



Commission for  
**Communications Regulation**

Universal Service Requirements  
**Provision of access at a fixed location (AFL)**  
**Quality of Service (QoS)**

**Response to Consultation and Decision**

**Reference:** ComReg 19/21 D02/19

**Version:** Final

**Date:** 13/03/19

## Redacted Information

In this document, ComReg has maintained the confidentiality of commercially sensitive information, as it is obliged to do under Regulation 15 of the European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2011<sup>1</sup> (the “Framework Regulations”) and in accordance with ComReg’s guidelines on the treatment of confidential information<sup>2</sup> (the “Confidentiality Guidelines”). Where information of a confidential/commercially sensitive nature is discussed in this document or the accompanying consultants’ reports, the relevant information has been redacted and a [X] symbol has been inserted.

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<sup>1</sup> S.I. No 333 of 2011.

<sup>2</sup> ComReg (2005) “ComReg’s Guidelines on the treatment of confidential information”, 05/04.

## Content

Section	Page
1. Foreword .....	6
2. Executive summary .....	8
3. Background to the 2017 QoS regime and AFL USO QoS consultation 18/120 12	
3.1 ComReg statutory and policy objectives .....	13
3.2 National Broadband Plan transition period & DCCAE – eir Commitment Agreement 14	
3.3 eir’s proposed transition from copper .....	15
3.4 Universal service QoS performance targets.....	16
3.4.1 eir’s model.....	18
3.5 AFL USO QoS Consultation 18/120.....	22
4. Need for AFL USO Quality of Service (QoS) in the State – Consultation Issues and ComReg’s Position .....	25
4.1 Option 1a – Re-impose AFL USO QoS targets and areas .....	27
4.2 Option 1b – Re-impose the AFL USO QoS targets, as previously set out in D03/17, and modify the NBP reporting area.....	27
4.2.1 Option 1b - Modification of ‘Area 2’ NBP sub-national reporting area (D03/17)28	
4.2.1.1 Respondents’ views .....	29
4.2.1.2 ComReg’s response.....	30
4.2.2 National and sub-national connection targets .....	31
4.2.2.1 Respondents’ Views.....	32
4.2.2.2 ComReg’s Response .....	32
4.2.3 National and sub-national service availability targets.....	33
4.2.3.1 Respondents’ Views.....	34
4.2.3.2 ComReg’s Response .....	34
4.2.4 Reporting, measurement, auditing and publication of QoS performance .....	36
4.2.4.1 Respondents’ Views.....	37
4.2.4.2 ComReg’s Response .....	37

4.3	Period of application.....	38
4.4	The need for AFL USO QoS in the State .....	39
<b>5.</b>	<b>eir’s AFL USO quality of service performance since 2017.....</b>	<b>40</b>
5.1	Connections Summary .....	41
5.2	Service availability summary – 2017 and Q1-Q3 2018 .....	45
<b>6.</b>	<b>Final Regulatory Impact Assessment (RIA) .....</b>	<b>58</b>
6.1	Introduction .....	58
	Step 1: Describe the Policy Issue and Identify the Objectives.....	59
	Step 2: Identify and Describe the Regulatory Options.....	62
	Option 1 – Re-impose an AFL USO QoS obligation.....	63
	Option 2 - No AFL USO QoS obligation .....	66
	Step 3 and 4: Determine the Impacts on Stakeholders and Competition .....	68
	Option 1a – Re-impose the AFL USO QoS targets and areas, as previously set out in D03/17 68	
	Option 1b – Re-impose the AFL USO QoS targets, as previously set out in D03/17 ....	69
	Modify ‘Area 2’ NBP sub-national reporting area, as previously set out in D03/17.....	69
	National and sub-national connection targets .....	71
	National and sub-national service availability targets .....	71
	Reporting, measurement, auditing and publication of QoS performance .....	74
	Step 5: Assess the Impacts and Choose the Best Option.....	75
	AFL USO QoS is necessary and justified.....	75
	The nature and structure of QoS targets is appropriate and proportionate .....	81
6.2	Conclusion .....	82
6.3	Respondents’ Views.....	82
6.4	ComReg’s Response .....	83
<b>7.</b>	<b>eir’s other general observations .....</b>	<b>84</b>
<b>8.</b>	<b>Decision Instrument.....</b>	<b>87</b>
<b>9.</b>	<b>Annex 1 – Eir’s performance 2017 and YTD 2018.....</b>	<b>100</b>
9.1	Review of eir’s QoS performance to date.....	100
9.1.1	National connections – 2017 and year to date (Q1-Q3) 2018.....	100
9.1.2	Sub-national connections – 2017 and year to date (Q1-Q3) 2018 .....	102

9.1.2.1	MDIBC area – 2017 and year to date (Q1-Q3) 2018.....	102
9.1.2.2	eir only area – 2017 and year to date (Q1-Q3) 2018.....	104
9.1.2.3	NBP area – 2017 and year to date (Q1-Q3) 2018.....	106
9.1.3	Connections Summary – 2017 and year to date (Q1-Q3) 2018 .....	108
9.1.4	National service availability –2017 and Q1-Q3 2018.....	113
9.1.4.1	Sub-national MDIBC area service availability – 2017 and Q1-Q3 2018 .....	114
9.1.4.2	Sub-national eir only area service availability – 2017 and Q1-Q3 2018 .....	115
9.1.4.3	Sub-national NBP area service availability – 2017 and Q1-3 2018.....	116
9.1.5	Service availability summary – 2017 and Q1-Q3 2018 .....	117

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# 1. Foreword

- 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 ComReg’s key statutory objectives in relation to the provision of of electronic communications services (“**ECS**”) are to:
- (i) Promote competition.
  - (ii) Contribute to the development of the internal market.
  - (iii) Promote the interests of users in Ireland, as well as within the European Union.
- 3 In order to promote the interests of users of ECS, ComReg must ensure the provision of basic telecommunications services in the State. This is known as the universal service and ComReg may designate one or more ECS providers to be a universal service provider (“**USP**”) with universal service obligations (“**USO**”).
- 4 Decision 05/16 obliged eircom Ltd (“**eir**”), as the designated USP, to provide access at a fixed location and telephone services (“**AFL**”) in accordance with Regulation 3 of the Universal Service Regulations (“**the Regulations**”)<sup>3</sup>. The manner in which this is achieved by the USP is not prescribed and the principle of technological neutrality allows the USP to choose the optimum method of providing such access and service.
- 5 In addition, Regulation 10 of the Regulations “*Quality of service of designated undertakings*” allows ComReg to specify requirements to be complied with by the USP in relation to the quality of service performance metrics (“**QoS performance targets**”) of certain USOs that it delivers to end-users.

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<sup>3</sup> The European Communities (Electronic Communications Networks and Services) (Universal Service and Users’ Rights) Regulations 2011.

- 6 D03/17 obliged eircom Limited (“eir”) as the designated USP, to comply with ComReg specified national annual quality of service performance targets requirements for connection targets, and national and sub-national ‘service availability’ targets (which combines fault occurrence and fault repair metrics) which are expressed in terms of a ‘maximum of working days outage per line’. D03/17 obligations lasted for 2 years.
- 7 This Decision paper details ComReg’s Decision regarding the Quality of Service (“QoS”) requirements on eir from 1 April 2018 until 30 June 2021.

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## 2. Executive summary

- 8 In accordance with its role in the protection of end-users, ComReg has put in place requirements on eircom Limited (“eir”) to be the universal service provider required to satisfy reasonable requests from consumers or businesses (end-users) for a connection and voice services at a fixed location (“AFL”) throughout the State until June 2021. In this regard, ComReg may also specify requirements to be put in place by eir, to ensure the appropriate quality of this universal service provision.
- 9 In 2017, following the previous quality of service regime, which was in place since 2008, ComReg specified the annual quality of service targets on eir for a period of two years. These targets related to connections and service availability, a new metric introduced in 2017.
- 10 As the current QoS regime was coming to an end (in December 2018), ComReg consulted<sup>4</sup> on the need for QoS targets and the appropriate regime for the period until June 2021.
- 11 In preparing its consultation, ComReg considered relevant factors that may have changed since the then current quality of service targets were introduced in 2017. These include;
- QoS regime set out in D03/17
  - eir’s QoS performance
  - eir’s current predictive model for investment/network performance – (“eir’s model”)
  - Actual investment made by eir and eir’s commercial rollout
- 12 ComReg sought the views of stakeholders on its proposals for QoS targets, to ascertain what the most appropriate requirements should be. In particular, the consultation requested the views of stakeholders on:
- The national and sub-national connection QoS measures
  - The national and sub-national service availability QoS measures
  - The QoS calculation, reporting and audit regime

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<sup>4</sup> Consultation document 18/120 “Universal Service Requirements Provision of Access at a Fixed Location (AFL) – Quality of Service (QoS)”



- ComReg's draft Regulatory Impact Assessment (RIA)

13 The consultation set out ComReg's preliminary views regarding relevant matters and in particular, in respect of ComReg's preliminary views on AFL USO QoS.

14 ComReg would like to thank the two stakeholders who responded to Consultation 18/120:

- eir
- ALTO

15 In addition to the submissions received, ComReg has taken into account a number of key considerations, in the decision-making process, including the following:

- Protecting the interests of end-users
- The likely deterioration in performance, in certain areas, in particular, absent any targets
- The obligation to provide access at a fixed location is technology neutral
- eir's indication<sup>5</sup> of its intention to transition its copper network to fibre
- eir's predictive model for investment/network performance ("eir's model")<sup>6</sup>

16 To ascertain what the most appropriate QoS performance target requirements should be, ComReg has given due regard to the following principles:-

- The targets should aim to balance the interests of end-users with promoting efficient investment.
- The targets should allow eir, as the USP, to have the flexibility to balance investment (in current and new networks) and repair expenditure as it considers appropriate to meet the targets.
- The cost and other implications for eir should be proportionate.

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<sup>5</sup> See Information Notice ComReg 17/05, 19 January 2017

<sup>6</sup> eir's current model provided to ComReg on foot of Section 13D Information Request.

- 17 ComReg has carefully considered the submissions received and this Decision sets out a summary of the main issues raised by respondents, ComReg's consideration of each of these issues and ComReg's response to each issue. It is not practical for ComReg to respond to every comment made. It should be noted that all submissions were considered and account has been taken of the merits of the views expressed. Chapter 4 of this document sets out stakeholders' submissions to ComReg's seven consultation questions, and ComReg's responses.<sup>7</sup>
- 18 ComReg has concluded its review of AFL USO Quality of Service. ComReg's Decision is summarised as follows:
- Re-impose the previous national and sub-national connection targets (D03/17) and re-impose the previous national and sub-national service availability targets, set out in the Decision Instrument, Schedules 19/21a to this Decision summarised below.
  - Amendment of the labelling of the sub-national area to provide greater clarity (i.e. Areas 1, 2 and 3).
  - Align the commencement date of AFL USO QoS obligations with the first day of the first month of the relevant quarter.
  - Impose an annual audit obligation, save where a Business Process Change is implemented which may impact the AFL USO QoS information and Data provided by eir. In such circumstances, a quarterly audit requirement for the relevant information and Data will apply for the quarter following that change.
  - The AFL USO QoS obligations are effective from 1 April 2019 until 30 June 2021, to coincide with the current AFL USO designation period<sup>8</sup>.

### **Connections**

#### **In-Situ Connections:**

- a. 80% of all In-Situ Connections shall be completed within 24 Hours of request.

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<sup>7</sup> Stakeholders also made general observations that did not appear to be in response to any of the seven consultation questions. Chapter 7 sets out stakeholders' general observations and ComReg's response. A copy of all non-confidential responses received are available on ComReg's website.

<sup>8</sup> Universal Service Requirements - Provision of Access at a Fixed Location (AFL USO) D05/16, Document No.16/65.

- b. 99.8% of all In-Situ Connections shall be completed within 2 Weeks of request.
- c. 100% of all In-Situ Connections shall be completed within 2 Months of request.

**All Other Connections:**

- a. 80% of All Other Connections shall be completed within 2 Weeks of request.
- b. 85% of All Other Connections shall be completed within 4 Weeks of request.
- c. 90% of All Other Connections shall be completed within 8 Weeks of request.
- d. 95% of All Other Connections shall be completed within 13 Weeks of request.
- e. 100% of All Other Connections shall be completed within 26 Weeks of request.

**Service Availability**

- a. National Service Availability Target of 0.237 maximum Working Days Outage per Line;
- b. Sub-National Service Availability Target of 0.607 maximum Working Days Outage per Line.

- 19 ComReg will begin a review 3 months after the Department of Communications Climate Action and the Environment<sup>9</sup> (the Department) has concluded the NBP contract award process. On foot of this review, ComReg will decide if it needs to commence a new consultation process in relation to the AFL USOs.

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<sup>9</sup> Department of Communications Climate Action and the Environment.

### 3. Background to the 2017 QoS regime and AFL USO QoS consultation 18/120

- 20 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”).
- 21 In order to promote the interests of users of ECS, ComReg must ensure that all users have access to basic telecommunications services in the State. This is known as the universal service and ComReg may designate one or more ECS providers to be a universal service provider (“**USP**”) with universal service obligations (“**USO**”).
- 22 In Decision 05/16 ComReg designated eircom Ltd (“**eir**”) as the USP in Ireland for the period 29 July 2016 – 30 June 2021 to provide connections and a voice service at a fixed location. That Decision seeks to ensure that end-users will continue to have access to the universal service. This includes access to a public communications network (“**PCN**”) and a publicly available telephone service over a network connection that allows for originating and receiving of national and international calls. This connection must be capable of supporting voice, and facsimile, as well as data communications at data rates that are sufficient to permit functional internet access (“**FIA**”).
- 23 Decision 05/16 obliged eir, as the designated USP, to provide access at a fixed location and telephone services (“**AFL**”) in accordance with Regulation 3 of the Universal Service Regulations (“**the Regulations**”)<sup>10</sup>. The manner in which this is achieved by the USP is not prescribed and the principle of technological neutrality allows the USP to choose the optimum method of providing access and service.

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<sup>10</sup> The European Communities (Electronic Communications Networks and Services) (Universal Service and Users’ Rights) Regulations 2011.

24 In addition, Regulation 10 of the Regulations “*Quality of service of designated undertakings*” allows ComReg to specify requirements to be complied with by the USP in relation to the quality of service performance metrics (“**QoS performance targets**”) of certain USOs that it delivers to end-users.

25 In the consultation process that led to Decision 05/16<sup>11</sup> and Decision 03/17<sup>12</sup> ComReg consulted on appropriate new QoS performance targets for the provision of access and telephone services.

26 ComReg concluded its considerations on new QoS performance targets and Decision 03/17 specified the appropriate QoS performance targets on eir as the USP for AFL.

### 3.1 ComReg statutory and policy objectives

27 Consultation 18/120 takes account of ComReg’s statutory and policy objectives, which are set out in the Framework Regulations 2011<sup>13</sup> and the Act of 2002.

28 One of ComReg’s key statutory objectives is to promote and protect the interests of end-users of the universal telecommunications service in the State. In fulfilling this overall statutory objective, ComReg seeks to ensure that it appropriately considers and balances the requirements of its other related objectives. ComReg is for example, required to promote efficient investment and innovation in new and enhanced infrastructures, while acting in a technological neutral manner (by not favouring one technology over another and not unduly placing constraints or obligations on certain technologies). Further, ComReg has a statutory objective to take due account of the variety of conditions relating to competition and consumers that exist in the various geographic areas within the State.

29 ComReg aims to promote and protect the interests of end-users by adopting measures to ensure that end-users will continue to have access to a universal service in terms of acceptable quality and availability. The QoS performance targets set out in D03/17 and consultation 18/120 encompass both fault occurrence and the time taken to repair faults when they occur in eir’s network (‘service availability’), in addition to the time taken to connect a premises.

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<sup>11</sup> Consultation 15/89 “USO-Provision of access at a fixed location” 7/8/15 and Consultation 16/31 “Universal Service Requirements – Provision of access at a fixed location (AFL)” 23/5/16.

<sup>12</sup> Decision 03/17 “Universal Service Requirements – Provision of Access at a fixed location – Quality of Service” 17/2/17

<sup>13</sup> S.I. No. 333/2011 - European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2011.

## 3.2 National Broadband Plan transition period & DCCAE – eir Commitment Agreement

- 30 In December 2014, ComReg published its ‘Call for Input’<sup>14</sup> to provide an opportunity for stakeholders to identify areas where they believed regulatory clarity may be desirable in the context of the National Broadband Plan.
- 31 In eir’s submission to the ‘Call for Input’ it raised the issue of a potential future transition from its existing copper access network to fibre access network(s) in the NBP intervention area.
- 32 On 18 June 2015, ComReg published its response to the call for input (ComReg Document No.15/57<sup>15</sup>). ComReg made it clear in consultation ComReg 16/01<sup>16</sup>, that ComReg would not want regulation to unnecessarily obstruct the replacement of legacy network elements with new technologies, where this is economically efficient and in the interests of end-users. However, ComReg also made it clear that regulation should ensure that the transition arrangements take due account of the need to minimise the disruption for end-users and OAOs.
- 33 On 7 April 2017 eir entered into a Commitment Agreement<sup>17</sup> with DCCAE in relation to eir’s plans to provide High speed broadband to 300,575 premises in rural areas on a commercial basis.
- 34 While eir’s initial estimates were that circa [REDACTED] of the 300,575 premises may be served through eVDSL (i.e. copper network), eir states that it is now seeing a level of overbuild, and where premises originally expected to be passed by eVDSL can be delivered through FTTH.
- 35 As of 30<sup>th</sup> September 2018, eir has passed [REDACTED] of the specific 300,575 premises under the Commitment Agreement. The remaining rollout is scheduled for completion by [REDACTED]<sup>18</sup>.

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<sup>14</sup> ComReg Document No. 14/26 entitled “National Broadband Plan – Call for Input on Regulatory Implications” dated 4 December 2014.

<sup>15</sup> ComReg Document No. 15/57 entitled “National Broadband Plan – Response to Call for Input” dated 18 June 2015.

<sup>16</sup> Call for Input; 16/01; “Transition from Eir’s copper network; proposed principles and notification procedures”.

<sup>17</sup> <https://www.dccae.gov.ie/documents/Commitment%20Agreement.pdf>.

<sup>18</sup> 13D information requirement from eir received 16<sup>th</sup> October 2018

- 36 At this time, ComReg does not know how the winning bid for the tender for NBP services in the NBP intervention area will be constructed; what technologies will be used; the specific timing of implementation; and to what extent copper will be reused as part of the solution.
- 37 ComReg is therefore assuming that some form of new infrastructure will be deployed in the NBP intervention area as part of the winning bid, and that this will be rolled out in parallel to the existing copper access network.
- 38 ComReg also assumes that in the intervening period, between NBP contract award and completion of the NBP roll-out, there may be a period during which dual running of the existing copper access network and the new infrastructure will be unavoidable.
- 39 The ECS market is likely to change significantly as a result of the NBP. ComReg does not anticipate that this will be fully implemented before the end of the AFL USO 5 year designation period, and ComReg anticipate that the full effect will not be realised for a minimum of 5 years. ComReg will, however, carefully monitor and review these developments in order to evaluate what impact it may have on the provision of basic communication services within the State. The most immediately foreseeable event is the NBP contract award. Accordingly, ComReg will begin a review 3 months after the Department has concluded the NBP contract award process. On foot of this review, ComReg will decide if it needs to commence a new consultation process in relation to AFL USOs.
- 40 For clarity, ComReg has no decision-making role in the design of the NBP (including decisions on the mapping or tendering process) or the award of any contracts under the NBP. As such, these NBP decision-making matters are outside of ComReg's remit. The decision-making with respect of these matters is the responsibility of the Department and the Minister.

### **3.3 eir's proposed transition from copper**

- 41 In July 2016, eir wrote to advise ComReg of its intention to retire and/or reduce access to eir's legacy service or networks outside the NBP intervention area. An Information notice containing eir's letter and ComReg's response was published on 19 January 2017<sup>19</sup>. The information notice also detailed the next steps in that process.

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<sup>19</sup> See Information Notice ComReg 17/05, 19 January 2017.

42 In October 2018 ComReg requested eir to provide an update on its current analysis and impact assessment including plans and timelines for the withdrawal of copper based services. [REDACTED]

43 Critically, during any proposed transition period, it is imperative that the minimum quality of service targets are provided, while allowing greater flexibility as to how this may be achieved by eir, particularly in remote areas<sup>21</sup>, so as to not adversely affect end-users.

### 3.4 Universal service QoS performance targets

44 In the setting the D03/17 QoS performance targets<sup>22</sup> and associated monitoring, ComReg applied the following overarching principles<sup>23</sup>:

- The targets should aim to balance the interests of end-users with promoting efficient investment.
- The targets should allow eir to have the flexibility to balance investment (in current and new networks) and repair expenditure as it considers appropriate to meet the targets.<sup>24</sup>
- The cost and other implications for eir should be proportionate.

45 Connection targets remained the same at national level as applied heretofore (i.e. D05/16) and also applied at the sub-national level for connections.

<sup>20</sup> [REDACTED]

<sup>21</sup> For the purpose of the analysis of the AFL USO and measuring the QoS performance against the targets, three sub-national areas were identified in the specific context of USO, by taking account of potential competitive constraints including the demand and supply side developments on the delivery of the universal service Areas derived for this purpose in 2015.

<sup>22</sup> D03/17

<sup>23</sup> Same overarching principles as set out in D03/17.

<sup>24</sup> The approach should not seek to require further improvement by eir in respect of its current generation network, beyond its current general performance levels at this time (LFI), which means that eir has the flexibility to balance investment costs against operational costs, in light of the NBP and the rollout of next generation networks on a commercial basis. eir will have the necessary commercial freedom to choose how they will meet their USO obligations.



46 The three sub-national areas were defined in the specific context of USO, by taking account of potential competitive constraints including the demand and supply side developments on the delivery of the universal service. The three sub-national areas<sup>25</sup> were:

- “Area 1” Market Driven Infrastructure Based Competition – based on areas where eir faces greater market-driven infrastructure-based competition, including, from Vodafone/ESB/SIRO or UPC.
- “Area 2” NBP<sup>26</sup> – based on the NBP intervention areas where a high capacity broadband access network is intended to be made available through Irish Government subsidies.
- “Area 3” eir only – based on areas where eir faces no competition from any fixed infrastructure providers but could face competition from mobile networks providing fixed access solutions.

47 To fulfil ComReg’s statutory duties to protect the interests of end-users, whilst taking proportionate measures, also promoting efficient investment and innovation by eir, ComReg decided to impose service availability targets (D03/17). This means that if fault occurrence performance deteriorates (i.e. there are more faults) then eir can address this issue to meet the performance targets by repairing the faults quicker. Equally, if fault levels improved, particularly with the rollout of fibre, then eir’s repair performance would not be as critical in meeting the targets.

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<sup>25</sup> As defined in the TERA report. It is important to note that these 3 areas were defined in the specific context of USO and especially looking at the provision of competitive constraints on the provision of voice AFL. This analysis was therefore different from the analysis aiming at defining Larger Exchange Areas (LEA) conducted in ComReg documents 11/72 and 13/14

<sup>26</sup> This area was defined based on the original NBP area (i.e. 750,000) (<https://www.dccae.gov.ie/en-ie/news-and-media/pressreleases/Pages/National%20Broadband%20Plan%20State%20Intervention.aspx>) as opposed to the currently defined NBP area <https://www.dccae.gov.ie/en-ie/communications/topics/Broadband/national-broadband-plan/Pages/National-Broadband-Plan.aspx>

### 3.4.1 eir's model

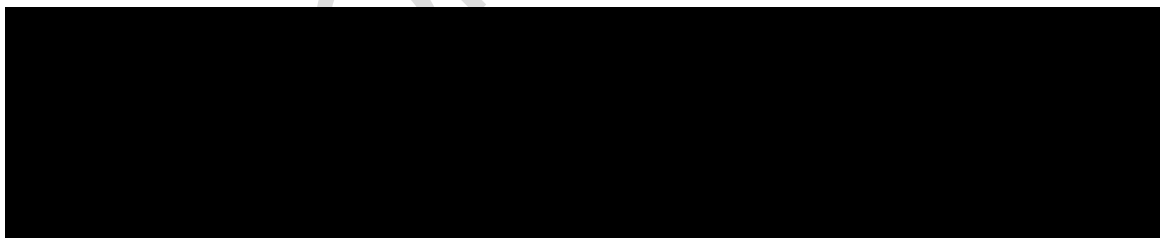
48 In D03/17 ComReg considered eir's investment/network performance scenario model ("eir's model")<sup>27</sup>. eir's model forecasted future estimates of fault occurrence (2016-2020) based on past performance and factored in aspects such as [REDACTED].

49 eir's model '*achievable speed of repair*' values were established by reviewing [REDACTED].

50 eir's model "*achievable speed of repair*" nationally, and for each of the sub-national areas, was expected by eir to remain the same during this transition period (i.e. eir's model "*achievable speed of repair*" appeared to remain constant irrespective of which investment scenario was considered) (Table 1).

51 eir subsequently confirmed in writing, on foot of a subsequent ComReg 13D Information Request<sup>28</sup> that eir's model '*achievable speed of repair*' would be achieved each year commencing July 2016 (i.e. from the commencement of eir's model). eir's model did not seek to improve further eir's '*achievable speed of repair*' in particular in certain sub-national areas.

Table 1: eir's '*achievable speed of repair*' values [REDACTED]



52 All *additional* investment in eir's model appeared to be focused on reducing the LFI, while the model's '*achievable speed of repair*' for each sub-national area remained constant in all investment scenarios.

