



Commission for
Communications Regulation

Universal Service Obligation Provision of access at a fixed location

Submissions to Consultation 15/89

Submissions to Consultation

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**An Coimisiún um Rialáil Cumarsáide
Commission for Communications Regulation**

Abbey Court Irish Life Centre Lower Abbey Street Dublin 1 Ireland

Telephone +353 1 804 9600 Fax +353 1 804 9680 Email info@comreg.ie Web www.comreg.ie

Submissions Received from Respondents

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1 ALTO

alto

alternative operators in the communications market

Consultation: Universal Service Obligation - Provision of access at a fixed location - Ref: 15/89

Submission By ALTO

Date: September 30th 2015

ALTO is pleased to respond to the Consultation: Universal Service Obligation - Provision of access at a fixed location - Ref: 15/89.

ALTO welcomes this opportunity to comment on this timely and important consultation.

As you are aware, ALTO is the leading representative group representing the interests of 9 of the alternative telecommunications companies' interests within the State. Those alternative telecommunications companies operate in the business, consumer and international carrier sectors and have done so successfully for quite some time now.

The ALTO group generally welcomes the important reforms proposed by ComReg in this Consultation, however, some of the suggestions made by ComReg appear to fall short of what would ordinarily be expected from regulators and State agencies tasked with supervision of numbering in other EU Member States.

Preliminary Remarks

ALTO has previously engaged with ComReg on the issue of USO and its general relevance in the current economic environment under ComReg Consultation 14/48. Most of the views expressed in ALTO's response paper remain unchanged at the time of submission of this response to Consultation 15/89.

In the next section, ALTO highlights some issues it has with ComReg's proposals as set out in the consultation paper and the TERA Report ComReg reference 15/89a.

Response to Consultation Questions:

Q. 1 Do you agree with ComReg and TERA's review of the relevant consumer trends? Please give reasons to support your view.

A. 1. ALTO does not generally agree with both the ComReg and TERA assessments. In fact, ALTO notes some inconsistencies between the analyses contained in both papers. ALTO notes as a matter of some concern, that redactions present in the TERA document in particular at page 27, are redactions that may be inappropriate in the context of new entrant investment decisions and the lack of alternative interconnection offerings such as IP Interconnection in order to facilitate the removal of the old PSTN.

ALTO calls on ComReg to disclose Eircom's views as to those matters redacted within the TERA report.

ALTO notes that the supply of bundled services in Ireland remains limited, and to that end, we require that ComReg continue its work reviewing regulated inputs to bundled services, as it currently does.

Q. 2 In your opinion are there other relevant factors in relation to consumer trends which ComReg should consider? Please give reasons to support your view.

A. 2. ALTO considers that the overall use and management of numbering and number spectrum, as well as line data may be inflated in the current reports being submitted to ComReg. That is not to say that any operator is consciously manipulating the data, but rather that networks may be recording greater number of live access lines than are actually functionally in service. ALTO notes that ComReg has been actively encouraging operators to resolve issues surrounding numbering spectrum and line data in recent months.

ALTO considers that ComReg has not adequately accounted for the migration of voice traffic from fixed to mobile networks.

This is particularly relevant because consumers are by choice increasingly using mobile telephones instead of fixed line telephones. This trend was illustrated by ComReg in Figures 4 and 5 of ComReg 14/26, which showed a sharp decrease in fixed call traffic corresponding with substantial increase in mobile traffic over the same time period.

In relation to paragraph 60 of the Consultation, where ComReg reports that 5% of end-users do not have mobile access, ALTO notes that there is no examination of why these end-users have not availed of mobile access. It may, for example, be the case that mobile access is available to these end-users, but that they have simply chosen not to avail of a mobile service. Therefore, it cannot be assumed that this cohort of end-users *rely* on a fixed line for basic electronic communications services.

ALTO disagrees with TERA's statement, as paraphrased by ComReg in paragraph 64 of the Consultation, that:

"It is generally accepted currently that substitution between fixed and mobile offers for either voice and or broadband is not yet effective"

At paragraphs 87 and 88 of the Consultation, ComReg presents estimates of the likely demand-response of customers to a 10% increase in the price of AFL. This estimate is based on a survey conducted by Research Perspective, on behalf of ComReg, in January 2012. ALTO submits and considers that this research is outdated, and therefore is of limited value as an indicator of market trends in this study (this research would be 10 years out of date if ComReg were to extend the USO AFL obligation to 2022).

Q. 3 Do you agree with ComReg and TERAs review of the relevant supply side trends? Please give reasons to support your view.

A. 3. ALTO has noted above that ComReg has not given sufficient weight in the Consultation to the role that mobile networks are playing in meeting the basic electronic communications needs of consumers. This applies for both voice calls and functional Internet access.

ALTO also notes that certain offerings that would see the supply side grow and be buffered, suffer from regulatory blocks and systems inertia, given the recent performances in industry experienced by operators.

Evidence to support this view has been prepared by Eircom Wholesale in this report:

https://www.eir.ie/opencms/export/sites/default/.content/pdf/regulatoryinformation/regulatory_governance_model.pdf

Furthermore, ALTO notes the bizarre statistic that Eircom consistently claims to have rolled out high speed broadband past 1.9 million premises. This of course significantly overlaps the Governments National Broadband – NBS, Plan 2 State Aid plans.

Q. 4 In your opinion are there other relevant factors in relation to supply side trends which ComReg should consider? Please give reasons to support your view.

A. 4. ALTO generally agrees with TERA's conclusion on the three main competitive areas. At clause 124 of the consultation paper we agree with TERA where they reach the conclusion that the review and data available does not supply a completely accurate view of coverage. In practice there will always be supply gaps, as commercial operators will only invest where there is a reasonable or efficient rate of return. These supply gaps maybe substantial and a USO obligation that requires services in these gaps to be provided may be too great in terms of network build and will not serve the customer or the operator. In such instances,

the ubiquitous Eircom copper network for voice and Functional Internet Access – FIA, and at the rather low 28.8kbit/s threshold will still only serve customers.

It is therefore clear to us, and we submit that the definition is too general for a definition of sub-geographic AFL as the investment required for other operators, such as ALTO members (and others) to may will more than likely be too great to reach sub-areas within the defined different competitive areas.

Generally, the supply side costs for future AFL are not yet known and nor is the supply mechanism, although the assumption is voice and FIA over a high-speed broadband access. It would be beneficial for ComReg to establish a demand side price for voice only and voice with FIA in order to understand what the market will pay and what is possible from using a high-speed broadband access.

Q. 5 In your opinion are there other relevant factors in relation to the European context or benchmarking which ComReg should consider? Please give reasons to support your view.

A. 5. ALTO agrees with ComReg that it is correct to monitor EU and Commission developments and updates to the framework, however until such a time these are available the current framework must be used as the reference. The Irish network and situation is somewhat unique, given the population demographics and competitive landscape here.

ALTO submits, as it has consistently on the subject of USO funding, as a regime, is an exception, rather than a norm.

Below we make specific remarks arising from the ComReg and TERA papers.

Geographic Average Pricing – GAP

ALTO considers GAP pricing to be absolutely essential for the USO, particularly where it is the more rural and difficult locations that will be in need of USO Access

Fixed Lines – AFLs. Not having GAP will increase the digital divide in Ireland with the rural communities paying a significantly higher price for Voice and Functional Internet Access. ALTO could not countenance such a position.

USO New Line Reasonable Access Threshold – RAT

ALTO notes the TERA analysis on the threshold for installing a new USO line and whilst there are significant differences in how the threshold is set by other jurisdictions the principle is established. We note from the consultation that Eircom is seeking to reduce the RAT given they should be able to receive a return in the medium to longer term. We would be supportive of this view but a new level must still strike a reasonable balance between uneconomic supply and reasonableness (or blanket refusal to supply).

Quality of Service – QOS

ALTO members remain increasingly concerned about the rising levels of Eircom's claims for running the USO and agree ComReg should benchmark service quality and claims against other countries. ALTO members consider that Eircom may be recovering years of underinvestment in its access network through increasing USO claims. The lack of transparency of the process increases our concerns.

Customer service is important and we consider the USO QOS figures mandated in regulation through the ComReg Decision 02/08 and 14/129 should continue. It is extremely difficult to compare like for like QOS figures without the precise definitions of what we are looking at and thus it is difficult to comment on the TERA figures without precise definition to ensure we are comparing like with like.

Functional Internet Access - FIA

Increasing the 28.8kbit/s is a significant challenge. ALTO has remarked to ComReg and stated publically that the requirement to have Internet and broadband

considered services within the USO is highly questionable and that it may require a re-build of the local access network (this appears to run contrary to some of both ComReg's and TERA's assumptions). In many areas this has already happened in the form of Broadband and high speed broadband and this is also a requirement of the NBP programme 30 Mbits to all. Given the stated aim of the NBP much higher FIA should be achievable in the coming years but it could not be met today.

Q. 6 Having considered the TERA Report and ComReg's consultation, in your opinion are there other factors with respect impact of not having AFL USOs or in respect of the need for an AFL USO and/or the associated AFL components that ComReg should consider at this time? Please give reasons to support your view.

A. 6. ALTO disagrees with ComReg's review of the impact of not having AFL USO. ComReg may have overstated the risks to universal, affordable and quality AFL in the absence of any USO.

ALTO notes with interest Eircom's persistent reluctance to agree improved SLAs with operators and we believe this should and would also apply to the USO given the opportunity.

Q. 7 Do you agree with ComReg and TERA's view of the risks to universal, affordable and quality AFL in the absence of any USO? Please give reasons to support your view.

A. 7. ALTO disagrees generally with ComReg and TERA's view of the risks to universal, affordable and quality AFL in the absence of any USO.

ALTO note Eircom's recent behaviour concerning price increases to the voice, Wholesale Line Rental – WLR, bundles and also to the Standalone Broadband

prices which in our view highlight Eircom can still and do act independently of competition. Given this behaviour, and by reference to this particular issue of WLR, ALTO agrees with TERA that there is a real risk that USO AFL prices will not be geographically averaged and rural customers will pay a significantly higher premium absent access infrastructure competition. We support ComReg's initiative for national cost orientated prices for SB-WLR but note absent other regulatory obligations Eircom could still set its own variable USO retail pricing.

Q. 8 Do you agree with ComReg's preliminary view that having regard to each of the various AFL components that some kind of AFL USO continues to be required post 31 December 2015? Please give reasons to support your view.

A. 8. ALTO agrees with ComReg's preliminary view that having regard to each of the various AFL components that some kind of AFL USO continues to be required post 31 December 2015.

As highlighted by TERA competitive infrastructure is not yet in place in many areas of Ireland and where it is available it's not ubiquitous and it could be several years before such is completed. During this time, absent USO obligations on Eircom, there would be little incentive to completely fulfil the USO and hence many customers were not be able to avail of the most basic communications services.

Q. 9 Do you agree with ComReg's preliminary summary of the technologies by which an AFL type service can in principle be supplied? Please give reasons to support your view.

A. 9. ALTO agrees with ComReg's preliminary summary of the technologies by which an AFL type service can in principle be supplied.

Q. 10 In your opinion are there other factors that ComReg should consider at this time? Please give reasons to support your view.

A. 10. ALTO submits that ComReg has not supplied enough evidence to support its conclusions within the Consultation paper. Furthermore, ALTO considers that ComReg should be in dialogue with the Department of Communications with regard to the minimum criteria and thresholds that are planned and will pertain to the NBS 2 project. ALTO has drafted its submissions to the DCENR consultation on this issue. Dialogue with the Department will limit the need for ComReg to overreach its own resources where the NBS/State may take over that work in the long term. Any winners/bidders should have minimum obligations as regards ALF and other USO elements, even if they are not necessary designated a USP in the formal sense by ComReg.

Q. 11 Do you agree or disagree with ComReg’s preliminary view that, if it is determined that there is a need for an AFL USO in the whole or parts of Ireland post 31 December 2015, any subsequent designation of a USP(s) to provide the AFL USO should be, in principle, for the entire State, allowing for flexibility in respect of individual components as relevant? Please give reasons to support your view.

A. 11. ALTO agrees that the USO will likely be required after 2015, however we are concerned that insufficient data and information has been made available to determine whether operators other than Eircom have the ubiquity in the areas they are operating to meet reasonable requests for USO AFL. Specifying USP on multiple operators will be problematic given that very few or none will have 100% coverage other than Eircom.

Q. 12 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.

A. 12. ALTO considers that the USO will need to be re-designated post December 2015 and that more work needs to be carried out if ComReg were to introduce multiple USPs. ALTO believes that further economic analysis is required in order to produce a robust sustainable and transparent approach for USO

ALTO

30th September 2015

2 BT

BT Communication Ireland Limited ["BT"]

Response to ComReg's Consultation:

Universal Service Obligation - Provision of access at a fixed location

Issue 1 - 30th September 2015

1.0 Introduction

BT welcomes the opportunity to comment to this consultation and we have addressed our comments through our responses to the questions.

2.0 Response to the Detailed Questions

Demand Trend Summary

Q. 1 Do you agree with ComReg and TERA's review of the relevant consumer trends? Please give reasons to support your view.

A.1 BT is not active in the consumer retail market hence it is difficult for us to make an informed comment, however the supply of bundles would appear well established.

Q. 2 In your opinion are there other relevant factors in relation to consumer trends which ComReg should consider? Please give reasons to support your view.

A.2 As above we are not active in the consumer retail market and are not in a position to provide an informed comment.

Supply Trend Summary

Q. 3 Do you agree with ComReg and TERAs review of the relevant supply side trends? Please give reasons to support your view.

A.3 We would agree with ComReg's analysis that there are medium to longer term potential developments that may increase the supply of products into the market, but as they have not yet happened or reached any form of material scale, we agree with ComReg that it's more appropriate to regulate on what currently exists whilst maintaining

the flexibility to incorporate change if necessary. For example the State has not yet finalised the NBP 2 deployment areas and the project has not yet selected a contractor(s) to deploy NBP2. We also note that eir Group is claiming to roll out high speed broadband past 1.9 million premises which could significantly overlap the Governments National Broadband Plan 2 State intervention plans.

Q. 4 In your opinion are there other relevant factors in relation to supply side trends which ComReg should consider? Please give reasons to support your view.

A.4 We would like to make the following two comments:

A.4.1 We would generally agree Tera's conclusion of three main competitive areas:

- 1) Areas with greater market-driven infrastructure-based competition including from Vodafone/ESB/SIRO or UPC, (referred to in the rest of the report "market-driven infrastructure based competition areas")
- 2) Anticipated NBP areas where a high capacity broadband access network would be made available through Government subsidies (referred to as "NBP areas");
- 3) Areas where Eircom faces no competition from any fixed infrastructure but could face competition from mobile networks providing fixed access solutions ("Eircom only" areas) especially forward looking.

and we would agree with TERA at clause 124 of the consultation that the conclusion does not supply a completely accurate view of coverage. In practice there will be supply gaps as commercial operators will only invest where there is a return and the NBP is not yet finalised and even when finalised deployment will take several years. We therefore consider the definition at this time to be too general for a definition of sub-geographic AFL.

A.4.2 Other than for eir Group the supply side costs for future AFL are not yet known and nor is the supply mechanism, although the assumption appears to be voice and FIA delivered over a high speed broadband access where such access exists. It would thus be beneficial for ComReg to understand what the market would pay for voice over high speed broadband infrastructure.

