Universal Service Requirements

Provision of access at a fixed location (AFL USO)

Submissions to Consultation

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Content

Section

alto

alternative operators in the communications market

Consultation: Universal Service - Access at a Fixed Location - (AFL), Response to Consultation and Draft Decision - Ref: 21/51

Submission By ALTO

Date: June 24st 2021

ALTO is pleased to respond to the Consultation: Universal Service –Access at a Fixed Location – AFL. Response to Consultation and Draft Decision – Ref: 21/51.

ALTO welcomes this opportunity to comment on this wide ranging and complex consultation and would like to make the following preliminary remarks before addressing the questions in detail.

Preliminary Remarks

ALTO notes with interest that ComReg currently consults on an interim extension to AFL USO in order to complete this consultation process, under document reference 21/66, wherein an interim designation is proposed by ComReg. ALTO suggests that this is not ideal and should be avoided in future.

ALTO is generally positively disposed to ComReg's conclusions in this consultation, with some small exceptions, and areas for concern or unnecessary risk – such as a lack of wholesale VoIP offering, an over reliance on FCS solutions versus copper, and some quality of service risks associated with splitting FACO into urban and rural designations.

We also remark that the USO funding dynamic should remain ComReg's focus for the time being.

ALTO notes that the industry is about to undergo a process of change to more modern technologies and the positions of new entrants such as NBI and Siro are clearly reflected in the analysis underpinning ComReg's review and consultation work.

Response to Consultation Questions:

Q.1. In your opinion are there other relevant factors in relation to supply side trends which ComReg should consider in the context of AFL USO? Please give reasons to support your view

A. 1. ALTO notes the position as analysed and set out by ComReg in the consultation paper. One very significant issue to new entrant and alternative operators is the lack of a viable or any wholesale VoIP product offerings. Ireland has remained at the rear of developments in this area for some time and ComReg should seek to remediate the position. The reports cited in the consultation are forward looking but do not appear to analyse the position at the consumer level.

ALTO submits that ComReg must remain fully cognisant of the risks associated with splitting FACO into Urban and Rural and seek to deploy measured to ensure that service levels are not diminished for either grouping. FCS appears to be a band aid solution to cover-up migration to the next generation of services over fibre, often resulting in consumers having no standalone voice/talk service.

Q. 2. Do you agree or disagree with ComReg's review of the relevant demand trends? Please give reasons to support your view

A. 2. ALTO agrees with the ComReg review of the relevant demand trends. ALTO caveats its agreement by highlighting the lack of a wholesale VoIP offering. Assuming that VoIP is more widely available than it is, can be an issue in the presentation of such analysis.

Q. 3. In your opinion are there other relevant factors in relation to demand trends which ComReg should consider? Please give reasons to support your view.

A. 3. ALTO submits that there is an acute lack of wholesale VoIP offerings in fibre only areas. Therefore, a products with specific profiles and pricing that fulfil the

requirements of USO but don't necessarily require a broadband service to be the anchor service should be considered fully by ComReg. This level of detailed analysis is not clear from the demand trends as presented in the consultation paper.

Q. 4. Do you agree or disagree with ComReg's preliminary view that there is no requirement to amend the current reasonable access requests process? Please give reasons for your answer.

A. 4. ALTO disagrees with ComReg's preliminary view that there is no requirement to amend the current reasonable access requests process. We do not believe that FCS is a viable alternative to copper. Yet this is a message that seems to be emerging on the face of the consultation paper, albeit at relatively low levels at this time. A cautionary approach should be taken to more FCS connections on the public telephone network.

Q. 5. Do you agree or disagree with ComReg's preliminary view that there is no requirement to amend the threshold levels applicable to reasonable access requests? Please give reasons for your answer.

A. 5. ALTO submits that there is an obvious mismatch between the thresholds applied for PSTN and LLU. The PSTN process should align with the LLU process.

Q. 6. Do you agree or disagree with ComReg's preliminary view to retain the minimum data rate of 28.8kbit/s? Please give reasons for your answers.

A. 6. ALTO agrees with ComReg's preliminary view to retain the minimum data rate of 28.8kbit/s. We do so only on the basis that there are users taking services at this level. More generally members believe that there should be a movement away from retention of such services, however ComReg's suggestion remains appropriate considering the market and public network conditions at this time.

Q. 7. Do you agree or disagree with ComReg's preliminary view that it remains inappropriate to use USO FIA requirements as a mechanism to guarantee access to broadband connections during this transition period? Please give reasons for your answers

A. 7. ALTO agrees with ComReg's preliminary view that it remains inappropriate to use USO FIA requirements as a mechanism to guarantee access to broadband connections during this transition period. This is due to the fact that a minimum threshold remains sensible. It is unacceptable to withdraw services prior to the completion of the NBP rollout.

Q. 8. Do you agree or disagree with ComReg's preliminary view that there is a need to maintain GAP post 30 June 2021? Please provide reasons for your answer.

A. 8. ALTO agrees with ComReg's preliminary view that there is a need to maintain GAP post 30 June 2021. In our view the analysis presented by ComReg at paragraphs 258 and 259 is sensible in the short to medium term and focusses correctly on consumer welfare considerations.

Q. 9. Do you agree or disagree with ComReg's preliminary view to not introduce tariff options? Please provide reasons for your answer.

A. 9. ALTO agrees with ComReg's preliminary view to not introduce tariff options. ComReg has clearly and cogently outlined the basis for constraints within the consultation paper and the likely imperative need for a review of the position post the transposition of the European Electronic Communications Code later on in 2021, or early 2022.

Q. 10. Do you agree or disagree with ComReg's preliminary views on control of expenditure measures? Please provide reasons for your answers

A. 10. ALTO agrees with ComReg's preliminary views on control of expenditure measures. ALTO does so on the basis that this matter is likely to require a need for review in the coming years. However, given the risks associated with social exclusion and low implementation costs, ALTO agrees with the position suggested by ComReg at this time.

