



Commission for  
**Communications Regulation**

# eir's 2017-2018 Universal Service Funding Application Publication of correspondence

## **Information Notice**

**Reference:** ComReg 19/74

**Version:** Final

**Date:** 18/07/2019

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

**Regulation One Dockland Central, Guild Street, Dublin 1, Ireland, 01 E4X0**

Telephone +353 1 804 9600 Fax +353 1 804 9680 Email [info@comreg.ie](mailto:info@comreg.ie) Web [www.comreg.ie](http://www.comreg.ie)

## **Content**

### **Non-confidential correspondence in relation to eir's 2017-2018 Universal Service Funding Application**

1. Letter from ComReg to eir dated 08 April 2019
2. Letter from eir to ComReg dated 10 April 2019
3. Letter from ComReg to eir dated 16 May 2019
4. Letter from A&L Goodbody (representative of eir) to ComReg dated 31 May 2019

## 1. Letter from ComReg to eir dated 08 April 2019



8 April 2019

William McCoubrey  
eir  
2022 Bianconi Avenue,  
Citywest Business Campus,  
Dublin 24,  
D24 HX03

### **USO Funding Application for financial year 2017/2018 ("2017/18 Funding Application")**

Dear William,

The Commission notes that eir has chosen not to submit a 2017/18 Funding Application by 31 March 2019. The terms of ComReg Decision D04/11 are clear as regards the timing of submission of USO funding applications.

ComReg will publish an Information Notice on its website setting this out.

Yours sincerely



**Barbara Delaney**  
Director, Retail  
Commission for Communications Regulation

**An Coimisiún um Rialáil Cumarsáide**  
**Commission for Communications Regulation**  
1 Lárcheantar na nDugaí, Sráid na nGildeanna, BÁC 1, Éire, D01 E4X0.  
One Dockland Central, Guild Street, Dublin 1, Ireland, D01 E4X0.  
Teil | Tel +353 1 804 9600 Suíomh | Web [www.comreg.ie](http://www.comreg.ie)

## 2. Letter from eir to ComReg dated 10 April 2019



2022 Bianconi Avenue  
Citywest Business Campus  
Dublin 24 D24 HX03  
T +353 1 671 4444  
eir.ie

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

By email only: [barbara.delaney@comreg.ie](mailto:barbara.delaney@comreg.ie)

10<sup>th</sup> April 2019

**Re: USO Funding Application for financial year 2017/2018 ('2017/18 Funding Application')**

Dear Barbara,

I refer to your letter dated 8<sup>th</sup> April 2019 in which you note 'eir has chosen not to submit a 2017/18 Funding Application by 31 March 2019' and indicate that the terms of Decision D04/11 are clear on the timing of such applications.

ComReg is aware from previous correspondence of eir's position on this issue. However, for the avoidance of any doubt, eir reiterates that:

The fact eir has not submitted a funding application by 31<sup>st</sup> March 2019 is without prejudice to eir's right to submit an application at a later date, and all of eir's rights in this regard are fully reserved.

It is ComReg's own ongoing and extensive delay over many years in reaching Decisions on USO funding that has put eir in the present position. eir notes that according to ComReg's most recent Action Plan a number of USO Decisions were scheduled for Q1 2019, but it is now Q2 with no decisions reached. As set out in detail in previous correspondence these Decisions (and any associated legal challenge) will impact the format and content of USO funding applications. eir therefore has no option but to await the outcome of this process before it can properly complete a funding application for the periods 2016/17 and 2017/18.

In particular, as ComReg is aware from submissions made to date, the process of preparing a funding application is very resource-intensive and expensive. As one of the issues currently in dispute is the recovery of consultancy support costs in completing an application, eir cannot make a decision on how to resource and fund the preparation of an application until this issue is resolved.

In your letter you refer specifically to the provisions of Decision D04/11 concerning the timing of submission of USO funding applications. eir notes that the relevant Decision 33 specifically provides that 'ComReg may extend this deadline'. Further, for all of the reasons outlined to date, most particularly



ComReg's own delay in making Decisions impacting the form and content of, and cost recovery for, an application, eir believes ComReg may not now invoke deadlines that its own conduct has made it impossible for eir to comply with.

eir further notes its understanding that in practice ComReg appears not to review new funding applications until a decision on unfair burden has been made on the preceding application. As no such decision has been reached, eir would query the appropriateness of ComReg asserting a deadline when, based on its conduct to date, it is not in a position at this point in time to review anything eir might submit. Finally, were eir to submit new funding applications, eir is concerned that any diversion of resources within ComReg towards assessing them, would cause further delay by it in finalising the outstanding Decisions.

We look forward to ComReg finalising its Decisions without further delay, and reiterate that eir continues to reserve all of its rights, in particular its right to submit all appropriate funding applications in future.

Yours sincerely,

William McCoubrey  
Head of Regulatory Strategy

### 3. Letter from ComReg to eir dated 16 May 2019



William McCoubrey  
eir  
2022 Bianconi Avenue  
Citywest Business Campus  
Dublin 24

16 May 2019

#### **USO Funding Application for financial year 2017-2018**

Dear William  
I refer to eir's letter of 10 April in respect of this matter.

