



Commission for
Communications Regulation

Universal Service Requirements

Provision of access at a fixed location (AFL USO)

Response to Consultation and Decision

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An Coimisiún um Rialáil Cumarsáide

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1. Executive Summary

1.1 ComReg's Statutory Mandate to Ensure the Provision of the Universal Services in the State

- 1 The Commission for Communications Regulation (“ComReg”) is the independent regulator for the electronic communications sector in Ireland. ComReg was established by section 6 of the Communications Regulation Act 2002 (the “**Act of 2002**”).
- 2 Our key statutory objectives are to:
 - (i) Promote competition.
 - (ii) Contribute to the development of the internal market.
 - (iii) Promote the interests of users of electronic communications services (“**ECS**”) in Ireland, as well as within the European Union.
- 3 This Decision concerns the basic right of end-users under Article 1 of the Universal Service Directive to have access to a minimum set of telecommunications services, and to the legal obligation to ensure, under Article 4 of the Universal Service Directive, that all reasonable requests for connection at a fixed location to the public communications network and/or for the provision of a publicly available telephone service over the connection are met by at least one undertaking.
- 4 In this regard, we have a statutory mandate that derives from a set of EU Directives, one of which is the Universal Service Directive.¹ The Minister for Communications, Energy and Natural Resources² (the “**Minister**”) transposed the Universal Service Directive via the Universal Service Regulations 2011 (the “**Regulations**”)³ into domestic law in Ireland.

¹ Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive) as amended.

² The name of the Department (DCENR) has been changed to the Department of Communications, Climate Action and Environment (DCCA) with effect from 23rd July 2016.

³ The European Communities (Electronic Communications Networks and Services) (Universal Service and Users' Rights) Regulations 2011.

- 5 The Universal Service Directive and the Regulations place primary responsibility on us, as the independent ECS regulator for Ireland, to safeguard and ensure the provision of a minimum set of telecommunications services in the State. We may designate an undertaking, or undertakings, to satisfy any reasonable request to provide, at a fixed location, a connection to the public communications network (“**PCN**”) and a publicly available telephone service over the network connection that allows for originating and receiving of national and international calls. The connection must be capable of supporting voice, facsimile and data communications at data rates that are sufficient to permit functional internet access (“**FIA**”). In this Decision, we refer to this collectively as access at a fixed location (“**AFL USO**”).
- 6 We may also impose requirements on a designated undertaking as regards quality of service, affordability and control of expenditure.
- 7 Where we designate an undertaking to comply with any such requirements, we refer to the designated undertaking as the universal service provider (“**USP**”). We refer to the requirements imposed on a USP as the universal service obligation (“**USO**”).
- 8 We are designating eircom Ltd (“**eir**”) as the USP for the period 29 July 2016 – 30 June 2021.
- 9 We have previously designated eircom Limited (“eir”) as the USP on successive occasions since 2002.⁴ Most recently, in December 2015, we designated eir as the USP to provide AFL USO for a period of 6 months, ending on 30 June 2016.⁵
- 10 The Response to Consultation No. 16/31 and this Decision will support a transition by the USP, as relevant, to being the *provider of last resort*.
- 11 During the transition period when alternative networks are being deployed, our objective is to ensure that reasonable requests for access at a fixed location are met, but without requiring unnecessary investment in the USP’s legacy copper network and without inhibiting the retirement of that network, once an alternative is available.
- 12 In this regard, we would draw attention to a number of aspects of our Response to Consultation No. 16/31 and Decision:

⁴ Our predecessor, the Office of the Director of Telecommunications, designated Eircom Limited as the USP on successive occasions, until our establishment in 2002 under the Act of 2002. Prior to the privatisation of Eircom Limited in 1999/2000, the assets of Eircom Limited were in State ownership.

⁵ ComReg Document 14/71 and D10/14 “*The provision of telephony services under the Universal Service Obligation, Access at a fixed location*”, 7 July 2014.

- At premises where affordable voice services are provided on a commercial basis over an alternative wired network, the USO does not apply.
- At premises where affordable mobile voice services are provided with good indoor coverage, the cost threshold for the USO is reduced from €7,000 to €1,000.
- At premises where wholesale broadband connections are available over an alternative network, but affordable voice service is not provided on a commercial basis, the USP need not invest in its own connections but is free to procure a wholesale connection and use voice over internet protocol (“VoIP”) to provide the required voice service.

1.2 The Consultation Process Leading up to this Response to Consultation and Decision

- 13 On 7 July 2014, following a full public consultation, we designated eir as the USP for a period of 18 months, i.e. from 7 July 2014 - 31 December 2015.
- 14 In 2015, we indicated our intention to carry out a forward-looking review of the future of AFL and to consider the future requirements for the AFL USO and a roadmap for its evolution.
- 15 We carried out a review of AFL USO in 2 parts.
- 16 **Part 1:** In August 2015, we commenced a public consultation (“**Consultation 15/89**”) in which we sought the views of interested parties on the evolution of and the future need for the AFL USO, post-December 2015. Consultation No. 15/89 also considered the various requirements that we can impose on a USP under the Regulations, including the threshold for determining when a request for AFL USO is reasonable (a reasonable access threshold (“**RAT**”)), quality of service of the USO (“**QoS**”), and the need for geographically averaged pricing (“**GAP**”). We also commissioned a report from our expert consultants, TERA, to assist us in forming our preliminary views on these issues and we published this report⁶ together with Consultation 15/89⁷.
- 17 In December 2015, we extended our decision of 7 July 2014, designating eir as the USP for a period of 6 months (1 January 2016 – 30 June 2016), pending the completion of our consultation process and a final decision on the future need for an AFL USO.

⁶ “Forward looking review of future AFL element of USO in Ireland” Ref: 2015-22-DB-ComReg-Scope of USO – First TERA Report.

⁷ ComReg Document 15/89 “Universal Service Obligation Provision of access at a fixed location”, 7 August 2015.

- 18 **Part 2:** In May 2016, we published a document containing a response to Consultation 15/89, a further consultation and a draft decision (“**Consultation 16/31**”). We also published a second report from TERA⁸.
- 19 In Consultation 16/31, we stated our preliminary view that an AFL USO is necessary for the next 5 years. We also sought further views on what specific requirements for AFL USO might be necessary, including QoS standards, affordability measures (including GAP), the specification for the RAT and FIA. We considered an overall approach and the options for the possible designation of an undertaking(s) under the Regulations.
- 20 During the course of this public consultation process, we obtained data from industry participants, using our statutory information gathering powers under the Act of 2002.
- 21 We also received submissions from the following industry participants and interested parties:
1. Alternative Operators in the Communications Market (“**ALTO**”).
 2. BT Communications Ireland Limited (“**BT**”).
 3. eircom Limited (“**eir**”).
 4. Sky Ireland (“**Sky**”).
 5. UPC Ireland/Virgin Media (“**Virgin Media**”).⁹
 6. Vodafone Ireland Limited (“**Vodafone**”).
- 22 The submissions we received contained useful suggestions and observations, which have helped to guide and inform us in the making of our decision.
- 23 We have now concluded our consultation process on the future need for AFL USO and its associated elements. We have also sought and obtained the consent of the Minister to the relevant aspects of our Decision.

⁸ *Forward-looking review of the future AFL element of the USO in Ireland: appropriate level and scope of various proposed obligations of an AFL USO Phase 2 Report – Ref: 2015-22-ComReg-Scope of USO – Second TERA Report.*

⁹ UPC in Ireland and Virgin Media in the UK are both part of the Liberty Global Group. UPC in Ireland was re-branded as Virgin Media in 2015.

1.3 Final Decision

24 Below is a summary of some of the main aspects of our decision which is set out in the Decision Instrument at Annex 1 to this Decision and which is explained in more detail in this Response to Consultation and Decision.

1.3.1 The need for a USO for AFL USO, the USP, and the Period of Designation

1.3.1.1 Summary of Our Decision

25 We have decided that there is a continued need for an AFL USO in the State. We are designating eir as the USP for AFL USO, for the period 29 July 2016 – 30 June 2021, for the entire State.

26 The ECS market is likely to change significantly as a result of the NBP. We do not anticipate that this will be fully implemented before the end of the AFL USO 5 year designation period, and we anticipate that the full effect will not be realised for a minimum 5 years. We will however, carefully monitor and review these developments in order to evaluate what impact it may have on the provision of basic electronic communications services in the State. The most immediately foreseeable event is the NBP contract award. Accordingly, we will begin a review 3 months after the Department has concluded the NBP contract award process. On foot of this review, we will decide if we need to commence a new consultation process in relation to AFL USO in the State and we will publish an information notice regarding this.

1.3.1.2 Summary of the Reasons for this Decision

27 We consider that without an AFL USO uneconomic end-users may not be properly served, or served at all, at an affordable price. It is unlikely that a service provider would have any incentive to serve end-users who are currently unprofitable. However, because of the NBP, it may well be, on a forward looking basis, that some, or all, AFL services can and will be provided on a commercial basis, using infrastructure and associated services which are fully deployed under the NBP. We will closely monitor developments as they occur.

28 In the meantime, there is no programme or mechanism which ensures that AFL USO (voice telephony at a fixed location) is provided to those who need it, other than a regulatory decision by ComReg.

29 The end-users who do require AFL USO from the designated USP are dispersed throughout the State.

- 30 We must protect end-users throughout the State who need AFL USO but who will not be commercially served. To ensure that any end-user in the State who reasonably requests it has access to a public telephone network at a fixed location and a telephony service, the USO designation must be for the whole of the State.
- 31 eir, because of its high degree of control and ownership of the public switched telephone network (PSTN), as well as ownership of a NGA network, is capable of meeting the reasonable requests of end-users on a nationwide basis.
- 32 In relation to the length of the designation period, we are mindful of our duty to act proportionately and that the 5 year designation overlaps with the period during which we can expect the NBP contract to be awarded and roll-out commenced. Accordingly we will begin a review 3 months after the Department has concluded the NBP contract award process. On foot of this review, we will decide if we need to commence a new consultation process in relation to AFL USO in the State and we will publish an information notice regarding this.
- 33 **Our reasons for this Decision are set out in Chapters 3 and 4.**

1.3.2 Reasonable Requests for AFL USO

1.3.2.1 Summary of Our Decision

- 34 Our Decision on what constitutes a reasonable request for AFL USO is intended to lessen eir's obligations as the USP to satisfy end-user requests for AFL USO in those parts of the State where there is Alternative Infrastructure/service providers
- 35 We have modified the definition of "reasonable access request" and introduced new reasonable access thresholds (which take account of the presence of Alternative Infrastructures in particular, and monetary thresholds) as follows:
- I. If a request by an end-user for AFL USO requires expenditure by the USP **not exceeding €1,000** for the USP to satisfy that request, it shall be a reasonable request, and the USP shall satisfy that request.
 - II. If a request by an end-user for AFL USO requires expenditure by the USP that **exceeds €1,000** for the USP to satisfy that request and, there exists at the time of the request Alternative Infrastructure in the geographic location of the end-user that can provide equivalent AFL USO (in terms of affordability, quality and standalone PATS) to that of the USP, the USP shall not be required to satisfy that request.

- III. The approach in (ii) shall however be **subject to an exception**: if the designated USP confirms that the Alternative Infrastructure is mobile, but the end-user does not agree that this will provide an equivalent service to that currently prevailing for AFL USO (including Minimum Indoor Coverage) the designated USP must promptly notify us of this fact, with relevant supporting information. ComReg will then adjudicate on whether the request is reasonable or not.
- IV. If a request by an end-user for AFL USO requires expenditure by the USP that **exceeds €1,000 but that does not exceed €7,000** for the USP to satisfy and, there is at the time of the request **no** Alternative Infrastructure in the geographic location of the requesting person that can provide equivalent AFL USO (in terms of affordability, quality and standalone PATS) to that of the USP, it shall be a reasonable request, and the USP shall satisfy that request. If the expenditure required by the designated USP **exceeds €7,000** and the end-user agrees to pay the amount in excess of €7,000, then the USP shall satisfy that request.

36 In the case of **iii** above, if the technology identified by the designated USP can and will provide an equivalent service to that prevailing for AFL USO, but the end-user requests an alternative technology, and is willing to pay for the additional costs, the USP must provide it (if technically feasible). In these circumstances, such a request is reasonable, and the designated USP must satisfy it.

1.3.2.2 Summary of the Reasons for Our Decision

- 37 We are entitled to require a designated undertaking to satisfy all **reasonable** requests for AFL USO.
- 38 Under previous decisions designating eir as the USP, requests for connections that involved expenditure by eir in excess of €7,000 were considered reasonable only if the requester agreed to pay the standard connection charge, and cost above €7,000.
- 39 We consider that this is a proportionate approach and one that takes into account eir's proposal that we have regard to the availability of Alternative Infrastructure. This approach therefore will support a transition by eir to being the *provider of last resort*.
- 40 eir, in its submissions, welcomed our proposals to allow the presence of Alternative Infrastructure to be a criterion for determining what constitutes a reasonable request for AFL USO. However, eir suggested that it was unclear about "...*what alternatives are admissible*" and suggested that there is uncertainty about the "*veto*", which we, or an end-user can exercise.

- 41 We took into account the views of eir and other interested parties, and we adjusted our criteria and approach to reasonable access requirements.
- 42 With regard to the need for Alternative Infrastructure to have sufficient indoor coverage, we note that in the case of mobile technology, the Department has proposed the establishment of a mobile and broadband taskforce¹⁰.
- 43 **Our reasons for this Decision are set out in in Chapter 5.**

1.3.3 FIA

1.3.3.1 Summary of Our Decision

- 44 We have decided to maintain the *status quo* which is to require the USP to adopt 28.8 kbit/s as a reasonable minimum data rate. We would emphasise that this is a minimum data rate and that it does not preclude eir from offering data rates that are faster than this.
- 45 We have required the USP to continue ensure that 94% of connections are capable of achieving this minimum data rate.
- 46 We are revoking Decision D9/05. We are re-specifying that 94% of installed connections must be capable of 28.8 kbit/s as a minimum data rate.

1.3.3.2 Summary of the Reasons for this Decision

- 47 The Regulations require that the USP must provide connections that are capable of supporting data communications at data rates that are sufficient to permit FIA. Once designated, the Regulations require that the USP ensures that a connection is capable of supporting data communications at data rates that are sufficient to permit functional internet access, taking into account prevailing technologies used by the majority of subscribers and technological feasibility.
- 48 Further, we may (but are not required to) specify requirements on a designated undertaking in relation to functional internet access. In Decision 09/05 we decided that: “...*the USP shall use all reasonable endeavours to ensure that all connections to the publically available telephone network are capable of a reasonable minimum data rate no lower than 28.8 kbit/s.*”

¹⁰ <http://www.dccae.gov.ie/news-and-media/en-ie/Pages/PressRelease/National-Broadband-Plan-in-rural-Ireland.aspx>

- 49 The Regulations do allow us to specify what functional internet access means. For the purposes of this decision however, we are not specifying what functional internet access is. Rather, on the basis of our Decision in Chapter 5, we have decided to specify as a requirement on the USP in relation to functional internet access that the data rate must not be less than 28.8 kbit/s.¹¹ It is necessary for us to specify this as a rate below 28.8 kbit/s is very unlikely to provide any internet access.
- 50 We have decided not to use USO FIA requirements as a mechanism to guarantee access to broadband connections. However, we foresee that USO requirements might play a role in ensuring universal availability of affordable higher-speed broadband outside the NBP intervention area in the future.
- 51 **Our reasons for our Decision are set out in Chapter 6.**

1.3.4 Affordability and Control of Expenditure Measures

1.3.4.1 Summary of Our Decision

- 52 We have decided to maintain the existing GAP obligation. This obligation relates to the designated services in accordance with Regulation 3, namely, a connection and PATS service (For the avoidance of doubt, this does not apply to bundled products).
- 53 We have decided to maintain existing control of expenditure measures for services within the scope of AFL USO, namely:
- Obligations in respect of disconnections and non- payment of bills; and
 - Obligations in respect of phased payment for connection fees.
 - We have decided not to introduce social tariffs at this time.
 - We have decided not to introduce any special contract terms and conditions applicable to contracts between end-users and the USP(s), at this time, pending finalisation of Quality of Service “QoS.”

1.3.4.2 Summary of Our Reasons for this Decision

- 54 In relation to social tariffs, there already exists an affordability safeguard for consumers in the form of the Retail Price Cap,¹² and a diversity of retail offers in the market. We have also decided to maintain the GAP obligation. Nonetheless, we may in the future review whether it is necessary to define a social tariff, should circumstances justify it.

¹¹ Maintaining the current FIA obligation will protect the small number of Eir customers who are still using dial-up services on existing connections and who do not have access to higher speeds.

¹² ComReg Document No.14/89: “Market Review: Retail Access to the Public telephone Network at a fixed Location for residential and Non Residential Customers”, 28 August 2014.

55 Given the general market circumstances, we considered whether absent regulation eir would have the ability and incentive to introduce line rental and connection (and calls) price increases for at least some end-users. We also considered, if we needed to maintain the GAP obligation or if that would create market distortions. In considering whether or not the balance of these risks requires that the GAP obligation be maintained, we considered both:

- what is the likelihood of each risk arising; and
- what the harm would be to consumer welfare if the risk arises.

56 We found maintaining the GAP obligation will protect end-user welfare, in particular, for high cost customers in rural areas and in areas where competition for voice access is not fully effective, while ensuring competition is sustained in rural as well as urban areas.

57 On the basis of our analysis, we consider that maintaining GAP will result in an overall net welfare benefit, benefiting both competition and end-users.

58 The GAP obligation is maintained with a view to ensuring that prices are affordable, whatever the geographic location.

59 We considered, in light of national circumstances, the potential impact on those most vulnerable in society of any potential change to affordability measures, including, our potentially introducing an obligation in relation to special tariffs. On the basis of the information available to date, we consider that there are currently a combination of mechanisms to ensure that basic voice services are broadly affordable for end-users.

60 Having regard to the presence of the obligation of a safeguard RPC, the maintenance of the GAP obligation and; because packages offered commercially appear broadly sufficient to ensure end-users, including more vulnerable consumers, can access voice services at an affordable price, we have decided that at this time it would not be appropriate to mandate a social tariff.

61 **Our reasons for this Decision are set out in Chapter 7.**

1.3.5 Quality of Service (QoS) of AFL USO

1.3.5.1 ComReg's Position

62 We have decided to defer a final decision on QoS pending further consideration. We expect to be in a position to publish a Decision respect of a new QoS regime reasonably soon.

63 In the interim, we consider that it is appropriate to maintain a quality of service regime. We are therefore maintaining Decision D02/08 titled "*Eircom's Universal Service Obligation – Quality of Service Performance Targets.*"

2. Introduction

- 64 In this Chapter we give a brief overview of the regulation of the universal services in the State. We also respond to the views expressed by eir, the designated USP, to the consultation process that has led to the publication of this decision.
- 65 We are responsible for the regulation of the Irish electronic communications sector, in accordance with national¹³ and EU legislation. One of our functions is to determine the need for, and scope of, the USOs for the Irish market and to decide which undertaking(s), if any, should be designated as the USP for particular USO(s).
- 66 The scope of universal service is defined by the Universal Service Directive. The USO scope was designed to ensure that everyone, irrespective of location, social standing or income can access basic telecommunications services at a fixed location. These are basic services that are considered essential for everyone.
- 67 The Universal Service Directive, transposed in Ireland by the Universal Service Regulations, requires that we must ensure that end-users throughout Ireland have access to an electronic communications network and voice services at a fixed location and these components must be affordable and delivered at a specified quality.
- 68 As the European Commission is currently considering the scope of the universal service (which will include AFL USO), the existing universal service requirements that we must ensure, may be subject to change.¹⁴ Any changes will likely be announced later this year, but that would be after our review is completed under the current legislative requirements. Further, it may be several years before any such changes are transposed into domestic laws and implemented.
- 69 A USP that is designated to provide AFL USO must:
- satisfy any reasonable request to provide at a fixed location connection to a public communications network;

¹³ The Communications Regulation Act 2002

¹⁴The European Commission is legally obliged to periodically review the scope of universal service (US) 23. The last European Commission Communication reporting on the scope of US was published in November 2011 and concluded that, at that point in time, there was no need to change the scope of US at EU level. ComReg notes that as part of the Digital Single Market Review, the European Commission is expected to deliberate on the role of the US inter alia on whether or not, and how, to change the scope of the US at EU level. The outcome of the European Commission's review and amendment, as relevant, of the legislative framework in the coming years in this regard will not be known in the immediate future. Consequently, ComReg will consider further information as it becomes available and with respect to a long-term implementation of Ireland's USO if so decided European Commission - full synopsis report of the public consultation on the evaluation and review of the regulatory framework for electronic communications, 20 March 2016. <https://ec.europa.eu/digital-single-market/en/news/full-synopsis-report-public-consultation-evaluation-and-review-regulatory-framework-electronic>.

- satisfy any reasonable request for the provision of a publicly available telephone service over the public communications network which allows for originating and receiving national and international calls; and
 - ensure that the connection is capable of supporting voice, facsimile and data communications at data rates that are sufficient to permit FIA, bearing in mind the technology used by the majority of subscribers and technological feasibility.¹⁵
- 70 We wish to thank the 6 respondents for their submissions. Having considered the views of respondents this Response to Consultation and Decision sets out our final views.
- 71 A copy of all non-confidential responses received will be made available on our website and a high level discussion of general views is set out below. However, it is not practical for us to respond to every comment made. This response to Consultation and Decision summarises the key elements of comments provided, and our views in relation to these. However it should be noted that all views were considered and account has been taken of the merits of the views expressed.
- 72 The Regulations provide that we can, with the consent of the Minister specify requirements to be complied with by the designated USP in relation to the reasonableness of requests for connection and access, terms and conditions, FIA¹⁶ and affordability measures including GAP.¹⁷
- 73 Prior to the publication of Consultations 15/89 and 16/31, we issued a number of information requests about AFL USO and its components to assist with this review. We reviewed this and other data, in coming to our preliminary view about a continued need for an AFL USO in the whole of Ireland, or in certain geographic areas.
- 74 We commissioned independent expert consultants, TERA, to carry out additional specific analyses and to review the evidence. This was set out in the First TERA Report and the Second TERA Report, which we have published on our website.¹⁸

¹⁵ Regulation 3 (1) - (3), Universal Service Regulations.

¹⁶ Regulation 3(5) (b) of the Universal Service Regulations.

¹⁷ Regulation 8 (2) – (3) of the Universal Service Regulations.

¹⁸ The First TERA Report can be found at <http://www.comreg.ie/publication/tera-forward-looking-review-of-future-afl-element-of-uso-in-ireland/>, the Second TERA report can be found at <http://www.comreg.ie/publication/tera-consultants-forward-looking-review-of-the-future-afl-element-of-uso-in-ireland-appropriate-level-and-scope-of-the-various-proposed-obligations-of-an-afl-uso/>

- 75 The First TERA Report studied the latest access services market evolutions, taking into account current market trends and likely evolutions in the coming 5 years. These include, the intensification of competition, the deployment of Fibre to the Home (“FTTH”) and the NBP. It considered the possible consequences if AFL USOs were to be ceased having regard to the situation in Ireland and the implementation of AFL USO in different EU Member States. The First TERA Report concluded that there was a continued need for an AFL USO in Ireland. The Second TERA Report assessed the requirements of USOs related to AFL USO, e.g. criteria for reasonable requests, affordability measures, and QoS.
- 76 In this Response to Consultation and Decision we now set out our final view that there is a need for an AFL USO post 30 June 2016.
- 77 We also set out our decision in relation to reasonable access requests, and affordability aspects (**including GAP**). We considered the most appropriate option for the specification of FIA, in light the NBP and the geographic availability of alternative platforms for the delivery of the AFL USO.
- 78 In coming to our Decision have taken into account the responses received in relation to Consultations 14/48¹⁹, 15/89, 15/124²⁰ and 16/31, the TERA Reports, information collected on foot of information requests, and other relevant material available to us at this time. Our final RIA in Chapter 9 reflects this.

2.1 Costing and Financing of USOs

- 79 The provision of a universal service may result in the USP(s) providing designated services at a net cost. The Universal Service Regulations²¹ allow a USP to seek funding for the net costs of meeting the USO, however, funding will only be permitted if it is determined by ComReg that the net cost may represent an unfair burden on the USP. To the extent that it does represent an unfair burden, the net cost of the USO shall be apportioned among providers of electronic communications networks and services.²²

¹⁹ ComReg Document 14/48 “*The Provision of telephony services under the Universal Service Obligation – Access at a Fixed Location*”, 16 May 2014.

²⁰ ComReg Document 15/124 “*Universal Service Obligation – Provision of access at a fixed Location*”, 23 November 2015

²¹ Regulation 11 of the Universal Service Regulations.

²² Regulation 12 of the Universal Service Regulations.

- 80 The designation method(s) we adopt must ensure that the obligations are provided in a cost effective manner and may be used as a means of determining the net cost of the universal service obligation²³. In this regard, Decision D04/11²⁴ illustrates how the net cost for all USOs, will be calculated and how the existence of an unfair burden will be determined. In the event a net cost is deemed to be an unfair burden, the requirement for a sharing mechanism is then triggered.
- 81 We have completed our assessment of eir's application for funding for the 2009-2010 period.²⁵ Our determination was that there was a positive net cost of €5.1m for the 2009-2010 period and that this positive net cost did not represent an unfair burden to eir.
- 82 We are currently assessing the funding applications received from eir for the financial years 2010-2011, 2011-2012, 2012-2013 and 2013-2014. Following a period of clarifications regarding the applications we will form our preliminary views on these applications and consult accordingly.
- 83 On 31 March 2016, we received an application for funding from eir for the financial year 2014-2015 and we issued an information notice regarding this application²⁶
- 84 Respondents have made comments regarding funding in their submissions. However, the assessment of universal service funding applications is a matter that is separate from the designation of a USP and it is not here.
- 85 Nonetheless, we plan to issue an information notice regarding our assessment of eir's USO funding applications in the coming weeks.

²³ Regulation 7(3) of the Universal Service Regulations.

²⁴ ComReg Document 11/42 and D04/11 "Report on Consultation and Decision on the Costing of universal service obligation: Principles and Methodologies", 31 May 2011.

²⁵ ComReg Document 14/03 D01/14 "Assessment of Eircom's Universal Service Fund Application for 2009- 2010– Response to Consultation and Determination", 9 January 2014.

²⁶ ComReg Document No. 14/37: "Universal Service Obligation Application for funding for the Universal Service Provider for the period 2014/2015", 13 May 2016.

2.2 The Submissions of the Current USP to our Consultation

- 86 In its submission, eir made certain claims in relation to our consultation process, which we do not agree with. In accordance with the requirement under the Regulations that the designation process be transparent, we have consulted with interested parties for almost 10 month, and eir has made submissions on each consultation document that we have published. We have also gathered helpful information from eir and the rest of industry (using our statutory information powers) which we have taken into account in order to form our proposals and to arrive at a final Decision.
- 87 eir has also stated that it should not be designated as the USP unless it has an “assurance” that it will be compensated for any net cost of providing the universal services uneconomically. The issue of compensation for any net cost is a separate issue and not one that is relevant to the question of designation.
- 88 eir objected to us having sought expressions of interest in Consultation 16/31 from other service providers who might wish to be a USP. Consultation 14/48²⁷ also invited expressions of interest and gave a detailed description of what should be included should an AFL USO be required.
- 89 We did not seek expressions of interest for a USP from any operator at the time we published Consultation 15/89 in August 2015. eir appears to identify this as a legal flaw in our USO designation mechanism.
- 90 We do not agree with eir. The purpose of that consultation was to examine whether there was, in the first place, a future need for USO AFL USO at all, it was not the appropriate juncture at which to seek expressions of interest.
- 91 In any event, we have received **no** expressions of interest from any interested party in response to our call for expressions of interest. Neither has any interested party pro-actively approached us in the period of the current USO designation (July 2014 to date) to express an interest in providing some or all of the elements of the universal service.
- 92 eir suggested that our consultation process was flawed, because we did not “undertake a full review of the AFL USO.”

²⁷ ComReg Document No. 14/48: “The provision of telephony services under the Universal Service Obligation”, dated 16th May 2014.

- 93 We do not agree with eir. The content of this final Decision, Consultation 15/89 and Consultation 16/31 demonstrate that we have conducted, with the assistance of TERA, a thorough and rigorous analysis of a large number of issues relevant to the future provision of the AFL USO in Ireland, in accordance with best practice and evidence-based policymaking.

3. The need for AFL USO

94 In Chapters 1 and 2 we gave a brief overview of the regulation of the universal services in the State and the consultation process that has led to the publication of this decision. This Chapter sets out our further decision that there is a continued need for AFL USO in the State post 30 June 2016 and our reasons for our decision.

95 This Chapter is structured as follows :

3.1 Our Decision.

3.2 Reasons for our Decision.

3.3 Need for AFL USO. We summarise the issues raised in Consultation 15/89 and Consultation 16/31.

3.4 Summary of respondents' submissions to Consultation 16/31. We summarise our response to these submissions.

3.1 Our Decision

- There is a continued need for AFL USO in the State.

96 Our Decision on what constitutes a reasonable request for AFL USO (as set out in Chapter 5), should result in a relaxation of the extent to which eir as the USP will be obliged to satisfy such requests in parts of the State where there are Alternative Infrastructures/service providers. We consider that this is a proportionate approach and we have taken into account eir's proposal that we should have regard to the availability of Alternative Infrastructure, instead of eir being the automatic provider of basic telephony services. This approach therefore supports a transition by eir, to being the provider of *last resort*.

3.2 Reasons for Our Decision

97 The AFL USO ensures the provision of basic telecommunication services in uneconomic areas of the State as well as for uneconomic customers in economic areas. Therefore, the AFL USO contributes to social and economic inclusiveness and cohesiveness.

98 Our overall objective is to ensure that there is a *provider of last resort* for basic electronic communications services within the State, and to fulfil our statutory mandate under the Regulations.

- 99 Because of this, we consider that any justification for the **complete** withdrawal of the existing USOs would need to be undisputed. There would need to be assurances that AFL USO services would be delivered in the future, at an affordable price, appropriate quality, and standalone (if necessary) throughout the State. However, there can, for example, be no assurance that uneconomic customers would be provided with basic telecommunications services under normal market conditions and without an AFL USO being imposed.
- 100 The obligations that we are putting imposing in this decision go no further than ensuring that there is a telecommunications *service provider of last resort*. This means that where the market is delivering the required services, the *provider of last resort* does not have to provide the required services.
- 101 In TERA's counterfactual analysis and section 4.2 of Consultation 16/31 we examined the need for an AFL USO for the whole or parts of Ireland. We examined relevant market trends, (both supply and demand side) possible competitive constraints, and the potential impact, of the Department's NBP initiative over the next 5 years. We also took into account all of the submissions which we received in response to Consultation 15/89 and Consultation 16/31.
- 102 In relation to migration of voice traffic from fixed to mobile, we acknowledged that retail fixed voice has been in decline for a number of years, while mobile voice calls have increased. However, minutes originating from fixed networks still account for a significant share of the total traffic. In addition, although fixed voice is in decline, it still exceeds an average of 2.5 hours per month.
- 103 Consultation 16/31 noted, our market analysis, in particular for the fixed voice access ("**FVA**") market,²⁸ which considering fixed mobile substitutability, found no strong evidence to suggest that fixed access and mobile access are sufficiently effective substitutes to merit inclusion in the same market. The market analysis suggested a complementary relationship between FVA and mobile, rather than an effective degree of substitutability. In addition, the recent emergence of FVA and mobile being offered in bundles suggests that end-users place a distinct complementary value on these services, rather than considering them to be substitutes.

²⁸ ComReg document 14/89: paragraph 4.21 to paragraph 4.155.

- 104 At the end of March 2016, there were 1,470,996 fixed voice subscriptions in Ireland, a decrease of 0.3% since the last quarter and a decrease of 2.2% since Q1 2016.²⁹ Due to technological convergence, alternative access networks may become alternatives for end-users and thus, the market may in various ways meet the need for voice telephony at a fixed location. A significant cohort of end-users do not have/utilise a fixed broadband connection. For these end-users, broadband with managed VoIP is unlikely to provide an alternative to their basic fixed voice telephony service, until the NBP is fully deployed. A potential set of “vulnerable” or “captive” end-users exists in Ireland – approximately 38.75% of fixed line subscriptions are single play.
- 105 Our Consumer ICT Survey 2015 indicates that 67% have home landline service, but service ownership varies significantly across age categories with 46% of 18-24’s have home landline while 88% of those aged 65+ have home landline. The majority (81%) use their landline to make calls, with 80% using landline to receive calls. In rural areas, 87% use their landline to make calls while 81% using landline to receive calls. This indicates that certain end-user types (65+, rural and lower income households) remain more attached to fixed access services. Without the AFL USO, these end-users would be more likely to be excluded. This would potentially exacerbate the digital divide, as noted by some respondents, though disputed by eir.
- 106 This suggests to us that non-price factors may be important drivers of the demand for FVA.
- 107 Without an AFL USO, eir might even choose to increase line rental prices and QoS could also deteriorate significantly.
- 108 No new evidence has been provided to us that suggests our views on TERA’s counterfactual do not remain valid. Left to the operation of market forces alone, access to services mandated by the Universal Service Directive may not be provided to everyone, irrespective of location, at an affordable price, and appropriate quality as demonstrated by the counterfactual.
- 109 The information provided to us by mobile operators demonstrates that indoor and outdoor coverage levels can often vary substantially. Mobile coverage may deteriorate indoors (compared to outdoors), below acceptable levels depending on the technology (2G or 3G) and the network operator.
- 110 Other factors further impact indoor mobile performance, including handset capabilities and building materials. However, in some cases, technical solutions are available that can mitigate these problems.

²⁹ ComReg Document 16/48r, “Quarterly Key Data Report(R) Q1 2016”, 13 June 2016.

- 111 We took into account the possible impact of NBP infrastructure on AFL USO, once it has been rolled-out and fully deployed. The Department envisages that with the NBP rollout, all end-users will be able connect to a public communications network at a fixed location. In principle, a managed VoIP service over a high speed quality network could satisfy the requirements of a voice AFL USO, if the service is affordable.
- 112 We have decided that there is a need for AFL USO in the State. We are unpersuaded by respondents' arguments to the contrary, due to TERA's counterfactual analysis, mobile limitations, uncertainty in respect of NBP, and absent of VoIP alternatives of any significant scale at this time.
- 113 However, we have decided to change certain aspects of the current AFL USO(s) taking account of current market trends and likely future developments. In relation to voice, this would mean fewer obligations on eir, with increased flexibility to facilitate investment, while ensuring that the USP continues to provide AFL USO where needed.
- 114 We have designed the associated obligations in such a way that no obligation to satisfy reasonable requests for connection and PATS crystallises on eir as the USP unless the end-user has no suitable alternative. If, as is eir's view, there is no need for any AFL USO, then no requests would need to be satisfied by eir as the provider as last resort.
- 115 On the basis if the continued need for AFL USO we set out in Chapter 4 that eir shall be the USP for AFL USO, for the period 29 July 2016 – 30 June 2021.
- 116 The ECS market is likely to change significantly as a result of the NBP. We do not anticipate that this will be fully implemented before the end of the AFL USO 5 year designation period, and we anticipate that the full effect will not be realised for a minimum 5 years. We will however, carefully monitor and review these developments in order to evaluate what impact it may have on the provision of basic electronic communications services in the State. The most immediately foreseeable event is the NBP contract award. Accordingly, we will begin a review 3 months after the Department has concluded the NBP contract award process. On foot of this review, we will decide if we need to commence a new consultation process in relation to AFL USO in the State and we will publish an information notice regarding this.