Q. 11. Do you agree or disagree with ComReg's preliminary views to continue to monitor QoS performance for any designated undertaking and to continue to publish QoS trends. Please provide reasons for your answers.

A. 11. ALTO agrees with ComReg's proposition. ALTO remains concerned with the suggestion that Urban and Rural splits of FACO could have a very detrimental effect on QoS. ALTO believes that ComReg must continue to monitor and report as has been the case for quite some time now.

Q. 12. Do you agree or disagree with ComReg's preliminary view that there is a continued need for an AFL USO, post 30 June 2021? Please provide reasons for your answers.

A. 12. ALTO agrees with ComReg's preliminary view that there is a continued need for an AFL USO, post 30 June 2021. ALTO suggests that ComReg has an obligation to maintain the status quo ante particularly in circumstances where the copper network is due to be retired shortly. ALF USO must continue when viewed on this basis.

Q. 13. Do you wish to express an interest in being a USP for any future provision of AFL under the USO? Please set out your reasons and any other information you deem relevant.

A. 13. ALTO is not in a position to express a view on this question.

Q. 14. Do you agree with ComReg's preliminary view that, in the absence of receiving any expressions of interest, that the current USP, eir, is best placed to continue to be the USP for AFL, in light of the preliminary proposal for an initial designation period of eighteen months – two years? Please provide reasons for your answer.

A. 14. ALTO agrees with ComReg's preliminary view that, in the absence of receiving any expressions of interest, that the current USP, eir, is best placed to continue to be the USP for AFL, in light of the preliminary proposal for an initial designation period of eighteen months – two years.

ALTO plans to engage extensively with ComReg on the subject of copper switch-off in the coming months.

Q. 15. Do you agree or disagree with ComReg's preliminary view that geographical scope of any proposed designation should be the whole of the State? Please set out reasons for your answer.

A. 15. ALTO agrees with ComReg's preliminary view that geographical scope of any proposed designation should be the whole of the State. This is a self-explanatory matter but we note the complexities arising should partial designations be made or sought. That would not be an ideal situation for ComReg or industry to be placed in.

Q. 16. Do you agree or disagree with ComReg's preliminary view that the designation period should be for a period 24 months unless amended?

A. 16. ALTO agrees with ComReg's preliminary view that the designation period should be for a period 24 months unless amended.

ALTO has previously suggested that any designation period should only commence after ComReg has fully deliberated on the subject of copper switch-off which we note

is in the ComReg work programme at this time.

ALTO notes that the eir Whitepaper on the subject of copper switch-off presents only one view of potential conditions. ALTO has its own views on copper switch-off that will be communicated to ComReg shortly.

Q. 17. Do you have any comments or suggestions on the draft Decision Instrument? Please set out your answer in detail.

A. 17. ALTO does not propose to offer any comments on the draft Decision instrument.

Q. 18. Do you agree or disagree with ComReg's draft regulatory impact assessment of the impact of the proposed options? Are there other impacts or details that should be included? Please set out reasons for your answer.

A. 18. ALTO agrees with ComReg's draft regulatory impact assessment of the impact of the proposed options. ALTO has submitted that there appears to be an issue with the lack of availability of wholesale VoIP offerings on the market which might provide for more flexible options for wholesale operators and consumers, this is a matter ComReg should seek to address in due course.

ALTO

24th June 2021

BT Communications Ireland Ltd (BT) Comments to ComReg's Public Consultation:

Universal Service Requirements
Provision of access at a fixed location
(AFL USO).

Issue 1 – 24th June 2021

1.0 Introduction

We support many of the preliminary views of ComReg including that the Access at a Fixed Location (AFL) Universal Service Offering (USO) should continue for the next 24 months as proposed. However we consider the next 24 months should be used to modernise and overhaul the regime.

For example the National Broadband Plan (NBP) has progressed to deployment with National Broadband Ireland (NBI) now in the early stages of rolling out the infrastructure and connecting homes within the Intervention Area (IA). Given the substantial State Aid involved and the Universal Nature of the offering within the IA, we would expect the AFL USO to be migrated to NBI within the IA at the 24 months renewal.

Separately we note the eir proposed withdrawal of copper and whilst we welcome ComReg's intention to consult on that programme, it seems that AFL will ultimately only be available in the medium to long term over fibre access which is generally taken to mean broadband access. Hence it would appear that broadband access will be a major component of any future USO.

2.0 Response to detailed questions

Q1. Q. 1 In your opinion are there other relevant factors in relation to supply side trends which ComReg should consider in the context of AFL USO? Please give reasons to support your view

A1. We agree with ComReg's preliminary view but given the rollout of out of high-speed BB within the NBP IA we believe ComReg should use the 24 months extension of the existing scheme to start considering how it can apply the USO to NBI premises passed. Although the NBI rollout is in its early stages it is expected to speed up significantly from later this year so why not start planning how to apply the USO so that in 24 months-time the migration of USP will be seamless within the IA.

We welcome that ComReg is planning to consult on the proposal for Copper Withdrawal which will likely acerated the migration from WLR and other copper-based services to fibre. We urge ComReg to start the consultation process quickly as there are many issues to consider not least the continued operation of Customer Premises Equipment.

Q. 2 Do you agree or disagree with ComReg's review of the relevant demand trends? Please give reasons to support your view.

BT Response

A.2 As BT Ireland does not trade in the retail consumer market we consider it sensible to leave this market trends question to those more closely involved.

Q3. In your opinion are there other relevant factors in relation to demand trends which ComReg should consider? Please give reasons to support your view.

A.3 In regards the specific issue of migrations we welcome the recent ComReg Direction and aspects of the FACO Draft Decision concerning migrations that should facilitate workable bulk migrations of voice services from WLR to VoIP carried over BB.

Q4. Do you agree or disagree with ComReg's preliminary view that there is no requirement to amend the current reasonable access requests process? Please give reasons for your answer.

