



Commission for
Communications Regulation

Response to Consultation

The Future Framework for the Regulation of Universal Service in the Irish Telecommunications Market

Provision of Telephony Services to Users

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An Coimisiún um Rialáil Cumarsáide

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1 Foreword

On behalf of the Commission, I am pleased to present our Response to Consultation on the Future Framework for the Regulation of Universal Service in the Irish Telecommunications Market which follows our consultation 02/116. I wish to thank the six respondents who provided views in relation to this paper.

The concept of universal service is one of the cornerstones of the European communications regulatory framework and is designed to ensure that every person can receive a basic set of high quality telecommunications services, no matter where they live, at an affordable price. The existing Irish universal service regime, in place since 1999, required updating in view of the new EU Framework. The issues set out in the consultation focused on how the provision of services such as telephone lines, payphones and directory services could continue to evolve in line with changing user needs, market developments and recent changes in the EU regulatory framework.

Given eircom's market share, the ubiquity of its network and its considerable experience and ability in providing universal services, the Commission is signalling its intention to designate eircom as the universal service provider. The Commission will also be seeking the consent of the Minister for Communications, Marine and Natural Resources regarding certain aspects in relation to the scope of the Universal Service Obligations (USO) which will have to be fulfilled by eircom. Once this process is completed, ComReg will formally designate eircom as the USP with specified obligations.

The updated universal service regime will lead to greater clarity around the universal service provider's specific obligations and result in increased transparency for users who seek access to these essential services. The USP is to publish a policy statement/customer charter regarding the provision of all services falling within the scope of the USO. The main provisions of the USO regime will be as follows.

1. Provision of Access

eircom will be required to provide telephone lines, on request, to every premises throughout the State. In doing this, they will have to develop specific criteria and associated terms and conditions governing the reasonableness of any user request for the installation of a telephone line including a procedure for resolving any disputes where they arise.

eircom will also be required to develop and publish a statement which sets out the range of factors which can affect its network performance and therefore the internet speeds experience by users via their telephone connection.

2. Directory Enquiry Services and Phone Book

eircom will be required to provide users with a printed phone book, free of charge, and to offer directory enquiry services throughout the State. A CD format of the directory is also to be developed, the price of which will be agreed with ComReg.

3. Public Pay Telephones

eircom will be required to provide payphones throughout the State to meet the reasonable needs of users and, subject to any guidelines that are agreed with ComReg, shall not remove any single site payphones.

To increase the level of transparency for users, eircom will publish an annual statement on its USO payphone strategy, including specific procedures for the removal/re-siting of payphones (including notification to the local community) and an escalation process in the event disputes arise. eircom will also have to publish information on changes in its payphone base.

4. *Provision of Service to Disabled Users*

eircom will be required to offer particular services to ensure that disabled users have access to universal services. They will be required to develop and publish a Code of Practice governing the provision of services to disabled users. ComReg will also be discussing with the USP other means of improving the accessibility of services to disabled users.

5. *Affordability*

Affordability considerations have been dealt with through the price cap mechanism, although eircom will be required to offer uniform prices for universal services throughout the State.

6. *Control of Expenditure*

In order to assist users in controlling their telephony expenditure, eircom will be required to offer

- a minimum level of itemised billing, free of charge,
- call barring facilities, with the barring of premium rate calls free of charge. eircom are to examine how an unbundled mobile call barring facility can be implemented,
- a facility to allow for the phased payment of connection fees via direct debit.

eircom are also to publish its disconnection policy in order to ensure transparency for users.

7. *Quality of Service*

eircom will be required to publish up to date information concerning its performance in the provision of services under the USO. Performance targets will be agreed between ComReg and eircom.

8. *Costing and Financing of Universal Service*

Issues regarding the calculating any net cost of universal service provision will be considered, if and when appropriate.

Further work on the above areas will continue over the coming months to ensure the development of a robust universal service framework that benefits consumers.

Etain Doyle

Chairperson

Commission for Communications Regulation

2 Introduction

The Commission for Communications Regulation (“ComReg”) is responsible for the regulation of the Irish telecommunications sector in accordance with national and EU legislation. One of the ComReg’s functions is to determine the scope of the universal service obligations for the Irish market and to decide what organisation(s) should be designated as the universal service provider(s).

This Response to Consultation follows the consultation document 02/116, “The Future Framework for the Regulation of Universal Service in the Irish Telecommunications Market” as issued in December. In that document, ComReg sought views as to how the universal service framework should be updated, in particular, in the following areas.

- How telephone, payphone, directory enquiry and phone book services are to be provided under the new framework.
- Which operator(s) should be designated as the provider(s) of these services.
- How affordability can be maintained for consumers using these services.
- How consumers can be assisted in monitoring and controlling their telephony expenditure.
- The setting of performance standards for the provision of the above services and how quality of service is to be monitored.
- Defining the principles for costing and financing any net cost of the provision of these services.

Six responses to the consultation were received which have been helpful to the Commission in forming a view as to how to implement changes in the universal service framework so as to satisfy new EU and subsequent national legislative requirements in this area. The respondents were:

- Consumers Association of Ireland
- eircom
- Esat BT
- Ireland Offline
- Member of the Public
- National Disability Authority

The responses are available for inspection at the Office, excluding any confidential material that respondents have specifically asked to be withheld.

2.1 Format of this Document

This report deals with the main issues raised by this consultation, each under the following sub-headings:

- A summary of the consultation topic.
- A summary of the views of respondents.
- Commission’s Position.

2.2 Ministerial Consent

The Department of Communication, Marine and Natural Resources issued a consultation on draft legislation which seeks to transpose the Universal Service Directive. As with the current framework, ComReg has responsibility for deciding on the scope of the universal service obligations and designating the universal service provider(s).

The consent of the Minister for Communications, Marine and Natural Resources is required in relation to a number of aspects concerning the scope of the USO. These areas, as specified in the draft legislation are as follows:

Provision of Access at a fixed Location

Reg 3(4) ComReg may, with the consent of the Minister, for the purposes of the services referred to in this Regulation, specify requirements to be complied with by an undertaking designated as aforesaid in relation to -

- (a) functional Internet access, having regard to prevailing technologies used by the majority of subscribers and to technological feasibility,
- (b) the reasonableness of requests for connection at a fixed location to the public telephone network and for access to publicly available telephone services at a fixed location pursuant to paragraph (1), and
- (c) the terms and conditions upon which such connection and access shall be provided.

Public Pay Telephones

Reg 5(1) An undertaking designated by ComReg under *Regulation 7* to provide public pay telephones shall ensure that public pay telephones are provided to meet the reasonable needs of end-users in terms of the geographical coverage, the number of telephones, the accessibility of such telephones to disabled users and the quality of services.

- (2) ComReg may, with the consent of the Minister, specify terms and conditions applicable to the provision of public pay telephones, for the purpose of ensuring that the requirements specified in paragraph (1) are met.

Specific Measures for Disabled Users

Reg 6(1) ComReg may with the consent of the Minister, specify obligations applicable to undertakings designated under Regulation 7 for the purpose of ensuring that disabled end-users can enjoy access to and affordability of publicly available telephone services, including access to emergency services, directory inquiry services and directories, equivalent to that enjoyed by other end-users.

Affordability of Tariffs

Reg 8(2) ComReg may, with the consent of the Minister, specify requirements to be complied with by an undertaking designated by ComReg under *Regulation 7* for the purpose of ensuring that such undertaking provides tariff options or packages to consumers which depart from those provided under normal conditions, in particular to ensure that those on low incomes or on special social needs are not prevented from accessing or using the publicly available telephone service.

On foot of the publication of the Response to Consultation, ComReg will commence the process of seeking Ministerial consent with respect to the positions taken within this paper insofar as they relate to the above areas. Once obtained, ComReg will, by way of Decision Notice and accompanying directions, designate eircom as the USP with specific obligations.

2.3 Regulatory Impact Assessment

On 21 February, the Minister for Communications, Marine and Natural Resources issued a series of policy directions to ComReg following a public consultation. Included was a Direction in relation to Regulatory Impact Assessment (RIA). The text of the Direction is as follows:

“The Commission, before deciding to impose regulatory obligations on undertakings in the market for electronic communications, shall conduct a Regulatory Impact Assessment in accordance with European and International best practice and otherwise in accordance with measures that may be adopted under the Government’s Better Regulation programme.”

In its Consultation Document, “Future Regulation of Electronic Networks and Services – ComReg Consultation Procedures” (Document 03/31 of 18 March 2003), the Commission stated that it would issue an Information Note on how it intended to implement this policy direction following a review of the issues involved. In accordance with the Direction, ComReg is currently reviewing best international practice and practice by equivalent European National Regulatory Authorities.

Given that the consultation paper on USO issues was published in December, 2002 it predates the Ministerial Direction regarding RIA. This paper is a response to consultation and no formal decision is being issued or are any new obligations being imposed. ComReg’s obligation is to decide on the scope of the services falling within the scope of the USO and to designate a USP to provide these services. In many cases, ComReg has no discretion over the specific obligations to be imposed, with its role revolving around fleshing out how exactly the obligations are to be fulfilled.

eircom is already the designated USP and the new designation, albeit in light of new obligations under the new European Directive, does not give rise to any major impact. Indeed, many of the proposals set out seek to develop processes and procedures on universal service. This will significantly benefit end users by providing them with greater clarity around the USP’s specific obligations and by increasing transparency for them when seeking access to these essential services. Such clarity will also minimise the need for inefficient case-by-case regulatory intervention. Broadly speaking,

therefore, the impact of the obligations that will be imposed on eircom should be minimal.

As stated earlier, Comreg will give effect to the positions set out in this paper once Ministerial consent has been obtained, as appropriate. It is ComReg's intention that a RIA will be completed in tandem with the Decision Notice that will give effect the universal service obligations and designation of the USP having regard to the positions as set out in this paper.

Comreg would welcome comments on the impact of the proposals set out in this paper. Interested parties are invited to submit comments to ComReg by 4th July at the latest. ComReg will take note of any views expressed.

All responses to this call for comments on the regulatory impact of the positions set out herein be clearly marked:-

“Reference: Submission re ComReg Universal Service RIA” as indicated above, and sent by post, facsimile or e-mail, to arrive on or before 5pm on, 4th July 2003, to:

FREEPOST
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Having analysed and considered the comments received, ComReg will publish its position in the Decision Notice which will give effect to both the USO scope and the designation of the USP.

In order to promote further openness and transparency ComReg will publish the names of all respondents and make available for inspection responses to the consultation at its Offices. Where respondents provide confidential information it should be clearly marked as such and if possible to include it in a separate annex to the response.

This paper does not constitute legal, commercial or technical advice. ComReg is not bound by it, except where there is a formal Direction or other document issued in fulfilment of a statutory obligation. All other aspects of this response to the consultation are without prejudice to the legal position of ComReg and to its rights and duties under legislation.

3 Background

3.1 Review of Universal Service Obligations

The background to the existing universal service obligations, along with the legislative developments at EU and national level which necessitate the current review of the Irish USO framework were set out in the consultation. A number of points are worth re-stating, namely

- eircom, (then Telecom Éireann) was designated by ComReg (then ODTR) in 1999 as the provider throughout the State of certain services falling within the scope of the Universal Service Obligation. At that time, ministerial consent was not required in relation to any aspect of USO.
- The EU revised the existing European Framework on Universal Service on 14th February 2002 with the adoption of the Directive on Universal Service and Users' Rights relating to Electronic Communications Networks and Services. This, and a number of other Directives, are required to be transposed into national legislation by July 2003.
- The Department of Communication, Marine and Natural Resources issued a consultation on draft legislation which seeks to transpose the Universal Service Directive. As with the current framework, ComReg has responsibility for deciding on the scope of the universal service obligations and designating the universal service provider(s). The consent of the Minister for Communications, Marine and Natural Resources is required in relation to a number of aspects concerning the scope of the USO.

3.2 Universal Service Regulations

The current review of the universal service framework was carried out in light of the proposed draft legislation. The draft regulations provide that ComReg is responsible for making decisions on the following areas:

- the scope of the obligation to provide telephone lines to end users, including its capability to provide functional internet access¹.
- the scope of the obligation to provide directory information services including the telephone directory and directory enquiry services.
- the scope of the obligation to provide public payphones¹.
- ensuring that disabled users have access to the above services on a basis similar to that enjoyed by other users¹.
- designating operator(s) as the universal service provider for the above services.
- ensuring that services are affordable for users¹.
- ensuring users can control expenditure through such measures such as itemised billing and call barring
- ensuring availability of information regarding the quality of service and setting of performance standards

¹ Consent of the Minister for Communications, Marine and Natural Resources to be obtained.

- deciding on issues related to the cost and funding of universal service

In the absence of a material difference between the draft regulations and the final regulations it is not anticipated that further examination of universal service issues is required prior to designation. This paper, therefore, represents ComReg's position regarding the intended scope of the USO and the intention to designate the USP.

4 Market Developments and Universal Service Provision

At the time, ComReg set out a number of issues to inform readers' considerations of the issues raised in the consultation regarding the scope and level of Universal Service, in particular, regarding the provision of payphones and the introduction of measures to allow consumers to control their telephony expenditure. These issues included

- **Overall Telephony Penetration Rate** – the fact that fixed and mobile telephony penetration rates (85%² household penetration and 77%³ population penetration respectively) point to a relatively high level of telephony penetration.
- **Disconnection Trends** – the fact that ComReg has required all operators to implement and publish a disconnection policy. It was also noted that for eircom, the net number of disconnections (which excludes those customers who are subsequently reconnected following payment of an outstanding bill) has decreased by 71% in the period July 2001 to June 2002, indicating a decrease in the number of people being left without a connection to the network. There are, nevertheless, a number of customers who do not have a telephone connection which may reflect the position that consumers' payment options are limited, particularly where payment difficulties are experienced.
- **Developments in the Market** – the development of competition in the market provides greater opportunities for all or part of the universal service obligations to be fulfilled by operators other than the former incumbent.
- **Trends on Housing Growth** – Over recent years, there has been significant growth in the number of new housing and apartment completions. This growth impacts the universal service obligation due to the increase in the number of homes seeking connections to the telephone network and, depending on location, the resulting extension of networks by operators to meet demand and fulfil those universal service obligations. In certain circumstances, the location of a house can make the provision of a telephone connection prohibitively expensive for the provider and a reasonable approach must therefore be taken in relation to provision.

ComReg asked whether the above factors were relevant in considering the scope and level of universal service and whether there were other issues that should be considered.

Q. 1. Do you agree that the factors identified above are relevant in considering the scope and level of universal service obligations? Are there other factors which need to be considered regarding the provision of Universal Service?

² ComReg estimates that based on CSO figures for the number of households in Q3 2002 (1.328m), that this figure stands at approx. 82%

³ Current mobile penetration rates are estimated at 80%, Irish Communications Market: Quarterly Key Data June 2003, 03/67b

4.1 eircom's Position

eircom felt that a comparison between household penetration rates for fixed telephony and mobile penetration rates was incorrect for the purpose of USO. They considered that network reach rather than customer penetration was relevant and given the ubiquity of mobile networks, that this factor should be considered. eircom also considered that a regional breakdown of penetration rates and fixed and mobile coverage were relevant in determining the scope and level of regulation.

eircom also questioned how disconnections were relevant to a determination of the level of USO.

eircom stated that consideration of USO should not be confined to the prevailing network market structure given the ubiquity of cellular networks and the functionality of such a service. They considered that there was no evidence to support the conclusion that the development of a competitive market provides greater opportunities for companies other than eircom to provide the USO.

On the matter of trends in housing growth eircom asserted that no evidence was offered by ComReg to suggest how this affects the USO. In addition to gross figures for new build completions, eircom said that a regional analysis would be beneficial, in particular, a breakdown between urban, rural and remote new house and apartment builds. Such data is available from the Department of the Environment.

A number of additional factors were also considered relevant by eircom in determining the level and scope of USO, namely

- **Comparison with other essential services:** eircom felt that a basic telecommunications service was one of a range of services provided on which there was a “universal service” and believed that it was more onerous for telecommunications than other utilities.

They felt that ComReg should take into consideration the processes adopted in other utilities and, at the least, measures should be adopted to impose an obligation on all developers of both private and commercial property to provide appropriate network access to the nearest interface of the public telecommunications network. Such an obligation could be set out as a prerequisite for planning permission by the relevant Local Authorities similar to the obligation to provide access to other utility services.

- **Cost of USO:** eircom considered that the cost of providing the USO as an additional factor of relevance in determining the scope and designation of the USP. They were also concerned that some of the proposals within the consultation go beyond what is required by the EU Directives (e.g. priority fault repair service for disabled users) and give rise to significant IT and Development costs without providing great benefit to the end user.

Furthermore, eircom believed that the USO was a significant cost burden and that the advent of CPS provided less opportunity for eircom to recover costs from call traffic from uneconomic areas and customers.

- **Impact Assessment and Sustainable Development:** eircom drew attention to the Direction of the Minister for Communications, Marine and Natural Resources, which directs that ComReg “takes account of the state of the industry and in particular the industry’s position in the business cycle”. Given the challenges facing the industry, in particular, the critical need for investment following the

flight of capital from the sector, eircom considered that a decision regarding the level and scope of USO should take into account the short/long term trade off between consumer welfare and the needs of the telecommunications sector.

eircom felt that the paper should have presented an impact assessment of the various options available for the delivery of USO and that designation should consider national circumstances such as population distribution and density.

