



Commission for
Communications Regulation

Submissions to Consultation on ComReg Document 12/39

The provision of telephony services under
Universal Service Obligations
- Scope and Designation

Submissions to Consultation

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

Abbey Court Irish Life Centre Lower Abbey Street Dublin 1 Ireland

Telephone +353 1 804 9600 Fax +353 1 804 9680 Email info@comreg.ie Web www.comreg.ie

Submissions Received from Respondents

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Response to Consultation:	12/71

Content

Section	Page
1: BT Communications Ireland Limited	4
2: Conduit	5
3: Eircom	6
4: Golden Search	7
5: Intel	8
6: Magnet	9
7: Telefónica	10
8: UPC Communications Ireland Ltd.....	11
9: Vodafone	12

1: BT Communications Ireland Limited

BT Communications Ireland Limited (“BT”) response to the ComReg consultation for the provision of telephony services under Universal Service Obligations.

Issue 1 – 5th June 2012

Introduction

We welcome this consultation although the decision appears to be a fait accompli given the current designation expires at the end of June 2012 and the new one starts a day later. We consider urgent changes to the USO are required to reflect advances in technology, the capability of the wider industry, and the changing environment such as the saturation of mobile phones. There are three themes to our response in this respect.

1. Where the USO is no longer valid.
2. Where USO activities should be put out to public tender.
3. Where the USP activities could be done more efficiently.

Separately we are concerned with the poor service performance from Eircom and although ComReg have not addressed such in the questions, it is very serious as it impacts the quality of service customers are receiving. This performance issue is frustrating for customers and also damages the reputation of the industry. We consider ComReg should seek for this area to be enforced rigorously for the benefit of the customer and the industry. Current penalties appear to be too low to act as a deterrent.

Please find our answers to ComReg's questions below:

BT detail response to ComReg’s Questions

Q. 1 Do you agree or disagree with ComReg's proposal that the next designation period should be a period of 2 years, from 1 July 2012 to 30 June 2014? Please provide reasons to support your view

A.1 We are in a period of considerable change where some aspects of the USO are no longer required, could be provided by others’ or be provided more efficiently. A two year designation is potentially exclusionary to others providing some aspects of the USO.

We note the National Directory Database (NDD) is not covered by this review indicating ComReg don’t consider it part of the USO. It is unclear why such has never been offered for tender or the revenues received not passed to the operators whose information is being provided to marketing companies for a fee. We would welcome a consultation by ComReg as to the future of the NDD and consider it should be offered for public tender.

Q. 2 Do you think an alternative duration for the next designation period should be considered? If so, what duration and why? Please provide reasons to support your view.

A.2 Our view is the maximum period should be one year during which time ComReg should consult fully on the constituents of the current USO to determine if the current approach is the most efficient and best value for money – we don't think it is. For example Eircom's regulated products are amongst the most expensive in Europe and its possible others could do certain parts of the USO more efficiently.

Q. 3 Do you agree or disagree with ComReg's proposal that, for the proposed next designation period, the required universal services should be designated for the entire State? Please provide reasons to support your view.

A.3. We consider there is a viable alternative proposal where the designation should not apply to the whole state due to the significant differences between the urban and more rural areas. There is a wider availability of services within urban areas and we consider where USO facilities are available commercially from at least three providers such should be removed from the USO designation in that area.

Q. 4 Do you agree or disagree with ComReg's proposal that Eircom should continue to be the universal service provider for the elements specified (section 5) during the next designation period, unless there are expressions of interest from other providers? Please provide reasons to support your view.

A.4 We consider ComReg should slightly modify its proposal that Eircom should continue to be the universal service provider for all the elements specified (section 5) during the next designation period. We consider the time has come to drop some aspects of the USO obligations and we will provide more detail in our responses to your further questions.

Q. 5 For future designation periods (after the proposed next designation period), do you agree or disagree with ComReg's approach to future designation methods for the provision of required elements of universal service? Please provide reasons to support your view.

A.5 We consider the time to change the USO features is now; not two years out. ComReg has mandated the industry will pay the unreasonable burden going forward and thus it is not reasonable or proportionate that we should be exposed to another two years of unnecessary features and the cost of potential Eircom inefficiencies.

Q. 6 Do you have any further comments or suggestions about future designation methods, after the proposed next designation period, (to June 2014)? Please provide reasons to support your view.

A.6 We consider 2014 is too long to wait and the system should be reviewed and modernised within one year.

Q. 7 Do you have any comments about future designations covering only certain geographic areas and/or customers? Please provide reasons to support your view.

A.7 Please see our response to question 3.

Q. 8 Do you agree or disagree with ComReg's proposal not to include Broadband, at this stage, in universal service? Please provide reasons to support your view.

A.8 We agree with the ComReg proposal not to include Broadband within the Universal Service at this time as this aligns with the European Commission view.

Q. 9 Do you agree or disagree with ComReg's proposal to review its consideration of broadband as a universal service no sooner than 2014? Please provide reasons to support your view.

A.9 We agree with ComReg's proposal to review its consideration of broadband as a universal service no sooner than 2014 as this aligns with the European Commission view.

Q. 10 What is your view in relation to the preliminary view that Eircom should be designated as the USP with respect to access at a fixed location for the entire State for the next designation period? Please give reasons to support your point of view.

A.10 We support the preliminary view Eircom should be designated as the USP with respect to access at a fixed location for the entire State for the next designation period as Eircom has ubiquitous access. However where USO features are available from at least three providers those features should be removed from the USO in that area as the market is meeting the requirement.

We are also of the view Eircom should be mandated to deploy efficient solutions such as the use of mobile technology where copper deployment would be inefficient.

Q. 11 What is your view in relation to the current Reasonable Access Threshold? Please give reasons to support your point of view.

A.11 ComReg are not proposing to include Broadband within the USO hence it should be possible for Eircom to deploy mobile fixed line substitution voice services at considerably less cost than the 7000 Euro threshold. We therefore propose a significant reduction in the threshold. This is supported by the following:

- Eircom already supply fixed voice over mobile services using their Fixed Cellular Solution (FCS) hence no product development is required.
- Mobile technology is mature and relatively cheap.
- Eircom owning one of the four mobile network operators further assists their ability to efficiently use mobile solutions.

Q. 12 Do you agree or disagree that the present provision of directory enquiry services on a commercial basis continues to meet the needs of consumers? Please give reasons to support your point of view.

A.12 We agree the present provision of directory enquiry services on a commercial basis continues to meet the needs of consumers as there is no evidence of market failure. Inclusion within the USO could undermine private investment and damage competition.

Q. 13 What is your view regarding the continued requirement to provide a printed directory to all consumers, unless the consumer requests not to receive it? Please give reasons to support your point of view.

A.13 Widespread access to the internet and the increasing use of smart phones means people will increasingly look up numbers electronically. We consider the pragmatic way forward is for people to opt-in rather than opt-out of paper directories as most people won't bother to opt-out of something that is free to them. The opt-in approach still meets the USO but saves production and distribution costs. This solution is also beneficial to the environment as less paper will be consumed.

Q. 14 What is your view in relation to the preliminary view that Eircom should be designated as the USP with respect to the provision of a subscriber directory, for the next designation period? Please give reasons to support your point of view.

A. 14 Our view is that there is potential to commercially provide a subscriber directory service and such should be offered for tender by ComReg or the DCENR.

Q. 15 What is your view in relation to the preliminary view that Eircom should be designated as the USP with respect to the provision of public payphones throughout the State for the next designation period? Please give reasons to support your point of view.

A.15 Ireland has a mobile penetration of 107% according to ComReg and payphones are commercially provided at numerous locations such as Heuston Station and shopping malls. Our view is uneconomic payphones should be phased out as customer demand dwindles suggesting they are no longer required at those locations. All generations are now familiar with the use of the mobile phone with children often owning mobiles; it is also more convenient to use the mobile than to travel to a payphone.

Separately the EC is about to mandate the introduction of E-CALL reducing the need for payphones further as vehicles will be able to automatically call for assistance in the event of an accident giving their exact GPS locations etc.

We welcome ComReg's intention to undertake a detailed review of the current USO payphones in respect of maintenance costs etc. and such should also include a study as to whether customers will be still served by alternatives if they were to be removed.

Q. 16 Do you agree that the current set of obligations is appropriate for consumers with disabilities in the context of the current scope of universal service, for the next designation period? Please give reasons to support your point of view.

A.16 We agree the current set of obligations are appropriate for consumers with disabilities although where similar are also required within the Users rights part of the regulations they should no longer be part of the USO.

Q. 17 Do you consider that the current measures (outlined above) provide appropriate protection for vulnerable consumers in terms of affordability? Please give reasons to support your point of view.

A.17 It is not clear from the ComReg figures whether the fixed line telephone bill includes broadband or not as €51 Euro appears high when you consider most telephony package now offer free minutes to landlines etc.

Q. 18 Do you agree with the approach with respect to call itemisation? Please give reasons to support your point of view.

A. 18 We agree the approach with respect to call itemisation but consider the USP should be allowed promote electronic billing to its customers (provided such is aligned with the regulations) to reduce costs. However, where the USP does not avail of cost effective billing mediums the industry should not have to pay for that inefficiency.

Q. 19 Do you consider that the call-barring options proposed are necessary to enable consumers to control their expenditure? Please give reasons to support your point of view.

A. 19 We consider call-barring options are important to enable consumers to control their expenditure such as to prevent non-bill payers with access to the phone running up high premium rate call charges etc.

Q. 20 What is your view in relation to charges for availing of call barring options which are a means of controlling expenditure? Please give reasons to support your point of view.

A.20 We agree with ComReg's view and in particular charging on-going rentals for the bar acts as a disincentive to use call barring which is wrong.

Q. 21 Do you consider that Eircom's current Disconnection Policy is reasonable? Please give reasons to support your point of view.

A.21 We agree the current Eircom Disconnection Policy as their basic logic of no-pay, no-service is commercially reasonable.

**Q. 22 Do you agree with the approach and conclusions in this regulatory impact assessment?
Please give reasons to support your point of view.**

A.22 We agree with the approach followed by ComReg but differ slightly concerning some of the conclusions as outlined in our responses above.

End

Issue date: 5th June 2012

Issue Status: Issue 1

Enquires to John O'Dwyer at BT Ireland

2: Conduit



CONDUIT

Response to 'The provision of telephony services under Universal Service Obligations : Scope and Designation' on behalf of Conduit (11850)

Introduction and Overview

11850 is both the name and number of Ireland's original independent directory enquiry service, having been established for over 10 years. 11850 is committed to providing callers the highest levels of service, accuracy and courtesy.

11850 is market leader in text directory enquiries in Ireland and the second largest voice directory assistance operator. 11850 is operated by Conduit, which is also one of Europe's leading providers of outsourced contact centre services with unrivalled experience in providing call centre support for many leading customer service and sales led organisations.

In 2006, Conduit was acquired by kgb ('knowledge generation bureau') which is a privately held, New York-based company and the world's largest independent provider of directory assistance and enhanced information services. kgb has built some of the most successful brands in the telecommunications, customer care and enhanced information services sectors. kgb has also pioneered the provision of a broad range of wholesale and retail information services beyond traditional directory assistance services.

Response to Questions

As ComReg might expect, Conduit's interest in this consultation is limited to the issues concerning directory enquiry services. For that reason our response is restricted to the questions in that short section.

Q. 12 Do you agree or disagree that the present provision of directory enquiry services on a commercial basis continues to meet the needs of consumers? Please give reasons to support your point of view.

Conduit agrees that the provision of directory enquiry services on a commercial basis clearly continues to meet the needs of consumers. We understand that the basis of this question is to query whether additional universal obligations may need to be imposed in order to compensate for a lack of competitive commercial provision. However, Conduit believes that in practice the situation is rather the reverse and in fact commercial provision significantly exceeds what might otherwise be imposed in a universal service context.

As mentioned above 11850 is market leader in text directory enquiries in Ireland and the second largest voice directory assistance operator. 11850 is known as the innovator of the Irish DQ market place, being first to introduce value added services such as free number text-back and the only DQ operator offering

free search via the web. 11850 also offers consumers the opportunity to be connected instantly to their chosen number or alternatively to request a number via text to 11850, rather than voice call. We give customers the ability to search by service where they do not know the name of a particular business

Consequently, there can be no doubt that the commercial provision of directory enquiries more than meets the reasonable needs and expectations of Irish consumers and that there is no need for additional obligations to be placed upon the Universal Service Provider. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Whilst the particular situation described has not so far arisen with any other fixed or mobile network operators, Conduit believes that it is symptomatic of a wider problem with the Irish regime for charges to directory (and other non-geographic) numbers.

Q. 13 What is your view regarding the continued requirement to provide a printed directory to all consumers, unless the consumer requests not to receive it? Please give reasons to support your point of view.

Conduit believes that the obligation to provide a printed directory is out of date and no longer needs to form part of the USO. We take this view because of the limited benefits derived from providing a directory to every Irish household (especially on an opt-out basis), compared with the potential which it has for distorting the competitive directory market.

Q. 14 What is your view in relation to the preliminary view that Eircom should be designated as the USP with respect to the provision of a subscriber directory, for the next designation period? Please give reasons to support your point of view.

Conduit believes that this question is somewhat disingenuous. In view of the timescales and the fact that the next designation period begins on 1 July 2012, ComReg clearly has no option but designate Eircom as the USP for that period, for all services, not merely the provision of a subscriber directory. As a result, Conduit believes that rather than being a 'preliminary view', it is in reality a decision which has already been made.

As a result, Conduit believes that it has no option but to accept that Eircom will be designated as the USP with respect to the provision of a subscriber directory, which is a position which we broadly support in the absence of any credible alternative.

All queries in relation to this response should be to Simon Grossman, Director of Government & Business Affairs, Conduit, Whitfield Court, 30-32 Whitfield Street, London W1T 2RG – simon.grossman@118118.com – 020 3205 0800

3: Eircom Group

eircom Group

**Response to ComReg Consultation Paper:
The provision of Universal Service Obligations, Scope and Designation**

ComReg Document 12/39

05 June 2012

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The comments submitted to this consultation are those of Meteor Mobile Communications Ltd. (MMC) and eircom Ltd (eircom) collectively referred to as eircom Group.

Introduction/Executive Summary

A universal service obligation is, in its principle, an essential aspect of the regulatory framework for electronic communications, promoting geographic and social inclusion by ensuring that anyone, irrespective of location, social standing or income can access basic telecoms services. eircom uniquely in the Irish market has committed to the universal provision of fixed line services at affordable prices and has delivered this universal service consistently since its original designation in 1999. While eircom recognises its central role in the provision of communications services across Ireland, there are very significant issues and concerns that arise from ComReg's proposed designation of eircom as the Universal Service Provider (USP) for the period 1 July 2012 to 30 June 2014. eircom in particular is very concerned that ComReg's proposal to re-designate eircom as the USP for a further two years is based on incorrect assumptions and an unfair process as well as an incomplete and inadequate analysis of the very important economic, social and commercial issues that underpin the concept of Universal Service provision.

