



Commission for
Communications Regulation

Requirements regarding Battery Back-up and information for Fixed Voice Services over non Public Switched Telephone Networks

Response to Consultation and Decision

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Glossary of abbreviations

BBU	Battery Back-Up
CPE	Customer Premises Equipment
DECT	Digital Enhanced Cordless Telecommunications
ECN	Electronic Communications Network
ECS	Electronic Communications Services
FTTH	Fibre To The Home
NRA	National Regulatory Authorities
PATS	Publicly Available Telephone Services
PSTN	Public Switched Telephone Networks
OTT	Over The Top
RIA	Regulatory Impact Assessment
USO	Universal Service Obligation
USP	Universal Service Provider
VoB	Voice Over Broadband
VoIP	Voice over Internet Protocol

1. Executive Summary

- 1 The Commission for Communications Regulation (“**ComReg**”) is responsible for the regulation of Electronic Communications Networks and Services (“**ECN**” and “**ECS**”) in accordance with EU and national legislation. Regulation 16 of the Universal Service and Users’ Rights Regulations 2011¹ (“**the Regulations**”) requires undertakings to ensure, to the fullest extent possible, the availability of fixed Publicly Available Telephone Services (“**PATS**”) in the event of catastrophic network breakdown or unforeseen circumstances. PATS providers must also take all necessary measures to ensure uninterrupted access to the emergency services.
- 2 Regulation 15 (6) provides that undertakings may be required to -
 - (b) inform subscribers of any change to access to emergency services or caller location information in the service to which they have subscribed.
 - (c) inform subscribers of any change to conditions limiting access to or use of services and applications where conditions are permitted under national law in accordance with European Union law.
- 3 The availability of high speed broadband is increasing and communications services and devices are rapidly evolving. There is an increasing use of Voice over Internet Protocol (“**VoIP**”) technology as well as over the top (“**OTT**”) services over non public switched telephone networks (“**non-PSTN**”) such as fibre, cable and fixed wireless access networks.²
- 4 As the market evolves consumers will migrate from the conventional PSTN. PSTN draws the necessary power for operation from the local exchange via the copper telephone wires and continues to work if there is a power failure, whereas a fixed voice service over a non-PSTN will not facilitate voice calls in the event of a power failure. In practice, alternative temporary power to support essential calls over non-PSTN during a power failure could be supplied via a battery back-up (“**BBU**”) facility installed at the consumer and end-user’s premises.

¹ European Communities (Electronic Communications Networks and Services) (Universal Service and Users’ Rights) Regulations 2011.

² An example of VoIP technology is Skype while an example of over the top services is WhatsApp.

- 5 On 9 December 2016, ComReg published Consultation Document No. 16/109³ (“**the Consultation**”), which examined options including the provision of information such as limitations of and changes to the technology and details of available BBU as potential solutions for end-users with voice services over non-PSTN in the event of a catastrophic network breakdown or unforeseen circumstances, particularly during a power failure at the home. ComReg also published a consumer survey with its Consultation.⁴
- 6 We wish to thank the five respondents for their submissions to the Consultation which were received on 20 January 2017. The submissions were received from the following organisations and industry participants:
- Alternative Operators in the communications market (“**ALTO**”);
 - eir Group which consists of Eircom Limited (trading as 'eir' and 'open eir') and Meteor Mobile Communications Limited (MMC) (“**eir Group**”);
 - Telecommunications and Internet Federation (“**TIF**”);
 - Virgin Media; and
 - Vodafone.
- 7 ComReg has considered respondents’ views and has taken due consideration in assessing and quantifying the potential impact on stakeholders and on competition arising from its proposals to specify requirements regarding BBU in coming to its Decision.
- 8 This Response to Consultation and Decision document sets out ComReg's final position on the information requirements for fixed voice services over Non PSTN having considered the submissions received together with other analysis and relevant information.
- 9 ComReg’s guiding principle is that the transition to non-PSTN networks and services should not result in the voice service and access to emergency services being more at risk than when consumers used the PSTN voice network and should not be detrimental to end-users.
- 10 In the context of power outages, ComReg is of the view that by fulfilling Regulation 14 (2)(b)(i) and (ii) of the Regulations, ECS/ECN providers of PATS must clearly disclose limitations in the event of a power failure to consumers and end-users within the terms and conditions of their contract.

³ ComReg Document No 16/109 “*Consultation on requirements regarding battery back-up for fixed voice services over non Public Switched Telephone Networks*”, 9 December 2016

⁴ ComReg Document No 16/109a, “*Battery Back-Up Survey*”, 9 December 2016.

- 11 As the prevalence of high speed networks using VoIP technology over time will increase and expand to all geographical areas, ComReg considers that at a minimum clear and effective information regarding any limitation in access or related changes must be provided to all subscribers, both potential and existing, by fixed PATS providers, so that amongst other things subscribers can make informed choices. This may be to choose to consume a VoIP service and how to use it, to elect or not to have a BBU service to address their particular needs and/or to manage expectations about reliability and functionality in their household or at their premises through suitable alternative approaches including a mobile phone.
- 12 In this respect, ComReg notes that broadly, respondents to the Consultation support the principle of informed consumers and that next generation voice providers should provide them with relevant and useful information. In addition, the respondents favour a voluntary collaboration across industry to make a consumer information guide available on line as well as at point of sale outlets.
- 13 The principle focus in this Decision is on, in particular, the provision of information in terms of potential access and limitations and impacts of technology and of available BBU facilities compatible with the CPE. ComReg is of the view that the availability and effective dissemination of appropriate information to end-users and subscribers is critical at this time.
- 14 Views were sought in the Consultation in relation to any additional requirements that vulnerable users may have. ComReg has decided not to mandate any additional obligations in respect of vulnerable users at this time, but will continue to monitor the situation and may revisit this aspect as relevant.
- 15 In transition to new networks and services, and in the public interest, ComReg considers it necessary and appropriate in order to achieve its objective of protecting consumers, to specify minimum information requirements for fixed PATS providers.
- 16 In respect of providing relevant information to end-users and subscribers⁵, ComReg considers there are two distinct groups:
 - End-users at the point of sale and prior to concluding a contract
 - Existing subscribers who have a contract with their Undertaking and during the contract there is a change in technology being used

⁵ The Regulations refer to various terms, this Decision uses the terms as appropriate in the context of the Regulations.

- 17 ComReg has decided that Fixed PATS Providers, when offering Fixed PATS over a Non – PSTN shall before the end-user is bound by a contract for fixed PATS or by any corresponding offer, clearly inform the end-user in durable form of the following minimum information (subject to the condition specified at sub paragraph (iii) of this section):-
- (i) details of the Non-PSTN technology being used to provide the PATS,
 - (ii) details of any limitations of the Non-PSTN PATS and how any such limitations could impact the end-user in accessing and using the PATS, in the event of a power failure,
 - (iii) where a BBU facility is currently available, fixed non-PSTN PATS Providers with 10,000 or more subscribers “**Relevant Fixed PATS Providers**”, shall give the end-user details in relation to at least one BBU facility compatible with the PATS and CPE offered to the end-user. Where no compatible BBU facility is currently available, Relevant Fixed PATS Providers shall inform the end-user that there is none currently available.
- 18 ComReg has decided that, Fixed PATS Providers shall, not less than one month and no more than 3 months prior to the date of implementation of a change in service from PSTN to Non- PSTN, clearly inform their subscribers to that service in durable form of the following:
- (i) the changes in technology that may have an effect on the subscribers access and use of the PATS and how such changes will impact the subscriber particularly any limitations of PATS in the event of a power failure,
 - (ii) the changes in technology that may have an effect on services providing access to emergency services or caller location information service and how it will impact the subscriber in their access or use of the services referred to in this sub paragraph,
 - (iii) where a BBU facility is currently available, Relevant Fixed PATS Providers shall give details in relation to at least one BBU facility compatible with the PATS and CPE supplied to the subscriber by the Relevant Fixed PATS Provider. Where no compatible BBU facility is currently available, Relevant Fixed PATS Providers shall inform the subscriber that there is none currently available.

- 19 ComReg is of the view that any implications of 16(1)(a)⁶ or 16(2)⁷ of the Regulations for fixed PATS, would be satisfied by meeting the requirements of this Decision. This view is without prejudice to any obligations on undertakings to ensure uninterrupted access to emergency services and the obligation to ensure the fullest possible availability of the publicly available telephone services provided over public communications networks in the event of catastrophic network breakdown or in cases of unforeseen circumstances.
- 20 ComReg considers that it is reasonable that these requirements are in place by 31 August 2018.
- 21 Finally, ComReg has considered its approach, in light of its information notice on Regulatory Framework for Next Generation Voice Services, including VoIP.⁸ This Decision in relation to BBU for VoIP services supersedes any existing detail in the guidelines on VoIP related to this matter.

⁶ “Undertakings shall ensure the fullest possible availability of the publicly available telephone services provided over public communications networks in the event of catastrophic network breakdown or in cases of unforeseen circumstances”

⁷ “An undertaking providing a publicly available telephone service shall take all necessary measures to ensure uninterrupted access to emergency services.”

⁸ ComReg Document 10/91, “*Regulatory Framework for Next Generation Voice Services, including VoIP*”, 18 November 2010.

2. Background

- 22 Regulation 16 of the Regulations requires undertakings to ensure, to the fullest extent possible, the availability of PATS in the event of catastrophic network breakdown, or unforeseen circumstances. PATS providers must also take all necessary measures to ensure uninterrupted access to the emergency services.
- 23 ComReg published a Call for Input⁹ in January 2016 to consider the principles that may be relevant when assessing the potential implications of the transition by eir from its existing copper access network to non-PSTN networks.
- 24 Section 3.2 of the Call for Input referred to regulatory requirements for PATS, and that replacement voice services must comply with applicable regulations on the availability of services and proposed a consultation on issues relating to BBU. These issues include whether or not any requirements should be specified for the purpose of ensuring the fullest possible availability of fixed PATS where access to the PATS involves equipment powered by the mains supply at the consumer and end-user's premises. Mindful of the principle of proportionality, ComReg does not envisage that any requirements related to battery back-up would have a material impact on the business case for non-PSTN.
- 25 Communications markets are continually and rapidly evolving with new services and devices entering the market. ComReg notes that for many consumers the perceived value of the fixed telephony service will increasingly move from voice to internet access for multiple services. The number of users of PSTN continues to be substantial, however increasingly, the conventional voice service will be delivered over high speed broadband networks using VoIP technology, often in a bundle with other services.