4.2 Views of Other Respondents

Most respondents agreed that the factors identified by ComReg were relevant. A number of additional issues were identified, namely

- The contract for the Department of Social and Family Affairs' 'Free Telephone Rental Allowance Scheme' is vested with eircom which is likely to represent a significant cost reduction benefit to the company as it limits the likelihood of bad debt arising in respect of such customers within the scheme. Billing processing costs are also likely to be significantly reduced.
- A discussion of how retail prices have been moving towards the costs of efficient provision should be included. In this context, it was suggested that eircom's fixed residential charges are the highest in the EU and their fixed business charges are the third highest in the EU⁴. Such high retail charges, if coupled with an *efficient* level of costs in eircom, should mean that any access deficit is kept to a minimum. However, the presence of any Access Deficit does not automatically imply that there is a net cost of USO i.e. Access Deficit and USO are not the same thing.
- A reference to the level of flexibility eircom has had to re-balance its prices, should be included and whether such flexibility has been fully utilised. Further, in relation to low user schemes, it would appear valid to assess the extent of take-up of such schemes, to ensure that the schemes are targeted specifically at those social groups for whom it is intended. Any leakage of the scheme to other groups should be prevented, so as to minimise the economic impact of the obligations.

Another respondent believed that ComReg should consider user profiles and user requirements as a factor in the provision of universal service.

One other respondent stated that the perspective of the citizen rather than consumers should be considered in setting USO requirements, on the basis that the word "consumers" only took account of existing, as opposed to potential, consumers.

4.3 Commission's Position

ComReg's position on the various points raised is set out below.

(a) Penetration Rates

ComReg does not consider that that comparisons between mobile telephony rates and household penetration rates are inappropriate in a USO context. The combination of high mobile and fixed line penetration makes it difficult to assess which people are now without access to telephony services. Therefore, ComReg must be cognisant of this in considering the scope of the USO and in setting any targets to be achieved by the USP (targets are dealt with in Section 9). In addition, traditionally fixed line penetration rates have been the measure of success of a USO.

⁴ 8th Implementation Report, annex 1, charts 81 and 82.

(b) Network Reach

This is a consideration to the extent that small or regional operators would be inappropriate candidates in the current context, and also in reviewing the specifics of how the USO operates, as discussed further below.

(c) Regulatory Impact Assessment

The position regarding RIA has been set out in section 2.3.

(d) USO requirement for ‘fixed location’

The ability/appropriateness of the network/operator to meet the requirements for the delivery of the services as they are defined within the scope of the USO is an important consideration.

While there has been growth in the mobile sector since the previous USO designation, the definition of the universal service obligation with respect to access as set out in the Directive require that connections to the public telephone network and access to publicly available telephone services are provided to the public *at a fixed location*. ComReg interprets this to be provision of access to a premises.

At present, universal service obligations only apply to fixed carriers. Mobile operators’ statutory ‘public service requirements’ tend to be included in the tender documents and licence provisions of mobile operators which require them to guarantee extensive geographic coverage. Under current and the new EU framework, they may also be required to contribute to any universal service funds. The use of mobiles to deliver the services falling under the USO would give rise to considerations regarding affordability (i.e. the retail cost of the universal services via mobile may be more expensive than via traditional fixed means). Furthermore, one of the key differences between fixed and mobile services is that mobile service normally connects individuals irrespective of their location. On the other hand, a fixed service normally connects households/businesses. The Directive also requires that access is capable, amongst other things, of supporting functional internet access. Mobile services may not currently satisfactorily supported these requirements.

While, in future, convergence may be expected to result in further blurring of the distinctions, and possibly a change in the texts of EU law, assuming inter-changeability between fixed and mobile services in a USO context does not currently appear appropriate. ComReg does not preclude the use of wireless communications to deliver universal services. Indeed, wireless technologies may provide cost advantages in providing access to unconnected households in less densely populated areas.

(e) Availability of competing services

ComReg has considered the points made and while competition should, in principle, provide opportunities for the provision of elements of USO services by operators, no operator has indicated an interest in providing these services which may indicate that competition has not yet developed sufficiently to make USO provision attractive to other operators.

(f) Disconnections

On the matter of the relevance of disconnections to Universal Service, ComReg considers that this is appropriate in the context of the discussions set out in the consultation under Section 8 concerning measures to allow users to control their telephony expenditure. The level of disconnections may be a barometer of the success or otherwise of the effectiveness of measures to allow users control their telephony expenditure (say call barring) and thereby avoid being disconnected from the network.

(g) Demographic developments

ComReg considers that trends in housing growth are relevant in the context of the specifics of the operation of the USO. It considers that the USO should be set on a national rather than on a regional basis i.e. that the same basic level of service should be available in all parts of the county, but with regard being taken of the reach of the USP network and the demography of housing. (Where a house is the same distance from the exchange and the same density in either Dublin or Mayo, the terms of accessibility should broadly be the same).

Given that part of the housing growth of recent years has been characterised by the extension of building developments into suburban or rural areas this may impact on the terms on which the USP provides telephone connections to these areas, particularly in light of the requirement for the request for a telephone connection to be reasonable. Apart from bespoke housing developments, overall housing growth can also affect the calculation of fixed line penetration rates which ComReg considers relevant in a universal service context. i.e. in order to maintain fixed line telephony penetration rates, installations must keep pace with housing growth.

(h) Other Utilities

ComReg notes eircom's comments in relation to the provision of other utilities and that obligations should be placed on developers, as part of the planning permissions process. Issues regarding planning permissions fall within the remit of the Local Authorities. While universal service legislation in the telecommunications arena is not prescriptive on these matters, ComReg considers that there may be merit in clarifying the boundaries of the USP's obligations. The USP is required, amongst other things, to provide to the public at a fixed location connections to the public telephone network. In providing access at a fixed location, ComReg interprets the provision of access at a fixed location to mean the provision of a connection to a premises. The USP should therefore provide users directly with a connection for the purposes of ensuring access to publicly available telephone services, i.e. a point to which telephone equipment can be connected. The USP, with the agreement of ComReg, will develop guidelines in this area which will set out the points to which connections will be provided having regard to different building types (i.e. there may be differences depending on whether it is a house or an apartment within a larger complex or other building type.).

(i) New Developments

ComReg is aware that delays in telephone installations can occur due to disputes between the USP and developers. Typically, a housing developer would contact eircom regarding the installation of telephone services to the location. The USP would provide ducting plans and specifications which would then in turn be laid by the developer to facilitate the installation of telecommunications infrastructure. The USP has an obligation to provide access and it is up to the USP, where it seeks to engage developers to lay supporting infrastructure, to negotiate reasonable commercial rates for doing so. In agreeing these rates, ComReg would also point out that the obligations of a USP are considered in light of 'reasonableness' (See Section 5.1.1) and that USP status should not be seen by other parties as a means of extracting rates which do not reflect normal commercial realities. ComReg considers that there may be merit in the USP seeking to produce and agree guidelines with representatives of the construction industry that would set out the roles of the parties with respect to the provision of telecommunications services. Subject to our available legal powers, ComReg would, on request from either party, seek to support such a process.

(j) Cost Issues

Issues around cost of USO are discussed in Section 10. ComReg does not consider the contract for the Department of Social Community and Family Affairs Free Telephone Rental Allowance Scheme to be of relevance in determining the scope of universal service obligations and the designation of the USP. The award of that contract to provide services under the FTRA is a matter for that Department. The question however of any net benefits/costs may be relevant in determining the net cost, if any, of meeting the USO.

On the matter of CPS providing less opportunity for eircom to recover costs, ComReg would point out that CPS charges have been set at efficient operator level which allows for recovery by eircom of associated costs.

(k) Other Matters

As regards the scope of the USO, our first obligation to make decisions in light of the objectives set out at national and EU level. Where choices regarding implementation exist, ComReg will seek to make decisions having regard to the views of consumers, industry, stakeholders, Ministerial policy directions and in light of experiences in the Irish market.

Issues around eircom pricing and associated matters have already been dealt with in the context of the Price Cap work stream.

5 Scope of Universal Service

The regulations set out the three main elements of universal service to be provided, namely,

- Provision of Access at a Fixed Location
- Provision of Directory Enquiry Services and Directories
- Provision of Public Pay Telephones

The above services are to be accessible to disabled users.

5.1 Provision of Access at a Fixed Location

The fundamental requirement of Universal Service is that all reasonable requests for connection at a fixed location to the public telephone network and for access to publicly available telephone services at a fixed location are to be met by at least one operator. This connection should support

- local, national, international and facsimile calls
- data communications at bit rates that are sufficient to permit functional internet access.

Under the draft legislation ComReg can, with the consent of the Minister, specify requirements to be complied with in relation to the above services (local, national, international and facsimile calls), in particular, regarding

- functional internet access, having regard to prevailing technologies used by the majority of subscribers and to technological feasibility
- the reasonableness of requests for connection to the network and for access to the abovementioned services
- the terms and conditions upon which such a connection and access is provided

5.1.1 Reasonable Requests for Connection

5.1.1.1 Summary of Consultation Issues

The general principle of the USP being required to meet all reasonable requests for access to the fixed network remains largely unchanged. The Commission noted that any attempt to describe reasonable in relation to the supply of standard services cannot be absolute. Under existing legislation the USP is responsible for deciding on the reasonableness of consumer requests for access to a telephone service, however, in future ComReg will be able to specify requirements in this regard.

The consultation paper set out proposals which were designed to increase the level of transparency for consumers in their dealings with the USP, thereby allowing them to directly enforce their rights when seeking to obtain a telephone line. The first proposal was that the USP should publish clear requirements around the assessment of reasonable request for access with the following areas being covered.

- The terms and conditions upon which a connection to the network and access to service will be provided.
- Situations where the provision of lines will automatically occur (say to premises where lines are already present).

- Situations where ComReg can require the provision of a line.
- What uses might be covered by this USO obligation (telephony or other uses such as home alarms).
- How issues such as planning permission, way leaves or equipment security affect the obligation to provide access.
- The types of property (permanent residences or businesses or temporary sites) covered by the USO.
- Instances where the use of wireless or other technologies might be appropriate.
- A basis upon which a determination regarding the reasonableness of a request for access can be made in light of whether the service can be supplied in an effective, efficient and economic manner.

If the requirements governing access were deemed appropriate, ComReg proposed that they are captured as part of a wider policy statement dealing with the delivery of all services in the USO. This policy statement would be developed by the USP in consultation with ComReg and would be subject to ComReg approval. Views on the following questions were sought.

- Q. 2. Do you agree with the approach to establish clear requirements regarding the obligation to meet ‘reasonable’ requests for access ? What requirements might be appropriate ?**
- Q. 3. Do you agree with the proposal that such requirement should be incorporated in a published Policy Statement dealing with the delivery of all services under the USO ?**

5.1.1.2 eircom’s position

eircom endorsed the principle of establishing requirements governing the USP’s obligation to meet reasonable requests for access. eircom reiterated their view that an obligation should be imposed on developers to provide local access connections and that this should be included as a requirement under the planning approval process.

In relation to the proposal for the USO to set out and publish specific requirements for assessing the reasonableness of requests, eircom do not recommend that ComReg should retain power to overrule the USP’s decision that has been reached in accordance with any agreed procedures. eircom are of the view that before imposition of specific requirements additional consultation will be required with the USP particularly in relation to the requirement to provide

‘a basis on which a determination regarding the reasonableness of a request for access can be made in light of whether the service can be supplied in an effective, efficient and economic manner’

In order to define ‘reasonableness’, eircom proposed the application of a specific economic test to establish whether a line exceeds a pre-defined cost threshold. They proposed that any connection above a defined cost threshold would require the end-user to fund the cost difference in order for installation to proceed. The nature and

level of these costs would be included in a standard and non-standard list of terms and conditions, and prices for ‘Standard and Non-standard connections’.

eircom considered in situations where the capital cost of providing the line is unlikely to be recovered from the customer that such cases should not be deemed reasonable. In such instances, eircom consider it appropriate to adopt one of a number of approaches that strike a balance between customer expectations and the commercial realities facing a telecom operator. These include

- recovery by the USP of non standard charges from the customer
- waiving of the Universal Service Obligation
- extension of the Universal Service Obligation to include coverage by mobile networks.

eircom regards it as essential that when a request is deemed unreasonable using agreed criteria that the decision should be binding on the customer.

5.1.1.3 Views of other respondents

One respondent noted that information on eircom’s current policy for assessing the reasonableness of requests was not available during the consultation period. This respondent, who agreed with the approach to establish requirements around the obligation to meet reasonable requests for access, stated that the USO should recognise the right of every user to a full copper pair and, in general, this should be considered a reasonable request. If provision of a full copper pair is not feasible then access provision by other means such as wireless or through an alternate operator should be considered. The respondent states that the current USP has licence obligations that require it to deliver services over Fixed Wireless Access, additional to those currently provided as part of the USO. In this regard, they considered that ISDN should be part of the USO.

This respondent also agreed with the proposal to incorporate the reasonableness test as part of a wider policy statement regarding the delivery of all services under USO. They are of the view that an enhanced customer charter is also required.

They recommended that in tandem with the publication of the policy statement that the USP should be required to inform users where ‘Pairgain⁵’ devices (carrier systems) are used. In such situations they recommended that consumers should have the option to submit a reasonable request for removal of these devices from their line. This same respondent also believed that Copper Loop Impact statements should be required from the USP if it is likely that a reasonable request for service will lead to degradation of copper in an area.

Another respondent also agreed with ComReg proposals on requests for access, but felt that it was primarily a consumer issue. This respondent supported an approach that allows the USP to recover its efficiently incurred costs in providing access to geographically remote locations. They noted that in the UK, BT has the flexibility to raise extra connection charges if installations exceed 100 man-hours (the “100 man-hour rule”).

One other respondent stressed the importance of ComReg’s involvement in the definition of a reasonable request for access and felt that this should not be left solely

⁵ A connection that is split to provide two or more separate voice channels.

to the USP as it may lead to financial concerns overriding consumer rights. Another respondent felt that the definition of reasonable access (and all other Universal Service Obligations) should include a commitment to people with disabilities, the elderly and those with special needs and on low incomes.

5.1.1.4 Commission's Position

The Commission is pleased to note that there was general agreement on its proposals regarding the publication of clear requirements around the USP's obligation to meet all reasonable requests for access.

Over the course of this consultation period, ComReg sought and received information from eircom on the current criteria for assessing reasonableness. At present, eircom assess reasonableness of requests on a case by case basis. For each request they will take a number of factors into account namely, the cost of the investment, the likelihood of serving any additional customers on the network provided, the potential for the request being met in the future by any major growth initiative that would not be specific to a single customer and social imperatives i.e. where a person with a disability requires access to the network.

In light of respondents support, ComReg believes that an appropriate means of removing any ambiguity as to what constitutes a reasonable request for access is the development of specific criteria and associated terms and conditions for access under the USO. Such criteria will be of benefit to users seeking access to the network as it will clearly set out the instances where they can obtain a telephone line at a standard installation cost.

Care will have to be taken in the development of these criteria. It is too simple to suggest that a request be deemed unreasonable where the capital cost of providing the line was unlikely to be recovered. Taking all installations across the network as a whole, there will be cases where costs are over recovered. To a certain degree, this over recovery can be applied to balance out or reduce the costs in those cases where the capital cost exceeds the cost of providing the line. In addition, as more users are added to the network, revenue tends to be generated from the additional calls to and from such users. Furthermore, ComReg also considers that there will be certain instances where a line can still be considered reasonable even when it exceeds the economic threshold, for example, the provision of access to disabled users, the elderly or those with special needs.

A critical component of the criteria will be the level of the threshold beyond which the user will be required to contribute towards the cost of installation. The purpose of universal service policy is to ensure that users can have reasonable requests for access to basic services at an affordable standard price. It is recognised, that this is not designed to cover every single case, in particular, where the cost of provision is extremely high. However, such cases should be in the minority and the level of any threshold (beyond which a non-standard installation cost might apply) should ensure that all but 'extreme' requests for access, are provided. ComReg notes one respondent's reference to the '100 man hour rule' employed within the UK.

eircom put forward a number of approaches that could be adopted in the event a request for access was considered unreasonable. These included

- (i) recovery of non-standard charges from the customer. ComReg does not necessarily agree that there is a requirement to recover all non-standard charges

and the cost threshold at which a request becomes unreasonable may be an appropriate point from which costs may be recovered.

- (ii) the waiving of universal service obligations in such cases. ComReg considers that the USP will still be required to provide access if the customer is prepared to pay any additional costs associated with their request for access. The phased payment of connection fees, as discussed under section 8.4 of the paper, will also ensure that users can minimise any impact that cost contribution might have.
- (iii) the extension of the USO to include coverage by mobile networks. This matter is dealt with in section 6.4. ComReg does not propose to designate a mobile operator as a USP at this time. However, it intends to keep this issue under consideration in the light of further convergence of technologies.

It would not be ComReg's intention to require eircom to provide access outside agreed criteria (and any specifically agreed exceptions). However, there may be cases where there are disagreements over whether or not the agreed criteria have been properly applied. ComReg are of the view that in developing agreed procedures that these should be sufficiently robust so as not to require intervention from ComReg. However, consumers right to dispute decisions made by the USP is explicitly recognised in draft regulation 3(3). ComReg's dispute resolution procedures are the subject of a separate consultation dealing with end-users rights under the USO Directive(ComReg 03/26) and will be available to users who, after exhausting the USP's complaint process, wish or need to raise any issues with regarding the provision of telephone connections.

On the matter of imposing an obligation on developers to provide local access as part of the planning permission process, planning requirements do not fall within the remit of this office. While universal service legislation does not refer to such matters directly, there may be merit in the USP seeking to develop a Code of Practice, in consultation with representatives of the construction industry, regarding the installation of telephone connections in light of the USO. Such a document could clarify roles and responsibilities of the parties, set standards for the installation of infrastructure to support the provision of universal services as well as dealing with commercial matters. This would have the benefit of avoiding unnecessary disputes between eircom and contractors and increase the speed at which installations can be completed to the overall benefit of the consumer. ComReg would, having regard to its legal powers, seek to lend it support to this process, if requested by one or both parties. It may be appropriate that further consultation is necessary on this issue.

