



An Coimisiún um
Rialáil Cumarsáide
Commission for
Communications Regulation

Universal Service

Provision of voice communications services at a fixed location – Submissions to ComReg 23/55

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An Coimisiún um Rialáil Cumarsáide
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1 Lárcheantar na nDugaí, Sráid na nGildeanna, BÁC 1, Éire, D01 E4X0.
One Dockland Central, Guild Street, Dublin 1, Ireland, D01 E4X0.
Teil | Tel +353 1 804 9600 Suíomh | Web www.comreg.ie

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**eir's Response to ComReg Consultation on Universal Service Provision of Voice
Only Connections and Voice Communications Services at a Fixed
Location - Response to Consultation, Further Consultation, and Draft Decision**

ComReg Document: ComReg 23/55



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DOCUMENT CONTROL

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The comments submitted in response to this consultation document are those of Eircom Limited and Meteor Mobile Communications Limited (trading as 'eir' and 'open eir'), collectively referred to as 'eir Group' or 'eir'.

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Accordingly, you are requested to contact a member of eir Group's Regulatory Strategy Team where there is a request by any party to have access to records which may contain any of the information herein and not to furnish any information before the eir Group has had an opportunity to consider the matter.

Outlined below is eir's response to the questions in ComReg's Consultation on Universal Service Provision of Voice Only Connections and Voice Communications Services at a Fixed Location - Response to Consultation, Further Consultation, and Draft Decision.

Response to consultation

Executive summary

eir has already outlined that it disagrees with the proposed designation of a Universal Service Provider (USP) in response to consultation ComReg 23/02. eir has not changed this position. eir is concerned by ComReg's continued failure to provide evidence for the need to designate a USP for voice communication services at a fixed location, its failure to consider mobile telephony in a viable technologically neutral way to provide fixed voice only services, and its disregard for the legislative requirements underpinning Universal Service Obligations (USO) particularly in respect of the proposals on reasonable requests. eir's concerns set out in this response are summarised as follows:

- eir is of the view that there is no requirement for a USP designation for voice communications services at a fixed location and ComReg has not provided evidence to support its positions regarding USO and disregarded the ability of mobile services to fulfil end-user needs to prevent the risk of social exclusion.
- ComReg has created a category of USO end-user which does not exist in legislation and overlooks the basis of USO as dependent on social need or option of last resort, not an end-user elective entitlement. ComReg's proposals do not comply with the relevant provisions in S.I. No. 444/2022 - European Union (Electronic Communications Code) Regulations 2022 ("the EECC Regulations") regarding the requirement to provide USO when existing commercial alternatives are already available, and also the designation length for existing services. Finally, ComReg's new interpretation of USO end-users is inconsistent with how uneconomic customers are to be identified pursuant to ComReg D08/10.
- ComReg objectives will not be fulfilled, some have not been explained in the case of eir contacting its voice only customers, and will instead create a disproportionate burden on industry.
- ComReg is employing isolated decision making by reviewing only VFL and not making holistic policy decisions that incorporate all market and regulatory developments in the near future.

ComReg has not demonstrated that there is a need to introduce a USP designation for voice communication services at a fixed location. ComReg has not considered the realities of the market, including the changing use of technology, the services providers are delivering and the pace of change of consumer behaviours moving away from fixed voice only services. ComReg has not encapsulated all available evidence in its review such as Virgin Media's roll-out of fibre and the functionality of mobile voice telephony to deliver voice services at a fixed location.

ComReg has failed to provide evidence that mobile phone telephony cannot be used to ensure voice communications can be made at a fixed location. ComReg's sole argument to exclude mobile is based on its suggestion that it is not a fixed location service – despite the fact that mobile technology is “mobile” and is functionally capable of being used in fixed locations. As such, ComReg's reasoning is not consistent with legislation. The legislation is technology neutral and ComReg should focus on the functionality of the communication networks in delivering ECS to customers (i.e. capability to allow end-users to make and receive local and international calls at a fixed location). Whether a device is physically tethered to the fixed location for the purpose of making voice calls is irrelevant.

ComReg has not provided evidence to underpin the proposed length of the designation and the scope. It is not clear why the designation period is based on the commercial targets of companies (fibre-roll out targets). ComReg appears to be in fact conflating two policy issues, its copper switch off (CSO) decision, which industry still awaits, and VFL USO review by focusing on the roll-out of fibre.

ComReg's proposals are not compliant with the EECC Regulations, of particular concern is the proposed requirement to provide USO voice only services where an existing commercial service is available. This is not compliant with universal service legislative requirements and is in direct contradiction of USOs as a provision where no other alternative exists. In addition ComReg's failure to evidence its proposals contradicts Article 86(4) of the EECC directive as ComReg has not used “an efficient, objective, transparent and non-discriminatory designation mechanism.”

ComReg's objectives will not be fulfilled and instead the proposed obligations will impose a disproportionate burden on industry. ComReg has not fully considered the scale of the impact of a designation of USP on eir, including the costs of its new proposals for eir to contact voice only customers in an exercise that has no meaningful purpose.