A.4 We agree with ComReg's preliminary view that there is no requirement to amend the current reasonable access requests process as there are few operators providing standalone voice and it's likely that some/most of those operators would be dependent on open eir products anyway.

Q5 Do you agree or disagree with ComReg's preliminary view that there is no requirement to amend the threshold levels applicable to reasonable access requests? Please give reasons for your answer.

A.5 We are aware of operational disagreements that have existed for some years concerning the thresholds and believe further work is needed in this area. For example it's our perception that a number of applications will end with an offer of the Fixed Cellular Service (FCS) (or whatever name open eir is calling or not calling it) and there is a lack of transparency as to the costs involved before going down this route vs. the copper route. This has been an issue for many years and more of the same is unlikely to resolve the matter. We would recommend ComReg engage with the parties on this matter to try to resolve.

Q6. Do you agree or disagree with ComReg's preliminary view to retain the minimum data rate of 28.8kbit/s? Please give reasons for your answers.

A.6 Whilst 28.8kbit/s is an incredibly slow speed in the modern world we would agree it's better to maintain the facility for the interim given the existing small cohort of users that maybe dependent on this for data communication. However we would suggest that ComReg monitor both the volume of users and network costs from time-to-time to determine the service is still being used and to look at alternative services. ✂. We agree the State Funded NBI rollout in the rural areas should improve matters.

Q7. Do you agree or disagree with ComReg's preliminary view that it remains inappropriate to use USO FIA requirements as a mechanism to guarantee access to broadband connections during this transition period? Please give reasons for your answers.

A7 We do not agree that ComReg should be restricting the customer's right to seek the best services they can achieve which is what this question is suggesting. Leaving aside the operator argument for a moment, we should consider the customer. We note the rules for the provision of USO PSTN services protects both the USO provider and the customer and if these are met the customer should be supplied with the PSTN service. That should be straight forward but it's often not. In many cases it would be expected these copper lines would be a long distance from the exchange or cabinet hence the reason why they were not available through commercial provision. In many cases it's unlikely the line will technically support high speed access over copper so for many USO lines the issue is mute.

If the customer wants to try/request any form of FIA why should they be restricted? Afterall the line may recover more revenue, easing the USP claim. For example, if the customer tried to replace their 28.8kbit/s dial-up modem with a 56kbit/s dial-up modem why should that be prohibited, similarly if the customer tried ordering ADSL or even VDSL the application should not be refused unless the line is not technically capable of such services. Clearly the customer must be made aware of the speed limitations through other regulation. Hence we think ComReg should consider the customer and the rules protect both parties.

We don't believe there is any intention to guarantee access to broadband as the line may not be capable of broadband speeds, but similarly why would the USP go out of its way to prevent the opportunity of a USO line being used for BB if such were possible. Indeed the USP will receive more revenue from a BB line than just a Voice line. We don't support ComReg's view on this.

Q11. Do you agree or disagree with ComReg's preliminary views to continue to monitor QoS performance for any designated undertaking and to continue to publish QoS trends? Please provide reasons for your answers.

A.11 Quality of Service has been a problem from time to time for various reasons and we consider the constant monitoring and penalties has contributed to the improvements we have seen over the past years. Several years ago the industry had to formally dispute what we considered were poor quality commercial Service Level Agreements in the form of repair targets and penalties. We therefore strongly agree with preliminary views to continue to monitor QoS performance. I.e. What gets measured gets done.

Q12 Do you agree or disagree with ComReg's preliminary view that there is a continued need for an AFL USO, post 30 June 2021? Please provide reasons for your answers

A.12 We agree with ComReg's preliminary view that there is a continued need for an AFL USO, post 30 June 2021. Absent the AFL USO there is a strong and we believe real risk that customers that can't be served commercially will not be served.

Q13. Do you wish to express an interest in being a USP for any future provision of AFL under the USO? Please set out your reasons and any other information you deem relevant.

A13. ✂.

Q14 Do you agree with ComReg's preliminary view that, in the absence of receiving any expressions of interest, that the current USP, eir, is best placed to continue to be the USP for AFL, in light of the preliminary proposal for an initial designation period of eighteen months – two years? Please provide reasons for your answer

A.14 As indicated in our response to question 13 to be the USP for AFL you really need to possess a ubiquitous mass-market high-volume access network and only one operator has that in Ireland as far as we are aware. i.e. the existing USP for AFL. Hence in our view, absent receiving any expressions of interest eir is best placed to become the USP for AFL for the coming 18 months to two years.

However, given the very considerable State Aid that has been afforded to NBI for the roll-out of broadband access within the IA, we consider and expect that ComReg should seriously look at migrating the USP for AFL within the IA to NBI once the 24 months has expired.

Q15 Do you agree or disagree with ComReg's preliminary view that geographical scope of any proposed designation should be the whole of the State? Please set out reasons for your answer.

A.15 We agree the USO is national in nature as everybody has a right to a telephone service and at this time, given NBI is in the early stages of rollout, we agree the existing USP should supply a national USO AFL solution. However, considering the major changes taking place in the industry with NBI, copper withdrawal, BB rollout and whether it should be covered by the USO, we believe a new approach is needed for the next review.

Q16 Do you agree or disagree with ComReg's preliminary view that the designation period should be for a period 24 months unless amended?

We agree with ComReg's preliminary view that the designation period should be for a period 24 months unless amended. We believe this time is needed to maintain the existing USO environment whilst work is underway to reform the USO process considering NBI and other major developments.

Q17 Do you have any comments or suggestions on the draft Decision Instrument? Please set out your answer in detail.

A17 We agree with the decision instrument which we note seeks to change the date of the existing Decision to extend the operation of that Decision to 2023. As we have indicated during our response we do consider a reform of the USO arrangements in Ireland is needed and ask that ComReg commence this ASAP. We also believe that ComReg should actively, if not already underway, consider how the USO will apply in the NBP Intervention area. We believe NBI as a State Funded supplier for BB should take up the obligation within the Intervention area.

