



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

# **Universal Service Provision of voice only connections and voice communications services at a fixed location**

## **Response to Consultation, Further Consultation, and Draft Decision**

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

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## Additional Information

All responses to this Further Consultation, Response to Consultation and Draft Decision should be clearly marked: "Reference: Submission re ComReg 23/55 as indicated above, and sent by post, facsimile, e-mail or online at [www.comreg.ie](http://www.comreg.ie) (current consultations), to arrive on or before 5:30pm on 20 July 2023, to:

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Please note ComReg will publish all respondents' submissions with the Response to this Further Consultation, Response to Consultation and Draft Decision, subject to the provisions of ComReg's guidelines on the treatment of confidential information – ComReg 05/24.

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# 1 Executive Summary

- 1 The Commission for Communications Regulation (“ComReg”) is the independent regulator for the electronic communications sector in Ireland. In exercising its functions, ComReg has the objective to promote the interests of users within the Community and in that regard ComReg has an obligation to take all reasonable measures to ensure that all users have access to a universal service<sup>1</sup>. This document is about availability of a fixed voice telephony universal service and proposes designation of universal service providers.
- 2 Currently there is a universal service obligation (“USO”) on Eircom Limited (“eir”) to, amongst other things, meet reasonable requests for access to a connection and voice services at a fixed location (“AFL”). The current AFL USO designation will expire on 30 June 2023<sup>2</sup>.
- 3 On 10 January 2023 ComReg issued a consultation document titled “Universal Service Requirements Provision of voice only connections and voice communications services at a fixed location (VFL USO)” (“Consultation 23/02”). Consultation 23/02 sought views on proposals in relation to the imposition of a fixed voice USO post 30 June 2023.
- 4 Having considered the submissions to Consultation 23/02, ComReg has revised its preliminary views and draft decision instrument. In this response to consultation, further Consultation, and draft decision (“Further Consultation” and “Draft Decision”) ComReg is conducting a further consultation on its revised preliminary views and the revised draft decision instrument, this document also includes a section responding to consultation responses. In summary the revised preliminary views which are being consulted upon are:
  - that availability at a fixed location of voice communications services cannot be ensured under normal commercial circumstances in the State.
  - that, subject to receiving the opinion of the the Minister for the Environment, Climate and Communications (“the Minister”) that other potential public policy tools cannot ensure access to voice communications services in the State, the following undertakings should be designated as USPs:
    - eir for **existing** USO voice communications services (including voice only connection) at a fixed location (“VFL services” and “VFL”) end-users; and

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<sup>1</sup> Section 12(2)(c)(i) of the Communications Regulation Act 2002, as amended (“the Act of 2022”).

<sup>2</sup> “Universal Service Requirements Provision of Access at a Fixed Location (AFL USO)”, Response to Consultation and Decision ComReg 21/112R, D09/21 (“ComReg D09/21”).

- Pure Telecom Limited (“Pure Telecom”) for **new** (in-situ and non-in-situ) USO VFL services end-users.
- that the maximum period of the proposed designation should be until 30 June 2027 and in Pure Telecom’s case it is subject to the following qualification: “in the event that Pure Telecom is no longer party to a contract enabling it to provide VFL services, its designation as USP will immediately cease and it will no longer be subject to the universal service obligations”; and
- that the geographic scope of the designation should be the State; and
- that “reasonable requests” should, subject to the consent of the Minister, be specified as set out in the Draft Decision.

5 Finally, ComReg will publish its response to the Further Consultation in which it will analyse and consider any submissions to the Further Consultation received and comments on the Draft Decision. This document will also include the text of any final decision made by ComReg.

## 2 Introduction

6 ComReg is the independent regulator for the electronic communications sector in Ireland. ComReg was established by section 6 of the Act of 2002. ComReg is responsible for the regulation of the Irish electronic communications sector in accordance with national and EU legislation.

7 In exercising its functions, ComReg has the objective to promote of the interests of users within the Community and in that regard ComReg has an obligation to take all reasonable measures to ensure that all users have access to a universal service<sup>3</sup>.

8 Currently there is a USO on air to, amongst other things, meet reasonable requests for AFL. The current AFL USO designation will expire on 30 June 2023<sup>4</sup>.

### 2.1 Consultation 23/02

9 On 10 January 2023 ComReg issued Consultation 23/02. The background to Consultation 23/02 is set out in full in that document. Consultation 23/02 sought views on proposals in relation to the imposition of a fixed voice USO post 30 June 2023. Consultation 23/02 was limited to universal service for VFL services.

10 Consultation 23/02 consulted on a proposal to make a decision under the European Union (Electronic Communications Code) Regulations 2022 (“S.I. 444 of 2022”), a statutory instrument which had, at that time, been published, but not yet been commenced. S.I. 444 of 2022 is part of the transposition of Directive (EU) 2018/1972 which established the European Electronic Communications Code<sup>5</sup> (“the Code”) a comprehensive set of new and revised rules for the telecoms sector.

11 In Consultation 23/02 it was set out that ComReg anticipated that S.I. 444 of 2022 would commence in Q1 2023. S.I. 444 of 2022 has now been commenced. Any decisions made following this Further Consultation will be made pursuant to S.I. 444 of 2022.

12 In Consultation 23/02 ComReg formed several preliminary views, in summary:

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<sup>3</sup> Section 12(2)(c)(i) of the Act of 2002.

<sup>4</sup> ComReg D09/21.

<sup>5</sup> Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (Recast).



- that a VFL services USO was required post 30 June 2023 for a maximum designation period of 5 years, unless amended. ComReg proposed to keep under review any designation and VFL services USO in light of changes in the market, or 6 months after the Minister had defined adequate broadband;
- that the current specifications for reasonable access requests for new connections (as set out in D09/21, Decision Instrument Section 5) should be altered to take account of (i) alternative infrastructure and equivalent services where they exist, and (ii) the ability of other service providers to serve these requests;
- that the specifications for reasonable access requests for existing connections (as set out in D09/21, Decision Instrument Section 5) should be altered to take account of alternative infrastructure and equivalent services where they exist;
- that quality of service of VFL services was to be monitored and published;
- that no requirements for terms and conditions were to be imposed; and
- that absent any expressions of interest, the current USP, eir, was best placed to be the USP for VFL services USO, post 30 June 2023.

13 ComReg in forming its preliminary views in Consultation 23/02 considered, amongst other things, the following:

- the new legislative framework (S.I. 444 of 2022);
- market trends and developments, including
  - demand and supply side trends (including information received from eir and other fixed voice service providers);
  - eir's network strategy (including FTTx, MSAN deployment and copper switch off); and
  - the rollout of the National Broadband Plan ("NBP") and commercial deployments; and
- information from eir regarding the implementation of the current AFL USO

## 2.2 Submissions to Consultation 23/02

14 ComReg received four submissions to Consultation 23/02 (from Alternative operators in the communications market ("ALTO"), eir, National Broadband Ireland ("NBI"), and Virgin Media Ireland Limited ("Virgin Media")) and these submissions are published in ComReg Document No. 23/02s.

- 15 Having considered the submissions to Consultation 23/02, ComReg has revised its preliminary views and draft decision instrument and is conducting this Further Consultation on its revised preliminary views and the revised Draft Decision.

## 2.3 Legal context

- 16 As indicated above the Code is a comprehensive set of new and revised rules for the telecoms sector. The Code is transposed into national law by S.I. No. 444 of 2022 and the associated Communications Regulation and Digital Hub Development Agency (Amendment) Act 2022, both of which have now been commenced (together “the new legislative framework”).

- 17 S.I. 444 of 2022 sets out requirements in respect of universal service. The main elements are:

- designation of universal service provider;
- definition of adequate broadband;
- quality of service (voice), terms and conditions, reasonableness;
- voice only connections and voice communications services at a fixed location<sup>6</sup> (“VFL services”);
- provision of affordable universal service;
- availability of universal service and designation; and
- control of expenditure.

- 18 In Consultation 23/02 ComReg anticipated that S.I. 444 of 2022 would commence in Q1 2023. S.I. 444 of 2022 has now commenced ComReg is now further consulting pursuant to Regulation 101 of S.I. 444 of 2022. Under the new legislative framework, ComReg’s role in respect of certain aspects of universal service is contingent on the Minister taking certain actions, and of particular relevance to this consultation are the following:

- i) defining adequate broadband for the purpose of S.I. 444 of 2022 and specifying associated quality standards;
- ii) forming the opinion that other potential public policy tools cannot ensure access to adequate broadband or to voice communications services in the State or any part of it as identified by ComReg; and

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<sup>6</sup> Referred to in Regulations 70(1)(b) and 70(4) of S.I. 444 of 2022.

- iii) providing Ministerial consent to requirements specified by ComReg to be complied with by an undertaking providing adequate broadband or voice communications service as universal services in relation to the reasonableness of requests for connection at a fixed location to these services.

19 As the Minister has not yet defined adequate broadband and as the current AFL USO is due to expire in June 2023, this Further Consultation is limited to universal service for voice communications services (including voice only connection) at a fixed location.

20 ComReg is consulting on a universal service designation for the provision of VFL services, and not for the provision of adequate broadband services. This approach is provided for in S.I. 444 of 2022. ComReg notes for example that Regulation 72(3) of S.I. 444 of 2022 provides that ComReg may designate a USP or USPs “to guarantee the availability at a fixed location of either of both of the services referred to in paragraph (1)” (emphasis added), where the services referred to are “adequate broadband” and “voice communications services.” Accordingly, there is a legal basis for a VFL services universal service designation that is distinct from an adequate broadband at a fixed location services designation.

## 2.4 Next steps

21 In this document ComReg responds to submissions to Consultation 23/02 and further consults on its revised preliminary views on the VFL services USO. It also proposes the Draft Decision. The Decision can only be made if the Minister (i) is of the opinion that other potential public policy tools cannot ensure access to voice communications services in the State or any part of it as identified by ComReg and (ii) consents to ComReg specifying the proposed requirements in relation to reasonableness of requests for connection to voice communications services at a fixed location.

22 Having considered responses to this Further Consultation, and if ComReg decides that it has established that the availability at a fixed location of voice communications services cannot be ensured under normal commercial circumstances in the State or in different parts of it, and therefore proposes to proceed with the Draft Decision, ComReg will ask the Minister if he is of the above opinion and whether he consents to ComReg specifying the proposed requirements.

- 23 Where the Minister is of the opinion that other potential public policy tools cannot ensure access to voice communications services in the State or different parts of it, ComReg is of the preliminary view that it will proceed to designate two USPs to meet reasonable access requests for VFL services as outlined later in this document.
- 24 Finally, ComReg will publish its response to the Further Consultation in which it will analyse and consider any submissions to the Further Consultation and comments on the Draft Decision. This document will also include the text of any final decision made by ComReg.

### 3 Retail voice communications services market developments

25 Consultation 23/02 considered the supply and demand side of voice communications services in the context of VFL services. It sought respondents' views on whether there were other relevant demand or supply side factors that should be considered in the context of a VFL services USO.

26 This section addresses the following matters which were raised by respondents in response to Consultation 23/02 and which are additional to those considered in Consultation 23/02;

- Importance of mobile services;
- Over-the-top ("OTT") services;
- Fibre deployments (a market in transition);
- Economic uncertainty; and
- Variety of wholesale voice over internet protocol ("VoIP") product offerings.

#### 3.1 Importance of mobile services

27 A number of respondents to Consultation 23/02 expressed the view that ComReg in Consultation 23/02 had not given due consideration to mobile communications when considering supply side trends in the retail voice communications market.

28 ComReg recognises the role of mobile services<sup>7</sup> in the commercial retail voice communications services market. End-users in the retail voice communications market are currently served commercially by both fixed and mobile communications services. However, in considering availability of VFL services for the purpose of universal service, the availability of standard mobile services (which for the avoidance of doubt do not include mobile services which are restricted to the relevant fixed location e.g. Fixed Cellular Solution ("FCS")) is not relevant.

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<sup>7</sup> Including 4G and 5G mobile networks.

- 29 Standard mobile subscriptions are not “an alternative VFL solution”, a position put forward by eir on several occasions in their response. This is because standard mobile telephony is not a “voice communications service at a fixed location”<sup>8</sup>. A standard mobile telephony service does not and cannot provide a voice communications service at a fixed location. Mobile telephony is not a “voice communications service at a fixed location”<sup>9</sup>. Section 4, “Establishing whether VFL services can be ensured commercially in the State”, addresses mobile communications in the context of a VFL services universal service.

## 3.2 OTT services

- 30 OTT services are services which, without there being any control or specific management whatsoever on the part of network operators, offer users the possibility of communicating with a limited number of persons in an interactive manner. These are services which allow bi-directional communication between users, but the service provider does not offer the conveyance of signals, making use instead of the third-party support network provided to the user. Examples of OTT services are messaging services, WhatsApp calls or videocalls, Facetime or Telegram, where numbers are not used to enable communication, as well as email services such as Gmail and Yahoo.
- 31 The Code, as transposed in S.I. 444 of 2022, introduces the new concept of interpersonal communication services, which encompasses any service that enables interactive communication between users. S.I. 444 of 2022 distinguishes between number-based interpersonal communication services (“NBICS”) and number-independent interpersonal communication services (“NIICS”). NBICS connect or enable communications with numbers in national or international telephone numbering plans. This option is not available in the case of NIICS, although they can use numbers purely for user identification purposes. In practice, NIICS are OTT communication services.
- 32 The assumption made by some respondents to Consultation 23/02 is that NIICS, where they include an element of voice over broadband, are either beginning to displace both fixed and mobile voice services or are capable of meeting the needs of the commercial market.

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<sup>8</sup> See paragraph 143 of Consultation 23/02.

<sup>9</sup> See paragraphs 142 and 143 of Consultation 23/02.

- 33 A voice communication service is defined in Regulation 2(1) of S.I. 444 of 2022 as “a publicly available electronic communications service for originating and receiving, directly or indirectly, national or national and international calls through a number or numbers in a national or international numbering plan”. A NIICS as defined “does not connect with publicly assigned numbering resources... or ...enable communication with a number or numbers in a ‘national or international numbering plan’”, therefore it is not a “voice communications service”. Accordingly, NIICS do not form part of ComReg’s consideration of availability of VFL services for the purpose of universal service.
- 34 The public may view ComReg’s number assignments by using the public search facility at the following link [ComReg Number Assignments](#). The assignments for any operator can be checked using the drop-down list under “Assignee”.

### 3.3 Fibre deployments (a market in transition)

- 35 ComReg recognises the changing nature of electronic communications services (“ECS”) and in particular the transition away from voice communications services to broadband-based services. It is anticipated that the number of end-users using voice communications services at a fixed location, provided on a standalone basis, will decrease over time as alternative networks are deployed, and end-users are migrated to modern alternatives and bundled services.
- 36 ComReg recognises that the voice communications services market is mature and in decline, with many retail service providers choosing to exclusively sell bundled product offerings, which may be financially more attractive, while making end-users “stickier”<sup>10</sup>.
- 37 The deployment of full-fibre networks by eir, SIRO and NBI, as well as the prospective fibre deployment being planned by Virgin Media, will transform the electronic communications landscape in the State over the next few years. In particular, ComReg notes the following developments:
- eir’s published statement that it aims to pass 1.9 million premises by the end of 2026<sup>11</sup>;
  - SIRO’s published statements<sup>12</sup> that it aims to pass 770,000 premises, and it is scheduled to complete the deployment by the end of 2024; and

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<sup>11</sup> [eir Fibre Partnership Press Release 220128.pdf](#) 28 January 2022.

<sup>12</sup> [SIRO Network Expansion to 154 Towns Across Ireland - Gigabit Broadband](#); and [SIRO unveils EUR50m rollout plan \(commsupdate.com\)](#)

- NBI's statement that it is scheduled to complete the deployment of the NBP network in late 2026/early 2027.

38 Alongside the deployment of fibre networks, the approaching withdrawal of legacy fixed-line voice services is also a relevant factor. In its paper "Copper Switch-off: Leaving a legacy for the Future"<sup>13</sup>, eir has signalled its intention to have a rolling programme where services provided over the legacy copper network will be withdrawn on a progressive basis. ComReg has also given detailed consideration to this issue and has put forward a proposed framework for the transition from legacy to modern infrastructure<sup>14</sup>.

39 It is important to ensure that end-users' rights are maintained during this transition period. ComReg's goal is to do this, where possible, without requiring the rollout of either new copper or fibre networks to meet new individual end-users' reasonable requests for connection at a fixed location (i.e. separate and distinct from planned network rollouts). ComReg recognises however, that during the transition period there may be a requirement for some form of transition service, that may not involve additional network rollout to ensure that existing end-users' ECS services are maintained, and new end-users' reasonable requests for connection at a fixed location are met.

### 3.4 Economic uncertainty

40 Some respondents to Consultation 23/02 expressed the view that uncertain economic times caused by several factors (Brexit, Covid-19, the war in Ukraine and the cost of money) face the electronic communications sector. Respondents to Consultation 23/02 also noted that inflation and increased interest rates are creating uncertainty as to how much companies may be able to deliver on their intended network investments.

41 ComReg will continue to monitor the situation closely and take any such uncertainty into account in establishing whether availability at a fixed location of voice communications services can be ensured, or not, under normal commercial circumstances in the State or different parts of it.

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<sup>13</sup> Updated available at [Microsoft Word - Whitepaper Leaving a Legacy.docx \(openeir.ie\)](#)

<sup>14</sup> See ComReg's Call for Inputs (ComReg Document No. 21/78 dated 3rd August 2021) and Consultation Document (ComReg Document No. 22/13 dated 25th March 2022).



### 3.5 Variety of wholesale VoIP product offerings

- 42 There are currently two wholesale service providers who offer (upon request) wholesale fixed VoIP voice services (as part of a bundle) in the State. ComReg understands that these services are available for resale on a national basis to commercial end-users where fibre to the premises (“FTTP”) or very high-speed digital subscriber line (“VDSL”) has been deployed.
- 43 ComReg understands that NBI does not currently offer a wholesale voice telephony product. The national broadband plan (NBP) contract,<sup>15</sup> has a provision for “other permitted wholesale products” which include a “voice telephony wholesale product”.
- 44 Accordingly, there are wholesale VoIP product offerings available which could accommodate a range of possible market entry strategies. In addition, there is nothing to prevent retail service providers (including new entrants) from requesting wholesale voice communications services products from wholesale service providers; or developing their own VoIP services.
- 45 ComReg notes, however, that there is no wholesale service provider currently offering a wholesale VoIP service that is limited to a voice only service to serve non-commercial end-users.

### 3.6 Conclusions

- 46 This section has addressed trends in the retail voice communications services market, additional to those considered in Consultation 23/02 and associated matters raised by respondents, now summarised below.
- 47 ComReg recognises the role of mobile services in the retail voice communications services market. End-users in the retail voice communications market are currently served commercially by both fixed and mobile communications services. However, in considering availability of VFL services for the purpose of universal service, the availability of standard mobile subscriptions is not relevant. A standard mobile telephony service does not and cannot provide a voice communications service at a fixed location (which for the avoidance of doubt do not include mobile services which are restricted to the relevant fixed location e.g. Fixed Cellular Solution (“FCS”).

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<sup>15</sup> Schedule 5.2 (“Wholesale Prices, Price Benchmarking Roles and Wholesale Product Benchmarking Rules”).

- 48 In respect of OTTs, a NIICS as defined “does not connect with publicly assigned numbering resources... or ...enable communication with a number or numbers in a ‘national or international numbering plan’”, therefore it is not a “voice communications service.”
- 49 ComReg recognises that the voice communications services market is mature and in decline with many retailers choosing to exclusively sell bundled product offerings, which may be financially more attractive, while making end-users “stickier.”
- 50 ComReg anticipates that the number of end-users using voice communications services at a fixed location, provided on a standalone basis, will reduce over time, as alternative networks are deployed and where end-users are migrated to modern alternatives and bundled services.

## 4 Establishing whether fixed voice communications services can be ensured commercially in the State

51 In Consultation 23/02 ComReg was of the preliminary view that a VFL USO was required, post 30 June 2023. The responses to consultation indicated diverging respondent's views on this matter.

52 This section sets out:

- the status of the Geographical Survey<sup>16</sup>;
- why standard mobile services cannot provide voice communications services at a fixed location (i.e. in the context of USO); and
- a consideration of OTTs and VoIP services and whether they could ensure the provision of VFL services under normal commercial circumstances.

53 The section then proceeds to summarise the additional evidence ComReg deems necessary to establish whether the availability at a fixed location of voice communications services can or cannot be ensured under normal commercial circumstances, namely:

- relevant market trends and developments as set out in Consultation 23/02, including eir's network strategy and the rollout of the NBP and commercial developments;
- updated voice only connection and voice communications services data (QKDR);
- Section 13D(1)<sup>17</sup> Information requirements ("Information Requirements") and associated responses; and
- responses received to Consultation 23/02 in respect of the need for a VFL services USO.

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<sup>16</sup> Regulation 100(1) of S.I. 444 of 2022 obliges ComReg to conduct a geographical survey ("Geographical Survey").

<sup>17</sup> Section 13D (1) of the Act.

54 Finally, the section sets out why, having taken that information into account, in conjunction with the retail voice communications services market developments, ComReg is of the preliminary view that availability at a fixed location of voice communications services cannot be ensured under normal commercial circumstances in the State or different parts of it.

## 4.1 Geographical survey

55 Regulation 72(1) of S.I. 444 of 2022<sup>18</sup> sets out that prior to making a universal service designation, ComReg must “establish[es] taking into account the results, where available, of the geographical survey conducted in accordance with Regulation 100 and any additional evidence it deems necessary, that the availability at a fixed location of adequate broadband or of voice communications services cannot be ensured under normal commercial circumstances in the State or different parts of it...”.

56 Regulation 100(1) of S.I. 444 of 2022 obliges ComReg to conduct a Geographical Survey of the reach of electronic communications networks capable of delivering broadband (“broadband networks”) by 21 December 2023 and to update it at least every three years thereafter.

57 In May 2022 ComReg published an Information Notice<sup>19</sup> to indicate to undertakings providing electronic communications networks and services ComReg’s intentions with respect to Geographical Surveys. It set out, amongst other things:

- the information to be obtained for the Geographical Survey can be used by ComReg (and other competent authorities as appropriate) for several of its other functions, including those relating to market analysis, for defining coverage obligations attached to rights of use for radio spectrum and for verifying availability of services falling within the universal service obligations;
- that ComReg will utilise the existing data collection processes and systems currently used to gather data, as appropriate; and
- the broad timelines envisaged for conducting the Geographical Survey, in particular that it is envisaged that the first Geographical Survey will be completed by November 2023, in accordance with the obligation to complete same by 21 December 2023.

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<sup>18</sup> Which transposes Article 22 of the Code.

<sup>19</sup> “Conduct of Geographic Surveys under Article 22 of the European Electronic Communications Code”, Information Notice, Reference ComReg 22/37, 11 May 2022.

- 58 ComReg collects a range of data from operators for regulatory purposes, including that which is relevant for the conduct of the Geographical Survey. Where available and relevant, ComReg has taken this data into account in the context of additional evidence.

## 4.2 Mobile cannot provide fixed voice communications services

- 59 In section 3 ComReg recognises the role of mobile services<sup>20</sup> in the context of the retail voice only communications services market. In this section ComReg considers mobile services in the context of fixed voice communications services. An assertion was made in responses to Consultation 23/02 that mobile services are substitutes for fixed voice services, this assertion was then used to support an argument that the market is providing fixed voice communications services anyway and therefore that there is no need for a VFL USO. However mobile services are not fixed services. eir's references to "mobile" in general terms in its submission often conflate mobile infrastructure (which ComReg fully accepts has the capability of providing the underlying connection for VFL services USO<sup>21</sup> as it does currently using FCS) and standard mobile subscriptions (which are incapable of providing a fixed voice service). Standard mobile subscriptions are not "an alternative VFL solution", a position put forward by eir on several occasions in its response. This is because standard mobile telephony is not a "voice communications service at a fixed location"<sup>22</sup>.
- 60 The fact that mobile telephony is sometimes a substitute for fixed voice (as was clarified by the European Commission ("EC") in its decision on the withdrawal of ComReg's notified draft measures in the markets for Retail Fixed Telephony Services ("RFTS") and Wholesale Fixed Access and Call Origination ("FACO")<sup>23</sup> ("the Withdrawal Decision") is not relevant in the way contended for by eir in its submission. A standard mobile telephony service does not and cannot provide a voice communications service at a fixed location. 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.