3.3 Summary – Consultation 15/89 and 16/31

- 117 In Consultation 15/89 and Consultation 16/31, we reviewed the overall trends that impact the need for an AFL USO beyond 2015 and 30 June 2016 respectively. We invited interested parties to submit their views. We have taken account of the submissions we received and the views of our consultants, TERA in the **TERA Reports**.

118 In **paragraphs 23-25; 50-52** of Consultation 16/31, we described the obligations that the current USP, eir is required to comply with.

3.3.1 Overview of Market Structure and Trends

119 In Consultation 15/89 and in the TERA Reports counterfactual analysis and section 4.2 of Consultation 16/31, we examined the need for an AFL USO for the whole or parts of Ireland. We examined relevant market trends, (both supply and demand side) possible competitive constraints, and the potential impact, of the Department's NBP initiative over the next 5 years. We also took into account all of the submissions received in response to Consultation 15/89.

120 Interested parties are referred to Consultation 16/31 and Consultation 15/89 generally and in particular, **paragraphs 46-117** of Consultation 16/31 in respect to our detailed market analysis.

121 We found that the competitive constraints with respect to AFL USO vary across the country and we identified 3 main competitive areas³⁰:

- Areas with market-driven infrastructure-based competition e.g. SIRO (Vodafone/ESB) or UPC/VM, (referred to in the first TERA report "market-driven infrastructure based competition areas");
- Anticipated NBP areas where a high capacity broadband access network would be made available through Department subsidies (referred to as "NBP areas");and
- Areas where eir faces no competition from any fixed infrastructure but could face competition from mobile networks, providing fixed access solutions ("eir only" areas).

122 In Consultations 15/89 and 16/31, we were clear that, irrespective of fixed mobile substitutability and technological neutrality, that mobile technology could be used to provide AFL USO, but that it has some limitations e.g. indoor coverage, end-users' preference for fixed solutions, and, in limited cases, affordability.

³⁰ It is important to note that these 3 areas defined by TERA, are identified so in the specific context of USO and especially by looking at the provision of competitive constraints on the provision of voice AFL USO. This analysis is therefore different from the analysis aimed at defining Larger Exchange Areas ("LEAs") conducted in ComReg Document No. 11/72 and in ComReg Document No. 13/14 in relation to Eir's obligation not to unreasonably bundle imposed in the Retail Fixed Narrowband Access Markets, in order to prevent margin squeeze. LEA have been defined on the basis of 5 criterion and the presence of LLU or NGA in a given area is an important criterion. However, in the context of AFL USO, the presence of LLU and of NGA is less relevant. This is because LLU and NGA are rarely used for the provision of standalone voice services. Therefore, the definition of LEA has not been considered further in this analysis.

- 123 We noted that different infrastructures have different coverage capabilities and the competitive constraints, with respect to AFL USO, are likely to differ throughout the country. The significant mobile coverage is outdoor and not indoor, but over time it is envisaged that mobile technologies will likely generate greater competitive constraints on AFL USO.
- 124 Universal Service Directive and Regulations, require us to ensure that any reasonable request by an end-user for connection at a fixed location is satisfied and that is provided at an affordable price and quality. If this is not satisfied by the market then we must designate USP(s) to ensure that reasonable requests are satisfied.
- 125 We are satisfied that the demand and supply trends described, and which were taken into account of in Consultation 15/89 and Consultation 16/31, still reflect the current market situation.

3.3.2 Continued need for AFL USO

- 126 This section provides a summary of our proposals and reasoning thereafter, in Consultation 15/89 and Consultation 16/31.
- 127 We noted that the justification for a **complete** withdrawal of the existing USOs would need to be undisputed. There would need to be assurances that AFL USO services would be delivered in the future, at an affordable price, and appropriate quality, throughout the State, without any USO obligation.
- 128 On the question of whether an AFL USO is needed for the whole or parts of Ireland, we examined the likely scenarios if there was no AFL USO, and whether over the next 5 years, the requirements of AFL USO would be met. Interested parties are referred to Consultation 16/31 and Consultation 15/89 generally, and in particular, **section 4.3** of Consultation 16/31 for our detailed analysis.
- 129 The USO ensures the provision of basic telecommunication services in uneconomic areas of the State and contributes to social and economic inclusiveness and cohesiveness. Article 4 (1) of the Universal Service Directive to ensure that all reasonable requests for connection at a fixed location to a public communications network are met by at least one undertaking We must consider whether the AFL USO would be delivered without a USO.
- 130 We proposed that without an AFL USO, certain groups of end-users may not have access to an electronic communications network and voice services at a fixed location, at an affordable price, delivered with a specified quality.

- 131 We observed that over the last number of years there has been a gradual decline in retail public switched telephone network (“**PSTN**”) FVA, subscriptions and retail voice traffic. However, demand for fixed telephony in the short to medium term continues to be significant and fixed voice subscriptions have been increasing quarter on quarter since Q1 2011. A potential set of “vulnerable” or “captive” end-users exists in Ireland – approximately 39.5% of fixed line subscriptions are single play.³¹
- 132 We recognised that the AFL USO needs to evolve with the changing digital environment. Technological and market developments indicate that end-users’ main interests are shifting, with broadband and mobile solutions increasingly in demand (often in bundles).
- 133 We have good evidence that there are fixed voice end-users that eir would not serve if it were not required by regulation to serve.³² For some end-users the cost of provision would be such that no provider would supply them on a commercial basis. Without a USO, it is possible that no undertaking would serve these end-users.
- 134 Having considered each of the various AFL USO components, we were of the view that there is a risk that, left to the operation of market forces alone, access to services mandated by the Universal Services Directive may not be provided to everyone irrespective of location, at an affordable price and appropriate quality. As technology and competition develops, and as end-users’ needs evolve, it is our duty to ensure that the AFL USO continues to meet their reasonable requests for basic voice telephony, if they are not already being met by the market.
- 135 We were of the view that without any AFL USO, and at least until the NBP is fully deployed, there is a real risk that the basic voice telephony service might not be delivered to all end-users (or may not be delivered at an affordable price or acceptable quality). Furthermore, some end-users may be connected only via alternative technologies, which may not be able to provide FIA. Without AFL USO eir might even choose to increase line rental prices. QoS could also deteriorate significantly.
- 136 Consultation 16/31 asked the following question regarding the need for an AFL USO:

³¹ ComReg Document 16/17, “*ComReg Quarterly Report Q4 2015*”, 10 March 2016.

³² eir’s USO funding applications indicate that this is the case.

Q. 1 Do you have any further submissions on our preliminary view that there is a continued need for an AFL USO for the period commencing 1 July 2016? Please give reasons to support your view.

3.4. Summary of Respondents' Submissions on Consultation 16/31 and Our Response to these Submissions

3.4.1. Continued Need for an AFL USO - Respondents' Submissions

137 The majority of respondents (ALTO, BT, Sky and Vodafone) agreed that there is a continued need for an AFL USO.

138 Virgin Media stated that: *"...There are likely to be very few, if any, end-users remaining that do not have access to basic electronic communications services ('ECS'). Most end-users already have access to these services either on a commercial basis from existing fixed or mobile service providers, or will gain access shortly through the Department's National Broadband Plan ('NBP')."*

139 eir, however stated that: *"...fundamentally disagrees with ComReg's view".* Furthermore eir is of the view that: *"...ComReg has failed to establish that an AFL USO USP continues to be required by end-users in Ireland and failed in this respect to have due consideration to the services availed of by the majority of end-users in Ireland".* In addition eir state that: *"...do not accept in this respect that it remains necessary to have access to a fixed voice, narrowband, access connection in order to participate fully in society in Ireland, having regard to the electronic communications services that are demanded and consumed by the majority of users in Ireland today and as evidenced by the State's NBP initiative."* eir stated that we reached our conclusion *"...using a flawed and circular rationale which reflects its misunderstanding of the requirements of the Universal Service Directive and Regulations."*, and that we *"...entirely failed to consider whether it was necessary and proportionate to impose a USO for AFL USO in Ireland."*

140 eir also stated that: *"...There is no universal right to standalone fixed voice telephony, as ComReg contends. It is not an obligation to ensure that any continued demand for fixed voice telephony is met, as a matter of universal right".*

141 eir also stated in its response that: *"...ComReg and TERA have provided no evidence that access at a fixed location is required in order to avoid social exclusion and in particular they have provided no evidence that any such requirement is not met by mobile services so that, in fact, all reasonable requests for a connection are already met".*

142 It also stated that: *"...ComReg's concern about indoor coverage in rural areas is misplaced" and that "there is no issue as to the affordability of mobile services, including for vulnerable low-income end-user".*

143 eir stated that: “... *ComReg, contrary to what is required under the Universal Service Directive, has failed to make the preliminary determination as to whether it is proportionate, efficient and non-discriminatory to impose a USO for AFL USO and erred in its finding that it is required under the universal service regime to ensure that demand for narrowband fixed voice telephony, which does not allow functional internet access, is met.*”

3.4.2. Continued Need for an AFL USO - ComReg's Response

144 We have taken full account of all of the submissions received and we note that the majority of respondents to Consultation 15/89 and Consultation 16/31 were in agreement that some kind of USO continues to be required for AFL.

145 In light of the review of market structure and trends, as well as in depth counterfactual analyses contained within the TERA Reports, we disagree with eir that our analysis uses flawed or that they have a circular rationale.

146 We have issued two consultations together with two reports as prepared by our Consultants, TERA, in coming to our Decision. There is a sound evidentiary basis for our view that without a USO AFL USO end-users would either be underserved, or not served at all, at an affordable price. The worst impact would be felt by end-users without alternative access or PATS, who would otherwise depend on a USP.

147 We consider that in the longer term, the NBP and commercial investment, has the potential to meet the needs of basic voice telephony, though this is still uncertain. Wholesale regulation will continue and there will be contractual obligations on NBP. We must emphasise that without the AFL USO, there is no other way for us to ensure, that a reasonable request for voice telephony will in all cases be fulfilled.

148 There is a continued demand for fixed voice telephony. Reasonable requests for this must be satisfied by at least one undertaking. We must consider whether the AFL USO would be delivered without a USO and we **must ensure** that reasonable access requests for connections at fixed location are met in Ireland.

149 We disagree with eir's suggestion that: “... *We have provided no evidence that any such requirement is not met by mobile services*”.

150 We identified in our market trends analysis that there are a number of operators with significant 3G coverage and who are gradually deploying 4G.

- 151 Consultation 16/31, (Chapters 4 and 6) considered in detail the issue of mobile networks as an alternative to fixed networks for provision of AFL USO connections. We found that fixed voice continues to be a significant service. Further, we find that indoor mobile coverage is not ubiquitous which may make mobile in some cases less relevant in respect of AFL USO. However, in accordance with the principle of technological neutral, we recognise that in certain circumstances mobile can be used in place of fixed line for delivery of USO requirements as set out in Chapter 5 below).
- 152 We considered the different infrastructures which have the capability to provide AFL USO, both fixed wired infrastructures and wireless infrastructures (including 3G and 4G mobile networks). We noted that these infrastructures have different coverage and the competitive constraints with respect to AFL USO are likely to differ throughout the country. The First TERA Report also noted that the significant mobile coverage is outdoor and not indoor, but that over time it is envisaged that mobile technologies will likely generate greater competitive constraints on AFL USO.
- 153 We were clear, irrespective of fixed mobile substitutability and in respect of technological neutrality, that mobile technology could be used to provide AFL USO, but that it has some limitations e.g. indoor coverage, end-users' preference for fixed solutions, and, in limited cases, affordability.
- 154 We also disagree with eir's view that: "*...ComReg's concern about indoor coverage in rural areas is misplaced*".
- 155 Further information, provided to us by mobile operators on foot of an information request (regarding indoor and outdoor coverage, by technology and by population, and geographic location) demonstrates that indoor and outdoor coverage levels do often vary substantially. Mobile coverage may deteriorate indoors (compared to outdoors), depending on the technology (2G or 3G) and the network operator. eir's submission to ComReg demonstrates that it is fully aware of this issue.
- 156 Other factors further impact indoor mobile performance, including handset capabilities and building materials. However, in some cases, technical solutions are available that can mitigate these problems.
- 157 We have established that there continues to be a need for AFL, on the basis of the above, particularly, that different Alternative Infrastructures or market forces, cannot in all cases, provide equivalent AFL services to that of the USP. In this context, it is necessary and appropriate to designate eir as the provider of last resort. eir by virtue of its high degree of control and ownership of the public switched telephone network (PSTN), as well as ownership of a NGA network, is capable of meeting the reasonable requests of end-users on a nationwide basis.

158 As we set out in Chapter 5, this is not unduly burdensome on eir as our overall approach supports a transition from eir, to the provider of last resort.

4. Designation of Universal Service Provider(s)

159 In Chapter 3 we set out our Decision that there is a continued need AFL USO in the State. This Chapter sets out our Decision to designate eir as the USP for these purposes and our reasons for this.

160 We find that there is a continued need for some kind of AFL USO in the whole of Ireland post 30 June 2016. Accordingly, we are required to designate one, or more, undertakings to guarantee the provision of the universal services so that the whole of the State is covered.³³

161 This Chapter is structured as follows:

- 4.1 Our Decision.
- 4.2 Reasons for our Decision.
- 4.3 Designation for the entire State: This summarises the issues in Consultation 16/31, the submissions which we received and our response to these submissions.
- 4.4 Duration of Designation: This summarises the issues in Consultation 16/31, the submissions which we received and our response to these submissions.
- 4.5 Universal Service Provider(s) Designation - summarises the issues raised in Consultation 16/31, the submissions received and our response to these submissions.

4.1 Our Decision

- There is a need for AFL USO in the entire State.
- eir shall be the USP for AFL USO, for the period 29 July 2016 – 30 June 2021.

³³ Regulation 7(1) of the Universal Service Regulations.

- The ECS market is likely to change significantly as a result of the NBP. We do not anticipate that this will be fully implemented before the end of the AFL USO 5 year designation period, and we anticipate that the full effect will not be realised for a minimum 5 years. We will however, carefully monitor and review these developments in order to evaluate what impact it may have on the provision of basic electronic communications services in the State. The most immediately foreseeable event is the NBP contract award. Accordingly, we will begin a review 3 months after the Department has concluded the NBP contract award process. On foot of this review, we will decide if we need to commence a new consultation process in relation to AFL USO in the State and we will publish an information notice regarding this.

4.2 Reasons for Our Decision

4.2.1. Designation for the entire State

- 162 End-users who require AFL USO to be delivered by the designed USP are dispersed throughout the State.
- 163 Therefore, to protect all end-users throughout the State and to ensure that any end-user in the State who requires the protections of universal service to get access to a public telephone network at a fixed location and a telephony service, the designation must be for the whole of the State.
- 164 Our Decision on what constitutes a reasonable request for AFL USO (set out in Chapter 5), should result in a relaxation of the extent to which eir as the USP will be obliged to fulfil such requests in parts of the State where there exist Alternative Infrastructures/service providers as well as meeting other criteria, notably a monetary threshold(s). We consider that this is a proportionate approach and we have had regard to eir's proposal that we should have regard to the availability of Alternative Infrastructure, instead of eir being the automatic provider of basic telephony services. This approach therefore supports a transition by eir to being the *provider of last resort*.
- 165 eir does not have to maintain a national narrowband network to deliver AFL USO. As set out at paragraph 12 above, it can use or purchase wholesale access to Alternative Infrastructures (its own or others, including the NBP) and associated services necessary to deliver its obligations. In any case, our proposals mean that it will only be necessary for eir to satisfy reasonable requests for connection and PATS at a fixed location in cases where there are no other adequate or suitable alternatives.

166 We designed the associated obligations in such a manner that no obligation to satisfy requests for access and a telephone service crystallises on eir as the USP unless the end-user has no suitable alternative. If, as is eir's view, there is no need for any AFL USO, then no requests would need to be satisfied by eir as the provider as last resort.

4.2.2. Duration of Designation

167 eir is the designated USP for AFL USO, for the period 29 July 2016 – 30 June 2021.

168 The ECS market is likely to change significantly as a result of the NBP. We do not anticipate that this will be fully implemented before the end of the AFL USO 5 year designation period, and we anticipate that the full effect will not be realised for a minimum 5 years. We will however, carefully monitor and review these developments in order to evaluate what impact it may have on the provision of basic electronic communications services in the State. The most immediately foreseeable event is the NBP contract award. Accordingly, we will begin a review 3 months after the Department has concluded the NBP contract award process. On foot of this review, we will decide if we need to commence a new consultation process in relation to AFL USO in the State and we will publish an information notice regarding this.

4.2.3. USP Designation

169 eir continues to be the largest provider of connections and voice services at a fixed location in Ireland. eir has already an extensive and ubiquitous access infrastructure in place to deliver the necessary access to all universal service end-users across the State. This cannot easily, or at all, be replicated by its competitors. eir benefits from its large network coverage, end-user base size and product portfolio, thereby giving it the ability to exploit greater economies of scale and scope in the provision of voice access and voice services than would otherwise be achievable by potential competitors.

170 eir, because of its high degree of control and ownership of the PSTN, and ownership of an NGA network, is capable of meeting the reasonable requests of end-users on a nationwide basis.

171 eir also remains the major fixed line provider in the market, with a current estimated market share of 42.4% of fixed voice subscriptions (either standalone or as part of a bundle) and 45.5% of fixed line revenues at the end of 2015. During the 5 year USP designation period it is likely that the AFL USO connections and PATS at fixed location will primarily be delivered using the eir (PSTN) network until the NBP network has been substantially rolled out, for at least those end-users who have a preference (and a right) to purchase standalone FVA.

4.3 Duration of Designation – Summary of Consultation 16/31

- 172 In light of the NBP and technological developments, we proposed in Consultation 16/31 that if AFL USO continues to be needed in all or parts of Ireland, it would be appropriate to designate a USP(s) for at least 5 (possibly 7) years. We also proposed, if necessary, to review this, once NBP infrastructure and services rollout is fully completed. We explained that this would allow us to take into account the full impact of the NBP (and relevant technological developments) and if necessary, to review the requirements for individual elements of the USO.
- 173 We carefully considered the TERA Reports and we agreed with their recommendation that a further designation of a USP for the provision of AFL USO is appropriate, proportionate and objectively justified. We also agreed with TERA's view that a designation could reasonably be specified for a period of 5 years from 29 July 2016, with a provision for review once the NBP infrastructure roll out is fully completed or, possibly sooner, depending on developments.
- 174 Notwithstanding this, we recognised and took account of the possibility that the NBP and other infrastructures may be in the process of being and fully deployed during the proposed designation period.
- 175 There may be continued requests for access at a fixed location, we have noted that demand for fixed connections, and voice services in the short to medium term continues to be significant. Because of the continued demand for fixed voice telephony particularly standalone (a basic entitlement of end-users), we and our consultants TERA considered if the AFL USO rights would be delivered absent a USO.
- 176 On the basis of our counterfactual analysis, we considered that market forces alone would not ensure end-user rights, for example, access to a public communications network at a fixed location and a PATS over that connection. We are required to ensure that all end-users (in particular, end-users in rural or sparsely populated areas, or less economic end-users distributed nationally) have access to an efficient and reliable universal connection and PATS at an affordable price and as a standalone PATS.
- 177 There is currently no programme or mechanism which ensures that AFL USO (voice telephony at a fixed location) is provided to those that need it, other than by a regulatory decision by ComReg. However, because of the NBP, it may well be that AFL USO can and will be provided using infrastructure and associated services which have been and fully deployed under the NBP.

- 178 We considered that proposed obligations should not force infrastructure rollout where suitable alternatives exist. Our proposals recognised this possible scenario such that the USP would not have to provide connections or PATS at a fixed location, if it has already being delivered, at an affordable price, as a result of the rollout of the NBP, during the proposed 5 year period.
- 179 Consultation 16/31 noted that while we think it is prudent to have flexibility going forward, there are very significant uncertainties. It is unclear, what the final outcome of the NBP procurement process will be and its impact on the future of the AFL USO cannot yet be known. In addition, it is uncertain when the European Commission's review of the universal service framework will be completed and if, how and when this may affect Ireland. We will need to carefully consider all relevant national and EU developments in this regard.
- 180 Our preliminary conclusion having regard to the above and having taken account of respondents' submissions and TERA's recommendations, was that a 5 year USO designation period, with a flexibility for review, if necessary, is appropriate. This approach should balance the current and future needs for the provision of AFL USO. In addition, we proposed that individual elements of the USO (such as QoS targets and FIA) could be reviewed within the 5 year period.
- 181 Consultation 16/31 asked the following questions regarding the duration of the designation:

<p>Q. 2 Do you agree with our proposal to designate a USP to deliver AFL USO for a period of 5 years, with a review to take place after 5 years or sooner if circumstances justify it? Please give evidence and reasons to support your view.</p>

4.3.1 Duration of the Designation - Respondents' Submissions

- 182 ALTO and BT agreed with our proposal. ALTO stated that: *"...Given the potential changes to the market that NBP and evolving technologies may bring, it would seem sensible to be able to stimulate a review only if countervailing circumstances justify it."*
- 183 Sky stated that: *"...The approach proposed by ComReg appears sensible given the flexibility outlined therein depending on whether circumstances justify it."* Virgin Media stated that: *"...ComReg should undertake regular reviews to account for 1. Changes in the way in which basic electronic communication services are provided over time...2. New network deployments could eliminate the need for a USO."* Furthermore it was of the view that: *"...In deciding on the duration and scope of the USP designation, ComReg should be mindful that Universal Service Obligations can undermine incentives for other operators to invest in broadband infrastructure."* It was also of the view that: *"...the designation should not exceed five years, and should be reviewed after three years."*

- 184 Vodafone agreed noting however that: *“...the awarding of the USP for 5 years given the changes expected in the market needs to be reviewed. ComReg should commit to review USO again following the awarding of the NBP and if the scope of USO changes as a result of the review in the EU or USO or the outcome of the Digital Single Market. ComReg need to have a clear trigger defined to review the designation as opposed to an open undefined review.”*
- 185 eir disagrees with the proposed designation period and stated that: *“...ComReg’s proposal for a five year designation period is unduly lengthy, particularly in the absence of a commitment to promptly address eir’s current and outstanding applications for USO funding and the failure by ComReg to address the matter of funding as part of the designation process. As such, a designation period of five years, even with the potential for an Interim review, is unduly lengthy and burdensome on eir.”*
- 186 eir stated that: *“...despite its commitment in 2014 to consider the future of the USO prior to any re-designation of a USP, ComReg in essence is doing little else than proposing to maintain the existing regime, albeit with some tweaks.”*
- 187 eir does not believe that: *“...we have not undertaken a proper review or established a fit for purpose regime. In this regard, eir finds it difficult to reconcile ComReg’s position with its statutory duties under the Communications Regulation Act and the Framework Regulations. ComReg’s persistence in refusing to consider the implications of high speed broadband for the continued need of an obligation to provide access to a narrowband connection is simply impossible to understand, as is its belief that narrowband roll-out may still be required were the NBP provider not providing traditional voice access. This is simply not consistent with the provisions of the Universal Directive (including Recitals 5 and 15) and Regulations and the requirement on Member States to ensure the universal service using the most efficient and appropriate approach.”*
- 188 eir stated that: *“...it does not believe that the regime proposed by ComReg is sufficiently flexible and appropriate to deal with the significant market changes that are underway.”* eir also believes it is necessary, *“that automatic review mechanism are built-in within ComReg’s decision, as follows:*
- *Trigger clauses built into the Decision such that reviews will commence immediately following the outcome of the NBP process and/or the adoption of a new / amending Directive by the EU impacting the USO regime.*
 - *Sunset clauses built into the Decision such that reviews must be completed by a particular date, failing which the obligations lapse”.*

4.3.2 Duration of the Designation – ComReg’s Response

189 The majority of respondents were in general agreement with our proposals. We recognise and take account of the possibility that the NBP infrastructures may be in the process of being deployed during the proposed designation period.

190 Vodafone wanted us to review the period of the proposed USO designation; however, it is unclear as to what the outcome of the NBP procurement process will be, and how, and when, the European Commission’s review of the universal service framework may affect Ireland. We will carefully consider all relevant national and EU developments in this regard.

191 We note eir’s observations in relation to automatic review mechanisms. We therefore consider it appropriate to provide for a review in the Decision Instrument.

4.4 Designation for the entire State - Summary of 16/31

192 We considered the geographical scope of AFL USO, in particular, whether or not it would be necessary to designate an AFL USO to cover the entire State.

193 Currently, AFL USO is defined national in its geography and the USP is designated accordingly. Nevertheless, the First TERA Report highlighted geographic differences such as competitive constraints, network availabilities, and network costs. TERA found that some areas of the State are unlikely to be affected without an AFL USO, while others would be significantly affected. TERA considered it could be possible to have sub-national USOs, for example, ineir only, or NBP areas, leaving other areas without AFL USO.

194 Having considered TERA’s reports, we proposed that it is likely to be difficult to identify individual geographical pockets/areas which should or should not be subject to an AFL USO. Although in theory, the removal of an AFL USO would likely have less of an impact on end-users in competitive areas, there is a risk that in practice some end-users in those areas may not be served. For example, there could be uneconomic end-users within economic areas.

195 On the basis of our analysis, we proposed that any subsequent designation of a USP(s) to provide the AFL USO should be for the entire State, allowing for flexibility for its individual components. Further, a national approach to AFL USO and designation of a USP could allow greater flexibility in the design of any AFL USO and in the management of the obligations.

- 196 Our Decision does just this. We must protect end-users throughout the State who need AFL USO but who will not be commercially served. To ensure that any end-user in the State who reasonably requests it has access to a public telephone network at a fixed location and a telephony service, the USO designation must be for the whole of the State.
- 197 We consider that a designation for the entire State does not create any additional burden on the designated USP, compared to the designation being only for precise geographical areas or end-user locations, where a provider of last resort is required. The net effect of the obligations is exactly the same, but our decision provides certainty for all interested parties.
- 198 Consultation 16/31 asked the following question regarding whether there are other factors that should be considered:

Q. 3 Do you agree with our proposal that the USO designation should be applied to the geographic area of the entire State? Are there other factors which should be considered by us in this regard? Please give evidence and reasons to support your view.

4.4.1. Designation for the entire State - Respondents' Submissions

- 199 ALTO, BT, Vodafone and Sky agreed with our preliminary view. ALTO and BT stated that: *"...even in highly populated urban areas with competition it may still not be possible to achieve commercial supply in some instances."*
- 200 Virgin Media stated that: *"...the USO designation should not apply within the NBP intervention area."*
- 201 eir stated that: *"...there can be no justification for a blanket designation across the State in the manner proposed by ComReg."* eir stated that: *"...ComReg has carried out little or no research or analysis into the level of demand or the fixed locations at which demand could not be served immediately either though existing fixed or mobile service availability."*
- 202 eir stated that: *"that no analysis of mobile coverage has been carried out and that..... no attempt has been made to identify areas that might not be covered in respect of indoor service, by any of the mobile operators, nor is there any mapping of these areas against other infrastructure that provide AFL USO."* eir' stated that: *"Such a mapping exercise would demonstrate that any potential USO AFL USO needs may arise in small geographic pockets. As eir stated in response to ComReg 15/89: "...if there is a continued need for an AFL USO, any subsequent designation cannot be for the entire State."*

4.4.2. Designation for the entire State - ComReg's Response

- 203 The majority of respondents agreed with our view that the USO designation should be applied to the geographic area of the entire State. In response to the view that the USO designation should not apply within the NBP area, we do not consider that it is possible for us to say at what stage of the NBP's development that it can ensure the provision of AFL USO and related USOs. Our designation is therefore flexible enough to accommodate this.
- 204 eir has objected to our proposal that it should be the USP, or at least, it appears that it so objects, unless it has an "assurance" that it will be compensated for any net cost of providing the universal services uneconomically.
- 205 We disagree with eir. First, it is not permissible for us to fetter our legal discretion by giving eir any such assurance in advance. Second, we must assess each application by eir for compensation for the uneconomic provision of the universal service on its individual merits, based on the available evidence. We must also apply the analytical framework that we have put in place to assess such applications.³⁴ Third, eir has conflated the issue of how we designate a USP, with the how the USP might be compensated by industry for the uneconomic provision of the universal service. This latter issue is separate from the former and, we are addressing this in a separate process, in which eir is engaged.
- 206 In response to eir's view that "*...there can be no justification for a blanket designation across the State*", we note again that not all end-users will require AFL USO to be delivered by the designed USP. For example, many end-users are currently services on a commercial basis. However, the end-users who do require AFL USO are dispersed throughout the State.
- 207 Therefore, to protect all end-users throughout the State and to ensure that any end-user in the State who requires the protections of universal service to have access to a public telephone network at a fixed location and a telephony service the designation must be for the whole of the State. This is a proportionate response because, amongst other things, it provides flexibility in the design and management of AFL USO.
- 208 We disagree with eir's view of mobile coverage as described in paragraphs 201 and 202 above. We obtained data from the mobile operators, which enables us to come to our view on indoor and outdoor coverage. As to what constitutes a reasonable request for a new connection, we have amended the obligation to take account of Alternative Infrastructure so that it includes mobile networks.
- 209 The practical effect of our proposal is as follows:

³⁴ ComReg Document No. 11/42 (Decision No. D04/11): "*Decision on the Costing of universal service obligations: Principles and Methodologies*" dated 31 May 2011.

- the USO *only* arises where a reasonable request is made by an end-user for AFL USO (in any geographic location of the State); and
- An Alternative Infrastructure (at a location, which is of sufficient quality and provided at an affordable price) is not available to the end-user at their fixed location.

210 Our Decision on what a reasonable request for AFL USO is lessens eir's obligations as the USP to satisfy end-user requests for USO AFL in those parts of the State where there is Alternative Infrastructure/service providers. We consider that this is a proportionate approach which takes into account eir's proposal that we should take into account the availability of Alternative Infrastructure. This approach therefore will support a transition by eir to being the provider of *last resort*.

4.5 Universal Service Provider(s) Designation - Summary of 16/31

211 It is a legal requirement under the Universal Service Directive and the Regulations that no undertaking can be excluded from being designated to provide all or part of the universal services, in all or part of the State.

212 The existing USO does not specify the technology to be used in providing connections or a PATS, nor does it preclude any USP from meeting end-user requests for connections, by sourcing a connection from a third party.

213 In principle, we believe it possible that a designated USP could, in the future, choose to meet requests for a connection and PATS by providing (or sourcing) a connection to the NBP network (and/or other enhanced networks) and providing a managed VoIP service over that connection. It may be possible too for any USP to meet some of its obligations by using other technologies, such as wireless connections.

214 Consultation 14/48 and Consultation 16/31 gave operators the opportunity to express an interest in providing all or part of the universal service, in all or part of the State. We received no expression of interest.

215 We are aware that market forces may be sufficient to ensure that the required AFL USO services are provided to everyone at an appropriate quality and at an affordable price. Further, in time, USO objectives could be effectively fulfilled in NBP areas under NBP contract, and no further intervention may be needed in those areas.

216 In paragraph 562 of Consultation 16/31 we considered that the following were important factors in deciding who is an appropriate USP(s) for the proposed 5 year period:

- Meeting the AFL USO requirements.
- Continuity of service to end-users.
- Migration.
- Most cost effective way of providing connections for a standalone voice service.
- Least burdensome regulatory approach: that allows planning for delivering connections and voice services.

217 In light of these factors, we considered two options:

- **Option 1:** Designate eir as the AFL USO provider for all fixed locations in the State for a period of 5 years, except at locations where a successful NBP bidder is accepting orders for wholesale connections to the NBP network.
- **Option 2:** Designate eir as the USO provider for the entire State for a period of 5 years.

218 These options were discussed in detail in **paragraphs 564 to 584** of Consultation 16/31.

219 We were of the preliminary view that eir is the most appropriate USP because of its national reach in terms of a fixed networks(s) and mobile and other technology alternatives available to it.

220 We were of the view that within the next 5 years, eir will remain the most appropriate USP to satisfy reasonable requests not met by the market (including as a result of the NBP). These could be satisfied by PSTN, NBP infrastructure or FCS. We observed, however, that many of the considerations that lead us to this conclusion would not apply once the NBP rollout is complete. It is far from inevitable that we would conclude that eir should continue to be designated throughout the State (if a further designation were considered necessary in 5 years).

221 Consultation 16/31 asked the following questions regarding the designation of the USP:

Q. 4 Do you agree with our preliminary view that the most appropriate approach is to designate Eir as the USP from 1 July 2016? Please give evidence and reasons to support your view.

Q. 5 Are there other factors or options which should be considered by ComReg in making a designation in respect of a USP? Please give evidence and reasons to support your view.