European Context and Benchmarking

Q. 5 In your opinion are there other relevant factors in relation to the European context or benchmarking which ComReg should consider? Please give reasons to support your view.

A.5 We would like to offer the following comments.

A.5.1 We agree with ComReg that its right to monitor the European Commission for further updates to the framework, but until such a time these are available the current framework must be used as the reference.

A.5.2 Geographic Average Pricing (GAP) – Without geographic average pricing for Voice we would be concerned the digital divide in Ireland would widen with the rural communities paying a significantly higher price for Voice and Functional Internet Access.

A.5.3 USO New Line Reasonable Access Threshold (RAT)

We note the TERA analysis on the cost threshold for installing a new USO line and whilst the TERA research shows there are significant differences in how the threshold is set by other jurisdictions the principle appears to be established. We note from the consultation that eir Group is seeking to reduce the RAT so that they can shorten the time to receive a return. We would be supportive of this view but a new level must still strike a reasonable balance between uneconomic supply and reasonableness.

A.5.4 Quality of Service (QOS)

We are increasingly concerned about the rising levels of eir Group's claims for running the USO and agree ComReg should benchmark service quality and fault repair against other countries. Our concerns are heightened with eir Groups recent history of meeting the USO requirements in Ireland and the need for three Performance Improvement Plans over recent years. We believe that if eir Group decides to underinvest in the access networks, the industry should not be penalised through higher charges.

A.5.5 Functional Internet Access

The hurdle to increase the 28.8kbit/s can be significant and may require a re-build of at least part of the local access network. In many areas this has already happened in the form of Broadband/high speed broadband and it's a goal for the NBP programme to achieve a minimum speed of 30 Mbit/s to all. Whilst the stated aim of the NBP is much higher than the achievable FIA, the State has not yet finalised their project coverage and development could take many years. We therefore believe it is difficult to factor this into the USO at this time other than to monitor developments.

Review of impact of not imposing ALF USO's

Q. 6 Having considered the TERA Report and ComReg's consultation, in your opinion are there other factors with respect impact of not having AFL USOs or in respect of the need for an AFL USO and/or the associated AFL components that ComReg should consider at this time? Please give reasons to support your view.

A.6 We agree with ComReg's review of the impact of not having AFL USO. Also as highlighted in the TERA report in its European bench marking Ireland has many dispersed dwellings and the current approach tends to align with countries with similar demographics. We would agree that absent the AFL USO many people would not be served and we would have a significant doubt that customers in rural areas would receive reasonable repair times for faulty services. We note the difficulty the industry has had agreeing improved SLAs with eir Group and believe this would also apply to the USO given the opportunity.

Q. 7 Do you agree with ComReg and TERA's view of the risks to universal, affordable and quality AFL in the absence of any USO? Please give reasons to support your view.

A.7 We agree with ComReg and TERA's view of the risks to universal, affordable and quality AFL in the absence of any USO. We note eir Group's recent behaviour concerning price changes to the voice/WLR bundle and also to the Standalone Broadband prices which in our view highlight eir Group can still act independently of the market. Given this potential behaviour we would agree with TERA that absent regulation there is a real risk that USO AFL prices will not be geographically averaged and rural customers will pay a significantly higher premium absent access infrastructure competition. We support ComReg's initiative for national cost based prices for SB-WLR but note absent other regulatory obligations eir Group could still set its own variable USO retail pricing.

Q. 8 Do you agree with ComReg's preliminary view that having regard to each of the various AFL components that some kind of AFL USO continues to be required post 31 December 2015? Please give reasons to support your view.

A.8 We agree with ComReg's preliminary view that having regard to each of the various AFL components that some kind of AFL USO continues to be required post the 31st December 2015. As highlighted by TERA competitive infrastructure is not yet in place in many areas of Ireland. We believe that where it is available it's not ubiquitous and without commercial incentive or State intervention other operators in Ireland will not become ubiquitous providers. Hence absent the USO obligations on eir Group, increased competition or the completion of State intervention investments no other operator will have the ubiquity in Ireland to have sufficient network access to support the USO fully.

AFL USO Technology

Q. 9 Do you agree with ComReg's preliminary summary of the technologies by which an AFL type service can in principle be supplied? Please give reasons to support your view.

A.9 We agree with ComReg's preliminary summary of the technologies by which an AFL type service can in principle be supplied. We note the definition set by legislation and also a technology neutrality approach as to the media used to convey services to a fixed point. Given there is no enforced line power obligation in Ireland we would support the view that managed VoIP services over a high speed quality access network could satisfy the requirements of a voice AFL USO. However what is not clear is what would be the price of a Voice only service over a high speed delivery.

Q. 10 In your opinion are there other factors that ComReg should consider at this time? Please give reasons to support your view.

A.10 We consider there should be a dialogue with the DCENR concerning the NBP to ensure that the USO can be supported by whoever wins the bid(s).

Geographical Scope and Duration of any potential Designation of USP

Q. 11 Do you agree or disagree with ComReg's preliminary view that, if it is determined that there is a need for an AFL USO in the whole or parts of Ireland post 31 December 2015, any subsequent designation of a USP(s) to provide the AFL USO should be, in principle, for the entire State, allowing for flexibility in respect of individual components as relevant? Please give reasons to support your view.

A.11 We agree the USO is required after 2015, however we doubt whether other operators could achieve the required ubiquity to meet the requirements of the USO. The information provided with the consultation does not help us determine whether operators other than eir Group have the ubiquity in the areas they are operating. For example an operator may be operating in Cork, but their presence maybe the city centre and selected urban locations only. Hence at a high level the operator may appear to be present in Cork, but their coverage is not ubiquitous with considerable new network investment required to reach this classification. I.e. they would not be able to comply with an obligation for Cork coverage without huge network investment. In our view there is only one provider at this time that could sustain the USO and that is eir Group. We agree the situation may change over the coming 5 to 7 years but again the access from other parties will not be ubiquitous in an area. For NBP, ubiquity would seem most unlikely as State Intervention is to address GAPS in coverage where the market has failed to commercially supply, hence it's difficult to see NBP being characterised with general USO coverage.

In the short to medium term it would appear to us that specifying the USP on multiple operators will be problematic given none will have 100% coverage other than eir Group.

Finally we consider the USO should be scheduled for a 5 year review period to ensure market and technology developments are reviewed whilst maintaining a level of market stability.

Regulatory Impact Assessment

Q. 12 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.

A. 12 We consider the USO needs to be re-designated post December 2015 but more work needs to be carried out if ComReg were to introduce multiple USPs. I.e. except for eir Group no operator has a ubiquitous network and coverage gaps are likely even in the areas where they trade. The consultation acknowledges the coverage gaps and we consider these should be given a higher prominence in the Impact assessments.

3 Eir

eircom Group

Response to ComReg Consultation Paper:

**Universal Service Obligation:
Provision of access at a fixed location**

ComReg Document 15/89



30 September 2015



DOCUMENT CONTROL

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The comments submitted to this consultation are those of eircom Ltd trading as 'eir' and 'Open eir'



Executive Summary

There has been no proper review of the Universal Service Obligations (USO) for Access at a Fixed Location (AFL) since the Designation of eircom as Universal Service Provider (USP) in 2006. As such the current Consultation, ComReg 15/89, is to be welcomed in principle. Unfortunately the approach and analyses of ComReg and its consultant TERA fall well short of the standard for a proper review.

The 2014 consultation elicited responses that a deep and thorough analysis was required of the current Irish market landscape prior to reaching a conclusion on any subsequent designation and its scope. This has not been done. The TERA Report, upon which ComReg's consultation is based, is a largely qualitative, backward looking assessment, relying on superficial analysis based on flawed assumptions and out of date reference data.

A strategic review of the AFL USO should be genuinely forward-looking based on sound assumptions on technology and market changes. As we explain further in this response the TERA Report fails in this regard and cannot be relied upon.

ComReg must complete its review in an orderly manner and this is likely to take the first half of 2016 to complete. This is beyond the expiry of the current designation period and so will allow ComReg a chance to properly assess the counterfactual of what will happen absent an AFL USO designation.

An objective assessment of the facts would lead to a rational conclusion that fixed line voice is in rapid decline as consumer preferences have moved to consume voice services from alternative platforms primarily mobile and VOIP. It is evident this well established trend will continue. It is startling that ComReg therefore proposes to maintain the AFL USO for a period of 5 to 7 years on a national basis. If eircom was mandated as USP in the manner that appears to be contemplated by ComReg then eircom would effectively be forced to maintain a national network for a service that is in terminal decline. Nowhere in the consultation material do ComReg or TERA consider what this actually means from an economic perspective. No attempt is made by ComReg to consider the costs that would be borne and optimal alternative investment foregone by the USP in such circumstances. This is unacceptable in a market where the driver for fixed access connectivity is high speed broadband. Changes in the market with the roll out of FTTH services by both eircom and SIRO are also ignored in the analysis.

In addition, the important role of mobile for the delivery of voice services in Ireland needs to be recognised at a higher level in TERA's and ComReg's thinking regarding the strategic direction of the USO.

Absent any clarity on the AFL role of VOIP in an FTTH environment ComReg is effectively seeking to require that a narrowband network is maintained nationally into the next decade without any consideration of the gross inefficiencies this will generate to the detriment of operators and consumers. This is because the net cost of the AFL USO will spiral upwards if it is to be maintained inefficiently on a narrowband network. ComReg must therefore consider the implications for Operators contributing towards that cost. ComReg has failed to properly analyse and take into accounts anticipated network evolution over the near term. Assuming ComReg can justify a designation of AFL USO beyond 2015 then it must clearly establish the role that VOIP and other voice services can play.



This is needed as much in the short term as when the NBP is rolling out. The DCENR has already specified that 80% of the NBP should be rolled out by 2018 and so waiting until after rollout is completed in 2020 to review the AFL USO is not justified. As the economy continues to recover new house building has commenced with a number of new housing developments in the planning phase. In the modern era eircom's technology of choice to both provision new build estates and the NBP is FTTH. It would be inefficient to deploy copper alongside the fibre.

The high level of regulatory risk that these current proposals confer on potential NBP bidders, in particular on eircom as the current USP, must be eliminated in order to protect the integrity and fairness of the NBP process.

ComReg is aware of the current review by the European Commission of the Regulatory Framework, including the USO. The results of that review are to be published next year. It makes no sense to take long term decisions without taking in account the results of a review that Ireland will be required to implement.

ComReg should move away from seeking to justify a significant regulatory intervention on the basis of qualitative discussion and conduct a rigorous assessment of the socio-economic, direct and indirect benefits and costs of maintaining the AFL USO. Such an assessment would be expected as part of a properly framed review of regulatory policy. This also requires the AFL USO to be properly defined in advance of any decision regarding USP designation or designation periods. There should be no 'in principles', 'ifs' or 'maybes' but a clear regulatory policy established.

There is also a clear need to review the operation of the funding arrangements for AFL USO. Four applications by eircom for funding are currently with ComReg for a total net cost of €36.6m. The administrative process for considering these applications is extremely slow. It is difficult to see how the AFL USO regime can be said to be either equitable or operating effectively if it is applied in an entirely one sided manner to the detriment of the existing USP.

For the avoidance of doubt we do not agree that some kind of AFL USO continues to be required post 31 December 2015.



1 Introduction

The current consultation follows on from ComReg Decision 10/14 of 7 July 2014 designating eircom as the USP for a period of 18 months, and eircom's appeal of that Decision, which was settled by agreement between eircom and ComReg. As part of the Settlement Agreement, ComReg agreed "to undertake a forward-looking review of the requirement for the Access at a Fixed Location element of the USO and issue in this context a consultation paper or papers no later than end June 2015". Moreover, it was agreed that these papers would "

[REDACTED]

It is of great concern to eircom that Consultation Document 15/89 meets none of the requirements that had been agreed as part of a settlement of High Court proceedings.

2. Unjustified delay

Consultation Document 15/89 was published late, on 7 August 2015. It is not clear what justification there is for this delay, having regard not only to the explicit terms of the Settlement Agreement but also ComReg's statement¹ in July 2014 that it had "decided, as soon as practicable, to commence a review process, including a public consultation, in respect of a review of the requirements in relation to the requests for connection, pricing and quality of service (QoS) measures. This includes the Reasonable Access Threshold (RAT), which is currently set at €7,000 and the target requirements for Functional Internet Access (FIA), currently set at 94% at 28Kbps), the future requirement for Geographically Averaged Prices (GAP) and the Quality of Service Targets established by D02/08, in respect of the Access at a Fixed Location USO."

This delay is of significant concern because it continues a pattern that eircom had understood ComReg agreed to put to an end with the Settlement Agreement. eircom's designation as USP has been rolled over pending completion of detailed reviews since 2006, first in 2010, then in 2012, and again in 2014. On each occasion for the last three designations ComReg's processes have allowed insufficient time for proper consideration of the issues. In 2010 ComReg issued its consultation on 22nd April 2010 with a response deadline of 21st May 2010. ComReg issued its Designation Decision on 30th June 2010. In 2012 ComReg issued its consultation on 30th April 2012. The response deadline was 5th June 2012 and ComReg issued its Decision on 29th June 2012. The cycle of insufficient consultation periods repeated itself in 2014 with ComReg issuing its consultation on 16th May 2014 with a response deadline of 16th June 2014. ComReg issued its Designation Decision on 7th July 2014 and there was a period of 7 days in 2014 where there was no designated USP.

The present consultation period concludes on 30th September 2015, that is 3 months from when the current Designation expires on 31st December 2015. During the next 3 months ComReg must analyse and consider the comments received as well as deal with some of

¹ Paragraph 2.2, ComReg 14/71



the strategic issues which were not considered in any depth in the consultation. If ComReg considers, following full consideration of views received, that it can objectively justify the maintenance of the AFL USO in Ireland for a period of time, then it must issue further consultation(s) on the scope of the future AFL USO to apply from 2016 and the designation process. Once the scope of the AFL USO is established, ComReg, in accordance with Article 3(2) of the USD having determined *“the most efficient and appropriate approach for ensuring the implementation of universal service, whilst respecting the principles of objectivity, transparency, non-discrimination and proportionality”*, will need to undertake a designation process. It must *“do so using an efficient, objective, transparent and non-discriminatory designation mechanism, whereby no undertaking is a priori excluded from being designated”* as required by Article 8(2) USD. The designation process should have sufficient detail on what is required of prospective suppliers and how their responses will be assessed and as such can only logically occur when the AFL USO definition is finalised.

It does not appear to be realistic on the part of ComReg to expect to properly execute each of these steps within a three month timeframe, or indeed a three month and three week timeframe, as per the original consultation timetable. In particular, there does not seem to be any reality to ComReg's plan, were ComReg to remain *“of the preliminary view that there is a need for some kind of AFL USO in the State post 31 December 2015”* to *“issue further consultation paper(s), during Q3 of 2015 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”*. That is allowing itself a mere three weeks to review submissions to consultation, take them into account and produce further consultation papers. Having regard to past practices, this is simply not possible and eircom has a serious concern that this consultation process is no more than a rubberstamping exercise in no way different from the roll-over approach followed by ComReg in the previous years. As explained by eircom in 2014, such an approach is simply unacceptable as being inconsistent with the requirements of the regulatory framework.