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<sup>20</sup> Including 4G and 5G mobile networks.

<sup>21</sup> See in particular paragraphs 140 and 143 of Consultation 23/02. Recital 230 of the Code ends "There should be no constraints on the technical means by which the adequate broadband internet access and voice communications services at a fixed location are provided, allowing for wired or wireless technologies, nor any constraints on which undertakings provide part or all of universal service obligations".

<sup>22</sup> See paragraphs 142 and 143 of Consultation 23/02.

<sup>23</sup> At paragraph 139 of COMMISSION DECISION of 17.9.2021 pursuant to Article 32(6) of Directive (EU) 2018/1972 (Withdrawal of notified draft measure). Cases IE/2021/2332-2333: markets for retail fixed telephony services and wholesale fixed access and call origination in Ireland.

- 61 The Withdrawal Decision concluded inter alia that mobile plans are offering unlimited voice calls at prices comparable to, or even lower than, RFTS subscriptions<sup>24</sup>. It also stated that the vast majority of RFTS subscriptions are part of a bundle and adding RFTS to the bundle can result in net savings or comes at no or very small additional costs<sup>25</sup>.
- 62 eir in its submission links universal service regulation and the price and access regulation in specific telecoms markets. eir references ComReg's recent Market Review decision (D05/22) titled "Access to the Public Telephone Network at a Fixed Location for Residential and Non-Residential Customers - Wholesale Fixed Access and Call Origination" ("the FACO Decision")<sup>26</sup> and the EC Withdrawal Decision. ComReg has considered recent regulatory developments in RFTS and FACO markets in Ireland. The FACO Decision related to competition within the relevant FACO markets, an assessment of significant market power ("SMP") within them and whether any regulatory intervention was required to address competition problems arising from any position of SMP. In the FACO Decision ComReg decided that SMP based regulation was no longer justified, and SMP regulation was withdrawn.
- 63 It is important to note that the FACO Decision merely indicates a tendency toward effective competition<sup>27</sup> in the identified markets within the period of the review. This does not, de facto, establish that fixed voice only communications services can be ensured under normal commercial conditions. The imposition (or withdrawal) of ex ante SMP based regulation by a regulator is a different regulatory tool to the imposition of universal service obligations. These tools are designed to achieve different things – at a very basic level SMP regulation seeks to address the competition issues arising from the presence of dominant market players and to promote competition at a market level, whereas the USO regime seeks to ensure all consumers have guaranteed access to a basic set of services. They are different frameworks pursuing different aims. It is erroneous to equate lack of SMP in a specific market with a finding that services can be "ensured under normal commercial circumstances in the State".

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<sup>24</sup> Paragraph 119.

<sup>25</sup> Paragraph 125.

<sup>26</sup> ComReg Decision D05/22, "Retail Access to the Public Telephone Network at a Fixed Location for Residential and Non-Residential Customers: Wholesale Fixed Access and Call Origin", Document No. 22/50, available at: [Response to Consultation and Decision – Retail Fixed Telephony Services and Wholesale Fixed Access and Call Origination Markets | Commission for Communications Regulation \(comreg.ie\)](https://www.comreg.ie/Response-to-Consultation-and-Draft-Decision-2022-23-24)

<sup>27</sup> Paragraph 4.100.

64 An assertion was made in response to Consultation 23/02 that the market is already delivering social inclusion through both fixed and mobile voice services. In deciding whether a universal service is required ComReg is not analysing if “the market is delivering social inclusion”<sup>28</sup>, it is assessing whether the specific service (fixed voice communications services) can be “ensured under normal commercial circumstances”. This is what Regulation 72(1) of S.I. 444 of 2022 requires ComReg to establish prior to a USP designation.

### 4.3 OTT services and VoIP

65 Some respondents to Consultation 23/02 suggested that alternatives to traditional circuit switched voice telephony should be considered in more detail. ComReg has therefore further considered in particular if the current provision of OTT or managed VoIP services (in particular managed voice over broadband (“VoB”)) could ensure the provision of VFL services under normal commercial circumstances.

66 ComReg notes that OTT providers are not providing voice communications services as they are not operating through “a number or numbers in a national or international numbering plan”.

67 ComReg in Consultation 23/02 acknowledges that in the future managed VoIP could meet the need for a VFL. However, the current situation is that, while a number of retail service providers currently provide a managed VoB based retail fixed telephony service (as outlined at paragraphs 108 to 113 of Consultation 23/02), these are provided as part of a bundle and not as a standalone fixed voice service. In addition, service providers are only capable of providing managed VoB at premises that are connected to or passed by next generation broadband which provides a fixed access component of sufficient speed and bandwidth to deliver the service - this network is not yet nationwide. As no standalone retail VoB product exists, and even if one did, not all of the State would be able to avail of it, it is legitimate to conclude that VoB services could not currently ensure the availability of VFL services in normal commercial circumstances in the State.

68 In Consultation 23/02 ComReg concluded that “the lack of national availability of next generation broadband impacts the ability to support managed VOIP at all locations. Accordingly, next generation networks cannot yet be relied on to ensure the full availability of VFL services nationally, in the short to medium term.” ComReg remains of this preliminary view.

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<sup>28</sup> eir’s response to Consultation 23/02, page 3 paragraph 4.

## 4.4 Additional evidence

69 In assessing whether the availability at a fixed location of voice communications services can or cannot be ensured under normal commercial circumstances in the State or different parts of it, ComReg has taken into account the following additional evidence which it deems necessary:

- relevant market trends and developments as set out in Consultation 23/02 and in the remainder of this section, including eir's network strategy and the rollout of the NBP and commercial developments;
- voice only connection and voice communications services data (QKDR);
- Information Requirements and associated responses; and
- responses received to Consultation 23/02.

### 4.4.1 Updated voice only connection and voice communication services data

70 ComReg's existing QKDR data collection processes and systems are used (amongst other things) to collect data on:

- the total number of low-level retail fixed telephony services access lines and subscribers (both commercial and universal service); and
- the number of standalone RFTS subscribers.
- the geographical location of the low-level retail fixed telephony services access lines and subscribers.

71 The following section updates the voice communications services information set out in Consultation 23/02.

72 Retail fixed telephony service may be measured in terms of the number of access paths<sup>29</sup>, lines, or subscriptions<sup>30</sup>. The overall number of access paths is likely to exceed the overall number of lines. The number of lines will generally exceed the overall number of subscriptions. The number of subscriptions is therefore an accurate reflection of the number of customers, while the number of access paths reflects the number of access connections.

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<sup>29</sup> Are not synonymous with access lines as, for example in the case of ISDN paths and or channels, more than one path may be provided via a single ISDN line.

<sup>30</sup> A subscription involves periodic payment for a single or multiple (bundled) services.



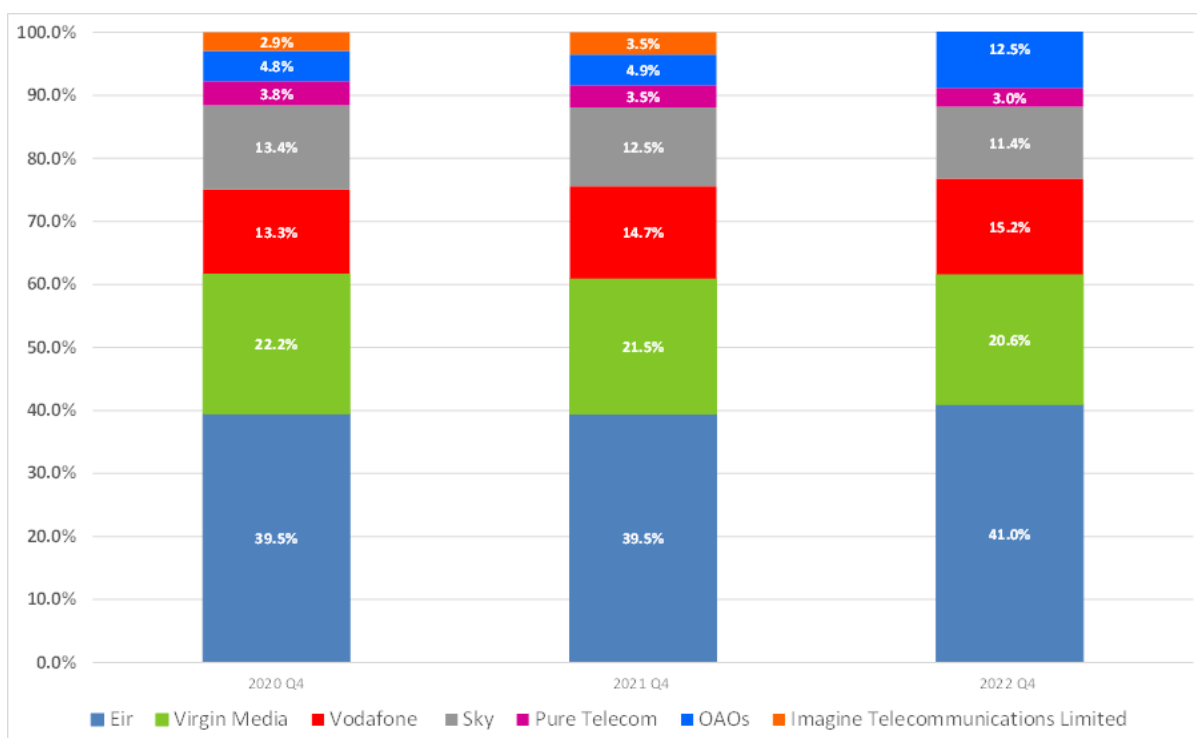
- 73 ComReg’s Q4 2022 QKDR indicates that the total number of fixed network access paths (i.e. PSTN and ISDN) has declined by 24% from roughly 1.09 million in Q4 2020, to roughly 0.83 million in Q4 2022.
- 74 Over the same period, alternative technologies have experienced growth. Managed VoB has been the fastest growing platform, with subscription numbers increasing by 10%, from 524,484 to 576,079.
- 75 Figure 1 disaggregates fixed narrowband access (copper) paths as at Q4 2022. It shows that the number of subscriptions provided over fixed narrowband access (copper) paths (PSTN) declined by 22% from 0.82 million in Q4 2020 to 0.64 million in Q4 2022

**Figure 1: Fixed narrowband access paths, fixed narrowband access and managed VoIP subscriptions**

	Q4 2020	Q4 2022	% change, Q4 2020 - Q4 2022
PSTN	870,385	678,256	-22%
ISDN Basic	86,662	71,070	-18%
ISDN Fractional	33,808	24,720	-27%
ISDN Primary	101,370	56,790	-44%
<b>Total ISDN</b>	<b>221,840</b>	<b>152,580</b>	<b>-31%</b>
<b>Total PSTN &amp; ISDN Access Paths</b>	<b>1,094,517</b>	<b>830,836</b>	<b>-24%</b>
<b>Fixed narrowband access retail fixed telephony service subscriptions</b>	<b>827,231</b>	<b>646,358</b>	<b>-22%</b>
<b>VoIP subscriptions</b>	<b>524,484</b>	<b>576,079</b>	<b>10%</b>
<b>Total retail fixed telephony service subscriptions</b>	<b>1,351,715</b>	<b>1,222,437</b>	<b>-10%</b>

- 76 Market shares measured by fixed voice telephony subscriptions (either standalone or as part of a bundle) are presented in Figure 2 below.

**Figure 2: Market Shares by Fixed Voice Telephony Subscriptions, Q4 2020 - Q4 2022**



77 Over the period Q4 2020 to Q4 2022 eir’s share has increased from 39.5% to 41% while Virgin Media’s has decreased from 22.2% to 20.6% (i.e., either standalone or as part of a bundle).

78 Vodafone’s share has increased from 13.3% to 15.2% while Sky’s share has decreased from 13.4% to 11.4%.

79 Other changes over this period include a decrease in Pure Telecom’s share from 3.8% to 3%, a decrease in Imagine Telecommunications’ share from 2.9% to 2%, and an increase in the market share of OAOs from 4.8% to 12.5%.

80 Figure 3 provides a breakdown of total retail fixed telephony service subscriptions by subscription type as of Q4 2022, versus Q4 2020. This illustrates that just under 15% of subscriptions are standalone fixed voice. Just over 85% of retail fixed telephony service subscriptions are bundled with at least one other service. The most common bundle combination is a retail fixed telephony service with fixed broadband which accounts for just over 41% of subscriptions with a retail fixed telephony service component. The vast majority of these are provided over next generation broadband.

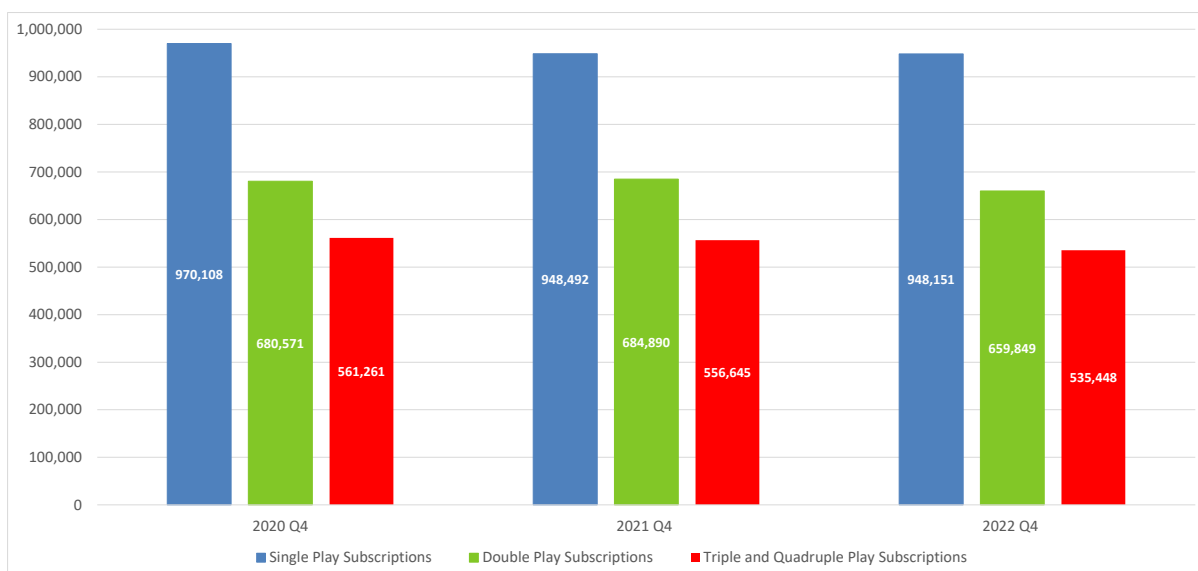
**Figure 3: Total RFTS Subscriptions Q4 2020 - Q4 2022**

Subscription type	Subscriptions - Q4 2020	% Total	Subscriptions - Q4 2022	% Total
Standalone retail fixed telephony service	226,489	16.8%	178,588	14.6%
Retail fixed telephony service and TV	4,893	<1%	3,374	<1%
Retail fixed telephony service and broadband	558,855	41.3%	502,982	41.1%
Retail fixed telephony service and mobile voice	5,457	<1%	5,422	<1%
Retail fixed telephony service, broadband, TV	395,443	29.3%	347,137	28.4%
Retail fixed telephony service, mobile voice, broadband	98,166	7.3%	118,229	10%
Retail fixed telephony service, mobile voice, TV	120	<1%	72	<1%
Retail fixed telephony service, broadband, TV, mobile voice	62,292	4.6%	66,633	5.5%
<b>Total retail fixed telephony service subscriptions</b>	<b>1,351,715</b>	<b>100%</b>	<b>1,222,437</b>	<b>100%</b>

81 Between Q4 2020 and Q4 2022 (see Figure 4) there has been:

- a decrease of 2.26% in the number of single play subscriptions;
- a decrease of 3.04% in the number of double play subscriptions; and
- a decrease of 4.6% in the number of triple or quadruple play subscriptions.

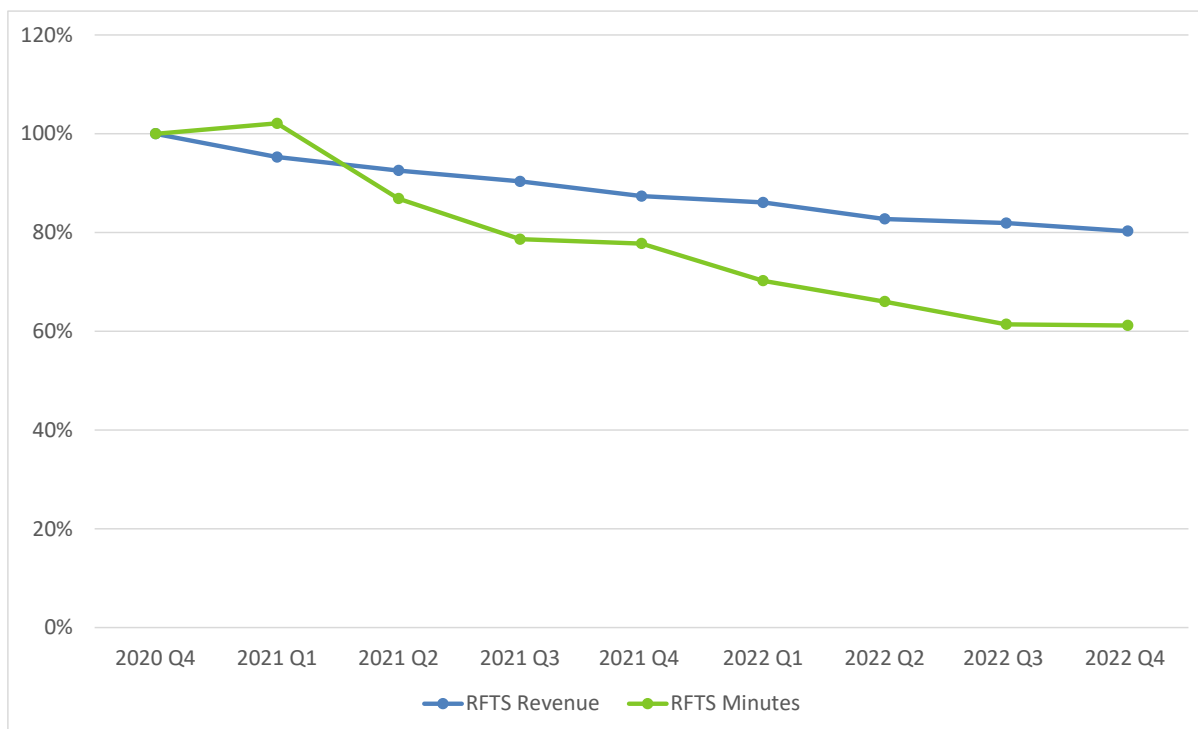
**Figure 4: Single, double, triple, and quadruple play subscriptions, Q4 2020 - Q4 2022**



82 ComReg's Q4 2022 QKDR data also indicates that there has been a persistent decline in retail fixed telephony revenues and traffic.

83 Figure 5 shows that from Q4 2020 to Q4 2022, revenues attributable to RFTS traffic<sup>31</sup> (blue line) have fallen by 20%, while traffic minutes (green line) have fallen by 39%.

**Figure 5: Retail Fixed Telephony Service Traffic and Revenues, Q4 2020 - Q4 2022 (Base Q2 2020 = 100)**

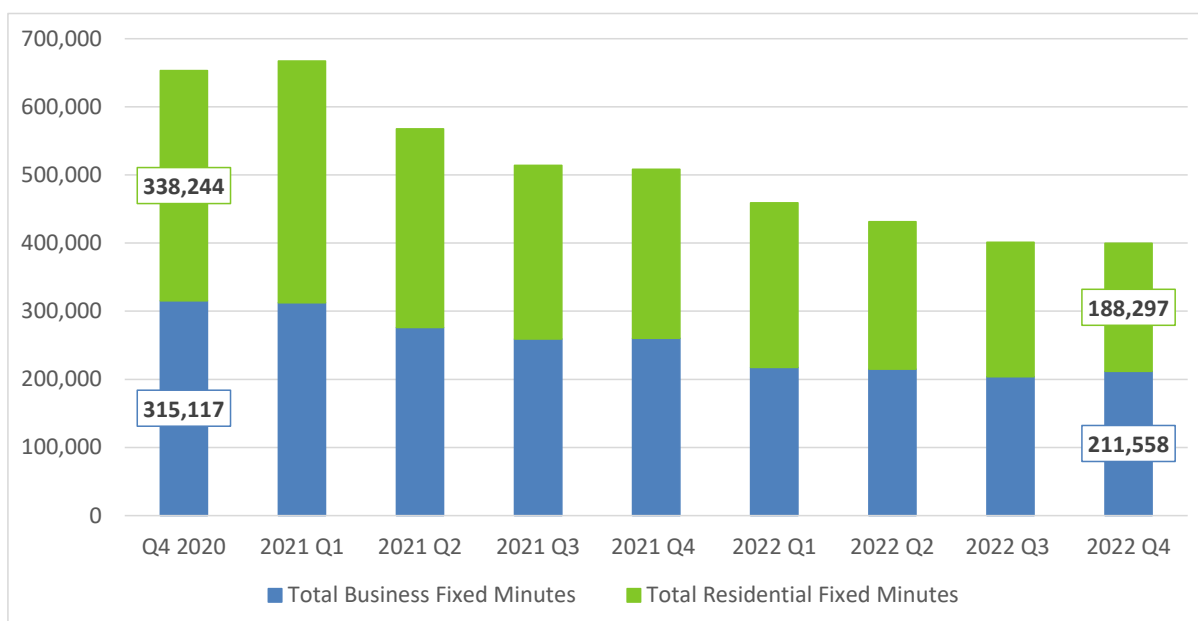


84 This demonstrates that the retail fixed telephony service market continues to reduce in size, measured by traffic and revenues.

85 Figure 6 illustrates the breakdown of retail fixed telephony service by residential and business end users. The data indicates that residential fixed voice minutes have decreased by 44.3% between Q4 2020 and Q4 2022, from 338,244 to 188,297. Similarly, business fixed voice minutes have decreased by just under 32.9% in the same period, from 315,117 to 211,558.

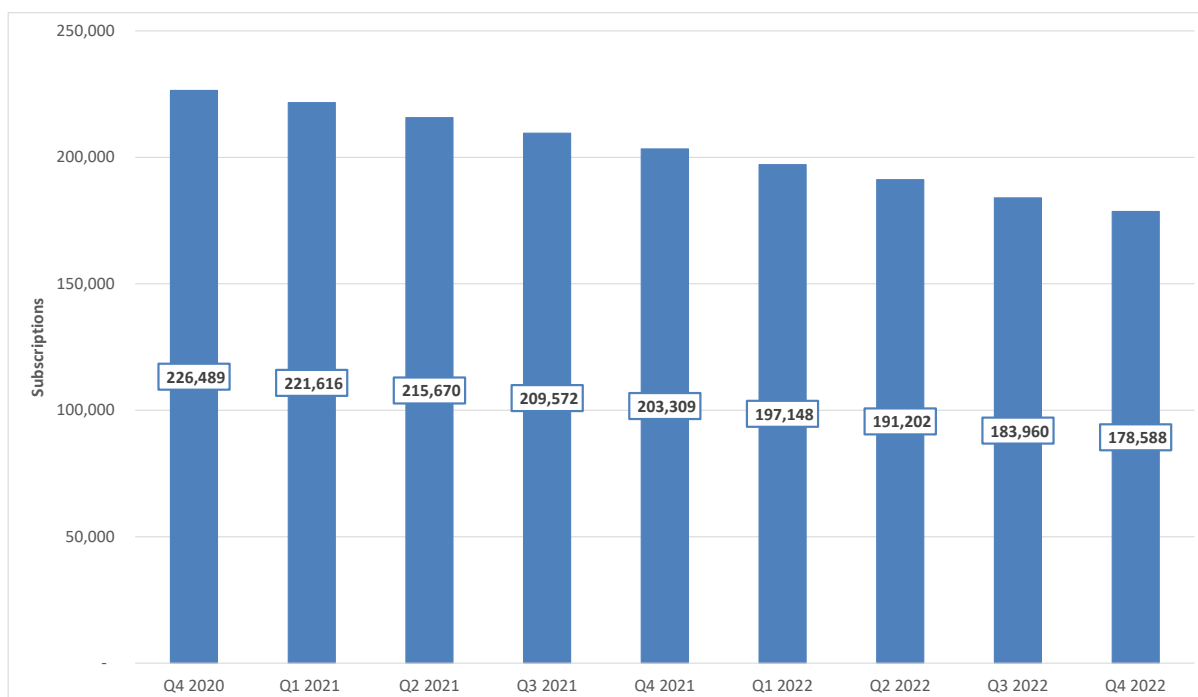
<sup>31</sup> These revenues include retail revenue generated by the direct and indirect provision of retail fixed telephony service, such as PSTN voice services and dial-up Internet services. This category also includes revenues from VoB services.

