



Commission for
Communications Regulation

Universal Service Obligation

Provision of access at a fixed location

Response to Consultation and Decision

Reference: ComReg 15/144 D10/15

Version: Final

Date: 31/12/2015

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1. Executive Summary

- 1 The Universal Service Directive requires that Member States ensure that certain services are made available at an affordable price and at the quality specified to all end users in their territory, irrespective of geographic location. Such services include (among others) the provision of Access at a Fixed Location (“AFL”). In Ireland, the Commission for Communications Regulation (“ComReg”) has the responsibility to ensure that universal service is implemented and Eircom Ltd (“Eir”) is currently designated, until 31 December 2015, as the Universal Service Provider (“USP”) to provide AFL.
- 2 On 7 August 2015, ComReg published a consultation (ComReg 15/89)¹ and consultants’ report² (“the 2015 consultation”) and sought the views of stakeholders on the future need for and the proposed evolution of the Universal Service Obligations (“USO”) in relation to AFL post-December 2015. Following a request, an extension was granted until the 30 September 2015³ for respondents to make their submissions.
- 3 ComReg’s preliminary view, in that consultation, is that some form of AFL USO is required from 1 January 2016 in order for the requirements of the Universal Service Directive to continue to be fulfilled in Ireland. ComReg proposed a period of 5 to 7 years and that specific obligations in respect of AFL would need to be in place for that period. ComReg also proposed that the specific obligations would need to be reviewed, in order to ensure that they are appropriately constructed in light of the current market and its anticipated future evolution, the National Broadband Plan (NBP) and other developments which can be (reasonably) foreseen during the proposed designation period.
- 4 ComReg is currently considering the views of the respondents to Consultation 15/89 and is also preparing a further consultation regarding the need for some kind of AFL USO. This will seek views on amongst other things, the detailed requirements of any AFL USO that might be imposed, the amendment or lapse of obligations, criteria for reasonable requests, affordability measures, quality of service targets and specifications in respect of functional internet access and terms and conditions. In preparation for this further consultation, ComReg is currently collecting additional, necessary data.

¹ ComReg Document No 15/89 - Universal Service Obligation - provision of access at a fixed location, “Consultation 15/89.”

² ComReg Document No 15/89a - TERA - Forward looking review of future AFL element of USO in Ireland, “TERA Report.”

³ ComReg Document No 15/95 - ComReg grants an extension to the consultation period for ComReg Document No 15/89.

- 5 In light of the above, ComReg requires an extended period of time, beyond December 2015, to consider further complex issues (outlined in paragraph 43), to prepare and issue its further consultation, to allow time for submissions, and subsequently, to consider those submissions. Following this, ComReg intends to publish its final Decision.
- 6 However, based on the preliminary view in Consultation 15/89 that some form of AFL USO continues to be required from 1 January 2016, and in the absence of a final Decision on this matter relating to the future period, ComReg proposed that the current obligations in respect of AFL USO on Eir should continue to be applied for a period of up to 6 months, allowing time for a Decision to be made on the future provision of AFL USO.
- 7 ComReg published a consultation (ComReg 15/124) which sought the views of stakeholders on its proposal to continue to apply the current obligations in respect of AFL⁴ on Eir for a period of up to 6 months, commencing 1 January 2016 (pending a further consultation and Decision on the future provision of AFL USO).
- 8 ComReg received four responses to the consultation as below:

Respondents
Alto - Alternative operators in the communications market
Eir - Eircom Limited and Meteor Mobile Communications Limited
Sky - Sky Ireland
Vodafone - Vodafone Ireland

- 9 ComReg has now considered and fully taken account of all respondents' views, and has decided to continue to apply the current obligations in respect of AFL on Eir for a period of up to 6 months commencing 1 January 2016.
- 10 The consultation issues, respondents' views and ComReg's position is detailed in section 4.

⁴ As established in Decision D10/14 - ComReg Document 14/71 and D10/14 "The provision of telephony services under the Universal Service Obligation, Access at a fixed location", 7th July 2014.

2. Introduction

- 11 The Universal Service Directive⁵ requires that Member States ensure that certain services are made available at an affordable price and at the quality specified to all end users in their territory, irrespective of geographic location.⁶ Such services include (among others) the provision of AFL.⁷
- 12 The Universal Service Regulations⁸, which transpose the Universal Service Directive, place primary responsibility on ComReg for safeguarding the provision of the universal services, including AFL. In summary, the Universal Service Regulations require that ComReg must ensure that customers throughout Ireland have access to an electronic communications network and voice services at a fixed location and that these components must be affordable and delivered to a specified quality.
- 13 In July 2014, Decision D10/14⁹ designated Eircom Limited (“Eir”) as the Universal Service Provider (“USP”) for AFL for a period of 18 months. The existing AFL USO remains in place until 31 December 2015. ComReg was, also at that time, of the preliminary view that following this 18 month period, there would likely remain a requirement for AFL USO and hence, a likely requirement to continue to designate a USP to deliver a USO over the short to medium term. However, ComReg committed to a review of the scope of the AFL USO in Ireland as soon as practicable, in order to determine the need, if any, for an AFL USO beyond 2015.
- 14 ComReg is now engaged in a detailed review of the AFL obligation and published a consultation on the matter in August 2015 (ComReg 15/89). ComReg is now reviewing and taking into account the responses that it received to that consultation and gathering additional, necessary data.
- 15 In order to consider the responses, gather the necessary information and properly address all relevant aspects, ComReg requires an extended period of time, after December 2015, to prepare and issue its further consultation and allow time for receipt of responses and to consider them and then to publish a final Decision.

⁵ Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users’ rights relating to electronic communications networks and services, as amended by Directive 2009/136/EC of 25 November 2009 (the “Universal Service Directive”).

⁶ Article 3.1, Universal Service Directive.

⁷ Article 4, Universal Service Directive.

⁸ The European Communities (Electronic Communications Networks and Services) (Universal Service and Users’ Rights) Regulations 2011 (S.I. No. 337 of 2011) (the “Universal Service Regulations”).

⁹ ComReg Document No 14/71 and D10/14 “The provision of telephony services under the Universal Service Obligation, Access at a fixed location”, 7th July 2014, “Decision D10/14.”

- 16 ComReg considers that in light of its role to ensure that consumers and end-users throughout the state receive affordable AFL at an acceptable quality, the evidence supporting a complete withdrawal of the existing AFL USOs would need to be incapable of being disputed.
- 17 Additionally, given the status of the current review, ComReg considers that it would be premature to propose to alter or remove specific obligations at this precise time.
- 18 ComReg considers therefore that the most appropriate course of action is to extend the current designation and obligations on Eir for 6 months, until the future provision of AFL USO is completed, i.e. 1 January 2016 - 30 June 2016.

