



Commission for  
**Communications Regulation**

# **The provision of telephony services under Universal Service Obligations**

## **Scope and Designation**

### **Consultation**

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**An Coimisiún um Rialáil Cumarsáide**  
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## Additional Information

All responses to this consultation should be clearly marked:-

### **Submissions to ComReg 12/39**

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Please note ComReg will publish all respondents' submissions with the Response to this Consultation, subject to the provisions of ComReg's guidelines on the treatment of confidential information – ComReg 05/24.

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# 1 Introduction

- 1 On behalf of the Commission for Communications Regulation, I am pleased to publish this consultation on the future provision of telecommunications under the universal service. The universal service has been guaranteed by EU and national legislation since 1997. In a liberalised and competitive telecommunications market, the universal service ensures the provision of basic telecommunication services throughout the State, particularly in areas of the State (such as rural or sparsely populated areas) where the market might not deliver these services. Thus, the universal service contributes to social and economic inclusiveness and cohesiveness in society.
- 2 On 30 June 2010, ComReg designated Eircom Limited (“Eircom”) as the universal service provider (“the USP”) for a two-year period ending on 30 June 2012. As the end of the current designation period is approaching, it is now appropriate to address the coming period.
- 3 The current scope of the universal service was designed with a conventional telecommunications environment of fixed voice-based networks in mind. However, as technology and competition develops, and as consumer needs evolve, policymakers should ensure that the services provided continue to meet consumers’ needs, particularly if they are not already met by the market.
- 4 Since 2010, Directive 2002/22/EC of the European Parliament was amended by Directive 2009/136/EC (“the Amending Directive”) and was transposed into Irish law on 1 July 2011 by the European Communities (Electronic Communications Networks and Services) (Universal Service and Users Rights) Regulations 2011 (“the Regulations”).
- 5 On 3 March 2010, the European Commission published a consultation on the future of the universal service in the digital era. On 23 November 2011, the European Commission issued its report which provides an indication of its proposed approach to aspects of the universal service, including mobility (in terms of access) and broadband. The impact, or timing, of any legislative changes arising from this report is not yet clear.

- 6 In theory, the universal service could be extended in scope so as to include broadband. However, while “broadband for all” is a stated policy objective at European and national level, the European Commission is still deliberating on the role of universal service in meeting this objective. Some countries may seek to use universal service as a mechanism to bring broadband to all its citizens, while others may seek to achieve this objective by different means, such as State-funded schemes, or other broadband availability programmes. Irrespective of the methods chosen, all Member States agree that expanding broadband availability is important for social and economic reasons. Irish Government policy is also directed at expanding the availability of broadband, as is clear from initiatives such as the National Broadband Scheme and the Rural Broadband Scheme.
- 7 The provision of universal service may result in the USP(s) providing designated services at a net cost. The Regulations allow the USP(s) to seek funding to meet a net cost of the universal service. In Ireland, the Regulations require that any such funding requirements must be met by industry. No universal service fund (“USF”) has been established in Ireland. Eircom's application for a USF for the financial period 2009/2010 must be received by ComReg by no later than 31 May 2012. Industry will wish to know the amount of any funding that Eircom intends to claim under a USF. If and when ComReg receives Eircom's USF application for Eircom's financial year 2009/2010, it will immediately notify industry of the total net cost being applied for by Eircom. Eircom's application will be assessed by ComReg before it makes any decision on whether or not there is a requirement to establish a USF.
- 8 In principle no undertaking is excluded from being designated as a USP and this consultation invites potential providers to express an interest in being so designated. The designation method(s) adopted must ensure that the obligations are provided in a cost effective manner and may be used as a means of determining the net cost of the universal service obligation. Having regard to the above, ComReg may, in the future, seek to instigate a competitive tendering procedure for the provision of all or part of the universal service.
- 9 The Amending Directive provides that consumers with disabilities should have equal access to and choice of electronic communication services available to all consumers. ComReg will shortly commence a consultation process regarding proposed measures, that would require authorised undertakings (not solely the USP), to facilitate equivalent access and choice for consumers with disabilities.

- 10 ComReg is now consulting with all stakeholders including industry, the public and consumer representative bodies in order to inform its approach to these important matters. On behalf of ComReg, I would encourage all interested parties to respond to this consultation. Responses are needed by 5 June 2012. By law, ComReg must ensure the designation of a USP by 1 July 2012. Under no circumstances will ComReg extend the period for responding to this consultation.

**Alex Chisholm**

**Chairperson**



## 2 Executive Summary

- 11 The Commission for Communications Regulation (“ComReg”) is responsible for the regulation of the Irish electronic communications sector, in accordance with national and EU legislation. One of ComReg’s functions is to determine the scope of the Universal Service Obligations (“USO”) for the Irish market and to decide which undertaking(s) should be designated as the Universal Service Provider(s).
- 12 EU and Irish legislation ensures that basic telephone services are available at an affordable price and specified quality, irrespective of geographical location, within Ireland. There are both social and economic grounds for the USO, for example, to provide services for vulnerable users and users in remote locations that the market might otherwise not choose to serve, thereby facilitating greater participation by those users in the market. The USO is, therefore, focused on ensuring that everyone, irrespective of location, social standing or income can access basic telecommunications services, thus bringing benefits to those with low incomes who have difficulty in affording such services, consumers with disabilities who need particular services or facilities, and those in rural locations for whom the cost of gaining access to service might otherwise be prohibitive.
- 13 The current USO designation on Eircom has been effective since 1 July 2010. This consultation seeks views on how the requirement to ensure universal services should be implemented. It also discusses the potential for the inclusion of broadband in the scope of the USO and the use of alternative designation methods after 30 June 2012 and into the future.
- 14 In principle, operators other than the incumbent may wish to provide all or part of the universal service, in all or part of the State. In order to decide if they are willing or able to do so, such operators will need certain information, for example, information about the uneconomic customers and uneconomic areas, if relevant, that they may choose to serve under a universal service obligation. Currently, there is little information available about this. However, far more of this information will be available later this year when Eircom submits its application for universal service funding for the financial period 2009/2010. Once this information becomes available, it is ComReg’s view that industry players should be in a better position to decide if they have an interest in providing all or part of the universal service in the State. Pending this, there is a continued need for a universal service in the State. In particular, there is a continued need for access at a fixed location in a majority of households in the State. ComReg’s preliminary view is that Eircom should continue to be the universal service provider. However, this is subject to two important provisos:

- It is without prejudice to the right of any other operator to express an interest in providing all or part of the universal service in all or part of the State. Operators may wish to provide such expressions of interest in the course of responding to this consultation and if ComReg receives them it will consider them very carefully; and
- Because the identity of uneconomic areas and customers is currently unclear—but should soon become much clearer—it is appropriate to only designate Eircom as the universal service provider for a period that reflects this, i.e. until this information is available and until Eircom's application for universal service funding for the financial period 2009/2010 has been fully assessed by ComReg.

