



Commission for
Communications Regulation

The provision of telephony services under the Universal Service Obligation

Access at a Fixed Location

Response to Consultation and Decision

Reference: ComReg 14/71 and D10/14

Version: Final

Date: 07/07/2014

Content

Section	Page
1 Introduction.....	4
2 Executive Summary	5
3 The need to sustain a USO for AFL	8
3.1 Overview	8
3.1.1 Increased take-up of electronic communications and bundled services	8
3.1.2 Rapid growth in Smartphone use	10
3.2 Government Broadband Initiatives	11
3.3 European Commission Review	12
3.4 Consultation Issue - The need for AFL USO.....	13
3.4.1 Consultation question	14
3.4.2 Respondents' views.....	15
3.4.3 ComReg's views.....	16
3.4.4 ComReg's final position.....	17
4 Part 1 (b) : Designation for an Interim Period.....	19
4.1 Consultation Issue – designation for interim period.....	19
4.2 Consultation Issue – USP for the designation for an interim period	22
4.3 Consultation Issue – scope of designation for interim period.....	25
4.4 Consultation issue - RIA.....	42
5 Regulatory Impact Assessment ('RIA') for Part 1 (b) – Designation for an Interim Period	44
5.1 Overview	44
5.2 Impact assessment for Designation for the Interim Period.....	45

Annex

Section	Page
Annex: 1 Glossary of Terms.....	50
Annex: 2 Decision Instrument	52

Chapter 1

1 Introduction

- 1.1 The Commission for Communications Regulation ('ComReg') is responsible for the regulation of the Irish electronic communications sector, in accordance with national¹ and EU legislation. One of ComReg's functions is to determine the need and scope of the Universal Service Obligations ('USO') for the Irish market and to decide which undertaking(s), if any, should be designated as the Universal Service Provider(s) ('USP') for particular USO(s).
- 1.2 As set out in ComReg Decision D07/12,² Eircom is currently designated as the USP for two years which commenced on 1 July 2012 and ends on 30 June 2014 ('the 2012 designation'). One of the USOs placed on Eircom by the 2012 designation is to satisfy any reasonable request to provide access at a fixed location to a public communications network, including access to services such as voice and functional internet access ('FIA')³.
- 1.1 ComReg set out its preliminary view and sought views of interested parties regarding the need to sustain an AFL USO in the immediate future in Part 1 of Consultation 14/48, "*The provision of telephony services under the Universal Service Obligation – Access at a Fixed Location*"⁴, as well as its preliminary view in respect of the designation of Eircom for that initial period.
- 1.2 This Response and Decision in respect of Part 1 of Consultation 14/48 sets out ComReg's final view and decision regarding the need to sustain a USO for AFL from July 2014 and the designation of a USP for a period of eighteen months ("the interim period").
- 1.3 Part 2 of Consultation 14/48 is ongoing. Responses to that consultation including expressions of interest are due by 8 August 2014.

¹ Under the Communications Regulation Act, 2002 (as amended).

² ComReg (2012), "*The provision of telephony services under Universal Service Obligations*", D07/12 http://www.comreg.ie/fileupload/publications/ComReg_1271.pdf

³ See Regulation 3 of the European Communities (Electronic Communications Networks and Services) (Universal Service and Users' Rights) Regulations 2011 (S.I. 337 of 2011). ("the Universal Service Regulations")

⁴ Consultation 14/48, <http://www.comreg.ie/fileupload/publications/ComReg1448.pdf>

Chapter 2

2 Executive Summary

- 2.1 The scope of universal service is defined by the Directive 2002/22/EC of the European Parliament, as amended by Directive 2009/136/EC ('the Directive'). The USO scope was designed to ensure that everyone, irrespective of location, social standing or income can access basic telecommunications services at a fixed location. These are basic services that are considered essential for everyone.
- 2.2 However, there is a risk that left to the operation of market forces alone, such services may not be provided to everyone. As technology and competition develops, and as consumer needs evolve, it is ComReg's duty to ensure that the AFL USO continues to meet end-users' basic telephony needs, if they are not already being met by the market.
- 2.3 The current scope of universal service in Ireland, in respect of AFL is set out in the 2012 designation and contains the following aspects:
- Provision of access at a fixed location, capable of allowing end-users to make and receive local, national and international telephone calls, facsimile communications and data communications, at data rates that are sufficient to permit functional Internet access;
 - Geographically averaged pricing, i.e. where telephone charges (including line rental) are the same for all subscribers irrespective of their geographical location; and
 - Measures in respect of Control of Expenditure and Affordability;
- 2.4 ComReg has previously specified obligations in respect of requests for connection including reasonable access and functional internet access (ComReg Decision D09/05)⁵. ComReg has also specified Quality of Service Performance Targets (Decision D02/08)⁶ in relation to the provision of specific elements of the AFL universal service.
- 2.5 Having considered the responses to Part 1 of Consultation 14/48, ComReg remains of the preliminary view that there is a need for an AFL USO for three to five years. However, ComReg has decided that it is most appropriate at this stage to designate Eircom, for an interim period of eighteen months from July 2014, to maintain the current AFL USO.

⁵ ComReg (2005), 05/70, <http://www.comreg.ie/fileupload/publications/ComReg0570.pdf>

⁶ ComReg (2008), 08/37, <http://www.comreg.ie/fileupload/publications/ComReg0837.pdf>

2.6 Part 1 of Consultation 14/48 was divided into two key sections :

a) The need to sustain a USO for AFL for 3 to 5 years

- This part sought views on the proposed maintenance of a USO for the provision of an AFL for a period of 3 to 5 years; and

b) Designation for Interim Period

- This part sought views on the designation of a USP for a period of twelve or eighteen months commencing 1 July 2014 ('interim period').

2.7 There were 7 responses to Part 1 of Consultation 14/48. The respondents are listed below:

- Alternative operators in the communications market ("ALTO");
- BT Communications Ireland Ltd ("BT");
- Eircom Group ("Eircom");
- Magnet Networks Limited ("Magnet");
- Telefónica;
- Údarás na Gaeltachta and;
- UPC Communications Ireland Ltd ("UPC");

2.8 ComReg has considered the views of the respondents to Part 1 of Consultation 14/48, published in Document 14/71s. This Response to Consultation and Decision summarises the key elements of the comments provided and ComReg's views in relation to these. This Response to Consultation and Decision sets out ComReg's final position and decision in respect of the need to sustain a USO for AFL from 1 July 2014 and the designation of Eircom as the USP for a period of eighteen months ("the interim period") from 1 July 2014.

2.1 When ComReg has considered the responses of Part 2 of Consultation 14/48 regarding the scope of AFL USO beyond the interim period and when it has assessed any expressions of interest received, ComReg will consult further regarding the designation of a USP for AFL following the conclusion of the designation for the interim period. Responses to Part 2 of Consultation 14/48 are due by 8 August 2014.

- 2.2 In this context, ComReg has also decided, as soon as practicable, to commence a review process, including a public consultation, in respect of a review of the requirements in relation to the requests for connection, pricing and quality of service (QoS) measures. This includes the Reasonable Access Threshold (RAT), which is currently set at €7,000 and the target requirements for Functional Internet Access (FIA), currently set at 94% at 28Kbps⁷, the future requirement for Geographically Averaged Prices (GAP) and the Quality of Service Targets established by D02/08⁸, in respect of the Access at a Fixed Location USO.
- 2.3 ComReg has already issued its Decision on measures to ensure equivalence in access and choice for users with disabilities.⁹ Other aspects of the USO such as payphones, specific measures for disabled end-users and subscriber directories were the subject of separate consultation processes and separate Decisions have also been issued.¹⁰

⁷ Both of these were specified by in ComReg D09/05⁷, ComReg 05/70 - Provision of access at a fixed location – connections to public telephone network and provision of functional internet access.

⁸ ComReg (2008), Quality of Service Performance Targets, ComReg Document 08/37

⁹ Electronic Communications:- Measures to Ensure Equivalence in Access and Choice for Disabled End-Users - ComReg 14/52 (D04/14)

¹⁰ ComReg 14/68 (D07/14); ComReg 14/69 (D08/14); ComReg 14/70 (D09/14)

Chapter 3

3 The need to sustain a USO for AFL

3.1 Overview

3.1 Part 1 of Consultation 14/48 considered consumer trends, the various Government Broadband Initiatives and the relevant statistics that supported ComReg's preliminary view that there remains a need for the AFL USO.

3.2 This chapter considers whether there is a need to sustain the USO for AFL from July 2014 for the next three to five years in the context ComReg's preliminary views and the views of respondents.

3.3 One of ComReg's statutory objectives is to promote the interests of users in the Community.¹¹ ComReg, through its quarterly reports¹², has identified the following trends, amongst others, in relation to consumers of electronic communications services in Ireland:

- Increased take-up of electronic communications services;
- A gradual decline in retail PSTN Fixed Voice Access (FVA) subscriptions and associated retail voice traffic;
- Growing attractiveness and take up of bundled services; and
- Rapid smartphone penetration rate growth, increased usage of over the top ("OTT") services and social media.

3.1.1 Increased take-up of electronic communications and bundled services

3.4 While weak economic growth continues to impact purchasing decisions of Irish consumers and businesses, year on year take-up of communications products and services has grown, reflecting the importance of these services to today's consumers¹³.

¹¹ Section 12 of Communications Regulation Act 2002, as amended.

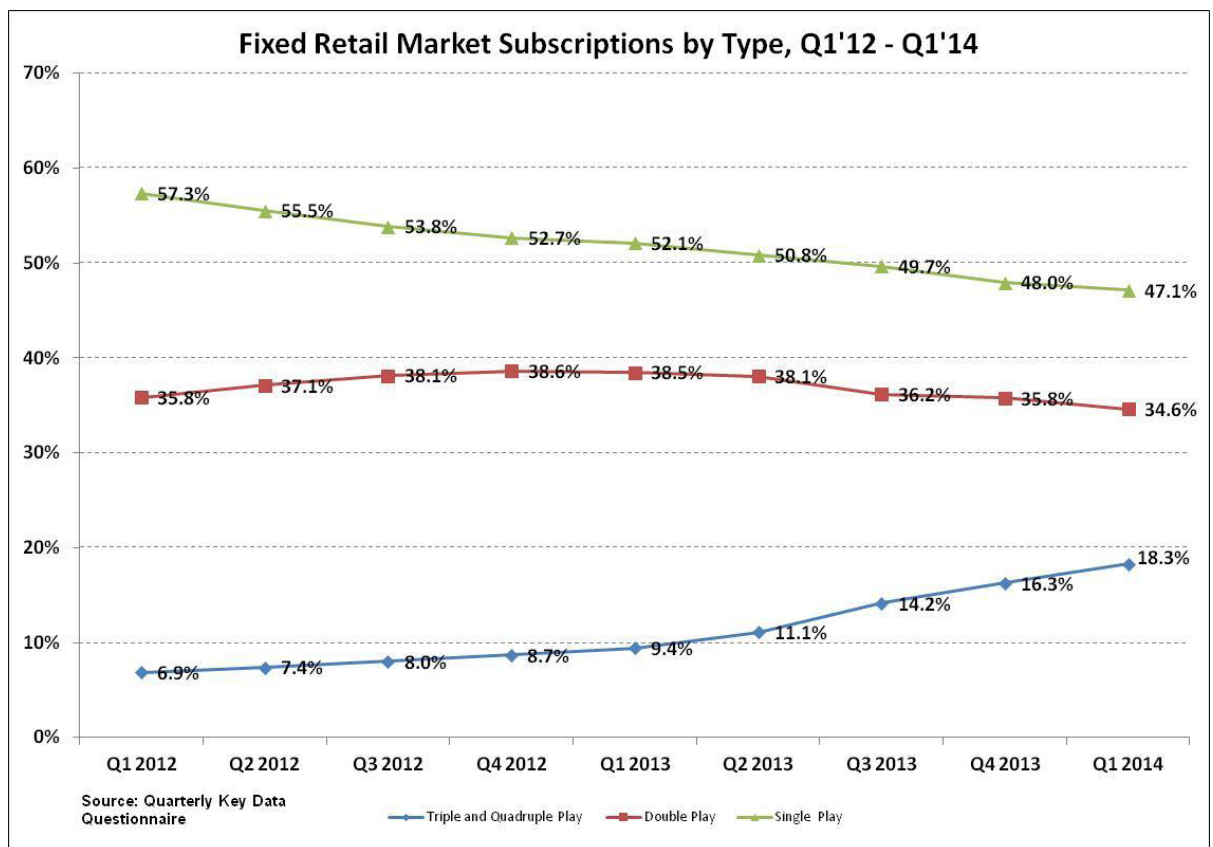
¹² Most Recent Report - ComReg (2014), Quarterly Key Data Report, Q1 2014
<http://www.comreg.ie/fileupload/publications/ComReg1461.pdf>