3. Background

- 19 ComReg is responsible for the regulation of the Irish electronic communications sector, in accordance with national¹⁰ and EU legislation. One of ComReg's functions is to determine the need for and scope of the USOs for the Irish market and to decide which undertaking(s), if any, should be designated as the USP for particular USO(s).
- 20 The scope of universal service is defined by the Universal Service Directive. The USO scope was designed to ensure that everyone, irrespective of location, social standing or income can access basic telecommunications services at a fixed location. These are basic services that are considered essential for everyone.
- 21 In accordance with Regulation 3 of the Universal Service Regulations, an undertaking designated to provide AFL shall:
- satisfy any reasonable request to provide at a fixed location connection to a public communications network;
 - 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; and
 - ensure that the connection is capable of supporting voice, facsimile and data communications at data rates that are sufficient to permit Functional Internet Access (FIA), bearing in mind the technology used by the majority of subscribers and technological feasibility.¹¹
- 22 The Universal Service Regulations also provide that such services must be affordable and attain the required quality of service.
- 23 The Universal Service Regulations further provide that ComReg, with the consent of the Minister for Communications, Energy and Natural Resources (the "Minister") may specify requirements to be complied with by the designated USP in relation to the reasonableness of requests for connection and access, terms and conditions, FIA¹² and affordability measures including Geographic Average Pricing, "GAP."¹³

¹⁰ Under the Communications Regulation Act 2002, as amended.

¹¹ Regulation 3(1) - (3), Universal Service Regulations.

¹² Regulation 3(5) (b) of the Universal Service Regulations.

¹³ Regulation 8(2) – (3) of the Universal Service Regulations.

2.1 Current AFL USO

- 24 As provided for By ComReg Decision D10/14, Eir is currently designated as the USP for AFL for a period of 18 months, until 31 December 2015, in relation to certain specific USOs (“the 2014 designation”). Eir is required to satisfy any reasonable request to provide a connection to a public communications network at a fixed location, and access to services over the connection such as voice and Fixed Internet Access (“FIA”).
- 25 In addition, ComReg has previously specified obligations in respect of requests for connection and access and FIA in Decision D9/05.¹⁴ In that Decision, ComReg introduced a threshold for determining whether a request for access should be considered “reasonable” (the Reasonable Access Threshold (“RAT”)) and also set a minimum target data rate for FIA (in relation to narrowband Internet only). ComReg has also previously specified Quality of Service (“QoS”) performance targets in relation to the provision of specific elements of the AFL USO in Decision D02/08¹⁵ and established performance improvement programmes (“PIPs”) with associated penalties.¹⁶
- 26 ComReg Decision D10/14 requires Eir, as the USP, to continue to comply with the obligations previously specified in ComReg Decision D09/05 in respect of the obligations relating to RAT and FIA. Decision D10/14 also imposes on Eir obligations in respect of Geographically Averaged Pricing (“GAP”) and QoS targets, established by Decision D02/08 for the designation period.
- 27 Eircom as the USP is required to provide AFL¹⁷ up to 31 December 2015 and must satisfy any reasonable request to provide AFL to a public communications network.
- 28 The current scope of the USO AFL, is set out in the 2014 under ComReg Decision D10/14 is as follows:
- Obligation to satisfy any reasonable request to provide at a fixed location connections to the public telephone network, capable of allowing end-users to make and receive local, national and international telephone calls, facsimile communications and data communications, at data rates that are sufficient to permit FIA;

¹⁴ ComReg Document 05/70 and D9/05, “Universal Service Requirements, Provision of access at a fixed location – connections to public telephone network and provision of functional Internet access”, 7th September 2005.

¹⁵ ComReg document 08/37 and D02/08 “Decision Notice – Response to Consultation on Eircom’s Universal Service Obligation- Quality of Service Performance Targets”, 28th May 2008.

¹⁶ ComReg also established a “Performance Improvement Programme” (PIP) which sets out the PIP targets and the financial consequences of a breach of annual performance improvement targets. The current “PIP3” agreement relates to the period July 2014 – December 2015. See <http://www.comreg.ie/fileupload/publications/ComReg14129.pdf>

¹⁷ ComReg Document No 14/71 and D10/14 “The provision of telephony services under the Universal Service Obligation, Access at a fixed location”, 7th July 2014, Decision D10/14.

- Obligation to satisfy any reasonable request to provide at a fixed location access to publicly available telephone services;
 - Obligation to meet QoS performance targets for the delivery of the AFL USO;
 - Obligation to apply measures to ensure affordability of tariffs imposed for AFL, including GAP, i.e. where telephone charges (including line rental) are the same for all subscribers irrespective of their geographical location; and
 - Obligation to apply measures to ensure that subscribers are in a position to monitor and control expenditure.
- 29 When it consulted on ComReg Decision D10/14, ComReg suggested that in the longer term the market might deliver universal voice access at a fixed location in its own right, without the need for a USP. However, ComReg was of the preliminary view that there would likely remain a requirement for an AFL USO and possibly, a requirement to designate a USP to deliver same over the short to medium term (three to five years) beyond 2015.

2.2 ComReg 14/48 Part II

- 30 In ComReg Document 14/48 ComReg consulted on the need for an AFL USO and sought views on how it could ensure that the universal service for AFL was appropriately implemented. This consultation had two parts. The first was to seek views on the need to sustain a USO for AFL for a period of 12 or 18 months from July 1st 2014, and the second on the future scope and designation of the AFL USO for a period of 3 to 5 years after the designation period.
- 31 ComReg indicated that if an AFL USO was considered necessary after the designation period, it may be appropriate for it to review the future scope of the AFL USO in Ireland in light of competitive, technological and service changes that have taken place since the previous designation.
- 32 Therefore Part II of ComReg Document 14/48 sought views on:
- ComReg's preliminary views in respect of the future scope of the obligations associated with the AFL USO in the period after the 2014 designation, including in relation to FIA and the RAT, QoS and GAP, as well as possible geographic aspects;
 - ComReg's preliminary views in respect of measures which seek to sustain affordability;
 - ComReg's preliminary views in respect of measures that assist with control of expenditure and terms and conditions to be provided by the USP; and
 - Expressions of interest in being the USP(s) for services with the scope of AFL USO in the period after the 2014 designation.

Four responses were received by 8th August 2014.¹⁸ The views expressed in response to Part II of ComReg Document 14/48 have been taken into consideration by ComReg in coming to its preliminary views as set out in the 2015 Consultation. Non-confidential submissions received by ComReg were published in ComReg Document 14/48s¹⁹ and the main relevant points were set out in the 2015 Consultation.

2.3 The 2015 Consultation

- 33 Consultation 15/89, issued on 7 August 2015, sought views on whether or not there is a continued need for an AFL USO to cover the whole of Ireland, or only to cover certain geographic areas in Ireland after 31 December 2015 and subsequently, if an AFL USO is deemed necessary in the whole or parts of Ireland, and the possible scope of the obligation. If an AFL USO is deemed necessary, it is conceivable that in the context of any designation at national level that the specification of obligations to be placed on the USP(s) for the provision of the AFL USO could address concerns at both geographic and/or national levels as they arise. This consultation also sought views on the possible impact in relation to the various components of AFL if there was no USO. It presented what the possible outcomes might be and considered whether such outcomes would meet or fall short of, the requirements to ensure AFL, as set out in the Universal Service Regulations.
- 34 Consultation 15/89 also considered possible forward looking requirements for the AFL element of the USO and a roadmap for its evolution, including, as relevant, in terms of QoS, affordability (including GAP), Reasonable Access Requests (including RAT) and FIA, having regard to, among others, the implication of the Government's NBP and the geographic availability of alternative platforms for the delivery of the USO on the continued requirement for the AFL element of the USO. It also considered both supply and demand side market trends.
- 35 In the national context, the 2015 Consultation also considered the Government initiatives in respect of broadband availability, in particular the NBP, which is designed to address the Government's target to increase high speed broadband access, coverage and speeds throughout Ireland.