On the matter as to whether the USO gives a user a right to a full copper pair, the Directive requires that connections to the public telephone network are provided. As well as through traditional fixed means, this does not preclude the use of wireless technologies. ComReg notes that telephony services within the scope of the existing USO are being provided by eircom on its wireless based Rurtel and Fixed Wireless Access platforms. The functionality of these connections is prescribed in terms of its ability to support services (local, national, international calls, facsimile communications and functional internet access). The use of Pairgain or Carrier Systems may be legitimate where they are required to deliver universal service to a higher proportion of the population. However, reasonable endeavours should be made by the USP to provide users with 'full' connections and ComReg expects that the use of pairgain devices will be reduced over time. This issue is dealt with further in section 5.1.2.

As to the inclusion of ISDN within the scope of the USO, ComReg would point out that the Directive says that it should not be included.

In light of the above, ComReg will consult further with the USP, and other parties where appropriate, to agree on the specific criteria, including the establishment of an appropriate cost threshold as well as other issues relevant to an assessment of the reasonableness of a request. It also follows for such a threshold, that instances where a request has been deemed unreasonable can result in an installation cost above the geographically averaged standard cost.

Once a cost threshold has been agreed, ComReg will require the USP to develop and publish more specific requirements around what is considered a reasonable request for access. Examples of the requirements are listed in section 5.1.1 of this paper. While acknowledging that these requirements cannot be absolute, ComReg are of the view that the requirements should be sufficiently prescriptive, so that they will facilitate consumers' ability to understand their entitlements under universal service. The requirements around this area will be subject to the approval of ComReg.

Many of the other suggestions that have been forthcoming as part of this consultation process will be considered in the development of requirements for inclusion in a published policy statement/ customer charter around the provision of all services under USO that addresses the needs of all users and, in particular, disabled users and those with special needs.

Summary of Commission's Position

The following will be the scope of the USO with respect to provision of access at a fixed location by a designated USP.

- (a) The USP will be required to provide to the public at a fixed location connections to the public telephone network and access to publicly available telephone services, and shall satisfy any reasonable request in that regard.
- (b) Any connection provided by a designated USP will be capable of allowing end users to make and receive (i) local, national and international telephone calls, (ii) facsimile communications and (iii) data communications rates that are sufficient to permit functional internet access.
- (c) Where USP denies any reasonable request made under (a) above it shall inform the person making the request of his or her right to pursue the dispute resolution procedures in accordance with the regulation 28 of the draft USO regulations.

- (d) The USP will, within three months following designation, establish clear requirements for the purpose of assessing the reasonableness of requests for connection at a fixed location to the public telephone network and for access to publicly available telephone services pursuant to paragraph (a) above. These requirements shall be agreed with ComReg and published by the USP.
- (e) The USP will be required, within three months following designation, to establish terms and conditions upon which a connection under paragraph (a) will be provided. Such terms and conditions will be agreed with ComReg and published by the USP.
- (f) The USP will publish any requirements that are established under paragraphs (d) and (e) above and incorporate them as part of a published policy statement/customer charter regarding the provision of all services falling within the USO, including the provision of services to disabled users and those with special needs.

5.1.2 Functional Internet Access

5.1.2.1 Summary of consultation issues

The aim of the legislative functional internet access requirement is to support the development of internet usage amongst consumers and small businesses in Ireland (larger businesses tend to rely on ISDN or leased lines). The Commission requested views on how best to achieve the requirement for the USP to provide functional internet access with a view to ensuring that the connection is brought up to the speeds enjoyed by the majority of subscribers so that it supports sufficient access to the internet. The consultation paper outlined the following means by which a functional internet access requirement may be fulfilled

- a requirement that PSTN connections are capable of supporting a minimum bit rate. This may involve a stepped approach whereby specific functional internet access targets are set that must be achieved over a period of time.
- requiring the USP to publish a statement setting out the factors which can reasonably affect the performance of its PSTN network and thus the data rate available to the end user.

Respondents were also requested to note that if a specific bit rate is mandated, it would have to be set having regard to the overall capability of the network and technical constraints that can affect the data rate such as the level of network development, the subscribers equipment, the application for which the connection is being used and the capacity at the ISP. In addition, where the obligation to meet a functional internet access requirement gives rise to net costs and an unfair burden on the USP, the costs would need to be recovered through a funding mechanism, such as an industry levy,

which may ultimately involve costs being passed on to consumers in terms of price rises.

ComReg also sought views as to whether there was benefit in establishing a flat rate internet product to encourage the use of internet as a learning tool within national secondary schools. Views on the following questions were sought.

- Q. 4. Do you agree with the specification of requirements setting a specific bit rate and the publication of a network performance statement by the universal service provider ? What bit rates might be appropriate ?**
- Q. 5. Is a stepped and targeted approach appropriate ?**
- Q. 6. Do you think there is benefit in establishing a flat rate product to encourage the use of the internet as a learning tool within national secondary schools? Are there alternative approaches or considerations that should be taken into account ?**

5.1.2.2 eircom's position

eircom accept that the provision of functional internet access is one of a number of catalysts for economic growth. However, eircom do not accept that it is either appropriate or viable to require that a narrowband PSTN connection should be universally capable of supporting a specific bit rate.

They state that contrary to the suggestion in the consultation, Recital 8 of the EU Directive states that 'it is not appropriate to mandate a specific data rate at a community level'. They highlight that while there is a reference to 56kbit/s in the directive it does not implicitly or explicitly define the term 'functional internet access'. Eircom note that article 4 of the EU directive requires that a connection shall be capable of supporting data rates the are sufficient to permit functional internet access, that the prevailing technologies used by the majority of subscribers and the technological feasibility shall be taken into account. eircom also state that the draft regulations refer only to 'functional internet access' and do not specify the necessity to introduce a minimum bit rate. They also point to the fact that ComReg recognises in the consultation that the data rate the end user experiences is dependent on a number of factors which include the level of network development, modem speeds, the subscribers terminal equipment, the given application for which the connection is being used and the ISP connection.

eircom outline specific reasons why they do not accept that the setting of a specific bit rate is an appropriate or viable approach.

- **The topology of the access network.** The access network is designed and optimised for voice services and while developments in modem technology support much higher bandwidths on many lines, this capability cannot be guaranteed on all lines in a network, a fact eircom state is universally accepted across the industry.
- **Carrier systems** A significant amount of telephone service is provided over carrier systems which essentially is a means of splitting one telephone line to

provide multiple lines. These systems are used to ensure greater access to a basic voice service where line resources are scarce. However, in splitting the line the bandwidth, and therefore the data rate experienced, is reduced. The provision of service by carriers means a limit on internet access to between 14.4 to 19.2kbs.

- **Cost Factors** eircom state that if a bit rate of 56kbits were set this would require the reduction of the maximum distance from subscribers to an exchange from 9km to 4.5km – effectively doubling the number of switches required and this would cost approximately €2bn. In addition the cost of replacing all existing carrier systems would be at least €90m to €100m.
- **Other Issues to be considered.** eircom also point to a range of factors outside the access network which influence the data rate experienced such as modem speed and bottlenecks in the internet backbone. Given the level of uncertainty created by these external factors it is unlikely that the setting of a minimum speed would make a significant difference.

With regard to the question of whether a stepped and targeted approach may be appropriate, eircom state that as they do not accept that a minimum bit rate is an acceptable or viable option they also do not accept that a stepped or targeted approach can be adopted. While eircom plans to invest in the network in the coming years, such investment will be subject to normal commercial criteria. eircom state that improved performance on the access network will lead to a situation where greater bit rates can be supported on a greater number of lines but the possibility of having all lines achieve a quality whereby a guaranteed bit rate can be supported even on a stepped basis is not achievable given the scale of investment that would be required

Finally, in relation to the question regarding provision of a flat rate internet access product for secondary schools eircom point to the fact that a flat rate internet product has been mandated by Comreg and that provision of internet to secondary schools is not a requirement under USO. Eircom also feel that this is more a function of the Department of Education rather than one for ComReg and argue that the provision of internet to secondary schools should be open on a commercial basis to all operators.

5.1.2.3 Views of other respondents

One respondent referred to Regulation 4 of the Directive, stating that that no bit rate has been specifically mandated. They do not believe that a specific bit rate should be set at this time and the more limited requirement as set out in the Directive and the draft US regulations should be applied.

The respondent expressed difficulty with the specification of a bit rate and the publication of a network performance statement by the USP. While they felt that this was a commendable aim, other factors need to be considered that may influence the customer's internet experience such as the customer's equipment, bottlenecks in the internet backbone and download speeds at the far-end server. As the customer's experience is dependent on the slowest link in the internet chain, the setting of a minimum bit rate may not significantly impact on the actual customer experience. In addition, the costs involved in network upgrades in order to ensure any minimum bit rate make this an unrealistic option.

They suggested a useful way forward may be further development of the Industry Copper Loop Frequency Management Plan, as they believe that current USP has been inefficient in respect of its access network and working practices for maintenance of the copper network are unlikely to be at benchmark best practice standards. This

respondent suggested that customers requiring guaranteed connection speeds may be better suited to ISDN or DSL services.

In relation to a stepped and targeted approach, this respondent was of the view that this would be appropriate in the context of developments that the USP may take in moving towards best practice for an efficient access network supply and maintenance regime.

Another respondent agreed with the implementation of a minimum bit rate and commented that the EU Directive stated that 56K was the optimum bit rate. Furthermore, they stated that the USO designation in 1999 has had not an effect on network quality for data communication. The installation of Pairgain devices also served to compound this degradation. In order to provide tangible benefits to consumers the respondent recommended that the USO must set out clearly the entitlements to a bit rate on the basis of distance from an exchange. The end-user should be informed by means of a customer charter of options available from the USP e.g. delivery by wireless if copper is not available.

The respondent felt that a stepped and targeted approach was appropriate and is of the view that intervals of two years are appropriate. They felt that at this stage it should be possible to get wireless installed more easily if the wired network will not support proper speeds.

The same respondent also considered that a flat rate product for schools would only be of benefit were its speeds to be higher than those available to the general public under the USO.

Another respondent made a general point regarding the internet stating that it provides an equal platform for all users regardless of ability and has facilitated access to services, information and informal support mechanisms for people with disabilities worldwide.

5.1.2.4 Commission's Position

ComReg considers that both the Directive and the Regulations are clear with respect to the functional internet access requirement. Recital 8 of the Directive refers specifically to it in the context of speeds of up to 56 kbits/sec but also recognises that Member States can permit data rates below this to exploit the capabilities of wireless technologies and to deliver universal service to a higher proportion of the population. While the Directive states that it was not appropriate to mandate a specific data rate at Community level, this does not preclude it being set at a national level. Furthermore, Regulation 3(4) of the regulations specifically provides for ComReg to specify requirements in relation to functional internet access.

ComReg recognises that the setting of a specific bit rate alone will not necessarily guarantee satisfactory internet access for consumers given the range of factors outside the control of the network operator that can have a significant influence on internet speed. Broadly speaking, any approach regarding the specification of a minimum bit rate/functional internet access may give rise to cost implications for the USP, which ultimately may result in increased prices for consumers. A balanced approach is therefore required. However, the importance of the internet as a driver of economic growth and in terms of social inclusion must also be recognised.

It is critical therefore to establish an approach that seeks to eliminate or minimise those issues within a USP's network that prohibit or restrict users ability to avail of reasonable internet speeds. Many of the issues raised through this consultation process

and, in particular, those that relate to the cost implications and the effectiveness of setting an obligation to provide a specific bit rate will require more detailed analysis and possibly further consultation. ComReg therefore does not intend to specify a minimum bit rate at this point.

ComReg's policy approach in the area of functional internet access will be to seek to ensure that connection to the public telephone network at a fixed location should be sufficient to support satisfactory internet access equivalent to that enjoyed by the majority of users.

ComReg is also of the view that the current requirement (under Annex 1 of Directive 97/33/EC) that a connection must be capable of transmitting data via modems at 2,400bps is an inappropriate benchmark considering the purposes for which consumers are now using their telephone lines. It is important that consumers have a clear indication as to what data rates they should expect from their connection. While a specific bit rate has not been mandated at this point, ComReg believes, in order to increase the level of transparency for users, that the USP should publish a statement which sets out the network speed that may be experienced by users having regard to typical network scenarios. Consumers would need to take into account the factors that affect network performance.

However, it is also clear from consultation responses and from the consumer complaints received by ComReg that certain issues in relation to internet service provision should be tackled. One key issue relates to the provision of service over carrier access systems/pairgain devices. ComReg recognises that where there is no other commercially/cost-effective or technically viable alternatives, the use of these devices may be required. Depending on the systems employed it may affect the data rate experienced by the user. However, some pairgain systems support 56Kbit/s modems.

ComReg is of the view that data speeds of 14.4 to 19.2 kbps (note that these speeds may not reflect actual modem speeds as experienced by users via their Internet Service Provider) may not constitute satisfactory internet access. While ComReg does not intend to specify a specific bit rate, there is a need to reduce the number of carrier access systems in use and/or allocate the resource to those users who have no requirement for internet access. ComReg will therefore engage with the USP to assess the level of use of carrier access systems and may require the USP to develop a detailed plan on how to address this issue moving forward.

It is considered that the issue can be addressed in a managed fashion through its incorporation into the USP's network development plans which, while subject to normal commercial criteria, must also consider regulatory obligations.

Therefore, ComReg's approach in relation to functional internet access can be summarised as follows.

- Connections to the public telephone network at a fixed location should be sufficient to support satisfactory internet access equivalent to that enjoyed by the majority of users, having regard to the prevailing technologies used by the majority of subscribers and to technological feasibility.
- The USP should publish a statement which sets out the range of factors which can affect its network performance (and are within its control) and therefore the data speeds experienced by internet users.

- The USP should quantify the proportion of users whose internet speeds may be affected through the use of carrier systems/pairgain devices in its network.

ComReg's discussions with the USP will focus on how these issues can be addressed and further public consultation may be appropriate. This will be included as part of a wider policy statement to be published by the USP regarding the delivery of universal services.

With regard to the establishment of a flat rate internet product for secondary schools, there is no provision for this under the USO Directive. Nonetheless since the publication of this consultation on universal service, ComReg has required that a flat rate internet product is to be made available for Irish consumers. This will be available as a wholesale product to other licensed operators and should ensure affordable internet access at competitive prices is available to Irish consumers in the future.

Commission's Position

On the matter of functional internet access, the USP will be required to

- (a) develop a public statement which sets out the range of factors which can affect its network performance (and are within its control) and therefore the speeds enjoyed by internet users.
- (b) inform ComReg of the number and location of connections to the public telephone network that employ carrier systems/pairgain devices
- (c) subject to further discussions with ComReg, develop a plan for addressing network performance issues that affect the speeds enjoyed by internet users.

The USP will be required to publish the information in paragraphs (a) and (b) as part of its wider policy statement regarding the delivery of universal services.

5.2 Directory Enquiry Services and Directories

The draft regulations require that the following universal service obligations are fulfilled in relation to the provision of directory information services. These include:

- The provision of a comprehensive printed directory of subscribers to all end users free of charge which is updated at least once a year
- The provision of a comprehensive national and international telephone directory enquiry service to all end users, including users of public pay telephones
- Keeping a record of all subscribers of publicly available telephone services in the State, including those with fixed, personal and mobile numbers

The directories and records should also comply with the relevant data protection legislation.

5.2.1 Summary of consultation Issues

The current USO is fulfilled by eircom and involves the provision of a comprehensive printed directory and a national and international directory enquiry service. eircom must also maintain a complete listing of all subscriber numbers (subject to relevant data protection legislation) which is fulfilled through the operation and maintenance of the National Directory Database (NDD). This NDD is used to compile the paper directory and facilitate the provision of directory enquiry services.

No major changes are proposed in how the universal service directory obligations under the draft regulations would be fulfilled. One question was raised as to whether the telephone directory should be provided in alternative formats such as a CD and whether a charge should apply.

- Q. 7. Do you agree that the obligations as outlined above should continue to apply in the manner? Do you believe there is merit in having the telephone directory provided in CD format?**
- Q. 8. Are there any other considerations with respect to the scope of the directory services obligation?**

5.2.2 eircom's position

eircom agreed that the directory service obligations should continue to be implemented according to the manner currently employed.

On the matter of alternative formats of the phone book, they highlighted that the uses of the NDD are covered by the current licence agreement, which would have to be amended by the industry Directory Information Services Forum (DISF). In this regard, they felt that the implications of introducing a CD Rom version of the phonebook should be addressed and analysed at the DISF with any recommendations of the forum being taken into account. A number of factors were highlighted as worth considering.

- existing and future data protection legislation,
- need to develop a multi user licensing regime
- the licensing arrangements of the NDD
- the fact that a CD is a fixed time product and cannot facilitate changes to a customer's preference as proposed by S.I. 192 of 2002

5.2.3 Views of Respondents

There was support from two respondents for the provision of the telephone directory in CD format. One respondent stated that the regulations provide that a comprehensive directory should be available to all. In situations where the current printed format of the phonebook is inaccessible to certain users (say those visually or cognitively impaired) it should be provided in an alternative format such as CD on request and free of charge. They felt that a charge could apply to business users who wished to access this form of the directory.

5.2.4 Commission's Position

The Commission considers that the USO directory service obligations can continue to be fulfilled according to the manner currently employed, namely, the USP will continue to provide the printed phone book free of charge, operate a universal directory enquiries service and maintain the National Directory Database. Given that eircom already provide online access to the directory, ComReg does not believe it necessary to mandate this.

