



Commission for
Communications Regulation

**The provision of telephony services
under the
Universal Service Obligation -
Access at a Fixed Location
Submissions to Consultation 14/48**

Submissions to Consultation

Reference: ComReg 14/71s

Date: 07/07/2014

Submissions received from respondents

Consultation	Part 1 of 14/48
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alto

alternative operators in the communications market

**Consultation: The provision of telephony services under the
Universal Service Obligation - Ref: 14/48 - Part 1**

Submission By ALTO

Date: June 16th 2014

ALTO is pleased to respond to the Consultation: The provision of telephony services under the Universal Service Obligation – Ref: 14/48 – Part 1.

ALTO acknowledges that ComReg's extension of the time for response by 1 working day, on foot of a request for a 3-week extension submitted by ALTO on the 5 June 2014.

ALTO welcomes this opportunity to comment on this wide ranging and complex consultation and would like to make the following general comments before addressing the questions in detail.

Preliminary Remarks

ALTO submits that it welcomes ComReg's recognition that the provision of Universal Service Obligations – USO, Access at a Fixed Location – AFL, and publicly available telephone services could be provided by means other than fixed networks, given that ALTO has submitted this in its previous response, as cited by ComReg at page 55 of the Consultation document.

ALTO however remains concerned that ComReg simply assumes that provision of Universal Services should be by traditional (or plain old) fixed networks only. ComReg states in the consultation document that Eircom's fixed network is the most efficient and that Eircom are the best placed undertaking to deliver the USO. This is despite ComReg's knowledge of Eircom's repeated claims for financial compensation for complying with USO.

ALTO submits that the current situation whereby a single Universal Service Provider – USP, maintains continued and deeply time lagged applications for funding is entirely inappropriate and at best unsustainable. This issue comes into acute focus when new entrant undertakings potentially at risk of having to

contribute to any fund, where a burden is assessed on the national network can not simply and retrospectively open their accounts in order to facilitate an incongruent and untimely review of any relevant burdens that have the potential, subject to analysis, to be shared by industry.

ALTO calls on ComReg to remedy its temporal assessment of any USO and in doing so remove the persistent risk to the new entrant community of having to pay for something that it in effect, gets little or no benefit from.

ALTO's overall position on USO has been communicated to ComReg on numerous occasions at this juncture. ComReg must endeavour to bring regulatory certainty to national network when dealing with the issue of USO and indeed the issue of USP designation. It remains ALTO's view that there may come a time in the not distant future where no single USP will be designated or indeed be desirable, given the nature of the Irish Communications landscape and proper relevant market forces.

ALTO also remarks that ComReg has recently identified the current USP's ownership structure in its Cost of Capital Consultation. The effect of a rather complex ownership structure sees re-investment falling below that of the required levels in a normally owned and operated, and aspects of the USO not being perhaps as clear as they ought to be in areas where proper and efficient investment is taking place in Current Generation Access – CGA, and Next Generation Access – NGA, services and offerings.

Response to Consultation Questions:

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.

A. 1. ALTO does not agree with ComReg’s preliminary view that there is a need for an AFL and publicly available telephone service USO for a period of three to five years. ALTO submits that ComReg does not provide any substantive or proper justification for continued imposition of the obligation. ALTO queries whether the unique communications market circumstances in Ireland require a period of 3 – 5 years for such a designation, considering the current/interim designation period of 12 or 18 months.

ALTO notes that ComReg has itself identified shifts in consumer and user profiles to alternative and Over The Top – OTT, service, and yet disappointingly proceeds to ignore those shifts with its proposals in the Consultation paper.

ALTO remains of the opinion that there may be no future pressing need to designate any USP for any aspect of USO, on the grounds of more than satisfactory delivery of the USO by simple market forces.

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.

A. 2. ALTO submits that ComReg appears to have left this issue to the 11th hour, now resulting a little or no option for industry, but to accept an interim/short term AFL USO. Presenting the industry with a regulatory *fait accompli* such as this particular one should be avoided at all costs, and this is the scenario that the industry now finds itself in. ComReg should address this most serious planning/scheduling issue as a matter of priority.

ALTO submits that given this current and somewhat unfortunate scenario, whereby the current regime expires at the end of June 2014, it may be justifiable and reasonable to impose a short term AFL USO. This is only in order to avoid issues with and for potentially vulnerable users.

Further, ALTO submits that taking ComReg's own analysis and applying it, any USP should be directed to comply with its USO by means of the most efficient and least cost technology solution, thereby reducing any burden to the USP and requirement for burden sharing on industry.

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.

A. 3. ALTO submits that any interim period should be twelve months only. ComReg should not require any longer period of time to properly assess burdens on the national network, or to complete an assessment to the extent that no USO designation is necessary or required. The same period of time should be adequate for any undertakings to submit expressions of interest to deploy universal services or to approach ComReg with a view to designation as a USP.

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.

A. 4. ALTO requests that ComReg reviews ALTO's response to Question 2, above. ALTO agrees that given the current and somewhat unfortunate scenario the industry finds itself in, that it may be appropriate to designate Eircom for the interim period commencing after the 30 June 2014. ALTO submits that ComReg must direct that most efficient means possible be utilised in complying with the USO, including the use of other forms of non-traditional network where that cost can be less than current fixed network solutions.

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.

A. 5. ALTO declines to submit a response on this question given its views expressed above.

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

A. 6. ALTO declines to submit a response on this question given its views expressed above.

ALTO

16th June 2014

BT Response to ComReg Consultation:

The Provision of telephony services under the Universal Service Obligation (Part A)

Issue 1 – 13th June 2014

Introduction

This is an important area of regulation and one where we consider improvements are required, particularly concerning the Universal Service Provider's (USPs) quality of service performance. We consider ComReg should apply the utmost effort to improve the service performance aspects or at least include a provision for improvements prior to the commencement of the Interim Designation. We therefore conditionally agree to the Interim Designation on the basis the service performance requirements are tightened ASAP and as part of the 1st July 2014 Designation.

The recent storms highlighted Eircom's vulnerability and the delays in resolving the situation were unprecedented with many customers being without service for considerable periods. In our view this needs to be addressed as a matter of urgency and ahead of the other issues identified.

In our view Eircom service is not yet at the correct standard for either customers or the industry and this opportunity to improve should not be lost, waiting another 12 to 18 months is unacceptable.

BT Response to Part 1 Questions

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.

A.1. We agree with ComReg's preliminary view that there is a need in Ireland to continue the Access Fixed Line USO for a period of three to five years given the current economic conditions. There is ongoing demand for the service in Ireland, however such supply must only be offered where genuinely required and with efficient costs.

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.

A.2. We agree with ComReg's preliminary view that in the short term (twelve months) there is a need for an AFL USO and we agree with ComReg that an opportunity should be open for others to volunteer to be a USP, however we also consider the time should

be used to review the USO in more detail. As per our introduction we consider improvements in the services performance aspects of the USO are urgently required and these should be addressed prior to the commencement of the Interim Designation in July. The recent storms also gave rise to a very high level of 'aged faults' which we consider were related to there being no USO incentive to correct faults over 10 days. This needs to be corrected ASAP and this is the opportunity to do that.

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.

A.3. We consider the interim period should be twelve months as this is sufficient time to complete the work without losing momentum.

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.

A.4. We are disappointed that it was not possible to prepare substantial changes to the USO prior to the 1st July 2014 Designation and reluctantly and conditionally agree to roll over the Eircom USP designation for an interim period of twelve months only. However, ComReg need to set a transparent timetable to progress issues for the Designation in 2015.

Leaving aside procedural comments which exist in this matter, it would have been preferential for the consultation to have been completed in good time prior to the Designation – less than three weeks is not sufficient. In our view an opportunity has been missed to materially improve the USO in 2014.

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? Please provide reasons to support your view.

A.5. We consider the current service performance aspects are unacceptable and need to be improved prior to the Designation of the 1st July 2014 or at least a provision made for improvement as part of the Designation. We also consider the whole area around 'storm mode' needs to be made transparent to industry.

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

A.6 Please see our response to question 5.

For enquiries please contact: john.odwyer@bt.com

eircom Group

Response to ComReg Consultation Paper:

**The Provision of telephony services under the Universal Service
Obligation**

Access at a Fixed Location

ComReg Document 14/48



16 June 2014

DOCUMENT CONTROL

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

Executive Summary

eircom recognises that consumers want continuity of service, and predictable, affordable prices, and we make every effort to meet our customers' evolving needs.

