



Commission for
Communications Regulation

Transition from Eir's copper network

Proposed principles and notification procedures

All responses to this consultation should be clearly marked: -
"Reference: Submission to ComReg Document No16/01", and sent by post, facsimile
or e-mail to arrive on or before 5p.m., 17 February 2016, to:

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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 in ComReg Document No 05/24.

Call for Input

Reference: ComReg 16/01

Date: 06/01/2016

An Coimisiún um Rialáil Cumarsáide

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Additional Information

14/126	15/57
14/126s	

Approval

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Content

Section	Page
1 Introduction.....	4
1.1 Background.....	4
1.2 Dual operation of copper and fibre platforms	7
1.3 Obligations under SMP regime	7
1.4 Retail obligations.....	9
1.5 Scope of this call for input	10
2 Wholesale principles	12
2.1 Wholesale Replicability	12
2.2 Wholesale migration.....	13
3 Retail principles	15
3.1 Assure the right of end-users to universal service at an affordable price	16
3.2 Replacement voice services offered on the New Network must comply with the regulatory requirements for publicly available telephone services	17
3.3 End-user rights should be upheld during the migration to the New Network....	18
4 Transition issues and notification requirements	21
4.1 Part A: Pre-notification of overall plans for Copper Switch-off and a specified number of trial exchanges.....	25
4.2 Part B: Pre-notification of Copper Switch-off, post-trial, on an exchange-by-exchange basis	27
5 Submitting comments.....	29

1 Introduction

1.1 Background

- 1 The Government's National Broadband Plan (**NBP**) was published by the Department of Communications Energy and Natural Resources (**DCENR**) on 30 August 2012. Further details were announced by the Minister for the DCENR (**the Minister**), on 15 July 2015, in a draft strategy document which sets out how the Government proposes to ensure the delivery of high-speed broadband in areas where the service providers are unlikely to provide such services commercially (i.e., the NBP intervention area(s)).¹ On the 22 December 2015, DCENR published the NBP Intervention Strategy - Updated December 2015 which takes into account the submissions received to the July 2015 publication.
- 2 For clarity, ComReg has no decision-making role in the design of the NBP (including decisions on the mapping or tendering process) or the award of any contracts under the NBP. As such, these NBP decision-making matters are outside of ComReg's remit. The decision-making with respect to these matters is the responsibility of the DCENR and the Minister.
- 3 However, ComReg does have a role in the context of the European Commission's State Aid Guidelines,² where it is recognised that as national regulatory authority ('**NRA**') (i.e. ComReg) has "*gained technical knowledge and expertise due to the crucial role assigned to them by sectoral regulation. They are best placed to support public authorities with regard to the State aid schemes and should be consulted when target areas are being identified. NRAs should also be consulted with regard to determining the wholesale access prices and conditions and solving disputes between access seekers and the subsidised infrastructure operator*"³. ComReg may be in a position to provide industry specific technical advice where appropriate.

¹ <http://www.dcenr.gov.ie/communications/en-ie/Broadband/Pages/National%20Broadband%20Plan%20-%20Intervention%20strategy.aspx>

² *EU Guidelines for the application of State aid rules in relation to the rapid deployment of broadband networks*, OJ C25, 26.01.2013, p.1

³ See paragraph 42.

- 4 The NBP might over time have implications for regulation of the electronic communications sector in Ireland, while in the short-term current and future regulation may have implications for the tender process for the NBP. On 4 December 2014, ComReg published its Call for Input⁴ to provide an opportunity for stakeholders to identify areas where they believe regulatory clarity may be desirable in the context of the NBP. ComReg received twenty three submissions in response to ComReg Document No 14/126. On 11 March 2015, ComReg published all submissions received.⁵
- 5 In Eir's submission (formerly Eircom) it raised the issue of a potential future transition from its existing copper access network to a fibre access network(s) in the NBP intervention area:

“An emerging hypothesis is that all or a majority of the services delivered under the NBP intervention will be based on fibre access technology. To ensure maximum value for the Government intervention, the provision of a future-proof solution will need to be provided as cost-effectively as possible. The current obligation on Eircom as the USP is to not withdraw any service on its technology platform for a period of time approved by ComReg. If a long transition period is determined by ComReg the USO costs of maintaining a parallel network will extend over a longer period. Consequently it is in the interests of all stakeholders such as other operators who would have to contribute to the USO costs, and ultimately to end-user customers who would fund these costs through their payments for service, that the parallel operation of both a copper and fibre network should be for as limited a period as practicable.”

- 6 On 18 June 2015, ComReg published its response to the call for input (ComReg Document No 15/57⁶). As noted in paragraph 92 of section 2.4.1 of ComReg Document No 15/57, ComReg's current position is:

⁴ ComReg Document No. 14/126 entitled “National Broadband Plan – Call for Input on Regulatory Implications” dated 4 December 2014.

<http://www.comreg.ie/fileupload/publications/ComReg14126.pdf>

⁵ ComReg Document No. 14/126s entitled “National Broadband Plan – Call for Input on Regulatory Implications – Submissions to Call for Input Document No. 14/126” dated 12 March 2015.

<http://www.comreg.ie/fileupload/publications/ComReg14126s.pdf>

⁶ ComReg Document No 15/57 entitled “National Broadband Plan - Response to Call for Input” dated 18 June 2015 <http://www.comreg.ie/fileupload/publications/ComReg1557.pdf>

“Our [ComReg’s] consent will be required if Eircom is to be allowed to phase out its copper network. Eircom has an obligation in several regulated markets not to withdraw access to services and facilities already granted (as well as obligations as part of its current USO designation). In the context of SMP obligations (in particular ComReg documents 08/104⁷ and 10/39⁸) a notice period of five years was proposed in the context of exchanges which had been unbundled. We note that there are likely to be few, if any, unbundled exchanges in the NBP intervention area and accordingly, many of the considerations set out in this document may need to be revisited in an NBP.”

