accordance with performance metric	EURO 12.70 per account affected per Working Day or part thereof of delay.
XX	Order Validation SLU	Advice of acceptance of the order within 4 working hours of the request being recorded on the UG	99% of request in accordance with performance metric	EURO 12.70 per account affected per Working Day or part thereof of delay.

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SERVICE LEVEL AGREEMENT

Table 3: ULMP, LS, GLUMP and SLU Standard Delivery Timeframes

Activity Number	Activity Description	Performance Metric	Performance Target	Service Credit for not meeting Performance Metric Target
12	Delivery Notification PU - Provision of ULMP on a Working Line	Advice of completion of accepted order by 17:00 on the forth, Working Day following Order Submission	96% of request in accordance with performance metric	EURO 12.70 per account affected per Working Day or part thereof of delay.
13	Delivery Notification PUI - Provision of ULMP on an insitu Line	Advice of completion of accepted order by 17:00 on the forth, Working Day following Order Submission	96% of request in accordance with performance metric	EURO 12.70 per account affected per Working Day or part thereof of delay.
14	Delivery Notification PLS - Provision of Line Sharing on a Working Line	Advice of completion of accepted order by 17:00 on the forth, Working Day following Order Submission	96% of request in accordance with performance metric	EURO 12.70 per account affected per Working Day or part thereof of delay.
15	Delivery Notification PLB - Provision of Line Sharing on a Working Line	Advice of completion of accepted order by 17:00 on the forth, Working Day following Order Submission	96% of request in accordance with performance metric	EURO 12.70 per account affected per Working Day or part thereof of delay.
16	Delivery Notification CHP - Re-jumpering of the LLU service to new pins on the OAO block.	Advice of completion of accepted order by 17:00 on the forth, Working Day following Order Submission	96% of request in accordance with performance metric	EURO 12.70 per account affected per Working Day or part thereof of delay.
17	Delivery Notification Convert - Provision of ULMP on a former Line Share line	Advice of completion of accepted order by 17:00 on the forth, Working Day following Order Submission	96% of request in accordance with performance metric	EURO 12.70 per account affected per Working Day or part thereof of delay.
18	Delivery Notification PUS - Provision of ULMP on a New Line or Spare Path	Advice of completion of accepted order by 17:00 on the ninth, Working Day following Order Submission	90% of validated Orders will have Delivery Notification sent in accordance with performance metric	EURO 12.70 per account affected per Working Day or part thereof of delay.
19	Delivery Notification	Advice of completion of	98% of request in accordance with	EURO 12.70 per account

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	PUG - Provision of GLUMP line	accepted order by 17:00 on the forth Working Day following Order Submission	performance metric	affected per Working Day or part thereof of delay.
XX	SLU Delivery Notification	Advice of completion of accepted order by 17:00 on the forth Working Day following Order Submission	98% of request in accordance with performance metric	EURO 12.70 per account affected per Working Day or part thereof of delay.

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* Advice of completion of accepted order by 17:00 on the tenth Working Day following Order Submission became effective from 1st September 2011.

Table 4: ULMP and GLUMP Soft Migration Delivery Timeframes

Activity Number	Activity Description	Performance Metric	Performance Target	Service Credit for not meeting Performance Metric Target
20	PSU Order Type Activation of accepted ULMP provide order and notification of completion	Advice of completion of the accepted order by 1700 on the second Working Day following the notification of the request was recorded on the UG.	98% of request in accordance with performance metric New and need to discuss	EURO 12.70 per account affected per Working Day or part thereof of delay
21	PSG Order Type Activation of accepted GLUMP provide order and notification of completion	Advice of completion of the accepted order by 1700 on the second Working Day following the Working Day the request was recorded on the UG	98% of request in accordance with performance metric New and need to discuss	EURO 12.70 per account affected per Working Day or part thereof of delay

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Fault Repair Service Level Summary

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For the purposes of this SLA, a fault is defined as any reported condition on an ULMP/LS/SLU access network circuit which does not meet eircom Operational PSTN standards, as defined in the Access Reference Offer, Annex C, Service Schedules 102, 103 and 106, Appendix 1.

The Access Seeker is responsible to undertake initial testing to prove the fault to the eircom local loop circuit, prior to submitting a Valid Fault report as per the IPM. The Access Seeker is also responsible to prove all faults out of their DSLAM equipment and the port associated with the line and perform CPE tests before reporting a fault, which would then be accepted by eircom.

NOTE: Once a GLUMP path has been delivered all GLUMP faults follow the ULMP Process.