⁹ ComReg Document No 16/01, "Transition from eir's copper network – proposed principles and notification purposes", 6 January 2016

- 26 The existing Universal Service Obligation (“**USO**”) does not specify the technology to be used in providing voice services¹⁰ nor, does it preclude the Universal Service Provider (“**USP**”)¹¹ from meeting consumer requests for connections by sourcing a connection from a third-party. In principle, ComReg considers it likely that a USP could choose to meet requests for a connection and voice service by providing (or sourcing) a connection to a non-PSTN and providing a VoIP service over that connection. It may also be possible for the USP to meet its obligations in some cases by using other technologies such as wireless.
- 27 The deployment of high speed broadband to households represents a profound change in the range of services and applications that consumers can enjoy. The Department of Communications, Climate Action and Environment is co-ordinating a State-led intervention to procure the delivery of high speed broadband in areas where service providers are unlikely to provide such services commercially.
- 28 As the market evolves and as consumers increasingly migrate to new advanced networks and services, one area of potential concern is the way in which fixed telephone services are protected in the event of a loss of power.
- 29 A conventional PSTN telephone draws the necessary power for operation from the local exchange via copper telephone wires, and as a result can continue to function even when there is a power failure at the premises. While in practice, the risk of interruption to the voice service for end-users of fixed non-PSTN networks and services could be mitigated by substitution of the fixed voice by mobile, this is dependent on coverage as well as a device that has battery sufficient to make a voice call. However, fixed non-PSTN, are unable to support voice calls in the event of a power outage as they do not conduct electricity.

¹⁰ ComReg Document No. 16/65 and D05/16 “Universal Service Requirements - Provision of Access at a Fixed Location (AFL USO)”, 29 July 2016.

¹¹ eir is currently designated as a USP of access at a fixed location to an ECN/ECS under the USO until 30 June 2021.

- 30 Services such as VoIP, whereby the consumer and end-user's broadband provides telephony-like services, are at risk of interruption during a power failure at the consumer and end-user's premises because these services rely on local power being supplied to the broadband modem. The consequence is that it may not be possible to make essential voice calls, including to emergency services during a power failure to the end-users premises. In practice, alternative temporary power to support essential calls over fibre or cable¹² access networks during a power failure could be supplied via a BBU facility installed at the consumer and end-user's premises.
- 31 Recital 35 of Directive 2009/136/EC of the European Parliament and of the Council¹³ (below) is important in the context of non-PSTN including those implemented as a result of the NBP.

"In future IP networks, where provision of a service may be separated from provision of the network, Member States should determine the most appropriate steps to be taken to ensure the availability of publicly available telephone services provided using public communications networks and uninterrupted access to emergency services in the event of catastrophic network breakdown or in cases of force majeure, taking into account the priorities of different types of subscriber and technical limitations."

- 32 The Consultation examined options in respect of the provision of information and BBU as potential solutions for end-users with voice services over non-PSTN to make essential fixed-line telephone calls, including to emergency services, during a power failure at the home.
- 33 The Consultation proposed that:
- Fixed PATS providers must advise end-users about the technology being used and any limitations in the event of a power failure and options for purchasing a BBU facility,
 - Fixed PATS providers should advise subscribers if there is a change in technology being used of its limitations in the event of a power failure and options for purchasing a BBU facility,
 - Fixed PATS providers would be required to provide detailed information about BBU options available to all end-users including sources for their availability, details of their cost, capacity and power duration,

¹² It is noted that similar to fibre, cable networks do not provide power to operate necessary equipment at the consumer location, including network devices (e.g., cable modems, optical network terminals) and telephones.

¹³ Directive 2009/136/EC of 25 November 2009

- Fixed PATS providers should advise subscribers if there is a change to access to emergency services or caller location information in the service.

34 This Response to Consultation and Decision now sets out ComReg's final views in respect of the provision of information and BBU as potential solutions for end-users. In coming to its Decision, ComReg has taken into account the responses received in relation to the Consultation, the consumer survey conducted in August 2016, information collected on foot of information requests, and other relevant material available to it at this time. The final RIA in Annex 1 reflects this.

3. Relevant Research

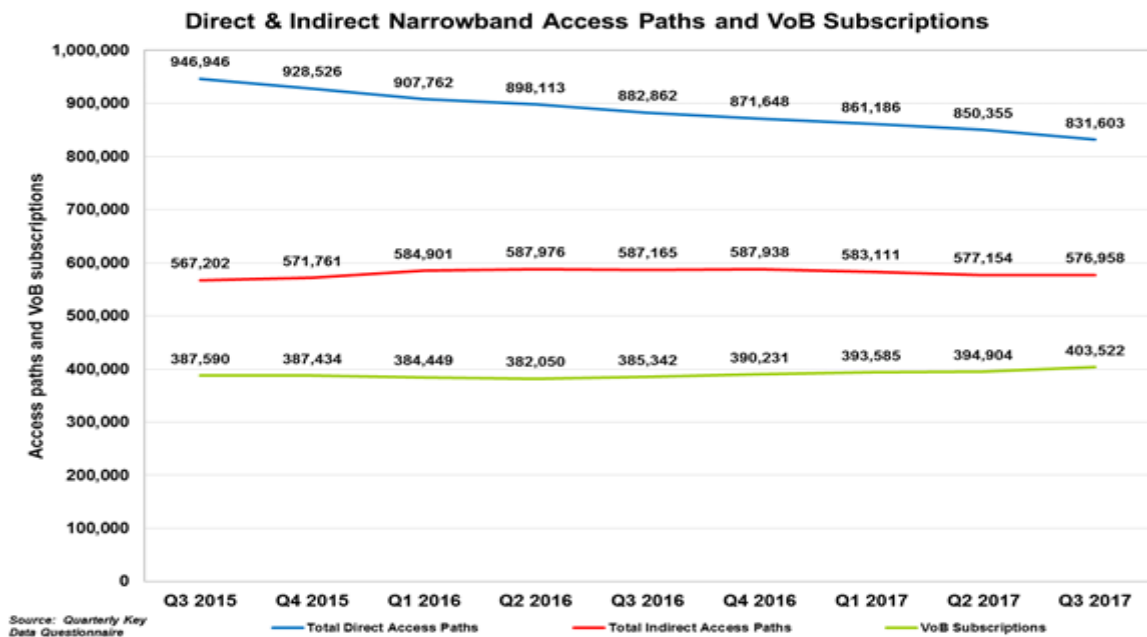
- 35 The Consultation looked at changes in technology for fixed voice services and referred to a number of independent sources including research carried out by Cullen International.¹⁴ This research looked at whether National Regulatory Authorities (“**NRAs**”) have imposed requirements regarding BBU for the optical terminating units and VoIP equipment for FTTH access deployments. It found that of the 15 benchmarked NRAs, with the exception of the UK, no NRA has mandated provision of a BBU service.
- 36 ComReg also noted that following Cullen International’s research, the UK’s NRA, Ofcom, published its Strategic Review of Digital Communications statement¹⁵ and stated its intention to withdraw its existing guidance¹⁶ on the use of BBU to protect against localised power outages.
- 37 The Consultation set out details of changes in technology used for fixed voice access. ComReg’s Q3 2017 Quarterly Key Data publication notes the number of Voice over Broadband (“**VoB**”) subscriptions increased by 2.2% since Q2 2017 and rose by 4.7% since Q3 2016. The following graph from the Quarterly Key Data Report as published in ComReg Document No. 17/108¹⁷ shows the number of VoB subscriptions.

¹⁴ See Appendix 1 of the Consultation

¹⁵ Ofcom Strategic Review of Digital Communications Statement
https://www.ofcom.org.uk/data/assets/pdf_file/0016/50416/dcr-statement.pdf

¹⁶ Ofcom’s guidance at the time of Cullen International’s research to those operators deploying fibre networks was that they should provide a back-up battery capable of allowing the customer to make emergency calls on their landline phone for at least an hour after a power cut at the premises

¹⁷ Figure 2.2.1.2 – Direct & Indirect Narrowband Fixed Access Paths and VoB Subscriptions



- 38 The Consultation also noted that while 41% of households in Ireland with mobile phone access had no fixed telephone access, 5% of the Irish households surveyed had no mobile telephone usage.
- 39 Prior to the Consultation, data was collected from fixed ECS/ECN providers using our statutory powers¹⁸ regarding BBU. A summary of findings from the data provided in response to this information request as set out in the Consultation is as follows:
- No ECS/ECN providers currently supply BBU solutions to their domestic customers. One ECS/ECN provider currently supplies BBU to commercial customers on request;
 - Half of the ECS/ECN providers provided estimates of cost for domestic BBU solutions. According to these providers estimated costs were approximately €100 to install and approximately €25 to maintain per year;
 - The majority of ECS/ECN providers report that they would likely charge their customers for a BBU solution, if provided;
 - Half the ECS/ECN providers had sales figures of the take-up of their supplied cordless (DECT) phones. However, the low percentage (in one case, approximately 12% of subscriber base) suggests the majority of consumers source their own cordless phone independent of their ECS/ECN provider.

¹⁸ Section 13D of the Communications Regulation Act 2002 as amended:
<http://www.irishstatutebook.ie/eli/2002/act/20/enacted/en/pdf>

40 ComReg's assessment of the potential harm to consumers given the risk of disruption to voice services has also taken into account the following:

- How the conventional telephone service offering has changed with the evolution of technology. The transition from PSTN networks to non-PSTN fixed networks and the increase of availability of high speed broadband means changes to conditions limiting access to or use of services are also increasing. Essentially, with consumers and end-users increasingly migrating to a VoIP services and this evolution in technology changes some of the characteristics of the voice service;
- Information from ComReg consumer line regarding any complaints in the year to 31 July 2017, in respect of issues resulting from loss of telephone service due to domestic electricity power failure;
- Consumer preferences for DECT or other handset devices;
- The consumer survey as to the extent of consumer awareness around the requirement of BBU to sustain VoIP services in the event of a power failure at the consumer and end-user's premises (ComReg 16/109a);
- Data on power outage statistics; and
- General BBU research on availability and cost.

41 The findings of the consumer survey were summarised in section 3.1.4 of the Consultation. Some relevant findings from this online survey are as follows:

- 99% of the respondents have a phone service, of which 95% have a mobile phone and 55% have a traditional telephone (21% corded, 79% cordless). 27% of all respondents include VoIP as a phone service.
- Of the age group 55+, 83% have a traditional telephone service (17% corded and 83% cordless), 98% have a mobile phone and 31% have a VoIP phone service.
- 99% of all traditional telephone users would have an alternative service to make an emergency call and 1% would not, if their home phone was not working. Of those 99%, 97% would use a mobile phone as an alternative service in the event of a power failure and 2% rely on a battery back-up.
- When asked if a cordless (DECT) telephone wouldn't work for a reason such as a power failure, 25% said they would plug a corded telephone directly into the wall to continue the phone service. 29% of these are aged 55+.