- 15 In theory, broadband availability could be expanded through the universal service. However, there are a number of current market and technological developments that in ComReg's view should further drive broadband availability and an increase in broadband speeds in the medium term. The developments in spectrum availability have an important role in expanding the availability of broadband as do Government initiatives such as the National Broadband Scheme (NBS) and Rural Broadband Scheme (RBS).<sup>1</sup> In addition, the deployment of Next Generation Access (NGA) is potentially very significant for increased broadband availability in Ireland in the medium-term.
- 16 Because the market is at such an important stage of development, ComReg considers that in principle it should for the time being observe the effects of technological developments and market provision on broadband availability and forbear from regulatory intervention in the area of broadband as a universal service. Accordingly, ComReg does not at this time propose to define FIA at a rate necessary to deliver broadband. Notwithstanding this, it is clear that ComReg will need to re-examine this issue carefully and it proposes to do so in 2014, when the effects of many of the market and technological developments and Government initiatives should be more apparent.
- 17 In designating one or more undertaking(s), ComReg will take a number of factors into consideration, including network reach, experience and ability to provide universal service. ComReg will also consider other relevant factors which may be identified in the course of this consultation and will also seek the consent of the Minister for Communications, Energy and Natural Resources with respect to the scope of the universal service and the designation of one, or more, undertaking(s). When this process is completed, ComReg will formally designate one, or more, undertaking(s) as the Universal Service Provider (USP), with specified obligations for a period commencing 1 July 2012.

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<sup>1</sup> <http://www.dcenr.gov.ie/Communications/Communications+Development/Rural+Broadband+Scheme/>

### 3 Background

18 On 30 June 2010, ComReg designated Eircom as the USP for a period of two years (ComReg 10/46 D04/10).<sup>2</sup>

19 In May 2008, ComReg established Quality of Service Performance Targets (ComReg 08/37 D02/08) in relation to the provision of specific elements of the universal service.

20 This consultation seeks views on the following:

- The scope of the obligation to provide telephone access to consumers (business and residential), including requiring a capability to permit functional internet access.
- The scope of the obligation to provide directory services, including the telephone directory and directory enquiry services.
- The scope of the obligation to provide public payphones.
- Ensuring that consumers with disabilities have access to the above services on a basis similar to that enjoyed by other consumers.
- Designating one, or more, undertaking(s) as the USP(s) for the above services.
- The provision of special tariff options for vulnerable consumers.
- Ensuring consumers can control expenditure, through measures such as itemised billing<sup>3</sup> and call barring.
- Issues related to the cost and funding of the universal service.

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<sup>2</sup> See ComReg Decision No. 10/46: <http://www.comreg.ie/fileupload/publications/ComReg1046.pdf>

<sup>3</sup> ComReg is currently conducting a consultation - Proposed consumer protection measures in respect of consumer bills and billing mediums and proposed amendments to General Authorisation (ComReg 11/78)

# 4 Designation of Universal Service Provider(s)

## 4.1 Designation Mechanism

- 21 The Regulations require ComReg to designate one, or more, operators to guarantee the provision of the universal services (as described in Section 5) to ensure that the whole of the State is covered. Different operators (undertakings), or sets of operators, can be designated to provide different elements of universal service, and/or to cover different parts of the State.
- 22 In principle, no undertaking should be excluded from being designated to provide all or part of the universal service, in all or part of the State. In the majority of Member States, the incumbent operator provides universal services. However, in some Member States other operators have become universal service providers. In theory, other operators in Ireland may be able and willing to provide all or part of the universal service, in all or part of the State and may be able to do so at a lower cost.<sup>4</sup> Greater competition in the Irish market since the previous designation may have increased the possibility for all, or part, of the universal service to be provided by operators other than Eircom.
- 23 ComReg has given consideration to the designation mechanism for future designations. The Regulations provide that the designation methods adopted must ensure that the obligations are provided in a cost effective manner and that they may be used as a means of determining the net cost of the universal service obligation. Other providers in the State may be in a position to provide all or part of the universal service, but in order to decide if they are willing and able to do so, they will need specific information about each of the universal services to be delivered. For example, they will need to know who the "uneconomic customers" are, to be provided with access at a fixed location, as a universal service obligation.
- 24 This information will be provided to ComReg in the course of Eircom's application for universal service funding for the period 2009/2010. ComReg's assessment of Eircom's application<sup>5</sup> may or may not conclude that there is a net cost and an unfair burden for the period 2009/2010.

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<sup>4</sup> In Ireland, a net cost, if any, and whether it is an unfair burden have yet to be determined.

<sup>5</sup> Report on Consultation and Decision on the costing of universal service obligations: Principles and Methodologies – ComReg Document No. 11/42 (D04/11).

- 25 In light of the above, ComReg is of the preliminary view that it would be prudent for it to defer the consideration of alternative mechanisms, including their appropriateness, for designating universal service providers, until such time as ComReg has concluded its assessment of Eircom's funding application for 2009/2010. By the time this assessment is complete, there should be information available which will allow the identification of uneconomic customers and uneconomic areas, uneconomic payphones etc. in the State.
- 26 Therefore, ComReg is of the preliminary view that the next designation period should be for a period that is long enough to accommodate the following:
- Eircom to submit its universal service funding application for 2009/2010 (due to be received by 31 May 2012).
  - 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<sup>6</sup>).
  - 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).
  - A transition period, if relevant, to a new USP or USPs.
- 27 It may in the future be necessary to extend or shorten designation periods to align with the financial years of other potential USP(s). However, for the time being, ComReg proposes to maintain its practice of designating for whole years.
- 28 Accordingly, ComReg is proposing a designation period of 2 years, from 1 July 2012 to 30 June 2014.

## 4.2 Designation for the entire State

- 29 ComReg has considered whether or not it is appropriate to continue to designate universal service obligations to cover the entire State.

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<sup>6</sup> Estimated to be by end January 2013.

- 30 In order for ComReg to fully consider designation for specific areas or customers—rather than on a national basis—ComReg requires details of those customers or areas that would not be served by the market and of those services or facilities that would not be provided if the USO did not exist. As the universal service provider for many years, Eircom is best placed to provide this information and it is required to do so in the course of its application for universal service funding for the financial year 2009/2010.
- 31 At this time, without more specific details regarding services or customers that would *not* be served by the market, ComReg remains concerned that certain universal services, including access at a fixed location (in accordance with specified quality of service metrics and geographically averaged prices<sup>7</sup>), might not be provided to all or some customers in the State without a universal service obligation.
- 32 Therefore, until further detailed information becomes available, ComReg is of the preliminary view that a universal service for the entire State, (whether or not it is delivered by different USP(s)), remains a requirement for the proposed next designation period.

### 4.3 Universal Service Provider

- 33 This consultation extends an invitation to all undertakings to express an interest in providing all, or part, of the universal service for the proposed next designation period of 2 years from 1 July 2012 to 30 June 2014. Any expressions of interest should be accompanied by the following:
- An outline of technical competence and expertise in providing the element service concerned
  - An outline as to how the proposed obligations, as detailed in this consultation, will be fulfilled, including a full description as to how the service(s) will be provided, and
  - Guaranteed level of service in terms of fault occurrence/availability of service to consumers and other relevant quality measures
  - Customer contract terms and relevant retail prices
  - Procedures and timelines for connection, fault management, the provision of information to consumers and the handling of complaints.
  - Indicative costs to provide the element of the service concerned, as relevant.

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<sup>7</sup> As discussed in paragraph 105

- 34 If expressions of interest are received, ComReg will consider such proposals and possible further steps, which may include further consideration of the next designation period and other aspects proposed in this consultation, in the response to this consultation.
- 35 Given its proposal for a designation period which allows for certain matters to be clarified, it is also ComReg's view that the current universal service provider, Eircom, should continue to be the universal service provider, for the elements specified in Section 5, for the reasons detailed including ubiquity, experience and capability, during the next designation period, **unless** ComReg receives suitable expressions of interest from other providers.