¹³ Draft Strategy Statement for Electronic Communications 2014 – 2016,
<http://www.comreg.ie/fileupload/publications/ComReg1433.pdf>

3.5 Since 2007, the rate of decline in retail fixed voice call traffic has been relatively steady, with a decrease of approximately 10% in Q1 2014 compared with Q1 2013, accounting for the remaining 30.9% of all voice minutes (compared to 34.9% in Q4 2013).¹⁴ Similarly, fixed line retail revenues fell by 7%, as at Q1 2014 when compared to Q1 2013.

3.6 However, the same trend has not been observed for FVA subscriptions, whether bought on a standalone basis or as part of a bundle. At the end of Q1 2014 there were 1,561,728 fixed voice subscriptions (an increase of 2.1% on Q4 2013 and an increase of 5.8% on Q1 2013). Fixed voice subscriptions have been increasing quarter on quarter since Q1 2011. As of Q1 2014 Eircom had 49% of all fixed voice subscriptions followed by UPC (20%) and Vodafone (16%).¹⁵

3.7 **Figure 3.1: Increasing adoption of bundled products in Ireland Q1' 12 – Q1' 14**



¹⁴ Based on data in the ComReg Quarterly Key Data Report, Q1 2007 and in the intervening periods up to the ComReg Quarterly Key Data Report, Q1 2014.

¹⁵ Most recent - ComReg (2014), Quarterly Key Data Report, Q1 2014
<http://www.comreg.ie/fileupload/publications/ComReg1461.pdf>

- 3.8 Service packages and bundles that include fixed telephony continue to grow in popularity among households and businesses. Clearly as illustrated by Figure 3.1 from the Q1 2014 Quarterly Report¹⁶, there is a trend in terms of end users preference for “one stop shopping”.
- 3.9 As outlined in ComReg’s Draft Strategy Statement for Electronic Communications 2014 – 2016, “Consumer preference for buying multiple communications services from a single provider has intensified in the last two years, with bundles accounting for more than 50% of all fixed subscriptions in Q3 2013. Demand for triple-play products has increased, contrasting with a decrease in single-play and double-play product adoption (see Figure 11). Several operators now offer triple play packages, and the first quadruple-play package was launched by Eircom in October 2013. We expect this trend to continue”.¹⁷

3.1.2 Rapid growth in Smartphone use

- 3.10 The number of smartphone/tablet users¹⁸ increased to 2,717,501 in Q1 2014, which was an increase of 4.2% from Q4 2013 and an increase of 12.2% compared to Q1 2013. This increasing penetration of smartphone adoption, coupled with consumer demand for low cost voice and data services appears to be driving usage of OTT services in Ireland (e.g. Skype and WhatsApp)¹⁹. Further evidence may be inferred from the declining SMS/MMS volumes and increasing mobile data consumption in recent years. Moreover, Analysys Mason and others suggest that IP-based messaging will be the prevailing messaging method in the years ahead.²⁰
- 3.11 These changing consumer preferences in respect of mobile technology, broadband access and bundled services highlight the need for ComReg to ensure that the universal service framework keeps in step with market developments and rapidly changing consumer needs.

¹⁶ ComReg (2014), Quarterly Key Data Report, Q1 2014

<http://www.comreg.ie/fileupload/publications/ComReg1461.pdf>

¹⁷ <http://www.comreg.ie/fileupload/publications/ComReg1433.pdf>

¹⁸ Based on active 3G SIMs excluding dedicated mobile broadband SIMs

¹⁹ <http://www.analysismason.com/Research/Content/Reports/OTT-communication-services-worldwide-forecasts-20132018/>

²⁰ <http://www.analysismason.com/About-Us/News/Insight/OTT-messaging-volumes-Jan2014-RDMV0/>

3.2 Government Broadband Initiatives

- 3.12 The Government's Framework for Sustainable Economic Renewal²¹, "*Building Ireland's Smart Economy*" emphasised that the need for effective communications services in Ireland is imperative in the context of global development. In its Statement of Strategy 2011 to 2014²², the Department of Communications, Energy and Natural Resources ("DCENR") sets out its core policy goal regarding the communications sector as:

"Contribute to sustainable economic growth, jobs, competitiveness and social inclusion by: facilitating and promoting timely investment in Next Generation Broadband networks; enhanced internet engagement by citizens and business; and supporting job creation, business development and innovation, especially in the digital media sector"

- 3.13 The "*Next Generation Broadband - Gateway to a Knowledge Ireland*" paper²³, published in 2009, identified that:

"... The availability of Next Generation broadband networks will underpin a transformation in the following areas: Economic development...: networks...; Sustainability...: Social inclusion...: Education...; Public services...: R&D and next generation Products and Services:..."

- 3.14 The nationwide availability of broadband has been assisted so far by Government schemes which include The National Broadband Scheme ("NBS") and The Rural Broadband Scheme ("RBS").
- 3.15 The NBS objective is, as defined by DCENR, "*to deliver broadband to certain target areas in Ireland in which broadband services were deemed to be insufficient*".
- 3.16 The RBS which is the state-subsidised roll out of broadband to areas in Ireland where it was previously unavailable has concluded.
- 3.17 The National Broadband Plan ("NBP") sets the Government's target in respect of increasing broadband speeds. The NBP states that it "*sets out the strategy to deliver high speed broadband throughout Ireland. Specifically, it will facilitate broadband download speeds of 70Mbps with a minimum of 40Mbps generally available and 30Mbps available in harder to reach rural areas*".

²¹

http://www.taoiseach.gov.ie/eng/Building_Ireland's_Smart_Economy/Building_Ireland's_Smart_Economy_.pdf

²² <http://www.dcenr.gov.ie/NR/rdonlyres/716F9A6E-BD77-4A3E-8EB2-BE6E26DD0BAE/0/DCENRStatementofStrategy20112014.pdf>

²³ <http://www.dcenr.gov.ie/NR/rdonlyres/F9B1D956-358D-4870-AA99-DD25A4417F59/0/NextGenerationBroadbandPaperGatewaytoaKnowledgeIreland.pdf>

- 3.18 In 2012, DCENR published “Delivering a Connected Society: A National Broadband Plan for Ireland”²⁴. The plan aims to “*facilitate broadband download speeds of 70Mbps with a minimum of 40Mbps generally available and 30Mbps available in harder to reach rural areas*”.
- 3.19 On 25 April, DCENR released a statement²⁵ that “*The Government has given the green light to the principle of a fibre build-out which will be the cornerstone of the State’s strategy to deliver high speed broadband to rural areas. Over 1,000 rural communities have already been identified as target areas for the proposed fibre based connections*” It also stated that “*The strategy will address all parts of Ireland that cannot access commercial high speed broadband services. To this end, it will include supporting measures to accelerate end user connections to the fibre network and proposals to address the most remote areas of the country*”.
- 3.20 ComReg notes that there is no Government scheme or programme or any other mechanism in place to ensure that AFL (voice telephony at a fixed location) is provided to those that need it, other than under the USO.
- 3.21 However in time, in the context of the NBP, it is conceivable that the AFL could be delivered over the infrastructure which has been rolled out under the NBP, causing the requirement for a USO for AFL to be re-examined. However, ComReg envisages that the completion of this programme and review of AFL USO would be conducted after the three to five year period contemplated in the consultation.

3.3 European Commission Review

- 3.22 The European Commission is legally obliged to periodically review the scope of universal service.²⁶ The last European Commission Communication reporting on the scope of US was been published in November 2011 concluding that, at that point in time, there was no need to change the scope of US at EU level. ComReg notes that the European Commission is now preparing to commence a study on 'Review of the scope of universal service'²⁷. This study will inform the European Commission’s review and amendment, as relevant, of the legislative framework in the coming years.

²⁴ <http://www.dcenr.gov.ie/NR/rdonlyres/1EA7B477-741B-4B74-A08E-6350135C32D2/0/NBP.pdf>

²⁵ <http://www.dcenr.gov.ie/Press+Releases/2014/Major+fibre+build-out+to+rural+Ireland+will+be+cornerstone+of+Government+strategy.htm>

²⁶ In accordance with Article 15 of the Universal Service Directive.

²⁷ <http://ec.europa.eu/digital-agenda/en/news/review-scope-universal-service-%E2%80%93-study-smart-20140011>

3.4 Consultation Issue - The need for AFL USO

3.23 As set out in Part 1 of Consultation 14/48, ComReg was of the preliminary view that there is a continued demand for fixed telephony. ComReg's reasoning is detailed below.

3.24 Demand for fixed telephony in the short to medium term continues to be significant. As of Q1 2014²⁸ there were 1,561,728 fixed voice subscriptions (an increase of 2.1% on Q4 2013 and an increase of 5.8% on Q1 2013). Fixed voice subscriptions have been increasing quarter on quarter since Q1 2011. Due to technological convergence, alternative access networks may become alternatives in the eyes of end users and thus fixed telephony needs may be met by the market in various ways. Figure 3.1 illustrates that increasingly businesses and customers, having already made the decision to purchase broadband internet access, take FVA in a bundle. This general trend suggests that many end users value the additional features of broadband. However, the increasing take-up and prevalence of bundles would appear to have led to a fragmentation of the customer base, for residential customers as well as business users, towards different alternatives depending on each customer's particular needs. For example,

- End-users wishing to avail primarily of broadband internet access combined in a bundle of higher value services, including voice as an "add on" service (i.e. are relatively more broadband centric where the perceived value of the fixed service has potentially moved from voice to internet access for multiple services) have additional choice in relation to their chosen supplier of fixed telephony; and
- Contrastingly, end-users wishing to avail of FVA only or primarily voice services based on PSTN and ISDN networks (and hence those who are voice-centric where the perceived value of the fixed service is voice) possibly have less choice in relation to supplier of fixed telephony.