- 7 In addition, in ComReg Document No 15/57, ComReg committed to publishing a separate consultation (in the second half of 2015) to consider the dual operation of copper and fibre platforms and a potential transition from copper to fibre access networks. This call for input is the next step in that process.
- 8 In publishing the Call for Input we are mindful of ComReg’s objectives as set out in Regulation 16 of the Framework Regulations⁹ and in particular Regulation 16(2) which states that:

“In pursuit of its objectives [under paragraph (1) and under section 12 of the Act of 2002], the Regulator shall apply objective, transparent, non-discriminatory and proportionate regulatory principles by, among other things—

(a) promoting regulatory predictability by ensuring a consistent regulatory approach over appropriate review periods,

(b) ensuring that, in similar circumstances, there is no discrimination in the treatment of undertakings providing electronic communications networks and services,

(c) safeguarding competition to the benefit of consumers and promoting, where appropriate, infrastructure based competition,”

- 9 ComReg is also cognisant of its objectives under Section 12 of the Communications Regulation Act 2002¹⁰, which include:

⁷ ComReg Document No. 08/104 entitled “Market review: Wholesale physical network infrastructure access (Market 4) – Response to ComReg Document 08/41 and Draft Decision” dated 23 December 2008 <http://www.comreg.ie/fileupload/publications/ComReg08104.pdf>

⁸ ComReg Decision D05/10, ComReg Document No. 10/39 entitled “Market Review: Wholesale (Physical) Network Infrastructure Access (Market 4) – Further Response to ComReg Document No. 08/104, Response to ComReg Document No. 09/42 and Decision” dated 20 May 2010 <http://www.comreg.ie/fileupload/publications/ComReg1039.pdf>

⁹ European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2011 (S.I. No. 333 of 2011).

¹⁰ <http://www.irishstatutebook.ie/eli/2002/act/20/enacted/en/print.html>

*“(i) to promote competition,
(ii) to contribute to the development of the internal market, and
(iii) to promote the interests of users within the Communities.”*

1.2 Dual operation of copper and fibre platforms

- 10 As stated in ComReg Document No 15/57, ComReg at this time does not know how the winning bid or bids for the tender for NBP services in the NBP intervention area(s) will be constructed; the identities of potential bidders for the NBP or indeed of the eventual winning bidder or bidders; what technologies will be used; the specific timing; and to what extent existing copper will be reused as part of the solution (say, for example, as part of a fibre-to-the-cabinet (**FTTC**) proposal).
- 11 For the purposes of addressing the question of withdrawing access to Eir's copper access network (referred to hereafter as the **Copper Switch-off**), we have assumed that some form of new infrastructure will be deployed in the NBP intervention area as part of the winning bid (referred to in this document as the **New Network**) and that this would be rolled-out in parallel to the existing copper access network. We also assume that in the intervening period between NBP contract award and completion of the NBP roll-out there may be a period during which dual running of the existing copper access network and the New Network will be unavoidable.
- 12 There are multiple scenarios with regard to who may roll-out the New Network (and this is elaborated further in paragraph 16 and 17). Possibilities include Eir rolling-out all; part; or none of the New Network.
- 13 Nevertheless, in the context of the NBP roll-out it may be economically inefficient and ultimately not in the interests of stakeholders for ComReg to continue to require the maintenance of the obligations relating to a parallel copper access network and associated services, where a New Network has been deployed under the NBP.

1.3 Obligations under SMP regime

- 14 Eir has been designated as having Significant Market Power (**SMP**) in certain regulated markets (see paragraph 15) and, pursuant to this designation, is obliged not to withdraw or reduce access to services and facilities already granted, except where this has been approved by ComReg.

- 15 For example, Eir is obliged not to withdraw access to current generation Wholesale Physical Network Infrastructure Access (**WPNIA**) which has already been granted, except where this has been approved by ComReg¹¹. This obligation is imposed pursuant to Regulation 12(2)(c) of the Access Regulations¹². Accordingly, Eir would be obliged, pursuant to its SMP obligations, to obtain ComReg's consent to a proposal to withdraw access to its copper access network and potential Copper Switch-off.
- 16 There are multiple future SMP scenarios that may apply at the point in the future when Eir seeks to switch off some or all of its copper network. This paper does not speculate on what SMP findings (if any) might have been made, nor on what remedies (if any) might have been imposed nor on what other obligations may apply in future. In scenarios where Eir has been found to have SMP, it may continue to be subject to obligations which mean that it could not withdraw access to the relevant parts of its copper network without ComReg's permission. In scenarios where Eir's Copper Switch-off plans were not constrained by ex-ante regulation, separately Eir would still be bound by any terms relating to service withdrawal that were contained in its commercial agreements with OAOs.
- 17 In the scenarios where Eir had been found to have SMP, and ComReg permission was required for service withdrawal, ComReg would have identified potential downstream competition problems in its market analysis. A likely prerequisite for ComReg agreeing to a proposal for Copper Switch-off in these circumstances is that potential competition problems in those areas where Copper Switch-off is proposed were adequately addressed as a result of the wholesale obligations pertaining to the New Network. For example, depending on the outcome of the NBP tender process, Copper Switch-off could be underpinned in the future by inter alia a continuing of an SMP designation on Eir or another operator applying to the New Network, a set of New Network obligations under a contract with DCENR, or a combination of both. This call for input addresses the notification process that would be required in circumstances where ComReg was satisfied that the potential competition problems were adequately addressed, and was therefore minded in principle to consent to Copper Switch-off in certain exchanges in the NBP area.

¹¹ ComReg Decision D05/10 contained in ComReg Document No. 10/39 entitled "Market review: Wholesale physical network infrastructure access (Market 4), Further response to ComReg Document No. 08/104, Response to ComReg Document No. 09/42 and Decision" dated 20 May 2010.

¹² European Communities (Electronic Communications Networks and Services) (Access) Regulations 2011 (S.I. No. 334 of 2011) (the "**Access Regulations**").

- 18 ComReg has not up to now mandated a specific timeframe for the prior notification of any intended withdrawal of access to Eir's copper access network. However, we signalled that a notice period of 5 years may be reasonable in the context of Eir exchanges which had been unbundled, but acknowledged that there may be circumstances within which a shorter timeframe may be appropriate.¹³ ComReg has not previously provided guidance regarding withdrawal of facilities in respect of exchange areas where Other Authorised Operators (**OAOs**) have not unbundled and/or where OAOs are unlikely to do so.