- Of the traditional telephone users in the age group 55+, 99% would use a mobile phone as an alternative in the event of power failure and 1% would have no alternative service.
- 25% of VoIP users are unaware and 75% are aware that a VoIP service might not work in the event of a power failure. The highest awareness is in the 55+ age bracket at 81%.
- 37% of VoIP users are unaware and 63% are aware that they may need to have a battery back-up to be able to use their VoIP service in the event of a power failure. The highest awareness is in the 55+ age bracket at 70%.

42 Data collected from ESB Networks ascertained that there were significant variances in power outage duration on a national, urban and rural level. In addition, the data indicated that in the six years up to and including 2015, an average of 32% of all outages lasted less than 2 hours in duration whereas the remaining average of 58.5% of all outages were between 2 and 6 hours in duration.

4. Consultation Issues and ComReg's Decision

4.1 Introduction

43 This Section summarises the respondents' submissions to the Consultation and sets out ComReg's views on these issues and its final position.

4.2 Analysis of Policy Issue - BBU

44 The Consultation set out the technological changes that are occurring in the market and in particular highlighted the decrease in the number of PSTN subscriptions. It focused on those changes which could adversely affect end-users in their homes and on potential solutions that might possibly limit negative impact at times of emergency or unforeseen circumstances.

45 In so doing, it considered the issue from a number of different perspectives. These included, but were not limited to, a snapshot survey of consumer awareness of the key issues, comparative analysis of current practice among other NRAs and existing research at national and international levels.

46 In particular, it addressed possible technical solutions which could be invoked to provide back up when and where mains supplied power was unavailable for a period of time. It considered BBU solutions and potential benefits to end-users in critical situations.

47 In this context, the first question asked was:

Q. 1. Are there any other factors that ComReg should consider in addition to those set out in Section 3.1., that cover market and technological changes, battery back-up availability and cost with respect to:

- (a) the limitations of services, such as VoIP, which are at risk of interruption during a power failure at the consumer and end-user's premises because these services rely on local power being supplied to the equipment through which the service is being provided; and
- (b) alternative temporary power capable of supporting essential calls over non-PSTN networks, such as, fibre networks, during a power failure supplied through a battery back-up facility installed at the consumer and end-user's premises?

Please provide detailed reasons and supporting evidence for your view.

Views of respondents

- 48 eir Group and Vodafone responded directly to question 1, while others responded with summary comments in their submissions.
- 49 ALTO, eir Group, TIF and Virgin Media all stated that they believe that the situation should remain as is. The views expressed broadly questioned regulatory intervention, the impact on competition, and the relevance of such an approach as the respondents are of the view the market is functioning in this respect and there is a decline in traditional voice and a corresponding increase in VoIP and mobile voice usage.
- 50 Vodafone stated that the matter is not new and is not limited to VoIP and express the view that *'it is generally made clear in the user guides for cordless DECT phones, mains power is required to operate the device'*.
- 51 eir Group stated that *'the market is operating effectively and consumers are acting rationally as evidenced by the ComReg Study, with 99% respondents stating they have a back-up service to make an emergency call'*.
- 52 The general view from industry respondents was that the material presented by ComReg did not prove the need for regulatory intervention in this area and that ComReg had not produced sufficient evidence of potential consumer detriment to justify the exercise of its formal powers to impose any specific obligations in respect of this matter. eir Group stated that *"The development of regulatory policy needs to be evidence based"*.
- 53 eir Group also stated that *"the evidence ComReg does present is not enough to justify the level of regulatory intervention it proposes"*.
- 54 TIF stated that an *'ability to select the service is preferable to including it within the proposition by default. TIF believes it should not be an obligatory requirement; this would only stifle investment and uptake of next generation services.'*
- 55 Support for an industry led initiative to inform customers and end-users of the limitations of services, especially at times of power failures, was in general positive. Involvement between industry and ComReg was also put forward.
- 56 TIF referred to the success of consumer guides in educating and informing end-users of new technologies and services. Virgin Media stated that it is willing to explore options with ComReg such as making the information more prominent in [its] customer communications materials, working with ComReg to develop an information guide that can be made available either by ComReg and/or by individual operators.

- 57 Vodafone noted it would welcome *'engagement across industry on a standardised information campaign which may assist ComReg in achieving its objective'*.
- 58 Virgin Media made a number of points regarding the BBU technical specifications provided by ComReg and flagged the weight of the battery could be 6kg (for short period of back-up time) to 15kg (390 Watt Hours of back up).

ComReg's Response and Position

- 59 ComReg has considered the responses and notes that all industry respondents are of the view that the measures are not required, as the situation. Whereby in the event of a power outage some end-users would not have been able to rely on their fixed PATS to make an emergency call, has always existed for PSTN end-users. ComReg agrees, the risk of interruption to the voice service could be mitigated by substitution of the fixed voice by mobile, however this is dependent on coverage as well as a device that has battery sufficient to make a voice call.
- 60 ComReg acknowledges that DECT phones are used and VoIP is available however the main differential is the increase in the number of end-users moving from the copper network due to the roll out of fibre nationwide.
- 61 Currently end-users who avail of a landline in a competitive environment generally have a choice whether to switch from copper to an alternative network and avail of the associated network advantages in respect of their broadband service.
- 62 In the future there may not be the same choice due to the phased replacement and the retirement of the legacy PSTN.
- 63 As demonstrated in the Consumer Survey, 25% of respondents said they would plug a corded telephone directly into the wall to continue the phone service in the event of a power outage. Therefore although 95% of respondents also have a mobile phone, it appears necessary to ensure end-users are informed that in moving to non-PSTN, in the event of a power outage, the ability to use the fixed voice service may be compromised.
- 64 The consumer survey also found that of the traditional telephone users in the age group 55+, 99% would use a mobile phone as an alternative in the event of power failure and 1% would have no alternative service.
- 65 The individual concerns as set out above have been taken into account when considering the responses to the other questions raised in the consultation.

4.3 Contractual and Information Requirements

- 66 ComReg’s preliminary view in the Consultation was that end-users need to know the risks associated with non-PSTN powered fixed voice services, if they are to make informed choices when purchasing a service.
- 67 ComReg considered continuing to rely on existing obligations with respect to contracts and such that ECS/ECN providers of fixed PATS are already required to clearly disclose limitations to end-users within the terms and conditions of their contract. Therefore, the features and capabilities of any non-PSTN service must be properly described including the dependency of the service on a power supply in the home and on the availability of a broadband connection.
- 68 ComReg raised 5 questions in respect of existing contractual and information requirements on fixed PATS providers, the responses to which are each analysed in turn below, ComReg’s response and final position are then set out.

Q. 2 Do you agree with the preliminary view that it is not sufficient to rely on the existing contractual and information requirements on fixed PATS providers?

Please provide detailed reasons and supporting evidence for your view.

Views of respondents

- 69 eir Group and Vodafone responded directly to this question.
- 70 The general opinion expressed by respondents was that sufficient information does exist and the limitations of all services is communicated to end-users. Vodafone and Virgin Media also stated that they are already providing such information, communicating limitations / key differences in services.
- 71 The necessity to specify formal regulatory obligations was questioned by both Vodafone and eir Group. eir Group stated *“there is no need to impose additional obligations and should ComReg have a concern it can and should use its existing consumer powers”*.

Q. 3 Do you agree that all fixed PATS providers should provide:

- (a) clear and transparent disclosure of conditions limiting access to or use of services at point of sale (instore, online, voice and face-to-face); and
- (b) Information on steps consumers and end-users may take to address those limitations?

Please provide detailed reasons and supporting evidence for your view.

Views of respondents

- 72 eir Group and Vodafone responded directly to this question. eir Group stated that, “*next generation voice providers should provide relevant and useful information to end-users*” but does not, however, “*agree that the requirement should be formally specified*”.
- 73 Vodafone agreed that clear information should be provided and confirmed that it currently communicates such to its customers and that “*there is an information deficit*”.

Q. 4 Do you agree that, in addition to the existing contractual and information requirements, all fixed PATS providers should provide detailed information (as set out in paragraphs 65 and 66 of the consultation document) about battery back-up, to all consumers and end-users, at the point of sale (instore, online, voice and face-to-face) and before entry into a contract?

Please provide detailed reasons and supporting evidence for your view.

Views of respondents

- 74 Two respondents directly responded to this question. eir Group noted “*there is merit in a voluntary industry initiative to promote information on technological evolution. However ComReg’s proposal to exercise its formal powers at this time in the absence of any evidence to warrant their exercise is disproportionate*”.
- 75 Vodafone agreed that operators should provide information to customers.
- 76 Virgin Media in its summary response, without referring specifically to this question, asserted that since its commercial launch, it has provided information on the limitations of the service during a power failure.

Q.5 Do you agree that all fixed PATS providers should provide pre contract and in the event that there is a change during the contract:

(a) clear and transparent disclosure of conditions limiting access to or use of services during the contract if there is a change in technology (instore, online, voice and face-to-face); and

(b) Information on steps consumers, end-users and subscribers may take to address those limitations.

Please provide detailed reasons and supporting evidence for your view.

Views of respondents

- 77 eir Group and Vodafone responded directly to this question. Vodafone state that they are currently providing the required information and guidance for consumers and again stated that a formal obligation is not required but would take into account any ComReg guidance in this area when communicating with customers.
- 78 eir Group referred to their response to Q.4. in respect of a voluntary industry initiative for both new customers and customers transitioning from legacy systems.

Q. 6 Do you agree that in addition to the existing contractual and information requirements all PATS providers should provide detailed information (as set out in paragraphs 65 and 66) about the requirement for battery back-up, to all subscribers, during the contract, if there is a change in technology (instore, online, voice and face-to-face) and before entry into a contract?

Please provide detailed reasons and supporting evidence for your view.

Views of respondents

- 79 eir Group and Vodafone responded directly to this question with both supporting a minimal intervention role for ComReg in this regard.
- 80 eir Group stated that it believes that ComReg did not present sufficient evidence to '*justify the level of regulatory intervention proposed by ComReg particularly as the ComReg Study confirms that the vast majority of users (97%) would rely on mobile as the back-up in the event of a power failure*'.
- 81 Vodafone highlighted its belief that the provision of more detailed information does not guarantee that consumers would read it. While believing that formal obligation is not required at this juncture, it suggested that '*it is more appropriate that ComReg develop guidance regarding battery back-up.*' It continued to say that '*it is more important that customers get clear and concise information regarding their options in relation to dependence on mains power. [Vodafone] agree this could be provided when customers are taking out service or if they are changing to a different technology at any stage*'.