ComReg does not believe that the provision of the telephone directory in CD format gives rise to any major impediments.

Firstly, the same data on the NDD which is used for the provision of the printed directory would be used for a CD version. Indeed, ComReg notes that directory information is already made available online. It is not, therefore, considered that the licensing arrangements of the NDD would have to be amended as the publishing of the phonebook on CD Rom does not constitute a new usage of the data contained on the NDD. The CD would contain the exact information that is contained in the phonebook simply replicated in a different manner. Indeed, eircom's document (as entitled "NDS6 National directory services using national directory data" (which is provided to all users of the NDD) specifically refers to the use of the data for the publishing of the White pages in CD Rom format. This document contains all the requirements which need to be met when publishing a directory CD Rom including for example that:

- no search is possible unless the enquirer first supplies the name and approximate address of the party sought
- the results of a search are only displayed ordered alphabetically by name
- it contains no entries classified on the Licensed Database as Unlisted or Ex Directory or any other Directory Status Classification preventing such use;

All these conditions would be applied to the universal directory CD Rom satisfying eircom's data protection concerns.

Secondly, notwithstanding the format of the directory, all data on the NDD continues to be subject to relevant data protection considerations. In developing the CD, considerations such as reverse searching which raises data protection issues, will have to be taken into account, but these can be resolved through technical means.

Thirdly, licensing arrangements regarding the use of a CD directory are not considered to be a major issue of concern. In relation to the need to develop a multi user licensing regime, ComReg agrees that some form of licence governing the use of the data on the CD would have to be developed. Such a licence could be relatively straight forward and could be incorporated onto each CD.

Lastly, as for the implications of S.I. 192 of 2002 and the fact that the CD directory would not be a real time product, this issue is not of relevance to the production of the CD version of the phonebook. While the NDD does record a subscriber's preference with regard to the receipt of direct marketing from third parties, the phonebook does not contain a reference to these preferences or are they referenced on the directory enquiries service. Therefore, S.I. 192 of 2002 has little bearing on the provision of the telephone phonebook in CD format. If there are concerns in this regard, they can be dealt with through technical means and via the licence agreement governing the use of data on the CD directory.

ComReg considers there is merit in the view of one of the respondents proposals that the CD format may be of benefit to users for which the current printed directory is inaccessible (e.g. visually, cognitively or dexterity impaired persons).

The Commission's position is that a CD version of the telephone directory will be introduced and, in this regard, the USP will develop a proposal backed by a clear project plan for its early introduction. These shall be agreed with ComReg. Furthermore, the USP, in developing the CD will have regard to ComReg's position under section 5.4 which deals with the provision of service to disabled users. Any issues that may impact on the NDD will be discussed by the Directory Information Services Forum.

ComReg considers a CD version of the directory to be a valuable service for users and should therefore be made available, on request, at an affordable charge. However, in the case of people with certain disabilities, a CD version may prove to be the only useable form of a directory. For such users it may be reasonable that no charge applies. Further analysis on the issue of a charge for disabled users is required and ComReg will defer its position on this matter pending the development of proposals by the USP as referred to above.

Commission's Position

The following will be the scope of the USO with respect to directory enquiry services and directories. The USP will be required to

- (a) provide to end users a comprehensive printed directory of subscribers, free of charge and updated at least once a year, based upon information supplied to it in accordance with the National Directory Database
- (b) provide a comprehensive national and international telephone directory enquiry service to all end users, including users of public pay telephones, based upon information supplied to it in accordance with the National Directory Database
- (c) subject to Regulation 10 of the European Communities (Data Protection and Privacy in Telecommunications) Regulations, 2002 (S.I. No. 192 of 2002), keep a record (to be known as the National Directory Database) of all subscriber of publicly available telephone services in the State, including those with fixed, personal and mobile numbers who have not refused to be included in that record, and allow access to any information contained in such a record to any such other undertaking or any person in accordance with terms and conditions approved by ComReg

(d) make available a comprehensive directory of subscribers on CD format to any person requesting it in accordance with terms and conditions as may be agreed with ComReg.

The USP will be required to provide ComReg with a proposal for the introduction of a CD version of the Directory backed by a clear project plan (and costing information) within three months following designation. These shall be agreed with ComReg.

5.3 Public Pay Telephones

The draft regulations require a designated USP to provide public payphones in sufficient numbers to meet the reasonable needs of end-users in terms of geographical coverage, numbers of payphones, accessibility to disabled and the quality of services. ComReg can, with the consent of the Minister, specify terms and conditions for the purpose of fulfilling the aforementioned requirements.

5.3.1 Summary of Consultation Issues

The number of eircom payphones as at Q2 2002 was 6685 and it was noted that the uptake in mobile telephony has contributed to a steady decline in payphone revenues. Rather than being prescriptive in this area to date, ComReg has relied on licence conditions requiring notification to the public in the event of a proposed removal of a payphone. However, it was felt that a more formalised approach was required and a number of measures were proposed to ensure that the reasonable needs of users are met.

ComReg considered that the definition of a public payphone as set out in the draft regulations required further clarification and proposed that it should mean a payphone that is available for use by the general public. The payphone can be located on the street or in other public places that are open to the general public (e.g. train stations, airports) when that place is open for the public to enter. This does not include payphones located on private premises which have a restricted usage by the general public (such as restaurants, bars, rented accommodation).

In order to ensure that the obligation to provide payphones is met not only through provision in high revenue areas (based on social need, in some cases payphones may have to be provided in uneconomic areas) ComReg also proposed the maintenance of some sort of ratio or quota system.

Having regard to eircom's existing rationalisation policy (which focuses on reductions in number of payphones at multi-payphone sites) and taking the existing payphone base as a starting point, ComReg proposed that eircom provide it with an statement annually on their payphone strategy for approval and publication. Such a strategy should include

- total public payphone numbers by location – payphones by county and location within each county (further disaggregated information on revenues to ComReg only).
- number and location of payphones adapted for use by persons with disabilities
- existing public payphone rationalisation policy
- criteria/considerations for removal and installation of public payphones.

In addition, ComReg should be notified of any proposed changes and that consultation with interested parties may be appropriate. Further initiatives included the publication of information on payphone provision on a quarterly basis and the development of guidelines regarding the removal and re-siting of payphones, which would allow for a period of representation by local communities. Views on the following questions were sought.

- | | |
|---------------|--|
| Q. 9. | Do you consider that the public payphone definition outlined above provides a workable solution in a USO context? In the context of this definition do you agree with the proposal to establish a ratio or quota system to establish an appropriate balance between economic and uneconomic payphone locations? |
| Q. 10. | Do you agree with the Commission's proposal that eircom should publish an annual statement on its public payphone strategy in light of the USO obligations which will be established? What areas should be covered in such a strategy? |
| Q. 11. | Do you agree with the Commission's proposal that eircom should publish information on public payphone provision to allow the validation of performance against its published payphone strategy statement ? |
| Q. 12. | Do you agree with the proposal to establish formal procedures around the removal or re-siting of public payphones? What should be contained in such procedures ? |

5.3.2 eircom's position

eircom, while recognising the universal service obligation, felt that payphone usage below a certain level suggested that no reasonable need exists for the service in light of fixed line penetration and the availability of substitute products. They considered that any definition of a public payphone in a USO context, should only include payphones on public lands and should exclude payphones provided under contractual arrangement with the site owner and where a concession fee is payable. eircom noted that ComReg has found that eircom are not dominant in the supply of payphones in these areas of the market. eircom therefore considered that the definition of public payphones in the USO context should refer to availability of service at locations rather than the number of individual payphone terminals.

eircom stated that a ratio or quota system could lead to a situation where if more locations became profitable, that they may be forced to install 'uneconomic' payphones to retain the ratio. eircom believe that there currently exists an excessive level of uneconomic sites that more than meet the reasonable needs of users. In this regard, eircom expected the existing base to be taken as a starting point with no additional installations or replacements occurring other than on commercial grounds for the following reasons.

- reduced demand for payphone services has allowed recent payphone rationalisation programmes to be implemented with no negative impact in terms of satisfying the needs of users;
- recent planning regulations now require a licence at a considerable cost for any future payphone kiosk installation.

In the event of a quota scheme being implemented, provision should be made for the orderly reduction of uneconomic payphones as user demand for such services decreases, as measured by revenue decline.

On the matter of publishing an annual statement on its payphone strategy, eircom indicated that there was a need to ensure that commercial considerations were taken into account and that any information published should only contain data on its entire payphone base and the specific processes relating to uneconomic single payphone locations. Information on the following areas could be provided.

- Total Number of eircom Payphones
- Public Payphones by County
- Rationalisation policy
- Processes with regard to payphone removal
- Arbitration Process

On the matter of publication of performance information, eircom stated that high level information could be made available on a quarterly basis to reflect changes in the above information, although this should be done in the most cost effective means available.

eircom proposed to formally document the procedures around the removal and re-siting of payphones and suggested that this process should be binding. Eircom felt that the existing 60 day notice period should be reduced to 49 days in order to bring it into line with the installation notice period required by local authorities under the Postal and Telecommunications Services Act 1983.

5.3.3 Views of Other Respondents

One respondent expressed concern at the potential closure of uneconomic payphones in isolated rural areas, as they considered them vital for the local community, particularly the elderly and for access to emergency services.

One respondent agreed that the near ubiquity of mobile phones across the State was a consideration in determining the USO for payphones and would not support any situation where the universal service provider would be required to provide high levels of uneconomic payphones. This same respondent felt that a “ratio or quota” system would not be appropriate if it resulted in levies being placed on operators. Another respondent agreed with the proposal of a quota to establish a balance between economic and uneconomic payphones. However, to complement the quota, the respondent suggested that ComReg develop guidelines and recommendations to assist the USP in the placement of new public payphones, with one payphone fully accessible to disabled users being available in all locations.

They also agreed with ComReg's proposal that the USP should publish an annual statement on its public payphone strategy in light of the USO obligations which will be established. Such a strategy should be set out at a high level and report on any

difficulties found in relation to the obligations and any barriers to creating a correct economic/ consumer balance.

Two respondents agreed with ComReg's proposal that the USP should publish information on public payphone provision to allow the validation of performance against its published payphone strategy statement.

Two respondents also agreed that some form of formal procedure around the removal or re-siting of public payphones is required as it is essential that those consumers affected by any proposed change are properly notified and fully understand the reasons behind the proposed action. However, one respondent would not support any regime that was so prescriptive and complex that the USP was not able to make reasonable decisions in the light of the evidence. Another respondent felt that ComReg's proposals did not go far enough and that payphone removals should be carried out on a case-by-case basis with the USP having to apply to ComReg to remove a payphone in advance of doing so. This should be reviewed by ComReg who would approve or reject such an application.

5.3.4 Commission's Position

ComReg does not agree with eircom's proposal that the definition of USO payphones, rather than referring to the number of individual payphones, should relate solely to availability of service at locations. The draft legislation requires that reasonable needs of users are met in terms of a number of criteria, namely geographical coverage, the number of payphones, the accessibility of such telephones to disabled users and the quality of such payphones. Consequently, ComReg considers that the eircom proposed payphone definition is too narrow.

ComReg recognises that the measurement of the fulfilment of a universal service obligation cannot solely rely on the total number of available payphones. i.e. an obligation at a particular site can be met through the provision of one or more payphones across a location (say at different points in a town), having regard to the demand for services and social needs in a particular area.

A payphone is defined in the draft legislation as "*a telephone available to the general public for the use of which the means of payment may include coins and/or credit/debit cards and/or pre-payment cards, including cards for use with dialling codes.*"

To provide further clarity within this definition in a USO context, ComReg considers that USO payphones shall cover those located on the street and in other public areas available to the general public at all times (i.e. unrestricted access) This does not include payphones located in private areas which have restricted access or are typically covered by commercial arrangements (and where the access to a payphone is dependent on the pre-existence of a commercial relationship), e.g. pubs, hotels, restaurants and shopping malls.

ComReg also considers that the USP should ensure, where possible, that all payphones provide for a number of payment means including coins and/or credit/debit cards and/or pre-payment cards, including cards for use with dialling codes.

ComReg also agrees with the view that it would be difficult to require a USP to place payphones in locations that are normally awarded by means of competitive tender. Where payphone contracts are awarded by competitive means, it would not be possible for ComReg to require the USP to place telephones in these areas.

Given the relevance of payphone provision by the industry to universal service, ComReg also proposes to explore with other payphone providers, whether a mechanism can be established to monitor their provision of payphones. This in turn may prove beneficial in the event of the proposed removal by the USP of payphones, as other operators may be willing to supply payphones in these areas, thereby ensuring that the needs of communities can continue to be met.

Having regard to the views expressed, ComReg does not propose to proceed with a quota or ratio system at this time. It is considered that the development of clear guidelines for the removal of payphones, along with the provision and publication of information, will provide sufficient a level of transparency around the USO payphone obligation and ensure that ComReg has sufficient data to monitor progress and intervene if appropriate. This will also be achieved through the specification of USO targets as discussed in Section 9.

ComReg also considers that, pending discussions with the USP on the implementation of the proposed USO obligations, that there should be no further reduction in the number of any single payphone sites (except those currently subject to the existing payphone removal notification process).

Furthermore, in future and subject to any installation, removal or re-siting guidelines to be agreed with ComReg, the USP should not remove or re-site any USO payphones and/or cease to provide service to these payphones, where it would result in the complete removal of a payphone from a site.

On the matter of the orderly removal of uneconomic payphones, ComReg considers that while revenue may be considered as an indicator of user demand, universal service obligations must take into account broader social considerations, for example, individuals on low incomes who cannot afford a phone and access to emergency services (particularly in remote areas).

ComReg notes that in other EU countries ‘basic’ payphones are provided in particularly isolated areas. Such payphones allow users to make emergency calls, to use calling cards or to make reverse charge calls but do not include components susceptible to vandalism such as coin and telephone card slots. Such payphones are less costly to maintain and may be an option worth exploring in an Irish context.

Under the existing USO, ComReg has not specified an exact number of payphones to be provided. Instead, ComReg has relied on regulatory safeguards such a licence condition which sets out a requirement on the USP to display a removal notice at a payphone and to consider any views received. Given the dynamic nature of the payphone market, ComReg considers that a similar flexible approach is appropriate, although specific removal/re-siting procedures require augmentation or development to ensure adequate provision is maintained. This will be a general requirement placed on the USP. In addition, ComReg also considers that a procedure should be established to adequately deal with requests for the installation of USO payphones.

On the matter of the proposed payphone notification process, ComReg agrees to the reduction of the existing 60 day notice period to 49 days. However, this should be accompanied by increased transparency for the community. To ensure maximum awareness of the proposed removal/re-siting of a payphone (only where it would result in the complete removal of payphones from a site) the USP should (i) publish a notice of a proposed removal on the payphone which is clearly visible to the public and (ii) publish notice of the proposed removal/re-siting notice on its website.

Where no objections are received to a proposed removal, the USP can proceed. However, where representations have been received, these must be considered in light of any guidelines and/or procedures agreed with ComReg. Having considered the representations, the USP shall communicate the decision to respondents, and highlight the escalation process in the event of disputes. It is only after the exhaustion of the escalation process that any removal can take place. ComReg will decide, upon agreement of the removal/re-siting/installation processes, whether these should be binding on the parties.

The USP should also ensure that adequate records are maintained regarding the removal/re-siting of payphones in order that compliance with procedures can be verified in the event of any disputes arising that may require the intervention of ComReg.

ComReg believes a requirement for the USP to apply to ComReg where it wishes to remove any USO payphone to be an unnecessary administrative burden. However, ComReg believes that where a removal of a USO payphone would result in the complete removal of service from a site (subject to any guidelines that are agreed), that ComReg should be informed. ComReg believes that this approach strikes an appropriate balance between allowing the USP to manage its USO payphone sites and the need to ensure that USO regulatory requirements are met. Processes around these requirements will be agreed bilaterally with the USP.

Commission's Position

The USP will be required to fulfil the following obligations with respect to the provision of payphones.

The USP will be required to ensure that public pay telephones are provided to meet the reasonable needs of end-users in terms of the geographical coverage, the number of telephones and the quality of services. The USP shall also ensure the accessibility of such telephones to disabled users, in accordance with any measures that may be required by ComReg.

The USP will be required to ensure that it is possible to make emergency calls from a public payphone using the single European emergency call number "112" and any national emergency call number that may be specified by ComReg in each case free of charge and without the necessity to use coins or cards or any other means of payment.

The USP will be required to ensure that users of its public payphones have access to a directory enquiry service.

Where possible, the USP will be required to ensure that all payphones provide for a number of payment means including coins and/or credit/debit cards and/or pre-payment cards, including cards for use with dialling codes.

The USP will be required to comply with the following terms and conditions with respect to the provision of payphones.

(a) The USP shall, following designation, publish the following information on a quarterly basis:

- Total Number of USO payphones by county⁶ and further disaggregated according to whether they are single or multiple payphone sites.
- Total Number of USO Payphones removed/re-sited and/or installed in a period. Such information shall be disaggregated according the whether the payphones are located at single or multi-sites and by county.

(b) Within three months following designation, the USP shall publish the following information which shall be approved by ComReg.

- An annual statement on USO payphone strategy, including any rationalisation plans.
- Processes with regard to removal/re-siting of USO payphones, including specifications for the notice of removal/re-siting.
- Processes for considering any requests for USO payphone installation.
- Escalation process in the event any areas of dispute arising under the above.

(c) Where criteria have been established covering disabled users access to payphones, the USP will be required to publish information regarding the number of payphones meeting such criteria.