¹⁸ Responses were received from Alternative Operators in the Communications Market ("ALTO"), Eircom, Magnet Networks Limited ("Magnet") and UPC Ireland ("UPC").

¹⁹ ComReg Document No 14/48s, "USO Access at a Fixed Location - Submissions to Part 2 of 14/48" 24th March 2015.

- 36 Prior to the publication of the 2015 Consultation, ComReg issued a number of information requests during 2014/15, to collect information on AFL and its components to assist with this review. ComReg has undertaken a detailed review of this data, and other information available to it, to arrive at its preliminary view as to whether there is a continued need for an AFL USO in the whole of Ireland or in certain geographic areas.
- 37 ComReg instructed independent expert consultants, TERA, to carry out additional specific analyses and review of the evidence, which is presented in the form of a report, (ComReg 15/89a) published at the same time.
- 38 The TERA Report studied the latest access services market evolutions, taking into account current market trends and likely evolutions in the coming 5 years. These include among other things, intensification of competition, deployment of Fibre to the Home ("FTTH") and the NBP. The TERA Report also assessed the possible consequences if AFL USOs were to be ceased. In doing so, it considered the AFL USO context in Ireland and reported on the implementation of AFL USO in different European countries. Finally, the TERA Report comes to a conclusion on the continued need for an AFL USO in Ireland.
- 39 ComReg 15/89, together with the TERA Report, therefore contains a detailed review of the AFL USO requirement, to assist ComReg in ascertaining if there may be a need for an AFL USO in the whole of Ireland or in certain geographic areas for a period post 31 December 2015.
- 40 If the outcome of this consultation is that there is a need for any kind of AFL USO in the whole or parts of Ireland for a period after 31 December 2015, ComReg will issue further consultations which would serve to drill down into the various components of the AFL USO that may be required and their proposed scope; including reasonable requests for connection and access, affordability, FIA and QoS.
- 41 The 2015 Consultation sought views on amongst other issues, the following:
- Consumer trends discussed in the consultation and any other relevant factors which ComReg has not considered.
 - Supply side trends discussed in the consultation and any other relevant factors which ComReg has not considered.
 - If any AFL USO continues to be required.
 - Factors which should be considered in respect of EU aspects and assessment of technologies suitable for delivering AFL.
 - Whether any designation should be for the entire State.
 - The duration of any AFL USO designation.

- 42 ComReg received five responses to ComReg 15/89.²⁰ ComReg is continuing to consider the responses received and prepare its preliminary views for further consultation.
- 43 ComReg has to consider and is preparing its preliminary views on a number of complex issues including:
- How to take account of the probable long-term replacement of current generation access networks with new networks, and the consequent risk that investments in those current generation networks could have only a short-term benefit, while at the same time ensuring that end user rights in relation to access at a fixed location are upheld.
 - Whether the reasonable access request test(s) should be extended to consider whether a USP should not be required to fulfil a request for access AFL if suitable affordable alternative services were available at that location, such services potentially including services available from mobile operators, other fixed operators and/or an operator contracted under the NBP.
 - What requirements should be specified in relation to FIA in light of current internet usage, available technology and in the context of the deployment of next generation access networks on a commercial basis and as a result of the NBP.
 - What the appropriate affordability measures are, considering changes in networks and end-user usage patterns in respect of the set of universal services.
 - What the appropriate quality of service levels are for current generation networks in the context of the deployment of next generation access networks on a commercial basis and as a result of the NBP.

²⁰ Responses were received from Alternative Operators in the Communications Market (“ALTO”), Eircom (“Eir”), BT, UPC Ireland (“UPC”) and Vodafone.

2.4 Other Related Workstreams

- 44 On 4 December 2014, ComReg published its Call for Input on regulatory implications of the NBP²¹. A Response to this Call for Input²² document was published on 18 June 2015 which addressed requests for clarification raised by respondents, including in respect of USO matters. 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. However, ComReg does have a role in the context of the European Commission's State Aid Guidelines.²³
- 45 ComReg is currently preparing a preliminary consultation/call for input regarding considerations in respect of transition from Eir's copper network, which it plans to issue in January 2016.
- 46 ComReg has already consulted on and in some cases issued Decisions on measures for disabled end-users.²⁴ ²⁵ Other aspects of the USO such as payphones²⁶ and subscriber directories²⁷ have been the subject of separate consultation processes. These aspects are not being considered in this workstream.
- 47 There are other aspects that USPs may be required to provide, including itemised billing, however, ComReg has already imposed obligations on all undertakings in respect of Itemised Billing and Billing Mediums.²⁸ Therefore, these aspects are not being considered in this workstream.

²¹ ComReg Document No 14/126 "National Broadband Plan – Call for Input on Regulatory Implications", 4th December 2014.

²² ComReg Document No 15/57 "National Broadband Plan –Response to Call for Input", 18th June 2015

²³ *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 ("State Aid Guidelines").

²⁴ ComReg Document No 15/117 Response to Consultation: Universal Service Obligation - Measures for disabled end-users: Terminal Equipment, 4 November 2015.

²⁵ ComReg Document No 15/69 and D04/15, "Universal Service Obligation Measures for disabled end-users; Text Relay Service", 8th July 2015 and ComReg Document No 15/143 and D09/15, Provision of Access to a Text Relay Service, 30 December 2015

<http://www.comreg.ie/fileupload/publications/ComReg15143.pdf>

²⁶ ComReg Document No 14/69 and D08/14, "Provision of Public Payphones, Universal Service Scope and Designation", 7th July 2014.

²⁷ ComReg Document No14/68 and D07/14, "Provision of Directory of Subscribers Universal Service Scope and Designation", 7th July 2014.

²⁸ ComReg Document No 13/52 and D08/13, "Consumer Bills and Billing Mediums", 6th June 2013.

- 48 Additionally, pursuant to Decision D12/14, Eircom is subject to a Retail Price Cap (“RPC”) which relates to consumers’ standalone fixed voice access service. Under this RPC, Eircom is not allowed to increase line rental prices by more than the rate of inflation. This obligation is not however, a USO, but is the result of a market definition and analysis exercise, and the finding of significant market power in the market for retail fixed voice access.

2.5 Principle of Technological Neutrality

- 49 ComReg notes that the requirement in the Universal Service Directive and Universal Service Regulations (which transpose the Universal Service Directive) is to provide AFL. The manner in which this is achieved is not prescribed by law and the principle of technological neutrality allows the USP to choose the optimum method of providing access and service. The requirement is for all elements of the USO, i.e. capability for voice, fax and data, to be provided subject to the certain specified targets.
- 50 The Universal Service Directive outlines that Member States should not impose constraints on the technical means by which AFL is provided, in particular allowing for the use of wired or wireless technologies, nor should they impose any constraints on which operator(s) provides AFL.²⁹
- 51 Bearing in mind the technological neutrality requirement provided in the Universal Service Directive, a recent judgment of the European Court of Justice (“ECJ”) on 11th June 2015 (in relation to a request for a preliminary ruling by the Belgian courts)³⁰ states that the term “at fixed location” should be understood as meaning the opposite to “mobile”. The background to the case is that two operators challenged Belgian legislation requiring operators to contribute to the financing of the net cost of services arising from the provision of mobile communication services and internet subscriptions at specific tariff conditions. Following a reference from the national courts, the ECJ confirmed that Article 9 (affordability of tariffs)³¹ and Article 13 (financing of USOs)³² of the Universal Services Directive apply only to the minimum set of universal services specified in the Universal Service Directive.