<sup>27</sup> eir investment model 25<sup>th</sup> August 2016 "20160526\_AFLUSO\_QoS\_Repaired.xlsx (Excel workings) provided to ComReg in response to Section 13D Information Request.

<sup>28</sup> eir response to 13D 28<sup>th</sup> October 2016.

- 53 During the transition period when alternative networks are being deployed, ComReg's objective is to ensure that reasonable requests for access at a fixed location and associated quality of service are met, but without requiring unnecessary investment in eir's copper network and without inhibiting the retirement of that network, once an alternative is available. Therefore, ComReg decided that it would not be appropriate to require eir to make additional capital investment to solely reduce the LFI, in circumstances where ComReg understood that regardless of such investment, eir's model '*achievable speed of repair*' nationally and for each of the sub-national areas was expected by eir to remain the same during this transition period.
- 54 Using eir's model for its '*planned*' national investment and its national '*achievable speed of repair*', eir's figures illustrated that there would be no '*additional*' investment other than its '*planned*' investment of [ ██████████ ] M each year required to meet the national target maximum of 0.237 working days outage per line.
- 55 This allowed eir a margin of 0.005% using eir's model and addressed eir's concerns about year-to-year variability in performance. Accordingly no '*additional*' investment to reduce line faults was required as a result of ComReg setting this target.
- 56 A national service availability target of **a maximum of 0.237 working days outage per line**,<sup>29</sup> was set having regard to the 5 year observed average of availability (2009-2014) and the predicted performance based on eir's three year model<sup>6</sup>.
- 57 ComReg also introduced sub-national service availability targets to ensure that the minimum sub-national availability levels did not deteriorate, while affording greater flexibility to eir as to how they achieved this<sup>30</sup>.

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<sup>29</sup> The availability target is calculated using fault occurrence during the period and repair performance.

<sup>30</sup> These sub-national targets were a particularly important measure in light of the introduction of a single national service availability metric instead of the previous six separate national targets relating to fault repairs and fault occurrence.

- 58 Using eir's model for its '*planned*' sub-national investment and its sub-national '*achievable speed of repair*', together with eir's claimed adjustment, eir's figures illustrated that there would be no 'additional' investment other than its 'planned' investment of €[REDACTED] M each year required to meet a sub-national target of maximum of [REDACTED] working days outage per line.
- 59 ComReg noted that eir's model was confined to the copper network. While the performance of its planned fibre connections was not factored in, eir had included planned investment and its estimate of "achievable speed of repair" in its model.
- 60 eir's model took no account of possible performance improvements as a result of :
- eir's own fibre deployment strategy and the associated migration of customers.
  - any cost comparison of copper versus fibre deployment and the associated service availability improvements.
  - Its significant planned rural FTTH deployment
- 61 Accordingly, ComReg was of the view that eir could further improve performance in the NBP area (recognising the conservative approach within eir's model) through the following possible mechanisms (1) increasing the number of eir resources per fault (towards the ratio in the competitive area) and/or (2) altering any policy in relation to the dispatch of resources for repair in certain areas , to narrow the gap in speed of repair, between [REDACTED] areas and (3) rolling out new technology to poor performing lines to increase performance.
- 62 In light of these factors ComReg set the same sub-national service availability targets of a **maximum of 0.607<sup>31</sup> working days outage per line** for three sub-national areas, having regard to the 5 year observed average of availability (2009-2014) and the predicted performance based on eir's three year model. The same sub-national target was set for all areas, based on the lowest performing area. This was intended to ensure that quality of service performance in that area did not deteriorate below what ComReg regarded as the minimum.

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<sup>31</sup> The availability target is calculated using fault occurrence during the period and repair performance.

- 63 Most importantly the service availability targets allowed eir to decide whether to invest to prevent faults by either rolling out new technology or maintain existing network connections or by carrying out repairs more quickly instead of investing in preventative maintenance.
- 64 ComReg was confident that the introduction of both national and sub-national service availability targets in D03/17 was a proportionate approach to achieving a minimum QoS performance standard and that it was appropriate to oblige eir to achieve this minimum standard, during this NBP transition period, while at the same time adequately protecting the interests of end-users.
- 65 Regulation 3 (1-3) provision of access at a fixed location and provision of telephony services, do not stipulate the network or technology to be used. Accordingly eir is free to meet its USP obligations utilising either copper or fibre networks, or both.
- 66 The introduction of national and sub-national service availability targets did not force eir to invest extensively and/ or exclusively in its copper network. This provided the necessary innovation and investment incentives for eir to accelerate any of its desired network deployment and/or replacement. It also gave eir the flexibility to make commercial decisions about whether and where to commit capital expenditure (“**CAPEX**”) on proactive maintenance of its network (essentially, prevention of line faults) and/or whether and where to commit operational expenditure (“**OPEX**”) on reactive maintenance (essentially, repair of line faults).
- 67 It is ComReg’s view that the national and sub-national service availability targets allowed eir to balance investment with reactive maintenance and repairs, while continuing to protect end-users by ensuring a minimum service availability level.
- 68 ComReg also amended the appropriate definitions so that, if appropriate, they can encompass other technologies, including fibre which may be used to provide access at a fixed location instead of current generation network.
- 69 ComReg was of the view that as new networks were deployed the targets may need to be reviewed in light of the expected better performance of those new networks, which were also expected to become more prevalent and widespread nationally.

70 In this context, ComReg was of the view that it was appropriate to review the QoS performance targets in a shorter timeframe than the USO Designation itself (i.e. prior to the expiry of D03/17 on 31 December 2018 as opposed to the expiry of D05/16 on 30 June 2021).

### 3.5 AFL USO QoS Consultation 18/120

71 In December 2018 ComReg consulted<sup>32</sup> on AFL USO Quality of Service, taking into account a number of key considerations:

- Protecting the interests of end-users
- The likely deterioration in performance, in certain areas, in particular, absent any targets
- The obligation to provide access at a fixed location is technology neutral
- eir's indication<sup>33</sup> of its intention to transition its copper network to fibre
- eir's predictive model for investment/network performance ("eir's model")<sup>34</sup>

72 ComReg was also cognisant of relevant factors that may have changed since the original quality of service targets were set in 2017 (D03/17). These included the following;

- The current QoS regime
- eir's QoS performance
- Any changes to eir's current predictive model for investment/network performance – ("eir's model")
- Actual investment made by eir and eir's commercial rollout

73 To ascertain what the most appropriate QoS performance target requirements should be ComReg had regard to the following principles:

- The targets should aim to balance the interests of end-users with promoting efficient investment.
- The targets should allow eir, as the USP, to have the flexibility to balance investment (in current and new networks) and repair and expenditure as it considers appropriate to meet the targets.

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<sup>32</sup> Consultation document 18/120 "Universal Service Requirements Provision of Access at a Fixed Location (AFL) Quality of Service (QoS)

<sup>33</sup> See Information Notice ComReg 17/05, 19 January 2017

<sup>34</sup> eir's current model provided to ComReg on foot of Section 13D Information Request.

- The costs and other implications for eir should be proportionate.

74 ComReg was of the preliminary view that a change in the level of the targets was not appropriate at this time. However, ComReg was of the preliminary view that it may be appropriate to consider whether, in light of the Commitment Agreement<sup>35</sup>, the QoS of any Connections arising in the scope of that agreement should be separately reported within the NBP Area<sup>36</sup>. The NBP Area would retain the same targets as before, however the NBP Area reporting would consist of two sub-areas: NBP sub-area 1 – NBP excluding the Commitment Agreement area<sup>37</sup>; and NBP sub-area 2 – the Commitment Agreement area.

75 ComReg was of the preliminary view that it was appropriate to :

- Re-impose the national and sub-national connection targets, as set out in D03/17.
- Re-impose the national and sub-national service availability targets, as set out in D03/17.
- Retain the reporting, measurement, auditing and publication of QoS performance, save for the NBP Area reporting which would the consist of two further sub-areas: sub-area 1- NBP Area excluding the Commitment Agreement Area<sup>38</sup>; and sub-area 2 – the Commitment Agreement area (for reporting purposes), and the associated national area.
- Retain the aforementioned proposed AFL USO QoS targets until 31 December 2020.

76 Consultation 18/120 sought the views of stakeholders on ComReg’s proposals for QoS targets, to ascertain what the most appropriate requirements should be.

77 There were two responses to consultation 18/120 received from the following respondents:

- ALTO
- eir

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<sup>35</sup> <https://www.dccae.gov.ie/documents/Commitment%20Agreement.pdf>.

<sup>36</sup> As defined and set out in “*Universal Service Requirements Provision of access at a fixed location (AFL) Quality of Service (QoS)*” document number D17/10, D03/17 and “*Response to Consultation and Decision Schedules*” document 17/10a, D03/17.

<sup>37</sup> NBP sub-national area excluding the Commitment Agreement premises

<sup>38</sup> NBP sub-national area excluding the Commitment Agreement premises

- 78 A copy of all non-confidential responses received are available on ComReg's website<sup>39</sup>.

NON CONFIDENTIAL

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<sup>39</sup> [www.comreg.ie](http://www.comreg.ie) ComReg 18/120s "Universal Service Requirements Provision of Access at a Fixed Location (AFL) Quality of Service (QoS) Submissions to Consultation 18/120"



## 4. Need for AFL USO Quality of Service (QoS) in the State – Consultation Issues and ComReg’s Position

- 79 This chapter considers the continued need for an AFL USO Quality of Service in the State, and the regulatory options available to ComReg, the options consulted on by ComReg, and ComReg’s consideration of stakeholder responses. Annex 1 provides an overview of eir’s QoS performance to date.
- 80 ComReg may designate an undertaking(s) where necessary to provide the services specified in the Regulations and may, if it considers necessary, specify further measures applicable to those designated undertakings where appropriate. QoS Performance Targets is an example of this.
- 81 In Decision 05/16 ComReg designated eircom Ltd (“**eir**”) as the USP in Ireland for the period 29 July 2016 – 30 June 2021 to provide connections and a voice service at a fixed location. That Decision seeks to ensure that end-users will continue to have access to the universal service. This includes access to a communications network (“**PCN**”) and a publicly available telephone service over a network connection that allows for originating and receiving of national and international calls. This connection must be capable of supporting voice, and facsimile, as well as data communications at data rates that are sufficient to permit functional internet access (“**FIA**”).
- 82 Decision 05/16 obliged eir, as the designated USP, to provide access at a fixed location and telephone services (“**AFL**”) in accordance with Regulation 3 of the Universal Service Regulations (“**the Regulations**”)<sup>40</sup>. The manner in which this is achieved by the USP is not prescribed and the principle of technological neutrality allows the USP to choose the optimum method of providing access and service.
- 83 In addition, Regulation 10 of the Regulations “*Quality of service of designated undertakings*” allows ComReg to specify requirements to be complied with by the USP in relation to the quality of service performance metrics (“**QoS performance targets**”) of certain USOs that it delivers to end-users.

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<sup>40</sup> The European Communities (Electronic Communications Networks and Services) (Universal Service and Users’ Rights) Regulations 2011.

84 An AFL USO QoS ensures the provision of basic telecommunications services in uneconomic areas of the State as well as for uneconomic end-users in economic areas, at an appropriate quality of service. These end-users are dispersed throughout the State. AFL USO QoS contributes to social and economic inclusiveness and cohesiveness.

85 ComReg has considered what the most appropriate QoS performance target requirements should be, having regard to the following principles:-

- The targets should aim to balance the interests of end-users with promoting efficient investment.
- The targets should allow eir to have the flexibility to balance investment (in current and new networks) and repair expenditure as it considers appropriate to meet the targets.
- The cost and other implications for eir should be proportionate.

86 In light of the concerns in relation to consumer welfare, and mindful of efficient investment incentives, ComReg has considered, through analysis and consultation with stakeholders (consultation 18/120), the following options available to it with respect to the nature and structure of future QoS obligations.

87 ComReg considered the following options:

- Option 1 – Re-impose an AFL USO QoS obligation;
  - Option 1a – re-impose the AFL USO QoS targets and areas, as previously set out in D03/17;
  - Option 1b – re-impose the AFL USO QoS targets, as previously set out in D03/17, but modify the Area 2 NBP sub-national area for reporting purposes to separately identify and report on NBP sub-area 1- NBP Area excluding the Commitment Agreement area<sup>37</sup> and NBP sub-area 2 – the Commitment Agreement area;
- Option 2 - No AFL USO QoS obligation.

88 Options 1 and 2 are addressed in the RIA. Option 1a and 1b are summarised below.

## 4.1 Option 1a – Re-impose AFL USO QoS targets and areas

89 This option would re-impose the obligation on eir to comply with performance targets and areas, as previously set out in Decision 03/17.

90 The rationale for re-imposing the targets and areas, as previously set out in Decision D03/17, is the recognition by ComReg that:

- A QoS regime remains necessary and appropriate to safeguard and ensure, during the transition to a fully completed NBP infrastructure, the provision of AFL in the State at an adequate level of QoS;
- Performance targets are important measures of consumer welfare and ensure that eir's performance in delivering AFL USO services, particularly in remote areas does not adversely affect consumers standard of service;
- With a cessation of QoS targets at this time there is a risk that eir would no longer continue investing in certain areas leading to a significant deterioration in service standards. The minimum quality delivered by eir should be at least maintained during the transition to a fully completed NBP infrastructure and result in an appropriate minimum quality delivery of AFL USO service across the country; and
- ComReg's guiding principle is that consumers should not have a lesser quality of service while transitioning to new advanced networks;

91 These targets (as previously set out in D03/17) can be reasonably achieved by eir, as set out at chapter 5.

## 4.2 Option 1b – Re-impose the AFL USO QoS targets, as previously set out in D03/17, and modify the NBP reporting area

92 This option considered the following:

- Modification of 'Area 2' NBP sub-national area, as previously set out in D03/17, to separately identify and report on:
  - NBP sub-area 1 - NBP Area excluding the Commitment Agreement area<sup>37</sup>
  - NBP sub-area 2 - Commitment Agreement<sup>35</sup> area
- Re-imposition of the national and sub-national area definitions, as previously set out in D03/17.

- Re-imposition of the national and sub-national connection targets, as previously set out in D03/17, - applicable to the three sub-national areas.
- Re-imposition of the national and sub-national service availability targets, as previously set out in D03/17 -applicable to the three sub-national areas.
- Re-imposition of the reporting, measurement, auditing and publication of QoS performance, as previously set out in D03/17, save for the extension of these reporting obligations to include the two new sub-areas within the NBP sub-national Area. For the avoidance of doubt the QoS targets would only apply at the NBP sub-national area level (i.e. not the NBP sub-area 1 or 2).
- Re-imposition of the aforementioned AFL USO QoS targets (as previously set out in D03/17), until 31st December 2020.

93 Each of these elements are now expanded below.

#### 4.2.1 **Option 1b - Modification of 'Area 2' NBP sub-national reporting area (D03/17)**

94 The rationale for this approach is in recognition that the NBP area (as previously set out and defined in D03/17) is now comprised of two distinct reporting sub-areas: sub-area 1 - NBP Area excluding the Commitment Agreement area<sup>37</sup>; and sub-area 2 - the Commitment Agreement area with the Department<sup>35</sup>

95 eir has indicated that there may be a level of [ [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] ]

96 In Consultation 18/120 ComReg proposed to modify the reporting definition of the 'Area 2' NBP to include two new sub-areas:

- NBP sub-area 1 - NBP Area excluding the Commitment Agreement area; and
- NBP sub-area 2 -The Commitment Agreement area.

97 The premises within the scope of the Commitment Agreement area are identified by eir as commercial deployments.

98 Accordingly, ComReg was of the preliminary view that it would be important going forward for it to understand the quality of service levels in each of the two sub-areas.

99 ComReg was of the preliminary view that eir had the capability to provide the relevant NBP sub-national area data report to ComReg and the relevant Commitment Agreement area data report to the Department. Accordingly, ComReg was of the preliminary view that the requirement to report on the 'Area 2' NBP by NBP sub-area 1 and NBP sub-area 2 should have been easily implemented by eir.

100 In Consultation 18/120 ComReg asked the following question.

Q1. Do you agree with ComReg's preliminary view to modify 'Area 2' NBP sub-national area to include the two new NBP sub-areas (NBP sub-area 1 – NBP Area excluding the Commitment Agreement area and NBP sub-area 2 – the Commitment Agreement area) from a reporting perspective? Please provide reasons and evidence to support your view

#### 4.2.1.1 Respondents' views

101 ALTO agrees with ComReg's preliminary view to modify 'Area 2' NBP sub-national area to include the two new NBP sub-areas (NBP sub-area 1 – NBP Area excluding the Commitment Agreement area and NBP sub-area 2 – the Commitment Agreement area) from a reporting perspective, as set out in consultation document 18/120.

102 eir does not agree that the NBP Area reporting should consist of two sub-areas based around the Commitment Agreement. eir state that the Commitment Agreement is a list of premises (predominantly with unstructured addresses) referenced by eircodes, while open eir's copper network is referenced by ARDIDs. eir are of the view that the nature of unstructured addresses makes it difficult to align eir's own address referencing system (ARDID) for unstructured addresses with eircodes associated with unstructured addresses. eir state that it is *"not possible to fully reconcile copper ARDIDs to eircodes"* and its expectation is that *"over time there will be a migration of customers from the copper network to the fibre network"*.

103 eir state that: ....*"however currently the USO is met only on the copper network, or where copper provisioning is not economical, the USO is met using FCS. As such QoS will continue to be based on PSTN services delivered over open eir's copper network performance."*

104 eir state that its copper network reporting systems are organised at an exchange level, and that none of its exchange areas are dedicated to the Commitment Agreement.

105 eir state that the Commitment Reporting it provides to DCCA "deals with network roll-out and connections neither of which is related to the defined metrics for USO AFL QoS." [REDACTED]

#### 4.2.1.2 ComReg's response

106 ComReg notes the views of respondents, regarding the imposition of the proposed modification of the current 'Area 2' NBP sub-national reporting area, as discussed in Consultation 18/120.

107 In Consultation 18/120 ComReg was of the preliminary view that the reporting regime, as previously set out in D03/17 should be re-imposed, save for the proposed amendment to the definition of the NBP sub-national area (by reference to Schedule 2 in D03/17s) to explicitly include both the NBP sub-area 1 and the NBP sub-area 2.

108 ComReg does not agree with eir's claim that the USO is solely delivered by the copper network. As set out in D05/16 the obligation to provide access at a fixed location is technology neutral and does not mandate the provision of the AFL USO via the USP's copper network. The USO designation is technology agnostic and USP can choose (i.e. it is in eir's control) the optimum method of provisioning access and service as well as direct its investment as it sees fit.

109 It allows the USP to choose the optimum method and technology of providing access and service to satisfy reasonable requests. eir does not have to maintain a national narrowband network to deliver AFL USO QoS. eir can use NGA or purchase wholesale from alternative infrastructure providers (including NBP) and associated services, where appropriate to deliver on its USO obligations.

- 110 ComReg notes eir's statement regarding its current ability to report QoS at exchange level only and its expectation that over time there will be a migration of customers from the copper network to the fibre network.
- 111 Accordingly ComReg has modified its view in respect of Option 1b, in light of eir's statement regarding its current ability to report QoS at exchange level only. ComReg has now decided that Option 1a (Option 1a – re-impose the AFL USO QoS targets and areas, as previously set out in D03/17), as set out in this Decision Instrument and Schedules 19/21a, is the most appropriate option.
- 112 Furthermore, for the purposes of clarity, ComReg has decided to amend the labelling of the sub-national areas<sup>41</sup>. It is important to emphasise that this change is in name only, and no amendments have been made to the MDF/ODF composition of each area at this time.
- 113 ComReg will continue to monitor eir's evolving reporting capabilities and accordingly may request further information. ComReg may separately, from time to time, request copies of eir's [REDACTED]

## 4.2.2 National and sub-national connection targets

- 114 In Consultation 18/120, ComReg was of the preliminary view that the sub-national connection QoS targets, as previously set out in D03/17, should continue to apply to 'Area 2' NBP, and not at the individual sub-area levels.
- 115 This will benefit end-users who should experience reasonable and fair connection times irrespective of geographic location.
- 116 The national and sub-national connection targets, as previously set out in D03/17, were intended to ensure consistency in minimum service provision nationally and across all three existing geographic areas. Annex 1 of this document sets out eir's actual national and sub-national connection performance<sup>42</sup> (2017 and year to date 2018).

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<sup>41</sup> 'Area 1' comprises the MDF areas where eir faces greater market-driven infrastructure-based competition, including, from Vodafone/ESB/SIRO or UPC.

'Area 2' reflects the original NBP intervention area (i.e. 750,000) (<https://www.dccae.gov.ie/en-ie/news-and-media/press-releases/Pages/National%20Broadband%20Plan%20State%20Intervention.aspx>); it comprises the MDF areas where a high capacity broadband access network is intended to be made available through Irish government subsidies.

'Area 3' comprises the MDF areas where eir currently faces no competition from any provider of fixed infrastructure but could face competition from mobile networks providing fixed access solutions.

<sup>42</sup> Based on ComReg information notices 18/62, 18/71, 18/87, and 19/05

- 117 From the perspective of end-users, the continuation of connection targets (national and sub-national) are important to ensure that they do not experience considerable delays in getting a telephone line and service connected.
- 118 In Consultation 18/120, ComReg asked the following questions:

Q2. Do you agree with ComReg’s preliminary view that the national and sub-national connection QoS measures should be maintained? Please provide reasons and evidence to support your view.

Q3. Do you agree with ComReg’s preliminary view that the national and sub-national connection QoS measures should be maintained at the current levels? Please provide reasons and evidence to support your view.

#### 4.2.2.1 Respondents’ Views

- 119 ALTO agree with ComReg’s preliminary view that the national and sub-national connection QoS measures should be re-imposed, as set out in Consultation 18/120.
- 120 eir state that it has no objection to the continuation of the measurement of QoS performance as previously required under D03/17 for a period of “*up to 2 years during the current AFL USO designation*”.

#### 4.2.2.2 ComReg’s Response

- 121 ComReg notes respondents’ views regarding the imposition of the national and sub-national QoS connection measures, as set out in Consultation 18/120.
- 122 ComReg was of the preliminary view that the sub-national connection QoS targets, as previously set out in D03/17, should be re-imposed in ‘Area 2’ NBP and not at the individual sub-area levels. This will benefit end-users who should experience reasonable and fair connection times irrespective of geographic location.
- 123 Both national and sub-national connection targets, as previously set out in D03/17, were set at the same level, which is unlikely to result in a disproportionate cost burden to eir as the USP. This is based on eir’s own model and investment figures and relative to the benefits of to end-users and industry during the transition period.



- 124 ComReg has therefore decided that it is appropriate to set the level of the sub-national targets at the same level as the national targets, as previously set out in D03/17, in order to better protect end-users in areas where there exists relatively low levels of competition between providers.
- 125 ComReg has also decided to re-impose these national and sub-national connection QoS measures and targets, as previously set out in D03/17, for a period of two years, commencing on 1 July 2019 until 30 June 2021. These national and sub-national connection QoS measures and targets are set out in this Decision Instrument and Schedules 19/21a.
- 126 In the period between the publication of this Decision and the commencement date of the national and sub-national connection QoS targets (i.e. 1 April 2019 – 30 June 2019), eir has a reporting obligation to report on Data (as defined) as per the requirements set out in Schedule 1 A, B, C and E (but not Schedule D) of the Schedules to this Decision Instrument. For the avoidance of doubt this obligation is solely a reporting obligation.
- 127 In addition, ComReg will issue a 13D Information Request<sup>43</sup> to eir to provide and report on Data in respect of the period 1 January 2019 – 31 March 2019.

### **4.2.3 National and sub-national service availability targets**

- 128 Sub-national service availability targets are an appropriate mechanism to ensure that the amount of time that services are not working (whether because of fault, or a delayed repair) are more consistent across all of the State and at least do not fall below a minimum standard in all specified areas.
- 129 In Consultation 18/120, ComReg was of the preliminary view that a sub-national target of 0.607 should be re-imposed. ComReg's rationale was based on eir's formal confirmation to ComReg that all of its model investment scenarios are based on the copper network only and that eir's model takes no account of possible performance improvements as a result of eir's own fibre deployment strategy and the associated migration of customers, including its significant planned rural FTTH deployment.

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<sup>43</sup> Requests for information made by ComReg to eir under Section 13D of the Communications Regulation Act 2002 (as amended)

- 130 The AFL USO which eir is required to provide pursuant to Decision D05/16 is technology neutral and does not mandate the provision of the AFL USO via eir's copper network – the USO designation is technology agnostic and eir can choose (i.e. it is in eir's control) the optimum method of provisioning access and service as well as direct its investment as it sees fit.
- 131 The QoS regime as previously set out in D03/17, obliged eir, as the AFL USO USP with QoS obligations to report performance data to ComReg on a quarterly basis, two months after the quarter end, and which must be accompanied by an independent audit report of the data, as previously set out in D03/17. These targets were measured annually.
- 132 ComReg noted that eir has not yet reported, which it is entitled to do, on the use of fibre access within the quarterly data eir was obliged to submit to ComReg.
- 133 In Consultation 18/120, ComReg asked the following questions:

Q4. Do you agree with ComReg's preliminary view that the national and sub-national service availability QoS measures should be maintained? Please provide reasons and evidence to support your view.

Q5. Do you agree with ComReg's preliminary view that the national and sub-national service availability QoS measures should be maintained at the current levels? Please provide reasons and evidence to support your view.

#### 4.2.3.1 Respondents' Views

- 134 ALTO agree with ComReg's preliminary view that the national and sub-national connection QoS measures should be re-imposed and at the levels previously set out in D03/17.
- 135 eir state that it has no objection to the continuation of the measurement of QoS performance and at the same levels as previously required under D03/17, for a period of *"up to 2 years during the current AFL USO designation"*.