3.25 This fracturing of the customer base may leave behind some customers who are not interested in broadband internet access or bundled services. A significant segment of end-users do not currently have/utilise a fixed broadband connection and, for that cohort of end-users, broadband with managed VOIP is unlikely to provide an alternative for their basic fixed telephony service at least in the interim period. In this context, a potential set of "vulnerable" or "captive" customers exists in Ireland – Figure 3.1 illustrates approximately 47% of fixed line phones are purchased independent of broadband and/or other services.

²⁸ ComReg (2014), Quarterly Key Data Report, Q1 2014
<http://www.comreg.ie/fileupload/publications/ComReg1461.pdf>

- 3.26 Survey results gathered in 2012/2013²⁹ indicate that certain customer types such as elderly people, family households and businesses, remain more attached to fixed access services.³⁰ This suggests that non-price factors may be important drivers of the demand for FVA for these customers thereby limiting the extent to which they would switch to alternative networks. The Survey results furthermore indicate a relatively low incidence of switching between fixed voice suppliers, with 11% of households³¹ and 19% of business users³² having reportedly switched within the previous twelve months of the survey date. Low levels of switching suggests that there is a certain amount of inertia amongst consumers (and less so with businesses) possibly explained by an increase in the prevalence of the bundling of retail services.
- 3.27 In addition, because of the specific features provided by the PSTN network available to them (functionalities and characteristics which cannot, or not easily, be replicated over other infrastructures),³³ either on the basis of where they are geographically and/or, dependent on their special social needs, in particular any "vulnerable" or "captive" customers cannot easily switch to another service/network (e.g., UPC's cable network, broadband networks or mobile).³⁴
- 3.28 In the context of the continued demand for standalone fixed telephony, and the provisions of the Universal Service Regulations ensuring the basic right of end-users to AFL, ComReg must examine if the AFL would be delivered absent a USO.

3.4.1 Consultation question

- 3.29 The first question posed by Part 1 of Consultation 14/48 was as follows:

²⁹ ComReg (2012/2013), The 2012 Market Research and 2013 ICT Surveys.

³⁰ ComReg (2012), 'Retail Access to the Public Telephone Network at a Fixed Location for Residential and Non Residential Customers', Market Review, 12/117, October 26th, para 4.178.

³¹ 2012 Market Research, Slide 38 - 55% of residential respondents reported never having switched FSP, while 15% had done so within 1 to 3 years ago and 18% did so more than 3 years ago. The 2013 Consumer ICT Survey (slide 23) reported similar switching figures with 52% of residential respondents reported having been with their FSP for 5 or more years, while 22% for between 1 to 3 years ago and 14% between 3 to 5 years.

³² 2012 Market Research, Slide 101 - 49% of business respondents reported never having switched FSP, while 21% had done so within 1 to 3 years ago and 7% did so more than 3 years ago. The 2013 Business ICT Survey (slide 22) reported somewhat similar switching figures with 46% of business respondents reported having been with their FSP for 5 or more years, while 22% for between 1 to 3 years ago and 13% between 3 to 5 years.

³³ These include mainly a high level of quality, security and reliability, independent power supply and the ability to deliver fax messages. These features make the PSTN networks especially suitable for specific applications such as alarm- and monitoring systems. The fact that PSTN provides electrical power makes it more robust than other solutions that rely on the normal power network and which then may not function in the event of a power cut.

³⁴ For example, users who are very price sensitive and/or do not typically benefit from a broadband connection or from a bundled offer.

Q.1 Do you agree with ComReg’s preliminary view that there is a need for an AFL USO for a period of three to five years? Please provide reasons to support your view.

3.4.2 Respondents’ views

- 3.30 Magnet expressed its agreement with ComReg’s preliminary view with regard to the ongoing requirement for an AFL USO for a period of three to five years, however highlighting that in its view *“it should be more a 5 year plan rather than that shorter 3 year plan”* as it would *“provide stability and also, allow time for further consultations as there is a major shift in the USP’s market share, voice technology deliver etc”*.
- 3.31 BT also agreed with ComReg’s preliminary view that there is a need in Ireland to continue with the AFL USO for a period of three to five years in light of the economic conditions. BT was of the view that there is an ongoing demand and that supply should only be offered where genuinely required and with efficient costs.
- 3.32 Telefónica agreed with most of the commentary and conclusions, however it was of the view that a 3 to 5 year period would not cater for the possibility of a review of the universal service requirements by the European Commission following its current review project.
- 3.33 ALTO did not agree with ComReg’s preliminary view that there is a need for an AFL USO for a period of three to five years and is of the view that there is no justification for this considering the interim period proposed. ALTO is of the view that there may be no future pressing need to designate any USP because of satisfactory delivery by market forces.
- 3.34 UPC did not agree that there is a need or justification for an AFL for a period of three to five years. UPC was of the view that in the context of the increased capabilities of mobile networks and phone applications that the need for AFL USO particularly for a period after the interim period is questionable.
- 3.35 UPC was also of the view that, in light of the Government’s National Broadband Plan (NBP), the period of 3 to 5 years is not appropriate. UPC also raised the matter of funding and pointed to Poland where it states that the USO has been removed due to market forces.

- 3.36 Eircom raised concerns regarding the process used by ComReg in respect of the designation of a USP and it stated *‘that there is a significant risk that consumers will suffer because in the absence of a USP all reasonable requests for connection at a fixed location to a public communications network may not be met.’* Eircom was of the view that there is not sufficient evidence that the USO AFL is appropriate to 2019 and beyond in light of the NBP and that any need will not be determined until after Part 2 of the consultation is completed.
- 3.37 Údarás na Gaeltachta agreed that ComReg should continue as proposed with the AFL USO. However, it was of the view that broadband should be added to the scope of USO in order to maximise economic development by ensuring adequate affordable broadband services. Further comments raised by Údarás na Gaeltachta in respect of broadband are addressed in section 4.3.4.

3.4.3 ComReg’s views

- 3.38 ComReg is of the view that it is appropriate for it to designate a USP for an interim period. ComReg has considered the risk if there were to be no AFL USO and ComReg is acting in accordance with its statutory obligations regarding the interests of end-users by ensuring that their right to basic telephone services is preserved.
- 3.39 ComReg’s view is supported by many of the respondent’s views that without an AFL USO from July 2014 there is a risk that certain customers would not be served by the market.
- 3.40 ComReg notes the agreement of many of the respondents with the view that there is a continued need for an AFL USO, at least for the interim period and ComReg notes Eircom’s comment in respect of the risk that would arise in the absence of a USO for AFL.
- 3.41 ComReg also notes some respondents’ views that it is unclear whether a future AFL USO will be required after the interim period, however, ComReg maintains its preliminary view that the analysis set out in the consultation and again in paragraph 3.1 to 3.28 above, that given the current circumstances, there will be a need for a USO for a further three to five year period, however no such decision in relation to this is being made at this time but will be pursuant to further consultation.

- 3.42 With respect to Telefónica's comment regarding the European Commission's review, ComReg acknowledges that this review has commenced and that the outcome of that review could ultimately mean a change in the universal service regime. However it is unclear, at this stage, when the review will be completed and when any amendments, as relevant, will be transposed into national legislation. Therefore, ComReg is of the view that the interim period will allow for further developments in this respect.
- 3.43 Regarding Údarás na Gaeltachta's opinion that broadband should be included in the AFL USO; ComReg's views on this are detailed in Section 4.3.4 below.
- 3.44 ComReg notes UPC's statement relating to funding, however, the matter of funding is addressed separately to designation, in both the Directive and in the Regulations.
- 3.45 In respect of UPC's reference to Poland, ComReg notes that in the vast majority of European Countries AFL remains inside the scope of Universal Service. In any case, ComReg must ascertain the conditions in the Ireland context in respect of its decision and ComReg remains of the view that access at a USO for AFL remains necessary.

3.4.4 ComReg's final position

- 3.46 ComReg maintains its view that a certain set of customers may be negatively affected by any removal of an AFL USO at this time. ComReg notes that the current USP, Eircom, by virtue of its USO funding application (2009-2010) claims that there are fixed voice customers that it would not choose to serve absent a USO.
- 3.47 There are a number of factors which contribute to ComReg's view and final position that absent an AFL USO, the basic telephony service would not be delivered by any undertaking or would not be delivered at an affordable price. This factors were outlined in Part 1 of Consultation 14/48 and include;
- The cost of provision of a service to certain areas/customers (uneconomic areas and uneconomic customers) may be more expensive than others and without a USO it is possible that no undertaking would choose to deliver the basic AFL service to those areas/customers.
 - Certain customer groups may not be an attractive commercial proposition and without a USO, it is possible that no undertaking would choose to offer the basic AFL service to those customers.
 - In light of the points above, without a USO including the requirement for geographically averaged prices the basic service may be provided, but not at an affordable price.

- 3.48 While ComReg remains of the view that a USO for AFL is required after the interim period, ComReg is not at this point making a decision in respect of the period of designation necessary after the interim period. This will be the subject of further consultation.
- 3.49 Having considered the views of stakeholders, ComReg maintains its view that, in the absence of any other service provider willing or able to provide access to voice and voice service at a fixed location to every customer on a commercial basis, therefore, an AFL USO continues to be required from July 2014.

Chapter 4

4 Part 1 (b) : Designation for an Interim Period

4.1 This section considers ComReg's views and the views of respondents towards the approach with respect to the immediate designation of a USP(s) from 1 July 2014.

4.1 Consultation Issue – designation for interim period

4.2 In the context of ComReg's preliminary view which was that there is a requirement for an AFL USO over the next three to five year period, ComReg, as set out in Consultation 14/48, considers that given other undertakings may be interested in providing the USO and to allow time for a meaningful assessment of this and in light of ongoing developments in the market and in respect of Universal Service, it cannot, at this stage designate a USP(s) for a significant period of time.

4.3 ComReg's view, as discussed in Part 1 of Consultation 14/48, was that there should be a designation for an interim period that is long enough to accommodate the following:

- Other providers to validly express an interest in providing the service;
- ComReg to evaluate the response to consultation on AFL post the interim period and any expressions of interest received and to determine and implement, if necessary, the most appropriate future designation method(s); and
- A transition period, if relevant, for a new USP or USPs to put in place any necessary arrangements.

4.4 It was ComReg's preliminary view that it was most appropriate to designate Eircom, for an interim period, in line with its current designation as USP for AFL, to ensure there is a USP for the provision of AFL USO in an interim period of twelve to eighteen months.

4.1.1 Consultation question

4.1 The next two questions posed by Part 1 of Consultation 14/48 concerned the length of the interim period and were as follows:

- Q.2 Do you agree with ComReg’s preliminary view that in the short term (twelve or eighteen months) there is a need for an AFL USO? Please provide reasons to support your view.
- Q.3 What is your view on whether the interim period should be twelve or eighteen months? Which period is most appropriate? Please provide reasons to support your view.