²⁹ Recital 8 to the Universal Service Directive.

³⁰ Case C-1/14 - Request for a preliminary ruling in the proceedings *Base Company NV and Mobistar NV v Ministerraad*, 11th June 2015.

³¹ Article 9 of the Universal Service Directive, in particular Article 9(2), provides *inter alia* that: “Member States may, in the light of national conditions, require that designated undertakings provide to consumers tariff options or packages which depart from those provided under normal commercial conditions...”

³² Article 13 of the Universal Service Directive, in particular Article 13(1), provides *inter alia* that: “Where, on the basis of the net cost calculation referred to in Article 12, national regulatory authorities find that an undertaking is subject to an unfair burden, Member States shall, upon request from a designated undertaking, decide (a) to introduce a mechanism to compensate that undertaking for the determined net costs under transparent conditions from public funds and/or (b) to share the net cost of universal service obligations between providers of electronic communications networks and services.”

- 52 ComReg considers it important to note that the ECJ's judgment related to the application of Articles 9 and 13 of the Universal Service Directive, and not to the meaning of AFL under Article 4 of the Universal Service Directive. Further, the judgement considered what constitutes a universal service, rather than what technology is capable of providing a universal service. ComReg's view is that the ECJ's statement that AFL means the opposite to mobile is not inconsistent with ComReg's previous position that the obligation to provide AFL does not have to be provided using a specific technology.
- 53 Additionally, ComReg has previously indicated that in principle, a managed Voice over Internet Protocol ("VoIP") service over a high speed quality network could satisfy the requirements of a voice AFL USO, if provided at an affordable price.³³ This is because the VoIP service will provide access at a fixed location allowing for voice and data services.

2.6 Call Barring

- 54 Currently Eir, as the USP, is the only undertaking obliged to provide call barring facilities to its subscribers. ComReg has issued a consultation on Selective Call Barring³⁴ obligations that would apply to all undertakings. The response date for a further consultation on Selective Call Barring was planned to be January 2016, however this has been extended to February following a request, and ComReg plans to issue a response to consultation and Decision in Q1 2016. Therefore, this Decision is also continuing the existing call barring obligations, imposed by ComReg Decision D10/14 on Eir, for a period of up to 6 months.

2.7 Costing and Financing of USOs

- 55 ComReg notes the provision of a universal service may result in the USP(s) providing designated services at a net cost. ComReg notes that the Universal Service Regulations³⁵ allow the USP to seek funding for the net costs of meeting the USO, if it is determined by ComReg that any net cost represents an unfair burden on the USP. To the extent that it does represent an unfair burden, the net cost of the USO would be apportioned among providers of electronic communications networks and services.³⁶

³³ ComReg Document No 15/57- National Broadband Plan, Response to Call for Input <http://www.comreg.ie/fileupload/publications/ComReg1557.pdf>

³⁴ ComReg Document No 15/31 "Preliminary Consultation- Selective Call Barring", 27th March 2015

³⁵ Regulation 11.

³⁶ Regulation 12 of the Universal Service Regulations.

- 56 The USO designation method(s) adopted by ComReg 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.³⁷ In this regard, Decision D04/11³⁸ illustrates how the net cost for all USOs, will be calculated and how the existence of an unfair burden will be determined. In the event a net cost is deemed to be an unfair burden, there would be a requirement for an industry sharing mechanism.
- 57 ComReg has completed its assessment of Eir's application for funding for the 2009-2010 period.³⁹ ComReg is currently assessing Eir's applications for funding for the periods 2010-2011⁴⁰, 2011-2012⁴¹, 2012-2013⁴², 2013-2014.⁴³
- 58 As Eir is designated to provide AFL USO for a further period of up 6 months from 1 January 2016, it is also be entitled to seek funding for that period.
- 59 A number of the respondents raised concerns with respect to funding and these are addressed in Section 4.

³⁷ Regulation 7(3) of the Universal Service Regulations.

³⁸ ComReg Document 11/42 and D04/11 "Report on Consultation and Decision on the Costing of universal service obligation: Principles and Methodologies", May 31st 2011, "Decision D04/11."

³⁹ ComReg Document 14/03 D01/14 "Assessment of Eircom's Universal Service Fund Application for 2009- 2010– Response to Consultation and Determination"

⁴⁰ ComReg Document 14/93 USO – Application for funding from the Universal Service Provider for the periods 2010/2011

⁴¹ ComReg Document 14/117 USO – Application for funding from the Universal Service Provider for the periods 2011/2012 and 2012/2013.

⁴² *Ibid.*

⁴³ ComReg Document 15/32 Application for funding from the Universal Service Provider for the period 2013/2014.

4. Consultation Issue

- 60 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 otherwise not deliver these services. The universal service contributes to social and economic inclusiveness and cohesiveness in society. It is ComReg's duty to ensure that the AFL USO continues to meet end-users' basic telephony needs, if they are not already being met by the market.
- 61 ComReg is currently considering the views of the respondents to its consultation on the future of the AFL USO and is also preparing its preliminary views for further consultation in respect of both the need for some kind of AFL USO and any specific detailed aspects of proposed imposition, amendment or lapse of obligations, including in relation to criteria for reasonable requests, affordability measures, quality of service targets and specifications in respect of functional internet access. To assist it in preparing its preliminary views for a further consultation, ComReg is considering the responses to Consultation 15/89 and is collecting additional data.
- 62 The existing AFL USO will only remain in force until 31 December 2015, unless amended by ComReg.
- 63 In light of the above, ComReg requires a further period of time, beyond December 2015, to prepare and publish its further consultation, to allow time for submissions and for ComReg to consider those submissions and ultimately to issue a Decision.
- 64 In the meantime, absent any AFL USO after 31 December 2015, there is a risk that the market would not deliver basic AFL services (as required by the Universal Service Regulations), at all or not at an affordable price or appropriate quality to certain areas of the State (such as rural or sparsely populated areas) and / or to less economic customers distributed nationally.
- 65 In considering the counterfactual (i.e. what might happen in the market if the AFL USO was removed) it is important to note that apart from the AFL USO, there is currently no other mechanism, programme or scheme in place to ensure that the basic telephony at a fixed location, set out in the Universal Service Regulations, is provided to everyone that requires it but cannot obtain it under normal market conditions. Therefore, ComReg is of the preliminary view that an AFL USO needs to be in place, at least until such time as it has completed its review.