ComReg's own strategy statement emphasises the need for timely and robust regulatory processes and the need to improve the effectiveness and efficiency of ComReg's business processes.² ComReg is demonstrably failing in this regard. It is also not meeting the challenge it explicitly recognises of keeping basic service obligations up to date as technology changes.

eircom does not see how ComReg could complete its review and put in place, to the extent that it is required, an appropriate designation process that is consistent with the requirements of the regulatory framework, prior to the expiry of the current designation period. The current designation period was set at a maximum of 18 months, precisely with the view to allowing ComReg the time to consider the requirement for an AFL USO and the designation methodology. eircom had opposed this approach on the basis that eircom should not have to be subject to an obligation for which no proper justification had been advanced. For the avoidance of doubt, eircom is of the strong view that it would be entirely unreasonable to extend eircom's current AFL USO obligations past 31 December 2015.

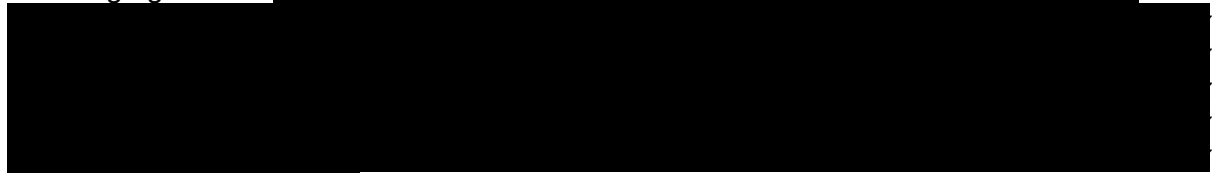
² <http://www.comreg.ie/fileupload/publications/ComReg1475.pdf>, page 11.



3 No Strategic Review

At this stage, it is almost 10 years since ComReg undertook anything close to a meaningful review of AFL USO. During that time the European Commission (EC) has completed two reviews of the Universal Service regime in 2008 and 2010 (reporting in 2011). The EC has commenced a further review this year and as part of its REFIT programme is reviewing the European Regulatory Framework. AFL USO is a substantial market intervention and those powers should not be exercised lightly without full consideration of the effects of the intervention on the market. Communications markets are continually evolving and it is difficult to see how ComReg is fulfilling the requirements of the Universal Services Directive 2009 (USD) which requires inter alia universal service obligations “*shall seek to minimise market distortions, in particular the provision of services at prices or subject to other terms and conditions which depart from normal commercial conditions, whilst safeguarding the public interest.*”

The 2014 consultation had elicited responses from the vast majority of operators that a deep analysis was required of the current Irish market landscape prior to reaching a conclusion on any subsequent designation and its scope. As recalled above, in the Settlement Agreement, ComReg agreed to “



”. However, while the consultation document pays lip service to doing a review of forward-looking requirements for the Access at Fixed Location element of the USO and a roadmap for its evolution, it is not a strategic review of AFL USO in Ireland. It is a tactical review of the components of USO – Quality of Service (QoS), Affordability, Geographically Averaged Pricing (GAP), Reasonable Access Threshold (RAT) and Functional Internet Access (FIA).

In particular, the consultation document looks no further than 1st January 2015 and does not consider in any detail how any of the components might change over the next few years. It is drafted seemingly on the assumption that there could only be a reasonable conclusion, namely that the present USO should continue largely unaltered for a period up to 7 years. The outcome of the next phase consultation is also clearly signalled: eircom will again be designated as USP with little or no changes to the regime. Essentially this is another pre-determined “rollover” exercise and is prejudicial to eircom’s interests. The concept of a USO, as the USD makes it clear, is that there should be the provision of a defined minimum set of services to all end-users at an affordable price (not necessarily imposed by regulation). The aim is an inclusive information society.³ That necessarily involves a consideration of how the information society has and will change. Ignoring such change is inconsistent with ComReg’s mandate to promote competition, investment and the interests of end users.

³ Recital 4 of the USD, 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 (Universal Service Directive) (as amended by Directive 2009/136/EC



The TERA Report, upon which ComReg's consultation is based, is a largely qualitative, backward looking assessment of some areas with relevance to Universal Service, relying on superficial analysis based on flawed assumptions and out of date reference data.

eircom in this context has serious concerns with the approach followed by TERA, as set out in the TERA Report entitled 'Forward looking review of future AFL element of USO in Ireland' (ComReg 15/89a) and of which the consultation paper itself is basically a summary. It is not clear what TERA's Terms of Reference⁴ were, having regard to TERA's particular expertise in the area of detailed cost modelling and the nature of report produced. It does not appear that TERA, or ComReg separately, made a specific assessment of changes in technology as well as the socio-economic, direct and indirect benefits and costs of maintaining the AFL USO. Such an assessment would be expected as part of a properly framed review and it is impossible to understand what is the factual basis that informs both TERA and accordingly, ComReg's views.

As an overarching comment the TERA assessment adopts the wrong starting point. The first step in a forward-looking review of AFL USO, including a roadmap for its evolution, is to ascertain whether the basic communications needs of citizens are being addressed by the market in its current and anticipated form, taking into account consumer and technological trends.⁵ Guidance can be found in Article 15 which requires consideration of social, economic and technological developments, taking into account, inter alia, mobility and data rates **in the light of the prevailing technologies used by the majority of subscribers.**⁶ If the answer to that question is that there is a gap for some segments of society and the backstop needs to change, then what needs to be considered is how to best address that gap whilst minimising potential distortions to the competitive operation of the market place. However, this is not what TERA or ComReg has done. Instead TERA and ComReg's review is limited to a consideration, backed by no evidence, of what eircom would do if its USO AFL obligations were removed, including "*how Eircom could behave in rather extreme situations (such as extreme competition in urban areas for example) assuming Eircom is behaving as a profit-maximising entity.*" As a result, there is no forward-looking review of what the AFL USO should look like and no roadmap allowing for its evolution while protecting the needs of consumers, only an update of ComReg's long overtaken 2006 assessment and then again limited, in TERA's own words, to an analysis of "*worst case but possible scenario*". Such an assessment is entirely insufficient and inconsistent with ComReg's statutory duties and the requirements of the regulatory framework.

The ComReg Consultation and TERA Report are extremely disappointing as they do not meet the expectations of a strategic review, including as ComReg itself envisaged it in previous consultation documents. ComReg first considered forward looking issues in Part 2 of ComReg 14/48 (Para.5.3): "*The current scope of the AFL USO was designed with a conventional telecommunications environment of fixed voice-based networks in mind. However, ComReg recognises that AFL USO needs to evolve as appropriate with a rapidly advancing digital environment. As set out in Chapter 3, technological and market*

⁴ No reference of the tender has been published on www.comreg.ie. A search of ComReg published / tenders / awards on www.eTenders.gov.ie for the period 1 July 2014 to 7 August 2015 yields no relevant tenders.

⁵ Article 1 of the USD makes it clear that: " The aim is to ensure the availability throughout the Community of good-quality publicly available services through effective competition and choice and to deal with circumstances in which the needs of endusers are not satisfactorily met by the market"

⁶ Emphasis added.



developments indicate that users' main interests are shifting with broadband and mobile solutions increasingly in demand, as well as fixed connections. Since 2012, take up of broadband is increasing and dial-up internet is now almost obsolete. The prevalence of bundled voice and broadband services are two factors that appear to be increasing subscriber migration to VOIP as well as some substitution away from the fixed line phone to mobile for voice telephony. Through this consultation process ComReg will determine whether a 'safety net' AFL USO continues to be appropriate in the short to medium term and if so whether any change to the scope is necessary" [emphasis added].

In ComReg 14/71 (para. 3.11) issued in July 2014 ComReg still appears to consider that the market may have changed since the last review in 2006 as "changing consumer preferences in respect of mobile technology, broadband access and bundled services highlight the need for ComReg to ensure that the universal service framework keeps in step with market developments and rapidly changing consumer needs" [emphasis added].

ComReg now appears to be of the mind that all the things it thought would be material and relevant in 2014 and which are clearly supported by ComReg's own market data⁷ are no longer relevant in 2015. Even as recently as 3rd July 2015 ComReg was signalling that the AFL USO Review would be a more rounded and developed analysis. The following quotes are taken from ComReg 15/57⁸ [emphasis added]:

(49) "*In advance of the expiry of the current AFL USO designation, ComReg is carrying out a forward looking review of the future of the AFL element of the USO. This will consider forward looking requirements for the AFL USO, and a roadmap for its evolution"*

(51) "*In the context of NBP, ComReg's review will consider to what extent its assessment of the evolution of AFL over 3 to 5 years should reflect the ongoing NBP roll out which is planned to commence during this period. The outcome of the NBP procurement process and thus its exact impact and timing of that impact on any AFL USO, will not be known definitively before ComReg's upcoming review consultation commences. However, ComReg will consider currently available information and further information as it becomes available and ComReg will liaise with the DCENR to ensure relevant information regarding the NBP which impacts on the AFL USO can be considered by ComReg."*

(72) "*It may be open to ComReg in the future to impose the universal service obligation as either a wholesale or retail obligation, whichever is more appropriate".*

(93) "*ComReg is of the view that it may be economically inefficient to insist on the maintenance of separate parallel copper infrastructure — where alternative infrastructure has been deployed under the NBP".*

ComReg's approach is simply impossible to understand.

In the absence of any forward-looking review of the AFL USO ComReg is not in the position to consider a roadmap for the evolution of AFL USO, as it had undertaken to do in the Settlement Agreement. ComReg tries and wishes the issue away by proposing in

⁷ See for example http://www.comreg.ie/_fileupload/publications/ComRegPR10092015.pdf

⁸ ComReg document "National Broadband Plan - Response to Call for Input"



effect to maintain the 2006 regime for a further 5 to 7 years, to 2021/2023. This is an extraordinary proposal.

As we explain later in this consultation response, such a designation period is simply entirely unjustified and unreasonable, including having regard to recent market developments as well as the National Broadband Plan process which ComReg is deeply involved in. In particular, ComReg has failed to adequately consider the relationship between the AFL USO and the National Broadband Plan (NBP) and more particularly, the justification for, and shape of, a continued AFL USO in the face of the NBP and associated investment in NGA networks. This, and associated issues, fall within the remit of ComReg. As such they are not addressed in the recent DCENR consultation on Connecting Communities – The National Broadband Plan (beyond basing some of the proposed KPIs on ComReg's current requirements).⁹ ComReg's failure to address these matters head-on puts eircom, as the current USP, at a unique disadvantage in its NBP bid. ComReg's proposal for a 5 to 7 year designation period which will expire after the NBP has rolled out may seek to absolve ComReg of any responsibility over these matters now or over the next 5 to 7 years but eircom, and the communications industry and its consumers more generally, will not be able to avoid this complex issue. ComReg acknowledged in July 2015 that *"it may not be economically efficient to insist on the maintenance of separate parallel copper infrastructure"*, particularly if eircom is not successful in some or all of the lots to be included in the tender. This continues to be the case and rolling over for 5 to 7 years the 2006 regime is to approach the matter in a manner that is simply unreasonable because it does not deal with the underlying issue.

The communications industry is a dynamic industry which is undergoing significant changes. A lot can and will change in a 5 to 7 years period and hence it is imperative that the regulator reaches a fully informed decision following a measured and proper review. The fact that the USO is based on the current European Regulatory Framework and that is currently undergoing a fundamental review only reinforces this need. It is clearly precipitate to impose long term obligations which may be inappropriate in less than 2 years' time.

A strategic review of the AFL USO should be genuinely forward-looking based on sound assumptions on technology and market change. As we explain further in this response this is not what ComReg has done and there has been no progress in bringing further clarity to the items ComReg considered relevant in July 2015.

We turn now to address the questions raised in the Consultation.

⁹ Para 6.2,
<http://www.dcenr.gov.ie/communications/SiteCollectionDocuments/Broadband/Strategy%20Reports/Governance%20Report.pdf>



Responses to Consultation Questions

Q. 1 Do you agree with ComReg and TERA's review of the relevant consumer trends? Q. 2 In your opinion are there other relevant factors in relation to consumer trends which ComReg should consider?

The forthcoming years will be of particular importance for the development of Ireland's communications sector. eircom is undertaking substantial investment in rolling out high speed fibre broadband which by 2020 will cover over 1.9million premises. SIRO is investing in the rollout of its rival network and will shortly launch commercial services¹⁰. UPC has launched high speed broadband services, is likely to upgrade these further in the next couple of years¹¹, and is the largest provider of network services in many parts of Ireland. Competition based on triple and quad play offers continues to intensify with the presence in the Irish market of a number of large international players such as Sky, Vodafone, Three and BT. Ireland's mobile networks are continuing to extend 4G coverage and to increase speeds. Speeds of to 21 Mbps are currently available and will only increase.¹² In addition to this market driven activity the Government has recently announced its proposed intervention strategy for the NBP.

Chapter 3 of the TERA Report is stated to look at consumer trends. TERA considers historic usage and market research from 2012 in respect of 'consumer trends'. It is deeply concerning that what little quantitative analysis that has been undertaken by TERA is based on out of date information. The analysis of consumer behaviour is based on market research results from 2012, originally presented in ComReg 12/117a. The residential market research was conducted between 17th February and 10th March 2012. This research predates the designation of eircom as AFL USO USP in 2012 and 2014. The research considers consumer behaviour three and a half years ago. It is not acceptable that this research is being used to inform forward-looking decision making in 2015, the implications of which are proposed to carry through potentially to 2023, a full decade after the research.