(d) Subject to any installation, removal or re-siting guidelines that are agreed with ComReg, the USP should not remove or re-site any USO payphones and/or cease to provide service to these payphones, where it would result in the complete removal of a payphone from a site (this does not include any payphones whose removal has already been notified under the existing removal process).

⁶ Given commercial considerations ComReg maintains the right to seek further information, as appropriate.

- (e) The USP will be required to inform ComReg where it proposes to remove a single payphone site. An appropriate process for this shall be agreed with ComReg.
- (f) The USP will be required to maintain adequate records regarding the removal/re-siting/installation of payphones to ensure compliance with any of the above procedures can be monitored, as appropriate.

The criteria set out in (a) to (f) will be approved by ComReg prior to their publication and shall be listed on the USP's website in an easily identifiable location. ComReg will liaise with the USP to discuss the detail regarding the implementation of these measures. Performance figures should be published quarterly and validated against any targets that may be set under Section 9.

5.4 Provision of Service to Disabled Users

The draft legislation provides that specific measures can be taken to ensure that disabled users enjoy access to and affordability of publicly available telephone services.

5.4.1 Summary of Consultation Issues

The consultation outlined the services currently provided by the USP for disabled users.

For users that are hearing impaired:

- Inductive couplers which allow users with a hearing aid set to connect it to their telephone in order to allow them to hear incoming speech clearly.
- Amplifier phones which allow the user to increase the volume of incoming speech.
- Teleflash Visual Alert which shows a flashing light, or makes a loud noise when the phone rings.

For Users that are hearing and/or speech impaired:

- A Text Relay Service provides facilities for the receipt and translation of voice messages into text and the conveyance of that text to the textphone of customers of any operator, and vice versa.
- The time taken to make a text telephone call is longer than that needed to make an ordinary call. To ensure equality of payment for deaf text telephone users, eircom fund the STEP rebate scheme. This provides text telephone users with a rebate of up to 70% on text phone call charges per bill.

For users with limited dexterity or mobility:

- Push button telephones with speed and automatic redial buttons allow pre-programmed numbers (typically the most called) or last called numbers to be dialled without having to re-enter the number.
- Hands free/loudspeaker phones mean that the handset does not need to be used at all.

For users with restricted vision:

- Restricted vision telephones are push button telephones with a raised dot on the central number (5) which can help people with restricted vision to find other numbers more easily.
- Braille billing free of charge.
- Special directory enquiries which allows those unable to use the phone book because of a disability to use a directory enquiry service free of charge.

The Commission considered that these services should continue to be offered under the new USO and put forward proposals regarding additional services that could be offered. The issue of a free priority fault repair service was raised. ComReg also put forward a proposal to establish a code of practice around provision of service by the USP to disabled users and sought views on whether and how other operators should be required to provide any of the services listed above. Views on the following questions were sought:

- Q. 13. Do you agree that the services above should form part of the universal service obligation ? Are there other considerations to be taken into account ?**
- Q. 14. Do you agree with the proposal to establish a code of practice around provision of telecommunications services to disabled users?**

5.4.2 *eircom's position*

eircom stated that they currently provide a range of services (outlined above) without obligation at a significant cost and they agreed that the continuing provision of these services under the new universal service obligation was valuable and beneficial both to people with disabilities and within the context of Government policies on social inclusion. They suggested that the obligation to provide these services be placed on all industry operators and, where appropriate, on all electronic communication customer premises equipment manufacturers.

eircom believed that a priority fault repair service for disabled users was not warranted given such a service was not explicitly provided for in the Directive or the draft regulations. They were of the view that the determination of policy regarding disabled users rested with the Department of Social, Community and Family Affairs, and the Department of Health and Children and it would be appropriate for these agencies to engage with industry operators directly if such a scheme were to be developed and funded. They stated that priority fault repair services were provided on a commercial basis to customers who have an SLA with eircom and it would therefore be proper for the agencies to negotiate with eircom directly. eircom also stated that the practical and financial implications of such a scheme needed to be carefully considered through a regulatory impact assessment process.

eircom suggested a number of issues which need to be considered such as data protection issues; definitions of disability that should be included; implications for hospitals, asylums and nursing homes; whether this should only be available to disabled users who live alone; the implications in respect of public payphones and the cost implications.

eircom agreed with the proposal to establish a code of practice for provision of service to disabled users and believed that this should apply to the industry as a whole rather than only to the USP.

5.4.3 *Views of Other Respondents*

One respondent did not express views on the issues raised. Another believed that the proposals around provision of service to disabled users were more a matter for consumer comment. Two other respondents agreed with the proposals for disabled users, with one welcoming the proposals to improve the accessibility of telecommunications services for disabled users, emphasising that it is the right of every user to enjoy equal access.

One respondent agreed with the inclusion, in the regulations, of a provision for special facilities for customers with disabilities or special needs. However, they felt that the consultation paper did not adequately address the broad range of needs of disabled users. The respondent stated that it is important for ComReg to look beyond the

service and facilities for people with disabilities that are currently available and think in a more user centred manner about how to improve access.

The respondent pointed to the lack of interpretation in the consultation as to who may be included in terms of disabled users and they believed that this issue needed to be addressed in order to make adequate provisions for disabled users. The respondent recommended that the Universal Service regulation should contain a definition of disabled users.

They also said that consideration needs to be given to the range of difficulties people experience in their use of telephone services

- hearing impairments ranging from moderate to severe deafness
- visual impairments ranging from moderate to severe blindness
- deaf-blindness
- speech impairment ranging from moderate to severe and requiring such things as send amplification
- limited dexterity (limited use of hands/arms, weak grip, hand tremor etc. requiring careful ergonomic design of phones)
- cognitive impairment (which affects memory, perception, problem solving)
- restricted mobility which has implications for positioning of telephones and means of access.

The respondent noted that a significant proportion of the population had one (or more) impairments which reduced their ability to use consumer products such as telephones.

This respondent provided comprehensive guidelines and recommendations on various aspects relating to provision of Universal Service to disabled users. They emphasised that the telephone was the main link for many people to the outside world and this was particularly true for disabled users. However, the respondent stated that technology might create a barrier between those who could use it and those who could not. While telephony and internet services could offer a way for disabled people to ‘leapfrog’ over the physical and social barriers that were still in place throughout society, these services could be a barrier to communication if they are difficult to use.

In relation to provision of access the respondent felt that provision of service to disabled users had to date been largely inadequate. They felt that the consultation should take into account the fact that the ability to see, hear, make inputs, read text or process information varied from user to user across time and across situations of use. In addition to the services currently provided to disabled users, the respondent recommended that the USP should be required to provide other features such as – sidetone reduction, adjustable ringer and pitch tone, microphone amplification, guarded/recessed/enlarged keys, buffer time for dialling out and synthetic speech display.

In relation to directory services, the respondent recommended that in addition to provision of a directory service free of charge in alternate formats for disabled users, the USP should ensure that

- its staff should receive disability awareness training.
- users of minicomms should also be able to use directory services, and

- electronic formats of the directory should adhere to WAI and NDA priority 2 guidelines (web accessibility guidelines).

Turning to public payphones, the respondent provided detailed guidelines on accessible placement of public payphones, in particular, directions that should be followed when locating a public payphone – the operating area, colour and tone of payphones and design of the surrounding area of the payphone. In relation to the payphone interface, the respondent noted that inductive couplers had improved the accessibility of public payphones to people with disabilities. Other mechanisms for improved accessibility were outlined such as the use of funnel type coin and card slots which facilitated people with impaired hand function. The respondent also provided guidelines on the placement of coin and card slots, the design of payphone buttons, volume control on the payphone and kiosk design. They recommended that the USP should provide at least one accessible public payphone in all locations. An accessible payphone should meet a number of criteria in that all users should be able to get to, access and operate all controls, and the methods used to make a payphone accessible should be consistently applied. The respondent recommended that the USP should adhere to the following guidelines:

- Building for everyone 2002 (NDA)
- Irish National Disability Authority IT Accessibility Guidelines version 1.1

The respondent agreed with the development of a code of practice to ensure quality of service standards for disabled users which would address complaints and other critical aspects of quality of service such as

- clear standards the consumer can expect
- rights to equality/diversity for disabled users (and others who may experience social exclusion)
- accessible public offices
- consultation and evaluation with the customer in relation to the development, delivery and review of the services provided
- provision of equality/ disability awareness training for all staff

The respondent provided a range of other recommendations that relate to another consultation on end users rights. These will be outlined in a future response to that consultation.

5.4.4 Commission's position

ComReg is aware that there is no interpretation within the Directive or the Draft regulations as to who should be included in terms of disabled users. i.e. a definition of disabilities and disabled groups to which the universal service provisions apply. ComReg is of the view that fundamental objective of universal service (i.e. equality of access to all) should be considered in defining the range of users that may require specific measures to be taken in order to improve accessibility.

There is general agreement that the range of services currently offered by eircom to disabled users should continue to be available from the USP moving forward. ComReg will therefore require that the current range services provided by eircom for disabled users will continue to be made available by the USP.

ComReg is of the view that in order to address the service needs of disabled users it is important that the service fully addresses the requirements of users for which it is designed. In designing services that meet the reasonable needs of any group of users it is imperative that the design process must involve consultation with the target users.

In relation to the provision of public payphones, ComReg will require the USP to provide a reasonable degree of accessibility to payphones for disabled users. One respondent has suggested that the USP must provide an accessible payphone in all locations. At present this may not be the case and the siting of public payphones is often dictated by factors beyond the control of the USP, e.g. planning requirements, restricted pedestrian access. Any requirement to provide an accessible payphone for disabled users in all locations would incur significant costs which will need to be appraised before a specific requirement is set.

However, the USP does have considerable control over the functionality of the payphone equipment and ComReg will engage in discussions with the USP as to how to improve accessibility in terms of features such as inductive couplers and accessible coin and card slots. It should be noted that accessibility is not purely a concern for the USP and ComReg will seek to encourage other payphone operators to provide payphones that are accessible for disabled users. Indeed, access by disabled users to payphones may be met through a combination of payphones provision by the USP and other operators.

ComReg does not accept that a priority fault repair service has to be specifically provided for in legislation in order for it to be introduced. The draft regulations state that

‘the Commission may, with the consent of the Minister, specify obligations applicable to undertakings designated under Regulation 7 for the purpose of ensuring that disabled end-users can enjoy access to and affordability of publicly available telephone services, including access to emergency services, directory enquiry services and directories equivalent to that enjoyed by other end-users’

Given that certain disabled users rely heavily on telecommunications services, particularly with respect to contacting emergency services, continuity of access is of paramount importance.

However, ComReg accepts that the development of specific measures for disabled users must take into account a range of factors including user needs, legislative requirements under universal service legislation and the impending Disability Bill and social policy.

In this context, ComReg will require the USP, where appropriate, to develop new services and improve existing services to ensure equality of access for disabled users. Many of the proposals put forward through this consultation process require further consideration e.g. priority repair service, Minicom access to directory enquiry services, accessible websites, buffer time for dialling out etc. Comreg will discuss these with the USP.

In order to increase transparency for disabled users ComReg also proposes that the USP be required to publish a Code of Practice regarding the accessibility of universal services to disabled users. This will include

- Publication of a clear policy on the accessibility of universal services to disabled users which will be included in the wider published policy statement on provision of universal services

- Publication of details on any special schemes available to disabled users (e.g. the STEP Rebate scheme).

The Code shall also address issues such as quality of service standards and performance targets, complaint handling and appeal procedures. This will be developed in consultation with ComReg and, where appropriate, representative groups (ComReg will approve the Code). Other providers will also be encouraged to sign up to this code of practice and will be invited to provide input into the initial development of this code.

It should also be noted that many of the recommendations that were put forward in this consultation, while of benefit to disabled users, relate to adaptations in terminal equipment and are outside the scope of the Universal Service Directive. However, recital 8 of the framework directive states

It is important for regulators to encourage network operators and terminal equipment manufacturers to cooperate in order to facilitate access by disabled users to electronic communications services.

Accessibility of communications is greatly increased through the availability of equipment adapted for use by disabled users, and the division between terminal equipment and networks is largely irrelevant to the user. While many improvements in accessibility can be achieved through developments in the network, it is clear that complementary communications equipment also needs to be taken into account. To this end, the European Commission has established the INCOM (Inclusive Communications) working group whose focus for the next year is to raise and spread awareness of the constraints experienced by people with various disabilities in gaining access to electronic communications and to suggest ways to overcome these constraints, share experience and outline good practice at an international, national and local level. ComReg envisage that the outcomes from the INCOM group will assist in development of policy moving forward.

Commission's Position

ComReg will be requiring the USP to implement the following measures with respect to the provision of services to disabled users.

For users that are hearing impaired:

- Inductive couplers which allow users with a hearing aid set to connect it to their telephone in order to allow them to hear incoming speech clearly.
- Amplifier phones which allow the user to increase the volume of incoming speech.
- Teleflash Visual Alert which shows a flashing light, or makes a loud noise when the phone rings.

For Users that are hearing and/or speech impaired:

- A Text Relay Service which provides for the receipt and translation of voice messages into text and the conveyance of that text to the textphone of customers of any operator, and vice versa.
- A rebate scheme whereby, as a result of the time taken to make a text telephone call, equality of payment for deaf text telephone users can be assured.

For users with limited dexterity or mobility:

- Push button telephones with speed and automatic redial buttons to allow pre-programmed numbers (typically the most called) or last called numbers to be dialled without having to re-enter the number.
- Hands free/loudspeaker phones which mean that the handset does not need to be used at all.

For users with restricted vision:

- Restricted vision telephones which can help people with restricted vision to find other numbers more easily.
- Braille billing free of charge.
- Special directory enquiries which allows those unable to use the phone book because of a disability to use a directory enquiry service free of charge.

The USP will be required to develop and publish, in consultation with appropriate representative bodies and with the agreement of ComReg, a Code of Practice governing its provision of services to disabled users. Such a Code shall set out its policy for the provision of such services, and include details regarding any special schemes offered and the availability of services.

The USP will also develop proposals as to how its directory enquiry service can be made available to Minicom users. ComReg will also discuss with the USP other means of improving the accessibility of services to disabled users, including, where appropriate, the development of new measures.

6 Designation of Universal Service Provider

The draft regulations require ComReg to designate one or more operators to guarantee the provision of universal service so that the whole of the State can be covered.

Different operators can be designated to provide different elements of universal service and/or to cover different parts of the state. The designation method used must be efficient, objective, transparent and non-discriminatory mechanism.

6.1 Summary of Consultation Issues

ComReg identified a number of factors relevant to the designation of the universal service provider. These are:

- As competition develops, operators other than the incumbent may be in a position to fulfil all or part of the USO. In addition, this is a consideration regarding the period for which the designation should apply.
- The designation must take into account the operator's ability and willingness to accept all or part of the obligations.
- While the USO has to cover the whole of the State, this does not preclude the area to which the USO applies being subdivided into a number of smaller geographical areas.
- Expressions of interest were invited from operators to put themselves forward to become Ireland's designated USP(s).

It was proposed, subject to there being no expressions of interest from other parties, to re-confirm eircom as the USP having regard to its market share, the ubiquity of its network and its considerable experience in providing the services within the USO.

ComReg considered that the universal service designation should apply for an unspecified period although that it was envisaged that a review could take place in three to five years having regard to any changes in market conditions. ComReg also proposed that the designation should apply to the whole of the State. Views on the following questions were sought.

- Q. 15. Do you agree with the proposal above? Are there other factors which should be considered by the Commission in making this designation.**
- Q. 16. Do you agree with the proposal above to re-confirm eircom as the universal service provider with respect to the provision of a subscriber directory and directory enquiry service. ? Are there other factors which should be considered by the Commission in making this designation**
- Q. 17. Do you agree with the proposal above to re-confirm eircom's designation as the universal service provider for public payphones? Are there other factors which should be considered by the Commission in making this designation ?**

- Q. 18. Do you agree with the Commission’s proposal that the universal service obligations should be applied to the geographic area of the State? Are there other factors which should be considered by the Commission in this regard ?**
- Q. 19. Do you consider that the USO designation should apply for an indefinite period with a review to take place in the next three to five years ?**

6.2 eircom’s Position

eircom stated that the intention to re-designate them as USP has not been done in a transparent and proper manner and was not supported by an economic or market analysis justification. They believed that references within the paper to obligations being discussed specifically and exclusively in the context of eircom restricted any meaningful consultation on the possibility of other operators being involved in or providing USO. While eircom accepted that it should for the present continue to carry a USO, it did not believe that it was appropriate to propose the designation of eircom as the USO provider for these services, particularly in the absence of

- the conclusion of the ongoing transposition process
- the implementation of the market definition and market analysis exercises
- the implementation of a regulatory impact assessment process

eircom proposed that, following consultation, the USO should be an obligation equally applied to mobile operators in order to optimise USO coverage, reduce costs of USO provision and ensure that mobile customers can benefit from the same set of services and consumer protection level as all other consumers. eircom proposed that in addition to designating eircom as the USP, it may be sufficient to designate one mobile Operator as a USP given the duplication of mobile network footprints and potential roaming between networks.

eircom also agreed with the continuation of the obligation to provide the directory elements of the USO.

eircom agreed with the application of the USO to the geographic area of the state and noted that the network infrastructure of the mobile operators achieves greater coverage than the current fixed network infrastructure. They believed that this was an important factor in considering the designation, and felt that in cases where access to the fixed network was costly, that a mobile USO provider would be able to offer the customer connection to the mobile network as an alternative.

It was also eircom’s view that given the dynamic nature of the market that a review of the USO should take place, at the very minimum, within two years of its implementation.

6.3 Views of Other Respondents

Three respondents agreed that eircom should be designated as the USP for the provision of access. One of these respondents suggested that it would be prudent to announce a policy objective to have more than one carrier with USO after the next USO review (2 years was suggested). Another respondent stated that there should be at

least another universal service operator in order to encourage competition and help to bring down the prices of basic telecommunication services.