Table 5: Fault Resolution

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SERVICE LEVEL AGREEMENT

ULMP Faults - No Line Test Data Supplied by AS

Activity Number	Activity Description	Performance Metric	Performance Target	Service Credit for not meeting Performance Metric Target
22a	Resolution of ULMP Fault	Repair Time: 3 Working Days	Target 85%	See Article 1 Appendix 5
22b	Resolution of ULMP Fault	Repair Time: 6 Working Days	Target 95%	See Article 2 Appendix 5
22c	Resolution of ULMP Fault	Repair Time: 11 Working Days	Target 100%	See Article 3 Appendix 5

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SLU Faults - No Line Test Data Supplied by AS

Activity Number	Activity Description	Performance Metric	Performance Target	Service Credit for not meeting Performance Metric Target
XXa	Resolution of SLU Fault	Repair Time: 3 Working Days	Target 85%	See Article 1 Appendix 5
XXb	Resolution of SLU Fault	Repair Time: 6 Working Days	Target 95%	See Article 2 Appendix 5
XXc	Resolution of SLU Fault	Repair Time: 11 Working Days	Target 100%	See Article 3 Appendix 5

Line Share Faults or ULMP/SLU Faults with Line Test Data Supplied by AS

Activity Number	Activity Description	Performance Metric	Performance Target	Service Credit for not meeting Performance Metric Target
23a	Resolution of Line Share Fault or ULMP Fault with Test Results	Repair Time: 2 Working Days	Target 85%	See Article 1 Appendix 4
23b	Resolution of Line Share Fault or ULMP Fault with Test Results	Repair Time: 5 Working Days	Target 95%	See Article 2 Appendix 4
23c	Resolution of Line Share Fault or ULMP Fault with Test Results	Repair Time: 10 Working Days	Target 100%	See Article 3 Appendix 4

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SERVICE LEVEL AGREEMENT

	Test Results			
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Table 6: Statistical Reporting

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Activity Number	Activity Description	Performance Metric	Performance Target	Service Credit for not meeting Performance Metric Target
24	Submission of monthly provisioning performance metrics to the Operator's	Provide performance metrics to the Operator's 20 days following the end of the month.	In accordance with metric.	Default Interest rate as per Access Agreement on all penalties due.
25	Submission of quarterly repair performance metrics to the Operator's	Provide performance metrics to the Operator's one month following the end of the quarter.	In accordance with metric	Default Interest rate as per Access Agreement on all penalties due.

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Appendix 1 - Exclusions

Service Assurance

The circuit will be deemed available to the Access Seeker and is therefore excluded for the purposes of calculating credits if the non-availability arises from or is otherwise caused or contributed to by the following circumstances:

- Where the fault is caused by, third party (does not include the situation where the third party has no association with the customer) activities such as cable damage, or gunshot. For example where a lorry brings down the overhead drop wire into the customer premises.
- Where Eircom formally declare contractual 'Force Majeure'. Eircom the case of a declaration of contractual 'Force Majeure' Eircom will be subject to a test of reasonableness.
- Where a fault occurrence is due to changes in Customer provided apparatus
- Where the fault is not in the eircom network i.e. Access Seeker non-fault
- Where a fault is reported and no fault is detected when the service is tested from end to end.
- Any period of scheduled outages notified to the Access Seeker in accordance with the planned works procedure
- A failure by the Access Seeker or its customer to allow access to premises or equipment when requested
- The Access Seeker or its customer failing to operate the service in accordance with eircom terms and conditions for the provision of the service
- A failure of the customer to report the fault in accordance with the fault reporting procedures

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Service Delivery

New Line or Spare Path Orders Only

Orders will be excluded from SLA in the event of any of the following circumstances arising:

- Customer delay
- The order requires the completion of network construction work.

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Appendix 2 - Guidelines for Payment of Penalty Credits

eircom shall provide Access Seekers with penalty statements one month in arrears with the statement being reconciled between the parties during month 3 of the quarter with payment made in the next billing cycle.

In the event that the Access Seeker is of the opinion that a penalty liability has been incorrectly calculated then a claim must be submitted in writing to:

The Penalty Manager
eircom Wholesale.
eircom HQ,
1 Heuston South Quarter,
St. Johns Road,
Dublin 8.

In case of a query, any supporting documentation must be supplied within ten Working Days of a request by eircom.

Any adjustment will be remitted by way of credit against the account associated with the claim.

SERVICE LEVEL AGREEMENT

Appendix 3 - Parked Time

Circumstances whereby a fault cannot be progressed on behalf of an Access Seeker, and the fault is parked are outlined as follows; -

- ✦ eircom cannot get co-operation from the Access Seeker with testing the line
- ✦ When a fault ticket receives an Unconfirmed Clear status, it will be parked.
- ✦ Where an engineer is dispatched and cannot get access to the end user premises
- ✦ Where to proceed would result in a health and safety risk, avoidance of which could not have been realistically predicted by eircom.
- ✦ If it is requested by the access seeker and/or end user
- ✦ Where a third party, other than eircom contracted entities, restricts eircom from working on resolution of the fault.
- ✦ Force Majeure

Appendix 4

Repair Service Credit Algorithm – Line Share Faults or ULMP/SLU Faults with Line Test Data provided by AS

2 Day Repair

Target	Actual Performance	Service CREDIT
85% Repair in 2 Days	$X\% = \text{Actual 2 Day Repair Performance}$	€4.00
95% Repair in 5Days	$Y\% = \text{Actual 5 Day Repair Performance}$	€7.00
100% Repair in 10 Days	$Z\% = \text{Actual 10 Day Repair Performance}$	€10.00

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Faults Repaired and applicable for SLA payment for the Quarter are assembled to give "List 1".

