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Rialáil Cumarsáide
Commission for
Communications Regulation

Eircom's proposed adjustments to invoices for MI WHQA circuits regulated under ComReg Decision D03/20

Information Notice

Reference: ComReg 25/92

Version: Final

Date: 19/12/2025

1. Provision by Eircom Limited t/a Eir and Open Eir ('Eircom') of Modern Interface ('MI') Wholesale High Quality Access ('WHQA') leased lines services at a fixed location, is regulated under ComReg Decision D03/20. In particular, Eircom is required to make available at regulated prices and in accordance with terms and conditions set out transparently in a Reference Offer ('LLRO'), MI WHQA circuits terminating in certain geographic areas identified in Decision D03/20 as "Zone B". Regulated circuits provided by Eircom consist of three components, namely a Wholesale Symmetrical Ethernet Access ('WSEA') physical fibre link and port extending from a third-party customer premises to an Eircom exchange; a Wholesale Ethernet Interconnection Link ('WEIL') enabling the handover of end-user traffic to an Access Seeker and a Wholesale Ethernet Service ('WES') which provides a logical connection between the WSEA and WEIL.
2. A number of operators purchasing regulated MI WHQA circuits from Eircom have brought to ComReg's attention that Eircom has communicated an intention to adjust amounts invoiced to them over the past twenty-four months for regulated WSEAs and WEILs and that Eircom intends for that purpose to rely on Clause 3.4 of Annex B of the LLRO. Clause 3.4 provides that *"in the event of undetected errors in the Billing Information which result in either under or over invoicing and payment, either Party may request a review of the Billing Information for any Billing Period within twenty-four (24) months of the date of the end of that Billing Period. When either Party becomes aware of an error in the process, they must undertake all reasonable endeavours to make the necessary correction and where possible an estimate of the financial impact of these undetected errors should be provided."*
3. According to Eircom the adjustments will correct billing "discrepancies" which it has identified while carrying out a desktop-based data cleansing exercise of its leased line services as part of an internal IT project. ComReg understands that as part of that cleansing exercise, Eircom has for circuits terminating in Zone B locations:
 - Ascertained what Eircom considers to be the actual location (address or X Y coordinates) of the circuit's customer-end (hereafter, 'B-end');
 - Calculated the distance between the B-end and the exchange-end of the circuit (hereafter, 'A-end') using the same methodology across all circuits; and
 - Checked that the charge for a circuit is consistent with the circuit's actual topology (e.g., the circuit's A-end is the local node i.e. Node reach or the APT reach).
4. Where "discrepancies" have been identified in terms of the location of the circuit's B-end as compared to that used for billing to date, the distance calculated now by Eircom and that used for billing to date or the circuit's topology (e.g., the circuit is connected directly to the parent exchange rather than the local node), Eircom intends on applying retrospective adjustments to correct any discrepancies between what Eircom considers ought to have been invoiced and what was invoiced in practice.