#### 4.2.3.2 ComReg's Response

- 136 The national and sub-national service availability targets, as set out in D03/17, are an overall combination of line fault occurrence (LFI) and average time needed to repair faults. It is stated as a maximum working days outage per line.

- 137 Service availability provides eir as the USP with the flexibility to balance preventative maintenance (Capital Expenditure - CAPEX) with operating expenditure (OPEX).
- 138 Sub-national service availability targets are an appropriate mechanism to ensure that the amount of time that services are not working (whether because of a fault, or a delayed repair), are more consistent across all of the State and at least do not fall below a minimum standard in all specified areas.
- 139 The USP is therefore afforded further flexibility within each of the sub-national areas, as over-achievement in one or more sub-national areas may be offset against under-achievement in other sub-national areas.
- 140 This flexibility is of particular importance during the NBP transition period. Service availability targets actively encourages and incentivises commercial investment and innovation in new networks, by not requiring any unnecessary investment in current generation networks and without ultimately inhibiting the retirement of that network, where appropriate.
- 141 The AFL USO which eir is required to provide pursuant to Decision D05/16 is technology neutral and does not mandate the provision of the AFL USO via eir's copper network – the USO designation is technology agnostic and eir can choose (i.e. it is in eir's control) the optimum method of provisioning access and service as well as direct its investment as it sees fit.
- 142 ComReg notes the views of respondents, regarding the re-imposition of the national and sub-national service availability targets, and the measurement of these, the national and sub-national connection QoS measures at the levels previously set out in D03/17, and as set out in Consultation document 18/120.
- 143 ComReg has therefore decided to reimpose a national service availability target of 0.237 and sub-national service availability targets of 0.607, as set out in this Decision Instrument and Schedules 19/21a, for a period of two years, commencing on 1 July 2019 until 30 June 2021. These national and sub-national service availability QoS measures and targets are set out in this Decision Instrument and Schedules 19/21a.

- 144 In the period between the publication of this Decision and the effective date of the national and sub-national service availability QoS targets (i.e. 1 April 2019 – 30 June 2019), eir has a reporting obligation to report on Data (as defined) as per the requirements set out in Schedule 1 A, B, C and E (but not Schedule D) of the Schedules to this Decision Instrument. For the avoidance of doubt this obligation is solely a reporting obligation.
- 145 In addition, ComReg will issue a 13D Information Request<sup>44</sup> to eir to provide and report on Data in respect of the period 1 January 2019 – 31 March 2019.
- 146 ComReg's rationale is based on eir formal confirmation to ComReg that all of its model investment scenarios are based on the copper network only and takes no account of possible performance improvements as a result of eir's own fibre deployment strategy and the associated migration of customers, including its significant planned rural FTTH deployment.
- 147 It is important to emphasise that eir, as the USP, will continue to have an obligation to separately measure and report on both LFI and average speed of repair, in the calculation of the national and sub-national service availability target levels.

#### **4.2.4 Reporting, measurement, auditing and publication of QoS performance**

- 148 In Consultation 18/120 ComReg was of the preliminary view that there should be no change to the calculation, reporting and audit regime, save for, the inclusion of the separate reporting on NBP sub-area 1 and 2 within the 'Area 2' NBP service availability targets at the sub-national and national level, and connection targets at the national and sub-national level, as previously set out in D03/17.
- 149 In Consultation 18/120, ComReg asked the following question:

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<sup>44</sup> Requests for information made by ComReg to eir under Section 13D of the Communications Regulation Act 2002 (as amended)

Q6. Do you agree with ComReg’s preliminary view there should be no change to the current calculation, reporting and audit regime, save for, the inclusion of, and separate reporting on the NBP sub-area 1 and 2, in the ‘Area 2’ NBP while maintaining the service availability target at sub-national and national level, and the national and sub-national connection targets?. Please provide reasons and evidence to support your view.

#### 4.2.4.1 Respondents’ Views

- 150 ALTO agree with ComReg’s preliminary view that there should be no change to the calculation, reporting and audit regime, save for, the inclusion of, and separate reporting on the NBP sub-area 1 and 2, in the ‘Area 2’ NBP while re-imposing the service availability target at sub-national and national level, and the national and sub-national connection targets, as previously set out in D03/17.
- 151 eir state that for the reasons set out in its response to Question 1 of this consultation it does not agree that the NBP Areas reporting should consist of two sub-areas based around the Commitment Agreement.
- 152 eir separately made a number of general observations in respect of the reporting, measurement, auditing and publication of QoS performance. These are addressed in chapter 7.

#### 4.2.4.2 ComReg’s Response

- 153 ComReg notes respondents’ views in respect of the calculation, reporting and audit regime, the inclusion of, and separate reporting on, the NBP sub-area 1 and 2, in the ‘Area 2’ NBP, together with ComReg’s preliminary to re-impose the service availability target at sub-national and national level, and the national and sub-national connection targets.
- 154 As outlined previously at paragraphs 108 to 113 ComReg notes eir’s statement regarding its current ability to report QoS at exchange level only and its expectation that over time there will be a migration of customers from the copper network to the fibre network.
- 155 Accordingly ComReg has now modified its view in light of eir’s statement regarding its current ability to report QoS at exchange level only. ComReg has now decided that Option 1a (Option 1a – re-impose the AFL USO QoS targets and areas, as previously set out in D03/17), and as set out this Decision Instrument and Schedules 19/21a, is most appropriate option.

156 Furthermore, for the purposes of clarity, ComReg has decided to amend the labelling of the sub-national areas<sup>45</sup>. It is important to emphasise that this change is in name only, and no amendments have been made to the MDF/ODF composition of each area at this time.

157 ComReg will continue to monitor eir's evolving reporting capabilities and accordingly may request further information. ComReg may separately, from time to time, request copies of eir's additional quarterly reports to the Department which show the number of orders placed and the number of orders completed.

### 4.3 Period of application

158 Taking into consideration eir's stated intention to retire and/or reduce of access to eir's legacy service or networks outside the NBP intervention area; and the current National Broadband Plan) ComReg was of the preliminary view that the aforementioned proposed AFL USO QoS targets should be retained until 30 June 2021.

159 ComReg has decided to re-impose these national and sub-national connection QoS measures and targets, as previously set out in D03/17, for a period of two years, commencing on 1 July 2019 to 30 June 2021. These national and sub-national connection QoS measures and targets are set out this Decision Instrument and Schedules 19/21a.

160 In the period between the publication of this Decision and the commencement date of the national and sub-national connection QoS targets (i.e. 1 April 2019 – 30 June 2019), eir has a reporting obligation to report on Data (as defined) as per the requirements set out in Schedule 1 A, B, C and E (but not Schedule D) of the Schedules to this Decision Instrument. For the avoidance of doubt this obligation is solely a reporting obligation.

161 In addition, ComReg will issue a 13D Information Request<sup>46</sup> to eir to provide and report on Data in respect of the period 1 January 2019 – 31 March 2019.

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<sup>45</sup> 'Area 1' comprises the MDF areas where eir faces greater market-driven infrastructure-based competition, including, from Vodafone/ESB/SIRO or UPC.

'Area 2' reflects the original NBP intervention area (i.e. 750,000) (<https://www.dccae.gov.ie/en-ie/news-and-media/press-releases/Pages/National%20Broadband%20Plan%20State%20Intervention.aspx>); it comprises the MDF areas where a high capacity broadband access network is intended to be made available through Irish government subsidies.

'Area 3' comprises the MDF areas where eir currently faces no competition from any provider of fixed infrastructure but could face competition from mobile networks providing fixed access solutions.

<sup>46</sup> Requests for information made by ComReg to eir under Section 13D of the Communications Regulation Act 2002 (as amended)

## 4.4 The need for AFL USO QoS in the State

- 162 Currently, there is no programme or mechanism which ensures that AFL at an appropriate level of QoS is provided to those who need it, other than a regulatory decision by ComReg.
- 163 ComReg's overall objective is to ensure that AFL USO QoS levels are appropriate, having regard to the existing and future network deployments (copper and fibre), both commercially and as a result of the NBP.
- 164 ComReg has decided that absent of any AFL USO QoS targets, eir would be unlikely to have same financial incentives to invest (capex/opex) in its AFL network(s) in the short to medium term in order to retain the level of fault occurrence.
- 165 Because of this, there can be no assurance that all AFL customers would be provided with basic telecommunications services, at an appropriate quality of service standard, under normal market conditions without AFL USO QoS being imposed.
- 166 In considering what QoS targets should be set, ComReg has considered the following overarching principles:
- The targets should aim to balance the interests of end-users with promoting efficient investment.
  - The targets should allow eir to have the flexibility to balance investment (in current and new networks) and repair expenditure as it considers appropriate to meet the targets.<sup>47</sup>
  - The cost and other implications for eir should be proportionate.
- 167 Critically, during this transition period, and rollout of any new networks, it is imperative that minimum quality of service targets are in place, while ensuring that performance, particularly in remote areas, such as the NBP area do not adversely affect end-users.
- 168 ComReg has therefore decided that there is a continued need for AFL USO QoS in the State.

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<sup>47</sup> The approach should not seek to require further improvement by eir in respect of its current generation network, beyond its current general performance levels at this time (LFI), which means that eir has the flexibility to balance investment costs against operational costs, in light of the NBP and the rollout of next generation networks on a commercial basis. eir will have the necessary commercial freedom to choose how they will meet their USO obligations.

## 5. eir's AFL USO quality of service performance since 2017

- 169 In Chapter 3, ComReg gave a brief overview of the regulation of the universal services in the State. This chapter sets out eir's QoS performance to date.
- 170 Regulation 10 of the Regulations "*Quality of service of designated undertakings*" allows ComReg to specify requirements to be complied with by the USP in relation to the quality of service performance metrics of certain USOs that it delivers to end-users.
- 171 ComReg D03/17, set legally binding annual performance targets for eir, with effect from 2 February 2017, to meet its obligations in respect of the services referred to in Regulation 3 of the Regulations.
- 172 ComReg D03/17 set targets at the national level for connection times and service availability, and introduced targets for each of the three sub-national areas<sup>48</sup> for connection times and service availability.
- 173 Connection targets remained the same at national level as applied heretofore and were also applied at the sub-national level for connections (D03/17 Decision Instrument Section 4.3)
- 174 The service availability targets combined the fault occurrence performance achieved and fault repair performance achieved to report the actual maximum working days outage per line (D03/17 Decision Instrument Section 4.4).
- 175 eir, as the USP was obliged to report performance data to ComReg on a quarterly basis, two months after the quarter end, and which had to be accompanied by an independent audit of the data in accordance with D03/17. These targets were measured annually. In accordance with this Decision, eir must provide an annual independent audit report these targets are measured annually.

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<sup>48</sup> As outlined in document 17/10a Schedule 2 the main distribution frames ('MDF') in the State are divided into three categories of sub-national areas. Area 1 – market driven infrastructure based competition (MDIBC) (Schedule 2(B) table 1; Area 2 – NBP area (Schedule 2(B) Table 2); and Area 3 – eir only area (Schedule 2(b) table3). The schedule 2 tables may be updated by ComReg, or following a request by eir (pursuant to the process set out in Section 7 of D03/17 Decision Instrument) to reflect ODFs and Aggregation Nodes as they become applicable based on CGA and NGA.



- 176 ComReg publishes USO performance data by quarter, providing an indication of performance towards the annual targets.
- 177 Annex 1 sets out full details of eir performance in 2017 and YTD in 2018. A summary is contained below.

## 5.1 Connections Summary

- 178 Table 2 summarises eir's national and sub-national performance for 2017 and provide an indication of performance towards each of the national and sub-national area '*in-situ*' connections performance targets for 2018. (See Appendix 1 for further details).
- 179 Table 3 summarises eir's national and sub-national performance for 2017 and provide an indication of performance towards each of the national and sub-national area '*all other*' connections performance targets for 2018. (See Appendix 1 for further details).

NON CONFIDENTIAL

**Table 2: Summary (national and sub-national areas) 'in-situ' connection performance (percentages) 2017 – Q3 2018**

Annual Performance Targets (ComReg Decision D03/17)		III-SITU CONNECTIONS - ACTUAL PERFORMANCE 2017				III-SITU CONNECTIONS - ACTUAL PERFORMANCE - YTD (Q1-3) 2018			
		National area	NBP area	eir only area	MDIBC area	National area	NBP area	eir only area	MDIBC area
Within 24 hours of request	80% of connections to be completed within this time period	82.50%	85.20%	82.00%	80.20%	85.70%	88.20%	85.20%	83.60%
Within 2 weeks of request	99.8% of connections to be completed within this time period	99.50%	99.50%	99.70%	99.40%	99.00%	99.40%	98.60%	98.80%
Within 2 months of request	100% of connections to be completed within this time period	99.90%	99.90%	99.90%	99.90%	99.70%	99.80%	99.90%	99.60%

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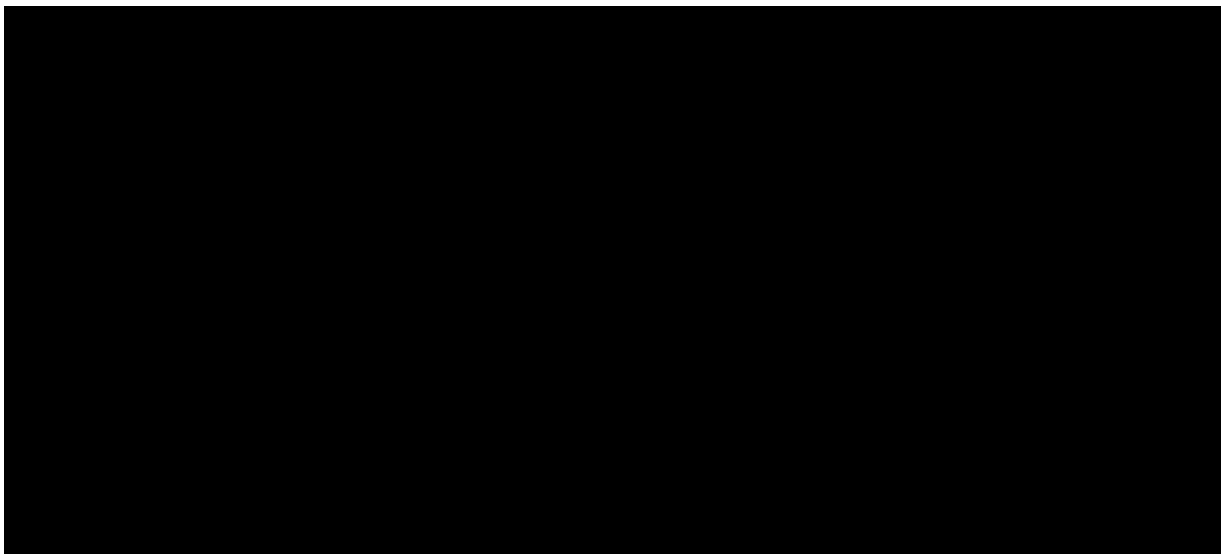
**Table 3: Summary (national and sub-national areas) ‘all other’ connection performance (percentage) 2017 – Q3 2018**

Annual Performance Targets (ComReg Decision D03/17)		ALL OTHER CONNECTIONS - ACTUAL PERFORMANCE 2017				ALL OTHER CONNECTIONS - ACTUAL PERFORMANCE - YTD (Q1-3) 2018			
		National area	NBP area	eir only area	MDIBC area	National area	NBP area	eir only area	MDIBC area
Within 2 weeks of request	80% of all requests to be completed within this time period	86.80%	82.30%	88.10%	88.10%	87.60%	85.20%	89.60%	87.70%
Within 4 weeks of request	85% of all requests to be completed within this time period	96.30%	93.90%	96.40%	97.10%	96.30%	94.60%	97.10%	96.70%
Within 8 weeks of request	90% of all requests to be completed within this time period	98.40%	97.10%	98.20%	98.90%	98.80%	97.90%	98.90%	99.10%
Within 13 weeks of request	95% of all requests to be completed within this time period	99.10%	98.30%	99.10%	99.50%	99.40%	98.80%	99.30%	99.60%
Within 26 weeks of request	100% of all requests to be completed within this time period	99.80%	99.60%	99.80%	99.90%	99.90%	99.80%	99.90%	99.90%

180 eir's model did not explicitly identify new connections. Accordingly ComReg has taken eir's reported actual connections ('in-situ' and 'all other') to estimate a future trend line.

181 This trend (Table 4) is in line with the total USO working lines in eir's model and eir's actual total USO working lines.

**Table 4: eir's model USO working lines versus actual USO working lines [REDACTED]**



182 Regulation 3 (1-3) provision of access at a fixed location and provision of telephony services, does not stipulate the network or technology to be used. Accordingly eir is free to meet its USP obligations utilising either copper or fibre networks, or both.

183 ComReg understands that a fibre to the cabinet first installation (FTTC: 1st Install) may be enabled remotely, once the operator sends to the end-user, the modem and splitter and the open eir technician patches the broadband service at the (FTTC). Subsequent reactivation of service can be done remotely. An operator can deliver VoIP on FTTC if the modem has analogue telephone adapter (ATA) i.e. phone connection (RJ11). The setup of VoIP is straight forward where the end-user plugs in phone and operator activates the VoIP service.

184 Furthermore, ComReg understands that after a fibre to the home first installation<sup>49</sup> (FTTH: 1st Install), subsequent reactivation of service can be done remotely. An operator can deliver VoIP on FTTH if the modem has ATA. The setup of VoIP is straight forward – the end-user plugs in phone and operator activates the VoIP service.

185 ComReg notes that eir has reported (as part of its input data to ComReg's Quarterly Key Data Report) that eir had [REDACTED] VoIP subscriptions as of Q4 2017 and [REDACTED] VoIP subscriptions as of Q2 2018.

186 eir's AFL USO QoS obligations obliged it to report data to ComReg on a quarterly basis, two months after the quarter end, and which must be accompanied by an independent audit report of the data, in accordance with D03/17. These targets were measured annually. ComReg notes that eir has not yet reported, which it is entitled to do on the use of fibre access within the quarterly data eir was obliged to submit to ComReg.

## 5.2 Service availability summary – 2017 and Q1-Q3 2018

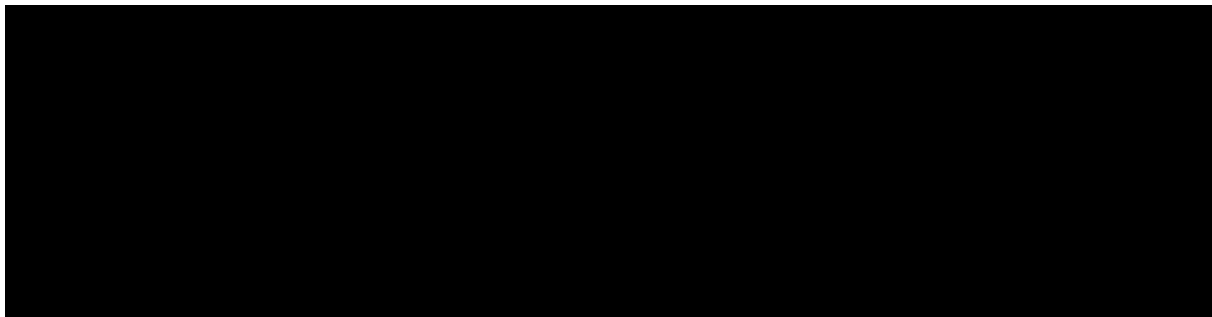
187 The service availability targets enable eir to decide whether to invest to prevent faults by either rolling out new technology or maintaining existing network connections or by carrying out repairs more quickly instead of investing in preventative maintenance.

188 As outlined in D03/17, eir's model provided an annual breakdown (2016-2019), which using eir's model '*achievable speed of repair*' demonstrated that the service availability performance targets were predicted to be met both nationally and sub-nationally in each of the three years, thus demonstrating that according to eir's model, both the national maximum of 0.237 working days outage per line (99.935%) and sub-national maximum 0.607 working days outage per line (99.834%) service availability targets would be met (Table 5).

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<sup>49</sup> Field technician survey and physical install (see video [https://www.youtube.com/watch?v=sAN\\_Tpkrrtw](https://www.youtube.com/watch?v=sAN_Tpkrrtw))

**Table 5: Predicted service availability based on LFI and on eir’s model ‘achievable speed of repair’** [8]



- 189 eir stated that the ‘*achievable speed of repair*’ values used to underpin the model were established by [REDACTED]
- 190 eir previously confirmed to ComReg that eir’s model is based on capital investment scenarios only, where the ‘*achievable speed of repair*’ is assumed to be constant and eir formally confirmed that the ‘*achievable speed of repair*’ would be achieved from the commencement of eir’s model (i.e. June 2016).
- 191 ComReg sought further confirmation from eir that the model ‘*achievable speed of repair*’ would be achieved from the commencement date of eir’s model. eir subsequently confirmed the aforementioned in writing, on foot of a subsequent ComReg 13D Information Request<sup>50</sup>.
- 192 eir’s supporting overview document<sup>51</sup> submitted in response to ComReg’s information request (16 August 2016) also described how eir planned to invest € [REDACTED] capital in the copper network on replacement/renewal in F/Y 2016/17 (€ [REDACTED] M capital over 3 years).
- 193 eir presented Table 6 showing the expected network performance nationally/sub-nationally after 3 years with the level of investment each year (€ [REDACTED] M, based on eir’s model ‘*achievable speed of repair*’ values).

<sup>50</sup> eir response to 13D 28<sup>th</sup> October 2016.

<sup>51</sup> Response to ComReg S13D of 25 Aug16.pdf.

**Table 6: eir's planned investment (€ [REDACTED] capital over 3 years) – eir model[REDACTED]***Figure 1 eir's current planned investment capital over 3 years)*

- 194 Using eir's 'planned' investment scenario (outlined in paragraph 54) and eir's yearly projected fault occurrence with its model '*achievable speed of repair*' to calculate yearly projected national and sub-national availability, the service availability performance targets were achievable each year commencing July 2016.
- 195 Between October 2018 and January 2019, ComReg issued three 13D Information Requests<sup>52</sup> to eir. Amongst other things, ComReg requested eir to provide ComReg with the current version of eir's model. ComReg also sought clarification on eir's actual level of capital expenditure in the copper network in financial years 2016/17 and 2017/18, and planned future copper and fibre expenditure.
- 196 The purpose of these 13D requests was for ComReg to verify and cross-check eir's actual capital expenditure versus eir's predicted capital expenditure as outlined in eir's model.
- 197 ComReg has used eir's model<sup>53</sup> as a comparator to assess eir's actual capital expenditure and speed of repair performance since February 2017.
- 198 In their 13D response of 23 October 2018, eir stated that the actual level of capital expenditure in the copper network in financial year 2016/17 was € [REDACTED] M and € [REDACTED] M in 2017/18. In eir's 13D responses to ComReg of 10 December 2018 and 23 January 2019, however eir stated that the actual level of capital expenditure in the copper network in financial year 2016/17 was € [REDACTED] M and € [REDACTED] M in 2017/18.

<sup>52</sup> Requests for information made by ComReg to eir under Section 13D of the Communications Regulation Act 2002 (as amended)

<sup>53</sup> eir response (23 October 2018) to 13D 17 October 2018.

199 The information provided by eir in response to these various 13D information requests did not advance ComReg’s consideration of these issues. The information confirmed that eir has incurred significantly more capital expenditure than as set out in eir’s model.

200 Table 7 summarises eir’s **actual** sub-national performance for 2017 and YTD 2018 (Q1-Q3).

**Table 7: Sub-national service availability summary 2017 - Q1- Q3 2018**

Annual Performance Targets (ComReg Decision D03/17)	SUB-NATIONAL SERVICE AVAILABILITY - ACTUAL PERFORMANCE 2017			SUB-NATIONAL SERVICE AVAILABILITY - ACTUAL PERFORMANCE -YTD (Q1-3) 2018		
	NBP area	eir only area	MDIBC area	NBP area	eir only area	MDIBC area
<i>Average fault repair time performance</i>	2.0222	1.9553	1.7384	2.2852	2.1696	1.8541
<i>Line fault occurrence performance per 100 lines</i>	22.7390	12.1352	6.6715	17.7344	7.8119	5.0053
<b>Sub-national - 0.607</b> maximum working days outage per line	0.460	0.238	0.116	0.406	0.170	0.093

201 Table 8 summarises eir’s **actual** national service availability performance for 2017 and YTD 2018 (Q1-Q3).

**Table 8: National service availability summary 2017 - Q1 - Q3 2018**

Annual Performance Targets (ComReg Decision D03/17)	NATIONAL SERVICE AVAILABILITY - ACTUAL PERFORMANCE 2017	NATIONAL SERVICE AVAILABILITY - ACTUAL PERFORMANCE - YTD (Q1-3) 2018
	National area	National area
<i>Average fault repair time performance</i>	1.9320	2.1456
<i>Line fault occurrence performance per 100 lines</i>	12.6372	9.2558
<b>National - 0.237</b> maximum working days outage per line	0.245	0.199

202 As outlined earlier in paragraph 60 eir’s model took no account of possible performance improvements (e.g. eir’s fibre deployment strategy; fibre versus copper deployment costs; and significant planned FTTH deployment):



203 Accordingly ComReg was of the view that eir could further improve performance in the NBP area (recognising the conservative approach within eir's model) through the following possible mechanisms (1) increasing the number of eir resources per fault (towards the ratio in the competitive area) and/or (2) altering any policy in relation to the dispatch of resources for repair in certain areas, to narrow the gap in speed of repair, between [REDACTED] areas and (3) rolling out new technology to poor performing lines to increase performance.

