



Commission for
Communications Regulation

eir's 2016-2017 Universal Service Funding Application

Information Notice

Reference: ComReg 18/76

Version: Final

Date: 24/08/2018

**An Coimisiún um Rialáil Cumarsáide
Commission for Communications**

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1. As a designated Universal Service Provider (“USP”), eir may submit an application for funding in relation to the net cost of providing Universal Service Obligation (“USO”) services.
2. The Commission for Communications Regulation (“ComReg”) published Decision D04/11 entitled “Costing of universal service obligations: Principles and Methodologies” on 31 May 2011¹ (“D04/11”).
3. In accordance with Decision 33 of D04/11, eir was due to submit its application for funding in respect of the 2016 – 2017 financial period by 31 March 2018.
4. Decision 33 of D04/11 provides that ComReg may extend this deadline. On 6 December 2017 eir requested an extension of 6 months to the deadline for submission of its 2016 – 2017 application to 30 September 2018. ComReg granted an extension to 31 July 2018.²
5. On 31 July 2018 eir informed ComReg by letter that eir has chosen not to submit an application for 2016 – 2017 by 31 July 2018 and stating that eir reserved its right to submit such an application at a later date.
6. On 21 August 2018 ComReg responded by letter stating that the terms of ComReg Decision D04/11 are clear as regards the timing of submission of USO funding applications and reserving ComReg’s position in that regard.

¹ ComReg Document No. 11/42

² See ComReg Information Notice 18/02



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Barbara Delaney
Director of Retail and Consumer Services
Commission for Communications Regulation
1 Dockland Central
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Dublin 1
D01 E4X0

31 July 2017

RE: 16/17 USO Funding Application

Dear Barbara,

eir currently has six USO Funding applications with ComReg, and ComReg is currently in the process of evaluating these. Five (covering the financial years 2010/11 to 2014/15) are at Draft Decision stage, while the remaining one (2015/16) is at an earlier stage in the evaluation process.

ComReg's current view, as expressed in the series of Draft Decisions¹, is that despite the fact that eir has borne a cost in the region of €45M to fulfil its USO obligations over the five years from 2010/11 to 2014/15, this cost did not constitute an unfair burden on eir.

eir is due to submit its next application, covering the 2016/17 financial year, to ComReg on 31st July 2018. The purpose of this letter is to inform you, for the reasons outlined below, that we will not be submitting this application by that date. This is entirely without prejudice to our right to submit such an application at a later date, and all of eir's legal rights in this regard are fully reserved.

As ComReg will be aware from eir's consultation response submitted on 11th June 2018², eir absolutely disagrees with ComReg's preliminary conclusion as regards an unfair burden. If ComReg maintains this position when it finalises its Decisions on the matter, eir will have to seriously consider challenging these Decisions, up to and including challenging the Decisions by legal means, in order to pursue its legitimate claim to be compensated fairly for the expenses it incurred in meeting the USO obligations which ComReg has imposed (and continues to impose) on eir.

In the context of a possible pending legal challenge, the outcome of which could possibly have implications for the format and content of any future (or retrospective) USO funding applications submitted to ComReg by eir, we do not believe that it is best use of eir's resources at this time to complete our 2016/17 USO funding application.

¹ Ref, ComReg documents 17/73, 17/81, 17/95, 17/109 & 18/36

² Ref. "180611_USOF_eir response to ComReg_10_11 to 14_15_Final_v02.pdf"

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As ComReg will be aware the preparation of a USO funding application is extremely resource-intensive, both in terms of time and cost. Of particular relevance in this regard is the fact that ComReg steadfastly maintains that the cost of any consultancy support that eir requires to assist in the completion of the USO funding application must not form part of the net cost of USO being claimed by eir. This is a viewpoint with which eir strongly disagrees.

We would reiterate that eir fully reserves all of its rights in relation to this matter, and our decision not to submit an application for 2016/17 at this time is without prejudice to our absolute right to submit such an application at some future time.

We look forward to ComReg finalising its various pending Decisions without further delay, and to eir being properly compensated for the considerable expense it is being forced by ComReg to incur to fulfil its USO obligations, for the benefit of the entire Industry and all stakeholders.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Kjeld Hartog', written over a horizontal line.

Kjeld Hartog
Director of Group Pricing and Regulatory Finance



24 August 2018

Kjeld Hartog
eir
1 Heuston South Quarter
St John's Road
Dublin 8

**USO Funding Application for financial year 2016/2017
("2016/17 Funding Application")**


Dear Kjeld,

I refer to your letter of 31 July 2018 (incorrectly dated 31 July 2017).

The Commission notes that eir has chosen not to submit any 2016/17 Funding Application by 31 July 2018 despite eir stating in its letter of 6 December 2017 that eir fully intended to submit a 2016/17 Funding Application (and pursuant to which the time period for doing so was extended by ComReg), and despite eir's engagement thereafter with ComReg in relation to the methodology to be used in preparing this application. The terms of ComReg Decision D04/11 are clear as regards the timing of submission of USO funding applications and ComReg's position in that regard is fully reserved.

With respect to your commentary regarding eir's funding applications for 2010/11 to 2014/15, eir's responses to consultation are being considered fully in the context of the ongoing decision-making process in respect of each of those applications.

Yours sincerely

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Barbara Delaney
Director, Retail
Commission for Communications Regulation

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