



Commission for
Communications Regulation

Universal Service Obligation - Measures for disabled end-users; Text Relay Service

Response to Consultation and Decision

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An Coimisiún um Rialáil Cumarsáide

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1 Executive Summary

- 1 The Commission for Communications Regulation (“ComReg”) issued a decision D04/14 in respect of measures to ensure equivalence in access to, and choice for, disabled end-users of telecommunications services in May 2014¹, which placed obligations on all electronic communications service providers in relation to the provision of services and information for disabled end-users.
- 2 On 7 July 2014, ComReg issued decision D09/14² stipulating measures for disabled end-users to be fulfilled by the universal service provider only. Both decisions highlighted that further consultation was necessary in relation to certain measures, including Text Relay Services (“TRS”).
- 3 ComReg Decision D09/14 obliged Eircom, as the universal service provider, to provide the following:-

For users who are hearing and/or speech impaired

- A Text Relay Service (TRS) 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.
- 4 On 5 March 2015, ComReg issued a consultation ComReg 15/21: Electronic Communications: - Proposed Measures in relation to Text Relay Services and Text Rebate Scheme, the following was proposed;
 - All Undertakings providing a Publicly Available Telephone Service offer to disabled end-users a TRS that provides facilities for the receipt and translation of voice messages into text and the conveyance of that text to a recipient, and vice versa.
 - The TRS facility should be technology neutral.
 - The rebate scheme would not apply to new users as it is intended that the proposed new TRS will be technology neutral, which should allow Undertakings to offer telecommunication bundles and packages which

¹ Decision D04/14, contained in ComReg document 14/52 “Electronic Communications: Measures to ensure equivalence in access and choice for disabled end-users – Response to Consultation and Decision.”

² Decision D09/14, contained in ComReg document 14/70 “Universal Service Obligation: Measures for Disabled End-users – Response to Consultation and Decision”.

should not disadvantage a TRS end-user, as such the original basis for the rebate scheme will not be as relevant for new users of the proposed TRS.

- 5 A question raised in the consultation issued in March 2015 asked “Q8 *Do you agree with ComReg’s preliminary view that the obligation on Eircom, as the USP, to continue to provide a TRS should be extended pending introduction by all PATS Undertakings of the proposed TRS, if decided?*”
- 6 On 8 May 2015, ComReg received seven responses which were published 12 June 2015.³
- 7 On 12 June 2015, ComReg issued a Response to Consultation and Further Consultation (ComReg 15/53)⁴ which asked the following question:

Q1. Are there any issues, (in addition to the responses already received as set out in section 2 of 15/53) in respect of ComReg’s preliminary view that it is appropriate to extend the current US TRS obligations on Eircom for a period of up to 12 months?
- 8 Only one respondent, eircom Group (Eircom), responded to this further consultation.
- 9 ComReg has considered Eircom’s views and is now issuing this response to ComReg 15/53 and Decision.
- 10 Having received the Minister’s⁵ consent, ComReg’s Decision is to designate Eircom, in accordance with Regulation 6, 7 and 8 of the USR, to continue to provide the current TRS, until up to 30 June 2016.

³ <http://www.comreg.ie/fileupload/publications/ComReg1521s.pdf>

⁴ <http://www.comreg.ie/fileupload/publications/ComReg1553.pdf>

⁵ Minister; Department of Communications, Energy and Natural Resources.

2 Responses received to Q1 ComReg 15/53 regarding the extension of measure on Eircom

- 11 In its response to ComReg 15/53, Eircom made comments in relation to concerns it has regarding consultation ComReg 15/53, including relating to the issue date⁶, the short consultation period and the period for ComReg to consider responses.
- 12 ComReg acknowledges that there was a short consultation period for consultation ComReg 15/53, however, ComReg notes, that the specific question was already raised in ComReg 15/21, which was issued in March 2015, and that no extension requests were received.
- 13 ComReg also notes that should it have required further time to consider responses, it has options available to facilitate this.
- 14 ComReg also notes that the process is in accordance with the procedures set out in ComReg 11/34⁷.
- 15 ComReg consultation 15/53 asked the following question:
 - *Q.1 Are there any issues, (in addition to the responses already received as set out in section 2 (of 15/53)) in respect of ComReg's preliminary view that it is appropriate to extend the current US TRS obligations on Eircom for a period of up to 12 months?*

Respondent's Views

- 16 In May 2015, in Eircom's response to Q8 of ComReg 15/21, which related to the extension of the current universal service TRS obligations on Eircom, Eircom stated that it " . . . does not disagree with the proposed extension provided that eircom is allowed to recover the cost of providing the service in an equitable manner."
- 17 In June 2015, Eircom's response to ComReg 15/53, relating to the specific matter of an extension, sets out concerns in relation to funding and business planning.