### Next Designation Period

- Q. 1 Do you agree or disagree with ComReg's proposal that the next designation period should be a period of 2 years, from 1 July 2012 to 30 June 2014? Please provide reasons to support your view.
- Q. 2 Do you think an alternative duration for the next designation period should be considered? If so, what duration and why? Please provide reasons to support your view.
- Q. 3 Do you agree or disagree with ComReg's proposal that, for the proposed next designation period, the required universal services should be designated for the entire State? Please provide reasons to support your view.
- Q. 4 Do you agree or disagree with ComReg's proposal that Eircom should continue to be the universal service provider for the elements specified (section 5) during the next designation period, unless there are expressions of interest from other providers? Please provide reasons to support your view.

### Future Designation periods<sup>8</sup>

- Q. 5 For future designation periods (after the proposed next designation period), do you agree or disagree with ComReg's approach to future designation methods for the provision of required elements of universal service? Please provide reasons to support your view.
- Q. 6 Do you have any further comments or suggestions about future designation methods, after the proposed next designation period, (to June 2014)? Please provide reasons to support your view.

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<sup>8</sup> ComReg does 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.

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



## 5 Scope of the Universal Service

### 5.1 Consideration of broadband as a universal service

36 On 3 March 2010, the European Commission issued a public consultation (consultation on future universal service in the digital era).<sup>9</sup> On 23 November 2011, the European Commission issued its report on the outcome of the public consultation and the third periodic review of the scope in accordance with Article 15 of Directive.<sup>10</sup> The report provides an indication of the proposed approach by the European Commission to some aspects of universal service, including mobility (in terms of access) and broadband. However, the impact, or timing, of any legislative changes arising from this report is not yet clear.

37 While 'broadband for all' is stated as a policy objective at European and national level, the European Commission continues to deliberate on the role of universal service in meeting this objective. The Commission's report states that:

*"Given the large sums needed to ensure broadband coverage through USO and the potential impact on industry and consumers, Member States need to carefully analyse whether national conditions warrant the extension of USO to broadband, taking into account the risk of social exclusion as well as possible distortion of competition and undue burden on the sector."*

38 The report also concludes that: *"The Commission currently does not see a need to change the basic concept and principles of universal service as an instrument for preventing social exclusion. At this stage, it would not be appropriate to include mobility or mandate broadband at a specific data rate at EU level."*

39 Some countries may seek to use universal service as a mechanism to bring broadband to all its citizens, while others may seek to achieve this objective by other means, such as State-funded schemes or other broadband availability programmes. ComReg notes that broadband, if appropriate, may be encompassed in the definition of universal service under the current legislation, through the specification of Functional Internet Access (FIA).

40 ComReg has considered a number of factors and developments in the Irish telecommunications market to determine if it is appropriate, at this time, to include Broadband in the scope of universal service. The points below provide details of the most relevant considerations.

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<sup>9</sup> [http://ec.europa.eu/information\\_society/policy/ecommlibrary/public\\_consult/universal\\_service\\_2010/](http://ec.europa.eu/information_society/policy/ecommlibrary/public_consult/universal_service_2010/)

<sup>10</sup> Universal service in e-communications: report on the outcome of the public consultation and the third periodic review of the scope in accordance with Article 15 of Directive 2002/22/EC.

- 41 ComReg's recent quarterly report<sup>11</sup> states that the total number of broadband subscriptions in Ireland for Q4 2011 was 1,664,214. The estimated broadband household penetration rate was 55.4% in Q4 2011 and the broadband per capita penetration rate (including mobile broadband) was 36.3%. These figures indicate that broadband services are continuing to be taken up by Irish consumers.
- 42 For those consumers who require broadband and do not have access, ComReg is aware of the importance of Government policy and, in particular, Government strategies and initiatives to advance the availability of broadband, such as the National Broadband Scheme (NBS) and the more recently announced Rural Broadband Scheme (RBS)<sup>12</sup>.
- 43 The objective of the NBS is to make a basic broadband service available to certain specified target areas in Ireland in which broadband services were deemed to be insufficient. Under a contract, 3 Ireland is required to provide services to all premises in the NBS area who seek a service. ComReg understands that the NBS contract runs until August 2014.
- 44 The RBS has been established to enable a basic broadband service to be provided to individual rural premises outside the NBS area which are not capable of obtaining a broadband service from existing internet service providers. The Scheme has been set up in conjunction with the Department of Agriculture, Food and the Marine as a measure under the Rural Development Plan using funding from the European Economic Recovery Programme.
- 45 Approximately 3,700 applicants initially qualified under the terms of the scheme and ComReg understands that the Verification Phase is now underway to establish whether applicants can be served without market intervention by Government. Indications from DCENR suggest that it seems probable that the vast majority of remaining eligible applicants can be offered a service from a commercial provider thereby potentially obviating the need for any State intervention.
- 46 In addition, ComReg understands that it is the Minister's<sup>13</sup> intention to publish a National Broadband Plan for Ireland later this year which will set out a range of policy commitments and actions aimed at accelerating the rollout of high speed broadband across Ireland.

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<sup>11</sup> Figures from ComReg Quarterly Key Data Report, Data as of Q4 2011: ComReg Document No. 12/20, March 2012.

<sup>12</sup> <http://www.dcenr.gov.ie/Communications/Communications+Development/Rural+Broadband+Scheme/>

<sup>13</sup> Minister for Communications, Energy and Natural Resources

- 47 In light of the Government broadband schemes that are ongoing and its planned actions, ComReg does not believe that it would be appropriate at this time for it to also seek to expand broadband availability, by mandating it as a universal service.
- 48 ComReg understands that for consumers with broadband subscriptions, the speed of their service is an important factor. In Q4 2011 approximately 74.5% of all broadband subscriptions were at contracted speeds of equal to or greater than 2Mbps. These figures suggest that the associated speeds of broadband services are continuing to increase.
- 49 In ComReg's most recent residential ICT survey,<sup>14</sup> 30% of residential consumers said that they found the speed of their broadband connection slower than expected. ComReg is of the view that the availability of transparent, user friendly information for actual speeds experienced by consumers when using broadband products is important for informing consumer choice. Accordingly, the Commission has commenced a project with the objective of developing and piloting a methodology and a tool for measuring and publishing broadband speeds experienced by consumers using different platforms. This should allow users to obtain comparable information on available broadband speeds, by operator package, by county and by time of day.
- 50 There are a number of current market and technological developments that will drive broadband availability and an increase in broadband speeds in the near term.
- 51 On 16 March 2012, ComReg published its response to consultation and decision for the auction of a number of individual rights of use in the 800 MHz, 900 MHz and 1800 MHz radio spectrum bands.<sup>15</sup> This auction will offer spectrum rights of use across these three critical bands for the period 2013 to 2030. The spectrum rights of use being auctioned, in particular the 800 MHz and 900 MHz spectrum bands, are highly suitable for advanced mobile services due to their excellent propagation properties which give high quality and wide area coverage, plus improved in-building reception.
- 52 Services based on LTE (Long Term Evolution) mobile technology are considered likely to be launched in Ireland in the near future, using the liberalised spectrum bands that ComReg is now proposing to make available, thereby ushering in a new era of advanced wireless services including fast, high capacity mobile broadband.

