



Consultation Paper

Payphone Access Charge

Industry Implementation

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All responses to this consultation should be clearly marked:-
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and sent by post, facsimile or e-mail, to arrive on or before 28th
July 2003, to:

FREEPOST
Ms. Carol Donohue
Commission for Communications Regulation
Irish Life Centre
Abbey Street
Dublin 1
Ireland

Ph: +353-1-8049600 Fax: +353-1-804 9680 Email:
carol.donohue@comreg.ie

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1 Introduction

ComReg is responsible for the regulation of the Irish telecommunications sector in accordance with European and National law. In recent years, the growth of freephone traffic in the Irish market has raised the issue of payphone operators being in a position to recover the cost of the use of their public payphones when calls are made to freephone numbers. The implementation of the Payphone Access Charge (PAC) facilitates the recovery of these costs.

The Commission for Communications Regulation (ComReg) is committed to facilitating the speedy implementation of the PAC for public payphone operators in the Irish market. ComReg believes that this must be implemented with the co-operation of all of industry and be done in robust way which adheres to the existing principals of interconnection.

ComReg has met regularly with industry representatives and has convened an industry forum to develop a solution for the introduction of the PAC on an industry wide basis. A project plan for the implementation of the PAC has been agreed and its implementation will see the introduction of an interconnection product to facilitate the industry wide charging of a PAC in October 2003.

Discussions have now reached a point where ComReg feels that it is appropriate to issue a public consultation on some of the details of the implementation of the charge, in particular, deciding which payphones are PAC eligible, charging transparency issues and other matters.

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

2 Background

In recent years the volume of 1800 free-phone calls originating from payphones has grown considerably. This is mainly because of the increasing popularity of pre-paid calling cards that use 1800 free-phone access numbers. As a result 1800 free-phone calls have become a significant proportion of traffic from many payphones. Since 1800 free-phone calls are free of charge to the user the payphone provider does not get any revenue for these calls, however costs are incurred. This has led to requests from payphone providers for the introduction of an access charge that is charged to the subscriber of the 1800 free-phone number.

2.1 Definition of PAC

A Payphone Access Charge (PAC) is a call charge levied on calls from payphones to 1800 free-phone numbers. As with ordinary call charges to 1800 free-phone numbers, the charge is applied to the terminating end of the call – the 1800 free-phone number. The PAC provides payphone providers with revenue for 1800 free-phone calls that would otherwise be carried without charge and is designed to cover the costs incurred by the payphone operator for operation and maintenance of the payphone, line rental, etc.

2.2 eircom's PAC

eircom notified ComReg of its desire to introduce a PAC for calls originating from its payphones in August 1999. In May 2000, the Director sanctioned eircom's introduction of an appropriately cost justified PAC (ODTR 00/33). The Decision Notice considered a PAC for eircom payphones only and did not address the possibility of other payphone providers levying a PAC since ComReg had not received a request from any other payphone provider in this regard at that time. Thus, at present, the PAC is only levied on calls from eircom payphones and not on calls from payphones operated by other providers.

2.3 Request for Extension of PAC to Other Payphone Providers

As mentioned earlier, in July 2002, ComReg initiated a consultation on the method of calculation of the PAC (ODTR 02/68). In response to the consultation paper (ODTR 02/73), two payphone operators stated that they should also be permitted to levy a PAC for calls originating from their payphones. Since the consultation in question related specifically to eircom's charges, the Director stated that an industry forum would be set up to deal with the implementation of PACs for other payphone operators.

ComReg views the payphone operators' request for extension of the PAC as reasonable for the same reasons that it judged eircom's request to be reasonable in decision notice ODTR 00/33. This is because many calls from payphones are made to 1800 free-phone numbers and in the absence of a PAC the payphone provider receives no revenue in relation to this traffic.

2.4 Industry Fora

To define and implement a solution, the ODTR convened an industry forum (the PAC Forum) with representation from payphone operators, network operators and pre-paid card providers. The forum held its first meeting on September 25th 2002 and has met on a number of occasions.

During January and February 2003 the PAC Forum was suspended and ComReg held a series of bilateral meetings with eircom to work through regulatory issues raised by eircom and to explore possible solutions. As most aspects of the solution needed to be implemented by network operators, a series of network operator meetings were also set up (chaired by ComReg), to work on the definition of a solution.