**Figure 6: Residential and Business Retail Fixed Telephony Service Minutes, Q4 2020 - Q4 2022**



86 A number of retail service providers are currently providing services in the standalone LL-RFTS market including eir, Vodafone, Pure Telecom, Digiweb, Virgin Media, Sky and others. It is important to note that the majority of these are legacy services, with only eir and Pure Telecom currently connecting new customers. Figure 7 shows that the total number of standalone LL-RFTS subscriptions has decreased by just over 21% between Q4 2020 to Q4 2022, from 226,489 to 178,588.

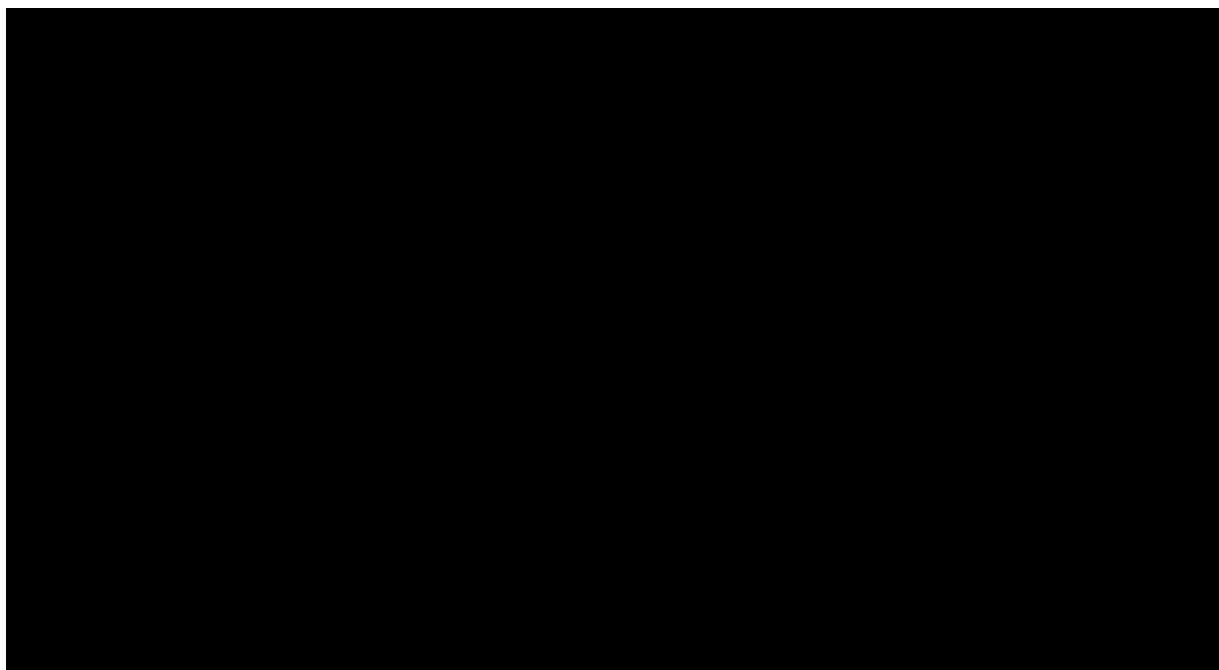
Figure 7: Total Standalone LL-RFTS subscriptions, Q4 2020 - Q4 2022



87 Between Q4 2020 and Q4 2022 the number of standalone RFTS subscriptions has declined by 21.1%, from 226,489 to 178,588. While the number is declining over time the cohort who continue to avail of this service is not trivial. The vast majority of these are provided over fixed narrowband access (copper) network, which remains the predominant form of retail fixed telephony service for households and businesses. This reflects the continued importance of fixed narrowband access (copper) network during this transition period.

88 ComReg's QKDR data shows that eir is currently the largest provider of standalone LL-RFTS subscriptions, accounting for [X ■■■ X] % of the market. However, eir's market share has declined from [X ■■■ X] % in Q4 2020 to [X ■■■ X] % in Q4 2022 (Figure 8).

## Figure 8: Standalone LL-RFTS subscriptions by Service Provider, Q4 2020 - Q4 2022 [X REDACTED X]



89 Few service providers now sell standalone retail fixed telephony service. Only eir and Pure Telecom actively offer standalone retail fixed telephony service. This is generally only available over fixed narrowband access (copper) network.

### 4.4.2 Information Requirements and associated responses

90 Consultation 23/02 set out that only eir and Pure Telecom actively offer a standalone retail fixed voice communications service. These services are generally provided over fixed narrowband access (copper) network.

91 Following consideration of responses to Consultation 23/02, ComReg, using its statutory information gathering powers, issued a number of information requirements to eir and Pure Telecom to clarify aspects of their respective technical and operational capability, and willingness, to commercially meet requests by end-users to access fixed voice communications services.

92 The following sections set out the key facts established following engagement with both eir and Pure Telecom. Full details of the engagement are set out in Annex 1.

#### 4.4.2.1 Information from eir

93 In summary, ComReg sought the following information from eir:

- the number and location of eir existing universal service voice only communications services customers

- eir’s proposed “stop-sell” date for new voice only communications services
- eir’s planned TIS<sup>32</sup> retirement date
- eir’s planned FCS retirement date
- any eir plans to offer wholesale or retail broadband product(s) that are limited to supporting voice only connections and voice communications services
- eir plans to support the provision of SB-WLR post 28 December 2023 (end of sunset period)
- whether eir’s new billing system could support voice only communications services
- whether its position remains unchanged – that it does not provide voice only connections on its FTTP or FTTC network
- the number of new voice only connections eir has provided between Q1 2021 – Q1 2023, the type of connection, and the installation costs of these connections.

94 Based on eir’s responses to information requirements and its response to Consultation 23/02 ComReg has established the following:

- eir is not in a position to distinguish between voice only and USO voice only customers<sup>33</sup>
- There is a total of [redacted] eir voice only communications services customers<sup>34</sup>
- eir currently has no definitive date for the retirement of TIS. “Stop-sell” is likely to commence in second half of 2023<sup>35</sup>
- [redacted]<sup>36</sup>
- [redacted]<sup>37</sup>

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<sup>32</sup> [redacted]

<sup>33</sup> eir 13D response of 06 April 2023.

<sup>34</sup> eir 13D response of 06 April 2023.

<sup>35</sup> eir 13D response of 14 April 2023.

<sup>36</sup> eir response to Consultation 23/02.

<sup>37</sup> eir 13D response of 06 April 2023.



- [redacted]  
[redacted]  
[redacted]<sup>38</sup>
- [redacted] [redacted]<sup>39</sup>
- It will be possible to bill existing eir retail voice only customers on eir's new billing system<sup>40</sup>
- [redacted]  
[redacted]  
[redacted]<sup>41</sup>

#### 4.4.2.2 Information from Pure Telecom

95 In summary, ComReg sought the following information from Pure Telecom:

- whether Pure Telecom plans to offer voice only connections and voice communications services to its current and future customers, post 28 December 2023 (end of SB-WLR sunset period)
- which technologies Pure Telecom plans to use to serve both existing and new customers, post 28 December 2023
- what commercial agreements Pure Telecom has to provide voice communications services to existing and new customers, and the duration of these commercial agreements
- whether it has a commercial “cost to connect” monetary amount, beyond which Pure Telecom will not commercially serve new voice only communications services customers
- whether there are any restrictions on Pure Telecom’s ability to serve new voice communication services.

96 Based on Pure Telecom’s responses to information requirements, ComReg has established the following:

- Pure Telecom plans to offer voice only connections and voice communication services to its current and future customers, post 28 December 2023<sup>42</sup>

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<sup>38</sup> eir 13D response of 06 April 2023.

<sup>39</sup> eir 13D response of 02 December 2022.

<sup>40</sup> eir 13D response of 06 April 2023.

<sup>41</sup> eir 13D response of 02 December 2022.

<sup>42</sup> Pure Telecom 13D response of 25 April 2023.

- Pure Telecom plans to serve both existing and new voice communication services customers using copper and fibre (where copper is not available as part of a bundled offering)<sup>43</sup>
- Pure Telecom has commercial agreements in place and plans to provide voice communication services to existing and new customers<sup>44</sup>
- [REDACTED]  
[REDACTED]  
[REDACTED]<sup>45</sup>
- [REDACTED]  
[REDACTED]  
[REDACTED]<sup>46</sup>. ComReg understands that Open eir, at locations where it has plans to, or is currently rolling out fibre network, will not deploy any new (non-in-situ) copper network to deliver new connections

#### 4.4.3 Reasonableness of requests (existing connections) – VFL USO assessment Q4 2020 – Q4 2022

- 97 As explained in section 4.1.1, the overall number of standalone RFTS subscriptions declined by just over 21% between Q4 2020 – Q4 2022, from 226,489 to 178,588 (Figure 7).
- 98 The distribution of total RFTS subscriptions has remained relatively constant across the retail service providers between Q4 2020 and Q2 2022.
- 99 Some end-users are migrating from standalone fixed voice to commercial bundles (dual; triple; quad-play) and in a minority of cases ceasing their fixed voice services completely.
- 100 While the number of standalone RFTS subscriptions is declining year on year, the number remains significant.

<sup>43</sup> Pure Telecom 13D response of 25 April 2023.

<sup>44</sup> Pure Telecom 13D response of 25 April 2023.

<sup>45</sup> Pure Telecom 13D response of 11 May 2023: [REDACTED]

<sup>46</sup> Pure Telecom 13D response of 11 May 2023.

- 101 As set out in Consultation 23/02 at paragraphs 245-248, ComReg analysed the distribution of the current installed standalone fixed voice base (subscriptions) across urban and regional exchange areas.<sup>47</sup>
- 102 For standalone fixed voice consumers located in urban areas, there are more likely to be equivalent services available to consumers, most likely over FTTx networks.
- 103 Standalone fixed voice consumers located in regional areas are less likely to have equivalent services available. Accordingly, these fixed voice consumers are more likely to rely on the USP for continued access to voice only connections and voice communications services.
- 104 ComReg is cognisant that the existing AFL USO connections may co-exist with equivalent services. The equivalent services may have the ability to meet pre-existing, and new requests, on a commercial basis.
- 105 Accordingly, this is a key input into ComReg's consideration of whether existing voice only connections and voice communications services remain reasonable, in the context of any VFL universal service considerations.

#### **4.4.4 Reasonableness of requests (new connections) – VFL USO assessment Q4 2020 – Q2 2022**

- 106 This section assesses the data underpinning the new connections delivered over the period 2018 – 2022, reflecting the latest available data.<sup>48</sup>
- 107 The technology used to meet reasonable access requests (at new premises) by the USP is not prescribed. The principle of technological neutrality allows the USP to choose the optimum method of meeting reasonable access requests.
- 108 These requests must be satisfied using the least cost technology. The least cost technology for new connections is likely be a FCS, where there is no in-situ connection.
- 109 To assess the impact of the current designation obligations on the USP, ComReg issued a 13(D)(1) Information Requirement to eir, the current USP (see paragraph for a summary of the information ComReg sought).

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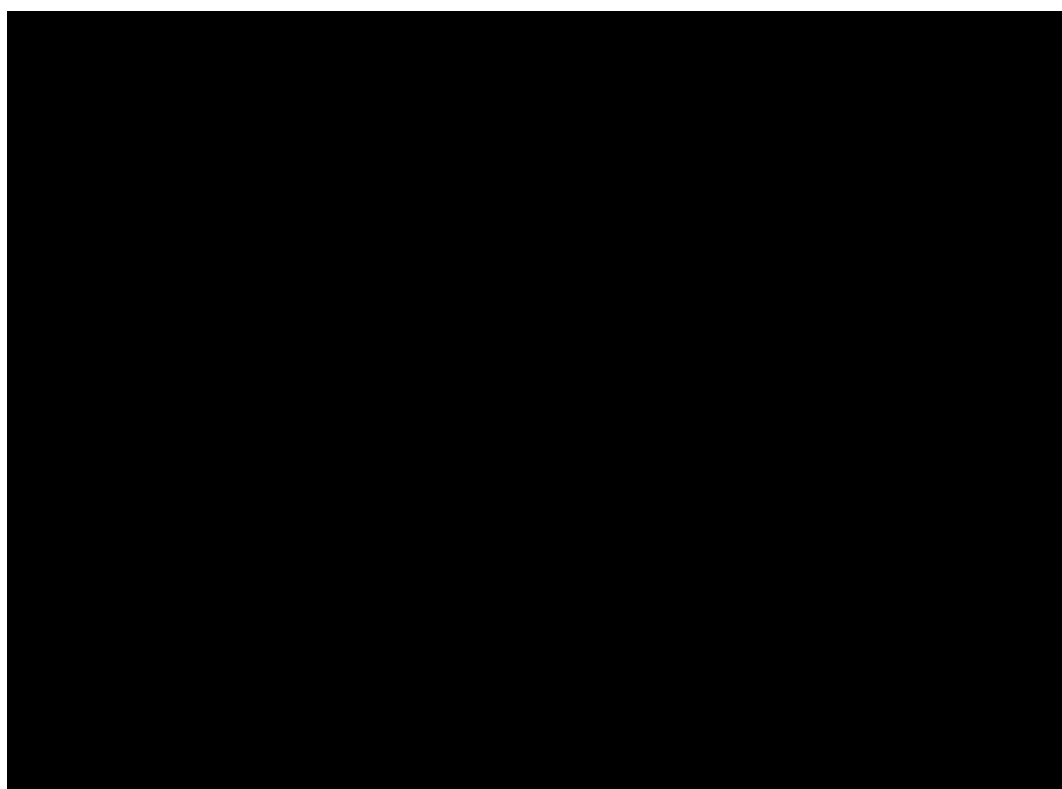
<sup>47</sup> "Urban" and "Rural" areas as defined in ComReg (2022), Market Reviews: Retail Access to the Public Telephone Network at a Fixed Location for Residential and Non-Residential Customers – Wholesale Fixed Access and Call Origination, Consultation and Draft Decision, Document No.20/46. Available at: <https://www.comreg.ie/publication/rfts-faco-consultation-document-and-draft-decision-instrument>

<sup>48</sup> ComReg has presented data from 2018 – 2022 to show the long-term trend in the number of new voice only connections.

110 eir's responses set out the number of new retail fixed voice only connections installed. This shows that the total number of new connections was [REDACTED] in 2018; [REDACTED] in 2019; [REDACTED] in 2020; [REDACTED] in 2021; and just [REDACTED] in 2022 (Figure 9).

111 This illustrates that there has been a year-on-year decline in the number of new standalone fixed access connections served between 2018 and 2022. Furthermore, it shows that the total number of new standalone fixed voice connections served by eir in 2021 and 2022 is very low. Between 2018 to 2022, the number of new connection requests received by eir decreased by over [REDACTED] %, and between 2020 to 2022, decreased by over [REDACTED] %.

**Figure 9: eir standalone fixed voice – total new connections, 2018-2022 [REDACTED]**

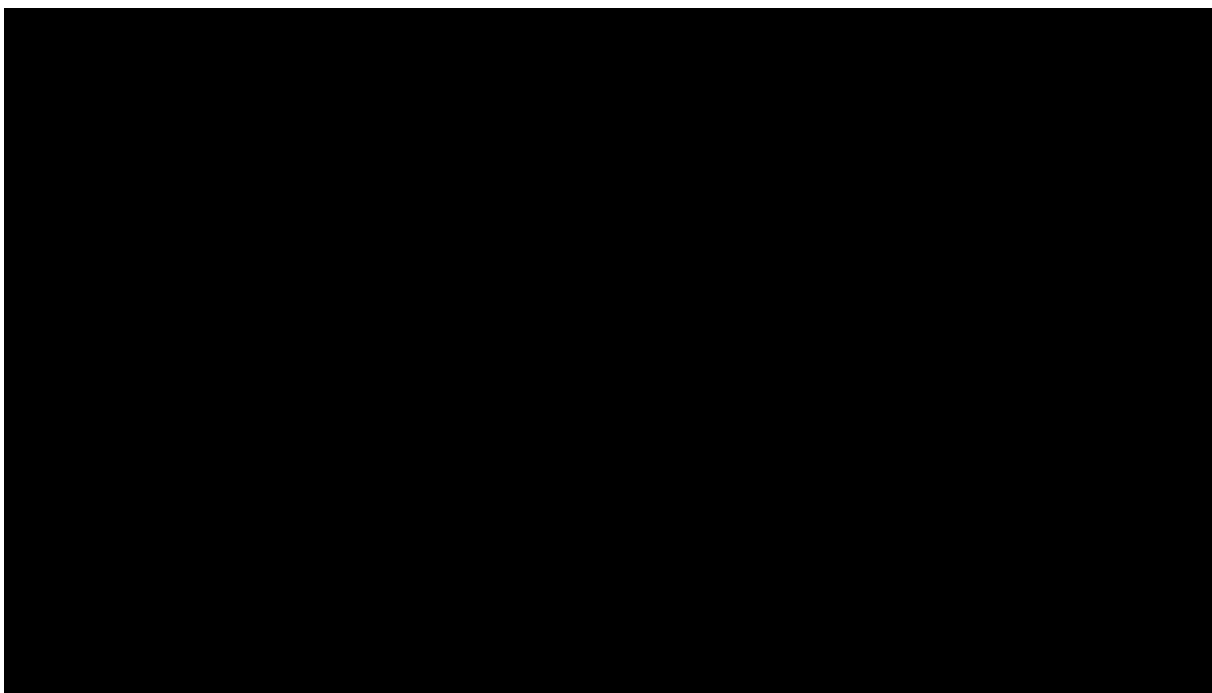


112 This is indicative of a declining market demand for new standalone fixed voice connections.

113 ComReg has examined eir's 13D Information Requirement responses to identify which underlying technologies are being used by eir to meet new retail fixed voice only access connection requests between 2020 and Q2 2022.

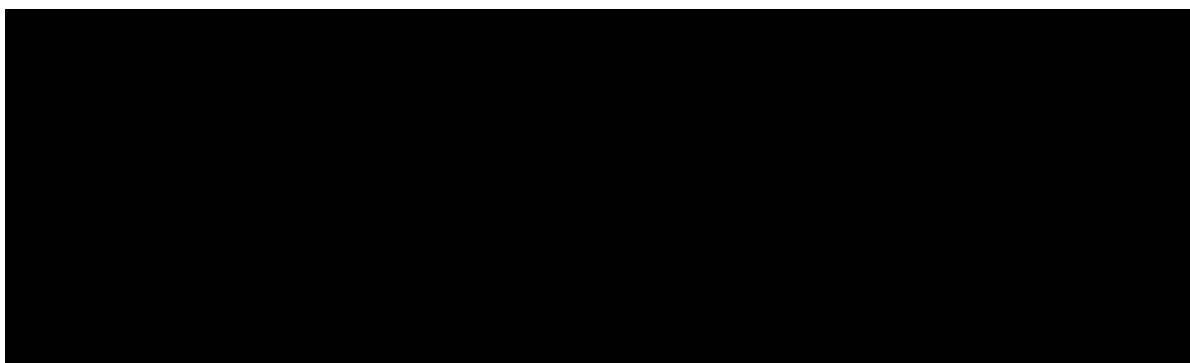
114 eir's 13D responses set out the number of new connections installed by technology type (copper (new or in-situ), fibre, FCS) [REDACTED].

**Figure 10: eir standalone fixed voice - new copper, in-situ copper, and FCS connections (2018-2022) [REDACTED]**



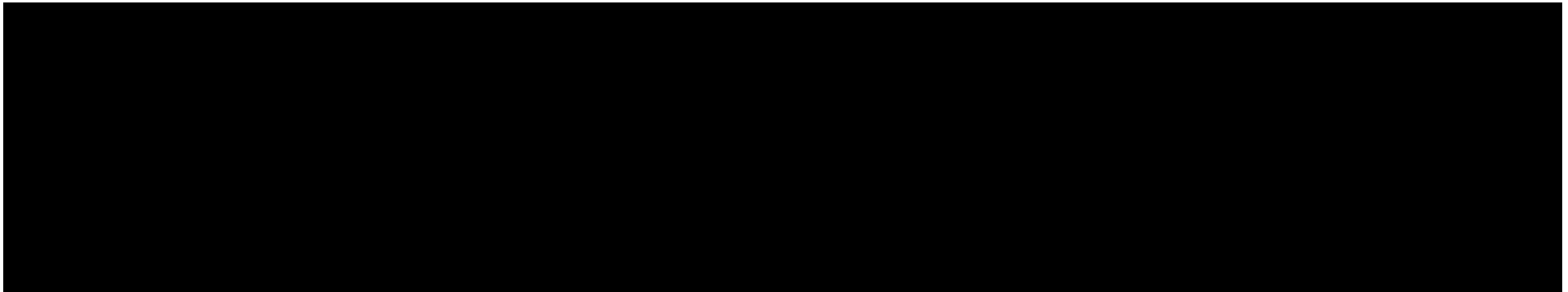
115 eir's responses highlighted that the majority of new retail fixed voice only access connections between 2018 and 2022 were fulfilled using copper technology with an extremely small number being fulfilled using FCS (as shown in Figure 10 and Figure 11).

**Figure 11: summary of eir total standalone fixed voice connections (2018-2022) [REDACTED]**



- 116 The number of eir new standalone fixed voice connections fulfilled using FCS has been consistently very small from 2018 - 2022. In recent years, only [X ■ X] connections were fulfilled using FCS in 2021, and even less in 2022, during which only [X ■ X] connections were fulfilled using FCS.
- 117 ComReg has also examined whether new connections between 2018 and 2022 have been met through existing infrastructure (in-situ connections) or whether they have required the deployment of new infrastructure (copper/FCS).
- 118 The number of eir new standalone fixed voice connections (i.e., non-in-situ) using the current generation network between 2018 - 2022 is small. eir's new standalone fixed voice connections (non-in-situ) represent a very small percentage, only [X ■ X] of the total standalone fixed voice subscriptions in 2022.

**Figure 12: eir standalone fixed voice connections by sub-national area<sup>49</sup> (2021-2022) [✂ REDACTED ✂]**



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<sup>49</sup> The sub-national areas as defined in ComReg Document No. 19/21a, 'Universal Service Requirements: Provision of access at a fixed location (AFL) Quality of Service (QoS) – Schedules'. Area 1 consists of areas where Eircom faces greater market-driven infrastructure-based competition, including from Vodafone/ESB/SIRO or UPC. Area 2 Reflects the original NBP intervention area. It comprises the areas where a high-capacity broadband access network is intended to be made available through Irish government subsidies. Areas where Eircom faces no competition from any provider of fixed infrastructure but could face competition from mobile networks providing fixed access solutions.

## 4.5 Responses to Consultation 23/02 in respect of the need for a VFL USO

- 119 Question 7 in Consultation 23/02 asked respondents whether they agreed or disagreed with ComReg's preliminary view that there is a continued need for a VFL services USO, post June 2023.
- 120 ALTO, and Virgin Media agree with ComReg's preliminary view stating that they agree with ComReg's statement at paragraph 322 of Consultation 23/02 that there is currently no other mechanism, programme, or scheme in place to ensure that the basic telephony at a fixed location and that maintenance of the status quo ante is important given eircom's clear plans to retire the copper network.
- 121 NBI agrees with ComReg stating that: "Once the deployment of fibre connectivity, both commercially and pursuant to the NBP, has been completed, the requirement for a VFL services USO should fall away. Following this, to the extent that any USO is needed, it should be confined to the provision of adequate broadband services."
- 122 eir states that: "it [ComReg] has not demonstrated that there is a need to introduce a market intervention for voice only connections and voice communications services at a fixed location ('VFL serves') (sic) separate to and in advance of considering the need for adequate broadband connections at a fixed location ('ABB'). Given that the latter is the most likely bearer for VFL, this review is rendered both incomplete and premature. There is no justification for a VFL USO as the market is delivering social inclusion through mobile and other voice services for the reasons set out throughout this response to consultation."