ComReg's response and position

- 82 Broadly, the response from industry, on contractual terms and information requirements, is that the market is operating effectively and consumers are operating rationally and hence ComReg should reconsider exercising its formal powers regarding these requirements at this time.
- 83 Notwithstanding this, ComReg observes that while there are claims that end-users are informed in respect of the limitation of the fixed non-PSTN PATS in the event of power failure, this information does not appear to be readily available to end-users before entry into a contract.
- 84 ComReg sees the availability of information for consumers and effective dissemination by providers of appropriate information as a critical element of its overall approach to this matter. Absent clear and adequate information, end-users cannot fully assess their needs for their voice service. End-users ability to make informed decisions absent such information is therefore reduced.
- 85 End-users may be solely reliant on fixed non-PSTN services to make telephone calls, including essential calls, either because the premises is in a new-build development in which there is no PSTN line available, or because the existing PSTN phone line has been discontinued in favour of for example a fibre or cable access service and, hence is no longer operational.
- 86 While in practice, the risk of interruption to the voice service for end-users of fixed non-PSTN networks and services could be mitigated by substitution of the fixed voice by mobile, this is dependent on coverage as well as a device that has battery sufficient to make a voice call.
- 87 Given this potential move towards non-PSTN services it is appropriate for ComReg to consider that where a service differs from a conventional PSTN telephone service in terms of service reliability and availability features (and therefore may not have the capability to meet consumer need and/or expectations), industry should ensure that consumers and end-users be made fully aware of these differences.
- 88 ComReg envisages that fixed PATS providers operating on a commercial basis would in the future in delivering a VoIP service provide effective information to their end-users. However, in many cases, fixed PATS providers do not appear to currently make available sufficient information to end-users before entry into a contract or during contract in respect of the features of a VoIP service (that the digital telephone service may not work in instances of a power failure) or BBU options to avoid interrupted service.

89 The results of the consumer survey notes that 1% of traditional telephone users would not have an alternative service to make an emergency call if their home phone was not working. Furthermore,

- When asked if a cordless (DECT) telephone wouldn't work for a reason such as a power failure, 25% said they would plug a corded telephone directly into the wall to continue the phone service;
- 25% of VoIP users are unaware that a VoIP service might not work in the event of a power failure;
- 37% of VoIP users are unaware that they may need to have a battery back-up to be able to use their VoIP service in the event of a power failure.

90 ComReg therefore has decided to require fixed PATS providers to provide clear and transparent information in respect of disclosure of conditions limiting access to or use of services as follows:

- To all potential non-PSTN subscribers pre contract at a minimum:
 - (i) details of the Non-PSTN technology being used to provide the PATS,
 - (ii) details of any limitations of the Non-PSTN PATS and how any such limitations could impact the end-user in accessing and using the PATS, in the event of a power failure.
- To existing subscribers in the event that there is a technology change during the contract:
 - (i) changes in technology that may have an effect on the subscribers access and use of the PATS and how such changes will impact the subscriber particularly any limitations of PATS in the event of a power failure,
 - (ii) changes in technology that may have an effect on services providing access to emergency services or caller location information service and how it will impact the subscriber in their access or use of the services referred to in this sub paragraph.

91 ComReg has decided that fixed PATS Providers must provide notice of the change to the subscriber not less than one month and no more than 3 months prior to the date of implementation. ComReg is of the view that this notification period would allow consumers sufficient time to determine the impact of the change on them. Any longer period may result in subscribers disregarding the information because the notification period is too long.

92 ComReg's detailed consideration of the options is set out in the Regulatory Impact Assessment ("RIA") set out at Annex 1 to this document.

4.4 Options for Purchasing a Battery Back Up

93 ComReg recognises that consumers and end-users are increasingly relying on new types of fixed telephone services and consequently, are moving away from more conventional telephony. In this transition, ComReg has identified a risk to some consumers and end-users where there is a real possibility of interruption to mains power supplies especially in emergencies or unforeseen circumstances.

94 In the Consultation, ComReg took an all-inclusive approach to information collection, consideration and dissemination. Principally, it looked at the possibility of information provision to consumers and end-users before and during contract.

95 It also looked at the technical solutions which are available and the possibility of subscribers sourcing these through fixed PATS providers and/or third party retailers. As part of this investigation, it considered the position of other NRAs vis-à-vis BBU and obligations, if any, placed on providers.

96 Technical considerations form part of the debate on Network Integrity. Information gathered and opinions given as part of the consultation on BBU will be fed into that discussion as well as shaping ComReg's approach to information provision to consumers and end-users generally. At this stage, however, ComReg has not specified technical obligations to be adhered to by undertakings regarding BBU solutions.

97 The Consultation question the following:

Q7 Do you agree that fixed PATS providers should identify to all consumers and end-users pre-contract and to subscribers during a contract change options for purchasing a battery back-up either supplied by the PATS provider or a third party retailer?

Please provide detailed reasons and supporting evidence for your view.

Views of respondents

98 eir Group noted '*the evidence presented by ComReg does not justify the level of regulatory intervention proposed by ComReg*', especially as '*there is already a high level of awareness of battery back-up*'.

99 While Vodafone was of the view that operators could advise about battery back-up, it did not agree, however, that this should extend to pricing due to the constant change of prices.

100 Virgin Media stated that *“Operators cannot be held accountable for the information provided by third party retailers (such as details on the cost, capacity, and power duration of the units along with installation and maintenance costs).”* Virgin Media also stated that it does not *“currently provide a battery back-up solution for its services nor does it have any knowledge of a third party retailer that currently sells battery back-up solutions that are interoperable with [its] network and services”*.

ComReg’s views and position

101 ComReg’s view is that it should be possible for an end-user or an operator to order the non-PSTN service with or without a BBU service. While no fixed PATS providers currently supply BBU solutions to their domestic customers, one PATS provider currently supplies BBU to commercial customers on request.

102 ComReg welcomes any industry initiative that results in a standardised information being made available to PATS subscribers and notes that this has been put forward in a number of responses.

103 However, as part of the general service offered by a provider to their subscriber, it is ComReg’s view that a subscriber should be able to contact their provider to understand what options are available to them and what they can do to protect themselves in the event of a power failure.

104 As demonstrated in the Customer Survey results, 25% of VoIP users are unaware that a VoIP service might not work in the event of a power failure. 37% of VoIP users are unaware that they may need to have a battery back-up to be able to use their VoIP service in the event of a power failure. In addition 37% of all VoIP users are prepared to pay for BBU each year.

105 ComReg is therefore of the view that Fixed PATS providers offering non-PSTN should provide information regarding at least one BBU facility in durable form to both

- End-users prior to concluding a contract
- Existing subscribers where during the contract there is a change in technology being used.

- 106 ComReg, however is cognisant of the impact an obligation of this type may have on smaller operators. Therefore ComReg has decided that only fixed non-PSTN PATS Providers with 10,000 or more subscribers (“**Relevant Fixed PATS Providers**”), will be required to provide information regarding a compatible BBU facility to the consumer/subscriber. This threshold would preclude the obligation from resulting in undesirable competitive or other unintended consequences, such as barriers to entry.
- 107 ComReg has decided that Relevant Fixed PATS Providers shall, (before the end-user is bound by a contract or in advance of implementing a change from PSTN to Non- PSTN for existing subscribers),
- give details in relation to at least one BBU facility compatible with the PATS and CPE offered to the end – user/subscriber. Where no compatible BBU facility is currently available Relevant Fixed PATS Providers shall inform the–end – user/subscriber that there is none currently available.
- 108 ComReg has decided that Relevant Fixed PATS Providers must provide information in respect of the BBU facility to the subscriber 1 not less than one month and no more than 3 months prior to the date of implementation of the change from PSTN to Non- PSTN. ComReg is of the view that this notification period would allow consumers sufficient time to determine the impact of the change on them. Any longer period may result in subscribers disregarding the information because the notification period is too long.
- 109 ComReg also notes that it has modified the obligations in respect of BBU from those proposed in the Consultation in light of the submissions received, such that the intervention and therefore the obligations on fixed PATS providers in terms of the provision of BBU is less than that originally proposed.

4.5 Potential Measures for Vulnerable Users

- 110 ComReg is aware that there are vulnerable end-users who may have additional special requirements in relation to the matter of BBU. While it is not proposing any specific measures at this time, it took the opportunity in its consultation to elicit the views of respondents regarding this topic.
- 111 ComReg asked the following question regarding the identification of specific groups or groups who were potentially at risk:

Q.8 (a) Is there a specific group or groups who are at a higher risk of experiencing consumer detriment compared to the general population in respect of this issue and where special provision in respect of BBU might need to be made for these groups?

If you are of the view that there are specific vulnerable groups we would welcome any observations to:

- (b) who is best placed to consider the needs of this specific group?
- (c) how those consumers could identify themselves as a vulnerable user including what registration and/or certification of vulnerability would be most appropriate; and
- (d) any cost or other implications for all vulnerable consumers to avail of a BBU service.

Views of respondents

- 112 eir Group put forward a dual approach. Firstly, it suggested that *'guides on battery back-up could be included in the ESB's communications to these customers both generally and in relation to specified planned outages'*. Secondly, it suggested guides could be produced by industry and distributed *'through the disability representative groups with which it has an established relationship through ComReg's Disability Forum and bodies such as Age Action Ireland'*.
- 113 eir Group considered that ComReg had omitted to properly evaluate the use of the register (currently used by disabled subscribers) for the purpose of identifying their additional requirements.
- 114 Vodafone stated that it is *'not aware of any current concerns arising in respect of specific vulnerable groups'*.
- 115 Virgin Media stated *'With respect to vulnerable consumers, Virgin Media notes ComReg does not intend introduce [sic] specific requirements for these consumers at this particular point in time. Should ComReg wish to revisit this position at some stage in the future, Virgin Media would be interested in engaging with ComReg on this matter'*.

ComReg's views and position

- 116 This question was designed to expand ComReg's current knowledge of issues surrounding the impact of the move towards non-PSTN on vulnerable users. Opinions expressed will feed into information already collected for example, from its consumer survey and information from PATS providers.