For payphone and directory services, subject to any interest that may be expressed by any other operator, one respondent agreed that eircom should be re-confirmed as the USP. Other respondents expressed no view in relation to the designation of a USP for these services.

Two respondents agreed that the USO should apply to the geographic area of the State. One of these respondents stated that it may be possible, subject to further study on the level of competition, that the USO payphone obligation in certain city locations could have some geographic bounds to it. However, the respondent felt it was difficult to perceive at this time how such a geographical boundary could be defined.

On the question of the period for which the USO should apply, three respondents agreed that the USO should, subject to social, economic or technological developments, apply for an indefinite period but be reviewed within three to five years.

Another respondent felt that there should be no more than 2 years between USO reviews. Prior to such reviews an examination should be undertaken to analyse the prevailing technologies utilised in peer OECD and EU countries in order to ensure that any new USO keeps pace with developments in this area.

6.4 Commission's Position

Under the Universal Service Directive, ComReg has to notify the European Commission by 24th July next of the names of undertaking(s) designated as having universal service obligations in accordance with Articles 4, 5, 6, 7 and where applicable Article 9(2). ComReg believes there is significant benefit to users and the industry in ensuring that the US framework is updated in the context of the transition from the existing to the new regulatory framework. In light of this, and notwithstanding the fact that the transposition process is ongoing, ComReg considers it necessary and prudent to engage in the consultation process at this time.

In consulting on the scope of USO under the new framework it is necessary to refer to existing obligations, which unavoidably requires reference as to how they are currently provided and by whom. Given that the existing USO is fulfilled by eircom, it is difficult to have any meaningful discussion on the issues without reference to the current USO provider. Indeed, it also provides a benchmark from which future considerations of USO provision can be reviewed, particularly in light of experience to date and legislative requirements.

In the consultation, ComReg highlighted the basis upon which it proposed to carry out the designation, namely, SMP status having regard to market share, the ability and willingness of an operator to fulfil part or all of the USO, network ubiquity and experience in the provision of services falling within the scope of universal service as defined in the EU Directive (and subsequently in the draft regulations). Furthermore, the consultation included an explicit request for expressions of interest from operators who may be willing to provide all or part of the universal service. The separate designation of a USP for the individual elements of the USO was not precluded by the consultation.

In setting out its position on designation, ComReg has relied on information available to it at this point in time. eircom is currently designated as the SMP operator in the

public fixed telephony services market and the fixed telephony networks market with a market share of 86% and 88% respectively (Decision Notice D08/02 – June 2002). While the market analysis under the new framework is underway, it is unlikely to be completed in time to allow its consideration as part of the current universal service work stream. However, the existing SMP designations continue in force pending the completion of the SMP market analysis under the new framework. Therefore ComReg considers it reasonable to utilise this data for designation purposes.

The scope of the universal service obligation with respect to access as set out in the USD requires that connections to the public telephone network and access to publicly available telephone services are provided to the public *at a fixed location*. As stated earlier in this paper (see section 4.3), ComReg interprets this concept as the provision of services to a premises (such as a house etc.).

ComReg does not propose to designate a mobile operator as a USP at this time. The office is obliged under the draft regulations to ensure that affordability of services is maintained for users. Given that that differences exist between fixed and mobile tariffs, this would, in designating a mobile operator as a USP, gives rise to affordability considerations which would also have to be resolved. Furthermore, the ability of GSM networks to delivery satisfactory levels of internet access is also a consideration.

Having regard to affordability and technical considerations, ComReg does not propose to designate a mobile operator as a USP at this time. ComReg does preclude the possibility of utilising wireless based systems for the provision of Universal Services. However, ComReg intends to keep this issue under review as the convergence of technology develops further.

Given that the regulations are still in draft form, ComReg is not in a position to finalise the designation process at this time. However, ComReg is signalling its intention to designate eircom as the USP and will do so once the regulations have entered into force. eircom will be required to fulfil the obligations set out in Sections 5.1 to 5.4, which themselves will be finalised once Ministerial consent has been obtained (as appropriate). ComReg will give effect to the designation by way of Decision Notice at the appropriate time.

Given that there was broad agreement on the matter of the geographic area to which the USO should apply, ComReg considers that the obligations should apply to the whole of the State. Currently, there is insufficient granularity in the level of market information available to the office to allow an examination of a designation below the level of the State. To achieve this would require development of data gathering and reporting by operators which is not justified at this time. Furthermore, SMP designations apply to the whole of the State.

Respondents views regarding the period of the designation ranged from 2 years to those suggested in the consultation which stated that a period of three to five years, having regard any changes in market conditions, might be appropriate. Com Reg notes that Article 36(3) of the Directive states that the European Commission shall periodically review the functioning of the Directive and report to the parliament not later than three years following the 24th July, 2003. The outcome of this review may lead to further changes in EU universal service legislation.

It will also require a number of months for the USP to give effect to the positions as set out in this paper (and later to be confirmed via Decision Notice).

In light of the above, ComReg therefore considers that the designation should apply for a period of three years. The period of designation is without prejudice to ComReg's rights and obligations to regulate the market. In advance of the expiration of the designation period, ComReg may carry out a review of USO scope taking account of evolving regulatory, social, commercial and technological conditions.

Commissions Position

The Commission intends to designate eircom as the USP for the provision of the following services throughout the State.

- Provision of access at a fixed location
- Directory Enquiry Services and Directories
- Public Pay Telephones
- Provision of Service to Disabled Users

The above services will be provided in accordance with the intended obligations set out in Sections 5.1 to 5.4 (subject to the process of obtaining Ministerial consent).

Effect will be given to both the obligations and designation by way of Decision Notice (and associated directions) once the transposition and ministerial consent processes have been completed.

The Designation shall apply for a period of three years. A review to facilitate any further designation may be carried out prior to the expiration of this period.

7 Affordability

The regulations generally set out affordability as being related to the information which users receive regarding telephone usage expenses as well as the relative cost of telephone usage compared to other services, and is also related to their ability to control expenditure. The aim of ensuring affordability is to be achieved by imposing obligations on undertakings designated as having universal service obligations.

7.1.1 Summary of Consultation Issues

Affordability is an important element of universal service regime and in Ireland this is maintained through mechanisms such as the Price Cap. A recent consultation on the Price Cap⁷ proposed the introduction of a new scheme where eircom would provide €5 worth of free national/local calls for €22.50 per month, with no line rental charge. It was stated in the USO consultation that no new measures would be proposed until the outcome of the Price Cap consultation was known, although this would be reviewed in light of responses received.

The issue of geographically averaged prices was also raised and it was proposed that an obligation be placed on operators designated with universal service obligations to geographically average prices for the relevant services falling under the USO. The following questions were raised.

- Q. 20. Do you agree with the proposed approach on the affordability of tariffs ?
Are there other factors which should be taken into consideration ?**
- Q. 21. Do you agree with the proposal to geographically average prices ? If so,
please explain your reasoning.**

7.1.2 eircom's position

eircom said their views on affordability had already been submitted to ComReg as part of the Price Cap consultation process. They considered that direct transfers such as the "Free Schemes" are the most efficient mechanism to use for protecting vulnerable users. They believed that the objective of minimising market distortions as per Article 3.2 of the Directive, would be advanced by ensuring that prices available to as many customers as possible are set at market rate. They believed that the best way to do this is to identify and assist individual vulnerable customers, instead of distorting prices to a wider group. They felt that the introduction of a regulatory impact assessment would be essential in this respect.

eircom stated that they offer geographically averaged prices throughout the state although not obliged to do so and did not agree with the proposal to introduce geographic averaging as a USO. They considered that geographic de-averaging of prices should be encouraged in order to support sustainable investment by all operators and minimise market distortions. They suggested that establishing broad price bands between which prices would differ reflecting broad divergence in cost, but within which prices would be averaged e.g. metropolitan centres, urban areas etc. Were ComReg to impose geographic averaging on eircom as an obligation they would seek

⁷ Consultation 02/96 *Review of the Price Cap for certain Telecommunications Services* is the third in a series of consultations on the Price Cap

to consult on circumstances where it would not apply. Such suggested circumstances could include cases where

- a request for a fixed line has been deemed unreasonable by the USP
- the line to be provided is not the first line to be provided to that location
- it is a second home/holiday home

7.1.3 Views of Respondents

On the first question, one respondent expressed their agreement with the proposal while another stated that they welcomed the introduction of a new low-users scheme.

On the issue of geographically averaged prices one respondent stated that they agreed with the proposal. They would support a USP recovering its efficiently incurred costs in providing access to geographically remote locations. Geographically de-averaged installation costs may be appropriate in the scenario where a test for reasonableness is adopted which would result in users paying above the standard installation charges. In this regard, they referred to the “100 man-hour” rule adopted in the UK by BT (See Section 5.1.1) and proposed that the USP be granted similar flexibility.

7.1.4 Commission’s Position

In light of responses, the Commission believes that, in the current climate, affordability can be maintained through a combination of the Price Cap mechanism and the Vulnerable Users Scheme.

The amended Price Cap, as introduced by ComReg, came into force on 4th February this year and means that eircom cannot increase the prices of the price cap basket of services in real terms i.e. by more than the rate of inflation.

The Vulnerable User Scheme, which stems from the Price Cap work stream, was introduced by eircom in June of this year. The scheme will also impact on affordability by limiting any increases in the size of telephone bills for all customers who have a relatively low level of usage. This scheme will potentially benefit all eircom residential customers whose average spend on calls [excluding line rental costs] is lower than approximately €11 per month (incl. vat). The scheme will work as follows: if a user spends on average less than €11 a month on calls alone, they can now pay an initial subscription fee of €22.50 (incl. VAT) per month. This will include line rental, local, national, fixed to mobile and international calls up to a value of €5.00 (incl. VAT). It should be noted that once a customer exceeds the €5.00 worth of free calls they will pay double on calls up to €11, after which they will revert to standard call rates.

The Commission considers that this scheme should currently satisfy the aim of ensuring affordability under universal service legislation and will not be proposing any new measures aimed at low income users until such a time as the success of the Vulnerable User Scheme can be determined. The applicability of this scheme to the aims of affordability under universal service shall be continuously monitored by the Office and ComReg reserves the right to require the introduction of additional or alternative schemes for the purpose of ensuring affordability under universal service.

The Commission would point out that the development of competition, through the regulation of wholesale prices and other means, also contributes to the affordability aim by ensuring price competition. Furthermore, measures to allow users to control

their telephony expenditure (see Section 8) are also related to affordability considerations.

The Department for Social and Family Affairs also operates a number of schemes which are designed to protect vulnerable users (such as pensioners and defined disability groups) and ensure affordability of services. For example, the Department's Free Telephone Rental Allowance (FRTA) scheme provides users who qualify for the scheme with free line rental and a credit of up to €1.21 towards calls each month.

On the matter of geographic averaging, ComReg noted eircom's position that they offer geographically averaged prices throughout the state although not obliged to do so. It remains ComReg's position that the benefits of geographic averaging in terms of the impact on non-competitive areas generally outweighs the impact on prices in low costs areas. Were the prices of services within the scope of the USO to be geographically de-averaged, it would give rise to issues regarding the affordability of such services to users.

The Commission has decided that geographically averaged pricing shall be required with respect to services falling within the scope of the USO. It is reasonable that in certain extreme circumstances where the cost of providing a telephone line is greatly in excess of the standard installation cost, that eircom should seek to recover some costs from the customer. This issue has been discussed in section 5.1 which deals with the obligation to meet all reasonable requests for access. The question as to the circumstances where geographically averaged installation costs may not be appropriate will be dealt as part of the work arising from this area. These circumstances will be agreed with ComReg.

However, ComReg does not consider that the cost of telephone installations should be geographically de-averaged in the case of a second line to a home. Where a line has already been provided to a location would suggest the availability of infrastructure in this area and may make refusal of a request difficult in light of reasonableness. The rights of users in these circumstances remains within the ambit of universal service legislation and ComReg does not believe that the USP could refuse to provide service on these grounds alone. Such cases will be dealt with in the context of the criteria that will be established regarding the reasonableness of requests for access.

Commission's Position

The Commission considers that affordability considerations are appropriately dealt with through the Price Cap mechanism and measures to allow users to control their telephony expenditure.

The USP will be required to offer geographically averaged prices throughout the State for the services falling within the scope of the USO. Specific circumstances where geographic averaging will not apply will be agreed with ComReg.

8 Control of Expenditure

The draft regulations provide that ComReg can make rules for the purpose of ensuring that subscribers monitor and control expenditure and avoid unwarranted disconnection from the network.

Measures which can be introduced include

- **Itemised Billing:** a minimum level of itemised billing to be provided to consumers free of charge.
- **Selective Call Barring:** the ability of the subscriber to bar outgoing calls of defined types or to defined numbers free of charge.
- **Pre-Payment Systems:** a facility to allow consumers to pay for access to and usage of the network/services on pre-paid terms.
- **Phased Payment of Connection Fees:** the facility whereby consumers can pay for their connection fees on a phased basis.
- **Non-Payment of Bills:** measures to cover disconnection in the event of the non-payment of bills (in effect, a disconnection policy).

ComReg can waive the requirement to provide the above measures if they are deemed to be widely available. ComReg stated that it would utilise the responses to this part of the consultation to focus the issues and to decide what measures may be appropriate.

8.1 Itemised Billing

8.1.1 Summary of Consultation Issues

The Commission considered that the current level of call itemisation as provided by eircom was sufficient to allow customers to verify and control their expenditure and did not believe that this needed to be amended at this time. ComReg sought views as to whether monitoring and control of expenditure in 'near' real time rather than having to wait until they receive a bill would be of further benefit in assisting subscribers to monitor telephony usage and control of expenditure.

- | |
|--|
| <p>Q. 22. Do you agree with the approach regarding call itemisation above ?</p> <p>Q. 23. Do you believe there is merit in a facility to allow users to monitor expenditure in 'near' real time ? What issues might the introduction of such a facility give rise to ?</p> |
|--|

8.1.2 eircom's position

eircom stated that they already comply with the requirements and therefore agreed with the Commission's statement that the current level of itemisation was sufficient and did not need to be amended at this time.

eircom felt that Call Tracking, which has been introduced as an enhancement to itemised billing allowing individual household members to track their calls, provides the opportunity to customers to monitor usage and expenditure and exert a degree of control over bills. They stated that the introduction of a more sophisticated 'near' real

time model would have significant development costs with little advantage to consumers over what is already provided

8.1.3 Views of Respondents

All respondents who expressed an opinion agreed with the Commission's approach regarding call itemisation, stating that the current level of itemisation provided consumers with sufficient information.

Only one respondent felt there was merit in the proposal regarding 'near' real time billing information but emphasised that it should be available to all including the elderly and disabled. Of those who did not agree with the proposal one respondent stated that it did not agree that there was necessarily any cost/real social benefit in the provision of 'near' real time billing information. They submitted that the provision of clear charging advice to consumers concerning key calling scenarios would achieve greater benefits for consumers as it would facilitate preventative measures being taken by customers as opposed to reactive remedial steps.

8.1.4 Commission's Position

Given the broad agreement as to the current approach on itemisation, ComReg does not propose to introduce any changes to the existing itemised billing regime at this time. Recent consumer research⁸ undertaken by ComReg in March 2003 indicates that 60% of consumers are aware that they can get a minimum level of call itemisation from eircom free of charge. ComReg will keep the matter under review.

ComReg does not propose to require the introduction of 'near' real time billing as part of the USO at this time. Consumer research has indicated that 26% of those surveyed would take up such a service even if there was a charge associated with it, and were it to be offered free of charge the level of demand rose to 46%.

The development costs, coupled the level of user demand and the availability of other measures to allow users to control expenditure, may not justify its introduction at time.

Commission's Position

ComReg intends to require the USP to provide, on request, a minimum level of itemised billing, as prescribed by ComReg, for free. The current requirements regarding the minimum level of itemised billing are set out in Decision Notice D09/01, Document 01/53, Itemised Billing by Telecommunications Operators.

8.2 Call Barring

8.2.1 Summary of consultation issues

eircom, as the current USP, offer call barring to Premium Rate Services free of charge with a range of other barring options being offered subject to the payment of a set up fee and ongoing rental charge. ComReg posed the question as to whether call barring

⁸ 03/29c Quarterly Market Review March 2003, Telecommunications Survey Residential Market

should be provided free of charge for customers who find themselves in payment difficulties. Access to certain services could be barred until such a time as a customer has discharged their debt or for a predetermined period.

Q. 24. Do you agree with the approach regarding call barring above ? Do you believe there is merit in the establishment of a facility to allow subscribers facing payment difficulties to avail of call barring facilities free of charge? What issues might the introduction of such a facility give rise to ?

8.2.2 *eircom's position*

eircom felt that they currently offer a sufficient level of call barring free of charge to customers. They stated that call barring to Premium Rate Services, which is provided free, is one of the most popular options used by eircom customers citing ComReg's own research in the Quarterly Report 2002 which alluded to the barring of premium rate calls to control expenditure. They also stated that they did not see any particular merit in extending such free facilities to other call types such as mobile.

With regard to the provision of call barring facilities to those facing payment difficulties, eircom were opposed to the introduction of such a facility. Eircom's view is that there is sufficient flexibility contained in the disconnection policy (see section 4.3) to allow users facing payment difficulties to control their expenditure and refer to the disconnection figures quoted by ComReg as an example of the effectiveness of the current range of policies in place to help vulnerable users

8.2.3 *Views of Respondents*

One respondent felt that eircom currently offer a sufficient level of call barring free of charge. They also believed that existing barring facilities provide sufficient flexibility to allow a customer experiencing payment difficulties to control phone usage until payment difficulties are overcome.