- List 1 = all tickets assessed under SLA for that period
- List 2 = all tickets closed after Day 2
- List 3 = all tickets closed after Day 5
- List 4 = all tickets closed after Day 10
- List 5 = List 2 minus List 3 - all tickets closed on days 3 through 5
- List 6 = List 3 minus List 4 - all tickets closed on days 6 through 10
- C(x) = count of tickets in a given list
- A(x) = average ticket days in a given list
- $\Sigma(x)$ = cumulative ticket days in a given list

Article 1: 85% service credit Calculation

Where this SLA is not met, the SLA penalty penalises Days 3 to 5 of all tickets in breach. The 85% target mitigates the commercial impact of this article.

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Number of Faults subject to Penalty

Number of Faults subject to penalty = $C(2)-C(1)*(1-0.85)$

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SERVICE LEVEL AGREEMENT

Multiplier

Penalty Days (multiplier) = $(\sum(5)-2*C(5)+3C(6)+3C(4))/C(2)$ - Average penalty days of all tickets in breach, where tickets closed on or after Day 6 are deemed to have breached this SLA by the maximum 3 days.

Service Credit 1 = (Number of Faults subject to penalty) * (Multiplier) * Penalty

Article 2: 95% Service Credit Calculation

Where this SLA is not met, the SLA penalty penalises Days 6 to 10 of all tickets in breach. The 95% target mitigates the commercial impact of this article.

Number of Faults subject to Penalty

Number of Faults subject to penalty = $C(3)-C(1)*(1-0.95)$

Multiplier

Penalty Days (multiplier) = $(\sum(6)-5*C(6)+ 5*C(4))/C(3)$ - Average penalty days of all tickets in breach, where tickets closed on or after Day 11 are as having breached this SLA by the maximum 5 days.

Service Credit 2 = (Number of Faults subject to penalty) * (Multiplier) * Penalty

Article 3: 100 % Service Credit Calculation

Number of Faults subject to Penalty

Number of Faults subject to penalty $C(4)$ (Count of all tickets closed on or after day 11)

Multiplier

= $(\sum(4)-10*C(4))/C(4)$

Service Credit 3 = (Number of Faults subject to penalty) * (Multiplier) * Penalty

Total Service Credit = Service Credit 1 + Service Credit 2 + Service Credit 3

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SERVICE LEVEL AGREEMENT

Appendix 5

Repair Service Credit Algorithm – ULMP/SLU Faults - No Line Test Data provided by AS

3 Day Repair

Target	Actual Performance	Service CREDIT
85% Repair in 3 Days	X% = Actual 3 Day Repair Performance	€4.00
95% Repair in 6 Days	Y% = Actual 6 Day Repair Performance	€7.00
100% Repair in 11 Days	Z% = Actual 11 Day Repair Performance	€10.00

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Faults Repaired and applicable for SLA payment for the Quarter are assembled to give "List 1".

- List 1 = all tickets assessed under SLA for that period
- List 2 = all tickets closed after Day 3
- List 3 = all tickets closed after Day 6
- List 4 = all tickets closed after Day 11
- List 5 = List 2 minus List 3 – all tickets closed on days 4 through 6
- List 6 = List 3 minus List 4 – all tickets closed on days 7 through 11
- C(x) = count of tickets in a given list
- A(x) = average ticket days in a given list
- Σ(x) = cumulative ticket days in a given list

Article 1: 85% service credit Calculation

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Where this SLA is not met, the SLA penalty penalises Days 4 to 6 of all tickets in breach. The 85% target mitigates the commercial impact of this article.

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Number of Faults subject to Penalty

$$\text{Number of Faults subject to penalty} = C(2) - C(1) * (1 - 0.85)$$

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Multiplier

Penalty Days (multiplier) = $(\Sigma(5) - 3 * C(5) + 3C(6) + 3C(4)) / C(2)$ – Average penalty days of all tickets in breach, where tickets closed on or after Day 7 are deemed to have breached this SLA by the maximum 3 days.

$$\text{Service Credit 1} = (\text{Number of Faults subject to penalty}) * (\text{Multiplier}) * \text{Penalty}$$

Article 2: 95% Service Credit Calculation

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Where this SLA is not met, the SLA penalty penalises Days 7 to 11 of all tickets in breach. The 95% target mitigates the commercial impact of this article.

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Number of Faults subject to Penalty

$$\text{Number of Faults subject to penalty} = C(3) - C(1) * (1 - 0.95)$$

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Multiplier

Penalty Days (multiplier) = $(\Sigma(6) - 6 * C(6) + 5 * C(4)) / C(3)$ – Average penalty days of all tickets in breach, where tickets closed on or after Day 12 are as having breached this SLA by the maximum 5 days.

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SERVICE LEVEL AGREEMENT

Service Credit 2 = (Number of Faults subject to penalty) * (Multiplier) * Penalty

Article 3: 100 % Service Credit Calculation

Number of Faults subject to Penalty

Number of Faults subject to penalty C(4) (Count of all tickets closed on or after day 12)

Multiplier

= $(\Sigma(4) - 11 * C(4)) / C(4)$

Service Credit 3 = (Number of Faults subject to penalty) * (Multiplier) * Penalty

Total Service Credit = Service Credit 1 + Service Credit 2 + Service Credit 3

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Appendix 6

eircom LLU SLA Penalty Calculation Example

The following section provides an example calculation for the SLA. The example covers all activities for Provisioning Process Points and Fault Repair.