4.5.1. Universal Service Provider(s) Designation - Respondents' Submissions

- 222 ALTO and BT agree with ComReg's preliminary view that the most appropriate approach is to designate eir as the USP from 1 July 2016. They stated that: *"...they are the only operator with ubiquitous access throughout the State for voice services. No other operator would reasonably be able to duplicate this essential facility in a reasonable timeframe to support the AFL USO service"*.
- 223 Virgin Media also agree, but stated that: *"...this designation should not apply within the NBP intervention area."*
- 224 Sky stated that: *"...it makes sense to designate Eir as the USP from 1 July 2016, otherwise certain customers may not have access to AFL USO services from that date until such time as a USP is designated."*
- 225 Vodafone agrees with the designation however they stated that: *"...Vodafone have major concerns at the short period yet again that are given to consultation on USO. It is impossible to accept that ComReg can take into account all of the comments and views and still decide on designation in two weeks. It is welcome that the designation is for 5 years (subject to review as outlined above) which gives some certainty for industry. "eir stated that: "...ComReg has conducted the current consultation process in a manner that is inconsistent with the requirements of the Universal Service Directive and Regulations and that has prejudiced eir". It is also of the view that: "...The process followed by ComReg is in this respect entirely defective. Far from ensuring that no undertaking is in principle excluded, the process followed by ComReg ensures that no undertaking other than eir may de facto be designated. In fact, ComReg makes it a pre-condition that they express an interest. eir believes that it is entirely discriminatory of it as eir has never expressed a willingness of discharging the USO in circumstances where the net cost of the USO has remained unshared to date."*
- 226 eir also stated that: *"...ComReg has nullified the provisions which permit other providers to register expressions of interest in being designated the USO for AFL USO on the basis that the periods in question simply would not allow another provider to put in place the structures and framework required to discharge the USO for AFL USO."*
- 227 eir also stated that: *"...If ComReg were to be sincere in seeking expressions of interest it would need to have afforded any candidates sufficient time; (a) in advance of ComReg's draft decision and designation to allow potential candidates to determine whether they want to make an expression of interest and (b) after ComReg's designation to ensure that the successful candidates are able to put in place necessary structures and frameworks to ensure that they will be able to discharge the obligation in question."*

- 228 eir stated that ComReg designated eir as the USP in 2014 and that: *“...while continuing in part 2 of 14/48 to seek views on the future of USO along with expressions of interest in fulfilling the AFL USO requirements following the 18 month re-designation of eir. ... ComReg did not publish any further requests for expressions of interest until now, having omitted to seek expressions of interest in the two USO AFL USO consultation documents 15/89 and 15/124.”*
- 229 eir was also of the view that: *“...ComReg will not be able to properly and thoroughly consider the submissions received from interested parties in advance of reaching a final binding decision on which provider should be designated the USO for AFL USO”*. eir also set out its view that: *“...ComReg subjects consideration of other providers to their expressing an interest. There is no reason for such an approach especially in the context of the NBP rollout.”*
- 230 In response to question 32, ALTO and BT consider factors such as the cost of the USO need to be considered, in particular: *“...the cost of the USO appears to be spiralling when reviewing the costs claimed by Eir over recent years.”* They suggested that this appears inconsistent with the cost reduction initiatives within eir that have been in the press from time to time and the fact that the country has been in recession for most of this period causing low levels of new housing development.
- 231 ALTO and BT stated that Consultation 16/31 lacked discussion regarding: *“...cost reduction through new innovation and leads to questions to whether the charges are those of an efficient operator.”*
- 232 ALTO and BT stated that: *“...greater transparency is required from both Eir and ComReg, as to whether there is value for money in the services provided, and what efforts are being made to reduce these costs.”*
- 233 Virgin Media stated that there are no further factors, which should be considered, while Sky stated that: *“...considers it has made all points relevant to USP in response to the previous questions.”*
- 234 Vodafone stated that: *“...has serious concerns that 5 years of USO applications for funding remain outstanding and represent a serious overhang on all operators in the market. ComReg have not been transparent in how they have approached this issue. For the avoidance of doubt Vodafone fundamentally disagree that either there is a net cost or that it represents an unfair burden. It is of great concern that eir continue to apply for funding, with the total funding requested in excess of €50ml.”*

- 235 Vodafone stated that: *“... There is a huge inconsistency where the cost of the USO appears to be spiralling when reviewing the costs claimed by Eir over recent years compared to the cost reduction initiatives within Eir that have hit the press from time to time and the fact that the country has been in recession for most of this period causing low levels of new housing development. Equally investment in the network is not increasing and operators face ‘Storm Mode’ from November to February 2016 which reflects the poor network. It should be noted that other utilities (e.g. ESB, An Post) do not seem to have the same deterioration in service during winter times.”*
- 236 eir stated that: *“...ComReg’s failure to decide on Funding Applications distorts the nature of eir’s USO Obligation”* and that: *“...ComReg’s failure to decide upon eir’s funding applications for 2010 to 2015 breaches the ‘principles of transparency, least market distortion, non-discrimination and proportionality’ by creating ambiguity for eir in respect of its financial obligations and by discouraging other operators from expressing interest in being a USP.”*
- 237 eir stated that: *“...ComReg’s failure to adjudicate upon the funding applications creates uncertainty for eir which impacts upon its finances and ability to plan its expenditure into the future. The value of the outstanding funding applications for four years of €51 million represents 4.67% of eir’s 2014 / 2015 turnover (€1,092 million, excluding mobile and discounts)”* and its view that *“ComReg’s failure to adjudicate upon the funding applications acts as a significant disincentive for other operators to engage with the call for expressions of interest.”*
- 238 eir stated that: *“...ComReg should not proceed to designate eir as the USO or indeed any USP until the funding issue has been addressed.”* eir also set out its view that *“any USP Designation should include an acknowledgement that ComReg will properly consider and issue a Decision on an Application for Funding within 6 months of receipt.”*
- 239 First, it is not permissible for us to fetter our legal discretion by giving eir any such assurance in advance. Second, we must assess each application by eir for compensation for the uneconomic provision of the universal service on its individual merits, based on the available evidence. We must also apply the analytical framework that we have put in place to assess such applications.³⁵ Third, eir has conflated the issue of how we designate a USP, with the how the USP might be compensated by industry for the uneconomic provision of the universal service. This latter issue is separate from the former and, we are addressing this in a separate process, in which eir is engaged.

³⁵ ComReg Document No. 11/42 (Decision No. D04/11): *“Decision on the Costing of universal service obligations: Principles and Methodologies”* dated 31 May 2011.

240 eir suggested that we have “failed” or “refused” to assess its applications for compensation for the uneconomic provision of the universal service. eir suggested that this has had a “chilling” effect on the potential for other service providers to express an interest in being a USP. We disagree with eir. First, we have received **four** applications from eir, claiming a net cost for the provision by it of the universal services and for which it seeks compensation in the form of funding from industry. We have acknowledged that we have received eir’s applications in several public notices. We are assessing them and we will make determinations on them.

4.5.2. Universal Service Provider(s) Designation - ComReg’s Response

241 We note the majority of respondents were in agreement that eir should be designated as the USP.

242 eir suggested that the period allowed for consultation was too short. We published our most recent consultation document on 4 May 2016, with a deadline for submissions by 13 June 2016. eir stated that the consultation process was “truncated” and “discriminatory” to eir.

243 We disagree with eir’s assertions on the basis that we have consulted in detail and at length on the need for, and scope of, AFL USO (as set out in section 1.2 and 1.3 of this document).

244 We began our consultation process in August 2015, not in May 2016, as eir suggested. We have consulted for a total of almost 10 months and eir has made submissions on each consultation document that we have published. We have also gathered information from eir and the rest of industry (using our statutory information powers) which we have taken fully into account in order to form our proposals and to arrive at a final Decision. Our most recent consultation gave nearly 6 weeks for the receipt of submissions by interested parties. eir is very familiar with the issues on which we have consulted since August 2015. eir is also aware of the time that we generally allow for the receipt of submissions to our consultations (4 weeks).

245 Prior to and since August 2015, eir has asked us to progress the consultation process. We have used our best efforts to complete the consultation process within the timeframe that we had previously signalled to all of industry in August and December 2015.

246 Under the Regulations, our USO designation must be transparent: we must properly consult (publicly) on our proposals before designating the USP and we must publish reasons for our Decision. The designation mechanism and our Decision are necessary, proportionate, non-discriminatory and transparent. We consider that this is what we have done.

- 247 We do not agree with eir's suggestion that: "...*ComReg in essence is doing little else than proposing to maintain the existing regime, albeit with some tweaks*". We have undertaken a detailed review of the need for and AFL USO. We have issued two consultations and two independent expert consultant reports. We have considered and reviewed the data as provided to us by industry, on foot of a number of information requests. We have also taken account of the Department's initiatives, and market trends and evolutions. Having regard to this analysis and taking due consideration of respondents' views, we have modified the USO such that eir will be the service provider of last resort.
- 248 In relation to eir's claims on the ability of other providers to register expressions of interest, we asked for expressions of interest in Consultation 14/48 for the period post December 2015 and described a proposed assessment methodology and selection criteria. Consultation 16/31 again asked for expression of interest from industry, but we received no expressions of interest.
- 249 We have clearly established that there continues to be a need for AFL services, particularly that alternative infrastructures or market forces cannot, at this time or, in all cases, provide broadly equivalent connection or PATS to the USPs provision AFL services. In this context, we consider that it is necessary to and entirely appropriate to designate eir at the provider of last resort. In this respect, eir, by virtue of its high degree of control and ownership of the PSTN, as well as ownership of an NGA network, is capable of meeting the reasonable requests of end-users on a nationwide basis. As we set out in the next Chapter, our approach is not unduly burdensome on eir because it supports a transition by eir to the extent possible, to a provider of last resort.

5. Reasonable Requests

250 In Chapter 4 we set out our Decision to designate eir as the USP for the next 5 years in the State. This Chapter sets out our further decision with our reasons, on what constitutes a reasonable request to the USP by an end-user for AFL USO; how requests must be satisfied by the USP; and the situations where the USP does not have to satisfy them.

251 We have decided that the presence of alternative infrastructure should be taken into account when assessing whether a new connection request is reasonable or not, such that the designated USP is the *provider of last resort*. In assessing the reasonableness of a request, the cost of the connection is also a relevant factor and therefore, we have introduced new reasonable access thresholds (which take account of criteria which include the presence of Alternative Infrastructure and monetary thresholds).

252 This Chapter sets out the following:

5.1 Our Decision.

5.2 Reasons for our Decision.

5.3 Pre-Existing Obligation - Reasonable Access Requests: This summarises pre-existing USP reasonable request obligations.

5.4 Summary of Consultation 16/31: This summarises our preliminary view respondents' submissions, and our response.

5.1 Our Decision

253 To ensure that the USP is the *provider of last resort*, we have modified the definition of "reasonable access request". This adjustment introduces 'new reasonable access thresholds' which takes account of criteria, including, the presence of Alternative Infrastructure and monetary thresholds) as follows:

- I. If a request by an end-user for AFL USO requires expenditure by the USP **not exceeding €1,000** for the USP to satisfy that request, it shall be a reasonable request, and the USP shall satisfy that request.
- II. If a request by an end-user for AFL USO requires expenditure by the USP that **exceeds €1,000** for the USP to satisfy that request, and there is at the time of the request an Alternative Infrastructure in the geographic location of the end-user that can provide equivalent AFL USO (in terms of affordability, quality and standalone PATS) to that of the USP, the USP shall not be required to satisfy that request.

- III. The approach at (ii) is **subject to an exception**: if the designated USP confirms that the Alternative Infrastructure is mobile, but the end-user does not agree that this will not provide an equivalent service to that currently prevailing for AFL USO (including Minimum Indoor Coverage) the designated USP must promptly notify us of this fact, with relevant supporting information. ComReg will then adjudicate on whether the request is reasonable or not.
- IV. If a request by an end-user for AFL USO requires expenditure by the USP that **exceeds €1,000 but that does not exceed €7,000** for the USP to satisfy and, there is at the time of the request **no** Alternative Infrastructure in the geographic location of the end-user that can provide equivalent AFL USO to that of the USP (in terms of affordability, quality and standalone PATS), it shall be a reasonable request, and the USP shall satisfy that request. If the expenditure required by the designated USP **exceeds €7,000** and the end-user agrees to pay the amount in excess of €7,000, then the USP shall satisfy that request.

254 In the case of **iii** above, if the technology identified by the designated USP can and will provide an equivalent service to that prevailing for AFL USO, but the end-user requests an alternative technology, and is willing to pay for the additional costs, the USP must provide it (if technically feasible). In these circumstances, such a request is reasonable, and the designated USP must satisfy it.

5.2 Reasons for our Decision

255 We are entitled to require a designated undertaking to satisfy all **reasonable** requests for AFL USO.

256 Prior to this Decision, requests for connections, which involved expenditure by eir in excess of €7,000, were reasonable, only if the requester agreed to pay the standard connection charge, plus incremental costs above €7,000.

257 This Decision on what constitutes a reasonable request for AFL USO is intended to lessen eir's obligations as the USP to satisfy end-user requests for USO AFL in those parts of the State where there is Alternative Infrastructure/service providers. We consider that this is a proportionate approach that takes into account eir's proposal that we should have regard to the availability of Alternative Infrastructure. This approach will support a transition by eir, to being the provider of *last resort*.

- 258 We have decided that where there is an alternative infrastructure at a fixed location, which is of sufficient quality, and provided at an affordable price, the requirement for the USP to provide a connection should be relaxed. In these circumstances, the need may be met by an alternative ECS provider.
- 259 Relaxing the obligation, so that the USP only has to provide a new connection in cases where there are no suitable alternative infrastructures and services present, should prevent inefficient infrastructure duplication, and therefore, mean lower costs to provide AFL USO.
- 260 If a request by a person for AFL USO requires expenditure by the USP **not exceeding €1,000** for the USP to satisfy that request, it is a reasonable request, and the USP must satisfy it.
- 261 In setting the €1,000 threshold, we considered, amongst other things, the TERA Reports. The TERA Reports found that the profitability threshold in respect of an end-user is likely to be between €700 and €2,000, depending on the competitive environment.
- 262 In the first TERA report, it was found that: *“...removing AFL USO where reasonable access is concerned would mean that the €7,000 threshold for a reasonable request is essentially set to zero, and the requirement to meet a reasonable request would no longer be in place”*. In other words, eir would be able to choose whether a given request would be addressed or not (or whether the connection costs would be passed to the end-user if these are considered as too expensive). In this case, eir, acting as a profit-maximising operator, will likely try to maximise its profits by comparing the cost of connecting a customer to its estimated future revenues before making a decision on each request.
- 263 TERA examined the period over which eir could expect future revenues and found it depends on the competitive pressure of the different areas:
- In **market-driven infrastructure-based competition areas**, the expected customer lifetime is **circa 4 years**.
 - In **NBP areas**, the period of time over which eir can expect future revenues depends on when the NBP network will be deployed and when customers will migrate to the NBP. This could be estimated at minimum **4 years**.
 - In **“eir only” areas where eir faces no competition** from any fixed infrastructure networks, a maximum **20 years** period can be considered according to eir.

- 264 TERA estimated the expected net revenues from AFL USO based on the monthly price of SB-WLR³⁶. SB-WLR was used as a proxy to estimate net revenues (excluding connection cost) because most of the costs recovered by SB-WLR are fixed costs (network costs) and because retail costs are assumed variable costs.
- 265 This analysis of the expected revenues shows that the profitability threshold was likely to be between €700 (market-driven infrastructure-based competition areas, NBP) and around €2,000 (eir only areas) depending on the competition environment. In other words, in NBP and market-driven fixed network competition areas eir may decide not to connect a customer if the connection cost is greater than €700. However, this choice would be mitigated by the fact that if eir does not connect this customer, eir would lose the opportunity to sell further products to this customer (in addition to the line rental, such as calls, broadband, etc.). In eir only areas, eir may decide not to connect a customer if its connection cost is greater than €2,000.
- 266 Taking TERA's analysis, with the number of connections that were requested in previous financial years, (as provided by eir in response to an information request) together, we are of the view that below a cost of €1,000 eir should be required to fulfil the request for connection. Even in the "greater than €500" connection cost range, the vast majority of connections are completed by Eircom as a USP with a copper path. The use of FCS solution remains very limited.
- 267 If a request by a person for AFL USO requires expenditure by the USP that exceeds **€1,000** for the USP to satisfy that request, and there exists at the time of the request, an Alternative Infrastructure in the geographic location of the end-user that can provide equivalent AFL USO (in terms of affordability and quality) to that of the USP, the USP shall not be required to satisfy that request.
- 268 This shall however be **subject to an exception**: if the designated USP confirms that the Alternative Infrastructure is mobile, and the end-user does not agree that this will provide an equivalent service to that currently prevailing for AFL USO (including Minimum Indoor Coverage) then the designated USP, must promptly notify ComReg of this, with relevant supporting information This recognises that the end-user is generally best placed to confirm this.
- 269 ComReg will then adjudicate on whether the request is reasonable or not. This is to ensure that there is transparency and accountability by the designated USP in how it satisfies requests. Further, we consider that this is consistent with one of our statutory objectives, which is to promote the interests of end-users.

³⁶ Based on both retail minus and cost orientated SB-WLR prices.

270 If a request by a person for AFL USO requires expenditure by the USP that **exceeds €1,000 but that does not exceed €7,000** for the USP to satisfy, and there is, at the time of the request, no Alternative Infrastructure in the geographic location of the requesting person that can provide equivalent AFL USO to that of the USP, it is a reasonable request, and the USP shall satisfy that request. If there is no Alternative Infrastructure in the geographic location of the requesting person there still must be an ECS provider of last resort available to the requesting person, given the legal requirement under the Regulations for AFL USO.

271 If it costs more **than €7,000** for the designated USP to satisfy the request, and the end-user agrees to pay the standard connection charge and the excess, then the USP shall satisfy that request. We have decided that if the expenditure required by the designated USP **exceeds €7,000** and the end-user agrees to pay the amount in excess of €7,000, then the USP shall satisfy that request.

272 We have decided that this level of €7,000 should not be amended. Although a reduction in the threshold would benefit the USP, the detriment to consumers of a decrease in this threshold would be significant, particularly as there is no alternative. We have decided therefore to maintain €7,000 RAT threshold at its current level in order to protect end-users. The majority of connections fall below this level, and only in a limited number of cases would end-users be required to pay the incremental costs.

273 With regard to the need for Alternative Infrastructure to have sufficient indoor coverage, in the case of mobile technology: we note that the Department has proposed the establishment of a mobile and broadband taskforce. We have amended the RAT decision tree (Figure 3.1 below) which was originally set out in Consultation 16/31 to take account of the presence of alternative infrastructure.

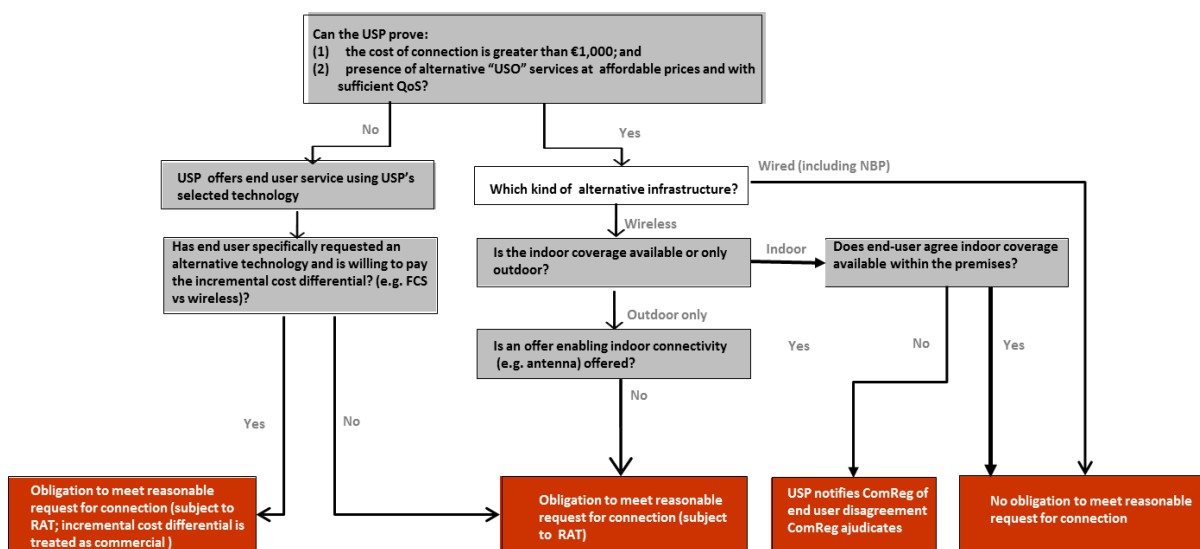


Figure 3 Updated Decision Tree

5.2.1. Implementation - USP

- 274 We consider that it is the responsibility of the designated USP to verify that there are alternatives available at the end-user's location, which are affordable and able to support voice calls and the minimum data rate of 28.8 kbit/s. Crucially however, the Alternative Infrastructure, needs to be affordable and with sufficient QoS.
- 275 In the case of a 2G mobile service, we are of the view, that because it does not support the minimum data rate in relation to FIA, it can only be considered if the USP is within the 94% threshold in relation to FIA connections. This is in addition to the tests for affordability and QoS (including indoor coverage) applied to alternative technologies.
- 276 The USP is also required to record the details of the Alternative Infrastructure present and the end-user's acknowledgement that the alternative is sufficient for the purposes of AFL USO. In respect of mobile networks, the indoor coverage equivalent to prevailing AFL USO is required, in order for it to be considered a feasible alternative. We require that the designated USP to provide us with these records on a quarterly basis.
- 277 In order to assess the **affordability** of the alternative solution, details such as cost of terminal equipment, connection fees, and monthly subscriptions and call/package prices must be compared with the service requests from the USP. If they are broadly the same price then the alternative solution could be acceptable, that is, in order for the alternative to be considered affordable, the Alternative Infrastructure must offer a package or packages, which are broadly in line with those prices offered by the USP in respect of connection, line rental, calls, and the terminal equipment.
- 278 If the presence of an appropriate Alternative Infrastructure cannot be established, the request for connection must be considered in accordance with the Reasonable Access Threshold.
- 279 We consider that the USP will be required to implement simple and transparent processes, whereby if the connection cost is greater than €1,000, the end-user (who has requested a connection) does not disagree that there suitable alternative, then the connection request may be considered not to be reasonable. This acknowledgement may be difficult to acquire. There may be situations where we will need to intervene to solve disagreements using our dispute resolution powers³⁷.

³⁷ Under the Universal Service Regulations.

- 280 If the end-user is not satisfied with the solution proposed by the USP (and assuming the solution complies with the regulatory obligations we have put in place in place) the end-user will be able to request an alternative technology. If this is a technology more expensive than that proposed by the USP, any such request should be considered by the USP. However, the end-user must be willing to pay the costs above the technology proposed by the USP.
- 281 When measuring the cost of the connection, the cost to a point inside the premises must be included. The costs incurred by the USP in bringing the connection from the roadside to inside the premises would relate to overhead drop wires, where such a solution is possible. However, where overhead wires can be used and the end-user requires underground cables, it is reasonable that the end-user should incur the additional costs, for example, of digging trenches and laying ducting for example.
- 282 In assessing the cost of a connection, only those costs that can be attributed to the individual end-user should be measured. Thus, infrastructure that is used currently, or will be used in the future, for the provision of a service to other end-users should be excluded from the calculation of connection cost.
- 283 We consider that the end-user is entitled to a detailed breakdown of the estimated costs of the connection. If they remain dissatisfied, the matter may then be referred to us for review.
- 284 A record of all the request for connection from end-users and the cost evaluation and of the solution proposed must be kept, and USP must use the least cost technology, so long as it is capable of allowing access to all the elements of USO telephony services - voice, fax and data.
- 285 To address concerns regarding possible abuse, the USP will be required to submit detailed draft processes governing the operational implementation of the modified reasonable access decision for review by ComReg. No Alternative Infrastructure may be implemented until the draft processes have been submitted to ComReg and approved by ComReg as set out in the Decision Instrument.

5.2.2. Implementation – End-User

- 286 For end-users, this will mean that while they are not guaranteed an AFL USO connection from the designated USP, they will have alternative access to a connection and PATS – with similar AFL USO capabilities to those provided by the designated USP (with sufficient quality and affordability).

- 287 If the end-user is not satisfied with the solution proposed by the USP (and assuming the solution is in keeping with the regulatory obligations in place) the end-user will be able to request an alternative technology. If this is a technology more expensive than that proposed by the USP, the end-user must be willing to pay the costs above the technology proposed by the USP (i.e. commercial service). This shall however be subject to an exception: if the designated USP confirms that the Alternative Infrastructure is mobile, but the end-user does not agree that this will not provide an equivalent service to that currently prevailing for AFL USO (including Minimum Indoor Availability) the designated USP must promptly notify ComReg of this fact, with relevant supporting information. ComReg will then adjudicate on whether the request is reasonable or not.
- 288 If an end-user believes the cost estimate for providing access is excessive, this can be subject to eir's complaint handling process.

5.2.3. Implementation – ComReg

- 289 ComReg will review the USP submitted detailed draft processes governing the operational implementation of the modified reasonable access decision. No Alternative Infrastructure may be implemented until the draft processes have been submitted to, and reviewed by ComReg.
- 290 ComReg will review the USP supplied quarterly reports which record the details of the Alternative Infrastructure present and the end-users acknowledgement that the alternative is sufficient for the purposes of AFL USO.
- 291 There may be situations where we would need to intervene to solve any disagreements under our dispute resolution powers.

5.3 Pre-Existing Obligations under 15/144 – Reasonable Access Requests

- 292 The Regulations provide that a designated undertaking shall satisfy any reasonable request to provide a connection to the public telephone network and access to PATS at a fixed location within the State. It is a requirement that the connection provided is capable of allowing telephone calls, data rate for facsimile, and data communications at data rates in relation to FIA.
- 293 The Regulations also provide that we may, with the consent of the Minister, specify requirements to be complied with by the designated USP in relation to the reasonableness of requests for connection and access.

294 Under the pre-existing USO designation (in accordance with Decision D9/05), the designated USP, eir, must consider all requests for connections reasonable if the expenditure involved in meeting the request is less than €7,000, and in which case the cost to the applicant is the standard connection charge.

295 Currently requests for connections which require expenditure by eir in excess of €7,000 are considered reasonable, if the applicant agrees to pay the standard connection charge, plus incremental costs above €7,000.

5.4 Summary of Consultations 15/89 and 16/31 – Our Preliminary Views, Respondents’ Submissions and Our Response

5.4.1. Market Trends and Developments

296 In Consultation 15/89 and Consultation 16/31 we considered the following:

- Consumer trends.
- Supply side trends.
- Continued need for AFL USO.
- Whether any designation should be for the entire State.
- Duration of any AFL USO designation.

297 The scope of the USO is AFL. How this is to be achieved is not prescribed and the principle of technological neutrality allows eir as the USP to choose the optimum method of providing access and service. The requirement is for all elements of the USO i.e. capability for voice, fax, and data services to be provided.

298 A monetary threshold is not the only way in which a reasonable request could be defined, and other factors such as the distance from the existing fixed network and coverage in the location from mobile networks could also be considered.

5.4.2. Reasonable Access Criteria

299 **Section 6.4** of Consultation 16/31 gave an overview of the different ways in which the reasonableness of a connection could be determined:

- Distance from the exchange and other factors.
- Presence of affordable Alternative Infrastructure.
- Monetary threshold.

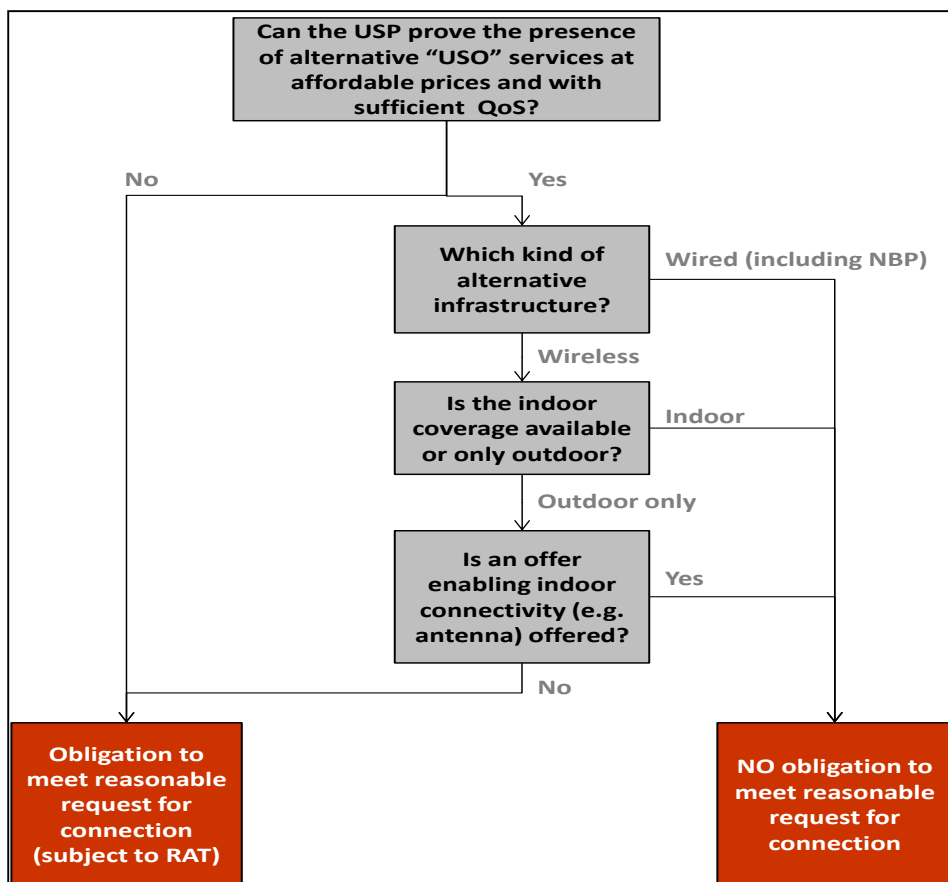
5.4.2.1. Distance from the Exchange and Other Factors

300 We expressed our preliminary view in Consultation 16/31 that the distance from the exchange is not an appropriate criterion for determining the reasonableness of a request for connection in Ireland, given our dispersed population.

5.4.2.2. Presence of Alternative Infrastructure

301 In Consultation 16/31 we expressed the preliminary view that the existence of Alternative Infrastructure was an appropriate but not sufficient pre-condition for not requiring the designated USP to satisfy requests for AFL USO.

302 We presented the following schematic to illustrate our proposals:



5.4.2.3. Monetary Threshold

303 We considered a number of options in relation to a monetary threshold as illustrated below:

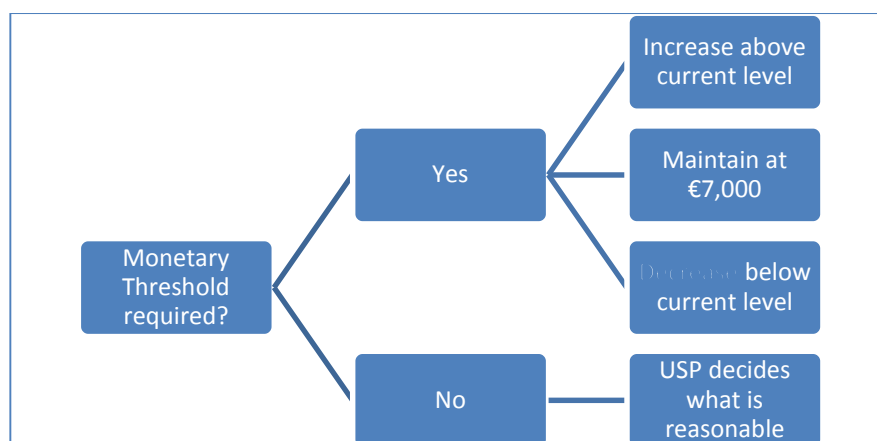


Figure 2 - Options for defining a Monetary Threshold

304 We expressed our preliminary view in Consultation 16/31 that a Reasonable Access Threshold should be maintained, however, the level at which it is set could be reviewed.

305 Consultation 16/31 asked the following questions regarding the reasonable access criteria:

Q. 1 Do you agree or disagree with the regulatory options for reasonable access requests as set above? Are there other options that we should consider? Please give reasons to support your view.

Q. 2 What do you believe is the most appropriate factor(s) to define a reasonable request? Are there other factors which you believe we should consider when assessing what defines a reasonable request? Please give reasons to support your view.

Q. 3 What is your view regarding how to assess if the Alternative Infrastructure is affordable? Please provide reasons to support your view.

Q. 4 Do you agree that indoor coverage is an important factor in assessing alternative connections and PATS? Please provide reasons to support your view.

Q. 5 Do you agree that where a threshold is set, only costs that can be attributed to the individual end-user should be measured and that the estimated cost of connecting an end-user should also be based on the least cost technology to provide the required service, irrespective of the technology the USP choose to utilise in practice? Please provide reasons to support your view.

Q. 6 Do you agree that end-users should be entitled to adequate and regular information regarding their request for connection? Please provide reasons to support your view.