204 In light of these factors ComReg set the same sub-national service availability targets of a **maximum of 0.607<sup>54</sup> working days outage per line** for three sub-national areas, having regard to the 5 year observed average of availability (2009-2014) and the predicted performance based on eir's three year model. The same sub-national target was set for all areas, based on the lowest performing area. This was intended to ensure that quality of service performance in that area did not deteriorate below what ComReg regarded as the minimum.

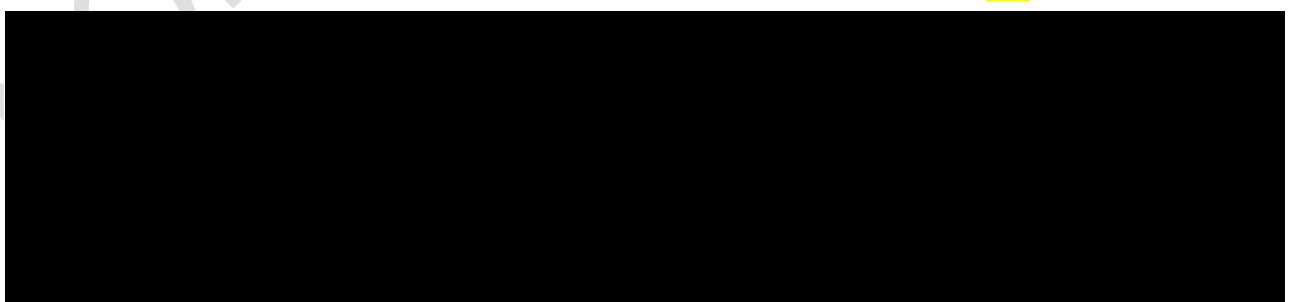
205 ComReg now examines the impact of each of the following parameters on eir's actual service availability performance:

- eir's model '*achievable speed of repair*' versus actual speed of repair
- eir's planned versus actual investment
- eir's planned versus eir's actual LFI

#### **eir's model '*achievable speed of repair*' versus actual speed of repair**

206 Table 9 demonstrates eir's actual speed of repair performance as at December 2017).

**Table 9: eir's actual speed of repair performance – December 2017<sup>55</sup>**

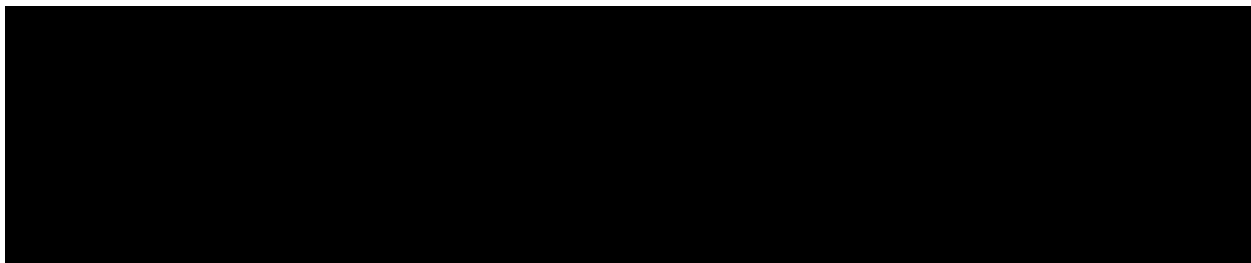


<sup>54</sup> The availability target is calculated using fault occurrence during the period and repair performance.

<sup>55</sup> eir's financial year is defined as commencing 1 July until 31 June in the relevant year.

207 Table 10 demonstrates the variances in eir's actual speed of repair performance against its '*achievable speed of repair*' in eir's model at December 2017.

**Table 10: Variance eir's actual speed of repair performance December 2017 versus '*achievable speed of repair*' eir's model [REDACTED]**

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208 Table 11 clearly demonstrates at the summary level that in 2017 and up to Q3 2018 eir's actual performance is varying when compared with its model's '*achievable speed of repair*' in all sub-national areas, and at the national level.

**Table 11: eir model '*achievable speed of repair*' versus eir's actual speed of repair [REDACTED]**

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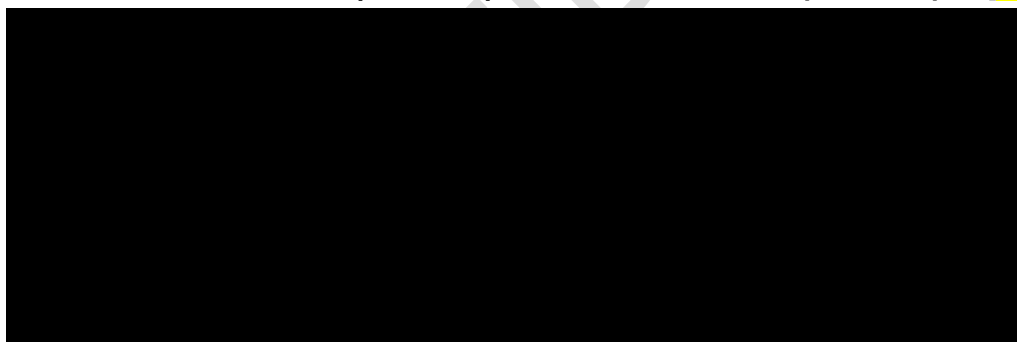
209 In 2017 eir achieved a national speed of repair which was [REDACTED] % of its stated model '*achievable speed of repair*'. eir achieved an eir only sub national area speed of repair which was [REDACTED] % of its stated model '*achievable speed of repair*'. eir achieved an MDIBC sub national area speed of repair which was [REDACTED] % of its stated model '*achievable speed of repair*'. eir achieved an NBP sub national area speed of repair which was [REDACTED] % of its stated model '*achievable speed of repair*'.

210 In Q3 2018 eir is currently achieving a national speed of repair which is [REDACTED] % of its stated model 'achievable speed of repair'. eir is currently achieving an eir only sub national area speed of repair which is [REDACTED] % of its stated model 'achievable speed of repair'. eir is currently achieving an MDIBC sub national area speed of repair which is [REDACTED] % of its stated model 'achievable speed of repair'. eir is currently achieving an NBP sub national area speed of repair which is [REDACTED] of its stated model 'achievable speed of repair'.

211 eir's model explicitly assumed that eir's 'achievable speed of repair' would be met from July 2016 (i.e. the commencement date of eir's model). Accordingly based on the flexibility provided by service availability targets eir can choose to be either invest to prevent faults by either rolling out new technology or maintaining existing network connections.

212 Table 12 clearly demonstrates eir's performance as of 2017 against its model 'achievable speed of repair'.

**Table 12: eir model 'achievable speed of repair' versus eir's actual speed of repair [REDACTED]**

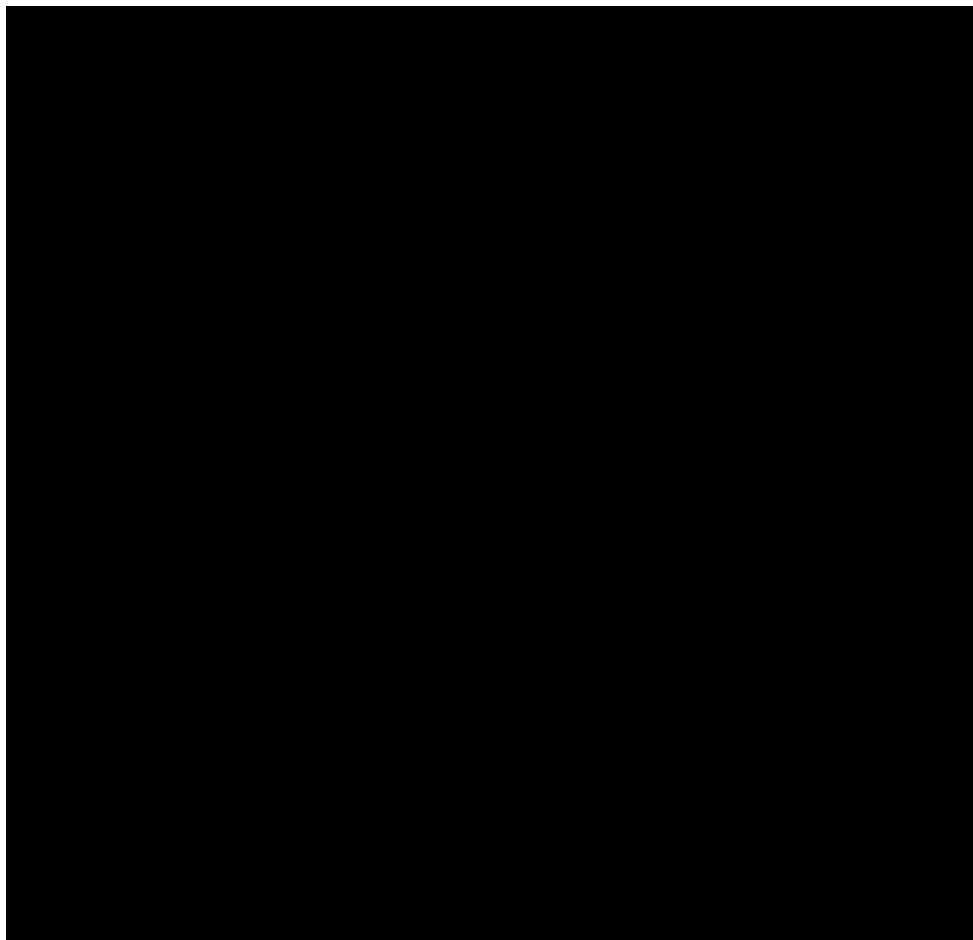


### **eir's planned versus actual capital investment**

213 Table 13 summarises eir's three different 13D responses and capital expenditure ranges<sup>56</sup> regarding eir's planned<sup>57</sup> versus actual capital expenditure in the copper network in financial years 2016/17, 2017/18, and 2018/19.

<sup>56</sup> Actual capital expenditure for 2018/19 was not requested by ComReg as part of eir's 13D information response of 23<sup>rd</sup> October 2018.

<sup>57</sup> As outlined in eir's model.

**Table 13: eir actual versus eir model planned capital expenditure - copper network [REDACTED]**

214 eir's actual level of capital expenditure<sup>58</sup> in the copper network in 2016/17 [REDACTED] and 2017/18 [REDACTED] are both higher than eir's forecasted level (eir's model). Based on eir's response of 23 October 2018, eir's actual capital expenditure in the copper network in financial year 2016/17 is [REDACTED] % of eir planned capital expenditure and is [REDACTED] % of eir planned capital expenditure in financial year 2017/18. Based on eir's responses of 10 December 2018 and 23 January 2019, eir actual capital expenditure in the copper network in financial year 2016/17 is [REDACTED] % of eir planned capital expenditure and is [REDACTED] % of eir planned capital expenditure in financial year 2017/18.

<sup>58</sup> Based on eir's response of 23rd October 2018 to ComReg's 13D of 16th October 2018, eir's response of 10<sup>th</sup> December 2018 to ComReg's 13D of 27<sup>th</sup> November 2018, and eir's response of 23<sup>rd</sup> January 2019 to ComReg's 13D of 9<sup>th</sup> January 2019.

- 215 In 2017 eir entered into a Commitment Agreement with DCCAE in relation to eir's plans to provide High speed broadband to 300,575 premises in rural areas on a commercial basis<sup>59</sup>. This will predominantly be delivered through the deployment of FTTH. While eir's initial estimates were that circa [REDACTED] % of the 300,575 premises may be served through eVDSL (i.e. copper network), [REDACTED]  
[REDACTED]  
[REDACTED]
- 216 Between October 2018 and January 2019, ComReg issued three 13D Information Requests<sup>60</sup> to eir. Amongst other things, ComReg requested eir to provide ComReg with the current version of eir's model. ComReg also sought clarification on eir's actual level of capital expenditure in the copper network in financial years 2016/17 and 2017/18, and planned future copper and fibre expenditure.
- 217 A purpose of these 13D requests was to verify and cross-check eir's actual capital expenditure versus eir's predicted capital expenditure as outlined in eir's model. ComReg has used eir's model<sup>61</sup> as a comparator to assess eir's actual capital expenditure and speed of repair performance since February 2017.
- 218 ComReg notes that section 1.3 'Sub-milestone Definitions' of the Commitment Agreement includes pole survey and pole replacement.
- 219 ComReg issued a further 13D Information Request<sup>62</sup>, which sought further details on eir's copper network capital expenditure, in order for ComReg to understand specifically how it relates to eir's commitment agreement with DCCAE.
- 220 The information provided by eir in response to these various 13D information requests did not advance ComReg's consideration of these issues. The information confirmed that eir has incurred significantly more capital expenditure than forecast.

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<sup>59</sup> Primarily commercial fibre deployments rural areas within the original NBP footprint (Commitment Agreement)

<sup>60</sup> Requests for information made by ComReg to eir under Section 13D of the Communications Regulation Act 2002 (as amended)

<sup>61</sup> eir response (23 October 2018) to 13D 17 October 2018.

<sup>62</sup> eir response (23rd January 2019) to 13D of 9th January 2019

221 The service availability targets as set out in D03/17 clearly demonstrate how they facilitate eir and provide the flexibility to decide whether to invest to prevent faults by either rolling out new technology or maintain existing network connections or by carrying out repairs more quickly instead of investing in preventative maintenance.

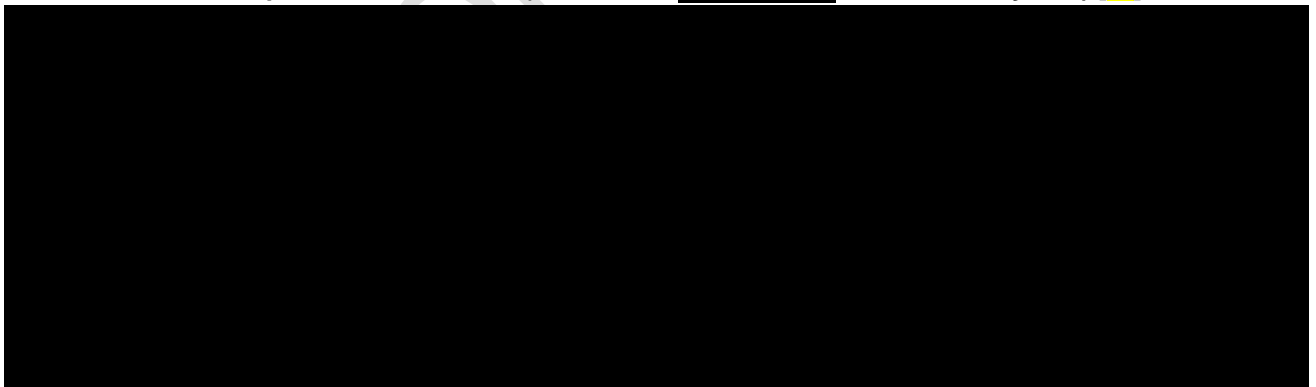
#### **eir's planned versus actual LFI**

222 eir's model is predicated on eir realising its (1) '*achievable speed of repair*' and (2) implementing its planned annual capital investment of € [REDACTED] M from the commencement of eir's model (July 2016).

223 Fault Occurrence or Line Fault Index (LFI) measures the number of faults occurring per one hundred lines. It is a proxy measure for the quality of an underlying network and is an indicator as to the level of preventative maintenance being undertaken within the network.

224 Based on eir's model Table 14 shows eir's expected copper network performance (LFI) and the maximum working day outage per line, nationally and sub-nationally after three years. eir's model demonstrated eir achieving its '*achievable speed of repair*' and the national service availability target, based on eir achieving a national LFI of [REDACTED]

**Table 14: eir's planned investment (eir model € [REDACTED] M over three years) [%]**



225 As outlined at paragraphs 54 to 61 ComReg was of the view that eir could further improve performance in the NBP area (recognising the conservative approach within eir's model) through the following possible mechanisms (1) increasing the number of eir resources per fault (towards the ratio in the competitive area) and/or (2) altering any policy in relation to the dispatch of resources for repair in certain areas, to narrow the gap in speed of repair, between [REDACTED] areas and (3) rolling out new technology to poor performing lines to increase performance. Accordingly ComReg set the sub-national target at 0.607 maximum working day outage per line.

226

[REDACTED]

227

The impact of the level of capital expenditure is demonstrated in Table 15<sup>63</sup>. It shows the **actual** line fault index (LFI) associated with the copper network performance nationally and sub-nationally (after 2 years of eir's model) based on eir's **actual** capital copper network investment.

228

eir's capital investment (€ [REDACTED] M over two years<sup>64</sup> - € [REDACTED] M over three years<sup>65</sup>) in the copper network is higher than eir's forecasted level (eir's model), and has contributed to a reduction in the current LFIs in both the national and sub-national areas (Table 15).

Table 15: Actual LFIs versus eir's model LFIs [REDACTED]

<sup>63</sup> eir's model commenced from 1 July 2016.

<sup>64</sup> Based on eir's response 13D response of 23<sup>rd</sup> October 2018

<sup>65</sup> Based on eir's 13D response of 10<sup>th</sup> December 2018 and 23<sup>rd</sup> January 2019

229 [REDACTED]

230 [REDACTED]

231 [REDACTED]

232 [REDACTED]

233 In paragraphs 222 to 231 ComReg has assessed the impact of each of the following parameters on eir’s actual service availability performance:

- actual speed of repair
- actual capital investment
- eir’s actual LFI

234 ComReg’s analysis based on the available data indicates that:

- eir appears to have made [REDACTED] level of capital investment in order to facilitate other new commercial technology deployments (eir’s fibre deployment strategy<sup>67</sup>; and significant FTTH deployment<sup>68</sup>) and to meet its Commitment Agreement obligations.

<sup>66</sup> [REDACTED]

<sup>67</sup> Primarily commercial fibre deployments in urban areas.

<sup>68</sup> Primarily commercial fibre deployments rural areas within the original NBP footprint (Commitment Agreement).



- eir's level of actual capital investment has resulted in associated reduction in the LFIs in the national, NBP and MDIBC area, however the LFI in eir only area has increased.
- eir [REDACTED] model '*achievable speed of repair*' which eir planned to achieve from July 2016.

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The level of the national service availability target is set so that in order for eir to achieve it, eir has to sufficiently over achieve each of the sub-national targets in one or more areas, to ensure that the overall national service availability target is met eir's actual performance is set out in Annex 1.

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## 6. Final Regulatory Impact Assessment (RIA)

### 6.1 Introduction

236 In Decision D05/16, ComReg determined that there was a continued need for the imposition of USO in respect of AFL and designated eir as the USP for the period 29 July 2016 to 30 June 2021.

237 With this Decision ComReg is now fulfils its statutory objective *inter alia* to ensure that the universal service is delivered at an appropriate quality. Decision D03/17 set performance targets for ensuring a minimum quality of service. Absent a USO, there is no guarantee that reasonable requests for access would be fulfilled to a sufficient standard of quality.

238 ComReg in D03/17 introduced the following broad measures in relation to QoS targets:

- Target of *service availability*, measured by combining the fault occurrence and fault repair metrics, set at the national and sub-national levels;
- Connection targets, set at the national and sub-national levels; and
- Obligations for reporting, auditing and publication of QoS performance.

239 The analysis presented in this section represents the regulatory impact assessment (“**RIA**”) which sets out ComReg’s final view of the effect upon stakeholders, notably, end users, eir itself as the USP, of imposing QoS performance targets on eir, as the designated USP.

- 240 ComReg’s approach to the RIA follows the RIA Guidelines (published in August 2007<sup>69</sup>) and takes into account the “Better Regulation” programme<sup>70</sup> and international best practice. Section 13(1) of the Act of 2002 requires ComReg to comply with Ministerial Directions. In this regard, Ministerial Policy Direction 6 February 2003 requires, that, before deciding to impose regulatory obligations on undertakings, ComReg shall conduct a RIA in accordance with European and international best practice and in accordance with measures that may be adopted under the “Better Regulation” programme.
- 241 As part of the process in selecting a preferred regulatory approach to this matter, ComReg sets out its key policy issues and objectives, followed by an assessment of the relevant regulatory options and their respective impacts for consumers, service providers and competition.
- 242 The purpose of this RIA is to assess on the likely impact upon stakeholders of the following options:
- Option 1 –Re-impose an AFL USO QoS obligation;
    - Option 1a – re-impose the AFL USO QoS targets and areas, as previously set out in D03/17.
    - Option 1b – re-impose the AFL USO QoS targets, as previously set out in D03/17 – Modify the current ‘Area 2 NBP sub-national area for reporting purposes to separately identify and report on NBP sub-area 1- NBP Area excluding the Commitment Agreement area<sup>37</sup> and NBP sub-area 2 -Commitment Agreement area<sup>35</sup>;
  - Option 2 - No AFL USO QoS obligation.

### **Step 1: Describe the Policy Issue and Identify the Objectives**

- 243 Universal service is the principle that all citizens should be provided with a range of basic services at a specific quality and at an affordable price so that they are able to participate fully in society, irrespective of their location, social standing or income.

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<sup>69</sup> ComReg Document No. 07/56 and 07/56a.

<sup>70</sup>[http://www.taoiseach.gov.ie/Publications/Publications\\_2011/Revised\\_RIA\\_Guidelines\\_June\\_2009.pdf](http://www.taoiseach.gov.ie/Publications/Publications_2011/Revised_RIA_Guidelines_June_2009.pdf).

- 244 Among ComReg’s objectives, as set out in section 12 of the Communications Regulation Act 2002 (as amended), is the promotion of the interests of users within the Community, in particular “*ensuring that all users have access to a universal service*” and “*addressing the needs of specific social groups, in particular disabled users.*”
- 245 There are both social and economic grounds for the USO, including providing services to help vulnerable users and those in remote locations whom the market might otherwise not choose to serve. The USO is also focused on bringing benefits to those with low incomes who have difficulty in affording a telephone service as well as end-users with disabilities who need particular services or facilities.
- 246 The AFL USO is an important part of the regulatory framework, as it ensures that all end users can obtain access to the universal service with acceptable quality. In order for the regulatory framework to function effectively and, in a way that benefits end users, it is vital that the actual performance of the USP in delivering AFL USO is satisfactory.
- 247 Subsequent to designating eir to deliver AFL USO, Regulation 10 of the Regulations (“*Quality of service of designated undertakings*”) allows ComReg, if it considers it necessary, to specify requirements to be complied with by eir in relation to QoS performance metrics.<sup>71</sup>
- 248 One of the most important areas of USO relates to end-users being provided with a telephone service in a reasonable period of time. It is also vital that faults, which will inevitably occur, are limited in number and are repaired speedily. Decision D03/17 performance targets provided important protections for end-users in terms of connection times, and service availability metrics.
- 249 ComReg considers that the AFL USO needs to evolve with the changing digital environment, with technological and market developments, users’ main interests may be shifting and broadband and mobile solutions, often in bundles, increasingly in demand. However, there remains 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 and at an appropriate quality.

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<sup>71</sup> Recital 17 of the Universal Service Directive provides that national regulatory authorities should be able to monitor achieved QoS for undertakings which have been designated as having universal service obligations. In relation to the QoS attained by such undertakings, national regulatory authorities should be able to take appropriate measures where they deem it necessary.

- 250 In the absence of AFL USO requirements, there is a risk that QoS would deteriorate especially in “eir only” and the “NBP” (sub-areas 1)<sup>72</sup> areas. There is a strong risk that eir would have financial incentives not to invest significantly in the short to medium term to reduce the number of faults. eir may tend to favour areas with infrastructure based competition and or the Commitment Agreement area and ensure fewer faults or shorter repair in those areas. Any significant difference in eir’s behaviour between the “market-driven infrastructure-based competition” the Commitment Agreement areas and “eir only”/ and the “NBP” (sub-area 1) areas, may result in an unacceptable deterioration of QoS within certain areas.
- 251 Thus, ComReg’s objective for imposing a QoS regime is that eir will meet at least a minimum quality for access at a fixed location and fixed voice service. ComReg seeks to ensure that end-users do not experience considerable delays in getting their phone line connected, and/or ensuring that a line is not out of order for an unreasonable period of time. A disruption or lack of service can be a source of considerable inconvenience and upset for customers, in particular, for those who live alone, are elderly or vulnerable.
- 252 In pursuing the objective to protect end-users, ComReg is also mindful of the objective to safeguard competition and promote efficient investment in infrastructure, ultimately to the benefit of end users.
- 253 In reviewing the QoS performance targets as previously set out in D03/17, ComReg considered the following overarching principles:
- The targets should aim to balance the interests of end-users with promoting efficient investment.
  - The targets should allow eir to have the flexibility to balance investment (in current and new networks) and repair expenditure as it considers appropriate to meet the targets.
  - The cost and other implications for eir should be proportionate.
- 254 Having regard to eir’s performance against the D03/17 QoS performance targets, it is imperative that minimum quality levels for AFL USO services are in place, particularly in remote areas, such as eir only and NBP (sub-area 1) so as to not adversely affect end-users.

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<sup>72</sup> NBP sub-national area excluding the Commitment Agreement premises.

255 The QoS targets would need to evolve as appropriate and align with end-users changing needs and general market developments. In considering the imposition of any regulatory measures ComReg is bound, pursuant to section 12 of the Act and Regulation 8 of the Framework Regulations, by the principle of proportionality and technological neutrality.

256 On balance, the approach to QoS targets, while protecting end-users, also gives eir appropriate flexibility in how it achieves at least a minimum quality delivery of AFL USO services particularly in remote areas so as not to adversely affect consumers.

257 ComReg is taking into account, in acting in the pursuit of its 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, in particular, elderly users and users with special needs; as more particularly set out at Article 8 of Directive 2002/21/EC<sup>73</sup> and the Regulations, ComReg must ensure all reasonable, proportionate measures to promote the interests of citizens by ensuring that they have access to universal services at a suitable quality standard.