4.1.2 Respondents’ views

- 4.2 Magnet expressed its agreement with ComReg in respect of a short term requirement of AFL USO of 12 to 18 months. Magnet agreed that there is a segment of the market that would not be served as this “*disenfranchised and isolated*” segment is considered ‘*commercially unattractive*’ by commercial undertakings. Additionally, Magnet was of the view that if AFL USO was not mandated, and was subsequently determined to be needed, it may prove difficult to reintroduce the obligation and in the meantime some people may suffer.
- 4.3 Magnet added that in the context of a further designation in twelve to eighteen months for a three to five year period, ‘*it should be a 12 month obligation with a further 4 year obligation once part 2 of this consultation has been completed and a decision made*’. Magnet’s reasoning for this view is that the longer the designation period the more stability for industry and certainty for the designated provider, particularly in regard financial reporting obligations.
- 4.4 ALTO was of the view that given the circumstances where the USO expires at the end June 2014, that it may be justifiable to impose a short term USO. ALTO proposed that a 12 month designation is sufficient to allow undertakings to submit expressions of interest.
- 4.5 UPC was of the view that an interim designation would not be necessary if ComReg had begun the process further in advance. UPC was also of the view that an interim designation should be for no more than 12 months on the basis that it should not require 18 months for expressions of interest to be submitted, reviewed and implemented, as relevant. UPC was of the view that those wishing to express an interest would already have been preparing in light of the expiry of the current designation.
- 4.6 UPC and ALTO are of the view that any designation should ensure that the least cost technology should be deployed.

- 4.7 BT agreed with ComReg's preliminary view that in the short term that there is a need for an AFL USO and that others should be given the opportunity to be the USP. BT was of the view that during the interim period a further review of the AFL USO should be undertaken. BT is of the view that the interim period should be no more than 12 months.
- 4.8 Telefónica was of the view that the period should be 18 months and that Part 2 of the consultation should be deferred and that a consultation on foot of the EC's review should be conducted.
- 4.9 Telefónica agreed with ComReg's view in respect of the need for an interim designation in the current circumstances, particularly in light of the fact that there has been no legislative change since the last designation.
- 4.10 Eircom was of the view that the ongoing need cannot be determined until ComReg carries out a review which will be informed by Part 2 of the consultation. Eircom is of the view that a review should be undertaken as soon as possible.
- 4.11 Eircom was of the view that the duration should be kept to a minimum and that the obligations imposed should also be kept to a minimum.

4.1.3 ComReg's views

- 4.12 ComReg agrees with the respondents that it is appropriate at this time for there to be a designation for an interim period.
- 4.13 ComReg is of the view that a designation period of 12 months may not adequately accommodate the ability for expressions of interest, which are not due until August 2014 to be assessed and implemented, as relevant, or for the planned review of the elements of the scope of AFL to be completed. ComReg is of the view that 18 months is a more appropriate timeframe in this context.
- 4.14 ComReg notes Telefónica's comments in respect of the European Commission's review of universal service; however, ComReg is of the view that as there are no details available in respect of the associated timeframes for the outputs of the EC's review, it would not be appropriate to align any designation period with the EC's review, at this stage. Further details may become available during the interim period and ComReg will appropriately consider and accommodate, as part of the proposed reviews, any such developments arising.

- 4.15 In respect of ALTO and UPC's comments regarding the use by the USP of least cost technology, ComReg is of the view that it is already incumbent on the USP to deploy the most cost effective means in meeting any USO. Nonetheless, ComReg considers that it would be appropriate to commence a review of the requirements associated with provision of connections including the RAT and FIA as previously established in ComReg D9/05 and the obligation to provide GAP for AFL USO.
- 4.16 ComReg agrees that a review of certain elements of the scope of USO should be undertaken as soon as practicable and during the interim period.

4.1.4 ComReg's final position

- 4.17 In respect of the factors and objectives set out in Chapter 3, and having considered the view of stakeholders, ComReg is of the view that a designation for an interim period of 18 months is required. This would also accommodate a review of aspects of the scope of the AFL USO, the opportunity for other operators to submit an expression of interest and a suitable transition period in the scenario that another undertaking is designated after the interim period.
- 4.18 ComReg has decided to have a designation for an interim period of 18 months.

4.2 Consultation Issue – USP for the designation for an interim period

- 4.19 As discussed in Consultation 14/48, ComReg is mindful that Eircom has and continues to be the largest provider of voice access and voice services at a fixed location in Ireland. Eircom enjoys control of an extensive, ubiquitous access infrastructure that is not easily replicated by its competitors. Eircom also benefits from its large network coverage, subscriber base size and product portfolio thereby giving it the ability to exploit greater economies of scale and scope in the provision of voice access and voice services than would otherwise be achievable by potential competitors.
- 4.20 As ComReg already noted, several fixed-line operators offering competing services do so via Eircom's network (such Fixed Service Providers require access to Eircom's infrastructure in order to provide voice access and voice services). However, in some cases, fixed line operators offer competing services over their own networks, for example, UPC offers voice as part of a bundle with either broadband or TV, however, this is not on a nationwide basis.

- 4.21 Therefore as outlined, Eircom, by virtue of its high degree of control and ownership of the public switched telephone network (PSTN), is capable of meeting the reasonable requests of consumers on a nationwide basis. Eircom remains the major fixed line provider in the market, with a current estimated market share of 49% of fixed voice subscriptions at the end of March 2014.³⁵

4.2.1 Consultation question

- 4.22 The next question included in Part 1 of Consultation 14/48 considered the designation of a USP for AFL USO as follows:

Q.4 Do you agree with ComReg's preliminary view that the most appropriate approach is to designate Eircom for the interim period commencing 1 July 2014? Please provide reasons to support your view.

4.2.2 Respondents' views

- 4.23 Magnet agreed with ComReg in respect of the proposed designation of Eircom for the interim period of twelve to eighteen months. Magnet stated that as *"Eircom has the largest fixed voice market share and has a ubiquitous network and is also the current designated USP"*, to designate Eircom avoids causing disruption to the industry *"until such time as a more definitive decision is made"*, through the progression of Part 2 of Consultation 14/48.
- 4.24 Eircom commented that it does not accept that it should be designated as the USP for the interim period. It was of the view that the designation that expires on 30 June 2014 cannot be extended. However, it states that it will not object to the designation with only certain minimum obligations attached to it.
- 4.25 Eircom was of the view that further consideration of the ability of all operators to bear the burden should be undertaken and that other operators should be considered.
- 4.26 UPC agreed with ComReg that in the circumstances it is appropriate to designate Eircom, subject to Eircom using the most cost efficient means possible. UPC is of the view that including the use of mobile if less costly should be an option.
- 4.27 UPC noted its disagreement with that statement at 5.76 of the consultation that *'current mobile services accessed by a mobile handset only do not meet the requirements for access at a fixed location'* on the basis that mobile networks are not prohibited under the Directive.

³⁵ ComReg quarterly key data report
<http://www.comreg.ie/fileupload/publications/ComReg1461.pdf>

- 4.28 Magnet was of the view that it is appropriate to designate Eircom for the interim period. It noted Eircom's voice market share and its ubiquitous network and the fact that it is currently designated as the USP. It noted that the interim designation does not cause any disruption to industry and provides certainty.
- 4.29 BT was of the view that further substantial changes are required to the AFL USO to improve it, in particular in respect of quality of service, but agreed that the designation of Eircom is appropriate on the basis of a 12 month period with a timeframe in place for the implementation of the next steps.
- 4.30 Telefónica agreed that given Eircom's current network scope and previous designations that it is the most appropriate operator for the interim period.

4.2.3 ComReg's views

- 4.31 ComReg notes that the majority of respondents agree with ComReg's proposal that Eircom should be designated as the USP for AFL for an interim period.
- 4.32 ComReg does not agree with Eircom's assertion that ComReg cannot place an obligation on Eircom in this manner. In addition, ComReg formed its preliminary view and now final decision based on an assessment of Eircom's capacity to provide the AFL USO and the need for it. ComReg has a statutory obligation to ensure that USOs are provided if there is a need for them. ComReg has determined that for a period of 18 months there is a need for an AFL USO.
- 4.33 ComReg has a duty to protect the interests of end-users and ComReg has set out in its consultation the reasons why it is of the view that without an AFL USO there is a risk that end-users could be detrimented to the extent that USO needs to be maintained. ComReg notes that Eircom agrees that there is a risk to end-users if there were to be no USO.
- 4.34 ComReg also set out why Eircom is best placed to meet the AFL USO at this time and ComReg remains of the view that Eircom should continue to be the USP for the interim period. In short, there is no other undertaking at this time that could provide the AFL USO in accordance with Regulation 7 of the Regulations.

- 4.35 ComReg notes UPCs comment in respect of mobile technology and ComReg wishes to reiterate that it has not stated that mobile technology cannot be used to deliver the AFL USO. ComReg points out that the current mobile services, without enhancement and equipment to cater for access at a fixed location, would not currently deliver access at a fixed location. However, mobile technology could be used as part of the solution to deliver AFL. In fact, ComReg notes that in some cases Eircom uses a fixed cellular solution (FCS) to deliver AFL.
- 4.36 ComReg notes BTs comments in respect of the improvement of the USO and in particular in respect of quality of service. This point is addressed in section 4.3.7 below.

4.2.4 ComReg’s final position

- 4.37 Having considered the views of respondents, ComReg maintains its view that it is appropriate that Eircom be designated, for an interim period, as the USP for AFL from July 2014 for a period of 18 months.

4.3 Consultation Issue – scope of designation for interim period

- 4.38 ComReg’s objective is to ensure the availability and sustainability of a telephone service at a fixed location during a period of assessment and potentially a transition to another operator as USP.
- 4.39 Current obligations with respect to the provision of AFL are set out in detail in D07/12 and include the following key elements set out below:
- The USP must satisfy any reasonable request in line with the Reasonable Access Threshold (“RAT”) to provide connections to the public telephone network and access to publicly available telephone services, in accordance with D09/05³⁶;
 - Such a connection must also provide Functional Internet Access (“FIA”) with a minimum data rate of 28.8kbps for 94% of connections, in accordance with D09/05.
 - Geographically Averaged Pricing (“GAP”);
 - Obligations in respect of quality of service (‘QoS’) targets, in accordance with D02/08; and
 - Provision of measures to assist consumers to control their expenditure.

³⁶ <http://www.comreg.ie/fileupload/publications/ComReg0570.pdf>

4.40 As outlined in Consultation 14/48 ComReg proposed that the current measures in respect of control of expenditure and affordability continue to be appropriate and should be maintained. These include:

- *Selective Call Barring*: Provide selective call barring facilities for outgoing calls to national, mobile, international and premium rate numbers. The call barring facility in respect of premium rate numbers shall be provided free of charge to users;
- *Phased Payment of Connection Fees*: Maintain and publish its scheme to allow for the phased payment of connection fees;
- *Non-Payment of Bills*: Maintain and publish its disconnection policy in connection with non-payment of bills.
- *Geographically Averaged Prices*: Apply geographically averaged prices throughout the State for the services in respect of AFL.

4.41 Given Eircom's current provision of these measures, it was ComReg's preliminary view that the measures continue to be appropriate and necessary at this time.

4.42 ComReg also stated that the following Decisions which relate to AFL USO should also remain in force:

- Obligations in respect of Requests for connection and reasonable access and functional internet access, as set out in D09/05³⁷
- Obligations in respect of Quality of Service Performance Targets, as set out in D02/08³⁸

4.43 Therefore, it was ComReg's preliminary view not to alter the scope of the current AFL obligations, mandated in 2012 as part of the AFL USO, during the interim period but rather to maintain the status quo for that period.

4.3.1 Consultation question

4.44 This question, included in Part 1 of Consultation 14/48, considers the scope of AFL USO in the interim period as follows:

³⁷ ComReg (2005), "Provision of access at a fixed location – connections to public telephone network and provision of functional Internet Access", ComReg Document 05/70

³⁸ ComReg (2008), Quality of Service Performance Targets, ComReg Document 08/37

Q.5 Do you agree with ComReg’s preliminary view that the current scope of the AFL USO continues to be appropriate for the interim period? Please provide reasons to support your view.