ComReg has an obligation to determine whether there is likely to be a shortfall in provision of telephony services if obligations are not imposed. Despite repeatedly (in 2010 and 2012) designating eircom as a Universal Services Provider (USP) for all services, for repeated short periods to allow proper consideration of the issues, ComReg is again proposing to extend the 2006 obligations for a further short period, while it engages in a full consideration of the issues.

The obligations imposed in 2006 are long outdated. They should be substantially reduced or dropped entirely. Extending them further, and proposing unrealistic targets and punitive measures for non-compliance, is wrong. We do not know what the outcome of the National Broadband Plan tender will be and ComReg's proposed approach could, in effect, demand that eircom diverts substantial investment funds into a technology approach which could result in stranded assets. Furthermore, ComReg is encouraging investment in long life assets (with "Regulated" lifetimes up to 40 years) on the basis of a temporary designation for a short period. If such investments were made in assets which have no commercial basis, and the designation were then to end in 2015, a huge depreciation charge could arise which would be entirely due to designation as USP. We note that when BT was assigned the ECAS for a period of 5 years, they were allowed to depreciate all of their ECAS assets over that timeline, on the basis that they might not be redesignated after 5 years, and if that happened, those assets might be stranded.

eircom believes in this context that the proposed designation of eircom as USP for an "interim period" is an invalid exercise of ComReg's powers under the Universal Service Regulations. In particular, the "roll-over designation" mechanism that ComReg has resorted to is clearly inconsistent with its obligation under the Universal Service Regulations to put in place a designation mechanism that is efficient, objective, transparent and non-discriminatory and allows consideration of other undertakings as USP. Clearly, only eircom is being considered for this interim period.

As ComReg may not lawfully "roll-over" eircom's designation as USP for an additional period of time, eircom's designation as USP will lapse on 30 June 2014. The fact that ComReg believes that it is necessary to designate a USP for the period 1 July 2014 to ensure that all reasonable requests for connection at a fixed location to a public communications network will be met does not mean that ComReg may ignore the requirements of the Universal Service Regulations because it did not, through its own fault, allow for a sufficient period of time to put in place an appropriate designation mechanism following a full review of the proper scope of the USO. If ComReg wants to redesignate eircom as USP, it may do so but only after it has put in place a designation mechanism that complies with statutory requirements and after having considered any continued requirement for an obligation to provide access at fixed location in the light of market developments.

Due to the failings of ComReg's administrative processes and the absence of a proper review, there is a significant risks 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. In order to avoid such an outcome, and strictly without prejudice to eircom's view that ComReg may not roll-over eircom's designation as it has proposed to do, eircom will not object to its re-designation and continue to meet reasonable requests for connection at a fixed location for a maximum interim period of 12 months, strictly subject to the following conditions:

For the period 1 July 2014 to 30 June 2015:

- eircom will continue to meet all reasonable demands for new connections, within the current RAT threshold
- eircom will not withdraw services currently provided
- eircom will not increase retail fixed line rental
- eircom will work proactively with ComReg to ensure affordability for vulnerable users through special tariff schemes as appropriate
- There is no obligation for geographically averaged prices
- Given the existence of the National and Rural Broadband Schemes, the widespread availability of Mobile broadband, and the increasing coverage of high-speed broadband networks, there will be no requirement of FIA for 94% of lines at 28.8kbps.
- The operation of D02/08 is suspended, pending full consideration of establishing a proportionate forward looking quality of service regime taking into account material developments since 2008 [REDACTED]. eircom will continue to publish quality of service statistics in the interest of transparency.

Response to Consultation

1. ComReg's administrative process is deficient

eircom is extremely concerned by the administrative approach adopted by ComReg in respect of considering the provision of Universal Service Obligation (USO) access at a fixed location. It is ComReg's perspective¹ that *"As the end of Eircom's designation term is approaching and in light of technical changes and market developments, it is necessary and appropriate to commence a review of the provision of Access at a Fixed Location ('AFL') under USO."*

The end of eircom's designation term is 30th June 2014. This date was fixed when Decision 07/12² was made on 29th June 2012. It is odd that ComReg has decided to commence the review less than two months prior to the deadline and nearly 22 months after the deadline was established. Why has ComReg not started this review sufficiently in advance of the deadline in order to allow a proper assessment of the future need for an AFL USO, its scope, and the implementation of a fair and transparent designation process? When setting the 30th June 2014 deadline, in line with its proposal³ in April 2012, ComReg explained why it had chosen a two year period.

"Therefore, ComReg was of the preliminary view that the next designation period should be for a period that is long enough to accommodate the following:

1. *Eircom to submit its universal service funding application for 2009/2010 (received on 31 May 2012).*
2. *ComReg to assess Eircom's funding application (ComReg intends to publish its determination on Eircom's USO funding application for 2009/2010 within approximately 8 months of receiving such an application).*
3. *ComReg to evaluate the specific details of any universal service obligation and to determine and implement, as appropriate, the most appropriate future designation method(s).*
4. *A transition period, if relevant, to a new USP or USPs."*⁴

Item 1 was already completed by the time of the actual designation and item 2 was substantively completed with the publication of ComReg's draft determination in May 2013⁵. Items 3 and 4 have not been progressed by ComReg in the last two years.

ComReg specifically chose a two year period in order to allow sufficient time for it to conduct a proper assessment of the future scope of the USO, establish the most appropriate designation method(s) and have sufficient time to allow a transition period to a new USP. It was eircom's understanding that this should all have been implemented by ComReg during the designation period that will expire on 30th June 2014, and been completed well in advance of this deadline. However, as a direct result of ComReg's inactivity on this issue over the past two years, we are now confronted with a situation where there is simply insufficient time for ComReg to do what it said it would do in 2012.

This is even more concerning when considered against the fact that there has not been a proper review of the AFL USO in eight years. The last attempt at a proper review preceded the

¹Paragraph 1.3, ComReg 14/48

²ComReg 12/71

³ComReg 12/39

⁴ 12/71, Paragraph 30, numbering added

⁵ComReg 13/45

designation of eircom as Universal Service Provider (USP) in 2006.⁶ In 2006 eircom was designated as USP for a period of 4 years expiring on 30th June 2010. In 2010 ComReg issued its “consultation” on USO⁷ on 22nd April 2010, slightly over two months before the expiry of the designation period. In 2010 ComReg proposed an interim designation on the basis that *“Taking account of the above factors, (in particular the planned transposition date of May 2011, the ongoing consultation on the scope of universal service by the European Commission and the fact that this consultation by ComReg is limited to the current legislation), ComReg is of the preliminary view that the designation should be for a limited period (that is, an approximate 2-year period, ending on 30 June 2012). ComReg is interested in seeking views on the case for alternative periods.”*⁸

Following the consultation ComReg issued its Decision and concluded simply *“Having carefully considered the views expressed by respondents, ComReg is of the view that, in order to provide certainty for stakeholders with respect to universal service, while allowing for a review in a reasonable timeframe, a two-year designation period is appropriate at this stage. ComReg intends to designate for a two-year period.”*⁹

ComReg states categorically in the current consultation¹⁰ the USO “are basic services that are considered **essential for everyone**”. Yet ComReg has failed to allow sufficient time in its 2010, 2012 and the current 2014 reviews to undertake a proper analysis. ComReg has managed the administrative processes in such a way that ComReg now presents the rolling-over of eircom’s designation as a *fait accompli* that is necessary to ensure the delivery of the universal service in Ireland. This is not good regulatory governance and does not provide confidence in the regulatory process. eircom in this respect does not believe, and has been so advised by its legal advisors, that the proposed roll-over of its designation as USP represents an unlawful exercise of ComReg’s powers under the Universal Service Regulations 2011. Such a roll-over is clearly in breach of the requirements that no undertaking be excluded from being designated as USP. Under the process followed by ComReg, no undertaking but eircom is being considered!

As ComReg may not lawfully “roll-over” eircom’s designation as USP for an additional period of time, eircom’s designation as USP will lapse on 30 June 2014. The fact that ComReg believes that it is necessary to designate a USP for the period 1 July 2014 to ensure that all reasonable requests for connection at a fixed location to a public communications network will be met does not mean that ComReg may ignore the requirements of the Universal Service Regulations because it did not, through its own fault, allow for a sufficient period of time to put in place an appropriate designation mechanism following a full review of the proper scope of the USO. If ComReg wants to redesignate eircom as USP, it may do so but only after it has put in place a designation mechanism that complies with statutory requirements and after having considered any continued requirement for an obligation to provide access at fixed location in the light of market developments.