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<sup>14</sup> ICT usage among residential consumers, November 2011, ComReg 11/96a.

<sup>15</sup> ComReg 12/25(D04/12) Multi-band Spectrum Release Release of the 800 MHz, 900 MHz and 1800 MHz Radio Spectrum Bands.

- 53 In theory, broadband availability could be expanded through the universal service. 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 because the market is at such an important stage in its evolution, ComReg considers it prudent for the time being to continue to observe the effect of technological developments and market provision on broadband availability.
- 54 Therefore, ComReg does not at this time propose to define Functional Internet Access (FIA) at a rate necessary to deliver broadband.
- 55 Notwithstanding the above ComReg intends to re-examine this issue carefully in 2014, when the effects of many of the current market and technological developments will be visible and the DCENR's broadband schemes will have been completed.

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

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

## 5.2 Provision of Access at a Fixed Location

- 56 A fundamental requirement of the USO is that all “reasonable” requests for connection to the public telephone network are met by at least one operator. Eircom, as the USP, is currently required to satisfy any reasonable request to provide a connection to the public telephone network at any fixed location in the State.
- 57 Any connection provided by a designated undertaking must be capable of allowing consumers to make, and receive, the following:
- Local, national and international telephone calls.
  - Facsimile communications.
  - Data communications, at data rates that are sufficient to permit functional internet access.
- 58 The obligation to provide access at a fixed location is technologically neutral. This means that alternative technologies can be used to deliver this obligation.

- 59 In considering whether or not the need exists to designate an undertaking to provide access at a fixed location, ComReg notes that, in Q4 2011, the mobile penetration rate was 107.1%,<sup>16</sup> excluding mobile broadband. However, it is also noted that current mobile licence conditions (GSM) specify a minimum coverage requirement ranging from 80% to 99%, measured as a percentage of population, and that coverage is measured on an outdoor basis<sup>17</sup>. It is estimated that there were 2,188,120 fixed market retail subscriptions in Q4 2011 across both business customers and residential consumers (a business customer may have multiple subscriptions). 62.2% of these subscriptions were single play (voice only). These figures indicate a significant continued demand for a fixed voice service.
- 60 In addition, ComReg's recent ICT residential survey<sup>18</sup> shows that 77% of homes have a fixed line compared with 97% that have a mobile. Despite this, the research found that there are only 23% homes that are mobile only homes and that the likelihood of fixed phone ownership increases with age. The business ICT survey found that 54% of businesses are dependent on their fixed line to do business<sup>19</sup>.
- 61 In terms of consumer choice in the fixed line market Eircom, is the largest revenue earning operator in the market with 56.2% market share, ComReg estimates that the next six largest operators (BT, UPC, Vodafone (fixed only), Cable and Wireless, Verizon and Imagine) contribute a further 33.2% of industry revenue.
- 62 Despite the available choice, ComReg remains concerned that some customers who require a fixed line service would not be provided with, or would not continue to be provided with, such a service absent the universal service obligation. Such customers or areas which would not be provided with a service without a USO are termed "uneconomic areas" or "uneconomic customers." ComReg is awaiting Eircom's application for a USF, (for 2009/2010) to obtain further details in relation to uneconomic areas and uneconomic customers.
- 63 A fixed line service continues to be chosen by a significant majority of households in the State. In order to ensure that all customers can continue to avail of a fixed service, irrespective of their location, ComReg is of the preliminary view that access at a fixed location for the entire State should remain a universal service obligation, for the next designation period.

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<sup>16</sup> Figures from ComReg Quarterly Key Data Report, Data as of Q4 2011, ComReg12/20, March 2012.

<sup>17</sup> Indoor coverage may be impractical to measure ( i.e. access to private dwellings etc.) and there is no international standard method of calculation i.e. simulation.

<sup>18</sup> ICT usage among residential consumers, November 2011, ComReg 11/96a.

<sup>19</sup> 19% of business respondents were in a rural area or village.

## Requests for connection

- 64 The fundamental requirement of universal service is that all reasonable requests for connection at a fixed location are met. There are many factors to be considered in ensuring that the requirements of consumers are met.
- 65 Currently, the USP is required to treat all requests for connection at a fixed location to the public telephone network, and for access to publicly available telephone services at a fixed location, as reasonable if the estimated expenditure involved in meeting the request is not greater than €7,000 and the applicant agrees to the payment of the standard connection charge.
- 66 In the majority of cases, the USP should not have any significant difficulties in providing network connections throughout the country, or defined territory within the State. Eircom, by virtue of its ownership of the public switched telephone network (PSTN), is capable of meeting the reasonable requests of consumers on a nation-wide basis. In addition, Eircom remains the major fixed line provider in the market, with a current estimated market share of 56.2%. ComReg notes that many fixed-line operators which offer competing services do so via Eircom's network. However, in some cases, fixed-line operators offer competing services over their own networks.
- 67 Although new housing has declined, where a dwelling is in a rural area and/or is a one-off development, the provision of a telephone connection can be disproportionately expensive. In this context, Decision Notice 09/05 stated that all requests for connection involving expenditure below €7,000 are to be considered reasonable and requests above €7,000 will still be considered reasonable providing the requesting party agrees to cover the excess connection costs above €7,000 - known as the Reasonable Access Threshold ("RAT").
- 68 ComReg notes that the provision of Access at a fixed location is technology neutral and therefore, new, perhaps more cost effective, technologies can be used to fulfil a request.
- 69 The average cost of providing connections is already reflected in standard charges. ComReg therefore anticipates that any requirement for incremental charges should impact upon very few applicants.
- 70 In assessing an appropriate level for a threshold, ComReg sought to ensure that only in exceptional cases would consumers have to pay charges over and above the standard connection charge.

- 71 ComReg understands that applications involving excess charges would rarely occur. In 2010 and 2011 ComReg understands that only a small number of customer's applications were estimated to be above the RAT of €7,000.
- 72 If Eircom were to be allowed to charge additional fees for a significant number of connections there could be a risk of over-recovery of costs.
- 73 ComReg considers that there are no details at this point to suggest that the threshold no longer provides a good balance between the interests of the majority of consumers in keeping costs down, and the needs of applicants in remote areas.
- 74 Therefore, it is ComReg's preliminary view that the threshold (RAT) remains appropriate.
- 75 ComReg will carefully consider any submission that it receives from interested parties for the provision of access to a fixed location throughout the State, or a defined territory within the State. In the absence of compelling evidence to the contrary (including any expressions of interest from other operators, as indicated in Section 4), ComReg is of the preliminary view that the principal factors, including network reach, experience and ability to satisfy reasonable requests for connection, that resulted in Eircom being designated as the USP with respect to access at a fixed location in July 2010 remain present in 2012.

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

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

### **5.3 The requirement for a printed telephone directory**

- 76 As USP, Eircom is also obliged to provide a printed telephone directory. Eircom also provides the telephone directory on-line at [www.eircomphonebook.ie](http://www.eircomphonebook.ie).
- 77 ComReg notes that there are now at least 4 operators offering multiple national Directory Enquiry (DQ) services. In 2011, ComReg introduced a new facility on its [www.callcosts.ie](http://www.callcosts.ie) website to allow consumers compare the cost of calls (including connection to each DQ provider). There is a variety of prices depending on the network operator and the DQ service provider.