4.3.2 Respondents’ views – General Scope

- 4.45 Magnet agrees that as an ‘*interim measure*’, the current scope of the USO should be maintained.
- 4.46 Telefónica agrees that the scope of the AFL is appropriate for the interim period but that a review is warranted.
- 4.47 UPC and ALTO had no direct comments on this aspect but did comment in respect of the use of least cost technology.
- 4.48 BT commented in respect of Quality of service which is addressed below.
- 4.49 Údarás na Gaeltachta commented in respect of FIA which is addressed in Section 4.3.4 below.
- 4.50 Eircom commented in respect of various aspects of the scope as detailed below and proposed amendments to the Decision Instrument to reflect its views.

4.3.3 Reasonable Access Threshold (RAT)

- 4.51 In accordance with the 2012 designation, Eircom must currently comply with the requirements in relation to the provision of AFL obligations, as set out in ComReg Decision D09/05, RAT.
- 4.52 ComReg remains concerned that some customers who require access at a fixed location would not be provided with, or would not continue to be provided with, such a service absent the USO. Such customers or areas which would not be provided with a service without a USO are termed “uneconomic customers” or “uneconomic areas”. Notably, Eircom must satisfy any reasonable request to provide connections to the public telephone network and access to publicly available telephone services.
- 4.53 In accordance with D09/05, Eircom is required to consider all requests for connections if the expenditure involved in meeting the request is less than €7,000 and the cost to the applicant in such instances shall not exceed the standard connection charge. Requests for connections which involve expenditure in excess of €7,000 are to be considered reasonable if the applicant agrees to pay the standard connection charge plus incremental costs above €7,000.

- 4.54 Based on information provided by Eircom, ComReg understands that applications involving charges in excess of the RAT have rarely been progressed. In fact in 2011, 2012 and 2013, ComReg understands that there were no applications for connections from customers above the RAT of €7,000.
- 4.55 In considering any possible change to the threshold, if the threshold were lowered, customers could suffer in that more customers may be obliged to assist in meeting the costs of new connections. In addition, the level of costs that consumers may have to pay to get a connection may also be greater and may not be affordable. If the threshold was to be increased, this could create an incentive for the USP to not deliver the most cost-effective solution, which may in turn affect the net cost.
- 4.56 ComReg considers that the threshold continues to provide a good balance between the interests of the majority of consumers by keeping the costs payable by them down, ensuring the needs of consumers in remote areas are met and maintaining an incentive for the USP to ensure that the most cost efficient solution is delivered at this time. Therefore, it was ComReg's preliminary view that the threshold ("RAT") remains appropriate for the short to medium term.
- 4.57 In relation to existing and new connections, ComReg's preliminary view was that that there should be no change to the requirement in respect of the provision of AFL USO.
- 4.58 However, ComReg's preliminary view was that if an AFL USO is considered necessary after the interim period, ComReg may consider if it would be appropriate to impose additional obligations in relation to new connections including for example those listed below:
- Conduct a cost evaluation of the alternative technologies available to meet the USO AFL requirements;
 - Conduct an evaluation of the suitability of the technologies being considered in light of Quality of Service targets of connection, fault occurrence and repairs;
 - Maintain a record of the cost evaluation, detailed cost breakdown and suitability in respect of the QoS targets for the technologies considered; and
 - Maintain a record of the solution chosen and appropriate reasons as to why it was chosen.

- 4.59 If these new obligations are necessary to be placed on the USP(s) for the provision of the AFL USO, ComReg would, with the consent of the Minister, further specify the requirements, in accordance with its powers at Regulation 3(5)(b) of the Universal Service Regulations.

4.3.3.1 Respondents' views

- 4.60 Eircom is of the view that this threshold needs to be revisited in the context of the Consumer Price Index (CPI) and for the threshold to be re-examined for appropriateness. Eircom stated that it would continue to meet reasonable requests within the RAT threshold.
- 4.61 BT, UPC and ALTO are of the view that the least cost technology should be mandated.

4.3.3.2 ComReg's views

- 4.62 ComReg remains of the view that the RAT remains appropriate at this time and notes Eircom's willingness to meet the related obligations. However, considering the views of respondents, ComReg agrees that a review of the RAT and associated aspects should be carried as soon as practicable and during the interim period.

4.3.3.3 ComReg's final position

- 4.63 ComReg has decided to retain the provisions of D09/05 in respect of the RAT and associated aspects for the interim period. ComReg has sought and obtained the consent of the Minister in this regard.
- 4.64 However, ComReg has decided to commence a review of this, which will include a public consultation, as soon as practicable. ComReg will seek the consent of the Minister if any alteration of the RAT is proposed on foot of the review.

4.3.4 Functional Internet Access – FIA

- 4.65 The current service requirement of FIA is that data communications are sufficient to permit FIA (the USP is currently required to adopt 28.8kbps as a reasonable minimum data rate). ComReg's preliminary view, for the reasons set out below, was that there is no need to alter upwards the required 28.8kbp/second data rate to a rate necessary to deliver broadband, in light of ongoing developments in the market and the Government's plans in respect of broadband.

- 4.66 The Government has implemented initiatives in respect of broadband rollout which include The National Broadband Scheme (“NBS”) and The Rural Broadband Scheme (“RBS”).
- 4.67 The NBS objective, as defined by DCENR, was “*to deliver broadband to certain target areas in Ireland in which broadband services were deemed to be insufficient*”.³⁹
- 4.68 The RBS is the state-subsidised roll out of broadband services to areas in Ireland where it was previously unavailable to ensure universal broadband availability⁴⁰.
- 4.69 The National Broadband Plan (“NBP”) sets the Government’s target in respect of broadband speed.⁴¹
- 4.70 In November 2013, in response to Oireachtas questions, the Minister stated that the Government's National Broadband Plan “*aims to radically change the broadband landscape in Ireland by ensuring that high speed broadband is available to all citizens and businesses. This will be achieved by providing: “sets out the strategy to deliver high speed broadband throughout Ireland. Specifically, it will facilitate broadband download speeds of 70Mbps with a minimum of 40Mbps generally available and 30Mbps available in harder to reach rural areas”. – a policy and regulatory framework that assists in accelerating and incentivising commercial investment and a State-led investment for areas where it is not commercial for the market to invest.*”
- 4.71 This Minister noted that “*Since the publication of the Plan, investments by the commercial sector are underway and in some instances have been accelerated in both fixed line and wireless high speed broadband services. In the fixed line segment of the market, eircom has announced plans to pass 1.4m properties with its next generation broadband service, with speeds of up to 100Mbps, while UPC has increased its entry level and maximum speeds to 120Mbps and 200Mbps respectively. Mobile operators have also made announcements regarding network upgrades and are rolling out enhanced product offerings.*”

³⁹ <http://www.dcenr.gov.ie/communications/communications+development/national+broadband+scheme.htm>

⁴⁰

<http://www.dcenr.gov.ie/Communications/Communications+Development/Rural+Broadband+Scheme/>

⁴¹ <http://www.dcenr.gov.ie/NR/rdonlyres/1EA7B477-741B-4B74-A08E-6350135C32D2/0/NBP.pdf>

- 4.72 The DCENR released a statement on 25 April 2014 ⁴²stating that “*The Government has given the green light to the principle of a fibre build-out which will be the cornerstone of the State’s strategy to deliver high speed broadband to rural areas. Over 1,000 rural communities have already been identified as target areas for the proposed fibre based connections*”.
- 4.73 According to Q1 2014 Report, there were 1,701,714 broadband subscriptions in Ireland. This is an increase of 0.7% since Q4 2013, and an increase of 2.0% since Q1 2013. There was an increase in total fixed line subscriptions in Q1 2014 (up by 23,523), but mobile broadband subscriptions fell again in Q1 2014 (down by 10,861 subscriptions). ComReg reports active mobile broadband subscriptions and does not include internet access over mobile handsets such as smartphones in these numbers.
- 4.74 The same quarterly report also notes that there was a continued decline in the share of single play subscriptions and a decline in double play subscriptions as triple play’s share of subscriptions continued to increase. 47.1% of fixed market retail subscriptions were single play compared to 52.7% in Q4 2012. 34.6% of subscriptions were double play (a bundle of two services) compared to 38.6% in Q4 2012 and 18.3% were triple play (a bundle of three services) compared to 8.7% in Q4 2012. This shows that user demands are shifting with single play (e.g. voice and/or access are declining), with the uptake of triple play increasing. The report also notes that the estimated fixed broadband household penetration rate was 61.5% in Q1 2014. This shows that fixed line services continue to be chosen by a significant majority of households in the State.
- 4.75 In principle, broadband availability could be expanded through the USO. However, it is clear that the NBS, RBS and developments in spectrum and NGA are potentially very significant for increased broadband availability in Ireland in the medium term. Accordingly, because of these developments and the fact that the market is at such an important stage in its development, ComReg considers it appropriate at this point to continue to observe the effect of technological developments and market provision on broadband availability.
- 4.76 One such development is the roll-out of next generation networks over 2012-2013 which resulted in a significant increase in broadband speeds offered, with over 56.7% of broadband subscribers in Ireland now being offered speeds in excess of 10 Mbps.

⁴² <http://www.dcenr.gov.ie/Press+Releases/2014/Major+fibre+build-out+to+rural+Ireland+will+be+cornerstone+of+Government+strategy.htm>

4.77 For consumers who require broadband and do not have access, ComReg is aware of the importance of the Government's policy and, in particular, Government strategies and initiatives to advance the rollout and availability of high speed broadband. ComReg intends to re-examine this issue carefully when the effects of many of the current market and technological developments are visible and when the DCENR's broadband plan has been further progressed. However, given the reasons stated above and subject to ComReg monitoring the impact of the Government's broadband schemes, at this stage, it was ComReg's preliminary view that the current FIA is appropriate and broadband should not be included as part of the scope AFL USO.

4.3.4.1 Respondents' views

4.78 Údarás na Gaeltachta was of the view that the AFL USO should be extended to include Broadband. Its comment was particularly in light of the fact that Eircom was proposed as the USP. It is of the view that Eircom Wholesale would be in the best position to provide the most economic rollout of a fibre/fibre based broadband system to the entire country.

4.79 Eircom was of the view that as FIA should exclude broadband, in light of the government broadband schemes, and because of the decline in narrowband internet connections, the continuance of FIA at 28kbps may no longer be required. In this context, Eircom claims that the continuance of the FIA as specified has implications for it in terms of investment.

4.3.4.2 ComReg's views

4.80 ComReg remains of the view that Broadband should not be included in the scope of the AFL USO at this time.

4.81 ComReg maintains its view that mandating broadband by redefining FIA under the AFL USO is not at this point in time appropriate or necessary in light of advances in broadband availability and speed on foot of the Government schemes.

4.82 ComReg notes Údarás na Gaeltachta's proposal that a combined approach with the NBP and USO could be used, however, it is ComReg's view that any designation of broadband as part of USO at this time would interfere with the NBP and could cause unnecessary duplication and costs. ComReg is also mindful that should any USO net cost be determined to be an unfair burden on the USP then the cost of that is to be shared among industry. In this regard, ComReg notes that the NBP funding model is different.