It is eircom's position that:

- ◆ It is particularly regrettable, and impossible to understand, that so little time is given by ComReg to consultation on the designation of the USP, in circumstances where it is ComReg that set the previous designation period. eircom does not accept that the designation of a USP other than eircom is in any way linked to eircom making an application for funding for the period 2009-2010.]<

] Since, progress on this issue has been slower than anticipated, in part due to an extraordinarily complex USO costing model that has set an unprecedented burden of compliance on eircom.]<

] the issue of USO funding does not in any way entitle ComReg to now link the review of eircom's application for funding for the period 2009/2010 and the designation of the USP for subsequent periods.

It is the case that the net cost calculated for that period is not reflective of the cost borne by eircom in subsequent periods and it is misleading to suggest otherwise. But in any case, this net cost is the cost borne by eircom and it is personal to eircom. eircom does not accept that the information contained in its submission is relevant or necessary for other undertakings to be considered by ComReg for the provision of USO. To the extent that ComReg's process supposes that undertakings will be considered for the provision of the universal service only where they are willing to do so, and that information that is confidential to eircom should be provided to them so that this decision can be made, the process is unfair and discriminatory. The failure by ComReg to progress the funding issue since 1999 did not prevent the repeated designation of eircom as USP. eircom is very concerned that ComReg appears to vindicate the position that it is not reasonable to expect others to be designated as USP in the absence of a funding mechanism, and implies that the current costing/funding exercise is primarily focussed on facilitating a funded USP designation for an alternative operator.

- ◆ eircom regrets that ComReg for the purpose of this consultation did not seek to put in place a coherent national strategy towards the availability of communications services (narrowband and broadband) at fixed locations in the State. eircom is of the view that this is an issue which must be considered as a matter of urgency and should not be postponed for a further two years.

- ◆ The proposal to designate eircom as universal service provider in respect of access at fixed locations fails to recognise the changed market context in which Universal Service is now being considered. In particular it fails to recognise that eircom cannot continue to carry national social and economic objectives while at the same time competing in a highly competitive market and investing in infrastructure and services which are critical for national economic recovery and which are then made available to competitors (including unregulated competing infrastructure owners) on regulated terms. There are a number of aspects of ComReg's proposed designation which are of very serious concerns to eircom:
 - It is not reasonable for ComReg to seek to impose on eircom performance targets which ComReg very well knows eircom is not in the position to meet. eircom fundamentally opposes the continuation of the targets set in ComReg Decision D02/08 and is of the view that ComReg may not lawfully reimpose these obligations in the current circumstances. To the extent that performance targets are justified, their levels must be set at realistic levels which take into account relevant factors such as changes in eircom's line base and line distribution between rural and urban areas. Unless the targets are reviewed in line with the already demanding targets set in the Performance Improvement Programme agreed with ComReg, eircom will have no choice but to oppose its designation.

 - ComReg has offered no reasonable justification for re-imposing on eircom the obligation to offer geographically averaged prices for the universal service. It is eircom's submission that in line of changes in the market conditions, this obligation now unduly distorts the market and should accordingly not be imposed.

 - ComReg has failed to justify the continuation of the universal service regime in respect of public payphones.

 - eircom disagrees with ComReg's proposal curtail eircom's commercial ability to charge for call barring facilities. ComReg has failed to give due consideration of the burden that would be imposed on eircom.

Response to Consultation

Questions 1 – 4 will be considered together.

Q. 1 Do you agree or disagree with ComReg's proposal that the next designation period should be a period of 2 years, from 1 July 2012 to 30 June 2014? Please provide reasons to support your view.

Q. 2 Do you think an alternative duration for the next designation period should be considered? If so, what duration and why? Please provide reasons to support your view.

Q. 3 Do you agree or disagree with ComReg's proposal that, for the proposed next designation period, the required universal services should be designated for the entire State? Please provide reasons to support your view.

Q. 4 Do you agree or disagree with ComReg's proposal that Eircom should continue to be the universal service provider for the elements specified (section 5) during the next designation period, unless there are expressions of interest from other providers? Please provide reasons to support your view.

A number of considerations concerning the designation of the universal service provider for the period starting 1 July 2012 are set out in section 4 of ComReg Doc. 12/39 including consideration regarding the designation mechanism to be used and the scope of the designation and concluding with an invitation to *"all undertakings to express an interest in providing all, or part of, the universal service for the proposed next designation period of 2 years"*. Having regard to the fact that ComReg issued this invitation only a few weeks before the current designation period expires, it is difficult to see how such an invitation could practically translate into undertakings other than eircom being duly considered by ComReg for designation for the proposed period. ComReg's position on this matter is difficult to understand given ComReg's finding that *"Greater competition in the Irish market since the previous designation may have increased the possibility for all, or part, of the universal service to be provided by operators other than Eircom."*

In essence, ComReg proposes that eircom be re-designated for the next period so that ComReg has time to review eircom's application for funding and provide sufficient information to other undertakings so that they can decide whether to apply or not for designation. eircom is of the view that ComReg's approach is fundamentally flawed, for the reasons set out below.

ComReg's considerations regarding the designation mechanism to be used and the scope of the designation appear to discourage any undertaking from expressing an interest in providing all or part of the universal service, as, ComReg suggests, undertakings other than eircom would not have sufficient information *"to decide whether they are willing and able to do so"*, for example, in relation to the *"uneconomic customers"*. The period proposed by ComReg is accordingly calculated to give ComReg sufficient time to *"assess Eircom's funding application"*

*(ComReg intends to publish its determination on Eircom's USO funding application for 2009/2010 within approximately 8 months of receiving such an application)" and "evaluate the specific details of any universal service obligation and to determine and implement, as appropriate, the most appropriate future designation method(s)" as well as provide for a transition period, if relevant, to a new USP or USPs."*¹

It is eircom's view that this approach, and the reason advanced by ComReg to justify the duration of the next designation period, are entirely inconsistent with the requirements set out in the Universal Service Regulations. In particular, Regulation 7(3) requires ComReg to "*adopt an efficient, objective, transparent and non-discriminatory designation mechanism whereby no undertaking is in principle excluded from being designated.*" In addition, "*the designation methods adopted shall ensure that the obligations... are provided in a cost effective manner and may be used as a means of determining the net cost of the universal service obligation*".²

It is also difficult to see how the current designation mechanism, which simply proposes to continue all obligations on eircom for as long as it will take ComReg to make available cost information to other undertakings so that they can "*decide whether they are willing and able*" and organise for a transition period, is consistent with ComReg's obligations under the Universal Service Regulations and the Universal Service Directive. In particular, it is eircom's view that ComReg's approach discriminates against eircom, which, it should be noted, is not given the opportunity to decide whether it is "*willing*" to continue to discharge the USO – nor was it given such opportunity on each occasion when the re-designation was proposed in the past.

eircom notes further that the criteria set out by ComReg to decide on the length of the next designation period are entirely irrelevant. In particular, eircom notes its application for funding for the period 2009-2010 will give little, if any, insight to alternative providers as to their costs of delivering the Universal Service:

- ◆ The net cost of providing the USO, calculated by eircom in accordance with the requirements of ComReg Decision D04/11, is very much specific to eircom. This is because, as ComReg would be well aware, it is calculated on the basis of eircom's HCA, using the technologies specific to eircom's networks, with eircom's "profitable" customers subsidising eircom's unprofitable customers in the calculation of the net cost. Clearly, this calculation will not give any valuable information to alternative providers who, one may reasonably expect, would rely on their own network and have a cost structure that is different from that of eircom's.
- ◆ Even if eircom's costs were relevant (which they are not), market circumstances have changed substantially since 2009/10. As ComReg notes³ there is "*greater*

¹ Paragraph 26, ComReg 12/39

² Regulation 7(3) of the Universal Service Regulations, 2011.

³ Paragraph 22, ComReg 12/39

competition in the Irish market since the previous designation" in 2010. eircom's retail subscriber base has contracted in that time and the geographic dispersion of the eircom retail customer base has moved towards a higher relative proportion of rural customers. Since 2010, generally, there have also been continuing significant movements in customer numbers and significant changes in revenue (incomes reduce as customers migrate from retail products to WLR/bitstream and Line share/LLU). Further significant revenue movements will occur as regulation reduces many revenue streams primarily in the wholesale business. All costs incurred in the period 2010/2012 will also impact on HCA accounts, and to the extent that any such costs are avoidable in terms of USO they could impact the gross costs. These effects alter the economics of the provision of universal services at fixed locations, such that eircom's 2009-2010 application for funding will provide no valuable insight into the cost of providing the universal service in subsequent years and it would be misleading to suggest otherwise.

eircom does not agree that the question of the scope of the universal service obligation – whether it should cover the entire State or not – is a question that is concerned with having details of "uneconomic areas" or "uneconomic customers". Rather, it is about establishing, in accordance with the requirements of the Universal Service Directive, whether there are areas within the State where *all* end-users can access basic telecoms services. In terms of the provision of access at a fixed location and the provision of telephone services, this means to ensure that all reasonable requests for connection and PATS are met. If it is not possible to identify such areas, then the scope should be national. Again, this is not dependent on assessing first what is the cost of the USO *to eircom*.

The Universal Service Directive and the Universal Service Regulations grant upon the designated USP a right to seek funding for the net cost of providing the universal service when it amounts to an unfair burden. [X

] Of course, this does not mean that the existence of a fund is any way a pre-requisite to the designation of the USP. Indeed, ComReg's lack of progress in dealing with the issue of the funding of the USO since eircom's first designation in 1999 did not prevent ComReg to redesignate eircom as USP. That ComReg now links the possibility that other operators be designated as USP (their "ability" to apply) with the availability of detailed information on the costs borne by eircom for the period 2009-2010 for delivering the USO is a matter of very serious concern to eircom. For the avoidance of doubt, the position that appears to be vindicated by ComReg that it is not reasonable to expect others to be designated as USP in the absence of a funding mechanism is one which is unfair to eircom and discriminatory and accordingly unlawful.

For the reasons set out above, eircom is of the view that the rationale set out by ComReg in deciding the length of the next designation period is entirely flawed and eircom does not accept that the length of the designation period is in any way linked with the assessment of eircom's

application for funding for the period 2009-2010. However, there are very important issues to be considered concerning the scope of the USO in light of changing market conditions, such as its geographic scope and whether broadband access should be part of the USO (eircom in this regard does not agree that it would be wise to wait until 2014 to take up this issue, as ComReg suggests) and it is highly regrettable, and impossible to understand, that ComReg has given so little time for consulting of such issues in advance of the designation of the USP for the period starting 1 July 2012, and giving the opportunity to all interested to apply for designation. It appears to eircom highly unlikely that the process followed by ComReg will allow applicants to put forward applications which ComReg would then have the necessary time to assess in advance of 30 June 2012. Not only does there not appear to be sufficient time by any measure but the lack of details included in the consultation document concerning the information which ComReg must have available to it will complicate making such an application.

In these circumstances, it seems to eircom that there is little choice but to accept the proposed designation period, which should be as short as possible while allowing sufficient time for ComReg to reassess its designation mechanism and the scope of the USO for the years to come. It seems also to eircom that for the same reasons, having regard to the fact that ComReg has not, three weeks before the current designation period expires, considered in any real fashion, alternatives to eircom, it is highly unlikely that ComReg would be in the position to designate any other USP than eircom. eircom is of the view that such a situation is to be deplored and that ComReg has not discharged its obligations under the Universal Service Regulations, such that its proposed re-designation is not consistent with the procedural requirements set out in the Universal Service Regulations.

Q. 5 For future designation periods (after the proposed next designation period), do you agree or disagree with ComReg's approach to future designation methods for the provision of required elements of universal service? Please provide reasons to support your view.

ComReg states⁴ that it *"is of the preliminary view that it would be prudent for it to defer the consideration of alternative mechanisms, including their appropriateness, for designating universal service providers, until such time as ComReg has concluded its assessment of Eircom's funding application for 2009/2010. By the time this assessment is complete, there should be information available which will allow the identification of uneconomic customers and uneconomic areas, uneconomic payphones etc. in the State."*

For the reasons stated above, eircom entirely disagrees with the contention that consideration of the approach to be followed for future designation must be deferred pending analysis of eircom's funding application for 2009/10. This is not a matter which, as explained earlier, is relevant. Rather what should be at the heart of ComReg's deliberations in respect of future

⁴ Paragraph 25, ComReg 12/39

designations is a holistic approach to the provision of access at fixed locations. Please see our response to Question 8 below in this regard.

Q. 6 Do you have any further comments or suggestions about future designation methods, after the proposed next designation period, (to June 2014)? Please provide reasons to support your view.

We have no additional comments at the current time. We look forward to further engagement to develop coherent national policy over the coming months and years.

Q. 7 Do you have any comments about future designations covering only certain geographic areas and/or customers? Please provide reasons to support your view.

Please see our response to questions 1-4.

Q. 8 Do you agree or disagree with ComReg's proposal not to include Broadband, at this stage, in universal service? Please provide reasons to support your view.

eircom agrees that broadband should not be included within the scope of universal service. However, eircom is of the view that the future of the universal service, and any evolution that may be necessary, should be considered having regard to relevant market and technological developments and Government initiatives, including the National Broadband Scheme and the Rural Broadband Scheme, and the ongoing initiative to establish a new national broadband plan for Ireland this year. eircom notes in this regard that to date, Government policy has pursued universal availability of basic broadband services with the view to creating greater equality and addressing socioeconomic disadvantages.⁵ These are the same objectives as those being pursued under the universal services regime for narrowband access at fixed locations. There are significant differences as to how the two schemes for narrowband and broadband service availability have been implemented and maintained. However both schemes are essentially about the provision of communications services at fixed locations which is what is at the core of the universal services regime as set out in European legislation.

The European Commission recently concluded⁶ that *“there is a risk that divergent national approaches to implementation in the broadband environment could distort markets and put an unreasonable burden on the sector”* and that *“it would be advisable to follow a common approach in applying the relevant provisions of the USD in the broadband context. This will*

⁵ See e.g., the evidence given by Mr. Aidan Dunning, *Secretary General of the Department Communications, Energy and Natural Resources* to the Oireachtas Committee of Public Accounts on 17th May 2012.