117 ComReg has decided not to mandate any additional obligations in respect of vulnerable users at this time, but will continue to monitor the situation and may revisit this aspect as relevant.

4.6 Draft Regulatory Impact Assessment (RIA)

118 Following the RIA guidelines¹⁹, European and international best practice, ComReg produced its draft assessment of the relevant regulatory options.

119 As part of the process in choosing a preferred regulatory approach to this matter, ComReg set out its key policy issues and objectives. ComReg identified that the central policy issue is the way in which fixed communications networks are protected from loss of power for end-users, especially those who are identified as being at risk. There are potential limitations of non-PSTN services, which are at risk of interruption during a power failure at the premises because these services rely on local power being supplied to the equipment through which the service is being provided. In this light, loss of fixed voice service over a non-PSTN during a power failure may become more of an issue for consumers as voice services transition from PSTN.

120 Moreover, end-users may expect that the fixed telephone service provided by a fibre or cable network (VoB or managed VoIP) would remain available in the event of a power failure in the home or premises as this capability has always been the case for PSTN telephony. Therefore, in transition to new advanced networks consumers and end-users may be unaware that they must take action to ensure voice service availability in a power failure. In this context, any lack of transparency *inter alia* insufficient engagement with consumers and end-users in respect of voice service characteristics including, any differences in the experience they could expect in using replacement services, would potentially result in a misinformed choice and consumer welfare would be reduced.

121 The proposed regulatory approach was designed to have the desired impact in terms of promotion of the interests of consumers through ensuring that fixed PATS providers comply with applicable regulations on the availability of services. In this respect, amongst other things, Regulation 16 of the Regulations could be addressed to ensure, to the fullest extent possible, the availability of fixed PATS during critical times and to create a situation where all fixed PATS providers take necessary steps to ensure uninterrupted access to emergency services when and where required.

¹⁹ ComReg 07/56a, "Guidelines on ComReg's Approach to Regulatory Impact Assessment", 10 August 2007.

122 The RIA identified and described four potential regulatory options. These were as follows:

- Relying on existing obligations (no intervention measures)
- Specify minimum *ex ante* BBU information requirements
- Impose BBU requirements
- Potential measures for vulnerable users.

123 After outlining what each of these possibilities might entail, ComReg assessed the options and their respective impacts for consumers, service providers as well as for competition. This included an assessment of the potential costs and benefits of each option, the potential net welfare among other key factors.

124 The Consultation asked the following question:

Q9 Do you agree or disagree with ComReg's draft high level assessment of the impact of the proposed regulatory options? Are there any other factors that you consider to be relevant?

Please provide detailed reasons and supporting evidence for your view.

Views of respondents

125 Of the five respondents, eir Group was the only respondent to comment specifically on the draft RIA. eir Group was of the view that the RIA *“did not bring anything to the table in terms of attempting to properly quantify and compare the costs and benefits of the various options under consideration”*. As such, eir Group submits that *“ComReg has not produced sufficient evidence of potential consumer detriment to justify the exercise of its formal powers to impose specific obligations in respect of battery back-up.”*

126 eir Group was of the view that there are *“elements of bias in the RIA, for example, when ComReg considers the role of mobile”*. eir Group believes that ComReg asserts rather than provides any evidence that *“local mobile networks can be overwhelmed in the event of adverse events and/or prolonged power failure.”*²⁰ In eir Group's view the total voice capacity of the mobile networks is at least double of the fixed voice requirement. In this light, eir Group considered that *“mobile capacity is unlikely to be overwhelmed given the twofold aggregated capacity advantage of mobile”*.

²⁰ Para 186: 'We recognise that mobile penetration levels are over a 100% and, hence, many consumers may have an alternative battery based access path to making calls, including essential calls. However, as set out above, mobile coverage may deteriorate indoors (compared to outdoors), depending on the technology (2G or 3G) and the network operator. Moreover, the local mobile networks can be overwhelmed in the event of adverse events and/or prolonged power failure.'

- 127 Other operators made a number of more general observations on the exploration of options to address the potential limitations of services during a power failure at the premises as follows.
- 128 ALTO proposed that the status quo should be maintained by ComReg where it should continue to rely on existing obligations. ALTO stated that the market does not require mandating a BBU type solution at this time. To do so in ALTO's view could result in undesirable competitive or other unintended consequences, such as barriers to entry.
- 129 TIF considered that ComReg had produced insufficient evidence of consumer detriment to exercise formal powers in respect of battery back-up. TIF questioned whether there is a need to implement such formal regulation when, in their view, the market is functioning. According to TIF, mandating BBU would stifle uptake of NGA services.
- 130 Virgin Media stated a requirement obliging ECS providers to offer BBU solutions is unnecessary in light of consumers being appropriately informed of limitations of service at the point of sale as well as in the terms and conditions of service.
- 131 Vodafone supported the position that consumers should be informed regarding service limitations. However, they do not consider a formal obligation is required at this time on the basis that the use of mains power and equipment is not new; mobile is universal which provides an alternative to fixed including at critical times; consumers are not raising a concern which suggests not information deficit and; that the industry provide the required information.

ComReg's views and conclusions

- 132 While ComReg address the respondent's views in relation to the high level assessment of the impact of the proposed regulatory options in this section, ComReg's views here should be read in conjunction with ComReg's analysis and final position on the RIA as set out in Annex 1.
- 133 ComReg considers that it has taken due consideration in assessing and quantifying the potential impact on stakeholders and on competition arising from its proposals to specify requirements regarding BBU. More specifically, as set out in paragraph 40 above ComReg's assessment of the potential harm to consumers given the risk of disruption to voice services has taken into account:

- How the conventional telephone service offering has changed with the evolution of technology;
- Information from ComReg consumer line regarding any complaints in respect of issues resulting from loss of telephone service due to domestic electricity power failure;
- Research carried out by Cullen International;
- Consumer preferences for DECT or other handsets, devices;
- The data submitted by fixed ECS/ECN providers;
- Feedback from the consumer survey as to the extent of consumer awareness around the requirement of BBU to sustain VoIP services in the event of a power failure at the consumer and end-user's premises;
- Data on power outage statistics; and
- General BBU research on availability and cost.

134 ComReg has a role to ensure consumer protection including to ensure the continuity and reliability of the voice service including uninterrupted access to emergency calling.

135 In this respect, ComReg has appropriately quantified the potential harm to end-users and to assess possible mitigation techniques.

136 As set out in the Consultation and above, ComReg has identified consumer protection concerns. End-users may be solely reliant on the non-PSTN to make fixed-line telephone calls, including essential calls – either because the premises is in a new-build development in which there is no PSTN line available, or because the existing PSTN phone line has been discontinued in favour of for example fibre or cable access service and, hence is no longer operational. Given this potential lack of choice it is appropriate for ComReg to consider the extent of consumer protection that is in place or could be put in place more formally at this time.

137 While in practice, the risk of interruption to the voice service for end-users of fixed non-PSTN networks and services could be mitigated by substitution of the fixed voice by mobile, this is dependent on coverage as well as a device that has battery sufficient to make a voice call. ComReg notes eir Group's view that mobile capacity is unlikely to be overwhelmed given the twofold aggregated capacity advantage of mobile.

- 138 Notwithstanding this, ComReg considers there is risk to users and in particular vulnerable users with a disruption of the fixed home phone service. ComReg notes that the prevalence of high speed broadband and VoIP technologies are likely to increase and will expand to all geographical areas. In this light, loss of fixed voice service over a non-PSTN during a power failure may become more of an issue for consumers as voice services transition from PSTN. End-users may have the wrong expectation that their voice service will continue to function in a similar way to the more conventional PSTN voice service. This would not allow them to make informed decisions concerning their voice service, including a requirement for additional protection i.e. BBU. Indeed, ComReg notes that eir Group acknowledges that the evolution of technology and the introduction of new services can present challenges for end-users who need to be properly informed. Other respondents also support the position that principally consumers should be sufficiently informed, amongst other things, regarding any service limitations.
- 139 In this context, any lack of transparency *inter alia* insufficient engagement with end-users in respect of voice service characteristics including, any differences in the experience they could expect in using replacement services, would potentially result in misinformed choice and consumer welfare would be reduced. Consumers and end-users need, at a minimum, to understand any risk associated with non-PSTN powered fixed voice services and access to emergency services, amongst other things, to make informed choices.
- 140 Broadly, the response from industry appears to be that the market is operating effectively and that consumers are operating rationally such that ComReg should reconsider exercising its formal powers regarding BBU requirements at this time. Notwithstanding this, ComReg observes that currently, in many cases, fixed providers do not make available any information to consumers, end-users and to subscribers before entry into a contract or to subscribers who are in contract in respect of the features of a VoIP service.
- 141 Additionally, it should be possible for a provider to provide sufficient information to an end-user in order for the end-user to acquire a BBU service should they so decide.
- 142 ComReg also notes that it has modified the obligations from those proposed in light of the responses such that the intervention and therefore the obligations on fixed PATS providers in terms of the provision of BBU is less than that originally proposed.

- 143 For these reasons, ComReg does not agree with the submission of some of the respondents that it has not produced sufficient evidence of potential consumer detriment to justify the exercise of its formal powers to impose specific obligations in respect of battery back-up. Having regard to ComReg's objective to safeguard and ensure the provision of a voice service to the fullest extent, mindful of investment incentives, ComReg considers that forbearance or maintaining the status quo could not be expected to be a benefit for all stakeholders and, therefore is not likely appropriate at this time.
- 144 Having addressed the specific issues raised by respondents in Section 2 and in relation to the RIA in this Section, the final RIA at Annex 1 sets out ComReg's updated and final assessment of the impact of regulatory options with respect to continuity and reliability of voice service on different stakeholders and competition. On this basis ComReg is of the view that it has decided on the most appropriate approach at this time to ensuring the fullest availability of the voice service.

5. Decision Instrument – responses to consultation

145 In the Consultation, ComReg presented its draft Decision Instrument. Views were invited on both the contents and proposed date that the Decision Instrument would take effect.

146 Two questions were asked in this regard as follows:

Q.10 Do you have any comments on the wording of ComReg's draft Decision Instrument?

Please provide detailed reasons and supporting evidence for your view.

Q.11 Do you agree with the effective date of ComReg's draft Decision Instrument?

Please provide detailed reasons and supporting evidence for your view.

Views of respondents

147 eir Group, in response to question 10 stated *"If an obligation can be justified, given the already high levels of awareness, [eir Group believes] it should be limited to ensuring end-users are made aware of the availability of information on back-up options in the event of a power failure"*.