## 4.6 Responses to Consultation 23/02 in respect of the need for a VFL USO – ComReg's response

- 123 It is for the Minister to define adequate broadband. ComReg does not consider that it is required to delay its consideration of VFL USO to wait until the ABB definition is in place and consider the universal service designation for both services together. 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.
- 124 As outlined previously, in deciding whether a universal service is required ComReg is not analysing if customers are being serviced or whether "the market is delivering social inclusion", it is assessing whether the service can be ensured under normal commercial circumstances.



## 4.7 Establishing whether fixed voice communications services can be ensured under normal commercial circumstances in the State

- 125 ComReg has taken into consideration the availability of the potential different technologies that may be capable of delivering fixed voice communications services (e.g. copper, mobile, fibre, Fixed Wireless Access (“FWA”) and Satellite).
- 126 To date, narrowband access (predominantly copper) has used to provide fixed voice communications services (where not sold in a bundle).
- 127 eir has used FCS at a small number of locations to provide a fixed voice service. While eir currently has no FWA, Imagine currently has an FWA product which is sold in a bundle (broadband and voice i.e. not limited to voice communications services). This offering is available at a sub-set of locations within the State. No other undertakings currently provide a fixed voice communications service using mobile infrastructure e.g. using a FCS type service.
- 128 While a number of retail service providers currently provide a managed VoB based retail fixed telephony service (as outlined at paragraphs 108 to 113 of Consultation 23/02), these are provided as part of a bundle and not as a standalone fixed voice service. In addition, service providers are only capable of providing managed VoB at premises that are connected to or passed by next generation broadband which provides a fixed access component of sufficient speed and bandwidth to deliver the service and this network not yet nationwide.
- 129 In respect of OTTs, a NIICS as defined “does not connect with publicly assigned numbering resources... or ...enable communication with a number or numbers in a ‘national or international numbering plan’”, therefore it is not a “voice communications service”.
- 130 There are currently two undertakings providing a retail fixed voice communications service in the State i.e. eir and Pure Telecom:
- eir is a vertically integrated company (operating as both a wholesale undertaking and a retail service provider).
  - Pure Telecom is a re-seller of both commercial and regulated wholesale component products, it does not own or operate its own network; it has retail sales and marketing functions and retail provisioning and billing systems. Pure Telecom is reliant on other wholesale undertakings (from whom it purchases commercial and regulated component products) for the delivery of its retail product offerings.



Question 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?

## 5 Designations

- 138 Regulation 72(1) provides that where ComReg establishes that the availability at a fixed location of voice communications services cannot be ensured under normal commercial circumstances in the State or different parts of it, and the Minister is of the opinion that other potential public policy tools cannot ensure access to voice communications services in the State or any part of it identified by ComReg, then ComReg may make a designation under Regulation 72(3) to impose appropriate universal service obligations to meet all reasonable requests by those end-users for accessing such services.
- 139 Regulation 72(3) provides that ComReg may designate one or more undertakings or sets of undertakings as universal service providers for such period as it may determine throughout the State or to cover different parts of the State.
- 140 If the Minister is of the opinion that other potential public policy tools cannot ensure access to voice communications services in the State or any part of it, ComReg proposes to proceed to designate universal service providers as outlined in the sections below. This section then outlines ComReg’s preliminary views in relation to the time period and the geographic scope for which these USPs will be designated.
- 141 ComReg is of the preliminary view that there are two separate and discrete cohorts:
- **existing** USO VFL services end-users; and
  - **new** USO VFL services end-users.

### 5.1.1 Existing USO VFL services end-users

- 142 ComReg has reviewed the available evidence in relation to the existing USO VFL services end-user base. ComReg asked eir, as the current USP, to identify the subset of its existing voice only connection and voice communication services customer base, which are served under its current universal service obligations.
- 143 eir has advised ComReg that:
- “it is not in a position to distinguish between **existing** voice only and USO voice only customers. However, there are a total of [X ████████ X] eir voice only communications services customers” (emphasis added)<sup>53</sup>;

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<sup>53</sup> eir 13D response of 14 April 2023.



145 ComReg considers that the existing USO VFL end-users are a subset of the [X █████ X] identified by eir – i.e., a maximum population of [X █████ X] and ComReg anticipates that the number in this subset (i.e. of existing universal service voice only connection and voice communications services end-users) will continue to decline over time.

146 ComReg is of the preliminary view that eir should be designated as USP in respect of existing USO VFL end-users for the following reasons:

- eir is unable to distinguish between its existing commercial voice only end-users and USO voice only end-users. If a third-party undertaking were to be designated as a USP in respect of existing USO VFL end-users, it would involve requiring them to serve an unquantified and unidentified group of end-users. This is not a practical proposition. It also would not be transparent in terms of the process, or the scope and scale of the potential obligations;
- any attempt to supply a list of eir’s USO VFL end-user base to other potential providers would, if even possible, risk causing market distortion within a declining commercial market; and
- ComReg considers that the most cost-effective way of serving these unidentified voice only USO customers would be using the existing products and network.

147 eir is free to approach its existing voice only connections and voice communications customers and seek to up-sell them to a commercial bundle. Indeed, eir in its 13D (1) response<sup>61</sup> has indicated that it intends to migrate these customers to equivalent plans making the change as seamless as possible. However, if designated as USP, eir may not force these customers to migrate to alternative commercial bundled offerings where the end-user requests a voice only connection limited to support voice communications services.

### 5.1.2 New voice only connections (in-situ) and VFL services end-users

148 ComReg recognises that the majority of new end-users, when offered a choice of a bundle (containing voice and broadband), at the same or similar price as a VFL service, are highly likely to opt for the bundled offer.

149 ComReg also recognises that the number of new voice communications services connections (using both “in-situ” and “non-in-situ” infrastructure) is very small annually and continues to decrease year on year (see Figures 9, 10, 11 and 12).

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<sup>61</sup> Eir response 30, March 2023.

150 Of these new connections, [X [REDACTED] X] % have been met using in-situ connections.

151 As set out earlier, ComReg has issued a number of further Information Requirements seeking additional relevant information from both eir and Pure Telecom. ComReg has carefully considered this information and is relying upon it to inform its revised preliminary views on the designation of a USP to fulfil new requests for connection at a fixed location.

152 eir has advised ComReg that:

- [X [REDACTED] X]  
[REDACTED]  
[REDACTED] X]<sup>62</sup>
- Paragraph 30 of eir’s response to Consultation 23/02 reads as follows: “USO connections and reporting are catered for only on the legacy TIS billing system. TIS is due to be retired from [X [REDACTED] X] (after the conclusion of the current designation on 30 June 2023). Therefore, no provider will have established systems for USO fulfilment or reporting” (emphasis added);

153 Based on eir’s responses ComReg is of the view that eir plan to exit the market for new voice only connections and voice communications services, post 30 June 2023.

154 Pure Telecom is a reseller of a commercial Wholesale product (SB-WLR). Pure Telecom is commercially serving all new end-users (where the underlying connections are ultimately provided to it by Open eir).

155 Pure Telecom has advised<sup>63</sup> ComReg that it:

- plans to continue to offer voice only connections and voice communications services to its current and future customers, post 28 December 2023<sup>64</sup>;
- will use PSRN, F/PRA copper-based phones lines under SB-WLR to service both existing and new customers, post 28 December 2023<sup>65</sup>;

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<sup>62</sup> eir 13D response of 02 December 2022.

<sup>63</sup> Pure Telecom’s 13D (1) response, dated 19 April 2023.

<sup>64</sup> Pure Telecom 13D response of 25 April 2023.

<sup>65</sup> Pure Telecom 13D response of 25 April 2023.

- has commercial agreements with two wholesale service providers (SB-WLR), post 28 December 2023<sup>66</sup>;
- has no plans to offer a retail broadband product(s) that is limited to supporting voice only connections and voice communications services<sup>67</sup>;
- that FCS forms part of the commercial wholesale product it is using to provide voice communications services<sup>68</sup>.

156 Pure Telecom has already confirmed that:

- it will connect new voice only (in-situ/ non-in-situ) connections and voice communications customers on a commercial basis<sup>69</sup>.

157 Accordingly, ComReg has amended its preliminary review in respect of new voice only (in-situ) connections. It is now of the preliminary view that it is appropriate to designate Pure Telecom in respect of new voice only (in-situ) connections.

158 ComReg notes:

- eir's statement in respect of its current retail provisioning and billing capability post 30 June 2023 for new voice only connections and voice communications customers;
- that any universal service obligation to serve such end-users will only crystallise where Pure Telecom were to decide, on a commercial basis, not to serve a particular request; and
- that Pure Telecom already has the necessary IT infrastructure in place to enable the provisioning, servicing, and billing of voice only connections and voice communications services end-users and is currently actively commercially serving these retail end-users and has no plans to retire the product or its systems.

159 ComReg recognises that Pure Telecom is dependent on underlying wholesale service providers to be able to continue to serve existing end-users, any potential new (in-situ/non-in-situ) customers. Accordingly, Pure Telecom has the network reach and capability of underlying wholesale service providers to serve new end-users whose premises have a pre-existing in-situ connection.

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<sup>66</sup> Pure Telecom 13D response of 25 April 2023.

<sup>67</sup> Pure Telecom 13D response of 25 April 2023.

<sup>68</sup> Pure Telecom 13D response of 07 June 2023.

<sup>69</sup> Pure Telecom 13D response of 25 April 2023.



160 In the event that Pure Telecom is no longer party to a contract enabling them to provide VFL services, their designation as USP would immediately cease and they would no longer be subject to the universal service obligations as set out in the Draft Decision.

161 Furthermore, any change to the current commercial arrangements (Open eir and Pure Telecom), or a decision by Pure Telecom to exit the voice only connection and voice communications services market would be considered a change in market conditions, which would likely warrant ComReg commencing a review of this element of any VFL services universal service designation.

### 5.1.3 New voice only connections (non-in-situ) and voice communications services end-users

162 ComReg recognises that during the transition period from copper to fibre networks, it would not be reasonable to require the deployment of new copper network. Equally, it would not be reasonable to require the timetable for the planned rollout of new fibre networks to be altered to meet individual end-user needs. Accordingly, it is important to consider what other options are currently, or may shortly, become available, to meet any reasonable requests for new voice only (non-in-situ) connections during this transition period.

163 The other options based on current information are likely to be (i) FCS or (ii) a new FWA product as neither require the rollout of network infrastructure. This does not preclude the rollout of network infrastructure where it is the choice of the designated undertaking (as universal service is technology neutral), where it is provided in a cost-effective manner.

164 ComReg notes that [redacted] % of new (non- in-situ) connections in 2022 have been served based on new copper connections. A very small number were met using FCS.

165 ComReg notes eir's statements that:

- its retail division is no longer in a position to support the provisioning and billing of new (in situ and non--in-situ) voice only connections and voice communications services "after the conclusion of the current designation on 30 June 2023"<sup>70</sup>;
- [redacted] [redacted] <sup>71</sup>; and

<sup>70</sup> eir non-confidential response to Consultation 23/02.

<sup>71</sup> eir 13D response of 02 December 2022.

- FCS is due to be retired as a retail offering when TIS is retired (date as yet undetermined)<sup>72</sup>.

166 ComReg notes Pure Telecom's statement that FCS forms part of the commercial wholesale product it is using to provide voice communications services.

167 ComReg has carefully considered the capabilities and existing products of undertakings who may be in a position to provide a transitional voice only connection and voice communications services without having to engage in new network rollout or extension, during this transition period.

168 ComReg considered the capabilities and current product offerings of undertakings with mobile networks.

169 None of the mobile network providers, except eir, has an existing fixed voice only connection and voice communications service.

170 The mobile network providers have broadband offerings which are capable of supporting voice services. However, these services are not currently restricted to (i) voice only services and (ii) access at a fixed location. For the mobile network providers to provide a standalone fixed voice communications service would require product development.

171 ComReg is also cognisant that the volume of new (non-in-situ) voice only connections and voice communications services is likely to be extremely small.

172 Accordingly, ComReg considers that it would be disproportionate to require one or more of the mobile network providers to develop such a product, where there is an existing retail and wholesale products in the market which has the capability to meet the majority of new voice only (non-in-situ) connections that may arise which has no definitive product retirement date (i.e. FCS).

173 ComReg notes:

- eir's statement in respect of its current retail providing and billing capability after the conclusion of the current designation on 30 June 2023 for new voice only connections and voice communications customers<sup>73</sup>;
- that any universal service obligation to serve such end-users will only crystallise where Pure Telecom were to decide, on a commercial basis, not to serve a particular request; and

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<sup>72</sup> Paragraph 27 of eir's response to Consultation 23/02.

<sup>73</sup> Paragraph 30 of eir's response to Consultation 23/02.

- that Pure Telecom already has the necessary IT infrastructure in place to enable the provisioning, servicing, and billing of voice only connections and voice communications services end-users and currently actively commercially serving these retail end-users and has no plans to retire the product or the billing system.

174 ComReg recognises that Pure Telecom is dependent on underlying wholesale service providers to be able to continue to serve any potential new (non-in-situ) customers. Accordingly, Pure Telecom has the network reach and capability of underlying wholesale service providers to serve end-users using a non-in-situ connection.

175 In the event that Pure Telecom is no longer party to a contract enabling it to provide VFL services, their designation as USP will immediately cease and they will no longer be subject to the universal service obligations as set out in the draft Decision Instrument.

176 Equally, all network providers (including eir) have the capability if they so choose to launch commercial wholesale and or retail broadband product(s) that are limited to supporting voice only connections and voice communications services.

177 Accordingly, ComReg is of the preliminary view that during this transition period, the least market distortive and most cost-effective manner to address those new (non-in-situ) end-user reasonable access requests is to designate Pure Telecom as the USP for new voice only (non-in-situ) connections and voice communications services.

## 5.2 Designation mechanism

178 Regulation 72(4) provides that in designating a USP ComReg shall “use an efficient, objective, transparent and non-discriminatory designation mechanism whereby no undertaking is in principle excluded from being designated. The designation methods adopted shall ensure that [VFL services] are provided in a cost-effective manner and may be used as a means of determining the net cost of the universal service obligation in accordance with Regulation 75.”

179 In Consultation 23/02 ComReg sought expressions of interest from interested parties in becoming the USP.

180 ComReg undertook to provide updates to both stakeholders and those undertakings that submit expressions of interest, as necessary, throughout the process. No expressions of interest were received.

181 As outlined above when considering who to designate as USP, ComReg considered all market participants for designation as USP.

182 Accordingly, no undertaking has in principle been excluded from being designated.

### 5.3 Designation period

183 In Consultation 23/02 ComReg was of the preliminary view that a maximum designation period of 5 years was required post 30 June 2023, unless amended. ComReg proposed to keep under review any designation in light of changes in the market, or 6 months after the Minister had defined adequate broadband

184 The responses to Consultation 23/02 indicated diverging respondents' views on the duration of any designation period. The suggestions in relation to duration ranged from one year, to delaying any designation decision until after the publication of the ComReg copper switch off decision.

185 ComReg notes the following statements by fibre network providers:

- eir states that its fibre network rollout will complete by the end of 2026; and
- NBI states that the deployment of the NBP network, is scheduled to complete in late 2026 / early 2027.

186 Accordingly, based on the aforementioned, it appears that by the end of 2026/mid 2027 all end-users should either be served by broadband (either commercially or via the NBP), where end-users select a bundle and/or service providers offer wholesale and or retail broadband products that are limited to supporting VFL services.

187 ComReg has relied upon information received in response to ComReg Information Requirements from both Pure Telecom and eir, which indicates that Pure Telecom will be able to continue to meet all reasonable requests for accessing voice only connections and voice communications services post 28 December 2023 on a commercial basis

188 Accordingly, ComReg is now of the preliminary view that the maximum period of the proposed designation should be until 30 June 2027. ComReg proposes to review any designation, 6 months after the Minister has defined adequate broadband, and to keep under review any designation in light of changes in the market. For the avoidance of doubt, were Pure Telecom to exit the market for VFL services this would likely trigger a review of the USO designation.

## 5.4 Geographic scope of designation

- 189 ComReg notes that end-users who may make reasonable requests for VFL services are dispersed throughout the State. Existing VFL services end-users who will be served by eir as USP are dispersed throughout the State.
- 190 Accordingly, ComReg remains of the preliminary view that any designations must cover the whole of the State. 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.
- 191 ComReg is of the view that the proposed voice only connections and voice communications service universal service obligations will only crystallise for the USPs, where end-users have no suitable commercial alternatives. Accordingly, 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.

## 5.5 Summary of designation

- 192 For the reasons set out above ComReg has formed the following preliminary views:
- eir should be designated as the USP for its existing USO VFL end-users;
  - Pure Telecom should be designated as the USP for all new USO VFL end-users;
  - The maximum period of the proposed designation should be until 30 June 2027; and
  - The geographic scope of the designation should be the State.

Question 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.

Question 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.

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

Question 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.

## 6 Quality of service (voice), terms and conditions, reasonable requests

193 In Consultation 23/02 ComReg was of the preliminary view that a VFL USO was required post 30 June 2023 and set out its preliminary views on quality of service (“QoS”), terms and conditions and reasonableness of requests for connection at a fixed location.

194 This section will set out ComReg’s revised positions in relation to QoS, terms and conditions and the reasonableness of requests for access and for connection at a fixed location.

### 6.1 Quality of service (voice)

195 Regulation 70(3)(a) of S.I. 444 of 2022 sets out that ComReg may specify requirements to be complied with by a USP providing voice communication services, including the quality standards to be provided.

196 ComReg considers that QoS is an important aspect of a VFL service. ComReg’s overall aim is to ensure that end-users receive universal services at an appropriate quality, for example in relation to outages, repairs, and installations, which may not be provided, absent a QoS USO.

197 It is important that the current commercial QoS standards are maintained by USPs. ComReg has considered the proposed USPs past performance and eir’s statements in respect of service quality standards. ComReg recognises that eir has been maintaining these standards even without an obligation in place. ComReg recognises that Pure Telecom is dependent on its underlying wholesale service providers for the level of QoS it provides to its customers. ComReg remains of the preliminary view that there is no need to specify VFL QoS standards, at this time.

198 ComReg is continuing to propose to monitor QoS performance on an ongoing basis using its statutory information gathering powers to obtain information, as ComReg considers necessary (including reports, processes, and plans) to carry out its functions. Accordingly, ComReg will collect relevant QoS information from USPs and relevant undertakings. ComReg is not proposing to impose an obligation for USPs to comply with VFL USO QoS standards. ComReg considers that this approach is proportionate and justified.

199 Where, during the proposed designation period, ComReg is of the view that the USP(s) actual QoS performance outputs have deteriorated or are likely to deteriorate to an inappropriate level, ComReg may separately commence a review in respect of establishing mandated VFL USO QoS standards.

200 There may be other circumstances which arise where ComReg deems it appropriate to intervene. Any consideration of a regulatory measure in relation to QoS standards will follow normal consultation procedures with related rights for stakeholders.

## 6.2 Terms and conditions

201 Regulation 70(3)(a) of S.I. 444 of 2022 sets out that ComReg may specify requirements to be complied with by a USP providing voice communication services, including the terms and conditions upon which the connection at a fixed location is to be provided.

202 As set out in Consultation 23/02, all service providers are required by law<sup>74</sup> to set out their term and conditions in their commercial contracts with end-users.

203 ComReg remains of the preliminary view that there is no need to specify specific terms and conditions in relation to VFL services USO at this time.

## 6.3 Reasonableness of requests

204 ComReg has carefully considered responses to Consultation 23/02 in respect of the reasonableness of requests for access or connection at a fixed location.

205 As set out earlier, ComReg has, following consideration of submissions to Consultation 23/02 and responses to a number of further Information Requirements seeking additional relevant information from eir and Pure Telecom, changed its proposals in relation to USP designations. Therefore, ComReg's preliminary views in relation to the specification of what constitute reasonable requests for access and connection have also changed as set out below.

### 6.3.1 Existing voice only connections and voice communications services end-users

206 ComReg's preliminary view is that eir should be designated as the USP for existing VFL services end-users. This is informed by eir's inability to distinguish between commercial voice only and USO voice only customers within its existing voice only customer base.

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<sup>74</sup> Chapters 2, 3 and 4 of the Consumer Rights Act 2022.



- 207 There is nothing currently to prevent any service providers (including USPs) from approaching their existing voice only connections and voice communications customers and seeking to up-sell them to a commercial bundle. Indeed, eir in its 13D (1) response<sup>75</sup> has indicated that it intends to migrate these customers to equivalent plans making the change as seamless as possible. However, eir, if designated as USP, may not force these customers to migrate to alternative commercial offering where the end-user requests a VFL service (in particular a voice only connection limited to support voice communications services).
- 208 ComReg is proposing in the Draft Decision that “Existing Connection” will be defined as “any Connection currently in place and over which a voice communications service is currently being provided”, where “Connection” is defined as “a connection at a Fixed Location to the electronic communications network at a primary location or residence, which includes a connection by fixed cellular solution”.
- 209 Having taken all of the above considerations into account, ComReg is of the preliminary view that the following is the most appropriate approach for reasonable requests for access over Existing Connections:
- A request by a Requester for access to a VFL service over an Existing Connection is a reasonable request and the USP shall continue to satisfy requests for such access where:
    - there is no Equivalent Service<sup>76</sup> available; or
    - 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).
  - In circumstances where a Requester has indicated that they wish to withdraw their request to access a VFL Service over an Existing Connection in order to move to an Equivalent Service, that request remains reasonable and the USP is obliged, where technically feasible, to continue to satisfy that request for access, until the Requester is availing of the Equivalent Service.

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<sup>75</sup> eir response 30, March 2023.

<sup>76</sup> “Equivalent Service” means “a voice communications service at a fixed location (whether standalone or in a Bundle) which is equivalent to that prevailing for the VFL Service provided by the USP, with respect to quality of service, Minimum Indoor Availability, and affordability”.

- 210 ComReg's preliminary view is that eir as USP will be obliged to contact each of its existing VFL services end-users 3 times (once every four months) within the first 12 months of the designation, and to ask whether these end-users are now requesting that their connection is limited to support voice communications only. This contact must be in a durable medium. Where, following these three contacts, an existing end-user does not respond, eir may then assume that this end-user is a commercial VFL end-user. This approach will ensure that within 12 months of designation, eir, will have explicitly identified who are truly USO end-users within its total group of existing voice only connection and voice communications services customers.
- 211 It is critical that this contact communication with end-users is transparent (i.e. simple and clear) so as to ensure that end-users understand what action they need to take either to withdraw their request for access or to continue to avail of a VFL service. ComReg is therefore minded to require pre-approval of both the method and content of all proposed contact communication.
- 212 ComReg is of the preliminary view that that the cost of connection threshold should be removed for reasonable requests for access over existing connections, as these connections are already in place.
- 213 The USP will be obliged to maintain records of all contacts made and report to ComReg on a quarterly basis.
- 214 ComReg is of the preliminary view that this approach strikes the right balance as eir as the USP will not be required to continue to serve existing voice only connections and voice communications services customers who may be staying purely due to inertia, however the rights of existing end-users to request a VFL service (in particular a voice only connection) will be protected.

### **6.3.2 New voice only connections (in-situ) and voice communications services users.**

- 215 As set out previously, ComReg's proposal is that Pure Telecom will be the USP for new voice only connections (in-situ) and voice communications services end-users.
- 216 ComReg recognises that the majority of new end-users, when offered a choice of a bundle (containing voice and broadband), at the same price as that of a voice only connection and voice communications services, are highly likely to opt for the bundled offer. ComReg is of the preliminary view that the risk that new voice only connections and voice communication services customers will not be commercially served in a bundle is extremely low.