1.4 Retail obligations

- 19 There are potential retail regulatory implications that could arise from a possible Universal Service Obligation (**USO**), as well as from obligations that apply generally to authorised undertakings.
- 20 Eir is currently designated as a Universal Service Provider (**USP**) and has a Universal Service Obligation (**USO**), under which it must meet reasonable requests for connections to a public telecommunications that are capable of supporting a range of services including voice and functional Internet access. It is also obliged to provide voice service over these connections.
- 21 There are a number of possible future USO scenarios. This paper does not speculate on whether Eir would continue to be a USP at the time of proposed Copper Switch-off, nor on the details of any USO which might apply. DCENR's contractual conditions in respect of the potential New Network might enable the market to provide services that would potentially negate the need for any USO in the intervention area. In scenarios in which there is a requirement for a USO, including possible obligations relating to the provision of an affordable voice service in the areas where Copper Switch-off is proposed, then the USP (whether Eir or another authorised undertaking) would need to ensure that it was able to deliver the USO using the New Network or by other means. In scenarios where Eir's Copper Switch-off plans are not constrained by a USO, Eir would still be bound by any relevant terms in its customer contracts.

¹³ ComReg Document No 08/104 entitled "Market review: Wholesale physical network infrastructure access (Market 4) – Response to ComReg Document 08/41 and Draft Decision" dated 23 December 2008, at paragraph 7.47. See also ComReg Decision D05/10 at paragraphs 7.52-7.56.

- 22 In addition, all operators of electronic communications networks and services have a range of regulatory obligations that might be particularly relevant if they replaced a current voice service using the copper network with a VoIP service offered over the New Network or in the context of new retail service offerings designed to replace existing retail services. These obligations include obligations related to availability of the service, access to emergency services, access for disabled end-users and provisions related to customer contracts. For the purposes of this paper, we assume that these obligations, or similar are in force when Copper Switch-off is proposed.

1.5 Scope of this call for input

- 23 The purpose of this call for input is to consider the principles that may be relevant for ComReg when assessing the potential implications of a transition from Eir's existing copper access network to a New Network. In particular, whether and under what circumstances Eir (as the operator currently designated with SMP) would be allowed to withdraw access to its copper access network in the NBP intervention area, if and when appropriate. This document also sets out the potential issues arising from possible Copper Switch-off.
- 24 At this time, we are not aware of any potential proposal regarding the withdrawal or reduction of access to Eir's copper access network outside the NBP intervention area. Nevertheless, there may be areas which are outside the NBP intervention area where the dual operation of the copper access network and an enhanced access network could also occur — which may prospectively result in some form of Copper Switch-off proposal in the medium-to-long-term from Eir. In this context, the principles that may be relevant for Copper Switch-off in NBP intervention areas may also be applicable for Copper Switch-off in non-NBP intervention areas.
- 25 As noted in paragraph 18, in areas of Local Loop Unbundling (**LLU**), any potential timeframe for Copper Switch-off would likely be longer and the likely principles for such unbundled exchanges could possibly be different given complexity in that scenario. As such unbundled (and prospectively unbundled) Eir exchanges are outside the scope of this call for input.
- 26 The remainder of this call for input is structured as follows:
- Chapter 2** sets out the proposed wholesale high level principles for consideration by ComReg in the event of a Copper Switch-off proposal.
- Chapter 3** identifies proposed retail principles, which include matters relating mainly to universal service as well as broader consumer protection.
- Chapter 4** deals with the transition issues and proposed notification requirements with respect to a transition from Eir's existing copper access network to a New Network.

Chapter 5 sets out the process for submitting comments in response to this call for input.

2 Wholesale principles

- 27 We are of the provisional view that it would be economically inefficient to insist on the maintenance of separate parallel copper infrastructure, for an indefinite period of time where alternative infrastructure has been deployed. This could ultimately be to the detriment of end users - for example via higher prices. However, this view is subject to certain conditions and notification timelines (as set out in Chapter 4).
- 28 In this chapter, we set out our preliminary views on wholesale principles that we consider ComReg should have regard to in setting conditions for a Copper Switch-off (the indicative notification timelines are set out in Chapter 4). It is notable that there will be a tension between some of them. For example, maximising certainty for industry players by introducing extended notification requirements may be at odds with a desire to minimise overall costs to the economy and maximise efficiency. We are interested in respondents' views as to how these considerations should best be balanced.
- 29 As previously highlighted it is considered that potential competition problems in the areas where Copper Switch-off is proposed would need to be adequately addressed as a result of the wholesale obligations pertaining to the New Network and that Eir would need to ultimately follow the transitional arrangements with regard to the wholesale principles, the retail principles (Chapter 3) and to the transition issues and notification requirements (Chapter 4).

2.1 Wholesale Replicability

- 30 ComReg's preliminary view is that OAOs using Eir's network should be able to rely on any wholesale inputs provided over the New Network after Copper Switch-off which replace those previously provided over the copper access network — such that they or their downstream customers (in the case of wholesale operators) can replicate, to at least the same degree of functionality and service quality, with appropriate guarantees regarding non-discrimination, oversight and governance where necessary, the retail service offerings that were generally available in the market based on the copper access network prior to Copper Switch-off.
- 31 Further, ComReg considers that OAOs should be able to switch to the replacement wholesale inputs without having to incur significant additional cost or make significant changes to, *inter alia*, their order handling; provisioning; and billing systems. In general, the transition to these replacement wholesale inputs should be seamless and not involve unnecessary delay or disruption for RSPs and wholesale operators.

- 32 In the context of the NBP, our understanding is that DCENR's invitation to tender will require bidders to deliver a solution which should technically fulfil this criterion (i.e., wholesale replicability). However, the actual detail of the eventual outcome after the New Network is in place will be what ComReg would be obliged to consider.
- 33 With respect to wholesale line rental (**WLR**) and / or Bitstream that are currently provided over the existing copper access network (as remedies under SMP), ComReg considers that these should be maintained until there is an equivalent wholesale service available over the New Network on an exchange-by-exchange basis (see Chapter 4).
- 34 It should be noted that the principle of wholesale replicability may not necessarily mean that the current wholesale product set provided over the existing copper access network would need to be reproduced in its entirety. For example, in the event of a Copper Switch-off in the NBP intervention area it may not be necessary to mandate a wholesale VOIP product as a successor to WLR, since it may be possible for operators to develop their own voice solution independently of the network owner. In ComReg Document No. 15/82 (Decision D05/15),¹⁴ ComReg decided that it would not mandate an access remedy requiring Eir to provide a wholesale VOIP product.