Service Level Summary for Provisioning Process Points

Account / Line Status Enquiry Example

Activity Number	Order Type	Performance Target	Total Orders Delivered	Orders Delivered Within Perf. Target	Actual Performance	Penalties	Total Days Late	Penalty Amount	Total Penalty	Note
1	DRL	98%	9	8	88.89%	1	10	12.7	127.00	
2	ULE	97%	241	232	96.27%	2	2	12.7	-	N/A - Minimum penalty rule

Standard Validations Timeframes

Activity Number	Order Type	Performance Target	Total Orders Delivered	Orders Delivered Within Perf. Target	Actual Performance	Penalties	Total Days Late	Penalty Amount	Total Penalty	Note
4	PU	98%	12	10	83.33%	2	2	12.7	-	N/A - Minimum penalty rule
5	PUI	98%	94	93	98.94%	1	1	12.7	-	N/A - Performance target met
6	PLS	98%	17	15	88.24%	2	4	12.7	-	N/A - Minimum penalty rule
7	PLB	98%	4	2	50.00%	2	2	12.7	-	N/A - Minimum penalty rule
8	CHP	98%	1	0	0.00%	1	1	12.7	-	N/A - Minimum penalty rule
9	PUS	98%	10	9	90.00%	1	10	12.7	127.00	
10	Convert	98%	10	9	90.00%	1	10	12.7	127.00	
11	PUG	98%	4	2	50.00%	2	10	12.7	127.00	

Standard Delivery Timeframes

Activity Number	Order Type	Performance Target	Total Orders Delivered	Orders Delivered Within Perf. Target	Actual Performance	Penalties	Total Days Late	Penalty Amount	Total Penalty	Note
12	PU	95%	10	9	90.00%	1	8	12.7	101.60	
13	PUI	95%	30	28	93.33%	1	1	12.7	-	N/A - Minimum penalty rule
14	PLS	95%	10	7	70.00%	3	9	12.7	114.30	
15	PLB	95%	2	1	50.00%	1	2	12.7	-	N/A - Minimum penalty rule
16	CHP	95%	5	4	80%	1	1	12.7	-	N/A - Minimum penalty rule
18	PUS	95%	1	0	0.00%	1	8	12.7	101.60	
19	PUG	95%	1	1	100.00%	-	0	12.7	-	

N/A - Minimum penalty rule

The SLA penalty regime is only valid for individual performance metrics where a minimum of €100 penalty has been incurred for a particular SLA activity in any given month per OAO.

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SERVICE LEVEL AGREEMENT

Fault Repair Service Level Summary

Need to update the example – could not change as picture format.

Fault #	Days to Repair
01-79	1
80 – 130	2
131 – 161	3
162 – 172	4
173 - 174	5
175 - 176	6
177 - 180	7
181	8
182	9
183	10
184	11
185	12
186	13
187	14
188	15
189	16
190	17
191	18
192	19
193	20
194	21
195	22
196	23
197	24
198	25
199	26
200	27

	2,5,10 Repair SLA	3,6,11 Repair SLA
L1 - All tickets assessed under SLA	200	200
L2 - All tickets closed after day 2 (3)	70	39
L3 - All tickets closed after day 5 (6)	26	24
L4 - All tickets closed after day 10 (11)	17	16
L5 - L2 minus L3 - all tickets closed on days 3-5 / 4-6	44	15
L6 - L3 minus L4 - all tickets closed on days 6-10 / 7-11	9	8
sum ticket days from list 4	323	312
sum ticket days from list 5	147	66
sum ticket days from list 6	67	66

2 Day Repair		3 Day Penalty	
Number of faults subject to Penalty $L2-L1*(1-0.73)$	$L2-L1*(1-0.73)$ $70-200*(1-0.73)$ 16	Number of faults subject to Penalty $L2-L1*(1-0.73)$	$L2-L1*(1-0.73)$ $39-200*(1-0.73)$ -15
Penalty Days Multiplier $(Sum(5)-2*(L5)+3*(L6)+3*(L4))/L2$	$((147-2*(44)+3*(9)+3*(17))/70)$ 1.957142857	Penalty Days Multiplier $(sum(5)-3*(L5)+3*(L6)+3*(L4))/L2$	2.384615385
Penalty	€125	Penalty	0
<hr/>		<hr/>	
5 Day Penalty		6 Day Penalty	
Number of faults subject to Penalty	$26-200*(1-0.92)$ 10	Number of faults subject to Penalty	$24-200*(1-0.92)$ 8
Penalty Days Multiplier	$67-5*9+5*17/26$ 4.115384615	Penalty Days Multiplier	$66-6*(8)+5*(16)/24$ 4.083333333
Penalty	€288	Penalty	€229
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10 Day Penalty		11 Day Penalty	
Number of faults subject to Penalty	17	Number of faults subject to Penalty	16
Penalty Days Multiplier	$(323-10*17)/17$ 9.000	Penalty Days Multiplier	$(312-11*16)/16$ 8.500
Penalty	€1,530	Penalty	€1,360

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Annex 6 : Part2: SB WLR SLA Industry Discussion



BT SOR to update the Eircom SB-WLR SLA

This is a formal Statement of Requirement for Eircom to update their Service Level Agreement (SLA) for Single Billing Wholesale Line Rental (SB-WLR) services.