- 217 ComReg also recognises that the number of new voice only connections and voice communications services requests is very small annually and continues to decrease year on year<sup>77</sup>.
- 218 ComReg is proposing to introduce a definition for an “In-Situ Connection” to mean “any Connection currently in place but over which a voice communications service at a fixed location is not currently being provided”.
- 219 Having taken all of the above considerations into account, ComReg is of the preliminary view that the following is the most appropriate approach for reasonable requests for new voice only connections where the connection is an In-Situ Connection:
- A request by a Requester for access to a VFL Service over an In-Situ Connection is a reasonable request, and Pure Telecom must satisfy it, where:
    - there is no Equivalent Service available; or
    - the Requester has indicated to Pure Telecom that they wish to avail of a VFL Service (even if there is an Equivalent Service available).
  - Pure Telecom shall maintain records of all requests for access to a VFL Service over an In-Situ Connection, in the same manner as eir is required to, for its existing voice only connections and voice communications end-users.
- 220 Pure Telecom will be obliged to notify ComReg six months in advance of: (i) any decision by Pure Telecom to exit the voice only connection and voice communications services market; or the expiry of a commercial contract to continue to provide the underlying wholesale component products required to deliver voice only connections and voice communications services.
- 221 ComReg is of the preliminary view that that the concept of a cost of connection threshold is not applicable to reasonable requests for access over new (in-situ) connections, as in-situ connections are electronically enabled and do not require a site visit. Accordingly, the cost of these connections is a standard charge that does not vary by location.

### **6.3.3 New voice only connections (non-in-situ) and voice communications services customers**

- 222 As set out previously, ComReg is of the preliminary view that Pure Telecom should be designated as the USP for new voice only connections (non-in-situ) and voice communications services end-users.

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<sup>77</sup> See Figure 9.

- 223 ComReg is proposing to introduce a definition for a New Connection to mean “a Connection that is not an Existing Connection (which includes, but is not limited to, In-Situ Connections)”.
- 224 Having taken all of the above considerations into account, ComReg is of the preliminary view that the following is the most appropriate approach for reasonable requests for a new voice only (non-in-situ) connection:
- A request by a Requester for access to a VFL Service over a New Connection is a reasonable request, and Pure Telecom must satisfy it, where one of the following criteria is satisfied:
    - there is no Equivalent Service available; or
    - the Requester has indicated to Pure Telecom that they wish to avail of a VFL Service (even if there is an Equivalent Service available).
  - A request for a New Connection is not a reasonable request if Pure Telecom estimates reasonably that the cost of satisfying such request will exceed €7,000 (excluding V.A.T.).
  - Pure Telecom shall maintain records of all requests for access to a VFL Service over a New Connection and comply with the obligations set out in section 9 of the Draft Decision Instrument.
- 225 Accordingly, while universal service is technology neutral, ComReg anticipates that Pure Telecom (using the services of its wholesale provider Open eir) will use FCS or FWA technology (where available) to connect any New Connections, as neither of these technologies require the rollout of either copper or fibre network.
- 226 Open eir has an existing FCS service and ComReg understands that eir may plan to launch a FWA product in the future. No other undertaking currently has an existing FCS type service available.
- 227 Equally, this approach does not preclude the rollout of network infrastructure where it is the choice of the Pure Telecom (as universal service is technology neutral), where is it provided in a cost-effective manner.
- 228 ComReg is of the view that this is the most appropriate approach and least market distortive approach. It is efficient, objective, transparent and non-discriminatory.
- 229 ComReg has sought information from eir in respect of the cost of new connections (broken out by cost bands, up to €7,000). eir did not provide ComReg with this information broken out by bands. Without this information ComReg is of the preliminary view that the most appropriate approach is to maintain the threshold at the current rate.

230 In this context, ComReg is of the preliminary view that that the concept of a cost of connection threshold should be imposed for reasonable requests for access over new (non-in-situ) connections and the following wording is proposed in this regard in the Draft Decision:

- A request for a New Connection is not a reasonable request if Pure Telecom estimates reasonably that the cost of satisfying such request will exceed €7,000 (excluding V.A.T).

Question 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.

## 7 Draft regulatory impact assessment (RIA)

### 7.1 Introduction

231 The purpose of the RIA is essentially threefold: first it is to establish whether regulation is actually necessary; second, it is to identify any positive or negative effects which might result from a regulatory measure and establish whether there is a net benefit; and third, it is to identify and assess any alternative regulatory measures.

232 ComReg conducts its draft RIA having regard to the Regulations and its obligations under and Section 13(1) of the Act which requires ComReg to comply with Ministerial Policy Directions, and ComReg's RIA Guidelines<sup>78</sup>,

233 ComReg's 5-step approach, as set out in its RIA Guidelines<sup>79</sup>, is as follows:

- **Step 1** - Describe the policy issue to be addressed and identify the objectives
- **Step 2** – Identify and describe the regulatory options
- **Step 3** – Determine the impact on stakeholders
- **Step 4** – Determine the impacts on competition
- **Step 5** – Assess the impacts and choose the best option

234 The analysis presented in this chapter represents ComReg's draft RIA. It sets out ComReg's preliminary views on the impact of VFL USO designations upon stakeholders and competition.

235 Consistent with the RIA Guidelines, ComReg's draft RIA considers the effect on stakeholders and competition of our preliminary view to designate one or more undertakings to guarantee the availability at a fixed location of voice communications services throughout the State. It also considers the specified requirements to be complied with by designated undertakings.

236 ComReg's aim in conducting the draft RIA is to ensure that any VFL designation obligations are appropriate, proportionate and justified based the analysis conducted, having regard to our functions and objectives under the Act of 2002.

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<sup>78</sup> ComReg document No. 07/56 and 07/56a.

<sup>79</sup> ComReg document No. 07/56 and 07/56a.

## 7.2 Step 1 – Describe the policy issue and identify the objectives

237 ComReg is mindful of its broader statutory objectives in exercising its functions, as set out in the Act of 2002.

238 The objectives of relevance to this consultation, as set out in section 12 of the Act of 2002, include:

“(1) The objectives of the Commission in exercising its functions shall be as follows— (a) in relation to the provision of electronic communications networks, electronic communications services, and associated facilities (i) to promote competition,

[... and]

(iii) to promote the interests of users within the Community,

239 The ComReg tasks and objectives of relevance to this consultation, include to:

- promote the interests of the consumers and business in the State, by ensuring a high and common level of protection for end-users<sup>80</sup>;
- take all reasonable measures to ensure all users have access to a universal service<sup>81</sup>;
- use an efficient, effective, objective, transparent and non-discriminatory designation mechanism when designating a USP whereby in principle no undertaking is excluded from being designated<sup>82</sup>;
- ensure that the designation methods adopted ensure that VFL is provided in a cost-effective manner and may be used as a means of determining the net cost of the universal service obligation<sup>83</sup>

240 ComReg is of the preliminary view that it has established that the availability at a fixed location of voice communications services cannot be ensured under normal commercial circumstances, based on the evidence set out in chapters 3 and 4.

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<sup>80</sup> Regulation 4(3)(d) of S.I. 444 of 2022.

<sup>81</sup> Section 12(2)(c)(i) of the Act of 2002.

<sup>82</sup> Regulation 72(4) of S.I. 444 of 2022

<sup>83</sup>

Regulation 72(4) of S.I. 444 of 2022

- 241 ComReg notes that where Minister is of the opinion the other potential public policy tools cannot ensure access to voice communication services in the State or any part of it as identified by ComReg, ComReg may make designations to impose appropriate universal service obligations to meet all reasonable requests by end-users for accessing voice communications services including the underlying connection.
- 242 The policy issue to be addressed in this draft RIA is therefore how ComReg may ensure that all reasonable requests by end-users for voice communications services and the underlying connection are met, absent, normal commercial circumstances, and other potential public policy tools.
- 243 The objectives to be achieved through the proposed regulatory actions are two-fold: (i) to protect the **existing** voice communications services end-users so they continue to be served; and (ii) to ensure that all **new** reasonable requests for voice communications services and underlying connections are met.

## 7.3 Step 2 – Identify and describe the regulatory options

- 244 This section sets out the range of options that would achieve the objectives identified at step 1.
- 245 ComReg has identified and described the following regulatory options:
- Option 1: Do nothing (make no designation)
  - Option 2: Designate undertaking(s) (universal service obligations)

Figure 13: Regulatory Options



### 7.3.1 Option 1 – Do nothing (no designation(s))

- 246 Under Option 1 ComReg would not intervene and would make no VFL designation(s).



247 Retail service providers would have commercial freedom to decide whether they: (i) continue to serve existing voice communications services end-users; and (ii) to choose who, if any, new voice communications services end-users, they wish to serve in the future.

### 7.3.2 Option 2 – Designate undertaking(s)

248 Under Option 2 ComReg would intervene and would designate undertaking(s) in respect of voice communications services and the underlying connection and at fixed location.

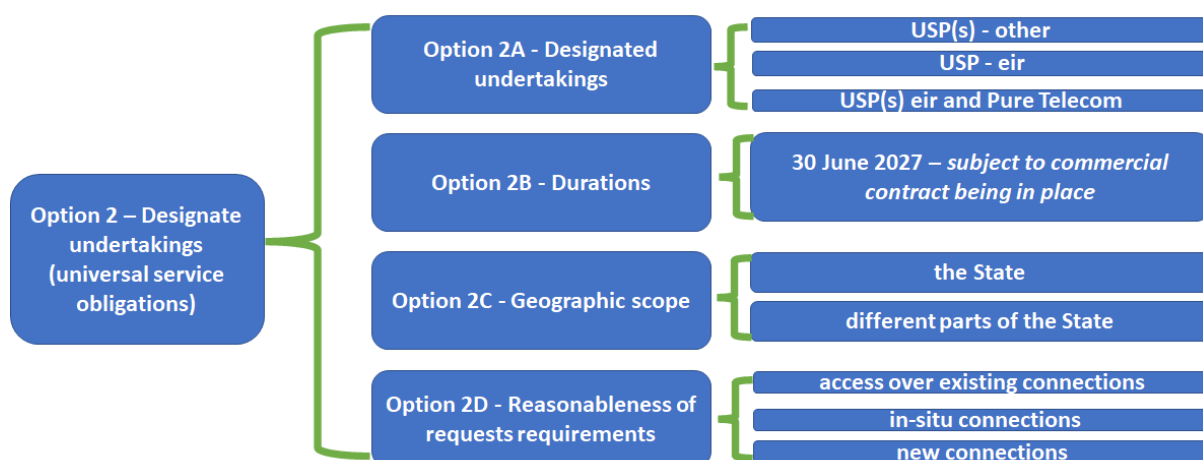
249 Designated undertaking(s) would not have the commercial freedom to decide whether they: (i) continue to serve existing voice communications services end-users; and (ii) meet all reasonable requests by end-users for accessing voice communications services at a fixed location.

250 Within Option 2 there are number of sub-options in respect of:

- which undertaking(s) are designated (Option 2A)
- the duration of any designation(s) (Option 2B)
- the geographic scope (the State or parts of it) (Option 2C)
- the requirements in relation to the reasonableness of requests (Option 2D).

251 These sub-options are set out in Figure 14 below.

**Figure 14: Option 2 – Designate undertaking(s) and associated sub-options**



### 7.3.2.1 Option 2A – designated undertaking(s)

- 252 Under Option 2A ComReg could designate undertaking(s) who are not currently actively serving the voice communications services market.
- 253 ComReg has considered the capabilities and existing products of undertakings who may be in a position to provide a transitional voice only connection and voice communications services without having to engage in new network rollout or extension, during this transition period.
- 254 There are no other fixed service providers actively serving the voice only communications markets other than eir and Pure Telecom.
- 255 ComReg has considered the capabilities and current product offerings of undertakings with mobile networks.
- 256 None of the mobile network providers, except eir, has an existing fixed voice only connection and voice communications service.
- 257 The mobile network providers have broadband offerings which are capable of supporting voice services. However, these services are not currently restricted to (i) voice only services and (ii) access at a fixed location. For the mobile network providers to provide a standalone fixed voice communications service would require product development.
- 258 ComReg is also cognisant that the volume of new (non-in-situ) voice only connections and voice communications services is likely to be extremely small.
- 259 Accordingly, ComReg considers that it would be disproportionate to require one or more of the mobile network providers to develop such a product, where there is an existing product in the market which has the capability to meet the majority of new voice only (non-in-situ) connections that may arise which has no definitive product retirement date (i.e., FCS).
- 260 Under Option 2Ai ComReg could designate the two undertakings who are currently actively serving the voice communications services market:
- eir for existing voice communications services end-users; and
  - Pure Telecom for new connections; or
- 261 Under Option 2Aii ComReg could designate eir only.

### 7.3.2.2 Option 2B – duration of designation(s)

262 Under Option 2B ComReg could make the maximum duration of any designation(s) to be:

- 30 June 2027 (i.e., when planned fibre network<sup>84</sup> rollouts are scheduled to be completed); subject to the following qualification:
  - where Pure Telecom is no longer party to a contract enabling it to provide VFL Services, its designation as USP would immediately cease and it would no longer be subject to VFL universal service obligations
- ComReg proposed to keep under review any designation and VFL services USO in light of changes in the market, or 6 months after the Minister had defined adequate broadband

### 7.3.2.3 Option 2C – geographic scope

263 Under Option 2C ComReg could make the geographic scope of any designation(s) to be:

- the State; or
- parts of the State

### 7.3.2.4 Option 2D – reasonableness of requests requirements

264 Under Option 2Di ComReg could specify requirements to be complied with by designated undertakings for reasonableness of requests for access over **existing connections**:

265 A request by a Requester for access to a VFL Service over an Existing Connection<sup>85</sup> would be a reasonable request and the USP would continue to satisfy requests for such access where:

- there is no Equivalent Service available; or the Requester indicates to the USP that they wish to continue to avail of a VFL Service (even if there is an Equivalent Service available).

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<sup>84</sup> NBI (under the NBP); SIRO and eir.

<sup>85</sup> Note definitions are as in the Draft Decision Instrument.

- 266 Under Option 2D eir would (within the first 12 months) contact individually every Existing End-User three times (once every four months) and in this contact would ask whether those end-users wish to continue to avail of a VFL Service. The content and method of the contact would be pre-approved by ComReg. This contact would be in a Durable Medium. Where, three months following these three contacts, an Existing End-User does not respond, this end-user's request for access would no longer be a reasonable request and this End-User would be a commercial VFL Services End-User. Where, following the contact, an Existing End-User does respond, eir would not be required to subsequently contact that Existing End-User in this regard.
- 267 Under Option 2Dii ComReg could specify requirements to be complied with by designated undertaking(s) providing VFL, for reasonableness of requests for In-Situ Connections:
- 268 A request by a Requester for access to a VFL Service over an In-Situ Connection would be a reasonable request, and Pure Telecom would satisfy it, where:
- there is no Equivalent Service available; or
  - the Requester has indicated to Pure Telecom that they wish to avail of a VFL Service (even if there is an Equivalent Service available).
- 269 Under Option 2Diii ComReg could specify requirements to be complied with by designated undertakings providing VFL, for reasonableness of requests for new connections:
- 270 A request by a Requester for access to a VFL Service over a New Connection would be a reasonable request, and Pure Telecom would satisfy it, where one of the following criteria is satisfied:
- there is no Equivalent Service available; or
  - the Requester has indicated to Pure Telecom that they wish to avail of a VFL Service (even if there is an Equivalent Service available).
- 271 A request for a New Connection would not be a reasonable request if Pure Telecom estimates reasonably that the cost of satisfying such request will exceed €7,000 (excluding V.A.T.).
- 272 Alternatively, under Option 2D ComReg could specify all reasonable request requirements to be complied with by eir only, to ensure VFL for end-users. However, based on the information provided to ComReg to date ComReg is of the preliminary view that it may be more appropriate to designate both eir and Pure Telecom.

## 7.4 Steps 3 and 4 – Determine the impact on stakeholders and competition

- 273 Having identified the objectives, and the available options to achieve those objectives, the next step is to identify the costs, benefits and impacts of each option, to determine the impact of each option on all stakeholders, including consumers.
- 274 ComReg also identifies the impact of each regulatory option might have on competition in the market. If an option would have possible negative effects on competition in the market, ComReg would only proceed with that option if the benefits outweighed the negative effects.
- 275 The following tables set out, for each of the proposed policy decisions, the key impacts we would envisage the identified options may have on industry, customers, and competition.

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Figure 15: Option 1 - do nothing (no designation)

	Costs	Impact on Industry	Impact on consumers	Impact on competition
Option 1: Do nothing (make no designation)	<p><b>Industry</b> No universal service net cost incurred</p> <p><b>End-users</b> May pay higher retail prices where end-users are required to buy a bundled service (to access voice communications services).</p>	<p>Under option 1, all retail service providers would have the flexibility to choose:</p> <p>(i) which voice communications services end-users they would continue to commercially serve; and</p> <p>(i) whether they would serve new voice only communications services end-users.</p>	<p>Some <b>existing</b> end-users may now be:</p> <p>(i) unserved; or</p> <p>(i) may be required to move to a bundled service (which contains elements that they may neither need or want) to continue to access to voice communications services</p> <p>Some <b>new</b> end-users may be:</p> <p>(i) unserved; or</p> <p>(i) may be required to buy a bundled service (which contains elements that they may neither need or want) to obtain access to voice communications services</p>	<p>Market becomes even less competitive than before (mature market already in decline)</p> <p>- Only one retail service provider willing to serve new end-users on a commercial basis (outside of a bundled service).</p> <p>- retail service providers with legacy end-users (not served in a bundle) are likely to continue to serve these end-users (where the underlying wholesale component products remain available and continue to be supplied to retail service providers by the relevant wholesale service providers).</p>

Figure 16: Option 2Ai – Designate undertaking (eir and Pure Telecom)

	Costs	Impact on Industry	Impact on consumers	Impact on competition
Option 2Ai: Designate undertakings eir and Pure Telecom)	<p><b>Designated USPs</b> <b>eir</b> - no additional costs incurred as eir states that it will continue to serve its existing voice communications services end-users (absent any designation). Designation may create an increased regulatory overhead (e.g. data collection, reporting and compliance in respect of universal service obligations). <b>Pure Telecom</b> - any additional cost incurred is confined to end-users it would not serve commercially. Pure Telecom will provide records to ComReg in respect of this. Designation may create an increased regulatory overhead (e.g. data collection, reporting and compliance in respect of universal service obligations).</p> <p><b>end-users</b> enables a monetary threshold requirement to be set for reasonableness of VFL request</p> <p><b>Industry</b> Potential cost to industry where funding applications are submitted by eir and Pure Telecom where unfair burdens may be established The net cost of voice communications services now based on (eir's) actual costs</p>	<p><b>Designated USPs</b> <b>eir</b> - designation only crystallises where it would not continue to serve its <b>existing</b> voice communications end-users on a commercial basis. <b>Pure Telecom</b> - designation only crystallises where they would not commercially serve <b>new</b> voice communications end-users on a commercial basis (where the underlying wholesale component products remain available and continue to be supplied by the relevant wholesale service providers)</p> <p><b>Retail providers (of voice communications services at a fixed location)</b> Low impact - existing end users are legacy customers.</p>	<p>All reasonable requests by end users for accessing voice communications services will be met.</p>	<p>Market competitiveness unchanged - market already in decline)</p> <p>- retail service providers with legacy end-users (not served in a bundle) are likely to continue to serve these end-users (where the underlying wholesale component products remain available and continue to be supplied to retail service providers by the relevant wholesale service providers).</p>

Figure 17: Option 2Aii – Designate undertaking (only eir)

	Costs	Impact on Industry	Impact on consumers	Impact on competition
Option 2Aii: Designate undertaking - eir only	<p><b>Designated USP</b> eir - no additional costs incurred for existing end-users as eir states that it will continue to serve its <b>existing</b> voice communications services end-users (absent any designation).</p> <p>Designation may create an increased provisioning and billing cost overhead to serve <b>new</b> end-users (retention of existing capabilities for longer; or the introduction of new capabilities).</p>	<p><b>Designated USP</b> eir - designation only crystallises where (i) it would not continue to serve its <b>existing</b> voice communications end-users on a commercial basis; and (ii) it is required to serve <b>new</b> end-users where these requests meet the reasonable request requirements.</p>	All reasonable requests by end users for accessing voice communications services will be met.	Market competitiveness unchanged - market already in decline) - retail service providers with legacy end-users (not served in a bundle) are likely to continue to serve these end-users (where the underlying wholesale component products remain available and continue to be supplied to retail service providers by the relevant wholesale service providers).
	<p><b>Consumers</b> cost to serve may increase marginally to recover any possible increase in provisioning and billing cost overhead</p> <p><b>Industry</b> Potential cost to industry where funding applications are submitted by eir where unfair burdens may be established The net cost of voice communications services now based on (eir's) actual costs .</p>	<p><b>Retail providers (of voice communications services at a fixed location)</b> Low impact - existing end users are legacy customers.</p> <p>Pure Telecom will continue to serve voice communications end-users (existing and new) on a commercial basis.</p>		

Figure 18: Option 2B – duration of designation(s)

	Costs	Impact on Industry	Impact on consumers	Impact on competition
Option 2B: Durations - 30 June 2027 – subject to commercial contract being in place	<p><b>Designated USPs</b> eir - duration may create an increased cost overhead due to (i) provisioning and billing requirements (retention of existing capabilities for longer; or the introduction of new capabilities) associated with <b>new</b> end-users; or (ii) the development of a new broadband product (connection limited to support voice communications services) <b>Pure Telecom</b> - any new commercial contract may have higher wholesale pricing.</p>	<p><b>Designated USPs</b> eir - required to provide VFL until 30 June 2027 <b>Pure Telecom</b> required to provide until 30 June 2027, (provided there is an underlying commercial contract in place)</p>	All reasonable requests by end users for accessing voice communications services will be met until 30 June 2027 (during the transition from copper to fibre based services)	Market competitiveness of VFL unchanged -market already in decline. May result in (i) an acceleration of eir's fibre rollout (ii) voluntary migration of existing VFL end-users and new end-users to bundled services.
	<p><b>End-users</b> eir's cost to service may marginally increase the price paid by end-users (where provisioning and billing costs increase or there is cost recovery of a new product). Pure Telecom's cost to serve may marginally increase the price paid by end-users (where the underlying wholesale price increases)</p> <p><b>Industry</b> Potential cost to industry where funding applications are submitted by eir and Pure Telecom for 2023- 2027 and unfair burdens may be established</p>	<p><b>Retail providers (of voice communications services at a fixed location)</b> Low impact - existing end users are legacy customers. The net cost of voice communications services now based on eir's actual costs .</p> <p>Pure Telecom will continue to serve voice communications end-users (existing and new) on a commercial basis. Possibility of a VFL USO funding claim by Pure Telecom</p>		

Figure 19: Option 2C – Geographic scope – the State

	Costs	Impact on Industry	Impact on consumers	Impact on competition
Option 2C: Geographic scope - the State	<p><b>Designated USPs</b> eir - no additional costs will be incurred for existing end-users as eir states that it will continue to serve its <u>existing</u> voice communications services end-users (absent any designation) at their current locations. Pure Telecom -no additional costs will be incurred due to the geographic scope. Pure Telecom will continue to serve where it has the underlying wholesale capability to serve (through its wholesale service providers).</p> <p><b>end-users</b> geographic scope of any designation does not impact the cost for end-users.</p> <p><b>Industry</b> Where any designation is restricted to parts of the State any associated net costs and any associated unfair burdens where established, might decrease.</p>	<p><b>Designated USPs</b> eir - geographic scope is already determined in respect of <u>existing</u> voice communications end-users. Pure Telecom - will serve end-user demand where it arises based on (i) ability of underlying wholesale service provider being able to serve the required location and (ii) underlying commercial contract continuing to be in place</p> <p><b>Retail providers (of voice communications services at a fixed location)</b> Low impact - existing end users are legacy customers.</p>	All reasonable requests by end users for accessing voice communications services in the State should be met.	Market competitiveness unchanged - market already in decline) - retail service providers with legacy end-users (not served in a bundle) are likely to continue to serve these end-users (where the underlying wholesale component products remain available and continue to be supplied to retail service providers by the relevant wholesale service providers).