Article 3(2)¹¹ requires “Member States shall determine the most efficient and appropriate approach for ensuring the implementation of universal service, whilst respecting the principles of objectivity, transparency, non-discrimination and proportionality. They shall seek to minimise market distortions, in particular the provision of services at prices or subject to other terms and conditions which depart from normal commercial conditions, whilst safeguarding the public interest.” The legislation is clear that Member States must actively undertake analysis (we refer to this as

⁶ComReg 06/32 refers

⁷ComReg 10/35

⁸Section 5, ComReg 10/35

⁹Section 4.3, ComReg 10/46

¹⁰Paragraph 2.2, ComReg 14/48, emphasis added

¹¹USD 2009

positive analysis') in order to **determine** what is necessary and **seek to** apply a balanced regime from the perspective of both the USP and citizens. ComReg's proposed approach, to simply rollover, with eircom's designation, the full set of obligations that has applied to eircom since it was designated as USO, because ComReg, and ComReg alone, has allowed the process to time out, does not provide the positive analysis required and is not compatible with the requirements of the regulatory framework.

In 2010 ComReg adopted an interim designation and promised to undertake a proper review during the period 2010/2012. This was not forthcoming.

Again in 2012 ComReg adopted an interim designation and promised to undertake positive analysis in a proper review in the period 2012/2014. This was, again, not forthcoming.

In 2014 ComReg yet again proposes an interim designation and yet again promises to undertake a proper review in the next 18 months. Will this actually happen? It is concerning that ComReg's actions, or more correctly its lack of action, on this issue, suggests that ComReg is either unable or unwilling to meet its statutory obligation to conduct a comprehensive forward-looking review of the actual needs in Ireland.

The current consultation is structured in two parts. Part 1 is referred to as "Interim Designation". Part 2 is referred to as "Future Scope of the AFL USO" and could be regarded as a positive indication that a proper review may be forthcoming. However we have been down this route before in the last two designation periods, as outlined above. Most recently the 2012 consultation included the following questions:

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

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

Q. 7 Do you have any comments about future designations covering only certain geographic areas and/or customers?

ComReg indicated at the time¹² that it did "*not intend to respond to questions 5, 6 and 7 in its response to this consultation, it will consider the responses received when appropriate in the context of deciding future designation methods*". As far as eircom is aware ComReg has never considered the responses it received during that formal consultation process on issues related to future designations and this calls into question the approach currently being followed by ComReg.

eircom cannot accept that it should unilaterally be required to bear the burden of regulatory obligations on a rolling basis simply because ComReg has failed to discharge its duties in relation to USO in an administratively efficient or non-discriminatory manner. We have been waiting for a proper analysis to be conducted since prior to the 2010 re-designation by ComReg.

In seeking to again roll over (for a third time) the AFL USO for an interim period, absent a proper review, ComReg is in effect concluding that nothing has changed since 2006. This is extraordinary. The market landscape in 2014 is radically different to that in 2006. In terms of the provision of basic telephony services, there is now near ubiquitous mobile network availability throughout Ireland. There are competing fixed network infrastructures in urban areas. eircom's retail market

¹²See footnote 8, ComReg 12/39, emphasis added

share of fixed lines has fallen to 51%¹³. There is clear evidence of a persistent migration of fixed call origination towards mobile networks and over the top / social media services. These alternatives to fixed line basic telephony services are now the primary methods used by citizens to maintain social inclusion.

The fundamental changes that have taken place since 2006 in respect of the preferences of Irish consumers for communications services can be seen over time.

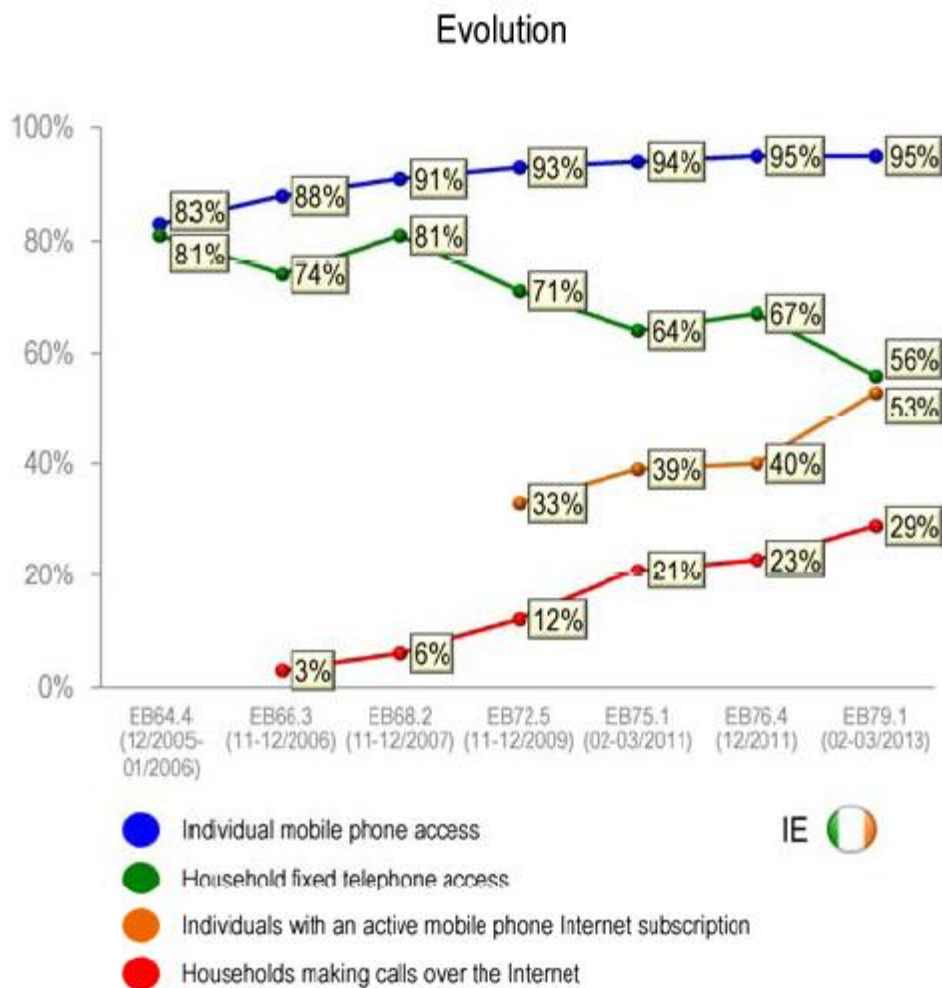


Figure 1: Household penetration of fixed and mobile services in Ireland¹⁴

According to the 2013 Eurobarometer study, the number of households with fixed telephone access fell from 81% at the start of 2006 to 56% in 2013. Over the same time individual mobile phone access has grown from 83% to a near ubiquitous level of 95%. Further insight is offered when the recent 2014 Eurobarometer study¹⁵ is considered. Page 18 of the 2014 study illustrates overall household telephone access by EU Member State. In the case of Ireland:

¹³As at Q4 2013, ComReg 14/19

¹⁴<http://ec.europa.eu/digital-agenda/en/news/special-eurobarometer-396-e-communications-household-survey>

¹⁵<http://ec.europa.eu/digital-agenda/en/news/special-eurobarometer-414-e-communications-household-survey>

	Ireland	EU average
No access	2%	2%
Mobile only	41%	31%
Mobile and fixed	52%	61%
Fixed only	5%	7%

Figure 2: Household telephone access method

It is clear that there are only 5% of households in Ireland that are reliant on fixed access, whereas 41% of Irish households are reliant on mobile access. This seriously calls into question ComReg’s continued focus on the eircom fixed network for the provision of basic telephony services in the context of universal service.

