



Commission for  
**Communications Regulation**

## Universal Service Requirements

### **Provision of access at a fixed location (AFL)**

### **Quality of Service (QoS)**

Submissions to Consultation 18/120

#### **Submissions to Consultation**

**Reference:** 18/120s

**Version:** Final

**Date:** 13/03/19

# Content

## Section

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# alto

alternative operators in the communications market

**Consultation: Universal Service Requirement Provision of Access at Fixed Location (AFL) Quality Of Service (QOS) - Ref: 18/120.**

**Submission By ALTO**

**Date: January 28<sup>th</sup> 2019**

ALTO is pleased to respond to the Consultation: Universal Service Requirement Provision of Access at Fixed Location (AFL) Quality Of Service (QOS) - Ref: 18/120.

ALTO welcomes this opportunity to comment on this consultation paper.

### **Preliminary Remarks**

ALTO notes that ComReg makes preparations to align broadly within the two NBP intervention areas.

ALTO also notes that the NBP has not in-fact been rolled out, so while we are generally in agreement with most of what ComReg suggests, we note that matters have not developed further owing to problems and delays within the NBP more broadly.

Industry has awaited the deployment of NBP since 2012.

### **Response to Consultation Questions:**

**Q. 1. 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 the NBP sub-area 2 – the Commitment Agreement area) from a reporting perspective? Please provide reasons and evidence to support your view [23]**

A. 1. ALTO agrees with ComReg’s preliminary view as stated.

**Q. 2. 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 [24]**

A. 2. ALTO agrees with ComReg's preliminary view that the national and sub-national connection QoS measures should be maintained.

**Q. 3. 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 [24]**

A. 3. ALTO agrees with ComReg's preliminary view that the national and sub-national connection QoS measures should be maintained at the current levels.

**Q. 4. 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 [25]**

A. 4. ALTO agrees with ComReg's preliminary view that the national and sub-national service availability QoS measures should be maintained.

**Q. 5. 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 [25]**

A. 5. ALTO agrees with ComReg's preliminary view that the national and sub-national service availability QoS measures should be maintained at the current levels.

**Q. 6. Do you agree with ComReg’s preliminary view that 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 [25]**

A. 6. ALTO agrees with ComReg’s position.

**Q. 7. Do you agree or disagree with ComReg’s draft regulatory impact assessment of the proposed options? Please set out reasons for your answers [67]**

A. 7. ALTO agrees with ComReg’s draft regulatory impact assessment of the proposed options. We also restate of preliminary comments to the extent that the intervention areas are not, as such, live as yet given the status of the NBP.

**ALTO**

**28<sup>th</sup> January 2019**

**eir**

**Universal Service Requirements**

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

**ComReg Document 18/120**

**Response to Consultation and Draft Decision**



**28 January 2019**

**DOCUMENT CONTROL**

<b>Document name</b>	eir response to ComReg 18/120
<b>Document Owner</b>	eir
<b>Status</b>	Non Confidential