### **Step 2: Identify and Describe the Regulatory Options**

258 In Decision D05/16, ComReg determined that there was a continued need for the imposition of USO in respect of AFL and designated eir as the USP for the period 29 July 2016 to 30 June 2021.

259 Decision D03/17 set performance targets for ensuring a minimum quality of service. In light of the expiration of D03/17 QoS performance targets, ComReg now fulfils its statutory objective *inter alia* to ensure that the universal service is delivered at an acceptable quality taking into account a number of key considerations:

- Protecting the interests of end-users
- The likely deterioration in performance, in certain areas, in particular, absent any targets
- Ensuring the obligation to provide access at a fixed location is technology neutral

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<sup>73</sup> 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").

- eir's indication<sup>74</sup> of its intention to transition its copper network to fibre
- eir's current predictive model for investment/network performance ("eir's model")<sup>75</sup>

260 ComReg, in Consultation 18/120, has considered a range of regulatory options open to it to achieve the objectives set out above.

- Option 1 – Re-impose an AFL USO QoS obligation
- Option 2 – No USO AFL QoS

#### **Option 1 – Re-impose an AFL USO QoS obligation**

261 The rationale for Option 1 is to ensure access to at least minimum quality AFL services regardless of geographic location. Should the market fail to meet end-user demand for basic services, without a USO, there is no guarantee that such standards will be in place to protect end-users. Therefore, an AFL USO obligation to comply with QoS performance targets, could be important to protecting consumer welfare *inter alia* the targets ensure that end users, in particular, vulnerable users, who require access to basic telephony at a fixed location do not experience considerable delays in getting a telephone line connected as well as ensuring that a line is not out of order for an unreasonable length of time.

262 ComReg notes that apart from AFL USO, there is no other mechanism, programme or scheme in place to ensure that AFL, as required by the Regulations, is provided to everyone that requires it at an acceptable quality where it cannot be obtained under normal market conditions. Under this approach the USP would be required to comply with QoS targets to ensure that QoS in relation to the AFL service would at least not deteriorate in the NBP transition period.

263 Having specific regard to the counterfactual analysis and its reasoning to designate eir as USP for the provision of AFL USO, ComReg has decided that there is likely a need for some form of QoS targets to continue to be in place in the short to medium term.

264 Performance targets are important measures of consumer welfare and ensure that eir's performance in delivering the AFL USO, particularly in remote areas does not adversely affect consumers' standard of service.

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<sup>74</sup> See Information Notice ComReg 17/05, 19 January 2017

<sup>75</sup> eir's current model provided to ComReg on foot of Section 13D Information Request.

- 265 Ensuring that end-users in Ireland can access basic telecommunications services with acceptable quality brings benefits to those who might otherwise be at risk of isolation, for instance those with low incomes who may have difficulty in affording a telephone service, consumers with disabilities who need particular services or facilities, or those in rural or sparsely populated areas for whom the cost of gaining access to services might otherwise be prohibitive. If end users would not be served in a competitive market, they must still have access to basic services of specified quality which are considered to be essential for participation in society.
- 266 From the end-user perspective, the availability of at least a minimum quality fixed voice service is absolutely essential in particular for more vulnerable users and to rural life. This is an important consideration in terms of consumer welfare providing continuity and reliability of voice service, including uninterrupted access to emergency services, in transition to other new advanced networks and services.
- 267 While Decision D05/16 designated eir as the USP it seeks to ensure that end-users have access to the universal service, additionally imposing QoS targets on eir will help to guarantee that reasonable requests for access are fulfilled to a sufficient standard of quality nationally and sub-nationally. In particular, it will help guarantee that actual performance of eir in delivering AFL USO is satisfactory – end-users will be provided with a telephone service in a reasonable period of time and faults, which inevitably occur, will be limited in number and/or repaired speedily. Potentially all end-users gain from QoS targets but more likely end-users living in “eir only” or “NBP” (sub-area 1) areas. (circa ██████████% active lines).<sup>76</sup>
- 268 Consumer welfare can be expected to be enhanced by re-imposing the AFL USO QoS targets. This would help to ensure that existing QoS levels in relation to the AFL service would at least not deteriorate below overall current QoS levels during the transition period.
- 269 ComReg has decided that during this transition period, there may be increased risk to consumers, given eir’s incentives to allow its copper network to degrade. This is an important consideration given that the majority of fixed voice services, including AFL services, are based on copper (i.e. PSTN technology), however this is expected to change over time with migration to advanced networks and services providing for better quality of service performance.

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<sup>76</sup> eir’s reported USO working line base by area.



- 270 As noted previously, eir has given an initial indication of its intention to transition its copper network to fibre. As the designated USP, however, it will need to provide end-users with an alternative method of connecting to the public telecommunications network and accessing voice services. Specifically, where copper-based products have been provided under a USO, and this is being withdrawn, then there will be a requirement that a suitable alternative product is offered and that the customer is not required to bear any significant cost in order to continue to avail of the service. ComReg has decided that the imposition of QoS targets serve as a means of ensuring at least a minimum performance from the USP delivering quality AFL USO services and, hence, achieving the objectives set out, in step 1. ComReg is of the view that new advanced access technologies (e.g., rollout of fibre connections) will likely bring higher QoS to the benefit of end-users.
- 271 Additionally, there is likely an industry benefit from QoS targets as availability of AFL at an acceptable quality standard can ensure businesses are contactable by customers resulting in a positive impact on the reputation of the business and confidence that its customers will have in it. Indeed, eir as the USP may gain from improved consumer confidence in AFL services (e.g., fewer faults, speedier repair times and/or installation times). End-users may have greater confidence in eir's network and may be more likely to remain eir customers and to use more of its products. Essentially, revenues for eir would most likely be retained (from the calls made by end-users in addition to the line rental charges they pay) from delivery of AFL at an acceptable quality standard.
- 272 With respect to costs, ComReg is of the view that the above benefits likely to accrue to eir will offset, to a degree, any cost to eir of meeting AFL USO QoS targets. ComReg furthermore considers that the AFL USO which eir is required to provide pursuant to Decision D05/16 is technology neutral and does not mandate the provision of the AFL USO via eir's copper network – the USO designation is technology agnostic and eir can choose (i.e. it is in eir's control) the optimum method of provisioning access and service as well as direct its investment as it sees fit.
- 273 For the above reasons, ComReg is of the view that the overall net impact of mandatory QoS targets on eir should be positive so that overall consumers and industry significantly gain from the requirement to meet minimum QoS levels in relation to connection and services during the transition to other new advanced networks and services.

## Option 2 - No AFL USO QoS obligation

- 274 Under Option 2 there would be no designation of a USP to deliver AFL USO at a minimum quality, hence, the QoS targets associated with the designation would not be able to be applied if appropriate (i.e. the counterfactual analysis).
- 275 The rationale behind this approach was that if left to the operation of market forces alone, AFL of an acceptable quality is provided to everyone that requires it in the short to medium term. This approach would involve eir (currently the USP) freely deciding what an acceptable AFL QoS is in respect of AFL as well as deciding more generally when and how to invest in its network and services.
- 276 eir would benefit in the absence of any associated QoS targets. Thus, for example, eir would freely decide what an acceptable AFL QoS is in respect of AFL and decide more generally when and how to invest in its network and services.
- 277 In this respect, eir would be unlikely to have financial incentives to invest significantly in its AFL network(s) (or certain areas) in the short to medium term to reduce the number of faults and/or to allocate sufficient resources needed to repair them. In the context of ceased USO QoS targets, any potential costs in terms of compliance with the QoS targets would also be removed. eir would have complete freedom to address the level of fault occurrence and repairs without having regarding to service availability.
- 278 There is no guarantee that universal services envisaged by the Directive would be provided at sufficient quality, thus there is a real risk of detriment to end-users.
- 279 Specifically, it is the loss or prolonged interruption of a service that is expected to function that is one of the main sources of consumer harm. Businesses expect their phone to work and make plans on the basis of this expectation, thus a removal or prolonged interruption of this service could be very costly to their business and reputation, particularly where they need frequent contact with their customers. Also, particularly vulnerable or aged consumers may find the loss or prolonged interruption of a communications system upon which they were relying for contact with their support networks extremely damaging.

280 Under this approach, ComReg recognised the potential different circumstances that may emerge in the various geographic locations which may impact the requirement or not for AFL USOs. Thus for example, where a new network is being deployed under the NBP, or otherwise commercially, it may be economically inefficient and ultimately not in the interests of stakeholders for ComReg to continue to require the maintenance of obligations relating to QoS performance targets throughout the State. In doing this, ComReg considers eir's investment incentives, in particular, the balance of incentives to invest in its network to reduce the number of faults, ultimately to the benefit of end users.

281 Having regard to the assessment of current market developments as well as eir's performance and investment with respect to QoS, as set out in eir's model and its 2017 QoS actual performance, ComReg's view of current performance is that eir's incentives to maintain an adequate level of QoS are significantly different across the country. eir would potentially have incentives to reduce investment in the network and in terms of its connection and repair efforts absent any QoS targets. Deterioration past a minimum level of QoS in relation to eir's ubiquitous network would likely be significant, and consumer welfare would suffer as a result and, in particular, "NBP" (sub-area 1)"eir only" areas.

282 ComReg has decided that, on balance, to not re-impose the QoS targets would not meet the objectives set out above, and hence it would unlikely be the most appropriate approach in respect of consumer welfare at this time.

### **Nature and structure of QoS Targets**

283 In D03/17 ComReg reviewed the need for and, scope of, AFL USO QoS targets and what the optimal targets were for the USP bearing in mind its performance in these areas alongside evolution in the market, on the supply as well as demand side.

284 On 7 April 2017 eir entered into a Commitment Agreement with DCCAE in relation to eir's plans to provide High speed broadband to 300,575 premises in rural areas on a commercial basis<sup>77</sup>.

285 ComReg has decided that there is a continued need for AFL USO QoS, to ensure that consumers throughout the State receive AFL at an acceptable quality.

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<sup>77</sup> <https://www.dccae.gov.ie/documents/Commitment%20Agreement.pdf>.

**Step 3 and 4: Determine the Impacts on Stakeholders and Competition**

286 Having regard to ComReg's objective to safeguard and ensure the provision of a minimum set of telecommunications services in the State with an acceptable quality, mindful of investment incentives and; that the complete withdrawal of the USO is not likely appropriate at this time, this final RIA summarises in the Table(s) and below ComReg's view of the impact of regulatory options with respect to QoS aspects on different stakeholders and competition.

**Option 1a – Re-impose the AFL USO QoS targets and areas, as previously set out in D03/17**

287 This option would re-impose the obligation on eir to comply with performance targets as previously set out in Decision D03/17. This option serves as a benchmark against which all other options can be compared.

288 A rationale for re-imposing targets as previously set out in Decision D03/17 would be recognition by ComReg that:

- A QoS regime remains necessary and appropriate to safeguard and ensure, during the transition to a fully completed NBP infrastructure, the provision of AFL in the State at an adequate level of QoS, based on ComReg's analysis of eir's performance;
- Performance targets are important measures of consumer welfare and ensure that eir's performance in delivering AFL USO services, particularly in remote areas does not adversely affect consumers' standard of service;
- With a cessation of QoS targets at this time there is a risk that eir would no longer continue investing in certain areas leading to a significant deterioration in service standards. The minimum quality delivered by eir should be at least maintained during the transition to a fully completed NBP infrastructure and result in an appropriate minimum quality delivery of AFL USO service across the country.
- ComReg's guiding principle is that consumers should not have a lesser quality of service while transitioning to new advanced networks; and
- These targets can be reasonably achieved by eir.

**Option 1b – Re-impose the AFL USO QoS targets, as previously set out in D03/17****Modify ‘Area 2’ NBP sub-national reporting area, as previously set out in D03/17**

289 The sub-national areas<sup>78</sup> as previously set out in D03/17 were defined as the ‘eir only’, ‘MBIDC’ and ‘NBP’ areas.

- “Area 1” (MBIDC) – Market Driven Infrastructure Based Competition – based on areas where eir faces greater market-driven infrastructure-based competition, including, from Vodafone/ESB/SIRO or UPC.
- “Area 2” NBP<sup>79</sup> – based on the NBP intervention areas where a high capacity broadband access network is intended to be made available through Irish Government subsidies.
- “Area 3” eir only – based on areas where eir faces no competition from any fixed infrastructure providers but could face competition from mobile networks providing fixed access solutions.

290 This option considers re-imposing the targets as previously set out in Decision D03/17, and modifying Area 2 –NBP reporting to recognise that this is now comprised of two distinct reporting sub-areas: sub-area 1 – NBP Area excluding the Commitment Agreement area<sup>37</sup>; and sub-area 2 Commitment Agreement with DCCAE. This ‘Area 2’ NBP was based on the original NBP area as opposed to the currently defined DCCAE NBP intervention area.

291 On 7 April 2017 eir entered into a Commitment Agreement with DCCAE in relation to eir’s plans to provide High speed broadband to 300,575 premises in rural areas on a commercial basis<sup>80</sup>.

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<sup>78</sup> It is important to note that these 3 areas are defined in the specific context of USO and especially looking at the provision of competitive constraints on the provision of voice AFL. This analysis is therefore different from the analysis aiming at defining Larger Exchange Areas (LEA) conducted in ComReg documents 11/72 and 13/14

<sup>79</sup> This area was defined based on the original NBP area (i.e. 750,000) (<https://www.dccae.gov.ie/en-ie/news-and-media/press-releases/Pages/National%20Broadband%20Plan%20State%20Intervention.aspx>) as opposed to the currently defined NBP area <https://www.dccae.gov.ie/en-ie/communications/topics/Broadband/national-broadband-plan/Pages/National-Broadband-Plan.aspx>

<sup>80</sup> <https://www.dccae.gov.ie/documents/Commitment%20Agreement.pdf>.

292 As part of Consultation 18/120, ComReg was of the preliminary view that there may be a requirement to amend the definition of 'Area 2' NBP sub-national area to distinguish between and separately report on two discrete and separate sub-areas of this sub-national area:

- Sub-area 1 - the NBP Area excluding the Commitment Agreement area and;
- Sub-area 2 - the Commitment Agreement.

293 ComReg was of the understanding that eir had the capability to identify the 300,575 premises governed by the Commitment Agreement at individual premises level. Accordingly ComReg was of the preliminary view that eir had the capability to report these premises both at individual premises level and at their associated MDF/ODF level.

294 Accordingly ComReg proposed to modify the reporting definition of the 'Area 2' NBP to now report separately on sub-area 1 (NBP Area excluding the Commitment Agreement area) and sub-area 2 (Commitment Agreement area).

295 eir has the capability to provide the relevant NBP sub-national area data reports to ComReg. Accordingly, ComReg was of the preliminary view that the requirement to report on 'Area 2' NBP sub-areas 1 and 2 should be easily implemented by eir.

296 ComReg notes eir's statement in its response to consultation regarding its current ability to report QoS at exchange level only and its expectation that over time there will be a migration of customers from the copper network to the fibre network.

297 Accordingly ComReg has now changed its preliminary view in respect of Option 1b, in light of eir's statement regarding its current ability to report QoS at exchange level only.

298 In Consultation 18/120, ComReg noted that eir has not yet reported, which it is entitled to do, on the use of fibre access within the quarterly data eir is obliged to submit to ComReg.

### **National and sub-national connection targets**

299 ComReg has decided to re-impose the sub-national connection QoS targets set out in this Decision Instrument and Schedules 19/21a. This will benefit end-users who should experience reasonable and fair connection times irrespective of geographic location.

300 The national and sub-national connection targets set out in this Decision are intended to ensure consistency in minimum service provision nationally and across all three proposed geographic areas.

301 ComReg is of the view that in light of D05/16 and the modifications to the reasonable access request criteria, the connection targets set out in this Decision are expected to be easier to achieve. Accordingly ComReg is of the view the sub-national connection targets set in D03/17 should be re-imposed.

302 Overall, ComReg is of the view that the re-imposition of these targets outlined are unlikely to result in a disproportionate cost burden, based on eir's own model and investment figures and relative to the benefits to end-users and the industry in the transition period. The benefits to consumers are likely to be significant. In contrast, if these obligations were removed no such benefits would follow to the detriment of the consumers and potentially risk being inconsistent with the Regulations.

### **National and sub-national service availability targets**

303 Having regard to the quantifiable assessment of eir's actual QoS performance in 2017 ComReg has decided that it is likely necessary and proportionate to set service availability national and sub-national targets. This approach will continue to protect end-users by ensuring that the amount of time that services are not working (either because of a line fault or a delayed repair) is more consistent across all of the State and at least does not fall below a minimum standard in all specified areas.

304 ComReg has decided that with QoS performance targets set at an appropriate level, there should be no deterioration in eir's current minimum service availability nationally or sub-nationally. Therefore, end-users in particular in "NBP" (sub-area 1) / "eir only" areas can benefit from a minimum standard as well as the potential for improved service availability which is envisaged going forward in transition to other advanced networks.

- 305 This measure should ensure that end-users in areas with less competition and, potentially experiencing lower levels of QoS, will not be significantly negatively affected in terms of QoS going forward.
- 306 It can also be expected to enhance the welfare of service providers that rely on eir's network for the delivery of services with sufficient quality, as set out in earlier sub-sections.
- 307 Setting minimum national and sub-national service availability targets also provides during the transition period maximum flexibility to eir in how it will achieve these targets. eir has further flexibility within each of the sub-national areas, in how the national service availability target is achieved. The over achievement in one or more sub-national areas, may be off set against the under achievement in other sub-national area(s), provided always, that the minimum sub-national target is achieved within each of the three individual sub-national areas, while also achieving the national target.
- 308 ComReg has decided that the re-imposition of national and sub-national service availability targets will continue to protect end-users in all specified areas. It should help ensure that quality of service performance does not deteriorate below what ComReg regards as the minimum nationally and across the sub-national areas in the State.
- 309 In this respect, the same sub-national target has been set for all areas and at a level based on the worst performing sub-national area with a view to protecting all end-users in terms of a minimum acceptable quality service. This should ensure that performance particularly in rural areas, does not adversely affect end users.
- 310 It is critical that the overall general minimum service availability does not deteriorate.
- 311 Service availability provides eir with the flexibility to choose how best to balance preventative maintenance (capital investment) with operating expenditure (Opex). In D03/17 ComReg set the national service availability target at a level to ensure that there would be no decrease in service quality, and no required improvement beyond the five year actual (2009-2014) observed average national service availability levels, having regard to eir's '*achievable speed of repair*' and its predicted fault occurrence levels in the context of eir's model (planned investment), consistent with ComReg's policy objectives.



312 As outlined in D03/17 national quality of service obligations may be insufficient to ensure an appropriate quality of service across the regions in the State. ComReg remains concerned by the extent of eir's ability to differentiate investment levels and fault repair times in different geographic areas. This can create unacceptable disparities in performance across the country.

313 Sub-national service availability targets are an appropriate mechanism to ensure that the amount of time that services are not working (whether because of a fault, or a delayed repair), are more consistent across all of the State and at least do not fall below a minimum standard in all specified areas.

314 ComReg has decided that the sub-national target of 0.607 as set out in D03/17 should be re-imposed.

315 ComReg's rationale is based on eir having formally confirmed that all of its model's investment scenarios are based on the copper network only and eir's model supplied to ComReg takes no account of possible performance improvements as a result of:

- eir's own fibre deployment strategy and the associated migration of customers.
- any cost comparison of copper versus fibre deployment and the associated service availability improvements.
- [REDACTED] <sup>81</sup>  
[REDACTED] <sup>82</sup>, [REDACTED] eir's model has taken no account of its significant planned rural FTTH deployment.

316 eir's model does not take into consideration possible performance improvements as a result of eir's own fibre deployment strategy and the associated migration of customers, including its significant planned rural FTTH deployment. Consequently, eir's approach appears to overstate the potential level of investment required to achieve the proposed minimum national and sub-national targets.

317 eir has confirmed its up to date model.

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<sup>81</sup> The second TERA report, Table 12 shows the 5 year average number of working lines within the three TERA defined areas.

<sup>82</sup> [REDACTED]

318 eir's own investor relations 'eir Q4 & Full year 2018 Results Presentation'<sup>83</sup> financial presentation states that at *“June 2018 there were 242,000 FTTH premises passed, with 195k of rural 300k rollout complete. eir is continuing FTTH rollout to a further 1.4m urban homes and business over 5 years”*<sup>84</sup>.

319 It may reasonably be expected to potentially remove poor performing connections from the areas with the poorest QoS and has therefore has the potential to automatically assist eir in improving the actual national and sub-national service availability.

320 Accordingly ComReg has decided that the sub-national service availability target of a maximum of 0.607 working days outage per line remains an appropriate target for the three sub-national areas. It establishes the minimum level of service availability to be achieved in each of the three sub-national areas.

321 Sub-national service availability targets ensure that the minimum sub-national availability levels do not deteriorate, while affording greater flexibility to eir as to how they achieve this.

322 The over achievement in one or more sub-national areas, may be off set against the reduced achievement in other sub-national area(s), provided always, that a minimum, sub-national target is achieved within each of the three individual sub-national areas in each year.

### **Reporting, measurement, auditing and publication of QoS performance**

323 ComReg was of the preliminary view that there would be no change to the calculation, reporting and audit regime, as previously set out in D03/17, save for, NBP Area reporting having a further two sub-areas: sub-area 1 – NBP Area excluding the Commitment Agreement area; and sub-area 2 –Commitment Agreement area).

324 ComReg notes respondents' views in respect of the calculation, reporting and audit regime, the inclusion of, and separate reporting on, the NBP sub-area 1 and 2, in the 'Area 2' NBP, together with ComReg's preliminary view to re-impose the service availability target at sub-national and national level, and the national and sub-national connection targets.

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<sup>83</sup>

[https://www.eir.ie/opencms/export/sites/default/.content/pdf/IR/presentations/2017\\_2018/quarter4/eir\\_4th\\_quarter\\_results\\_presentation\\_FY18\\_presentation.pdf](https://www.eir.ie/opencms/export/sites/default/.content/pdf/IR/presentations/2017_2018/quarter4/eir_4th_quarter_results_presentation_FY18_presentation.pdf).

<sup>84</sup> Slide 4.

325 As outlined previously at paragraphs 108 to 113 ComReg notes eir's statement regarding its current ability to report QoS at exchange level only and its expectation that over time there will be a migration of customers from the copper network to the fibre network.

326 Accordingly ComReg has now changed its preliminary view in light of eir's statement regarding its current ability to report QoS at exchange level only. ComReg has now decided that Option 1a (Option 1a – re-impose the AFL USO QoS targets and areas, as previously set out in D03/17), and as set out in this Decision Instrument and Schedules 19/21a, is the most appropriate option.

327 ComReg will continue to monitor eir's evolving reporting capabilities and accordingly may request further information. ComReg may separately, from time to time, request copies of eir's additional quarterly reports to the Department which show the number of orders placed and the number of orders completed.

328 The methodology for measurement of performance against QoS targets is set out in the Schedules to this Decision (ComReg Document No. 19/21a).

#### **Step 5: Assess the Impacts and Choose the Best Option**

329 ComReg has decided on the most optimal regulatory approach in respect of a QoS regime is set out below having considered:

- eir actual 2017 performance; and
- eir's model
- information provided by eir in response to information requests.<sup>85</sup>

#### **AFL USO QoS is necessary and justified**

330 Having regard to ComReg's objectives, ComReg considered the option to remove AFL USO QoS, which would involve leaving access to services mandated by the Universal Services Directive to market forces alone and eir freely deciding the quality of that service.

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<sup>85</sup> eir investment model 25<sup>th</sup> August 2016 "20160526\_AFLUSO\_QoS\_Repaired.xlsx (Excel workings) provided to ComReg in response to Section 13D Information Request.

- 331 Having considered past performance by eir relating to indicators of quality of service, and market developments generally, ComReg has decided that at this time there cannot be complete assurance that AFL USO services would, without any mandated QoS in place, be delivered at an appropriate quality throughout the State.
- 332 ComReg has decided that absent of any AFL USO QoS targets, eir acting as a profit maximising operator, would have incentives to reduce its investment in networks and services in the short to medium term (outside of the MBIDC and Commitment Agreement areas), and hence would not likely maintain an adequate level of QoS. Further, there is an observed difference between “markets driven infrastructure based competition”, and “eir only” and “NBP” areas with respect to an adequate minimum level of QoS. Consequently, there is a risk that QoS could significantly deteriorate in particular, in “eir only” and/or “NBP” areas, increasing geographic disparity in terms of QoS. This could negatively impact end-users as well as service providers relying on eir’s network to deliver services.
- 333 ComReg is of the view that any costs incurred in respect of a QoS obligation would, on balance, be outweighed by the benefits to consumers and hence the complete removal of all the targets at this time is not appropriate.
- 334 Accordingly, ComReg is of the view that re-imposing AFL USO QoS targets (Option 1a) is necessary and proportionate weighted against the objectives to be achieved by doing so. ComReg has decided that the AFL USO QoS targets and monitoring, is necessary and entirely justified to protect end users who eir, as the USP, is reasonably required to provide with a connection of suitable quality. It will lead, at a minimum, to a minimum QoS (service availability and connections) for end-users and it can be envisaged that QoS will improve going forward with the rollout of advanced networks, including, NBP.