Mobile is the dominant voice service eircom | meteor*

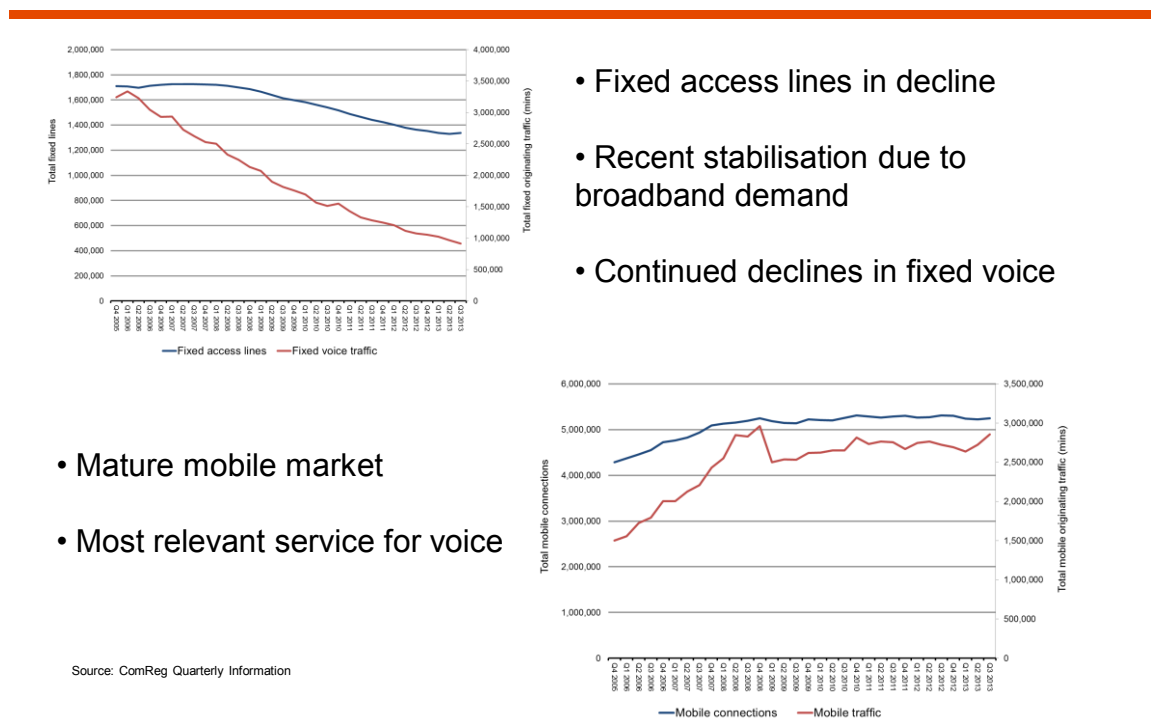


Figure 3: Mobile is the dominant voice service

As illustrated in figure 3 above there is a clear and persistent migration of voice traffic away from fixed access lines. It is also notable that, within mobile access, there is also a growing migration of voice traffic towards over the top VoIP services. The 2014 Eurobarometer survey identified “Using a mobile subscription to make cheaper Internet calls via a mobile or other handheld device is most common in Croatia (39%), Luxembourg (36%) and Ireland(34%).”¹⁶

All the key indicators raise serious questions as to ComReg’s historic position, which it seeks to entrench for a further 12 to 18 months, that USO AFL can only be provided by eircom and therefore eircom, and eircom alone, must suffer the regulatory burden. The market reality is that

¹⁶Page 37, 2014 Eurobarometer Study

eircom's retail fixed services, upon which the USO is imposed, provide service to only 29% of Irish households¹⁷. A proper review by ComReg is long overdue.

¹⁷ eircom's market share of fixed lines at 51% multiplied by the percentage of Irish households service by fixed telephone access at 57%.

2. The obligations on eircom are unjustified and unreasonable

*“With regard to the key areas mandated by ComReg in respect of AFL, which include the Reasonable Access Threshold (“RAT”), Functional Internet Access (“FIA”), Affordability measures such as Geographically Averaged Pricing (“GAP”) and Quality of Service (“QoS”), ComReg is of the preliminary view that it is appropriate to **review** these elements **after** the conclusion of the **interim period**, as set out in Chapter 4.”*¹⁸ ComReg has in effect concluded that the four years since 2010 was insufficient to consider these issues, but has presented no evidence to support this conclusion. Instead ComReg proposes to review the elements after the next designation expires in mid to end 2015 which would mean that the elements will not have been reviewed for 10 years.

The absence of a proper assessment places eircom, ComReg and the Minister in legal jeopardy particularly as ComReg has presented no robust evidence to allow the Minister to determine whether the elements of the USO AFL now proposed for the period 2014/2015 can be justified at this time¹⁹.

For the interim period ComReg proposes to rollover the existing components AFL USO without any consideration. ComReg seeks to justify its proposed course of action on the basis that it is not changing anything that eircom is currently doing. *“Given Eircom’s current provision of these measures, ComReg’s view is that the measures continue to be appropriate and necessary at this time and in light of the proposal to have an interim designation period, ComReg is of the preliminary view that the reasons why it was considered that the measures were necessary in 2012 are still valid for the interim period.”*²⁰

As explained above, as a result of the flawed process being followed by ComReg, ComReg’s exercise of its powers is an invalid exercise such that eircom’s designation as a USP will lapse on 30 June 2014. In addition, even if ComReg could lawfully designate eircom as USP for the period starting 1 July 2014, which eircom does not believe is the case, eircom does not accept that ComReg could simply re-impose for an interim period on eircom the obligations which have attached to the USO AFL.

ComReg is acting in an unreasonable manner when seeking to maintain regulatory obligations without actually assessing the effect of those obligations on the USP relative to the perceived benefits that would accrue to society from the discharge of the obligations. This is contrary to the requirements of European legislation. *“Member States shall determine the most efficient and appropriate approach for ensuring the implementation of universal service, whilst respecting the principles of objectivity, transparency, non-discrimination and proportionality. They shall seek to minimise market distortions, in particular the provision of services at prices or subject to other terms and conditions which depart from normal commercial conditions, whilst safeguarding the public interest.”*²¹ The legislation allows the imposition of specific universal service obligations that depart from normal market conditions. For example it may be appropriate to implement specific measures to protect vulnerable members of society who have Affordability issues. USO AFL requires that unprofitable customers are served and is a departure from normal market conditions as are the additional components of the AFL USO. ComReg has a duty to ensure that if any specific universal service obligations are imposed on an undertaking, they are done so in the knowledge that the risk for market distortion has been properly assessed and minimised. ComReg has failed to undertake any analysis.

¹⁸ Paragraph 3.32, ComReg 14/48, emphasis added

¹⁹ As required by Regulation 3(5) of SI 337 of 2011

²⁰ Paragraph 4.11, ComReg 14/48

²¹ Article 3(2), USD 2009

2.1 Reasonable Access Threshold

The Reasonable Access Threshold (RAT) was set in 2006. Since that time regulation and competition have driven down wholesale and retail prices. ComReg’s own analysis of CPI in its quarterly market information confirms this. See Figure 4 below.

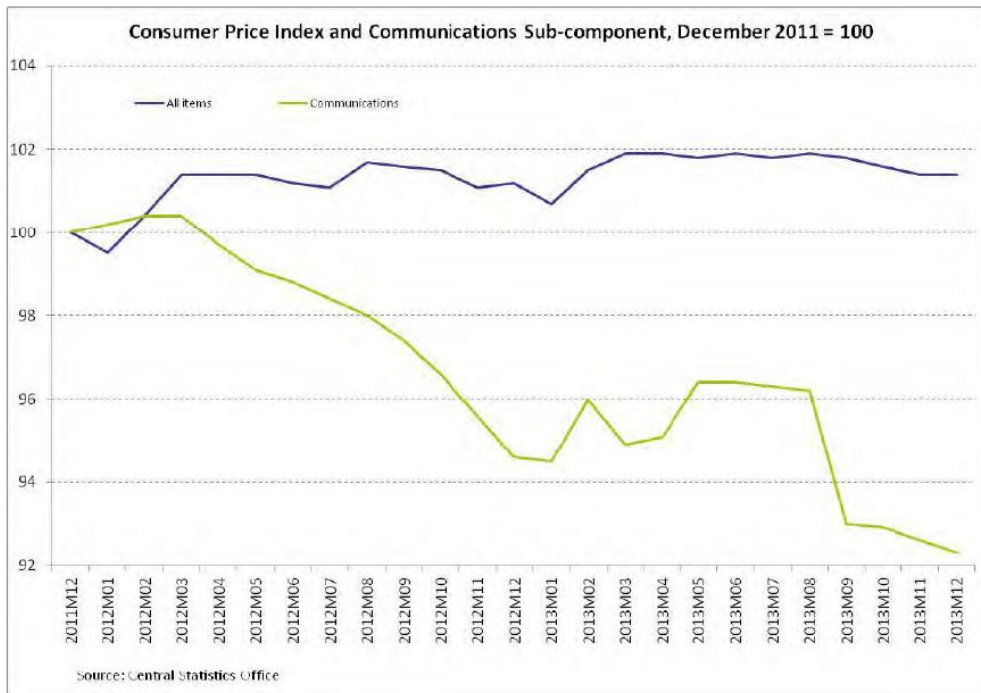


Figure 4 CPI and communications sub component²²

In the current consultation ComReg has provided no evidence to show that the access threshold remains reasonable, i.e. will wholesale / retail revenues be sufficient for eircom to recover the RAT investment within a reasonable period of time? The fact that circumstances have changed were recognised by ComReg in 2012. “*In light of technological developments, ComReg proposes to commence a review of the RAT in Q4 2012.*”²³ However ComReg failed to meet its promise to undertake the review.