The only forward looking projection carried out in the consumer trends section is a linear projection of fixed voice traffic in which "*Fixed voice traffic was representing 45% of the total voice traffic in 2009 and if recent trends keep going, this share should [would] represent 15% of the total traffic within 5 years.*" This is not to the standard of a forward looking socio-economic analysis. The projection taken with other historic trends clearly illustrates that fixed voice, which is at the heart of the AFL USO, is a declining service that is rapidly being replaced by mobile and over the top (OTT) services. However TERA, and ComReg, appear to approach the subject of AFL USO from the perspective that so long as someone continues to consume fixed voice then the AFL USO remains necessary based on a notion referred to as 'unneglectable' demand. 'Unneglectable' is not defined by TERA and is not a term eircom has come across before. What is striking and definitely cannot be neglected is that in Q2 2015 there were 3,594,077 mobile voice and data subscribers using 3G/4G networks in Ireland.¹³ This approach is also apparent from TERA's comments in respect of

¹⁰ <http://siro.ie/roll-out/>. SIRO has already announced the availability of services for this autumn, eg <http://siro.ie/dundalk-shines-brighter/>

¹¹ DOCSIS 3.1 is expected to start rollout next year -

<http://www.libertyglobal.com/pdf/presentations/Liberty-Global-Q2-Earnings-Presentation-FINAL.pdf>

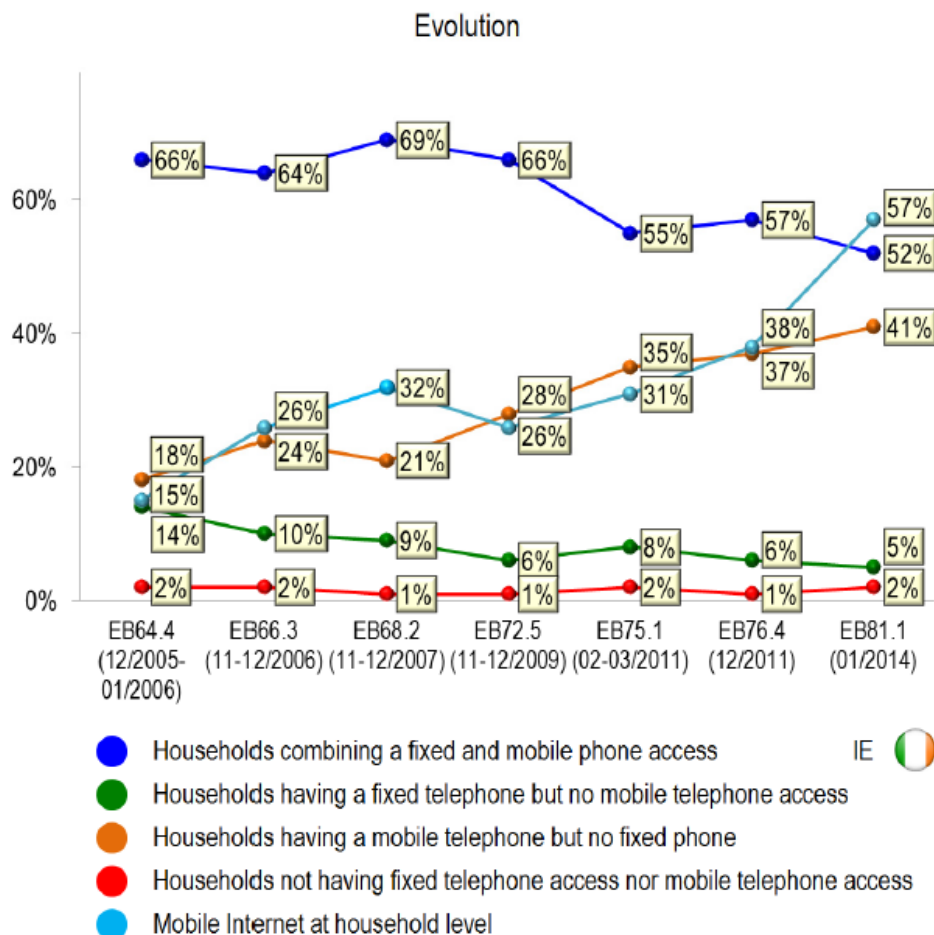
¹² <https://switcher.ie/broadband/guides/mobile-broadband-coverage/>

¹³ http://www.comreg.ie/_fileupload/publications/ComReg15102.pdf



the use of VOIP (s.3.1.1.3): TERA observes that the results of a survey in 2013 “show 43% of respondents reported that they never used unmanaged VoIP services at all”. What the result actually illustrates is that the majority of respondents, 57%, have at some point in time used VOIP.

ComReg notes (para.60) that TERA point to the 2014 Eurobarometer survey that 5% of end-users in Ireland have fixed access but not mobile access. It is not appropriate to view the fixed only figure in isolation and hold this out as some form of justification for maintaining the USO as an obligation for a fixed line network operator. It is clear that Irish households have a preference for mobile phone access as their technology of choice for basic telephony services. The following chart sets out the results of the Eurobarometer survey in terms of the evolution of household consumption of phone access.



93% of households at the start of 2014 had mobile phone access. This compares with 84% of households in 2005/06. 80% of households had fixed telephone access in 2005/6 compared with 57% in 2014. The trend in the number of households with a fixed phone is downwards whilst the number with mobile phone is increasing.

41% of households only had a mobile phone in 2014 compared to 18% in 2005/06. In contrast the number of fixed phone only households has declined from 15% in 2005/06 to 5% in 2014. Mobile phone access is increasingly the service of choice for households at a



fixed location. The decline in fixed phone is a national trend which can be observed in urban and rural areas,

Objectively considered, these statistics indicate that fixed line voice is in rapid decline as consumers have moved to consume voice services from alternative platforms, primarily mobile and VOIP and that this well established trend will continue. UPC today does not provide a separate voice service and [REDACTED]. It is startling that ComReg therefore proposes to maintain the AFL USO for a period of 5 to 7 years on a national basis. If eircom is designated as USP in the manner that appears to be contemplated by ComReg then eircom would effectively be forced to maintain a national network for a service that is in terminal decline. Nowhere in the consultation do ComReg or TERA consider what this actually means from an economic perspective. No attempt is made by TERA or ComReg to consider the increasing costs that would be borne and optimal alternative investment foregone by the USP in such circumstances. This is unacceptable in a market where the driver for fixed access connectivity is high speed broadband.

Q. 3 Do you agree with ComReg and TERAs review of the relevant supply side trends?
Q. 4 In your opinion are there other relevant factors in relation to supply side trends which ComReg should consider?

In Section 3.2 of its report TERA provides an overview of the current fixed line deployment plans of Open eir, Siro and UPC. A section also looks at mobile network coverage. However, although ComReg of course has extensive information gathering powers and indeed has a lot of the relevant data already at its disposal, TERA deals with this matter based on publicly available information (announcements and coverage maps on websites) and at times, out of date information. For example in respect of mobile coverage, TERA present the coverage maps of each operator individually. It would be directly relevant to this review to combine the coverage of all the mobile operators to identify the extent of white zones (areas without mobile coverage) across the State. TERA also refers to a statement by eircom regarding eircom's 3G coverage as being 90% at 31st December 2012 and concludes that "*Despite this large coverage, an unneglectable part of the population and of the territory would not be covered by eircom's 3G or 4G network*". Our mobile coverage has moved on significantly since 2012. At the end of July 2015 our 3G network was available to [REDACTED]% of the population. It is also of concern that no such comment is made in respect of the other mobile operators' coverage despite one other operator also being a fixed consumer network provider and other fixed networks about to launch mobile virtual network operations.

In the light of this, and having regard to the fact that, as ComReg accepts AFL may be delivered over wireless and mobile platforms and has been done in other EU States, ComReg's conclusion that mobile platforms are not suitable for AFL delivery "because of poor coverage of mobile services" is without any sound basis.

Based on the narrow view that only fixed infrastructure deployment is relevant TERA defines three geographic areas for the purpose of its assessments, areas with market driven competition, the anticipated NBP Intervention Area (which we note is still subject to review) and so called 'eircom only' areas, where competition comes from mobile networks. The fact that the definition of the three areas entirely ignores mobile (remember 41% of Irish households relied solely on mobile phones in 2014 and this trend has been rising for over 5 years) renders this analysis meaningless in the context of AFL USO. Whilst the three areas may be relevant regarding the universal provision of broadband in the State, they are



irrelevant for these purposes as the subject of this review is AFL USO. We also do not understand the basis for TERA's doubts that the NBP will be completed by the end of 2020, as per the Government's announced policy.

Q. 5 In your opinion are there other relevant factors in relation to the European context or benchmarking which ComReg should consider?

As ComReg notes in the Consultation, the European Commission has commenced a review of the USO. ComReg doubts if the outcome will be known in the immediate future. Whilst that may well be the case the Commission's stated timetable is that the review will be completed in 2016. This calls into question the rationale for ComReg's proposed designation period of 5 to 7 years. To the extent that a further designation period can be justified for AFL USO then it should end with a review as soon as the EC review is completed to ensure that USO regulation in Ireland is kept in step with the rest of Europe.

eircom notes the Annex of the TERA report titled 'Benchmark of AFL USOs imposed by other NRAs in Europe'. Practices vary between countries with some countries seeing no need to impose an AFL USO. The benchmarking is missing a vital ingredient. There is no comparison of the specific circumstances in each country relative to Ireland. Relevant circumstances would include maturity of fixed and mobile networks, spread of population and geography etc. The need and scope for AFL USO has to be determined at the national level and, as such, the section of the TERA Report on EU Benchmarks is disappointing.

Q. 6 Having considered the TERA Report and ComReg's consultation, in your opinion are there other factors with respect impact of not having AFL USOs or in respect of the need for an AFL USO and/or the associated AFL components that ComReg should consider at this time?

Q. 7 Do you agree with ComReg and TERA's view of the risks to universal, affordable and quality AFL in the absence of any USO?

eircom will address these two questions together. In short, we find the TERA analysis to be substandard and do not agree with the ComReg / TERA view of the risks in the absence of any USO. We discuss each element in more detail below.

- Reasonable requests for AFL

TERA's analysis in section 4.3 considers data provided by eircom in terms of cost incurred per connection in recent years. From this TERA speculates that different numbers of customers might not be connected if the Reasonable Access Threshold was reduced to different levels. The simple fact is that during the period reviewed by TERA eircom did not reject any requests for connection despite difficulties eircom experiences in obtaining the requisite wayleaves and access to property and there is no reason to suggest that this would change absent the AFL USO.

In section 4.4 of its Report TERA considers what AFL may be delivered absent an obligation. It is concerning that TERA demonstrates a lack of understanding of the AFL USO as currently defined in Ireland. TERA states "*Eircom may prefer to use the FCS technology (see §3.2.1). FCS not being capable to support FIA (see §3.2.1), some customers would not be able to get FIA anymore which would mean that the requirements of the Universal Service Directive would not be met in Ireland.*" FIA is defined for the purpose of AFL USO as the provision of internet access at speeds of 28.8Kbps on 94% of lines. Consequently



the requirements of the USD are in fact being met when FCS is used in limited circumstances. However TERA goes on to conclude that absent the AFL USO Ireland would fail to meet the requirements of the USD because “*absent any AFL USO, it is possible that [redacted] customers (Eircom’s estimated unprofitable customers) would be connected on the basis of alternative technologies.*” It is unlikely that eircom would rationally install an alternative technology solely for the provision of out of date narrowband services for premises already connected to the network. Even if it did do so with a technology that did not support FIA then the requirements of the USD as defined in Ireland would be met ([redacted]).

- Internet access demand

The TERA Report (s.3.1.3) considers a number of issues related to Functional Internet Access (FIA). It is not clear why the focus of TERA’s consideration is narrowband internet access. The fact that this is what is currently in place is not relevant as such. As noted in Recital 8 USD “*Connections to the public telephone network at a fixed location should be capable of supporting speech and data communications at rates sufficient for access to online services such as those provided via the public Internet.... Member States should be able to require the connection to be brought up to the level enjoyed by the majority of subscribers so that it supports data rates sufficient for access to the Internet.*” This indicates that, to the extent FIA is to be specified it should be consistent with how the internet is consumed by the majority of users. This is further amplified in Article 4(2) of the USD. “*The connection provided shall be capable of supporting voice, facsimile and data communications at data rates that are sufficient to permit functional Internet access, taking into account prevailing technologies used by the majority of subscribers and technological feasibility.*”

TERA should therefore be considering and basing its conclusions on what is currently enjoyed by the majority of subscribers. TERA does acknowledge that: “*In Ireland, like in the rest of Europe, the vast majority of broadband customers have access to speed greater than 2 Mbps and the majority have access to speed greater than 10 Mbps. A relatively small proportion of households has internet access speeds above 144 kbps and below 2 Mbps. Therefore, customers with narrowband Internet access have speeds significantly lower than the vast majority of the population in Ireland which can lead to social exclusion*”. This suggests, it appears to eircom, that the current FIA specified at 28.8kbps is no longer fit for purpose or consistent with the requirements of the USD.

TERA makes a range of observations regarding narrowband internet access suggesting that there may be geographically isolated pockets of demand for narrowband internet access (figure 13) with emphasis on a single rural exchange area in Co. Kildare (figure 15). TERA also attempts to consider affordability (section 3.1.3.3) conjecturing that “*some customers could accept to experience very poor levels of quality of service (see previous section) because they cannot afford to pay for broadband. For these customers, FIA is likely to be very important but broadband is too expensive.*”

None of this is a justification for the continuance of AFL USO per se unless there is to be a radical rethink of FIA. As noted by TERA (p.57) “*Thanks to the NBS, broadband should in theory be available to 99% of the population of Ireland*”. There would appear to be an objective basis for FIA to be set at a speed of at least 2Mbps (as enjoyed by the vast majority of subscribers) and if there is an affordability issue then targeted tariff interventions



could be considered¹⁴. However such initiatives are not without cost and associated benefits. No attempt has been made by TERA or ComReg to quantify the socio economic costs and benefits.

TERA observes that “*Demand for narrowband Internet access is low and decreasing*”. In 2006 narrowband Internet access accounted for nearly 600k internet users in Ireland. As observed in the TERA Report there were [REDACTED] narrowband internet access customers in July 2014 which represented just [REDACTED]% of PSTN working lines. This figure has further declined. Again this calls into question the proportionality of mandating a USP to maintain a national network for a service that is in terminal decline and already statistically insignificant.

eircom has undertaken some analysis which looks at the utilisation of dial-up internet during July / August 2015. The analysis considers the distribution of call duration by residential and business user and is presented graphically:

[REDACTED]

[REDACTED]

This analysis demonstrates that over [REDACTED]% of dial-up usage is by businesses and is of a short duration (less than 2 minutes) suggesting that dial-up internet is primarily being used for legacy business processes such as electronic payment systems. This is the most likely explanation bearing in mind that [REDACTED]% of the short duration business traffic is over lines capable of broadband. This calls into question the proportionality of mandating a USP to maintain a national network for a service that is in terminal decline and already statistically insignificant.

It should also be noted that the FIA, as set in 2005, is currently expressed as an obligation for 28.8kps for 94% of installed telephone lines. Internet access under the universal service regime in Ireland has never been expressed as a universal requirement, i.e. 100%. This is in stark contrast to the Government’s NBP which aims to ensure all premises in Ireland will by 2020 be able to obtain broadband at speeds of 30Mbps or more.

¹⁴ We note in passing that Ofcom now supports universal availability of 10 Mbps broadband in the UK despite Ireland having higher average speeds - <http://stakeholders.ofcom.org.uk/binaries/research/infrastructure/2014/infrastructure-14.pdf>



- Affordability

In the consumer trends section (3.1.2) TERA considers the topic of affordability. The material considered by TERA is not directly relevant to the issue of affordability. TERA considers the retail line rental price cap which is imposed on eircom as a Significant Market Power (SMP) obligation. TERA also considers general consumer sensitivity to retail line rental price changes. This form of analysis is more appropriate to an assessment of the competitive state of an economic market. There is no up to date relevant consumer market evidence. The TERA price sensitivity assessment is based on out of date consumer research from 2012 which cannot be relied upon to inform decision making in 2015¹⁵. However in any event none of this is relevant to the issue of affordability in the context of universal service.

Recital 4 USD provides insight as to what is meant by affordability. *“Ensuring universal service (that is to say, the provision of a defined minimum set of services to all end-users at an affordable price) may involve the provision of some services to some end users at prices that depart from those resulting from normal market conditions.”* This is further amplified in Article 7(2) USD which states 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, in particular to ensure that those on low incomes or with special social needs are not prevented from accessing the network.”* It is clear that affordability should be viewed through the lens of whether vulnerable segments of society can afford the market price for fixed voice services. The TERA analysis is limited to looking at the market price. Neither TERA nor ComReg consider affordability from the perspective of vulnerable members of society.