- 78 In 2010, ComReg's Forum on Electronic Communications Services for People with Disabilities worked on a voluntary initiative with service providers which resulted in a number of fixed and mobile providers, providing free access to a special directory enquiry service for their customers with disabilities. ComReg intends to consult on proposed measures for people with disabilities regarding access to directory/directories of subscribers, in its upcoming consultation in respect of equal access and equal choice for consumers with disabilities, in accordance with Regulation 17 of the Regulations.
- 79 ComReg also sought the views of its Consumer Advisory Panel, which noted that the printed directory provides consumers with useful information which may not be available by other similar means (for example, access to details and contact information for Government services). ComReg also notes its Business Survey<sup>20</sup> observed that one quarter of all businesses consider access to a printed telephone directory as essential for their business.
- 80 ComReg has been considering whether or not subscribers should have the option of indicating a preference for receiving, or not receiving, the printed telephone directory. ComReg notes that for those who do not have internet access, the printed directory is the only free mechanism to access a comprehensive list of subscribers (except for those using the free directory enquiry service for consumers with disabilities). Therefore, ComReg is of the preliminary view that the printed directory (directories) should be provided, except for those that request not to receive it, on the basis that ComReg understands that this option would not have any significant impact on any claimed net cost of the USO, as relevant.
- 81 ComReg considers that consumers should receive a printed directory (unless they have requested not to) relating to the area where they are located. However, subscribers are entitled to a comprehensive subscriber listing and in this respect, must be able to request and receive a directory for each other area/location.
- 82 ComReg will carefully consider any submissions that it receives from interested parties for the provision of the telephone directory. In the absence of compelling evidence to the contrary (including any expressions of interest from other operators), ComReg is of the preliminary view that, taking into account factors such as existing infrastructure, experience and ability to fulfil the directory service obligations, Eircom should be the USP with respect to the provision of a subscriber directory.

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<sup>20</sup> ComReg Business ICT Survey, April 2010 - <http://www.comreg.ie/fileupload/publications/ComReg1033.pdf>



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

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

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

## 5.4 Public pay telephones

83 The Regulations provide that a designated undertaking shall ensure that public payphones are provided to meet the reasonable needs of consumers in terms of geographical coverage, number of telephones, accessibility of such telephones to consumers with disabilities and the quality of service. The USO payphones cover those located on the street and in other public areas available to the public at all times.

84 The Regulations define a public payphone as:

*“a telephone available to the general public for the use of which the means of payment may include coins, credit cards, debit cards, or pre-paid cards, including cards for the use of dialling codes.”*

85 The current requirements, therefore, oblige the USP to ensure that, where possible, all public payphones provide for a number of payment means. In addition, it must be possible to make emergency calls free-of-charge from all public payphones. The ubiquity of Eircom’s network is relevant in the context of the provision of public payphones, as the capability to provide public payphones throughout the country is clearly dependent on that ubiquity.

- 86 The average number of USO payphones operated during the period October 2011 to December 2011 was 1396.<sup>21</sup> This is a decrease of 81 USO payphones, from 1,477,<sup>22</sup> since the same period in 2009 (prior to the last designation). Despite the decline in numbers of USO payphones and use, based on 2011 usage figures submitted by Eircom to ComReg, it is apparent that payphones continue to provide a basic service to many people throughout the State, indicating their continued necessity. A public payphone may be valued and needed by many people without a land-line or a mobile phone or those away from home, or those whose mobile phone is out of credit, or those who, for whatever reason, choose to use a payphone instead of their mobile phone.
- 87 The average number of calls, from some USO phones may be relatively low; this may be explained because of possible lower footfall associated with more extreme rural areas where USO payphones may be located. Should the obligation be removed, it is expected that only economic payphones would be retained. However, payphones which are not economic because they are located in more extreme rural areas may be more relied upon by vulnerable consumers. In this respect, ComReg notes that payphones continue to be used to make calls to 1850/1890 numbers, to emergency services, to mobile numbers, and to local and international numbers. Furthermore, consumers also use payphones for the reverse charge calls service and for pre-paid phone cards.
- 88 As a consequence primarily of the growth in mobile telephony, further reductions in the number of payphones in both urban and rural areas may be unavoidable due to a possible further fall in demand for public payphones. However, in effecting any reduction in the number of payphones, the USP must ensure that the USO is met and, in this respect, ComReg 06/14 – Removal/Relocation of Public Pay Telephones<sup>23</sup> sets out the process to be adopted by Eircom.
- 89 However, ComReg understands that there are a number of USO payphones that continue to be vandalised and therefore, there may be difficulty maintaining them in working order (in accordance with ComReg 06/14). During Q4 2011, 9% of payphones were not in full working order compared with 4.9 % in the previous quarter.

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<sup>21</sup> [http://www.comreg.ie/\\_fileupload/publications/ComReg1226.pdf](http://www.comreg.ie/_fileupload/publications/ComReg1226.pdf)

<sup>22</sup> Provision of Universal Service by Eircom, Performance Data – Q4 2009 (1 October 2009 to 31 December 2009) - [http://www.comreg.ie/\\_fileupload/publications/ComReg1020.pdf](http://www.comreg.ie/_fileupload/publications/ComReg1020.pdf)

<sup>23</sup> [http://www.comreg.ie/\\_fileupload/publications/ComReg0614.pdf](http://www.comreg.ie/_fileupload/publications/ComReg0614.pdf)

- 90 In light of this, ComReg intends to undertake a detailed review of the current USO payphones with maintenance issues, to ascertain what should be done in such circumstances. ComReg also plans to undertake a review of uneconomic USO payphones, after assessing Eircom's 2009/2010 Fund Application, to establish their continued need. Based on this review, ComReg may seek to amend the universal service obligation in respect of payphones and/or the payphone removal policy.
- 91 ComReg will carefully consider any submissions that it receives from interested parties for the provision of public payphones throughout the State, or a defined territory within the State. In the absence of compelling evidence to the contrary (including any expressions of interest from other operators), ComReg is of the preliminary view that the principal factors, including existing infrastructure, network reach and experience, that resulted in Eircom being re-designated as the USP with respect to the provision of public payphones in July 2010 remain present in 2012.

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

## 5.5 Provision of Universal Service to Consumers with Disabilities

- 92 The Regulations provide for specific measures for consumers with disabilities. ComReg can specify obligations applicable to designated undertakings for the purpose of ensuring that consumers with disabilities can enjoy access to, and affordability of, publicly available telephone services equivalent to that enjoyed by other consumers.
- 93 In June 2010, the following obligations were imposed on the USO with respect to the provision of services to consumers with disabilities:
- 94 For consumers who are **hearing-impaired:**
- Inductive couplers which allow consumers with a hearing aid set to connect the set to their telephone to allow them to hear incoming speech clearly.
  - Amplifier phones which allow the user to increase the volume of incoming speech.
  - Teleflash Visual Alert which shows a flashing light, or makes a loud noise when the telephone rings.