⁶ The issue date on ComReg's website was 12th June 2015, as dated on the 1st page of the consultation document, not 11th June as referred to in paragraph 68 of the consultation.

⁷ Information Notice on ComReg Consultation Procedures
http://www.comreg.ie/fileupload/publications/ComReg_1134.pdf

- 18 In relation to USO funding, Eircom suggests that ComReg’s preliminary view that a cost of *“less than €50,000 on eircom as the USP would have no impact on other service providers”* presupposes the outcome of the universal funding application assessments.
- 19 Eircom also raises concerns about its business planning and investment in relation to TRS and suggest that in this respect ComReg is engaging in *piecemeal regulation.... not consistent with prudent business practice, operates against the principle of regulatory certainty and is not proportionate on ComReg’s part.”* In this respect, Eircom is seeking that ComReg makes its decision in respect of the future TRS as soon as possible.

ComReg’s View

- 20 ComReg notes that its assessment of any universal service funding applications is separate to this consultation process. It is ComReg’s view that, solely because of the low indicative monetary value, (€27,037 for 2013-2014)⁸, however, the impact of this level of monetary value in full or in part on Eircom or other service providers is negligible, this is reflected in the Final RIA.
- 21 ComReg in the process of analysing the responses to consultation ComReg 15/21 (excluding Q8) and plans to issue its response in Q3 2015. The technology and solutions available in respect of TRS are evolving and ComReg wants to ensure equivalence for disabled end users, while being proportionate. In addition, if a Decision is taken to extend a TRS obligation to all Service Providers, the timeframe for implementation could be less than 12 months. ComReg considers this to be a prudent and responsible approach.
- 22 ComReg remains of the view that it is appropriate to extend the current US TRS obligations on Eircom for a period of up to 12 months, from 8 July 2015.

ComReg’s position

- 23 Having considered Eircom’s response, ComReg’s position is that Eircom should be designated to continue to provide the current TRS services in accordance with Regulations 6 and 7 of the Universal Service Regulations⁹, as follows:-

For users who are hearing and/or speech impaired

For users who are hearing and/or speech impaired:

⁸ ComReg notes that this monetary value indicates the incremental cost to Eircom of providing the current TRS service for a further 12 months and is not an estimate of the cost of providing another TRS solution by Eircom or other undertakings.

⁹ S.I. No. 337 of 2011, the European Communities (Electronic Communications Networks and Services) (Universal Service and Users’ Rights) Regulations 2011.

- (i) 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.
- (ii) 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.

24 Therefore, ComReg is of the view that in order to maintain the current TRS service pending a decision on the future of TRS and any implementation period, if relevant, Eircom should be designated to continue to provide the current TRS obligations until up to 30 June 2016.

Draft Decision Instrument

25 In reply to Q1 in consultation 15/53, which asked respondents whether they had any other issues that they wanted to raise, Eircom stated that it took exception to the section of the draft Decision Instrument, which was headed “Continuation of Obligations” and which stated: *“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”*. Eircom stated that *“as D09/14 is a time bound Decision which will expire on 30 June 2015”*, so therefore it *“should be deleted as it is not lawful”*.

26 In this section of the Draft Decision Instrument, it clearly relates to *“all other obligations imposed on the USP by ComReg in relation to its Universal Service obligations”*, i.e. not to D09/14. The purpose of this section, which has been standard practice in all USO Decisions, is to make it clear that all other extant USO obligations are not affected by this particular Decision. Therefore, ComReg does not see any requirement to delete this section. However, to deal with Eircom’s concerns, ComReg has inserted an explicit reference to D09/14 in the Decision Instrument, to make it clear that that particular Decision Instrument is no longer extant.

27 Eircom has pointed out that the numbering of what appears to be a second section 3 of the draft Decision Instrument should be amended to become section 4; this amendment has been made in the final Decision Instrument.