2.2 Functional Internet Access

Functional Internet Access (FIA) was defined in 2006 and has remained unaltered since. The FIA is set at a level that excludes broadband²⁴. In 2006 narrowband accounted for 61% of all internet connections²⁵. As at the end of 2013 narrowband accounted for 0.5% of all internet connections²⁶. It is not clear to eircom why ComReg is seeking to maintain a narrowband internet access USO when other Government initiatives in the form of the National Broadband Scheme and the Rural Broadband Scheme should guarantee basic broadband internet access for all. In its response to the 2012 consultation eircom highlighted the need for a joined up approach to be taken when developing policy for universal availability of narrowband and broadband connections. The

²²Table 1.4.1, ComReg 14/19

²³Paragraph 144, ComReg 12/71

²⁴The FIA is set at 28.8kbps

²⁵See section 2.5, ComReg 06/52

²⁶In absolute terms there are 8,567 narrowband internet subscriptions in operation. eircom would question the proportionality of ComReg’s proposed approach which is effectively a sledgehammer to crack a nut.

implementation of the Government's National Broadband Plan (NBP) will have a profound effect in setting the strategic landscape for the provision of communications services in rural areas. In 2012, ComReg agreed²⁷ *“that between now and its planned review in 2014, it should continue to closely monitor developments and re-assess whether there is a demonstrable case for including broadband in the universal service.”* There is no evidence in 14/48 that ComReg has made any reassessment.

Rather than consider the implications of the NBP on the future provision of basic telephony services in rural areas ComReg dismisses the NBP as a material consideration in the current consultation because *“the future availability of high speed broadband for all through NBP may impact the need to have an AFL USO but this is at least a number of years away.”*²⁸ This is very shortsighted. The current consultation is seeking to continue obligations on eircom to invest in rural areas. Such investments are long term in nature. *“[I]n 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.”*²⁹ The outcome of the NBP will likely be known during the proposed interim designation period and it seems to be ComReg's position that once the NBP is established the implications for USO AFL will be assessed. However given the highly likely outcome that the NBP infrastructure will meet the needs for basic telephony and broadband services together, ComReg must exercise extreme caution to ensure it does not leave the current AFL USP in a situation of stranded investment. These considerations cannot be left to wait for a number of years'.

2.3 Affordability measures: Geographic Averaging and Social Schemes

In the case of geographic averaging ComReg considers: *“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. These aims remain 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. 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. ComReg may, if warranted, revisit this obligation in the future.”*³⁰

It is clear that eircom already faces differing intensities of competition within the State. ComReg accepted this in Decision 04/13³¹ when it defined the “Larger Exchange Area”(LEA) and related Significant Market Power (SMP) remedies. The time to revisit this geographic average obligation is now.

ComReg's belief that nothing has changed, and therefore the components of the AFL USO remain fit for purpose, is further called into question in respect of Social Schemes. Since the last designation in 2012, the Government has withdrawn the Department of Social Protection's Telephone Allowance (TA). From 1 January 2013 the TA was significantly reduced to €9.50 per month. It was reduced to zero on 1 January 2014 and had been provided to over 240,000 vulnerable members of society served by eircom. Given the scale of this change, which was targeted at the elderly, and at disabled pensioners, i.e. the very vulnerable members of society

²⁷ Paragraph 105, ComReg 12/71

²⁸ Paragraph 3.30, ComReg 14/48

²⁹ Paragraph 3.20, ComReg 14/48

³⁰ Paragraph 7.23, ComReg 14/48

³¹ ComReg 13/14

ComReg purports to protect with Affordability measures, it is surprising that ComReg does not consider a full review should be undertaken now. ComReg previously recognised the operation of the TA as contributing to Ireland meeting the Affordability objective of the USO. Since the withdrawal of the TA we have seen increasing churn and bad debt in this segment, strongly suggesting that Affordability is a growing concern. ComReg's decision to delay undertaking a proper review may have a detrimental impact on vulnerable users.

ComReg's position in respect of Affordability measures is confusing. On one hand, ComReg argues that geographic averaging is essential to ensure affordability and to avoid higher cost customers paying more than low cost customers. Consequently ComReg seeks to impose a blanket obligation of geographic averaging "*to ensure that basic telephone services are available at an affordable price*". It is ComReg's position therefore that any change to retail line rental prices on a geographic basis would give rise to unaffordable process. ComReg sets the materiality threshold at a price increase of greater than or equal to 1 cent. However when considering social schemes³² ComReg sets a totally different materiality threshold to measure affordability. ComReg concludes that, despite the removal of the DSP TA "*there is no need to exercise its powers in relation to specific tariff options going forward*". It is ComReg's position that an increase of €337.08³³ per year is not a material consideration. This is an entirely different and somewhat discriminatory approach to assessing materiality compared to the obligation of geographic averaging that is proposed to be imposed on eircom. It is also notable that ComReg only mentions the 1 January 2014 reduction in the TA as relevant. ComReg suggests some customers faced a possible increase of €114 in January 2014 because the allowance of €9.50 per month paid in 2013 was removed, but in fact the majority of voice only customers faced a total increase of €337 because several operators accepted the 2012 allowance could be set against bundle charges and the DSP also allowed it to be claimed as cash.

Furthermore the absence of any proper analysis means that ComReg has failed to assess whether its proposal to roll over the current AFL USO risks creating competitive distortions to eircom's disadvantage. In particular ComReg has failed to demonstrate that the USO AFL for geographic averaging of retail pricing in combination with eircom's various SMP obligations does not unduly hamper eircom's ability to compete in the retail market. ComReg's arbitrary approach to the consideration of Affordability is unacceptable and there is no justification for the imposition of a geographic averaging obligation on eircom. In these circumstances, eircom does not believe that the Minister could lawfully allow this obligation to be imposed on eircom for the period starting 1 July 2014. If the key concern is to ensure USO AFL at affordable prices, then ComReg must consider alternative approaches, including:

- Maintaining a Retail Price Cap but allowing lower prices in some geographic areas, for example the LEA;
- Introducing appropriate Affordability measures with appropriate controls to minimize market distortion;
- Setting up an industry Affordability fund to subsidise vulnerable users, especially those formerly supported by the DSP scheme and eircom's Social Benefit scheme;
- Some combination of these approaches.

³²See page 45 of the consultation

³³In fact, at the time of the 2012 designation, the former DSP customers had an effective subsidy of line rental, handset rental and call allowances totaling €28.09 per month or €337.08 per annum

2.4 Quality of Service

Last but not least of the USO AFL components we consider ComReg's position on quality of service targets. It is ComReg's view that the targets set in Decision 02/08³⁴ "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."³⁵ "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 5.5.3³⁶, Eircom has demonstrated, in the main that these targets are achievable. ComReg is of the preliminary view that it is appropriate to maintain the targets for the interim period as without these targets there is no guarantee that such quality standards would be met nationally by the USP."³⁷

While it is true that eircom was making significant positive progress towards attaining the Decision 02/08 targets, in particular with regard to fault occurrence as demonstrated by ComReg in Figure 5.2 of the consultation,



We do not consider it fair that ComReg proposes to place eircom in immediate compliance jeopardy by rolling over obligations without consideration of material developments. The targets in Decision 02/08 are no longer appropriate and must be suspended for the time that it takes to review them and to define and implement a proportionate performance regime in the context of any longer term designation.

eircom is also of the view that ComReg cannot impose a network quality of service regime for the period of the interim designation as ComReg has failed to demonstrate that its proposed approach will encourage efficient investment. We do not believe that ComReg will be able to make such a judgement until it has completed a proper review determining the future requirements, if any, for USO AFL. As noted in section 2.2 of this response, the implementation of the NBP will have a profound impact establishing how voice and broadband access will be provided to rural communities. At this stage in the process nobody knows who might win the NBP tender or what the preferred technology solution may be. ComReg is seeking investment with lifetimes of up to 40 years to discharge obligations that might only last 12 to 18 months. There is a significant risk therefore that any investment eircom is mandated to make as a consequence of an enforced quality of service regime (that is already unattainable as highlighted above) will be inefficient investment and /or require accelerated capital recovery charges to be recovered through the universal service funding mechanism. Given the significant financial impact this will have on the

³⁴ComReg 08/37

³⁵Paragraph 5.45, ComReg 14/48

³⁶We assume ComReg is referring to section 5.3.3.