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



## Response

1. eir welcomes the opportunity to comment on ComReg's market analysis and preliminary conclusions.
2. eir is disappointed at the lateness of this ComReg review. ComReg states<sup>1</sup> "*In light of the **forthcoming expiration** of the current Universal Service Requirements Provision of access at a fixed location (AFL) quality of service (QoS) performance decision (31 December 2018), ComReg is **undertaking a review of the current QoS targets.***" [Emphasis added.] The consultation was issued on Friday 28<sup>th</sup> December 2018. The next working day was 31<sup>st</sup> December 2018, the date upon which the quality of service regime expired. Thus, whilst ComReg purports to be undertaking a forward looking review in light of forthcoming expiration, the reality is that the regime has expired and ComReg cannot say it is reviewing current QoS targets as no targets currently apply. It is difficult to see how ComReg could be so late in commencing a review when the expiry date has been known since 17<sup>th</sup> February 2017.
3. Unfortunately, unnecessary delay and poor project planning has been a characteristic of ComReg reviews in recent years where obligations have ceased to apply (e.g. USO printed directory, USO payphones and now Access at a Fixed Location Quality of Service) before ComReg has undertaken and concluded a proper review to determine the obligations that will be imposed going forward. ComReg must undertake proper planning to manage a more predictable regulatory regime rather than the current haphazard approach where obligations lapse before being re-considered. ComReg's approach is inconsistent to its claims when imposing obligations that they are necessary in the first place. For example, on 16<sup>th</sup> July 2018, following expiry of the previous designation on 30<sup>th</sup> June 2018, ComReg imposed an interim USO public payphone designation on eir. ComReg stated its rationale for this emergency measure to be meeting its statutory obligations and to protect end-users<sup>2</sup>: "*Imposing a public payphone USO on eir for 3 months consisting of requirements set out in D08/14 pending the planned consultation on policy issues arising regarding any future designation or otherwise for provision of public payphones is necessary and appropriate to protect end-users. ComReg's key statutory objective is to promote and protect the interests of end-users of the universal service in the State. The availability of public payphones is important for more vulnerable end-users*". In ComReg 18/67 ComReg indicated it intended to consult on the future of the payphone USO and issue a decision during the 3 month interim period. No decision has

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<sup>1</sup> Para 7, ComReg 18/120

<sup>2</sup> Para 36, ComReg 18/67

emerged and the Payphone USO has expired since 15<sup>th</sup> October 2018. As noted above, ComReg's overall approach has been haphazard at best and has the effect of being prejudicial to eir as the Universal Service Provider when it has no clarity on what obligations may apply.

4. Delays in ComReg's administrative processes have also been prejudicial to eir's interests where the USO imposes additional costs on eir. The European Framework acknowledges that being a Universal Service Provider may create additional costs and the designated entity may seek funding. It is over 4 years since eir made its submission for funding in respect of FY10/11 and a decision is still awaited from ComReg following a consultation process that concluded in June 2018.
5. We do not believe that this is a fair way to regulate and urge ComReg to conduct its business in a more objective, orderly and timely manner.
6. Turning to the substance of the consultation. "ComReg is of the preliminary view that it is appropriate to:-
  - Re-impose the existing national and sub-national connection targets.
  - Re-impose the existing national and sub-national service availability targets.
  - Retain the existing reporting, measurement auditing and publication of QoS performance, save for the NBP Area reporting would now consist of two further sub-areas: sub-area 1 – NBP Area excluding the Commitment Agreement area<sup>4</sup>; and sub-area 2 –Commitment Agreement area for reporting purposes), and the associated national area.
  - Retain the aforementioned proposed AFL USO QoS targets until 31st December 2020."<sup>3</sup>
7. eir has no objection to the national and sub-national connection service availability targets, as previously set out in D03/17 applying for a further period during the current USO AFL designation period which expires on 30 June 2021.
8. However eir does not agree, as set out in response to question 1, that NBP Area reporting should consist of two sub-areas. eir is unable to report on the two sub-areas using its well established reporting systems which are based on exchange areas. It is not technically or economically feasible for eir to report on the sub-areas.

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<sup>3</sup> Para. 12, ComReg 18/120