The network operators group produced an agreed project plan which was then presented to the PAC forum.

2.5 PAC Project Plan

The industry agreed PAC project plan will see the introduction of the PAC for payphone operators for their eligible payphones in October 2003. The plan has a number of milestones that need to be met in order for the target of October to be reached.

Milestones include

1. Agreement on Product description
2. Agreement on Accounting principles
3. Agreement on the processes and procedures
4. Agreement on Terms and Conditions
5. Implementation and Delivery

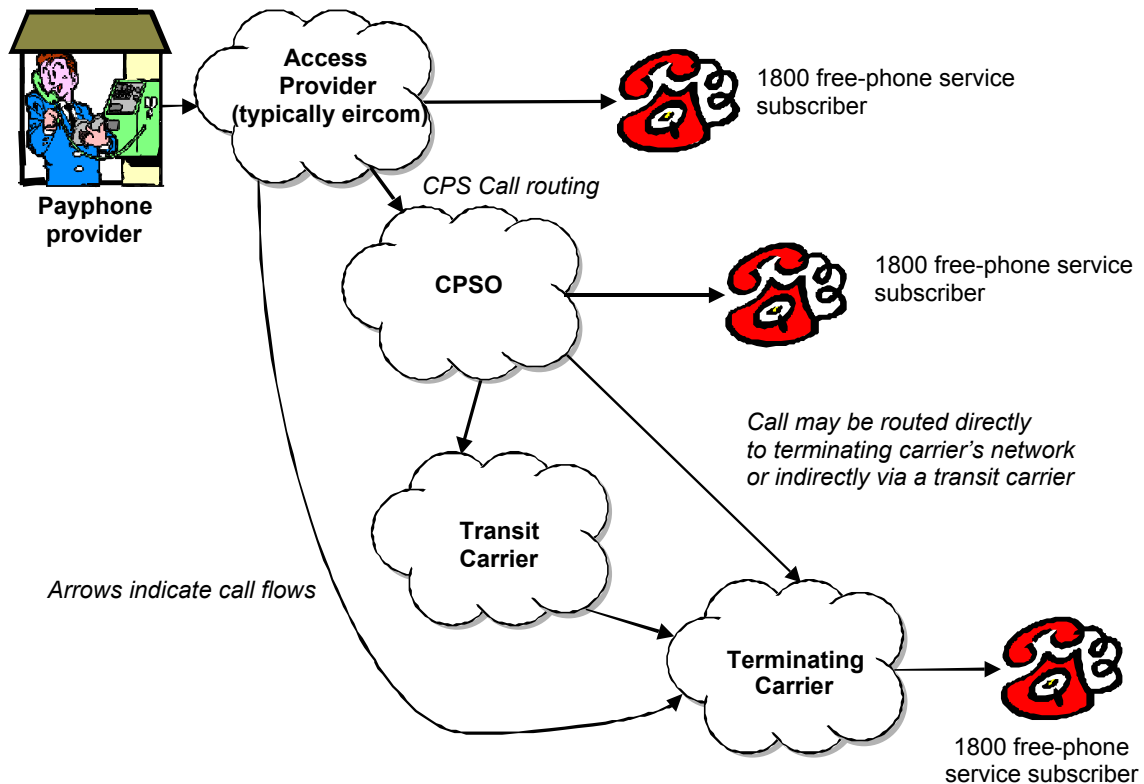
Milestones 1 to 4 above have been completed according to the project plan schedule and milestone 5 is underway. eircom have committed to implement the interconnect billing solution necessary to support the industry wide introduction of the PAC by October. Issues to be addressed that impact on the implementation phase of the project plan are discussed in Section 3.

Other network operators will, as appropriate, need to develop their own interconnect billing solutions.

2.6 Parties Involved in PAC

Figure 1 provides an illustration of the parties that are potentially involved in a call eligible to levy the PAC.

Figure 1: Parties Involved in PAC



The parties involved depend on the carrier used by the payphone provider, the network where the 1800 free-phone service resides and the call routing arrangements of each carrier.