- 66 Although ComReg set out its preliminary views in respect of an AFL USO in the future in the 2015 Consultation and stated its preliminary view that the current precis AFL USO regime is not appropriately aligned with the current or future long term needs, ComReg has not completed its review of the components of AFL, including in respect of reasonable requests for access and service, affordability, quality of service and call barring. However, ComReg remains concerned that in the absence of an AFL USO, certain groups of customers may not have access to an electronic communications network and voice services at a fixed location at an affordable price and delivered with a specified quality.
- 67 ComReg has to consider and is preparing its preliminary views on a number of complex issues, as outlined already in paragraph 43.
- 68 ComReg was of the preliminary view that, in the interests of all stakeholders, it would be premature to propose to alter or to not impose the AFL USOs from 1 January 2016, even for the short period proposed, because ComReg's review as to the most appropriate regime for the future has not yet been completed.
- 69 In considering an appropriate period, ComReg was cognisant of its current plan to issue a further consultation in Q1 2016, allowing for responses by early Q2 2016 and a Decision regarding the future of AFL USO by the end June 2016.
- 70 ComReg posed the following questions:

- Q. 1 ComReg's preliminary view is that, pending completion of its review, it is appropriate that the current safeguards remain in place after 31 December 2015. Do you agree with ComReg's preliminary view that Eir should be designated to continue to meet the obligations that are currently in place for a further period of up to 6 months to complete the review? Please give reasons to support your view.
- Q. 2 Do you agree or disagree with ComReg's draft high level assessment of the impact of the proposed regulatory options? Are there any other factors that you consider to be relevant? Please set out reasons for your answer.
- Q. 3 Do you have any comments on the Draft Decision Instrument at Annex 1? Please set out reasons for your answer.

Respondents' views

- 71 Both Alto and Sky raised issues in respect of universal service funding, but also agreed with ComReg's preliminary view that the current obligations should be extended for six months.

- 72 Vodafone also raised issues regarding funding but disagreed with ComReg's proposal to extend the designation on the basis that "*...there is a clear trend to cancel fixed lines, particularly in rural areas in favour of mobile connectivity and a general trend to focus fixed connections on broadband only.*"
- 73 Vodafone also raised a concern regarding the series of consultations but did not offer a further detailed view on the future direction of USO.
- 74 Eir disagreed with ComReg's proposal and raised a number of concerns which are detailed below, however, Eir stated that it "*did not object to its designation for a maximum period of up to six months*", if the USO designation was amended such that the quality of service targets contained in D02/08 did not apply to the period.

Funding Issues

- 75 Alto, Vodafone and Sky all raised issues in respect of the Retail Price Cap, in particular, claiming that Eir has had the ability to increase its revenues in respect of USO.
- 76 Sky also raised issues with respect to other aspects in relation to profits and the cross-subsidisation of USO services, which they consider results in there being no unfair burden on Eir.
- 77 Sky is of the view that its arguments in respect of funding should be taken into consideration in the context of Consultation 15/124 and also, during ComReg's assessment of funding applications.
- 78 Alto and Vodafone also note the current funding applications made by Eir and Vodafone states that ComReg should promptly decide on the outstanding funding applications.

Quality of Service Targets (ComReg Decision D02/08)

- 79 Eir raised a number of concerns it has in respect of the continued application of the quality of service targets (ComReg Decision D02/08).
- 80 Eir is of the view that in light of PIP3, (agreed in the context of a legal settlement⁴⁴), which has a higher fault occurrence rate than ComReg Decision D02/08, and runs for the period 1 January 2015 to 31 December 2015, it cannot now be expected to achieve the fault occurrence target set by ComReg Decision D02/08 by 30 June 2016.

⁴⁴ ComReg 14/120r – The provision of telephony services under the Universal Service Obligation – Access at a Fixed Location - <http://www.comreg.ie/fileupload/publications/ComReg14120R.pdf>
ComReg 14/129 - Provision of Universal Service by Eircom, Quality of Service - <http://www.comreg.ie/fileupload/publications/ComReg14129.pdf>

- 81 Eir suggests that it in respect of fault occurrence, it expects to achieve a lower rate than that set out on PIP3, but it will still be higher than the targets specified by ComReg Decision D02/08. It also suggests that it has met its commitments in respect of capex investment in the copper access network but that it cannot achieve the ComReg Decision D02/08 targets absent tens of millions of Euros of investment. It also claims that these targets are disproportionate in the context of the migration to its fibre access network which it expects to replace the rural overhead copper network by 2020. Eir also raised a related concern in the context of encouraging investment in broadband rather than legacy networks.
- 82 Eir suggests that the ComReg Decision D02/08 targets are annual and are subject to seasonality and therefore, H1 of 2016 would be the most challenging period of the year due to winter weather.
- 83 Eir questions how ComReg Decision D02/08 would be assessed annually, given that the extension period proposed is for 6 months and in the context that PIP3 already covers H2 of 2015.

Other issues raised by Eir

- 84 Eir raises an issue with respect to the delay by ComReg in issuing the 2015 Consultation⁴⁵. It is of the view that if this consultation process was commenced earlier, as committed by ComReg then the need for the extension consultation would not have arisen.
- 85 Eir is of the view that ComReg has not properly assessed if there is need for an AFL USO and that ComReg has not demonstrated that there is a shortfall in the provision of AFL such that it claims that the designation of an undertaking may not be necessary. It is of the view that *'If ComReg is satisfied that Eir is in fact providing AFL everywhere then there is no need for a designation'*.
- 86 Eir contests that ComReg does not have to designate an undertaking to ensure the whole state is addressed and that ComReg is incorrectly interpreting its obligation. It also claims that the proposal was presented as a *"fait accompli."*
- 87 Eir claims that ComReg has carried out the same activity for last number of years and it has continued to designate Eir with the same obligations and Eir suggests in relation to ComReg that this is an *"...invalid exercise of its powers such that Eir's designation as the USP will lapse on 31st December 2015"* and Eir does not accept that ComReg could re-impose the current obligations for an interim period.
- 88 Eir claims that there is no robust evidence to determine whether the elements of the USO proposed for H1 2016 can be justified at this time.

⁴⁵ A description of the consultation contained in Section 3.2 above.

- 89 Eir comments in respect of the current market and notes the household penetration of fixed versus mobile ownership. It also comments on Eir's market share and competing network infrastructures, migration of fixed line calls to mobile and (Over the Top ("OTT") services. Eir also comments on the use of landlines to facilitate broadband.
- 90 Eir comments in respect of the approach in other Member States where a USO is not in place at this time.

Regulatory Impact Assessment ("RIA")

- 91 Eir is of the view that the RIA as presented by ComReg does not meet the necessary requirements.
- 92 Eir is of the view that Option 1 of ComReg's RIA contains two possibilities and that the first part of this option – not to impose a USO for the interim period is the most appropriate under the circumstances.
- 93 Eir is of the view that the aspects in relation to funding need to be more fully explained, rather than to just state that Eir is entitled to seek funding as relevant.
- 94 Eir states (as also stated in its response to the 2015 consultation) that funding arrangements need to be reviewed. It comments that the administrative process in relation to this is extremely slow, with no apparent end in sight.
- 95 Eir states that ComReg does not consider how the regime could be altered under Option 1.

Draft Decision Instrument

- 96 Eir claims that ComReg cannot unilaterally amend the expiration date of the designation period and requests that aspect of the Decision Instrument to be removed.

ComReg's views

- 97 ComReg notes the issue raised by Vodafone in respect of the impact on USO of the availability of mobile voice alternatives. ComReg has already indicated in its consultation (and at paragraph 43 above), that it is considering whether the reasonable access request test(s) should be extended to consider whether a USP should not be required to fulfil a request for access at a fixed location if suitable affordable alternative services were available at that location, such services potentially including services available from mobile operators, other fixed operators and/or an operator contracted under the NBP.