This is surprising given ComReg’s view in 2014 (ComReg 14/48, Para. 5.52) that *“In particular, affordability has to be maintained for vulnerable user groups, such as the elderly, those on low incomes and for consumers with disabilities. From the perspective of consumers and the competitiveness of the economy generally, Irish communication costs should not in principle exclude the most vulnerable in the community from making a minimum use of telephony services”*.

In section 4.5.2 of its Report TERA discusses various factors that may influence retail line rental prices in the market place. We understood that this section was supposed to form part of TERA’s assessment of what might happen absent an AFL USO. TERA presents no conclusion at the end of the section which suggests that it does not consider affordability to be an issue absent an AFL USO. However, as we note above, TERA has been asking the wrong question as to what is meant by affordability in the context of the USD.

We note ComReg’s comments in the Consultation (para.84) regarding eircom’s voluntary schemes. As ComReg will be aware the Talktime Control scheme closed for new participants earlier this year. Consequently the scheme should be referred to in the past tense.

¹⁵ Economic Market Reviews are supposed to be undertaken every three years so data from 2012 could not be relied upon if a Market Review was being undertaken in 2015.



- Geographically Averaged Pricing (GAP)

Section 4.5.3 of the Report poses the question - what if the GAP USO is ceased? Following a number of statements related to market competition and wholesale SMP price caps, TERA offers its opinion that it is possible that eircom could decide to locally increase its prices. To date eircom has adopted a national retail pricing strategy. It is possible if eircom had greater retail pricing flexibility that some degree of geographic differentiation may take place. It is acknowledged by ComReg that eircom faces different levels of retail price competition in different geographic areas as evidenced by the incorporation of the concept of Larger Exchange Areas in NGA SMP pricing regulation. TERA acknowledges "*Absent any GAP USO, Eircom may wish / be forced (in order to remain competitive) to maintain or effectively decrease its line rental price*" [emphasis added].

TERA asks 'what if the GAP USO is ceased?' and answers that eircom might exercise retail pricing flexibility. However would this be a negative outcome? TERA does not address this. It is not unknown, for example in the electricity market, for 'essential' services to be charged differently to end users depending on their location. TERA's answer is in fact meaningless. TERA or ComReg must undertake further analysis to substantiate whether the GAP USO generates a net benefit for the citizens of Ireland. In its RIA ComReg lists one of the consumer benefits from removing the AFL USO to be "*Competition in urban areas may intensify, perhaps leading to lower prices for consumers in these areas*". However ComReg does not quantify this. Regulatory policy in respect of GAP turns on the balance between the interests of two categories of customers, those in urban areas and those in rural areas. ComReg or TERA must quantify the impact on each group of customers in order to determine the correct regulatory policy in respect of GAP.

TERA does make an attempt to quantify the negative impact on rural customers if the GAP is removed. The analysis is flawed because it relies on market research data gathered in 2012 and uses an incorrect estimate of the extent of mobile coverage. As such TERA estimates that approx. 5,000 customers could be affected is overstated by at least a factor of four. We are strongly of the view that this is entirely insufficient to justify distorting competitive market forces and requiring eircom to maintain a national network for USO AFL for the next 5 to 7 years. In any event up to date economic analysis is required.

It is however welcome that TERA acknowledges in its analysis that mobile is a relevant consideration in respect of the GAP assessment. As we have said above it is important for TERA and ComReg to pay more regard to the role of mobile for the delivery of voice services in Ireland when considering the strategic direction of USO, particularly in view of the very high number of mobile only households and high mobile penetration.

- Disconnections for bad debt

TERA considers (p.80) that "*Avoiding unwarranted disconnection is an important feature to avoid social exclusion considering the importance of AFL.*" TERA goes on to conclude that "*For the disconnection policy ... it cannot be excluded that they would not be maintained by Eircom in the absence of AFL USO.*" TERA appears to consider that eircom's disconnection policy differs from that of other operators. TERA is mistaken as, as highlighted previously by ComReg (para. 5.71, ComReg 14/48), "*There is an existing obligation on all operators to publish their Disconnection Policy, as part of their Code of Practice for Complaint Handling. In a previous review, ComReg considered whether the USP should have a more detailed Disconnection Policy. However, ComReg decided that a balance had to be struck between protecting*



consumers from unwarranted disconnections and commercial interests and so no such requirement was imposed.” Given that eircom’s disconnection policy is similar to other market players and is governed by a general obligation outside of the USO, TERA is wrong to claim that *“In the absence of USOs, it can be envisaged that the number of disconnections / cessations would raise and the average debt value would decrease.”* The existence of AFL USO or otherwise is not relevant here.

- **Quality of Service**

TERA considers eircom’s incentives to meet network QoS targets in section 4.7 of the Report. TERA speculates that in areas of fixed infrastructure based competition eircom should have an incentive to maintain / improve QoS. In the case of so-called “eircom only” areas TERA speculates that eircom may have lower incentives but competition from mobile operators may mitigate this risk. It is welcome again that TERA at least acknowledges that mobile is a relevant AFL USO consideration in respect of the Quality of Service assessment. The important role of mobile for the delivery of voice services in Ireland needs proper recognition in considering the strategic direction of USO.

TERA hypothesises that eircom may have reduced incentives if it wins the NBP whereas if it loses in the NBP eircom may have more incentive to invest. It is not clear why that would be the case and indeed, eircom believes that the opposite is equally valid. In particular, it can be considered that eircom’s incentives will be enhanced if it wins the NBP. This is because eircom operates a national network. In rural areas eircom’s network is currently predominately copper based. That will change over the next few years as eircom rolls out FTTH commercially in rural areas (per our announcement of 4th June 2015). If eircom wins the NBP bid it will likely roll-out FTTH in the NBP area. This will not be a separate network but an upgrade to the existing network. In a relatively short period of time we would expect the network to migrate from copper to fibre. Post migration many of the existing assets such as telegraph poles will continue to support the network. It is not possible for eircom to deliberately degrade the QoS of its copper network in this scenario. As fibre is deployed some elements of network investment will in fact be accelerated such as pole remediation / replacement. It is counterintuitive for TERA to suggest that eircom could consciously degrade the QoS on the copper network in these circumstances. TERA’s approach suggests that it considers that copper is the only real delivery mechanism for AFL USO, and hence eircom must be the de facto USP. Such a position is not legally sound.

The logic underpinning TERA’s speculation into eircom’s incentives should its NBP bid be unsuccessful can also be questioned. TERA considers that *“If Eircom loses, it will be forced to maintain / improve QoS in order to compete and generate revenues from the retail line rental for as long as possible.”* The very reason that the NBP is being contemplated is because there are areas where commercial market forces have failed to deliver ubiquitous high speed broadband services. However TERA is contemplating a post NBP environment where there are two separate network infrastructures. This is not a logical construct. In this scenario (i.e. if eircom were not the successful NBP bidder in a particular area), as the NBP rolls out it is to be expected that customers would migrate from the eircom network to the NBP provider consistent with observed consumer demand trends for high speed broadband services. This would leave the eircom network with a dwindling customer base of voice only customers and insufficient revenue streams to justify capital investment on its network items with a pay-back period longer than a few years. It clearly cannot be viable to operate a commercial copper network and a semi-commercial NBP network in parallel in areas recognised as being non-commercial. The situation is also muddled by the DCENR’s



current proposal that the NBP provider would not be able to provide basic (i.e. less than 30 Mbps) broadband services in order to preserve the business case of existing operators. As eircom's NBP consultation response makes clear this restriction is unlikely to prevent suppliers other than the USO provider exiting these areas and will place financial stress on eircom should it not be the NBP provider. The proposed DCENR restriction will not affect the NBP provider offering a basic voice service. TERA's position appears to be at odds with the economic rationale for the NBP, and with economic reality.

Disappointingly ComReg/TERA has not done any strategic analysis – it does not consider whether the AFL USO in its current form is suitable for now and going forward. This is despite respondents suggesting a need for change in the 2014 consultation. Nor has ComReg nor TERA attempted to give any consideration to how the NBP intervention and other market developments will impact on the economics of delivery of the AFL USO. Given all that will unfold over the next few years, it is concerning that ComReg is proposing to continue to maintain the USO to at least the end of 2021 and possibly to 2023. This is plainly inappropriate and impacts the robustness of the consultation.

TERA's analysis of possible eircom investment strategies at the national level is also flawed for a number of reasons. The first is that it is not clear, nor indeed appropriate, that TERA focuses on eircom. The purpose of this consultation is to determine whether there is a need for AFL USO beyond 31st December 2015. ComReg has indicated that subsequent consultations will be undertaken to determine the scope of the AFL USO and to operate the designation mechanism should ComReg consider that there is an objective justification for an AFL USO designation beyond 2015. TERA's focus on eircom and a hypothetical eircom behaving in the "worst case but possible manner" is simply misplaced.

Second, TERA's analysis is also flawed in any event because TERA has not adopted reasonable and up to date assumptions. TERA's assumptions are based on information provided to ComReg in July 2014 but they are not consistent with PIP3 as agreed between eircom and ComReg on 31st October 2014. TERA assumes eircom will invest €[REDACTED] in 2015 and 2016. In PIP3 eircom has committed to investing €32m in 2014/15 and €26m in 2015/16. The basis for TERA to assume that eircom will invest €[REDACTED] in subsequent years to keep the LFI stable is not clear.

TERA's starting point for the LFI is not consistent with the PIP3. The TERA analysis assumes an LFI of 14.5 from mid-2016 when in fact eircom has committed to achieve a target of 14.5 by 31st December 2015. Furthermore the benefits of the additional investment committed to by eircom in 2015 and 2016 have not been factored in to the 'stable LFI' assumed by TERA.

Another key assumption, the number of working lines, is also out of date and unrealistic. The number of working lines is assumed by TERA to be [REDACTED] and TERA assumes this remains stable over the 7 year period to 2022. The following chart illustrates the movement in the number of working lines over time and extrapolates the trend.



[REDACTED]

[REDACTED]

From the chart we can see that the number of working lines was [REDACTED] in July 2014. A year later the figure has fallen to [REDACTED] consistent with the persistent decline in AFL USO services. Extrapolating the historic trend forward it is likely that there will be [REDACTED] the number of working lines in operation by the end of 2020 relative to the TERA assumption of [REDACTED]. It should be noted that the extrapolation may be considered to be conservative. The extrapolation excludes migration impacts from new competing infrastructure (Siro and/or NBP operator(s)) and excludes impact from new replacement infrastructures built by eircom (FTTH). All indicators point to an increased rate of decline in USO working lines, meaning that traditional copper PSTN will become irrelevant over the proposed 5 to 7 year period, thereby potentially leaving eircom with substantial stranded assets if the AFL USO designation on eircom is carried over for 5 to 7 years largely unaltered, as appears to be ComReg's intention.

TERA considers QoS performance in the three geographic areas it has defined. This analysis is presented in section 4.7.3 of the Report. TERA observes that the levels of performance vary by area and this *"is largely explained by the fact that a significant amount of infrastructure is underground in market-driven infrastructure-based competition areas (and therefore cables are less prone to faults) while a significant share of infrastructure is overhead in other areas"*. TERA then goes on to undertake what it considers to be a 'dynamic' analysis which is essentially looking at historic trends¹⁶. TERA is attempting to test its assertion that: *"Eircom's obligations with respect to QoS are national obligations (there is no obligation to provide geographically average QoS levels) and therefore nothing prevents Eircom to target its investments to improve QoS in some areas and not in others."* The trend of fault occurrence between 2010 and 2014 (Figure 41 of the Report) clearly demonstrates that trends in performance are consistent across the three TERA areas, i.e., in years where fault occurrence falls this is observed across the three TERA areas and in years where fault occurrence increase this is observed across the three TERA areas. However, in a somewhat prejudicial manner, TERA concludes that just because there is no evidence of strategic manipulation of faults in the past, *"such a scenario cannot be excluded"*. TERA is mistaken in believing that eircom has substantial control over the level of fault occurrence on a geographic basis.

There are a number of other factors that will impact on the LFI on a regional and national basis that have not been factored into TERA's already somewhat flawed analysis. These

¹⁶ The extent to which this analysis may be considered dynamic is questionable in the context of econometric analysis.



can take longer to fix. This is also the case if a number of poles on a route have been damaged due to storm effects including storm debris. These factors are not ‘strategic choices’.

TERA presents fault repair performance for the three TERA areas in figures 42 to 45. These show varying levels of performance year on year. However, as has been observed with fault occurrence, the changes in performance are consistent across the three TERA areas in each year. This does not support TERA’s contention that eircom can strategically manipulate fault repair to the detriment of certain segments of society but rather undermines its conclusions due to the difference in rural conditions.

TERA concludes its analysis by calculating the average number of faults per staff member (Table 11) and identifies that the average number of faults per staff member is higher in rural areas relative to urban areas. However TERA fails to consider the fact that fault occurrence rates in rural areas may be more bursty in that localised weather events can generate a relatively high volume of faults in a short period of time. If an alternative metric is observed, such as number of active lines per staff, we see that staffing levels are higher in rural areas relative to urban areas, as outlined in the table below.

TERA Area	Active Lines	Staff	Lines / staff
Market driven	██████████	██████████	██████████
NBP	██████████	██████████	██████████
eircom only	██████████	██████████	██████████

Again, the objective facts do not provide evidence that eircom has acted in a strategic way to the detriment of some segments of society.

TERA concludes “Based on this analysis, it can be **imagined** that in the absence of QoS AFL USOs, Eircom may tend to favour areas with infrastructure-based competition even more than that and ensure shorter repair times in these areas as end-users are more likely to switch supplier in case of long faults” [emphasis added]. This is simply an unacceptable conclusion. It is possible to ‘imagine’ any range of outcomes but this cannot be the foundation for sound decision making. As explained above TERA’s conclusion is not supported by evidence related to eircom’s past performance (bearing in mind that TERA starts from the premise that because the current targets are national eircom has the flexibility to make strategic choices). TERA’s analysis is flawed. There are a number of practical and external factors that have not been properly considered by TERA which we have discussed above.

TERA has also overlooked the fact that our wholesale business is obliged by way of its SMP obligations to “conclude, maintain or update, as appropriate, legally binding SLAs with Undertakings, which shall include provisions for Performance Metric”¹⁷. Consequently TERA’s counterfactual, a world absent the AFL USO imposed on eircom, is missing a fundamental feature. The AFL USO QoS regime could be said to be redundant given that

¹⁷ Text from section 8.3 of D05/15 as it relates to open eir’s Wholesale Line Rental product. Equivalent obligations apply in respect of the suite of eircom’s Regulated Access Products.



both the current regulatory framework and that emerging from the Commission's review put emphasis on negotiated SLAs. TERA's analysis and conclusions cannot be relied upon as justification for continuation of the AFL USO.

TERA concludes its analysis of QoS with consideration of eircom's network investment in the three TERA areas. TERA looks at yearly investment in the access network expressed per retail line fault (table 47) and expressed by active line (table 48). In TERA's opinion "*When compared to the number of faults, these investments have been significantly higher in market-driven infrastructure-based competition areas over the last couple of years*". However "*When compared to the number of active lines, no clear trend can be identified as depending on the years, target is more on NBP areas or on "Eircom only" areas.*" Table 48 in fact shows that eircom has consistently invested more per line in rural areas relative to urban areas. This fact does not support the conclusion that TERA wishes to reach so it is selectively (and conveniently) ignored. Rather TERA concludes that eircom does not invest as much in rural areas compared to the level of faults and "*This trend is likely to be reinforced if QoS USOs were ceased.*" TERA's conclusion is flawed because it is based on a biased selection and interpretation of the facts, ignores both past investment and announced future investment and fundamentally has ignored wholesale SMP obligations in respect of SLAs.