Reasons for this request

1. To improve the service offered to end customers.
2. It was 2008/2009 when the last major review was commenced and numerous service improvements have been made which should now be reflected within the SLA.
3. To improve the competitiveness of all parties using the Eircom network.

Use of Eircom Template.

We are using the template kindly supplied by Eircom to assist clarity. This front page has been added to ensure that it is clear this document is a discussion paper within the industry body.

Discussion: BT is happy to engage in a constructive industry discussion through the LLU industry group to progress this SOR.

History

Version	Author	Comment
Industry Draft A	John O'Dwyer	Initial comments to update the Eircom SLA

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eircom **wholesale**

Service Level Agreement for Single Billing through Wholesale Line Rental

Issue 2.7

Effective from 01/03/09



SERVICE LEVEL AGREEMENT

Revision history

Version	Date	Revised by	Revision details
2.7	1 st March 2009	eircom	Industry Agreed

Associated documents

Title	Location
	www.eircomwholesale.ie



SERVICE LEVEL AGREEMENT

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SERVICE LEVEL AGREEMENT

1. Introduction

This document details the service levels to which *eircom* commits with regard to the provision and repair, of Single Billing through Wholesale Line Rental, hereafter referred to as SB-WLR. The service is at all times provided subject to the terms and conditions as set out in the Reference Interconnect Offer, Annex C, Service Schedule 401.

The service includes the provision and repair of SB-WLR ordered pursuant to an Agreement being in place between *eircom* and the Operator ordering the service.¹

The service described in this SLA is subject to the industry agreed Single Billing through Wholesale Line Rental Product Description ("SB-WLR Product Description") and Single Billing through Wholesale Line Rental Inter Operator Process Manual ("SB-WLR IPM"). This latter document defines the detailed operational process associated with the provision of SB-WLR and is a representation of how the SLA parameters are supported in practice and must be read in conjunction with the SLA.

The definitions in Annex A of the Reference Interconnect Offer will apply unless explicitly stated.

Review

Reviews of this Service Level Agreement shall take place in accordance with the normal process for review of the Interconnect Agreement, which allows for annual reviews (Next Review is intended to commence in Sept. 2009)

Dispute Resolution

Disputes arising shall be subject to the dispute resolution process specified elsewhere in this Interconnection Agreement.

Metrics

eircom shall be responsible for monitoring and measuring performance metrics and shall report on the agreed metrics to the operator on a monthly basis for provision and repair. Provisioning performance reports will be provided within 10 Working Days of the end of the month. Repair performance reports will be provided within one month of the end of the reporting quarter. An outline to guidelines for payment of penalty credits is provided in Appendix 2.

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2. Definitions

Working Day: 09:00 – 17:00 Monday to Friday excluding Government Holidays. **Includes that Eircom systems** (to include GUI, FTP and Web services) **will process transactions from 08.00 to 20:00 hours seven days a week including Government Holidays.**

Activation Fault: Single Billing activation faults are those faults that arise as a result of activation of SB-WLR by *eircom* that are accepted as faults by *eircom*. The scenarios covered under this fault are those experienced by the end-customer as a direct result of activation within 48 hours of service activation and would consist primarily of:

- i) an inability to make outgoing calls as wrong CPS category applied or
- ii) failure to provide working ancillary service as ordered and notified as provided in the completion notice.

¹ Monitoring of web-services will be conducted over the next six months with a view to identifying suitable metrics and targets for inclusion in the next revision of the SLA.



SERVICE LEVEL AGREEMENT

Line Fault: A Single Billing line fault is defined as a fault reported by a customer of an Operator, where the fault results in disrupted or degraded service

Repair Time: The duration between the time a fault is received and accepted by *eircom* in accordance with the fault reporting procedures and the time the fault is closed by *eircom* with the SB-WLR Operator identified as the last Unconfirmed Clear, less parked time.

Unconfirmed Clear: On completion of a repair, a fault ticket receives an Unconfirmed Clear status and the ticket is parked. The clock is stopped until:

- it is accepted as cleared by the SB-WLR Operator and therefore becomes a "Confirmed Clear Permanent or
- 2 working days**, from the Unconfirmed Clear notification to the SB-WLR Operator has elapsed in which case the fault becomes a "Confirmed Clear Permanent" by default or
- The clear is legitimately rejected by the SB-WLR Operator and the repair clock is restarted.

Valid Faults: all faults other than those excluded faults in accordance with Appendix 1, and *eircom* defined non-faults (clear codes 00-99), **customer** internal wiring faults and CPE faults, as described in Annex F of the IPM.

Confirmed Clear Permanent: If a fault clear has either been accepted by the SB-WLR Operator or **2 working days** has elapsed from Unconfirmed Clear notification, the fault ticket is given a Confirmed Clear Permanent status. In addition, a final clear code is associated with the fault ticket and it is permanently closed.