Figure 20: Option 2C – Geographic scope – parts of the State

	Costs	Impact on Industry	Impact on consumers	Impact on competition
Option 2C: Geographic scope - parts of the State	<p><b>Designated USPs</b> eir - no difference in the costs of the geographic scope of a designation being in the State or in parts of the State, as eir's existing voice communications services end-users' locations are already defined. Pure Telecom - no difference in the costs of the geographic scope of a designation being in the State or in parts of the State.</p> <p><b>end-users</b> no cost impacts for end-users by virtue of the geographic scope (the State or parts of the State)</p> <p><b>Industry</b> Potential cost to industry where funding applications are submitted by eir and Pure Telecom for 2023- 2027 and unfair burdens may be established may be lower where the geographic scope is parts of the State.</p>	<p><b>Designated USPs</b> eir - geographic scope is already determined in respect of <u>existing</u> voice communications end-users. Pure Telecom - will serve end-user demand where it arises based on (i) ability of underlying wholesale service provider being able to serve the required location and (ii) underlying commercial contract continuing to be in place. The impact of the geographic scope is the same regardless whether it is the State or parts of it.</p> <p><b>Retail providers (of voice communications services at a fixed location)</b> No impact - existing end users are legacy customers.</p>	Reasonable requests by end users for accessing voice communications services will be met in parts of the State.	Market competitiveness unchanged - market already in decline) - retail service providers with legacy end-users (not served in a bundle) are likely to continue to serve these end-users (where the underlying wholesale component products remain available and continue to be supplied to retail service providers by the relevant wholesale service providers).



Figure 21: Option 2Di – Reasonableness of requests requirements for access over existing connections

	costs	Impact on Industry	Impact on consumers	Impact on competition
<p><b>Option 2Di:</b> Reasonableness of requests requirements - for access over existing connections - Contact existing end-users within first 12 months No Equivalent Service available - Wish to continue to avail of VFL service</p>	<p><b>Designated USPs</b> eir - no additional costs to serve incurred as eir states that it will continue to serve its existing voice communications services end-users (absent any designation). eir may incur an additional cost associated with requirement to contact customers within first 12 months of designation. Pure Telecom - any additional cost incurred is confined to end-users it would not serve commercially. Records requirements may create an increased regulatory overhead.</p> <p><b>end-users</b> no change</p> <p><b>Industry</b> Any net cost associated with existing connection would now be based on actual end-users and costs</p>	<p><b>Designated USPs</b> eir and Pure - do not have to continue to serve where there is an Equivalent Service and the end-user has not expressed wish to continue to use VFL service.</p> <p><b>Retail providers (of voice communications services at a fixed location)</b> No impact - existing end users are legacy customers.</p>	<p>Possible greater choice - will be proactively contacted by eir to establish their continued interest in VFL or an Equivalent Service.</p> <p>Ability to retain existing connection where end-users express this in a durable medium.</p>	<p>Market competitiveness unchanged - market already in decline)</p>

Figure 22: Option 2Dii – Reasonableness of requests requirements for in-situ connections

	costs	Impact on Industry	Impact on consumers	Impact on competition
<p><b>Option 2Dii:</b> Reasonableness of requests requirements - for in-situ connections - no Equivalent Service available; or - wish to avail of VFL service</p>	<p><b>Designated USP</b> Pure Telecom - any additional cost incurred is confined to end-users it would not serve commercially. Costs based on wholesale pricing of commercial contract. Records requirements may create an increased regulatory overhead.</p> <p><b>end-users</b> no change</p> <p><b>Industry</b> Any net cost associated with in-situ connection would now be based on actual contractual costs for an in-situ connection</p>	<p><b>Designated USP</b> Pure Telecom - do not have to serve where there end-user is willing to move to an Equivalent Service</p> <p><b>Retail providers (of voice communications services at a fixed location)</b> No impact - existing end users are legacy customers.</p>	<p>Ability to obtain VFL in-situ connection where end-users express this in a durable medium.</p>	<p>Market competitiveness unchanged - market already in decline)</p>

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**Figure 23: Option 2Diii – Reasonableness of requests requirements for new connections**

	costs	Impact on Industry	Impact on consumers	Impact on competition
<p>Option 2Diii: Reasonableness of requests requirements - for new connections - no Equivalent Service available; or - wish to avail of VFL service; and - cost to connect &lt;€7k</p>	<p><b>Designated USP</b> Pure Telecom - any additional cost incurred is confined to end-users it would not serve commercially. Costs based on wholesale pricing of commercial contract where the monetary threshold for a reasonable request is €7,000. Records requirements may create an increased regulatory overhead.</p> <p><b>end-users</b> monetary threshold for a VFL reasonable request is €7,000.</p> <p><b>Industry</b> Any net cost associated with new connection would now be based on actual contractual costs for a new connection (monetary threshold of €7,000)</p>	<p><b>Designated USP</b> Pure Telecom - do not have to serve where: (i) there is an Equivalent Service (ii) end-user does not wish to avail of VFL service ; or (iii) the cost to connect &lt;7k</p> <p><b>Retail providers (of voice communications services at a fixed location)</b> No impact - existing end users are legacy customers.</p>	<p>Ability to obtain VFL new connection where end-users express this in a durable medium (where monetary threshold is &lt;7k)</p>	<p>Market competitiveness unchanged - market already in decline)</p>

## 7.5 Step 5 – Assess the impacts and choose the best option(s)

- 276 Section 6 of the Minister’s policy direction requires that ComReg impose regulatory obligations only where justified. Accordingly, ComReg will choose the regulatory option(s) that best achieves the identified objectives, provided always that the benefit of that option exceeds the costs. Cost and benefits may be difficult to measure accurately, particularly since stakeholders subject to regulation could have an incentive to exaggerate the costs of particular obligations. A comprehensive cost benefit analysis will be conducted only when it is deemed necessary, or where it would be reasonable and proportional to do so. However, ComReg will always try to implicitly consider costs and benefits before making a decision.
- 277 ComReg will consider the promotion of competition, the development of the internal markets, the proportion of the interests of users within the community and the competitive impact when deciding which option(s) is best.
- 278 ComReg is of the preliminary view that eir should be designated as USP in respect of existing USO VFL end-users for the following reasons:
- eir is unable to distinguish between its existing commercial voice only end-users and USO voice only end-users. If a third-party undertaking were to be designated as a USP in respect of existing USO VFL end-users, it would involve requiring them to serve an unquantified and unidentified group of end-users. This is not a practical proposition. It also would not be transparent in terms of the process, or the scope and scale of the potential obligations.
  - ComReg considers that the most cost-effective way of serving these unidentified voice only USO customers would be using the existing products and network.
- 279 eir is free to approach its existing voice only connections and voice communications customers and seek to up-sell them to a commercial bundle. However, if designated as USP, eir may not force these customers to migrate to alternative commercial offering where the end-user requests a voice only connection limited to support voice communications services. Indeed, eir in its 13D (1) response<sup>86</sup> has indicated that it intends to migrate these customers to equivalent plans making the change as seamless as possible.
- 280 ComReg is of the preliminary view that Pure Telecom should be designated in respect of new voice only (in-situ) connections.

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<sup>86</sup> Eir response 30, March 2023.

281 ComReg notes:

- eir's statement in respect of its current retail provisioning and billing capability post 30 June 2023 for new voice only connections and voice communications customers;
- that any universal service obligation to serve such end-users will only crystallise where Pure Telecom were to decide, on a commercial basis, not to serve a particular request; and
- that Pure Telecom already has the necessary IT infrastructure in place to enable the provisioning, servicing, and billing of voice only connections and voice communications services end-users and currently actively commercially serving these retail end-users and has no plans to retire the product or the billing system.

282 ComReg recognises that Pure Telecom is dependent on underlying wholesale service providers to be able to continue to serve existing end-users, any potential new (in situ/non-in-situ) customers. Accordingly, Pure Telecom has the network reach and capability of underlying wholesale service providers to serve new end-users whose premises have a pre-existing in-situ connection.

283 In the event that Pure Telecom is no longer party to a contract enabling them to provide VFL services, their designation as USP would immediately cease and they would no longer be subject to the universal service obligations as set out in the draft Decision Instrument.

284 ComReg has carefully considered the capabilities and existing products of undertakings who may be in a position to provide a transitional voice only connection and voice communications services without having to engage in new network rollout or extension, during this transition period.

285 ComReg considered the capabilities and current product offerings of undertakings with mobile networks.

286 None of the mobile network providers, except eir, has an existing fixed voice only connection and voice communications service.

287 The mobile network providers have broadband offerings which are capable of supporting voice services. However, these services are not currently restricted to (i) voice only services and (ii) access at a fixed location. For the mobile network providers to provide a standalone fixed voice communications service would require product development.

288 ComReg is also cognisant that the volume of new (non-in-situ) voice only connections and voice communications services is likely to be extremely small.

- 289 Accordingly, ComReg considers that it would be disproportionate to require one or more of the mobile network providers to develop such a product, where there is an existing product in the market which has the capability to meet the majority of new voice only (non-in-situ) connections that may arise which has no definitive product retirement date (i.e., FCS).
- 290 ComReg notes:
- eir's responses<sup>87</sup> in respect of (i) its current retail providing, and billing capability post 30 June 2023; and (ii) new voice only connections and voice communications customers;
  - that any universal service obligation to serve such end-users will only crystallise where Pure Telecom were to decide, on a commercial basis, not to serve a particular request; and
  - that Pure Telecom already has the necessary IT infrastructure in place to enable the provisioning, servicing, and billing of voice only connections and voice communications services end-users and currently actively commercially serving these retail end-users and has no plans to retire the product or the billing system.
- 291 ComReg recognises that Pure Telecom is dependent on underlying wholesale service providers to be able to continue to serve any potential new (non-in-situ) customers. Accordingly, Pure Telecom has the network reach and capability of underlying wholesale service providers to serve end-users using a non-in-situ connection.
- 292 In the event that Pure Telecom is no longer party to a contract enabling them to provide VFL services, their designation as USP will immediately cease and they will no longer be subject to the universal service obligations as set out in the draft Decision Instrument.
- 293 Equally, all undertakings (including eir) have the capability if they so choose to launch commercial wholesale and or retail broadband product(s) that are limited to supporting voice only connections and voice communications services.
- 294 Accordingly, ComReg is of the preliminary view that during this transition period, the least market distortive and most cost-effective manner to address those new (non-in-situ) end-user reasonable access requests is to designate Pure Telecom as the USP for new voice only (non-in-situ) connections and voice communications services.

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<sup>87</sup> Paragraph 30 of eir's response to Consultation 23/02, and eir's 13D response dated 02 December 2022.

- 295 ComReg notes the following statements by fibre network providers:
- eir states that its fibre network rollout will complete by the end of 2026; and
  - NBI states that the deployment of the NBP network, is scheduled to complete in late 2026 / early 2027.
- 296 Accordingly, based on the aforementioned, it appears that by the end of 2026/early 2027 all end-users should either be served by broadband (either commercially or via the NBP), where end-users select a bundle and/or service providers offer wholesale and or retail broadband products that are limited to supporting VFL services.
- 297 ComReg has relied upon information received in response to ComReg Information Requirements from both Pure Telecom and eir, which indicates that Pure Telecom will be able to continue to meet all reasonable requests for accessing voice only connections and voice communications services post 28 December 2023 on a commercial basis
- 298 Accordingly, ComReg is now of the preliminary view that the maximum period of the proposed designation should be until 30 June 2027. ComReg proposes to review any designation, 6 months after the Minister has defined adequate broadband, and to keep under review any designation in light of changes in the market. For the avoidance of doubt, were Pure to exit the market for VFL services this would likely trigger a review of the USO designation.
- 299 ComReg notes that end-users who may make reasonable requests for VFL services are dispersed throughout the State. Existing VFL services end-users who will be served by eir as USP are dispersed throughout the State.
- 300 Accordingly, ComReg remains of the preliminary view that any designations must cover the whole of the State. 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, may do so.
- 301 For the reasons set out above ComReg has formed the following preliminary views:
- eir will be designated to meet all reasonable requests by Existing End-Users for accessing VFL Services over Existing Connections.
  - Pure Telecom will be designated to meet:
    - a) all reasonable requests by New End-Users for accessing VFL Services over New Connections; and

**b) all reasonable requests by New End-Users for accessing VFL Services over Existing Connections.**

- The USPs are designated until 30 June 2027, subject to the following qualification:
  - In the event that Pure Telecom is no longer party to a contract enabling it to provide VFL services, its designation as USP will immediately cease and it will no longer be subject to the universal service obligations as set out in this draft Decision Instrument; and
- The geographic scope of the designations should be the State.

302 ComReg is of the preliminary view that the following is the most appropriate approach for reasonable requests for access over Existing Connections:

303 A request by a Requester for access to a VFL Service over an Existing Connection is a reasonable request and the USP shall continue to satisfy requests for such access where:

- there is no Equivalent Service available; or
- 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).

304 In circumstances where a Requester has indicated that they wish to withdraw their request to access a VFL Service over an Existing Connection in order to move to an Equivalent Service, that request remains reasonable and the USP is obliged, where technically feasible, to continue to satisfy that request for access, until the Requester is availing of the Equivalent Service.

305 ComReg's preliminary view is that eir as USP will be obliged to contact each of its existing VFL end-users three times (once every four months) within the first 12 months of the designation, and to ask whether these end-users wish to continue to avail of a VFL service. This contact must be in a Durable Medium. Where, following these three contacts, an existing end-user does not respond, eir may then assume that this end-user is a commercial VFL services end-user. This approach will ensure that within 12 months of designation, eir, will have explicitly identified who are truly USO end-users within its total group of existing voice only connection and voice communications services customers.

306 ComReg is of the preliminary view that that the cost of connection threshold should be removed for reasonable requests for access over existing connections, as these connections are already in place.

- 307 The USP will be obliged to maintain records of all contacts made and report to ComReg on a /quarterly basis.
- 308 ComReg is of the preliminary view that this approach strikes the right balance as the USP will not be required to continue to serve existing voice only connections and voice communications services customers who may be staying purely due to inertia, however the rights of [existing] end-users to request that the connection be limited to support voice communications services will be protected.
- 309 ComReg is of the preliminary view that the following is the most appropriate approach for reasonable requests for new voice only connections where the connection is an In-Situ Connection:
- 310 A request by a Requester for access to a VFL Service over an In-Situ Connection is a reasonable request, and Pure Telecom must satisfy it, where:
- there is no Equivalent Service available; or
  - the Requester has indicated to Pure Telecom in writing that they wish to avail of a VFL Service (even if there is an Equivalent Service available).
- 311 Pure Telecom shall maintain records of all requests for access to a VFL Service over an In-Situ Connection, in the same manner as eir is required to so, for its existing voice only connections and voice communications end-users;
- 312 Pure Telecom shall be obliged to notify ComReg six months in advance of: (i) any decision by Pure Telecom to exit the voice only connection and voice communications services market; or the expiry of a commercial contract to continue to provide the underlying wholesale component products required to deliver voice only connections and voice communications services.
- 313 ComReg is of the preliminary view that the following is the most appropriate approach for reasonable requests for a new voice only (non-in-situ) connection:
- 314 A request by a Requester for access to a VFL Service over a New Connection is a reasonable request, and Pure Telecom must satisfy it, where one of the following criteria is satisfied:
- there is no Equivalent Service available; or
  - the Requester has indicated to Pure Telecom that they wish to avail of a VFL Service (even if there is an Equivalent Service available).
- 315 A request for a New Connection is not a reasonable request if Pure Telecom estimates reasonably that the cost of satisfying such request will exceed €7,000 (excluding V.A.T.).



- 316 Accordingly, while universal service is technology neutral, ComReg anticipates that Pure Telecom (using the services of its wholesale providers) will use FCS or FWA technology to connect any New Connections, as neither of these technologies require the rollout of either copper or fibre network.
- 317 Open eir has an existing FCS service and ComReg understand that eir plan to launch a FWA product in the future. No other undertaking currently has an existing FCS type service available.
- 318 Equally, this does not preclude the rollout of network infrastructure where it is the choice of the relevant undertaking (as universal service is technology neutral), where is it provided in a cost-effective manner.
- 319 ComReg is of the view that this is the most appropriate approach and least market distortive approach. It is efficient, objective, transparent and non-discriminatory.

Question 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.

## 8 Draft Decision Instrument

### 1. STATUTORY FUNCTIONS AND POWERS

- 1.1. This Decision and Decision Instrument is hereby made by the Commission for Communications Regulation (“ComReg”) for the purposes of designating undertakings as having universal service obligations in accordance with Regulation 72(3) of the European Union (Electronic Communications Code) Regulations 2022 (“S.I. 444 of 2022”) and specifying requirements in accordance with Regulation 70(3) of S.I. 444 of 2022.
- 1.2. This Decision and Decision Instrument is made:
  - i. Pursuant to and having regard to the tasks, functions, and objectives of ComReg set out in sections 10 and 12 of the Communications Regulation Act 2002, as amended (“the Act”) and Regulations 4 and 5 of S.I. 444 of 2022;
  - ii. Pursuant to and having regard to the functions and powers conferred upon ComReg by Regulations 70 and 72 of S.I. 444 of 2022;
  - iii. Having regard to the functions and powers conferred upon ComReg by Regulations 71, 74, 75, 76 and 77 of S.I. 444 of 2022;
  - iv. Pursuant to and having regard to Directive 2018/1972 of the European Parliament and of the Council of 11 December 2018<sup>88</sup> establishing the European Electronic Communications Code (Recast);
  - v. Having, pursuant to section 13 of the Act, complied with the Ministerial Policy Directions where applicable;
  - vi. Having consulted pursuant to Regulation 101 of S.I. 444 of 2022;
  - vii. Having had regard to the submissions made by interested parties in response to ComReg Document No 23/02 and ComReg [INSERT REFERENCE]; and;
  - viii. Having had regard to the analysis and reasoning set out in ComReg Document No. 23/02 and 23/55, and Decision **XX/XX** (which shall, where the context admits or requires, be construed together with this Decision Instrument).

### 2. DEFINITIONS AND INTERPRETATION

- 2.1. In this Decision Instrument;
  - i. terms used are as defined in S.I. 444 of 2022 unless the context otherwise admits or requires;

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<sup>88</sup> OJ No. L 321, 17.12.2018, p. 36

- ii. references to European legislation, primary legislation or secondary legislation shall be construed as references to that legislation as amended from time to time;
- iii. words in the singular form shall be construed to include the plural and vice versa, unless the context otherwise admits or requires;
- iv. a reference to a section, clause, or schedule, is a reference to a section, clause, or schedule of this Decision Instrument unless the context otherwise admits or requires; and
- v. examples shall not be construed to limit, expressly or by implication, the matters they illustrate.

2.2. In this Decision Instrument;

**“Bundle”** means a fixed voice service and broadband service sold together as a package;

**“Connection”** means a connection at a Fixed Location to the electronic communications network at a primary location or residence, which includes a connection by fixed cellular solution;

**“Decision Instrument”** means this decision instrument;

**“Durable Medium”** has the same meaning as it has in the Consumer Rights Act 2022;

**“Effective Date”** means the date specified in Section 12 of this Decision Instrument;

**“eir”** means Eircom Limited and its subsidiaries and any related companies, and any undertaking which it owns or controls, and any undertaking which owns or controls Eircom Limited and its successors and assigns. For the purposes of this Decision Instrument the terms “subsidiary” and “related company” shall have the meanings ascribed to them by the Companies Act 2014;

**“Equivalent Service”** means a voice communications service at a fixed location (whether standalone or in a Bundle) which is equivalent to that prevailing for the VFL Service provided by the USP, with respect to quality of service, Minimum Indoor Availability, and affordability;

**“Existing Connection”** means any Connection currently in place and over which a voice communications service is currently being provided;

**“Existing End-Users”** means those end-users [listed at Annex 1] who are being provided with a VFL Service by eir and who were identified by eir to ComReg on [X Date ], including end-users served by eir commercially and end-users served by eir pursuant to its universal service obligation.

**“Fixed Location”** means the interior of the Requester’s Premises, at a network termination unit that is used to connect customer premises equipment (CPE) at the Requester’s Premises (but without additional wiring) to the public electronic communications network;

**“In-Situ Connection”** means any Connection currently in place but over which a voice communications service at a fixed location is not currently being provided;

**“Minimum Indoor Availability”** means availability to the Requester throughout the Requester’s Premises of a service that is at least functionally and technically equivalent to the VFL provided by the USP at the Requester’s Premises;

**“Minister”** means the Minister for the Environment, Climate and Communications;

**“Ministerial Policy Directions”** means the policy directions made by Dermot Ahern TD, then Minister for Communications, Marine and Natural Resources, pursuant to Section 13 of the Communications Regulation Act 2002 (as amended), dated 21 February 2003 and 26 March 2004;

**“New Connection”** means a Connection that is not an Existing Connection (which includes, but is not limited to, In-Situ Connections);

**“New End-Users”** means those end-users who request access to VFL Services but who are not Existing End-Users;

**“Pure Telecom”** means Pure Telecom Limited and its subsidiaries and any related companies, and any undertaking which it owns or controls, and any undertaking which owns or controls Pure Telecom Limited and its successors and assigns. For the purposes of this Decision Instrument the terms “subsidiary” and “related company” shall have the meanings ascribed to them by the Companies Act 2014

**“Requester”** means an end-user (including consumer, microenterprise, small enterprise, medium-sized enterprise, or not-for-profit organisation) who is requesting access to VFL Services over an Existing Connection or who is requesting connection to VFL Services;

**“Requester’s Premises”** means the Requester’s primary location or residence;

**“USP”** means an undertaking designated by ComReg under Regulation 72(3) of S.I. 444 of 2022 and this Decision Instrument. The USPs for the purposes of this Decision Instrument and S.I. 444 of 2022 are specified in Section 4; and

**“VFL Service”** or “Voice at a Fixed Location Service” means a voice communications service at a fixed location (where the underlying connection can be limited on request to a voice only connection).

### **3. APPLICATION AND SCOPE**

3.1. This Decision Instrument designates the USPs specified in Section 4 from the Effective Date.

3.2. This Decision Instrument is legally binding upon and legally enforceable against the USPs from the Effective Date.

### **4. DESIGNATION OF THE USPS**

4.1. Having taken into account the matters outlined in **[Insert reference to response to further consultation]**, ComReg established that the availability at a fixed location

of voice communications services cannot be ensured under normal commercial circumstances in the State.

- 4.2. The Minister has communicated to ComReg that he is of the opinion that other potential public policy tools cannot ensure access to voice communications services in the State
- 4.3. Therefore, under paragraph 72(3) of S.I. 444 of 2022 ComReg designates as follows:
- i. eir to meet all reasonable requests by Existing End-Users for accessing VFL Services over Existing Connections.
  - ii. Pure Telecom to meet:
    - c) all reasonable requests by New End-Users for accessing VFL Services over New Connections; and
    - d) all reasonable requests by New End-Users for accessing VFL Services over Existing Connections.

## **5. THE PERIOD AND GEOGRAPHIC SCOPE OF DESIGNATION**

- 5.1. The USPs are designated until 30 June 2027, subject to the following qualification:
- i. In the event that Pure Telecom is no longer party to a contract enabling it to provide VFL Services, its designation as USP will immediately cease and it will no longer be subject to the universal service obligations as set out in this Decision and Decision Instrument.
- 5.2. The geographic scope of the designations is the State.

## **6. REASONABLENESS OF REQUESTS FOR ACCESS OVER EXISTING CONNECTIONS**

- 6.1. Pursuant to its power under Regulation 70(3) of S.I. 444 of 2022 and having received the consent of the Minister, ComReg hereby specifies the following requirements to be complied with by the USPs in relation to the reasonableness of requests for access and connection to VFL Services over Existing Connections.
- 6.2. eir shall within 12 months of the Effective Date of this Decision Instrument contact individually every Existing End-User three times (once every four months) and in this contact ask whether those end-users wish to continue to avail of a VFL Service. The content and method of this contact must be approved in advance by ComReg. This contact shall be in a Durable Medium. Where, three months

following these three contacts, an Existing End-User does not respond, this End-User's request for access is no longer a reasonable request and this End-User is a commercial VFL Services End-User. Where, following the contact, an Existing End-User does respond, eir shall not be required to subsequently contact that Existing End-User in this regard.