³⁷Paragraph 7.23, ComReg 14/48

USP and industry the quality of service regime cannot simply be rolled over absent a proper analysis of very material issues.

It should also be noted that the quality of service regime was established over 6 years ago. There have been substantial changes in that time including the impact of competition on eircom's retail line base from a geographic perspective, and the ongoing roll-out of Fibre to the Cabinet services, which need to be fully considered if a forward looking quality of service regime is to be established.

3 Conclusion

The proposed designation of eircom as USP for an “interim period” is an invalid exercise of ComReg’s powers under the Universal Service Regulations in the context of an administrative process which has not allowed, due to ComReg's fault alone, for a sufficient period of time to put in place an appropriate designation mechanism following a full review of the proper scope of the USO. In particular, the “roll-over designation” mechanism that ComReg has resorted to is clearly inconsistent with its obligation under the Universal Service Regulations to put in place a designation mechanism that is efficient, objective, transparent and non-discriminatory and allows consideration of other undertakings as USP. Clearly, only eircom is being considered for this interim period.

As ComReg may not lawfully “roll-over” eircom’s designation as USP for an additional period of time, eircom’s designation as USP will lapse on 30 June 2014. The fact that ComReg believes that it is necessary to designate a USP for the period 1 July 2014 to ensure that all reasonable requests for connection at a fixed location to a public communications network will be met does not mean that ComReg may ignore the requirements of the Universal Service Regulations because it did not, through its own fault, allow for a sufficient period of time to put in place an appropriate designation mechanism following a full review of the proper scope of the USO. If ComReg wants to redesignate eircom as USP, it may do so but only after it has put in place a designation mechanism that complies with statutory requirements and after having considered any continued requirement for an obligation to provide access at fixed location in the light of market developments.

Due to the failings of ComReg’s administrative processes and the absence of a proper review, 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. In order to avoid such an outcome, and strictly without prejudice to eircom's view that ComReg may not roll-over eircom's designation as it has proposed to do, eircom will not object to its designation as USP for a maximum period of 12 months provided that such designation is in respect to the least onerous set of obligations that will allow reasonable requests for connection at a fixed location to be met. Further to eircom’s submissions in section 2 above, this means the following:

For the period 1 July 2014 to 30 June 2015:

- eircom will continue to meet all reasonable demands for new connections, within the current RAT threshold
- eircom will not withdraw services currently provided
- eircom will not increase retail fixed line rental
- eircom will work proactively with ComReg to ensure affordability for vulnerable users through special tariff schemes as appropriate
- There is no obligation for geographically averaged prices
- There is no requirement for FIA (for 94% of lines at 28.8kbps) given the existence of the National and Rural Broadband Schemes, the widespread availability of Mobile broadband, and the increasing coverage of high-speed broadband networks.
- The operation of D02/08 is suspended, pending full consideration of establishing a proportionate forward looking quality of service regime taking into account material developments since 2008 [REDACTED]. eircom will continue to publish quality of service statistics in the interest of transparency.

Response to Consultation Questions

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.

eircom does not agree that ComReg has provided sufficient evidence for its preliminary view that the current AFL USO will be appropriate to 2019 and beyond, given that the NBP will ensure universal broadband by then. The ongoing need for an AFL USO can only be determined when ComReg has completed a proper review which will be informed by Part 2 of the current consultation.

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.

Please see eircom's response to Q. 1. The ongoing need for an AFL USO, as from 1 July 2015, can only be determined when ComReg has completed a proper review which will be informed by Part 2 of the current consultation.

As highlighted in section 1 above we are extremely concerned by the administrative approach followed by ComReg. ComReg should have commenced a proper review much earlier such that the conclusions from the review could be implemented by the end of the current designation period. ComReg should have undertaken the necessary reviewed in a timely and orderly manner; it should not further delay it and complete such review as soon as possible.

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.

In eircom's view, the flawed process followed by ComReg means that ComReg cannot lawfully exercise its power of designation for the period 1 July 2014. Any interim period where there is no USP, or the USP is subject to obligations the necessity and proportionality of which have not been fully assessed should be kept to the minimum. Accordingly, to the extent that an interim designation can be justified, including having regard to the scope of the obligations imposed, then the duration should be kept to a minimum. We believe that a proper review can be completed within twelve months and therefore twelve months should be the maximum duration of the interim period

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.

eircom cannot accept that it should be required to bear the burden of regulatory USO obligations because ComReg has failed to discharge its duties in an administratively efficient manner. If there is to be an AFL USO, ComReg has left it too late to seek an alternative USP. This means that eircom's designation as USP will lapse on 30 June 2014 and may not lawfully be extended for a further "interim period".

If ComReg persists with the designation of eircom, eircom will not object to this designation, only if it is for minimal obligations for 12 months only and with the clear acceptance that there can be no compliance jeopardy for accepting the obligation.

If ComReg determines there is a need for USO in the future, proper consideration of the ability of all operators to bear the burden must be undertaken, with more profitable operators given an appropriate share of the burden. eircom does not believe that a mechanism whereby only

operators (other than eircom) who express an interest in being designated can be considered for designation is a mechanism that is consistent with the Universal Service Regulations

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.

eircom does not agree that the current scope of the AFL USO continues to be appropriate. eircom is extremely concerned that ComReg’s cursory approach to the obligations applying during the interim period will, if maintained, place eircom in regulatory jeopardy in respect of performance targets as we highlight in section 2 of this response. We are also concerned that the components of the AFL USO are proposed to remain without any consideration as to their effect on eircom’s ability to achieve the obligations or the effect the obligations will have on eircom’s ability to compete.

It is ComReg’s view that *“Given Eircom’s current implementation of these obligations, ComReg’s preliminary view is that the measures continue to be appropriate and necessary at this time. ComReg’s preliminary view is that to alter the obligations in any way at this stage, **without further detailed consideration, could create a risk for consumers** reliant on the USO of AFL.”*³⁸

Absent proper analysis ComReg has adopted an unreasonable position that the status quo should be maintained because it may, in ComReg’s subjective view, be in the interest of consumers. However ComReg has failed to properly assess the effect of the proposed obligations. The fact that an obligation has been imposed before is not in itself justification for the perpetuation of such an obligation beyond its expiry date. As highlighted in section 2 above, the absence of a proper analysis by ComReg overlooks material concerns, potential regulatory jeopardy and risk of unnecessary market distortions arising from the proposal to simply rollover the current component parts of AFL USO for the interim designation period. Any interim USO AFL must be set at the minimum necessary level of regulatory intervention and eircom will not object to its designation where the USO AFL is set at the minimum level necessary to ensure an adequate universal service, namely:

For the period 1 July 2014 to 30 June 2015:

- eircom will continue to meet all reasonable demands for new connections, within the current RAT threshold
- eircom will not withdraw services currently provided
- eircom will not increase retail fixed line rental
- eircom will work proactively with ComReg to ensure affordability for vulnerable users through special tariff schemes as appropriate
- There is no obligation for geographically averaged prices
- There is no requirement for FIA (for 94% of lines at 28.8kbps) given the existence of the National and Rural Broadband Schemes, the widespread availability of Mobile broadband, and the increasing coverage of high-speed broadband networks.
- D02/08 does not apply, pending full consideration of establishing a proportionate forward looking quality of service regime taking into account material developments since 2008 [REDACTED]. eircom will continue to publish quality of service statistics in the interest of transparency.

³⁸Paragraph 4.13, ComReg 14/48, emphasis added

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

Paragraph 2.3 should be amended such that only the RAT element of D9/05 is maintained.

Paragraph 2.4 of the Draft Decision Instrument, which references Decision 02/08, should be deleted.

Paragraph 2.4 (duplicate numbering) regarding geographically averaged pricing should be deleted.

Magnet Networks are firstly disappointed that ComReg took until mid- May to publish a consultation about something that requires a decision by the 1st July. This is a repeat of the 2012 consultation where Magnet also highlighted their disappointment in the short response period. However, secondly Magnet is happy that ComReg are looking at this obligation in the longer term and are consulting on this.

Question 1.

Magnet Networks agrees with ComReg's preliminary view that there is a requirement for an AFL USO for a period of 3-5 years. Magnets belief is that it should be more a 5 year plan rather than that shorter 3 year plan. This is to provide stability and also, allow time for further consultations if there is a major shift in the USP's market share, voice technology deliver etc.