The consultation is devoid of any rationale for the contact proposal and the nature of the

question to be posed to eir's end users – “do you still want a voice service?” – is irrelevant in the context of USO and inconsistent with how uneconomic customers (i.e., USO customers) are to be identified per ComReg D08/10. This is compounded by the lack of evidence for a designation of USP and set against the backdrop of the outcome of the case regarding eir claiming the net cost of providing universal services in the recent ECJ case which eir won. eir is still waiting for ComReg to undertake a reassessment of its unfair burden assessment in light of the ECJ Opinion. eir cannot fully or properly assess the impact of the imposition of a USP obligation, until ComReg has undertaken this reassessment, and indicated what costs are recoverable as an unfair burden.

ComReg is employing isolated decision making instead of holistic policy decisions by reviewing only VFL USO requirements separate to other considerations such as defining adequate broadband and not incorporating all future market and regulatory developments. The VFL USO is no longer required in the form proposed by ComReg and any future consideration should be taken in the context of the availability of affordable broadband.

eir considers:

- There is no requirement for VFL USO as ComReg has not demonstrated evidence of the need and has not fully assessed the market or considered the functionality of mobile voice telephony in providing the ability to use voice ECS at a fixed location to prevent the risk of social exclusion.
- ComReg should review its proposals and ensure that they meet legal requirements set out in the EECC Regulations.
- The proposed imposition of measures by ComReg are not based on regulatory principles or evidence particularly as ComReg acknowledges in many places in the consultation **"eir states that it will continue to serve its existing voice communications services end-users (absent any designation)"** and that it will continue to serve its wholesale SB-WLR customers until copper-switch off.

Q 1. Do you agree or disagree with ComReg’s preliminary view that availability at a fixed location of voice communications services cannot be ensured under normal commercial circumstances in the State?

1. Weir disagrees with ComReg’s view that the availability at a fixed location of voice communication services cannot be ensured under normal commercial circumstances in the State for three key reasons:
 - ComReg has provided no evidence to support its view. ComReg’s “rationale and reasoning” are merely isolated statements without the required supporting analysis or cogent reasoning to support ComReg’s positions and draft decisions.
 - ComReg has rushed its analysis, creating a policy silo which results in uncertainty for the market. It has not conducted a full analysis of the market, including the realities of the market such as the focus on delivering fibre as set out in the digital connectivity strategy. ComReg has failed to consider the changing consumer behaviours regarding the use of voice only which are declining at pace and the requirement for a USO designation. ComReg’s “analysis” regarding the decline of fixed voice is in a very abstract and commentary way which fails to actually analyse those numbers in the context of a USO designation,
 - ComReg overlooks and dismissed the use of mobile telephony and therefore fails to consider the USO designation in a technologically neutral way.

No evidence

2. ComReg has failed to provide adequate evidence to inform or support its view that availability at a fixed location of voice communications services cannot be ensured under normal commercial circumstances in the State. ComReg merely notes the reasons for its decision to impose an obligation as:

“ (1) there are only two undertakings who are actively selling voice communications services in the State, one is a reseller and one is planning on exiting the market for new voice communications services connections; and (2) The next generation broadband networks capable of providing managed VOB are not yet nationwide.”
3. ComReg has noted the very small number of new fixed voice copper connections delivered using current generation network between 2018 and 2022 in paragraph 118, but has not incorporated this into its decision to impose USP for new connections. Nor has ComReg considered the small number of existing VFL users in

its decision to designate USP, despite acknowledging the figures provided by eir. This again demonstrates that ComReg is not basing its proposal to impose USP designation on evidence.

4. ComReg has overlooked eir's statement and commercial position that it will continue to support the provision of SB-WLR until copper switch off. It is clear that existing service will continue until copper-switch off. ComReg has failed to provide a decision on copper-switch off and is conflating the two policy decisions it needs to make. It seems that the ComReg USO and CSO teams may be working in isolated siloes.
5. Finally, eir notes ComReg's focus on FCS as an acceptable technology for VFL USO. It is therefore, unclear and inconsistent on ComReg's part, how one wireless technology such as mobile voice telephony cannot replace another wireless technology (FCS) in instances for VFL USO where both rely on the same mobile technology infrastructure and the only difference is the terminal equipment used.

ComReg's analysis is rushed and not complete

6. The electronic communications landscape has already changed considerably, and this change is ongoing, not in the future like ComReg is suggesting.
7. Although ComReg has recognised that the number of end-users using voice communications services at a fixed location on a standalone basis will continue to reduce over time as alternative networks are deployed (paragraph 50), ComReg has not considered this a shaping market force or as a factor in its decision. ComReg therefore has not based its review of the requirement to designate USP on the available evidence.
8. As noted in paragraph 97, the RTFS subscriptions are declining rapidly and will likely continue to do so. eir disagrees that the number of standalone RTFS subscriptions is significant and ComReg is overlooking the fast rate of decline in customer take up of this service. The rapid rates of decline in 2022 signal that policy decisions to promote a declining legacy fixed service are unnecessary taking into account the changes in consumer behaviour. This includes the pattern of end-users migrating to bundles from standalone fixed voice through choice.