Q18. Do you agree or disagree with ComReg's draft regulatory impact assessment of the impact of the proposed options? Are there other impacts or details that should be included? Please set out reasons for your answer

A.18 We generally agree with the Regulatory Impact Assessment which generally follows the preliminary views through the consultation. Whilst we agree the approach for the next 24 months, we consider this won't be the case beyond the 24 month time frame, and if not already underway we believe ComReg should review the major market changes that are coming, including being ready for NBI to take over the obligation within the Intervention area, life without copper and what are the plans for a BB USO.

End

eir Response to ComReg Consultation:

Universal Service Requirements Provision of access at a fixed location (AFL USO)

ComReg Document 21/51

24 June 2021

DOCUMENT CONTROL

Document name	eir response to ComReg 21/51
Document Owner	eir
Status	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’.

Executive summary

1. eir is extremely concerned by the process adopted by ComReg to propose to designate eir as the Universal Service Provider (USP) for the Access at a Fixed Location Universal Service Obligation (AFL USAO).

2. ComReg has failed to consider the relevant issues in any meaningful way and has not adduced any quantifiable evidence in support of its position that there is a need to maintain a market intervention of the scale of the AFL USO. There is no justification for an AFL USO as the market is delivering social inclusion through mobile and other voice services.

3. In the absence of an evidence base for its proposals ComReg has sought to bounce eir into being designated as the USP through a truncated consultation process with responses due 4 days before the expiry of the current designation on 30th June 2021. This is clearly an unfair process of either deliberate or incompetent design on the part of ComReg. However this is par for the course as evidenced by ComReg's approach to previous designation processes in 2014 and 2016.

4. ComReg proposes to maintain the components of the AFL USO unchanged, with the exception of an as of yet undefined quality of service (QoS) regime. This is also despite the fact that the market has moved on significantly since features such as Functional Internet Access (FIA) and Geographic Averaged Pricing (GAP) were first defined and set by ComReg originally in 2005.

5. An FIA of 28.8Kb/s cannot in any way be considered to provide functioning access to the internet. Rather ComReg is requiring eir to maintain a legacy dial-up service nationally for a few end users who will have access to alternative modern means to send low data rate messages.

6. The GAP acts as a constraint on eir's retail pricing flexibility. ComReg has not analysed the potential impact of the GAP on eir's ability to compete in the competitive retail market.

7. ComReg states its intention to review the QoS regime post designation. The QoS regime has the potential to impose significant costs on eir, depending on the targets adopted. A poorly designed QoS regime could force eir to have to inefficiently invest in its legacy network when ComReg should be encouraging investment in Very High Capacity Networks.

8. This is particularly concerning in the National Broadband Plan (NBP) Intervention Area (IA) were the ongoing rollout of the State-funded NBP network will render eir's copper network redundant in only a few years.

9. The absence of any details on the QoS regime that will apply places eir at an incredibly unfair disadvantage of being proposed as the USP without full knowledge of the potentially very costly implications.

10. The process ComReg is following is fundamentally flawed. In any event there is no need for the continuation of the outdated AFL USO regime and ComReg should focus its intention on examining the need or otherwise for a regulatory construct to promote Affordable Broadband services in accordance with the European Code.

11. eir notes the publication on 22nd June 201 of ComReg consultation 21/66 which proposes to impose an interim designation on eir pending ComReg's consideration of the responses to this consultation. eir will respond separately to ComReg 21/66. However its publication only two days before the submission deadline for this consultation further calls into question the intent and effect of ComReg's administrative processes in respect of the USO regime.

Response to consultation

12. eir would normally welcome the opportunity to participate in the consultation process to develop informed regulatory policy. However eir has a number of fundamental objections to both the manner in which ComReg is conducting the consultation process for "Universal Service Requirements Provision of access at a fixed location" and to the proposals that ComReg now makes in respect of designating and regulating a USP.

13. ComReg has conducted the consultation process in accordance with a timetable that is fundamentally flawed, inefficient and has significantly discriminated against eir and its interests. This consultation document was issued on 27 May 2021, only one month before the current designation period expires on 30 June 2021. The deadline for submissions is 24 June 2021, a mere four working days before the expiry date of eir's current USO AFL designation period. The unduly short timeframes have nullified ComReg's call for expressions of interest from other telecoms operators, which in turn increases the likelihood of eir being designated the AFL USP.

14. Unfortunately administrative delays on the part of ComReg are not unknown across its various workstreams. ComReg's oversight of the USO regime (including the assessment of eir's unfair burden funding applications) has been particularly fraught and this is not the first time that eir has been the victim of ComReg's gross mismanagement of the review process.

15. The current designation was imposed following a consultation (ComReg 16/31) which was issued on 4 May 2016, just under two months before the previous designation period expired with a deadline for submissions thirteen working days before the expiry date of the designation on 30 June 2016. In the circumstances eir had no option but to Appeal the subsequent Designation Decision particularly as key elements of the USO AFL regime to apply to eir, notably the Quality of Service obligations had not been resolved at that time.

16. It seems bizarre that 5 years on ComReg has chosen to follow an almost equivalently flawed administrative process.

17. ComReg has been aware of the expiry date of the current designation for 5 years and has had adequate time to plan and undertake a proper review in a fair and non-discriminatory manner. Given the continued administrative process issues associated with the USO designation and associated obligations in recent history draws question of its very relevance even within ComReg and the need for designation more broadly in this modern technology age. The fact that history is repeating itself in this unfair manner and specifically across a

number of inter-related USO obligations (including the USO to generate a Printed Directory, the USO to provide Public Payphones, Quality of Service obligations and indeed the designation of the USP itself) appears to be either a continued administrative oversight by ComReg and/or a cynical attempt is being made to circumvent fair regulatory process acting disproportionately against eir's interest.

18. Before progressing to the specific questions eir notes that ComReg's bias can be further observed by the fact that questions 4 to 11 deal with the design / components of the USO AFL. It is not until question 12 that ComReg remembers it needs to be seen to ask the question whether there is a continued need for an AFL USO.