148 eir Group suggested a number of amendments to the proposed wording of the draft Decision Instrument and reiterated its point that *"the evidence presented by ComReg does not justify the level of regulatory intervention proposed by ComReg"*.

ComReg's views and conclusions

149 ComReg has addressed the specific issues raised by respondents in Section 2 and in relation to the draft Decision Instrument throughout this Response to Consultation and Decision Document. The updated and final Decision Instrument is now at Annex 2.

150 The Consultation proposed that the Decision would be fully effective six months from the date of publication of the Decision. ComReg notes that respondents to the Consultation did not comment on the timeframe for implementation ComReg has therefore decided that it is reasonable that these requirements are in place by 31 August 2018.

Annex: 1 Final RIA

Introduction

- 151 The analysis presented in this section represents the final RIA. It sets out ComReg's conclusions of the effect upon stakeholders as well as competition, of ComReg exercising its powers to impose obligations to assist in ensuring that fixed PATS providers comply with applicable regulations on the availability of the voice service.
- 152 The purpose of the RIA, is to assess the likely impact upon stakeholders and competition of options regarding information and potential solutions for consumers and end-users to make essential fixed-line telephone calls, including to emergency services, during a power failure at the home.
- 153 ComReg's aim in conducting its final RIA is to ensure that any specific obligations imposed are appropriate, proportionate and justified in light of the analysis conducted, having regard to the consumer protection concerns that have been identified in transition to non-PSTN, while taking into account the twin objective of promotion of competition and the principle of technological neutrality. The purpose of the RIA is to establish whether regulation is actually necessary, to identify any possible negative effects which might result from imposing a regulatory obligation and to consider any alternatives. Consistent with the RIA Guidelines and, section 13(1) of the Act, ComReg's final RIA considers the effect of proposed regulation and regulatory change. Therefore, ComReg in conducting this final RIA takes full account of its obligations under the Regulations.
- 154 ComReg has carefully considered in Section 4 of this Decision document the specific issues raised on various aspects of its proposals and notes only one respondent specifically commented directly on the draft RIA set out in the Consultation in relation to ComReg's information and BBU proposals.
- 155 Having regard to all available evidence collated during the consultation process, including, the respondents views, the following sets out ComReg's final RIA on requirements regarding the provision of information and BBU as potential solutions for end-users with voice services over non-PSTN. This final RIA sets out the 5 steps set out in the RIA Guidelines.

Step 1: Describe the policy issue and identify the objectives

- 156 As the market evolves and as consumers increasingly migrate to new advanced networks and services, one area of concern is the way in which telephone subscribers are protected from a loss of power at their premises. Services over a non-PSTN, such as VoIP, are at risk of interruption of the fixed voice service during a power failure at the consumer and end-user's premises resulting in the end-user being unable to make essential fixed voice calls.
- 157 Communications markets are continually and rapidly evolving with new services and devices entering the market. Increasingly therefore the conventional voice service will be delivered over high speed broadband networks using VoIP technology. Over time, a feature of PSTN which will no longer be available for non-PSTN consumers and end-users is the ability to make a fixed call when there is no power at the premises.
- 158 End-users may have the wrong expectation that their voice service will continue to function in a similar way to the more conventional PSTN voice service. Lack of knowledge and information may not allow them to make informed decisions concerning their voice service, including the need for additional equipment such as BBU.
- 159 ComReg is cognisant of its objectives, as set out in Section 12 (1) (a) (iii) of the Communications Regulation Act, 2002 (as amended), including the promotion of interests of consumers of services and protecting consumer welfare.²¹
- 160 In this context, any lack of transparency and insufficient engagement with end-users in respect of voice service characteristics including, any differences in the experience they could expect in using replacement services, would potentially result in misinformed choice and consumer welfare would be reduced.
- 161 ComReg's objective is to ensure that fixed PATS providers inform their subscribers of any differences in the technology over which their service is provided and how it will impact them in using their service, in particular in the event of a power outage.

²¹ *Communications Regulation Act, 2002*, as amended, section 12 1 (a) and (c). Also, the European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2011.

- 162 ComReg’s objective under Regulation 16 (1) (a) of the Regulations is to ensure that providers meet their obligations with respect to ensuring “*the fullest possible availability of the publically available telephone services provided over public communications networks in the event of catastrophic network breakdown, or in cases of unforeseen circumstances*”. PATS providers must also take all necessary measures to ensure uninterrupted access to the emergency services.²²
- 163 Therefore, ComReg’s objective for specifying any requirements regarding the provision of information and BBU for fixed voice services over fixed PATS is to assist in ensuring the fullest possible availability of fixed PATS and to inform voice users what they need to consider to ensure their protection against power failure in respect of CPE for their telephony service where necessary and appropriate.
- 164 In pursuing the objective to protect end-users, ComReg is also mindful of the objective to safeguard competition and promote efficient investment, ultimately to the benefit of end-users. ComReg believes that in transition to a non-PSTN and voice service choice needs to be underpinned by an understanding of what services are on offer so that end-users can make informed choices. End-users need, at a minimum, to understand any risk associated with non-PSTN voice services. They need to know how to protect themselves from such risks and have a meaningful opportunity to do so.
- 165 ComReg must ensure that all reasonable, proportionate measures to promote the interest of end-users by ensuring the fullest availability of the voice service. However, in considering the imposition of any regulatory measures, additional to the general obligations that apply on authorised undertakings, ComReg has taken into account, in acting in pursuit of its objectives as set out in Section 12 of the Act and Regulation 16 of the Regulations, the importance of the principle of proportionality and technological neutrality.

Step 2: Identify and describe the potential regulatory options

- 166 In light of the identified consumer protection concerns, during the consultation process ComReg considered a range of regulatory options²³ open to it to achieve the stated objectives.

²² Under Regulation 16 (2) of the Universal Service Regulations.

²³ See Section 3 and 4.3 of Consultation 16/109.

167 ComReg's final RIA considers two options, as follows:

Option 1: Rely on existing obligations (i.e. maintain the status-quo, no intervention measures).

Option 2 : Specify minimum ex ante information provisions and BBU information requirements. For the purposes of completing the Final RIA ComReg will now consider the impact of mandating fixed PATS providers to

- Provide relevant information to end-users before the end-user is bound by a contract.
- Inform subscribers in durable form during the contract of any changes in technology and how it will impact the subscriber particularly any limitations of PATS in the event of a power failure.
- Provide information to the end-user/subscriber regarding at least one BBU facility which is compatible with the PATS and CPE offered/supplied where the provider has more than 10,000 fixed subscribers.

Step 3 and 4: Determine the impacts on stakeholders and on competition

168 In order to determine the impacts on stakeholders and competition, ComReg has considered respondents' views and has taken into account the following:

- How the conventional telephone service offering has changed with the evolution of technology which changes some of the characteristics of the voice service;
- Information from ComReg consumer line regarding any complaints in respect of issues resulting from loss of telephone service due to domestic electricity power failure;
- Research carried out by Cullen International on whether NRAs have launched consultations or imposed provisions on BBU;
- Consumer preferences for DECT or other handsets, devices;
- Data submitted by fixed PATS providers in relation to BBU;
- The consumer survey on the extent of consumer awareness around the requirement of BBU to sustain VoIP services in the event of a power failure at the consumer and end-user's premises;
- Data on power outage statistics; and
- General BBU research on availability and cost.

169 Having regard to ComReg's objective to safeguard consumers and ensure the provision of the voice service to the fullest extent, mindful of investment incentives and; this final RIA assesses the impact of the two regulatory options set out above.

Option 1: Rely on existing obligations (no intervention measures)**Impact on Consumers**

- 170 As demonstrated in the consumer survey, a large percentage of consumers are not fully informed about the limitations and potential impact of non-PSTN, in particular in the event of a power outage.
- 171 In transition to new technology solutions end-users may have the wrong expectation that their voice service will continue to function in a similar way to the more conventional PSTN voice service.
- 172 Absent clear and adequate information, end-users cannot fully assess their needs for their voice service including a BBU service. End-users ability to make informed decisions absent such information is therefore reduced.
- 173 The impact of not increasing the information to end-users is that detriment can arise to the extent that there is insufficient knowledge amongst end-users in respect of power outage risks and BBU for fixed non-PSTN services.

Impact on Industry

- 174 ComReg envisages that fixed PATS providers operating on a commercial basis would, in the future in delivering a VoIP service, provide effective information to their end-users as well as offer a BBU service. However, in many cases, fixed PATS providers do not appear to currently make available sufficient information to end-users before entry into a contract or during a contract in respect of the features of a VoIP service (that the digital telephone service may not work in instances of a power failure) or available BBU options to avoid interrupted service.
- 175 Maintaining the status quo would not cost the industry financially. However, as more end-users move to non-PSTN, absent sufficient information on the limitations and impact of moving to non-PSTN, there may in the future be an increase in consumer detriment in this regard.

Impact on Competition

- 176 Enhanced transparency measures as well as minimum ex-ante information requirements helps promote competition, gives increased consumer confidence and reduces the risk of consumer harm.
- 177 By maintaining the status quo end-users may therefore suffer detriment and barriers to taking up a VoIP service may exist.

Option 2: Specify information provisions and BBU information requirements

Impact on Consumers

- 178 Appropriate consumer information is a critical element of ComReg's overall approach to this matter. Over time end-users will increasingly rely on non-PSTN instead of the conventional services and absent necessary information, there may be a lack of awareness and/or confusion in transition to new access technologies and services. ComReg considers that consumer welfare will be enhanced by seeking that industry improve the information flows to consumers pre contract and during contract about (i) the risk of interruption to service in a power failure at the premises along with (ii) the steps that could be taken to address any such risks, including, options for the purchase of a BBU service should their circumstances require it.
- 179 The provision of clear and adequate information is expected to allow end-users to more fully assess their needs for their voice service including a BBU service. This will enable them to make informed decisions, particularly where such information was not previously available. This may be to choose to consume a VoIP service and how to use it, to elect or not to have a BBU service to address their particular needs and/or to manage expectations about reliability and functionality in their household or at their premises through suitable alternative approaches including a mobile phone.
- 180 Consumer awareness of a possible non-availability of the voice service is not particularly extensive even among VoIP users at this time.²⁴ Or, at least, it would seem that the level of consumer understanding of CPE, BBU issues may not be uniform among consumers. ComReg notes eir's submission that "*the evolution of technology and introduction of new services can present challenges for end users*" and that TIF also considers that "*some customers may need to be educated and informed to keep abreast of new emerging services.*" As such, this creates a risk of end-users being uninformed or insufficiently informed and protected.
- 181 ComReg's view is that as the prevalence of high speed networks using VoIP technology over time increase and expand to all geographical areas, end-users will benefit from at a minimum, clear and effective communication regarding any changes in access so that they can make informed choices.