9. eir disagrees that ComReg cannot wait until the Minister defines adequate broadband and disagrees that *“If ComReg were to wait in the way suggested by eir it would not be acting in accordance with its obligation to take all reasonable measures to ensure that all users have access to a universal service,”* (paragraph 123) as ComReg has not evidenced that normal service would not be in place. Indeed as ComReg acknowledges in many places in the consultation ***“eir states that it will continue to serve its existing voice communications services end-users (absent any designation)”*** and will continue to support its existing wholesale SB-WLR customers until copper switch-off. Crucially, ComReg has also failed to consider eir’s submission that there is no legal requirement to designate any operator as the USP on 1 July (which ComReg has now already failed to do) – and it is in within ComReg’s power to intervene at a later date should it become evident that there is a social requirement for ComReg to do so. This is particularly crucial in the context that the Code has now been transposed and ComReg should focus its intention on examining the need or otherwise for a regulatory construct to promote Affordable Broadband services in accordance with the European Code.
10. ComReg is not considering the full market developments when reviewing the deployment of full-fibre networks as it overlooks the fact Virgin Media has already deployed fibre networks by referencing *“prospective fibre deployment being planned by Virgin Media”* (paragraph 370). This is a general approach by ComReg as seen in the WLA/WCA market review of not considering the entire evidence base when making regulatory decisions, not fulfilling statutory obligations.
11. In addition, ComReg has not yet finished the geographical survey which should be used to inform its USO decisions as set out under EECC Regulation 72(1). The projected date of completion is November 2023 and eir considers this is another reason to delay the USO AFL review assuming ComReg can demonstrate an objective justification to maintain a VFL USO. eir does not understand how accurate analysis can be undertaken if ComReg does not have all the required information.
12. ComReg’s analysis therefore is not evidence based. As submitted by eir to ComReg’s consultation *“it is important to highlight that the requirement of the consultation process is not that ComReg is considering withdrawing the USO it is required to prove that regulatory intervention is necessary and a new designation is required”*. However, this failing is not addressed in ComReg’s latest consultation and is again built on an assumption of a need for voice only fixed USP designation, when all the evidence is pointing to a redundancy of fixed voice only services. ComReg

should complete a full review of evidence, even if this means delaying its USO designation decision to ensure its decisions that are proportionate and work for all players in the market.

13. eir also highlights international experience as an example of European regulators successfully not imposing USO and USP designations for fixed voice telephony. Both before and after the EECC directive, Member States have chosen not to enforce USO or designate USP. In Denmark¹, broadband is not included in USO and from 1 October 2022 telephony is not included under USO. Other countries such as Switzerland no longer include a USO for analogue technologies.² ComReg should consider the experience of other countries that have successfully removed USO and USP designation to ensure a full review and evidence basis before imposing USO.

Use of mobile telephony

14. As eir has continually outlined, it disagrees with ComReg that, “*standard mobile telephony is not a “voice communications service at a fixed location.”* It is illogical to say that someone making a voice call on a mobile phone while in a building is not making a voice call at a fixed location. ComReg continues to overlook the evidence and reality in the market both in terms of consumer behaviour and technological developments. eir notes that ComReg’s Quarterly Key Data Reports reveal continuing fall in fixed voice traffic minutes and near universal mobile ownership as stated in ComReg’s latest Mobile Experience Survey 2022. eir outlined in its submission to ComReg consultation 23/02 that mobile phone voice services are already preventing the risk of social exclusion as they are the most affordable voice service. ComReg has continued to overlook mobile telephony as a lower cost solution that already prevents the risk of social exclusion, a basis for the implementation of USO.
15. As stated in paragraph 107, the principle of technological neutrality allows USPs to choose the optimum method of meeting access requests, satisfied through “*the least cost technology*” (paragraph 108). ComReg describes the least cost technology as likely to be a FCS for new connections. ComReg’s flawed and inconsistent reasoning is highlighted here, as it is unclear, how one wireless technology such as mobile

¹ Danish Agency for Data Supply and Infrastructure (2023). Available at: <https://eng.sdfi.dk/digital-infrastructure/telecom/telecomregulation#:~:text=Universal%20Service%20Obligations&text=According%20to%20the%20Danish%20Act.called%20%E2%80%9CUniversal%20Service%20Obligations%E2%80%9D>

² ComCom (2017) Available at: <https://www.comcom.admin.ch/comcom/en/Homepage/documentation/media-information.msg-id-66782.html>

voice telephony cannot replace another wireless technology (FCS) in instances for VFL USO where both rely on the same mobile technology. ComReg has not provided evidence of the differences between the wireless technology that would prove mobile telephony cannot provide the same function.