Q. 1. In your opinion are there other relevant factors in relation to supply side trends which ComReg should consider in the context of AFL USO?

19. eir notes that ComReg's supply side discussion is focussed on the development of fixed access networks. Whilst these are relevant to consideration of the AFL USO ComReg has failed to acknowledge the potential role of mobile services both on the supply and demand sides.

20. The purpose of a USO is to ensure the provision of the basic set of telecoms services including where provision of such access is not economic in order to avoid market failure leading to social exclusion.

21. Contrary to what ComReg appears to believe, neither the Directive nor the Regulations mandate the provision of narrowband, fixed voice, services. Instead, connections must be, in accordance with Article 4(2) of the Universal Service Directive, "*capable of supporting voice, facsimile and data communications at data rates that are sufficient to permit functional Internet access, taking into account prevailing technologies used by the majority of subscribers and technological feasibility*".

22. In determining whether all reasonable requests for connection at a fixed location permitting actual functional internet access are already met, regard should be had to the communications services that are consumed by End Users in Ireland, the risk of social exclusion arising from being unable to have fixed access and the cost and proportionality of mandating an AFL USP in these prevailing circumstances.

23. It is disappointing to note that ComReg's thinking has not evolved over the last 5 years. In our response to ComReg 16/31 we observed "*ComReg … have provided no evidence that access at a fixed location is required in order to avoid social exclusion and in particular they have provided no evidence that any such requirement is not met by mobile services so that, in fact, all reasonable requests for a connection are already met. A number of other Member States have chosen to not impose a USO for AFL on this basis, including Germany, Estonia, Luxembourg, Poland and Romania. It is true that Member States may not impose as a USO the provision of mobile services. However this does not in any way mean that the universal service may not be met by mobile services such that there is no need for a USO AFL. This is a matter which appears to have been either ignored or misunderstood by ComReg*."

24. This suggests that ComReg's concern about indoor coverage in rural areas is misplaced. ComReg has also overlooked its own initiatives including the licensing of mobile phone repeaters to enhance indoor coverage (D08/18 refers). More generally, it calls into serious question the rationale for maintaining the AFL USO as there does not appear to be any basis for the proposition that the AFL USO is necessary to avoid social exclusion in Ireland where social inclusion in now achieved through both fixed and mobile access. eir's own coverage analysis estimates that more than 97% of the population should have good 3G / 4G indoor coverage and provide a much superior data service than AFL USO. This is particularly the case as mobile access is much more likely to provide truly functional internet access than a copper line supporting 28.8 kbps, which will not, as expressly admitted by ComReg provide functioning access to the internet.

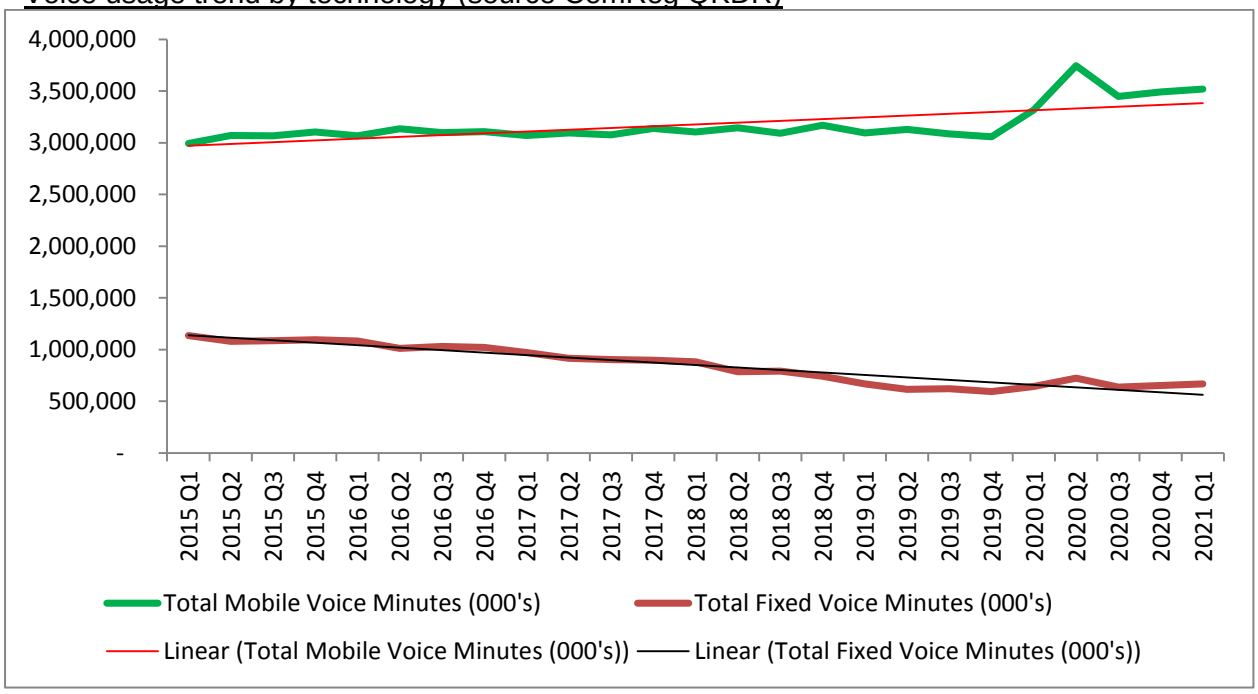
25. We note further that there is no issue as to the affordability of mobile services, including for vulnerable low-income end-users. The relatively low cost of providing access for mobile subscriptions, the fact that mobile has become the service of choice for voice oriented users and the emergence of broadband as key driver of fixed subscriptions has resulted in mobile service becoming far more affordable than even basic fixed line rental for low to medium level users.