²⁴ ComReg's omnibus research (2016).

- 182 Subscribers of providers with less than 10,000 fixed subscribers may not be fully informed in respect of compatible BBU facilities. ComReg considers that the information requirements, as specified above and in the Decision Instrument at Annex 2, will have minimal cost impacts on fixed PATS providers given that the process and systems required to implement transparency obligations²⁵ should already exist.
- 183 However, the interventions could involve some implementation and operational costs for fixed PATS providers, such as, in updating advertising/promotional materials or implementing a relevant sales process. Notwithstanding, these potential impacts, ComReg consider that the minimum information and BBU requirements will have minimal cost impacts on fixed PATS providers.
- 184 Fixed PATS providers should already furnish end-users with clear and effective information upon initiation of service, and can include additional BBU information with the other materials, removing the need for a special cost of distribution.
- 185 ComReg is of the view the cost of the provision of BBU information would be in the region of €5-10k per Fixed PATS provider for the provision of BBU information; this cost is made of up (i) time spent researching available BBU units (ii) BBU purchase. Smaller providers would not be required to provide this information to end-users as this obligation only applies to providers with more than 10,000 fixed subscribers. This threshold would preclude the obligation from resulting in undesirable competitive or other unintended consequences, such as barriers to entry.
- 186 On this basis, ComReg's view is that any incremental costs incurred by the fixed PATS providers complying with any additional information requirements would not be considered overly burdensome, would be proportionate on fixed PATS providers.

²⁵ Pursuant Regulation 14 of the Regulations.

Impact on competition

- 187 In pursuing the objective to protect end-users, ComReg is also mindful of the objective to safeguard competition and promote efficient investment, ultimately to the benefit of end-users.
- 188 ComReg envisages that the minimum information and BBU requirements will promote competition as consumers will be better informed of the service characteristics including any potential limitation and options available to them to mitigate interruptions. This would mean that consumers have a better understanding and awareness such that they can better choose according to their own valuation (the price and quality) of service offerings. The regulatory changes will therefore perform well in terms of better equipping potential end-users as well as existing subscribers to make competitive or better informed choices based on the merits of the service offering as well as their particular needs including, a BBU service. Improved transparency through clear and adequate information should thus help promote price competition and service innovation among fixed PATS providers, in turn, generating further benefits for consumers over the medium to longer term.
- 189 ComReg is of the view that the obligation to provide information on the technology used and its limitations to end-users will not have a negative impact on competition as it will be available to all end-users regardless of their service provider. Although only Relevant providers are required to provide information in relation to BBU facilities, other providers may choose to also provide this information.
- 190 Furthermore, by ensuring the fullest availability of fixed PATS, information and BBU requirements can be viewed as providing a more secure commercial and regulatory environment for fixed PATS providers to operate and invest in, thereby providing greater revenue certainty and supporting more efficient and sustainable competition over the longer term.
- 191 As also noted above, in the long term, given increased consumer confidence and a reduction in risk of consumer harm, they may also be more minded, if not having done so already, to access and use the products and services that the industry has to offer, potentially leading to increased revenues and increased market entry. The measures would likely reduce any (perceived) barriers to taking up a VoIP service. This will, in effect, grow competition and innovation as firms not already in the industry could see it as a favourable and positive place to do business.

- 192 In addition, the enhanced information and BBU measures will not target any one access technology and apply as appropriate to all ECS/ECN providers providing fixed PATS including (managed) VoIP services, therefore, respecting the principles of proportionality, non-discrimination and technology neutral. ComReg envisages that the enhanced transparency and minimum BBU information requirements will be relatively neutral in relation to competition between fixed PATS providers. ComReg furthermore envisages that the latter regulatory measures would not have a material impact on the business case for new networks and service, in particular given the threshold of 10,000 subscribers, and are therefore proportionate on industry.
- 193 ComReg is of the view that the obligation to provide information to end-users will not have a negative impact on competition. The threshold of 10,000 subscribers will preclude the obligation regarding BBU information from resulting in undesirable competitive or other unintended consequences, such as barriers to entry.
- 194 Although information in respect of available BBU facilities is not required to be provided to all end-users, service providers may opt to provide end-users with this information.

Step 5: Assess the likely impacts and choose the best option

- 195 ComReg is of the view that, in transition to non-PSTN networks and services, and in the public interest, it is necessary, appropriate and proportionate to specify additional information and BBU information requirements to be complied with by fixed PATS providers, pursuant to Regulation 15 and Regulation 16 of the Regulations.
- 196 By maintaining the status quo end-users may suffer detriment and barriers to taking up a VoIP service may exist. Maintaining the status quo could not be expected to be a benefit for all stakeholders and, therefore is not appropriate at this time.
- 197 ComReg is of the view that, in addition to the requirement on Fixed PATS providers to disclose risk of interruption to the voice service within the contract, clear disclosure of risk is required, for existing subscribers during the contract period, if there is a change in the conditions which may impact access to emergency services or applications.²⁶

²⁶ Pursuant to Regulation 15 of the 2011 Regulations.

- 198 In addition, and in the public interest, ComReg's view is that fixed PATS providers should be responsible for ensuring that its subscribers are aware of the options to purchase a BBU service. ComReg is of the view that at least certain fixed PATS Providers should provide, assistance to subscribers, whose conditions in access change, regarding information and any available BBU facility which is compatible with the PATS and CPE used for the PATS subscribed to.
- 199 The net effect of the benefits and costs of improved *ex ante* information is likely to be positive such that overall consumers and end-users as well as industry gain from the measures. Measures that increase information available to end-users would empower them to make informed choices. It would also act as a safeguard for high risk vulnerable users, supporting their need for continuity of service and emergency access as well as access to other ancillary services. If adequately informed, consumers would likely be protected against detriment. They would be sufficiently aware of any service limitations, know how to protect themselves from such risks, and have a meaningful opportunity to do so. ComReg believes that increasing information around disclosure of risk and BBU could help reduce the potential for consumer detriment including any (perceived) barriers to taking up a VoIP service.
- 200 Regarding an effective functioning of the market, however, ComReg notes that in many cases, fixed PATS providers do not currently make available sufficient information to end-users before entry into a contract or to subscribers who are in contract in respect of any differences in technologies and the features of a VoIP service (that the digital telephone service may not work in instances of a power failure). In addition, so far no non-PSTN providers make available information on BBU to support fixed non-PSTN PATS, save in some cases for business consumers.
- 201 In this light, the approach by fixed PATS providers to the provision of information and BBU at this time is somewhat insufficient to protect all end-users. Consequently, ComReg wish to seek that industry, at a minimum, improve the information flows and where a service differs from a conventional telephone service in terms of service reliability and available features (and therefore may not meet consumer expectations), end-users should be made fully aware about these differences. Fixed PATS providers with more than 10,000 subscribers should also inform end-users of any available BBU facility which is compatible with the PATS and the CPE used for the PATS subscribed to. ComReg envisages that fixed PATS providers operating on a commercial basis would, in delivering a non-PSTN service, provide effective information to their end-users as well as provide information on at least one BBU facility where one is currently available.

- 202 Consumer awareness of a possible non-availability of the voice service is not particularly extensive even among VoIP users at this time.²⁷ Or, at least, it would seem that the level of consumer understanding of CPE, BBU issues may not be uniform among consumers. Thus, availability of clear and accurate information pre contract or, in the event of a change in access during a contract period, related to CPE back-up power from reliable sources, is an important means to empower end-users. Equipped with information all consumers and end-users, as well as existing subscribers, will be in a better position to make decisions on whether or not to purchase back-up power and conduct regular maintenance in order to ensure voice access during power outages.
- 203 Absent a minimum *ex ante* transparency and BBU information requirements on fixed PATS providers many may not provide their end-users with clear and effective information, including, in relation to the potential need for BBU or how to self-provision this service. ComReg believes that increasing transparency could help reduce the potential for consumer detriment and reduce any (perceived) barriers to taking up a VoIP service. As set out above, the required baseline information measures themselves to have limited costs on consumers as well as on industry, such that the net effect on consumer welfare would be expected to be positive.
- 204 While in practice, the risk of interruption to the voice service for end-users of fixed non-PSTN networks and services could be mitigated by substitution of the fixed voice by mobile, this is dependent on coverage as well as a device that has battery sufficient to make a voice call. This risk of interruption to the fixed voice service could also be mitigated by the use of BBU.
- 205 ComReg believes that in transition to a non-PSTN choice needs to be underpinned by an understanding of what services are on offer so that end-users can make informed choices. End-users need, at a minimum, to understand any risk associated with non-PSTN powered voice services. They need to know how to protect themselves from such risks, and have a meaningful opportunity to do so.
- 206 Having regard to the analysis and reasoning set out and, having regard to respondents' views, ComReg is of the view that the most appropriate regulatory approach to this policy issue is Option 2, i.e. to specify information and BBU information requirements for fixed PATS providers.

²⁷ ComReg's omnibus research (2016).

- 207 In transition to new networks and services and in the public interest, these minimum requirements are reasonable and technology neutral and on all fixed PATS providers (or in respect of the provision of BBU information those providers with more than 10,000 subscribers). By specifying minimum information requirements regarding BBU for fixed voice services over non-PSTN, ComReg is seeking to ensure the fullest possible availability of PATS in particular in the event of a power failure in the home or premises. ComReg is seeking to offer end-users of voice service protection against power failure in respect of their CPE for their telephony service where necessary and appropriate.
- 208 Overall, the intervention is expected to enhance consumer welfare through protecting consumers. As such, the measures as set out in the Final Decision Instrument, broadly consisting of enhanced transparency and the minimum BBU *ex ante* information requirement, assists ComReg in meeting its statutory objectives, to protect consumer interest whilst promoting competition and investment. Moreover, the measures are reasonable, least burdensome in terms of any associated costs and, therefore, proportionate on fixed PATS providers. The approach complies with principles of objectivity, proportionality and transparency as well as ComReg's guiding principle that transitions to new advance networks and services should not result in the fixed voice service being more vulnerable than when consumers used the more conventional service.
- 209 ComReg considers that this approach will provide an appropriate and balanced regulatory framework to BBU matters. It expects that as technology and the market developments evolves further it may be appropriate to make modifications to regulation, as relevant.