## Requirement for AFL USO QoS targets

Options	Impact on Industry		Impact on End-user	
	Costs	Benefits	Costs	Benefits
<p><b>Option 1</b> <b>Re-impose AFL USO QoS obligations</b></p>	<p>eir may incur costs for the provision of AFL USO at an acceptable quality. These costs may depend on the specification of QoS levels.</p> <p>Where a net cost is claimed and an unfair burden is determined, providers of electronic communications network/services may be required to contribute to a fund.</p> <p>The duration of the QoS obligation may impact on the net cost claimed.</p>	<p>Provision of AFL USO at an acceptable quality benefits all operators in terms of end user demand and satisfaction about the service.</p> <p>Avoids non availability of AFL which can have a detrimental effect on businesses, as being non contactable by customers can seriously affect the reputation of the business and confidence that its customers will have in it.</p>		<p>Ensure that end-users do not experience considerable delays in getting a phone line connected; it will also ensure that a line is not out of order for an unreasonable period of time.</p> <p>Benefits consumers with sufficient QoS in transition to new advanced networks and services, current QoS should not be less while it is envisaged QoS will improve going forward with the completion of advanced networks.</p> <p>Ensure that performance particularly in remote areas does not adversely affect consumer's standard of service.</p>
<p><b>Option 2</b> <b>No AFL USO QoS obligations</b></p>	<p>eir has incentives to reduce its investment absent QoS to the detriment of operators delivering services to end users over eir's network.</p> <p>eir's incentives differ across the country and these disparities in performance</p>	<p>The deployment of new technology likely to result in higher QoS in localised areas, resulting in different QoS levels in different areas</p> <p>eir would be free to decide what 'an acceptable AFL QoS is' in respect of AFL and more generally</p>	<p>AFL USO will not be delivered to all end-users with an acceptable quality, deterioration in the level of QoS would likely be significant and to their detriment.</p> <p>eir's incentives differ across the country and the disparities in performance would likely</p>	<p>The deployment of new technology likely to result in higher QoS in localised areas, resulting in different QoS levels in different areas</p> <p>End-users in MDIBC area may experience improved QoS if</p>

	<p>could increase inter alia:</p> <ul style="list-style-type: none"> <li>• eir may favour MDIBC area and ensure fewer faults and/or shorter repair times in these areas.</li> <li>• Despite a higher level of fault occurrence in areas with limited competition (e.g. eir only area) eir may choose to invest more in MDIBC and Commitment Agreement areas.</li> </ul>	<p>have complete freedom on when and how to invest in its network and services.</p> <p>eir's incentives to maintain QoS differ across the country and it will have total flexibility as to its planned investment and/cost of repair:</p> <ul style="list-style-type: none"> <li>• in MDIBC area there are incentives to improve/maintain QoS in order to compete</li> <li>• eir will likely need to maintain/improve QoS in part of the NBP area in order to meet its Commitment Agreement obligations.</li> <li>• There may be little incentive to maintain QoS in the eir only area where eir is experiencing no competition</li> <li>• No additional net cost incurred due to the delivery of AFL USO at a sufficient QoS level, hence no claim as a result of AFL USO QoS - to the benefit of the industry including eir.</li> </ul>	<p>increase.</p> <p>Potentially all end-users would be negatively impacted with a lower QoS, more so for those in NBP (subset) or eir only areas (circa 50% lines) where currently there are limited/no alternatives.</p> <p>End users may be forced to migrate or churn more quickly onto other advanced networks alternative if and where available.</p>	<p>competition intensifies</p> <p>eir will likely need to maintain/improve QoS in NBP area in light of its Commitment Agreement obligations to the benefit of end-users in these areas only.</p>
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## Nature and Structure of QoS targets

Options	Impact on Industry		Impact on End-user	
	Costs	Benefits	Costs	Benefits
<p><b>Option 1</b></p> <p><b>Re-impose QoS targets</b> and areas</p> <p>National and sub-national connection targets</p> <p>National and sub-national Service Availability targets</p> <p><b>Sub-national areas: eir only; MBIDC; NBP</b></p>	<p>A net cost may result which can be claimed.</p> <p>Industry may be required to contribute to a fund, if net cost found to be an unfair burden</p> <p>Service availability levels may vary across the areas</p>	<p>Simpler to implement and monitor</p> <p>Deployment of new technology and NBP rollout are likely to result in higher QoS</p> <p>eir has greater flexibility to decide how and where to invest (preventative maintenance vs speed of repair)</p>	<p>Targets are both national and sub-national targets. Some end-users may experience more regular faults and longer repair times than others</p> <p>Service availability levels may vary across the areas</p>	<p>eir will be required to achieve minimum national and sub-national QoS (service availability targets) for end-users</p> <p>Ensures no excessive fault occurrence or repair times experienced in each of the sub-national areas (i.e. areas with less competition will not be significantly negatively affected in terms of QoS)</p>
<p><b>Option 2</b></p> <p><b>Re-impose QoS targets</b> and modify Area 2 –NBP reporting area</p>	<p>A net cost may arise which can be claimed</p>	<p>Ensures that commercial expenditure (Commitment Agreement) cannot be claimed as part of any US net cost.</p>	<p>In some areas, end-users may experience more regular faults and quicker repair times; or more infrequent faults and longer repair times</p>	<p>End-users benefit from at least no further deterioration in eir's current minimum service availability at the national or sub-national level</p>

Options	Impact on Industry		Impact on End-user	
	Costs	Benefits	Costs	Benefits
<p><b>Re-impose</b> national and sub-national connection targets</p> <p>National and sub-national Service Availability targets</p> <p><i>Modify Sub-national areas:</i></p> <p><b>Retain</b> eir only and MBIDC areas</p> <p><i>Modify the NBP reporting area – split in two:</i></p> <p>-Commitment Agreement Area(300,575 premises) -NBP</p>	<p>May incur additional cost in implementing the additional sub-national areas (NBP sub-area 1) and Commitment Agreement sub-area 2)</p>	<p>Provides greater QoS transparency in of the NBP area.</p> <p>Retains eir's flexibility decide how and where to invest (preventative maintenance vs speed of repair) and efficient investment</p>	<p>Sub-national areas defined based on groups of MDFs with the defined areas – on going maintenance and updating costs</p> <p>Targets set to ensure end-users a minimum level of QoS</p> <p>Possibility that QoS performance in the Commitment Agreement Area may deteriorate if network not maintained into the future</p>	<p>eir can compensate for any expected higher fault rates with speedier repairs</p> <p>Provides greater visibility on service availability and its drivers</p> <p>Sub-national targets mean end-users may benefit from a minimum service, particularly in the NBP area.</p> <p>Sub-national targets protect end-users and ensure the service quality is appropriate</p> <p>End-users should continue to get the level of QoS they are currently experiencing and, all end-users experience reasonable and fair connection times, irrespective of geographic location</p>



**The nature and structure of QoS targets is appropriate and proportionate**

- 335 In light of the consumer protection concerns, notably, that during the NBP transition period there may be an increased risk to consumers, given eir's incentive to allow its copper network to degrade, ComReg has decided that to completely remove the QoS targets is not appropriate at this time.
- 336 It is vital that the actual performance of eir in delivering AFL USO is satisfactory. Therefore, obligations in respect of QoS, which eir as the USP is currently obliged to comply with, are set out in this Decision.
- 337 ComReg recognises that the ECS market will change significantly in the future including as a result of the NBP. The design of AFL USO QoS needs to take into account market trends and likely evolutions in the coming 2 years, notably, the deployment of FTTH networks, the development of the NBP and adoption of VOIP etc.
- 338 To this end, ComReg has decided that in light of NBP, the Commitment Agreement and the roll out of next generation networks on a commercial basis that re-imposing QoS targets as set out in D03/17 is the most preferred approach.
- 339 The service availability targets are designed to promote efficient investment and innovation in new networks, without requiring any unnecessary investment in the current generation networks. In this respect, service availability targets would not require eir to invest extensively and exclusively in their copper network, and give eir greater freedom to decide commercially the balance between proactive and reactive maintenance, while achieving the service availability targets, it should help provide innovation and investment incentives for eir to accelerate any desired network deployment and/or replacement. Moreover, the USO designation is technology agnostic and eir can direct its investment as it sees fit.
- 340 Consequently, the quality delivered by eir should be at least maintained (in terms of service availability and connections) and result in a minimum appropriate standard of service across the country. Going forward, ComReg's guiding principle is that consumers should not have less than minimum quality of service while transitioning to advanced networks.
- 341 The Decision incorporates an objective assessment of the various regulatory options available to guarantee that universal services envisaged by the Directive and the Regulations would be provided with a sufficient quality standard. As part of this assessment, ComReg has undertaken an analysis of the market and technological developments and their likely evolutions and an impact assessment of regulatory options for addressing identifiable consumer protection concerns.

## 6.2 Conclusion

342 ComReg has designated eir as the USP for the period 29 July 2016 to 30 June 2021. Thus, its role is to ensure that consumers throughout the State receive AFL USO at an acceptable quality.

343 ComReg has decided that the evidence (including the recent performance by eir in relation to QoS targets, and market developments generally) does not support a complete withdrawal of AFL USO QoS targets at this time.

344 Thus, ComReg has decided that Option 1a (i.e. “re-imposition of QoS targets, as previously set out in D03/17”) represents the most justified, reasonable and proportionate of the available regulatory approaches. It seeks to balance the end-user impact with any cost burden on eir as the USP and enhances its flexibility.

345 Localised next generation network deployments, while far from ubiquitous, may have an impact on the overall quality of service level within that area. Localised deployments, may result in improvements in overall AFL USO QoS, since quality of the localised network, particularly fibre, and its associated fault incident rate, are likely to be significantly better than the existing networks.

346 ComReg has decided that the QoS targets period will be from 1 July 2019 to 30 June 2021. This is reflective of the yearly assessment of the potential impact of QoS targets.

347 ComReg has decided that it will help to ensure that AFL USO QoS levels are appropriate for the predominant current generation network, having regard to the deployment of next generation networks, both commercially and as a result of NBP. This will best achieve the objectives of protecting consumer welfare while promoting effective competition and efficient investment.

348 In Consultation 18/120 ComReg asked the following question:

Q.7 Do you agree or disagree with ComReg’s draft regulatory impact assessment of the proposed options? Please set out reasons for your answer.

## 6.3 Respondents’ Views

349 ALTO agree with ComReg’s draft regulatory impact assessment of the proposed options.

350 eir state that it has it does not consider that ComReg’s draft regulatory impact assessment provide an adequate justification for the additional granularity of reporting in what ComReg terms Area 2 “NBP”.

351 eir is of the view that any increased granularity of reporting in the form of sub-areas within in one of the existing sub-national areas: “...serves to undermine any delicate balance ComReg had previously achieved and removes the current flexibility afforded to eir as to how it achieves at least a minimum QoS while also protecting end-users.”

## 6.4 ComReg’s Response

352 ComReg notes the views of respondents in respect of the draft regulatory impact assessment of the proposed options.

353 ComReg disagrees with eir’s view that the draft RIA did not provide adequate justification for the additional granularity of reporting proposed in Consultation 18/120. ComReg outlined its rationale for its proposal in recognition that the NBP area (as previously set out and defined in D03/17) is now comprised of two distinct reporting sub-areas: sub-area 1 - NBP Area excluding the Commitment Agreement area<sup>37</sup>; and sub-area 2 - Commitment Agreement area with DCCAE<sup>35</sup> and that it would be important for ComReg to understand any differences in performance between the Commitment Agreement and the NBP Area.

354 As outlined earlier ComReg has now decided that Option 1a (i.e. “re-imposition of QoS targets, as previously set out in D03/17”) represents the most justified, reasonable and proportionate of the available regulatory approaches. It seeks to balance the end-user impact with any cost burden on eir as the USP and enhances its flexibility.

## 7. eir's other general observations

355 This chapter sets out additional observations made by eir to consultation 18/120 which were outside of the specific consultation questions. These observations are summarised and addressed below.

- Quarterly audit obligation of QoS performance reporting
- Business/Residential breakdown of performance reporting
- Recognition and accommodation of, items beyond eir's control (e.g. wayleaves) in the calculation and reporting of connections and service availability targets
- Consultation and 13D information
- Timely review of universal service obligations

### **Quarterly audit obligation of performance reporting**

356 eir is of the view that the quarterly audit obligation in respect of QoS performance reporting should become only an annual obligation, in the interests of efficiency. eir outline that as QoS targets set by ComReg are annual targets, eir is of the view that there is no benefit in conducting quarterly audits. eir is of the view that annual audits of QoS performance are more appropriate and reference ComReg's principle that "the cost and other implications for eir should be proportionate."

357 ComReg has considered eir's view and has amended the audit reporting obligation in this Decision Instrument to reflect an annual audit requirement save where a change in a related business process has occurred during a particular quarter.

### **Business/Residential breakdown of performance reporting**

358 eir is of the view that the break out of QoS performance reporting by business and residential customer segments should be removed, citing the tight timeline for submission of QoS performance reports and that the QoS targets do not apply at this granular level.

359 ComReg notes that eir is currently reporting by Business and Residential customer segments. ComReg is of the view that the continuation of this reporting obligation is proportionate as (1) this is an existing eir reporting capability; and (2) it ensures consistency from a comparison perspective with prior year.

**Recognition and accommodation of items beyond eir's control**

360 eir is of the view there is an inconsistency in the reporting principle which is not consistently applied. eir is of the view that the measurement of the speed of provisioning and repair excludes those time periods where customers are not available and/or eir cannot gain access to the premises. However where eir is prevented from gaining access to other premises or property (e.g. Wayleaves, land owners or local authorities) the USO performance reporting methodology makes no allowance for this.

361 ComReg in document 18/08<sup>86</sup> considered wayleaves. ComReg contacted a number of Local Authorities seeking information on their processes for wayleave applications and corresponding notification periods for various dig distances.<sup>87</sup> In the DCC area a 3 month notification period is required for effective excavation distances greater than 100 linear metres. For distances less than this, the notification period is 7 days. It should also be noted that DCC appear to apply the most regulated and automated rules for road opening applications compared to other Local Authorities. Having examined all of the evidence gathered, ComReg formed the preliminary view that a Service Provider can access customer sites in a reasonable timeframe<sup>88</sup> when its network infrastructure is within 100 metres of the relevant premises.

**Consultation and 13D information**

362 eir is of the view that ComReg may not have completed its QoS analysis phase before setting out its proposals in consultation 18/120. eir cite the failure of consultation 18/120 to acknowledge a 13D<sup>89</sup> response submitted on 10 December 2018, and a subsequent ComReg 13D request that issued on 9 January 2019.

363 In respect of the 13D response submitted by eir to ComReg on 10 December, ComReg notes that this was a response to a further request for clarification and expansion issued by ComReg on 27 November, which itself arose from the need for clarification in respect of eir's earlier October 13D response. The information the subject of these 13D requests was sought by ComReg to verify and cross-check eir's actual capital expenditure versus eir's predicted capital expenditure outlined in eir's model.

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<sup>86</sup> ComReg Document "Market Review Wholesale High Quality Access at a Fixed Location, Response to Consultation, Consultation and Draft Decision.

<sup>87</sup> ComReg contacted 5 local authorities: the 4 Dublin local authorities (Dublin City Council, South Dublin Co. Co., Dun Laoghaire Rathdown Co. Co. and Fingal Co. Co.) and Cork County Council.

<sup>88</sup> Such as those stipulated by retail users.

<sup>89</sup> Requests for information made by ComReg to eir under Section 13D of the Communications Regulation Act 2002 (as amended).

364 The ongoing collection and subsequent clarification of eir's information responses pertinent to USO AFL QoS during the consultation response period does not preclude nor impede ComReg from making an informed and considered decision. In any event, the information provided by eir in response to these various 13D information requests did not advance ComReg's consideration of these issues.

#### **Timely review of universal service obligation**

365 eir is of the view that ComReg must undertake proper planning to manage a more predictable regulatory regime. eir is of the view that unnecessary delay and poor project planning has been a characteristic of ComReg reviews in recent years. eir specifically seek a commitment for an "*orderly and timely review in advance of expiry with a consultation issued during H2 2020*".

366 As outlined earlier in this document and in D05/16, ComReg will begin a review 3 months after the Department has concluded the NBP contract award process. On foot of this review, ComReg will decide if it needs to commence a new consultation process in relation to AFL USOs

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## 8. Decision Instrument

### STATUTORY FUNCTIONS AND POWERS

- 1.1. This Decision and Decision Instrument is made by the Commission for Communications Regulation (“ComReg”) for the purposes of imposing obligations, requirements, specifications and Performance Targets relating to quality of service for the provision by eir of its universal service obligations in respect of the services referred to in Regulation 3 of the European Communities (Electronic Communications Networks and Services) (Universal Service and Users’ Rights) Regulations 2011 (the “**Universal Service Regulations**”).
- 1.2. This Decision and Decision Instrument is made:
  - a. pursuant to and having regard to the functions and objectives of ComReg set out in sections 10 and 12 of the Communications Regulation Act 2002 (as amended) (the “**Act**”) and Regulations 12 and 16 of the European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2011 (the “**Framework Regulations**”);
  - b. pursuant to the functions and powers conferred upon ComReg under and by virtue of Regulations 3, 7 and 10 of the Universal Service Regulations;
  - c. having regard to 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) (the “**Framework Directive**”) (as amended), and 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);
  - d. having, pursuant to section 13 of the Act, complied with the Ministerial Policy Directions where applicable;
  - e. having had regard to the views of interested parties, including those expressed pursuant to the public consultation carried out in accordance with Regulation 26 of the Universal Service Regulations and Regulation 12 of the Framework Regulations, in response to ComReg Document No. 18/120;

- f. having had regard to the matters set out in ComReg Decision D05/16 “*Universal Service Requirements - Provision of access at a fixed location (AFL USO)*”; and
- g. having had regard to the analysis and reasoning set out in ComReg Decision 02/19, Document No. 19/21 (which shall, where the context admits or requires, be construed together with this Decision Instrument).

## 2. DEFINITIONS AND INTERPRETATION

- 2.1. The following words and phrases shall have the following meanings, unless the context otherwise requires:

“**Access Line**” means a Connection from the NTP to the entry point or to the local switch or remote concentrator, whichever is nearer; which is in many cases the main distribution frame (MDF) or optical distribution frame (ODF);

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

“**Agreed Date**” means the date that a Customer has requested and that eir and a Customer have agreed for the completion of a Valid Service Order;

“**All Connections**” means the sum of In-Situ Connections and All Other Connections;

“**All Other Connections**” means Lines that are not In-Situ Connections and are not Connections with an Agreed Date and includes, without limitation, new build and pre-cabled Connections;

“**Business customer**” is a “User” within the meaning of Regulation 2 of the Framework Regulations who is not a “Residential customer”;

“**Business Process Change**” means any change to the manner of collection or processing of “Data” that may affect the integrity of the Data to be reported in accordance with Section 6.1.1 of this Decision Instrument;

“**ComReg**” means the Commission for Communications Regulation, established by Part 2 of the Communications Regulation Act 2002;

“**Connection**” means a connection to the public communications network within the meaning of Regulation 3 (1) of the Universal Service Regulations and provided pursuant to a reasonable request as set out in ComReg Decision D05/16;



**“Connection Performance Targets”** means the quality of service performance targets specified by ComReg in respect of Connections in relation to eir’s universal service obligations for the provision of access at a fixed location, as set out in Section 4.3 of this Decision Instrument;

**“Customer”** means a “Subscriber” within the meaning of Regulation 2 of the Framework Regulations or the Customer’s representative, and in the case of requests for Connection, means an “End-User”;

**“Data”** means any information, data, calculations, figures or metrics relevant to eir’s performance, as further specified in Schedule 1 of this Decision Instrument;

**“Data Collection Period”** means the quarterly period in respect of which ComReg collects Data from eir. There are four Data Collection Periods in each Year, the timing of which is set out in Schedule 3(A);

**“Day”** means a calendar day;

**“Decision Instrument”** means this Decision Instrument and its Schedules ComReg Document 19/21a hereto, which is made pursuant to, *inter alia*, Regulation 10 of the Universal Service Regulations;

**“D02/19”** means the Decision and Decision Instrument issued by ComReg on 13 March 2019, entitled “*Universal Service Requirements – Provision of Access at a Fixed Location (AFL) – Quality of Service (QoS)*”;

**“Effective Date”** means the date this Decision Instrument becomes operative and fully effective as 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 or any undertaking which owns or controls Eircom Limited, its successors and assigns and including agents, contractors or sub-contractors of any of the latter. For the purposes of this Decision Instrument the terms “subsidiary” and “related company” shall have the meanings ascribed to them in the Companies Act 2014;

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

**“Electronically Enabled”** means that the activation of a Line can be carried out remotely, through systems configuration, without the need for physical intervention;

**“Exchange Fault”** means a Fault which is attributable to an exchange or core Network issue (and for the avoidance of doubt, excludes Line Faults, Other Faults, Faults due to Vandalism and Faults due to Third Party Damage);

**“Fault”** means an incident of disrupted or degraded Network service;

**“Fault due to Vandalism”** means a Fault that has occurred due to Vandalism;

**“Fault due to Third Party Damage”** means a Fault that has occurred due to Third Party Damage;

**“Fault Occurrence”** is a measurement of the rate at which Faults occur and may refer to either the **“LFI”** ratio and / or the **“Total Faults”** ratio specified in Schedule 1;

**“Fault Repair”** means the repair of a Valid Fault resulting in the restoration of the Network to normal working order;

**“Fault Repair Time”** means the duration from the occurrence of a Valid Fault to the occurrence of Fault Repair;

**“Fibre Network”** means an electronic communications network which is used to provide public telephony services; it supports the transfer between NTPs of speech communication and also other forms of communication, such as facsimile and data;

**“Hour”** means 60 minutes;

**“In-Situ Connection”** means a Connection via an Electronically Enabled Line, excluding Connections with an Agreed Date;

**“Independent Audit Report”** means a report prepared by an independent auditor pursuant to Regulation 10 (6) of the Universal Services Regulations, in respect of the Data provided by eir to ComReg in accordance with Section 6 of this Decision Instrument;

**“Initial Data Collection Period”** means the period from 1 April 2019 to 30 June 2019, as set out in Schedule 3(A) .

**“Line”** means an Access Line which is providing a Network to a Customer;

**“Line Fault”** means a Fault which is attributable to a Line (and for the avoidance of doubt, excludes Exchange Faults, Other Faults, Faults due to Vandalism and Faults due to Third Party Damage);

**“LFI”** means the number of Line Faults per 100 Lines;

**“MDF”** means main distribution frame;

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

**“Month”** means a calendar month;

**“National Area”** means all the MDF areas (or as the case may be, ODF areas) within the State as specified by the table in Schedule 2(A), or the sum of the Sub-National Areas;

**“National Service Availability Target”** means the performance target eir must achieve for service availability in respect of the National Area, as set out in Section 4.4 of this Decision Instrument and calculated by reference to Schedule 1;

**“Network”** means any electronic communications network which eir uses to fulfil its universal service obligations, including the Public Switched Telephone Network or Fibre Network;

**“NTP”** means the network termination point, which is the physical point at which a Customer is provided with access to a public communications network; in the case of networks involving switching or routing, the NTP is identified by means of a specific network address, which may be linked to a Customer number or name;

**“ODF”** means optical distribution frame;

**“Other Fault”** means a Fault which lies within the Network, excluding a Line Fault, Exchange Fault, Fault due to Vandalism, or Fault due to Third Party Damage;

**“Performance Targets”** mean the Service Availability Targets and / or the Connection Performance Targets specified by ComReg in relation to eir’s universal service obligations for the provision of access at a fixed location, as set out in Section 4 of this Decision Instrument;

**“Public Switched Telephone Network” or “PSTN”** means an electronic communications switched network which is used to provide publicly available telephone services; it supports the transfer between NTPs of speech communications and also other forms of communications, such as facsimile and data;

**“Residential customer”** is a “Consumer” within the meaning of Regulation 2 of the Framework Regulations;

**“Schedules”** refers to Schedule 1 (*“USO Quality of Service - Calculation Methodologies”*), Schedule 2 (*“National and Sub-National Areas”*) and Schedule 3 (*“Reports to ComReg”*) of this Decision Instrument.

**“Service Availability Targets”** refers to both the National Service Availability Target and the Sub-National Service Availability Target, as set out in Section 4.4 of this Decision Instrument and calculated by reference to Schedule 1;

**“State”** means Ireland;

**“Sub-National Area”** means a collection of MDF areas (or as the case may be, ODF areas) within the State as specified by the tables in Schedule 2(B);

**“Sub-National Service Availability Target”** means the performance target eir must achieve for service availability in respect of each Sub-National Area, as set out in Section 4.4 of this Decision Instrument and calculated by reference to Schedule 1;

**“Third Party”** means any person other than eir;

**“Third Party Damage”** means unintentional damage to or destruction of the Network caused by a Third Party;

**“Total Faults”** means the sum of Line Faults plus Exchange Faults, plus Faults due to Vandalism, plus Faults due to Third Party Damage plus Other Faults;

**“USO”** means universal service obligation;

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

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

**“Valid Fault”** means any Fault within the Network experienced by a Customer, which cannot be attributed to components outside the Network;

**“Valid Service Order”** means an order by a Customer for a Line at a specified address (whether made orally, or in writing, including by any electronic means, or in any other acceptable form), that is not later deemed invalid;

**“Vandalism”** means intentional damage to or destruction of the Network caused by a Third Party, or theft by a Third Party;

**“Working Day”** means 8 Working Hours;

**“Working Days Outage per Line”** means the average number of Working Days that a Line is without Network service, calculated by reference to Schedule 1;

**“Working Hour”** means 60 minutes duration between 09:00 – 17:00, from Monday – Friday (excluding Saturday, Sunday and public holidays);

**“Week”** means 7 consecutive Days;

**“Year”** means an annual period from either 1 July 2019 to 30 June 2020 or from 1 July 2020 to 30 June 2021.

- 2.2. References to “Decision Instrument”, “Schedule”, “Section”, and “Decision” mean respectively: references to this Decision Instrument, Schedule ComReg Document 19/21a, sections of this Decision Instrument, and ComReg Decision D02/19.
- 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 otherwise admits or requires.
- 2.5. 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. SCOPE AND APPLICATION**

- 3.1. This Decision Instrument is binding upon eir and does as follows:
  - 3.1.1. specifies and imposes Connection Performance Targets in respect of the National Area and the Sub-National Areas, in respect of eir’s provision of universal service at a fixed location;
  - 3.1.2. specifies and imposes Service Availability Targets in respect of the National Area and the Sub-National Areas based on a combination of the Fault Occurrence and Fault Repair metrics, in respect of eir’s provision of universal service at a fixed location;
  - 3.1.3. describes the methodology which eir shall use for the purposes of collecting, calculating, publishing and reporting on Data and / or Performance Targets; and

- 3.1.4. describes the methodology and calculations which ComReg shall use for the purposes of monitoring and assessing compliance by eir with the Performance Targets.