Two respondents felt there was merit in establishing a facility to allow subscribers facing payment difficulties to avail of call barring free of charge. One of these believed there is merit in extending this to all domestic users to help them avoid getting into payment difficulties in the first place. Another respondent stated that call barring should be offered for all, especially those in rented accommodation or with credit difficulties. No charge should be added to monthly line rental with the user being able to restrict calls to local/national/non-geographic/Internet when they wish. They also proposed that ComReg should consider the introduction of PIN access systems on a more widespread basis to help control access to and costs of calls.

8.2.4 *Commission's Position*

Whilst the Universal Service Directive specifically refers to premium services as an example of high priced calls, it also acknowledges that the measures referred to may need to be reviewed and changed in light of market developments. In the past, calls to premium rate numbers may have given most cause for concern in terms of control of expenditure, ComReg is mindful that other call types also lead to control of expenditure concerns for consumers.

Recent research⁹ undertaken by ComReg shows that of those who currently avail of call barring to control expenditure, 42% bar mobile calls as opposed to 28% for premium rate services. ComReg is aware that at present the facility to bar mobile calls without having to also bar national calls is not available. This means that the flexibility of users to selectively bar certain call types is restricted. ComReg considers that the barring of calls to mobiles should be available in isolation from other defined calls types e.g. national. ComReg considers that demand for mobile call barring would be greatly increased if it were to be isolated from national calls and many consumers would benefit from the ability to control their expenditure on these types of calls. The ability to selectively bar mobile calls in isolation is provided by the majority of universal service providers across Europe.

The introduction of an unbundled mobile call barring product may require the resolution of technical difficulties. Indeed, Comreg is aware that the issue of call barring (and eircom's capabilities in this regard) is being discussed by the industry in the context of the introduction of Wholesale Line Rental (WLR) and the availability of corresponding wholesale call barring products. Technical difficulties have been identified, albeit in a WLR context, and solutions are being explored. ComReg will be requiring the USP to submit a detailed proposal to the office as to how the issue of an unbundled mobile call barring facility can be dealt with. Subject to the outcome of these discussions, ComReg reserves its right to require further action as appropriate.

On the matter as to whether call barring options (other than for premium rate numbers which is already free) should be free, ComReg considers that there is merit in extending this to mobile calls, but will decide on this matter when reviewing the USP's proposal with respect to the barring of mobile calls.

The issue of whether the full range of call barring options should be free of charge to consumers who find themselves in difficulties is one which is directly related to the USP's disconnection policy. While not wishing to mandate free call barring options for those in payment difficulties, ComReg expects the USP to adopt a reasonable approach when dealing with such users. Consumers facing payment difficulty are expected to follow eircom's disconnection policy and contact them (prior to disconnection) to see whether an appropriate repayment plan can be arranged.

ComReg notes the availability to have all outbound calls barred (with only access to freefone and emergency services and incoming calls). However, ComReg believes that the cost of such a service should not be prohibitive, particularly for those facing payment difficulties who would currently continue to incur costs/debt while making repayments. ComReg intends to discuss this matter of call barring pricing with the USP to ascertain what can be done in this area. Subject to the outcome of these discussions, ComReg reserves its right to require further action as appropriate.

⁹ 03/29c Quarterly Market Review March 2003, Telecommunications Survey Residential Market

Commission's Position

It is ComReg's intention to require the Universal Service Provider (USP) to provide selective call barring facilities for outgoing calls to National, Mobile, Premium Rate and International Calls. The premium rate call barring facility shall be free of charge for users.

The USP will be required to submit a detailed proposal to ComReg within three months following designation as to how the issue of an unbundled mobile call barring facility can be dealt with.

8.3 Pre-Payment Systems

8.3.1 Summary of Consultation Issues

Given the wide availability of prepaid products in the market, along with the possibility of the introduction of other measures to allow users to control expenditure, ComReg sought views as to the merits of the introduction of pre-payment systems for services within the scope of the USO, including an internet pre-paid product and an option whereby the user could set a predetermined level of call expenditure with the USP. ComReg stated that it was considering limiting the provision of pre-payment systems to these services.

- Q. 25. Do you agree with the approach to limit the requirement to offer pre-payment systems?**
- Q. 26. Do you believe there is merit in the establishment of a facility to allow subscribers set a predetermined level of expenditure and/or a pre-paid internet product? What issues might the introduction of such a facility give rise to?**

8.3.2 eircom's position

eircom stated that it does not offer a pre-paid account facility and previous research amongst its customer base had indicated little interest in such a scheme being warranted. They believed that sufficient facilities existed in the Irish market to enable consumers to pay for access to the public telephone network and use of publicly available telephone services on pre-paid terms (e.g. pre-paid calling cards, mobile). eircom also referred to research published in ComReg's Quarterly Review March 2002 which showed that only 24% of respondents were interested in the introduction of a pre-pay system to control expenditure.

eircom also felt that the proposal that the USP arrange pre-determined levels of expenditure with customers would be completely unworkable and financially untenable. The proposal would be very inefficient and costly with little benefit to consumers.

8.3.3 Views of Respondents

There were mixed views among respondents regarding the approach to limit the requirement to offer pre-payment systems. One respondent supported the Commission's view that facilities already existed to allow consumers to pay for access to the public telephone network and use of publicly available telephone services on prepaid terms. They stated that they did not agree with any operator being required to develop any such systems for USO purposes alone. Another respondent felt if a prepaid system were to be introduced that tariffs for both prepaid and postpaid calls should remain the same.

It was widely felt that the introduction of predetermined call spend or pre-paid internet products would be costly and there would be practical difficulties regarding their implementation. One respondent felt that there were existing products which allowed consumers to select a package which best suit specific usage requirements.

8.3.4 Commission's Position

In light of the views of respondents and available research regarding consumer preferences, ComReg does not intend at this time to propose that the USP be required to develop systems to allow the introduction of these type of services. Research undertaken by ComReg in the March Quarterly Report 2003 shows that demand for such services is currently limited. There are a number of products on the market which may satisfy user demand prepaid services. ComReg also considers that the development costs of introducing prepay systems in the absence of consumer demand would not be appropriate at this time. Also of relevance is recital 15 of the USO Directive which refers to current conditions not warranting a requirement for operators with USO to alert subscribers where a predetermined limit of expenditure is exceeded.

ComReg reserves the right to review the need to introduce such schemes in the future should market demand require it.

Commission's Position

ComReg does not intend to require the USP to introduce pre-pay systems at present.

8.4 Phased Payment of Connection Fees

8.4.1 Summary of Consultation Issues

ComReg considered that the main benefit of introducing phased payment of connection fees would be to allow certain subscribers, who by virtue of the level of the up front cost, might not ordinarily get connected to the network to become connected. Views were sought as to the merit of such a scheme. ComReg stated it that, prior to a decision being taken, it wished to carry out further work regarding the level of demand for such a product and possibly engage in discussions on the practical implications regarding its implementation with the provider concerned. Feedback from ComReg's consumer survey for the first quarter of 2003 would also be considered.

Q. 27. Do you agree with the approach regarding the facility for subscribers to spread the payments for PSTN connections over a period ? Do you believe there is merit in the establishment of such a facility? What issues might the introduction of such a facility give rise to ?

8.4.2 eircom's Position

eircom stated that they would be prepared to implement a phased payment scheme for new first time PSTN connections, on condition that payments were made via direct debit. Their rationale for this was that the scheme could give rise to an unacceptable level of bad debt as it affords credit to customers with no credit history. In addition, the cost of a PSTN line installation varies (depending on whether it is a first time connection or a re-instatement of a line) and eircom maintain that direct debit would provide a guarantee that at least some of the cost of a new installation would be recouped.

The introduction of a facility to allow the phased payment of connection fees also raises a number of internal issues which would need to be explored further, for example, impact on billing systems, credit terms etc. eircom also highlighted that there may be negative issues from the customer's perspective as spread payments add to bill totals over a number of months and direct debits may not be popular with certain customers.

8.4.3 Views of Respondents

One respondent agreed with the introduction of such a scheme. They believed it was a positive step for ensuring that people can connect to the telephone network as the cost can be prohibitive to potential subscribers on low incomes. Another respondent stated that they did not believe that the cost of PSTN connection represented a particularly high barrier to entry and maintained that whether this kind of facility is offered should depend on user demand. Care also needed to be taken so as not to increase the level of bad debt if such a scheme is to be introduced.

8.4.4 Commissions Position

The Commission considers there are benefits in the introduction of this scheme although a number of issues regarding billing systems and terms and conditions need to be resolved.

A core aim of the USO is to ensure that as many people as possible can get access to telephony services and the phasing of connection fee payments will ensure that users who might ordinarily not get connected to the network because of the installation cost can do so. The Commission notes that, in light of bad debt considerations, direct debit is one preferred payment option under such a scheme.

Comreg accepts eircom's proposal that a scheme to allow for the phased payment of connection fees should be implemented using a direct debit option. Such a scheme will be introduced within three months following designation. The USP will be required to develop such a scheme which shall be notified to ComReg via the Telecommunications Scheme amendment process.

Commission's Position

The Universal Service Provider (USP) will be required to introduce a scheme to allow for the phased payment of connection fees via direct debit within three months following designation.

8.5 Non Payment of Bills

8.5.1 Summary of Consultation Issues

The Commission proposed continuing the existing obligation¹⁰ on all operators to publish their Disconnection policy as part of their Code of Practice (Regulation 25(6) of the draft regulations for the extension of the obligation on the USP to publish their disconnection policy to all operators). ComReg raised the question as to whether the USP should have a more detailed disconnection policy in order to keep as many subscribers as possible connected to the network. ComReg considered the policy should provide customers with a wider appreciation of the service being provided, how to pay for the service, the consequences of non payment and importance of contacting the company should subscribers experience payment difficulties. The policy should set standards, clarify expectations and bring greater transparency. It was noted though that the obligation was not intended to promote a 'no disconnections' policy.

Q. 28. Do you agree with the approach regarding the non-payment of bills ? Do you believe there is merit in the USO provider having a more developed policy? What issues might such a policy deal with ?

8.5.2 eircom's position

eircom maintained that their current credit control and disconnection policies as set out in their code of practice for handling consumer complaints are flexible, reasonable, allow for adequate customer warning, with the use of disconnection being an action of a last resort. They considered that while attempting to keep as many customers connected to the network as possible, eircom's disconnection policy must also reflect the company's commercial interests and did not agree with the proposal to introduce a "softening" of its disconnection policy.

8.5.3 Views of Respondents

One respondent believed that there should be a clear policy on this matter which is readily understood and which is applied on a consistent basis across the state.

8.5.4 Commission's Position

In line with the proposal in section 8.5.1 above, ComReg considers that the existing obligation on all operators to publish their disconnection policy as part of their Code of Practice on Consumer Complaint Handling should be continued. In relation to the additional requirement which could be placed on the USP, ComReg recognises the need for a balance to be struck between protecting users from unwarranted disconnections and commercial interests.

¹⁰ ODTR Document 01/67 Codes of Conduct for the Handling of Consumer Complaints by Telecommunications Operators, Decision Notice D13/01

Gross disconnection figures for eircom residential customers show that throughout 2002 the number of lines being disconnected fell from 2.15% in the 1st Quarter to 1.85% by the year end (a figure half of what they were in the period June to September 2001). Net Disconnection figures (i.e. those who are not subsequently reconnected in the period) also fell considerably to 0.02% by the year end. These figures, especially the overall figures, would seem to indicate that the current disconnection policy is succeeding in reducing the number of subscribers being disconnected.

Rather than softening eircom's current disconnection policy, it is simply the Commission's intention to enhance the level of information contained within it to ensure that there is no ambiguity regarding the USP's obligations as well as the subscriber's responsibility with respect to the payment of bills. The variance between overall gross disconnection and net disconnection figures, 85% and 0.02% for 4th Quarter 2002 respectively, indicates that once disconnected most customers are also subsequently reconnected.

This would appear to point to a lack of understanding by consumers regarding the payment options available to them, the timeframes for payment as well as the benefits of entering into discussions with the company if temporary payment difficulties are being faced.

ComReg will therefore be entering into discussions with the USP with a view to augmenting the current level of information so as to clarify expectations and bring greater transparency to the disconnection process.

Commission's Position

It is ComReg's intention to require, the designated Universal Service Provider (USP) to publish disconnection policy as part of their Code of Conduct for Handling Consumer Complaints. ComReg will be entering into discussions with the USP with a view to augmenting the current level of information within their disconnection policy so as to clarify expectations and bring greater transparency to the disconnection process.

It is also ComReg's intention to require that all undertakings publish their disconnection policy as part of their Code of Conduct for Handling Consumer Complaints.

The current requirements regarding the non-payment of bills are set out in minimum level of itemised billing are set out in Decision Notice D13/01, Document 01/67, Codes of Conduct for the Handling of Consumer Complaints by Telecommunications Operators.

8.6 Provision of Information to Users

ComReg has noticed through its consumer research that awareness of the facilities identified to assist users in controlling their expenditure, while increasing, is still not as high as it should be. ComReg considers that if there were greater awareness regarding the availability of these measures, then more people would be able to better monitor and control their expenditure.

ComReg considers that the availability of these service from the USP should be clearly highlighted to users and Comreg will engage with the USP as to how this can be achieved, including the development a dedicated, concise information section on its website or in booklet form setting out information in relation to all aspects of its USO.

9 Quality of Universal Service

Under the draft regulations, universal service providers are required to publish adequate and up-to-date information concerning their performance in the provision of universal service, based on quality of service parameters, definitions and measurement methods set out in Annex III of the Directive. These measures include supply time for initial connection, fault repair time and consumer complaints. ComReg can make rules specifying additional quality of service performance parameters for the provision of services falling under the USO.

9.1.1 Summary of Consultation Issues

ComReg noted in its consultation that consumers already have access to comprehensive quality of service performance data, for the leading fixed telephony operators, through the Measuring Licensed Operator Performance Programme. ComReg considers this publication meets most of the requirements set out in the draft legislation.

In the consultation, ComReg proposed that quality of service performance measures that are currently set out in Measuring Licensed Operator Performance (MLOP) programme should be developed to provide disabled users with specific data relevant to their needs. ComReg also sought views on the merits of establishing performance targets for the USP and targets that may be appropriate. Views on the following questions were sought.

- Q. 29. Do you agree with the proposal to provide additional quality of service performance data on services relevant to the needs of disabled consumers and end-users?**
- Q. 30. Do you believe there is merit in the establishment of performance targets for the USO operator? What targets might be appropriate?**

9.1.2 eircom's position

eircom are of the view that the proposal to provide additional quality of service performance data for services relevant to the needs of disabled consumers and end-users is not workable for a number of reasons including data protection issues, lack of capacity within current systems and the financial costs associated with system developments.

In relation to benchmarking targets, eircom urged caution in the assumption that a benchmarking approach to the establishment of performance targets. eircom recognise that as a commercial provider of telecommunications services in a competitive market and quality of service performance standards have to be developed and maintained in order to remain competitive. They also welcomed ComReg's intention to have further detailed consultation with the designated USO provider(s) in developing performance targets.

9.1.3 Views of other respondents

Most respondents agree that quality of service performance data should be published. One respondent was of the view that eircom should provide performance data to all its

retail and wholesale customers in line with best European practice. This respondent does not believe that this is an issue unique to USO or the needs of the disabled user.

A number of respondents see merit in the establishment of performance targets for the USO provider. One respondent expressed the view that performance targets should be in line with Best European practice. Another respondent while acknowledging the importance of targets stressed the need to rigorously monitor adherence to them.

Another respondent referring to fault repair and service degradation, cautioned that in setting targets there was the need to ensure that the focus was on adequately correcting problems and not solely on meeting the particular target.

9.1.4 Commission's Position

ComReg accepts that the development and publication of additional quality of service measures require a committed effort from the USP that may involve system changes, staff training and process re-design. This has been evidenced through the implementation of the Measuring Licensed Operator Performance (MLOP) programme. Under this programme eircom who are currently designated as the USP currently provides valuable performance data on Universal Services such as

- provision of access by promise time,
- complaints registered and processed within 28 days
- faults registered and cleared by promise time
- performance of public payphones

ComReg would point out that eircom already provides performance data for its wholesale customers. Under the MLOP programme, performance data is published bi-annually on the supply of regulated services provided by eircom as the operator designated as having significant market power to other licensed operators. Outside MLOP, ComReg requires eircom to publish a suite of leased line delivery performance data which is made available on a monthly basis via the eircom website.

This consultation process has raised a number of issues that are of concern to end-users such as general network performance data and delivery of services to disabled users. It is also clear through the provisions of the new Directive, a key consideration moving forward is the provision of quality of service performance data to all users, in particular, disabled users. ComReg has also outlined a number of measures in this paper that will be required of the USP under the new legislation and is mindful that effective compliance with the required measures should be monitored moving forward.

ComReg is also of the opinion that the setting of performance targets will benefit end-users in terms of transparency and improving service quality levels. Comreg notes eircom's view that quality of service performance targets are a commercial imperative, but would point out that they are also a regulatory requirement. Where possible, the quality of service performance measurement may meet both commercial and regulatory needs.

ComReg agrees with respondents that quality of service performance targets should be in line with best practice standards across Europe but nonetheless accepts that national conditions may have to be borne in mind.

ComReg's position in quality of service measurement for the provision of USO services is as follows.

- The existing MLOP programme will continue to be utilised to provide performance measurement results for the delivery of services by the USP.
- Relevant performance parameters for the provision of services by the USP to disabled users will be developed, subject to any data protection considerations.
- Performance targets for the provision of services by the USP will be developed.