- 4.83 In respect of Eircom's desire to remove any FIA requirement, it is unclear as to what Eircom's approach and its implications would be if the FIA requirement was removed or the target percentage of 94% altered. ComReg is concerned that, although the number of narrowband subscribers has decreased, as the NBP has not yet been rolled out, there may be unacceptable short term implications for some USP customers. ComReg also notes that the Regulations provide that the connection provided must be capable of supporting functional internet access and facsimile as well as voice communications and in this respect ComReg has decided to retain the 28Kbps safeguard.
- 4.84 However, having considered the views of Eircom regarding the FIA requirements and other respondent's views in respect of least cost technology, ComReg agrees that a review of the FIA requirements should be carried out as soon as practicable and during the interim period.

4.3.4.3 ComReg's final position

- 4.85 ComReg has decided to retain the provisions of D09/05 in respect of the FIA and associated aspects for the interim period. ComReg has sought and obtained the consent of the Minister in this regard.
- 4.86 However, ComReg has decided to commence a review of this, which will include a public consultation, as soon as practicable. ComReg will seek the consent of the Minister if any alteration of the FIA is proposed on foot of the review.

4.3.5 Affordability including Geographically Averaged Pricing

- 4.87 Regulation 8(3)⁴³ of the Universal Service Regulations provides that ComReg may, with the consent of the Minister, require a designated undertaking to apply common tariffs including geographical averaging throughout the State, in light of national conditions. This obligation was placed on the USP in 2003 and aims to ensure that basic telephone services are available at an affordable price, irrespective of geographical location, within Ireland.
- 4.88 The question may arise as to whether the current obligation is the best way of ensuring affordability of tariffs or whether this can be left to competition in some regions. ComReg may, if warranted, revisit this obligation in light of the outcome of the Fixed Voice Access (FVA) market review.

⁴³ There are a number of other tariff provisions in Regulation 8

- 4.89 The cost of providing services, especially access⁴⁴ can in principle vary considerably between remote rural and high density urban subscribers. Where prices (especially line rental) are averaged, there is a possibility that rural subscribers may create a net cost for the USP, i.e. some customers, especially in rural areas, will be unprofitable to serve. Essentially, these would be considered high cost subscribers who do not make sufficient use of the telephone to provide Eircom with enough revenue to cover the associated costs. Such customers then may be subsidised by customers that Eircom earns high profits from, usually low cost urban customers. However, even if the provision of access is on average profitable some level of net cost may therefore arise. In respect of any net cost, an application for funding can be made in accordance with Regulation 11 of the Universal Service Regulations.
- 4.90 Geographically averaged prices mean that the USP must implement a standard 'averaged' price irrespective of the location of the subscriber. Without this safeguard, customers in certain locations could be subject to higher prices, for voice only communications, than others, depending on location.
- 4.91 ComReg's preliminary view was that the objectives in respect of GAP remain relevant, in the context of universal service, to protect end-users and it proposed no change to this position in respect of the services included under AFL USO in the short to medium term.

4.3.5.1 Respondents' views

- 4.92 Eircom claimed that the continuation of GAP together with Eircom's SMP obligations may unduly hamper Eircom's ability to compete in the retail market and Eircom is of the view that a combination of other measures and USP obligations to address affordability may be more appropriate.
- 4.93 Eircom proposed that it could maintain a retail price cap while allowing prices to be lowered in some areas such as the LEA (Large Exchange Areas).
- 4.94 Eircom commented on the removal of the Department of Social Protection's telephone allowance and its view of the impact, in terms of affordability on certain customers.
- 4.95 Eircom also proposed an industry affordability fund to subsidise vulnerable users.

⁴⁴ Access is usually thought of as the connection between the customer and the MDF (sometimes called the local loop or the 'last mile' {actually, it can be more than 3 miles}), and as a service involves investments and OAM costs

4.3.5.2 ComReg's views

- 4.96 ComReg remains of the view that it would not be appropriate to alter or remove the obligation to provide geographically averaged prices in the context of the interim period and without further consultation.
- 4.97 ComReg however, is prepared to consider the merits of the proposals put forward by Eircom and by other stakeholders by way of a review, to include a public consultation, of the obligations placed on any AFL USP in respect of affordability, including Geographically Averaged Pricing.

4.3.5.3 ComReg's final position

- 4.98 ComReg has decided that geographically averaged prices should remain as an obligation on the AFL USP at this time, pending a review which will be commenced as soon as practicable. ComReg has sought and obtained the consent of the Minister in this regard.
- 4.99 ComReg has decided to commence a review, which will include a public consultation, as soon as practicable. This review would also consider, as relevant, the outcome of the Fixed Voice Access (FVA) market review. ComReg will seek the consent of the Minister if any alteration of the obligation to Geographically Average prices for AFL is proposed on foot of the review.

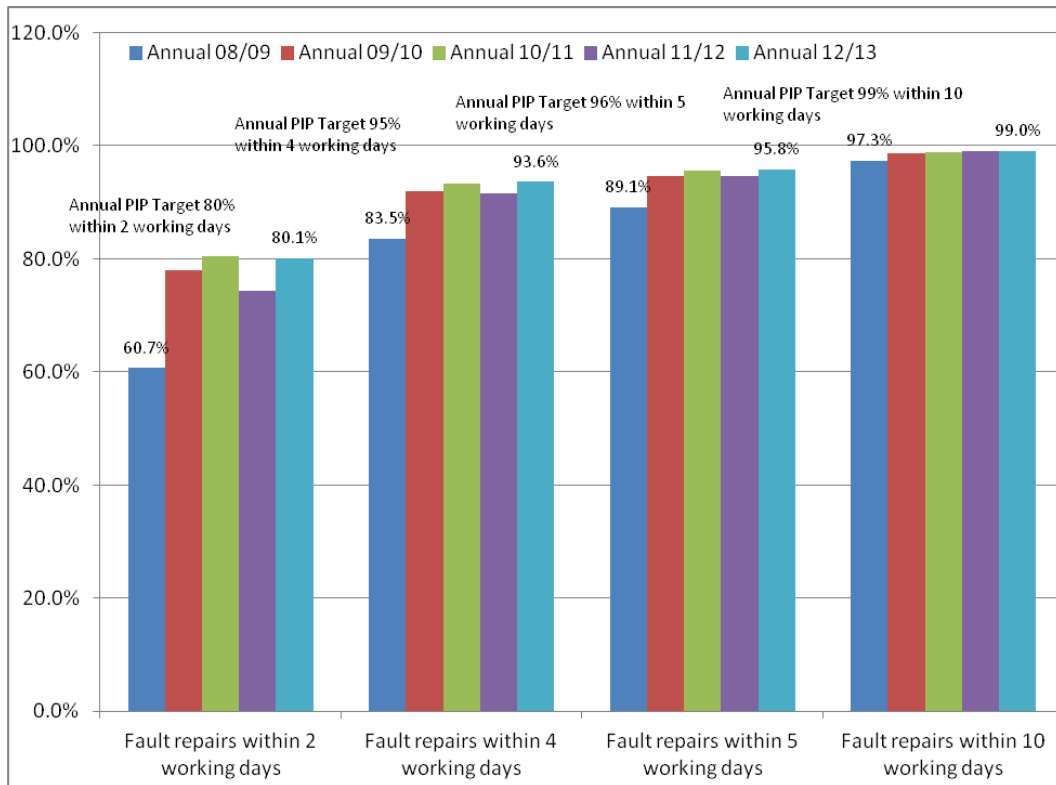
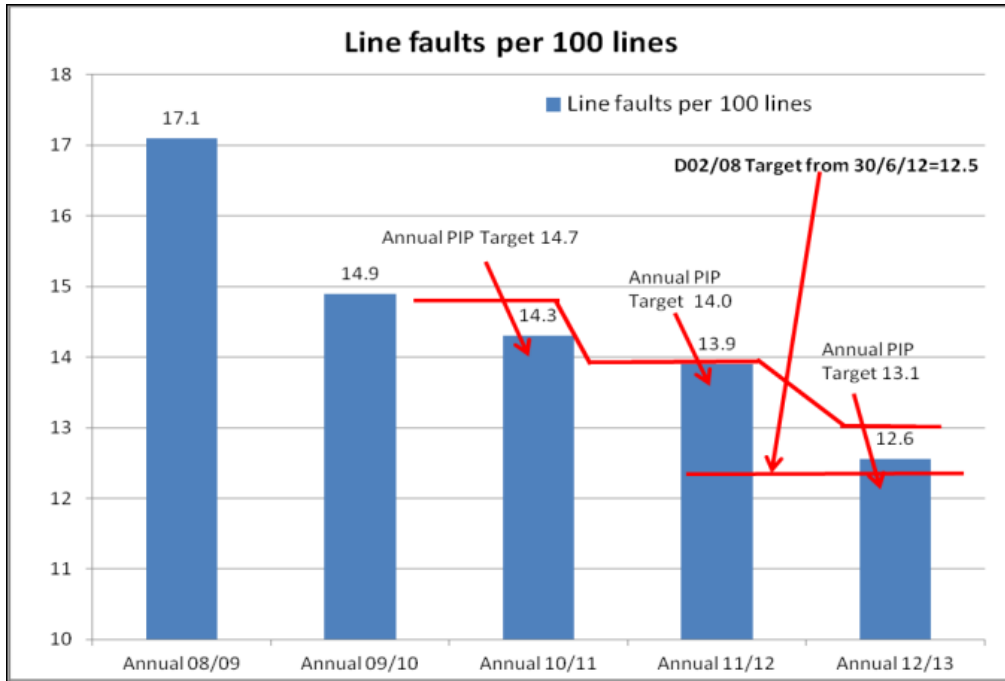
4.3.6 Quality of Service

- 4.100 ComReg Decision D02/08 prescribed legally binding performance targets, referred to in Regulations 10 in respect of Regulation 3 of the Regulations, for Eircom's Quality of Service ("QoS") in respect of the provision of AFL. These targets provide binding measures of quality measures for connections, fault rate occurrence and fault repair times.
- 4.101 Following D02/08, ComReg and Eircom established a USO QoS performance improvement programme ("PIP") for the periods 2010/2011 and 2011/2012. Eircom has a renewed PIP ("PIP2") in respect of the annual periods 2012/2013 and 2013/2014. prescribed legally binding performance targets, referred to in Regulations 10 in respect of Regulation 3 of the Regulations, for Eircom's Quality of Service ("QoS") in respect of the provision of AFL. These targets provide binding measures of quality measures for connections, fault rate occurrence and fault repair times.

