



Office of the Director of  
**Telecommunications  
Regulation**

**DECISION NOTICE**

**Local Loop Unbundling  
Review of eircom's Access Reference Offer**

**Decision No:** D4/02  
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## Foreword

Arrangements for the introduction of DSL services, providing higher capacity communications over conventional telephone lines have proved complex and contentious in many countries and particularly so in Ireland. I am pleased therefore that discussions have now concluded on a range of issues, opening the way for the introduction of a non-discriminatory bitstream service by eircom, and unblocking LLU pricing which has been subject to court action. Eircom have indicated that this action is now being discontinued.

In April 2001 in the absence of firm pricing for LLU services, I set interim rates to ensure that interested access seekers could move forward to avail of the opportunities which Local Loop Unbundling opens up to them. These interim prices were challenged by eircom.

Eircom have now submitted charges for LLU services which I consider that I can accept. In this Decision Notice, I am accepting changes to eircom's Access Reference Offer and setting these as final prices for the period 1 January 2001 to 31 March 2002 and for the period 1 April 2002 to 31 March 2003 subject to the further review of certain aspects which are detailed in this Notice. The review of these rates has thrown up some data issues which merit further analysis and which will be reviewed in the context of the price cap and the new LRIC access network Industry Advisory Group. There is also some refinement of the ancillary charges to take place shortly.

While it would normally be appropriate to set the rate for 1 April 2002 - 31 March 2003 on an interim basis, I consider that the balance of convenience for the industry would lie in having a fixed figure and that therefore the prices for this period are also now finalised on the same basis as for the periods 1 January 2001 to 31 March 2002. These rates supersede the rates set in my decision of April 2001 D8/01 (ODTR document 01/27).

I note that the LLU programme has accelerated over the last number of months with some forty exchanges now either unbundled or in the process of being unbundled for use by alternative operators. I am confident that the programme will continue to accelerate and urge other operators to investigate the new markets and services which they can target through LLU. I am conscious that good co-operation is required from the incumbent to get LLU underway and will continue to offer the services of my Office in supporting implementation efforts where operators require support.

**Etain Doyle,**

**Director of Telecommunications Regulation.**

## (1) INTRODUCTION

The European Union LLU Regulation was adopted on 18 December 2000. It required eircom to publish a Reference Offer on unbundled access to the local loop and related facilities by 31<sup>st</sup> December 2000, and to answer reasonable requests from that date. Although eircom published an Access Reference Offer (ARO), it was neither complete nor compliant at that time, and ODTR intervention was required. ODTR documentation<sup>1</sup> outlines the developments following this to bring the reference offer into compliance and to extend it appropriately to meet needs.

A key intervention was Decision Notice D8/01 which set interim rates for LLU services. The Director considered her intervention was necessary to rectify a situation where the ARO had not met the obligations required by regulation on 31 December 2000 and pricing was not appropriate or firmly based.

The Director notes that following the submission of new data by eircom, it is now possible to approve rates and also that eircom's legal challenge to her Decision is being discontinued. This Decision Notice supersedes the relevant parts of D8/01<sup>2</sup>, agreeing final pricing for the period 1 January 2001 to 31 March 2002 and for the period 1 April 2002 to 31 March 2003.

The Director is pleased that a number of access seekers have expressed interest in LLU, and notes that one access seeker is advanced in the implementation of its programme with some forty exchanges in the process of being unbundled. Finalisation of prices can only help those access seekers currently interested, and others who may be intending investment in Ireland, to plan their business cases.

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<sup>1</sup>

- ODTR 00/99 of 22<sup>nd</sup> December 2000 – Information Notice on work to that date and initial commentary on the draft Reference Access Offer.
- ODTR 01/01 of 31<sup>st</sup> January 2001 – Information Notice outlining changes to be made to the ARO and the work programme to complete tasks by end February 2001
- ODTR 01/15 of 9<sup>th</sup> March 2001 – Information Notice outlining progress and seeking a more focused approach to remaining items – new timetables to finish by end April 2001
- ODTR 01/21 of 2<sup>nd</sup> April 2001 – Decision Notice D5/01 – directing changes to the ARO on supply of information and detailing timetables to finish work by end April 2001
- ODTR 01/27 of 30<sup>th</sup> April 2001 – Decision Notice D8/01 – setting interim rates for LLU services
- ODTR 01/35 of 18<sup>th</sup> May 2001 – Information Notice setting out arrangements for Service Level Agreements
- ODTR 02/24 of 7<sup>th</sup> March 2002 – Decision Notice D1/02 – directing the Copper Loop Frequency Management Plan

<sup>2</sup>Section 6 of D8/01 and in particular Decision 6.3.1

## **(2) LEGISLATIVE BACKGROUND**

Regulation 2887/2000 of the European Parliament and of the Council on unbundled access to the local loop ('the LLU Regulation') was published in OJL 336 of 30 December 2000.

eircom, as the operator designated by the Director as having significant market power in the provision of fixed public telephone networks and services under Annex 1, Part I, of Directive 97/33/EC, is a notified operator within the meaning given to that term in Article 2(a) of the LLU Regulation.