⁶ Commission Communication on Universal service in e-communication, COM(2011)795

make USO arrangements more efficient and boost regulatory predictability for the sector, so that investment and competition in the Digital Single Market will work to the benefit of innovation, consumer choice and affordability. The Commission will engage in discussions with the Member States, European Parliament and other stakeholders in the light of this Communication.” In this context, BEREC has been keen to point to the need for consistency and clarity as *“the principles outlined in the [Commission’s] Communication would also have a significant effect on current universal services, and in particular on the designation mechanism and financing.”* In Ireland, a new Government initiative is ongoing with the objective of increasing the average speed of available broadband services, which may alter the dynamics for the provision of voice telephony services. In this context, eircom is of the view that there is urgency for the debate on the scope of universal service to be commenced immediately, so that issues regarding the availability of narrowband access and broadband access can be considered together in a manner that is consistent.

Accordingly, we disagree with ComReg’s proposal to defer its consideration of the scope of Functional Internet Access after 2014. The strategic debate must be commenced now to ensure the development of a consistent and coherent regime for the universal availability of access to communication services at fixed locations. This in turn will inform appropriate future designation method(s) for the next designation period.

Q. 9 Do you agree or disagree with ComReg’s proposal to review its consideration of broadband as a universal service no sooner than 2014? Please provide reasons to support your view.

We do not agree. The review should commence immediately in conjunction with the Government’s policy initiative to develop a national broadband plan in order to be in an informed position with appropriate national policy prior to the expiry of the next designation period.

Q. 10 What is your view in relation to the preliminary view that Eircom should be designated as the USP with respect to access at a fixed location for the entire State for the next designation period? Please give reasons to support your point of view.

Section 5.2 of ComReg’s consultation document includes certain developments concerning mobile penetration and usage. It is not entirely clear to eircom what these developments seek to establish. For the avoidance of doubt, eircom notes that it does rely in certain circumstances on mobile technology for the purpose of delivering access at a fixed location.

There are a number of different aspects to the obligation of provision of access at a fixed location, including what constitutes a reasonable request for connection but also the quality of service that is expected of the USP in terms of delivering the connection and maintaining the line. While some considerations of what should constitute a reasonable request for connection are set out in the consultation document in the context of the Reasonable Access Threshold (dealt with in response to Question 11), there is no discussion whatsoever of what quality of service it is reasonable to expect of the USP. ComReg nonetheless proposes in its draft

decision to continue the obligations imposed on eircom by ComReg Decision D02/08. In the absence of any consultation on this issue, and in the current factual circumstances, eircom is of the view that ComReg cannot lawfully do so and eircom strenuously objects to the performance targets set out in D02/08 to be continued. eircom notes the following:

- ◆ The absence of discussion of the appropriate performance targets, in the context where ComReg clearly recognises the need to reimpose those on eircom by way of the new Decision is in breach of the requirements of the Framework Regulations, which require ComReg not only to publish a draft of the proposed decision but also to give reasons for the proposed measure. In stark contrast with the proposal to maintain the Reasonable Access Threshold at the level set by Decision D09/05, there is absolutely no discussion of why it is necessary to maintain the current performance targets.
- ◆ The absence of discussion of what amounts to reasonable performance targets, and the decision to reimpose the performance targets set out in D02/08, are impossible to understand given that ComReg knows that eircom is not in the position to meet, in particular, the LFI set out in D02/08 to be reached by 30 June 2012. eircom refers in this regard to the [3<

] Performance Improvement Programme requiring eircom to improve its performance in accordance with demanding but realistic targets. In terms of the LFI this target was set at 14.0 for 30 June 2012. It is simply irrational for ComReg to take the view that eircom could be in the position to achieve an LFI of 12.5 on 1 July 2012, in circumstances where ComReg knows very well that an LFI of 14.0 on 30 June 2012 is a challenging target for eircom. eircom accordingly does not believe that ComReg can reasonably redesignate eircom as USP if the requirements that must be met by the USP are requirements that eircom is simply not in the position to meet.

- ◆ eircom also notes that in its invitation on undertakings to express an interest in providing the USO, ComReg requested that information be submitted concerning, inter alia, "*guaranteed level of service in terms of fault occurrence/availability of service to consumers and other relevant quality measures*". There is no suggestion that the performance targets set in D02/08 must be achieved for anyone to be considered as USP. It is also, accordingly, unfair and discriminatory to expect of eircom a performance which does not appear to be expected of other potential candidates.

eircom submits that in setting performance targets for the period 1 July 2012 to 30 June 2014, if any, ComReg is bound to take into account eircom's current levels of performance and the relevant factors which determine an appropriate level of performance. eircom notes in this regard that overall performance within the network is affected by the reduction overall in its line base and a change in the line mix between urban, rural and very rural. Cable theft is also more and more prevalent; climate changes mean that exceptional climate events are occurring more often. eircom is of the view that such events should be taken into account when setting performance targets and/or assessing network performance. eircom notes in this regard that exceptional weather events are taken into account in assessing An Post's performance and there are no reasons why this should not be done for eircom also.

eircom is of the firm view that it is entirely unreasonable to impose in 2012 targets which had been set in 2008, in circumstances where these targets do not take into account actual market conditions and where eircom, as ComReg knows well, will clearly not be in the position to achieve an LFI of 12.5 on 1 July 2012. eircom accordingly will have no choice but to oppose its designation were the performance targets set out in ComReg Decision D02/08 continued from 1 July 2012.

Q. 11 What is your view in relation to the current Reasonable Access Threshold? Please give reasons to support your point of view.

eircom has previously submitted views on the reasonableness of the Reasonable Access Threshold in correspondence in 2011 and 2012. ComReg states⁷ that it *“is minded to consider that the current approach remains valid and proportionate at this juncture, subject to any compelling new information submitted in this consultation.”* It is not clear to us that ComReg has given due consideration to our previous representations and we therefore submit them again as part of this response:

eircom submission dated 21st March 2012: eircom’s view on the level of RAT has not differed from that provided in our response [“110610_USO_eircom_Response.pdf”] to ComReg’s Letter of 13th April 2011, in which ComReg sought information with respect to USO during 2010. For clarity, this is provided below.

“eircom believes that, at the current rate of €7,000 for Reasonable Access Threshold, it will not achieve a reasonable return on investment. The small number of orders where the cost exceeds €7,000 simply masks the fact that many connections are uneconomic. Even if the time value of money is ignored, a customer lifetime of [x] months would generate incremental revenue of €[x] ([x]*€18.021) in contribution to the network, to cover both incremental OPEX and incremental CAPEX. Where the incremental cost is greater than €[x] but less than €7,000, eircom may still make a substantial loss. The RAT should be reviewed such that the average incremental net cost to eircom is less than the average incremental revenue.

At the same time, there are many requirements on our network for once-off service provision. In taking the view that costs should be geographically de-averaged, the high cost of once-off service provision should also be examined. Even at the average cost of connecting these once-off units today, costs may only be recovered after a period of 15 years (15 years @ €20.962 per month = €3.7k: so we would need to ignore OPEX, and to take in a lot of margin on calls and broadband to get incremental net revenue to recover initial capital costs to get a recovery period anywhere near 15 years) and indeed the cost recovery period may be much higher if the line is unbundled. Given the infrastructure that is used to deliver these once-off lines, the recovery of costs may be beyond the economic lifetime of the assets deployed and, therefore, there is a negative return on investment, or an under-recovery of costs.

⁷ Paragraph 131, ComReg 12/39

We also note that, despite the rate of inflation and decreasing number of requests, eircom's costs in deploying network remained fixed during the period."

Q. 12 Do you agree or disagree that the present provision of directory enquiry services on a commercial basis continues to meet the needs of consumers? Please give reasons to support your point of view.

We agree that the provision of directory enquiry services on a commercial basis continues to meet the needs of consumers.

Q. 13 What is your view regarding the continued requirement to provide a printed directory to all consumers, unless the consumer requests not to receive it? Please give reasons to support your point of view.

eircom welcomes ComReg's proposal to amend the obligation to allow consumers to 'opt-out' of receipt of the printed directory. We believe this development is timely and updates the obligations reflecting that alternative online means are established to access the directory (www.eircomphonebook.ie) through mobile and landline connections. Putting the choice in the consumers' hand is consistent with an inclusive society and likely to generate broader environmental benefits, significantly reducing paper consumption.

Assuming the proposal is adopted we will initially manage an online process for citizens to opt-out of receipt of the paper directory. During the period to 2014 we believe that printed directories will become the exception rather than the default format. It will be important to manage distribution costs during this transition phase. Consideration may be given to incentivising the migration away from printed directories through the application of delivery charges. This would have the benefit of reducing the Directory net cost that would otherwise have to be recovered from a universal service fund. We note that the application of a delivery charge is not precluded by the Universal Service Regulations⁸ and already occurs in some other Member States. Consideration may also be given to alternative distribution methods, e.g. citizens can collect printed directories from distribution points such as public libraries, thereby ensuring that the needs of vulnerable consumers are protected whilst minimising the attendant societal cost.

eircom intends to maintain the existing phonebook coverage areas and will maintain current practice to fulfil requests for out of area directories.

Q. 14 What is your view in relation to the preliminary view that Eircom should be designated as the USP with respect to the provision of a subscriber directory, for the next designation period? Please give reasons to support your point of view.

⁸ Regulation 4(1) requires "that a comprehensive directory of subscribers is made available" [emphasis added]

We do not object to being designated for the provision of a subscriber directory on the understanding that eircom will be adequately compensated for any consequential cost burden arising.

Q. 15 What is your view in relation to the preliminary view that Eircom should be designated as the USP with respect to the provision of public payphones throughout the State for the next designation period? Please give reasons to support your point of view.

eircom does not believe that sufficient justification has been presented for the continuation of public payphone universal service provision.

Under Article 6(2) of the Universal Services Directive, "*A Member State shall ensure that its national regulatory authority can decide not to impose obligations under paragraph 1 in all or part of its territory, if it is satisfied that these facilities or comparable services are widely available, on the basis of a consultation of interested parties as referred to in Article 33.*"

In its response to consultation in 2010, ComReg promised to undertake a detailed review to establish if there would be continued justification for the public payphone obligation⁹: "*Having carefully considered the views expressed by respondents, ComReg intends to designate Eircom with respect to the provision of public payphones throughout the State. ComReg proposes to continue to monitor the usage of payphones and to engage with consumers, including those with disabilities, and other key stakeholders with respect to their usage of such payphones, and to arrive at an understanding of the consumer detriment, if any, that would arise if the obligation was to be removed.*"

It is clear from the points put forward seeking to justify its proposal to continue to oblige the provision of public payphones that ComReg has not yet undertaken the review that had been promised in 2010. eircom in this regard is of the view that the justification upon which ComReg seeks to roll-over the public payphone obligation is entirely insufficient.

eircom notes in particular that having acknowledged the continued year on year decline in the usage of public payphones, it is not reasonable to jump then to the conclusion¹⁰ that "*it is apparent that payphones continue to provide a basic service to many people throughout the State, indicating their continued necessity.*" It is entirely unclear what criteria that ComReg has adopted for the purpose of determining the minimum socially efficient level of usage to justify the net cost of providing universal public payphones. ComReg goes on to make quite sweeping and unsubstantiated statements at paragraphs 86 and 87 of 12/39. In this regard eircom does not accept the conclusion that "*A public payphone may be valued and needed by many people without a land-line or a mobile phone*" where, according to ComReg's own research,¹¹ 99.3% of the Irish adults own a mobile phone. It is also surprising that ComReg would justify the continued obligation to provide public pay phones on the basis that a "*mobile phone is out of credit*". eircom does not believe that the provision of public payphones should seek to address

⁹ Paragraph 8.3, ComReg 10/46

¹⁰ Paragraph 86 of ComReg 12/39

¹¹ See ComReg 12/46a

alleged weaknesses in the top-up distribution network of the mobile phone companies. It should be noted that mobile service providers typically provide a range of top-up methods including via SMS and through customer care channels. Improved convenience for mobile users is not adequate justification for designating a universal service.

eircom also notes ComReg's observation that *"payphones which are not economic because they are located in more extreme rural areas may be more relied upon by vulnerable consumers. In this respect, ComReg notes that payphones continue to be used to make calls to 1850/1890 numbers, to emergency services, to mobile numbers, and to local and international numbers."* However, the fact that public payphones experience some usage does not in itself inform the debate as to whether the benefits of their universal provision outweigh the costs.

In light of the above, we do not consider that ComReg has offered sufficient justification to further oblige the provision of public payphones.

Q. 16 Do you agree that the current set of obligations is appropriate for consumers with disabilities in the context of the current scope of universal service, for the next designation period? Please give reasons to support your point of view.

We welcome ComReg's acknowledgement¹² that *"the Amending Directive aims to assist in ensuring that consumers with disabilities have access to electronic communications services equivalent to that enjoyed by the majority of consumers and in ensuring that consumers with disabilities can benefit from the choice of undertakings and services available to the majority. ComReg is planning to shortly commence a consultation on measures to do with accessibility of telecommunication services, in accordance with Regulation 17 of the Universal Service Regulations. Pending this, ComReg proposes that the current set of measures provided by the USP be maintained."*

In the interim eircom has no objection to the maintenance of the current set of obligations under the universal service regime.

Q. 17 Do you consider that the current measures (outlined above) provide appropriate protection for vulnerable consumers in terms of affordability? Please give reasons to support your point of view.

Among the current measures designed to maintain the affordability of the universal service, ComReg lists the retail price cap regime. For the avoidance of doubt, the retail price cap regime is not a universal service obligation that eircom must comply with as the USP. Rather, it is a measure that has been imposed on eircom following ComReg's finding, five years ago, that eircom had SMP on the retail market for narrowband access. This is a market for which a review is long overdue but this review, and the designation of the USP for the period 1 July 2012-30 June 2014, are entirely separate processes.

¹² Paragraph 99 of ComReg 12/39

By contrast with the price cap, the obligation on eircom to offer geographically averaged tariff throughout the State for the universal service is an obligation which has been imposed on eircom as the USP. eircom in this regard does not accept that ComReg may refuse to consider whether this obligation is necessary while at the same time imposing it. ComReg is obliged to justify the measures which it proposes, and in the case of the obligation to offer geographically averaged prices, to seek the consent of the Minister. eircom notes in this context that it is also a requirement under the Universal Service Directive and Regulations that market distortions be minimised, in particular in terms of the provision of services at prices or subject to other terms and conditions which depart from normal commercial conditions. In this regard, and for the avoidance of doubt, ComReg may not lawfully postpone consideration of the distortive effect of the obligation to offer geographically averaged prices to the review of the market for narrowband access or the NGA consultation, in particular where ComReg decided to impose such an obligation.

eircom is of the firm view that the obligation to geographically average its prices across the State is an obligation which now distorts competition, having regard to the evolution of the market since 2010. In particular, the intensity of competition within urban markets means that eircom is not in the position to offer geographically averaged prices that are competitive and this works to the detriment of competition and therefore end-users. eircom in this regard is of the view that this obligation no longer contributes to the affordability of the universal service and therefore is not justified for the next designation period.