## 95 For consumers who are hearing and/or speech impaired:

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

## 96 For consumers who have limited dexterity or mobility:

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

97 For consumers who have **restricted vision**:

- Restricted vision telephones which can help people with restricted vision to find other numbers more easily.
- Braille billing, free-of-charge.
- Special directory enquiry arrangements which allow those consumers unable to use the telephone directory, as a result of a disability, to use a directory enquiry service, free-of charge.
- In addition, the USP was required to develop and publish a Code of Practice for the provision of services to consumers with disabilities and is available on the Eircom website at:

[http://www.Eircom.ie/bvEircom/pdf/code\\_of\\_practice\\_disability.pdf](http://www.Eircom.ie/bvEircom/pdf/code_of_practice_disability.pdf)

## 98 ComReg notes that, in some cases, the mandatory set of obligations may be less than voluntary measures being provided by operators (for example, the provision of free directory enquiry service for consumers with disabilities by operators, in addition to Eircom, as initiated by ComReg's Forum on Electronic Communications Services for People with Disabilities).

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

100 It should be noted that it is ComReg's preliminary view that these obligations would apply to whatever USP(s) are designated by ComReg. Any party expressing an interest in fulfilling any of the relevant elements of the USO in all, or part, of the State should address how it would fulfil these obligations.

Q. 16 Do you agree that the current set of obligations is appropriate for consumers with disabilities in the context of the current scope of universal service, for the next designation period<sup>24</sup>? Please give reasons to support your point of view.

## 5.6 Affordability

101 The Irish economy has experienced a major recession since the last designation in 2010. Ireland, with a relatively small market, is particularly dependent on international trade and is, therefore, particularly vulnerable to global economic trends. According to the CSO, employment fell from 1.9 million in September 2009 to 1.8 million by the end of December 2011, a decline of 5%, ComReg survey data observes that the average residential spend on fixed line telephone bills is around €51 per month<sup>25</sup>.

102 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).

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<sup>24</sup> Note that obligations in respect of consumers with disabilities applicable to all undertakings will be considered in ComReg's consultation, in accordance with Regulation 17. A related decision may render it unnecessary to place certain related obligations on the USP.

<sup>25</sup> ICT Usage among residential consumers, December 2011 (ComReg1196a.pdf)

- 103 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<sup>26</sup>) 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 disconnected from the network.
- 104 The Regulations require designated undertakings to adhere to the principle of maintaining affordability for the set of universal services, that is, provision of access at a fixed location, directory enquiry, and public payphones. In particular, affordability has to be maintained for vulnerable user groups, such as the elderly, those on low incomes and for consumers with disabilities. From the perspective of consumers and the competitiveness of the economy generally, Irish communication costs should not exclude the most vulnerable in the community from making a minimum use of telephony services. While communications services are a basic necessity for all consumers, ComReg considers that protections for vulnerable customers should remain in place. These should aim to protect vulnerable customers from a rapid increase in overall bills.
- 105 At present, affordability is maintained through a number of different schemes, including:
- a. Within the retail price cap regime – this provides a safeguard on consumer’s line rental and connection fees. A price cap based on the rate of inflation (or CPI minus 0%) has been applied to Eircom’s fixed telephony access charges - on each of Eircom's lower<sup>27</sup> and higher level<sup>28</sup> access services- since October 2008<sup>29</sup>. Therefore, the maximum average price increase of the services subject to the cap is the rate of inflation.

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<sup>26</sup> Available on the Eircom website at [www.Eircom.ie](http://www.Eircom.ie); see Annex 2.

<sup>27</sup> Lower level services means the provision of telephone exchange lines and ISDN BRA lines, (those being services for which a recurring charge is made by Eircom for the availability of such lines) and telephone exchange line and ISDN BRA connection and takeover.

<sup>28</sup> “Higher level services” means the provision of ISDN FRA and ISDN PRA lines,(those being services for which a recurring charge is made by Eircom for the availability of such lines) and ISDN FRA and ISDN PRA connection and takeover

<sup>29</sup> ComReg Document 07/76.

- b. The Department of Social Protection's (DSP) Telephone Allowance. The DSP operates a number of schemes which are designed to protect vulnerable users (such as pensioners, widowers and defined disability groups) and ensures affordability for services. The Telephone Allowance provides consumers who qualify for the scheme with a payment towards their telephone bill (either landline or mobile phone).
- c. Eircom's "social benefit package",
- d. Eircom's low usage scheme - Vulnerable Users Scheme ("VUS").
- e. Geographical averaging - Under Regulation 8 (3) of the Regulations, ComReg may require the designated undertaking to apply common tariffs, including geographic averaging. 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. These aims remain relevant and ComReg does not at this time propose to change this position in respect of the services included in Universal Service. However, the potential emergence of differential competitive conditions across geographic areas is currently under discussion in the context on broadband/NGA (see for example ComReg Document No. 11/72 and ComReg Document No. 12/27) and will be considered as part of the ongoing market review of the Retail Fixed Narrowband market. 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 market review. The retail price cap on Eircom (which, in addition to being the current USP, has dominance in fixed telephony access markets) means that its prices<sup>30</sup> are capped irrespective of location on a national basis at the rate of inflation. ComReg's process of review of the Retail Fixed Narrowband Market is currently underway.

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

106 Any party expressing an interest in fulfilling any of the relevant elements of the USO in all, or part of, the State should address how it would comply with obligations relating to affordability.

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<sup>30</sup> See 105a above

## 5.7 Control of Expenditure

107 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 facing disconnection from the network. 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.
- **Non-Payment of Bills:** ensure the availability of a Disconnection Policy.

108 When responding to the questions below, respondents are requested to consider whether any benefits from the measures discussed are likely to exceed the cost of provision.

### Itemised Billing

109 Eircom, as the USP, is required to provide a minimum level of itemised billing free of charge to subscribers<sup>31</sup> subject to data privacy provisions.<sup>32</sup> The level of itemisation provides subscribers with a list of numbers called, call cost and duration, with subtotals by call type, line and equipment rental along with full details of any relevant discounts.

110 In October 2011, ComReg initiated a consultation on proposed consumer protection measures in respect of consumer bills and billing mediums<sup>33</sup> and ComReg is currently considering the submissions received prior to making its decision. It is proposed that the measures would apply to all undertakings.

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<sup>31</sup> In accordance with Regulation 9 (2) of the Universal Service Regulations and ODTR Decision No. D09/01.

<sup>32</sup> Consumers can request to receive a non-itemised bill.

<sup>33</sup> ComReg Document No. 11/78.



111 Prior to a decision in respect of ComReg 11/78, ComReg considers that the current level of itemised billing, to be provided by the USP, should be retained, until such decision is forthcoming, to allow customers of the USP to verify their charges and to assist in the control of their expenditure.

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

## Selective Call Barring

112 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 offered, subject to payment of a set-up fee and ongoing rental charges, including:

- Premium Rate, International, Cross Channel and National.
- Premium Rate, International and Cross Channel.
- Premium Rate and International.
- Premium Rate and Mobile.

113 ComReg considers that the call-barring options available are reasonable in terms of enabling users to control their expenditure.

114 However, ComReg is of the view that consumers who avail call barring as a cost control measure should be able to do so without incurring a charge for such a request.

115 ComReg is therefore proposing that, in addition to current facility to bar premium rate services, free of charge, the USP should provide, on request, the call barring services listed below free of charge. ComReg understands that this option would not have any significant impact on any claimed net cost of the USO.<sup>34</sup>

International: already provided but a charge imposed.

Mobile: already provided but a charge imposed.