26. In the light of the above, eir believes that end-users' requirements for access at a fixed location including allowing them functional internet access are met by mobile services so that it is neither necessary nor proportionate to designate a USP for the next two years.

27. Recent market research carried out for ComReg[1] indicates that only 46% of the representative sample owned a landline. Of these over 40% rarely or never used their landline to make or receive calls meaning that just over a quarter of the population use a landline. Mobile is more important for voice services in modern society as illustrated in the following chart.

[1] ComReg 21/28b

Voice usage trend by technology (source ComReg QKDR)



28. Mobile ownership is in excess of 98% of the adult population as noted by ComReg in the consultation.

29. In light of the above, it is eir's view that ComReg, contrary to what is required under the Universal Service Directive, has failed to make the preliminary determination as to whether it is proportionate, efficient and non-discriminatory to impose a USO for AFL and erred in its finding that it is required under the universal service regime to ensure that demand for narrowband fixed voice telephony, which does not allow functional internet access, is met.

Q. 2. Do you agree or disagree with ComReg's review of the relevant demand trends?

30. eir agrees with a number of the statements made by ComReg:

"*106 Household Retail fixed telephony service penetration has declined by 15.3% (between Q3 2016 – Q4 2020). Consumer usage patterns indicate a general and ongoing decline in the use of retail fixed telephony service, as well as increased usage of broadband, of mobile telephony, and of bundled products*."

"*129 Customer experience of voice services delivered over VoIP is generally not very different from those delivered over PSTN/fixed voice access.*"

"*133 ComReg's view is that the ECJ's statement "that AFL means the opposite to mobile" is not inconsistent with ComReg's position that AFL is not a mobile service, however the obligation to provide AFL does not have to be provided using a specific technology. In accordance with the principle of technology neutrality, wireless technology can be used as part of the solution to deliver access at a fixed location for USO.*"

31. However, taking into account our comments in response to the previous question eir cannot see why ComReg is so blinkered when considering the availability of voice services to support social inclusion.

Q. 3. In your opinion are there other relevant factors in relation to demand trends which ComReg should consider?

32. Please see our responses to questions 1 and 2.

Q. 4. Do you agree or disagree with ComReg's preliminary view that there is no requirement to amend the current reasonable access requests process?

33. eir has not used the process to date.

Q. 5. Do you agree or disagree with ComReg's preliminary view that there is no requirement to amend the threshold levels applicable to reasonable access requests?

34. ComReg has failed to take into consideration the ongoing roll-out of the NBP in the Intervention Area (NBP IA). ComReg states "*39 During the transition period when alternative networks are being deployed, our objective is to ensure that reasonable requests for access at a fixed location are met, but without requiring unnecessary investment in the USP's legacy copper network and without inhibiting the retirement of that network, once an alternative is available.*"

35. eir fully agrees with the principles set out in ComReg's statement. If ComReg can justify the imposition of a narrowband AFL USO for a further two years it must be dynamic to ensure unnecessary investment is not mandated. This gives rise to two considerations in respect of the NBP IA.

36. First once a premises has been passed the AFL USO obligation should be lifted from eir in respect of such premises, essentially the reasonable access threshold is reduced to €0.

37. Second, when a request for a new connection is received in the NBP IA the reasonable access thresholds should be reduced relative to the forecast date that the NBP will be rolled out to the premises reflective of the fact that eir's investment must be recovered over a much shorter period.

38. eir is of the firm view that there is simply no basis under the Universal Service Directive and Regulations for ComReg to impose the AFL USO on eir. Where alternative, including NBP, infrastructure exists, then clearly requests for connections are capable of being met by an operator and it is difficult to see why a USO requiring eir to roll-out a legacy network could be necessary, efficient and proportionate in these circumstances. eir notes further in this context that the provision of PATS under the USO since 2011 is no longer an obligation that exists independently of the obligation to meet reasonable requests for connection at a fixed location. Since the amendments to the Universal Service Directive in 2009, an obligation to meet reasonable requests for PATS can only be imposed in respect of the connections which are the subject of the USO. Where requests for connections can be met using alternative infrastructure, there is simply no basis to require eir or another provider to roll out infrastructure in order to meet a request for PATS. The only obligation which may be imposed is an obligation to provide PATS over the required connection. Whether this would

be appropriate will depend on how reasonable such requests are including having regard to the matters set out in our response to Question 1.

Q. 6. Do you agree or disagree with ComReg's preliminary view to retain the minimum data rate of 28.8kbit/s?

39. eir does not agree it is appropriate or justified to impose an obligation for a minimum data rate of 28.8 Kbit/s.

40. At paragraph 223 ComReg states that "*Decision D05/16 maintained the prevailing status quo in respect of FIA, as the NBP tender process had not completed at that time. ComReg did not specify what functional internet access is. ComReg decided to specify as a requirement on the USP, that the data rate must not be less than 28.8 kbit/s, as a reasonable minimum data rate.*" This statement is confused as it appears to suggest ComReg has stepped back from the concept of FIA in favour of a minimum data rate. However it is clear from the USR and USD that ComReg only has the authority to specify and impose obligations in respect of FIA.

41. As the term suggests any Functional Internet Access obligations must support 'functional' access to the internet. It is therefore perhaps understandable that ComReg is seeking to repackage the FIA obligation as a 'minimum data rate' because a data rate of 28.8 kbit/s cannot provide functional access to the internet. ComReg's proposed FIA data rate was set in 2005 and is now very much out of date with the advancement of technology. According to ComReg's most recent QKDR 82.9% of all fixed broadband subscriptions were equal to or greater than 30MBps in Q1 2021. Only 0.7% lines had a service less than 2Mbps. Mandating a rate of 28.8Kbit/s would seem to be a pointless exercise "*having regard to prevailing technologies used by the majority of subscribers in the State and to technological feasibility*"[2]. Unfortunately it has substantial cost implications for the USP. As such this obligation should be removed if an AFL USO designation can be justified.