- 6.3. A request by a Requester for access to a VFL Service over an Existing Connection is a reasonable request and the USP shall continue to satisfy requests for such access where:
- i. there is no Equivalent Service available; or
  - ii. 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).
- 6.4. In circumstances where a Requester has indicated that they wish to withdraw their request to access a VFL Service over an Existing Connection in order to move to an Equivalent Service, that request remains reasonable and the USP is obliged, where technically feasible, to continue to satisfy that request for access, until the Requester is availing of the Equivalent Service.
- 6.5. The USPs shall maintain records of all contacts made pursuant to section 6.2 and requests for access to a VFL Service over an Existing Connection and comply with the obligations set out in section 9 of this Decision Instrument.
- 6.6. This USPs shall notify ComReg immediately if they are considering exiting the fixed voice market for whatever reason. Any notification shall take place at least 6 months prior to exit.

## **7. REASONABLENESS OF REQUESTS FOR IN-SITU CONNECTIONS**

- 7.1. Pursuant to its power under Regulation 70(3) of S.I. 444 of 2022 and having received the consent of the Minister, ComReg hereby specifies the following requirements to be complied with by Pure Telecom in relation to the reasonableness of requests for connection at a fixed location to a voice communications service.
- 7.2. A request by a Requester for access to a VFL Service over an In-Situ Connection is a reasonable request, and Pure Telecom must satisfy it, where:
- there is no Equivalent Service available; or

- the Requester has indicated to Pure Telecom that they wish to avail of a VFL Service (even if there is an Equivalent Service available).

7.3. Pure Telecom shall maintain records of all requests for access to a VFL Service over an In-Situ Connection and comply with the obligations set out in section 9 of this Decision Instrument.

## **8. REASONABLENESS OF REQUESTS FOR NEW CONNECTIONS**

8.1. Pursuant to its power under Regulation 70(3) of S.I. 444 of 2022 and having received the consent of the Minister, ComReg hereby specifies the following requirements to be complied with by Pure Telecom in relation to the reasonableness of requests for a new connection at a fixed location to a voice communications service.

8.2. A request by a Requester for access to a VFL Service over a New Connection is a reasonable request, and Pure Telecom must satisfy it, where one of the following criteria is satisfied:

- there is no Equivalent Service available; or
- the Requester has indicated to Pure Telecom that they wish to avail of a VFL Service (even if there is an Equivalent Service available).

8.3. A request for a New Connection is not a reasonable request if Pure Telecom estimates reasonably that the cost of satisfying such request will exceed €7,000 (excluding V.A.T.).

8.4. Pure Telecom shall maintain records of all requests for access to a VFL Service over a New Connection and comply with the obligations set out in section 9 of this Decision Instrument.

## **9. RECORDS**

9.1. The records referenced at Sections 6.5, 7.3 and 8.4 must contain the following information:

- i. the name of the Requester;
- ii. the address and Eircode of the Requester;
- iii. the date of the Requester's request;
- iv. what the Requester requested (including a copy in written form or a recording of the phone call requesting); and

- v. the USPs reasons as to how it has complied with Sections 6, 7 or 8, as appropriate (including number of Connection requests received, number of Connection requests fulfilled, description of each individual Connection request fulfilled due to universal service obligations, and associated reasons (i.e. which would not have been fulfilled commercially), the underlying technology used to meet a New Connection and an explanation as to why this technology is the most cost-effective technology). The USPs reasons as to whether (and how) using mobile technology for the VFL Service ensures Minimum Indoor Availability (as appropriate).

9.2. The records referenced at Sections 7.5, 8.3 and 9.4 must be in a written form (or if appropriate a recording of a phone call) and kept for 2 years from the date that the request was first made, or the related documentary evidence was received.

9.3. The USPs shall on a quarterly basis, within 2 months of the end of the previous quarter, provide ComReg with a report in written form summarising the records referenced at Section 9 of this Decision Instrument together with associated records.

9.4. For the avoidance of doubt, the first quarter referred to at 9.3 is a calendar quarter, or part thereof, from the effective date of this Decision Instrument.

## **10. STATUTORY POWERS NOT AFFECTED**

10.1. Nothing in this Decision Instrument shall operate to limit ComReg in the exercise and performance of its statutory powers or the duties conferred on it under any primary or secondary legislation in force prior to or after the Effective Date of this Decision Instrument.

## **11. MAINTENANCE OF OBLIGATIONS AND SEVERANCE**

11.1. If any Section(s), Clause(s) or provision(s), or portion(s) contained in this Decision Instrument is found to be invalid or prohibited by the Constitution, by any other law or judged by a court to be unlawful, void or unenforceable, then that Section(s), Clause(s) or provision(s), or portion(s) thereof shall, to the extent required, be severed from this Decision Instrument, and rendered ineffective, but as far as possible without modifying the remaining Section(s), Clause(s) or provision(s), or portion(s) thereof and shall not in any way affect the validity or enforcement of this Decision Instrument or other Decision Instruments.

## **12. EFFECTIVE DATE AND DURATION**



- 12.1. This Decision and Decision Instrument is effective from [xx/xx/xx] and shall remain in full force and effect until 30 June 2027, unless amended by ComReg.

**ROBERT MOURIK**  
**CHAIRPERSON**  
**THE COMMISSION FOR COMMUNICATIONS REGULATION**

## **ANNEX 1**

List of Existing End-Users who are being provided with a VFL Service by eir and who were identified by eir to ComReg on [X Date], including end-users served by eir commercially and end-users served by eir pursuant to its universal service obligation.

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

## 9 Responses to Consultation 23/02

- 320 In Consultation 23/02 ComReg set out its preliminary views on the need for a VFL USO, post 30 June 2023 and asked for respondents' views in this respect. The responses to Consultation 23/02 indicated a range of diverging views on these matters.
- 321 This section sets out the relevant ComReg questions, respondents views and ComReg's associated responses. Where ComReg has revised its preliminary views earlier in this Further Consultation, ComReg will refer out to the section of this document.
- 322 The purpose of public consultations is to allow ComReg to consider the views of interested parties in the context of reaching a decision on particular matters. All views will be considered, and account taken of the merits of views expressed. It should, however, be noted that the process is not equivalent to a voting exercise on proposals and ComReg will exercise its judgement having considered the merits of the views expressed. It is not practical for ComReg to provide commentary on each individual submission, however non-confidential versions of each submission will be published<sup>89</sup>.

### 9.1 Consultation 23/02 – question 1

- 323 At section 3.1 of Consultation 23/02 ComReg provided a supply-side market summary and outlined in detail the relevant factors in relation to supply side trends which it had considered in the context of the proposed VFL USO. ComReg proceeded to ask the following question: "In your opinion are there other relevant factors in relation to supply side trends which ComReg should consider in the context of a VFL services USO? Please give reasons to support your view."

#### 9.1.1 Respondents' views

- 324 Responses to this question were received from ALTO, eir, NBI and Virgin Media.
- 325 ALTO states that: "One very significant issue to new entrant and alternative operators is the lack of a variety of wholesale VoIP product offerings which might could [sic] accommodate the range of possible market entry strategies – this issue has been highlighted to ComReg previously by ALTO. Ireland has remained at the rear of developments in this area for some time and ComReg should seek to remediate the position possibly within wholesale markets."

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<sup>89</sup> ComReg Consultation Procedures Document 11/34

- 326 ALTO also states that: “ComReg should not overestimate the position of Virgin Media in the context of the supply side trends, a cautious approach to announcements and DOCSIS network for voice should be adopted and maintained” and adds that: “...At a time of great economic uncertainty, caused by a build-up of factors from Brexit, Covid-19, the war in Ukraine and now the cost of money with inflation and increased interest rates, there is uncertainty as to how much companies will be able to deliver on their intended investments.”
- 327 ALTO concludes by agreeing with ComReg’s conclusion at paragraph 83.
- 328 eir states that: “ComReg has failed to acknowledge the important role of mobile services both on the supply and demand sides, repeating the mistakes of the previous USO review. This is all the more surprising in light of the focus of attention on mobile telephony services (MTS) by the European Commission in its Withdrawal Decision requiring ComReg to withdraw the 2021 Draft Decision on the Market Review of Retail Access to the Public Telephone Network at a Fixed Location.”
- 329 eir states that: “The market is already delivering social inclusion through both fixed and mobile voice services however Mobile services are the most affordable”, and that: “Mobile networks already provide connections at locations that cannot reasonably be reached by fixed networks.”
- 330 eir contends that “ComReg has chosen to set aside the significance of mobile telephony despite clear evidence of the substitutability of mobile for fixed voice service and the fact that eir’s mobile network has been the obligation to take all reasonable measures to ensure that all users have access to a universal service fulfilling USO requests for connections at locations that are not service by any fixed network”, and further states that: “FCS has been rendered obsolete by developments in the market for mobile repeaters and ComReg own initiative in the licensing of mobile phone repeaters to enhance indoor coverage”, and that: “ComReg has repeated the same mistakes in this USO review as it adopted in its initial vetoed review of the RFTS and FACO markets.”
- 331 eir suggests that there is international precedent for, and it would be “entirely reasonable” for ComReg to reach the conclusion that, a VFL USO is not required, and asserts that “much of the evidence presented in ComReg’s consultation document and supplemented in this response provides overwhelming support for such a conclusion”.
- 332 eir states that if a USO designation is deemed necessary: “arguably ComReg should consider one or more vertically integrated mobile providers that also host at least one MVNO as the optimal choice as this would minimise market distortion by enabling the access seeker to choose their preferred retail provider”.

- 333 NBI states that: “the market presence of 4G and 5G mobile networks should be..... included in any consideration of relevant supply-side trends in the context of the requirement for a VFL services USO. Likewise, the increasing popularity and usage of OTT services, which include an element of voice over broadband, mean that such services are also relevant and worthy of consideration from a supply-side and/or demand side point of view”.
- 334 NBI concludes by stating that: “In considering the future need for a VFL services USO, it would be advisable to factor in the significant supply-side and/ or demand side impact of these OTT services.”
- 335 Virgin Media states that: “ComReg’s conclusion at paragraph 83 is correct that these networks [Virgin Media and SIRO] cannot yet be relied on to ensure the full availability of VFL services nationally.”

### 9.1.2 ComReg’s response – question 1

- 336 Section 3 of this document addresses the following matters which were raised by respondents which are additional to those considered in Consultation 23/02, in particular;
- Importance of mobile services;
  - Over-the-top (“OTT”) services;
  - Fibre deployments (a market in transition);
  - Economic uncertainty; and
  - Variety of wholesale VoIP product offerings.
- 337 Section 4 addresses eir’s comments in relation to the FACO Decision and its arguments in relation to mobile providing “social inclusion”.

## 9.2 Consultation 23/02 – question 2

- 338 At section 3.2 of Consultation 23/02 ComReg provided a demand-side market summary and outlined in detail the relevant factors in relation to supply side trends which it had considered in the context of the proposed VFL USO. ComReg then asked question 2, “Do you agree or disagree with ComReg’s review of the relevant demand trends? Please give reasons to support your view”, the responses to which are considered below.

## 9.2.1 Respondents' views

- 339 Responses to this question were received from ALTO, eir, NBI and Virgin Media.
- 340 ALTO states that: "ALTO agrees with the ComReg review of the relevant demand trends. ALTO caveats its agreement by highlighting the limited range of wholesale VoIP offerings in the market. Assuming that VoIP or SIP services are more widely available than they are, can be an issue in the presentation of ComReg's analysis."
- 341 eir states that: "... the exercise of a right to VFL does not go hand in hand with the retention of a fixed or indeed a fixed PSTN connection. ComReg should not confuse inertia with the absence of an alternative VFL solution given mobile call volumes and near ubiquitous mobile phone ownership", and that: "ComReg has not given any consideration to the fact that end-users might be migrated to modern alternatives. Instead ComReg is attempting to limit the options under consideration to re-impose the former USO."
- 342 eir states that: "ComReg fails to take account of the important fact that broadband has become the anchor product in fixed bundles and voice is typically bundled by default or offered at little extra cost and this results in a significant portion of voice connections having little or no usage. Therefore, it is misleading for ComReg to make sweeping statements about fixed voice service being "required", and that: "ComReg's analysis of the demand for VFL is also over simplified as it focuses solely on the demand for standalone VFL and bundles. ComReg does not consider the fact that it does not have visibility of the number of households served by an unbundled VFL and unbundled mobile."
- 343 NBI expresses the view that "ComReg's analysis of the main demand trends make sense and are supported by the data it has presented." In addition, NBI states that: "...NBI welcomes ComReg's recognition in the consultation that, for the purposes of assessing if an end-user has access to an equivalent service, a bundled offering that includes a managed VoIP service constitutes an equivalent service. This means that, as fibre deployment advances, both within the NBP IA and commercially elsewhere, the requirement for a VFL services USO provided on a standalone basis, either over the legacy network or by other means (such as a fixed cellular solution), should be lessened."
- 344 Virgin Media states that: "Virgin Media agrees with ComReg's review of the relevant demand trends. It is however always critical to look at what the market failure is and to see if it could be addressed by other means."

## 9.2.2 ComReg's response – question 2

- 345 There is general agreement with ComReg's analysis of the main demand trends.

346 Section 3 of this document addresses matters which were raised by respondents which are additional to those considered in Consultation 23/02, in particular;

- Importance of mobile services;
- Over-the-top (“OTT”) services;
- Fibre deployments (a market in transition);
- Economic uncertainty; and
- Variety of wholesale VoIP product offerings.

### 9.3 Consultation 23/02 – question 3

347 Following section 3.3 of Consultation 23/02 ComReg then asked question 3, “in your opinion are there other relevant factors in relation to demand trends which ComReg should consider? Please give reasons to support your view”, the responses to which are considered below.

#### 9.3.1 Respondents’ views – question 3

348 Responses to this question were received from ALTO, eir, NBI and Virgin Media.

349 ALTO states that: “ALTO submits that there appears to be a limited range of wholesale VoIP offerings in fibre only areas. Therefore, a product with specific profiles and pricing that fulfil the requirements of USO but don’t necessarily require a broadband service to be the anchor service should be considered fully by ComReg. This level of detailed analysis is not clear from the demand trends as presented in the consultation paper.”

350 eir states that: “ComReg must give due consideration to the importance of mobile services. ComReg has chosen to set aside the significance of mobile telephony despite clear evidence of the substitutability of mobile for fixed voice service and the fact that eir’s mobile network (as the USPs network but not necessarily the only mobile networks available) has been the bearer for connections at locations that are not served by any fixed network”, and that: “The growth in mobile coverage and market penetration along with the decline in fixed voice only connections as evidence by ComReg in this consultation make an overwhelming case in favour of mobile ensuring the universal availability of VFL absent any USO. In the case of less remote locations and urban areas ComReg cannot discount the importance of bundles (including broadband bundles that incorporate a VFL element.”

351 eir states that: “ComReg also need to take account of the significance of Over-The-Top (OTT) services which are beginning to displace both fixed and mobile voice services. ComReg has demonstrated its awareness of this in its proposed strategy for 2023-2025 where ComReg observes “While ECS play a fundamental role, OTTs offer a range of services to consumers to enable them to communicate, work, learn and be entertained”, and that: “Some OTT providers offer fixed geographic phone numbers with prices starting from as little as €7.01 per month and with inclusive national, mobile, and international calls for just €15 per month. Therefore, the market delivers complementary access and OTT call offerings that can be combined into an affordable solution for VFL.”

352 NBI states that: “...three further factors are relevant from a demand perspective. These are as follows:

- Extensive full-fibre deployment is displacing legacy fixed networks;
- Withdrawal of copper-based legacy voice services is now approaching;
- Demand for OTT services is contributing to ongoing decline in fixed voice services”,

and that: “... ComReg’s view that a bundled offering which includes a managed VoIP service constitutes an equivalent service for USO purposes should mean that access requests are facilitated via fibre connections either commercially or on the NBP network. NBI considers this to be an appropriate, effective, and proportionate approach.”

353 NBI states that: “...it would make sense to give explicit recognition in its analysis to this important demand factor, which is indicative of the ongoing transformation of electronic communications services, with traditional voice telephony service provided over the legacy network now largely confined to the margins.”

354 Virgin Media states that: “... Virgin Media recognises the role of USO in supporting social inclusion and welcomes the focus on closing the gap between availability and take up of services to address a clear market failure The goal of USO under the EECC is to avoid the risk of social exclusion, which prevents citizens from full social and economic participation in society, through a lack of access to electronic communications services. This should be an important consideration for ComReg when reviewing demand trends.”

### 9.3.2 ComReg’s response – question 3

355 Section 3 of this document addresses matters which were raised by respondents which are additional to those considered in Consultation 23/02, in particular;

- Importance of mobile services;
- Over-the-top (“OTT”) services;
- Fibre deployments (a market in transition);
- Economic uncertainty; and
- Variety of wholesale VoIP product offerings.

## 9.4 Consultation 23/02 – question 4

356 At section 4 of Consultation 23/02 ComReg considered the need for a VFL USO and set out the basis for its preliminary view that there is a requirement to impose new specifications for reasonable access requests for existing end-users. ComReg then asked question 4 i.e. “do you agree or disagree with ComReg’s preliminary view that there is a requirement to impose new specifications for reasonable access requests for existing end-users? Please give reasons for your answer”, the responses to which are considered below.

### 9.4.1 Respondents’ views – question 4

357 All four respondents made submissions in respect of this question.

358 ALTO states that:” ALTO agrees with ComReg’s preliminary view that there is a requirement to amend the current and impose new reasonable access requests process. As stated previously, we do not believe that FCS is a viable alternative to copper. Yet this is a message that seems to be emerging again on the face of the consultation paper, albeit at relatively low levels at this time. A cautionary approach should be taken to more FCS connections on the public telephone network.”

359 eir states that: “ComReg’s proposal would add no value. ComReg proposes to introduce criteria for determining whether an existing connection continues to be in scope for USO, following the arrival or identification of an alternative at that location. This has been notably absent from the current designation. Under ComReg’s proposal an end-user would have to voluntarily switch to the alternative before the USP obligation would be lifted in respect of that end-user. This renders ComReg’s proposal ineffectual and meaningless. ComReg suggests in its RIA (paragraph 404), that this would minimise any cost associated with a VFL services USO. eir is at a loss as to how this would have any bearing on the cost of USO service provision. For the avoidance of doubt, eir has not suggested that it would withdraw service entirely in such circumstance in any case, even in the absence of a USO designation.”



360 NBI states that: “NBI recognises that ComReg has little choice, due to the expiry of the current USO in June this year, but to move ahead at this juncture with its consideration of the need for a VFL services USO. It follows that, if ComReg decides that a VFL services USO is required post-30th June 2023, it must impose specifications for reasonable access requests in the case of existing end-users”, and that: “NBI welcomes ComReg’s acceptance that, where commercial fibre deployment has taken place and where NBI has rolled out its fibre network within the NBP IA, the existence of such alternative infrastructure and the availability of bundled services that include a VoIP component are deemed to be sufficient in meeting reasonable requests for access for existing end-users currently availing of fixed voice services over the copper network. As ComReg notes, this position is consistent with the framework it has set out in relation to the transition from legacy to modern infrastructure.”

361 Virgin Media states that: “Yes [it agreed with ComReg’s preliminary view]”, adding that: “... a USO should only apply where there is a clear market failure.”

#### **9.4.2 ComReg response – question 4**

362 Three out of the four respondents agree with ComReg’s proposed approach.

363 Having considered the responses to Consultation, and additional information received following Information Requirements, ComReg has now revised its’ preliminary views in relation to this aspect. Responses to question 4 were taken into account in particular in the context of sections 4 and 6 of this document.

### **9.5 Consultation 23/02 – question 5**

364 In section 4 of Consultation 23/02 ComReg set out the basis for its preliminary view that there is a requirement to re-impose the threshold level applicable to new reasonable access requests, as set out in D09/21. ComReg then asked question 5, “Do you agree or disagree with ComReg’s preliminary view that there is a requirement to re-impose threshold level applicable to new reasonable access requests, as set out in D09/21? Please give reasons for your answer”, the responses to which are considered below.

#### **9.5.1 Respondents’ views – question 5**

365 Three respondents (ALTO, eir and NBI) made submissions in respect of this question.

366 ALTO states that: “ALTO agrees with ComReg’s preliminary view that there is a requirement to re-impose threshold levels applicable to new reasonable access requests based on very clearly presented market evidence. The market has not moved on quickly enough to remove or jettison existing regulations.”

367 eir states that: "This is a moot question as the proposed USO has not been objectively justified. Even if a USO were justified, the proposed threshold is no longer relevant to any potential USP's costs whether that be eir or another undertaking or combination of undertakings."

368 NBI states that: NBI states that: "ComReg's analysis in the consultation document confirms that the total number of new standalone fixed voice connection requests received by Eircom in recent years is very low, which confirms the declining demand for such connections. In this regard, the framework outlined by ComReg for considering new access requests – which is set out in Figure 16 – is sensible and, as ComReg notes, the procedure appears to be working well."

369 NBI also states: "As ComReg further notes, the threshold level it proposes to reimpose in relation to the cost of putting in place new connections is only an issue for non-standard connections that require significant investment in infrastructure (i.e., poles and duct) that has long asset lives and which may, in time, be used to deploy fibre connections. As such, NBI agrees with ComReg's preliminary view that this obligation should be reimposed. That said, NBI has no views to offer on the appropriate level at which this threshold should be set."

370 Virgin Media declined to respond to this question.

## 9.5.2 ComReg response – question 5

371 Two out of the three respondents agree with ComReg's preliminary view.

372 Having considered the responses to Consultation, and additional information received following Information Requirements, ComReg has now revised its preliminary views. Responses to question 5 were taken into account in particular in the context of sections 4 and 6 of this document.

## 9.6 Consultation 23/02 – question 6

373 In section 4.3.1 of Consultation 23/02 ComReg set out its proposed approach to control of expenditure measures. ComReg then asked the following question: "do you agree or disagree with ComReg's approach to control of expenditure measures? Please provide reasons for your answers."

### 9.6.1 Respondents' views – question 6

374 ALTO states that: "ALTO agrees with ComReg's preliminary views on control of expenditure measures. ALTO does so on the basis that this matter is likely to require a need for review in the coming years. However, given the risks associated with social exclusion and low implementation costs, ALTO agrees with the position suggested by ComReg currently."

- 375 eir states that: “While eir agrees with ComReg’s conclusion that control of expenditure measures are already being delivered by the market, we disagree with ComReg’s analysis as it focuses solely on the current USP. This question is being asked in respect of the construction of any USO and before ComReg addresses the question as to whether a USO is necessary in the first instance. Therefore, it is entirely inappropriate and insufficient to consider these measures solely in the context of the current USPs offerings.”
- 376 NBI stated that: “To the extent that ComReg maintains there is a continued need for a VFL services USO, its approach to control of expenditure measures appear sensible and proportionate.”
- 377 Virgin Media states that: “ComReg’s drafting at paragraphs 313 and 314 is unclear. Are paragraphs 313 and 314 directed at all undertakings or are they directed at the designated universal service provider? Greater clarity is required here. If the purpose is to put forward ComReg’s position in respect of all undertakings this should be made clearer.”

## 9.6.2 ComReg response – question 6

- 378 ComReg notes that two out of four respondents generally agree with its position.
- 379 ComReg does not currently propose to take any action (i.e., specify requirements or waive requirements) pursuant to Regulation 74 of S.I. 444 of 2022 “Control of expenditure”. ComReg remains of the view that the appropriate approach is to keep the “Control of expenditure” obligations under review. Such obligations, will going forward, apply to those undertakings are designated as USP(s) following the Further Consultation. Regulation 74 of S.I.444 of 2022 places obligations on universal service providers and not all undertakings.

## 9.7 Consultation 23/02 – question 7

- 380 In section 4 of Consultation 23/02 ComReg set out its preliminary view on the need for a VFL services USO post 30 June 2023. ComReg then asked the following question: “do you agree or disagree with ComReg’s preliminary view that there is a continued need for a VFL services USO, post 30 June 2023?” Please provide reasons for your answers.