3 Regulatory Impact Assessment (“RIA”)

3.1 Role of the RIA

- 28 A RIA is an analysis of the likely effect of a proposed new regulation or regulatory change. The RIA should help identify regulatory options, and should establish whether or not a proposed regulation is likely to have the desired impact. The RIA should also in certain cases suggest whether regulation is or is not appropriate. The RIA is a structured approach to the development of policy, and analyses the impact of regulatory options on different stakeholders.
- 29 The Commission’s approach to RIA is set out in the Guidelines published in August 2007, Commission Document No. 07/56 and 07/56a. In conducting this RIA, the Commission takes account of the RIA Guidelines,¹⁰ adopted under the Government’s Better Regulation programme.
- 30 Section 13 (1) of the Communications Regulation Act 2002, as amended, requires the Commission to comply with certain Ministerial Policy Directions. Policy Direction 6 of February 2003 requires that before deciding to impose regulatory obligations on undertakings the Commission must conduct a RIA in accordance with European and International best practice, and otherwise in accordance with measures that may be adopted under the Government’s Better Regulation programme. In conducting the RIA, the Commission also has regard to the fact that regulation by way of issuing decisions e.g. imposing obligations or specifying requirements can be quite different to regulation that arises by the enactment of primary or secondary legislation.
- 31 In conducting RIA, the Commission takes into account the six principles of Better Regulation. These are:
1. Necessity.
 2. Effectiveness.
 3. Proportionality.
 4. Transparency.
 5. Accountability.
 6. Consistency.

¹⁰ http://www.taoiseach.gov.ie/eng/Publications/Publications_Archive/Publications_2011/?pageNumber=2

- 32 To ensure that a RIA is proportionate and not overly burdensome, a common sense approach is taken. As decisions are likely to vary in terms of their impact, and if after initial investigation a decision appears to have relatively low impact, the Commission would expect to carry out a less exhaustive RIA. In determining the impacts of the various regulatory options, current best practice appears to recognise that full cost benefit analysis would only arise where it would be proportionate, or, in exceptional cases, where robust, detailed, and independently verifiable data is available. This approach will be adopted when necessary.
- 33 ComReg's RIA Guidelines set out, amongst other things, the circumstances in which ComReg considers that a RIA might be appropriate. In summary, ComReg will generally conduct a RIA in any process that might result in the imposition of a regulatory obligation (or the amendment of an existing regulatory obligation to a significant degree), or which might otherwise significantly impact on any relevant market or on any stakeholders or consumers
- 34 As set out in ComReg's RIA Guidelines, there are five steps to this RIA. These steps are:
- Step 1: Identify the policy issue and identify the objectives;
 - Step 2: Identify and describe the regulatory options;
 - Step 3: Determine the impacts on stakeholders;
 - Step 4: Determine the impacts on competition; and
 - Step 5: Assess the impacts and choose the best option.

3.2 Identify the policy issue and identify the objectives;

- 35 The Text Relay measures to be delivered by the USP, Eircom, contained in D09/14, expire at the end of June 2015.
- 36 This consultation proposes to continue the Text Relay measures currently delivered by the USP whilst ComReg is considering the responses to ComReg 15/21. The period of up to 12 months allows ComReg sufficient time to complete the process and for any future measures in respect of TRS, if decided, to be implemented.

3.3 Identify and describe the regulatory options;

- 37 There are currently two options open to ComReg at this time.

38 Option 1: Not to require Eircom, pursuant to Regulations 6 and 7 of the Regulations, to continue to provide a TRS service and Text Rebate scheme to disabled end-users.

39 Option 2: To specify that Eircom should be required, pursuant to Regulations 6 and 7 of the Regulations, to continue to provide TRS measures for disabled end-users from 8 July 2015 for up to 12 months.

3.4 Determine the impacts on stakeholders;

40 Should ComReg not require Eircom to continue to provide these measures, it could create detriment for those disabled end-users that rely on the Text Relay Service and the Text Rebate scheme for their fixed service communications. Details of statistics regarding usage, as per Table 1 below, indicate that there are disabled end-users using these facilities.

Text Relay Service	TRS Facilities	Details	2013	2014
For users that are hearing and / or speech impaired	National relay service (Minicom) – TRS Service	Voice to text calls per year	339	189
			average call length in seconds - 55	average call length in seconds - 56
		Text to voice calls year	1,713	1,262
			average call length in seconds - 298	average call length in seconds - 408
	Rebate Scheme	NAD ¹¹ Registered Customers	75	58
		NAD Rebate paid	€3,510.61	€2,976.05

Table 1: Take Up and Usage of TRS¹²

¹¹ NAD (National Association of the Deaf) rebate scheme. This provides text telephone users (minicom users) with a rebate of up to 70% on text phone call charges per bill.