5.4.3. Reasonable Access Criteria - Respondents' Submissions

- 306 With respect to the appropriate factors to define a reasonable request, ALTO agrees with ComReg, however ALTO stated that: *"...the scenarios identified do not, at all, consider the potential problems that may arise due to wholesale issues"*. ALTO agrees with maintaining the threshold for USO requests at €7000, however ALTO stated that: *"...The proposed new approach that Eir will not have to meet requests for new lines will create a new dimension of issues at the wholesale layer, and this is unsatisfactory"*. ALTO stated that: *"... that the consultation has not fully considered the regulatory options given the absence of wholesale considerations."*
- 307 BT stated that: *"...ComReg also need to consider the potential wholesale issues that may arise"* and stated that: *"...The proposed new approach that Eir will not have to meet requests for new lines also creates a new dimension of issues at the wholesale layer, some of which are familiar problems"*. It was also concerned that *"Consumers may not be aware that numerous providers use Eir wholesale local access and this may cause confusion in the retail space."*
- 308 BT asked *"...In the event that Eircom do not provide access as there is an alternative operator can ComReg confirm whether or not the other access provider will be obligated to provide the service. There appears to be an assumption that NBP will provide, but what will be the obligation on another commercial operator, for example a Wireless Internet Service Provider (WISP) or SIRO. How will the process work and avoid the customer running the gauntlet of service rejections."*
- 309 Vodafone agreed with the regulatory options considered by ComReg.
- 310 Sky stated that: *"...are concerned that the 2 step process outlined will be open to abuse. Eircom will have an incentive to refuse access in all cases where the connection cost threshold is such that it would generate a medium term net cost to Eircom. There is no prescribed timeframe/process in which Eircom is required to "prove" appropriate Alternative Infrastructure exists or how oversight of this process is to be conducted or who is the ultimate arbitrator in determining whether or not relevant criteria are met. These significant gaps could lead to an exponential increase in customer dissatisfaction (in particular where Eircom are commercially incentivised to refuse access/promote the position Alternative Infrastructure is deemed to be sufficient). It could see a significant increase in ComReg's workload and lead other unforeseen difficulties through a process that may require significant consumer engagement."*
- 311 Sky stated that: *"...these are concerns/issues ComReg could consider (and consult on) over the next 18 months but in the meantime it is more appropriate to maintain the current predictable standard of a Reasonable Access Threshold ("RAT")."*

- 312 Furthermore Sky stated that: *“...If ComReg is still minded to implement some form of Alternative Infrastructure test before such a review/consultation, Sky would propose one possible solution to alleviating the concerns identified would be to have a 3 stage test with two levels of RAT considered whereby RAT1 < RAT2 and RAT2 is equal to the current proposal of €7000. This option would have a reduced RAT for the first part of the three-step test (RAT1). If the cost of connection were <RAT1 (e.g. €700 to €2000 threshold identified by TERA), then the request must be met and step 2 and 3 of the process are ignored. If the cost of connection is >RAT1 then proceed to steps 2 and 3 which would be the same as those already outlined as the preferred approach by ComReg. The extra step could actually lead to a significant reduction in customer dissatisfaction and reduce a potentially significant workload on both ComReg and Eir from an administrative perspective.”*
- 313 In relation to the appropriate factors to define a reasonable request, ALTO stated that: *“...in many ways, the answer can be unpredictable as every installation will be slightly different. In our view the question should be what is unreasonable? The answer is simply that it is unreasonable to break the €7k threshold, unless the additional cost is funded by the customer.”*
- 314 Sky stated that: *“...the factors outlined by ComReg are relevant. Where end-users have no alternative to the USP then a request ought to be deemed reasonable if under the current RAT.”*
- 315 Vodafone stated that: *“...supports the views discussed by ComReg on the processes which need to be addressed to agree a reasonable request.”*
- 316 Virgin Media was of the view the most appropriate factors to define a reasonable request are the availability of an Alternative Infrastructure and a reasonable access threshold.
- 317 Virgin Media stated that: *“...ComReg’s proposed approach allows Eir to seek an exemption from meeting access requests when Alternative Infrastructure is available.”* It was of the view that: *“...The approach authorises Eir to effectively determine where the boundary of the USO intervention area lies. This means that Eir could feasibly meet a request for access despite the availability of Alternative Infrastructure, then deem that end-user to be uneconomic and apply for funding for the associated capital costs under the USO.”* Virgin Media stated that: *“...Not only should Eir be exempted from meeting the access request when Alternative Infrastructure is available, but any costs associated with connecting premises where Alternative Infrastructure is available should be excluded from any USO funding application. ComReg, rather than Eir, should determine which end-users are within range of Alternative Infrastructure.”*

- 318 Virgin Media stated that: *“...ComReg has proposed that the reasonable access threshold should remain at €7000. This threshold highlights the high cost burden placed on all telecommunications users associated with the USO, and the importance of availing of Alternative Infrastructure where possible.”*
- 319 In relation to how to assess if Alternative Infrastructure is affordable, ALTO stated that: *“...the customer will decide based on their need for the service and their ability to pay.”*
- 320 Sky stated that if affordability is being considered in the context of the customer *“...it should be deemed unaffordable if cost of connection and on-going recurring charges are materially greater than the geographically average price as provided by the AFL USO USP. Alternative Infrastructure should be deemed affordable by the USP if it can be provided for a cost less than the RAT.”*
- 321 Vodafone stated that: *“...there are a number of Alternative Infrastructures available that satisfy the basic USO requirements. Mobile plans exist which offer decent mobile voice services to 99.7% of the population and are affordable. Customers will decide based on their need for the service and their ability to pay. However, with the loss of the telephony rebate scheme there is a clear risk that the price for service may be unaffordable to some.”*
- 322 Virgin Media stated that: *“... Eir’s monthly retail line rental charge is no longer a suitable measuring stick for what would represent an affordable alternative”*. Furthermore, it stated that: *“...Given the complexity of this product-market, the price of a basic landline does not offer a suitable indicator of what consumers can afford. Rather, the price of a bundle of ECS may be a better indicator of what is considered to be affordable by end-users.”* It also stated that: *“...The high take-up and use of mobile services suggests that mobile services are also considered by end-users to be an affordable form of ECS.”*
- 323 Consultation 16/31 asked whether respondents agreed that indoor coverage was an important factor in assessing alternative connections and PATS. The vast majority of respondents agreed
- 324 ALTO and BT agreed with our view, and that it is not reasonable to expect end-users to have to go outside of the premises to receive and make telephone calls. They agreed that the service should be provided to an appropriate quality within the actual premises.
- 325 Sky also agreed and stated that: *“...Poor indoor coverage has implications for practical use of the service in numerous scenarios to have to go outdoors in order to have connectivity to a network. (e.g. sick or elderly, working out of home office, receiving calls in all scenarios etc.)”*

- 326 Vodafone agreed and noted that: *“...In terms of mobile telephony, devices and additional equipment are available to boost indoor signals. Customers need to consider the functionality and affordability in terms of framing a reasonable request.”*
- 327 Virgin Media also agreed and stated that: *“...though indoor connectivity issues should not be used, as a priori, to exclude mobile services. Clearly in many scenarios, a mobile connection provides an adequate indoor connection to support a basic electronic communications service.”*
- 328 In relation to the costs to be attributed to the end-user, the four respondents (ALTO, Sky, Vodafone, and Virgin Media) who directly responded to this question agreed with our proposition. Where a threshold is set, only costs that can be attributed to the individual end-user should be measured, and that the estimated cost of connecting an end-user should be based on the least cost technology to provide the required service, irrespective of the technology the USP choose to utilise in practice.
- 329 Virgin Media stated that: *“...The cost should reflect that of the least-cost solution (for the avoidance of doubt, including mobile networks). Any USO funding should only include efficiently incurred costs.”*
- 330 eir provided one response for questions 7-11. eir welcomed ComReg’s acknowledgment of alternatives, however, it was of the view, *“the proposed approach side steps the proper assessment of the need for AFL USO and instead attempts to shift the onus of identifying where there may be a continued need for an AFL USO, from ComReg onto the USP.”*
- 331 eir stated that: *“...It is not clear from ComReg’s consideration of RAR in chapter 6 whether a mobile solution on its own is sufficient or if it has to be a ‘fixed wireless access.’”*
- 332 eir stated that: *“...According to the second exception, 2G or FCS, could be used but only if the end-user confirms they do not want an internet connection is of concern, particularly in areas where eir intends to rollout fibre access. Essentially the obligation is saying that eir must provide a copper connection to provide 28.8Kbps even if the NBP will provide a solution within the next few years. This does not support efficient investment and leaves eir with a very short period over which to recover the copper investment.”*
- 333 eir was of the view that the reasonable access criteria does not give sufficient flexibility because:

“-The customer right to veto alternatives creates at the very least a costly administrative process and potentially undermines the suggested flexibility.

-It leaves eir exposed to under recovery of costs in the NBP area if a copper connection must be provided to support 28.8Kbps in advance of NBP rollout.

-ComReg has not specified / pre-approved a list of acceptable technologies or what mobile signal strength would satisfy MIA. [Minimum Indoor Availability]

-It is not clear that a pure mobile service would suffice. Mobile is an acceptable functional substitute for a voice service and given the massive change that will be brought about by the NBP should, at least, be allowed as a transitional solution. It is notable that 40% of households nationally (46.1% in rural areas) are already mobile only.

-The alternative must be 'affordable'. However ComReg has not specified how that should be tested."

334 eir stated that: *"...the proposal was ambiguous because ComReg does not specify or pre-approve a list of acceptable technologies or an indication of the level of mobile signal strength would satisfy minimum indoor availability. It does not state whether a pure wireless alternative is acceptable or whether it has to mimic a fixed line service as the current FCS does. ComReg's proposals also lack any specifications with respect to how the affordable requirement would operate. ComReg should clearly acknowledge that a mobile service is acceptable to provide access to narrowband services at a fixed location."*

335 eir stated that: *"...The proposed regime is unduly burdensome on eir because it proposes that the End-user would always have a right of veto against any Alternative Infrastructure that eir may identify. If the End-user were to exercise this veto, eir would be obliged to supply the connection at no additional cost to the End-user once the cost of doing so is not higher than €7,000. As outlined below the cost of providing the connection will rarely be higher than €7,000 and therefore that the customer's right of veto will nearly always be determinative. Also, the veto which features in the draft decision would appear to apply even to the current FCS solution."*

336 eir stated that: *"...The intended regime fails to recognise that the USO for AFL USO should only be obliged to supply a connection where there is no affordable Alternative Infrastructure available that is of a reasonable quality."*

337 Of those who responded to question 12 on the entitlement of end-users to adequate and regular information regarding their request for connection, most respondents agreed with our view. ALTO stated that: *" all end-users should be kept informed of the progress of their request for connection so that their expectations are properly managed even if the request is to be rejected which we believe will increase rapidly with the proposed scheme."*

338 BT stated that: *“...customers should be kept informed of the progress of their request for connection so that their expectations are managed; even if the request is to be rejected which we believe will increase rapidly with the proposed scheme.”*

339 Sky agreed that: *“...in the interests of maintaining a transparent process”*, while Vodafone stated that: *“...customers should receive a committed date for their connection request and this date should not be changed due to resourcing issues within the USP”*. Virgin Media stated that: *“...a communications process should be approved by ComReg.”*

340 eir stated that: *“...eir currently provides such information and regardless of and separate to USO obligations is looking at ways of improving it, to support enhanced provisioning.”*

5.4.4. Reasonable Access Criteria - ComReg's Response

341 Respondents were generally in agreement with the regulatory factors and options as set out in Consultation 16/31. However, respondents raised a number of concerns in relation to these questions.

5.4.4.1. Alternative Infrastructure

342 BT and ALTO raised concerns that end-users may not be aware that, in many cases, the underlying wholesale service provider to retailers is Open eir. Open eir may provide the access and service at the wholesale level to the relevant OAO, when service has been requested by the OAO. Alternatively, an OAO may refer an end-user to eir directly to obtain the access and service at the retail level. Eir is the USO provider of last resort for end-users.

343 BT queried what obligation will there be on another commercial operator if eir does not provide the service. We are not imposing this specific obligation on Alternative Infrastructure providers at this time. However, if the USP has identified that:

- the Alternative Infrastructure provider has a broadly equivalent service is available which could fulfil the end-user USO need; and
- The end-user agrees; and
- the Alternative Infrastructure provider refuses to supply the end-user with the services;

344 Then the USP should formally record this and advise ComReg in writing.

345 If this situation arises, it confirms the need for an AFL USO, as without it, some end-users would not be served.

- 346 The obligation to provide the USO is on the designated USP. It will be the responsibility of the designated USP to verify that there were alternatives available at the location, which were affordable and able to meet the minimum standards required of AFL USO. The end-user who has requested a connection may disagree that there is, in fact, a suitable alternative. If the end-user refuses to accept that there is suitable alternative or if the alternative service provider refuses to provide a connection and service to the end-user, then ComReg will adjudicate on whether or not there is a suitable alternative.
- 347 We disagree with eir's view that the proposed approach "*...fails to recognise that the USO for AFL USO should only be obliged to supply a connection where there is no affordable Alternative Infrastructure available that is of a reasonable quality*". In our opinion, this is exactly the intended effect of the proposed approach and the associated rules have been constructed to achieve this.
- 348 In response to eir's concern in respect of FIA, we again note, as set out in paragraph 282 of Consultation 16/31. In the case of a 2G mobile service, we are of the view, that because it does not support the minimum data rate in relation to FIA, it can only be considered by the USP to satisfy a request, if the USP is within the 94% threshold for FIA connections. This would be in addition to the tests for, affordability, and QoS (including indoor coverage) applied to alternative technologies.
- 349 We remain of the view that our specification in relation to FIA defines the "minimum data standard (28.8 kbit/s)" required. This does not preclude the USP from offering the end-user a service that operates above the minimum standard. It is therefore incorrect to state that eir is exposed to under recovery of costs in the NBP area, as we are not prescribing the technology to be used in providing a FIA connection to end-users in advance of NBP rollout.
- 350 eir sought clarification as to whether a pure mobile alternative is acceptable, or whether it has to mimic a fixed line service. If over the €1,000 threshold, when considering other available networks, and if there is a mobile network available, which is affordable, of sufficient quality indoors and provides the necessary services then this network would be agree a sufficient alternative to the USP network and the request would not be reasonable.
- 351 eir requested ComReg to supply a list of pre-approved technologies. ComReg notes that the USO obligation is technology neutral, and various technologies and infrastructures, in principle, may be used by the USP to meet its obligations to satisfy reasonable requests to deliver access and service at a fixed location once the reasonable access criteria are met. ComReg has set out examples of alternative access technologies in section 6.4.2 of 16/31.

352 ComReg has already noted in 15/89 [Para 235-237] that current mobile services accessed via a mobile handset are not access at a fixed location. ComReg has also noted that this has been adjudicated on by the ECJ. However, in deciding, whether a request is reasonable, ComReg has decided that availability of services such as mobile services may be considered.

5.4.4.2. Affordability

353 In relation to assessing if the Alternative Infrastructure is affordable, respondents had varying views. We note the view that customers will decide based on their need, and or their ability to pay.

354 In response to eir's view, that there are no specifications with respect to how the affordable requirement would work, we make the following remarks.

355 When an end-user requests a connection, they are aware of the price of the service they are requesting, including the price of the connection, equipment and services. We are of the view therefore that because of their request for a connection, the end-user considers the prices affordable. Therefore, we remain of the view that in order for the Alternative Infrastructure to be considered affordable, the Alternative Infrastructure must offer a package or packages, which are broadly in line with those prices offered by the USP in terms of connection, line rental or subscription, calls, and the terminal equipment.

5.4.4.3. Mobile Coverage

356 In respect of issues relating to indoor coverage, respondents agreed that indoor coverage was an important factor. There is equipment available, which boosts indoor signals, and we agree that in some cases a mobile connection provides adequate indoor coverage to support a basic service.

357 We note eir's view that we have not specified what level of mobile strength would satisfy Minimum Indoor Coverage. We consider however that whether or not there is sufficient indoor coverage will depend on the person's ability to make/receive calls of sufficient quality without their being dropped or failing to connect at the necessary locations inside their premises. This would allow them to use the service at the same locations as with a fixed connection with a handset that allows for movement throughout the premises.

5.4.4.4. Customer right to Veto

358 In relation eir's question regarding the customer's right to veto against any Alternative Infrastructure that eir might identify, we are of the view that the customer does not have a veto on whether or not the Alternative Infrastructure or PATS proposed to them by eir meets the criteria. However, the customer may provide information to eir and/or ComReg, and eir to ComReg, as to why they do not agree that the Alternative Infrastructure meets the requirements. ComReg will consider these in deciding if the alternative infrastructure meets the specified criteria. The customer's experience of mobile coverage at their premises will be a particularly important input in the case where a mobile service is being proposed by the USP as an alternative. In this specific case (exception), where the end-user does not agree that the Minimum Indoor Availability is broadly equivalent, eir will be obliged to promptly notify ComReg so that ComReg may adjudicate in this matter, and ensure that the USO service obligation is met.

359 The manner (technology) in which the USO service or an alternative service is delivered is not something that the end-user can demand, assuming all affordability, FIA and GAP USO requirements have been met. If however, the end-user requests a particular technology for their service that will be regarded as commercially provisioned (save for the specific exception identified above in the previous paragraph 358).

360 If the end-user refuses to indicate that they are satisfied with the alternative infrastructure proposed by the USP, then they will be advised of the service provider's code of practice for complaint handling and their right to complain to ComReg. ComReg will be the final arbiter.

5.4.4.5. Cost Evaluation

361 We note Virgin Media's concern in relation to funding for the USO. In this respect, we note that the overarching principle when determining whether a net costs exists is whether these costs are unavoidable. The USP must conduct a cost evaluation of the alternative technologies available to meet the USO AFL USO requirements. We expect that the optimal cost technology will be used, providing that the connection is capable of allowing access to all elements of telephony service. This will not create an incentive for the USP to incur costs that it might not otherwise be incurred. The revised 2-step process allows the USP to avoid putting in place new connections that may not be commercially profitable, unless there is an absolute need. New connections can be satisfied using any available and feasible technology, allowing the principles of least cost to be implemented.

362 In respect of the costs which are included in any assessment, we note respondents who commented were in agreement with our proposal that :

- only costs that can be attributed to the individual end-user should be measured; and

- that the estimated cost of the USP connecting an end-user must also be based on the least cost technology to provide the required service, irrespective of the technology the USP chooses to utilise.

5.4.4.6. Adequate and Regular Information

363 We note respondents were in general agreement with our preliminary view that end-users should be entitled to adequate and regular information regarding their request for connection. We acknowledge eir's opinion that: "...currently provides such information and regardless of and separate to USO obligations is looking at ways of improving it, to support enhanced provisioning."

5.4.4.7. Other

364 We note the concerns raised by Sky, in relation to the 2 step process. We have taken these concerns into account in our Decision. Our final Decision now reflects a modified process, which as Sky has stated in its submission, could actually lead to a significant reduction in any potential customer dissatisfaction.

365 We have decided to introduce a level below which the USP must satisfy a request for connection. Above this level the presence of Alternative Infrastructures are taken into account when assessing whether or not a request is reasonable.

366 Furthermore, where no Alternative Infrastructures are present, the RAT threshold of €7,000 will remain.

6. Functional Internet Access

367 In Chapter 5 we set out our Decision on what a reasonable request for AFL USO is; when and how it must be satisfied; and the situations where a request does not have to be satisfied by the USP. In this Chapter we set out further Decision to maintain a minimum data rate of 28.8 kbit/s internet access and our reasons for this. We have made a decision not to specify FIA.

368 We have decided that the existing requirements 28.8 kbit/s in relation to FIA should be maintained to ensure that the minimum data rate is maintained for current users, pending the availability of higher speed services.

369 We consider that it is premature at this time to consult on the need for fast broadband FIA requirements at locations outside the NBP intervention area.

370 We consider that once the NBP has been fully deployed in an area, then reasonable requests for FIA in that area will be met as a result of the NBP, and it will not be necessary for us to specify FIA requirements in that area under the AFL USO regime. We will monitor the situation on an ongoing basis, and intervene as appropriate.

371 We will re-examine the issue of fast broadband FIA requirements and whether to designate one or more USPs to deliver them, in the light of any output from the DCCAE monitoring process.

372 This Chapter sets out the following:

6.1 Our Decision.

6.2 Reasons for our Decision.

6.3 Need to specify Fast Broadband FIA, sets out issues addressed in Consultation 16/31: respondents' submissions and our response.

6.4 Need to maintain requirements specified in relation to FIA, sets out issues addressed in Consultation 16/31; respondents' submissions and our response

6.1. Our Decision

373 Having regard to the analysis set out elsewhere in the Consultation documents and the TERA Reports and to respondents' views, we have decided:

- To maintain the *status quo* at this time.

- The USP is currently required to adopt 28.8 kbit/s as a reasonable minimum data rate. We would emphasise that this is a minimum data rate and that it does not preclude eir from offering data rates that are faster than this.
- We are revoking Decision D9/05. We are re-specifying that 94% of installed connections must be capable of 28.8 kbit/s as a minimum data rate, within this Decision Instrument. The USP shall submit to ComReg its draft proposals no later than 1 month from the Effective Date on how to report on its compliance with the aforementioned.

6.2. Reasons for Our Decision

6.2.1. Minimum Data Rate

374 Once designated, the Regulations themselves require that the USP ensures that a connection is capable of supporting data communications at data rates that are sufficient to permit FIA, taking into account prevailing technologies used by the majority of subscribers and technological feasibility.

375 We may however, specify requirements (but we are not required to) on a designated undertaking in relation to FIA. We decided in Decision 09/05 that: *“...the USP shall use all reasonable endeavours to ensure that all connections to the publically available telephone network are capable of a reasonable minimum data rate no lower than 28.8kbit/s.”*

376 The Regulations allow us to specify what FIA means. For the purposes of this decision however, we are not specifying what FIA is. The ECS market is changing, as a result of the NBP. Therefore, it is premature at this time to consult on the need for fast broadband FIA requirements at locations outside the NBP intervention area. Another consideration is that the full effect of NBP developments will not be clear, for a minimum 5 years. We will carefully monitor and review these developments, in order to evaluate what impact they may have on the provision of basic ECS in the State. Further we note the respondents' views including that there is a lack of information currently as to the potential impact of market developments including NBP on AFL USO and the review of universal service by the European Commission is forthcoming.

377 In this context, we have decided to maintain the pre-existing requirements in relation to FIA i.e. minimum data rate of 28.8 kbit/s for internet access. We have decided to specify as a requirement on the USP in relation to FIA that the data rate must not be less than 28.8 kbit/s.³⁸ It is necessary for us to specify this, as a rate below 28.8 kbit/s is very unlikely to provide internet access.

³⁸ Maintaining the current FIA obligation will protect the small number of Eir customers who are still using dial-up services on existing connections and who do not have access to higher speeds.

378 We consider this approach to be the most reasonable and appropriate at this time, because:

379 Maintaining the current minimum data speed and target limits the USP's ability to replace existing copper connections with FCS (which is not capable of supporting the minimum data rate). Retaining a minimum data rate means that end-users who currently have and use either dial-up or basic broadband over copper will not lose their ability to access the internet. However, this approach will not absolutely ensure that all end-users currently receiving basic broadband on copper connections would continue to enjoy the same level of basic broadband service, as the USP will have flexibility within the targets to replace some copper lines with FCS and the level of basic broadband service may deteriorate for other reasons.

380 Any increase in the data rate might only increase coverage of dial-up access, which is of very limited value for those who do not already have access. A decrease in the data rate would lead to greater risk of end-users losing basic internet access as a result of replacement of existing copper connections with FCS.

381 Essentially, the existing requirements specified in relation to FIA provide a safety net for ensuring that the minimum data rate is maintained for current users, pending the availability of higher speed services. Nevertheless, these requirements do not preclude eir or other operators from offering data rates that are faster than this. On the basis of the analysis set out here and elsewhere in the Consultation documents, the existing requirements specified in relation to FIA which is objective, proportionate and non-discriminatory remains therefore the preferred option.

6.2.2. Broadband

382 High speed broadband is not currently a mandatory component of the USO under national and EU law.

383 We have decided not to use USO FIA requirements as a mechanism to guarantee access to broadband connections. However, we foresee that USO requirements might play a role in ensuring universal availability of affordable higher-speed broadband outside the NBP intervention area in the future.

384 The Department is monitoring the commercial rollout plans of operators to ensure that services are delivered in line with commitments made by operators. In the meantime, we are continuing to collect and analyse information about usage patterns and planned and actual commercial broadband deployments. It is anticipated that as new networks are rolled out, either commercially or as a result of the NBP, general access to broadband will increase and the minimum data rate specified under USO will be far exceeded.

385 The DCCAIE has raised the issue of whether high speed broadband should be a USO, in discussions with the EU. We are also engaging with the DCCAIE about a potential form of USO in areas where commercial providers have already built high-speed broadband networks, but where issues might arise with new house builds.

386 We will re-examine the issue of fast broadband FIA requirements and whether to designate one or more USPs to deliver them, in the light of any output from the Department's monitoring process.

6.2.3. Minimum Data Rate Target

387 We are revoking Decision D9/05. We are re-specifying that 94% of installed connections must be capable of 28.8 kbit/s as a minimum data rate, within in this Decision Instrument.

388 We are maintaining the 94% of installed connections target, in recognition that not all connections are capable of supporting the minimum data rate of 28.8 kbit/s.

389 We re-iterate that 28.8 kbit/s is a minimum data rate and that it does not preclude eir from offering data rates that are faster than this, or a higher percentage of installed connections that are capable of achieving the minimum data rate.

390 eir has stated that the current monitoring mechanism is no longer working as it relies on sampling dial-up call, the volume of which are now too low to allow a meaningful assessment of compliance.

391 ComReg has an obligation to ensure that the target is met by the USP. A key issue in whether or not there has been compliance, is a transparent measurement methodology.

392 eir shall, no later than **1 month** from the Effective Date, submit to ComReg a draft written statement setting out the eir's proposals on how to report on its compliance with the minimum data rate target.

393 Upon receipt of this written statement, ComReg may either approve it and notify eir of this, or may disapprove it, with summary reasons therefor, in which case ComReg may require eir to promptly re-submit a revised statement. Upon receipt of a revised statement, ComReg may either approve it or disapprove it. Once ComReg approves a revised statement it shall become final.

394 eir shall, on a quarterly basis, provide ComReg with written reports on eir's performance. eir shall publish these reports in such a manner and format as ComReg may specify.

6.3. Need to Specify Fast Broadband FIA – Issues Addressed In Consultation 16/31

395 With current usage patterns, many end-users need faster data speeds to carry out standard internet functions. The speed they may need is likely to increase as their usage patterns become more demanding. However, the NBP and commercial deployment of NGA networks are expected to deliver such data speeds. We considered it unlikely that it will be necessary to specify FIA requirements for connections at fixed locations within the NBP intervention area, since affordable connections of appropriate speed and quality are planned to be available at all premises in the intervention area as a result of the NBP. However, we may need to specify USO FIA requirements for connections at locations outside the NBP intervention area if it transpires that commercial deployment cannot ensure that all reasonable requests for affordable connections of appropriate speed and quality are met by at least one undertaking at all premises outside the NBP intervention area.

396 Since 2005 there have been substantial changes in how end-users use and access the internet, and the speeds available.

397 To date, availability of broadband has been delivered by the commercial sector, supplemented by Department schemes which include the National Broadband Scheme (“NBS”) and the Rural Broadband Scheme (“RBS”).

398 According to ComReg’s Q4 2015 Quarterly Report³⁹, there were 1,708,787 broadband subscriptions in Ireland. Using fixed residential broadband subscriptions only, the estimated fixed broadband household penetration rate as of Q4 2015 was 66.8%. This shows that fixed line services continue to be chosen by a significant majority of households in the State. It also outlines Ireland’s household broadband (both fixed and mobile are included) penetration rate, at 83%, is higher than the EU28 average of 80%.

399 According to the Q4 2015 Report, there was an increase in total fixed broadband subscriptions in Q4 2015 (up by 1.2%), but mobile broadband subscriptions fell again in Q4 2015 (down by 18,758 subscriptions).⁴⁰

400 The same report indicated that average fixed broadband speeds offered continue to increase. In Q4 2015, approximately 68.7% of all fixed broadband subscriptions were equal to or greater than 10Mbps up from 63.8% in Q4 2014. 56.1% of all fixed broadband subscriptions were equal to or greater than 30Mbps, up from 45.4% in Q4 2014.

³⁹ ComReg Document 16/17: “ComReg Quarterly Report Q4 2015”, 10 March 2016

⁴⁰ ComReg reports active dedicated mobile broadband subscriptions and does not include internet access over mobile handsets (such as smartphones) in these numbers.

- 401 Figure 1 of Consultation 16/31 illustrated the breakdown of broadband subscriptions by advertised (headline) speed across all fixed broadband platforms (mobile broadband is excluded). In total, approximately 56.1% of broadband subscriptions were ≥ 30 Mbps (with 19.3% ≥ 100 Mbps). This equates to approximately 60.4% (21.9% ≥ 100 Mbps) of residential subscriptions and 27.9% (1.7% ≥ 100 Mbps) of business subscriptions.
- 402 The data suggests that most business users subscribe to broadband services with advertised download speeds of between 2Mbps - 10Mbps, while most residential users subscribe to broadband services with speeds of between 30Mbps - 100Mbps.
- 403 How FIA might be defined depends on what data speeds are necessary for commonly used applications to function correctly. Commonly used applications today include e-mail, web browsing, phone calls, watching videos, gaming, working from home, uploading content to social media, and online shopping. It is also necessary to take account of the possible presence of more than one simultaneous internet user at a fixed location.
- 404 Consultation 16/31 gave examples of the recommended or required speeds for (for example) Netflix and Skype and noted that in general, the speed required by end-users is highly dependent on the use and the number of devices in use at any one time - high usage with a number of devices in use would require much higher speeds.
- 405 Taking account of the above use cases, we were of the view that access at dial-up speeds cannot continue to be regarded as functional and that many users have needs that could be met only by speeds considerably faster than basic broadband. However we noted that more than half residential end-users currently have speeds greater than 30 Mbps (and that this proportion is growing), that over two-thirds of residential users have speeds greater than 10 Mbps, that demand for narrowband Internet is very low, and that many private operators have announced over the last few years (and again, more recently) that they will provide speeds greater than 30 Mbps to a significant proportion of the population.
- 406 In considering what requirements it may be proportionate to specify in relation to FIA, we took into account the services and technologies currently available, as well as planned State interventions and commercial investments.

- 407 Our preliminary view was that it was premature at this time to consult on the need for fast broadband FIA requirements at locations outside the NBP intervention area. We proposed to revisit the issue of fast broadband FIA requirements and whether to designate one or more USPs to deliver them in the light of any outputs from the DCCNR monitoring process and in light of market developments generally. In the meantime, we are continuing to collect and analyse information about usage patterns and planned and actual commercial broadband deployments.
- 408 Consultation 16/31 asked the following questions regarding the need to specify fast broadband FIA requirements:

- Q. 7 Do you agree or disagree with our preliminary view that it is unlikely to be necessary to specify fast broadband FIA requirements inside the NBP intervention area but that it may be necessary in future to specify such obligations at locations outside the intervention area? Please give reasons to support your view.
- Q. 8 Do you agree it is not appropriate at this time, for July 2016, to decide whether or not to specify fast broadband FIA requirements at locations outside the intervention area? Please give reasons to support your view.
- Q. 9 In your opinion, when FIA is reviewed in the future how should the minimum data speed be determined? Do you have a view about what the speed should be? Please give reasons to support your view.
- Q. 10 When do you think that we should revisit this issue? Please give reasons to support your view.

6.3.1. Need to Specify Fast Broadband FIA - Respondents' Submissions

- 409 Respondents' views on these questions were varied, some respondents agreed with the proposals, whereas others noted, in some instances, further information would need to be available in order to form an opinion.
- 410 ALTO and Vodafone did not agree with our preliminary view that it is unlikely to be necessary to specify fast broadband FIA requirements inside the NBP intervention area but that it may be necessary in future to specify such obligations outside of the intervention area. Vodafone stated that: *"...It is unclear what the take up in the intervention area will be and there may be a number of people who for whatever reason do not subscribe to the services."*
- 411 Sky however agreed stating that: *"... it is not necessary to specify fast broadband FIA requirements inside the NBP in the event that the NBP is delivered within the currently envisaged timeframe by the Department of circa 2020/21."*

412 Virgin Media stated that: “...there is no need to specify FIA requirements inside or outside of the NBP intervention area because:

- *FIA is already being delivered by a combination of all providers’ fixed and mobile networks*
- *Specifying USO for broadband provision could undermine competition and incentives to invest.*
- *Within NBP intervention area: a broadband USO could undermine the NBP competitive tender process by creating an uneven playing field.*
- *Outside of the NBP intervention area: A broadband USO could discourage commercial investment by other operators in broadband infrastructure (since they risk having to compete with a subsidised provider).”*

413 Furthermore, it was of the view that: “...the NBP would appear to supersede any requirement for a FIA USO obligation.”

414 eir stated that: “...it is not only unlikely to be necessary to specify fast broadband FIA requirements inside the NBP intervention area but it is in fact very difficult to see how it can even be envisaged that this could be necessary. Similarly, the areas outside the intervention area are by definition outside the intervention area because market forces will deliver high speed broadband internet access in the near future.”

415 eir also stated that: “...Where alternative, including NBP, infrastructure exists, then clearly requests for connections are capable of being met by an operator and it is difficult to see why a USO requiring eir to roll-out a legacy network could be necessary, efficient and proportionate in these circumstances.”

416 In response to question 3, ALTO submitted that: “...there is an acute lack of detailed line performance information for current generation broadband outside of the intervention areas. ALTO calls on ComReg to conduct a detailed study to inform such a decision to enable the optimum route to such to be achieved”. It was also of the view that “While some urban areas are enjoying high speed broadband, there are still premises in urban areas that are not able to avail of high speed broadband and many others that fall between urban and the designated intervention areas that are still served by traditional broadband at much slower speeds.” It also stated that: “...would support more research to achieve an informed and cost effective solution.”

417 BT stated that: “...There is a lack of detailed information for current generation broadband outside of the intervention area and a first step should be for ComReg to conduct a detailed study to inform such a decision to enable the optimum route to such to be achieved”. BT also stated that: “...would support more research to achieve an informed and cost effective solution.”

- 418 Vodafone stated that: *“...there is a lack of detailed line performance information for current generation broadband outside of the intervention areas. While some urban areas are enjoying high speed broadband, there are still premises in urban areas that are not able to avail of high speed broadband and many others that fall between urban and the designated intervention areas that are still served by traditional broadband at much slower speeds”*.
- 419 In response to question 3 Sky agreed with ComReg’s proposal and noted they *“...consider it to be prudent to reconsider these issues within 18 months, as proposed, when a clearer picture on NBP begins to emerge”*. Sky also stated that: *“...ComReg should keep the issue under constant review taking account of developments in the market and in particular with respect to NBP”*.
- 420 In response to question 4, relating to how, in the future the minimum data speed should be determined, ALTO submitted that: *“...there is insufficient information available in the Irish market to take a competent view for the specific characteristic of Functional Internet Access.”* BT was also of this view and stated that: *“... in order to make such an assessment that it would need to know information such as what applications must be supported by functional internet access, what would be the cost, and who would fund it”*.
- 421 In relation to how the minimum data speed should be determined when FIA is reviewed in the future, Sky stated that: *“...consider that ComReg should take account of the European Digital Agenda’s target of a minimum speed of 30Mbps as a starting point. However, this target should be assessed against developments in the market since it was originally put in place e.g. busy hour traffic growth and forecasts of same, end-user device capability, technological developments etc. Such an exercise should inform whether the 30Mbps remains appropriate or whether greater ambition in this regard should be considered e.g. future proof options”*.
- 422 Vodafone stated that: *“there is insufficient information available in the Irish market to take a full view of FIA. The concept of FIA was developed at a time when broadband was not available and it is reasonable to assume that with broadband more broadly available the concept of FIA is redundant.”* It also stated that: *“....It is also too early to review whether broadband should be added to the USO AFL USO designation at some point in the future”*.
- 423 Virgin Media stated that: *“...strongly disagrees with ComReg’s inference in paragraph 173 that the FIA obligation should be engineered to support over-the-top commercial streaming services such as Netflix. Virgin Media notes that the purpose of the USO should be to enable activities with high social and economic externalities and network effects. Since end-users are already well serviced by DTT and Ireland has one of the highest penetrations of pay TV services in Europe, there is no obvious social or economic justification for engineering the FIA obligation to cater for the provision of streaming services”*.

- 424 BT, in response to question 5 stated that: *“...ComReg should revisit this issue in approximately two years as by that time the NBP should hopefully be in deployment and decisions for the Intervention area will be set, as well as a clearer direction being available from Europe”*. ALTO stated that: *“...ComReg should revisit this issue in approximately 2 years, from now, as by that time the NBP should be in deployment phase and decisions for the Intervention area will be set out”*.
- 425 Vodafone stated that: *“...ComReg should await the outcome of the review of USO in the EU due in 2016 and following the conclusion of the NBP before revisiting the FIA concept”* whereas Sky stated that: *“...ComReg should keep the issue under constant review taking account of developments in the market and in particular with respect to NBP”*.
- 426 In response to the same question, Virgin Media stated that: *“...The issue should only be revisited if the NBP fails to provide an adequate safety net for guaranteeing universal access. For example, if end-users outside of the NBP intervention area are not able to access basic services. Until that time, the NBP must be given the opportunity to deliver on its intended purpose”*.