Q. 18 Do you agree with the approach with respect to call itemisation? Please give reasons to support your point of view.

As ComReg will be aware, per our submission to ComReg consultation 11/78, eircom does not agree that the default bill format should be a fully itemised bill. However eircom has no objection to the current level of itemised billing to be maintained pending ComReg's Decision following the consultation ComReg 11/78. Thereafter the universal service Designation must be amended to ensure that any related billing obligations to be borne by eircom are consistent with and no more burdensome than the obligations that will apply to other communications service providers.

Q. 19 Do you consider that the call-barring options proposed are necessary to enable consumers to control their expenditure? Please give reasons to support your point of view.

eircom considers that the range of call barring options is sufficient to meet consumer needs. We consider that the call barring facilities offered by eircom have proved to be a successful form of control for consumers and meet demand for control of expenditure.

Q. 20 What is your view in relation to charges for availing of call barring options which are a means of controlling expenditure? Please give reasons to support your point of view.

eircom believes that the current barring charging regime for call barring is appropriate and fair. Consumers that avail of call barring options obtain the obvious benefit of being able to control potentially high expenditure. The modest cost to the consumer is far outweighed by the benefits obtained.

There are costs that eircom incurs in making barring facilities available to consumers. These include the necessary administration charges to handle the order, establish the call barring for consumers and deal with any queries that may arise. In addition the call attempts to numbers, when barring is in place, avail of network resources and switching capacity that carry costs.

We question ComReg's statement¹³ that mandating the free of charge provision of mobile call barring and international call barring "*would not have any significant impact on any claimed net cost of the USO.*" The basis for ComReg's statement or its intention is not clear. ComReg makes reference in footnote 34 to Regulation 9(2) – Schedule 1, Part A (b) of the Universal Service and Users Rights Regulations 2011. This confirms that ComReg may specify certain call barring facilities, free of charge, but does not offer any illumination on net cost of universal service funding in regard to selective call barring. Indeed Schedule 2, Part B of the Regulations clearly establishes "*The recovery or financing of any net costs of universal service obligations requires designated undertakings with universal service obligations to be compensated for the services they provide under non-commercial conditions.*" Consequently the correct interpretation must be that the costs and revenues associated with providing free call barring are recoverable through universal service funding. eircom earns approx. €[><] revenue per annum from the provision of the relevant call barring services. We consider this amount to be significant.

As noted above we do not consider an obligation on eircom to provide free call barring facilities to be proportionate. Furthermore if ComReg was to impose such a non-commercial obligation on us it must allow us to recover the foregone commercial revenue through the universal service fund.

Q. 21 Do you consider that Eircom's current Disconnection Policy is reasonable? Please give reasons to support your point of view.

eircom considers that its Disconnection Policy is fair and reasonable. It is essential that bad debt exposure is identified and managed.

Q. 22 Do you agree with the approach and conclusions in this regulatory impact assessment? Please give reasons to support your point of view.

We do not agree with the approach and conclusions in the regulatory impact assessment (RIA). The approach is wrong because the RIA is little more than a qualitative discussion. No attempt has been to quantifiably assess the efficiency or cost of ComReg's proposals. As a consequence the conclusions of the RIA are flawed.

¹³ Paragraph 115 of ComReg 11/39

4: Golden Search Ltd.

**Responses to ComReg Consultation on the Provision of
Telephony Services under Universal Service Obligations
(USO)**

Submitted by:

Golden Search Ltd.

**Publisher of the eircom Phonebook under license to
eircom**

Responses to ComReg USO for Telephony Services

Q13 *What is your view regarding the continued requirement to provide a printed directory to all consumers, unless the consumer requests not to receive it? Please give reasons to support your point of view.*

We fully support the continued requirement to provide a printed directory to all consumers with the provision for an “opt-out” for those consumers who do not wish to receive a printed directory. Our reasons are the following:

- Ensuring access to subscriber information for consumers who prefer printed directories
- Ensuring access to subscriber data for consumers who do not have access to the internet or internet enabled mobile devices
- Accomodating those consumers who prefer to not receive the printed directories in favour of internet or mobile based access

Precedent Around Europe

The opt-out option is currently in place in the following European countries and has been successfully managed:

Austria	Czech Republic	Denmark
Finland	Switzerland	Norway
Spain		

Alternative Access Methods

The information contained in the printed directory will be even more widely available in the coming months across different platforms:

- eircomphonebook.ie (currently available)
- eircomphonebook mobile “app” (in development for iPhone and Android)
- eircomphonebook data included in the goldenpages.ie “app” (in development for iPhone & Android)

Process for Opt-Out

Utilizing the up-coming printed directory distribution, we will jointly promote ***phonebookoptout.ie*** through an onsert. Consumers will be directed to the website and prompted through a step-by-step process to decline the printed directory.

The website will ask the Bill Payer to enter their name, address and telephone number and valid email address. An email will be sent to the Bill Payer for validation. Once the Bill Payer validates their email address by clicking a link in the email, they will be prompted to mark their location on a map.

Based on the address, map location and telephone number will allow Golden Search Ltd. to accurately build distribution plans.

Reverse Search

In order to ensure higher accuracy and speed in the “opt-out” process, pre-filling name and address fields based on telephone numbers is recommended. This would be achieved by allowing a “reverse look-up” of the subscribe information based on the provided telephone number.

Several European countries allow direct reverse search from their websites of private persons including Germany, France and Norway (i.e. entering a telephone number and finding out who is the subscriber).

Removal of Do Not Follow (DNF)

To further ensure accessibility to subscriber listings, we recommend that the Do Not Follow (DNF) currently on the eircomphonebook.ie be removed so the data can be indexed by search engines. Search engines such as Google and Bing are the most used sources to find information in Ireland.

Coverage Areas

The existing coverage areas (based on telephone exchanges) should continue to form the basis for distribution to consumers living in those areas. The areas are:

01	Dublin
02	Cork
04	Midlands, East & Northeast
05	Midlands & Southeast
06	Mid West & Southwest
07/09	West & Northeast

Requests for directories outside of the area the consumer resides should be fulfilled in the same manner as they have been under the previous USP.

Encouraging the Migration to Opt-out

We fully support the move to opt-out as consumer habits change to embrace alternative methods of finding business and private person information. In the planning of the opt-out, thought should be given to encouraging people to take advantage of this through the introduction of a delivery charge for those who do not opt-out. This delivery charge is used in other member states, such as Austria, and is not precluded in the Universal Services Regulations. This delivery charge would have the benefit of reducing the Directory Net Cost that would be recovered from the Universal Services Fund.

Alternative Funding

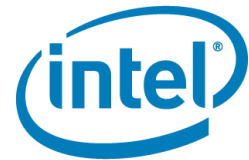
If a delivery charge is implemented, it is possible that it can be recovered through the national broadcasting charge or License Fee. According to statements by Minister for Communications Pat Rabbitte, companies who received funding are fulfilling a public broadcasting service and **were bound by a set of statutory obligations**. Clearly, the distribution of printed directories as detailed by ComReg meets both of these criteria and should be eligible for funding.

Contacts:

Paul Wood
Marketing Director
goldenpages.ie
Tel: 01 618 8000
Email: Paul.Wood@goldenpages.ie

Kevin Murphy
Operations Director
goldenpages.ie
Tel: 01 618 8000
Email: Kevin.Murphy@goldenpages.ie

5: Intel Corporation



Intel Corporation comments on ComReg consultation on 'The Provision of Telephony Services under Universal Service Obligations' (ComReg 12/39)

23rd May 2012

To: Michelle O'DONNEIL
Commission for Communications Regulation
Irish Life Centre
Abbey Street Freepost
Dublin, Ireland
Ph: +353-1-8049600 Fax: +353-1-804 9680
Email: retailconsult@comreg.ie, michelle.odonnell@comreg.ie

From: Peter GIBSON
Intel Corporation
Greater Europe Communications Policy Team / Global Public Policy
Tel: +44 1 926 314811
Email: peter.gibson@intel.com

Introduction

Intel Corporation (Intel)¹ welcomes the opportunity to respond to the Consultation on "*The Provision of Telephony Services under Universal Services Obligations*". Our responses are provided in the subsequent pages but the main focus of our submission is in relation to questions 8 and 9.

We would be pleased to provide additional clarification on our response if required.

Regards

A handwritten signature in black ink, appearing to read "Peter Gibson", written over a horizontal line.

Following Pages

- Intel's Opening Comments
- Intel's Response to Questions

¹ Intel Corporation is a registered organization in the European Commission's Register of Interest Representatives. ID number: 7459401905-60.

About Intel: For decades, Intel Corporation has developed technology enabling the computer and Internet revolution that has changed the world. Founded in 1968 to build semiconductor memory products, Intel introduced the world's first microprocessor in 1971. Today, Intel the world's largest chip maker is also a leading manufacturer of computer, networking, and communications products. In Europe, Intel employs some 6000 employees, including more than 900 in R&D. For more information see <http://www.intel.com>



Intel's Opening Comments

Universal Service is an important tool to subsidize telecommunications connectivity for underserved and / or high cost areas. Many countries, both mature and emerging, have established a Universal Service Fund (USF) to support these subsidies. Intel supports the development and indeed reform of USF programs around the globe to help expand benefits to consumers. Intel recommends that governments establish or expand the pool for USF distributions beyond traditional telecommunications to include broadband.

When initially created, most Universal Service policies focused exclusively on providing affordable "fixed line" telephone service to all citizens, regardless of their geographical location. To keep pace with the need for access to modern technology, many countries have already or are considering expanding their USF distributions to include ICT-related services to support ICT/broadband programs that give underserved businesses and individuals' access to broadband Internet, devices, and content and services that deliver substantial social and economic benefits.

Making high quality, affordable broadband communications service universally available is an important economic and societal goal, shared by most stakeholders. Broadband is a key driver of economic growth. The World Bank reports that in low- and middle-income countries, every 10% point increase in broadband penetration corresponds to an increase in economic growth of 1.38% points – more than in high-income countries and more than for other telecommunications services². Additional studies on the economic value of broadband show similar correlations³.

It is clear that broadband enhances active participation in society: e-health, e-learning, e- government and e-business services are increasingly being used by citizens. This has resulted in more active economic and social participation in society, providing better possibilities to find employment, do business and study, irrespective of location.

As broadband becomes an essential tool of everyday life, we are confronted with the question of how to implement a true "broadband for all" policy and what the role of Universal Service policies might be in meeting this challenge. The European Commission has already provided leadership in this area with the i2010 program and State aid guidelines. Its importance has also been highlighted in the proposed EU2020 strategy and its expected flagship initiative "the Digital Agenda".

Intel's Response to Questions

Questions 1-7

Intel has no comment on these questions

5 Scope of the Universal Service

5.1 Consideration of broadband as a universal service

Question 8 Do you agree or disagree with ComReg's proposal not to include Broadband, at this stage, in universal service? Please provide reasons to support your view.

Question 9 Do you agree or disagree with ComReg's proposal to review its consideration of broadband as a universal no sooner than 2014? Please provide reasons to support your view.

Intel disagrees with ComReg proposal **not** to immediately include Broadband in the scope of Universal Service.

² Yongsoo Kim, Tim Kelly, and Siddhartha Raja, *Building Broadband: Strategies and Policies for the Developing World* (Jan. 2010)

³ McKinsey & Co., (February 2009) estimates that a 10% increase in broadband household penetration delivers a boost to a country's GDP that ranges from 0.1 percent to 1.4%. See also Booz & Co., at 5 (2009) reports that 10% broadband penetration in a specific year is correlated to 1.5% greater labor productivity growth over the next five years, and that countries in the top tier of broadband penetration have exhibited 2% higher GDP growth than countries in the bottom tier.



Intel has a long-standing policy of promoting technology and competitive neutrality meaning we support flexible government policies allowing any technology and/or service to be deployed. Technology and competitive neutrality also extends to Intel's USF advocacy where we support making USF available for all means of communications, including traditional telephone and broadband connections.

Universal Service could assist greatly towards achieving the EC broadband for all objective and we therefore believe broadband should be included in the scope of Universal Service. However, flexibility for implementation should be introduced in order to take into account the specificities in terms of existing broadband penetration rates, geographic, topological and other factors. Flexibility can be provided via decentralised implementation where National authorities design their Universal Service implementation based on their particular situations avoiding unreasonable costs. Intel's basic principles are that eligibility should be determined in a fair, transparent, and technology- and competitively-neutral manner with any distribution mechanism efficient and sustainable.

While broadband deployment should be a top priority for governments, adoption issues are equally important as simply deploying broadband networks is not sufficient to enable adoption for many citizens. Intel encourages countries to implement National Broadband Plans to achieve universal adoption at the household level, including affordable PC/broadband bundle programs, accompanied by digital literacy training; ideally, countries should provide mechanisms for low-income, less educated, and other vulnerable citizens to acquire broadband service and equipment, as well as government e-services and appropriate training to understand the relevance of broadband to their lives.

Intel recommends establishing a Universal Service Fund including broadband in a transparent manner utilizing public funds from general tax revenues.

[Questions 10-22](#)

Intel has no comment on these questions

End

6: Magnet Networks

Magnet Networks welcomes the consultation but believe that it would have been advantageous if it was published at the end of 2011 instead of 30th April 2012 with a decision required within two months. This is putting undue pressure on respondents and the regulator to make a decision without, maybe, full and proper analysis. ComReg were aware that this decision had to be made, and Magnet feel an eleventh hour consultation is not fully appropriate. Also, ComReg has published several consultations around this time expected reasoned, detailed and considered answers, however, not giving due consider to the resources within companies that are responding to these consultations. Every year ComReg bunches consultations together and requires response within a close timeframe and every year respondents request extensions. This could have been prevented in this instance due to the length of time ComReg had to consult to ensure that no undue pressure was places on either the respondents or the decision makers, yet, this has not occurred and this disappoints Magnet.

Q. 1 Do you agree or disagree with ComReg's proposal that the next designation period should be a period of 2 years, from 1 July 2012 to 30 June 2014? Please provide reasons to support your view.

Magnet Networks propose a designation from 1st July 2012 until 31st December 2013, this is to coincide with a change to a January to December financial year. It also gives ComReg and DCENR to look and decide which elements of the USO are commercial e.g. phone book, phone boxes, NDD etc and which are actually USO obligations e.g. provision of a telephone line from an exchange to a premises.