As a general point, ComReg does not agree with the assertions contained in eir's letter.

Clear provision is made in D04/11 for a deadline for the submission of funding applications. eir is aware of this timeframe (indeed it was fixed having had regard to eir's submission in response to ComReg Consultation 11/15). There is no provision or facility in D04/11 for eir (or any designated undertaking) to unilaterally alter the timing of a funding application or to make the timing of an application conditional upon the outcomes of other funding application decisions or associated legal challenges. Timely submission of funding applications is important and necessary in order that stakeholders can be informed of the fact and amount of any funding application at the appropriate time.

Decision 33 of D04/11 provides that ComReg may extend the deadline for funding applications where it considers that there are exceptional reasons for doing so. While ComReg has, in its discretion, previously granted extensions to eir for the submission of funding applications, ComReg received no communication at all from eir regarding a 2017/18 application in advance of the deadline (or prior to ComReg writing to eir in respect of the matter on 8 April 2019), still less an application for an extension of time.

eir's understanding that ComReg will not review a new funding application until a decision has been made on the preceding application is incorrect. As you are aware, ComReg recently made and published its decisions in respect of funding applications for the five financial years 2010-2015 at the same time, and ComReg's assessment of eir's funding application for 2015/2016 was also underway prior to this. eir should

**An Coimisiún um Rialáil Cumarsáide**  
**Commission for Communications Regulation**  
1 Lárcheantar na nDugáí, Sráid na nGildeanna, BÁC 1, Éire, D01 E4X0.  
One Dockland Central, Guild Street, Dublin 1, Ireland, D01 E4X0.  
Teil | Tel +353 1 804 9600 Sufomh | Web [www.comreg.ie](http://www.comreg.ie)

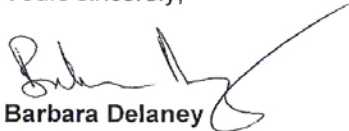


be aware from its extensive engagement with ComReg in respect of those applications that they were not being assessed consecutively in the manner in which your letter describes.

It is a matter for eir as to whether it resources the preparation of a funding application, however such considerations do not override the provisions of ComReg Decision D04/11 and the timeframes specified therein nor do they permit of eir reserving to itself the right to submit a funding application – with potentially significant implications for other undertakings – at an unspecified future time.

ComReg reserves its position in respect of any future steps that eir might take.

Yours sincerely,



**Barbara Delaney**

**Director, Retail and Consumer Services Division**



4. Letter from A&L Goodbody (representative of eir) to ComReg dated 21 May 2019

A&L Goodbody

A&L Goodbody
International Financial Services Centre
25-28 North Wall Quay, Dublin 1
D01 H104
T: +353 1 649 2000
DX: 29 Dublin | www.algoodbody.com

Dublin
Belfast
London
New York
San Francisco
Palo Alto

Date | 31 May 2019
Our ref | 01426891
Your ref |

By Email and By Registered Post

Barbara Delaney
Director of Retail and Consumer Services
Commission for Communications Regulation
1 Dockland Central
Guild Street
Dublin 1
D01 E4X

RE: USO Funding Application for Financial Year 2017/2018

Dear Barbara

We refer to your letter dated 16 May 2019 sent to our client in relation to the above matter.

As these matters are now before the Court, in the proceedings Eircom Limited -v- Commission for Communications Regulation, High Court Record No. 2019/167 MCA, we do not propose to engage in further correspondence on the matter.

However, please note that our client reserves all rights with respect to the issues raised in your letter.

Yours sincerely

A&L Goodbody (handwritten signature)

A&L Goodbody
T: +353 1 649 2000
E:

M-45553095-1

PM Law - CE Gill - JG Greenan - J Conan - PD White - W Powell - LA Kennedy - SM Duggan - B McDonnell - C Duff - PV Maher - S O'Riordan - IP McKenna - KA Feehey
M Shetlock - EP Conlon - E MacNeill - KP Allen - EA Roberts - C Rogers - G O'Toole - JH Kelly - N O'Sullivan - MJ Ward - AC Burke - D Widge - C Christie - S O'Connell - JW Yarr - DR Baxter
A McCarthy - JF Whelan - JB Scriverelle - MF Barr - AM Curran - A Roberts - M Dale - RM Moore - D Main - J Cahill - M Traynor - PM Murray - P Walker - K Fufong - PT Fahy - M Raddale
D Inverarity - M Coghlan - DR Francis - A Casey - B Hussey - M O'Brien - L Mullooly - K Ryan - E Hurley - G Stanley - D Duggan - C Clarkin - R Gray - R Lyons - J Sheehy - C Morrissey
C Camoli - SE Carson - P Digg - J Williams - A O'Boine - MD Cole - G Conneely - J Daloz - SM Lynch - M McElhinney - C Owens - AD Lee - K O'Connor - JH Mike - T Casey - M Doyle
CJ Comerford - R Minnie - D Berkeley - K O'Shaughnessy - B O'Connell - BE Murphy - D Nangle - L Butler - A Lawler - C O'Connell - N McMahon
Consultants: SW Haughey - Professor JCW Wylie - AF Browne - MA Greene - AV Faragan - JA O'Farrell - IB Moore