Funding Issues

- 98 ComReg notes the issues raised in respect of funding made by Alto, Sky, and Vodafone. ComReg is currently assessing the applications and plans to issue a number of consultations in 2016 in respect of these applications.
- 99 ComReg cannot prejudge the outcome of these consultations or its assessment in respect of net cost or unfair burden. ComReg will however fully take these issues raised by respondents into consideration when assessing Eir's outstanding funding USO applications.
- 100 ComReg notes Eir's comments regarding the assessment of funding applications and ComReg notes that Eir is aware of status of the assessment of the outstanding funding applications. Further, Eir has contributed to any delay in the assessment process.

Quality of Service Targets (ComReg Decision D02/08)

- 101 ComReg notes Eir's comments in respect of the quality of service targets set out in ComReg Decision D02/08, however, ComReg also notes that Eir's arguments are limited to fault occurrence targets and ComReg notes that Eir does not specifically mention other applicable targets including connections and repairs.
- 102 ComReg notes that the PIP3 target for Fault Occurrence was reduced, however, to compensate for this reduction, the target and penalties with respect of Fault Repairs within 2 working days were increased. However, although Eir's performance for the full year 2015 has yet to be evaluated, Eir's year to date performance for repair times for H1 2015 is significantly lower than both PIP3 and D02/08.⁴⁶ ComReg also notes that it agreed not to undergo a compliance assessment against the relevant PIP3 targets for the period from July 2014 to December 2014.⁴⁷

⁴⁶ Section 2.3 – Fault Repair Times <http://www.comreg.ie/fileupload/publications/ComReg15111.pdf>

⁴⁷ ComReg 14/120r – The provision of telephony services under the Universal Service Obligation – Access at a Fixed Location - <http://www.comreg.ie/fileupload/publications/ComReg14120R.pdf>

ComReg 14/129 - Provision of Universal Service by Eircom, Quality of Service - <http://www.comreg.ie/fileupload/publications/ComReg14129.pdf>

103 ComReg Decision D02/08 has continued to remain in force and ComReg agrees with Eir that the D02/08 targets are measured on an annual basis and ComReg is of the view that in the context of the new six month designation, ComReg Decision D02/08 targets apply to the period 1 July 2015 to 30 June 2016. However, ComReg notes Eir's observation that the D02/08 July 2015 - 30 June 2016 measurement period for QoS overlaps with the period covered by PIP3 (H2 2015) and in this context, ComReg is of the view that it may be appropriate to address this matter. However, ComReg considers that this is separate to this designation decision.

104 ComReg also notes Eir's comments in respect of appropriate quality of service performance targets for any further designation period, if relevant, and ComReg has already indicated in its consultation (and at paragraph 43 above) that it is considering what the appropriate quality of service levels are for current generation networks in the context of the deployment of next generation access networks on a commercial basis and as a result of the NBP.

105 ComReg has not yet completed this review, and therefore, considers that the continuation of the current targets are proportionate and reasonable during the next 6 months, particularly in the context that the planned replacement of fibre in rural areas is still a number of years away from completion.

Other issues raised by Eir

106 ComReg notes that Eir raises an issue with respect to the delay by ComReg in issuing the 2015 Consultation.⁴⁸ ComReg issued its consultation as soon as practicable, having received the required inputs and carried out the necessary analysis. ComReg notes that Eir sought and was granted an extension in respect of providing information to ComReg. ComReg required that information in advance of forming its preliminary views, which were stated in that consultation.

107 ComReg notes Eir's view that there may not be a need for a designation because it is already delivering the requirements. However, ComReg's analysis and preliminary views in the 2015 Consultation is that absent a designation, there may be detriment for consumers. This is because not all the required elements of the AFL USO may be provided at an appropriate quality and affordable price. ComReg is considering the responses to the 2015 Consultation and in advance of considering those views, it must consider what option is in the best interests of consumers, to ensure that the needs of those consumers that require access at a fixed location are appropriately satisfied.

⁴⁸ A description of the consultation contained in Section 3.2 above.

- 108 ComReg is fully aware that the Regulations do not require it to designate an undertaking to ensure the provision of AFL. However, it must ensure that the whole of the State is covered and ComReg is of the view that removing the obligation at this time would not be appropriate to ensure consumers rights are met for the interim period.
- 109 ComReg does not agree with Eir's assertion that the process was presented as a "*fait accompli*". ComReg consulted on the matter, it allowed adequate time for respondents to submit their views and ComReg has fully considered the views of respondents. If further time was required to consider respondents' views then it was open to ComReg to delay coming to a decision on the matter.
- 110 ComReg does not agree with Eir's claim that ComReg has carried out the same activity for last number of years and it has continued to designate Eir with the same obligations without a review. On each occasion, ComReg has consulted in the context of the current market conditions and in 2014, ComReg significantly changed many of the elements of the USO. ComReg has overhauled the universal service obligations in respect of payphones, subscriber directories and measures for disabled end-users (including directory enquiries, code of practice, terminal equipment and text relay services).
- 111 ComReg has also reviewed billing aspects and in 2014, ComReg issued a call for inputs and consultation in respect of call barring.⁴⁹
- 112 ComReg also reviewed the National Directory Database obligations and these obligations are now no longer imposed as a USO.
- 113 In respect of AFL, in 2014, ComReg issued a two part consultation. Part two sought expressions of interest from undertakings in respect of provision of AFL. No expressions of interest were forthcoming, meaning that no competitive process was appropriate at that time.
- 114 ComReg does not agree that ComReg cannot exercise its powers in this manner. ComReg has consulted on its preliminary views regarding the extension, and ComReg is concerned that absent any AFL USO after 31 December 2015, there is a risk that the market would not deliver basic AFL services (as required by the Universal Service Regulations), at all or not at an affordable price or appropriate quality to certain areas of the State (such as rural or sparsely populated areas) and / or to less economic customers distributed nationally.

⁴⁹ An extension to the deadline for submissions was sought and granted - <http://www.comreg.ie/fileupload/publications/ComReg15138.pdf>

- 115 In considering the counterfactual, i.e. what might happen in the market if the AFL USO was removed, it is important to note that apart from the AFL USO, there is currently no other mechanism, programme or scheme in place to ensure that the basic telephony at a fixed location, set out in the Universal Service Regulations, is provided to everyone that requires it and cannot obtain it under normal market conditions. Therefore, ComReg is of the view that it is appropriate, proportionate and justified to continue to designate Eir as USP, in order to ensure that consumer detriment does not arise; at least until such time as it has completed its review.
- 116 ComReg notes Eir's comments in respect of the current market and designations in other Member States and ComReg is of the view that these comments are appropriate to the 2015 Consultation process. ComReg will consider these comments in that context.

RIA

- 117 ComReg does not agree with Eir's view that view that the RIA as presented by ComReg does not meet the necessary requirements. ComReg has set out in detail in the 2015 consultation its preliminary views as to the counterfactual absent a designation in respect of AFL. ComReg is considering respondents' submissions and ComReg is not yet in a position to form a view. However, ComReg has considered the views expressed to consultation ComReg 15/124 and has not been made aware of any compelling arguments as to why a designation should not continue for the interim period.
- 118 Contrary to Eir's view, ComReg disagrees that *not* imposing a USO for the interim period is the most appropriate option under the circumstances. ComReg is concerned that absent any AFL USO after 31 December 2015, there is a risk that the market would not deliver basic AFL services (as required by the Universal Service Regulations), at all or not at an affordable price or appropriate quality to certain areas of the State (such as rural or sparsely populated areas) and / or to less economic customers distributed nationally.
- 119 In considering the counterfactual, i.e. what might happen in the market if the AFL USO was removed, it is important to note that apart from the AFL USO, there is currently no other mechanism, programme or scheme in place to ensure that the basic telephony at a fixed location, set out in the Universal Service Regulations, is provided to everyone that requires it and cannot obtain it under normal market conditions.