#### **4. OBLIGATIONS ON EIR WITH RESPECT TO QUALITY OF SERVICE PERFORMANCE TARGETS**

- 4.1. eir shall fully comply with each of the Performance Targets specified in this Section and with the calculation methodologies described in Schedule 1 (*USO Quality of Service -Calculation Methodologies*) of this Decision Instrument.
- 4.2. ComReg may amend or revise the Performance Targets and / or the Schedules from time to time as it deems appropriate, and in so doing, ComReg shall have regard to the views of interested parties.

#### **4.3. Connections**

- 4.3.1. eir is required to achieve and fully comply with the following Connection Performance Targets in respect of the National Area and in respect of the individual Sub-National Areas as specified in Schedule 2, for each Year:

##### **In-Situ Connections:**

- a. 80% of all In-Situ Connections shall be completed within 24 Hours of request.
- b. 99.8% of all In-Situ Connections shall be completed within 2 Weeks of request.
- c. 100% of all In-Situ Connections shall be completed within 2 Months of request.

##### **All Other Connections:**

- a. 80% of All Other Connections shall be completed within 2 Weeks of request.
- b. 85% of All Other Connections shall be completed within 4 Weeks of request.

- c. 90% of All Other Connections shall be completed within 8 Weeks of request.
- d. 95% of All Other Connections shall be completed within 13 Weeks of request.
- e. 100% of All Other Connections shall be completed within 26 Weeks of request.

#### **4.4. Service Availability**

- 4.4.1. eir is required to achieve and fully comply with the following Service Availability Targets in respect of the National Area and the individual Sub-National Areas, as specified in Schedule 2, for each Year:
  - a. National Service Availability Target of 0.237 maximum Working Days Outage per Line;
  - b. Sub-National Service Availability Target of 0.607 maximum Working Days Outage per Line.

### **5. PERFORMANCE MEASUREMENT**

- 5.1. eir's performance against the Performance Targets shall be assessed based on the calculation methodologies set out at Schedule 1 and by reference to the MDF areas (or ODF areas, as the case may be) specified in Schedule 2.
- 5.2. ComReg shall monitor compliance with the Performance Targets by reference to the Independent Audited Reports of Data received from eir on an annual basis, save in such cases where an associated Business Process Change has been made, and shall use such Data to calculate eir's compliance with the Performance Targets for each Year. Where a Business Process Change is made by eir, eir shall provide ComReg with an Independent Audited Report in respect of the relevant Business Process Change(s) within two Months of the commencement of the quarter that follows the quarter in which the Business Process Change is made.
- 5.3. ComReg may publish Data relating to eir's performance on its website from time to time, either in the form of an information notice (usually entitled "Provision of Universal Service by eir – Performance Data") or otherwise, as ComReg deems appropriate.

## **6. REPORTING AND AUDITING OBLIGATIONS**

- 6.1. Pursuant to Regulation 10 (1), 10 (3), 10 (4) and 10 (6) of the Universal Service Regulations eir shall comply with the following reporting and auditing obligations:
- 6.1.1. eir shall submit Data to ComReg for each Data Collection Period and for the Initial Data Collection Period in written and electronic form (spread sheet), no later than two Months from the end of each Data Collection Period and no later than two Months from the end of the Initial Data Collection Period, in accordance with the timing of the Latest Submission Date to ComReg set out in Schedule 3(A);
  - 6.1.2. In respect of the Initial Data Collection Period only, the Data that eir is obliged to submit to ComReg shall comply with the calculation methodologies described in Schedule 1, in respect of the National and Sub-National Areas specified in Schedule 2 and in accordance with the requirements of Schedule 3, save that there shall be no requirement to report annual data in accordance with Schedule 1 D.
  - 6.1.3. eir shall ensure that Data submitted to ComReg further to Section 6.1.1 is in all respects complete, accurate and free from error and is in the format set out at Schedule 3(B);
  - 6.1.4. eir shall arrange for an Independent Audit Report of the Data to be prepared for each Year (and for each Business Process Change in accordance with Section 5.2) at eir's own cost, and shall submit it to ComReg together with a cover letter from the independent auditor who prepared the Independent Audit Report.
  - 6.1.5. The Independent Audit Report and cover letter for each Year shall be submitted no later than two months from the end of each Year
  - 6.1.6. The Independent Audit Report and cover letter for any Business Process change shall be submitted no later than the Latest Submission Date to ComReg, as set out in Schedule 3(A), that relates to the Reporting Period during which the Business Process Change first took effect.



## **7. AMENDMENT TO SCHEDULES**

- 7.1. eir shall not, without receipt of prior written approval from ComReg, implement any amendment to:
- 7.1.1. The methodology for collecting, measuring, calculating or reporting on the Data specified in Schedule 1; or
  - 7.1.2. The classification of MDFs (or as the case may be, ODFs) within the National Area and / or the Sub-National Areas, specified in Schedule 2; or
  - 7.1.3. The timing and format of reporting specified in Schedule 3 hereto.
- 7.2. In respect of any request for amendment(s) to Schedules 1, 2 or 3 by eir, the following provisions shall apply:
- 7.2.1. eir shall notify ComReg in writing of its request and shall, at the same time, also furnish ComReg with a detailed written submission outlining the basis for its request, all relevant facts and the likely effect of the proposed amendment(s);
  - 7.2.2. ComReg may request eir to provide it with further information in order to fully consider eir's request, and may specify a timeline for receipt of such information; and
  - 7.2.3. Following receipt of eir's request, its written submission and, where applicable, any further information requested, ComReg shall consider the appropriateness of the proposed amendment(s) and shall communicate to eir within a reasonable period whether, and on what terms (which terms may include obtaining an Independent Audit Report in respect of the amendment at eir's own cost), or to what extent, it approves or refuses its request for amendment(s).
- 7.3. ComReg shall, subject to any confidentiality requirements, publish any amendment(s) to Schedules 1, 2 or 3 (either following a request from eir or pursuant to Section 4.2 above) on its website.

## **8. STATUTORY POWERS NOT AFFECTED**

- 8.1. 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) from time to time.

## **9. MAINTENANCE OF OBLIGATIONS**

- 9.1. Unless expressly stated otherwise in this Decision Instrument, all obligations and requirements contained in decision notices and directions made by ComReg applying to eir and in force immediately prior to the Effective Date shall continue in force and eir shall comply with same.

## **10. CONFLICT**

- 10.1. For the avoidance of doubt, to the extent that there is any conflict between a ComReg Decision Instrument and ComReg document dated prior to the Effective Date and eir's obligations now set out herein, this Decision Instrument shall prevail, unless otherwise indicated by ComReg.

## **11. SEVERANCE**

- 11.1. If any Section, Schedule, or portion thereof 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, Schedule, or portion thereof shall, to the extent required, be severed from this Decision Instrument, and rendered ineffective, but as far as possible without modifying the remaining Sections, or portions thereof and shall not in any way affect the validity or enforcement of this Decision Instrument or other decision instruments.

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

- 12.1. This Decision, Decision Instrument and its Schedules are operative and fully effective from 13 March 2019 and shall remain in full force and effect unless otherwise specified by ComReg.

**THE 13th DAY OF MARCH 2019**

NON CONFIDENTIAL

## 9. Annex 1 – Eir’s performance 2017 and YTD 2018

### 9.1 Review of eir’s QoS performance to date

#### 9.1.1 National connections – 2017 and year to date (Q1-Q3) 2018

367 Connection times measures the length of time taken to connect an end-user for various different connection types (i.e. in-situ; new connections). The connection methods tend to remain reasonably constant. It is a measure of the ease of reconnection and of obtaining a new connection to the underlying network.

368 The introduction of both national and sub-national connection targets was intended to ensure consistency in minimum service provision nationally and across all three geographic areas.

369 The actual annual connections performance is measured, for compliance purposes, with reference to the total number of ‘*in-situ*’<sup>90</sup> connections and ‘*all other*’ connections. Performance is measured by quarter which provides an indication of performance towards the annual connection targets.

370 Table 16 provides a summary of eir’s national ‘*in-situ*’ connections for each quarter and the annual result for 2017.

**Table 16: National ‘*in-situ*’ connections – 2017**

Annual Performance Targets (ComReg Decision D03/17)		Q1 2017 <sup>91</sup> Result	Q2 2017 Result	Q3 2017 Result	Q4 2017 Result	Annual Result (1Jan 2017– 31 Dec 2017)
Within 24 hours of request	<b>80%</b> of connections to be completed within this time period	81.1%	81.3%	83.3%	84.8%	<b>82.5%</b>
Within 2 weeks of request	<b>99.8%</b> of connections to be completed within this time period	99.8%	99.7%	99.5%	98.9%	<b>99.5%</b>
Within 2 months of request	<b>100%</b> of connections to be completed within this time period	99.9%	100.0%	100.0%	99.6%	<b>99.9%</b>

<sup>90</sup> Data reported excludes information regarding in-situ connections with an agreed date, as a agreed dates for in-situ connections only arise when an end-user seeks, and eir agrees to, a deferred installation e.g. a connection for a holiday home etc.

<sup>91</sup> As required by Schedule 2 of ComReg 17/10a, D03/17 ComReg adjusted eir performance data for Q1 2017 (2/2/17 – 31/3/17) to reflect the usual 3 month data collection period.

371 Table 17 provides a summary of eir's national '*in-situ*' connections year to date (Q1-3) for 2018. This table provides an indication of performance towards the '*in-situ*' performance targets for 2018.

**Table 17: National '*in-situ*' connections – Q1- Q3 2018**

Annual Performance Targets (ComReg Decision D03/17)		Q1 2018 Result %	Q2 2018 Result %	Q3 2018 Result %	YTD Result (1 Jan 2018 – 30 Sept 2018) %
Within 24 hours of request	<b>80%</b> of connections to be completed within this time period	85.4	86.8	85.1	85.7
Within 2 weeks of request	<b>99.8%</b> of connections to be completed within this time period	98.4	99.6	99	99
Within 2 months of request	<b>100%</b> of connections to be completed within this time period	99.5	99.8	99.9	99.7

372 Table 18 provides a summary of eir's national '*all other*' connections for each quarter and the annual result for 2017. '*All other*' connections excludes information regarding '*in-situ*' connections. Furthermore where a customer introduced delay is recorded, and there is auditable evidence of such, eir shall exclude these valid service orders for the purposes of the performance targets.

**Table 18: National – '*all other*' connections – 2017**

Annual Performance Targets (ComReg Decision D03/17)		Q1 2017 Result	Q2 2017 Result	Q3 2017 Result	Q4 2017 Result	Annual Result (1 Jan 2017– 31 Dec 2017)
Within 2 weeks of request	<b>80%</b> of all requests to be completed within this time period	89.6%	89.9%	87.8%	78.5%	<b>86.8%</b>
Within 4 weeks of request	<b>85%</b> of all requests to be completed within this time period	96.8%	96.5%	96.5%	95.0%	<b>96.3%</b>
Within 8 weeks of request	<b>90%</b> of all requests to be completed within this time period	98.5%	98.0%	98.6%	98.4%	<b>98.4%</b>
Within 13 weeks of request	<b>95%</b> of all requests to be completed within this time period	99.0%	99.0%	99.3%	99.2%	<b>99.1%</b>
Within 26 weeks of request	<b>100%</b> of all requests to be completed within this time period	99.8%	99.7%	100.0%	99.8%	<b>99.8%</b>

373 Table 19 provides a summary of eir’s national ‘*all other*’ connections year to date (Q1-3) for 2018<sup>92</sup>. This table provides an indication of performance towards the ‘*all other*’ connections performance targets for 2018.

**Table 19: National ‘*all other*’ connections - Q1-Q3 2018**

Annual Performance Targets (ComReg Decision D03/17)		Q1 2018 Result %	Q2 2018 Result %	Q3 2018 Result %	YTD Result (1 Jan 2018 – 30 Sept 2018) %
Within 2 weeks of request	<b>80%</b> of all requests to be completed within this time period	78.6	89.8	93.8	87.6
Within 4 weeks of request	<b>85%</b> of all requests to be completed within this time period	93.1	96.2	99.3	96.3
Within 8 weeks of request	<b>90%</b> of all requests to be completed within this time period	98.2	98	100	98.8
Within 13 weeks of request	<b>95%</b> of all requests to be completed within this time period	99.1	98.9	100	99.4
Within 26 weeks of request	<b>100%</b> of all requests to be completed within this time period	99.8	99.8	100	99.9

## 9.1.2 Sub-national connections – 2017 and year to date (Q1-Q3) 2018

### 9.1.2.1 MDIBC area – 2017 and year to date (Q1-Q3) 2018

374 Table 20 provides a summary of eir’s sub-national MDIBC area ‘*in-situ*’ connections for each quarter and the annual result for 2017.

**Table 20: MDIBC area – ‘*in situ*’ connections – 2017**

Annual Performance Targets (ComReg Decision D03/17)		Q1 2017 Result	Q2 2017 Result	Q3 2017 Result	Q4 2017 Result	Annual Result (1 Jan 2017– 31 Dec 2017)
Within 24 hours of request	<b>80%</b> of connections to be completed within this time period	80.5%	76.8%	80.5%	83.5%	<b>80.2%</b>
Within 2 weeks of request	<b>99.8%</b> of connections to be completed within this time period	99.5%	99.3%	99.8%	98.9%	<b>99.4%</b>

<sup>92</sup> All other’ connections excludes information regarding ‘in-situ’ connections. Furthermore where a customer introduced delay is recorded, and there is auditable evidence of such, eir shall exclude these valid service orders for the purposes of the performance targets.

Within 2 months of request	100% of connections to be completed within this time period	99.8%	100.0%	100.0%	99.8%	99.9%
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375 Table 21 provides a summary of eir's sub-national MDIBC area 'in-situ' connections year to date (Q1-Q3) for 2018<sup>93</sup>. This table provides an indication of performance towards the sub-national MDIBC area 'in-situ' connections performance targets for 2018.

**Table 21: MDIBC area – 'in-situ' connections - Q1-Q3 2018**

Annual Performance Targets (ComReg Decision D03/17)		Q1 2018 Result	Q2 2018 Result	Q3 2018 Result	YTD Result (1 Jan 2018 – 30 Sept 2018)
		%	%	%	%
Within 24 hours of request	80% of connections to be completed within this time period	83.9	85	81.9	83.6
Within 2 weeks of request	99.8% of connections to be completed within this time period	98.5	99.2	98.8	98.8
Within 2 months of request	100% of connections to be completed within this time period	99.6	99.5	99.8	99.6

376 Table 22 provides a summary of eir's sub-national MDIBC area 'all other' connections for each quarter and the annual result for 2017<sup>94</sup>.

**Table 22: MDIBC area – 'all other' connections – 2017**

Annual Performance Targets (ComReg Decision D03/17)		Q1 2017 <sup>53</sup> Result	Q2 2017 Result	Q3 2017 Result	Q4 2017 Result	Annual Result (1 Jan 2017 – 31 Dec 2017)
Within 2 weeks of request	80% of all requests to be completed within this time period	91.2%	91.0%	89.2%	79.9%	88.1%
Within 4 weeks of request	85% of all requests to be completed within this time period	97.8%	97.0%	97.5%	96.1%	97.1%

<sup>93</sup> All other' connections excludes information regarding 'in-situ' connections. Furthermore where a customer introduced delay is recorded, and there is auditable evidence of such, eir shall exclude these valid service orders for the purposes of the performance targets.

<sup>94</sup> See footnote 63.

Within 8 weeks of request	<b>90%</b> of all requests to be completed within this time period	99.2%	98.4%	99.1%	98.9%	<b>98.9%</b>
Within 13 weeks of request	<b>95%</b> of all requests to be completed within this time period	99.5%	99.3%	99.7%	99.4%	<b>99.5%</b>
Within 26 weeks of request	<b>100%</b> of all requests to be completed within this time period	100.0%	99.7%	100.0%	99.9%	<b>99.9%</b>

377 Table 23 provides a summary of eir's sub-national MDIBC area 'all other' connections year to date (Q1-Q3) for 2018<sup>95</sup>. This table provides an indication of performance towards the sub-national MDIBC area 'all other' connections performance targets for 2018.

**Table 23: MDIBC areas – 'all other' connections - Q1-Q3 2018**

Annual Performance Targets (ComReg Decision D03/17)	Q1 2018 Result %	Q2 2018 Result %	Q3 2018 Result %	YTD Result (1 Jan 2018 – 30 Sept 2018) %
Within 2 weeks of request	79.1	89.8	93.3	87.7
Within 4 weeks of request	93.7	96.7	99.2	96.7
Within 8 weeks of request	98.7	98.3	100	99.1
Within 13 weeks of request	99.5	99.2	100	99.6
Within 26 weeks of request	99.8	99.9	100	99.9

### 9.1.2.2 eir only area – 2017 and year to date (Q1-Q3) 2018

378 Table 24 provides a summary of eir's sub-national eir only area 'in-situ' connections for each quarter and the annual result for 2017.

**Table 24: eir only area – 'in-situ' connections - 2017**

Annual Performance Targets (ComReg Decision D03/17)	Q1 2017- <sup>28</sup> Result	Q2 2017 Result	Q3 2017 Result	Q4 2017 Result	Annual Result (1 Jan 2017 – 31 Dec 2017)
Within 24 hours of request	79.1%	81.3%	83.4%	85.8%	<b>82.0%</b>

<sup>95</sup> See footnote 63.



Within 2 weeks of request	<b>99.8%</b> of connections to be completed within this time period	100.0%	100.0%	99.6%	99.1%	<b>99.7%</b>
Within 2 months of request	<b>100%</b> of connections to be completed within this time period	100.0%	100.0%	100.0%	99.6%	<b>99.9%</b>

379 Table 25 provides a summary of eir's sub-national eir only area 'in-situ' connections year to date (Q1-Q3) for 2018<sup>96</sup>. This table provides an indication of performance towards the sub-national eir only area 'in-situ' connections performance targets for 2018.

**Table 25: eir only area 'in-situ' connections - Q1-Q3 2018**

Annual Performance Targets (ComReg Decision D03/17)		Q1 2018 Result	Q2 2018 Result	Q3 2018 Result	YTD Result (1 Jan 2018 – 30 Sept 2018)
		%	%	%	%
Within 24 hours of request	<b>80%</b> of connections to be completed within this time period	84.1	86.3	85	85.2
Within 2 weeks of request	<b>99.8%</b> of connections to be completed within this time period	97.9	99.6	98.2	98.6
Within 2 months of request	<b>100%</b> of connections to be completed within this time period	99.5	100	100	99.9

380 Table 26 provides a summary of eir's sub-national eir only area 'all other' connections for each quarter and the annual result for 2017.

**Table 26: 'All other' connections - 'eir only' area**

Annual Performance Targets (ComReg Decision D03/17)		Q1 2017 <sup>30</sup> Result	Q2 2017 Result	Q3 2017 Result	Q4 2017 Result	Annual Result (1 Jan 2017– 31 Dec 2017)
Within 2 weeks of request	<b>80%</b> of all requests to be completed within this time period	89.9%	90.8%	89.2%	80.8%	<b>88.1%</b>
Within 4 weeks of request	<b>85%</b> of all requests to be completed within this time period	96.8%	96.8%	96.3%	95.4%	<b>96.4%</b>
Within 8 weeks of request	<b>90%</b> of all requests to be completed within this time period	98.3%	97.8%	98.5%	98.4%	<b>98.2%</b>

<sup>96</sup> All other' connections excludes information regarding 'in-situ' connections. Furthermore where a customer introduced delay is recorded, and there is auditable evidence of such, eir shall exclude these valid service orders for the purposes of the performance targets.

Within 13 weeks of request	<b>95%</b> of all requests to be completed within this time period	99.0%	98.9%	99.1%	99.4%	<b>99.1%</b>
Within 26 weeks of request	<b>100%</b> of all requests to be completed within this time period	99.8%	99.9%	99.8%	99.8%	<b>99.8%</b>

381 Table 27 provides a summary of eir's sub-national eir only area 'all other' connections year to date (Q1-Q3) for 2018<sup>96</sup>. This table provides an indication of performance towards the sub-national eir only area 'all other' connections performance targets for 2018.

**Table 27: eir only area – 'all other' connections - Q1-Q3 2018**

Annual Performance Targets (ComReg Decision D03/17)	Q1 2018 Result %	Q2 2018 Result %	Q3 2018 Result %	YTD Result (1 Jan 2018 – 30 Sept 2018) %
Within 2 weeks of request	82	92	94.4	89.6
Within 4 weeks of request	94.5	96.9	99.6	97.1
Within 8 weeks of request	98.1	98.4	100	98.9
Within 13 weeks of request	98.9	99	100	99.3
Within 26 weeks of request	99.9	99.7	100	99.9

### 9.1.2.3 NBP area – 2017 and year to date (Q1-Q3) 2018

382 Table 28 provides a summary of eir's sub-national NBP area 'in-situ' connections for each quarter and the annual result for 2017.

**Table 28: NBP area 'in-situ' connections - 2017**

Annual Performance Targets (ComReg Decision D03/17)	Q1 2017 <sup>74</sup> Result	Q2 2017 Result	Q3 2017 Result	Q4 2017 Result	Annual Result (1 Jan 2017 – 31 Dec 2017)
Within 24 hours of request	83.0%	86.3%	85.9%	85.8%	<b>85.2%</b>
Within 2 weeks of request	100.0%	100.0%	99.2%	98.7%	<b>99.5%</b>

Within 2 months of request	<b>100%</b> of connections to be completed within this time period	100.0%	100.0%	100.0%	99.4%	<b>99.9%</b>
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383 Table 29 provides a summary of eir's sub-national NBP area 'all other' connections year to date (Q1-Q3) for 2018<sup>96</sup>. This table provides an indication of performance towards the sub-national NBP area 'all other' connections performance targets for 2018.

**Table 29: NBP area 'all other' connections - Q1-Q3 2018**

Annual Performance Targets (ComReg Decision D03/17)		Q1 2018 Result	Q2 2018 Result	Q3 2018 Result	YTD Result (1 Jan 2018 – 30 Sept 2018)
		%	%	%	%
Within 24 hours of request	<b>80%</b> of connections to be completed within this time period	87.5	88.8	88.3	88.2
Within 2 weeks of request	<b>99.8%</b> of connections to be completed within this time period	98.6	100	99.5	99.4
Within 2 months of request	<b>100%</b> of connections to be completed within this time period	99.3	100	100	99.8

384 Table 30 provides a summary of eir's sub-national NBP area 'all other' connections for each quarter and the annual result for 2017<sup>96</sup>.

**Table 30: 'All other' connections - NBP area 2017**

Annual Performance Targets (ComReg Decision D03/17)		Q1 2017 <sup>76</sup> Result	Q2 2017 Result	Q3 2017 Result	Q4 2017 Result	Annual Result (1 Jan 2017 – 31 Dec 2017)
Within 2 weeks of request	<b>80%</b> of all requests to be completed within this time period	85.4%	86.3%	82.9%	72.2%	<b>82.3%</b>
Within 4 weeks of request	<b>85%</b> of all requests to be completed within this time period	94.5%	95.0%	94.2%	91.6%	<b>93.9%</b>
Within 8 weeks of request	<b>90%</b> of all requests to be completed within this time period	96.9%	97.3%	97.4%	96.8%	<b>97.1%</b>
Within 13 weeks of request	<b>95%</b> of all requests to be completed within this time period	97.8%	98.6%	98.6%	98.4%	<b>98.3%</b>
Within 26 weeks of request	<b>100%</b> of all requests to be completed within this time period	99.3%	99.7%	100.0%	99.4%	<b>99.6%</b>

385 Table 31 provides a summary of eir's sub-national NBP area 'all other' connections year to date (Q1-Q3) for 2018<sup>96</sup>. This table provides an indication of performance towards the sub-national NBP area 'all other' connections performance targets for 2018.

**Table 31: NBP area 'all other' connections – Q1-Q3 2018**

Annual Performance Targets (ComReg Decision D03/17)	Q1 2018 Result %	Q2 2018 Result %	Q3 2018 Result %	YTD Result (1 Jan 2018 – 30 Sept 2018) %	
Within 2 weeks of request	80% of all requests to be completed within this time period	73.5	87.5	94.5	85.2
Within 4 weeks of request	85% of all requests to be completed within this time period	90	94.2	99.4	94.6
Within 8 weeks of request	90% of all requests to be completed within this time period	97	96.6	100	97.9
Within 13 weeks of request	95% of all requests to be completed within this time period	98.2	98	100	98.8
Within 26 weeks of request	100% of all requests to be completed within this time period	99.6	99.7	100	99.8

### 9.1.3 Connections Summary – 2017 and year to date (Q1-Q3) 2018

386 Table 32 and Table 33 summarises eir's national and sub-national performance for 2017 and provides an indication of performance towards each of the national and sub-national area 'in-situ' connections performance targets for 2018.