2.2 Wholesale migration

- 35 In principle, Open Eir customers (both Retail Service Providers (**RSPs**) and wholesale operators) should be able to physically migrate their user base from the existing copper access network to the New Network with minimum disruption and maximum certainty.
- 36 In order to achieve a smooth transition, ComReg considers that particular attention must be given to ensuring that appropriate processes, procedures and any necessary information are made available to OAOs in sufficient time ahead of the migration, such that, if necessary, the migration of large numbers of wholesale customers can be planned in advance and project managed by the operators concerned — ensuring that disruption and risk of service loss is kept to a minimum.

¹⁴ ComReg Decision D05/15, ComReg Document No. 15/82 entitled "Market Review – Wholesale Fixed Voice Call Origination and Transit Markets – Response to Consultation and Decision" dated 24 July 2015 http://www.comreg.ie/_fileupload/publications/ComReg1582.pdf

- 37 ComReg's preliminary view is that both single customer and bulk migration capability would be required. Regulatory obligations in respect of fixed number portability would need to be respected pursuant to the Universal Service Regulations¹⁵ – also see ComReg Document No. 99/24 (Decision No D1/99)¹⁶. ComReg expects that it would seek reassurance from Eir in this regard as part of any agreement to allow any Copper Switch-off.
- 38 In the context of the NBP, ComReg considers that, if Eir were to bid for and win the NBP tender, the cost of migration from the existing copper access network to the New Network should be borne by Eir (as it would be the chief beneficiary of the wholesale migration process). In the case where Eir does not bid for/win the NBP tender process, the co-operation of the winning bidder(s) would be required to ensure a smooth migration path. However, existing industry processes should necessitate relatively little modification to accommodate the NBP. ComReg will discuss with DCENR how best this might be ensured.
- 39 In the context of the Copper Switch-off, we are interested in respondents' views as to the likely quantum of incremental cost associated with such a migration of Open Eir wholesale customers and how the costs should be recovered/apportioned.

- Q. 1 Do you think that the principles set out in this paper should be restricted to the NBP intervention area or should they have wider applicability? Please provide suitable detail.
- Q. 2 Do you agree with the list of wholesale principles set out above in section 2.1 to 2.2? Are there any other principles in this respect that should be considered? Please set out clearly the reasons for your response.
- Q. 3 In assessing these issues what costs and benefits should ComReg take into account in forming its opinion?
- Q. 4 In your view, in the context of Copper Switch-off and were Eir not to bid for/win the NBP tender how should the costs of migrating current Open Eir wholesale customers be recovered?
- Q. 5 Should Eir be required to reflect the wholesale principles in its commercial agreements with operators, or should the principles be used only as guidance for ComReg if and when Eir asks for permission to withdraw regulated wholesale access products offered on its copper network?

¹⁵ Regulation 25 of the European Communities (Electronic Communications Networks and Services)(Universal Service and Users' Rights) Regulations 2011 (the "**Universal Service Regulations**")

¹⁶ Decision Notice D1/99 entitled "Introducing Number Portability in Ireland" dated April 1999 See http://www.comreg.ie/_fileupload/publications/odtr9924.pdf

3 Retail principles

- 40 The purpose of this chapter is to review the principles that may be relevant for ComReg to consider when assessing possible implications of a transition from the existing copper access network to a New Network on end-user interests, notably, on the universal service obligation (**USO**) and end-user protection measures; and whether from an end-user perspective there is a need to set conditions for any Copper Switch-off, such as appropriate end user notice period(s).
- 41 Communications markets are continually and rapidly evolving with new services and devices entering the market. We note that for many consumers the perceived value of the fixed telephony service will increasingly move from voice to internet access for multiple services. However, certain end-users will, in the immediate future, likely continue to wish to avail of a voice only service primarily over the existing copper access network. ComReg has highlighted in previous consultations¹⁷ that certain customer types remain more attached to fixed (voice) access services thereby limiting the extent to which they would themselves choose to switch to other networks.¹⁸
- 42 Therefore Copper Switch-off may have significant ramifications if the number of users of the traditional voice service continues to be substantial.¹⁹ There will need to be readily-available alternatives and the transition for end-users will need to be carefully managed. As long as service providers resolve consumer issues effectively, there may be no need for more formal intervention.
- 43 In this chapter, we set out our preliminary views on retail principles that we consider ComReg should have regard to in setting conditions for a Copper Switch-off. We are interested in respondents' views as to how best to apply such principles as well as general consumer protection issues that may arise in the context of transitioning from the existing copper access network to a New Network.

¹⁷ ComReg Document No. 12/117 (see footnote 18) and ComReg Document No. 14/71 (see footnote 15).

¹⁸ These include a high level of quality, security and reliability, independent power supply; the fact that PSTN provides electrical power makes it currently more robust than other solutions that rely on the normal power network and which then may not function in the event of a power cut.

¹⁹ Mindful of the intent of Directive 2009/136/EC of the European Parliament and of the Council of 25 November 2009 (Citizen's Rights Directive); the Universal Service Regulations; and Consumer Information and Cancellation Regulations.

3.1 Assure the right of end-users to universal service at an affordable price

- 44 ComReg considers that citizens' rights to basic telephony universal services at fixed locations in Ireland must be ensured during a transition from the copper access network to a New Network; *inter alia* by assuring that end-user's must continue to have the ability to connect to the public communications network at a fixed location and access relevant services over that connection, at an affordable price and appropriate quality, as relevant.²⁰
- 45 Eir is currently designated as the USP for the purposes of providing access at a fixed location to an electronic communications network and voice services²¹ under the USO (**AFL USO**) until 30 June 2016.²² ComReg published a consultation on whether there is a need for an AFL USO in Ireland post December 2015.²³ In that consultation, ComReg's preliminary view was that there is a continued need for some kind of AFL USO in Ireland for at least the next 5 years and possibly for 7 years.²⁴ ComReg's consultation in respect of the need for an AFL USO will mean that related requirements to the AFL USO post 2015, if appropriate, will be decided in the coming period.
- 46 If Eir were to be a USP in the areas where Copper Switch-off is proposed, then it would need to provide end users with an alternative method of connecting to the public telecommunications network and accessing voice services.
- 47 The existing USO does not specify the technology to be used in providing voice services. Nor does it preclude the USP from meeting end-user requests for connections by sourcing a connection from a third-party. In principle, ComReg considers it likely that a USP could choose to meet requests for a connection and voice service by providing (or sourcing) a connection to the New Network and providing a VoIP service over that connection. It may also be possible for the USP to meet its obligations in some cases by using other technologies such as wireless.