A "beneficiary" is defined in Article 2(b) of the LLU Regulation as a third party duly authorised in accordance with Directive 97/13 EC or entitled to provide communications services under national legislation, and which is eligible for unbundled access to a local loop.

Article 3(1) of the LLU Regulation requires eircom (as the notified operator) to publish from 31 December 2000, and keep updated, a reference offer for unbundled access to their local loops and related facilities. Article 3 (3) states that charges are to be set on the basis of cost orientation. Recital 11 of the Regulation states that charges should be transparent, non discriminatory and objective in order to ensure fairness. The Annex to the LLU Regulation includes a minimum list of items to be included in such a reference offer, under the following headings: conditions for unbundled access to the local loop, collocation services, information systems, and supply conditions.

Additionally, Article 3(2) of the LLU Regulation requires eircom, from 31 December 2000, to meet reasonable requests from beneficiaries for unbundled access to their local loops and related facilities under transparent, fair and non discriminatory conditions. Requests may only be refused on the basis of objective criteria, relating to technical feasibility or the need to maintain network integrity.

The LLU Regulation also obliges the National Regulatory Authority (NRA), under Article 4 (1), to ensure that charging for unbundled access to the local loop fosters fair and sustainable competition. In the case of Ireland, the ODTR is the NRA. Furthermore, Article 4 (2) (a) provides that the NRA shall have the power to impose changes on the Reference Offer, including prices, where such changes are justified; and under Article 4 (2) (b) require notified operators to supply information relevant for the implementation of the Regulation. Under Article 4 (3) the NRA may intervene on its own initiative in order to ensure non-discrimination, fair competition, economic efficiency and maximum benefit for users.

### **(3) REVIEW OF EIRCOM'S ACCESS REFERENCE OFFER**

In D6/00, the Director, while stating that LRIC should form the core of the pricing formula for LLU, recognised that the application of LRIC was new to the Irish market and would take time to apply LRIC to access network costs, as it has to core network costs. The Director therefore indicated that she might employ other relevant information, including historic cost data, for a period of time.

Prior to the issue of D8/01, eircom had not provided an adequate cost justification of its proposed ARO prices on either a LRIC or HCA basis, and the Director was obliged to set interim charges on the basis of benchmarks and expert opinion. Notwithstanding eircom's legal challenge of D8/01, both the ODTR and eircom have since made progress in developing historic costing models for the local loop.

Eircom has submitted new pricing proposals on a historic cost basis which have been reviewed by the ODTR. These proposals are based on the latest accounting information (Separated Accounts for 2000-2001) and are based on the assumptions on asset lives and WACC adopted by the ODTR. Ancillary LLU services and collocation services were justified on the basis of bottom up cost models. The Director has accepted these charges and accordingly those set in Decision 6.3.1 of Decision Notice D8/01 are superseded.

It remains the Director's position that LRIC should form the core of the pricing formula. In order to expedite the introduction of LRIC, the Director proposes the setting up of an Industry Advisory Group under an independent chairperson appointed by the ODTR. She would expect that this group would have substantially completed its work by November 2002, but this depends crucially on the provision of information by eircom.

**Decision 1. An Industry Advisory Group is to be convened under the chairmanship of an independent person to be appointed by the ODTR for the purpose of advising the ODTR on the development of a LRIC model for the access network and associated issues.**

eircom has proposed a revised set of charges in their Access Reference Offer which shall be made available on the eircom website, such revisions being notified to registered beneficiaries through the agreed change control procedure. These charges are also set out in the Schedule attached at Appendix 1.

Following evaluation of the submission, the Director considers that the revised charges are acceptable. She directs that the figures be applied as final figures for the period 1 January 2001 to 31 March 2002. Also, for the balance of convenience of operators, the figures are set as final figures for the period 1 April 2002 to 31 March 2003. These rates supersede the rates set out in the Director's decision of April 2001, D8/01 (ODTR document 01/27). The ODTR will review the charges in the light of the outcome of LRIC models for the access network.

It is important that this decision be implemented quickly.