However, if the SB-WLR Operator responds with a rejection of the repair, within **2 working days**, the ticket is un-parked, the clock is re-started and repair work recommences. On completion of the repair, the Unconfirmed Clear status is applied again, the SB-WLR Operator is notified and the process above is repeated.

Parked Time: The times during which the SLA clock is stopped which include:

- time not covered by the relevant SLA or
- during out of hours periods where resources being made available on a reasonable endeavours basis are unavailable or
- Circumstances as outlined in Appendix 3.

Storm Mode (Suspension of SLA) - Where Eircom trigger the Force Majeure clause of the Reference Interconnect Offer (RIO) in relation to events beyond their control. Once Storm Mode is triggered Eircom will not pay service credits for missing SLA targets. See Appendix 5 for Storm Mode Declaration Procedure

3. SLA Schedule

The SLA schedule is set out in the following tables. Where limitations apply to any activity in this SLA, these are detailed after the table to which they apply. The party with the obligation in all instances is *eircom*.

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SERVICE LEVEL AGREEMENT

In the event of query or dispute, the relevant dispute process will be followed.

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Table 1: Account\Line Status Enquiry

Activity Number	Activity Description	Performance Metric	Performance Target	Service Credit for not meeting Performance Metric Target
1	DR Order type Also available on webservises see webservises target	Advise of completion of the accepted order within 4 working hours of the request being recorded on the UG	95% within 4 hours and 100% with one working day.	€ 12.70 per account affected per Working Day or part thereof of delay.
2	LE Order Type Also available on webservises see webservises target	Advise of completion of the accepted order within 4 working hours of the request being recorded on the UG	95% within 4 hours and 100% with one working day.	€ 12.70 per account affected per Working Day or part thereof of delay.
3	Web-services	Web Services to be included in this SLA. Response should be within 1 minute max available during the hours of 8am to 8pm 7 days a week.	98% within 4 hours and 100% with one working day.	EURO 12.70 per late response

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Table 2: Orders for In-Situ/In-Service PSTN/BRA Lines

Activity Number	Activity Description	Performance Metric	Performance Target	Service Credit for not meeting Performance Metric Target
4	PW Order Type Activation of accepted provide SB-WLR/provide SB-WLR and CPS order and notification of completion Also available on webservises see webservises target	Advise of completion of the accepted order - within 4 working hours of the request being recorded on the UG	99% of request in accordance with performance metric	€ 25.39 per account affected per Working Day or part thereof of delay.

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5a	<u>LNI/LTI/MI</u> Order Types: Provision of accepted New /Additional PSTN/BRA Line Order Also available on webservices see webservices target	Advise of completion of the accepted order within 4 working hours of the request being recorded on the UG	99% of request in accordance with performance metric	€ 12.70 per account affected per Working Day or part thereof of delay
5b	<u>LNI/LTI/MI</u> Order Types: Provision of accepted New /Additional PSTN/BRA Line Order Also available on webservices see webservices target	Advise of completion of the accepted order by 17:00 on the Second Working Day following the Working Day the request was recorded on the UG	99% of request in accordance with performance metric	€ 12.70 per account affected per Working Day or part thereof of delay
6	<u>CL Order Type</u> Completion of accepted cease SB-WLR order and notification of completion Also available on webservices see webservices target	Advise of completion of the accepted order within 4 working hours of the request being recorded on the UG	99% of request in accordance with performance metric	€ 12.70 per account affected per Working Day or part thereof of delay.

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Table 3: Orders for New/Additional PSTN/BRA Lines

Activity Number	Activity Description	Performance Metric	Performance Target	Service Credit for not meeting Performance Metric Target
7	<u>LNN/LTN/MN</u> Order Types: Acceptance or Rejection of New/Additional PSTN/BRA Line Order Also available on webservices see webservices	Advice of acceptance or rejection of each order submitted by 17:00 on the first Working Day following the Working Day the request was recorded on the UG	98% of request in accordance with performance metric	€ 12.70 per account affected per Working Day or part thereof of delay

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	target			
8	<u>LNN/LTN/MN</u> Order Types: Provision of new/additional PSTN/BRA line with Single Billing Also available on webservices see webservices target	Advice of completion of accepted order by 17:00 on the tenth Working Day following the Working Day the request was recorded on the UG	98% of request in accordance with performance metric	€ 12.70 per account affected per Working Day or part thereof of delay
9	Order Validation of PRA order Also available on webservices see webservices target	As per separately published CS SLA		
10	Delivery of PRA line, standard delivery Also available on webservices see webservices target	As per separately published CS SLA		
11	Delivery of PRA line, non-standard delivery Also available on webservices see webservices target	As per separately published CS SLA		



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Table 4: Service Features

Activity Number	Activity Description	Performance Metric	Performance Target	Service Credit for not meeting Performance Metric Target
12	<u>CH Order Type</u> Activation of changes to Ancillary Services order and notification of completion ² Also available on webservises see webservises target	Advise of completion of the accepted order within 2 working hours of the request being recorded on the UG	98% of request in accordance with performance metric	€ 12.70 per account affected per Working Day or part thereof of delay.
13	<u>CN Order Type</u> Activation of number change request on PSTN lines Also available on webservises see webservises target	Advise of completion of the accepted order within 4 working hours of the request being recorded on the UG	98% of request in accordance with performance metric	€ 12.70 per account affected per Working Day or part thereof of delay.
14	<u>CM Order Type</u> Adding and Removing TOS Also available on webservises see webservises target	Advise of completion of the accepted order within 2 working hours of the request being recorded on the UG	98% of request in accordance with performance metric	€ 12.70 per account affected per Working Day or part thereof of delay.