6.3.2. Need to Specify Fast Broadband FIA - ComReg's Response

- 427 We note the views of respondents, in particular, whether it will be necessary, in the future, to specify fast broadband FIA requirements inside the NBP intervention area, and to specify such obligations at locations outside the intervention area.
- 428 We consider that USO requirements may play a role in ensuring universal availability of affordable higher-speed broadband outside the NBP intervention area in the future. We propose to re-examine the issue of specifying and designating a USP(s) for higher speed broadband when NBP contractual arrangements and the extent of commercial deployments have become clearer. We have decided not to specify requirements in relation to USO FIA as a mechanism to guarantee access to broadband connections at this time. However, we foresee that USO requirements might play a role in ensuring universal availability of affordable higher-speed broadband outside the NBP intervention area in the future.
- 429 The Department is monitoring the commercial rollout plans of operators to ensure that services are delivered in line with commitments made by operators. In the meantime we are continuing to collect and analyse information about usage patterns and planned and actual commercial broadband deployments. It is anticipated that as new networks are rolled out, either commercially or as a result of the NBP, general access to broadband to broadband service will increase and the minimum FIA data rate specified under USO will be far exceeded.

- 430 High speed broadband is not currently a mandatory component of the USO under national and EU law.
- 431 The DCCAIE has discussed whether high speed broadband should be a USO, in discussions with the EU. We are also engaging with the DCCAIE about a potential form of USO in areas where commercial providers have already built high-speed broadband networks, but where issues might arise with new house builds.
- 432 We will take these views into consideration in any future review. We await further developments in the DCCAIE's process.
- 433 In respect of how the minimum data speed should be determined when FIA is reviewed in the future, we note a number of respondents are of the view there is insufficient information available in the Irish market to take a full view.

6.4. Need to Retain Current FIA Requirements – Issues Addressed in Consultation 16/31

- 434 Under the Regulations an undertaking, once designated, must ensure that a connection is capable of supporting data communications at data rates that are sufficient to permit FIA, having regard to the prevailing technologies used by the majority of subscribers and to technological feasibility.
- 435 Under Decision D9/05 the USP must, among other things⁴¹ maintain 28.8 kbit/s as a minimum data rate. The USP must take the utmost account of ComReg's guidelines in this regard when planning network build, providing individual connections to the network, and when responding to requests to address service quality. The guidelines in Decision D9/05, specify that 94% of installed connections must be capable of this minimum data rate.
- 436 In section 5.2 of Consultation 16/31, we examined the trends in narrowband internet access, and note narrowband internet subscriptions have been in decline for a number of years. We examined download times with a 28.8 kbit/s connection and considered the impact on end-users absent a USO in respect of requirements specified in relation to FIA.

⁴¹ Under Decision D9/05, the USP must provide us with quarterly reports on its performance in relation to this target. Where an end-user has doubts about his line capability, the USP must provide a written statement stating the data carrying capability of a connection. The USP must use all reasonable endeavours to address issues with individual connections where the capability is found to be below the reasonable minimum data rate of 28.8 kbit/s.

- 437 We noted the Department's NBP⁴² initiative to advance the rollout and availability of high speed broadband throughout Ireland.
- 438 In considering what might happen without a USO, we noted that it is possible that with eir's current narrowband Internet access, end-users would still be able to avail of dial-up internet access. We were concerned that there is a chance the removal of FIA minimum data rates (and targets) could result in a number of connections (currently capable of dial-up access) being replaced, for example, in the event of a fault on the line, with connections which do not have the same capability. It is also likely that for certain new end-users, other technologies (such as FCS) which are not capable of providing internet access would be rolled out, at least in the short term.
- 439 In areas where there is infrastructure based competition, the removal of FIA from the USO is less likely to have an impact on end-users. End-users are already able to get better internet speeds (subject to affordability).
- 440 Further, end-users, in eir only areas, are likely to be most impacted without a FIA USO. These end-users may not have, or continue to have, a connection capable even of dial-up internet access.
- 441 We noted that under current regulatory obligations and until the NBP is fully deployed, some end-users are still unable to avail of even dial-up internet access from the USP. Where there is infrastructure based competition, the removal of FIA from the USO is less likely to have an impact on end-users. They are already able to get better internet speeds (subject to affordability).
- 442 We took the preliminary view that some sort of FIA requirement should continue to be specified in the near-term. While dial-up services are no longer functional for the majority of end-users, we were concerned that users who currently use basic broadband, should still not have the service withdrawn, pending the availability of higher speed services.
- 443 In this context, we considered two options for the near-term FIA requirements commencing in July 2016:
- Option 1: Maintaining the existing requirement that 94% of lines should support speeds of 28.8 kbit/s; and
 - Option 2: Replacing the existing requirement with a requirement that premises currently served with connections that are capable of basic broadband should continue to be served with connections that support basic broadband or higher speeds.

⁴² The DCCAIE is co-ordinating a State-led intervention to procure the delivery of high speed broadband in areas where service providers are unlikely to provide such services commercially. The implementation of the NBP is the responsibility of the Minister and the DCCAIE.

- 444 These options were detailed in **sections 5.3.1 and 5.3.2** of Consultation 16/31.
- 445 In our preliminary view, option 1 was found to have the (minor) advantage of protecting the small number of users who are still using dial-up services.
- 446 Despite the attractions of Option 2, we were of the view that there were disadvantages in seeking to implement it from 1 July 2016, including that it might require the USP to make changes to its business processes and network maintenance approach, for which it had little preparatory time.
- 447 The USP is currently required to adopt 28.8 kbit/s as a reasonable minimum data rate. We have decided to maintain the status quo at this time.
- 448 Decision D9/05, specifies that 94% of installed connections must be capable of this minimum data rate.
- 449 Consultation 16/31 asked the following questions regarding the need for an AFL USO:

<p>Q. 11 Do you agree that we should maintain the current FIA requirements for the time being? Please give reasons to support your view.</p>
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6.4.1. Need to Maintain Current FIA - Respondents' Submissions

- 450 Some respondents agreed with the proposal, while others disagreed.
- 451 ALTO BT and Vodafone agreed that the current FIA requirements should be maintained. Sky however stated that: *"...option 2 ought to be the preferred and appropriate option. Eircom Ltd ("Eircom") are essentially protected from excessive costs by ComReg's proposal to derogate from the requirement where these are excessive. Sky considers a 28.8kbps product cannot provide functional broadband service so maintaining the existing FIA requirement is essentially a decision to preclude the provision of basic broadband as part of the USO process"*.
- 452 In response to the same proposal, Virgin Media stated that: *"...considers that continuation of the obligation is not justifiable"* and noted its view that *"there is a risk that having two broadband funding mechanisms applied simultaneously could lead to inefficient and costly duplication of subsidised networks. This is particularly a concern due to the high cost of providing broadband connectivity in uneconomic areas."* It also stated that: *"...a broadband USO could undermine the NBP competitive tender process by creating an uneven playing field"*.

453 eir stated that: “...ComReg’s proposals are at odds with the specific requirements of the Universal Service Directive, and for this reason are unsustainable and unlawful”. In addition it stated that: “... there is simply no legal basis which allows ComReg to require eir to provide connections at a level that does not allow for functional internet access and we do not believe that the Minister, including in light of his view that 30 Mbps is required in Ireland in the context of the NBP, could reasonably give his consent to ComReg making such a determination”.

454 eir stated that: “...As ComReg is not in the position, to specify what constitutes FAI [sic] (one of two options), it can do nothing but remove all requirements as regards FAI [sic] (the other option) as current requirements are clearly unsuitable to achieve FAI [sic] and will result in market distortions and inefficient infrastructure investment”.

6.4.2. Need to Maintain Current FIA - ComReg’s Response

455 We note a number of respondents agreed that the current FIA requirements should be maintained whereas, Sky’s view is that Option 2 ought to be the preferred and appropriate option. However, we consider that this option would require the USP to repair any faults necessary to restore broadband access that meant that basic broadband was no longer provided. However it would not require the USP to ensure there was no degradation in speed at all.

456 We remain of the view that it would be too difficult to establish whether a degradation in speed had occurred as there is no benchmark measurement for existing connections, but it would be relatively straightforward to determine whether basic internet access had previously been available and was not now available.

457 As set out in Consultation 16/31, despite its advantages, there are disadvantages in seeking to implement this approach from 1 July 2016. It might require the USP to make changes to its business processes and network maintenance approach, for which it would have little time to prepare. For example, where high speed broadband is planned on a commercial basis in the near future, it may be acceptable for an end-user to experience a short disruption until the new service is fully deployed. On balance therefore, we remain of view that we should not implement this option at this time.

458 In relation to Virgin Media’s concern that by maintaining the current FIA requirements, there would be a risk of having two broadband funding mechanisms applied, we consider that this risk does not arise. Under Decision D9/05, the current FIA obligation requires the USP to adopt 28.8 kbit/s as a reasonable minimum data rate, a broadband USO is not being introduced at this time.

- 459 The Regulations allow us to specify what FIA means. For the purposes of this Decision however, we are not specifying what functional internet access is. One consideration is that the market is changing, as a result of the NBP. Therefore, it is premature at this time to consult on the need for fast broadband FIA requirements at locations outside the NBP intervention area. Another consideration is that the full effect of NBP developments will not be clear, for a minimum 5 years. We will carefully monitor and review these developments, in order to evaluate what impact they may have on the provision of basic ECS in the State.
- 460 Further, we note the respondents' views including that there is a lack of information currently as to the potential impact of market developments including NBP on AFL USO and the review of universal service by the European Commission is forthcoming.
- 461 We have decided to maintain the pre-existing requirements in relation to FIA i.e. a minimum data rate of 28.8 kbit/s for internet access. We would emphasise that this is a minimum data rate and that it does not preclude eir from offering data rates that are faster than this. We are specifying this pursuant to our powers under Regulation 3 of the Regulations. We specify as a requirement on the USP in relation to functional internet access that the data rate must not be less than 28.8 kbit/s.⁴³ It is necessary for us to specify this, a rate below 28.8 kbit/s is unlikely to provide internet access.
- 462 We consider this approach to be the most reasonable and appropriate at this time, among other things, because
- 463 eir currently provides a data rate of 28.8 kbit/s to more than 94% of installed telephone lines. Maintaining the current minimum data speed and target limits the USP's ability to replace existing copper connections with FCS (which is not capable of supporting the minimum data rate). Retaining a minimum data rate means that end-users who currently have and use either dial-up or basic broadband over copper will not lose their ability to access the internet. However, this approach will not absolutely ensure that all end-users currently receiving basic broadband on copper connections would continue to enjoy the same level of basic broadband service, as the USP will have flexibility within the targets to replace some copper lines with FCS and the level of basic broadband service may deteriorate for other reasons.

⁴³ Maintaining the current FIA obligation will protect the small number of Eir customers who are still using dial-up services on existing connections and who do not have access to higher speeds.

- 464 Any increase in the data rate might only increase coverage of dial-up access, which is of very limited value for those who do not already have access. A decrease in the data rate on the other hand would lead to greater risk of end-users losing basic internet access as a result of replacement of existing copper connections with FCS.
- 465 We are not minded to alter the required minimum data rate to one necessary to deliver broadband as a USO, because of market developments and State-led market intervention. We also have decided that we are not at this time in a position to mandate a specific speed, which is higher than a data rate of 28.8 kbit/s as a FIA obligation. We consider that it would not be appropriate to do this, particularly while the NBP is at this stage of development.
- 466 Essentially, the existing requirements specified in relation to FIA provide a safety net for ensuring that the minimum data rate is maintained for current users, pending the availability of higher speed services. Nevertheless, these requirements do not preclude eir or other operators from offering data rates that are faster than this. On the basis of the analysis set out here and elsewhere in the Consultation documents, the existing requirements specified in relation to FIA is our preferred option.

7. Affordability

467 In Chapter 6 we set out our Decision to maintain a minimum data rate of 28.8 kbit/s for basic internet access. This Chapter sets out our further Decision on what affordability obligations are necessary and justified for us to impose on the USP for end-users of AFL USO and our reasons for this.

468 We have decided that the GAP obligation should be maintained, and that we do not propose to introduce social tariffs at this time.

469 AFL USO must be provided to all end-users at an affordable price, in particular for vulnerable user groups, e.g. the elderly, those on low income, and for consumers with disabilities.

470 From the perspective of social inclusion, Irish communication costs should not exclude the most vulnerable in the community from making a minimum use of telephony services. While communication services are a basic necessity for all end-users, we considered that protections for more vulnerable end-users (e.g., the elderly, disabled and end-users in rural locations) should remain in place.

471 This Chapter sets out the following:

7.1 Our Decision.

7.2 Reasons for our Decision.

7.3 Summary of Pre-Existing Obligations.

7.4 Summary of affordability issues raised in Consultation 16/31.

7.5 Geographically Averaged Pricing: This gives an overview of the obligation, a summary of respondents' submissions to our Consultations, and views.

7.6 Social Tariffs: This gives an overview of the obligation, a summary of respondents' submissions to our Consultations, and our views.

7.1. Our Decision

472 On the basis of the analysis and reasoning set out elsewhere in the consultation documents and in the TERA Reports we have decided the following with respect to affordability requirements:

- To maintain the existing GAP obligation. This obligation relates to the USO services in accordance with Regulation 3, namely, a connection and PATS service (For the avoidance of doubt, this does not apply to bundled products).

- Not to introduce social tariffs at this time. There are pre-existing safeguards for consumers in the form of the RPC and a diversity of retail offers in the market. The existing GAP obligation is to be maintained. Nonetheless, we may review, in the future, whether it is necessary to define a social tariff, should circumstances justify it.

7.2. Reasons for our Decision

7.2.1. Geographically Averaged Prices

473 The cost of providing services, especially access can, in principle, vary considerably between remote, rural and high density urban end-users. Where prices (especially connection and line rental) are averaged, there is a possibility that some high cost end-users, such as, rural end- users as well as low users in more urban areas, may create a net cost for the USP. Essentially, these would be considered high cost end-users who do not make sufficient use of the telephone to provide eir with enough revenue to cover the associated costs. Such end-users then may be subsidised by end-users that eir earns high profits from, such as, lower cost, urban end-users or high usage customers. However, even if the provision of access is on average profitable, some level of net cost may therefore arise.

474 The First TERA Report highlighted that, without a GAP USO, eir could behave differently in the different areas, depending on the relative level of competition, and whether eir's pricing behaviour was likely to be sufficiently price constrained by other innovative services. Therefore, in the context of affordability, TERA's view was that any impact on end-users is likely to vary, depending on the area within which they are located, and the pricing strategy pursued by operators.

475 In Consultation 16/31 we noted that, without a GAP obligation, it is possible that end-users in market-driven infrastructure-based competition areas, may benefit from decreases in access prices (eir may wish or be forced to decrease its line rental charge). In contrast, if the obligation to provide GAP for AFL USO is removed, it may negatively affect other end-users, particularly those in eir only areas, who may experience increases, or no decreases, in telephony access prices. These end-users are unlikely to have an alternative to easily switch to, should eir increase the retail line rental price or fixed telephony prices in general. We are of the view that it is likely that those who would be most (negatively) affected, are those potentially higher cost customers located in more rural areas or in areas where competition for voice access is not fully effective. A similar situation could possibly arise for those end-users in NBP areas, at least during the roll out phase of the new infrastructure over the next (circa) 5 years.

- 476 Consultation 16/31 also noted that despite some price constraint on eir's retail connection and line rental price, in TERA's view, it could not be excluded that eir may wish to increase prices in specific areas where constraints are not yet sufficient or relatively less. This could preclude some consumers (TERA estimated this could be at least circa 100,000 consumers) from receiving an affordable AFL USO service. Our approach to affordability including maintaining a GAP obligation on the USP, is consistent with developments elsewhere in the EU. Consultation 15/89 and the benchmark analysis (First TERA Report, Annex B) set out that GAP is imposed in the majority of countries analysed. However TERA's analysis shows that this is not always the case for densely populated countries.
- 477 In respect of constraints on eir's ability to increase retail connection and line rental prices, TERA's reports took into account that eir is subject to wholesale price controls (Single Billing Through Wholesale Line Rental "SB-WLR"), a Retail Price Cap ("RPC") on line rental and connection, as well as a requirement for nationally uniform charges (GAP). Additionally, end-users' price sensitivity and competition, combine to somewhat constrain eir's ability to increase the line rental and connection prices, particularly for end-users who take up bundled voice – increasing demand and supply of bundled offers nationally.
- 478 Given the general market circumstances, we considered whether absent regulation eir would have the ability and incentive to introduce line rental and connection (and calls) price increases for at least some end-users. We also considered whether retaining the GAP obligation would create market distortions. In considering whether or not the balance of these risks requires that the GAP obligation be maintained, we considered in Consultation 16/31, **paragraphs 482-488** both:
- what is the likelihood of each risk arising; and
 - what would the harm be to consumer welfare if the risk arises.
- 479 We found that maintaining the GAP obligation will protect end-user welfare, in particular, in rural areas and areas where competition for voice access is not fully effective, while ensuring workable competition is sustained in rural as well as urban areas.
- 480 Having regard to the analysis set out in the Consultations and in the TERA reports, and taking into account respondents views, we consider that maintaining GAP will result in an overall net welfare benefit, benefiting both competition and end-users. We have decided to maintain the existing GAP obligation. This obligation relates to the designated services in accordance with Regulation 3, namely, a connection and PATS service (For the avoidance of doubt, this does not apply to bundled products).

7.2.2. Social Tariffs

481 We consider, in light of national circumstances, the potential impact on those most vulnerable in society of any potential change to affordability measures including the possibility to introduce an obligation in relation to special tariffs. On the basis of the information available to date, our view is that there are currently a combination of mechanisms ensure that basic voice services are broadly affordable for end-users. The Second TERA Report noted mandating a social tariff(s), could be inconsistent with the recent Department policy choice to remove the telephone allowance. We do not consider it necessary, in the presence of a safeguard price cap on the basic telephone line rental and connections, combined with the GAP, in addition to other price options, to impose an obligation on the USP to provide social tariffs.

482 Regarding social tariffs, TERA's benchmark analysis showed that many countries require the USP to offer tariff options or social tariffs which generally fall within two broad categories:

- In the form of discounts and reductions for the end-users who are entitled to claim the social tariffs; or
- In the form of a special package.

483 Also, as set out in the benchmark analysis, the recipients of social tariffs in general consist of two groups: people on low income, and people with special social needs: i.e. the elderly, the disabled and war veterans.

484 Consumers have the option of keeping their fixed line under eir's vulnerable user scheme or 'control' phone plans,⁴⁴ which have characteristics more similar to pre-paid mobile offers, and many do so. In respect of the potentially more vulnerable consumers, at present there are low usage plans or plans for particular needs as set out in paragraph 496 of Consultation 16/31.

485 We note that in addition to their standard call charges eir offer a range of tariff plans, including plans which offer discounts on calls only, and those which offer discounts on call and line rental bundles. Similarly other networks including mobile already commercially offer plans for low usage customers.

⁴⁴ The Second TERA report note that Considering the fact that the incremental cost of a given user on the network is very low, the provision of a low user package like the VUS or targeted package such as 'Talktime Control' is economically rational for an operator like eir since it generates small revenues but greater than incremental costs.

- 486 We are satisfied that due to the wide variety of plans including discount plans which eir and other operators currently offer, which allow end-users in particular the more vulnerable consumer to benefit from discounts, regardless of their varied usage patterns suggest that there is no need for ComReg to further exercise its universal services powers and introduce specific tariff schemes.
- 487 Further, as noted above the range of tariffs advertised by standalone fixed voice service providers and mobile operators should ensure that voice access prices are broadly affordable at this time for the majority of end-users.
- 488 Having regard to respondents' views and on the basis of the analysis set out above, we are of the view that it would not be appropriate at this stage to mandate a social tariff. We are of the view that packages offered commercially are sufficient to ensure all end-users, including more vulnerable consumers can access voice services at an affordable price.
- 489 Having regard to the presence of the obligation of a safeguard RPC, the decision to maintain the GAP obligation and; because packages offered commercially appear broadly sufficient to ensure end-users, including more vulnerable consumers, can access voice services at an affordable price, we have decided that at this time it would not be appropriate to mandate a social tariff.
- 490 These combined measures should protect vulnerable end-users from a rapid increase in their overall bills.
- 491 No additional information has been presented to us which would support changing our view and we therefore have decided that a requirement to offer Social Tariffs should not be introduced.

7.3. Summary of Pre-Existing Obligations

- 492 Pursuant to the Regulations, the USP can be required to adhere to the principle of maintaining affordability for universal services. In this respect, the Regulations provide that we may oblige a designated USP to offer special tariff options or packages which depart from those provided under normal commercial conditions, in particular, to ensure that those on low incomes or with special social needs are not prevented from accessing the network. The Regulations also provide that we may require USP to apply common tariffs, including geographical averaging throughout the State.
- 493 At present, affordability is maintained through a number of different schemes:
- Within the existing RPC:⁴⁵ this provides a safeguard on consumer's line rental and connection fees (but excludes calls).

⁴⁵ *Ibid.*

- eir's "Talktime Control Scheme" in respect of existing end-users.
- eir's low usage scheme or Vulnerable Users Scheme ("VUS").
- GAP obligation: ensures universal services provided by the USP are available at a uniform price, irrespective of geographical location in Ireland.

7.4. Summary of Affordability Issues - Consultation 16/31

494 We were of the view in Consultation 16/31 that from the perspective of social inclusion, Irish communication costs should not exclude the most vulnerable in the community from making a minimum use of telephony services. While communication services are a basic necessity for all end-users, we considered that protections for more vulnerable end-users should remain in place. These should protect vulnerable end-users from a rapid increase in their overall bills.

495 As set out in Consultation 16/31, **section 8.2, paragraph 459**, eir, as the operator with significant market power (SMP), is subject to a retail price cap on its line rental and connection prices.⁴⁶ The price cap restricts the amount by which eir can increase these prices in any given year. Given this safeguard price cap on consumer's line rental and connection fees is retained, this will mean inflationary increases in basic line rental (PSTN) services only (i.e. CPI-0).

496 In respect of assessing any impact of ceasing the RPC obligation, it was noted that as the RPC obligation is imposed on eir as the SMP operator in the FVA market and not because it is the USP. The removal of the USO designation would not directly affect this safeguard on consumer line rental prices which, as discussed further below, is complementary to the GAP obligation.

497 A GAP obligation in respect of AFL USO has been place on the USP since 2003. GAP means that charges for designated AFL USO services, in accordance with Regulation 3 of the Regulations, are the same for all end-users throughout the State irrespective of their geographic location. GAP for AFL USO is a mechanism to ensure that basic telephone connection and services provided by the USP are available at an affordable price, irrespective of geographical location in Ireland.

498 eir voluntarily provides the VUS special tariff plans as well as the Talktime Control Scheme. However, in Consultation 16/31 we noted that Talktime Control is no longer available to new end-users, and when offered was only available to consumers who previously availed of the DSP Telephone Allowance.

⁴⁶ In 2014, we decided pursuant to the review of the FVA that continuing to implement a RPC for basic line rental (PSTN) services with a view to safeguarding 'captive' voice customers was appropriate.

499 Considering whether a change or otherwise might be required in respect of affordability measures, ComReg and its consultants TERA benchmarked approaches taken to affordability elsewhere in the EU (First TERA Report).⁴⁷ This benchmark analysis found that all of the 12 countries studied imposed measures for affordable access, through the introduction of one or a combination of measures: GAP, social tariffs and/or price control.

500 We were of the preliminary view that no change was required with respect to the affordability measures, *inter alia*, that the GAP obligation should be maintained, however, social tariffs should not be introduced. Having regard to respondents' views, we, in the following sections, further consider the risk to affordable universal voice access for all, were the GAP obligation removed as well as no change in respect of social tariffs.

7.5. Geographically Averaged Pricing

501 Ensures universal services provided by the USP are available at a uniform price, irrespective of geographical location in the State.

502 Consultation 16/31 asked the following questions regarding GAP:

Q. 24 Do you agree with our preliminary view that the obligation to maintain geographically averaged prices should be maintained? Please provide reasons to support your view.

7.5.1. Geographically Averaged Pricing - Respondents' Submissions

503 With the exception of eir, all respondents to the further consultation agreed that GAP should be maintained.

504 Among the respondents that agreed, ALTO and BT agreed with the maintenance of GAP, stated that: "...*The digital divide is already a serious national issue and not to maintain geographically averaged prices would raise further political issues given it would be the rural areas that are most likely to see the higher charges.*"

505 Sky stated that: "...*the case for GAP is finely balanced and conclusions ComReg has arrived at appear to be reasonable based on the arguments presented.*"

506 Virgin Media also agreed with the maintenance of GAP, and stated: "...*considers that this obligation should only apply to standalone fixed telephone services. As previously noted, this obligation should only apply at locations where an affordable alternative service is not available.*"

⁴⁷ *Ibid.*

- 507 eir stated, however, that: *“...ComReg’s analysis of whether to maintain the obligation of GAP is simplistic and flawed; it fails to analyse the cost of maintaining the GAP regime and to weigh these costs against purported benefits.”*
- 508 eir stated that: *“...TERA’s consideration of GAP is superficial and, in particular, does not provide any meaningful consideration of the costs of continuing to impose the obligation on eir. As a result the TERA conclusion does not present a robust case for retaining the obligation for eir to maintain geographically averaged prices.”* In addition it stated that: *“...The overall framework purportedly applied by TERA, considering the costs and benefits of maintaining a GAP obligation is appropriate. However, TERA has addressed the issue in a cursory manner, and did not undertake meaningful analysis to reach its conclusion that the GAP obligation should be retained. In eir’s view, it is simply unacceptable to maintain an obligation on eir that has a material impact on our ability to compete, without taking due care to consider the issue.”*
- 509 According to eir, a proper approach would consider the benefits of maintaining an obligation and the costs of that obligation and assessing if the costs outweigh the benefits. eir stated that: *“...if the costs do not outweigh the benefits consideration must be given to whether there are “any alternative, less stringent obligations that could be imposed”.*
- 510 eir stated that: *“...on TERA’s own analysis, in the face of a cost-orientated SB-WLR, there would appear to very limited (if any) risk of a material detriment to consumers on standalone voice in rural areas from removing the GAP.”* According to Eir, a balanced analysis would conclude that constraints notably, cost orientated SB WLR and mobile, are increasing and the risk of any price increases by Eir including on rural consumers is low. In eir’s view, it could not profitably increase prices given these increasing constraints.
- 511 Furthermore, eir is of the view that the GAP obligation is disproportionate as it prevents reductions which it considers is a dis-benefit for end-users, though Eir also notes that GAP can prevent increases for some users.
- 512 eir referred to TERA’s Report and noted its concern that: *“...TERA’s evident lack of understanding of what GAP actually is has causes them to completely misrepresent the benefits and costs.”*

513 In addition eir stated that: *“...ComReg are failing to act in accordance with and apply the principles of proportionality, efficiency, objectivity and non-discrimination as mandated in the USR and the USD (as amended). It is entirely unsatisfactory and not in accordance with these guiding principles that TERA and ComReg should accept and have regard to risks when designing the USP’s obligations by applying the entirely unsatisfactory threshold that a risk ‘...cannot be ruled out...’. If TERA and ComReg had applied a proper and appropriate standard for filtering out risks that lacked a sufficient foundation in reliable research and data (e.g. ‘real and appreciable risk’) it is clear that the risk should have been disregarded.”*

514 eir considers that: *“...Even if one accepts that there is a risk of excessive increases by eir on rural consumers, and that this risk needs to be addressed, then the option of maintaining GAP should be tested against alternative mechanisms to achieve the required aim.”* eir proposed some such alternatives that in its view we have failed to consider, notably,

- ComReg could amend the retail price cap by imposing a sub-basket of rural/non-LEA residential users.
- ComReg could impose a maximum rural tariff for residential users to maintain affordability.
- ComReg could define a special social tariff, such as the vulnerable user scheme, and require that eir make it available to residential users in defined areas.

515 In respect of maintaining the GAP, eir submits that TERA has not undertaken any analysis to quantify the extent of the competitive impact on eir. It is eir’s view that competitive distortions would be much reduced or non-existent if alternatives (suggested above) to the GAP were imposed.

516 eir Business (like eir Consumer) considers that the GAP constraint on it is significant and this will be exacerbated in the face of the reduction in SB-WLR prices, which others will use to compete more aggressively.

517 Without a removal of the GAP eir is of the view that it will not be able to compete fairly. In this respect, eir submits that as the GAP USO requires lower prices to be applied to all customers of a specific type in all locations, eir would not be able to make significant discounts to retail prices.

7.5.2. Geographically Averaged Pricing - ComReg's Response

- 518 Current AFL USO obligations imposed on eir as the USP include the obligation to apply measures to ensure affordability of tariffs, including GAP, i.e. where telephone charges (including connection and line rental) are the same for all end-users irrespective of their geographical location. A large majority of respondents agreed that the obligation to provide geographically averaged prices should be maintained with a view to ensuring that prices are affordable whatever the geographic location. We note ALTO's and BT's views that the digital divide is already a serious national issue in Ireland.
- 519 We also note Virgin Media's submission that: "*...this obligation should only apply at locations where an affordable alternative service is not available*". As set out in Chapter 5, we have designed the associated obligations in such a way that no obligation to satisfy reasonable requests for connection and PATS crystallises on eir as the USP unless the customer has no suitable alternative. At paragraph 277, in order for the alternative to be considered affordable, the Alternative Infrastructure must offer a package or packages which are broadly in line with those prices offered by the USP in terms of connection, line rental, calls, and the terminal equipment. Indeed, an Alternative Infrastructure platform which would be capable of providing AFL USO universal services but for which prices would not be affordable, could not be considered as meeting the requirements of providing AFL USO universal services.⁴⁸
- 520 Further, in response to Virgin Media's view that: "*...this obligation should only apply to standalone telephone services*", we can confirm that, as proposed in Consultation16/31, the existing GAP obligation is maintained. This obligation relates to the designated services in accordance with Regulation 3, namely, a connection and PATS service (For the avoidance of doubt, this does not apply to bundled products).

⁴⁸ The First TERA Report: page 49 and updated in Section 1 and Section 4 of the Second TERA Report.
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521 In eir's view, ComReg's analysis (including TERA's inputs) of whether to maintain the obligation of GAP is simplistic and fails to analyse the cost of maintaining the GAP regime and to weight these costs against the benefits. We disagree that we have not done this analysis. With respect to assessing the potential risk to universal affordable AFL USO in the absence of the GAP obligation, ComReg together with TERA first considered in detail relevant market trends, both on the supply and demand side, possible competitive constraints and the potential impact if any of the Departments NBP initiative over the next 5 year period.⁴⁹ In light of the evolving market trends and developments, we reviewed in detail potential constraints on eir and the line rental and connection price, such as, end-users price sensitivity, the presence of the RPC, and eir's obligation to provide SB-WLR.⁵⁰ Having regard to all available information (amongst other things, our recent retail (RFVA)⁵¹ and wholesale (FACO)⁵² voice access market analyses, the updated trends, potential increasing constraints on eir, the 13D information) as well as the respondents' views, we then considered the possible impact of ceasing the GAP obligation on consumers, competition and eir, on each of the three geographic areas (as broadly defined in Section 3.2 of the First TERA Report).

522 We used the framework set out in section 8.3.2 of Consultation 16/31 to assess whether maintaining the GAP obligation is appropriate, proportionate and justified (see RIA, Section 11, Consultation 16/31). Contrary to eir's view, our impact assessment did consider the likely risks of maintaining a GAP USO compared to ceasing with such an obligation. As explained in the First TERA Report, because eir is currently designated as USP, the counterfactual focused on how eir could behave and the impact of that behaviour on end-users of AFL USO, without any AFL USO, including cessation of GAP.

⁴⁹ Section 3 of Consultation 15/89 and Section 3 of the First TERA Report (updated in Section 1 of the Second TERA Report).

⁵⁰ See also Consultation 16/31: Section 8 (Affordability) and Section 11 (RIA) and the First TERA Report, section 3.2 and 4.5 (and updated in the Second TERA Report section 1.2.1 and pages 39-46).

⁵¹ ComReg Document No. 14/89, we noted in Consultation 15/89 and Consultation 16/31, eir is subject to a retail price cap on its line rental and connection prices given it is the operator with significant market power (SMP).

⁵² See ComReg's Decision in respect of the wholesale voice access market http://www.comreg.ie/_fileupload/publications/ComReg1582.pdf

523 We considered the balance of risk⁵³ – whether GAP would create significant market distortions, compared to whether absent regulation eir would have the ability an incentive to introduce line retail and connection (and call) price increases for some end-users. Having considered respondents views to Consultation 15/89, we considered on a preliminary basis that the balance of these risks requires that the GAP obligation be maintained. For example, the Second TERA Report noted that: “...*keeping the GAP obligation guarantees the customers in rural areas will not suffer from high prices compared to customers in urban areas. This may be important to assist in avoiding social exclusion and to bridge the digital divide*”. However, assessing the balance of risk without an AFL USO, TERA also noted that: “...*the problem with this approach is potential market distortion. Because of the GAP obligation, the USP may be unable to set competitive prices in areas where alternative operators are present*”. Notwithstanding this, in respect of overall competitive impact TERA noted that: “...*since the GAP applies only to connection and voice only services (in light of the proposed retention of the 28kbps data rate for the time being), the impact on the competition is very limited.*”

524 However, eir believe that there is no justification to maintain the GAP obligation. Because of increasing constraints on it, in eir’s view, there is no risk of material detriment to voice consumers in rural areas – the risk of any price increases by eir including on rural consumers is low. eir is of the view that without a removal of the GAP it will be unable to compete fairly.

525 eir commented that there are three sources of constraint on eir:

- End-users switching to alternative providers using SB-WLR:
- End-users switching to mobile; and
- End-users switching to alternative providers using their own fixed infrastructure e.g., fixed wireless providers.

⁵³ See paragraphs 480 to 488 and section 11 (RIA) of Consultation 16/31.

- 526 Having regard to eir's views and other respondents' views, we further considered each of the above identified sources of constraint on eir and further set out our reasoning in this regard. We again acknowledge that these three sources can imply local constraints on eir to increase prices. As our Consultations and the TERA Reports noted, however, at this stage constraints on eir from mobile as well as alternative providers using own infrastructure are not available everywhere in the country (in particular, their coverage is likely to be less important in the more rural parts where competitive constraints are already lower).⁵⁴
- 527 With respect to mobile constraints, eir submit that based on its own research over 46% of rural households have expressed a preference for mobile as their first line technology for the delivery of voice services. Consequently, eir is of the view that there is no justification to maintain the GAP obligation. However, our recent survey evidence does not agree that home landline telephone service ownership is insignificant. Rather, the evidence shows that fixed voice remains significant at 67% nationally, with little variance between urban (71%) and rural users (61%).⁵⁵ More importantly, the evidence points to significant difference in landline ownership by age with 88% of those aged over 65 having a home landline. The evidence also indicates that take up of mobile is almost universal and that there are no significant variances between urban and rural users in take up or usage of mobile services;⁵⁶ Further, that the majority of end-users access both mobile and landline at home – 63% of households combine a fixed and mobile phone indicating complementary services and not substitutes.⁵⁷ We note the recent Vodafone research broadly concurs and indicates the percentage of people with each technology at home in rural Ireland – 70% have a landline telephone compared to smart mobile phone/l phone (68%).⁵⁸

⁵⁴ While we acknowledge that mobile constraints are likely to increase in time because of developments in relation to mobile coverage extension, QoS improvements, development of fixed wireless technologies, etc., as set out in our analysis and Chapter 5, in the context of delivering an AFL USO service the significant mobile coverage is outdoor and not indoor.