Q. 2 Do you think an alternative duration for the next designation period should be considered? If so, what duration and why? Please provide reasons to support your view

For this designation the period should be a standard financial year, 1st January to 31st December, thus this designation should end on 31st December 2013. With the potential advent of the USF mid year designations cause difficulty with OAO's who have a January to December financial year. Thus, having a January to December allows for easy calculation of expenditure in a particular financial year.

Q. 3 Do you agree or disagree with ComReg's proposal that, for the proposed next designation period, the required universal services should be designated for the entire State? Please provide reasons to support your view.

Yes, if the designation was not for the entire State, then though areas that seem well serviced and economical may have blackspots and these will be ignored by commercial operators especially in pay phones etc. Also, a digital divide will be emphasised even further.

Q. 4 Do you agree or disagree with ComReg's proposal that Eircom should continue to be the universal service provider for the elements specified (section 5) during the next designation period, unless there are expressions of interest from other providers? Please provide reasons to support your view

Overall agree. Magnet Networks does not believe that any other party will express an interest to be designated USP unless they understand where the uneconomic areas are and the information around the current USO. However, some services are economic and thus should now the disaggregated from the USO obligations and be put out for tender such as phonebook, NDD etc.

Q. 5 For future designation periods (after the proposed next designation period), do you agree or disagree with ComReg's approach to future designation methods for the provision of required elements of universal service? Please provide reasons to support your view.

In relation to waiting until further details are received and acquired from Eircom and shortening or lengthening designations to align with the designates financial year, then, yes Magnet Network agrees with ComReg's proposal.

Q. 6 Do you have any further comments or suggestions about future designation methods, after the proposed next designation period, (to June 2014)? Please provide reasons to support your view

As proposed earlier, Magnet believes the designation period should conclude in December 2013, to allow for January to December reporting and prevent mid-year USF requests.

Q. 7 Do you have any comments about future designations covering only certain geographic areas and/or customers? Please provide reasons to support your view.

Magnet believes that isolating geographic areas may cause a digital divide and thus, further isolate rural areas.

Q. 8 Do you agree or disagree with ComReg's proposal not to include Broadband, at this stage, in universal service? Please provide reasons to support your view

Magnet Networks feel that broadband should be included. Government seem to have come to the end of their consultations on national and rural broadband and thus, including broadband in the USO would ensure that all of Ireland not only has access to phone but now data. A minimum rate should be ascribed such as 2MB. Rural areas with an aging population are vulnerable and thus, broadband will and has started to play a greater role in protecting these people with on line monitoring of health such as blood pressure, weight, diabetes management etc.

Q. 9 Do you agree or disagree with ComReg's proposal to review its consideration of broadband as a universal service no sooner than 2014? Please provide reasons to support your view

Magnet Networks disagree, as stated above Magnet believe broadband should be included now and not in 2013/2014, technology will have moved on to a point where designating broadband then may be too late. However, if ComReg decide not to include it in the current consulted designation, and review at the next designation consultation, broadband must be reviewed in light of the fact that the NBS contract will be expiring and thus, this may give an appropriate opportunity to role NBS into the USO.

Q. 10 What is your view in relation to the preliminary view that Eircom should be designated as the USP with respect to access at a fixed location for the entire State for the next designation period? Please give reasons to support your point of view

Magnet Networks agree with the designation outlined in this consultation. No other provider will put themselves forward without all the requisite information until ComReg and DCENR put out a tender for certain aspects currently included in USO such as NDD, phonebook etc.

Q. 11 What is your view in relation to the current Reasonable Access Threshold? Please give reasons to support your point of view.

Currently, feel it is reasonable however, magnet feel that with the advent of NGA that rather than digging copper fibre should be put in as the price, as set out in consultation 12/27, is 95% cheaper than copper. It uses the same duct infrastructure so engineering costs are no different. No point in not future proofing the areas that need it. Alternatively, doing both so that the end user gets advantage when their exchange/cabinet is upgraded.

Q. 12 Do you agree or disagree that the present provision of directory enquiry services on a commercial basis continues to meet the needs of consumers? Please give reasons to support your point of view.

The current Directory enquiry services meet all the needs to the end user and thus, directory enquiry services should not be part of the USO.

Q. 13 What is your view regarding the continued requirement to provide a printed directory to all consumers, unless the consumer requests not to receive it? Please give reasons to support your point of view.

Magnet Networks do not believe that printed directories are required and a request for tender should be published to seek expressions of interest from third parties. People either ring directory enquiries or have the number they are required to ring written down. Vulnerable and elderly people usual ask either a family member or carer to provide them with relevant numbers and these people access them either via the internet or phone. Also, it is not clear to end users that they do not have to receive a directory and can actual refuse it. Most people now just through the printed directory into their recycling bins.

Q. 14 What is your view in relation to the preliminary view that Eircom should be designated as the USP with respect to the provision of a subscriber directory, for the next designation period? Please give reasons to support your point of view.

Eircom should have no designation re subscriber directory as a request for tender should be published. This is the place that the majority of commercial directory enquiries get their numbers from and it is not easily accessible.

Q. 15 What is your view in relation to the preliminary view that Eircom should be designated as the USP with respect to the provision of public payphones throughout the State for the next designation period? Please give reasons to support your point of view.

Magnet Networks agree, as eircom have the presence already.

Q. 16 Do you agree that the current set of obligations is appropriate for consumers with disabilities in the context of the current scope of universal service, for the next designation period? Please give reasons to support your point of view.

Overall Magnet agrees, however, in relation to hearing and visual impaired the designations here relate to customer premises equipment and should the USP be obligated to provide the end user with these systems which may be bought from any specialised store. Thus, the provision of the equipment

may be onerous on Eircom, but also, Eircom maybe over recovering cost of the provision of this equipment. Also, the equipment provided by Eircom may not be appropriate to the individual's needs, and that individual may be better off getting her/his needs assessed by a company that specialises in this equipment.

Q. 17 Do you consider that the current measures (outlined above) provide appropriate protection for vulnerable consumers in terms of affordability? Please give reasons to support your point of view.

Overall, Magnet Networks agree, however, based on the invoice figure included in this consultation, Magnet questions the cost of the service. Is broadband included in this invoice as national and local calls are now a common bundle feature?

Q. 18 Do you agree with the approach with respect to call itemisation? Please give reasons to support your point of view

Magnet Networks overall agrees, however, Magnet feel that efficient billing mediums should be allowed such as e-bill and text.

Q. 19 Do you consider that the call-barring options proposed are necessary to enable consumers to control their expenditure? Please give reasons to support your point of view.

All the call barring options proposed are necessary to allow all users benefit and bar certain call types.

Q. 20 What is your view in relation to charges for availing of call barring options which are a means of controlling expenditure? Please give reasons to support your point of view.

Call barring charges need to be cost orientated, however, those we are most likely to use them may be the most vulnerable and least able to pay and thus, potentially, the USP may be designated not to charge them.

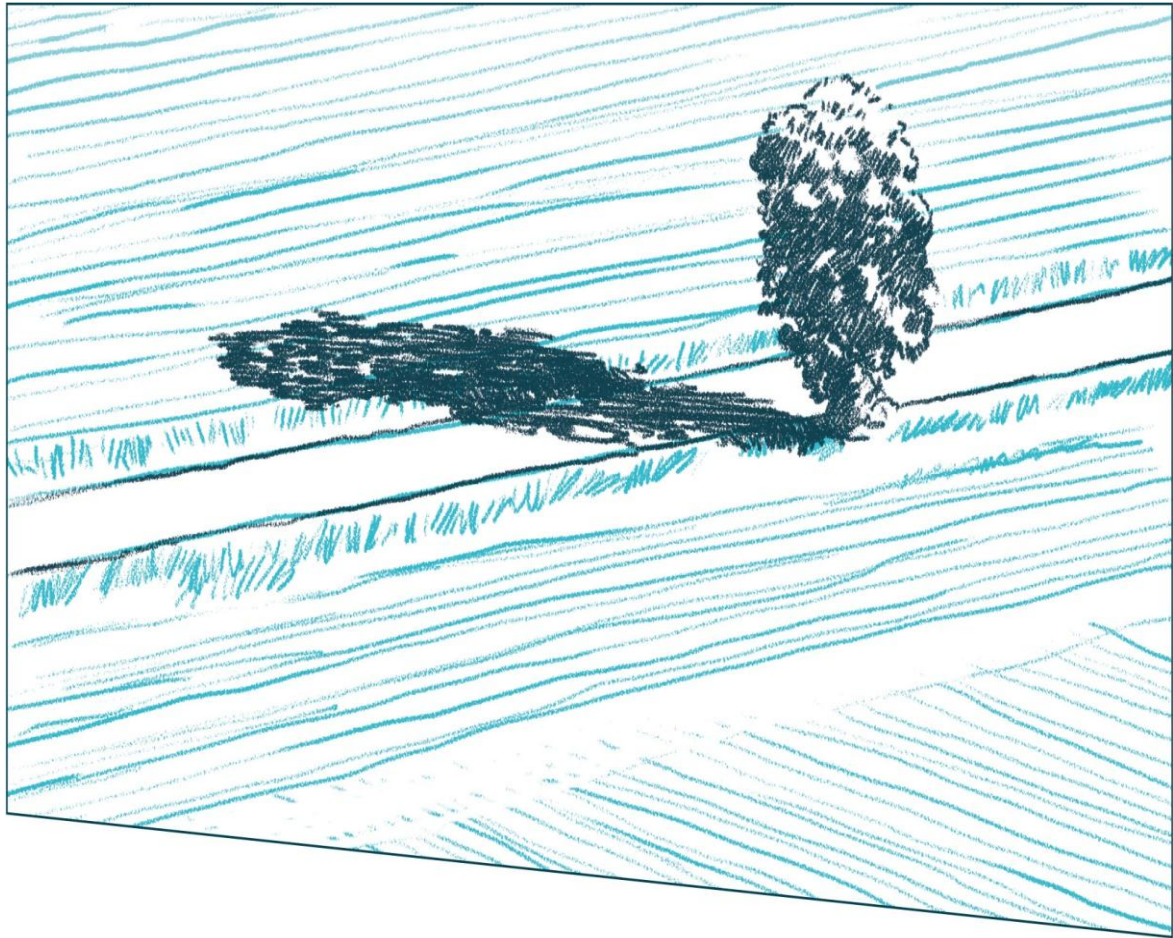
Q. 21 Do you consider that Eircom's current Disconnection Policy is reasonable? Please give reasons to support your point of view.

Magnet Networks believe that eircom's current disconnection policy is reasonable.

Q. 22 Do you agree with the approach and conclusions in this regulatory impact assessment? Please give reasons to support your point of view.

Magnet Networks agree with the regulatory impact assessment.

7: Telefónica



RESPONSE TO USO CONSULTATION (COMREG DOC: 12/39)

1. Telefonica welcomes the opportunity to respond to the consultation on the scope and designation of Universal Service. Telefonica however would express concern at the outset that ComReg restricted any opportunity to the extension of the consultation period because of the need to quickly re designate an operator. ComReg have been aware for some time that this designation needed to be updated but have ensured through delay that the industry does not have an opportunity to respond in any detail to the consultation. Given the consultation circumstances, the decision looks like a *fait accompli* ;
2. We can now see from the latest application by eircom that the net cost for the industry of a USO designation is in the region of €6ml. The extension of the USO designation therefore has a potential cost to industry which should not lightly be extended without evidenced based research;
3. ComReg have argued, in relation to other sectors, that universal service obligations are not an appropriate mechanism to deal with the cost of national delivery of a service of general interest. It is difficult to reconcile therefore the decision to re designate eircom for a further two years;
4. Telefonica welcomes ComReg's approach to invite interested parties to tender for parts or all of the Universal Service. The model used by the DCENR for the national broadband scheme and the rural broadband scheme have been successful at identifying where uneconomic areas and customers exist and through transparent tendering processes identify operator(s) willing to offer some or all of those services. Telefonica would support ComReg's view that following the net cost application(s) by eircom under the current designation the identity of uneconomic areas and customers will be clear and Telefonica would encourage ComReg to use this data as the basis of the tendering process and a more productive engagement with industry on universal service in the future;
5. Telefonica believe the scope of Universal service should not be extended to broadband. The initiatives taken by the department referred to above and by ComReg in the consultation, have addressed any concerns in relation to uneconomic areas and customers;
6. In terms of the scope of the current designation, Telefonica agree with ComReg that it should review the information received as part of the 'net cost' application to better identify uneconomic customers and areas. Without this data it is hard to comment on the advisability of continuing the current scope of the designation. Specifically in relation to printed telephone directories and public pay phones the obligation would appear to be out of date given the alternatives open to consumers. Telefonica believes ComReg should consult on proposals to discontinue the printed telephone book, allowing only those who expressly require

it to continue to have this service. In relation to public payphones uneconomic phones should be detailed in a future consultation and the designation removed from those locations where no social or economic reason exists to maintain the payphone;

7. Ultimately the cost of provision of services in uneconomic areas and customers is reflected in prices consumers pay for electronic communications services. In the interests of transparency ComReg should identify the costs of these universal services and seek alternative solutions to the provision of these services.

Response to Consultation Questions:

Q. 1. Do you agree or disagree with ComReg's proposal that the next designation period should be a period of 2 years, from 1 July 2012 to 30 June 2014? Please provide reasons to support your view

A. 1. Telefonica believes that as industry is in a period of considerable change where it is possible that some aspects of the USO may no longer be required or which could be provided by others a two year designation could be potentially viewed as exclusionary to others providing some aspects of the USO, for example Directories or the National Directory Database – NDD, Payphones and which should now be put out to consultation as separate services and seek views on their continued provision.

Q. 2. Do you think an alternative duration for the next designation period should be considered? If so, what duration and why? Please provide reasons to support your view.

A. 2. Telefonica believe the maximum period of designation should be one year, during which time ComReg should consult on the current USO to determine if the current approach is the most efficient and best value for money. The USO arrangements in place represent a significant cost for industry and deserve a considered consultation process to update.

Q. 3. Do you agree or disagree with ComReg's proposal that, for the proposed next designation period, the required universal services should be designated for the entire State? Please provide reasons to support your view.

A. 3. Telefonica does not agree the designation should apply to the whole State, as there are significant differences between the urban and more rural areas. ComReg should

conduct a study to identify the uneconomic areas and customers that require universal services.

Q. 4. Do you agree or disagree with ComReg's proposal that Eircom should continue to be the universal service provider for the elements specified (section 5) during the next designation period, unless there are expressions of interest from other providers? Please provide reasons to support your view.

A. 4. Telefonica believes a proper review of the scope of USO is long overdue and the time has come to consider dropping some aspects of the USO obligations. ComReg have detailed how operators can offer expression of interest however given the time and evidence available this has not been possible. A serious engagement with industry on the elements of the USO and a serious commitment to consult with the general public on the provision of these services is required.