In the simplest case, with a payphone using eircom for both calls and access, calling a 1800 free-phone service on eircom's network, the call is routed directly across eircom's network.

Often, the payphone provider uses eircom for access and another carrier for calls (the Carrier Pre-Selection Operator). In this case, the CPSO routes the call to the terminating carrier's network. If the CPSO does not have a direct link to the terminating network the call is routed via another carrier's network (the transit carrier). The transit carrier is often eircom since eircom has direct connections to all other networks.

Interconnect billing arrangements provide payment for each carrier that transports the call.

Important points to note are:

- that in several of the call scenarios, the payphone and the 1800 free-phone service are not connected to the same network.

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- that the payphone provider has commercial relationships only with its access provider and service provider
- the 1800 free-phone service subscriber has a commercial relationship only with its carrier
- there is no direct commercial relationship between the payphone provider and the 1800 free-phone service provider

These points were considered when evaluating the method of implementation for the PAC.

2.7 Legislation

Details regarding the legislative basis for a PAC are set out in appendix 1.

3 Implementation of PAC

This section deals with the method of implementation of the PAC and the issues that have been identified during industry discussions. The main issues that need to be addressed are:

- (a) definition of PAC eligible payphones
- (b) charging transparency
- (c) incoming freephone call blocking
- (d) fraud prevention

3.1 Definition of Eligible Payphones

The PAC for eircom was originally approved in recognition of the costs involved in providing payphones in public places and the high volume of 1800 free-phone calls originating from such payphones. Typically, such phones are subject to high maintenance costs, wear and tear, etc. A specific definition for PAC eligible payphones is necessary in order to prevent possible abuse of the application of the levy and to allow for policing and transparency of the charge. ComReg believes that this should be the basis for defining a set of eligibility criteria for extending the PAC to the wider industry.

A “public pay telephone” is defined as a telephone available to the general public for the use of which the means of payment may include coins and/or credit/debit cards and/or pre-payment cards, including cards for use with dialling codes.¹

To be eligible for a PAC charge, ComReg considers that the payphones should be available at all times to any member of the public wishing to use it and provide for one or more of the payment means identified above. The payphone should be owned and operated by the payphone provider who also is responsible for paying the rental for the telephone line supporting the payphone.

ComReg believes that payphones located in more secure indoor locations such as pubs, restaurants and clubs do not meet the above criteria. These payphones are not available to the general public at all times whereas other categories of payphones allow for unrestricted round-the-clock access. In addition, many of these payphones do not carry such a high proportion of 1800 free-phone traffic and therefore do not incur such high costs or ‘wear and tear’. ComReg therefore proposes that these payphones should not be eligible to levy the PAC.

ComReg proposes the following categories for PAC Eligible Payphones:

- Public payphones located on public highways to which the public has access at all times

¹ Directive 2002/22/EC on universal service and users’ rights relating to electronic communications networks and services (Universal Service Directive)

- Public payphones located in other external locations which may not be public highways but to which the public has unrestricted access at all times
- Payphones in public spaces such as airports, railways, hospitals and bus stations

ComReg proposes the following categories for non-PAC Eligible Payphones:

- payphones in public houses, restaurants and clubs
- payphones in private premises (e.g. rented accommodation, hostels and hotels)
- payphones in private buildings (e.g. lobbies, canteens etc.)
- payphones in shopping malls
- payphones provided where there is a contractual relationship which involves revenue sharing

- Q. 1. Do you agree with the criteria used in the definition of PAC eligible payphones? If not, please give alternatives and also outline your reasoning. Are there other criteria that may be appropriate?**
- Q. 2. Do you agree that the categories of payphones identified above as being PAC eligible ? If not, please state why and suggest alternatives.**

3.2 Charging transparency

To permit all interested parties to check the validity of their PAC charges and as a precaution against fraud it will be necessary to implement measures to ensure the integrity of PAC charges.

To support this aim, ComReg proposes a twofold approach:

- all payphone providers wishing to levy a PAC must be registered with ComReg as payphone providers and demonstrate they satisfy the eligibility criteria
- the industry will update and have visibility of a database of PAC Eligible Payphones.

ComReg would allow any provider with PAC Eligible Payphones to register, but would reserve the right to cancel the registration and bar the provider from levying the PAC in cases of abuse.