⁵⁵ ComReg's 2015 ICT consumer survey, slide 10 and Slide 16.

⁵⁶ ComReg's 2015 ICT consumer survey, slide 16 and slide 58.

⁵⁷ The Eurobarometer eCommunications survey, June 2016.

⁵⁸ See <https://www.vodafone.ie/connected-futures/>

- 528 Additionally, our assessment did take into account the potential increasing constraint on eir's pricing with the introduction of cost-oriented SB-WLR prices instead of retail-minus. Cost orientated SB-WLR is in principle a nationwide competitive constraint. We did envisage that with the reduction in the wholesale input cost for voice services that alternative retail operators would have more room in the future to compete with eir in respect of the voice service. This also holds true for eir (retail) in respect of its retail prices nationally, for business and residential users. However, the Decision with respect to cost orientated SB-WLR has only been effective since July 2016 and the development of new offers by retail providers will take time to have an impact on the broader market and ultimately consumers. On this basis, there is no clear view at this time of the actual use that retail providers, of both eir and Other Authorised Operators, will make of this wholesale input price (especially as regards the provision of the standalone voice service or voice packages as competition is focused primarily on bundled products).
- 529 With respect to the potential impact on competition and on eir, its view is that: *"...its competitors already take advantage of the GAP constraint on it" and that "this will be exacerbated in the face of the reduction in SB-WLR prices, which others will use to compete more aggressively"*. However, having considered in detail the evolving market structure and developments, including, the increasing demand and supply side constraints, the evidence so far shows that, despite some fixed operators undercutting eir in respect of voice service and voice packages (see Figure 10, Consultation16/31: p 85) as well as some decrease in the price of mobile voice plans, eir's fixed line rental and connection charges remain unchanged since 2007 i.e. Eir did not decrease the price in the context of increasing competitive constraints. Absent regulation, fixed landline telephony costs, such as, eir's standard calls charges and some voice packages have increased for end-users.

530 With respect to the risk of a price increase, the RPC is imposed precisely in order to address eir's ability to raise line rental and connection prices above the competitive level in light of its SMP in the wholesale and retail voice access markets. In the presence of the obligation of a safeguard RPC, eir's retail fixed line rental and connection charges have not increased since 2007, though eir can increase line rental and connection prices in line with inflation. It is noted that eir continues to have approximately 43% of the overall voice market and 67% of standalone voice access.⁵⁹ Notable also, are the large geographic variances in home landline market shares: eir has a 67% market share of rural areas, compared to Vodafone (20%), Sky (9%) and UPC (2%).⁶⁰ We considered it important to take into account competitive offerings, for example, the fact that Virgin Media does not currently offer any standalone AFL USO product and other potential developments including the NBP. While providers of voice services bundled with broadband and other products will likely provide in the future an increased constraint on eir, evidence shows that bundle ownership rates vary across regions: only 49% in rural areas compared to 70% in urban areas, and 77% in Dublin.⁶¹ For the reasons set out in our Consultations and the TERA Reports and, at paragraphs 473 to 480, we find that eir could behave differently in geographic areas with varied technological and competitive conditions.

531 With respect to the costs of maintaining the GAP obligation, eir believes that: *"...the impact is much more significant than TERA recognises. The GAP obligation applies for all universal services products, including both consumer and business retail line rental products"*. Notwithstanding, eir did not provide any empirical evidence in this regard. In eir's view, there is a clear case for removing the GAP obligation as there are valid competitive reasons why it would like to be able to decrease retail prices selectively, in particular, to business customers. eir believes the GAP obligation is disproportionate, as in its view, it prevents reductions which is a dis-benefit for end-users.

532 However, we consider that the GAP obligation is objective and necessary and is not unduly burdensome on eir, amongst other things, because:

- The GAP obligation relates to the USO services in accordance with Regulation 3, namely, a connection and PATS service (For the avoidance of doubt, this does not apply to bundled products) and applies to services where competition is not yet effective;

⁵⁹ ComReg quarterly report data Q1 2016.

⁶⁰ ComReg's 2015 ICT consumer survey, slide 10 and slide 37.

⁶¹ ComReg's 2015 ICT consumer survey, slide 9.

- The RPC imposes a maximum tariff for line rental and connection, eir is able to have reductions in designated AFL USO services once passed through to all end-users nationally. Also noted above, with the reduction in the SB-WLR input cost, it is probable that there is further scope for eir (as well as OAOs) to profitably reduce the AFL USO price (GAP price) nationally and eir has not provided any information to show the contrary;
- Moreover, eir has pricing flexibility regarding its broad retail offers including bundled offers, subject to the requirements of wholesale price controls in place. It is envisaged that standalone voice consumers may increasingly migrate to bundles which include voice, thus any impact of the GAP obligation on eir would decrease in time. However, it is noted at paragraph 530, bundle ownership rates vary across regions and is very high in more competitive areas: only 49% in rural areas compared to 70% in urban areas, and 77% in Dublin;⁶² and
- Any impact of the GAP obligation on eir would likely decrease in time. Our decision on what constitutes a reasonable request for AFL USO is intended to lessen eir's obligations as the USP to satisfy end-user requests for USO AFL in those parts of the State where there is Alternative Infrastructure/service providers (see Chapter 5).

533 We will closely monitor the future development of retail offers in light of the reduction in wholesale input costs and whether or not these savings are passed through to consumers throughout the State in the form of lower fixed voice prices. Such pricing should ultimately deliver the benefits of competitive prices nationally, rather than in geographic areas where competition is strongest.

534 According to eir, "...the test for affordability cannot reasonably be based on the relative price of *services in rural areas as compared to urban areas, notwithstanding the evidence that Eir has put forward to demonstrate that the removal of GAP would enable it to reduce prices to customers in rural areas.*" However, in Consultation 16/31, we set out that the introduction of de-averaged prices could risk significant rate shock for some residential end-users, which would be inconsistent with the objectives of the safeguard RPC obligation as well as the principle of universal service, *inter alia*, the availability of affordable voice service for end-users who wish to purchase that service on a standalone basis, for end-users in rural areas etc.

⁶² *Ibid.*

- 535 Given the relatively more limited competitive constraints on eir's pricing in some geographic areas, higher cost consumers in rural areas and areas where competition is not yet effective may have to pay higher voice access prices than their low cost counterparts from densely populated areas (though there is no guarantee that any cost advantages in denser areas would be passed on to standalone voice end-users which are distributed nationally). The obligation of GAP means that customers for whom the costs of provision of voice telephony access are higher than average do not have to pay high prices.⁶³ Such pricing should ultimately deliver the benefits of competitive prices nationally, rather than in geographic areas where competition is strongest. It also ensures that standalone voice services are affordable in areas where the high costs of provision would otherwise disadvantage groups of customers. According to the Vodafone report, some 87% of over 65s have a landline compared to 70% of all adults in rural Ireland.
- 536 Indeed, as set out in our Consultations, the USP may wish to retain geographically averaged prices for commercial reasons. That is, it might in particular value the relative administrative simplicity and ease of customer information and transparency that are afforded by uniform pricing.
- 537 We disagree with eir's view that our analysis (including TERA's inputs) of whether to maintain the obligation of GAP is flawed, including in respect of assessing the potential increasing constraints on eir. Having regard to our analysis⁶⁴ and respondents' views we can conclude that, on balance, maintaining GAP will result in an overall net welfare benefit, benefiting both competition and end-users. We are of the view that maintaining the GAP obligation will protect end-user welfare in particular, in rural areas and areas where competition for voice access is not fully effective while ensuring workable competition is sustainable in rural as well as urban areas.
- 538 Finally, eir's view is that we have not considered alternative mechanisms against the option of maintaining a GAP obligation:
- a) ComReg could amend the retail price cap by imposing a sub-basket of rural/non-LEA residential users.
 - b) ComReg could impose a maximum rural tariff for residential users to maintain affordability.

⁶³ It is of note that Vodafone's recent "connected futures" report: page 13 states that: "... *the vast majority – 81% – of people in rural Ireland disagree with the proposition that people living in rural areas should expect to pay more to access the internet than their urban counterparts because it is more expensive to provide the service there. Indeed, 70% disagree strongly with this idea.*"

⁶⁴ See response to consultation, further consultation and draft decision 16/31: Section 8 (Affordability): Figure 11 and Section 11 (RIA) and the First TERA Report, section 3.2 and 4.5 (and updated in the Second TERA Report section 1.2.1 and section 1.2.2, and pages 39-46).

- c) ComReg could define a special social tariff, such as the vulnerable user scheme, and require that eir make it available to residential users in defined areas.

539 We noted in Consultation 15/89 and Consultation 16/31, and above, that at present, affordability is maintained through a combination of different schemes. Having regard to the TERA inputs as well as respondents' views, we assessed (Section 8.3.2 of Consultation 16/31) the option of maintaining the RPC but allowing for lower prices in some geographic areas, that is, cessation of the GAP obligation. However, the analysis⁶⁵ enables us to conclude that maintaining the obligation of GAP to ensure prices are affordable whatever the geographic location is necessary, appropriate, and justified in the presence of the existing obligation of a safeguard RPC. As set out in our Consultations, by geographically de-averaging retail prices for designated AFL USO services, eir would be able to increase prices for high cost customers, for example, in rural areas while decreasing them in urban areas. This concern remains valid because the current safeguard obligation of the RPC is assessed as a total average nationally and not for each individual end-user.

540 We acknowledge that we could, in principle, amend the existing RPC by imposing a) a sub-basket of rural/non-LEA residential users or b) impose a maximum rural tariff for residential users. However, a narrowing of the scope of the RPC at this time would risk that line rental and connection charges would increase for some or all end-users – the need for the RPC obligation, imposed on eir having been designated with SMP in the retail fixed voice access market, continues to arise nationally and it is to safeguard against excessive prices in respect of standalone voice end-users which are distributed nationally. The presence of the obligation of a safeguard RPC, which imposes a maximum tariff for line rental and connection, ensures that prices remain overall affordable for all end-users. Therefore, this regime also protects rural/non-LEA residential users against a risk of voice telephony price increases, services within the AFL USO scope. For the reasons set out above, the RPC and GAP obligations are complementary obligations to maintaining affordability, either measure operating on its own may not achieve the objective of affordable voice access for everyone. Finally, we together with TERA⁶⁶ did consider and consult on the possibility to c) define a social tariff. It is noted that social tariffs would only target specific groups of qualifying end-users and would not therefore necessarily ensure that tariffs in rural areas are affordable.

⁶⁵ Consultation 15/89: p44-46, Consultation 16/31: p84-91 and the First TERA Report, section 4.5 (and updated in the Second TERA Report pages 39-46).

⁶⁶ Consultation 16/31: p92-94 and the Second TERA Report pages 39-46.

7.6. Social Tariffs

541 There is no pre-existing obligation on the designated USP to provide social tariffs.

542 Consultation 16/31 asked the following questions regarding Social Tariffs:

Q. 25 Do you agree or disagree with our preliminary view that at this time a requirement to offer Social Tariffs should not be introduced? Please give reasons and/or evidence to support your view.

7.6.1. Social Tariffs - Respondents' Submissions

543 All respondents agreed with our preliminary view, with the exception of eir. ALTO and BT agreed and stated that: *"...as prices of telephone services have fallen in real terms over many years and we would agree with ComReg that packages offered commercially ensure all customers can access voice services at affordable prices."*

544 eir stated that: *"...There are a range of competing services and tariffs available in the market across the State. This calls into question the need to maintain the USO regime. However, if a social tariff were designed to address the concerns identified in the GAP discussion above, it may be a better solution than GAP..."*

7.6.2. Social Tariffs - ComReg's Response

545 We note the majority of respondents were in agreement that a requirement to offer Social Tariffs should not be introduced at this time. We note eir's comments and have addressed its concerns in respect of GAP in section 7.5.2 above.

546 We remain of the view that there are currently other mechanisms that ensure that basic voice services are broadly affordable for end-users. We also remain satisfied that due to the wide variety of plans including discount plans which eir and other operators offer, which allow end-users in particular the more vulnerable consumer to benefit from discounts, regardless of their varied usage patterns suggest that there is no need for us at this time to further exercise our universal services powers and to introduce specific tariff schemes.

547 No additional information has been presented to us which would support changing our view and therefore, we have decided that a requirement to offer Social Tariffs should not be introduced. Nonetheless, we may in the future review whether it is necessary to define a social tariff, should circumstances justify it.

8. Control of Expenditure

548 Chapter 7 set out our Decision on what affordability measures are justified for end-users of AFL USO. This Chapter sets out our further Decision on what obligations it is justified for us to impose on the USP, in order to help end-users of AFL USO to control their expenditure and our reasons for it.

549 Universal service is not only about enabling end-users to be connected to a fixed telephone network. It is also important that all end-users who wish to remain connected to the fixed network can do so.

550 It is imperative that end-users are able to monitor and control their expenditure to ensure that they do not find themselves unable to pay their bill and face disconnection from the network.

551 In addition to affordability of tariffs, the Regulations also provide for several measures with respect to control of expenditure, including in relation to terms and conditions for the provision of facilities and services.

552 This Chapter sets out the following:

8.1 Our Decision.

8.2 Reasons for our Decision.

8.3 Overview of the proposed regulatory options available in Consultation 16/31, with a summary of the responses which we received.

8.4 Our response having considered the submissions.

8.1. Our Decision

- To maintain the pre-existing obligations in respect of disconnections and non-payment of bills.
- To maintain the pre-existing obligations in respect of phased payment for connection fees.
- Not to introduce any special contract terms and conditions applicable to contracts between end-users and the USP.

8.2. Reasons for our Decision

8.2.1. Disconnections

- 553 As part of their Code of Practice for Complaint Handling there is an obligation on all operators to publish their Disconnection Policies.
- 554 Consultation 16/31 noted that in the context of universal service, eir's Disconnection Policy, and the associated number of disconnections, has an impact on the number of people connected to the fixed network. The level of disconnections may indicate the effectiveness of the existing measures. Universal service is not truly universal if many people are left without access to a telephone. We recognise however, that some disconnections may also result for other reasons, such as fraud or the deliberate non-payment of bills.
- 555 The eir Disconnection Policy includes notification measures for end-users who fall into payment arrears. This policy appears to continue to have a positive effect by reducing the number of end-users that may have been otherwise disconnected from the network.
- 556 The Disconnection Policy should provide that, if an end-user does not pay a bill by the account due date, the USP may restrict an end-user's ability to make and receive calls except to emergency services and that the USP will endeavour to contact an end-user to remind them that a bill is overdue.
- 557 eir's Disconnection Policy⁶⁷, has an impact on the number of people connected to the fixed network, it includes notification measures for end-users who fall into payment arrears. This policy continues to have a positive effect by reducing the number of end-users that may have been otherwise disconnected from the network.
- 558 In Consultation 16/31 we noted that the Second TERA Report found that it cannot be excluded that the current Disconnection Policy would not be maintained by eir in the absence of an AFL USO. It also found that maintaining the existing obligation would prevent social exclusion and should be maintained given its importance for end-users and low implementation costs for the USP.
- 559 We have decided that no amendment to the requirement for a USP to provide a Disconnection Policy is necessary at this time.

⁶⁷ <http://support.eir.ie/article/codeofpractice>

8.2.2. Phased Payment of Connection Fees

560 Under the Regulations, the USP may also be required to allow for phased payment of connections. A phased payment for connection fees is currently mandated. eir, as well as other operators, currently provide this facility.

561 The key aim of the USO is to ensure that end-users can get access to telephony services (reasonable requests) and the phasing of connection fees ensures that they are not prohibited from early connection because of an inability to pay the total connection charge in one payment. In recent years eir has maintained a connection promotion whereby connection charges were set to €0. Therefore no end-user needed to rely on the phased payment plan.

562 The First TERA Report concluded that in the absence of the AFL USO there is a risk that services such as eir's disconnection policy, would not be maintained by eir. In addition, the Second TERA Report recommended that the existing obligation should be maintained, given its importance for end-users and low implementation costs for the USP.

563 Due to the benefits to end-users of the service and the low implementation costs for the USP, we have decided that no changes to this facility are warranted at this time.

564 The Second TERA Report found that it cannot be excluded that the current Disconnection Policy would not be maintained by eir in the absence of an AFL USO. It also found that maintaining the existing obligation would prevent social exclusion and should be maintained given its importance for end-users and low implementation costs for the USP. For these reasons we have decided the disconnections policy should be maintained.

8.2.3 Special Terms

565 We considered if it was necessary to prescribe any terms and conditions which should be offered, or should not be permitted by the USP.

566 In Section 7 of Consultation 16/31 we considered whether automatic refunds for service issues should be incorporated into the USP's terms and conditions.

567 Section 45 of the Act 2002 provides summary enforcement powers in relation to relevant.

8.3. Summary of Consultation 16/31

568 Universal service is not only about enabling people to be connected to a fixed telephone network, it is also important that all end-users who wish to remain connected to the fixed network can do so.

569 We consider that it is imperative that end-users are able to monitor and control their expenditure to ensure that they do not find themselves unable to pay their bill and face disconnection from the network. We can take measures to ensure that end-users are in a position to monitor and control expenditure, as set out in **Paragraph 504** of Consultation 16/31.

8.3.1. Terms and Conditions of Contract

570 Consultation 16/31 asked the following questions regarding Control of Expenditure:

Q. 26 Do you agree or disagree with our preliminary view that the USP should be required to continue to provide its Disconnections Policy? Please give reasons to support your view.

Q. 27 Do you agree or disagree with our preliminary view that the USP should be required to continue to provide a Phase Payment Plan for connection fees? Please give reasons to support your view

Q. 28 Do you agree or disagree with our preliminary view in respect of the terms and conditions of contract? Please provide reasons to support your view.

8.3.2. Control of Expenditure - Respondents' Submissions

571 ALTO, BT, Vodafone and Sky agreed with ComReg's preliminary views in respect of the disconnections policy, the phased payment plan and the terms and conditions of contract. Virgin Media had no comment in this regard.

572 ALTO and BT agreed with our preliminary view in relation to the Disconnections Policy and stated that: *"...for the reasons provided by ComReg such as to prevent misuse of the service through fraud or deliberate non-payment of bills."*

573 ALTO and BT agreed and stated that: *"...that the USP should be required to continue to provide a Phased Payment Plan for connection fees to assist the customer manage the hurdle of a large one of cost."*

574 ALTO agrees with the preliminary view in respect of the terms and conditions of contract and stated that: *"...as such is a mandatory requirement of the USO and Users rights European and Irish legislation and certain conditions are helpful for these types of service."* While BT agreed and stated that: *"...as a customer contract is a requirement of the USO and Users rights European and Irish legislation and certain conditions are helpful for these types of service."*

575 eir did not agree with our proposal in respect of the Disconnections Policy stating that: *"...The USO in this regard is otiose and represents duplicated regulation. As ComReg observes in section 9.2 all operators are required to publish their Disconnection Policy and ComReg has previously, correctly, concluded that the USP's Disconnection Policy does not need to be more detailed."*

576 eir questioned as follows: “...How can TERA conclude that eir or another entity designated to be USP would not maintain a Disconnection Policy when all operators already have an obligation to do so. This is illogical. There is simply no justification for maintaining this obligation.”

577 eir did not agree with our proposal in respect of the Phased Payment Plan. It stated that: “...The obligation is otiose as acknowledged by ComReg market practice is such that there are no connection charges. This has been the case for many years. We also question ComReg’s reasoning for maintaining this obligation which appears to be linked in ComReg’s view to disconnection policy.”

578 eir agreed with our view and stated that: “...there is no justification for the imposition of any special contract terms and conditions applicable to contracts between end-users and the USP(s).”

8.3.3. Control of Expenditure - ComReg’s Response

579 The majority of respondents were in agreement with our preliminary views on Control of Expenditure measures.

580 eir did not agree with our preliminary views on the Disconnection Policy or the Phased Payment Plan.

581 The eir Disconnection Policy (see eir’s Code of Practice for Complaint Handling) includes notification measures for subscribers who fall into payment arrears. This policy appears to continue to have a positive effect by reducing the number of subscribers that may have been disconnected from the network. We agree with the concern raised in the Second TERA Report that without a USO, the number of disconnections and temporary cessations can increase, meaning customers may be disconnected earlier and for a low amount of debt.

582 The Second TERA Report noted that, it cannot be ruled out that the disconnection policy would not be maintained by eir without of an AFL USO. We are of the view consider that this obligation does not result in high costs to the USP, and given their importance for end-users, we have decided that the Disconnection Policy should be maintained.

583 As set out previously eir has for a number of years offered a residential connection promotion, whereby connection charges are waived. However eir has not indicated to us that it intends to remove or withdraw connection charges permanently. The standard connection charge in the absence of the promotion is €121.93. We remain of the view that if the promotion was to be discontinued, the phased payment plan would be of use to consumers. If connection promotions were discontinued, this and the phased payment plan would prevent social exclusion. In light of the low costs involved in its provision, we have decided to maintain this obligation.

9. Regulatory Impact Assessment (RIA)

584 The analysis and reasoning set out elsewhere in Consultations 15/89 and 16/31 and the TERA Reports enable us to reach the conclusion that: an AFL USO is needed post 30 June 2016 and that eir should be the designated USP for the period 29 July 2016 – 30 June 2021, for the entire State.

585 The analysis presented in this Chapter represents the final RIA which sets out our final view of the potential impact of designating eir for the provision of AFL and the imposition on eir of the proposed elements associated with AFL USO, notably, the obligation to provide reasonable access to AFL USO services, obligation of GAP, to ensure lines are capable of FIA and control of expenditure measures.

586 The RIA, in conjunction with the rest of the analysis and reasoning set out elsewhere (in Consultations 15/89 and 16/31 and the TERA Reports), represents the RIA and should be read together.

9.1 Introduction and summary

587 ComReg as part of the Consultations 15/89 and 16/31, set out its preliminary RIAs *inter alia* on each of:

- The requirement for an AFL USO (the need to designate an undertaking as USP for the provision of AFL USO following the end of the current designation); and
- The need for, and scope of, each of the obligations (reasonable access request, FIA, QoS, affordability and control of expenditure) that would sit alongside any such AFL USO designation.

588 In so doing, we noted that the purpose of a RIA is to establish whether regulation is actually necessary, to identify any possible negative effects that might result from imposing, amending or withdrawing a regulatory obligation and to consider any alternatives. We set out our approach to conducting the RIA and then conducted our RIA having regard to its proposed approach to designating (or not) an undertaking as USP for the provision of AFL USO following the end of the current designation along with a consideration of the scope of the various options open to us in respect of any components of AFL USO.⁶⁸

⁶⁸ A detailed description of the options with respect to the various USO aspects is set out in Section 8 of Consultation 15/89 and in Section 11 of Consultation 16/31.

- 589 Essentially, our approach follows the RIA Guidelines published by ComReg in August 2007⁶⁹ and takes into account the “Better Regulation” programme⁷⁰ and international best practice. Section 13(1) of the Act of 2002 requires ComReg to comply with Ministerial Policy Directions. In this regard, Ministerial Policy Direction 6 of February 2003⁷¹ requires that, before deciding to impose regulatory obligations on undertakings, ComReg shall conduct a RIA in accordance with European and international best practice and otherwise in accordance with measures that may be adopted under the “Better Regulation” programme.
- 590 We set out our key policy issues and objectives, followed by an assessment of the relevant regulatory options and their respective impacts for consumers, service providers and competition. The Universal Service Directive and the Regulations place primary responsibility on us, as the independent ECS regulator for Ireland, to safeguard and ensure the provision of a minimum set of telecommunications services in the State.
- 591 On the basis of the counterfactual and other analysis and reasoning set out, we proposed to designate eir as USP for the provision of AFL USO. It was noted that in order to safeguard and ensure the provision of a minimum set of telecommunications services in the State, we were required to impose alongside the USP designation one or more obligations (reasonable access request, FIA, QoS, affordability and control of expenditure), as appropriate.
- 592 With respect to the need to designate an undertaking as USP for the provision of AFL USO, the regulatory options we considered were, “*to maintain an AFL USO for 5-7 years for the entire State*” (Option 1a), or “*to maintain an AFL USO for 5-7 years for geographic areas*” (Option 1b), or “*Remove the AFL USO*” (Option 2). Our preliminary view was, on balance, that Option 1a represented the most justified, reasonable and proportionate of the approaches to AFL USO – the counterfactual analysis did not support the undisputed complete withdrawal of AFL USO, rather there was likely in the immediate future to be a continued need for some form of AFL USO nationally.
- 593 Having regard to respondents views, the RIA in Consultation 16/31 expanded the RIA in Consultation 15/89. More specifically, with respect to the various conditions to be attached to any AFL USO designation, the regulatory options that we considered in detail included the following:

⁶⁹ ComReg Document No. 07/56 & 07/56a.

⁷⁰

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

⁷¹ Ministerial Policy Direction made by the Minister of Communications, Marine and Natural Resources on 21 February 2003.

- **Reasonable access request:** the reasonableness of a connection could be determined through a) **the presence of alternative infrastructures** (“consider Alternative Infrastructures (Option 1) and “do not consider Alternative Infrastructures (Option 2)) and/or; b) **by way of a monetary threshold** (“no monetary threshold” (Option 1), “monetary threshold but increase above €7000” (Option 2a), “monetary threshold but decrease below €7000” (Option 2b); ‘maintain current threshold 7000’ (Option 2c)); and/or; c) **distance related criteria** (‘consider distance related’ (Option 1) and ‘do not consider distance related’ (Option 2); and
- **FIA:** “Maintain Existing Data Rate and Target” (Option1) or “Require the continuance of basic broadband connections” (Option 2);
- **QoS:** “To keep existing targets” (Option 1) and “to modify existing targets” (Option 2);
- **Affordability:** in respect of GAP we considered whether to “Maintain GAP obligation” (Option 1) compared to “Remove GAP obligation” (Option 2); and in respect of social tariffs, we considered “impose an obligation to provide social tariff plans” (Option 1) and “do not impose an obligation to provide social tariff plans” (Option 2); and
- **Control of expenditure:** “impose obligations” (Option 1) and “do not impose obligations” (Option 2).

594 We provisionally considered in Consultation 16/31, on balance, that:

- Maintaining an AFL USO for the entire State was the most proportionate option;
- Maintaining FIA at the current rate was the most appropriate at this time;
- It is appropriate to consider the presence of Alternative Infrastructures when assessing whether or not a request for connection is reasonable;
- Where no Alternative Infrastructures were present the RAT of €7,000 should remain;
- A service availability target should be introduced to measure QoS;
- GAP should be maintained;
- No obligation to provide social tariffs should be introduced; and
- No amendments are necessary to control of expenditure measures.

595 We invited comments from interested parties on the RIA and its underlying analysis, proposed in Consultations 15/89 and 16/31.

9.2 Assessment of Impact of Proposed Options - Respondents' Submissions and ComReg's Response

596 ALTO, BT and Vodafone agreed with our preliminary conclusions on the assessment of the impact of the proposed options. Sky also broadly agreed save for the analysis on QoS. In this respect, Sky considers that moving to a service availability target understates the risk to consumers across the entire country due to the investment flexibility it affords the USP. According to Sky, Service availability targets are extremely lax on a sub-national basis and would result in a very poor customer service level something which is not reflected in the RIA.

597 Virgin Media believes our RIA is inadequate as it does not, in its view, quantify the benefits or the costs associated with the Universal Service Obligations. Virgin Media believes that: *"...Failure to fully account for these costs within a RIA could ultimately result in ComReg over-specifying the USO, at the expense of all end-users"*. It suggested that: *"...A good starting point for a quantitative assessment would be to look at the costs that are reported by Eir in relation to the USO, and to obtain cost estimates made by the DCENR in relation to the provision of broadband in the intervention area. Each of the proposals made by ComReg in this consultation has cost implications, which need to be quantified and then balanced against the social and economic benefits that accrue"*.

598 With respect to costs, Virgin Media considers that amending the USO to include broadband would significantly increase the cost-burden on the USP. Virgin Media furthermore considers that if capital investment costs are passed onto end-users, this could potentially drive marginal customers out of the market, thereby undermining ComReg's initial objective to promote the uptake of basic telecommunications services.

599 Virgin Media that: *"...considers that, given the scale of the impacts that arise from the proposed USO, a comprehensive quantitative assessment of the options by ComReg is required. Specific attention should be given to Eir's claims relating to non-economic customers in economic areas"*.

600 eir did not agree with our impact assessment and in that regard had the following specific issues:

- No quantifiable assessment of the impacts of the proposed options (e.g., GAP). eir noted the revised guidelines concerning RIAs from the Department of the Taoiseach and stated that: “...*emphasises the importance of conducting a quantitative analysis*” and was of the view that: “...*The need to carry out a full quantitative analysis is supported by the principles of efficiency and objectivity identified in Regulation 7 of the USR which are stated to guide ComReg selection of a USP*”.
- There is a need to conduct a quantitative analysis because this is supported by the principles of efficiency and objectivity and in accordance with Regulation 7 of the USR.
- Our RIA does not meet the principles of efficiency and objectivity because: “...*The TERA reports rely on market research data from 2012*” and “...*ComReg’s consultation document clearly indicates a strong reliance on the TERA reports, their findings and recommendations*”. It was of the view that: “...*given the rapidly evolving nature of the telecommunications market it is not safe to rely on this research*” and that: “...*TERA has misinterpreted the 2012 research with the result that the conclusions that it draws from the research are in-accurate.*” eir also set out its opinion that “*ComReg has ignored a fundamental principle of best practice for RIAs, that being the evaluation of regulatory options based on quantitative analysis and criteria*” and that the RIA “...*is entirely lacking in any quantitative analysis and criteria for assessing whether the option chosen represents an efficient solution that balances the costs and benefits*”.
- Finally, eir is of the view that in the absence by ComReg to quantify the costs and benefits of its proposals renders the RIA meaningless.

601 We note the varying views of respondents in respect of our draft RIA, though the majority agree with its analysis and conclusions. We have carefully considered the responses received to our consultations 15/89 and 16/31 including our draft RIAs. We consider the respondents views under the following categories:

- a) Quantifiable assessment
- b) Nature of quality of service targets
- c) Re-specify FIA under USO - potential amending of USO to include broadband

9.2.1. Quantifiable Assessment

602 We disagree with eir and Virgin Media suggestion that the preliminary RIAs lacked a quantified assessment. With respect to assessing the potential risk to universal affordable AFL USO in the absence of the designation and the associated individual obligations, we together with TERA first considered in detail relevant market trends, both on the supply and demand side, possible competitive constraints and the potential impact if any of the Departments NBP initiative over the next 5 year period.⁷²

603 Our impact assessment of the overall regulatory approach and regulatory options on consumers, competition and eir (as the existing USP), on each of the three geographic areas takes into account including amongst others, empirical evidence from a range of sources etc.- the qualitative and quantitative data received from industry participants, European benchmarking.⁷³ Drawing on the range of data sources, the analysis and reasoning set out elsewhere in the Consultations as well as the respondents' views, the impact assessment takes due consideration of notably,

- The requirement for AFL USO (Chapters 3 and 4);⁷⁴
- The obligation to provide reasonable access to AFL USO services (Chapter 5);⁷⁵
- To ensure lines are capable of FIA (Chapter 6);⁷⁶ and
- Obligation of GAP (Chapter 7);⁷⁷
- Control of expenditure measures (Chapter 8).⁷⁸

⁷² Provisionally, in Chapter 3 and Chapter 5 of Consultation 15/89 and Section 3 of the First TERA Report (updated in Chapter 4 of Consultation 16/31 and Second TERA Report).

⁷³ Amongst other things, our recent retail and wholesale voice access market analyses, the updated trends, potential increasing constraints on eir.

⁷⁴ Provisionally, in Chapter 5 of Consultation 15/59 and the First TERA report (and updated in Chapter 4 of Consultation 16/31 and the Second TERA report).

⁷⁵ Provisionally, in Chapter 5 of Consultation 15/59 and the First TERA report (updated in Chapter of Consultation 16/31 and the Second TERA report).

⁷⁶ Provisionally, in Chapter 5 of Consultation 15/59 and the First TERA report (updated in Chapter 5 of Consultation 16/31 and the Second TERA report).

⁷⁷ Provisionally, in Chapter 5 of Consultation 15/59 and the First TERA report (updated in Chapter 8 of Consultation 16/31 and the Second TERA report).

⁷⁸ Provisionally, in Chapter 5 of Consultation 15/59 and the First TERA report (updated in Chapter 9 of Consultation 16/31 and the Second TERA report).

604 With respect to estimating the potential costing of AFL USO, as we set out in section 2.1, this analysis will be addressed separately as a separate decision by ComReg, as relevant, and is outside the scope of this consultation process, including, this RIA.

605 Contrary to eir's view, we consider that our RIA does meet the principles of efficiency and objectivity, as well as, transparency, proportionality and non-discrimination. It is clear that our assessment of the impact of our proposals does:

- rely on all available evidence including submissions by respondents on the practical workings and does not as eir would suggest solely rely on market research data from 2012;
- as outlined above, rely on a detailed analysis (qualitative and quantitative) of the impact of our overall regulatory approach to delivering universal affordable telephony services on stakeholders and on competition;
- consider in detail the rapidly evolving nature of the telecommunications market. The design of the proposed AFL USO's takes due account of market trends and likely evolutions in the coming 5 years, including, the variety of conditions relating to competition and consumers that exist geographically; also the forthcoming roll out of NBP; and
- consider the costs and benefits of each option and the net benefit. Thus, for example, Chapter 7 above Consultation 15/89 and Consultation 16/31⁷⁹ provide a quantifiable assessment of the impacts of the GAP obligation which is based on all available evidence and analysis collated during this consultation process.

606 For the above reasons, we consider that we have taken due consideration in assessing and quantifying the impact on stakeholders and on competition arising from our proposals.

9.2.2. Nature of Quality of Service Targets

607 Having regard to, amongst other things, respondents' views on QoS, we have decided to defer a final decision on QoS pending further consideration of the specific issues raised in that regard. Respondents' views in respect QoS are currently being reviewed in detail. They will be addressed as relevant in a separate decision by ComReg on a new QoS regime which we envisage will be published within the coming period.

⁷⁹ Refer to Figure 11 of Consultation 16/31 and the TERA Report.