²⁰ See Regulation 3 of the European Communities (Electronic Communications Networks and Services) (Universal Service and Users' Rights) Regulations 2011 (S.I. 337 of 2011) (**Universal Service Regulations**).

²¹ Eir is required to, *inter alia*, satisfy any reasonable request to provide at a fixed location connection to a public communications network; ensure that such connection is capable of supporting voice, facsimile and data communications at data rates that are sufficient to permit functional internet access (**FIA**); and satisfy any reasonable request for the provision of a publicly available telephone service over the network which allows for originating and receiving national and international calls.

²² ComReg Decision D10/15, ComReg Document No. 15/144 entitled "Universal Service Obligation - Provision of Access at a Fixed Location", dated 31 December 2015, <http://www.comreg.ie/fileupload/publications/ComReg15144.pdf>

²³ ComReg Document No. 15/89 entitled "Universal Service Obligation - Provision of access at a fixed location", dated 7 August 2015, <http://www.comreg.ie/fileupload/publications/ComReg1589.pdf>

²⁴ ComReg Document No 15/124: *Universal Service Obligation – Access at a fixed location*, <http://www.comreg.ie/fileupload/publications/ComReg15124.pdf>

- 48 ComReg is unable to predict whether the provision of a VoIP service over the New Network would be more cost-effective than maintaining the copper network. That would be a matter for the USP. ComReg notes that an affordable VoIP service might commercially be provided over the New Network depending on the wholesale product set and pricing structure put in place for the New Network. It is a matter for DCENR whether the NBP contractual arrangements will result in this outcome.
- 49 The transition from a traditional voice service to a service offered on the New Network could be managed in a way that enables re-use of existing building wiring and equipment. (For instance the service could be provisioned by providing a voice gateway that can be connected to an existing in-house telephone socket using a standard cable). However if the USP implements a voice service on the New Network in a way that requires significant replacement of end-user cabling or equipment, this could have an implication for the affordability of the service and ComReg would need to consider how to address this.

3.2 Replacement voice services offered on the New Network must comply with the regulatory requirements for publicly available telephone services

- 50 Replacement voice services must comply with the applicable regulations on availability of services.²⁵ These require undertakings to ensure the fullest possible availability of PATS in the event of catastrophic network breakdown or unforeseen circumstances.²⁶ Also PATS providers must take all necessary measures to ensure uninterrupted access to emergency services.²⁷
- 51 Unlike traditional telephone services, VoIP services provided on the New Network are at risk of interruption from a failure of the electricity supply at the end user's premises. This risk could be mitigated by the use of battery back-up to ensure a supply of power to equipment such as network termination equipment, routers and VoIP gateways.

²⁵ In respect of the availability of services see Article 23 of the Universal Service Directive, transposed by Regulation 16 of the **Universal Service Regulations**.

²⁶ Regulation 16 (1) (a) "*Undertakings shall ensure the fullest possible availability of the publicly available telephone services provided over public communications networks in the event of catastrophic network breakdown or in cases of unforeseen circumstances*"; Regulation 16(1) (b) "*The Regulator may specify requirements to be complied with by undertakings for the purpose of subparagraph (a).*"

²⁷ Regulation 16 (2) of the Universal Service Regulations provides "*An undertaking providing a publicly available telephone service shall take all necessary measures to ensure uninterrupted access to emergency services.*"

- 52 ComReg proposes to consult on issues relating to battery back-up, including whether or not it should specify any requirements for the purpose of ensuring the fullest possible availability of PATS where access to the PATS involves equipment powered by the mains supply at the end-user's premises. Mindful of the principle of proportionality, ComReg does not envisage that any requirements related to battery back-up would have a material impact on the business case for new networks.
- 53 Access for disabled end-users to a PATS provided on the New Network should be equivalent to that provided to other end-users. Facilities such as text relay which are currently offered should continue to be provided and accessible terminal equipment will need to be available. Further, deployment of a PATS on the New Network should not reduce interoperability of services – such PATS must ensure that end users can call all other end users and access all publically available networks and services, irrespective of network, otherwise consumer choice and welfare would be reduced.

3.3 End-user rights should be upheld during the migration to the New Network

- 54 There may be customers who are content with traditional services provided on the copper network, and who have no desire to switch to the New Network at the time when Copper Switch-off is proposed. While, such customers do not have a right to insist that traditional services are provided to them indefinitely if there is adequate services on a New Network, they need to be treated reasonably and appropriately and in accordance with their consumer rights during any migration.
- 55 The notice period given to OAOs and Eir Retail before withdrawal of copper-based wholesale services²⁸ will enable them to develop replacement products and communicate with their customers before copper-based services are withdrawn.
- 56 Further, customers should be given adequate notice of withdrawal of services on the copper network, and time to arrange replacement services. It may be that a coordinated industry-led process would be a useful component of this communication. The communications should also properly explain to end-users any differences in the experience they can expect in using replacement services, including for instance any information ComReg considers is necessary, as a result of the consultation mentioned in paragraph 52, in respect of the operation of the replacement services during a power outage and appropriate information regarding battery back-up, as relevant. Additionally, communication regarding any changes required to customer premises equipment and related install and set-up details will need to be provided to customers so that they can make informed choices.

²⁸ As noted in section 2.1 of this call for input.

- 57 Importantly, end-users must be notified²⁹ about any changes to the contractual terms and conditions that would apply to the replacement services. Where copper-based services are withdrawn and replacement services are offered, this may involve a change in the customer's contract in which case customers will have the right to exit their contract without penalty and switch to another provider. Consumers must give informed consent to any new contracts, as relevant.³⁰
- 58 Large business customers often have much more demanding and complex requirements than residential customers and small businesses. They are also likely to be able, and want, to engage about future network changes to ensure that their business needs continue to be met. In this situation, close commercial engagement between the affected businesses and their communications providers will likely be the best approach.
- 59 In general there is no regulatory obligation for service providers to offer customers equivalent products on the New Network at the same or similar price but ComReg expects that service providers would normally wish to do this. However, where copper-based products have been provided under a USO, then there will be a requirement that a suitable alternative product is offered and that the customer is not required to bear any significant cost in order to continue to avail of the service.

²⁹ In accordance with Regulation 14 of the Universal Service Regulations.