Question 2.

Magnet agrees in the short term (12-18 months) there is a requirement for an AFL USO. Currently, there is a segment of the market that if not covered by AFL USO would not be serviced by commercial players as they are commercially unattractive. Thus a US obligation is a social obligation to ensure that no element of society becomes disenfranchised and isolated. Therefore, if no obligation was mandated in the short term it would be difficult to bring back in a US obligation later and in the interim communities and people suffer.

Question 3.

If there is to be a further obligation that is to last from 1.5 to 3.5 years i.e. the interim term versus 3 to 5 year term, then 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. Having stability for 4 years gives peace of mind to the whole of industry, and, certainty to the US provider, especially with accounting and reporting obligations.

Question 4.

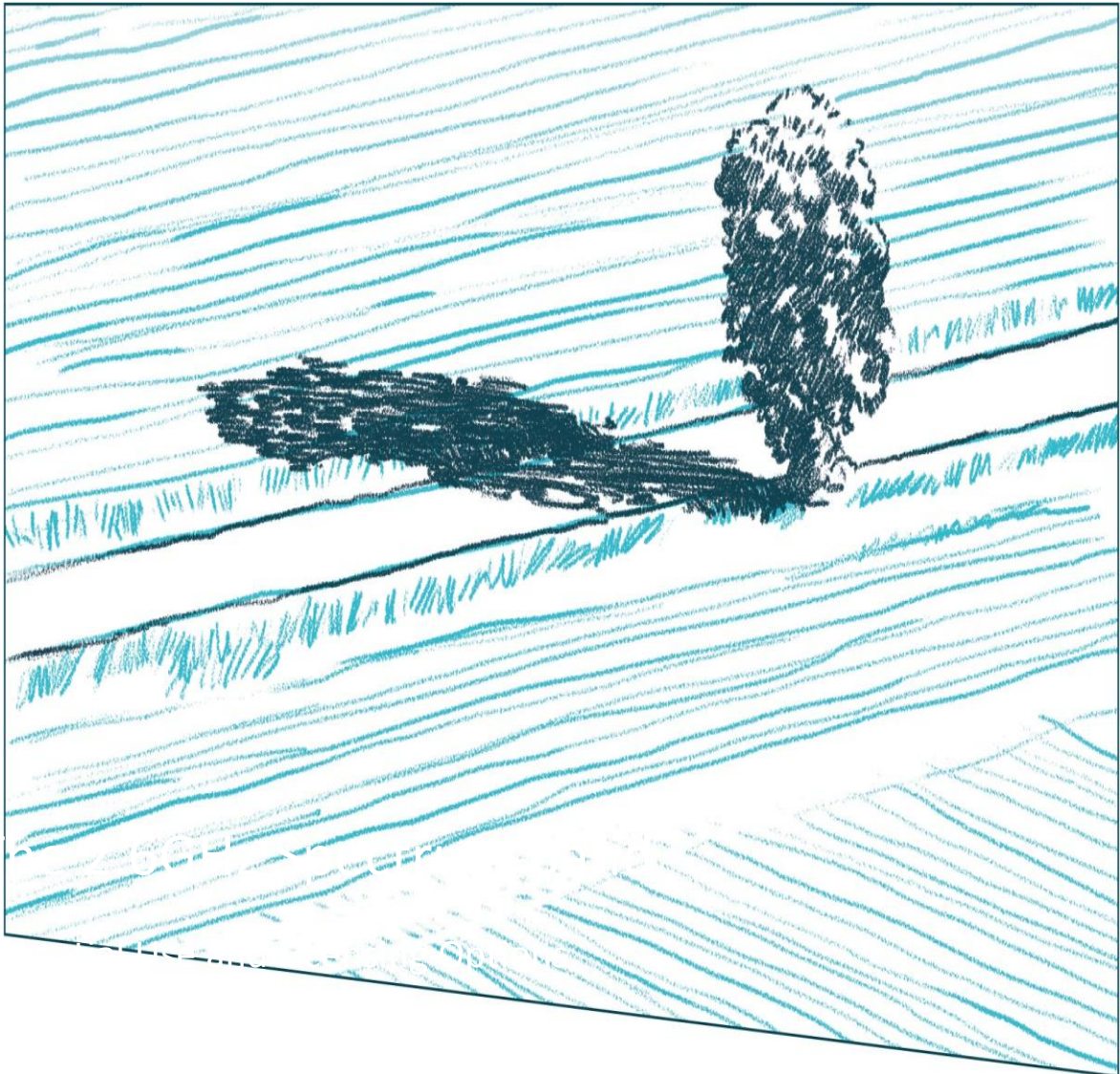
Magnet agrees with ComReg's proposal. Until a full and further consultation takes place, which will do so under Part 2 of this consultation then in the interim Eircom should be named as having a USO. Eircom has the largest fixed voice market share and has a ubiquitous network and is also the current designated USP. Thus in the interim designating them as US provider does not cause any disruption to the industry until such time as a more definitive decision is made on Part 2 of this consultation.

Question 5.

As an interim measure Magnet agrees with ComReg's preliminary view that the current scope of the USO should remain.

Question 6.

Magnet agrees with the text outlined by ComReg in their Draft Decision Notice.



**The provision of telephony services under
the Universal Service Obligation: Access at a
fixed location**

16th June 2014

Telefonica

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

Telefonica agrees with much of the commentary and conclusions reached by ComReg in relation to the provision of a Universal Service (US) at a fixed location. However, the view that there is a need to restate the 'access at a fixed location' for a further 3/5 years undermines the possibility of revision following the EU Commission review in 2014.

ComReg's analysis points to growing use of broadband and mobile and the fact that mobile is ubiquitous with over 100% mobile penetration. These trends are likely to continue and are likely to be addressed in the EU's review with the possibility of a change to the current definitions and scope.

In Telefonica's view it would be prudent to designate for an interim period of 18 months and to conduct a national consultation following the EU review and if appropriate designate for a further, longer period, in 18 months' time.

Telefonica would also suggest that part 2 of the USO consultation should be deferred as it is unlikely, given the current narrow definition of access at a fixed location, that any other operators or group of operators would offer to service the US at a fixed location. It would appear to be more logical to await the EU review and as part of a national consultation to seek expressions of interest from other operators based on the USO scope and designation following the EU review.

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.

Telefonica agrees with the need for a short term designation of AFL USO. There is little scope to do otherwise given the current Universal Service Directive. Telefonica would however recommend that more consideration is given to doing USO reviews based on multiyear designations and avoiding the need for interim designations for short periods which has been the practise in recent years.

- 3. What is your view on whether the interim period should be twelve or eighteen months? Which period is the most appropriate? Please provide reasons to support your view**

Telefonica would refer ComReg to the answer to Q1 where it is our view that an 18 month designation is appropriate given that the results of the EU review commencing in 2014 would be a major input to any future US regime.

- 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.**

Telefonica agrees that eircom given its current network scope and previous designations is the most appropriate operator for this interim period.

- 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.**

Telefonica agrees AFL is appropriate of the interim period proposed. Our view is based on the EU directive and the difficulty ComReg would have in finding, in a short period of time, an appropriate alternative. However the definition is in Telefonica's view outdated and needs to be reviewed.

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

Telefonica agrees with the draft decision

12 Meitheamh 2014



Údarás na Gaeltachta

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ríomhphost: eolas@udaras.ie www.udaras.ie

An Coimisiún um Rialú Cumarsáide
Lár Ionad Irish Life
Sráid Na Mainistreach
Baile Áth Cliath 1

Attn: Joan Killeen

Re: Submissions to ComReg 14/48

A Chara,

Údarás na Gaeltachta welcomes this opportunity to provide input to the Consultation and draft decision regarding the provision of telephony services under the Universal Service Obligation (USO), Access at a Fixed Location (AFL).

Having considered the Consultation and draft decision, it is the view of Údarás na Gaeltachta that ComReg should continue with the AFL USO as proposed. However An tÚdarás is also of the opinion that it is essential to add the provision of broadband services to this obligation, in order to safeguard the economic development that has occurred in peripheral areas including the Gaeltacht up to this point and to ensure that the potential for further economic development of these areas is not compromised by a lack of adequate affordable broadband services.

Údarás na Gaeltachta is the regional authority responsible for the economic, social and cultural development of the Gaeltacht. The Board of Údarás na Gaeltachta is comprised of Local Authority Nominees and members from the 8 Local Authority Gaeltacht Areas. The overall objective of Údarás na Gaeltachta is to ensure that Irish remains the main communal language of the Gaeltacht and is passed on to future generations.