16. ComReg has not provided evidence that mobile phone telephony cannot be used to ensure voice communications at a fixed location. The legislation is technology neutral and ComReg should focus on the functionality of the communication networks in delivering ECS to customers (i.e. capability to allow end-users to make and receive local and international calls).
17. In fact ComReg states that *“in many circumstances a mobile telephony service is a close substitute for a voice communications service at a fixed location, however it is not a voice communications service at a fixed location.”* This demonstrates that ComReg recognises the functionality of the service of mobile telephony but for another reason cannot accept that mobile can be used at a fixed location as successfully as FCS or copper. It is not clear why a mobile technology has to be plugged into a wall to be considered as providing a voice communications service, or why the consideration cannot be based on the ability of end-users to make a call within a building.
18. ComReg is also not consistent in its assessment of mobile phone telephony across its policy and regulatory decisions. In ComReg’s battery back-up decision (ComReg 21/143) ComReg recognise that near universal mobile use provides a “suitable alternative” to mitigate against the loss of a landline telephone in a power outage and is part of the reason for no longer requiring the provision of information regarding battery back-ups. ComReg should be consistent in its policy decision making and apply the same principles where relevant.
19. This links to ComReg continuing to overlook the relevance of European Commission comments on ComReg’s FACO market review to USO. eir recognises that the imposition (or withdrawal) of ex ante SMP based regulation by a regulator is a different regulatory test to the imposition of USO. However, there has to be certainty and consistency across regulatory tools and policy decisions for markets to function effectively. It is clear from the Commission’s comments and ComReg’s subsequent FACO market review Decision (ComReg 21/76) that mobile is a functionally acceptable alternative to PSTN.

20. eir notes MCA, the telecoms regulator in Malta, in its consultation focuses on the functionality of the technology as long as it meets certain requirements. In the 2023 USO Decision document, the MCA clarify that voice communications services at a fixed location may also be provided using wireless technologies subject to meeting functionality requirements, “subject to the following:
- (a) the functional characteristics for voice communications services as defined in Decision 1 would be satisfied, (i.e. capability to allow end-users to make and receive local and international calls); and*
- (b) the voice communications services in question would adhere to all regulatory requirements applicable to fixed voice communications services. In the case of the provision of standalone voice communications services at a fixed location, (regardless of whether the standalone voice communications services are provided through wired or wireless technologies), there is no specific requirement for the underlying connection to satisfy the functional characteristics of an adequate broadband internet access service specified in sub-section 4.1.1.2 and Decision 1, subject that the requirements outlined in (a) and (b) above in this sub-section are satisfied.”³*
21. eir notes that before ComReg makes a USP designation, the Minister must be of the opinion that public policy tools cannot ensure access to voice communications services in the State or any part of it under Regulation 72 (1) of the EECC Regulations. ComReg recognise this in several places throughout the consultation document, and set this out in section 4.2. of the decision instrument. eir is unclear why ComReg has drafted a decision instrument, when it is not clear the USP designation can yet be imposed. ComReg should not impose a Decision until the Minister has made this assessment. eir expects that the Minister’s assessment will be undertaken in line with Article 86 (2) of the EECC directive, “respecting the principles of objectivity, transparency, non-discrimination and proportionality,” and taking into consideration the opinion of industry, and the lack of evidence for ComReg’s proposals.

eir has clearly outlined that it disagrees with the requirement to impose USO for fixed voice telephony in Ireland as outlined above and in our previous response to ComReg consultation 23/02. However, eir offers the following comments on the detail of the USO proposal. These comments should not however be taken or presented as an endorsement of ComReg’s proposed approach.

³ MCA (2023) Decision Notice Universal Service Obligations on Electronic Communications Services <https://www.mca.org.mt/sites/default/files/Decision%20on%20the%20Redefinition%20of%20the%20ECS%20USO%202023.pdf>

Q 2. Do you agree or disagree with ComReg’s preliminary view that eir should be designated as the USP for its existing USO VFL end-users. Please set out reasons for your answer.

22. eir disagrees that it should be designated as USP for existing USO VFL end-users as:
- ComReg has not provided evidence of the need for a USP designation.
 - It is not clear why eir has been designated over other providers based on its market share.
 - ComReg has incorrectly created the concept of a “USO VFL end-user”. ComReg’s proposed identification of USO VFL end-users is also inconsistent with the defined methodology set out in ComReg D08/10.
23. eir has already outlined that it will continue to serve existing voice only customers and that the current provision of its wholesale SB-WLR service will continue until copper switch off, meaning eir has not taken a decision to not provide the voice only service. Therefore it is not clear why there is a requirement to impose a USO and designate eir as USP for existing voice only customers.
24. ComReg has still not provided clarity on copper switch off, and as a result is conflating two separate policy decisions, requiring USP designation where there is clearly no need. eir has committed to upgrading its networks to the latest technology, fulfilling the objectives of the Digital Connectivity Strategy 2022 and should not be held back or distracted from meeting this objective with unnecessary regulatory obligations. eir considers that it is disproportionate for ComReg to wait until entire fibre roll-out has taken place to consider removing redundant VFL USO.
25. ComReg has also failed to justify eir’s designation as USP based on market share in standalone LL-RFTS subscriptions. eir’s market share is below 3% and is declining. It is not clear why the burden of USP is placed on eir and not its competitors – particularly in the context of Virgin Media which have a significant broadband market share in urban areas and as an operator designated as the USP could provide voice only services.
26. In the context of designation more widely, eir considers that ComReg is ignoring the scale of the impact of the obligations of USP designation on eir. It has not considered the cost on the provider as part of its designation. This is compounded by the backdrop of making this designation when eir is still awaiting reimbursement for costs it faced as the current USP. ComReg has also overlooked the new costs that will be imposed through the requirement to contact customers which is

discussed in response to question 6.