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

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<sup>34</sup> In accordance with Regulation 9(2) – Schedule 1, Part A (b)

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

## Phased Payment for Connection Fees

116 In a previous universal service review, phased payment for connection fees was introduced. 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. The scheme is implemented using a direct debit option. ComReg does not propose to make any changes to this scheme at this time.

## Non-Payment of bills

117 As stated earlier, there is an existing obligation on all operators to publish their Disconnection Policy, as part of their Code of Practice for Complaint Handling. In the previous review, 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.

118 ComReg is not proposing to amend Eircom's Disconnection Policy.<sup>35</sup> This policy provides that, if you do not pay your bill by the account due date, Eircom may restrict your ability to make and receive calls and which also provides that, while doing this, Eircom will endeavour to contact you to remind you that your bill is overdue.

119 Any party expressing an interest in fulfilling any of the relevant elements of the USO in all, or part of, the State should address how it would comply with current obligations relating to control of expenditure and what other arrangements it would put in place.

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

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<sup>35</sup> Available on the Eircom website at [www.Eircom.ie](http://www.Eircom.ie); see Annex 2.

## **6 Draft Decision Instrument**

### **1 STATUTORY FUNCTIONS AND POWERS GIVING RISE TO DECISION**

- 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;
  - ii. Having regard to the functions and powers conferred upon ComReg under and by virtue of Regulation 7(1) of the European Communities (Electronic Communications Networks and Services) (Universal Service and Users’ Rights) Regulations 2011 (“the Regulations”); and
  - iii. Having taken account of the representations of interested parties submitted in response to ComReg Document No. ●

### **2 DESIGNATION OF UNIVERSAL SERVICE PROVIDER**

#### **Provision of Access at a Fixed Location**

- 2.1 In accordance with Regulation 7 of the Regulations, Eircom Ltd. 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.
- 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 of 7 September, 2005.

## Directory Services

- 2.4 In accordance with Regulation 7 of the Regulations, Eircom Ltd. is hereby designated as the USP for the purpose of complying with the following obligations, as provided for by Regulation 4 of the Regulations.
- 2.5 The USP shall ensure that a comprehensive printed directory or directories of subscribers, based on the data provided to it in accordance with Regulation 19(4), is updated at least once in each year and is made available to all end-users, except if that end user requests the USP not to supply them with a printed directory.

## Public Pay Telephones

- 2.6 In accordance with Regulation 7 of the Regulations, Eircom Ltd. is hereby designated as the USP for the purpose of complying with the following obligations, as provided for by Regulation 5 of the Regulations.
- 2.7 The USP shall do the following:
- i. Ensure that public pay telephones are provided to meet the reasonable needs of end-users in terms of the geographical coverage, the number of telephones, and the quality of services.
  - ii. Ensure that it is possible to make emergency calls from a public pay telephone using the single European emergency call number “112” and any national emergency call number that may be specified by ComReg, in each case free of charge and without the necessity to use coins or cards or any other means of payment.
  - iii. Ensure that users of its public pay telephones have access to a directory enquiry service.
  - iv. Where possible, ensure that all public pay telephones provide for a number of payment means; including coins and/or credit/debit cards and/or pre-payment cards, including cards for use with dialling codes.
  - v. Adhere to the processes for the removal/relocation of public pay telephones as set out in ComReg 06/14 as may be amended by ComReg from time to time.

## Specific Measures for Disabled Users

- 2.8 In accordance with Regulation 7 of the Regulations, Eircom Ltd. is hereby designated as the USP for the purpose of complying with the following obligations, as provided for by Regulation 6 of the Regulations.

## 2.9 The USP shall do the following:

- i. Provide a dedicated section of its website, accessible from the homepage, containing comprehensive information in relation to the services it provides which are of particular interest and relevance to people with disabilities;
- ii. Maintain, operate, monitor and ensure its own compliance with a Code of Practice concerning the provision of services for people with disabilities and shall periodically review and, where appropriate, amend the Code of Practice in consultation with the NDA and other representative bodies.
- iii. The USP shall provide the following specific services:

### **For users who are hearing-impaired:**

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

### **For users that are hearing and/or speech impaired:**

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

### **For users with limited dexterity or mobility:**

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

### **For users with restricted vision:**

- Restricted vision telephones which can help people with restricted vision to find other numbers more easily.

- Braille billing free of charge.

#### **For users unable to use the phone book because of a disability:**

- Special Directory Enquiry arrangements to allow the use of directory enquiry services free of charge.

### **Geographically Averaged Pricing**

2.10 As provided for by Regulation 8 (3) of the Regulations, Eircom Ltd., as the USP, shall apply geographically averaged prices throughout the State for the services referred to in this Decision.

### **Control of expenditure**

2.11 As provided for by Regulation 9 of the Regulations, Eircom Ltd., as the USP, shall do the following:

- Provide a minimum level of itemised billing to customers free of charge.<sup>36</sup>
- 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, mobile and international numbers shall be provided free of charge to users.
- Maintain and publish its scheme to allow for the phased payment of connection fees.
- Maintain and publish its disconnection policy in connection with non-payment of bills.

## **3 CONTINUATION OF OBLIGATIONS**

3.1 All other obligations imposed on the USP by ComReg in relation to its universal service obligations, which were immediately in force prior to the effective date of this Decision and Decision Instrument, shall continue to have full force and effect. Such obligations include, without limitation, those set out in the following:

- ODTR Decision D09/01.
- ComReg Decision No. D9/05.
- ComReg Document No. 06/14.

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<sup>36</sup> In accordance with ODTR Decision D09/01

- ComReg Decision No. D02/08.
- ComReg Decision No. D04/11.

## **4 EFFECTIVE DATE AND DURATION**

- 4.1 This Decision and Decision Instrument is effective from 1 July 2012 until 30 June 2014, unless otherwise amended by ComReg.

## 7 RIA

- 120 As part of the process of evaluating the most efficient and appropriate approach for ensuring 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.<sup>37</sup>
- 121 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. ComReg must also ensure that the needs of specific users, in particular, users with disabilities, are addressed.
- 122 ComReg's approach to universal service scope and designation is in accordance with the currently applicable legislation.
- 123 ComReg must ensure that the services listed below are made available on an affordable basis at the quality specified to all end-users independently of geographical location:
1. Provision of reasonable requests for access at a fixed location supporting voice and functional internet access. (ComReg has discretion in so far as it can determine what is reasonable);
  2. Provision of directories in the form decided by ComReg.
  3. Provision of public payphones, if necessary, to meet the reasonable needs of end-users as assessed by ComReg.
  4. Provision of certain services or equipment to disabled users where deemed appropriate by ComReg.
  5. Provision of certain facilities to control expenditure and ensure affordability.
- 124 The Regulations place responsibility on ComReg to designate one, or more, Universal Service Providers (USP/s).
- 125 ComReg's approach to conducting a RIA is outlined in its RIA Guidelines. In relation to Universal Service, 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.

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<sup>37</sup> Guidelines on ComReg's Approach to Regulatory Impact Assessment - ComReg 07/56a.



126 In relation to Universal Service, 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. ComReg's role is more to decide what is reasonable as an implementation of the Universal Service, 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.