Q. 8 Do you agree with ComReg's preliminary view that having regard to each of the various AFL components that some kind of AFL USO continues to be required post 31 December 2015?

For the reasons explained throughout this submission, including in our response to Question 7 above, we do not agree that some kind of AFL USO continues to be required post 31 December 2015 and we are of the view that the analysis undertaken by ComReg and TERA is inadequate and insufficient and cannot as such justify the imposition of "*some kind of AFL USO*" post 21 December 2015.

Q. 9 Do you agree with ComReg's preliminary summary of the technologies by which an AFL type service can in principle be supplied?

As clearly outlined elsewhere in this response, it is eircom's view that copper, fibre, mobile and wireless based technologies are all capable of delivering an AFL type service. Consequently if there is to be a designation process for the period beyond 31st December 2015 then it should be open to all operators and all technologies. That is consistent with ComReg's obligations as regards technology neutrality stemming from the regulatory framework.

Q. 10 In your opinion are there other factors that ComReg should consider at this time?

- Relationship to NBP

Section 3.2.2.2 of the TERA Report introduces the NBP. TERA states (p.51) "*the physical build could begin in late 2016*" and "*it could take 5 years to complete*", i.e. end 2021. It is the stated intention of the Government that 60% of the intervention area will be built out by end 2018 and 100% by 2020¹⁸. It is concerning that these basic errors in TERA's understanding

¹⁸ See section 7 of

<http://www.dcenr.gov.ie/communications/SiteCollectionDocuments/Broadband/Strategy%20Reports/Proposed%20Intervention%20Strategy.pdf>



are then used to justify an assertion that *“it is likely that the envisaged new NBP infrastructure will generate limited competitive pressure only in some areas over the next 5 years”*.

TERA acknowledges that the NBP should be able to support the provision of AFL USO services through VOIP technology. *“However, that does not automatically imply that retail operators relying on the NBP network will provide universal type service amongst others, voice services for example.”* This statement by TERA is perhaps the most disappointing aspect of how TERA and ComReg have approached consideration of AFL USO. At every opportunity ComReg and TERA have sought to distance themselves from the NBP on the basis that as the outcome is not certain so we shall ignore it for now. This is not acceptable. ComReg, as the Regulator for electronic communications in Ireland, is acting in an advisory capacity to the Department on the NBP project. ComReg sits on the steering group and is extensively consulted. It is inconceivable that ComReg cannot form a view on the relationship between the NBP and the AFL USO.

Despite eircom’s request for the regulatory issues relating to the NBP to be clarified well in advance of the planned tender ComReg has failed to deal with those issues. ComReg is now proposing to maintain the AFL USO for a period of 5 to 7 years. This means that if imposed on eircom (which for the avoidance of doubt we do not consider can be justified) the AFL USO would require eircom to maintain a parallel network to the NBP although the very reason that the NBP is being contemplated is because there are areas where commercial market forces have failed to deliver ubiquitous high speed broadband services because it does not make business sense. Clearly, if there is no business case for the existing single network to deliver the required broadband, there is even less of a business case for 2 networks, which to some extent at least will be competing. This is not a logical, cost-effective or economically justifiable construct.

In the light of this, ComReg's failure to consider the relationship between the NBP and the AFL USO for the ubiquitous delivery of a suite of voice and broadband services to the citizens of Ireland is contrary to the best interest of consumers. The NBP will have a direct impact on any operator designated as AFL USP beyond 2015. This cannot be ignored.

It is also questionable whether ComReg’s proposed designation period of 5 to 7 years is compatible with Article 8(2) USD which requires *“When Member States designate undertakings in part or all of the national territory as having universal service obligations, they shall do so using an efficient, objective, transparent and non-discriminatory designation mechanism, whereby no undertaking is a priori excluded from being designated.”* The NBP presents the possibility of new market entry in a region by someone other than eircom. The entrant will be excluded from considering the opportunity to be USP if ComReg maintains its proposed 5 to 7 year designation period.

Contrary to what ComReg appears to now believe, consideration of the USO and the NBP cannot wait until the implementation of the NBP is fully complete - at or after 2021.

The NBP obligation is to have 60% of all target premises connected by end 2018, which will require specific clarity on AFL well in advance of that period – including on funding the USO if the AFL is to be delivered separately from the NBP. Also, the reference at para. 156 to eircom customers taking on average 4 years to migrate to NBP seems to be both lacking in evidence and misplaced; our rural trials and the experience in other countries makes it clear that there will be a high propensity for customers with very low speed broadband or no broadband to move quickly to the new high-speed service.



ComReg has failed to eliminate regulatory uncertainty on USO. The NBP public tender will issue before the end of 2015. If eircom is re-designated - this will only become clear after the issuing of the tender – eircom will face an unknown but increasing deficit in delivering AFL as the NBP is being rolled out. Whether winner or not of any part of the NBP contest, the designated USP will face significant net costs in providing the AFL service with no clarity on whether it will be compensated or not: compensation for the net cost of the USO if it is an unfair burden being another area ignored by TERA and ComReg.

The inadequacy of the consideration of these issues relating to the NBP is sustaining a high degree of regulatory uncertainty and risk for all potential NBP bidders but in particular for eircom as the current USP. It is imperative this high level regulatory risk is eliminated to the greatest extent possible before the public tender stage of the NBP in order to protect the integrity and fairness of the NBP process.

- VOIP

ComReg has failed in its forward looking review to establish a clear position on how the AFL USO may evolve despite recognising that this is something it should consider. Rather than addressing important issues upfront ComReg adopts a position that VOIP may in principle be used to provide AFL but ComReg is unable to think about this until after the NBP rollout. See for example paragraph 73 of the Consultation: *“ComReg has already stated that in principle a managed VoIP service over a high speed quality network could satisfy the requirements of a voice AFL USO if provided at an affordable price, however, ComReg notes TERA’s point that in advance of the NBP rollout, VoIP services are unlikely to provide AFL for more consumers throughout the State than already served with voice services by legacy fixed networks.”* This ignores the fact that the objective of the NBP is to reach all premises, including those that are not serviced by the copper network e.g. those premises served by FCS or currently with no connection to the network and that customers will migrate continuously as the NBP network is being rolled out. eircom would urge ComReg to set out clearly what objective requirements a VoIP service over a high speed broadband network must meet in order to satisfy the requirements of a voice AFL so as to bring certainty to this matter.

At various points in the Consultation ComReg seeks to adopt a negative stance in respect of VOIP. For example at Paragraph 212 ComReg opines *“However, a significant segment of end-users do not currently have/utilise a fixed broadband connection and, for these end-users, broadband with managed VoIP is unlikely to provide an alternative for their basic fixed telephony service at least until the NBP is rolled out. In this context, a potential set of “vulnerable” or “captive” customers exists in Ireland –approximately 47% of fixed line subscriptions are single play”*. These customers are not ‘captive’ or ‘vulnerable’ and the use of such emotive language is unnecessary. A forward looking review should take into account technological migration. eircom is in the process of upgrading its network to FTTH in rural areas and the NBP is expected to further accelerate the migration to FTTH. ComReg has approached the issue from the wrong perspective. ComReg should be considering how an AFL USO should be delivered in an FTTH environment, if required.

At paragraph 70 ComReg states *“that some ancillary services such as monitored home alarm and fax services are not yet readily available over a broadband connection. For some customers this may represent a barrier to switching from a narrowband FVA service”*. ComReg provides no evidence to support this statement. In the case of monitored alarms there has been a migration towards wireless solutions. In the case of fax, for all intents and



purposes this service is essentially extinct, and not used to any material extent in this day and age. ComReg cannot seek to rely on sweeping generalised statements and must provide solid evidence to support its position.

At paragraph 118 ComReg confirms that it will not consider VOIP as an AFL delivery mechanism until after 2020: “ComReg will also need to consider the impact of the new NBP infrastructure on the implementation of any AFL USO once it has been fully completed, possibly post 2020. The expected scenario post NBP rollout means that in principle and technically all end users will have ability to connect to a public communications network at a fixed location. In principle, in relation to AFL and US, a managed VoIP service over a high speed quality network could satisfy the requirements of a voice AFL US if provided at an affordable price. On this basis, it is conceivable that any necessary AFL (‘access to a communications network’ as well as adequate voice service at an affordable price (managed VoIP for example)) could be delivered over the high capacity broadband infrastructure rolled out under the NBP, causing the requirement, if decided, for any USO for AFL to be re-examined” [emphasis added]. ComReg cannot dodge the question for five or more years - an eternity in the present era of accelerating technological evolution and competitive development. This is not consistent with a forward looking review or with ComReg’s statutory duties. Nor is this uncertainty likely to be reflected in the revised European regulatory framework. Again ComReg should not commit to long term positions when it is well aware that extensive reviews are taking place at a European level¹⁹.

Absent any clarity on the AFL role of VOIP in an FTTH environment ComReg is effectively seeking to require that a narrowband network be maintained nationally into the next decade without any consideration for the gross inefficiencies and duplication this will generate to the detriment of Operators and consumers alike. This is because from the USP’s point of view the net cost of the AFL USO will spiral upwards if it is to be maintained inefficiently on a narrowband network. From a user’s point of view it may result in higher costs as well, even if they migrate from the USP’s service, as this will affect the case for funding. ComReg must therefore consider the implications for all operators contributing towards that cost as it inevitably spirals. ComReg has failed to properly analyse and to take into account anticipated network evolution over the near term. Assuming ComReg can justify a designation of AFL USO beyond 2015 then it must clearly establish the role that VOIP can play in a manner which delivers certainty at a time when eircom, and other operators, are preparing for NBP bids.

This is needed as much in the short term as when the NBP is rolling out. As the economy continues to recover new house building has commenced with a number of new housing developments in the planning phase. In the modern era eircom’s technology of choice to provision new build estates is FTTH. It would be inefficient to deploy copper alongside the fibre.

There should be no ‘in principles’, ‘ifs’ or ‘maybes’ but a clear regulatory policy established.

- **Funding**

It should go without saying that the costs of the AFL USO, and its funding, is a critical aspect of its provision. However, ComReg does not consider or review arrangements for AFL USO funding in this Consultation. There is only one substantive reference to funding at paragraph

¹⁹ See, eg question 152 from the Commission’s current consultation.



47 of the Consultation: “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 Regulations 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.”

There is a clear need to review the operation of the funding arrangements for AFL USO. Four applications for funding by eircom are currently with ComReg totalling €36.6m. The administrative process for considering these applications is extremely slow and the high-level timeline is summarised below:

2010/11

Application submitted to ComReg on 1st Sept 2014: Net cost €10m

A few questions have been raised by ComReg from time to time, but all of these have been fully addressed without delay by eircom.

The main tranche of questions were closed off by us on 23rd April 2015, and ComReg has not raised any significant queries since that time. In the intervening period of almost 6 months it appears to us that ComReg has made little progress in moving forward this application.

2011/12 & 2012/13

Applications submitted to ComReg on 31st Oct 2014, almost twelve months ago: Net cost €7.3m and €8m respectively

No engagement from ComReg on these applications since that time.

2013/14

Application submitted to ComReg on 31st March 2015: Net cost €11.3m

No engagement from ComReg on this application since that time.

It is difficult to see how the AFL USO regime can be said to be equitable if it is operated in an entirely one sided manner to the detriment of the USP.

[Question]250 Do you agree or disagree with ComReg’s preliminary view that, if it is determined that there is a need for an AFL USO in the whole or parts of Ireland post 31 December 2015, that any subsequent designation of a USP(s) to provide the AFL USO (s) specified should be for a period of at least 5 years and possibly 7 years?

eircom does not believe a further designation can be objectively justified based on the flawed evidence presented in the Report and Consultation. Even if a further designation could be justified (and, for the avoidance of doubt, eircom does not believe it can), eircom does not agree that it could reasonably be specified for a period of at least 5 years or possibly even 7 years. As highlighted earlier in this response issues pertaining to the interaction of AFL USO and the NBP and the current consultations on the European Regulatory Framework must be addressed upfront. They cannot be addressed retrospectively in 5 to 7 years after significant irreparable damage has been done. The outcome of the EC review and changes to the regime will be known in the next year and any national policy implications should be addressed immediately thereafter. We note ComReg’s observation (Para. 249 of the Consultation) that “ComReg envisages that it would need to reconsider any designation after the NBP infrastructure and services rollout is fully completed (possibly post 2020) in order to take into account the full impact of the NBP and any other relevant market and technological developments at that time. It is also conceivable



that any individual elements of the USO could be reviewed within this designation period if the circumstances justified it.” ComReg’s administrative track record on USO reviews is poor and in order to balance the interests of the USP, any designation should be time-bound such that if there is to be one it should be no longer than 12 to 18 months.

Q. 11 Do you agree or disagree with ComReg’s preliminary view that, if it is determined that there is a need for an AFL USO in the whole or parts of Ireland post 31 December 2015, any subsequent designation of a USP(s) to provide the AFL USO should be, in principle, for the entire State, allowing for flexibility in respect of individual components as relevant?

eircom does not agree that if there is a need for an AFL USO post 2015 that any subsequent designation should be for the entire State. To the extent that there are discrete groups of vulnerable citizens that require protection through Universal Service measures then such measures should be targeted. For example, if an affordability issue of €5 is identified for some customers would it be logical for a USO to be mandated such that all customers of the USP are given a €5 credit? Equally when mobile is clearly a viable alternative for the vast majority of citizens to meet their basic telephony needs is it logical, reasonable or proportionate to mandate the USP to maintain a national narrowband network in the broadband era? It is clearly not proportionate. ComReg needs to consider designating successful NBP bidders rather than the uneconomic continuation of separate networks. Any intervention that can be justified should be specific and targeted to the social detriment being addressed. This approach is consistent with the USD which requires that market distortions are minimised.

Q. 12 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?

eircom disagrees with ComReg’s draft Regulatory Impact Assessment.

The RIA considers three options:

- Option 1a: Maintain AFL for 5 to 7 year period for the entire State
- Option 1b: As Option 1 but not covering all of the State
- Option 2: Remove the AFL USO

ComReg is setting out to compare maintaining the AFL USO for a period of 5 to 7 years with the option of removing the AFL USO. The RIA is entirely qualitative and subjective in its narrative. It is also based on the flawed analysis and conclusions of the highly superficial TERA Report.

ComReg assumes that the RIA is insensitive to the duration of the designation period, i.e. it is implied in options 1a and 1b that the net cost and any resulting funding requirement will be the same irrespective of the duration of the designation period. In our view this is incorrect. There is significant uncertainty in terms of changing consumer consumption, technological change, new market entry, the NBP and European Commission’s review of the USO regime. If, as discussed earlier in this response, ComReg effectively mandates the maintenance of a narrowband network to meet the AFL USO then the cost burden to Operators, in the form of universal funding, which ultimately must be borne by customers, will increase substantially for each year the designation is maintained. This must be taken into account in the cost



benefit assessment. ComReg selected a consultant with predominately cost modelling skills and they should use those skills.