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Table 5: Fault Resolution

Activity Number	Activity Description	Performance Metric	Performance Target	Service Credit for not meeting Performance Metric Target
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¹ NOTE – for new line installations, exclusions to this metric will include instances where customer delay occurs or where the order requires completion of network construction work. Orders completed up until midnight will be deemed to be completed within the Working Day.

² Call answering implementation will be excluded in this version of SLA due to current system constraints



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15	<u>FA Order Type Activation Fault</u> Also available on webservices see webservices target	Advise of completion of the accepted order within 4 working hours of the request being recorded on the UG	98% of request in accordance with performance metric	€ 12.70 per account affected per Working Day or part thereof of delay.
16	Resolution of other access network faults for PRAs affecting the Single Billing service Also available on webservices see webservices target	As per separately published CS SLA		
17a	Resolution of PSTN/BRA Line Fault Also available on webservices see webservices target	Repair Time: <u>2 Working Days</u>	Target 90%	See Article 1 Appendix 4
17b	<u>Resolution of PSTN/BRA Line Fault</u> Also available on webservices see webservices target	Repair Time: <u>5 Working Days</u>	Target 96%	See Article 2 Appendix 4
17c	<u>Resolution of PSTN/BRA Line Fault</u> Also available on webservices see webservices target	Repair Time: <u>10 Working Days</u>	Target 100%	See Article 3 Appendix 4

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The SB-WLR Operator is responsible to undertake initial testing to prove the fault to the *eircom* local loop circuit, prior to submitting a Valid Fault report as described in Annex D – Fault Reporting Checklist as per the IPM.



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In addition to the above metrics, *eircom* will, on an interim basis pending the development and introduction of an SLA with specific wholesale capability, make the enhanced SLA's that it provides to its retail customers available through SB-WLR. The specific enhanced SLA's provided are:

- ✔ eircom Assist SLA for ISDN PRA's and FRA's
- ✔ eircom Assist plus SLA for ISDN PRA's and FRA's
- ✔ eircom Premium Assist SLA for ISDN PRA's and FRA's

Where the Operator purchases such enhanced SLA for any particular line, that SLA will replace the application of this SLA for the relevant service elements.

Table 6: Billing Information

Activity Number	Activity Description	Performance Metric	Performance Target	Service Credit for not meeting Performance Metric Target
18	Provision of Billing Data to Operator	Provision of the billing data. Billing data should be deposited in the Operators folder on the server and notification sent to the Operator no later than 17:00 of the third Working Day following the published scheduled Major Account Billing (MAB) date	100% of data provided in accordance with performance metric.	Default Interest rate as per Interconnection Agreement on financial amount of outstanding billing data

Table 7: Statistical Reporting

Activity Number	Activity Description	Performance Metric	Performance Target	Service Credit for not meeting Performance Metric Target
19	Submission of monthly provisioning performance metrics to the Operator's	Provide performance metrics to the Operator's 10 days following the end of the month.	In accordance with metric.	Default Interest rate as per Interconnection Agreement on all penalties due.
20	Submission of monthly repair performance metrics to the Operator's	Provide performance metrics to the Operator's within 5 working days following the end of the month .	In accordance with metric.	Default Interest rate as per Interconnection Agreement on all penalties due.

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Table 8: Service Credit (Penalty Reporting)

Activity Number	Activity Description	Performance Metric	Performance Target	Service Credit for not meeting Performance
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				Metric Target
19	Submission of monthly details of circuits that have breached SLA	Provide performance metrics at the same time as the service credits (penalty reports) in line with the statistical reporting for provision and repair	In accordance with metric.	Default Interest rate as per Interconnection Agreement on all penalties due.



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Appendix 1

Exclusions

The circuit will be deemed available to the SB-WLR Operator and is therefore excluded for the purposes of calculating credits if the non-availability arises from or is otherwise caused or contributed to by the following circumstances:

- Where the fault is caused by, third party activities such as cable damage, or gunshot.
- Where the fault is caused by severe weather conditions such as storms, flooding, fire or lightning
- Where a fault occurrence is due to changes in Customer provided apparatus
- Where the fault is related to customer premises equipment dialling 13xxx codes
- Where a fault is reported without following the Fault Reporting Checklist, as per the IPM.
- Where the fault is not in the eircom network i.e. SB-WLR Operator non-fault
- Where a fault is reported and no fault is detected when the service is tested from end to end.
- A failure of the SB-WLR Operator to pass on all the fault details provided by the SB-WLR Operator's customer
- A failure by the SB-WLR Operator or its customer to allow access to premises or equipment when requested
- The SB-WLR Operator or its customer failing to operate the service in accordance with eircom terms and conditions for the provision of the service
- A failure of the customer to report the fault in accordance with the fault reporting procedures