Q. 5. For future designation periods (after the proposed next designation period), do you agree or disagree with ComReg's approach to future designation methods for the provision of required elements of universal service? Please provide reasons to support your view.

A. 5. As stated above Telefonica believe the time to change the USO features is now, not two years from now. ComReg has mandated the industry will pay the unreasonable burden going forward and thus it is not reasonable or proportionate that we should be exposed to another two years of unnecessary features and potential inefficiencies. ComReg invite's others to volunteer to be designated and in response we express an interest for ComReg or the DCENR to issue public tenders to run certain facilities such as the NDD, payphones, phonebooks, etc. on commercial terms. There is no good reason why eircom is mandated to continue to provide facilities such as the ones listed above.

Q. 6. Do you have any further comments or suggestions about future designation methods, after the proposed next designation period, (to June 2014)? Please provide reasons to support your view.

A. 6. Telefonica does not accept that the industry should have to wait until 2014 for future designations and the current system should be reviewed and aspects offered for public tender within one year.

Q. 7. Do you have any comments about future designations covering only certain geographic areas and/or customers? Please provide reasons to support your view.

A. 7. No

Q. 8. Do you agree or disagree with ComReg's proposal not to include Broadband, at this stage, in universal service? Please provide reasons to support your view.

A. 8. Telefonica agrees with the ComReg proposal not to include Broadband within the universal service at this time, as this aligns with the European Commission's view and supports the European Commission view that the industry cannot afford the cost of such a condition.

Q. 9. Do you agree or disagree with ComReg's proposal to review its consideration of broadband as a universal service no sooner than 2014? Please provide reasons to support your view.

A. 9. Telefonica agrees with ComReg's proposal to review its consideration of broadband as a universal service no sooner than 2014 as the expense to mandating such is too expensive for the industry.

Q. 10. What is your view in relation to the preliminary view that Eircom should be designated as the USP with respect to access at a fixed location for the entire State for the next designation period? Please give reasons to support your point of view.

A. 10. As a mobile operator, Telefonica could not offer voice services at a 'fixed' location and given the prerequisites set out by ComReg in terms of national reach Telefonica supports the preliminary view eircom should be designated as the USP with respect to access at a fixed location for the entire State, for the next designation period. Telefonica however would restate its earlier view that ComReg have failed to justify its position on scope and the designation process and the minimum designation period should be adopted as an interim measure in advance of a fuller analysis on USO.

Q. 11. What is your view in relation to the current Reasonable Access Threshold? Please give reasons to support your point of view.

A. 11. No views

Q. 12. Do you agree or disagree that the present provision of directory enquiry services on a commercial basis continues to meet the needs of consumers? Please give reasons to support your point of view.

A. 12. Telefonica believes directory enquiry services is working commercially and meets the needs of consumers.

Q. 13. What is your view regarding the continued requirement to provide a printed directory to all consumers, unless the consumer requests not to receive it? Please give reasons to support your point of view.

A. 13. As discussed above Telefonica, ComReg should consider people opt-in to directories in the future hence the USO will be met with savings in production and distribution costs.

Q. 14. What is your view in relation to the preliminary view that Eircom should be designated as the USP with respect to the provision of a subscriber directory, for the next designation period? Please give reasons to support your point of view.

A. 14. Telefonica believe there is potential to commercially provide a subscriber directory service and such should be offered for tender by ComReg or the DCENR.

Q. 15. What is your view in relation to the preliminary view that Eircom should be designated as the USP with respect to the provision of public payphones throughout the State for the next designation period? Please give reasons to support your point of view.

A. 15. Given the levels of mobile telephone penetration in Ireland, it is Telefonica's view that payphones should now be removed from the USO and left to commercial supply, this is due to payphones only generally being provided where viable and substitute access (e.g., mobile phone) is widely available in other locations. ComReg should consult on those payphones it considers removing in uneconomic areas.

Q. 16. Do you agree that the current set of obligations is appropriate for consumers with disabilities in the context of the current scope of universal service, for the next designation period? Please give reasons to support your point of view.

A. 16. Telefonica agrees the current set of obligations is appropriate for consumers with disabilities although where similar are also required within the Users rights part of the regulations they should no longer be part of the USO.

Q. 17. Do you consider that the current measures (outlined above) provide appropriate protection for vulnerable consumers in terms of affordability? Please give reasons to support your point of view.

A. 17. Yes.

Q. 18. Do you agree with the approach with respect to call itemisation? Please give reasons to support your point of view.

A. 18. Telefonica agrees with the approach with respect to call itemisation, but we consider that the USP should be allowed promote electronic billing to its customers to reduce costs. However, where the USP does not to avail of more cost effective billing mediums the industry should not have to pay for that inefficiency.

Q. 19. Do you consider that the call-barring options proposed are necessary to enable consumers to control their expenditure? Please give reasons to support your point of view.

A. 19. Yes.

Q. 20. What is your view in relation to charges for availing of call barring options which are a means of controlling expenditure? Please give reasons to support your point of view.

A. 20. Telefonica agrees with ComReg's view

Q. 21. Do you consider that eircom's current Disconnection Policy is reasonable? Please give reasons to support your point of view.

A. 21. Telefonica agrees that the current eircom Disconnection Policy is reasonable as their basic logic of 'no pay', 'no service' is commercially reasonable.

Q. 22. Do you agree with the approach and conclusions in this regulatory impact assessment? Please give reasons to support

A.22 Telefonica believes ComReg need to conduct more evidence based analysis of the scope of the USO using market research and EU comparators. The imposition of USO 'net costs' on the industry at a time of significant change in the sector and financial challenges is likely to undermine the rationale to invest in Ireland. This is not addressed by ComReg.

8: UPC Communications Ireland Ltd.

The provision of telephony services under Universal Service Obligations
Scope and Designation

UPC Ireland response to ComReg consultation 12/39

Executive Summary and General Observations

- 1.1. UPC Communications Ireland Ltd. (UPC Ireland) welcomes the opportunity to comment on the above mentioned consultation and has provided feedback on the specific questions below.
- 1.2. In addition, UPC Ireland would like to take the opportunity to comment more broadly on the consultation process itself and on the concept of a universal service obligation (USO) and the designation of (a) universal service provider(s) (USP(s)).
- 1.3. In order to contextualise the current consultation it is useful to set out recent key developments with respect to the USO in Ireland. As ComReg will be aware, eircom was originally designated the USP for a fixed term in 2003, in 2006 and finally again in 2010. During the course of the 2010 designation, ComReg determined that as the USP, should eircom incur costs in meeting its USO and these costs having been verified by ComReg, eircom would be entitled to be compensated for these from June 2009 onwards. Monies to cover these costs would come from a yet-to-be-established fund to be financed by operators of electronic networks and services (ECN/ECS). On May 31, 2012 eircom submitted an application for funding for the financial year June 2009-June 2010 for an amount of 6.22m euro. A decision on a potential net cost/unfair burden on the UPC and the potential resulting size of any eventual fund and who would be required to contribute to the fund has yet to be made by ComReg and will be the subject of a separate consultation process expected to happen in the near future.
- 1.4. With respect to the current consultation and taking into consideration past and future timelines with respect to ongoing consultations on the USO, UPC Ireland would have the following general observations to make:
 - 1.4.1 Firstly it would appear to UPC that, further to having undertaken three separate USP designations in the recent past, the process and timelines required by ComReg to undertake proper and thorough analysis on USO (re-)designation should be well known to ComReg. It is the Regulator alone that determines the duration of the designation, which in 2010, was set to last until June 30, 2012. It is therefore of some surprise to UPC Ireland that the current consultation was only issued two months prior to the June deadline, which, allowing for adequate time for third parties to respond, has resulted in the Regulator having to expedite and rush through this exercise. This would not appear to UPC Ireland to be an appropriate manner in which to conduct an important review on such an important issue.



- 1.4.2 The main focus of the current consultation is to consider the re-designation of eircom as the USP and separately, to invite third parties to express any interest they may have to in fulfilling the USO (in full or in part) from July 1, 2012. Such parties (other than eircom) are however severely handicapped in their ability to make a credible application (by virtue of the fact that neither eircom nor ComReg have yet disclosed any meaningful information with respect to the USO as it has been provided to date). Indeed, confirmation from ComReg that eircom will be again designated the USP for a further two years, is the only realistic outcome of this consultation. That UPC Ireland may not in of itself be interested in being a USP is of little consequence – the company is hugely concerned at what it views as a dangerous precedent and one which is grossly unfair to any provider that might have wished to put forward a credible proposal to become a USP.
- 1.4.3. Based on the above, it would appear to UPC Ireland that the current consultation is yet another example of poor time and project management by ComReg – an issue which UPC Ireland and the industry as a whole has already brought to the Regulator’s attention on a several occasions with respect to a number of regulatory policy areas.
- 1.4.4. On a more general note and with respect to particular positions put forward by ComReg in this consultation, UPC Ireland would offer the following observations with respect to:

1.5 The USO provision

- 1.5.1. The origins of the USO, as it is known today, date back to EC Directive 2002/22/EC as amended by 2009/136/EC when it was felt it was necessary to ensure provision of a connection at a fixed location to the public telephone network and for access to publicly available telephone services at a fixed location, as well as access to three further services (directory and directory enquiry services, payphones, special measures for disabled users). Since that time the telephony landscape has of course changed considerably. The take up of mobile services now means that Ireland has a mobile penetration of 107%.¹ The affordability of these mobile services (including pre-paid) is not generally called into question.
- 1.5.2. This level of mobile penetration and the retail price at which mobile services are delivered raise two interesting points. Firstly, it would call into question whether there is indeed still a need for a policy provision to ensure the availability of telephony services per se and secondly the question arises as to whether ComReg’s proposed requirement to do so via fixed network is justifiable.

¹ ComReg Quarterly Data Report, Data as of Q4 2011, ComReg 12/20, March 2012.



- 1.5.3. On the first, ComReg appears to be declaring at face value that the USO is still required and this without any apparent economic or market analysis. To go further and to take the position that notwithstanding the absence of any justifiable rationale for the continued provision of a USO, UPC Ireland finds ComReg's proposal to the effect that eircom should benefit from a de-facto re-designation, very alarming.
- 1.5.4. That ComReg determines that it will de-facto re-designate eircom as the USP only because it has run out of time and no other provider will be able to make a meaningful application between now and the deadline, is also alarming and hugely frustrating for any provider that may wish to consider becoming a USP from July 1, 2012. It is particularly disappointing since the management of this process resides with ComReg alone and could have been easily avoided if it had managed the process differently.
- 1.5.5. With regards the second, the continued emphasis on delivery of telephony through a fixed network not only ignores the current national reach of (multiple) mobile networks but it would also appear to preclude the designated USP from meeting its key USO obligation by mobile means. This was surely not the original intent of the EU policy which was merely to ensure that consumers have access to: a connection at a fixed location to the public telephone network and for access to publicly available telephone services at a fixed location. It follows therefore that if the current USP or future USPs is/are in a position to satisfy USO obligations via mobile means, it/they should be allowed to do so.
- 1.5.6. Following on from this, it is of particular note that ComReg recognises twice in its consultation document that the definition in Article 4 of the Universal Service Directive (USD) and transposed into Irish law of a "*connection at a fixed location to the public telephone network and for access to publicly available telephone services at a fixed location*" is technology-neutral. In spite of this, ComReg appear to insist on delivery of the service by means of a fixed network at certain points in the consultation document - although this is not expressly stated in the draft Statutory Instrument in Section 6 of the same consultation document.² This is important, since if one is to consider the intended and stated objectives of Article 4 of the USD, it would follow that if for economic or other reasons, the USP/USPs wished to meet obligations by means of mobile technology, there would be no issue in doing so. This is a critical nuance in a country such as Ireland that has a high percentage of one-off-housing and a high mobile penetration rate.
- 1.5.7. Further, if it was the case (which it is not), that USO could only be satisfied by the USP having a ubiquitous fixed national network, this would mean that only eircom could ever satisfy this requirement. If ComReg is to proceed with this approach (to require the existence of a fixed network to offer fixed telephony services), this is

² "Universal Service is not only about enabling people to be connect to a fixed telephone network – it is also important that all consumers who wish to remain connected to the fixed network can do so" Section 102, Pg 29, ComReg consultation 12/39.



likely to add significantly to the costs incurred in making the service available. In addition, it ignores alternative and arguably more cost efficient solutions (e.g. delivering the services via mobile). This may result in triggering the creation of an unnecessary financial compensation mechanism which may affect other electronic communications networks and services (ECN, ECS) since they may be required to contribute to cover net costs/unfair burden incurred. On a separate but related point, in the event the USP has *not employed* the most cost efficient means by which to make the service available while it *is given the freedom* to select the most cost efficient means, the difference between the most cost effective solution and the actual cost incurred, should be borne by the USP alone. That third parties may be on hand to pick up the tab is not a justification in itself for not ensuring delivery of service via the most cost effective means.

1.5.8. As has been stated previously, mandated utilisation of a fixed network is not, nor has it ever been since 2002, the intent of the USO. Rather the focus is to ensure the availability of telephony services at a fixed location, on a technology-neutral basis. ComReg's document is therefore – at a minimum – ambivalent, and indeed its proposals may not be in accordance with the applicable legal framework.

1.6. Scope

UPC Ireland welcomes the proposal by ComReg not to bring broadband in scope in this particular re-designation. ComReg correctly points to the existence of the National Broadband Scheme and the soon-to-be-launched Rural Broadband Scheme which will ensure the universal provision of broadband in Ireland. The current approach is also consistent with the position taken by the European Commission to date.

1.7. Application for funding by the USP

1.7.1 While outside the remit of the current consultation, UPC Ireland would like to reiterate its views with respect to how applications for funding by the current USP are processed by ComReg.

1.7.2 As previously stated, UPC Ireland fundamentally disagrees with ComReg's intended approach whereby it will not make the detail of the USP application for funding public. (Indeed, at present, ComReg has only published the global amount of €6.22m for eircom's application for the financial year 2009/2010). It is UPC Ireland's view that any request for funding by the USP has to be made available for review. UPC Ireland does not accept that there would be any legitimate grounds for keeping such information private and would strongly argue that any operator that is required to contribute to any eventual fund has to have sight of the detail of the bill they will potentially be asked to cover. A reluctance to disclose details on grounds of commercial sensitivity is not justifiable and at the very minimum, should be determined by an independent adjudicator.



Q. 1 Do you agree or disagree with ComReg's proposal that the next designation period should be a period of 2 years, from 1 July 2012 to 30 June 2014? Please provide reasons to support your view.