9.2.3. Re specify FIA under USO - Potential amending of USO to include broadband

- 608 Having regard to respondents' views and final reasoning set out in Chapter 6, we have decided to maintain 28.8 kbit/s as a reasonable minimum data rate. This is to ensure that basic internet access is not withdrawn from current users pending the availability of higher speed services.
- 609 We are of the view that, for the immediate future, there is not a requirement for ComReg to specify a broadband FIA. This is because the NBP and commercial deployment of NGA networks are expected to deliver such data speeds. We are of the view that once the NBP has been fully deployed in an area, then reasonable requests for FIA in that area will be met as a result of the NBP, and it will not be necessary for us to specify FIA requirements in that area under the ALF USO regime. However, outside the NBP intervention area, we foresee that USO requirements might play a role in ensuring universal availability of affordable higher speed broadband, *inter alia*, if it transpires that commercial deployment cannot ensure that all reasonable requests for affordable connections of appropriate speed and quality are met by at least one undertaking. We note respondents' varying views in this regard in Chapter 6.
- 610 We acknowledge that amending the USO to include broadband could whilst also delivering significant benefits to end-users potentially increase the cost-burden on the USP(s), on competition and ultimately on consumers (if any associated cost was to be passed through to them).
- 611 However, it is premature at this time to consult on the need for broadband FIA requirements at locations outside the NBP intervention area. We will closely monitor the situation on an ongoing basis, and reconsider the need if any to intervene as appropriate. We propose to revisit the issue of broadband FIA requirements and whether to designate one or more USPs to deliver them in the light of any output from the Minister's monitoring process and in light of market developments generally. At such time as a potential a requirement for us to specify a broadband FIA is considered, any costs, benefits and overall impact of any relevant regulatory options available will be considered as part of any RIA. At this time however, this analysis is outside the scope of this Decision.

9.3 Final RIA

- 612 In Chapter 4 we have decided that Eir should be the designated USP for the period 29 July 2016 – 30 June 2021, for the entire State. In light of our role to ensure that end-users throughout the State receive affordable AFL USO at an acceptable quality, the evidence supporting a complete withdrawal of the existing AFL USOs would need to be undisputed.

613 The following sets out our final RIA in relation to requirement for an AFL USO and the specific obligations that sit alongside the AFL USO. It expands on the draft RIAs contained in Consultations 15/89 and 16/31 and identifies preferred options relevant to the various aspects of the USO following the end of the current designation and our final decision in that regard.

9.3.1. Describe the Policy Issue and identify the Objectives

614 We have taken into account, in acting in the pursuit of our objectives as set out in Section 12 of the Act of 2002 and Regulation 16 of the Framework Regulations, the importance of promoting efficiency, sustaining competition, promoting efficient investment and innovation whilst giving the maximum benefit to end-users, elderly users and users of special needs; as more particularly set out at Article 8 of Directive 2002/21/EC⁸⁰ and the USRs, we must ensure that all reasonable, proportionate measures to promote the interests of citizens by ensuring that they have access to universal service as specified.

615 With specific regard to the counterfactual analysis and, having regard to the respondents' views, it was noted that our regulatory objectives are to mitigate the risk that without an AFL USO uneconomic end-users may not be properly served, or service at all, at an affordable price, or with acceptable quality of service. It is unlikely that a service provider would have any incentive to serve end-users who are unprofitable. Furthermore, our objective is to ensure that the universal service for AFL is implemented appropriately as necessary, and that any future provision of an AFL USO continues to evolve appropriately and align with consumers' changing needs and market developments.

616 Because of the NBP, it may well be, on a forward looking basis, that AFL USO can and will be provided using infrastructure and associated services which have been and fully deployed under the NBP. Nonetheless, pending such developments there is no programme or mechanism which ensures that AFL USO (voice telephony at a fixed location) is provided to those that need it, other than by a regulatory decision by ComReg. We are of the view that an AFL USO is necessary to ensure consumer rights inter alia continued access to universal affordable telephony in the future as relevant. The designation must be for the whole of the State to protect end users dispersed nationally and who do require AFL.

617 While safeguarding and ensuring the provision of AFL USO, we were also mindful of the objective to safeguard competition and facilitate investment to the benefit of end users.

⁸⁰ Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services, as amended ("Framework Directive").

618 In pursuing these objectives, we recognised that regulatory measures should be kept to the minimum necessary to address the identifiable risks to universal affordable telephony services.

9.3.2. Identify and Describe the Regulatory Options

619 We identified and considered the regulatory options open to us to meet our objectives. The obligations which are currently imposed on the USP with respect to AFL USO and each of the individual components could be maintained, removed or amended. A detailed description of the options with respect to the various AFL USO aspects is set out below.

9.3.2.1. Requirement for an AFL USO

620 Consultations 15/89 and 16/31 considered whether or not there is a need for an AFL USO. In this respect, we identified the following regulatory options which may be adopted in order to meet the objectives set out above.

Option 1: Maintain an AFL USO Obligation for the entire State

621 Maintain an AFL USO throughout the State post 30 June 2016 for a period of at least 5 years. If an AFL USO is maintained for the entire State, it would ensure that all end-users, regardless of their geographic location would be reasonably entitled to a connection at a fixed location. Apart from the AFL USO, there is currently no other mechanism, programme or scheme in place to ensure that the basic telephony at a fixed location, set out in the Universal Service Regulations, is provided to everyone that requires it and cannot obtain it under normal market conditions.

622 Designate a single USP for the entire State. Alternatively, different operators, or sets of operators, can be designated to provide different elements of the universal service, and/or to cover different parts of the State. Therefore, if requiring an AFL USO, we may decide to designate USP(s) for the entire State (Option 1a) or for different geographic areas (Option 1b).

623 Where it is determined that an AFL USO is required, the various aspects of the USO which are currently prescribed also need to be considered, namely:

- Functional Internet Access
- The reasonableness of requests
- Quality of Service
- Affordability including GAP
- Control of expenditure.

624 We are deferring our final decision on QoS pending further consideration and hence this aspect is not considered further in this RIA.

Option 2: Remove the AFL USO Obligation

- 625 Do not to impose any obligation to provide AFL USO. If this approach is adopted, no operator would be obliged to provide AFL USO including connections to a public communications network and related components that ensure affordability and quality. Therefore, there is a risk that more remote end-users may not be adequately served. Absent any AFL USO, there may be a risk that the market would not deliver basic AFL USO services to some areas of the State (such as rural or sparsely populated areas) and / or to less economic end-users distributed nationally.
- 626 The current AFL USO obligations with respect to the reasonableness of connection requests, FIA, affordability and QoS would no longer apply. Therefore, there is a risk that the level of service currently enjoyed by end-users would no longer be guaranteed. That is, there is a risk that left to the operation of market forces alone, some or even all services and related components may not be provided to certain end-users.

9.3.2.2. Reasonable Access Requests

- 627 The scope of the USO is to provide access at a fixed location. The manner in which this is achieved is not prescribed and the principle of technological neutrality allows the USP to choose the optimum method of providing access and services. Previously, a monetary threshold has been used in Ireland to define what requests are considered reasonable. However, there are a wide range of alternative or complementary ways in which the reasonableness of a connection could be determined. For example, the availability of Alternative Infrastructures, or dependant on the distance from the exchange.
- 628 The factors identified were assessed in order to determine what the most appropriate approach is.

a) Presence of Alternative Infrastructure

- 629 We were of the view the presence of Alternative Infrastructures is one possible factor which could be considered when assessing whether a request for connection is reasonable or not.

Option 1: Consider the presence of Alternative Infrastructures

- 630 As set out in Section 6 of Consultation 16/31 and the Second TERA Report, if the USP could prove the existence of an Alternative Infrastructure which is affordable and of sufficient quality, then a request for connection may not be considered reasonable in that instance.

631 Where an Alternative Infrastructure is not present in the area (or is present but is not affordable or of sufficient quality) then the USP may still be required to connect the end-user. Such requests could also be considered using factors such as the distance of the connection from the exchange, the costs involved or other factors such as whether the premises is a primary residence or a holiday home.

Option 2: Do not consider the presence of Alternative Infrastructures

632 In this instance the presence of Alternative Infrastructures is not a relevant factor when assessing whether a request for connection is reasonable or not. Other factors such as those set out below would be used to assess the reasonableness of a request.

b) Monetary Threshold

633 A monetary threshold may be considered as a relevant factor in determining whether a request for connection is reasonable or not. If a threshold is deemed necessary, then it could be increased, decreased or maintained at the current €7,000 level, details of these options are set out below.

Option 1: No monetary threshold

634 Rather than setting a threshold, below which all requests for connection are considered reasonable, we could allow the USP to assess individual requests and decide whether the request is reasonable. It is likely the USP would consider the reasonableness of the request by considering the cost of the connection and expected future revenues. Whether a request for connection is completed is at the discretion of the USP.

Option 2: Monetary threshold

635 Under this option, the reasonableness of a request for connection is determined by the cost of connection. The level of the threshold could be maintained at the current level or it could amended. In all cases the threshold could be linked to inflation, however at this time we are of the view that linking a threshold to inflation would not be appropriate. The options are outlined below.

Option 2 (a): Increase the Threshold

636 The RAT could be increased above the current level to a level which would allow the vast majority of connections to be made without end-users incurring any incremental costs. In this situation, those connections which are unfeasible due to their location and the high costs involved, may still be required to contribute to the costs.

637 The threshold could be set to ensure that only a small percentage of end-users would be liable to pay costs over the threshold thus ensuring that the majority of end-users, regardless of their geographic location would be able to access the network for the standard connection charge.

638 End-users who need access at a fixed location are guaranteed a connection, once they are willing to pay any costs over the threshold. However, the manner in which the access is provided is not prescribed and the principle of technological neutrality allows the USP to choose the optimum method of providing access and service.

Option 2(b): Decrease the Threshold

639 Reducing the threshold below the current level would result in some end-users paying more for a connection, however it could potentially reduce the net cost to the USP.

640 The threshold could be set so as to ensure a certain percentage of end-users would be liable to pay costs over the threshold. End-users who need access at a fixed location are guaranteed a connection, once they are willing to pay any costs over the threshold. However, the manner in which the access is provided is not prescribed and the principle of technological neutrality allows the USP to choose the optimum method of providing access and service.

Option 2(c): Maintain Existing Threshold

641 In this situation, the USP would be required to consider any requests for connection which involve expenditure in excess of €7,000 as reasonable, if the applicant agrees to pay the standard connection charge plus incremental costs above €7,000. End-users are aware of the threshold, as it has been in place for a number of years. Maintaining the current threshold would not be expected to result in many additional high cost connections to the network, therefore not leading to significant detriment to either industry or end-users.

642 In this situation, end-users who need to access at a fixed location are guaranteed a connection, once they are willing to pay any costs over the threshold. However, the manner in which the access is provided is not prescribed and the principle of technological neutrality allows the USP to choose the optimum method of providing access and service. End-users in higher cost locations, where there is no Alternative Infrastructure, may still remain unable to connect to a network.

c) Distance Related

643 The definition of reasonableness could include a measurement of the distance of the location where the connection was required from the exchange. Therefore we have identified the following regulatory options which may be adopted.

Option 1: Consider distance in determining the reasonableness of a request

644 The distance from the existing fixed network may be an appropriate consideration in some instances. Under this option the USP would have to consider a request for connection as reasonable once it was within a certain distance of the exchange.

Option 2: Do not consider distance in determining the reasonableness of a request

645 Under this option the distance from the exchange is not a relevant factor in considering the reasonableness of a request. Although the distance from the existing fixed network may be an appropriate consideration in some instances, the terrain may also have a large impact on a connection. Further, due to new emerging technologies, the distance from the fixed network may not have as much an impact on the reasonableness of a connection as it might have previously.

d) Introduced 'New Reasonable Access Thresholds'

646 Having regard to our final reasoning set out in Chapter 5, and having regard to respondents' views, another option is to adjust the criteria and approach to reasonable access requirements, as summarised here and above in section 5.1.

- i. If a request by an end-user for AFL USO requires expenditure by the USP **not exceeding €1,000** for the USP to satisfy that request, it shall be a reasonable request, and the USP shall satisfy that request.
- ii. If a request by an end-user for AFL USO requires expenditure by the USP that **exceeds €1,000** for the USP to satisfy that request and, there exists at the time of the request Alternative Infrastructure in the geographic location of the end-user that can provide equivalent AFL USO (in terms of affordability, quality and standalone PATS) to that of the USP, the USP shall not be required to satisfy that request.
- iii. The approach in (ii) shall however be **subject to an exception**: if the designated USP confirms that the Alternative Infrastructure is mobile, but the end-user does not agree that this will provide an equivalent service to that currently prevailing for AFL USO (including Minimum Indoor Coverage) the designated USP must promptly notify us of this fact, with relevant supporting information. ComReg will then adjudicate on whether the request is reasonable or not.

- iv. If a request by an end-user for AFL USO requires expenditure by the USP that **exceeds €1,000 but that does not exceed €7,000** for the USP to satisfy and, there is at the time of the request **no** Alternative Infrastructure in the geographic location of the requesting person that can provide equivalent AFL USO (in terms of affordability, quality and standalone PATS) to that of the USP, it shall be a reasonable request, and the USP shall satisfy that request. If the expenditure required by the designated USP **exceeds €7,000** and the end-user agrees to pay the amount in excess of €7,000, then the USP shall satisfy that request.

647 In the case of **iii** above, if the technology identified by the designated USP can and will provide an equivalent service to that prevailing for AFL USO, but the end-user requests an alternative technology, and is willing to pay for the additional costs, the USP must provide it (if technically feasible). In these circumstances, such a request is reasonable, and the designated USP must satisfy it.

648 End-users in higher cost locations, where there is no Alternative Infrastructure, may still remain unable to connect to a network. Option (d) means, on the one hand, increased flexibility to facility efficient investment, while on the other hand, ensuring that the USP continues to provide AFL USO where needed.

9.3.2.3. FIA

649 With respect to FIA, we may decide to amend or maintain the current data rates and targets for installed lines.

Option 1: Maintain Existing Data Rate and Target

650 Maintain the minimum data rate at the current level of 28.8 kbit/s. This would mean the majority of connections which currently are capable of FIA, continue to be capable. However, this approach would not absolutely ensure that all end-users receiving basic broadband on copper connections would continue to enjoy this service, as the USP might have flexibility within the targets to replace some copper lines with FCS.

Option 2: Require the continuance of basic broadband connections

651 This option would require the USP to continue to provide connections capable of basic broadband (i.e. at speeds of 1 Mb/s or higher) to premises where it had once been available, except with our consent. It would require the USP to repair any faults that meant that basic broadband was no longer provided, but it would not require the USP to ensure there was no degradation in speed at all.

9.3.2.4. Affordability

a) GAP

652 With respect to GAP, we may maintain or remove the obligation to provide GAP. These options are set out below.

Option 1: Maintain GAP obligation

653 Maintaining GAP as set out in Section 8 of this consultation document and the Second TERA Report ensures end-users have access to broadly affordable price, however it may lead to competitive distortion.

Option 2: Remove GAP obligation

654 As set out in Section 6 of Consultation 16/31 and the Second TERA Report, if the GAP obligation is removed, this would allow the USP greater pricing flexibility and the ability to differentiate between end-users and areas in respect of its basic voice telephony services prices. Without a GAP obligation, it is likely that those who would be most (negatively) affected are those located in more rural areas, as well as high cost customers in more urban areas. A similar situation could possibly arise for those end-users in NBP areas, at least during the roll out phase of the new infrastructure over the next (circa) 5 years. Removal of the GAP would not achieve the objective of social inclusiveness

b) Social Tariffs

655 The Universal Service Regulations provide that we may specify special tariff options or packages which depart from those provided under normal commercial conditions, in particular, to ensure that those on low incomes or with special social needs are not prevented from accessing the network. Therefore, we have the two following options available.

Option 1: Impose an obligation to provide special tariff plans

656 To date we have not mandated the provision of social tariffs. However, eir currently offers vulnerable consumers a number of tariff plans. We may however impose an obligation to provide tariff options in order to protect those most vulnerable consumers.

Option 2: Do not impose an obligation to provide special tariff plans

657 We may decide not to impose additional obligations in respect of special tariff plans. The presence of a safeguard price cap on the basic telephone line rental and other price offers in the retail market currently may be sufficient to ensure affordability.

9.3.2.5. Control of Expenditure

658 In addition to affordability measures, the Universal Service Regulations also provide for several measures with respect to control of expenditure. We may decide to impose obligations in this respect.

Option 1: Impose Obligations

659 We may impose obligations on the USP in respect of a Disconnection Policy and Phased Payment for connection fees and Terms and Conditions of contract. Therefore, we can amend or maintain these obligations at this time.

Option 2: Do not impose Obligations

660 We may decide not to impose obligations for some or all of existing measures.

9.3.3. Determine the impacts on stakeholders and competition

661 Having regard to the need to safeguard and ensure the provision of a minimum set of telecommunications services in the State, and that as yet the complete withdrawal of the USO cannot be undisputed, the final RIA updates the assessment of the impact of regulatory options on different stakeholders and competition, set out in the Tables below.

Requirement for an AFL USO

Measure Proposed	Impact on Industry		Impact on End-user	
	Costs	Benefits	Costs	Benefits
<p>Option 1(a)</p> <p>Maintain an AFL USO for a 5 year period for the entire State</p>	<p>USP may incur costs for the provision of the USO. These costs will be dependent on the specific obligations which are imposed as set out below.</p> <p>Regardless of who the USP(s) is/are, where a net cost is claimed and an unfair burden is determined, providers of electronic communications networks may be required to contribute to a fund.</p> <p>The duration of the obligation will impact on the costs, with a shorter duration potentially resulting in lower costs.</p>	<p>Designated operator benefits from being USP, by virtue of benefits such as enhanced brand recognition, life cycle benefit, ubiquity and marketing.</p> <p>Additional end-users added to the network potentially benefits all operators.</p> <p>Longer designation period provides regulatory certainty, for industry in respect of length of current regime and possible implications for fund issues</p>		<p>End-users regardless of their geographic location would be reasonably entitled to a connection and service at a fixed location.</p> <p>Each additional end-user added to the network increases the value of the service to other users of the network.</p> <p>This ensures continuity of provision of the universal services and certainty at this point in time.</p> <p>End-users may benefit in terms of QoS, connection charges, availability of connections capable of FIA etc., depending on the specific obligations imposed.</p>

Measure Proposed	Impact on Industry		Impact on End-user	
	Costs	Benefits	Costs	Benefits
<p>Option 1(b)</p> <p>Maintain an AFL USO in place for a period of 5 years but not covering all geographic areas of the state.</p>	<p>USP may incur costs for the provision of the USO. These costs will be dependent on the specific obligations which are imposed as set out below.</p> <p>Net cost may be slightly lower where entire State is not covered.</p> <p>Regardless of who the USP(s) is/are, where a net cost is claimed and an unfair burden is determined, providers of electronic communications networks may be required to contribute to a fund.</p> <p>The duration of the obligation will impact on the costs, with a shorter duration potentially resulting in lower costs.</p>	<p>Additional end-users added to the network potentially benefit all operators</p> <p>The period of designation provides certainty for industry in respect of length of current regime and possible implications for fund issues.</p> <p>Longer designation period provides regulatory certainty, for industry in respect of length of current regime and possible implications for fund issues</p>	<p>Some areas may not be adequately served depending on the geographic area in which they are located.</p>	<p>Some end-users depending on their geographic location would be reasonably entitled to a connection and services at a fixed location</p> <p>This ensures continuity of provision of the universal services and certainty at this point in time for some end-users.</p> <p>Some end-users may benefit in terms of QoS, connection charges, availability of connections capable of FIA etc., depending on the specific obligations imposed.</p>

Measure Proposed	Impact on Industry		Impact on End-user	
	Costs	Benefits	Costs	Benefits
<p>Option 2</p> <p>Remove the AFL USO</p>	<p>Operators using the current USP's network may not be able to guarantee connections to end-users</p> <p>USP no longer benefits from brand recognition and over time the life cycle benefits would disappear.</p> <p>Reduction in the number of new end-users added to the network</p>	<p>No costs incurred due to the provision of the USO and hence no net cost claim.</p>	<p>Basic telephony service may not be delivered to all end-users by any undertaking or may not be delivered and an affordable price or acceptable quality</p> <p>It is likely that those end-users who would be most affected are those located in more remote rural areas, however certain urban end-users may also be impacted.</p> <p>End-users may suffer, for example, through less favourable terms and conditions and/or service levels, due to the absence of a universal service obligation and competition.</p>	<p>Competition in urban areas may intensify, perhaps leading to lower prices for end-users in these areas.</p>

Measure Proposed	Impact on Industry		Impact on End-user	
	Costs	Benefits	Costs	Benefits
			<p>Some end-users may not be able to get a connection to the network and some existing connections and services may be discontinued.</p> <p>End-users may have connections which are not be capable of FIA.</p> <p>Quality of Service may deteriorate to an unacceptable standard in certain geographic areas.</p>	

A Reasonable Request for Connection

	Options	Impact on Industry		Impact on End-user	
		Costs	Benefits	Costs	Benefits
Alternative Infrastructures	Option 1 Consider Alternative Infrastructures	<p>Obligation on USP to provide connections, though potentially to a reduced number of end-users</p> <p>USP may still incur some costs</p> <p>Burden of proof on USP to prove existence of alternatives, therefore potential for administrative burden on USP</p>	<p>Potential for reduced net cost for USP</p> <p>If sharing mechanism necessary where unfair burden determined less impact on other operators</p> <p>No inefficient infrastructure duplication</p>	<p>In some instances the end-user may not get the connection from the USP with their preferred technology</p> <p>Risk that the Alternative Infrastructure does not remain affordable or of sufficient quality over time</p>	<p>End-users still guaranteed a connection which has the same capabilities as AFL USO.</p> <p>Those connections where there is no Alternative Infrastructure would still be guaranteed a connection, possibly subject to a cost threshold</p>
	Option 2 Do not consider Alternative Infrastructures	<p>USP required to provide all connections subject to the RAT</p> <p>Risk of inefficient network duplication and costs where an alternative operator is present</p> <p>USP may incur costs in providing end-users with connections</p>	<p>USP does not have administrative burden of proving existence of Alternative Infrastructure.</p>	<p>Connection may still be subject to a threshold therefore end-users may pay the incremental costs.</p>	<p>All End-users guaranteed to get a connection from the USP subject to other criteria such as RAT.</p> <p>Connection will be affordable and have sufficient QoS</p> <p>Consistent with current approach</p>

	Options	Impact on Industry		Impact on End-user	
		Costs	Benefits	Costs	Benefits
		If unfair burden determined all undertakings would be required to contribute to fund			
Monetary Threshold	Option 1 No monetary Threshold	No clear rules and no way for other undertakings to determine whether a request for connection would be met	USP decides whether a request is reasonable, likely taking into consideration the costs and future revenues. Simple for the USP	Risk that a number of connections would be refused. No clear rules and no way for other end-users to determine whether a request for connection would be met Difficult to determine connection cost and those most impacted are likely to be those in remote rural areas where there is no alternative available.	
	Option 2(a) Maintain a threshold but increase threshold above current €7,000 level	Net cost may be claimed, this would be expected to be higher than if the threshold remained at the current level. This may lead to increased costs for the USP.	Industry benefits from externalities- each additional end-user added to the network increases the value of the service to other users.	Some end-users in remote rural areas may still not be able to afford access to the network.	Vast majority of end-users, regardless of their geographic location would be able to access network at standard connection charges i.e. without incurring incremental costs.

Options	Impact on Industry		Impact on End-user	
	Costs	Benefits	Costs	Benefits
	Depending on the increase, very high cost connections which previously were not completed due to the incremental costs payable by the applicant may be re-applied for.	Clear rule as to when the USP can accept or deny connection requests.	<p>USP may increase access charges to compensate for reduced connection revenue (subject to other regulatory constraints)</p> <p>Some end-users may still have to pay incremental costs, depending on the threshold level.</p> <p>Price of a standard connection may increase, however GAP and RPC obligations would limit the potential impact. This increase would only effect new end-users to the USP's network.</p>	<p>Some end-users may no longer be required to pay incremental costs as the cost of their connection now falls below the threshold.</p> <p>Those end-users who are required to pay the incremental costs now pay a lower amount.</p> <p>End-users who previously did not connect to the network due to high incremental costs may now proceed with the connection, depending on the threshold level.</p> <p>Larger network of end-users</p>
Option 2(b) Maintain a threshold but decrease threshold below current level	USP required to connect end-users, subject to the cost of the connection being lower than a reduced threshold	Potentially reduced net cost however may result in unfair burden, sharing mechanism will impact on industry	Detriment to end-users likely to be substantial. Some End-users may have to contribute more to their connection that under the previous RAT.	<p>End-users still guaranteed a connection, subject to a lower RAT</p> <p>Majority of end-users can access network at standard connection charges.</p>

Options	Impact on Industry		Impact on End-user	
	Costs	Benefits	Costs	Benefits
	<p>USP may still incur some costs, however net cost may be claimed which may potentially be lower than if the threshold was not decreased.</p> <p>Reduction in net cost unlikely to be significant due to the low number of connections affected.</p> <p>Industry required to contribute to a fund if net cost found to be an unfair burden</p>	<p>Clear rule as to when the USP can accept or deny connection requests.</p> <p>Ubiquity benefits arise for the USP due to the national presence</p> <p>USP benefits from additional revenue by virtue of end-users paying incremental costs, however this is likely to be low.</p>	<p>End-users who previously did not have to pay incremental costs may now need to, in addition the incremental costs will increase for some end-users</p> <p>Some end-users in remote rural areas may not be able to afford access to the network.</p> <p>The number of end-users impacted depends on the RAT level. If the RAT decreased to €3,000 We expects ✂ end-users per year would have to contribute up to €4,000 extra for a connection.</p>	
<p>Option 2(c)</p> <p>Maintain current threshold</p>	<p>USP required to connect end-users where the cost of the connection is below €7,000</p>	<p>The USP continues to get a contribution from the end-user for high cost connections</p> <p>End-users can connect to the network leading to positive network externalities</p>	<p>Some end-users in remote rural areas may not be able to afford access to the network</p>	<p>Majority of end-users can access network at standard connection charges.</p> <p>This leads to a larger network of end-users than might otherwise be</p>

	Options	Impact on Industry		Impact on End-user	
		Costs	Benefits	Costs	Benefits
		Net Cost may be claimed, however costs should reduce if the exemption from providing a connection where there is an Alternative Infrastructure is implemented.	Clear rule as to when the USP can accept or deny connection requests.		
Distance Related	Option 1 Consider distance when assessing whether request is reasonable	Depending on the distance, the costs to the USP may increase	Possibly simpler approach for USP, especially if distance is the only factor assessed Depending on the distance, the costs to the USP may decrease	Distance from exchange considered, may mean in some instances end-users have to pay more for a connection than under the current threshold regime	End-users can easily identify whether they would be guaranteed a connection. Regime is transparent and easy for end-user to determine with certainty whether their request will be considered as reasonable.
	Option 2 Do not consider when assessing whether request is reasonable		Other factors such as the cost of the connection are used to determine whether a request is reasonable.	Less transparency for end-users that a threshold regime, where the end-user cannot determine in advance whether their request will be considered as reasonable.	End-users aware that of their connection is low cost they can connect at the standard connection charge, or where it is higher cost they can choose whether or not to pay increment costs.

Updated option (d): Adjust the criteria and approach to reasonable access requirements and introduce new **'reasonable access thresholds'**

	Options	Impact on Industry		Impact on End-user	
		Costs	Benefits	Costs	Benefits
	<p>Option (d)</p> <p>Introduce new 'reasonable access thresholds'</p> <p>(Which considers Alternative Infrastructures and two levels of monetary thresholds).</p>	<p>USP required to provide reasonably requested connections, though potentially reduced number of end users as a provider of last resort</p> <p>USP required to connect end-users where the cost is < €1000</p> <p>USP required to connect end-users where the cost is > €1000 and there is no alternative</p> <p>If cost >€7,000 end-user pays the incremental costs above €7,000</p> <p>Net Cost may be claimed, however costs should reduce</p>	<p>The USP continues to get a contribution from the end-user for high cost connections</p> <p>End-users who have no alternatives can connect to the network leading to positive network externalities</p> <p>Clear rule as to when the USP can accept or deny connection requests</p> <p>Technology neutral and lessens any risk of inefficient infrastructure duplication</p>	<p>Some end-users in remote rural areas may not be able to afford access to the network</p> <p>In some instances the end-user may not get the connection from the USP with their preferred technology</p>	<p>Those end users for which there is no alternative would still be reasonably guaranteed a connection, possibly subject to a cost threshold.</p> <p>Majority of end-users can access a network at standard connection charges which is affordable and has sufficient quality, mitigating social exclusion</p> <p>This leads to a larger network of end-users than might otherwise be, leading to positive externalities</p>

	Options	Impact on Industry		Impact on End-user	
		Costs	Benefits	Costs	Benefits
			<p>Potential for reduced net cost for USP as a result of the exemption from providing a connection where there is an Alternative Infrastructure.</p> <p>If a sharing mechanism were to be triggered, potentially less impact on alternative operators</p>		

FIA Data Rates

Option	Impact on Industry		Impact on End-user	
	Costs	Benefits	Costs	Benefits
<p>Option 1</p> <p>Maintain current rate</p>	<p>USP may not always be able to deploy the least cost technology due to FIA targets.</p> <p>There may be a net cost for the provision of uneconomic connections.</p> <p>Operators using the USP's network may not always be able to purchase connections capable of broadband in certain areas.</p>	<p>Large investment in broadband is not required, therefore net cost claimed should not increase.</p> <p>No costly duplication of networks.</p> <p>Minimum data requirement does not preclude USP from offering higher data rates.</p>	<p>Some end-users who require broadband may not have access.</p> <p>Some end-users may not have a line capable of FIA.</p> <p>28.8 kbit/s not being broadband is unsuitable for current internet usage. At 28.8 kbit/s speed not appropriate to allow end-users to open webpages.</p>	<p>Majority of end-users guaranteed FIA connections, commercial rollout together with NBP should ensure in the coming years all consumers will have a line capable of high speed broadband.</p> <p>End-users who currently have and use a line capable of FIA will not lose their ability to access the internet pending the availability of higher speed services.</p> <p>Mitigates the risk that some end users may lose basic access to internet if existing copper connections were to be replaced with FCS.</p>

Option	Impact on Industry		Impact on End-user	
	Costs	Benefits	Costs	Benefits
<p>Option 2</p> <p>Require the continuance of basic broadband connections</p>	<p>Significant network upgrades required in some instances, where alternative investments enabling an achievement of higher speeds are planned in the short term on a commercial basis or by way of the NBP.</p>	<p>Potential for maintaining revenues due to end-users continuing to purchase broadband.</p>	<p>Potential increase in charges due to the increase in costs incurred by the USP</p> <p>Some end-users will not have a line capable of broadband.</p>	<p>End-users who currently have broadband access will be able to avail of it.</p> <p>Current household broadband penetration rate (fixed & mobile) is 83%</p>

Affordability

	Options	Impact on Industry		Impact on End-user	
		Costs	Benefits	Costs	Benefits
GAP	Option 1 Maintain obligation	<p>Will cause constraints on the USP only in competitive areas viz standalone voice offers which are not the predominant driver of competition in these areas. Consequently the existing GAP obligation is not burdensome.</p> <p>Any impact of the GAP obligation on Eir would decrease in time as consumers may increasingly migrate to bundles; as provider of last resort etc.</p> <p>Net cost may be claimed due to the inability of the USP to charge more costly end-users including rural users higher charges</p>	<p>Relates to the designated services in accordance with Regulation 3, namely, a connection and PATS service, services where competition is not yet effective</p> <p>pricing flexibility regarding broad retail offers including bundled offers</p> <p>Overall net welfare benefit, benefiting competition to the benefit of consumers. Workable competition is sustained in rural as well as urban areas,</p>	<p>Lower cost urban end-users may pay prices higher than those which may be applicable if the obligation was removed</p>	<p>Lessens the risk of price increase for connection and line rental; in particular for high cost consumers in rural areas and areas where competition for voice access is not yet effective.</p> <p>Affordable universal voce service ensures social inclusion.</p> <p>Maintaining GAP safeguards competition while protecting end-user welfare thus will result in an overall net welfare benefit, benefiting both competition and end-users.</p>

	Options	Impact on Industry		Impact on End-user	
		Costs	Benefits	Costs	Benefits
	Option 2 Remove Obligation		<p>This would allow the USP (Eir currently) greater pricing flexibility and the ability to differentiate between end-users and areas in respect of its basic voice telephony services prices</p> <p>The USP would have ability and incentive to set lower prices in more competitive (primarily urban) areas to meet competition from alternative operators.</p>	<p>Risk that this would cause an adverse effect, rural areas may have to pay higher line rental fees when using a telephone than those in densely populated areas</p> <p>End-users would not be protected against a risk of unjustified line rental and connection price increases, despite the existing RPC.</p>	<p>Urban end-users may benefit from reduced prices</p>
Social Tariffs	Option 1 Impose obligation	<p>USP may claim net cost due to the provision of Social Tariffs</p> <p>All undertakings required to contribute where an unfair burden is found.</p>			<p>Vulnerable Consumers benefit from the availability of reduced tariffs</p>
	Option 2 Do not impose Obligation		<p>USP and other providers can offer tariff schemes which are suitable for vulnerable consumers or low users</p>		<p>Consumers continue to be able to avail of commercially offered tariff schemes</p>

	Options	Impact on Industry		Impact on End-user	
		Costs	Benefits	Costs	Benefits
			No net cost as a result of the imposition of Social Tariffs.		Other mechanisms provide a safeguard, lessening any risk of bill shock

Control of Expenditure

Options	Impact on Industry		Impact on Consumer	
	Costs	Benefits	Costs	Benefits
<p>Option 1</p> <p>Maintain obligations</p>	<p>Relatively low cost to USP of the schemes</p>	<p>Unlikely to have a material impact on any net cost claim</p> <p>A consumer handling process that is transparent assists end users reasonably remaining connected to network, thus greater network utilisation (i.e. incoming calls at least)</p> <p>Provides goodwill such that end users may later reconnect to the network and services of the USP, later turn profitable etc.</p>		<p>Lessens the risk of social exclusion, end users who want to remain connected can reasonably do so</p> <p>End-users are able to monitor and control their expenditure, reduces risk of being unable to pay their bill and face disconnection from the network</p> <p>Control of expenditure facilities that are of importance to end-users, particularly phased connection fee plan for those that need to avail of it</p> <p>Increased transparency inter alia consumer notification</p>
<p>Option 2</p> <p>Do not Maintain obligations</p>		<p>USP may have small reduction in any net cost claim</p>	<p>Loss of control of expenditure facilities that are of importance to end-users</p>	

9.3.4. Assess the Impacts and choose the best option

662 We have considered the respondents' views to Consultations 15/89 and 16/31 and the draft RIA. We set out a detailed response to the specific comments made by respondents in respect of the draft RIA in section 9.2. Our response and final position on the most appropriate overall regulatory approach is set out below.

9.3.5. Imposition of AFL USO

663 Removing the USO (Option 2) in relation to AFL USO at this time would be premature. Market trends show that end-users continue to rely on AFL USO, and in the absence of a USO, we are of the view that there are end-users who would not be connected to the network, leading to detriment to these end-users.

664 There is a risk that left to the operation of market forces alone, access to services mandated by the Universal Service Directive may not be provided to everyone irrespective of location and at an affordable price and appropriate quality.