SERVICE LEVEL AGREEMENT

Appendix 2

Guidelines for Payment of Service Credits

1. *eircom* shall provide SB-WLR Operators with service credit statements one month in arrears of measurement period in the case of repair and 10 working days in the case of provisioning with payment made in the next billing cycle. The applicable service credit to be paid is the difference between actual % achieved and the target %. The service credit statement should be reconciled by the SB-WLR Operator who may dispute the statement through this process.
2. In the event that the SB-WLR Operator is of the opinion that a penalty liability has been incorrectly calculated then a claim must be submitted in writing to:

The Penalty Manager
eircom Wholesale.
Eircom HQ,
1 Heuston South Quarter,
St. Johns Road,
Dublin 8.
3. In case of a query, any supporting documentation must be supplied within ten Working Days of a request by *eircom*.
4. Any adjustment will be remitted by way of credit against the account associated with the claim.



Appendix 3

Parked Time

Circumstances whereby a fault cannot be progressed on behalf of an SB-WLR Operator, and the fault is parked are outlined as follows:

- *eircom* cannot get co-operation from the SB-WLR Operator with testing the line
- When a fault ticket receives an Unconfirmed Clear status, it will be parked.
- Where *eircom* cannot get access to the end user premises, where such access is required
- Where to proceed would result in a health and safety risk, avoidance of which could not have been realistically predicted by *eircom*.
- If it is requested by the SB-WLR Operator and/or end user
- Where a third party, other than *eircom* contracted entities, restricts *eircom* from working on resolution of the fault.
- Force Majeure



SERVICE LEVEL AGREEMENT

Appendix 4

Repair Service Credit Algorithm

TARGET	ACTUAL PERFORMANCE	SERVICE CREDIT
90% Repair in 2 Days	X% = Actual 2 Day Repair Performance	€4.00
96% Repair in 5 Days	Y% = Actual 5 Day Repair Performance	€7.00
100% Repair in 10 Days	Z% = Actual 10 Day Repair Performance	€10.00

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Faults Repaired and applicable for SLA payment for the Quarter are assembled to give "List 1".

- List 1 = all tickets assessed under SLA for that period
 - List 2 = all tickets closed after Day 2
 - List 3 = all tickets closed after Day 5
 - List 4 = all tickets closed after Day 10
 - List 5 = List 2 minus List 3 – all tickets closed on days 3 thru 5
 - List 6 = List 3 minus List 4 – all tickets closed on days 6 thru 10
- C(x) = count of tickets in a given list
A(x) = average ticket days in a given list
 $\Sigma(x)$ = cumulative ticket days in a given list

Article 1) 90% service credit Calculation

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Where this SLA is not met, the SLA penalty penalises Days 3 to 5 of all tickets in breach. The 90% target mitigates the commercial impact of this article.

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Number of Faults subject to Penalty

Number of Faults subject to penalty = $C(2)-C(1)*(1-0.90)$

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Multiplier

Penalty Days (multiplier) = $(\Sigma(5)-2*C(5)+3C(6)+3C(4))/C(2)$ – Average penalty days of all tickets in breach, where tickets closed on or after Day 6 are deemed to have breached this SLA by the maximum 3 days.

Service Credit = (Number of Faults subject to penalty) * (Multiplier) * Penalty

Article 2) 96% Service Credit Calculation

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Where this SLA is not met, the SLA penalty penalises Days 6 to 10 of all tickets in breach. The 96% target mitigates the commercial impact of this article.

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Number of Faults subject to Penalty

Number of Faults subject to penalty = $C(3)-C(1)*(1-0.96)$

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Multiplier

Penalty Days (multiplier) = $(\Sigma(6)-5C(6)+5*C(4))/C(3)$ – Average penalty days of all tickets in breach, where tickets closed on or after Day 11 are as having breached this SLA by the maximum 5 days.

Service credit = (Number of Faults subject to penalty) * (Multiplier) * Penalty



SERVICE LEVEL AGREEMENT

Article 3) 100 % Service Credit Calculation

Number of Faults subject to Penalty

Number of Faults subject to penalty C(4) (Count of all tickets closed on or after day 11)

Multiplier

$$= (\Sigma(4)-10C(4))/C(4)$$

Service Credit = (Number of Faults subject to penalty) * (Multiplier) * Penalty



SERVICE LEVEL AGREEMENT

Appendix 5 Storm Mode Declaration Procedure

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Storm Mode can only be declared in the event of force Majeure being triggered contractually by Eircom, ComReg and the industry will be notified of the following information:

- Concurrent notification to industry and ComReg that Storm Mode is being declared.
- The date and time of the declaration,
- The reason in detail for the declaration,
- The Counties impacted.
- The Services Impacted.
- Concurrent notification to the industry and ComReg given as each county is restored to normal service, or notification all counties are restored to normal service, whichever is the sooner.

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The expectation of industry is that Storm Mode will only be triggered in the most exceptional circumstances and services should remain in Storm Mode for the minimum period necessary. If Storm persists for period of more than seven consecutive days, or is repeated within a period of six months a comprehensive report detailing the issues, details of the Weather, damage caused and mitigation should be provided to the industry and the National Regulator.

Commented [72]: A fault clear code should be introduced for storm mode.

The procedure above does not remove the operator's contractual rights.