³⁰ For example in accordance with the Universal Service Regulations, the European Union (Consumer Information, Cancellation and other Rights) Regulations 2013 (S.I. No. 484 of 2013) (**Consumer Information and Cancellation Regulations**).

- Q. 6 Do you agree with the universal service principles set out in relation to ensuring citizens' universal service rights during a transition from the existing copper access network to a New Network? Are there other principles in this respect that should be considered? Please set out clearly the reasons and evidence for your response.
- Q. 7 Do you agree with the general retail (end-user) principles that ComReg has identified for protecting consumer interests during any Copper Switch-off? Are there other principles in this respect that should be considered? Please set out clearly the reasons and evidence for your response.
- Q. 8 Do you agree with the likely areas of risk to protecting consumer interests that ComReg has identified that need to be addressed by RSPs during a transition away from the copper access network to a New Network?
- Q. 9 What challenges and benefits for consumers should ComReg take into account in forming any future opinion as to the appropriateness of universal service and general retail (end-user) principles during a transition from the copper access network to a New Network?
- Q. 10 What other important consumer interests are there?
- Q. 11 In assessing these issues what costs and benefits should ComReg take into account in forming any future opinion in relation to these matters?

4 Transition issues and notification requirements

60 The purpose of this chapter is to consider the various transition issues and notification procedures that may be relevant to any proposed Copper Switch-off.

61 In addition, this chapter considers the timeframes and notification requirements to be adhered to before Eir could implement any proposed Copper Switch-off. The context set out in paragraphs 16 and 17 would also apply to this section.

62 ComReg acknowledges that there is a tension between a desire to maximise the time available to industry participants (ultimately consumers and businesses) to adjust to new circumstances and a desire to minimise costs. For example, there may be merit in deferring a Copper Switch-off entirely until NBP roll-out is fully complete. However, this may entail inefficient dual running costs.

63 There are a number of both wholesale and retail elements to be considered in this regard, amongst others, including:

- The extent to which Eir has been able to provide assurance regarding the matters discussed in Chapter 2 and Chapter 3;
- The reference by which a public notification in relation to a proposed Copper Switch-off can be made;
- The duration of any notification periods in relation to a proposed Copper Switch-off;
- The exchange size, the addressable market in the exchange (e.g., PSTN and DSL penetration), the competitive structural presence of OAOs and their relative market share of the addressable market;
- Whether wholesale input services, such as, WLR or Bitstream that are provided over the existing copper access network should be maintained until all physical copper has been taken out of service; or new wholesale products suited to the network type chosen to replace PSTN are introduced alongside an appropriate process and migration path;
- The cost of migrating customers to a New Network;
- The availability of substitute wholesale input services capable of replicating retail services currently available over the existing copper access network;

- Suitable quality and non-discrimination oversight and governance arrangements;
- The geographic availability of the New Network and the timing of network roll-out and completion; and
- The identity of the winner(s) of the NBP.

64 This last point is important because if Eir were not to win all of the NBP tender further complexities would arise. Eir would not control the timing of either the availability of alternative wholesale services on the New Network or the geographic plan for roll-out of the New Network. Furthermore, the network topology of the winning bid(s) may not match Eir's, creating further complexity. It may be desirable for DCENR to include contractual terms in the NBP to ensure that any NBP winner(s) which do not have SMP will coordinate with Eir as far as possible in relation to the roll-out of the New Network.

65 There are many permutations and combinations to consider. For discussion purposes, we set out four broad options as follows:

- **Option A:** To require Eir to notify ComReg and industry of its plans for Copper Switch-off at the time of the award of the NBP contract(s) or as soon as possible thereafter i.e., prior to New Network deployment. Copper Switch-off could then take place according to a pre-specified planned timetable such that it would occur set periods of time after planned milestones were scheduled to be achieved. These milestones could be set by reference to the availability of new wholesale products alongside appropriate migration paths, NBP roll-out etc.

A likely disadvantage of this approach, regardless of who wins the NBP contract(s), will be the likely uncertainty at the time of Eir's notification as to precisely where and when the New Network will become available as well as the delivery of other milestones.

- **Option B:** One possibility to alleviate the disadvantage of Option A is to insist that the timeframe to be observed by Eir for notification of any proposed Copper Switch-off is the same as the planned NBP roll-out duration i.e., to accept notification of the proposed Copper Switch-off but delay its implementation until the NBP roll-out is complete. While this is a simple approach that provides certainty it may entail unnecessary cost given the operation in parallel of the existing copper access network and the New Network.

- **Option C:** A hybrid approach. One possibility would be to insist that Eir provides an overall, high level announcement of its plans for Copper Switch-off upfront, including indicative timelines of various milestones. A trial Copper Switch-off in a limited number of exchanges may be appropriate as well as an assessment on the impact on end-users and competition (to ensure that any unforeseen local issues can be addressed prior to any wider roll-out of Copper Switch-off). Wider roll-out of Copper Switch-off would be subject to more detailed exchange by exchange notifications which would also require an assessment on the impact on end-users and competition.

This option, or something like it, is likely to provide more flexibility and has the potential to reduce overall costs albeit at a cost of increased complexity. The discussion below focuses on this option.

- **Option D:** Voluntary agreements to be entered into by industry with respect to timing and conditions for Copper Switch-off without intervention by ComReg. While we are open to such approaches we believe the chances of achieving a satisfactory outcome are low.

66 ComReg's currently favoured option is Option C. As part of this option, ComReg envisages that any proposed Copper Switch-off should be adequately notified to ComReg and in two separate stages, as set out below:

- **Part A:** An overall adequate pre-notification to ComReg which includes Eir's high level plans for Copper Switch-off and identifies a trial area(s) for first deployment of Copper Switch-off (subject to ComReg's approval) in order to test and identify any necessary improvements to Eir's Copper Switch-off concept.

On receipt of a submission from Eir, ComReg would publish Eir's submission on ComReg's website and invite comments from industry and interested parties.

- **Part B:** Following deployment of Copper Switch-off in approved trial areas the ongoing pre-notification to ComReg of any proposed Copper Switch-off on an exchange-by-exchange basis.

These proposed notification requirements are discussed in turn below.

67 ComReg considers that Eir wholesale customers should have sufficient notice of any proposed Copper Switch-off to allow them to revise/adjust business plans, if necessary, and that RSPs including Eir should also adequately inform their customers (as set out in chapter 3).³¹

³¹ In particular in the context of Managed Voice over Internet Protocol, see paragraph 24.