27. ComReg has incorrectly created the concept of a 'truly USO end-user'. The premise of USO is on fulfilling a need for a service where it is not commercially available, not a category of consumer or end-user that prefers a fixed voice only service even though alternatives are in place. ComReg has not explained the use of this term or its definition, and it should not be used going forward. Finally, the definition is inconsistent with the extant uneconomic customer definition and the identification of uneconomic customers per ComReg D08/10.

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Q 3. Do you agree or disagree with ComReg's preliminary view that Pure Telecom should be designated as the USP for all new (in-situ and non-in-situ) USO VFL end-users? Please set out reasons for your answer.

28. eir is not in the position to agree or disagree with ComReg's proposal to designate Pure Telecom as USP for all new USO VFL end-users, as it is unclear on why ComReg has made this decision, as:
 - eir does not consider there should be USP designation for new or existing customers.
29. eir has already outlined it does not consider the need for a USP designation for fixed voice customers, including new customers. ComReg has recognised that the demand for new connections is low (non-in-situ and in-situ) and to impose a USP designation in this context is a disproportionate burden. ComReg has not considered why there would be new requests for universal services, citing itself the context of declining fixed voice usage, universal mobile ownership, increased uptake of bundles and fibre roll out.
30. eir considers that ComReg is creating uncertainty in the market, by attempting to solve a non-existent problem as mobile telephony can provide universal voice only services in the market.
31. Finally, the purpose of being designated with USP is that the operator is the provider of last resort for a defined period. However, under ComReg's proposal it would appear that Pure is designated unless it decides it no longer wishes to be so.

Q 4. Do you agree or disagree with ComReg's preliminary view that the designation period should be until 30 June 2027, unless otherwise amended?

32. eir disagrees with the designation period for USO lasting until 30 June 2027 as:
- Fundamentally, eir considers USO for voice services as redundant, which it has outlined throughout this response.
 - It is not clear the reasoning or evidence for the length of the designation, which is not based on regulatory principles but commercial decisions of providers.
 - To the extent that the proposed designation is a continuation of existing services per Regulation 73(1) of the EECC Regulations, ComReg has not considered its obligations under Regulation 73(4) of the EECC Regulations to review the obligation for existing connections every three years.
33. In response to this consultation 23/02 eir raised concerns regarding the timing of the USO designation period and the need to define adequate broadband. ComReg has not considered these concerns as it has only reduced the proposed designation period by one year from its previous suggestion of a maximum of 5 years and has not acknowledged the timing issue.
34. It is also not clear why the designation period appears to be based on commercial targets for the roll-out of fibre, instead of regulatory principles or evidence of a need for universal service obligation. In fact, ComReg is proposing to impose the VFL USO beyond the latest proposed roll-out completion date for NBI of late 2026/early 2027. Also, ComReg has not accounted for Virgin Media's fibre roll-out plans. Therefore, once again ComReg has not made a decision based on evidence and has chosen a designation period which overlooks the fact a USP is not required and the market developments which point to this.
35. The proposed end date will also lead to uncertainty for providers if the target dates for fibre roll out are not met, it is not clear if this will result in further designation of USP if ComReg continue to conflate copper switch off issues with USO designation.
36. ComReg has also not taken account of its obligations under the EECC Regulations. ComReg proposes to continue to designate eir USP for existing connections until 2027. Regulation 73(4) states that ComReg must review the status of certain existing universal services within three months after commencement of the Regulations and

every three years thereafter. ComReg has however not proposed this in the case of eir's USP obligations:

“ (4) The Regulator shall review the status of universal service obligations referred to in paragraph (1) within three months after the commencement of these Regulations and every three years thereafter.”

37. ComReg needs to provide clarity on the application of Regulation 73 and also of Regulation 72.

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Q.5 Do you agree or disagree with ComReg’s preliminary view that geographic scope of the proposed designations should be the whole of the State? Please set out reasons for your answer.

38. eir disagrees with the proposal to designate a USP in Ireland for fixed voice telephony and has outlined the reasons for this above. Nevertheless, eir has considered the geographic scope proposed and does not agree with the proposed geographic scope of a state wide USP designation as:
- ComReg has not provided evidence of the need for this scope and has based its decision on assumption rather than on evidence of a need for VFL USO.
 - ComReg has incorrectly interpreted the right to request a connection is limited to fixed voice only, as a right that exists separately to the establishment of the need for USO. USO provides end users with an option of last resort and is not meant to be a lifestyle choice. The EECC is clear (Recital 212) *“Universal service is a safety net to ensure that a set of at least the minimum services is available to all end-users and at an affordable price to consumers, where a risk of social exclusion arising from the lack of such access prevents citizens from full social and economic participation in society.”*
39. The designation of a USP must be based on evidence that VFL cannot be delivered commercially in an area, including through options such as mobile phone telephony networks. ComReg has not provided evidence as to why the scope would be the entire State instead of areas where USO is not commercially available, nor that a USP designation is required at all.
40. ComReg states that end-users that make requests for VFL services are dispersed throughout the State but does not provide evidence of this State-wide demand going forward. Instead ComReg base the decision on a perceived possible need for USO, *“This geographic scope of designation is required to ensure that any end-user in the State who requires the protections of universal service in order to obtain a voice only connection and voice communications services, has such protection.”* ComReg is once again basing its decision on the existing USP designation rather than taking a forward looking approach that considers market realities and demonstrating that an intervention is necessary. In any event any regulatory concern in respect of existing voice only customers is unfounded as ComReg acknowledges in many places in the consultation ***“eir states that it will continue to serve its existing voice***