ComReg will consult further with the USP, and other relevant parties where appropriate, regarding the development performance data for disabled users and the setting of performance targets for delivery of USO.

Commission's Position

Comreg intends to require the USP to

- (a) publish adequate and up to date information concerning its performance in relation to the provision of universal services, based on the quality of service parameters, definitions and measurement methods set out in Annex III of Directive 2002/22/EC and shall supply such information to the Commission.
- (b) Subject to any data protection considerations, publish adequate and up to date information concerning its performance in relation to the provision of universal services to disabled users where relevant parameters have been developed. This may involve consultation with other parties, where appropriate.

The requirements in relation to (a) are to be fulfilled according to the methods as specified under the Measuring Licensed Operator Performance (MLOP) regime as established under ComReg Document 00/04.

ComReg will develop performance targets for the provision of universal services, in consultation with the USP.

10 Costing and Financing of USO

The draft regulations provide that a universal service provider may receive compensation for the net cost of meeting the USO obligation concerned where, on the basis of such net cost calculation, ComReg determines that the undertaking in question is subject to an unfair burden. The draft regulations provide principles for calculating the net cost of universal service, in accordance with Annex IV, Part A, of Directive 2002/22/EC respectively.

10.1 Summary of Consultation Issues

Under the new draft Regulations ComReg will be obliged to set up a mechanism to share any financial burden resulting from the cost of universal service provision amongst market players where it determines that the net cost of meeting the USO represents an unfair burden. If appropriate, compensation will be funded by a sharing mechanism administered by ComReg or by a body independent from the undertakings designated by ComReg.

ComReg sought views of respondents on a number of issues that would need to be considered in relation to any national scheme for costing and financing of universal service. These issues included:

1. Allocation of the USO through competitive tendering.
2. The calculation of the net cost of universal service.
3. Determination of whether any net cost is an unfair burden.
4. Mechanisms for financing USO (as appropriate), including the determination of who might contribute and how any costs may be shared between contributors (if any).

ComReg indicated that the response to the consultation would form the basis of a further consultation once the relevant statutory instrument had been finalised.

<p>Q. 31. Should competition for the provision of universal service be introduced?</p> <p>Q. 32. What criteria, if any, should an operator be required to meet to be allowed compete to provide universal service? What should be the frequency of any competition in the provision of universal service?</p> <p>Q. 33. Is there any competitive advantage to the provision of universal service? If not, what might constitute an “unfair burden”?</p> <p>Q. 34. Does the USO confer any benefits on the universal provider? e.g. brand awareness etc.</p> <p>Q. 35. Which non-tangible benefits should be taken into account and how should they be assessed? Suggestions for valuing other forms of benefit are also welcome.</p>

- Q. 36. When should there be a USO net cost sharing mechanism? What should be the basis for establishing a methodology for the calculation of the net cost of universal service with the aim of creating a universal service fund?**
- Q. 37. Who should contribute to the financing of universal service? Should certain categories of operators (for example, below a certain threshold and or market share) or certain components of the universal service be excluded from the cost sharing arrangements?**
- Q. 38. What should be the preferred allocator of the costs of USO? e.g., volume of traffic, turnover, number of calls, other?**
- Q. 39. For which types of services within the scope of universal service¹¹ should competitive mechanisms be introduced, if at all, and which type of mechanism?**
- Q. 40. What sort of mechanism(s), if any, would be useful or relevant to introduce competition in the provision of certain universal services**

10.2 eircom's position

Competitive tendering for the provision of universal services

eircom accepted that the introduction of competition for the provision of universal service could lead to the provision of universal service at a lower cost. It qualified this assumption however, highlighting that any introduction of a competitive tendering process should take account of the following issues:

- Competition in the voice telephony market was already determining where the commercial opportunity lay. Commercially attractive elements of the USO, for example, directory enquiry services were already offered by competing operators on a commercial basis.
- Competition in the directory enquiries market had however resulted in higher tariffs for end users to cover the inherent high cost of this aspect of the USO.
- Operators were unlikely to provide universal services in the absence of a funding mechanism because of, in the view of the USP, the innate commercial deficit on universal services.
- Commercially attractive elements of USO, for example, payphones in urban areas were likely to be fragmented from less attractive payphone services with the introduction of tendering for this USO element. The USP believed that any fragmentation of such services should be resisted as it would exacerbate the deficit increasing the requirement for a funding mechanism.

In the event that alternative operators were allowed to compete for the provision of universal services the USP submitted that the essential criteria that must be met included:

¹¹ Basic connection, public payphones, directories and directory enquiry services

- A national telecommunications network including local end/ access connections to end users supported by fully developed OSS and Customer Care systems to ensure quality of services, control of expenditure and measures for the disabled.
- Concerning the provision of payphones, the USP felt that the criteria should include an ability to provide payphones to all geographic locations in the State and an operating agreement with the relevant network operators. On the subject of the frequency of the competition it states that the contract for the provision of USO should be for a minimum period of 2 years.

Potential competitive advantage to the provision of universal service and non tangible benefits

The current USP argued that there was no competitive advantage to the provision of universal service. While it accepted that the historic monopoly granted in the provision of telecommunications services to ensure the provision of universal service conferred an advantage of ubiquity on the incumbent telecommunications provider, it claimed that any advantage with respect to ubiquity had been eliminated with the introduction of competition and in particular, the development of competing mobile platforms. The growth of mobile networks and mobile usage significantly neutralised any advantage of USO provider ubiquity.

The USP argued that increasing liberalisation and the growth of mobile were placing it at a competitive disadvantage in the market. Alternative providers of fixed telecommunications networks and services through CPS were exploiting more profitable services and/or areas generally used in the past by the USP to fund the (alleged) deficit on the access line. Even where access prices were increased, the location of many USO customers and geographically averaged pricing would result in many USO customers remaining uneconomic. In addition, the USP believed that the lower unit cost in mobile network provision compared to fixed lines conferred a competitive advantage on mobile operators.

Any prior competitive advantage due to brand awareness was also diminished. The incumbent brand dominance had decreased with a proliferation of competing brands. The global power of competing brands in the Irish market and absolute volume of mobile handsets compared to the fixed network illustrated the extent to which the eircom brand dominance had been reduced. Furthermore, the USP argued that the association of the eircom brand with social elements of the telecommunication service had contributed to a weakening of the brand relative to mobile brands. It appeared, in the opinion of the USP that any association with social elements potentially conferred a disadvantage rather than a benefit on the universal service provider. Although they were aware of certain claims being assigned to high street payphone locations as contributing to brand awareness, eircom did not consider there to be any non tangible benefits to being a universal service provider. In particular, eircom argued that payphone location should not be considered as a potential benefit as mobile handsets equally contributed to conferring advantage through brand awareness.

According to the USP, the “unfair burden” of USO equated to the cost of service provision to those areas and customers which the USO provider would choose not to serve if it did not have an obligation to do so. In that regard, the USO cost was that cost incurred in providing service to a customer or to an area where the avoidable costs

were greater than the revenues that would be forgone as result of withdrawing service from that area or customer. The USP believed that recent developments (liberalisation and the growth of mobile) had brought about a decline in fixed revenue as a proportion of total end user telecommunications revenue and had therefore resulted in an increased net cost to the USP in the provision of universal service.

Principles for a Net Cost Sharing Mechanism

Given the USP definition of what constituted an “unfair burden” - the cost of USO provision – it suggested that a universal service fund should be set up in parallel with an actual USO designation. The USP suggested that all competing operators should either pay or play for the provision of universal services because the main competing operators in Ireland were subsidiaries of international companies. National market share was irrelevant as a basis for a decision regarding compensation of the USO. Further EU precedent existed for a mobile operator’s contribution to a universal service fund. All net cost elements should be included in an assessment of unfair burden as elements not representing a net cost should not be part of the USO as it would be provided commercially.

10.3 Views of Other Respondents

Competition for the provision of Universal Service

According to one respondent competition in the PSTN market was not yet effective as a result of the fixed incumbent’s historical monopoly in the local loop. It was unlikely therefore that competition for the provision of basic universal services would emerge in the short to medium term as a result of the incumbent’s control of the essential bottleneck components for these services. The scope for competition in the payphone and directory inquiries markets, while perhaps more readily open to competition, was also limited. Only in a fully competitive telecommunications market could competition take place for universal service provision. A key enabler of competition in the provision of USO was the ability of an alternative operator to provide the services in an efficient way, at a similar cost level, with similar economies of scale. Furthermore, alternative providers must be able to obtain appropriate wholesale services from the incumbent operator to meet any USO. Until such time as bottlenecks were overcome to enable competing operators to contemplate offering universal services, it was premature to introduce competition for US supply.

Another respondent did not believe that competition for the provision of USO services could exist at this time; however it would not rule it out in the future. It felt that the important factor now was to deepen the concept of the right to a universal service and to decouple this from purely commercial imperatives. On that basis it proposed that, prior to being designated a USP, an operator should satisfy certain requirements in relation to people with disability, the elderly, those on low income and with special social needs. This respondent felt that the frequency of the US competition should match the preferred frequency of re-evaluation of USO scope i.e. 2 years.

Potential competitive advantage to the provision of universal service and non tangible benefits

One respondent submitted that, unlike other competing operators, a competitive advantage did exist for the incumbent operator in the provision of USO in the form of a ubiquitous network and huge economies of scale inherited from its historic monopoly

position. The economics of customer density conferred a cost advantage on the incumbent, allowing the high fixed costs of the local loop to be shared across a range of customers and products. These advantages would, in the opinion of the respondent, be in addition to other intangible benefits. Another respondent also believed a competitive advantage existed through the universality of a network in a given region. Inertia selling, where a user was less likely to move to an alternative service provider where there was little distinction between competing services, could also confer a competitive advantage.

The perceived benefits of USO were those identified in other countries such as:

- Ubiquity – the USP had a national presence and therefore was in an advantageous position when a customer moved area.
- Brand benefit – the reputation of the USP was enhanced.
- Life-cycle benefit – a universal service might eventually become profitable.
- Payphone advertising – the USP’s logo was displayed and payphones might also be used for 3rd party advertising.

It was submitted therefore that precedent suggested non-tangible benefits such as the above and demonstrated that incumbents could gain a greater benefit from USO than their efficient relevant cost. However, one respondent expressed the view that the issue of whether there were benefits and the value of such was complicated and should be subject to another consultation. Although a complex issue, one operator noted that the value of the non-tangible benefits could be estimated based on established approaches, though none were mentioned.

Concerning the issue of “unfair burden”, a respondent submitted that it would be premature to determine what could constitute an unfair burden in advance of any detailed assessment of the likely net cost of USO. Further, the extent to which there was an unfair burden depended on factors in addition to the USP financial performance, such as efficient cost and the implications for other services and the rest of the industry. A second respondent felt that services which fell within the bounds of a reasonably maintained network should be outside the definition of an unfair burden.

Principles for a Net Cost Sharing Mechanism

On the issue of whether there should be a USO net cost sharing mechanism, of those who expressed a view, one respondent submitted that it was potentially premature to comment on the issue of cost sharing at this time as the nature and scale of the issue was not yet known. In the event that a net cost representing an unfair burden on the USP was established, this respondent felt that the question of what sort of obligation should be funded and from what source, e.g. social obligations funded by the government, should first be further examined. In addition, they felt that any cost sharing should avoid competitive distortions, undue preference or undue discrimination between operators, platforms, technologies or services. A second respondent submitted that there should be a cost sharing mechanism only where the fixed incumbent accounted for less than 60% of the fixed line market and when mobile operators had 50% of the overall telecommunications market.

As to the basis for establishing a methodology for the calculation of the net cost, the only respondent who stated an opinion agreed with the broad thrust of the proposal in the consultation but added that its primary concern would be that the quantification of benefit and cost should be determined in a fully transparent manner. The aim of a net cost assessment should in its opinion be to identify the change in USP's economic performance if the USO were removed. This would require in its opinion adequate data to be available on cost and revenues and to a sufficient granularity, for example, averages were not appropriate. Further, any net cost calculations should be based on efficient operator principles. In that regard, adjustments should be made where appropriate to bring USO costs in line with an efficient operator standard. Other principles that should be considered in any calculation of the net cost included LRIC, intangible benefits and in particular the issue of transparency.

A respondent was of the view that services not subject to retail price control should not be part of any USO net cost claim. A further respondent noted that recital 23 of the new USO Directive states that "contributions should be recovered.....by spreading contributions as widely as possible". On the basis of this they believed that should a USO fund be established then all providers of electronic communications networks and services (this would include mobile network operators and ISPs) should contribute. They maintained that further consideration was necessary as to precisely which sorts of operators, services and activities were relevant when deciding how any net costs were shared. Any decision with respect to compensation for USO should take account of the competitive development of the market and services and the operators concerned. Another respondent felt that, in time, certain categories of operators would contribute but that they lacked scale and universality at present. Respondents suggested that turnover had been identified as the most appropriate allocator but again this would need further consideration.

10.4 Commission's Position

Competitive tendering for the provision of universal services

In line with the principles set out in the Directive and transposing Regulations ComReg is required to incentivise the efficient provision of USO by designated operators. It does not therefore rule out the possibility of seeking competitive tenders for the USO obligation in future. Clearly, using competitive tendering to determine USO providers has attractive efficiency features ensuring that universal service is provided by the operator(s) with the lowest costs thereby minimising any operator contributions to a universal service fund. In that context a "pay or play" mechanism might be considered. However, Comreg is also aware that the conditions might not be such as to favour a competitive tendering process for the provision of universal services at this time. In particular, competition in the communications market might not be at a stage as to allow alternative operators compete for the provision of universal services.

Potential competitive advantage to the provision of universal service and non tangible benefits

ComReg notes the views of respondents on the types of advantages that might accrue to the USP and on the degree to which they might provide benefits to offset any costs of USO. ComReg believes that there are likely to be benefits, though the extent of these benefits will need to be reviewed. Any review of benefits will need to be consistent with the legislative requirements and take into account the complexities

involved in this type of assessment. Although all these benefits may not be precisely quantifiable, it should be possible to establish verifiable estimates for the categories of intangible benefit listed by the European Commission Communication¹² using standard practices in business evaluations. However, any such evaluation must clearly identify the basis for calculation and any assumptions made. ComReg expects to consult further on these issues as part of a further consultation on more detailed procedures for the calculation of the net cost and assessment of any unfair burden.

Principles for a Net Cost Sharing Mechanism

EU and national legislation does not require the creation of a mechanism to finance universal service providers unless the net cost of the USO creates a competitive disadvantage to the operator in question. The legislation enables a review the likelihood of an unfair burden, if any, in the absence of a particular request for financing or any detailed estimate of the net cost. Article 16 of the Universal Service Directive requires a market analysis of certain relevant retail markets including an assessment of market power. To the extent that market power or dominance exists, indicating that competition is not yet effective, a determination of an unfair burden is less likely if the US provider is able to use its dominant position to recover any cost from customers, though price regulation may inhibit its ability to do this.¹³

So long as the incumbent operator dominates the market and competitors have only small market shares, or, so long as competition has yet to flourish or become effective and other operators are not also involved in the business of providing universal service, the setting up of a mechanism to share the USO cost may not be required. Such a mechanism could, have negative side effects, inhibit market entry of new, particularly smaller competitors and, in addition, create substantial administrative costs that should not be incurred unnecessarily.

Directive 2002/22/EC, in particular, Article 12, does not require a review of the net cost of universal service provision upon a request for financing from any universal service provider nor it does make a determination of a possible unfair burden solely contingent for a request for a net cost calculation by any universal service provider. While Comreg considers an estimate of the net cost of universal service provision from a designated universal services provider as useful, any calculation of the net cost of universal service must be based on a particular methodology and therefore cannot be based on a particular estimate provided by a specific operator.

ComReg is of the view that the method for calculating the net cost of universal service must be based on objective, transparent, non discriminatory and proportionate procedures and criteria in identifying the cost, less revenue and associated benefits of providing universal service obligations to a customer or group of customers. ComReg will aim to clarify the issues that must be taken into consideration when calculating the net cost of universal service in any future consultation.

¹² Com (96) 608, Commission Communication on assessment criteria for national schemes for costing and financing of universal service in telecommunications.

¹³ In its response, eircom referred to an increase in tariffs for directory enquiries as a result of competition, relating that to the high costs of providing the service. ComReg notes that if tariffs were below cost before the development of competition, eircom were likely to have been able to recover those costs from other services where they had a dominant position.

The Commission aims to deal with the issue of costing and financing of the USO in both a proportionate and practical manner. In that regard it will consider the following relevant issues:

- Inherent difficulties in calculating any net cost of universal service in accordance with a particular methodology
- The practical difficulties in implementing a sharing mechanism
- The need to ensure that any establishment of such a mechanism is justified based on efficient costs taking account of the state of competition in the electronic communications sector.

The Commission suggests that a frequent and detailed view of the net cost of universal service provision be considered only where competition is effective.

Commission's Position

Issues regarding the calculating any net cost of universal service provision will be considered, if and when appropriate.

11 Next Steps

As stated earlier in the paper, ComReg will seek to obtain the consent of the Minister for Communications, Marine and Natural Resources in relation to certain aspects concerning the scope of the Universal Service Obligations.

On foot of the issue of this Response to Consultation, ComReg will commence this consent process with the Department, with a view to ensuring that the new USO and resulting designation of eircom as the USP can be implemented by the 24th July next.

ComReg has, as part of this response to consultation, also sought views from interested parties as to the regulatory impact of the positions set out in this paper. On obtaining Ministerial consent, ComReg will, by way of Decision Notice, finalise the obligations and designate eircom as the USP.

In the meantime, ComReg may engage with eircom regarding the implementation of the measures set out in the paper.