ComReg reaches preliminary views that maintaining the AFL USO:

- Strikes a balance between the costs to the USP / Industry and the needs of consumers
- The costs incurred by the USP would on balance be outweighed by the benefits to consumers for at least the next five years
- *“As technology and competition develops, and as consumer needs evolve, 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.”*

ComReg does this without attempting to derive any financial estimates of the potential benefits and costs of its proposed actions (despite having employed a cost modelling consultant to undertake analysis). We have highlighted throughout this response a range of issues that need to be quantified. For example in respect of GAP, the trade-off between the interests of the urban consumers’ and rural consumers’ needs to be quantified so that an informed choice can be made on the correct regulatory policy to be adopted. The effect of the NBP also needs to be modelled in this respect.

It is ComReg’s view (para. 268) that: *“the specifics in terms of the potential impact on the USP(s) of providing the AFL USO cannot be quantified at this time as the impact will be determined by the specific obligations which may be imposed on the USP(s) should an AFL USO be deemed to be required. That is, the imposition of an AFL USO and the designation of a USP in this regard, in itself will not necessarily have a large impact on industry or consumers in the absence of ComReg specifying the various conditions to be attached to any designation. The individual obligations which sit alongside any such designation will determine what the impact of designation might be. Hence this RIA outlines, at a high level, how the two options set out above will impact on stakeholders and chooses the most appropriate means of achieving its aims.”* This is nonsense. The costs / benefits of AFL USO cannot be properly assessed without evaluating the individual obligations. For example if the FIA was changed to mandate a higher line speed and / or to be achieved on a higher proportion of lines this could lead to a substantially different view of the costs to provide the AFL USO and a different view of the consumer benefits. As is recognised by TERA a dial-up service at 28.8Kps is practically useless to access the modern internet and a higher FIA would likely create consumer benefit. ComReg should move away from seeking to justify a significant regulatory intervention on the basis of a brief qualitative discussion and instead conduct a rigorous assessment of the socio-economic, direct and indirect benefits and costs of maintaining the AFL USO. Such an assessment would be expected as part of a properly framed review of regulatory policy. This also requires the AFL USO to be properly defined in advance of any decision regarding USP designation or designation periods.

4 UPC



**UPC Ireland response to:
Universal Service Obligation
Provision of Access at a Fixed Location
Consultation
ComReg 15/89**

30 September 2015



Summary

UPC Communications Ireland Limited ('UPC Ireland') welcomes the opportunity to respond to ComReg's Consultation ('the Consultation') on the Universal Service Obligation ('USO'), and the provision of access at a fixed location ('AFL') ('ComReg 15/89').

UPC Ireland has responded to ComReg's specific questions in the subsequent sections. The main themes of this response are as follows:

1. **There are likely to be very few, if any, remaining uneconomic customers.** Though a large number of end-users still choose to purchase a landline, most do not *rely* on traditional fixed networks as a means of gaining access to basic electronic communications services.¹ Given that ComReg has described in Section 3 what appears to be a functioning retail market for electronic communications services, UPC Ireland considers that the starting point for defining the scope of the USO should be to presume that the market will deliver basic electronic communications services to end-users. In which case, intervention is only warranted where there is clear evidence of uneconomic end-users.
2. **Demand for single-play services, and fixed-only households, do not represent evidence of the requirement for USOs.**² In most cases, consumers are able to obtain access to basic electronic communications services in the absence of USO. For example, by purchasing services from a competing AFL supplier (including a mobile provider).
3. **ComReg has not given sufficient weight in the Consultation to the role that mobile networks are playing in meeting the basic electronic communications needs of consumers.** Mobile networks are used widely for the provision of basic voice calls and internet services.
4. **A mobile network, and a mobile handset³, are capable of providing a basic electronic communications service at a fixed location.** UPC Ireland therefore disagrees with ComReg's preliminary view that a mobile handset cannot be used to provide a basic electronic communications service at a fixed location.⁴
5. **ComReg has not provided evidence to support its assessment of 'uneconomic' households.** ComReg has relied too heavily on Eircom's⁵ partial assessment of uneconomic households, which was presented for the purpose of applying for USO funding.
6. **ComReg's assessment of 'uneconomic' households is not transparent⁶.** As a result of excessive redaction of relevant and crucial information, interested parties⁷ are not able to assess Eircom's reported costs associated with supplying various segments of end-users. If, as Eircom claims, these customers are not commercially viable, then it is not clear how the information could be deemed to be commercially sensitive.
7. **Any USO designation made in this decision should be reviewed by 2018 at the latest.** ComReg's proposal to implement a five to seven year term for the USO fails to account for the

¹ In accordance with Regulation 3(1) - (3) of the Universal Service Regulations, basic electronic communications services include a connection to a public communications network at a fixed location, and provision of a publicly available telephone service over the network which allows for originating and receiving national and international calls. The connection should be 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

² See paragraphs 60 and 61 of the Consultation.

³ The ability of a mobile handset to provide other non-fixed services does not preclude it from also providing a service at a fixed location.

⁴ See paragraph 237 of the Consultation

⁵ Note that Eircom has been renamed 'Eir' since ComReg published the consultation. To maintain consistency with the Consultation, UPC will refer to Eircom throughout this response.

⁶ For example, see TERA's redacted analysis on page 66 and 67 of the TERA report.

⁷ Note that interested parties, and in particular fixed and mobile network operators, are likely to be best placed to assess the costs associated with providing electronic communications services in Ireland.

dynamic nature of the market-place and significant progress in the National Broadband Plan ('NBP') rollout by 2018.

- 8. The USO Functional Internet Access obligation is defunct.** UPC Ireland considers that the NBP will ensure universal access to internet services going forward, thereby superseding the requirement for a Functional Internet Access ('FIA') USO obligation. UPC Ireland notes that attempting to address FIA within the USO, concurrent to the implementation of the NBP, would be unwieldy and could lead to inefficiency and duplicative funding of broadband networks.

Introduction

The purpose of the USO is to guarantee the right of end-users to benefit from basic electronic communications services that would potentially otherwise not be delivered by the market.

UPC Ireland notes that the telecommunications sector is undergoing fundamental change. End-users who were previously limited to a household landline, now have access to a range of technologies and products including mobile telephones, broadband, and over-the-top services for personal and business communication. In this evolving market place, as has been illustrated by ComReg's recent market analysis, there is a decreasing reliance by consumers on fixed line telephony.⁸

The widespread deployment of mobile networks and fixed broadband networks is reducing the number of end-users who would, absent a USO, not be delivered electronic communications services by the market (hereby referred to as '**uneconomic end-users**'). In order to promote continued investment and competition in electronic communications markets, ComReg must ensure that the USO does not extend to commercially viable end-users.

UPC Ireland considers that ComReg has failed to adequately account for market developments in assessing the commercial viability of end-users. Most notably, mobile network development has reduced the cost of providing basic services to consumers that may previously have been considered to be uneconomic.

UPC Ireland is concerned that an inherent bias in ComReg's Consultation towards legacy fixed networks as the medium for delivering basic electronic communications services could result in the USO being over-specified, and potentially over-costed. To prevent this from occurring, ComReg should take into account that a fixed line connection is not always the most cost-effective delivery platform.

UPC Ireland notes that the USO funding mechanism, in its current form, could potentially result in net costs associated with servicing uneconomic customers being shared across all users of electronic communications networks and services in Ireland. Any over-estimate of USO net cost and unfair burden could therefore result in inefficient wealth-transfers from all users, and competing suppliers, to the universal service provider(s) (USP(s) – currently Eircom). UPC Ireland notes that this could be detrimental to end-users in two ways. First, the over-estimated costs could be recovered from consumers through higher retail prices, and secondly, the USP'(s) competitors could be placed at a competitive disadvantage since they will face higher costs.

UPC Ireland is also concerned with ComReg's failure to assess previous Eircom USO funding applications. UPC Ireland notes that there are currently four applications for USO funding that have not been assessed by ComReg dating back to 2010. These represent significant regulatory uncertainty (and potential financial liabilities) for all operators. For these reasons, ComReg should prioritise the

⁸ See Figures 4 and 5 of [ComReg 14/26](#), which show sharp decreases in fixed call traffic corresponding with substantial increases on mobile traffic over time.

assessment of these Eircom applications. Given UPC Ireland's views expressed throughout this response, we expect that ComReg would find no net cost, or at least no unfair burden, arising from provision of the USO by Eircom.

UPC Ireland responds to ComReg's specific questions below.

Q. 1 Do you agree with ComReg and TERA's review of the relevant consumer trends?

UPC Ireland does not agree with ComReg and TERA's review of the relevant consumer trends.

Please see response to Q.2 below for UPC Ireland's comments in relation to ComReg and TERA's assessment of consumer trends

Q. 2 In your opinion are there other relevant factors in relation to consumer trends which ComReg should consider?

UPC Ireland considers that ComReg has not adequately accounted for the migration of voice traffic from fixed to mobile networks. This is particularly relevant because consumers are by choice increasingly using mobile telephones instead of fixed line telephones. This trend was illustrated by ComReg in Figures 4 and 5 of ComReg 14/26, which showed a sharp decrease in fixed call traffic corresponding with substantial increase in mobile traffic over the same time period.

In relation to paragraph 60 of the Consultation, where ComReg reports that 5% of end-users do not have mobile access, UPC Ireland notes that there is no examination of why these end-users have not availed of mobile access. It may, for example, be the case that mobile access is available to these end-users, but that they have simply chosen not to avail of a mobile service. Therefore, it cannot be assumed that this cohort of end-users *rely* on a fixed line for basic electronic communications services.

UPC Ireland disagrees with TERA's statement, as paraphrased by ComReg in paragraph 64 of the Consultation, that:

It is generally accepted currently that substitution between fixed and mobile offers for either voice and or broadband is not yet effective

Substitution between fixed and mobile networks in relation to voice services was explicitly accounted for within the European Commission's ('EC's') 2014 Recommendation on relevant markets susceptible to ex ante regulation. The EC removed the market for wholesale fixed call origination from its list of recommended markets on the basis that consumers have the ability to make calls on a mobile telephone. In fact, the European Commission noted in the explanatory note that:⁹

...technological solutions, particularly offered by VoIP and mobile operators, will further reduce PSTN user captivity by offering increased reliability and security at similar levels as PSTN networks.

⁹ European Commission. September 2014. Explanatory note accompanying the Commission Recommendation on relevant product and service markets within the electronic communications sector susceptible to ex ante regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services. Page 21.

It is therefore evident that the EC, and NRAs, are increasingly recognising that mobile services represent a substitute for traditional fixed voice telephone calls. Similarly, UPC Ireland considers that mobile broadband can offer a suitable substitute for functional internet access.¹⁰

UPC Ireland notes that ComReg has, without justification, redacted from the Consultation the number of customers availing of Eircom's Vulnerable User and Talktime Control Schemes (see paragraph 84). UPC Ireland notes that this information is relevant for interested parties responding to the Consultation, and it is not clear why this information would be regarded as being commercially sensitive. In the interest of transparency, UPC Ireland considers that this information should be made available to interested parties.¹¹

In paragraphs 87 and 88 of the Consultation, ComReg presents estimates of the likely demand-response of customers to a 10% increase in the price of AFL. This estimate is based on a survey conducted by Research Perspective, on behalf of ComReg, in January 2012. UPC Ireland considers that this research is outdated, and therefore is of limited value as an indicator of market trends in this study (this research would be 10 years out of date if ComReg were to extend the USO AFL obligation to 2022).

Q. 3 Do you agree with ComReg and TERAs review of the relevant supply side trends?

See response to questions 1 and 2. As noted above, ComReg has not given sufficient weight in the Consultation to the role that mobile networks are playing in meeting the basic electronic communications needs of consumers. This applies for both voice calls and functional internet access.

ComReg therefore does not agree with ComReg and TERAs review of the relevant supply side trends.

Q. 4 In your opinion are there other relevant factors in relation to supply side trends which ComReg should consider?

See response to questions 1 and 2. As noted above, ComReg has not given sufficient weight in the Consultation to the role that mobile networks are playing in meeting the basic electronic communications needs of consumers. This applies for both voice calls and functional internet access.

Q. 5 In your opinion are there other relevant factors in relation to the European context or benchmarking which ComReg should consider?

UPC notes that USO funding regimes are the exception rather than the norm in the EU. In addition, there are no indications that USO funding regimes would have led to any additional infrastructure deployment, and increased user take-up. This has become increasingly evident, as mobile (voice/text and broadband) offerings became more widely commercially available within the relevant geographic area.

¹⁰ UPC notes that, by way of example, Vodafone Ireland is advertising speeds of up to 75 MB/s over its 4G network. See <http://www.vodafone.ie/network/4g/> for details.

¹¹ The same should apply to the redacted information in paragraph 191 of the Consultation, and key information on the costs associated with service provision that is redacted from the TERA report.

UPC notes that there are only 3 out of 28 EU Member States with an industry financed USO system¹². UPC notes that a system involving a USP being subsidised by its competitors can lead to increased risk of regulatory gaming by the USP.¹³

UPC notes that, where such a financing system exists, the accepted net cost of servicing the USO has been declining. For example, as noted by UPC in a previous submission to ComReg, in France the original net cost amount calculated in 1998 of €275m declined to €30m by 2010, and in Spain the original net cost amount of €203m declined to €43m by 2010.¹⁴

Q. 6 Having considered the TERA Report and ComReg's consultation, in your opinion are there other factors with respect impact of not having AFL USOs or in respect of the need for an AFL USO and/or the associated AFL components that ComReg should consider at this time?

UPC Ireland considers that ComReg has overstated the risks to universal, affordable and quality AFL in the absence of any USO. This is because ComReg has not adequately accounted for reductions in the cost of providing basic services to consumers available through the use of mobile networks.

UPC Ireland considers that ComReg has not provided evidence demonstrating the need for the continued need for a USO. Instead, ComReg appears to have adopted Eircom's position, as set out in its applications for USO funding. As discussed below, a more robust analysis by ComReg is required.

UPC Ireland disagrees with the sentiment expressed by ComReg in paragraph 142 of the Consultation:

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 preliminary view that the AFL USO may continue to play an important role.

The statement suggests that a USO, or some alternative program, will be required to ensure universal service into perpetuity. UPC Ireland notes that the AFL USO will only be required as long as there are end-users who would not otherwise be able to obtain access at a fixed location. Given the continued and ongoing fixed and mobile infrastructure investment across less populated regions of Ireland¹⁵, it is unlikely that the AFL USO will continue to play an important role in the future.

UPC Ireland disagrees with ComReg's apparent inclusion of 'less economic customers' within the USO. In particular, paragraph 144 of the Consultation states:

The existing AFL USO will remain in force until 31 December 2015. Absent any AFL USO after that date, there may be 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

¹² http://berec.europa.eu/eng/document_register/subject_matter/berec/download/0/187-berec-report-on-universal-service-reflec_0.pdf

¹³ For example, a USP may attempt to exaggerate the costs of servicing the USO in order to maximise the value of the subsidy.

¹⁴ UPC Ireland Response to: ComReg 13/45 Consultation and Draft Decision on the Assessment of Eircom's Universal Service Fund Application for 2009-2010

¹⁵ Including the NBP, the SIRO network deployment, and the deployment of mobile network infrastructure.

to certain areas of the State (such as rural or sparsely populated areas) and / or to less economic customers distributed nationally.