In preparation of the PAC extension to the rest of industry, ComReg has already developed an industry database that will be used to store lists of all telephone numbers, associated with PAC Eligible Payphones. The database will enable operators to verify the integrity of their PAC charges by comparing A-Numbers from billing information against telephone numbers in the

database. ComReg proposes that service providers should be responsible for updating the database with up to date lists of all PAC Eligible Payphone lines to which they provide service and to ensure that only PAC eligible payphones are included.

Processes and procedures for operation of the database will be agreed by industry during the implementation of this project.

The eligibility criteria for payphone operators wishing to levy the PAC may consist of some or all of the following;

- payphone operator must supply name, address, contact details etc.
- payphone operator must have complied with the authorisation regulations² and any associated arrangements established by ComReg under the General Authorisation Process. These arrangements, which are to replace the existing licensing regime following changes in the EU Regulatory Framework, are currently the subject of public consultation³.
- payphone operator must prove that they own payphones that fall within the definition of a PAC eligible payphone
- payphone operator must supply listing of payphones on which they intend to levy PAC

Q. 3. What should the criteria be for evaluation of Payphone Operators by ComReg so as to be eligible to order from eircom the facility to levy the PAC?

3.3 Incoming freephone call blocking

When ComReg originally sanctioned the introduction of the eircom PAC (ODTR 00/33) it directed eircom to offer barring for payphone calls to 1800 free-phone numbers operated by OLOs. Essentially, a facility was required whereby an OLO who did not wish to receive calls to its 1800 numbers from payphones could choose to have those calls blocked from being passed to its network. This requirement arose in the context of an environment whereby eircom was the only operator levying the PAC.

The rationale was twofold:

- Regulation 8(12)(a) of the Interconnect regulations stipulates “charges for services shall be sufficiently unbundled that an applicant should not be compelled to pay for anything not strictly related to the service requested...” OLOs who do not wish to receive payphone calls to their 1800 freephone numbers should not be compelled to do so and pay the

² These regulations, which transpose the Authorisation Directive adopted by the EU in April 2002, are due to enter into force by the 25th July next.

³ ComReg Document 03/61 - Future Regulation of Electronic Communications Networks and Services - Arrangements for General Authorisations

PAC. eircom's refusal to provide barring of 1800 free-phone numbers of OLOs that do not wish to attract payphone access charges is not consistent with this regulation.

- that OLOs that do not have Intelligent Network facilities will not be able to bar the calls themselves and that therefore eircom should offer barring to avoid them being effectively compelled to accept payphone calls to 1800 free-phone numbers.

ComReg considers that that this facility should continue to be available when the PAC is extended to other payphone operators. i.e. an network operator should be in a position to request that freephone calls from PAC eligible payphones be blocked. In such an environment, a network operator that originates calls from PAC eligible payphones would, on request from its interconnected operator, bar all freephone calls from all PAC eligible payphones to that interconnected operator.

Q. 4. Do you have any comments on the above?

3.4 Fraud Prevention

ComReg wishes to protect all parties involved in the PAC billing chain from potential abuse. ComReg considers that this can be achieved by adopting measures which would seek to limit attempts to use the facility in a manner for which it is not intended and to deal with such situations. This can be accomplished by placing clear responsibility on adherence to the processes and also by setting out the procedure for dealing with alleged abuses.

The process as it currently stands places the obligation on the Service Provider of the payphone operator for ensuring that only PAC eligible payphones levy the charge (in turn, Service Providers should ensure the compliance of the payphone operators via commercial contractual agreement).

In the case of alleged abuse of the facility, ComReg believes the following should happen;

- 1) Any information relating to possible fraudulent activities should be highlighted to ComReg
- 2) ComReg will immediately conduct an investigation and inform the relevant parties
- 3) A payphone operator found by ComReg as having abused the PAC facility will result in suspension of their PAC pending the remedy of any abuse.
- 4) The outcome to the investigation may include one of the following; no case to answer therefore no suspension, suspension of PAC pending remedy of an abuse, for repeated abuse or serious abuse suspension of PAC for all payphones listed for a particular operator, for a specified period or until ComReg is satisfied that abuse will no longer occur.