9. eir is calling for changes to the reporting, measurement and auditing of QoS performance as previously required under D03/17. With regard to auditing we request that the auditing requirement be made annual rather than quarterly in the interest of efficiency.
10. Also in the interest of efficiency, eir is calling for the removal of the breakout of USO QoS performance by Residential and Business customer segments. The QoS targets do not apply at such a granular level and there is no evidence of this detail being required for any other purpose under such a routine reporting obligation. eir has previously highlighted to ComReg that the reporting window of just eight weeks following each quarter, combined with the requirement to report on each of the 3 sub-regions generates the risk of breaching the reporting deadline. Rationalising the report by removing this split would help to reduce this risk while also meeting the overarching efficiency requirement that applies to USO activities.
11. As regards measurement, the reporting methodology seeks to measure eir's performance with respect to those aspects that are within eir's control. However, this principle is not consistently applied. For instance, eir's the measurement of the speed of provisioning and repair excludes those time periods during which the customer is not available and/or eir cannot gain access to the customer's premises to carry out the necessary works. However, in instances where eir is prevented from gaining access to other premises or property, for example where a wayleave is required from other land owners or local authorities, there is no provision in the USO methodology to take account of these.
12. There is some confusion in the consultation regarding ComReg's proposal for the duration of the period for which the QoS targets will be retained. In paragraphs 12, 74, and 92 it is proposed that the AFL USO QoS targets should be retained until 31st December 2020. Whereas in paragraph 264 and section 18.1 of the draft decision instrument it is proposed that the decision instrument shall remain in effect for a period of two years from its effective date. eir has no objection to the targets being retained for a two year period provided that period does not extend beyond 30<sup>th</sup> June 2021. We would ask that the obligations commence on the 1<sup>st</sup> day of month to facilitate measurement and reporting.
13. We note that the consultation fails to acknowledge a S13D response submitted on 10<sup>th</sup> December, almost three weeks prior to the consultation publication (for example the capex figures quoted in paragraph 127 are those provided to ComReg in October whilst more granular figures were provided on 10<sup>th</sup> December). We also note that ComReg issued a further S13D request during the consultation response period which appears relevant to the subject matter of the consultation. This suggests that ComReg is still in information gathering mode. Whilst we do

not believe that the information provided by eir in response to the S13D will alter views on whether the D03/17 targets should be maintained going forward it is surprising that ComReg may not have completed its analysis phase before setting out its proposals in a consultation.

14. The current USO AFL designation expires on 30<sup>th</sup> June 2021. We request ComReg to confirm that it will conduct an orderly and timely review in advance of expiry with a consultation issued during H2 2020.

## RESPONSE TO CONSULTATION QUESTIONS

***Q.1 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?***

15. eir does not agree that NBP Area reporting should consist of two sub-areas based around the Commitment Agreement. It is not possible for eir to report QoS on this basis. The Commitment Agreement does not cover homogenous geographic areas, rather it is a list of premises referenced by Eircodes. open eir's copper network is referenced to ARDIDs. The Commitment Agreement is being delivered predominately to premises that have unstructured addresses and it is not possible to fully reconcile existing copper ARDIDs to Eircodes.
16. The Commitment Agreement is being delivered using FTTH and VDSL technology. More than 90% of premises in scope will be passed by FTTH served by a new fibre access network that is overlaid on infrastructure supporting the existing copper network. Thus the majority of premises in scope of the Commitment Agreement will be passed by the copper and fibre access networks. It can be expected that over time there will be a migration of customers from the copper network to the fibre network however currently the USO is met only on the copper network, or were 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.
17. As ComReg is aware, eir's copper network performance reporting systems are organised at an exchange level. This is the reason that ComReg defined each of the three sub-areas in D03/17 by reference to specified exchange areas following lengthy analysis by its consultants. The Commitment Agreement includes premises in [X] exchange areas. Of these [X] fall within the

D03/17 definition of MDIBC, [X] are eir only, and [X] are NBP. None of the exchange areas are dedicated to the Commitment Agreement.

18. For the reasons set out above it is not possible in practice to split the PSTN reporting in the manner suggested. ComReg states<sup>4</sup> “eir currently has the capability to provide the relevant NBP sub-national area data report to ComReg, the relevant Commitment Agreement area data report to DCCAE. Accordingly, ComReg is 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 be easily implemented by eir.” ComReg’s understanding is incorrect. open eir does provide reporting to DCCAE regarding the Commitment Agreement area. The report deals with network roll-out and connections, neither of which is related to the defined metrics for USO AFL QoS. The report predominately relates solely to the roll-out of broadband services over a fibre access network which is not relevant for the purpose of monitoring AFL USO QoS performance. [X]

**Q.2 Do you agree with ComReg’s preliminary view that the national and sub-national connection QoS measures should be maintained?**

19. eir has no objection to the continuation of the measurement of QoS performance as previously required under D03/17 for a period up to 2 years during the current AFL USO designation.