Annex: 2 Final Decision Instrument

1. STATUTORY FUNCTIONS AND POWERS GIVING RISE TO THE DECISION

1.1. This Decision and Decision Instrument, made by the Commission for Communications Regulation (“ComReg”), established under Section 6 of the Communications Regulation Act, 2002 (as amended), relates to the provision of Fixed PATS over PSTN and Non– PSTN and is made:

- (i) Pursuant to and having regard to the functions and objectives of ComReg set out in Sections 10 and 12 of the Communications Regulation Act, 2002 (as amended) (“the Act”) and in accordance with Regulations 12 and 16 of the European Communities (Electronic Communications Networks and Services) (Framework) Regulations, 2011 (“the Framework Regulations”);
- (ii) Pursuant to the functions and powers conferred upon ComReg under and by virtue of Regulation 15 (6) (b) and (c) and 16 (1) (a) and (b) of European Communities (Electronic Communications Networks and Services) (Universal Service and Users’ Rights) Regulations 2011 (“the Universal Service Regulations”);
- (iii) Having regard to Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) (the “Framework Directive”) (as amended), and Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users’ rights relating to electronic communications networks and services (Universal Service Directive) (as amended);
- (iv) Having had regard to the views of interested parties, including Undertakings and the submissions they made in response to ComReg Document No. 16/109;
- (v) Having had regard to the Government’s National Broadband Plan as published by the Department of Communications, Energy and Natural Resources (DCENR);²⁸
- (vi) Having regard to the analysis and reasoning set out in ComReg Document No. 16/109 and Decision D02/18 (which shall, where the context admits or requires, be construed together with this Decision Instrument).

²⁸ Department of Communications, Climate Action and Environment (DCCA).

2. DEFINITIONS AND INTERPRETATIONS

2.1. Definitions

'Battery back-up' ("BBU") means a back-up power facility that ensures users have the ability to make calls over their Fixed PATS in the event of a power failure which includes, but is not specifically limited to, access to emergency services.

'Fixed PATS Provider' means an Undertaking, providing or offering to provide to end –users and subscribers Fixed PATS over PSTN and Non- PSTN.

'Non–PSTN [PATS]' means any network used to provide PATS, excluding a PSTN.

'Public Switched Telephone Network' or "PSTN" means an electronic communications switched network which is used to provide publicly available telephone services.

'Relevant Fixed PATS Provider' means a Fixed PATS Provider with 10,000 or more fixed subscribers.

- 2.2. References to European Union legislation or to Irish primary legislation or secondary legislation shall be construed as references to that legislation as amended from time to time.
- 2.3. Other terms, words, or phrases used in this Decision Instrument shall have the same meaning as they have in the Framework Regulations and the Universal Service Regulations, unless the context otherwise admits or requires.
- 2.4. Words in the singular form shall be construed to include the plural and vice versa, unless the context otherwise admits or requires.
- 2.5. Examples shall not be construed to limit, expressly or by implication, the matters they illustrate.

3. APPLICATION AND SCOPE

- 3.1 Subject to Sub sections 4.1(iii) and 4.2(iii) this Decision Instrument applies to, and is binding upon any Fixed PATS Provider.
- 3.2 ComReg has specified additional obligations for Relevant Fixed PATS Providers.
- 3.3 This Decision is without prejudice to any other obligation on Undertakings to ensure uninterrupted access to emergency services and the obligation to ensure the fullest possible availability of the publicly available telephone services provided over public communications networks in the event of catastrophic network breakdown or in cases of unforeseen circumstances.

4. THE OBLIGATION TO PROVIDE INFORMATION

4.1 In order to ensure the fullest availability of Consumer Premises Equipment (“CPE”), Fixed PATS Providers, when offering Fixed PATS over a Non – PSTN shall, before the end-user is bound by a contract for fixed PATS or by any corresponding offer, clearly inform the end- user in durable form of the following minimum information (subject to the condition specified at sub paragraph (iii) of this section):

- (i) details of the Non-PSTN technology being used to provide the PATS,
- (ii) details of any limitations of the Non-PSTN PATS and how any such limitations could impact the end-user in accessing and using the PATS, in the event of a power failure,
- (iii) where a BBU facility is currently available Relevant Fixed PATS Providers shall give the end- user details in relation to at least one BBU facility compatible with the PATS and CPE offered to the end – user. Where no compatible BBU facility is currently available Relevant Fixed PATS Providers shall inform the–end – user that there is none currently available.

4.2 Fixed PATS Providers shall not less than one month and no more than 3 months prior to the date of implementation of a change in service from PSTN to Non- PSTN, clearly inform their subscribers to that service in durable form of the following:-

- (i) the changes in technology that may have an effect on the subscribers access and use of the PATS and how such changes will impact the subscriber particularly any limitations of PATS in the event of a power failure,
- (ii) the changes in technology that may have an effect on services providing access to emergency services or caller location information service and how it will impact the subscriber in their access or use of the services referred to in this sub paragraph and
- (iii) where a BBU facility is currently available Relevant Fixed PATS Providers shall give details in relation to at least one BBU facility compatible with the PATS and CPE supplied to the subscriber by the Relevant Fixed PATS Provider. Where no compatible BBU facility is currently available Relevant Fixed PATS Providers shall inform the subscriber that there is none currently available.

5. STATUTORY POWERS NOT AFFECTED

5.1 Nothing in this Decision Instrument shall operate to limit ComReg in the exercise and performance of its statutory powers or the duties conferred on it under any primary or secondary legislation in force prior to or after the Effective Date of this Decision Instrument.

6. MAINTENANCE OF OBLIGATIONS AND SEVERANCE

6.1 If any section(s), clause(s) or provision(s) or portion(s) contained in this Decision Instrument is found to be invalid or prohibited by the Constitution, by any other law or judged by a court to be unlawful, void or unenforceable, then that section(s), clause(s) or provision(s) or portion(s) thereof shall, to the extent required, be severed from this Decision Instrument and rendered ineffective but as far as possible without modifying the remaining section(s), clause(s) or provision(s) or portion(s) thereof and shall not in any way affect the validity or enforcement of this Decision Instrument or other Decision Instruments.

7. EFFECTIVE DATE, DURATION AND REVIEW

7.1 This Decision and Decision Instrument is effective from the date of its publication (**the Effective Date**) and shall remain in full force and effect unless amended by ComReg.

- a. Fixed PATS Providers are required to comply with the requirements of this Decision Instrument by 31 August 2018.
- b. Fixed PATS Providers shall at ComReg's request, confirm and demonstrate to ComReg's satisfaction with documentary evidence that subscribers and end-users have been informed in accordance with Section 4 of this Decision Instrument.

Gerry Fahy
CHAIRPERSON
THE COMMISSION FOR COMMUNICATIONS REGULATION
THE 30 DAY OF JANUARY 2018

Annex: 3 Legislation

The legal basis is provided for in the European Communities (Electronic Communications Network and Services) (Universal Service and Users' Rights) Regulations 2011 (the "Regulations"), the functions and objectives assigned to ComReg by Sections 10 and 12 of the Communications Regulations Act 2002 and the tasks and objectives of ComReg as provided for in the European Communities (Electronic Communications Networks and Services) (Framework) Regulations, 2011.

The Communications Regulation Act 2002 (as amended)

Objectives of the Commission

12.—(1) The objectives of the Commission in exercising its functions shall be as follows—

(a) in relation to the provision of electronic communications networks, electronic communications services and associated facilities—

(i) to promote competition,

(ii) to contribute to the development of the internal market, and

(iii) to promote the interests of consumers within the Community,

[.]

(2) In relation to the objectives referred to in subsection (1)(a), the Commission shall take all reasonable measures which are aimed at achieving those objectives, including—

(a) in so far as the promotion of competition is concerned—

(i) ensuring that consumers, including disabled consumers, derive maximum benefit in terms of choice, price and quality,

(ii) ensuring that there is no distortion or restriction of competition in the electronic communications sector,

(iii) encouraging efficient investment in infrastructure and promoting innovation, and

(iv) encouraging efficient use and ensuring the effective management of radio frequencies and numbering resources,

(b) in so far as contributing to the development of the internal market is concerned—

(i) removing remaining obstacles to the provision of electronic communications networks, electronic communications services and associated facilities at Community level,

(ii) encouraging the establishment and development of trans-European networks and the interoperability of transnational services and end-to-end connectivity,

[(iii) Revoked by the European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2011 Reg 41(1)]

(iv) cooperating with electronic communications national regulatory authorities in other Member States of the Community and with the Commission of the Community in a transparent manner to ensure the development of consistent regulatory practice and the consistent application of Community law in this field, and

(c) in so far as promotion of the interests of consumers within the Community is concerned—

(i) ensuring that all consumers have access to a universal service,

(ii) ensuring a high level of protection for consumers in their dealings with suppliers, in particular by ensuring the availability of simple and inexpensive dispute resolution procedures carried out by a body that is independent of the parties involved,

(iii) contributing to ensuring a high level of protection of personal data and privacy,

(iv) promoting the provision of clear information, in particular requiring transparency of tariffs and conditions for using publicly available electronic communications services,

(v) encouraging access to the internet at reasonable cost to consumers,

(vi) addressing the needs of specific social groups, in particular disabled consumers, and

(vii) ensuring that the integrity and security of public communications networks are maintained.

[..]

(3) In carrying out its functions, the Commission shall seek to ensure that measures taken by it are proportionate having regard to the objectives set out in this section.

(5) In carrying out its functions, the Commission shall have regard to international developments with regard to electronic communications networks and electronic communications services, associated facilities, postal services, the radio frequency spectrum and numbering.

(6) The Commission shall take the utmost account of the desirability that the exercise of its functions aimed at achieving the objectives referred to in subsection (1)(a) does not result in discrimination in favour of or against particular types of technology for the transmission of electronic communications services.

In particular, Regulation 16 of the Regulations provides that

- (1) (a) Undertakings shall ensure the fullest possible availability of the publicly available telephone services provided over public communications networks in the event of catastrophic network breakdown or in cases of unforeseen circumstances,
 - (b) The Regulator may specify requirements to be complied with by undertakings for the purpose of subparagraph (a).
- (2) An undertaking providing a publicly available telephone service shall take all necessary measures to ensure uninterrupted access to emergency services.

Regulation 15 (6) of the Regulations provides that

- (6) The Regulator may require an undertaking providing public electronic communications networks or publicly available electronic communications services, among other things, to-
 - (b) inform subscribers of any change to access to emergency services or caller location information in the service to which they have subscribed.
 - (c) inform subscribers of any change to conditions limiting access to or use of services and applications where conditions are permitted under national law in accordance with European Union law.