- 68 ComReg is also conscious that there are other notification obligations which may be triggered as a result of the Copper Switch-off. These could include Regulation 7(4)³² of the Universal Service Regulations which deals with the disposal of a substantial part of the local access network of the universal service provider. These could also include Condition 18.2 and 18.3 of the General Authorisation which deal with Cessation of Service³³ and the notification obligation to ComReg and Consumers in this regard.
- 69 ComReg notes that it may be necessary to consult publicly at an appropriate stage in the process.

- Q. 12 Are there any additional options which you consider may be appropriate? Please provide sufficient detail on your identified option(s) including any associated timeframes.
- Q. 13 Do you agree with the proposed hybrid approach (Option C) in respect of Copper Switch-off in the NBP intervention area? Please set out clearly the reasons for your response.
- Q. 14 Do you consider that a similar proposed approach would be appropriate for the non-intervention area? Please set out clearly the reasons for your response.
- Q. 15 Should Eir not be successful in the NBP tendering process, what additional complexities may there be which may impact wholesale notifications to industry regarding a proposed Copper Switch-off? Please set out clearly the reasons for your response.

³² Regulation 7(4) Where an undertaking designated in accordance with paragraph (1) intends to dispose of a substantial part or all of its local access network assets to a separate legal entity under different ownership, it shall notify the Regulator at the time of the decision to dispose or 6 months prior to the transaction whichever is the earlier date. Such notification shall include details as to the effect of the intended transaction on the provision of access at a fixed location under Regulation 3(1) and of telephone services under Regulation 3(2). The Regulator may impose, amend or withdraw specific obligations on the separate legal entity.

³³ "Cessation of Service" means any Termination, Suspension, or Restriction, howsoever arising, of an Electronic Communications Network or of an Electronic Communications Service, or access thereto, provided by an Authorised Person to Consumers. It does not include the replacement of an Electronic Communications Network or an Electronic Communications Service by a functionally equivalent Electronic Communications Network or Electronic Communications Service.

4.1 Part A: Pre-notification of overall plans for Copper Switch-off and a specified number of trial exchanges

70 ComReg considers that, irrespective of the approach adopted with respect to Copper Switch-off (see the discussion above), that there should be no de-facto Copper Switch-off in any exchange until migration to the New Network has been trialled at an agreed number of exchanges. It will be important that wholesale operators and end-users understand the implications and have adequate opportunity to prepare for any migration process.

71 At the outset, following the award of the NBP contract(s), ComReg proposes that Eir should furnish to ComReg overall plans of how it intends to conduct the proposed Copper Switch-off and overall anticipated timelines for key stages of Copper Switch-off. In these high level plans, Eir could include, *inter alia*:

- Proposals for an initial 'Copper Switch-off trial' (**the trial**) setting out a specified number of exchanges where Copper Switch-off is to be trialled and a description of all relevant issues pertaining to the trial (including the exchange(s) size and the addressable market in each exchange (e.g., PSTN and DSL penetration);
- Where the New Network is controlled by Eir, a description of what wholesale products are to be used to meet retail and wholesale requirements;
- Where Eir does not control the New Network, what arrangements it has entered into to ensure the smooth migration of its own, RSPs' and OAOs' customers to the New Network and how its proposed Copper Switch-off programme is to be co-ordinated with NBP roll-out;
- Proposed migration paths and how these are to be effected (including bulk migrations) at both wholesale and retail level;
- What appropriate consumer protection measures (see Chapter 3) will be put in place, amongst other things adequate communication and notification to consumers;
- The processes which are, or will be put, in place to ensure compliance with the Wholesale Principles and Retail Principles (see Chapter 2 and Chapter 3 respectively) such that RSPs, OAOs and end-users are not unduly impacted;
- The information Eir proposes to be published with respect to proposed Copper Switch-off;
- A description of the impact on retail and wholesale customers of any legitimate price changes consequent to the transition to the New Network; and

- Confirmation that Eir would be in compliance with all regulatory obligations imposed upon it together with a detailed assessment as to how such compliance is to be ensured following the transition to the New Network.
- 72 ComReg would review the Eir plan and agree the specified exchanges to be included in the trial.
- 73 ComReg would not unreasonably withhold approval for the commencement of the trial; however the trial could not start without approval from ComReg.
- 74 Once ComReg's approval for the commencement of the trial in the specified exchanges has been granted, Eir would be required to give adequate notice to ComReg, industry and end-users before commencing the trial.
- 75 As part of the trial process, Eir would be obliged to maintain a log of issues/problems encountered during the trial. At the end of the trial period, Eir would be required to provide ComReg with a report on the log of those issues/problems and any proposals that have addressed/will address those issues/problems identified. ComReg might revert to open Eir's customers to obtain an evaluation of the trial and to assess whether any issues/problems that were encountered during the trial were appropriately resolved. The need for a more formal consultation process would be considered.
- 76 Once the trial period has been completed, ComReg may or may not grant approval for Eir to proceed to Part B of the process as described below.

Q. 16 Do you agree with ComReg's proposed pre-notification procedures for the Copper Switch-off trial in specified exchanges? What period of notice do you think is appropriate before trial commencement? What information should be provided as part of the notification process? Please provide reasons for your response.

Q. 17 Do you agree that it is appropriate for ComReg to insist on a limited trial in advance of a more general Copper Switch-off programme? Please set out clearly the reasons for your response.

4.2 Part B: Pre-notification of Copper Switch-off, post-trial, on an exchange-by-exchange basis

77 ComReg considers that Eir should also notify ComReg industry and end-users in advance of, and obtain ComReg's approval for, any proposed Copper Switch-off on an exchange-by-exchange basis. ComReg may consider as part of its determination: the exchange size, the addressable market in the exchange (e.g., PSTN and DSL penetration), the competitive structural presence of OAOs and their relative market share of the addressable market. ComReg's preliminary view as to the processes that shall be followed by Eir in this regard are set out below.