¹² USO Measures for disabled end-users; Take up and usage statistics. ComReg Doc 15/22 <http://www.comreg.ie/fileupload/publications/ComReg1522.pdf>

- 41 In respect of any impact on Eircom of the decision, ComReg notes that the net cost claimed by Eircom in relation to TRS for 2013-2014 was €27,037. Solely because of the low indicative monetary value, (€27,037 for 2013-2014)¹³, ComReg is of the view that the impact of this amount in full or in part on Eircom or other service providers is negligible.
- 42 Publishing the previous consultation (ComReg 15/21) along with the responses (ComReg 15/21s) already received, provided all stakeholders with the opportunity to submit additional views in relation to the proposal to require Eircom to continue to offer the service for up to one year.

3.5 Determine the impacts on competition;

- 43 ComReg is of the view that extending the obligation on Eircom to continue to provide the current TRS has no negative impact on competition, as currently there are a low number of users of the service. Additionally, ComReg is extending of the obligation in order to give comprehensive consideration to the responses of ComReg consultation 15/21, which may lead to the enhancing competition by facilitating choice and switching by deaf and hard of hearing end-users, if all PATs providers are obliged to provide TRS in the future.
- 44 Finally, in light of the fact that the net cost claimed by Eircom relating to TRS for 2013-2014 was €27,037¹³, ComReg is of the view that there is negligible impact (due to the low indicative cost), of designating Eircom, on Eircom or on other service providers, including in terms of funding of any net cost, as relevant.

3.6 Assess the impacts and choose the best option

- 45 In light of the possible issues arising if there was no TRS provider at this time, ComReg is of the view that it is most appropriate that Eircom continues to be designated to provide the TRS measures for a period of up to 12 months (option 2).

¹³ ComReg notes that this monetary value indicates the incremental cost to Eircom of providing the current TRS service for a further 12 months and is not an estimate of the cost of providing another TRS solution by Eircom or other undertakings.

4 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 Regulation Act 2002;
- ii. Pursuant 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”);
- iii. Having regard to Regulations 6 and 8 of the Regulations;
- iv. Having taken account of the representations of interested parties submitted in response to ComReg document No. 15/21 and 15/53.
- v. Having regard to the analysis and reasoning set out in ComReg document 15/69.

2. DESIGNATION OF UNIVERSAL SERVICE PROVIDER

Specific Measures for Disabled Users

In accordance with Regulation 7 of the Regulations, Eircom Limited and its subsidiaries, and any undertaking which it owns or controls and undertaking which owns or controls it and its successors and assigns (“Eircom”) is hereby designated as the USP for the purpose of complying with the following obligations, and as provided for by Regulation 6 of the Regulations, the USP shall therefore provide the following specific services:

For users who are hearing and/or speech impaired:

- (i) 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.¹⁴
- (ii) 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.

3. GEOGRAPHICALLY AVERAGED PRICING

¹⁴ Vice versa means providing facilities for the receipt and translation of text from textphones into voice messages and the conveyance of those voice messages to customers of any operator.

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

4. CONTINUATION OF COMREG DECISIONS

All other decisions imposed by ComReg in relation to universal service obligations (other than Decision D09/14), which were immediately in force prior to the effective date of this Decision and Decision Instrument, shall continue to have full force and effect.

5. EFFECTIVE DATE AND DURATION

This Decision and Decision Instrument is effective from 8 July 2015 until 30 June 2016.

Jeremy Godfrey
CHAIRPERSON
THE COMMISSION FOR COMMUNICATIONS REGULATION
THE 8 DAY OF JULY 2015

Annex 1 Legal Basis

Universal Service Requirements

A 1.1 Current US obligations in relation to text relay services are set out in Decision D09/14¹⁵, which applies from 7 July 2014 until 30 June 2015.

A 1.2 Regulation 7 of the Regulations, provides that ComReg may designate an undertaking, for such period as may be specified, to comply with a universal service obligation.

A 1.3 Regulation 6 of the Regulations, provides that ComReg shall, with the consent of the Minister, specify obligations applicable to designated undertakings for the purpose of ensuring that disabled end-users can enjoy access to and affordability of certain services.

A 1.4 Regulation 8 of the Regulations provides that ComReg may, with the consent of the Minister, require an undertaking designated under Regulation 7 to apply common tariffs including geographical averaging throughout the State.

¹⁵ Contained in ComReg document 14/70 “Universal Service Obligation – Measures for Disabled End-Users – Response to Consultation and Decision”.