**Decision 2. Pursuant to her powers under Article 4 of Regulation 2887/2000 the Director considers the charges published by Eircom as version 1.7 of the Access Reference Offer and set out in the Schedule at Appendix 1 of this Decision Notice as final rates for the periods 1 January 2001 to 31 March 2002 and for 1 April 2002 to 31 March 2003. Any adjustment due from or to an access seeker is to be settled within 45 days of this decision.**

By replacing the interim figures directed in D8/01 the Director is making these new figures retrospective for the periods concerned.

The Director believes that while current proposals represent a significant step along the path to Local Loop Unbundling, time constraints have meant that certain aspects of the ancillary charges as described below, have not been fully worked through, and that these matters should be pursued rapidly. In the interests of making progress as rapidly as possible she has decided to accept eircom's current proposals for now but requests it to revisit these issues as follows:-

- a) A significant aspect of the LLU product is the cost associated with the pre-order survey process of the exchange for collocation. The Director is not convinced that the basis of application of these costs as currently applied, which in effect means that it is all being carried by one access seeker, does not represent an undue burden in the early phases of local loop unbundling. There is the risk that new access seekers will bear an excessive amount of the set up costs associated with exchange preparation. Consequently, she proposes that further work be done to establish if an alternative charging basis would be more appropriate. Eircom is to submit revised proposals by 15 May 2002.[see at Appendix 1- Pre-Ordering Charges]
- b) In relation to site specific costs the Director believes that access seekers will need more certainty about what these costs are likely to be for any given site. Accordingly, she proposes that her office and eircom do more work to develop a schedule of prices and associated charging rules which can be used as an objective reference point for the development of site specific charges by 31 May 2002, and to review site specific costs for the exchanges for which licences have already been executed. [see at Appendix 1 - Site Specific Charges]
- c) The Director also believes that the current proposals provide insufficient incentive to eircom to provide information and services in an accurate, timely and thorough manner. She would envisage a structure whereby Eircom would reimburse access seekers where service targets have not been met and seeks proposals from eircom by 15 May 2002 to put this process into effect. These arrangements will be set out in due course in the Service Level Agreement at Annex E to the Access Reference Offer.

In line with her general regulatory obligations, the Director also undertakes to review all charges to ensure non-discrimination between access seekers and will direct changes if found to be necessary.

## APPENDIX 1 – SCHEDULE OF CHARGES

The following charges shall be published in eircom's Access Reference Offer and shall be set as final for the period 1 April 2002 to 31 March 2003. All charges exclude VAT and are in euro.

<b>ULMP Charges</b>	<b>Price</b>
Monthly Rental	16.81
Connection Order with Successful Completion	121.52
Connection with SC – including survey for SP	154.25
Connection Order Failing Validation	17.38
Connection OFV – including survey for SP	45.21
Cancellation (of Order within four days)	24.12
Disconnection	49.58
Line Test	49.18
Fault Clearance	117.31
Upgrade of LS to ULMP on same pair	80.70

<b>Line Sharing Charges</b>	<b>Price</b>
Monthly Rental	9.00
Connection Order with Successful Completion	123.41
Connection with SC – including survey for SP	156.14
Connection Order Failing Validation	17.60
Connection OFV – including survey for SP	45.43
Cancellation (of Order within four days)	24.12
Disconnection	75.00
Line Test	18.09
Fault Clearance	117.31

<b>Pre-Ordering Charges</b>	<b>Price</b>
Site Specific Information Request	318
Initial Survey Request	571
Full Survey Report - Small	4382
Full Survey Report - Medium	5139
Full Survey Report - Large	5801
Site Offer	6133
Combined Full Survey Request and Site Offer	Sum of FSR and Site Offer
Site Inspection - Near	1143
Site Inspection - Distant	2194
Site Inspection – Very Distant	2845



<b>Site Specific Charges</b>	<b>Price</b>
Site Preparation Charge	Site Specific
Process Charge – Site Preparation	15% of Installation Services charge
Occupancy Charge	Site Specific
Process Charge – Occupancy	15% of occupancy charges and 15% of external service provision charges e.g. standard AC power, water.
External service provision charge	€ cost
Power Usage Charge (DC)	13.14 cent per kWh

<b>Escort Charges</b>	<b>Price</b>
Planned Access Working Hours – first 30 minutes on site	60.46
Planned Access Working Hours – subsequent 15 minutes on site	12.12
Planned Access After Hours – first 30 minutes on site	100.77
Planned Access After Hours – subsequent 15 minutes on site	20.19
Unplanned Access Working Hours – first 30 minutes on site	121.04
Unplanned Access Working Hours – subsequent 15 minutes on site	18.17
Unplanned Access After Hours – first 30 minutes on site	217.90
Unplanned Access After Hours – subsequent 15 minutes on site	33.32