78 Once the Copper Switch-off in the specified trial exchanges (see Section 4.1) has been successfully completed and approval to proceed further granted by ComReg, Eir would be obliged to provide ComReg, industry and end-users adequate notice before Copper Switch-off could occur in any such exchange. We propose that Eir in the first instance would provide ComReg with a detailed description setting out its plans for Copper Switch-off at a specified exchange or group of exchanges, including for example:

- The details of the exchange(s) for the proposed Copper Switch-off;
- The proposed timelines (taking into account notice requirements as described above) ;
- Where the New Network is controlled by Eir, a description of what wholesale products are to be used to meet retail and wholesale requirements;
- Where Eir does not control the New Network, what arrangements it has entered into to ensure the smooth migration of its own, RSPs' and OAOs' customers to the New Network and how its proposed Copper Switch-off programme is to be co-ordinated with NBP roll-out;
- Proposed migration paths and how these are to be effected (including bulk migrations) at both wholesale and retail level;
- What appropriate consumer protection measures (see Chapter 3) will be put in place, amongst other things adequate communication and notification to consumers;
- The processes which are, or will be put, in place to ensure compliance with the Wholesale Principles and Retail Principles (see Chapter 2 and Chapter 3 respectively) such that RSPs, OAOs and end-users are not unduly impacted;
- The information Eir proposes to be published with respect to proposed Copper Switch-off;

- A description of the impact on retail and wholesale customers of any legitimate price changes consequent to the transition to the New Network;
- Confirmation that Eir will be in compliance with all regulatory obligations imposed upon it together with a detailed assessment as to how such is to be ensured following the transition to the New Network; and
- Where there are differences between information provided at this time and information provided under paragraph 71 above, a description of such differences and an explanation as to why they have arisen.

79 Upon receipt of the submission from Eir, ComReg would review it and would endeavour to communicate to Eir as soon as possible its decision whether to give approval to proceed with Copper Switch-off at the specified exchange(s). While ComReg would not unreasonably withhold approval for the exchange(s) being requested Copper Switch-off in the exchange(s) under review cannot start without approval from ComReg. ComReg would also consider whether consultation with stakeholders would be appropriate.

80 We propose that following approval from ComReg, Eir would be required to publish sufficiently in advance of Copper Switch-off in any exchange information adequate for the purposes of industry and end users.

Q. 18 Do you agree with the pre-notification procedures proposed for Copper Switch-off on an exchange-by-exchange basis? What notice periods do you think would be appropriate? What sequence should they follow? What information would industry and end users reasonably require? Please justify your response.

5 Submitting comments

- 81 All comments are welcome to the call for input, however it would make the task of analysing responses easier if comments were referenced to the relevant question number from this document.
- 82 The call for input will run from 6 January 2016 to 17 February 2016 during which time ComReg welcomes written comments on any of the issues raised.
- 83 In order to promote further openness and transparency ComReg will publish all respondents' submissions to this call for input, subject to the provisions of ComReg's guidelines on the treatment of confidential information in ComReg Document No. 05/24³⁴. 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.
- 84 Please submit all documents by email to wholesaleconsult@comreg.ie and by post to:

Ms. Claire Kelly
Commission for Communications Regulation
Irish Life Centre,
Abbey Street,
Dublin 1,
Ireland

Please Note:

- 85 ComReg appreciates that many of the issues raised in this call for input may require respondents to provide confidential information if their comments are to be meaningful.
- 86 As it is ComReg's policy to make all responses available on its website 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.

³⁴ ComReg Document No. 05/24 entitled "Guidelines on the treatment of confidential information – Final text of Guidelines" dated 22 March 2005
<http://www.comreg.ie/fileupload/publications/ComReg0524.pdf>

Questions

Section	Page
Q. 1 Do you think that the principles set out in this paper should be restricted to the NBP intervention area or should they have wider applicability? Please provide suitable detail.	14
Q. 2 Do you agree with the list of wholesale principles set out above in section 2.1 to 2.2? Are there any other principles in this respect that should be considered? Please set out clearly the reasons for your response.	14
Q. 3 In assessing these issues what costs and benefits should ComReg take into account in forming its opinion?.....	14
Q. 4 In your view, in the context of Copper Switch-off and were Eir not to bid for/win the NBP tender how should the costs of migrating current Open Eir wholesale customers be recovered?.....	14
Q. 5 Should Eir be required to reflect the wholesale principles in its commercial agreements with operators, or should the principles be used only as guidance for ComReg if and when Eir asks for permission to withdraw regulated wholesale access products offered on its copper network?	14
Q. 6 Do you agree with the universal service principles set out in relation to ensuring citizens' universal service rights during a transition from the existing copper access network to a New Network? Are there other principles in this respect that should be considered? Please set out clearly the reasons and evidence for your response.	20
Q. 7 Do you agree with the general retail (end-user) principles that ComReg has identified for protecting consumer interests during any Copper Switch-off? Are there other principles in this respect that should be considered? Please set out clearly the reasons and evidence for your response.	20
Q. 8 Do you agree with the likely areas of risk to protecting consumer interests that ComReg has identified that need to be addressed by RSPs during a transition away from the copper access network to a New Network?	20
Q. 9 What challenges and benefits for consumers should ComReg take into account in forming any future opinion as to the appropriateness of universal service and general retail (end-user) principles during a transition from the copper access network to a New Network?	20
Q. 10 What other important consumer interests are there?	20
Q. 11 In assessing these issues what costs and benefits should ComReg take into account in forming any future opinion in relation to these matters?	20

- Q. 12 Are there any additional options which you consider may be appropriate? Please provide sufficient detail on your identified option(s) including any associated timeframes. 24
- Q. 13 Do you agree with the proposed hybrid approach (Option C) in respect of Copper Switch-off in the NBP intervention area? Please set out clearly the reasons for your response. 24
- Q. 14 Do you consider that a similar proposed approach would be appropriate for the non-intervention area? Please set out clearly the reasons for your response. 24
- Q. 15 Should Eir not be successful in the NBP tendering process, what additional complexities may there be which may impact wholesale notifications to industry regarding a proposed Copper Switch-off? Please set out clearly the reasons for your response. 24
- Q. 16 Do you agree with ComReg's proposed pre-notification procedures for the Copper Switch-off trial in specified exchanges? What period of notice do you think is appropriate before trial commencement? What information should be provided as part of the notification process? Please provide reasons for your response. .. 26
- Q. 17 Do you agree that it is appropriate for ComReg to insist on a limited trial in advance of a more general Copper Switch-off programme? Please set out clearly the reasons for your response. 26
- Q. 18 Do you agree with the pre-notification procedures proposed for Copper Switch-off on an exchange-by-exchange basis? What notice periods do you think would be appropriate? What sequence should they follow? What information would industry and end users reasonably require? Please justify your response..... 28