communications services end-users (absent any designation)".

41. The baseless proposed geographic scope of USP designation will increase the unnecessary burden of USP for fixed telephony on eir and Pure, even though commercially supplied options for voice telephony exist such as mobile.
42. ComReg appears to have confused the USO requirements regarding fixed voice communication services. ComReg outlines that *"while any designations may be for the whole of the State, obligations will only crystallise at identified discrete end-user locations, that are not served commercially, or where the end-users have exercised their right to a connection limited to support fixed voice communications services."* ComReg's position is incorrect. The right to limit a connection to support fixed voice communications service is not separate to the requirement to impose USOs, it is an option for an end-user to request where USO exists for in respect of an available adequate broadband internet access service as specified under Regulation 70 (1).

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Q.6 Do you agree or disagree with ComReg’s preliminary views in relation to the reasonableness of requests for connection (existing; new in situ; and new non in situ) and for access to VFL services? Please set out reasons for your answer.

43. eir strongly disagrees with all aspects of ComReg’s views in relation to reasonableness of requests for connection and considers ComReg’s proposals do not comply with legislation. In summary:
- ComReg has proposed requirements that go beyond the legal requirement for USO.
 - eir strongly disagrees with requirement to contact its existing customers.
44. ComReg is incorrectly portraying USO as an end-users right of choice irrespective of other commercial arrangements available to the end-user, as almost a “lifestyle-choice”. For instance ComReg proposes that reasonableness is to be determined as a customer can decide whether or not to use an equivalent commercial service, “*the Requester has indicated to the USP that they wish to continue to avail of a VFL Service (even if there is an Equivalent Service available).*”
45. eir is alarmed that ComReg has stated this is the case “*even if there is an Equivalent Service available*” which is in contradiction to the fundamental principle of universal service. This is not in compliance with USO legislation or conventions, as universal service is intended to provide an option of last resort when no commercial operator will provide a service. Therefore, an end-user should not have the choice to reject an alternative provider if available in favour of a service delivered under USO. There is no justification for a VFL USO as the market is preventing social exclusion through universal mobile telephony and other voice services as set out above. The proposal for reasonableness demonstrates ComReg’s objective of forcing providers to retain voice only services, where there is no need, and most importantly no legal requirement to do so.
46. ComReg needs to provide clarity on the application of Regulation 73 in the context of its proposed definition of an “existing connection” in the draft decision.

Requirement to contact customers

47. eir strongly disagrees and does not understand the purpose of ComReg’s proposal that as USP it would have to contact each existing VFL service end-users three times

(once every four months) within the first 12 months of the designation, and to ask whether those end-users wish to continue to avail of a VFL Service as:

- ComReg is ignoring the legal basis of USO that requires a service to be provided where there is no commercially available alternative.
- The proposal will not provide clarity on end-users that require USO voice only communications, therefore not fulfilling ComReg's objectives and rendering this a pointless exercise.
- eir considers that ComReg would be imposing a disproportionate burden in terms of costs and data protection implications. This would also lead to costs and inconvenience for customers to confirm their choice.
- The proposed requirement is commercially invasive and not mandated by legislation. ComReg has proposed imposing a contact requirement on eir only (overlooking Pure and other providers of existing voice only services who account for more than 80% of such end users) which includes it approving contact content and method, and onerous reporting requirements, without demonstrating a requirement for this.

48. eir does not agree that this contact proposal will provide clarity on end-users that require USO voice only communications. Whether those end-users wish to continue to avail of a VFL Service does not of itself identify whether the end user is being served under the USO, i.e. the provision of service to that premises on the fixed copper network is uneconomic (assuming ComReg's focus remains blinkered towards legacy fixed technology).

49. The proposal will not fulfil ComReg's aim of determining who is "truly a USO end-user". This concept does not exist under legislation; the basis of USO is on a lack of alternative service, not an opt-in end-user. Similarly, for net cost calculation purposes even if an end-user declares themselves as wanting or not wanting a fixed voice only service – that identification in of itself does constitute those end-users being within an uneconomic area or an uneconomic customer per ComReg D08/10. Therefore, it is not clear how asking a customer if they still require the service determines if they are a "commercial VFL end-user". In ComReg's net cost calculation the definition of uneconomic customers is not an opt in/out questionnaire, therefore it cannot be determined by a questionnaire as proposed.