ComReg's powers in this area stem from the obligations of the Service Providers of the payphone operators. The above procedure would, in effect, be operated via the service provider of the payphone operator in question.

Q. 5. Do you agree with the procedure for dealing with fraudulent activity? If not, please give your reasoning and where appropriate detail alternative mechanisms.

4 Submitting Comments

All comments are welcome, however it would make the task of analysing responses easier if comments were referenced to the relevant question numbers from this document.

The consultation period will run from **30 June, 2003** to **28 July, 2003** during which the Commission welcomes written comments on any of the issues raised in this paper.

Having analysed and considered the comments received, ComReg will review the position and publish a report on the consultation in early August which will, inter alia summarise the responses to the consultation.

In order to promote further openness and transparency ComReg will publish the names of all respondents and make available for inspection responses to the consultation at its Offices.

ComReg appreciates that many of the issues raised in this paper may require respondents to provide confidential information if their comments are to be meaningful. Respondents are requested to clearly identify confidential material and if possible to include it in a separate annex to the response. Such information will be treated as strictly confidential.

Appendix 1 – Legislation Relating to PAC

Both EU and Irish legislation recognise that, in the interests of developing and sustaining competition in the telecommunications sector, the ability of new entrants to the market to interconnect with the network of an incumbent operator is essential.

The most relevant legislative provisions in relation to interconnection are:

- Council Directive 97/33/EC on interconnection in telecommunications with regard to ensuring universal service and interoperability through application of the principles of Open Network Provision (“the Interconnection Directive”), and
- The European Communities (Interconnection in Telecommunication) Regulations, 1998, S.I. No. 15 of 1998, transposing the above directive (“the Interconnection Regulations”).

Under the legislation, a telecommunications industry operator providing fixed public telephone networks and designated as having Significant Market Power (SMP) in that market is required to publish a Reference Interconnect Offer (RIO) which is based on market needs and to which the Commission may direct changes.

The pay phone access charge is a charge for interconnection services between the payphone and the terminating operator for 1800 free phone calls. The charge is levied on the terminating operator for those services.

eircom as an SMP operator in the public fixed telephony services and networks market is obliged to publish such interconnection charges as part of the RIO under Regulation 8 of the Interconnection Regulations and the Commission has the power to direct *eircom* to justify its charges and where appropriate, direct they be adjusted to ensure transparency and cost-orientation. The Commission also has the power under Regulation 10 of the Interconnection Regulations to intervene on its own initiative to “specify issues which shall be included in an interconnection agreement or to lay down specific conditions to be observed by one or more parties to such an agreement”.

The Commission may set conditions or make changes under 10(3) in relation to the following:

- Conditions designed to ensure effective competition
- Directions or conditions relating to tariffs
- Supply and usage conditions
- Conditions as to compliance with relevant standards and/or essential requirements

This list is not exhaustive.

A new EU regulatory framework was adopted by the Council of the European Union on February 14th 2002 for the provision of electronic communications throughout the internal market. The new framework consists of a package of Directives which reflect technological and economic changes and which attempt to further harmonise the regulation of electronic communications:-

- a common regulatory framework for electronic communications networks and services (Framework Directive);
- authorisation of electronic communications networks and services (Authorisation Directive);
- access to, and interconnection of, electronic communications networks and associated facilities (Access Directive);
- universal service and users' rights relating to electronic communications networks and services (Universal Service Directive); and
- processing of personal data and the protection of privacy in the electronic communications sector (Data Protection Directive).

All Member States are now obliged to adopt national legislation implementing this 'telecoms package' by 24 July 2003 except for the Data Protection Directive which has to be implemented before 31 October 2003.

As with the current framework, a mechanism has been included which triggers various regulatory obligations on markets such as access and interconnection. In the new framework this mechanism, still called significant market power (SMP), closely relates to the competition law concept of dominance.

Under the new EU Framework the most relevant legislative provisions in relation to PAC are the Access Directive and the Regulations which will transpose the Directive into national law. The provisions of the new Access Directive require that the national regulatory authorities of Member States be able to intervene of their own initiative in order to secure the policy objectives of Article 8 of the Framework Directive. National regulatory authorities must, when required, follow the consultation procedures referred to in Articles 6 and 7 of the Framework Directive.