## 9.7.1 Respondents' views – question 7

- 381 ALTO states that: “ALTO agrees with ComReg’s preliminary view that there is a continued need for a VFL services USO, post 30 June 2023, as there is currently no other mechanism, programme, or scheme in place to ensure that the basic telephony at a fixed location. ComReg’s own evidence and clear reporting underpins this requirement. ALTO suggests that maintenance of the status quo ante is important given eircom’s clear plans to retire the copper network, as is set out in the Consultation paper and elsewhere.”
- 382 eir states that: “ComReg has failed to acknowledge the altered regulatory context or to consider the relevant issues in any meaningful way and has not presented any quantifiable evidence in support of its position. It has not demonstrated that there is a need to introduce a market intervention for voice only connections and voice communications services at a fixed location (‘VFL serves’) separate to and in advance of considering the need for adequate broadband connections at a fixed location (‘ABB’). Given that the latter is the most likely bearer for VFL, this review is rendered both incomplete and premature. There is no justification for a VFL USO as the market is delivering social inclusion through mobile and other voice services for the reasons set out throughout this response to consultation.”
- 383 NBI states that: “the EECC provides for the maintenance of a USO for voice-only connections. In light of this, it is prudent for ComReg to plan for a VFL services USO post-30th June 2023, even if, in practice, it is likely that the demand for voice-only services will continue to decline and that end-users’ requirements will be more than adequately accommodated by the availability of managed and OTT voice services provided over high-speed broadband, as well as via mobile connections. In this regard, NBI welcomes the fact that ComReg recognises that a voice service provided over alternative infrastructure such as NBI’s NBP network would meet the requirements for the provision of a voice service from a USO perspective if a VoIP service forms part of a bundled offering. This will mean that, as fibre deployment advances, both commercially and as a result of the NBP, the need for a standalone voice service to be provided by the USP is likely to be short-term in nature and limited to premises not yet passed by a fibre service”.
- 384 NBI concludes that: “Once the deployment of fibre connectivity, both commercially and pursuant to the NBP, has been completed, the requirement for a VFL services USO should fall away. Following this, to the extent that any USO is needed, it should be confined to the provision of adequate broadband services.”
- 385 Virgin Media states that: “...we agree with ComReg’s statement at paragraph 322 “It is important to note that apart from the VFL services USO, there is currently no other mechanism, programme, or scheme in place to ensure that the basic telephony at a fixed location... is provided to everyone that requires it and who cannot obtain it under normal market conditions””.

## 9.7.2 ComReg response – question 7

386 ALTO, NBI and Virgin Media agree with ComReg’s preliminary view that there is a continued need for a VFL services USO, post 30 June 2023.

387 eir disagrees with ComReg’s preliminary view.

388 Having considered the responses to Consultation 23/02, and additional information received following information Requirements, ComReg has further set out its preliminary views at section 4 of this document.

## 9.8 Consultation 23/02 – question 8

389 ComReg in section 5 of Consultation 23/02 set out the basis for its invitation to undertakings to express an interest in being a USP for the provision of VFL services under the USO. ComReg then asked the following question: “do you wish to express an interest in being a USP for any future provision of voice only connections and voice communications services VFL under the USO? Please set out your reasons and any other information you deem relevant.”

### 9.8.1 Respondents’ views – question 8

390 ALTO states that: “As a representative organization this question is not relevant to ALTO. ALTO has advised its individual members that if they wish to express an interest they should directly respond to the Consultation.”

391 eir states that: “eir does not wish to express an interest in being a USP”, and goes on to criticise the way in which ComReg sought expressions of interest and ComReg’s procedures in general.

392 NBI states that: “In light of its clear contractual mandate under the NBP Project Agreement, NBI sees no role for itself as a potential USP for voice-only connections and voice communications services under the USO”.

393 Virgin Media stated that they had no interest in being a USP for any future provision of voice only connections and voice communications services VFL under the USO.

### 9.8.2 ComReg response – question 8

394 In question 8 ComReg sought expression of interest from interested parties in becoming the USP. No expressions of interest were received.

395 In response to question 8 eir made various complaints, including in relation to ComReg’s approach to seeking expressions of interest, ComReg does not accept that these complaints are valid.

## 9.9 Consultation 23/02 – question 9

396 ComReg in section 5 of Consultation 23/02 summarised the basis for its preliminary view that eir may be best placed to be the USP post 30 June 2023 and asked the following question; ComReg is of the preliminary view that, absent of: (i) receiving any expressions of interest, or (ii) the availability of an Alternative Infrastructure provider with an Equivalent Service, that is willing to serve end-users commercially; that the current USP, eir, may be best placed to be the USP for voice only connections and voice communications services post 30 June 2023. Please provide reasons for your answer.

### 9.9.1 Respondents' views – question 9

397 ALTO states that: “ALTO agrees with ComReg’s preliminary view that the current USP, eir, may be or, even is best placed to continue to be the USP for voice only connections and voice communications services post 30 June 2023. ALTO believes that in eircom’s unique position of having and maintain copper network, it is sensible for ComReg to re-designate the USP as it has done previously.”

398 eir states that: “Following this inadequate assessment of the availability of VFL and the potential need for a VFL USO and having merely paid lip service to the consideration of alternative USPs, ComReg proposes to adopt and impose upon eir the components of the former Access at a Fixed Location (AFL) USO, virtually unchanged. ComReg has ignored the fact that eir will not be providing new standalone VFL connections from the second half of 2023<sup>90</sup> due to systems changes. Furthermore, due to related changes to rationalise eir’s IT stack, USO reporting the will no longer be possible as the reporting systems will be replaced during this timeframe. In short, eir has never been less well placed to fulfil ComReg’s proposed USO. ComReg has identified that eir is one of two undertakings currently offering standalone retail fixed telephony service”.

399 eir adds that: “Therefore, should ComReg manage to objectively justify its proposals, which it has not and cannot, having dismissed out of hand the role of mobile already delivering universal VFL, there remains a retail provider that is positioned to fulfil standalone retail fixed telephony service delivery. eir is certainly not best placed to be the USP for voice only connections and voice communications services. We have provided strong evidence that indicates that mobile networks are best positioned to fulfil the need for VFL nationwide and as stated above, if the need for a USP is identified it might be best serviced by one or more vertically integrated network provider that host at least one MVNO, in the interest of minimising market distortion and providing choice to end-users exercising their USO VFL rights.”

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<sup>90</sup> As per eir’s response to ComReg’s November 2022 13D USO information requirement.

400 NBI states that: “To the extent that a VFL services USO is required post-30th June 2023, then, absent either expressions of interest or the availability of an alternative service, the current USP, Eircom, would appear to be best placed to take on this obligation. As already noted, such a requirement is likely to be short-term in nature and would no longer be needed once there is nationwide availability of fibre connectivity.”

401 Virgin Media states that: “Virgin Media agrees with ComReg’s assessment.”

## 9.9.2 ComReg response – question 9

402 In general, there was agreement amongst respondents with ComReg’s preliminary view that, absent of: (i) receiving any expressions of interest, or (ii) the availability of an Alternative Infrastructure provider with an Equivalent Service, that is willing to serve end-users commercially; that the current USP, eir, may be best placed to be the USP for voice only connections and voice communications services post 30 June 2023.

403 eir does not agree with ComReg’s preliminary view.

404 Having considered the responses to Consultation 23/02, and additional information received following Information Requirements, ComReg has further set out its revised preliminary views on designation at section 5 of this document.

## 9.10 Consultation 23/02 – question 10

405 At section 6.3 of Consultation 23/02 ComReg outlined the reasons for its preliminary view that any designations must cover the whole of the State. ComReg proceeded to ask the following question: “Do you agree or disagree with ComReg’s preliminary view that geographical scope of any proposed designation should be the whole of the State? Please set out reasons for your answer.”

### 9.10.1 Respondents’ views – question 10

406 ALTO states that: “ALTO agrees with ComReg’s preliminary view that geographical scope of any proposed designation should be the whole of the State. This is self-explanatory, and we note the complexities arising should partial designations be made or sought. That would not be an ideal situation for ComReg or industry to be placed in.”

407 eir states that: “eir does not agree. To the extent that an AFL USO can be justified (if at all) it should be targeted at any areas that may be identified in which a request for VFL cannot be delivered, having exhausted all reasonable options including the use of mobile repeaters.”

- 408 NBI stated that: “NBI understands and accepts ComReg’s rationale for proposing that the geographical scope of any proposed VFL service USO designation should be the whole of the State. As ComReg states, end-users who might want to make voice-only reasonable access requests are dispersed throughout the State and so a nationwide designation is required to ensure that any end-user requiring the protections of the USO is in a position to do so.”
- 409 Virgin Media stated that: “Virgin Media agrees with ComReg’s view that geographical scope of any proposed designation should be in respect of the whole of the State.”

### **9.10.2 ComReg response – question 10**

- 410 ALTO, NBI and Virgin Media agree with ComReg’s preliminary view that geographical scope of any proposed designation should be the whole of the State. NBI recognise that within the NBP intervention area the requirement for voice only communications services will decline or fall away upon the completion of the NBP rollout.
- 411 eir disagrees with ComReg’s preliminary view.
- 412 Having considered the responses to Consultation, and additional information received following Information Requirements, ComReg has set out its preliminary views on geographical scope of any proposed designation at section 5 of this document.

### **9.11 Consultation 23/02 – question 11**

- 413 At section 6.4 of Consultation 23/02 ComReg outlined the reasons for its preliminary view that a VFL USO should be imposed for a maximum of 5 years. ComReg proceeded to ask the following question: Do you agree or disagree with ComReg’s preliminary view that the designation period should be for a maximum period 5 years, unless otherwise amended?

#### **9.11.1 Respondents’ views – question 11**

- 414 ALTO states that: “ALTO agrees with ComReg’s preliminary view that the designation period should be for a period of 5 years unless otherwise amended. ALTO has previously suggested that any designation period should only commence after ComReg has fully deliberated about copper switch-off which we note remains in the ComReg work programme at this time. ALTO notes that the eir Whitepaper about copper switch-off, as previously published, presents only one view of potential conditions. ALTO has its own views on copper switch-off that has been communicated to ComReg under separate cover.”



- 415 eir states that it: "...does not agree that the designation period should be for a maximum period 5 years. If ComReg were able to objectively justify a VFL designation in the first instance, it should only be for a maximum period of 1 year (to 30 June 2024). This should allow more than adequate time for the Minister to conclude the definition of adequate broadband IAS including associated quality of service standards and for ComReg to consult on the need or otherwise for a USO under the new framework."
- 416 NBI states that: "NBI accepts ComReg's need, in the short-term, to put in place a VFL services USO and the proposed designation period of no longer than five years appears appropriate. As noted above however, in response to Q.10, NBI will have completed the deployment of the NBP network in the NBP IA within the proposed designation period and so, for premises in the IA, the designation will by then have become moot. NBI notes that it is ComReg's intention to commence a review of the proposed USO designation no later than six months after the Minister has concluded the definition of adequate broadband internet access services and associated quality of service standards. NBI strongly supports this proposal and looks forward to engaging constructively in this review once it gets underway."
- 417 Virgin Media states that: "Virgin Media ...agrees that the designation should be for the proposed period unless otherwise amended."

### **9.11.2 ComReg response – question 11**

- 418 Two out of the four respondents agreed with ComReg's proposed approach.
- 419 NBI notes that it will have completed the deployment of the NBP network in the NBP IA within the proposed designation period.
- 420 Having considered the responses to Consultation 23/02, and additional information received following Information Requirements, ComReg has now revised its preliminary views. These are set out at 5 of this document.

## **9.12 Consultation 23/02 – question 12**

- 421 At section 7 of Consultation 23/02 ComReg outlined the reasons for its preliminary view that a VFL USO should be imposed for a maximum of 5 years. ComReg proceeded to ask the following question: Do you have any comments or suggestions on the draft Decision Instrument? Please set out your answer in detail.

### **9.12.1 Respondents' views – question 12**

- 422 ALTO states that: "ALTO does not propose to offer any comments on the draft Decision instrument."

423 eir states that: “eir questions the relevance and meaning of section 5.7 ii. of the draft Decision Instrument.”

424 NBI states that: “NBI has no observations to offer in relation to the draft Decision Instrument.”

425 Virgin Media states that: “Virgin Media has no comment to make on the Draft Decision.”

### **9.12.2 ComReg response – question 12**

426 Having considered the responses to Consultation, and additional information received following Information Requirements, ComReg has now revised its preliminary views and set out a revised Draft Decision Instrument at section 8 of this document.

## **9.13 Consultation 23/02 – question 13**

427 ComReg asked respondents, in question 13, “do you agree or disagree with ComReg’s draft regulatory impact assessment of the impact of the proposed options? Are there other impacts or details that should be included? Please set out reasons for your answer.”

### **9.13.1 Respondents’ views – question 13**

428 ALTO, eir and NBI responded to this question. ALTO and NBI were broadly in agreement with ComReg’s draft regulatory impact assessment of the impact of the proposed options.

ALTO states that: “ALTO is in broad agreement with ComReg’s draft regulatory impact assessment of the impact of the proposed options. ALTO does not suggest any other impacts or details that should be included at this time.”

429 eir states that: “The Regulatory Impact Assessment (RIA) is significantly deficient, as it omits options, is devoid of quantitative analysis of the limited options that have been considered and is incoherent in respect of the Reasonable Access Request (RAR) options... The absence of any attempt by ComReg to quantify the costs and benefits of its proposals renders the RIA meaningless”, adding that: “The need to carry out a full quantitative analysis is supported by the principles of efficiency and objectivity identified in Regulation 72(4) of the EECC Regulations which should guide ComReg selection of a USP”.

430 NBI identifies VHCNs as an item for further consideration.

- 431 NBI states that: “NBI agrees with ComReg’s draft regulatory impact assessment of the proposed options. One further consideration is the requirement contained in the EECC for national regulators to promote access to and take-up of services provided over very high-capacity networks (Footnote: EECC Article 3, paragraph 2a) and for national regulators to ensure “territorial cohesion” in relation to the deployment of such networks (Footnote: EECC, Recital 23.)”.

### **9.13.2 ComReg response – question 13**

- 432 ComReg disagrees with eir’s views in relation to the draft RIA and is of the view that it’s draft RIA was consistent with ComReg’s obligations.
- 433 Having considered the responses to Consultation 23/02 and additional information received following Information Requirements, ComReg has now revised its preliminary views and sets out a revised Draft RIA in this document

## 10 Next steps

- 434 The timeframe for receipt of submissions to this further consultation paper is 5:30pm on 20 July 2023 during which time ComReg welcomes written responses on any of the issues raised in this document. It is requested that comments within submissions reference the relevant question numbers from this document.
- 435 To promote further openness and transparency, ComReg will publish all respondents' submissions to this further consultation, subject to the provisions of ComReg's Guidelines on the Treatment of Confidential Information – ComReg 05/24.
- 436 Respondents are requested to clearly identify confidential material and provide a confidential and non-confidential version of its responses.
- 437 Respondents are also requested to provide any electronic submissions in an unprotected format so that they can be appended into ComReg's submissions document for electronic publication.

# 11 Annex 1

## 11.1 ComReg's engagement with eir

438 On 30 March 2023 ComReg issued an Information Requirement seeking the following information from eir:

- clarification on eir's proposed date for the retirement of TIS;
- the number of existing voice only communications services customers currently on the TIS billing system;
- the number of existing universal service voice only communications services customers currently on the TIS billing system;
- details of eir retail's migration plans for eir retail voice only communications services customers from TIS (including key milestones and associated timelines);
- how, in advance of, and after the retirement of TIS, eir retail proposes to deal with eir retail voice only communications service customers who wish to retain their current voice only communications service;
- whether existing eir voice only communications services customers are billed (or are capable of being billed) on any eir systems, other than TIS (distinguishing between eir retail customers and OAO customers);
- the number of existing eir USO voice only communications services customers;
- the location of existing eir USO voice only communications services customers (by Eircode; x/y co-ordinates, where available);
- details of any eir retail plans (including associated timings) for migration of existing eir retail FCS (fixed cellular solution) customers;
- whether Open eir plans to offer a wholesale broadband products(s) that is limited to supporting a voice only connection(s) and voice communications services (if yes, details of the proposed wholesale broadband product(s) and associated timelines); and

- whether eir retail plans to offer a retail broadband product(s) that is limited to supporting voice only connection(s) and voice communications services (if yes, details of the proposed retail broadband product(s) and associated timelines).

439 Eir responded to ComReg on 06 April 2023 and 14 April 2023.

440 On 06 April 2023 eir wrote to ComReg stating that: it “is not in a position to distinguish between voice only and USO voice only customers.”

441 ComReg also notes the following from eir’s 13D response of 06 April:

- eir confirmed that the “stop-sell” is the initial stage of TIS retirement and that eir intends to stop selling fixed voice only connections in the second half of 2023;
- regarding its migration plans for voice only communications services customers from the TIS billing system, eir stated that it “[redacted]”;
- regarding eir retail voice only communications service customers who wish to retain their current voice only communications service, eir “... intends to migrate these customers to equivalent plans making the change as seamless as possible”;
- eir confirmed that “... it will be possible to bill existing eir retail voice only customers on the new billing system”, and that “We [eir] are not in a position to comment on OAO customers”;
- eir requested that ComReg consider whether “data provided to ComReg for the Quarterly Key Data Reporting... is sufficient for ComReg’s current needs.”;
- regarding any plans eir may have to migrate existing eir retail FCS customers, eir stated: “[redacted]”;
- in relation to whether Open eir plans to offer a wholesale broadband product(s) that is limited to supporting voice only connections and voice communications services, eir stated: “[redacted]”; and

- in relation to whether eir retail plans to offer a retail broadband product(s) that is limited to supporting voice only connections and voice communications services, eir stated: “[< >]”.

442 ComReg sought further information from eir in relation to the geographical location of eir fixed voice only communications service customers. On the 14 April 2023, eir wrote to ComReg stating that:

- There are [< >] eir voice only communications services customers currently on the TIS billing system;
- eir is not in a position to distinguish between voice only and USO voice only customers. However, there are a total of [< >] eir voice only communications services customers; and
- eir “[< >]”.

443 On 2 May 2023 ComReg issued a further Information Requirement seeking the following information from eir:

- the number of new retail fixed-voice only connections<sup>91</sup> installed by eir for the periods: 1 January 2021 to 31 December 2021; 1 January 2022 to 31 December 2022; and 1 January 2023 to 31 March 2023; broken out by:
  - a) connection type, including but not limited to, copper, fibre (FTTH/FTTC), and FCS) nationally, and sub-nationally (with specific reference to sub-national areas 1, 2 and 3 as defined and set out in D02/19);
  - b) in-situ or new connection;
  - c) customer location<sup>92</sup> (by Eircode or ARD ID (where Eircode is not available) nationally, and sub-nationally (with specific reference to sub-national areas 1, 2 and 3).
  - d) the cost of each of these connections (set out in a) above), by technology type used, in the following cost to serve bands during the financial years 2021 – 2022, 2022 – 2023 and the period 1 January 2023 – 31 March 2023.

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<sup>91</sup> As specified in ComReg D09/21, “New Connections” means a Connection at any primary location or residence that has never been connected to the Public Communications Network (PCN) (fixed)”.

<sup>92</sup> Please confirm whether eir holds the requested customer location information at (i) XY co-ordinates; or (ii) ARD ID level; and if this is the case, please provide the requested customer location data

- the number of retail fixed voice connections (using FCS technology) offered to end-users by eir for the periods 1 January 2021 to 31 December 2021; 1 January 2022 to 31 December 2022; and 1 January 2023 to 31 March 2023; and the number of these which were rejected by the end-user, and the reason for rejection of the connection, in accordance with ComReg Decision D09/21.
- the total new fixed voice access requests received by eir, the number rejected by the end-user, the number rejected by eir, and the number of requests that were successfully installed, for the periods 1 January 2021 to 31 December 2021; 1 January 2022 to 31 December 2022; and 1 January 2023 to 31 March 2023.
- the average cost of installing a fixed voice only connection (SB-WLR) for the periods 1 January 2021 to 31 December 2021; 1 January 2022 to 31 December 2022; and 1 January 2023 to 31 March 2023.

## 11.2 ComReg's engagement with Pure Telecom

- 444 Consultation 23/02 set out that only eir and Pure Telecom actively offer standalone retail fixed telephony service. This is generally only available over fixed narrowband access (copper) network.
- 445 On 19 April 2023 ComReg issued an Information Requirement seeking the following information from Pure Telecom:



- Does Pure Telecom plan to continue to offer voice only connections and voice communication services to its current and future customers, post 28 December 2023?
- What technologies does Pure Telecom plan to use to serve its existing voice only communication services customers post 28 December 2023?
- What technologies does Pure Telecom plan to use to serve new voice only communication services customers post 28 December 2023?
- Which service providers' services does Pure Telecom re-sell, to deliver voice only connections and voice communication services to the retail market? Does Pure Telecom have a commercial agreement with Open eir or any other wholesale service provider in relation to the provision of a Wholesale product (SB-WLR), post 28 December 2023? If yes, please provide details of the commercial agreement or agreements and associated timelines.
- Does Pure Telecom have any plans to offer a retail broadband product(s) that is limited to supporting voice only connection(s) and voice communications services? If yes, please provide details of the proposed retail broadband product(s) and associated timelines.

446 On the 25 April 2023 Pure Telecom wrote to ComReg stating that:

- It does plan to continue to offer voice only connections and voice communication services to its current and future customers, post 28 December 2023;
- It plans to use PSTN, BRA and F/PRA copper-based phone lines under SB-WLR to serve both its existing and new voice only communication services customers post 28 December 2023;
- It re-sells Open eir and BT services to deliver voice only connections and voice communication services to the retail market;
- It has commercial agreements with Open eir and BT in relation to the provision of a wholesale product (which includes SB-WLR services), post 28 December 2023;
- [REDACTED]  
[REDACTED];

- [REDACTED]  
[REDACTED]; and
- Pure Telecom has no plans to offer a retail broadband product(s) that is limited to supporting voice only connection(s) and voice communications services

447 On 05 May 2023 ComReg issued a further Information Requirement seeking the following information from Pure Telecom:

- Is Pure Telecom capable of connecting and willing to commercially connect totally new voice only communications services customers, who have never been connected to the copper network (i.e. non-in-situ) using copper?
- If so, does Pure Telecom have a commercial “cost to connect” monetary amount, beyond which Pure Telecom will not commercially serve a new voice only communications services customers (i.e. non-in-situ), using copper? What is this monetary amount and are there any associated assessment criteria?
- Do the commercial agreements which Pure Telecom has with Open eir and BT (referenced in the Response) have a commercial “cost to connect”, monetary amount, beyond which these operators will not commercially serve new Pure Telecom voice only communications services customers (i.e. non-in-situ), using copper? If so, what is this monetary amount is for each contract, and are there any associated assessment criteria?
- Pure Telecom’s plans (including associated timelines) for the continued provision or service including any planned migration of existing voice only communications services customers, after the expiry of both of the commercial agreements referenced in Pure Telecom’s 13D(1) Response of 25 April 2023
- Pure Telecom’s plans (including associated timelines) as to how new voice only communications services customers will be served after the expiry of both of the commercial agreements referenced in Pure Telecom’s 13D(1) Response of 25 April 2023
- The service levels that you have agreed with Open eir and BT in respect of provisioning new voice only communications services connections (both in-situ and non-in-situ) and any associated penalties

- The service levels agreed with Open eir and BT in respect of existing voice only communications connections, including the timeframes for repairs and any associated penalties
- The average lifecycle of Pure Telecom's voice communications services customers
- Whether there are any clauses in the commercial agreements referenced in the Response which could inhibit your ability to continue to provide voice only communications services during the term of these agreements. Please provide detail of any such clauses.

448 On 09 May 2023 Pure Telecom wrote to ComReg stating that:

- Pure Telecom [redacted]  
[redacted]  
[redacted].
- [redacted]  
[redacted]  
[redacted].
- [redacted]  
[redacted]  
[redacted].
- [redacted]  
[redacted]  
[redacted].
- In relation to Pure Telecom's plans to serve existing and new voice only communications services customers post [redacted], Pure stated [redacted]  
[redacted]  
[redacted].
- [redacted]  
[redacted]  
[redacted].
- [redacted]  
[redacted]  
[redacted].

- Regarding any clauses in Pure Telecom's commercial agreements which may inhibit Pure Telecom's ability to continue to provide voice only communications services during the terms of these agreements, Pure stated that [REDACTED], and that [REDACTED]. Pure Telecom also noted that [REDACTED].