In fact, USO requirements Regulation 70(1) of the EECC Regulations outlines that USO extend to "commercial users" and an undertaking designated as having a USO must "satisfy any reasonable request by a customer, microenterprise, small

enterprise, medium-sized enterprise or not-for-profit,” Therefore there is no logic in determining who is a “commercial user” as other business or commercial users are entitled to avail of universal service if required as set out under Regulation 70(1).

50. It is also not clear why eir has to prompt its customers to make a request to whether they still wish to have a voice only service. In general, in situations where customers settle regular bills for a service it is reasonable to assume they do not need to be asked if they “*wish to continue to avail*” of the service. There is simply no logic to justify ComReg’s proposed obligation. It is neither reasonable nor proportionate.
51. Imposing this obligation on eir will result in a disproportionate burden in terms of costs and data protection implications. If eir is to contact customers through a durable medium, this would most likely be a letter based on the typical communication behaviours of these voice only customers.
52. We estimate it would cost eir Retail over $\text{€} 100$ to implement the proposed contact obligation, taking into account the cost of planning the campaign, sending letters, and recording responses. A similar level of cost would be incurred by other operators if the entire population of fixed voice only end-users is to be interrogated. Therefore the cost of ComReg’s proposal could be in the region of $\text{€} 100$ and ComReg has failed to consider the proportionality of this cost.
53. eir will have to set up a dedicated team of agents to manage the contact programme. The estimate above does not take into account the opportunity cost of losing these resources from eir’s business activities.
54. ComReg has not made it clear how the proposed “contacts” with customers are to be recorded, why these contacts need to be recorded and what is meant by the term “contacts”. This is relevant as if “contacts” refers to a customer’s response to the proposed letter, eir is unclear how this will be achieved. In this scenario, eir will likely have to invest in new IT infrastructure, provide training on this and create a dedicated team. The resources, the costs and the time this will take are completely disproportionate, especially as ComReg has not explained why or provided evidence that the recording of contacts is necessary.
55. In addition, ComReg has not specified that this reporting requirement will end after the 12-month period it has proposed for the contacts campaign, nor how long these contacts are required to be stored. ComReg has proposed a sweeping, vague

recording requirement that fails to consider the resulting financial and resource impacts on eir. In the context of ComReg proposing that eir is designated USP until 2027, it is especially unclear why eir would need to contact its customers to confirm they wish to retain their voice only service. ComReg needs to first establish the purpose of this exercise, and consider the practical, disproportionate implications of its proposal to assess the burden. This proposal is not based on evidential need to contact consumers.

56. This proposal would impose a lot of costs on eir, considering the cost of contacting consumers and recording contacts, to complete a task that has no purpose as there is no concept of a “truly USO end-user” and USO extends to some commercial end-users so it is not clear what the outcome of this task will be. eir is also the only operator that must undertake this task even though Pure will potentially be responsible for new USO connections.
57. Even if one was to accept there is a concept of a “truly USO end-user”, which there is not, and that the proposed contact mechanism would identify such users, which it will not, the proposal to impose the obligation on eir alone would be flawed. eir’s share of voice only users is less than 5%. Consequently ComReg’s proposal is only interrogating a subset of the in-scope population.
58. The proposal may also impose unnecessary costs on customers who would have to call eir to notify us that that they wish to continue to use a voice only service. This extra cost would result from an exercise that does not benefit customers, is not compliant with legislation and the objective of which has not been clarified.
59. ComReg has also not clarified how long the customer will be deemed as limited to voice only and if eir will have to undertake this exercise again, which will impact on business forecasting.
60. The increased reporting requirements to ComReg on a quarterly basis of all contacts made are unnecessary and will impose disproportionate costs on eir. ComReg has not clarified why the reporting is required; especially if after one contact eir can consider the customer still wants to retain its connection as set out in the decision instrument. However, ComReg’s wording in the draft Decision Instrument regarding the number of contacts eir is required to make with customers is not clear. eir interprets this wording to mean that once a customer has confirmed they wish to continue to avail of VFL, they do not have to be contacted again, even if

the full three contacts have not been made.

61. eir does not have the consent of the customers in the identified cohort to contact them to ask if they still require their voice only connection. Consequently, eir may have to inform the Data Protection Commissioner about this obligation. eir is not clear on why it would have to engage another state body to fulfil an obligation of contacting customers that is pointless and is not required under law. This is a disproportionate burden and consequence of a proposal that is pointless, and has not been fully considered.

NON-CONFIDENTIAL

Q 7. Do you agree or disagree with ComReg's draft regulatory impact assessment? Are there other impacts or details that should be included? Please set out reasons for your answer.