120 Therefore, ComReg is considers it appropriate, proportionate, and justified to designate Eir in order to ensure that consumer detriment does not arise, at least until such time that it has completed its review. It would be wholly inappropriate for ComReg to take the risk that the requirements of the Universal Service Regulations in respect of AFL may be met, absent a designation. If Eir does deliver as it says it will, then there is no detriment to it either.

121 In respect of the funding issues raised by Eir, in relation to the RIA, ComReg notes that Eir is aware of status of the assessment of the outstanding funding applications. Further, Eir has contributed to any delay in the assessment process.

122 ComReg notes Eir's view that the aspects in relation to funding need to be more fully explained, rather than to just state that Eir is entitled to seek funding as relevant. ComReg agrees that the Universal Service Regulations provide that, in the event that a net cost is determined to be an unfair burden, that an industry sharing mechanism is to be established.

123 ComReg disagrees with Eir's claim that ComReg does not consider how the regime could be altered under Option 1. This is not the case, ComReg has explained that it is not appropriate to alter these obligations prematurely in advance of the completion of its review.

124 ComReg has updated its final RIA to take account of the views of respondents.

Draft Decision Instrument

125 ComReg, in accordance with the Regulations, is entitled to amend the expiration date of any designation period, following consultation and consideration of the submissions.

ComReg's Decision

126 ComReg has decided to extend the designation on Eir as USP for a period of 6 months, commencing 1 January 2016.

127 ComReg has a duty to ensure that the whole of the state is covered in respect of access at a fixed location, which includes related obligations.

128 There is no other scheme in place to achieve this and the legal requirements for a USO under the Universal Service Regulations must continue to be met.

5. Regulatory Impact Assessment (RIA)

- 129A RIA is an analysis of the likely effect of a proposed new regulation or regulatory change. It helps identify regulatory options, and should indicate 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 probable impact of regulatory options on different stakeholders.
- 130 ComReg's approach to RIA is set out in the Guidelines published in August 2007, in ComReg Document No. 07/56 & 07/56a⁵⁰. In conducting this RIA, ComReg takes account of the RIA Guidelines,⁵¹ adopted under the Government's *Better Regulation* programme.
- 131 In relation to universal services, where ComReg is charged with implementing a statutory obligation, it will assess each case individually and determine whether a RIA is necessary and justified, having regard to its degree of discretion and the principles of reasonableness and proportionality.
- 132 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 2002/21/EC⁵².
- 133 ComReg's approach to the scope and designation of the provision of the AFL USO is in accordance with the currently applicable legislation.
- 134A RIA should enable ComReg to determine the impact of any regulatory change or new regulation, and should assess the alternatives to regulation- such as no intervention, self-regulation or performance based regulation amongst others. RIAs aim to identify areas where regulation can be reduced.

⁵⁰ ComReg Document No. 07/56 "ComReg's Approach to Regulatory Impact Assessment – Response to Consultation and Guidelines" 10th August 2007 and ComReg Document No. 07/56a "Guidelines on ComReg's Approach to Regulatory Impact Assessment", 10th August 2007.

⁵¹ http://www.taoiseach.gov.ie/eng/Publications/Publications_2011/Revised_RIA_Guidelines_June_2009.pdf

⁵² Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services, as amended ("Framework Directive") at Article 8.

135A RIA should identify the impact of the various options on stakeholders, on competition and on consumers and also the key risks associated with each option. A RIA therefore increases transparency of decision making and ensures the best possible outcome for stakeholders, consumers and competition.

Step 1: Describe the Policy Issue and identify the Objectives

136 ComReg is reviewing the continued need if any for an AFL USO in the State. In this regard, ComReg's objective is to ensure consumers continue to have access to AFL in the future as relevant to ensure consumer rights.

137 Eircom was designated as the USP for AFL for the period from July 2014 to 31 December 2015. In light of the preliminary views set out in the 2015 Consultation, ComReg is of the preliminary view that there will likely be a continued need for an AFL USO throughout the State for the immediate future, for a period of 5-7 years from 1 January 2016.

138 ComReg is currently considering the views of the respondents to its consultation on the future of the AFL USO and ComReg is also preparing its preliminary views for further consultation in respect of both the need for some kind of AFL USO and any specific detailed aspects of proposed imposition, amendment or lapse of obligations, including in relation to criteria for reasonable requests, affordability measures, quality of service targets and specifications in respect of functional internet access. To assist in preparing its preliminary views for a further consultation, ComReg is considering the responses to Consultation 15/89 and is also currently in the process of collecting additional data.

139 The existing AFL USO will only remain in force until 31 December 2015, unless amended by ComReg.

140 In light of the above, ComReg requires a further period of time, beyond December 2015, to prepare and issue its further consultation, to allow time for submissions and for ComReg to consider those submissions and to ultimately issue a Decision.

Step 2: Identify and Describe the Regulatory Options

141 In this context, ComReg has two options at this time:

- Option 1 - To propose now to
 - (a) alter the AFL USOs commencing 1 January 2016.
 - (b) not to impose the AFL USOs commencing 1 January 2016.

- Option 2 - To propose now to keep the current end-user protections in place for a period of months commencing 1 January 2016 until its review has been properly completed.

Steps 3 & 4: Determine the impacts on stakeholders and competition

- 142 While ComReg completes its consultation process, in the meantime, absent any AFL USO after 31 December 2015, there is a risk that the market would not deliver basic AFL services (as required by the Universal Service Regulations), at all or not at an affordable price or appropriate quality to certain areas of the State (such as rural or sparsely populated areas) and / or to less economic customers distributed nationally.
- 143 In considering the counterfactual, i.e. what might happen in the market if the AFL USO was removed, it is important to note that apart from the AFL USO, there is currently no other mechanism, programme or scheme in place to ensure that the basic telephony at a fixed location, set out in the Universal Service Regulations, is provided to everyone that requires it and cannot obtain it under normal market conditions. Therefore, ComReg is of the view that an AFL USO needs to remain in place at least until such time as it has completed its review.
- 144 Although ComReg set out its preliminary views in respect of an AFL USO in the future in the 2015 Consultation and indicated it was of the preliminary view that the current precise regime is not appropriately aligned with the current or future long term needs, ComReg has not completed its review of the AFL components, including reasonable requests for access and service, affordability, quality of service and call barring.
- 145 ComReg notes the provision of a universal service may result in the USP(s) providing designated services at a net cost. ComReg notes that the Universal Service Regulations⁵³ stipulate that a USP can seek funding for the net costs of meeting the obligation concerned, however, funding will only be permitted if it is determined by ComReg that the net cost may represent an unfair burden on the USP. To the extent that it does represent an unfair burden, any net cost of the USO shall be apportioned among providers of electronic communications networks and services.⁵⁴

⁵³ Regulation 11 of the Universal Service Regulations.