- 4.102 The related targets for PIP2 address timescales for connection, fault rate occurrence and fault repairs and include, in some cases, more demanding targets than those that were in place for the initial PIP. Eircom has also put in place a financial security mechanism (cash deposit) to guarantee its performance for the annual periods 2012/2013 and 2013/2014. Eircom's maximum annual financial liability is €10m for the current annual period. In addition, Eircom estimated that it would make an investment of €51m over the periods 2012/2013 and 2013/2014. For the period 2012/2013, Eircom achieved its targets for connections, fault occurrence, and certain fault repair targets.
- 4.103 For the year 2012/2013, Eircom had achieved the majority of the targets set out in ComReg Decision D02/08. In total, fifteen performance targets were set out in ComReg's Decision; nine of which relate to connection times, five relate to repair times and a glide path was put in place in relation to achieving the annual performance target of 12.5 for fault rate occurrence.
- 4.104 The most recent annual performance assessment data of 2012/2013 outlining QoS for Eircom is published in ComReg Document 14/09.⁴⁵
- 4.105 ComReg was of the preliminary view that the targets set out in D02/08 in terms of connections, fault occurrence and fault repairs remain appropriate and are the minimum to be achieved. These targets could be applied equally to any technology or service provider who is designated to as an AFL USP.
- 4.106 The annual performance compliance assessment for 2012/2013 showed that while three of the targets for connection were not achieved, the maximum margin of failure was 0.2%. Six of the nine performance targets for connections were exceeded. Eircom's fault rate occurrence result was 12.6 for the annual period 2012/2013 which indicates that further improvement is necessary to achieve the ComReg D02/08 target of 12.5 for fault rate occurrence. In relation to fault repairs, three of the five ComReg D02/08 targets were not achieved for the annual period 2012/2013, albeit the margin of failure for one of these targets was slim.
- 4.107 The charts below shows Eircom's comparative performance with regard to fault repairs and line fault occurrence for each year since 2008⁴⁶:

⁴⁵ <http://www.comreg.ie/fileupload/publications/ComReg1409.pdf>

⁴⁶ <http://www.comreg.ie/fileupload/publications/ComReg1409.pdf>



4.108 ComReg was of the preliminary view that it is appropriate to maintain current standards with respect to quality of service measures. The QoS targets imposed on a USP represents a minimum standard. As the current USP, Eircom has demonstrated, in the main, that these targets are achievable. Should the market fail to meet end-user demand for basic services, in the instance of no USO, there is no guarantee that such standards will be in place to protect consumers.

4.109 However, ComReg was of the preliminary view that additional proposed QoS targets may be necessary after the interim period to address issues in respect of service availability, call quality and the national and annual nature of the targets.

4.3.6.1 Respondents' views

4.110 BT is of the view that the current USP performance is unacceptable and needs to be improved in particular in light of recent service outages where customers were out of service for considerable periods. BT is of the view that Eircom is not yet at the correct standard and the opportunity to seek improvements should not be lost.

4.111 Eircom is of the view that the Quality of Service targets should be suspended pending a full review in light of material developments. Eircom is of the view that the quality of service regime required by D02/08, in light of the NBP, would not encourage efficient investment and could lead to stranded assets and it claims that this will have implications for both the USP and the industry in terms of universal service funding.

4.112 Eircom was of the view that there have been developments that ComReg should consider in respect of any QoS standard, including D02/08, imposed on it.

4.3.6.2 ComReg's views

4.113 ComReg does not agree with Eircom's allegations that the Quality of Service targets set out in D02/08 are not appropriate for the interim period. Eircom, as recently 2012/2013 has demonstrated that the targets are in the main achievable and ComReg is of the view that it is appropriate, particularly in the absence of any other measurable minimum standard, that D02/08 continues to apply for the interim period.

4.114 ComReg notes Eircom's arguments but it does not agree that a complete removal of the quality of service standards would be in the interests of end-users. ComReg is of the view that the standards in D02/08 remain appropriate and proportionate and that Eircom should seek to continue to achieve those standards.

4.115 However, ComReg is of the view that a review of the QoS targets may be necessary to consider the appropriate targets, address issues including service availability, call quality, the national and annual nature of the targets and any other relevant developments.

4.3.6.3 ComReg's final position

4.116 ComReg has decided that it is appropriate that the Quality of Service standard set by D02/08 is proportionate and warranted for the interim period.

4.117 However, ComReg has decided to commence a review of D02/08, which will include a public consultation, as soon as practicable.

4.3.7 Control of expenditure – Consultation issue

4.118 In addition to affordability of tariffs, ComReg considers that it is imperative that subscribers are able to monitor and control their expenditure to ensure that they do not find themselves unable to pay their bill and face disconnection from the network. In accordance with the relevant legislation, ComReg can take measures to ensure that subscribers are in a position to monitor and control expenditure, including:

- Itemised Billing: a minimum level of itemised billing to be provided free-of-charge to consumers;
- Selective Call Barring: the ability of the subscriber to bar outgoing calls of defined types;
- Introducing a spend threshold: the ability to set a limit on the charges on your bill;
- Phased Payment of Connection Fees: the facility whereby consumers can pay for their connection fees on a phased basis and
- Non-Payment of Bills: ensure the availability of a Disconnection Policy.

Itemised billing

4.119 In 2012, Eircom, as the USP, was required to provide a minimum level of itemised billing free of charge to subscribers subject to data privacy provisions. However, in 2013 ComReg's decision in respect of billing and billing mediums⁴⁷ placed obligations in relation to itemised billing on all undertakings.

⁴⁷ ComReg (2013), "Consumer Bills and Billing Mediums",
<http://www.comreg.ie/fileupload/publications/ComReg1352.pdf>

4.120 Therefore, such obligations are no longer on the USP alone and will not fall within the scope of the AFL USO for the interim period or in the future.

Selective call barring

4.121 Eircom, as the USP, is currently required to offer call barring for outgoing calls to Premium Rate Services free-of-charge to subscribers. A range of other call barring options for outgoing calls is also required to be offered by Eircom as the current USP, subject to payment of a set-up fee and ongoing rental charges, including:

- National;
- Mobile; and
- International.

4.122 ComReg considers that the call-barring options available are reasonable in terms of enabling users to control their expenditure. It was ComReg's preliminary view that call barring should continue to be offered by the AFL USP pending any consideration, consultation and subsequent introduction by ComReg of an extension of such measures to all undertakings in accordance with Regulation 24 of the Universal Service Regulations.

4.123 Absent any view submitted by respondents ComReg remains of this view and has made the decision to retain the call barring obligation on the USP.

Phased Payment for Connection Fees

4.124 As set out in ComReg 12/71, disconnections policy and Non-Payment of bills, phased payment for connection fees is currently mandated. The 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 fees ensures that consumers are not prohibited from early connection because of an inability to pay the total connection charge in one payment. Eircom currently provides this facility, as well as other operators, and in respect of the interim period, it is ComReg's view that no changes to this facility are warranted.

Disconnections policy and Non-Payment of bills

- 4.125 Universal service is not only about enabling people to be connected to a fixed telephone network - it is also important that all consumers who wish to remain connected to the fixed network can do so. In the context of universal service, Eircom's Disconnection Policy, and the associated number of disconnections, has an impact on the number of people connected to the fixed network. Universal service is not truly universal if many people are left without access to a telephone, (it is recognised, however, that disconnections may also result for other reasons, such as fraud or the deliberate non-payment of bills).
- 4.126 With regard to the relevance of disconnections to universal service, ComReg considers that this issue is important in the context of enabling subscribers to control their telephony expenditure. The level of disconnections may be a barometer of the effectiveness of the existing measures which facilitate such control. In addition to the measures outlined below, the Eircom Disconnection Policy (as set out in its Code of Practice for Complaint Handling) includes notification measures for subscribers who fall into payment arrears. This policy appears to continue to have a positive effect by reducing the number of subscribers that may have been otherwise disconnected from the network.
- 4.127 There is an existing obligation on all operators to publish their Disconnection Policy, as part of their Code of Practice for Complaint Handling. This includes notification measures for subscribers who fall into payment arrears. This policy appears to continue to have a positive effect by reducing the number of subscribers that may have been otherwise disconnected from the network.
- 4.128 ComReg considered whether the USP should have a more detailed Disconnection Policy. However, ComReg decided that a balance had to be struck between protecting consumers from unwarranted disconnections and commercial interests and so no such requirement was imposed.

4.3.7.1 ComReg's final position

- 4.129 Absent any view submitted by respondents, ComReg has decided to retain the existing call barring obligation on the USP.
- 4.130 In respect of phased payment of connection fees, Eircom currently provides this facility, as well as other operators, and absent any view submitted by respondents, in respect of the interim period, ComReg has decided that no changes to this facility are warranted.
- 4.131 In the absence of any views submitted by respondents, ComReg has decided that the provisions in respect of the USP's Disconnection Policy should remain unchanged for the interim period.

4.3.8 Consultation question – Decision Instrument

4.132 This question included in Part 1 of Consultation 14/48 considers the scope of AFL USO in the interim period as follows:

Q.6 Do you agree with the text of ComReg's draft Decision Instrument in Annex 3. Please provide reasons to support your view.

4.3.9 Respondents' views

4.133 Eircom proposed amendments to reflect its views in respect of the scope of the AFL for the interim period in particular with respect to its proposed removal of the FIA, Quality of Service and Geographically Averaged Pricing.

4.3.10 ComReg's views

4.134 ComReg has amended the Decision Instrument to take account of its intention to conduct a number of reviews during the interim period including in relation to RAT, FIA and GAP and QoS.

4.4 Consultation issue - RIA

4.135 It is ComReg's view as set out in Consultation 14/48, that the designation of Eircom in respect of the provision of AFL USP for an interim period proposed in Part 1 of this Consultation Paper is transparent, justified and proportionate, in accordance with the Universal Service Regulations and Directive and otherwise in line with Better Regulation guidance and Regulatory Impact Assessment norms.

4.4.1 Consultation question

4.1 This question in Consultation 14/48 considered the Regulatory Impact Assessment in respect of the designation of Eircom for an interim period of 12 to 18 months from 1 July 2014.

Q. 14 Do you agree with the approach and conclusions in this draft regulatory impact assessment? Please give reasons to support your point of view.

4.4.2 Respondents' views

- 4.2 No Respondent responded directly to this question however comments were made which relation to the options considered by ComReg as addressed in the sections above.

4.4.3 ComReg's final position

- 4.3 Having considered the views of respondents to the Part 1 questions; ComReg has addressed the comments and amended and finalised the RIA accordingly. In particular, ComReg has incorporated the review of certain aspects and the possibility of the implementation of any changed requirements on the USP during the interim period.

Chapter 5

5 Regulatory Impact Assessment ('RIA') for Part 1 (b) – Designation for an Interim Period

5.1 Overview

- 5.1 As part of the implementation of USO, ComReg is conducting a Regulatory Impact Assessment (RIA), in line with ComReg Document No. 07/56a, and taking into account the RIA Guidelines adopted under the Government's Better Regulation initiative.⁴⁸
- 5.2 ComReg's approach to conducting a RIA is outlined in its RIA Guidelines. In relation to Universal Services, where ComReg is charged with implementing a statutory obligation, it will assess each case individually and determine whether a RIA is necessary and justified, having regard to its degree of discretion and the principles of reasonableness and proportionality.
- 5.3 ComReg must use all reasonable, proportionate measures to promote the interests of citizens by ensuring that citizens have access to universal service as specified in Directive 2009/36/EC.
- 5.4 ComReg's approach to the scope and designation of the provision of AFL USO is in accordance with the currently applicable legislation.
- 5.5 ComReg must ensure that the provision of AFL USO, specifically the provision of reasonable requests for access at a fixed location supporting voice and functional internet access services are made available on an affordable basis at the quality specified to all end-users independently of geographical location.
- 5.6 The Regulations give ComReg the discretion to designate one, or more, USPs.

⁴⁸ ComReg (2007), 07/56a, Guidelines on ComReg's Approach to Regulatory Impact Assessment

- 5.7 ComReg's role in this context is to decide whether there is a requirement for the AFL USO and what is reasonable for an implementation of AFL USO, rather than to assess the merits of the underlying policies embedded in legislation. Thus, it is not necessary to outline a range of options and to make an assessment of the impacts of each on stakeholders. Rather, ComReg outlines how its proposals will impact on stakeholders and chooses the most proportionate means of achieving the stated aims in the Universal Service Directive and the Universal Service Regulations.
- 5.8 In relation to the provision of AFL USO for an interim period commencing July 2014, ComReg's discretion is limited and hence, in contrast to the cases normally contemplated under the RIA Guidelines, there is not a wide range of regulatory options to choose amongst.