665 As technology and competition develops, and as end-user needs evolve, it is our duty to ensure that the AFL USO continues to meet end-users' basic telephony needs, if they are not already being met by the market.

666 Because of, amongst other things, TERA's counterfactual analysis, mobile limitations, uncertainty in respect of NBP outcomes as well as the current absence of VOIP alternatives on any significant scale, we consider the AFL USO designation is necessary and entirely justified. No new evidence has been provided to us that suggests our views on TERA's counterfactual are no longer valid. Left to the operation of market forces alone, access to services mandated by the Universal Service Directive may not be provided to everyone, irrespective of location, at an affordable price, and appropriate quality as revealed by counterfactual analyses.

667 We were of the view that without any AFL USO, and at least until the NBP is fully deployed, there is a real risk that the basic voice telephony service might not be delivered to all end-users (or may not be delivered at an affordable price or acceptable quality). Furthermore, some end-users may be connected only via alternative technologies, which may not be able to provide FIA. Without AFL USO Eir might even choose to increase line rental prices. QoS could also deteriorate significantly.

- 668 Having specific regard to the counterfactual analysis and market developments generally, we do not believe there can be complete assurance that AFL USO services would without any obligation in place be delivered in the future at an affordable price and, appropriate quality, throughout the State. We consider the evidence supporting a complete withdrawal of the existing USOs would need to be undisputed.
- 669 Accordingly, the AFL USO ensures the provision of basic telecommunication services in uneconomic areas of the State as well as for uneconomic customers in economic areas and contributes to social and economic inclusiveness and cohesiveness. Our approach is not unduly burdensome on Eir because it supports a transition by Eir to the extent possible, to a provider of last resort. On this basis, it facilitates efficient investment and innovation to the benefit of consumers.
- 670 For the final reasoning set out in Chapters 3 and 4 and, having regard to respondents' views, we are of the view that the AFL USO should continue for a period of 5 years (Option 1) – Eir is designated for the provision of AFL for the period 29 July 2016 – 30 June 2021, for the entire State. The Tables above update the assessment of the impact of the designation for the provision of AFL USO on different stakeholders.

9.3.6. Reasonable Requests for Connection

9.3.6.1. Alternative Infrastructures

- 671 Our preliminary view in Consultations 15/89 and 16/31 was that It is appropriate to consider the presence of Alternative Infrastructures when assessing whether or not a request for connection is reasonable such that a designated USP is a *provider of last resort* (Option 1). However, we are of the view that where the costs involved in connecting an end-user are below €1,000 the USP should provide a connection. Above this threshold, the presence of alternatives networks should be a consideration. This would allow the USP to provide connections only where the end-user has no alternative, meaning there is no unnecessary investment or duplication of networks, subject to the €1,000 threshold. Further, this would mean that end-users for whom there was no alternative would still have the ability to connect to the USP's network, although such connections would still be subject to a monetary threshold.

9.3.6.2. Monetary Threshold

672 In addition, our preliminary view in Consultations 15/89 and 16/31 was that in assessing the reasonableness of a request, the cost of a connection is also a relevant factor. Where a threshold is maintained we were of the preliminary view that, given consideration of the presence of Alternative Infrastructure, maintaining the upper RAT at the current level of €7,000 is most appropriate (Option 2c). Maintaining the current threshold of €7000 would in our view prevent consumer detriment particularly for those in remote rural locations. Further, our preliminary view was that the cost savings made by the USP following any increase in the threshold (Option 2(a)) would be outweighed by the detrimental impact on consumers and hence this option was not preferred.

9.3.6.3. Updated ‘Reasonable Access Thresholds’

673 As set in Chapter 5, on the basis of the analysis set out in the consultation documents and the TERA Reports, and having regard to respondents views, we remain of the view that a) **the presence of alternative infrastructures** (Option 1) and b) **monetary thresholds** (Option 2) are relevant criteria for a determination of whether a request for connection is reasonable or not. We are of the view that additional criteria (such as distance related) are not necessary at this time.

674 Having regard to our final reasoning set out in Chapter 5, and having regard to respondents’ views, to ensure that the USP is the *provider of last resort*, we have adjusted the criteria and approach to reasonable access requirements (as summarised above in section 5.1). More specifically, we have modified the definition of “reasonable access request” and introduced ‘new reasonable access thresholds’. Our revised approach takes due account of the presence of Alternative Infrastructures as well as monetary thresholds. With respect to the latter criteria, having specific regard to the TERA analysis of eir’s profitability threshold as well as regard to respondents’ views, we consider for reasons of practical implementation that an additional monetary threshold should also be introduced. Essentially, a lower monetary threshold (i.e., €1000, below which all requests for connection should be considered as reasonable) should be applied as relevant, additional to the current level of €7000. This lower level monetary threshold aligns with the estimates in the TERA Reports as to eir’s profitability threshold. As such, we consider applying the additional €1000 monetary threshold as relevant to be a proportionate approach. With respect to a determination of a reasonable request our revised approach is represented in the Tables above as updated **Option (d) ‘reasonable access thresholds’**.

675 For the reasons set out in Chapter 5 and due to the small number of connections to which the RAT is applied, we are of the view that Option (d) is the most appropriate and proportionate approach at this time. Our approach is appropriate because it can prevent consumer detriment for end users who have no alternative and particularly for those in remote rural locations. It is proportionate because it the decision goes no further than ensuring that there is a telecommunications service provider of last resort. No obligation to satisfy a reasonable request crystallises on eir unless the end users has no suitable alternative. In addition, the USP is not precluded from meeting end user requests for a connection and PATS, by sourcing those from a third party, consistent with the principle of technology neutral (discussed at paragraphs 10 - 11). This means increased flexibility to facility efficient investment, while ensuring that the USP continues to provide AFL USO where needed. The Tables above update the assessment of the impact of introducing new 'reasonable access thresholds' on different stakeholders.

9.3.7. FIA Minimum Data Rates

- For the reasons set out in Chapter 6, we have decided to maintain the pre-existing requirements in relation to FIA i.e. minimum data rate of 28.8 kbit/s for internet access (Option 1). We consider this approach to be the most reasonable and appropriate at this time, among other things, because: the market is changing, as a result of the NBP. Therefore, it is premature at this time to consult on the need for fast broadband FIA requirements at locations outside the NBP intervention area;
- The full effect of NBP developments will not be clear, for a minimum 5 years. We will carefully monitor and review these developments, in order to evaluate what impact they may have on the provision of basic electronic communications services in the State;
- As set out at paragraph 68, the forthcoming review of universal service by the European Commission; and
- The respondents' views including that there is a lack of information currently as to the potential impact of market developments including NBP on AFL USO.

676 Maintaining the status quo at this time safeguards competition for the benefit of consumers. Essentially, the existing requirements specified in relation to FIA provide a safety net for ensuring that the minimum data rate is maintained for current users, pending the availability of higher speed services. Nevertheless, these requirements do not preclude Eir or other operators from offering data rates that are faster than this. On the basis of the analysis set out here and elsewhere in the consultation documents, Option 1 which is objective, proportionate and non-discriminatory remains therefore the preferred option. The Tables above update the assessment of the impact of maintaining the existing requirements specified in relation to FIA on different stakeholders.

9.3.8. Affordability

9.3.8.1. GAP

677 We have decided in Chapter 7 to maintain the existing GAP obligation with a view to ensuring that prices are affordable, whatever the geographic location (Option 1).

678 We consider that the GAP obligation is not unduly burdensome on eir, amongst other things, because:

- The GAP obligation relates to the designated services in accordance with Regulation 3, namely, a connection and PATS service (For the avoidance of doubt, this does not apply to bundled products) and applies to services where competition is not yet effective;
- eir has pricing flexibility regarding its broad retail offers including bundled offers;
- It is envisaged that voice only consumers may increasingly migrate to bundles including voice, thus any impact of the GAP obligation on eir would decrease in time; and
- Also, in this respect, our decision on what constitutes a reasonable request for AFL USO is intended to lessen eir's obligations as the USP, essentially the provider of last resort.

679 We furthermore consider that the GAP obligation is objective and necessary. If the GAP obligation is removed, some end-users would not be protected against a risk of price increases, despite the existing RPC control. Absent GAP, Eir would have greater pricing flexibility and the ability to geographically discriminate between end-users for fixed voice service and in particular with respect high cost consumers and in relation to standalone voice end-users, services where competition is not yet effective. By maintaining GAP together with the safeguard obligation of RPC affordable prices of voice services should be ensured. The Tables above update the assessment of the impact of affordability requirements (including GAP) on different stakeholders.

9.3.8.2. Special Tariff Plans

680 Our view in Chapter 7 is that an obligation in respect of Social Tariffs is not necessary at this time, in light of national circumstances (Option 2). This preferred option is appropriate, proportionate and justified having regard to developments in relation to competition and consumers. On the basis of the information available to date, there are at present other mechanisms that ensure that basic voice services are broadly affordable for end-users. The Tables above update the assessment of the impact of affordability requirements on different stakeholders.

9.3.9. Control of Expenditure

681 Our preliminary view in Consultations 15/89 and 16/31 was that Option 1 represented the most justified, reasonable and proportionate of the approaches to control of expenditure facilities. Having regard to the final reasoning set out in Chapter 8, and having regard to respondents' views, we have decided to maintain the pre-existing obligations in respect of disconnections and non-payment of bills. In addition, we have decided to maintain the pre-existing obligations in respect of phased payment for connection fees.

682 These consumer protection measures aim to prevent consumer detriment. All end users who want to remain connected can reasonably do so (it is not only enabling end users to be connected to the PSTN). Further, end-users are able to monitor and control their expenditure to ensure that they do not find themselves unable to pay their bill and face disconnection from the network. Essentially, maintaining the existing requirements in relation to control of expenditure prevents social exclusion.

683 We are not introducing at this stage any special contract terms and conditions applicable to contracts between end-users and the USP(s). Therefore, we are of the view that the control of expenditure measures are unlikely to result in additional cost or a disproportionate cost burden for the USP. For the reasons set out above, the benefits to end-users are likely to be significant. We consider that the costs are outweighed by the ongoing benefit to end-users. The Tables above update the assessment of the impact of control of expenditure measures on different stakeholders.

9.3.10. Quality of Service for AFL USO

684 Having regard to, amongst other things, respondents' views on QoS, we have decided to defer a final decision on QoS pending further consideration of the specific issues raised in that regard. Respondents' views in respect QoS are currently being reviewed in detail. They will be addressed as relevant in a separate decision by ComReg on a new QoS regime which we envisage will be published within the coming period. In the interim the existing QoS regime will be maintained.

9.4 Conclusion

685 The Consultations 15/89 and 16/31 (together with the TERA Reports) and this Decision incorporate a full and objective assessment of the various regulatory options available for safeguarding and ensuring the provision of a minimum set of telecommunications services in the State. As part of this assessment, we undertake detailed analysis of market trends and developments, the counterfactual scenario and a graduated impact assessment of potential regulatory options for addressing each of the identified risks to AFL USO. This final RIA should, therefore, be read in conjunction with the Consultations and this Decision as a whole.

686 For the reasons set out above, the RIA, which is an integrated part of the overall analysis, is in accordance with the guidelines and is fit for purpose. We are of the view that the RIA is sufficient to justify the overall regulatory approach having identified the continued need for AFL USO.

687 Our view is that, absent an AFL USO, there is the potential that universal affordable AFL service may not be provided to everyone or, in all locations, which would negatively affect consumers, contrary to applicable legislation. The counterfactual analysis provided examples of potential risks to universal affordable AFL and the impact of these on consumers (First TERA Report, p: 85-86, Table 12).

688 ComReg objectives in designating the USP to provide AFL USO are to; safeguard and ensure the provision of a minimum set of telecommunications services in the State; and, help to ensure that consumers can achieve maximum benefits in terms of telephony service and social inclusion; whilst, also minimising the burden on the USP. In this respect, no obligation to satisfy requests for access and a telephone service crystallises on Eir as the USP unless the customer has no suitable alternative, essentially the USP is the provider of last resort.

10. Draft Decision Instrument

689 This Chapter sets out the following:

- 10.1 Our Decision.
- 10.2 Reasons for our decision.
- 10.3 Summary of respondents' submissions on Consultation 16/31.
- 10.4 Our Responses.

10.1. Our Decision

690 Our final Decision Instrument is at Annex 1.

10.2. Reasons for the Decision

691 The purpose of the Decision Instrument is to consolidate and to formalise the policy decisions that we have made as legally binding and enforceable in order for us to be able to ensure the provision of AFL USO and thereby protect the interests of end-users in the State.

10.3. Summary of respondents' submissions on Consultation 16/31

692 Chapter 12 of Consultation 16/31 set out a draft Decision Instrument and asked the following question:

Q. 29 Do you have any comments or suggestions on our draft Decision Instrument? Please set out your answer in detail.

10.3.1. Draft Decision Instrument: Respondents' Submissions and our responses

693 We have noted the views of respondents. Below, we state what they are, where we accept respondents' suggestions for deletions/amendments, or where we do not accept them, and we give reasons in each case.

694 Sky had no comments on the draft Decision Instrument.

695 Virgin Media had no comments on the draft Decision Instrument.

696 ALTO, BT and Vodafone expressed concerns about the draft provisions on QoS.

697 eir made several suggestions for deletions and modifications

10.3.2. Definitions

698 eir proposed changes (and sought clarity on) in relation to the some of the definitions: “Alternative Infrastructure”, “Connection”, “Minimum Indoor Availability”, and “Good Industry Practice”.

699 “Alternative Infrastructure”: eir suggested that we define what is “reliable proper and fully functioning.” Rather than doing this, we have now changed the definition in our final Decision Instrument to reflect our Decision that the Alternative Infrastructure must offer equivalence to AFL USO. We consider this a more practical and realistic approach.

700 “Connection”: eir stated that the definition is incorrect where it states: “*(except that in relation to facsimile, regard may be had to the prevailing technologies used by the majority of End-Users and to technological feasibility).*” We have now changed the definition in our final Decision Instrument to align precisely with the Regulations. The definition now reads: “Connection” means a connection to the public telephone network that meets the requirements set out in Regulation 3 (3) of the Regulations.”

701 “Good Industry Practice”: eir stated: “*How will ComReg measure the USPs performance against this definition? The practice is presumably that of a provider of universal services and there is no Irish comparable.*” We have now changed the definition in our final Decision Instrument to clarify that reference to good industry practice is not to that of a USP. We consider that the definition does not need to be USP specific, but that it should be to any service provider, operating according to good industry practice. We also consider that the concept of good industry practice is one that must be well understood by any service provider who is, or considers that they are, operating according to good industry practice.

702 “Minimum indoor availability”: eir stated that: “*For this definition to be meaningful to inform USP decision making ComReg must clearly specify what constitutes ‘functionally and technically equivalent.’*” Rather than effectively seeking to specify technical standards, the focus of our definition is directed to the customer’s experience of the service. We do not consider that specification of a standard would necessarily guarantee that the service will be equivalent. We have therefore not changed this definition in our final Decision Instrument.

10.3.2.1. FIA

703 eir stated that a number of Sections must be deleted. eir stated that there is no justification for a FIA obligation (Sections 5.2, 5.6 d, 6.1 – 6.7, 8.1 – 8.3, and 8.5). In Chapter 6 we have set our decision and reasoning in relation to FIA. We have therefore not deleted these Sections from our final Decision Instrument, but have retained them with some changes.

10.3.2.2. QoS

704 eir stated that a number of Sections must be deleted. eir stated that there is no justification for QoS obligations (Sections 5.3, 5.7, 5.8c, 7.1 – 7.3, 7.5 – 7.7, 8.1 – 8.3, and 8.5). We disagree that there is no justification for QoS. However, we have deleted references to QoS as we are now deferring our decision on this issue.

10.3.2.3. Section on Refunds

705 eir requested the deletion of Section 7.1 (terms and conditions). We have deleted the section because Section 45 of the Act 2002 provides summary enforcement powers in relation to relevant offences.

10.3.2.4. Section on Revocation

706 eir that that in Sections 6.7 and 7.7: “...ComReg seeks to introduce a mechanism to preserve revoked Decisions if the current Decision is challenged. eir’s position is that ComReg’s attempts to revoke Decision 09/05 and Decision 02/08 on conditions wherein it may come back into force on the occurrence of certain events is not valid.” We have taken account of eir’s comments and we have deleted these Sections from our final Decision Instrument.

10.3.2.5. USO funding

707 eir stated that a new Section should be inserted stating that: “ComReg will consider and issue a Decision in respect of any application for funding with 6 months of receipt.” This request relates to a matter which is outside of the scope the consultation and scope of this decision. We have not inserted eir’s proposed wording in to our final Decision Instrument.

10.3.2.6. GAP

708 eir stated that Section 9.1 GAP must be deleted because we have not considered the costs and benefits of the proposed GAP obligation and consequently it cannot be implemented given the risk of distorting competition contrary to the principles of USD. We disagree with eir. We have considered the costs and benefits of the proposed GAP obligation. We refer to the RIA that we have included in Chapter 9.

709 eir also stated that we have proposed alternative text for the GAP obligation compared to previous decisions on USO. eir's observation is correct. This obligation relates to the designated services connection and PATS service, for the avoidance of doubt, this does not apply to bundled products.

10.3.2.7. RAT

710 eir commented on the RAT. We have amended the RAT in relation to what eir described as the customer "veto." In relation to Section 5.5, eir suggested that the end-user has an: "...*unfettered veto on the USP's proposed Alternative Infrastructure...*" We do not agree that this is the case. The end-user is, in the case of a wireless network, entitled to communicate to the designated USP that that network will not provide an equivalent service to that currently prevailing for AFL USO (including Minimum Indoor Availability). eir is then required to promptly notify ComReg of this. At that point, it becomes a matter for ComReg to adjudicate on. Accordingly, we have not provided for an unfettered or automatic veto right.

711 We have also adopted Sky's suggestion in their response to the substantive Sections of Consultation 16/31 on the monetary threshold.

10.3.2.8. Section on 5 Year Designation

712 eir suggested that Section 12.1 should be amended as the period of designation is too long. We disagree for the reasons which we have set out in Chapter 4.

10.3.2.11. Miscellaneous

713 In relation to Section 5.6 c, eir repeated the text of the draft Section, but without comment or suggestion for amendment.

714 In relation to Section, 5.8 d, eir suggested that reference to "carrier systems" was not technology neutral. We have taken account of eir's comment and removed the specific reference to "carrier systems."

715 eir suggested that Section 9.2 in relation to control of expenditure obligations should be deleted because those obligation are “otiose”. We do not agree with eir. In Chapter 8, we have set our decision and reasoning in relation to control of expenditure obligations on the USP. We have therefore not deleted this Section from our final Decision Instrument.

Annex: 1

1. STATUTORY FUNCTIONS AND POWERS

1.1 This Decision and Decision Instrument is hereby made by ComReg for the purposes of imposing obligations, requirements, and specifications for the provision of the universal services in the State.

1.2 This Decision and Decision Instrument is made:

- i. Pursuant to and having regard to the functions and objectives of ComReg set out in sections 10 and 12 of the Act and Regulations 12, 13 and 16 of the Framework Regulations;
- ii. Pursuant to the functions and powers conferred upon ComReg by Regulations 3, 7, 8, 9, and 10 of the Universal Service Regulations;
- iii. Having regard to Directive 2002/21/EC, Directive 2002/22/EC and Directive 2009/136/EC;
- iv. Having pursuant to section 13 of the Act, complied with the Ministerial Policy Directions where applicable;
- v. Having had regard to the views of interested parties, including Undertakings and the submissions they made in response to ComReg Document No. 14/48, ComReg Document No. 15/89, ComReg Document No. 15/124; and ComReg Document No. 16/ 31; and
- vi. Having had regard to the analysis and reasoning set out in ComReg Document No. 15/89, ComReg Document No. 16/ 31, and Decision • (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, unless the context otherwise admits or requires, the following terms shall have the following meanings:

“Act” means the Communications Regulation Act 2002 (as amended);

“AFL” means the connection and services referred to in Regulation 3 (1) - (3) of the Universal Service Regulations;

“Alternative Infrastructure” means the network of an Undertaking, other than the fixed network of the USP, which at the time a request is made by an

End-User to the USP for a Connection and/or PATS, is able to provide an Equivalent Service to the End-User;

“**ComReg**” means the Commission for Communications Regulation, established under section 6 of the Act;

“**Connection**” means a connection within the meaning of Regulation 3 (1) of the Universal Service Regulations, at a primary location or residence. A Connection includes a New Connection and/or an Existing Connection as the context admits or requires;

“**Decision Instrument**” means this decision instrument which is made pursuant to *inter alia* Regulations 3, 7, 8, 9, and 10 of the Universal Service Regulations;

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

“**Directive 2002/21/EC**” means Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) (as amended);

“**Directive 2002/22/EC**” means Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive) (as amended);

“**Directive 2009/136/EC**” means Directive 2009/136/EC of the European Parliament and of the Council of 25 November 2009 amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services, Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector and Regulation (EC) No 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws;

“**Durable Medium**” means any medium (including paper, or e-mail or audio recording) that enables a person to store information addressed personally to them, in a way accessible for future reference, for a period of time adequate for the purposes of the information, and which enables the reproduction of the stored information in unaltered form;

“**ECN**” means electronic communications network, which has the same meaning as it has in Regulation 2 of the Framework Regulations;

“Effective Date” means the date specified in Section 12.1 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;

“End-User” has the same meaning as it has in Regulation 2 of the Framework Regulations;

“End User Premises” means the End-User’s primary location or residence;

“Equivalent Service” means a Connection and a standalone PATS which is equivalent to that prevailing for AFL provided by the USP, with respect to quality of service, Minimum Indoor Availability, and affordability;

“Existing Connection” means any Connection that is not a New Connection;

“FIA” means functional internet access as referred to in Regulation 3 (3) (c) of the Universal Service Regulations;

“Fixed Location” means the interior of the End-User’s Premises, at a network termination unit that is used to connect customer premises equipment (CPE) at the End-User Premises (but without additional wiring) to the Public Communications Network (fixed);

“Framework Regulations” means the European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2011;

“Good Industry Practice” means that standard and degree of skill, care, efficiency, diligence, prudence, and foresight which would reasonably and ordinarily be expected from a skilled and experienced Undertaking;

“Minimum Indoor Availability” means availability to the End-User that is at least functionally and technically equivalent to the capabilities of wired/fixed line technology provided at a Fixed Location and that functions throughout the End-User’s Premises;

“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 at any primary location or residence that has never been connected to the PCN (fixed);

“**PATS**” means a publicly available telephone service which has the same meaning as it has in Regulation 2 of the Universal Service Regulations;

“**PCN**” means public communications network, which is has in Regulation 2 of the Framework Regulations;

“**State**” means Ireland;

“**Undertaking**” has the same meaning as it has in Regulation 2 of the Framework Regulations;

“**Universal Service Regulations**” means the European Communities (Electronic Communications Networks and Services) (Universal Service and Users’ Rights) Regulations 2011; and

“**USP**” means the Undertaking, designated by ComReg pursuant to Regulation 7 of the Universal Service Regulations and this Decision Instrument. The USP, for the purposes of this Decision Instrument and the Universal Service Regulations, is specified in Section 4;

- 2.2 References to “Decision Instrument”, “Schedule”, “Section”, and “Decision” mean respectively: references to this Decision Instrument, a Schedule or Section of this Decision Instrument, and ComReg Decision 05/16.
- 2.3 References to European Union legislation or to Irish primary or secondary legislation shall be construed as references to that legislation as amended from time to time.
- 2.4 Other terms, words, or phrases used in this Decision Instrument shall have the same meaning as they have in the Framework Regulations and the Universal Service Regulations, unless the context admits or requires.
- 2.4 Words in the singular form shall be construed to include the plural and vice versa, unless the context otherwise admits or requires.
- 2.6 Examples shall not be construed to limit, expressly or by implication, the matters they illustrate.

3. APPLICATION AND SCOPE

- 3.1 This Decision Instrument designates the USP(s) specified in Section 4 from the Effective Date, for the purpose of complying with the obligations in this Decision Instrument.

3.2 This Decision Instrument is legally binding upon and legally enforceable against the USP from the Effective Date, subject to Section 12.

4. THE USP AND GEOGRAPHICAL SCOPE

4.1 Eir is hereby designated as the USP for the purpose of complying with the obligations in this Decision Instrument.

4.2 The geographical scope of the obligations imposed on the USP by this Decision Instrument is the entire State.

5. CONNECTIONS, PATS, AND REASONABLENESS OF REQUESTS

CONNECTIONS

5.1 The USP shall satisfy any reasonable request (as described in this Section 5) by an End-User for a Connection at the charge(s) published by the USP.

PATS

5.2 The USP shall satisfy any reasonable request (as described in this Section 5) by an End-User for a standalone PATS that allows for originating and receiving of national and international calls, at the charge(s) published by the USP, over the connection to the public communications network referred to paragraph 5.1.

REASONABLENESS OF REQUESTS

Existing Connections and/or PATS

5.3 All requests for Existing Connections and /or PATS to be provided over Existing Connections are reasonable and the USP shall continue to satisfy them.

New Connections and/or PATS

Requests for New Connections and/or PATS where cost will not exceed €1,000

5.4 A request by an End-User for a New Connection and/or PATS at a Fixed Location is reasonable and the USP shall satisfy it, if the USP estimates reasonably that the cost of satisfying it will not exceed €1,000 (excluding V.A.T.).

Requests for New Connections and/or PATS where there is Alternative Infrastructure

- 5.5 A request by an End-User for a New Connection and/or PATS at a Fixed Location is not reasonable, and the USP need not satisfy it, if there is Alternative Infrastructure serving the End-User premises, and if the USP estimates reasonably that the cost of satisfying the request will exceed €1,000 (excluding V.A.T.), save for the provisions of 5.6.
- 5.6 If the Alternative Infrastructure is a mobile network and the End-User communicates their opinion to the USP in a Durable Medium, that it does not, or will not provide an Equivalent Service, then the following shall apply:
- i. the USP shall notify ComReg in writing, no later than two weeks after the USP has received the said communication from the End-User; and
 - ii. ComReg will adjudicate as soon as possible on whether or not the request for a Connection and/or PATS is reasonable, having regard to the all of the relevant circumstances, the views of the End-User and the USP and the provisions of this Decision Instrument, in particular this Section 5.
 - iii. If the End-User and the USP have agreed that the Alternative Infrastructure proposed by the USP can and will provide an Equivalent Service, and the End-User requests a different technology, which is technically feasible, to satisfy their request for a Connection and/or PATS, that request is reasonable and the USP shall satisfy it, if the End-User has agreed to pay the incremental costs for the different technology

Requests for New Connections where there is no Alternative Infrastructure

- 5.7 If at the time of the request by an End-User to the USP for a New Connection and/or PATS there is:
- i. no Alternative Infrastructure serving the End-User Premises; and
 - ii. the USP estimates reasonably that the cost of satisfying it will not exceed €7,000 (excluding V.A.T.)
- that request is reasonable and the USP shall satisfy it.
- 5.8 If at the time of the request by an End-User to the USP for a New Connection and/or PATS there is:
- i. no Alternative Infrastructure serving the End-User Premises; and
 - ii. the USP estimates reasonably that the cost of satisfying it will exceed €7,000 (excluding V.A.T.); and
 - iii. the End-User has agreed to pay the costs that exceed €7,000 (inclusive of V.A.T.)

that request is reasonable and the USP shall satisfy it.

Records of Connections and/or PATS

- 5.9 The USP shall maintain records in a written form, of all requests made to it by End-Users for Connections and/or PATS, for **2 years** from the date that the request was first made. These records shall contain the following information:
- i. the name of the End-User;
 - ii. the address and Eircode of the End-User;
 - iii. the date of the End-User's request;
 - iv. what the End-User requested;
 - v. the USP's reasons as to how it has complied with Section 5; and
 - vi. the USP's reasons as to whether or not (and how) an Connection or PATS which uses wireless technology ensures Minimum Indoor Availability.

Processes

- 5.10 The USP shall, no later than **2 months** from the Effective Date, submit to ComReg a draft written statement setting out the USP's proposals in relation to the following (the "Draft Process Statement"):
- i. the USP's breakdown of the costs of, and suitability of, the alternative technologies (including the optimal cost technology available) chosen by the USP to satisfy reasonable requests for AFL by End-Users; having regard to the USP's quality of service targets specified in ComReg Decision D02/08;
 - ii. the USP's reasons for why a particular alternative technology was chosen by the USP to satisfy reasonable requests for AFL by End-Users;
 - iii. the creation and maintenance by the USP of written records in relation to the matters referred to in (i), (ii), and (iii) ;
 - iv. adequate information on works proposed by the USP to satisfy requests by End-Users for AFL (which information shall be provided in writing to End-Users);
 - v. the creation and maintenance by the USP of written records to evidence that any alternative technology chosen by the USP to satisfy reasonable requests for AFL by End-Users use of the Minimum Indoor Availability

and that the End-User has agreed to the alternative technology chosen by the USP;

- vi. the creation and maintenance by the USP of written records containing details of the Alternative Infrastructure for the purposes of Section 5 and the End-User's agreement that the Alternative Infrastructure will satisfy their request for the provision of AFL by the USP;
 - vii. the creation and maintenance by the USP of written records to demonstrate that the Connection and PATS provided by an Alternative Infrastructure will offer a tariff package or packages which are broadly in line with those prices offered by USP for Connection and/or PATS; and
 - viii. a draft code of practice for handling complaints by End-Users in relation to requests for AFL (which code of practice shall be made available in a Durable Medium to End-Users).
- 5.11 Upon receipt of the Draft Process Statement, ComReg may either approve it and notify the USP of this, or may disapprove it, with summary reasons therefor, in which case ComReg may require the USP to promptly re-submit a revised Draft Process Statement(s). Upon receipt of a revised Draft Process Statement, ComReg may either approve it or to disapprove it with reasons and notify the USP, Once ComReg approves a revised Draft Process it shall take effect as final (the "Process Statement").
- 5.12 The USP shall comply with the Process Statement in all respects.

Cost Estimates

- 5.13 For the purposes of the cost estimates referred to in this Section 5, the USP shall base these on the optimal cost technology that can be employed by the USP (using Good Industry Practice) for a Connection and/or PATS to the Fixed Location (by means of an overhead connection, where possible). These estimates shall include only those costs which can be attributed to the requesting End-User.
- 5.14 The USP shall, when satisfying reasonable requests by End-Users for Connections and for PATS:
- i. satisfy all reasonable requests and inform each End-User how it will do so, the time within which the request will be satisfied, unless a prior survey is required, in which case the USP shall inform the End-User when the survey will be commenced and completed;
 - ii. adopt and publish easily accessible and transparent information and procedures to ensure that all End-Users can receive and access information on the progress of their requests; and

- iii. using Good Industry Practice, avoid the use of technologies that would result in a Connection not achieving a minimum data rate of 28.8 kilobits per second (“kbit/s”).

6. PERFORMANCE TARGETS RELATED TO FIA

- 6.1 Pursuant to Regulation 3 (5) (a) of the Universal Service Regulations, the USP shall ensure that **94%** of Connections achieve a minimum data rate of **28.8 kbit/s** for internet access.
- 6.2 The USP shall, no later than **1 month** from the Effective Date, submit to ComReg a draft written statement setting out the USP’s proposals on how to report on its compliance with Section 6.1 (the “Draft Reporting Proposal”). Upon receipt of this Draft Reporting Proposal, ComReg may either approve it and notify the USP of this, or may disapprove it, with summary reasons therefor, in which case ComReg may require the USP to promptly re-submit a revised Draft Reporting Proposal. Upon receipt of a revised Draft Reporting Proposal(s), ComReg may either approve it or disapprove it. Once ComReg approves a revised Draft Reporting Proposal it shall become final (the “Report Process”).
- 6.3 The USP shall comply with the Report Process in all respects.
- 6.4 The USP shall, on a quarterly basis, within **2 months** of the end of the previous quarter, provide ComReg with written reports on the USP’s performance in relation to Sections 6.1 generated by the Reporting Process referred to in Section 6.2. The USP shall publish these reports in such a manner and format as ComReg may specify.
- 6.5 The USP shall, upon the request of any End-User who raises a query or a concern in a Durable Medium about their Connection capability, provide them with a written statement confirming its internet access data rate. If on receipt of this written statement, the End-User still has a query or concern the USP may require the End-User to conduct reasonable self-tests, prior to the USP assessing and testing the internet access data rate.
- 6.6 The USP shall use all reasonable endeavours, in accordance with Good Industry Practice, to remedy performance problems with a Connection, where its internet access data rate does not achieve a minimum data rate of 28.8 kbit/s.

- 6.7 In accordance with Regulation 10 (6) of the Universal Service Regulations, the USP shall arrange an independent audit, (which shall be paid for by the USP) of the performance data provided to ComReg pursuant to Section 6.3.

7. REPORTING

- 7.1 The USP shall on a quarterly basis, within **2 months** of the end of the previous quarter, provide ComReg with a report in written form, in relation to its compliance with its obligations in Section 5 and 6.
- 7.2 For the purpose of its obligations in Sections 5 and 6, the performance of the USP shall be determined by reference to the information normally set out in ComReg information notices, published every quarter and usually entitled “*Provision of Universal Service by Eircom Limited - Performance Indicators*”, or as ComReg may publish in another manner or format from time to time.

8. OBLIGATIONS OF THE USP: GEOGRAPHICALLY AVERAGED PRICING AND CONTROL OF EXPENDITURE

Geographically Averaged Pricing

- 8.1 In accordance with Regulation 8 (3) of the Universal Service Regulations, the USP shall apply geographically averaged prices throughout the State for the Connections and PATS referred to in this Decision Instrument.

Control of Expenditure

- 8.2 The USP shall:
- i. maintain and publish a scheme to allow for the phased payment of Connection fees; and
 - ii. maintain and publish its disconnection policy in relation to the non-payment of bills.

9. REVOCATION AND SAVER

- 9.1 ComReg Decision No. D09/05 is hereby revoked.
- 9.2 ComReg Decision No. D02/08 shall continue in force until the earlier of:
- i. 31 December 2016; or

- ii. the date upon which a decision by ComReg on the USP's quality of service obligations related to the provision of AFL becomes fully operative.

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, DURATION, AND REVIEW

- 12.1 Subject to Section 12.2, this Decision and Decision Instrument is fully effective from 29 July 2016 and shall remain in full force and effect until 30 June 2021, unless amended by ComReg.
- 12.2 Sections 5.5 – 5.8 shall come into operation immediately upon the Process Statement taking effect in accordance with Section 5.11.
- 12.3 ComReg will commence a review 3 months after the Department has concluded the National Broadband Plan contract award process, and decide whether or not to commence a new consultation process in relation to AFL USO in the State and publish an information notice regarding this.

**JEREMY GODFREY
CHAIRPERSON
THE COMMISSION FOR COMMUNICATIONS REGULATION**

Made on this the 29 day of July 2016