⁵⁴ Regulation 12 of the Universal Service Regulations.

- 146 The designation method(s) adopted by ComReg 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.⁵⁵ In this regard, Decision D04/11 illustrates how the net cost for all USOs, will be calculated and how the existence of an unfair burden will be determined. In the event a net cost is deemed to be an unfair burden, the requirement for a sharing mechanism is then triggered.
- 147 As set out above, ComReg has completed its assessment of Eir's application for funding for the 2009-2010 period⁵⁶ and ComReg is currently assessing Eir's applications for funding for the periods 2010-2011, 2011-2012, 2012-2013, 2013-2014.
- 148 If Eir was to be designated to provide AFL USO for a further period of up to 6 months from 1 January 2016, it would also be entitled to seek USO funding for the appropriate period, which, if found to be an unfair burden would result in an industry funded sharing mechanism.
- 149 In considering the appropriate period, ComReg is cognisant of its current plan to issue its further consultation in Q1 2016, allowing for responses by early Q2 2016 which should allow, subject to further consideration of the responses, for a Decision regarding the future of the AFL USO by the end June 2016.

⁵⁵ Regulation 7(3) of the Universal Service Regulations.

⁵⁶ ComReg Document 14/03 D01/14 "Assessment of Eircom's Universal Service Fund Application for 2009- 2010– Response to Consultation and Determination."

Step 5: Assess the Impacts and choose the best option.

- 150 ComReg is of the view at this time that there is a continued need for an AFL USO throughout the State post 31 December 2015 until ComReg finalises its current review and publishes a Decision. Allowing the obligations to lapse or prematurely changing them (Options 1a and b), in ComReg's view, would not be appropriate.
- 151 ComReg is of the view that costs incurred by USP(s) in respect of an AFL obligation for this short period would, on balance, be outweighed by the benefits to consumers. In particular it is vital that consumers' right to access at a fixed location at an affordable price and appropriate quality is guaranteed. ComReg notes that Eir may apply for funding for any net cost incurred.
- 152 As set out above, there is a risk that left to the operation of market forces alone, basic universal services may not be provided to everyone at an affordable price and appropriate quality.
- 153 ComReg is aware that in time the market may deliver universal voice AFL in its own right without the need for a USP, however, for the above reasons, a certain set of customers may be negatively affected by removal of all AFL USOs at this time.
- 154 Considering the above, ComReg is of the view that, in the interests of all stakeholders, it would be premature to propose to alter or to not impose the current AFL USOs from 1 January 2016 even for the short period proposed, because ComReg's review as to the most appropriate regime for the future, as relevant, has not yet been completed.
- 155 ComReg is of the view that these measures are unlikely to result in a disproportionate cost burden relative to the benefits to the end users. For the reasons set out above, the benefits to consumers are likely to be significant (to the extent that their right to AFL is required to be ensured). In contrast, if these obligations were removed there is no guarantee that consumers' rights would be fulfilled, to the detriment of consumers and potentially inconsistent with the Universal Service Regulations.

6. Next Steps

The 2015 Consultation

156 Where ComReg remains of the preliminary view that there is a need for some kind of AFL USO in the State in the future, it is envisaged that ComReg would issue further consultation paper(s), during Q1 of 2016 on its preliminary view on the designation of undertaking(s) with the AFL USO and the scope of each of the various aspects of the AFL USO, such as the reasonableness of requests for connection, FIA, affordability measures and QoS.

157 This further consultation phase, as relevant, would assess in detail what specific proposed requirements for AFL might be necessary. This could include QoS standards, affordability measures including GAP, the specification of a reasonable access request and the specification of FIA.

158 If appropriate, ministerial consent will be sought for relevant specifications, as required, and any further decision(s) will be made subsequent to this further consultation process and in light of the end the relevant designation period.

Annex: 1 Decision Instrument

1. Statutory functions and powers giving rise to this decision instrument

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

- i. Having regard to sections 10 and 12 of the Communications Regulations Act 2002 (“the Act of 2002”);
- ii. Pursuant to the functions and powers conferred upon ComReg under and by virtue of Regulations 7(1), 8 and 9 of the European Communities (Electronic Communications Networks and Services) (Universal Service and Users’ Rights) Regulations 2011 (“the Regulations”);
- iii. Having regard to Regulation 3 of the Regulations;
- iv. Having, where appropriate, pursuant to section 13 of the Communications Regulation Acts 2002 to 2011 complied with the policy directions made by the Minister for Communications, Marine and Natural Resources.
- v. Having regard to the analysis and reasoning set out in ComReg document No. 15/89.
- vi. Having taken account of the representations of interested parties submitted in response to ComReg document No. 15/124 and
- vii. Having regard to the analysis and reasoning set out in ComReg document No. 15/144.

2. Amendment to ComReg Decision D10/14

2.1 In this section 2, ComReg Decision D10/14 means ComReg document 14/71, dated 7 July 2014 and entitled: *“The provision of telephony services under the Universal Service Obligation - Access at a Fixed Location.”*

2.2 Section 4.1 of ComReg Decision D10/14 is hereby amended by replacing it with the following:

“4.1 This Decision and Decision Instrument is effective from 7 July 2014 and shall remain in force until 30 June 2016 or as amended by ComReg.”

3. Effective date

3.1 This Decision and Decision Instrument is effective from 1 January 2016.

JEREMY GODFREY
CHAIRPERSON
THE COMMISSION FOR COMMUNICATIONS REGULATION
THE 31st DAY OF DECEMBER 2015

Annex: 2 Legal Basis

Regulation 3 of the European Communities (Electronic Communications Network and Services) (Universal Service and Users' Rights) Regulations 2011 ("USO Regulations") provides as follows:

- "3. (1) A designated undertaking shall satisfy any reasonable request to provide at a fixed location connection to a public communications network.*
- (2) A designated undertaking shall satisfy any reasonable request for the provision of a publicly available telephone service over the network connection referred to in paragraph (1) that allows for originating and receiving of national and international calls.*
- (3) A designated undertaking that provides a connection to the public communications network shall ensure that the connection is capable of supporting—*
- (a) voice,*
 - (b) facsimile, and*
 - (c) data communications at data rates that are sufficient to permit functional Internet access,*
- having regard to the prevailing technologies used by the majority of subscribers and to technological feasibility.*
- (4) Where a designated undertaking denies any reasonable request made under paragraph (1) or (2) it shall inform the person making the request of his or her right to pursue the dispute resolution procedures referred to in Regulation 27.*
- (5) The Regulator may, with the consent of the Minister, for the purpose of the services referred to in this Regulation, specify requirements to be complied with by a designated undertaking in relation to—*
- (a) functional Internet access, having regard to prevailing technologies used by the majority of subscribers in the State and to technological feasibility,*
 - (b) the reasonableness of requests for connection at a fixed location to a public communications network under paragraph (1) and the provision of a publicly available telephone service that allows for the originating and receiving of national and international calls referred to in paragraph (2), or*
 - (c) the terms and conditions upon which connection at a fixed location to a public communications network referred to in paragraph (1) and the provision of a publicly available telephone service over such a network connection that allows for the originating and receiving of national and international calls referred to in paragraph (2) shall be provided.*

(6) A designated undertaking that fails to comply with the requirements of paragraph (1), (2), (3) or (4) commits an offence.”