**Q.3 Do you agree with ComReg’s preliminary view that the national and sub-national connection QoS measures should be maintained at the current levels?**

20. eir has no objection to the continuation of the measurement of QoS performance as previously required under D03/17 for a period up to 2 years during the current AFL USO designation.

**Q.4 Do you agree with ComReg’s preliminary view that the national and sub-national service availability QoS measures should be maintained?**

21. eir has no objection to the continuation of the measurement of QoS performance as previously required under D03/17 for a period up to 2 years during the current AFL USO designation.

**Q.5 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?**

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<sup>4</sup> Para. 82, ComReg 18/120

22. eir has no objection to the continuation of the measurement of QoS performance as previously required under D03/17 for a period up to 2 years during the current AFL USO designation.

***Q.6 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?***

23. As explained in our response to question 1, eir does not agree that NBP Area reporting should consist of two sub-areas based around the Commitment Agreement. It is not possible for eir to report QoS on this basis.
24. eir is calling for the rationalisation of the report in the interest of efficiency, through the removal of the Business and Residential split and for greater consistency, the exclusion of provisioning and repair delays from the calculation, in the case of delays arising from circumstances beyond eir's control such as way leave induced delays. Please see paragraphs 9 and 10 of this response.
25. eir has no objection to the continuation of the reporting, measurement and publication of QoS performance as previously required under D03/17. However we request that the auditing requirement be made annual rather than quarterly in the interest of efficiency. The targets are assessed annually so there is no benefit in conducting quarterly audits as well as an annual audit. The quarterly requirement results in unnecessary expense. Moving the audit to an annual basis is fully aligned with ComReg's principle that "*the cost and other implications for eir should be proportionate*"<sup>5</sup>

***Q.7 Do you agree or disagree with ComReg's draft regulatory impact assessment of the proposed options?***

26. eir does not consider that ComReg's draft regulatory impact assessment provides adequate justification for the additional granularity of reporting in what ComReg terms Area 2 "NBP".
27. ComReg notes numerous times that 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. eir would emphasise that it is deploying high speed broadband to these

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<sup>5</sup> Para 10 and elsewhere, ComReg 18/120

specifically selected premises on the basis that they are economic to serve and therefore commercially viable. The agreement serves to underpin the timing of the delivery and to provide a level of certainty to DCCAIE on the eir commitment to deliver on the premises.

28. As noted by ComReg, the sub-national areas identified in D03/17 are currently defined as follows;

“Area 1” (MBIDC) – Market Driven Infrastructure Competition – based on areas where eir faces greater market-driven infrastructure-based competition, including from Vodafone/ESB/SIRO or UPC.

“Area 2” NBP – based on the NBP intervention area 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 network providing fixed access solutions.

29. ComReg is proposing that Area 2 **based on the NBP intervention area** should be further split into two sub-areas i.e. the NBP Area excluding the Commitment Agreement area and the Commitment Agreement area. eir would remind ComReg that the premises covered by the Agreement are and will be supplied on a commercial basis without government subsidies and in line with the State Aid Guidelines were therefore required to be excluded from the “intervention area”. By definition they are **not** NBP premises and rather fall into Areas 1 and 3.
30. ComReg states at paragraph 180. that “[o]n balance, the **current** approach to QoS targets, while protecting end-users, also give 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” [emphasis added]. ComReg then proceeds to superficially assess the various options available to it and the supposed associated merits, in particular in relation to the requirement for increased granularity in reporting on Area 2. eir is of the view that any increased granularity of reporting in the form of sub-areas within one of the existing sub-national areas only serves to undermine the 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.
31. In any event, given the additional available information now at ComReg’s disposal, that it is not even in fact possible for eir to report QoS on this basis, it is clear that an assessment of the merits and disadvantages would produce Option 1a i.e. the maintenance of the current AFL USO QoS targets and areas as the preferred option.