5. Some Access Seekers have expressed concern at Eircom's proposed course of action and have raised this matter with ComReg. Based on information provided by Eircom and Access Seekers, ComReg has concerns that Eircom's planned retrospective adjustments to invoices will have a material impact on Access Seekers and may cause serious disruptions to the retail market where the relevant circuits are used as inputs to retail leased lines. Against this background it appears appropriate that ComReg sets out in this Notice how provisions of the LLRO which Eircom has invoked govern Eircom's provision of regulated circuits under Decision D03/20 with the view to informing engagement between Eircom and its wholesale customers.
6. Information to date indicates that the billing discrepancies issues identified by Eircom affect most, if not all, of its wholesale customers and concern a significant portion of the regulated MI WHQA circuits provided by Eircom. ComReg has serious concerns that this arises, not so much from "billing errors" as from gaps in the processes that Eircom uses for the delivery of MI WHQA circuits and in particular, that Eircom does not record accurately and systematically the actual locations at which it provisions circuits. In general terms while Eircom should be entitled to address errors and discrepancies prospectively it seems unreasonable that other operators should be liable retrospectively for Eircom's failings.
7. Reliance by a party to a LLRO contract on Clause 3.4 of the LLRO's Annex B, requires that party to establish that there has been an "*undetected error in the Billing Information.*" In turn, Billing Information is defined in Clause 2.4 of the LLRO's Annex B as information which "*is based on the information provided for in Table 1,*" namely: the circuit number, the A-end address, the B-end address, the circuit type, the connection fee and the rental associated with each circuit.
8. In that regard, discrepancies arising as regards the location of the A-end (which is relevant to the topology of a circuit) and B-end of a circuit, may constitute errors within the meaning of Clause 2.4, where the locations recorded in the billing systems do not match the circuit that has been provisioned in accordance with the Access Seeker's order.
9. However, there is not necessarily an "error in the Billing Information" in the case of a discrepancy between the charge for a provisioned circuit that does not reflect the Access Seeker's order, and the charge for the circuit that was ordered by the Access Seeker. There can also be no "error in the Billing Information" as regards the length of a circuit, that is, the distance calculated between the A-end and the B-end, when their respective locations contain no error. In particular, it appears to ComReg that the systematic calculation of distances by Eircom for the purpose of billing constitutes a change to the approach that had been followed to date by Eircom, rather than correction of an "error in the Billing Information". Clause 3.4 of Annex B of the LLRO does not allow Eircom to make corrections that follow from changes in how the Billing Information for regulated MI WHQA circuits is determined. The fact that Eircom may

have used as part of its cleansing exercise the same methodology it uses in its pricing tools is not relevant, in circumstances where the pricing tools are not used for the purpose of accepting an order or indeed for invoicing regulated leased lines services.

10. It should be noted that there is nothing to prevent Eircom from introducing any such changes, but they can only be implemented on a forward-looking basis, having been notified to ComReg and Access Seekers in advance and in accordance with the timelines set out in ComReg Decision D03/20 as part of Eircom's obligation of transparency.
11. In all cases, it is for Eircom to establish that the "discrepancies" it has identified do constitute errors within the meaning of Clause 3.4 and that it is, in the circumstances, entitled to recover the differential between the amounts recovered and the amount owed when calculated on the basis of corrected Billing Information. In determining the amount to be invoiced retrospectively, if any, account should be taken of the nature of the discrepancy or error, the extent of the error, the party that bears responsibility for the error, and any other factor relevant to the circumstances of the case. As the party seeking to rely on Clause 3.4, it is for Eircom to provide actual evidence to Access Seekers as to how these factors, having been taken account of by Eircom, justify the recovery of amounts it believes are owed to it. This includes where the topology is unexpected, establishing that a) for each specific circuit, the circuit's topology reflects the Access Seeker's specific requirements; and b) that the correction will lead to a price consistent with the price quoted to the Access Seeker at the time of order.
12. Access Seekers are entitled to information allowing them to understand the basis on which Eircom claims there is an error and the justification for any additional payment sought, on a circuit-by-circuit basis. This would include for each circuit, the circuit's ID and the nature of the change proposed for the circuit (B-end location, length/distance or topology) as well as details of relevant affected information "before" and "after" the change, the period over which the adjustment applies, whether the proposed adjustment should result in under-billing, over-billing or have no impact and the estimated amount in monetary terms. Information provided to date by Eircom does not appear to be sufficient to allow Access Seekers understand the basis on which Eircom claims there is an error and the justification for any additional payment sought.
13. ComReg hopes that this will assist Eircom and Access Seekers in resolving in a fair, transparent and non-discriminatory manner the "billing discrepancies" identified by Eircom; it is intended that this will be the starting point that ComReg would take were it to carry out an investigation of specific complaints or disputes that are brought to it for resolution. However, nothing above should be understood to limit ComReg's discretion in dealing with a specific matter.