62. eir considers that ComReg has not completed a full regulatory impact assessment as it has not considered the full impact of its proposals or the full suite of sub-options available such as designation time periods and scope. ComReg has also drawn conclusions that are not based on evidence and are not clear in some places. It is not clear how it can conduct a proper regulatory impact assessment, in terms of the impact of designation on an operator, when it has not yet carried out its reassessment of what costs constitute an unfair burden on a designated operator (and are therefore recoverable).
63. ComReg has not provided evidence for its conclusion in paragraph 240 that it has established that fixed voice communication service cannot be ensured under normal commercial circumstances. ComReg wilfully ignores the relevance of a significant piece of evidence as it refers to in the RIA - "**eir states that it will continue to serve its existing voice communications services end-users (absent any designation)**". This renders the need or justification to designate eir as USP for existing customers otiose. It is not clear why is ComReg ignoring this.
64. ComReg does not consider the full set of options under 2B regarding duration of designations as it has only considered basing the designation on the roll-out of fibre completion not a threshold of completion. In fact, ComReg has not outlined why the designation period is based on the fibre-roll out. In the same way, regarding Option 2C, ComReg has not considered the scope of designation as being linked to areas where there may be alternative solutions like mobile voice telephony available or narrowing the designation to specific areas of need determined by geographic survey to be completed.
65. Under Option 1 Figure 15, ComReg does not consider the positive impacts of not designating a USP. This includes the fact bundles are often cheaper than voice only services, and customers may pay less for a bundled package, a positive for customers. It is also unclear why the market would become less competitive as USOs apply where there is a need or as a last resort due to the absence of commercial options. ComReg states the "**Market becomes even less competitive than before (mature market already in decline)**". It seems that ComReg has concluded that the 'Market', which we assume to mean fixed voice, is not very competitive and will

become less competitive absent a USO. ComReg offers no evidence to support this assertion and appears to have forgotten its own conclusions, following a detailed market review, that the wholesale and retail markets for fixed voice are competitive.

66. ComReg also fails to recognise the additional costs that eir would incur through the requirement to contact customers in Figure 16. eir is also unclear what is meant by the sentence, “*The net cost of voice communications services now based on (eir's) actual costs*” in Figure 16.
67. eir is unclear on how a designation until 30 June 2027, “*May result in (i) an acceleration of eir's fibre rollout.*” eir has committed to commercial plans to deliver its fibre roll out which are not dependent on USO designation.
68. In the RIA ComReg has also contradicted its requirements in the proposed Decision stating that “*Pure Telecom - do not have to serve where: (i) there is an Equivalent Service,*” which creates confusion regarding statements that providers are required to deliver voice only services even if equivalent services are available.
69. The RIA does not provide a sound basis from which to make regulatory policy decisions.

NON-CONFIDENTIAL

Q 8. Do you have any comments on or suggestions in relation to the draft Decision Instrument? Please set out your answer in detail.~

70. The decision instrument does not include the provision to allow for review after the adequate broadband decision has been made as stated in the body of the consultation. There needs to be a mechanism to enact this review in the Decision Instrument to ensure that a review takes place after the definition has been established.
71. eir has highlighted throughout this response a number of instances where it considers that ComReg has not complied with legislative requirements regarding USO. eir considers that point 6.3 in the decision instrument is not legally compliant in regard to point ii. as USO do not apply where there is an equivalent commercial service available. This applies to section 7.2 and 8.2 also.
72. ComReg also needs to provide clarity on the definition of existing services outlined in the Decision Instrument in the context of Regulation 72 (4) as outlined earlier.
73. eir also considers that ComReg should review the designation period of up to 2027 in line with points outlined above regarding a requirement to review provisions for existing services every three years.

ComReg
One Dockland Central,
Guild Street,
Dublin 1,
Ireland,
D01 E4X0

Thursday 6th July 2023

BY EMAIL: retailconsult@comreg.ie

**Pure Telecom Response to Universal Service Provision of voice only connections and voice communications services at a fixed location
Response to Consultation, Further Consultation, and Draft Decision**

Dear Gabrielle,

First and foremost, Pure Telecom appreciates the detailed and informative Draft Decision published by ComReg on the universal service provision of new voice only connections and voice communications services at a fixed location on 20th June 2023.

As ComReg notes in their Draft Decision, Pure Telecom rely on our wholesale partners for the delivery of all services to our consumer and business customers. We do not operate or own any infrastructure and as such are 100% dependant on network operators.

Pure Telecom would like to inform ComReg that we have taken the decision to withdraw from offering consumers a new voice only connection at a fixed location.

Going forward, Pure Telecom will only offer consumer voice services as part of a bundle alongside a broadband connection which may be via POTS or a standalone service accompanied by SIP, depending on the customer's requirements and the technology or infrastructure available.

Please note that Pure Telecom has observed a significant decline in the requirement for new voice only services in the consumer market. Therefore, in line with other service providers referenced in the consultation document 23/55, Pure Telecom has also made the decision, for now, to focus our resources meeting the market demands which we are observing and to only provide voice within a bundled product offering. As with all services we provide, we will continue to monitor market demands and trends closely and adjust our future strategy accordingly.

Our sales and marketing, IT (including billing) and provisioning resources will now be focussed on Pure Telecom's broadband and bundled offerings to new customers. We will continue to service and support all existing voice only connections going forward.

Yours sincerely


Jonathan Long
Head of Operations

Pure Telecom Ltd. Unit 3018 Lake Drive, Citywest Business Campus, Dublin 24, D24 TY81
Tel: +353 (0)1 2469000 www.puretelecom.ie