UPC does not disagree with the proposed designation term of two years assuming this allows ComReg enough time to conduct appropriate analysis and consultations in advance of any future (re)-designation(s). See comments at Sections 1.4 – 1.5 above

Q. 2 Do you think an alternative duration for the next designation period should be considered? If so, what duration and why? Please provide reasons to support your view.

See response to Q1.

Q. 3 Do you agree or disagree with ComReg's proposal that, for the proposed next designation period, the required universal services should be designated for the entire State? Please provide reasons to support your view.

UPC Ireland does not disagree that national coverage may be an appropriate basis for any future designation of the USP for connection at a fixed location to the public telephone network and for access to publicly available telephone services at a fixed location. Should the USO ever expand to include services beyond telephony (e.g. broadband) more detailed consideration as to the feasibility of ensuring nation-wide coverage will be necessary (particularly if it strays into the product specification arena).

Q. 4 Do you agree or disagree with ComReg's proposal that Eircom should continue to be the universal service provider for the elements specified (section 5) during the next designation period, unless there are expressions of interest from other providers? Please provide reasons to support your view.

UPC Ireland disagrees. See comments at Sections 1.4.2 and 1.5.2-1.5.8 and 1.7 above.

Q. 5 For future designation periods (after the proposed next designation period), do you agree or disagree with ComReg's approach to future designation methods for the provision of required elements of universal service? Please provide reasons to support your view.

UPC Ireland is not in a position to respond as it is unclear what, if anything, ComReg has set out in this regard. See also commentary at Sections 1.5.2-1.5.8, 1.6 and 1.7.



Q. 6 Do you have any further comments or suggestions about future designation methods, after the proposed next designation period, (to June 2014)? Please provide reasons to support your view.

UPC Ireland would advocate that future designations should be run by open tender and that mobile delivery of a connection at a fixed location to the public telephone network and for access to publicly

available telephone services at a fixed location should be explicitly permitted (and costs for not utilising the cheapest solution should be deducted from any eventual financial compensation).

Q. 7 Do you have any comments about future designations covering only certain geographic areas and/or customers? Please provide reasons to support your view.

UPC Ireland does not have a view point on this.

Q. 8 Do you agree or disagree with ComReg's proposal not to include Broadband, at this stage, in universal service? Please provide reasons to support your view.

UPC Ireland strongly agrees with this proposal. The inclusion of broadband is premature particularly given the current status of the market including the roll out of that National and Rural Broadband Schemes, current commercial deployments of fixed and mobile broadband services by the private sector and the expected roll out of LTE-based wireless services in the near future. See also commentary at Section 1.6.

Q. 9 Do you agree or disagree with ComReg's proposal to review its consideration of broadband as a universal service no sooner than 2014? Please provide reasons to support your view.

UPC Ireland agrees. A two year designation would appear to UPC Ireland to be the minimum term for any possible future designation. UPC Ireland would expect the licensees in the 800, 900 and 1800MHz bands to have deployed LTE by that time.

Q. 10 What is your view in relation to the preliminary view that Eircom should be designated as the USP with respect to access at a fixed location for the entire State for the next designation period? Please give reasons to support your point of view.

UPC Ireland disagrees. Please see commentary at Sections 1.4, 1.5 and 1.7.

Q. 11 What is your view in relation to the current Reasonable Access Threshold? Please give reasons to support your point of view.

UPC Ireland does not have a view on the Reasonable Access Threshold.



Q. 12 Do you agree or disagree that the present provision of directory enquiry services on a commercial basis continues to meet the needs of consumers? Please give reasons to support your point of view.

UPC Ireland agrees and believes this is sufficient.

Q. 13 What is your view regarding the continued requirement to provide a printed directory to all consumers, unless the consumer requests not to receive it? Please give reasons to support your point of view.

UPC Ireland would disagree with the intention to continue to require the USP to offer phone books as part of its USO. UPC Ireland believes phone books are an antiquated service that has long since been replaced by more modern and efficient methods (internet, directory enquires) of looking up a phone number. At the very minimum, should ComReg persist in its intention to maintain this as part of the USO requirements, it should change the status for a phone book from an opt-out to an opt-in – i.e. consumers have to deliberately elect to receive a phone book rather than them having to request not to receive a copy.

Q. 15 What is your view in relation to the preliminary view that Eircom should be designated as the USP with respect to the provision of public payphones throughout the State for the next designation period? Please give reasons to support your point of view.

It would appear to UPC that the requirement to continue to offer and maintain public payphones is a somewhat outdated concept – particularly in light of the current mobile penetration rate of 107%. It would appear to UPC Ireland that ComReg may have missed an opportunity to review the continued provision of these services in this particular designation. However it is noted that ComReg intends to conduct a review between this designation and the next. UPC Ireland believes such a review is timely and merited.

Q. 14 What is your view in relation to the preliminary view that Eircom should be designated as the USP with respect to the provision of a subscriber directory, for the next designation period? Please give reasons to support your point of view.

Please see response to Questions 12 and 13.

Q. 16 Do you agree that the current set of obligations is appropriate for consumers with disabilities in the context of the current scope of universal service, for the next designation period²⁴? Please give reasons to support your point of view.

It would appear to UPC Ireland that these provisions are appropriate for the USP, all the more so if the USP is compensated for any costs incurred in making such services available.



Q. 17 Do you consider that the current measures (outlined above) provide appropriate protection for vulnerable consumers in terms of affordability? Please give reasons to support your point of view.

UPC Ireland does not have a particular viewpoint on this issue.

Q. 18 Do you agree with the approach with respect to call itemisation? Please give reasons to support your point of view.

UPC Ireland agrees that the current status quo, where call itemisation requirements are applicable to the USP, is appropriate.

Q. 19 Do you consider that the call-barring options proposed are necessary to enable consumers to control their expenditure? Please give reasons to support your point of view.

UPC Ireland does not have a particular viewpoint on this. It would appear to UPC that any regulatory requirements on call barring should be applicable to the USP only. Beyond this, it should be at the discretion of the network service provider whether or not to offer this facility. In the event this is viewed as an important feature by the relevant consumer, this will be presumably be reflected in their choice of service provider.

Q. 20 What is your view in relation to charges for availing of call barring options which are a means of controlling expenditure? Please give reasons to support your point of view.

See response to Questions 18 and 19 above.

Q. 21 Do you consider that Eircom's current Disconnection Policy is reasonable? Please give reasons to support your point of view.

UPC Ireland does not have a view on this question with respect to Eircom's disconnection policy for non-payment of bills. UPC Ireland would note however that ComReg currently have a separate consultation with respect to the optimisation of inter-operators processes to facilitate consumer switching (ComReg document 12/40). UPC Ireland is currently reviewing that consultation and commentary with respect to disconnection for this particular USO consultation (ComReg 12/39) is without prejudice to any comments the company may make on ComReg 12/40.

Q. 22 Do you agree with the approach and conclusions in this regulatory impact assessment? Please give reasons to support your point of view.

UPC Ireland does not agree with the approach or the conclusions of the regulatory impact assessment (RIA).

UPC welcomes the fact that ComReg recognises the value in undertaking a RIA, the purpose of which is to understand the potential effects a decision may have on all relevant stakeholders.



However by adopting an approach that fixed telephony services can only be provided over a fixed network and not examining the (financial) impacts this decision on those that may be required to fund delivery of this service, ComReg is not fulfilling the objectives of the regulatory impact assessment exercise. As stated throughout this paper, the delivery of services at a fixed location, as provided in Article 4 of the USD, is in fact technology neutral. At no point is there a requirement that these services equate to ensuring a customer has access to a fixed network.

If ComReg chooses to ignore alternatives such as that mentioned in Section 1.5 of this paper, it should consider the impact of taking such a decision as part of the RIA exercise. To this end, the scope of the RIA should be extended to include an assessment of the impact of ComReg's decision to require the making available of services at a fixed location by a fixed telephony network only, and what this will mean for those that may be required to fund the provision of this service by ComReg's chosen mode of delivery.

June 5, 2012



9: Vodafone



THE PROVISION OF TELEPHONY SERVICES UNDER UNIVERSAL SERVICE OBLIGATIONS – SCOPE AND DESIGNATION

Introduction

At the time of submitting this response (5th June 2012), ComReg have confirmed (via ComReg document 1257) that Eircom has made a submission for USO net cost funding of €6.22m. It can reasonably be expected that a submission of this magnitude will be accompanied by substantial information supporting Eircom's net cost calculation and further to decide whether or not to establish a universal service fund. The timing of the funding application, coinciding as it does with the last few days allowed by ComReg to submit responses to this consultation, and with the latest possible application submission date allowed under a deadline extension granted by ComReg to Eircom (when the latter failed to meet a previous extension of the submission deadline) raises fundamental concerns about the fairness and robustness of the consultation process.

In Vodafone's view the process is seriously flawed in a number of aspects, including the following;

- ComReg has allowed a situation to occur where information vital to ComReg itself in order to present a set of evidence based proposals and a robust impact assessment only became available at the very end of the consultation period itself. The failure to obtain this information in a timely fashion and to make it available to other stakeholders in advance of this consultation process has led ComReg to predetermine a roll-over of Eircom's designation and to render the consultation process effectively moot.
- ComReg invites interest from other parties to supply universal services while well aware that much of the information required to support such an application is not available due to ComReg's own decisions on the timing of Eircom's application for funding.
- ComReg has rejected (in advance) any application from respondents for an extension to the response deadline even though information critical for effective and fully informed responses has become available during the consultation period.

Vodafone non-confidential response to ComReg 12/39 – The provision of telephony services under Universal Service Obligations – Scope and Designation

- ComReg justifies this strict enforcement of the deadline on the basis that it is legally obliged to designate a USP on or before the 1st July 2012. It is arguable that such a legal justification exists.
- Vodafone notes that the purported deadline for re-designation is entirely of ComReg's own construction and would remind ComReg that at the time of the last designation Vodafone cautioned ComReg against setting too short a designation period in the light of the uncertainty around the timing of the European Commission's workstream on USO.
- ComReg is proposing to re-designate Eircom as the sole USP while simultaneously being in possession of information which may prove that no such designation is required for some or all of the universal services.

In effect, the consultation process amounts to ComReg proposing to rubber-stamp Eircom's re-designation as a USP following a token effort to elicit submissions from other parties who may also be interested. This is not acceptable or supportable. ComReg has failed to carry out the required analysis or gathered the necessary information to support the proposals it makes in this consultation regarding the re-designation of Eircom as USP. It has failed to provide other stakeholders with the necessary information to make robust applications to become USPs in their own right. On this basis, the process is fundamentally flawed.

Vodafone formally requests as part of this response that any new information which has come into ComReg's possession before the response deadline, and which directly or indirectly relates to the subject of this consultation, should be immediately assessed by ComReg and made available to stakeholders before ComReg makes its final decision on Eircom's re-designation. ComReg should also accept further input from respondents submitted on the basis of that newly acquired information. Failure to pursue either or both of these actions will in Vodafone's view, fatally undermine the basis of any decision pursuant to this consultation.

Vodafone will now address the specific questions in the consultation:

Q. 1 Do you agree or disagree with ComReg's proposal that the next designation period should be a period of 2 years, from 1 July 2012 to 30 June 2014? Please provide reasons to support your view.

In Vodafone's view, there is insufficient information provided in the consultation to support ComReg's view that the next designation should be for a period of two years. In addition, from past experience of USO designation durations, it is difficult to be confident in any assessment by ComReg of what constitutes a reasonable period to complete all the activities which must be undertaken before the next designation is required. In ComReg 1046 and contrary to proposals for a longer designation put forward by Vodafone, Alto and Ireland off-line, ComReg set the designation period as two years. ComReg supported the two year designation on the following grounds; *Having carefully considered the views expressed by respondents, ComReg is of the view that, in order to provide certainty for stakeholders with respect to universal service, while allowing for a*

review in a reasonable timeframe, a two-year designation period is appropriate at this stage.

This statement certainly bears closer scrutiny. Firstly, it cannot reasonably be argued that any level of certainty has been given to industry stakeholders in relation to universal service as a result of the previous two year designation. Eircom have been able to delay the supply of information to support an application for funding until one month before the current designation expires. This notwithstanding the fact (acknowledged by ComReg in this consultation) that such information is likely to be indispensable to any other party wishing to make a fit-for-purpose application to become a USP for some or all of the designated universal services. This is truly remarkable since, in granting Eircom additional time to make an application for funding, ComReg was fully aware that this would mean that no new information would be available to either ComReg or the wider market at the time it would be consulting on a new designation and inviting applications from alternative providers. The inevitable outcome of this is a consultation process which amounts effectively to a rubber-stamping of Eircom's re-designation as the sole USP, and a half-hearted and token invitation to other parties to make applications.

Secondly, ComReg plainly intended the current two year period to provide sufficient time for a review of the current designation and to open the possibility for other parties to make applications to become USPs. However in the intervening period, ComReg failed to ensure that any parties considering making such an application had the required information at their disposal. The lack of information also means that ComReg is no nearer than it was two years ago to discovering whether the current delivery of universal services by Eircom is efficient. In addition, none of the required information has been made available by ComReg which would allow other operators contemplating making an application to supply universal services to do the necessary business case analysis. Indeed, even if by some other means a business case could be constructed, any application would inevitably fail since there is insufficient time for an applicant to implement all of the activities required to supply universal services before the new designation period begins on July 1 2012.

Q. 2 Do you think an alternative duration for the next designation period should be considered? If so, what duration and why? Please provide reasons to support your view.

Vodafone believe that the first two tasks described in paragraph 26, are not relevant to assessing the period required for the next designation. The first point relating to Eircom's submission for universal service funding for the period 2009-2010 should not be considered since Eircom must make this application before 31 May 2012 which is within the current period. The second point relating to ComReg's assessment of the application is immaterial to Eircom's, or any other provider's, designation as a USP. It is a completely separate regulatory task which must be undertaken in any case once a funding request has been submitted.

Only the latter two workstreams are relevant, namely;

- (a) ComReg's evaluation of the specific details of any universal service obligation and its determination and implementation, as appropriate, of the most appropriate future designation method(s),and

(b) A transition period, if relevant, to a new USP or USPs.

These alone should determine the length of the upcoming designation which should on this basis be shorter than the 2 years proposed by ComReg.

In addition Vodafone notes that these activities are ones which should be undertaken by ComReg for any designation/re-designation. During the period of the current designation ComReg has not observably commenced these activities. If, as ComReg asserts, it currently has a statutory obligation to designate some entity as USP then it is undoubtedly a pre-requisite to carry out the necessary preparatory work to enable it to discharge this obligation in a reasonable and fair manner.