42. ComReg seeks to justify its proposal on the basis it[3] "*is concerned that absent an obligation for a minimum data rate then there is a risk that this minimum data rate would not be provided to a small cohort who are dependent on it for basic data needs*" and "*there may be unacceptable short term implications for some end-users if the AFL USO is withdrawn, prior to the completion of the NBP rollout*." ComReg provides no evidence to support its stated concern.

[2] USR 3.(5)(a)
[3] Paragraphs 231 and 232

43. In reality the effect of the proposed obligation is to require eir to maintain a national dial-up internet access service. There are very few users of the service and most of those will be large business using legacy machine to machine applications. They are not vulnerable or socially excluded citizens.

44. ComReg is misinterpreting what universal service is about, as set out in the Universal Service Directive and Regulations. In particular, contrary to what ComReg appears to suggest, there is no entitlement, and there can be no obligation, to maintain in place a service simply because a number, including a "small cohort" (para. 35), of users avail of the services. The requirement under Article 4 is to ensure that all reasonable requests for connections supporting functional internet access are met. This requirement cannot in any way be interpreted to allow ComReg to require eir to preserve a dial up internet service, for the few remaining users because this service does not in fact allow functional internet access. ComReg appears to be seeking to perpetuate defunct services. This is not what the USO is about and is not what ComReg is legally permitted to require from a USP.

45. The proposed regime is contrary to ComReg's own stated strategy of ensuring rollout of high-speed broadband and, in providing for a service at 28.8 Kbps, it does not ensure Functional Internet Access ("FIA") as provided for in the USR and USD.

46. ComReg compounds its failures by seeking to designate a USP for AFL for a further two years requiring continued investment to make available an outmoded service nationally, and, compounded with the as yet unknown QoS regime potentially further inefficient investment into the intervention area.

47. In considering the matter of Functional Internet Access, it is essential to have regard to the requirements of the Universal Service Directive, in particular, the requirement under Article 3 that Member States "*determine the most efficient and appropriate approach for ensuring the implementation of universal service, whilst respecting the principles of objectivity, transparency, non-discrimination and proportionality*" and "*seek to minimise market distortions*" and the requirement under Article 4 (and Regulation 7 of the Universal Service Regulations) that Member States (in Ireland, ComReg) "*ensure that all reasonable requests for connection at a fixed location to a public communications network are met by at least one undertaking*." Importantly in this context, it is an express requirement that this connection is "*capable of supporting voice, facsimile and data communications at data rates that are sufficient to permit functional Internet access, taking into account prevailing technologies used by the majority of subscribers and technological feasibility*". Member States are also required to "*ensure that all reasonable requests for the provision of a publicly available*

telephone service over the network connection referred to in paragraph 1 that allows for originating and receiving national and international calls are met by at least one undertaking."

48. eir is of the view that ComReg's proposals are at odds with the specific requirements of the Universal Service Directive and Regulations, and for this reason are unsustainable and unlawful.

49. The rationale followed by ComReg as regards both FIA and the designation of a USP raises significant concerns that the USO regime contemplated by ComReg will result in an entirely inefficient duplication of infrastructure, that is entirely contrary to ComReg's statutory duties and objectives and the obligations of all public authorities concerned, including the Minister, under Article 3 of the Universal Service Directive. eir considers it to be an absolute requirement that the USO does not duplicate the purpose of the NBP in delivering broadband in the NBP area. Having established that the NBP best serves the objective of delivering broadband service throughout the State, it is entirely counterintuitive to consider that a USO is required in parallel with the NBP, now or at a later stage.

Q. 7. Do you agree or disagree with ComReg's preliminary view that it remains inappropriate to use USO FIA requirements as a mechanism to guarantee access to broadband connections during this transition period?

50. eir notes that there will be a review to define Adequate Broadband Internet Access Services when the Code is transposed into Irish legislation. It would not be appropriate to create a new mechanism to guarantee access to broadband connections in advance of completion of that review.

Q. 8. Do you agree or disagree with ComReg's preliminary view that there is a need to maintain GAP post 30 June 2021?

51. ComReg's consideration of GAP is superficial and, in particular, does not provide any meaningful consideration of the costs of continuing to impose the obligation on eir. As a result ComReg does not present a robust case for retaining the obligation for eir to maintain geographically averaged prices.

52. In eir's view, it is simply unacceptable to maintain an obligation on eir that has a material impact on our ability to compete, without taking due care to consider the issue.

53. In essence the key benefit is that GAP will prevent increases for some users. However, GAP also prevents reductions to some users, which is a disbenefit for end-users, and should be avoided. The GAP obligation is therefore disproportionate. If ComReg wants to prevent increases for users of voice only services it should do exactly that, and not prevent reductions.

54. ComReg states[4] it "*is of the preliminary view that maintaining GAP will result in an overall net welfare benefit.*" ComReg has not provided any evidence to support this conclusion. We note that the Regulatory Impact Assessment is devoid of any quantitative assessment. However for ComReg to reach a conclusion on net benefit it must be able to quantify the benefit and cost associated with its proposal.

55. With regard to pricing there are a number of sources of constraints on eir:

- End-users switching to alternative providers using SB-WLR;
- End-users switching to mobile;
- End-users switching to alternative providers using their own fixed infrastructure e.g. fixed-wireless providers;
- End-users switching to alternative providers using their own managed Voce Over Broadband (VOBB) service;
- End-users switching to Over The Top services / unmanaged VOBB; and
- End users ceasing their fixed line service.

[4] Paragraph 258

56. ComReg's discussion in the consultation only considers alternative fixed line providers and as such ComReg's analysis as far as it goes is incomplete.

57. ComReg states[5] it "*has considered whether retaining the GAP obligation would create market distortions and whether the balance of these risks requires that the GAP obligation be maintained*". Simply stating that it has considered these matters is insufficient for the purpose of regulatory decision making. ComReg must present the facts of its assessment.