UPC Ireland notes that this statement is not supported by evidence. Furthermore, UPC Ireland considers that there is no basis for including 'less economic customers' within the scope of a USO. Any customer that generates a positive economic return should, by definition, be excluded from USO claims for funding.

In paragraph 158 of the Consultation, ComReg has, without justification, redacted its estimate of the number of new customers that Eircom would deem to be uneconomic (and therefore would be unlikely to connect without the USO) over a five year period. This information is relevant for interested parties responding to the Consultation, and it is not clear to UPC Ireland why this information would be classified as being commercially sensitive. In the interest of transparency, UPC Ireland considers that this information should be made available to interested parties.

ComReg states in paragraph 162 that:

It is likely that mobile networks may not have coverage, or sufficient indoor coverage in these [remote] areas, and hence the impact on these consumers is likely to be substantial. It is also possible that some consumers in urban areas may also not be addressed, as is demonstrated by the existence of uneconomic customers in economic areas, in Eircom's net cost funding applications.

Rather than providing evidence to support this preliminary position, ComReg has referred to Eircom's funding application. Eircom's funding application is likely to downplay the ability of mobile networks (including its own) to offer basic electronic communications services, in order to maximise the amount of USO funding Eircom could potentially receive. UPC Ireland considers that ComReg should follow an evidence-based approach to inform its assessment of factors affecting the scope of the USO, rather than relying on Eircom's data. ComReg should present any such evidence and provide interested parties an opportunity to comment on that evidence.

Furthermore, ComReg has not adequately justified the case for apparent 'uneconomic end-users within economic areas'. UPC Ireland considers it unlikely that such a group of customers would exist given the economics of supplying services over telecommunications networks. In particular, Eircom is likely to face low marginal costs associated with supplying additional customers over its network within economic areas. It is therefore unlikely that Eircom, or any operator, would choose not to supply additional customers that are located within reach of, or close to, their existing network (thereby turning down available revenue).¹⁶ Furthermore, use of Eircom's own mobile network is unlikely to have been included in Eircom's claims for funding, yet should have been.

Again in paragraph 169 of the Consultation, ComReg appears to adopt Eircom's view on uneconomic customers as its own. ComReg notes that "*unprofitable customers as measured by Eircom in its USF net cost model are a good proxy for these [uneconomic] customers*". UPC Ireland considers that, in order to ensure an objective assessment, ComReg should perform its own analysis of the profitability of customers, based on raw data, rather than relying on Eircom's assessment. This assessment should be fully transparent, and interested parties should be given the opportunity to examine the model.

In paragraphs 180 to 183, ComReg discusses TERA's view that Eircom may, absent a USO, increase prices in uneconomic areas. UPC Ireland disagrees with the assertion that Eircom faces an incentive

¹⁶ This point applies also to paragraph 168 of the Consultation

to increase prices in localised geographic areas. UPC Ireland considers that Eircom is likely to face a national pricing constraint for two reasons.

- **Eircom has a ubiquitous product offering, and therefore benefits from being able to run national marketing campaigns.** Shifting to de-averaged retail pricing would complicate Eircom's sales and marketing strategy, and involve additional cost.
- **De-averaged retail pricing would generate negative publicity for Eircom.** Delineation of its customer-base into geographic groups would gain unwanted media attention and would be difficult for Eircom to justify to its customers.

Given the small volumes of end-users likely to fall under the USO, any additional revenue available to Eircom from increasing the price of services for these customers would be minimal, and would be outweighed by the logistical, marketing, and public relations costs associated with retail price de-averaging. As such, it is not feasible to assume that, absent a USO, Eircom would benefit from charging particular customers on its network a higher price (particularly where the customers are already connected to the network, and therefore the marginal cost of supplying the cost is very low).

Q. 7 Do you agree with ComReg and TERA's view of the risks to universal, affordable and quality AFL in the absence of any USO?

For the reasons set out in response to question 6, ComReg does not agree with ComReg and TERAs view of the risks to universal, affordable and quality AFL in the absence of any USO.

Q. 8 Do you agree with ComReg's preliminary view that having regard to each of the various AFL components that some kind of AFL USO continues to be required post 31 December 2015?

See response to question 6.

Q. 9 Do you agree with ComReg's preliminary summary of the technologies by which an AFL type service can in principle be supplied?

UPC Ireland does not agree with ComReg's preliminary summary of the technologies by which AFL can be supplied.

UPC Ireland disagrees with ComReg's statement in paragraph 237 that mobile services accessed by a mobile handset exclusively do not meet the requirements for access at a fixed location. UPC Ireland notes that a mobile network, and a mobile device, can be used to provide a basic electronic communication services at a fixed location, and there is no requirement that the delivery device must be 'fixed to the wall' of the premises.

UPC Ireland considers that excluding mobile services from the USO would be unjustified, antiquated and nonsensical, particularly in light of the EC's recent acknowledgement that mobile calls offer a viable substitute for fixed calls (2014 EC Recommendation on Relevant Markets). UPC Ireland also reiterates (see our responses to previous ComReg consultations) that the 2002/2009 EU regulatory framework for electronic communications never contained any restriction on the technology to deliver AFL USO.

UPC Ireland notes that ComReg appears to assign preference to fixed narrowband networks based on irrelevant product features. For example, ComReg states in paragraph 232:

*One distinctive feature of fixed narrowband access is that the PSTN/ISDN technology provides for functionalities and characteristics which cannot, or not easily, be replicated over other infrastructures. **These include certain quality features, security and reliability, independent power supply and the ability to deliver and receive fax messages. These features make the PSTN networks especially suitable for specific applications such as alarm and monitoring systems. The fact that PSTN provides electrical power makes it more robust than other solutions that rely on the normal power.***

UPC Ireland notes that the Universal Service Directive never sought to safeguard these additional services and features¹⁷, which in some cases are obsolete. As such, assigning preference to fixed narrowband networks on the basis of these characteristics is inappropriate and a legal basis for it is absent.

Q. 10 In your opinion are there other factors that ComReg should consider at this time?

See response to Q.9.

UPC Ireland also notes that ComReg has not provided evidence of *uneconomic end-users within economic areas*. For the reasons set out above, UPC Ireland considers it unlikely that such a group of customers would exist given the economics of supplying services over telecommunications networks.

Do you agree or disagree with ComReg's preliminary view that, if it is determined that there is a need for an AFL USO in the whole or parts of Ireland post 31 December 2015, that any subsequent designation of a USP(s) to provide the AFL USO (s) specified should be for a period of at least 5 years and possibly 7 years?

UPC Ireland disagrees with the 5 or 7 year USO specifications proposed by ComReg. UPC Ireland considers that these timeframes are too long given the dynamic nature of the electronic communications market.

Specifically, regular reviews of USO are required for the following reasons:

1. **Changes in the way in which basic electronic communication services are provided over time.** Technological developments are continuously taking place in the provision of electronic communications (some of these trends were discussed in the Consultation, and in UPC Ireland's response to question 2 above). These changes can affect the underlying costs associated with the provision of these services.¹⁸ The net cost associated with meeting any USO is therefore also likely to change over time.

If a USO is considered by ComReg to be necessary, then regular reviews of the USO should be undertaken to ensure that any potential funding system does not result in market distortion.

2. **New network deployments could reduce the number of allegedly *uneconomic* customers.** The deployment of commercially-funded mobile and fibre infrastructure, or state funded broadband

¹⁷ Directive 2002/22/EC as amended by 2009/136/EC.

¹⁸ Talk is Cheaper: The cost of telecommunications has fallen worldwide 17 May 2011, Economist. Available online at <http://www.economist.com/blogs/dailychart/2011/05/telecommunications>

networks, may extend to households for which Eircom has applied for USO funding.¹⁹ Clearly the USO should be tapered back in cases where commercial services and state-aided networks are meeting the basic electronic needs of consumers.

UPC Ireland considers that over-recovery by Eircom of the net burden would be harmful to competition, and to end-users. UPC Ireland therefore proposes that the USO should be reviewed regularly in order to ensure that these circumstances do not arise. UPC Ireland considers that the next review should be completed by 2018 at the latest.

Q. 11 Do you agree or disagree with ComReg’s preliminary view that, if it is determined that there is a need for an AFL USO in the whole or parts of Ireland post 31 December 2015, any subsequent designation of a USP(s) to provide the AFL USO should be, in principle, for the entire State, allowing for flexibility in respect of individual components as relevant?

UPC Ireland reiterates that, if there is a need for an AFL USO at all, it is likely to be limited to a small number of households. In which case, these end-users are best served by a single provider that has access to fixed and mobile technology.

Q. 12 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?

For the reasons given throughout this response, UPC Ireland disagrees with ComReg’s draft high level assessment of the impact of the proposed regulatory options.

As noted above, UPC Ireland considers that ComReg has overestimated the cost of delivering basic electronic communications services to end-users. This has resulted in part from ComReg adopting an unjustified bias towards fixed networks in its assessment. ComReg also appears to rely heavily on Eircom’s views as expressed in its *Universal Service Net funding application* in relation to the net cost of supplying services. UPC Ireland considers that ComReg should instead undertake its own independent and transparent analysis of uneconomic customers, and all interested parties should be given an opportunity to review that analysis and to provide comment.

ComReg notes on Page 66 that “additional customers added to the network potentially benefit all operators”. This externality that allegedly arises from the USO is not supported by evidence, and is dismissed by ComReg in an earlier section (page 42) where it is acknowledged that “the actual benefit of this network externality may be difficult to determine and hence may not be considered by Eircom when deciding whether to connect a customer in the absence of a USO.” If Eircom itself does not account for any *network externality* benefit associated with adding customers to its network, then it would be inconsistent to expect that other operators would somehow benefit from the additional customers served by means of the USO.

ComReg notes on page 68 that “It is likely that those consumers who would be most affected are those located in more remote rural areas, however certain urban ‘uneconomic’ customers may also be

¹⁹ For example, SIRO have announced plans to deploy FTTH networks to 500,000 households outside of the footprint of UPC Ireland’s network on a phased basis (<http://siro.ie/roll-out/>). Similarly, Hutchison 3 and Vodafone are deploying LTE networks across Ireland presently.

impacted.” UPC Ireland reiterates that ComReg has failed to independently and transparently assess the commercial viability of providing services to end-users. UPC Ireland considers that ComReg should provide a full cost analysis of uneconomic customers, and in particular the apparently ‘uneconomic urban customers’ (since the existence of this cohort seems even less plausible).



Universal Service Obligation

Provision of access at a fixed location

Vodafone response to Consultation ComReg 15/89

Overall remarks:

Vodafone welcome the opportunity to comment on ComReg's Consultation 15/89. We understand the historical requirement for a USO system. In our view a number of relevant and important changes have happened in the last number of years which are significant to the USO, particularly the roll-out of increased mobile phone services; 3G at 900MHz and 4G at 800MHz. Further significant change will occur in the coming years as the National Broadband Plan is implemented. These changes will significantly change the requirements for USO.

Already customers of mobile phone networks have access to a broad range of voice and data services in both bill-pay and pre-paid packages. In areas where mobile coverage is not an issue these services are often used by customers to replace fixed voice and narrowband data service. Pre-paid services in particular are useful to consumers who are price sensitive and have low traffic demands.

The national broadband plan will define a required service in the nominated intervention areas. In these areas our understanding is that the DCENR will define a minimum service to be provided to all customers. While the intervention is for broadband services the ongoing convergence of voice and data services can ensure that voice requirements are covered in these areas. When fully implemented it would appear that this defined service, plus the available mobile and any other fixed services will meet the needs of the customers which are now addressed by USO and that no separate USO will be required. The proposition that a USO would apply in the intervention areas in parallel with an implemented NBP intervention would appear administratively inefficient.

ComReg's consultation further identifies Eircom areas and areas with Market driven Infrastructure competition. As these are areas with higher population density it is likely that there will be multiple mobile operators present in addition to the competitive fixed service operators. We believe that customers will then have available a wide range of bill-pay and pre-paid options to satisfy their requirements and that no USO will be required in these areas.

We would encourage Comreg to form a policy for USO to cover the period to the end of implementation of the NBP defining the role of USO and the role of the NBP contract in providing services to customers.

List of Questions

Q. 1 Do you agree with ComReg and TERA's review of the relevant consumer trends? Please give reasons to support your view.

Yes we agree with the analysis of relevant trends.

Q. 2 In your opinion are there other relevant factors in relation to consumer trends which ComReg should consider? Please give reasons to support your view

Customers with a demand for low volumes of voice are moving to prepaid mobile packages where they believe they have more control over their total spend.

Q. 3 Do you agree with ComReg and TERAs review of the relevant supply side trends? Please give reasons to support your view.

We agree

Q. 4 In your opinion are there other relevant factors in relation to supply side trends which ComReg should consider? Please give reasons to support your view

In addition to the voice coverage reported Vodafone already cover 84% of the population with 3G speeds greater than 1Mbps and 72% of the population at 4G speeds greater than 3Mbps. Roll-out of data service coverage is continuing and by end 2015 will be a close match to voice coverage.

Q. 5 In your opinion are there other relevant factors in relation to the European context or benchmarking which ComReg should consider? Please give reasons to support your view.

no additional information.

Q. 6 Having considered the TERA Report and ComReg's consultation, in your opinion are there other factors with respect impact of not having AFL USOs or in respect of the need for an AFL USO and/or the associated AFL components that ComReg should consider at this time? Please give reasons to support your view.

No other factors

Q. 7 Do you agree with ComReg and TERA's view of the risks to universal, affordable and quality AFL in the absence of any USO? Please give reasons to support your view.

Yes, for the reasons discussed in the report, we agree that there is a risk to universal, affordable and quality AFL at this time.

Q. 8 Do you agree with ComReg's preliminary view that having regard to each of the various AFL components that some kind of AFL USO continues to be required post 31 December 2015? Please give reasons to support your view.

We agree that some kind of USO will continue to be required in the period post 2015, for a time period up until the implementation of the NBP.

Q. 9 Do you agree with ComReg's preliminary summary of the technologies by which an AFL type service can in principle be supplied? Please give reasons to support your view.

Yes we agree.

Q. 10 In your opinion are there other factors that ComReg should consider at this time? Please give reasons to support your view.

No.

250 Do you agree or disagree with ComReg's preliminary view that, if it is determined that there is a need for an AFL USO in the whole or parts of Ireland post 31 December 2015, that any subsequent designation of a USP(s) to provide the AFL USO (s) specified should be for a period of at least 5 years and possibly 7 years? Please give reasons to support your view. .

Yes we agree. The time period should be co-ordinated with the completion of the National Broadband Plan.

Q. 11 Do you agree or disagree with ComReg's preliminary view that, if it is determined that there is a need for an AFL USO in the whole or parts of Ireland post 31 December 2015, any subsequent designation of a USP(s) to provide the AFL USO should be, in principle, for the entire State, allowing for flexibility in respect of individual components as relevant? Please give reasons to support your view.

Over the next five years there will be both changes in the availability of mobile services and an implementation phase of the NBP. In light of the difficulty in tracking these changes in market through changing USO designation we agree with the conclusion of the Tera report (quoted in paragraph 258) that USO should apply to the whole country during this period.

Q. 12 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.

We agree with ComReg's draft high level assessment of the impact of the proposed regulatory options

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