The authority endeavors to achieve that objective by funding and fostering a wide range of enterprise development and job creation initiatives and by supporting strategic language, cultural and community based activities.

An tÚdarás has, since its inception, developed industrial estates and business parks throughout the Gaeltacht, from Donegal in the north to Cork in the south. Along with the other estate/park services (such as water, waste water, three phase electricity, street lighting) An tÚdarás considers broadband and telephony services among the essential services required by businesses, without which many enterprises would be unable to function.

While it is clear from the consultation document that ComReg considers broadband provision outside of the scope of the legislation, the legislation stipulates that “*functional internet access*” be provided for. But what is functional internet access? The feedback An



OIFIGÍ RÉIGIÚNACHA

Páirc Ghnó Ghaoth Dobhair,
Doirí Beaga,
Co. Dhún na nGall

Páirc Ghnó an Daingin,
Baile an Mhuilinn,
Daingean Uí Chúis,
Co. Chiarraí

Áislann Bhéal an Mhuirthead,
Bóthar an tSéipéil,
Béal an Mhuirthead,
Co. Mhaigh Eo

Páirc Ghnó Bhaile Mhic Íre,
Baile Mhic Íre,
Co. Chorcaí

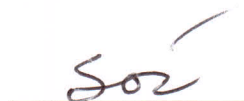
tÚdarás received in a recent survey of its client companies and what has been relayed to its executives from client enterprises and others considering locating enterprises in the Gaeltacht, is that in order to function optimally, that a minimum prerequisite is a data rate of at least 10Mb/s, with many requiring significantly higher. The data rate deemed functional by ComReg in this consultation is 28kb/s. There is a disparity of a multiple of over 350 between these two figures. Clarity on this would be welcomed.

Recent announcements regarding the extension of Eircom Wholesale's fibre based broadband infrastructure, the roll out of 4G and increased coverage of 3G by mobile operators along with other services such as local Wi-Fi based services are all very welcome developments. Notwithstanding these announcements not many peripheral rural areas will benefit from this infrastructure in any meaningful way as it will be concentrated in areas of denser population. This is of course how commercial forces will operate as they are profit driven and this is where An tÚdarás feels that the state needs to intervene to address this market failure. As it is the basis of the AFL USO to ensure a level playing field for those marginal areas that will not be covered by normal market development, the Gaeltacht included, it is imperative that positive steps are taken to address this point.

ComReg's decision 09/05 identifies that increasing the minimum level data rate for "*functional internet access*" may divert funds away from the investment by the USO in its broadband services. This is a valid point. An tÚdarás would contend that the two processes are not mutually exclusive and that the investment in broadband services should benefit all. The recent announcement of DCENR (reference 10 in the consultation document), commits the Government to the roll out of a fibre based system. Though it may not necessarily be the case, it would be reasonably expected considering the existing fibre installation possessed by it, that Eircom Wholesale would be in the best position to provide the most economic roll out of a fibre/fibre based broadband system to the entire country. That Eircom has also been selected in the consultation and draft decision document as the USO for similar reasons, facilitates the parallel progression of these processes, a progression that if expedited in the short term, would mean existing businesses, providing vital local employment in areas of Ireland badly hit by the recent economic conditions, could continue to function in those areas, continue to provide much needed employment and consider expansion and growth in their enterprises which in turn would create additional employment in these areas.

An tÚdarás looks forward to improved levels of service provision as an outcome of this review and the facilitation of a greater degree of innovation and investment as a result. We would welcome the opportunity to address and discuss the issues raised with ComReg at a future date.

Le gach dea ghuí,



Steve Ó Cúláin
Chief Executive



**UPC Ireland Response to: ComReg 14/48;
Consultation and Draft Decision on the
Provision of Telephone services, under the
Universal Service Obligation (Access at a
Fixed Location) Part 1**



Introduction

UPC Communications Ireland Limited (“UPC Ireland”) welcomes the opportunity to provide its response to ComReg on its Consultation (“the consultation”) on the Provision of access at a fixed location and publicly available telephone service under the Universal Service Obligation (USO), (ComReg 14/48 Part 1).

In common with other aspects of Universal Service, UPC Ireland believes that where services are justifiably designated for provision by a Universal Service Provider (USP) it is imperative that such services are provided efficiently.

UPC Ireland welcomes ComReg’s recognition that the provision of USO access at a fixed location and publicly available telephone service could be provided by means other than fixed networks however, UPC Ireland remains concerned that ComReg maintains an implicit assumption of provision by fixed networks only. ComReg states repeatedly throughout the consultation document that Eircom’s Public Switched Telephone Network (PSTN) is best placed to deliver the USO, despite ComReg having full knowledge of Eircom’s claim for financial compensation for doing so.

UPC Ireland is of the view that the increased capability of mobile networks, and over-the-top (OTT) phone applications, calls into question whether circumstances in Ireland require a USO designation for access at a fixed location and provision of publicly available telephone service.

Responses to ComReg Questions

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.

UPC Ireland does not agree with ComReg’s preliminary view that there is a need for an AFL and publicly available telephone service USO for a period of three to five years. ComReg’s consultation document contains minimal substantive justification for continued imposition of the obligation. UPC Ireland is of the view that given the increased capability of mobile networks, and over-the-top phone applications, it is questionable whether circumstances in Ireland require such a USO designation, particularly for a period of 3 – 5 years. ComReg itself recognises the trend towards smartphone adoption and use of low cost OTT voice services, stating in paragraph 3.9 that:



“The number of smartphone / tablet users increased to 2,607,507 in Q4 2013, which was an increase of 1.9% from Q3 2013 and an increase of 9.2% compared to Q4 2012. 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.”

UPC Ireland believes that this trend will gather significant further momentum in the near future as Irish mobile operators extend the rollout of their Long Term Evolution (LTE) networks. Yet ComReg appears to dismiss the impact of this trend in making its current proposal to extend the obligation for a further 3 – 5 years on top of an interim designation period of 12 or 18 months.

In addition, UPC Ireland is of the view that given the implementation of the Government National Broadband Plan (NBP) and the European Commission study on the scope of universal service in the near future, that a 3 – 5 year designation is inappropriate.

This is all the more relevant in the light of Eircom’s claims for financial compensation for USO for provision of AFL and publicly available telephone service in recent funding applications.

We also note that the Polish NRA, which is responsible for a country with large rural / low density areas with significant socio-economic disadvantages in rural areas, has concluded in May 2014 that there is no need to designate any universal service provider for any aspect of USO, on the grounds of satisfactory delivery of the USO by market forces¹.

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.

UPC Ireland is of the view that consideration of such an interim designation would be entirely unnecessary if the current round of USO reviews had been better planned and implemented by ComReg, to ensure a full and proper analysis of the potential need to maintain the AFL USO and publicly available telephone service obligation beyond June 2014.

Nevertheless, given the current situation (expiry at the end of June 2014), it may be justifiable to impose a short term AFL USO in order to avoid a sudden shock to potentially vulnerable users. However, UPC Ireland is of the view that ComReg should direct the provider, even for this interim period, to use the most efficient means

¹ <http://uke.gov.pl/raport-o-usludze-powszechnej-13783>



possible, explicitly including the use of a mobile network where this entails less cost than the use of a fixed network.

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.

UPC Ireland believes that the interim designation should be for no more than 12 months. It should not require 18 months for interested operators to express an interest in providing the service and for ComReg to review and operationalize if necessary, or for ComReg to conclude that a USO designation is no longer warranted. Genuinely interested operators should not be surprised by the expiry of the current designation at the end of June 2014 and have had considerable time to prepare during the course of the existing designation.

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.

UPC Ireland agrees given the current circumstances that the most appropriate approach is to designate Eircom for the interim period commencing 1 July 2014, but subject to ComReg directing Eircom, even for this interim period, to use the most efficient means possible, explicitly including the use of a mobile network where this entails less cost than the use of a fixed network. See also response to Question 2 above.

Please also note in this regard that UPC Ireland disagrees with paragraph 5.76 of the consultation, where ComReg indicates that "*current mobile services accessed by a mobile handset only do not meet the requirements for access at a fixed location*", UPC Ireland considers that there is no legal basis for this ComReg assertion under Directive 2002/22/EC as originally implemented and as amended by Directive 2009/136/EC. This assertion perpetuates an unwarranted bias in the treatment of USO by ComReg, specifically the assumption of provision by fixed networks only.



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.

No comment.

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

No comment.