5.2 Impact assessment for Designation for the Interim Period

- 5.9 In respect of a USO for AFL from July 2014 for a USO for AFL; ComReg has two options:
1. Maintain a USO for AFL
 2. Remove the USO for AFL
- 5.10 For the reasons set out in Chapter 3, ComReg was of the preliminary view that a USO for AFL continues to be necessary to protect end-users. There may be a net cost to the USP(s) in providing the AFL USO. In this case, the USP(s) may seek to request funding in accordance with ComReg D04/11. This in turn may have an impact on undertakings in respect of an associated sharing mechanism if there is a positive net cost and if this is determined to be an unfair burden, in accordance with D04/11.
- 5.11 In light of the objectives of the Universal Service Directive and the ongoing demand for AFL, ComReg remains of the view that it is not appropriate to remove the universal service obligation for AFL.
- 5.12 In light of the view that it is appropriate to maintain a USO for AFL; ComReg has a number of further considerations
1. The period of the designation
 2. Which undertaking(s) should be designated
 3. The scope of the AFL USO

The period of the designation

- 5.13 ComReg's preliminary view remains that the need for an AFL USO will continue for a further three to five years, as detailed in Chapter 3, however ComReg is not determining the matter as part of this Decision. In this context, ComReg is of the view that other undertakings may be interested, and have the right to be considered, in becoming a USP. Therefore, ComReg wishes to allow time for valid expressions of interest to be submitted and to be evaluated by ComReg and for a potential transition period to a new USP(s).
- 5.14 ComReg has allowed until 8 August 2014 for Expressions of Interest to be submitted.
- 5.15 Having considered the submissions received, ComReg has decided that it is appropriate to have a designation for an interim period of eighteen months to allow for the full process, as appropriate, to occur.

Which undertaking should be designated

- 5.16 ComReg has decided that Eircom as the current USP is best placed to continue to be the USO for the interim period. Eircom is the largest provider of voice access and voice services at a fixed location in Ireland. It has an extensive infrastructure, subscriber base and product portfolio allowing for economies of scale and scope. In the absence of any other real alternatives that ComReg could consider as a USP from July 2014, it is ComReg's view that it is appropriate that Eircom continue to be designated for the interim period.

The scope of the AFL USO

- 5.17 There are a number of aspects to be considered in respect of the scope of the AFL USO. These include:
- Reasonable requests for connection (D09/05)
 - Functional Internet Access (D09/05)
 - Geographically Averaged Prices
 - Measures to assist in controlling expenditure
 - Quality of Service Targets (D02/08)

Reasonable requests for connection

- 5.18 ComReg has discretion in relation to providing access at a fixed location, with regard to setting a threshold for what would constitute a reasonable request. At one level, ComReg could specify that all requests are reasonable. However, this would have a large impact on the USP who would be faced with the prospect of very large costs. In addition, the absence of a threshold could encourage consumers to submit requests which entail high costs.
- 5.19 ComReg remains of the view that the existence of a threshold is important. While a USP would be required to provide a connection to the public communications network, ComReg has previously issued guidance on what might be termed a reasonable request and the threshold of €7,000 defined in D09/05 gives a USP protection where the costs involved in providing such access are high. Thus, consumers can obtain a connection at the standard rate so long as the costs of so doing do not exceed this threshold. Any costs incurred above this threshold in the provision of a connection are paid by the applicant.
- 5.20 ComReg considers that the current approach remains valid and proportionate for the interim period. However it has decided to commence a review as soon as practicable.

Functional Internet Access

- 5.21 This matter is fully discussed in Chapters 3 and 4. The consultation paper does not propose changes to FIA or the required 28.8kbp/second data to a higher rate or lower (zero) rate, or to redefine FIA for the AFL USO.
- 5.22 ComReg considers that it is not appropriate, at this juncture, for broadband to be included in the interim or medium term AFL USO, primarily because (a) ComReg has to be mindful of Government policy on broadband, and (b) the market is currently subject to rapid technological developments.
- 5.23 In addition, ComReg does not consider the option to zeroise the rate or lower the target of 94% to be appropriate as it could impact some users.
- 5.24 ComReg considers that the current approach remains valid and proportionate for the interim period. However it has decided to commence a review as soon as practicable.

Geographically averaged prices

- 5.25 The obligation for geographically averaged prices was placed on the USP in 2003 and aims to ensure that basic telephone services are available at an affordable price, irrespective of geographical location, within Ireland. This aim remains relevant with the policy objective and ComReg does not at this time propose to change this position in respect of the services included in Universal Service. Without this measure there is a danger that customers and/or areas that the USP considers uneconomic would have to pay higher prices than economic customers.
- 5.26 However, the potential emergence of differential competitive conditions across geographic areas will be kept under review by ComReg. The question may arise as to whether the current obligation is the best way of ensuring affordability of tariffs or whether this can be left to competition in some regions or whether there are other ways of achieving the same objective.
- 5.27 ComReg considers that the current approach remains valid and proportionate for the interim period. However, it has decided to commence a review as soon as practicable.

Quality of service targets

- 5.28 ComReg considers that it is appropriate to maintain current standards with respect to quality of service measures during the interim period. The QoS targets imposed on a USP represent a minimum standard and as detailed in section 4.3.6. Eircom has demonstrated, in the main that these targets are achievable. ComReg is of the view that it is appropriate to maintain the targets for the interim period as without these targets there is no guarantee that such or any quality standards would be met nationally by the USP.
- 5.29 ComReg considers that the current approach remains valid and proportionate for the interim period. However, it has decided to commence a review as soon as practicable.

Funding Applications

- 5.30 Pursuant to the Regulations, a USP(s) may seek to receive funding for the net cost of meeting the USO obligation concerned where, on the basis of appropriate net cost calculation; ComReg determines that the undertaking in question is subject to an unfair burden. Regulation 11 (1) provides that: *“Where an undertaking designated as having an obligation under Regulation 3, 4, 5, 6, 8 or 9 seeks to receive funding for the net costs of meeting the obligation concerned, it may submit to the regulator a written request for funding”*.

- 5.31 Eircom's application for a USF for 2010-2011 is due by September 2014 and applications for 2011/2012 and 2012/2013 are due in November 2014. Information regarding the net cost of each element of universal service will be provided to ComReg in the course of Eircom's applications for universal service funding for each of the periods. ComReg plans to publish details of the value of the applications, when received, as appropriate.
- 5.32 As Eircom is designated for the interim period of 18 months, it is also entitled to seek funding for that period.

Annex: 1 Glossary of Terms

A 1.1 Set out below is a glossary of terms used throughout the document.

AFL	Access at a Fixed Location
CATV	Community Access Television
DCENR	Department of Communications, Energy and Natural Resources
DSP	Department of Social Protection
FCS	Fixed Cellular Solution
FIA	Functional Internet Access
FWA	Fixed Wireless Access
FVA	Fixed Voice Access
FSP	Fixed Service Provider
GAP	Geographically Averaged Pricing
ISDN	Integrated Services Digital Network
NBP	National Broadband Plan
NBS	National Broadband Scheme
OTT	Over the Top
PIP	Performance Improvement Programme
PIP2	Performance Improvement Programme 2
POTS	Plain Old Telephone Services
PSTN	Public Switched Telephone Network
QoS	Quality of Service
RAT	Reasonable Access Threshold

RBS	Rural Broadband Scheme
RFTS	Retail Fixed Telephony Services
RFVC	Retail Fixed Voice Calls
RPC	Retail Price Cap
SMP	Significant Market Power
USF	Universal Service Funding
USO(s)	Universal Service Obligation(s)
USP(s)	Universal Service Providers(s)
VOIP	Voice over Internet Protocol
VUS	Vulnerable User's Scheme

Annex: 2 Decision Instrument

1 Statutory functions and powers giving rise to this decision instrument

1.1 This Decision and Decision Instrument, made by the Commission for Communications Regulation (“ComReg”), relates to the provision of universal services in the Irish telephony market and is made:

- i. Having regard to sections 10 and 12 of the Communications Regulations Act 2002 (“the Act of 2002”);
- ii. Pursuant to the functions and powers conferred upon ComReg under and by virtue of Regulations 7(1), 8 and 9 of the European Communities (Electronic Communications Networks and Services) (Universal Service and Users’ Rights) Regulations 2011 (“the Regulations”);
- iii. Having regard to Regulation 3 of the Regulations;
- iv. Having, where appropriate, pursuant to section 13 of the Communications Regulation Acts 2002 to 2011 complied with the policy directions made by the Minister for Communications, Marine and Natural Resources^[1]
- v. Having taken account of the representations of interested parties submitted in response to ComReg document No. 14/48 and
- vi. Having regard to the analysis and reasoning set out in ComReg document No. 14/71.

2. Designation of a Universal Service Provider(s)

Provision of Access at a Fixed Location

2.1 In accordance with Regulation 7 of the Regulations, Eircom Limited and its subsidiaries, and any undertaking which it owns or controls, and any undertaking which owns or controls it and its successors and assigns (“Eircom”) is hereby designated as the Universal Service Provider (“the USP”) for the purpose of complying with the following obligations, as provided for by Regulation 3 of the Regulations.

^[1] Policy Directions made by Dermot Ahern TD, then Minister for Communications, Marine and Natural Resources, dated 21 February 2003 and 26 March 2004.

2.2 The USP shall satisfy any reasonable request to provide at a fixed location:

- i. Connections to the public telephone network; and
- ii. Access to publicly available telephone services.

2.3 The USP shall comply with the requirements in relation to the obligations referred to in section 2.2 hereof, as set out in ComReg Decision D9/05^[1].

Quality of Service

2.4 The USP shall comply with the requirements in relation to the obligations referred to in section 2.2 hereof, as set out in ComReg Decision D02/08^[2].

Geographically Averaged Pricing

2.5 In accordance with Regulation 8(3) of the Regulations, Eircom, as the USP shall apply geographically averaged prices throughout the State for the services referred to in this Decision.

Control of Expenditure

2.6 In accordance with Regulation 9 of the Regulations, Eircom, as the USP, shall do the following:

- Provide selective call barring facilities for outgoing calls to national, mobile, international and premium rate numbers. The call barring facility in respect of premium rate numbers shall be provided free of charge to users;
- Maintain and publish its scheme to allow for the phased payment of connection fees; and
- Maintain and publish its disconnection policy in connection with non-payment of bills.

^[1] Provision of access at a fixed location – connections to public telephone network and provision of functional internet access, dated 7 September 2005.

^[2] Decision Notice – Response to consultation on Eircom’s Universal Service Obligation – Quality of Service Performance Targets, dated 28 May 2008.

3 Review

3.1 ComReg will undertake a review of certain aspects of the AFL USO, including a public consultation of the obligations set out in sections 2.3, 2.4 and 2.5, and such review will be commenced as soon as practicable after 7 July 2014.

4 Effective date and duration

4.1 This Decision and Decision Instrument is effective from 7 July 2014 and shall remain in place until 31 December 2015 or as amended by ComReg.

**KEVIN O'BRIEN
CHAIRPERSON
THE COMMISSION FOR COMMUNICATIONS REGULATION
THE 7th DAY OF JULY 2014**