## **7.1 Impact assessment**

### **Eircom**

127 ComReg notes that Eircom Limited has entered into examinership in the Commercial Division of the High Court. This process is intended to provide a solution to the problem of Eircom's heavy debt burden and ComReg looks forward to a resolution to this issue. ComReg has no statutory role in the matter.

128 Eircom's regulatory obligations including its obligations as an authorised undertaking and as a provider of Electronic Communications Networks and Services as the designated Universal Service Provider (USP) are not affected by this process.

129 In accordance with the Regulations, no undertaking is in principle excluded from providing universal service. In this context, ComReg notes that there is no impediment, as a result of the examinership, of Eircom being designated as a USP, if appropriate.

### **Proposed Scope**

130 ComReg recognises that any regulatory decision must be a reasoned decision, in line with obligations under the Regulations. In view of a designation of a USP, the potential key impact of the proposed scope of various different aspects of universal service on a USP, operators and consumers is set out in the following sections.

- 131 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 find 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 that it cannot itself control. Moreover, the absence of a threshold could encourage consumers to build in more and more remote places as the costs for so doing would be borne by other parties. For these reasons, 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 PSTN, 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. ComReg is minded to consider that the current approach remains valid and proportionate at this juncture, subject to any compelling new information submitted in the consultation.
- 132 While the printing and distribution of a paper directory may involve some direct cost, it may also confer advantage through advertising and brand awareness.
- 133 In terms of public payphone availability, a network of payphones is already extant. While mobile telephony growth and other factors may contribute to a reduction in demand for public payphones, the procedure for the removal of non commercial payphones<sup>38</sup> gives flexibility to a USP to manage any operation and maintenance costs involved. In addition, a network of payphones may confer advantage through advertising, brand awareness and product availability (e.g., Wi-Fi hot spots based at payphones). ComReg proposes to maintain the current obligation in respect of public payphones for the proposed next designation period but to undertake a detailed review of the current USO payphones with maintenance issues, to ascertain what should be done in such circumstances. ComReg also plans to undertake a review of uneconomic USO payphones, as relevant, when ComReg has assessed Eircom's USF application for 2009/2010, to establish their continued need.
- 134 In addition, ComReg has discretion with respect to certain specific obligations relating to access for disabled consumers, affordability and control of expenditure. While these may involve some costs to a USP, in each case ComReg sees significant benefits to consumers from these provisions (such as providing consumers with greater information and control over how they purchase, and use, telephony services).

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<sup>38</sup> ComReg document 06/14 sets out the process to be adopted for the removal/ relocation of payphones in the public interest.

- 135 It is considered that obligations imposed for Consumers with Disabilities should not add substantial cost to a USP in view that this USO component may be less than or broadly equal to voluntary measures provided by operators. In contrast, should such an obligation be withdrawn, and should operators simultaneously withdraw their voluntary measures, the impact on consumers with disabilities would be severe.
- 136 ComReg considers that many measures currently in place to control expenditure are sufficient (e.g. itemised billing and disconnection policies). ComReg is proposing to amend some measures now and may amend others in the future. The associated cost of maintaining and enhancing these obligations is likely to be relatively minor as operators, in general, offer these services to customers. In contrast, the impact of withdrawing these measures on customers struggling to control their expenditure could be significant. The impact of possible new measures, such as the facility to bar different types of outgoing calls free of charge, is unlikely to lead to significant additional costs, however the impact of this facility would be assessed prior to any final decision.

## 7.2 Conclusion

- 137 Subject to any compelling new information or views provided in response to this consultation, ComReg's preliminary view is that the implementation of the Universal Service proposed in the Consultation Paper would be transparent, justified and proportionate, and otherwise in line with Better Regulation guidance and Regulatory Impact Assessment norms. Furthermore, any costs may be outweighed by benefits corresponding to universal service provision. However, pursuant to the Regulations, a USP may seek to receive compensation 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 such funding."

138 ComReg expects Eircom's application for a USF for 2009/2010 by end May 2012. Information regarding the net cost of each element of universal service will be provided to ComReg in the course of Eircom's application for universal service funding for the period 2009/2010. ComReg plans to publish details of the value of the application prior to the closure of this consultation. ComReg's assessment of Eircom's application<sup>39</sup> may or may not conclude that there is a net cost and an unfair burden for the period 2009/2010.

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

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<sup>39</sup> Report on Consultation and Decision on the costing of universal service obligations: Principles and Methodologies - ComReg 11/42 (D04/11).

## 8 Next Steps

- 139 All comments are welcome to the consultation however it would make the task of analysing responses easier if comments were referenced to the relevant question numbers from this document.
- 140 The consultation period will run from 30 April 2012 to 5 June 2012 during which the Commission welcomes written comments on any of the issues raised in this paper.
- 141 Having analysed and considered the comments received, ComReg will review the main proposals set out in the consultation, amend if necessary in light of representations received, obtain the consent of the Minister<sup>40</sup>, where appropriate, and publish the final decision.
- 142 To provide sufficient time for ComReg to carry out the necessary steps, (including taking full account of responses received and obtaining the consent of the Minister) and to designate a USP from 1 July 2012, as it is legally obliged to do, responses must be submitted **no later than** 5 June 2012. Under no circumstances will this date be extended.
- 143 In order to promote further openness and transparency ComReg will publish all respondents' submissions to this consultation, subject to the provisions of ComReg's guidelines on the treatment of confidential information in ComReg Document No. 05/24. We would request that electronic submissions be submitted in an-unprotected format so that they can be appended into the ComReg submissions document for publishing electronically.

### **Please note:**

- 144 ComReg appreciates that many of the issues raised in this paper may require respondents to provide confidential information if their comments are to be meaningful.
- 145 As it is ComReg's policy to make all responses available on its web-site and for inspection generally, respondents to consultations are requested to clearly identify confidential material and place confidential material in a separate annex to their response.
- 146 Such information will be treated subject to the provisions of ComReg's guidelines on the treatment of confidential information as set out in ComReg Document No. 05/24.

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<sup>40</sup> Minister for Communications, Energy and Natural Resources

## **Annex: 1 Statutory basis**

147 The statutory basis is set out in principal legislation governing the area of Universal Service and is set out in the European Communities (Electronic Communications Networks and Services) (Universal Service and Users' Rights) Regulations 2011, in particular, Regulations 3-9. These Regulations give effect to Directive 2009/136/EC of the Parliament and of the Council of 25 November 2009 amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services, Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector and Regulation (EC) No 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws.

## Annex: 2 Eircom Disconnection policy

<http://support.Eircom.net/SRVS/CGI-BIN/WEBCGI.EXE/&/?New&Kb=BB&Company={8C5A3413-D734-4C47-9016-F9EBD3B87D94}&Case=codeofpractice>

It is our policy here at *Eircom* that bills due must be paid on or before the date specified on the bill. This normally allows a period of 14 days after the bill date for payment, 21 days if you pay by direct debit.

If you do not pay your account by the due date we may restrict your ability to make and receive calls. Before doing this we will endeavor to contact you to remind you that your bill is overdue.

Should your line be restricted in this manner you will still be able to contact the emergency services via 112 or 999.

If after we restrict service in this way your balance remains outstanding we will write to you informing you that your contract will be terminated (notification of termination).

If the amount due remains unpaid after the time specified in the notification of termination your account will be terminated and your line removed. At this point you will no longer be able to contact the emergency services and will receive your final bill.

We will continue to follow up on outstanding balances after the final bill issues.

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