387 Table 34 and Table 35 summarises eir's performance for 2017 and provides an indication of performance towards each of the national and sub-national areas 'all other' connections performance targets for 2018.

388 Table 34 and Table 35 summarises eir's performance for 2017 and provides an indication of performance towards each of the national and sub-national areas 'all other' connections performance targets for 2018.

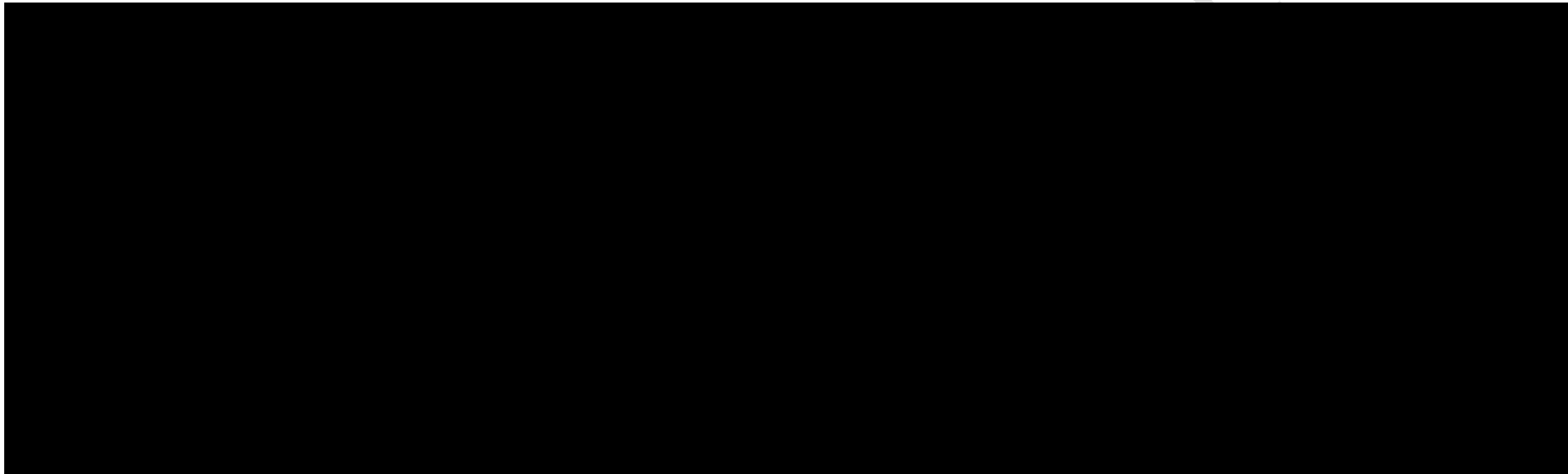


**Table 32: Summary (national and sub-national areas) 'in-situ' connection performance (percentages) 2017 - Q3 2018**

Annual Performance Targets (ComReg Decision D03/17)		IN-SITU CONNECTIONS - ACTUAL PERFORMANCE 2017				IN-SITU CONNECTIONS - ACTUAL PERFORMANCE - YTD (Q1-3) 2018			
		National area	NBP area	eir only area	MDIBC area	National area	NBP area	eir only area	MDIBC area
Within 24 hours of request	<b>80%</b> of connections to be completed w ithin this time period	82.50%	85.20%	82.00%	80.20%	85.70%	88.20%	85.20%	83.60%
Within 2 weeks of request	<b>99.8%</b> of connections to be completed w ithin this time period	99.50%	99.50%	99.70%	99.40%	99.00%	99.40%	98.60%	98.80%
Within 2 months of request	<b>100%</b> of connections to be completed w ithin this time period	99.90%	99.90%	99.90%	99.90%	99.70%	99.80%	99.90%	99.60%

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**Table 33: Summary (national and sub-national areas) 'in-situ' connection performance (volumes) 2017 - Q3 2018**

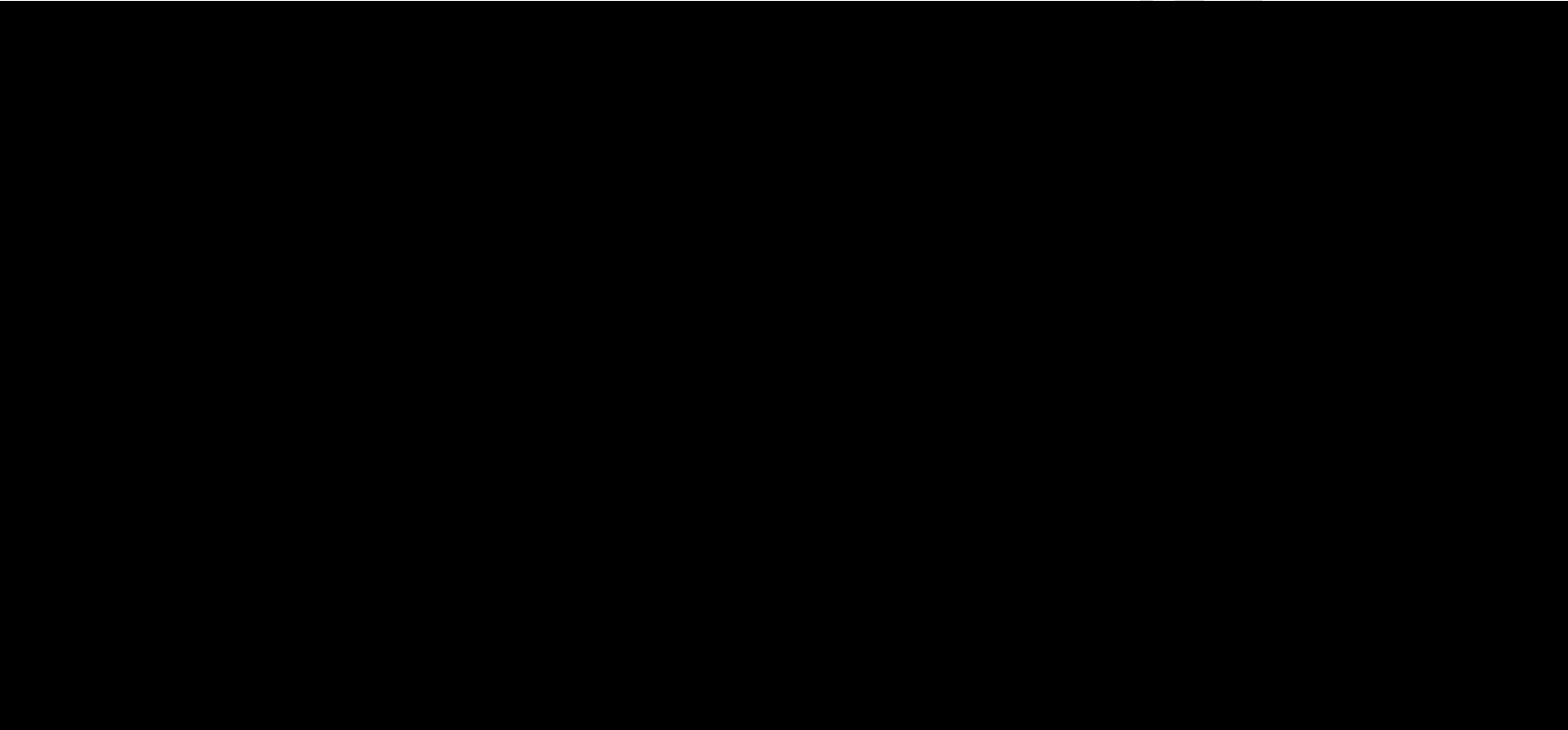


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**Table 34: Summary (national and sub-national areas) 'all other' connection performance (percentage) 2017 - Q3 2018**

Annual Performance Targets (ComReg Decision D03/17)		ALL OTHER CONNECTIONS - ACTUAL PERFORMANCE 2017				ALL OTHER CONNECTIONS - ACTUAL PERFORMANCE - YTD (Q1-3) 2018			
		National area	NBP area	eir only area	MDIBC area	National area	NBP area	eir only area	MDIBC area
Within 2 weeks of request	<b>80%</b> of all requests to be completed within this time period	<b>86.80%</b>	<b>82.30%</b>	<b>88.10%</b>	<b>88.10%</b>	<b>87.60%</b>	<b>85.20%</b>	<b>89.60%</b>	<b>87.70%</b>
Within 4 weeks of request	<b>85%</b> of all requests to be completed within this time period	<b>96.30%</b>	<b>93.90%</b>	<b>96.40%</b>	<b>97.10%</b>	<b>96.30%</b>	<b>94.60%</b>	<b>97.10%</b>	<b>96.70%</b>
Within 8 weeks of request	<b>90%</b> of all requests to be completed within this time period	<b>98.40%</b>	<b>97.10%</b>	<b>98.20%</b>	<b>98.90%</b>	<b>98.80%</b>	<b>97.90%</b>	<b>98.90%</b>	<b>99.10%</b>
Within 13 weeks of request	<b>95%</b> of all requests to be completed within this time period	<b>99.10%</b>	<b>98.30%</b>	<b>99.10%</b>	<b>99.50%</b>	<b>99.40%</b>	<b>98.80%</b>	<b>99.30%</b>	<b>99.60%</b>
Within 26 weeks of request	<b>100%</b> of all requests to be completed within this time period	<b>99.80%</b>	<b>99.60%</b>	<b>99.80%</b>	<b>99.90%</b>	<b>99.90%</b>	<b>99.80%</b>	<b>99.90%</b>	<b>99.90%</b>

**Table 35: Summary (national and sub-national areas) ‘all other’ connection performance (volumes) 2017 - Q3 2018**





## 9.1.4 National service availability –2017 and Q1-Q3 2018

- 389 The service availability target combines the two parameters of fault occurrence (i.e. level of line faults) and fault repair times<sup>97</sup> (i.e. time needed to repair line faults). Service availability reports on the actual number of working days outage per line against the target maximum working day's outage per line.
- 390 ComReg publishes USO performance data by quarter. The actual annual performance is measured for compliance purposes, with reference to the average fault repair time for the year and the line fault occurrence for the year. The quarter results provide an indication of annual performance.
- 391 The actual annual performance is measured with reference to the average fault repair time for the year and the line fault occurrence for the year.
- 392 The national service availability target of **0.237** maximum working days outage per line, set the minimum service availability target to be achieved nationally. This provided eir with further flexibility within each of the sub-national areas, in how the national service availability target is achieved. The over achievement in in one or more sub-national areas, may be off set against the under achievement in other sub-national area(s) provided always that the minimum sub-national target is achieved within each of the three sub-national areas in each year.
- 393 If the actual number of working days outage per line annual performance result is  $\leq$  **0.237**, the target has been achieved. If annual actual number of working days outage per line performance result  $>$  **0.237**, the performance target has not been achieved.
- 394 Table 36 summarises eir's service availability performance against the national target for 2017.

**Table 36: National service availability 2017**

National Service Availability Target (D03/17)	Q1 2017 Result	Q2 2017 Result	Q3 2017 Result	Q4 2017 Result	Annual Result (1Jan 2017–31 Dec 2017)
Average Fault Repair Time Performance	1.7567	1.4807	1.6165	2.6213	1.9320

<sup>97</sup> Repair time measures the length of time it takes from when a fault is reported until it is repaired, and is a measure of the level of reactive maintenance/operating expenditure (opex) being undertaken.

Line Fault Occurrence Performance per 100 lines	3.4434	2.4762	2.7124	4.0321	12.6372
<b>0.237</b> <sup>98</sup> maximum Working Days Outage per line <sup>99</sup>	0.061	0.037	0.044	0.106	<b>0.245</b>

395 Table 37 provides an indication of eir's national service availability performance towards national service availability performance targets for 2018.

**Table 37: National service availability - Q1-Q3 2018**

National Service Availability Target (D03/17)	Q1 2018 Result	Q2 2018 Result	Q3 2018 Result	YTD Result (1 Jan 2018 – 30 Sept 2018)
Average Fault Repair Time Performance	2.8136	1.6637	1.6437	2.1456
Line Fault Occurrence Performance per 100 lines	3.961	2.699	2.5771	9.2558
<u>0.237[1] maximum Working Days Outage per line</u>	0.112	0.045	<b>0.043</b>	<b>0.199</b>

#### 9.1.4.1 Sub-national MDIBC area service availability – 2017 and Q1-Q3 2018

396 The sub-national service availability target is **0.607** maximum working days outage per line for all three sub-national areas. If the annual performance result is  $\leq 0.607$ , the target has been achieved. If annual performance result  $> 0.607$ , the performance target has not been achieved.

397 Table 38 summarises eir's sub-national MDIBC service availability performance against the target for 2017.

**Table 38: Sub-national MDIBC area service availability - 2017**

Sub-National Service Availability Target (D03/17) – MDIBC	Q1 2017 Result	Q2 2017 Result	Q3 2017 Result	Q4 2017 Result	Annual Result (1 Jan 2017 – 31 Dec 2017)
Average Fault Repair Time Performance	1.6866	1.4379	1.5464	2.1917	1.7384

<sup>98</sup> If the annual performance result is less than or equal to 0.237, the target has been achieved. If the annual performance is greater than 0.237 the performance target has not been met.

<sup>99</sup> See page 28 of ComReg 18/120a for Service Availability calculation methodology.

Line Fault Occurrence Performance per 100 lines	1.9208	1.4091	1.4233	1.9247	6.6715
<b>0.607<sup>100</sup></b> maximum Working Days Outage per line <sup>101</sup>	0.033	0.021	0.023	0.043	<b>0.116</b>

398 Table 39 provides an indication of eir's sub-national MDIBC area service availability performance towards sub-national MBIDC area service availability performance target for 2018.

**Table 39: Sub-national MDIBC area service availability –Q1-Q3 2018**

National Service Availability Target (D03/17)	Q1 2018 Result	Q2 2018 Result	Q3 2018 Result	YTD Result (1 Jan 2018 – 30 Sept 2018)
Average Fault Repair Time Performance	2.3384	1.5351	1.5043	1.8541
Line Fault Occurrence Performance per 100 lines	2.0231	1.5223	1.4506	5.0053
<u>0.607[1] maximum Working Days Outage per line</u>	0.048	0.024	<b>0.022</b>	<b>0.093</b>

#### 9.1.4.2 Sub-national eir only area service availability – 2017 and Q1-Q3 2018

399 The sub-national service availability target is **0.607** maximum working days outage per line for all three sub-national areas. The sub-national service availability target of a maximum of 0.607 workings days outage per line was set having regard to the actual (5 year average) service availability level in the worst performing sub-national area.

400 If the annual performance result is  $\leq 0.607$ , the target has been achieved. If annual performance result  $> 0.607$ , the performance target has not been achieved.

401 Table 40 summarises eir's service availability performance against the eir only area sub-national target for 2017.

**Table 40: Sub-national eir only service availability - 2017**

Sub-National Service Availability Target (D03/17) – Eir Only	Q1 2017 Result	Q2 2017 Result	Q3 2017 Result	Q4 2017 Result	Annual Result (1 Jan 2017– 31 Dec 2017)

<sup>100</sup> If the annual performance result is less than or equal to 0.607, the target has been achieved. If the annual performance is greater than 0.607 the performance target has not been met.

<sup>101</sup> See page 28 of ComReg 18/120a for Service Availability calculation methodology.

Average Fault Repair Time Performance	1.7135	1.5094	1.6647	2.7171	1.9553
Line Fault Occurrence Performance per 100 lines	3.5278	2.5767	2.4935	3.5495	12.1352
<b>0.607<sup>100</sup></b> maximum Working Days Outage per line	0.061	0.039	0.042	0.097	<b>0.238</b>

402 Table 41 provides an indication of eir's sub-national eir only area service availability performance towards the sub-national eir only area service availability performance target for 2018.

**Table 41: Sub-national eir only service availability –Q1-Q3 2018**

Sub-National Service Availability Target (D03/17) – Eir Only	Q1 2018 Result	Q2 2018 Result	Q3 2018 Result	YTD Result (1 Jan 2018 – 30 Sept 2018)
Average Fault Repair Time Performance	2.8405	1.7249	1.6751	2.1696
Line Fault Occurrence Performance per 100 lines	3.2552	2.3102	2.2331	7.8119
<u>0.607[1] maximum Working Days Outage per line</u>	0.093	0.04	<b>0.038</b>	<b>0.17</b>

### 9.1.4.3 Sub-national NBP area service availability – 2017 and Q1-3 2018

403 The sub-national service availability target is **0.607** maximum working days outage per line for all three sub-national areas. If the annual performance result is  $\leq 0.607$ , the target has been achieved. If annual performance result  $> 0.607$ , the performance target has not been achieved.

404 Table 42 summarises eir's sub-national NBP area service availability performance against the sub-national target for 2017.

**Table 42: Sub national NBP area service availability 2017**

Sub-National Service Availability Target (D03/17) – NBP	Q1 2017 Result	Q2 2017 Result	Q3 2017 Result	Q4 2017 Result	Annual Result (1Jan 2017– 31 Dec 2017)
Average Fault Repair Time Performance	1.8103	1.4940	1.6361	2.7749	2.0222
Line Fault Occurrence Performance per 100 lines	5.6850	4.0558	5.1763	8.1203	22.7390

<b>0.607</b> maximum Working Days Outage per line	0.103	0.061	0.085	0.226	<b>0.460</b>
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405 Table 43 provides an indication of eir's sub-national eir only area service availability performance towards the sub-national eir only area service availability performance target for 2018.

**Table 43: Sub-national NBP area service availability - Q1-Q3 2018**

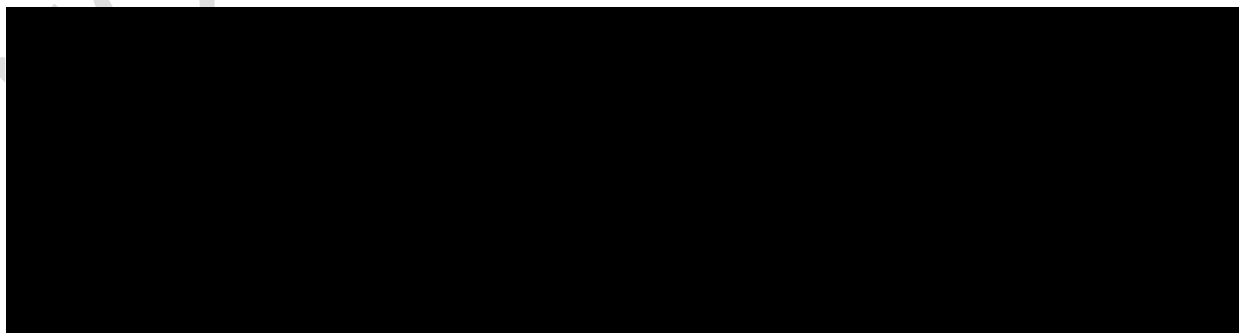
Sun-National Service Availability Target (D03/17) - NBP	Q1 2018 Result	Q2 2018 Result	Q3 2018 Result	YTD Result (1 Jan 2018 – 30 Sept 2018)
Average Fault Repair Time Performance	3.0304	1.7115	1.7069	2.2852
Line Fault Occurrence Performance per 100 lines	7.858	5.0303	4.8069	17.7344
<u>0.607</u> [1] maximum Working Days Outage per line	0.239	0.087	<b>0.083</b>	<b>0.406</b>

### 9.1.5 Service availability summary – 2017 and Q1-Q3 2018

406 The service availability targets allows eir to decide whether to invest to prevent faults by either rolling out new technology or maintain existing network connections or by carrying out repairs more quickly instead of investing in preventative maintenance.

407 As outlined in D03/17 eir's model provided an annual breakdown (2016-2019), which using the eir model '*achievable speed of repair*' demonstrated that the service availability performance targets were predicted to be met both nationally and sub-nationally in each of the three years, thus demonstrating that according to eir's model, both the national maximum of 0.237 working days outage per line (99.935%) and sub-national maximum 0.607 working days outage per line (99.834%) service availability targets would be met.

**Table 44: Service availability based on LFI and on eir's 'achievable speed of repair' [8]**



408 eir stated that the '*achievable speed of repair*' values used to underpin the eir model were established by [REDACTED]

- 409 eir previously confirmed to ComReg that eir’s model is based on capital investment scenarios only, where the ‘achievable speed of repair’ is assumed to be constant and eir formally confirmed that the ‘*achievable speed of repair*’ would be achieved from the commencement of eir’s model (i.e. June 2016).
- 410 ComReg sought further confirmation from eir that the ‘*achievable speed of repair*’ would be achieved from the commencement date of eir’s model. eir subsequently confirmed the aforementioned in writing, on foot of a subsequent ComReg 13D Information Request<sup>102</sup>.
- 411 eir’s supporting overview document<sup>103</sup> submitted in response to ComReg’s information request (16 August 2016) also described how eir planned to invest € [REDACTED] capital in the copper network on replacement/renewal in F/Y 2016/17 (€ [REDACTED] M capital over 3 years).
- 412 eir presented Table 45 showing the expected network performance nationally/sub-nationally after 3 years with the level of investment each year (€ [REDACTED] M, based on eir’s ‘*achievable speed of repair*’ values.

Table 45: *eir’s planned investment (€ [REDACTED] M capital over 3 years) – eir model*

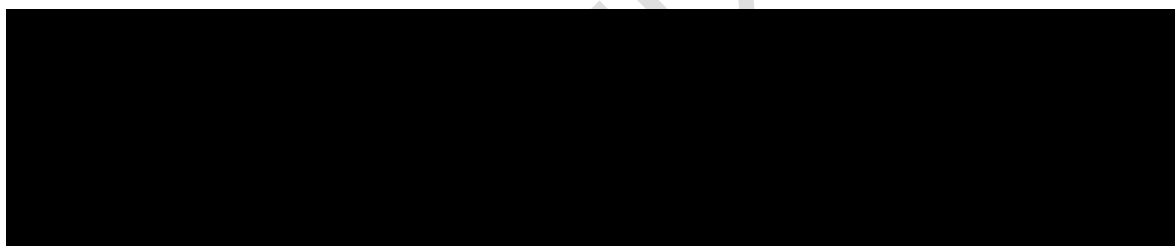


Figure 1 *eir’s current planned investment [REDACTED] capital over 3 years)*

- 413 Using eir’s ‘planned’ investment scenario (outlined above) and eir’s yearly projected fault occurrence with its ‘*achievable speed of repair*’ to calculate yearly projected national and sub-national availability, the service availability performance targets were achievable each year commencing July 2016.
- 414 Table 46 summarises eir’s **actual** performance for 2017 and provides an indication of eir’s actual performance towards each of the sub-national area service availability performance targets for 2018.

<sup>102</sup> eir response to 13D 28<sup>th</sup> October 2016.

<sup>103</sup> Response to ComReg S13D of 25 Aug16.pdf

**Table 46: Sub-national service availability summary 2017 - Q1-Q3 2018**

Annual Performance Targets (ComReg Decision D03/17)	SUB-NATIONAL SERVICE AVAILABILITY - ACTUAL PERFORMANCE 2017			SUB-NATIONAL SERVICE AVAILABILITY - ACTUAL PERFORMANCE -YTD (Q1-3) 2018		
	NBP area	eir only area	MDIBC area	NBP area	eir only area	MDIBC area
<i>Average fault repair time performance</i>	2.0222	1.9553	1.7384	2.2852	2.1696	1.8541
<i>Line fault occurrence performance per 100 lines</i>	22.7390	12.1352	6.6715	17.7344	7.8119	5.0053
<b>Sub-national - 0.607</b> maximum working days outage per line	<b>0.460</b>	<b>0.238</b>	<b>0.116</b>	<b>0.406</b>	<b>0.170</b>	<b>0.093</b>

415 Table 47 illustrates eir's 2017 individual sub-national service availability performance in 2017.

**Table 47: National service availability summary 2017 - Q1-Q3 2018**

Annual Performance Targets (ComReg Decision D03/17)	NATIONAL SERVICE AVAILABILITY - ACTUAL PERFORMANCE 2017	NATIONAL SERVICE AVAILABILITY - ACTUAL PERFORMANCE - YTD (Q1-3) 2018
	National area	National area
<i>Average fault repair time performance</i>	1.9320	2.1456
<i>Line fault occurrence performance per 100 lines</i>	12.6372	9.2558
<b>National - 0.237</b> maximum working days outage per line	<b>0.245</b>	<b>0.199</b>

416 As outlined earlier in paragraph 60 eir's model took no account of possible performance improvements( e.g. eir's fibre deployment strategy; fibre versus copper deployment costs; and significant planned FTTH deployment):

417 Accordingly ComReg was of the view that eir could further improve performance in the NBP area (recognising the conservative approach within eir's model) through the following possible mechanisms (1) increasing the number of eir resources per fault (towards the ratio in the competitive area) and/or (2) altering any policy in relation to the dispatch of resources for repair in certain areas, to narrow the gap in speed of repair, between [REDACTED] areas and (3) rolling out new technology to poor performing lines to increase performance.

- 418 In light of these factors ComReg set the same sub-national service availability targets of **a maximum of 0.607<sup>104</sup> working days outage per line** for three sub-national areas, having regard to the 5 year observed average of availability (2009-2014) and the predicted performance based on eir's three year model. The same sub-national target was set for all areas, based on the lowest performing area. This was intended to ensure that quality of service performance in that area did not deteriorate below what ComReg regarded as the minimum.

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<sup>104</sup> The availability target is calculated using fault occurrence during the period and repair performance.