Q. 3 Do you agree or disagree with ComReg's proposal that, for the proposed next designation period, the required universal services should be designated for the entire State? Please provide reasons to support your view.

In paragraph 30, ComReg states "*In order for ComReg to fully consider designation for specific areas or customers—rather than on a national basis—ComReg requires details of those customers or areas that would not be served by the market and of those services or facilities that would not be provided if the USO did not exist. As the universal service provider for many years, Eircom is best placed to provide this information and it is required to do so in the course of its application for universal service funding for the financial year 2009/2010*".

Since ComReg concedes that it does not have any information on which to assess whether a designation should continue to be for the entire state (this may no longer be strictly true depending on the content of Eircom's USO funding request), Vodafone fails to see how any other party (with the exception of Eircom) could have a basis to agree or disagree with ComReg on this particular question. Despite having extensive information gathering powers, ComReg has allowed a situation arise where it cannot make a decision due to a lack of information. This clearly need not have occurred as there was no need for ComReg to rely exclusively on Eircom to provide this information as part of a funding request, ComReg could have required it to be provided under a Regulation 13D(1) direction¹. ComReg chose not to do this, with the result that Eircom now control the pace at which progress on universal service issues progress. This is clearly not desirable and should not be acceptable.

Nor can it be argued that requiring Eircom to provide such information would be overly burdensome, particularly as it relates to universal services such as Payphones, Directory Services, Services for Disabled Services and Control of Expenditure. ComReg could have requested information relating to these services at any time during the current designation period. Had it done so, and had it made the information available (subject to its confidentiality obligations), it is possible that applications could have been received for alternative providers for some or all of these services (Vodafone believes that information relating to the Provision of Access at a Fixed Location could also have been obtained over the same period but accepts that this is a more resource intensive exercise).

¹ Information request pursuant to Regulation 13D(1) of the Communications Acts 2003 to 2011

Vodafone non-confidential response to ComReg 12/39 – The provision of telephony services under Universal Service Obligations – Scope and Designation

On this basis, Vodafone can neither agree nor disagree and would require further information on this matter in order to assess the reasonableness of the proposal.

Q. 4 Do you agree or disagree with ComReg's proposal that Eircom should continue to be the universal service provider for the elements specified (section 5) during the next designation period, unless there are expressions of interest from other providers? Please provide reasons to support your view.

Vodafone's ability to comment on this question is severely curtailed due to the lack of information relating to the current provision of universal services. ComReg is asking respondents to agree or disagree on whether Eircom should continue to be the sole provider of universal services unless other parties express an interest. It is unreasonable for ComReg to qualify its proposal to roll-over Eircom's USO designation on the possibility of expressions of interest coming from other parties while at the same time acknowledging ComReg itself cannot formulate positions on various aspects of USO due to a lack of information. On this basis, Vodafone can neither agree nor disagree and would require further information on this matter in order to assess the reasonableness of the proposal. At the time of developing this response, ComReg confirmed that Eircom has made a submission for USO funding. It is reasonable to assume (in the absence of a view of the submission) that Eircom have supplied a substantial amount of material to substantiate its claim. A view of the relevant information from that submission (subject to ComReg's confidentiality obligations) would be of great assistance to Vodafone and other stakeholders in submitting reasonable and meaningful responses to this and other questions in this consultation.

However, even if such information was made available without undue delay, a response date of 5th June 2012 would simply not allow respondents the opportunity to analyse the data and formulate replies based on its content. It is on this basis that in our introduction, Vodafone requested that any new information which has come into ComReg's possession before the response deadline, and which directly or indirectly relates to the subject of this consultation, should be immediately assessed by ComReg and made available to stakeholders **before ComReg makes its final decision on the Eircom's re-designation**. In addition, ComReg should also accept further input from respondents submitted on the basis of that newly acquired information.

Notwithstanding the above, Vodafone considers that there are potentially two very distinct categories of end-users availing of USO who should be taken into account when contemplating designating a provider for universal services (particularly relation to the provision of access at a fixed location). Indeed, this consideration should be taken into account when determining if a USP is required at all for this service.

The first of these are customers who already have a telephone service. In this category, Eircom will have already sunk the cost of providing access. Where the revenue from serving these customers exceeds the marginal operational costs of providing the service then Eircom has a positive business case to continue to provide service even were someone other than Eircom might be designated as USP. ComReg already has available to it, detailed information as regards the cost of Eircom's network including repair processes arising from the LLU cost model. From this, ComReg should be able to identify

Vodafone non-confidential response to ComReg 12/39 – The provision of telephony services under Universal Service Obligations – Scope and Designation

lines or categories of existing lines which either do or do not cover their marginal operational costs.

The second category is those end-users who are making a new application for telephone service. In this case ComReg has carried out no analysis where the locations of currently unconnected premises is nor has it correlated this with information regarding the extent of mobile coverage or where there are potentially competing fixed network infrastructures such as cable. This information should be capable of being analysed to identify the areas which potentially would require USO support.

ComReg did not need to await an application by eircom for USO funding to carry out the analysis set out above. Such an analysis would have set a maximum potential scope for any USO obligation and would have allowed an assessment on whether USO needs be fully national in scope.

Notwithstanding any information that might not have been available until eircom made its claim for USO funding for the period 2009/2010, ComReg has included some analysis which would not rely on this information.

It is Vodafone's view that this analysis is overly simplistic and flawed and cannot be relied on to reach conclusions as to the re-designation or otherwise of eircom. Examples of this flawed analysis include the issue of whether voice services provided over the mobile network are a more effective method of meeting USO requirements. Specific examples of the defects in ComReg's reasoning are set out below.

In its reasoning ComReg refers to the fact that "*the likelihood of fixed phone ownership increases with age*". While this may be true based on the totality of the market, ComReg has not considered what the age profile is of those applying for fixed telephone service for the first time and has not correlated the age demographic of those applying for telephone service for the first time with the age profile for mobile phone ownership. In light of this incomplete analysis ComReg's reliance on any analysis of mobile customers' age distribution is flawed.

ComReg seems to imply that the fact that mobile coverage requirements are "*measured on an outdoor basis*" means that mobile cannot be considered an effective mechanism for supplying telephony service at a fixed location. This approach conflates the network capability with the terminal capability and the type of subscription. Eircom uses a "Fixed Cellular Solution", which Vodafone understands uses the mobile network to provide the fixed access layer but does so on the basis of dedicated terminal equipment and a fixed telephone subscription. ComReg has failed to properly analyse the potential for the use of a mobile network to service USO demands as opposed to mobile subscriptions. In this regard its analysis is partial and incomplete and cannot be relied on to draw any conclusions in respect of USO designation.

Q. 5 For future designation periods (after the proposed next designation period), do you agree or disagree with ComReg's approach to future designation methods for the provision of required elements of universal service? Please provide reasons to support your view.

Vodafone non-confidential response to ComReg 12/39 – The provision of telephony services under Universal Service Obligations – Scope and Designation

Vodafone's ability to comment on this question is severely curtailed due to the lack of information relating to the current provision of universal services. Once further information is made available, Vodafone will be happy to provide responses on future designation methods (including a possible tendering process).

Q. 6 Do you have any further comments or suggestions about future designation methods, after the proposed next designation period, (to June 2014)? Please provide reasons to support your view.

Please see answer to question 5.

Q. 7 Do you have any comments about future designations covering only certain geographic areas and/or customers? Please provide reasons to support your view.

In our answer to question 4, Vodafone has given views on the potentially two very distinct categories of end-users availing of USO. This distinction should, in our view, inform not only Comreg's current thinking in relation to any USO designation but should also inform it into the future.

Q. 8 Do you agree or disagree with ComReg's proposal not to include Broadband, at this stage, in universal service? Please provide reasons to support your view.

Vodafone agrees with ComReg proposal not to include broadband at this stage in universal service. We support ComReg's assessment of the current situation and the means, other than through universal service, by which the benefits of broadband can be brought to the citizens of this country. These include those initiatives already in place such the National Broadband Scheme (NBS) and the proposed Rural Broadband Scheme (RBS) as well as the upcoming multi-band spectrum auction, which will also contribute to the roll-out of faster and more ubiquitous broadband. The proposed Government National Broadband plan will hopefully provide the policy drivers, the updated guidelines and legislative changes and the impetus to accelerate the rollout of high speed broadband services.

In light of the developments and with due regard to the importance of widespread broadband availability (to at least a basic 2Mb\sec service), Vodafone further supports ComReg's proposal to further review this issue in 2014.

Q. 9 Do you agree or disagree with ComReg's proposal to review its consideration of broadband as a universal service no sooner than 2014? Please provide reasons to support your view.

Please see answer to question 8.

Q. 10 What is your view in relation to the preliminary view that Eircom should be designated as the USP with respect to access at a fixed location for the entire State for the next designation period? Please give reasons to support your point of view.

Vodafone's ability to comment on this question is severely curtailed due to the lack of information relating to the current provision of this universal service. For example, without detailed information relating to uneconomic customers or areas it is possible

Vodafone non-confidential response to ComReg 12/39 – The provision of telephony services under Universal Service Obligations – Scope and Designation

that any proposals made by Vodafone in this regard could prove to be impractical or not required at all in light of information which may be provided by other parties in the near future. Vodafone would urge ComReg that now that further information has become available as a result of any funding request by Eircom, this should be made available to interested parties as soon as possible - subject only to ComReg's confidentiality obligations.

Q. 11 What is your view in relation to the current Reasonable Access Threshold? Please give reasons to support your point of view.

Without further information, it is difficult to be definitive on whether the current threshold is reasonable and objectively justified.

Vodafone is aware that Eircom has provided services to customers in some locations (presumably not already served by fixed infrastructure) by means of a fixed cellular solution (FCS). The logical conclusion that can be derived from this decision is that the provision of a fixed service by means of FCS should not be more expensive than the threshold level of €7,000 since (any cost above this can be recovered from the requesting customer). If that is the case, then the threshold level should be set to align with the delivery of service via FCS or indeed any other technology offering lower cost than copper.

Q. 12 Do you agree or disagree that the present provision of directory enquiry services on a commercial basis continues to meet the needs of consumers? Please give reasons to support your point of view.

Directory services are already offered on a competitive basis by many different providers through operators, voice recognition technologies, and SMS. Availability of the same information (for free) through the internet is a further competitive alternative to traditional directory services providers. Many Member States have already taken directory services out of the USO concept. On this basis, Vodafone would agree with that customer's needs are met commercially and without the requirement for universal service.

Q. 13 What is your view regarding the continued requirement to provide a printed directory to all consumers, unless the consumer requests not to receive it? Please give reasons to support your point of view.

Vodafone agrees that there is an ongoing requirement for a significant cohort of customers to be provided with a printed directory. What Vodafone does not agree with, is that Eircom should be re-designated as the sole provider of this universal service without a proper analysis and on the basis of object evidence justifying the decision. This has clearly not been provided in this case and ComReg was always at liberty during the current designation to obtain the information to support this proposal. It clearly failed to do so for reasons that have not been outlined here.

Q. 14 What is your view in relation to the preliminary view that Eircom should be designated as the USP with respect to the provision of a subscriber directory, for the next designation period? Please give reasons to support your point of view.

Please see response to question 13.

Q. 15 What is your view in relation to the preliminary view that Eircom should be designated as the USP with respect to the provision of public payphones throughout the State for the next designation period? Please give reasons to support your point of view.

In the context of the essentially ubiquitous availability of mobile communications services, Vodafone does not believe that it is likely that there is any longer a necessary requirement for the imposition of a universal service obligation with respect to the provision of public payphones throughout the state.

Vodafone notes that a detailed cost-benefit analysis has again not been included by ComReg as part of its Regulatory Impact Assessment to establish whether the costs of providing the remaining public payphones covered under the USO are proportionate relative to any economic or social benefit to consumers that may arise. If it is the case that the costs of public payphone provision are entirely disproportionate relative to the benefits to consumers then it must be seriously considered whether the resources devoted to public payphone provision would not be more efficiently deployed elsewhere to meet customer and wider societal needs.

Vodafone considers that a more detailed assessment of the relevant benefits and costs of public payphone provision is required before a final decision on the designation of a USP with respect to the provision of public payphones is made. However, on the basis of the available information, it is Vodafone's view that there is no clear justification for a universal service obligation on a designated operator with respect to public payphone provision and that this obligation should accordingly be withdrawn.

Q. 16 Do you agree that the current set of obligations is appropriate for consumers with disabilities in the context of the current scope of universal service, for the next designation period? Please give reasons to support your point of view.

Subject to the outcome of the proposed ComReg consultation on measures to do with accessibility of telecommunication services in accordance with Regulation 17 of the Universal Service regulation, Vodafone agrees that the current set of obligations is appropriate for consumers with disabilities in the context of the current scope of universal service.

Q. 17 Do you consider that the current measures (outlined above) provide appropriate protection for vulnerable consumers in terms of affordability? Please give reasons to support your point of view.

There are currently very strong incentives for the market to provide competitively priced mobile communications services to consumers, and to maintain and increase the affordability of these services. With consumer spending continuing to shrink, this trend is likely to continue in the future. This is progressively reducing the requirement for current affordability measures required under the universal service obligation.

Vodafone non-confidential response to ComReg 12/39 – The provision of telephony services under Universal Service Obligations – Scope and Designation

On this basis, existing measures should be kept under continuous review in terms of determining their necessity and effectiveness in ensuring affordability for vulnerable user groups to the extent that this is not already being achieved by competition in the market.

Q. 18 Do you agree with the approach with respect to call itemisation? Please give reasons to support your point of view.

Q. 19 Do you consider that the call-barring options proposed are necessary to enable consumers to control their expenditure? Please give reasons to support your point of view.

Q. 20 What is your view in relation to charges for availing of call barring options which are a means of controlling expenditure? Please give reasons to support your point of view.

Q. 21 Do you consider that Eircom's current Disconnection Policy is reasonable? Please give reasons to support your point of view.

Q. 22 Do you agree with the approach and conclusions in this regulatory impact assessment? Please give reasons to support your point of view.

Vodafone believes that ComReg's approach to the Regulatory Impact Assessment is fundamentally flawed.

Vodafone believes that the impact assessment of what is reasonable as an implementation of the Universal Service should take the form of a cost-benefit analysis using quantitative and other objective evidence to a greater extent than currently so as to adequately demonstrate that all aspects of the proposed approach are objectively justified and proportionate. The lack of information available to ComReg and all other stakeholders at this time (with the exception of Eircom), has resulted in a RIA that does not provide a fair opportunity to support a change from the status quo.

Notwithstanding the above, Vodafone agrees with ComReg's position that the provision of some universal services may confer a benefit on Eircom and must be accounted for when assessing the degree of any burden or net cost which the designation as USP may entail.