58. ComReg's discussion regarding GAP is predicated on an unsubstantiated view that retail prices may increase. It is not appropriate to use this to effectively apply an extreme precautionary principle, and to state that obligations on eir should be maintained on the basis of an assertion.

59. Even if one accepts that there is a risk of excessive increases by eir, and that this risk needs to addressed, then the option of maintaining GAP should be tested against alternative mechanisms to achieve the required aim. There are many such alternatives that ComReg has failed to consider:
    - ComReg could impose a maximum tariff for residential users to maintain affordability but also allowing the USP to exercise retail price differentiation
    - ComReg could define a special social tariff and require that eir make it available to residential users in defined areas

60. This list is non-exhaustive but it seems there is little proper consideration of any alternative by ComReg.

[5] Paragraph 256

Q. 9. Do you agree or disagree with ComReg's preliminary view to not introduce tariff options?

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

Q. 10. Do you agree or disagree with ComReg's preliminary views on control of expenditure measures?

62. eir does not agree that specific measures should be imposed on the USP. They should either be imposed on all retail operators or none.

Q. 11. Do you agree or disagree with ComReg's preliminary views to continue to monitor QoS performance for any designated undertaking and to continue to publish QoS trends.

63. ComReg states: "*40 The current QoS regime set out in D02/19 is also coming to an end on 30 June 2021. Accordingly, ComReg intends to consider the future requirements for an associated AFL USO QoS. ComReg considers that QoS is an important aspect of AFL, accordingly ComReg is of the view it is important that the QoS performance is maintained. Therefore, at this time, ComReg will continue to monitor QoS performance for any designated undertaking and ComReg will continue to publish QoS trends. ComReg will shortly commence a review on QoS as may be appropriate*."

64. This is repeated at paragraph 306 and appears to be ComReg's sole consideration of the associated QoS regime. QoS is fundamental part of the USO burden. Inappropriate changes could require open eir to increase investment in its rural copper network at a time when that network is being replaced by the rollout of NBP giving rise to stranded investments and the inefficient use of scarce capital resources which are better deployed supporting the rollout of fibre access networks.

65. In the absence of any details or indications as to what the revised QoS regime might look like eir is at a loss to understand the full implications of being designated USP.

66. If ComReg forces eir to continue to provide the USO in areas where there is another better network (State supported) this will be highly productively inefficient. It will force eir to continue to bear the very significant costs of maintaining an outdated network, when the vast majority of customers, and certainly the most valuable ones, would have migrated to the NBP network. It is also unclear how this would be consistent with a copper switch off programme.

67. The correct productive efficiency question is "what is the most cost effective way for this service to be provided?" That is very obviously for the NBP network to take on the USO and provide these services, rather than for eir to be forced to significantly invest to continue to provide a USO based on outdated and overbuilt infrastructure at an average net cost of c. €10 million per year. The NBP will have all the technical capabilities of doing this, as well as providing more enhanced services. It is economically wrong for ComReg and its advisors to force such an outcome.

68. Any subsequent decision to potentially increase network quality is forcing eir to increase the costs of providing universal service to these areas shortly before the eir network becomes completely redundant. From an economic efficiency perspective this makes no sense whatsoever. It could only be justified if the social policy analysis of imposing such an obligation is utterly compelling.

Q. 12 Do you agree or disagree with ComReg's preliminary view that there is a continued need for an AFL USO, post 30 June 2021?

69. eir fundamentally disagrees with ComReg's view that there is any continued need for an AFL USO. eir is of the view that ComReg has failed to establish that an AFL USO continues to be required by end-users in Ireland and failed in this respect to have due consideration to the services availed of by the majority of end-users in Ireland. The purpose of the universal service is to prevent social exclusion by ensuring that citizens in rural and remote areas or low-income households have affordable access to basic and essential telecoms services. We do not accept in this respect that it remains necessary to have access to a fixed voice, narrowband, access connection in order to participate fully in society in Ireland, having regard to the electronic communications services that are demanded and consumed by the majority of users in Ireland today and as evidenced by the State's NBP initiative. ComReg, however has failed to give any consideration to this issue and reached its conclusion that there is a continued need for an AFL USP using a flawed and circular rationale which reflects its misunderstanding of the requirements of the Universal Service Directive and Regulations.

70. ComReg states "*166 Universal service is a safety net to ensure that a set of at least the minimum services is available to all end-users and at an affordable price, where the risk of social exclusion arising from the lack of such access prevents citizens from full social and economic participation in society.*

167 Because of this, ComReg considers that any justification for the complete withdrawal of the existing USO would need to be undisputed. There would need to be a guarantee that AFL USO services would be delivered in the future, at an affordable price and quality, throughout the State."

71. ComReg has set the bar too high. The European regulatory framework does not set an absolute right to a fixed voice service. Significant discretion is awarded to the Member States under the Universal Service Directive as regards their approach to universal service. Article 3(2) thus provides that it is for Member States to "*determine the most efficient and appropriate approach for ensuring the implementation of universal service, whilst respecting the principles of objectivity, transparency, non-discrimination and proportionality",* constrained only by an obligation to *"seek to minimise market distortions, in particular the provision of services at prices or subject to other terms and conditions which depart from normal commercial conditions, whilst safeguarding the public interest*." Insofar as the AFL

obligation is concerned, this discretion manifests itself in two aspects. First, there is no obligation to impose an AFL USO: Article 8(1) of the Universal Service Directive is clear that this is an option for Member States, designating a USO required to meet requests for AFL is not a requirement. Regulation 7 of the Universal Service Regulations similarly does not require ComReg to designate a USP in charge of the AFL USO. Instead, Regulation 7(1) provides that "*The Regulator may designate one or more undertakings, for such period as may be specified by the Regulator, to comply with an obligation or requirement referred to in Regulation 3, 4(1)(a) or (b), an obligation or term or condition referred to in Regulation 5 or 6 and, where applicable, a requirement under Regulation 8(2), so that the whole of the State may be covered.*"

72. Second, Member States are not required to ensure that all requests for connection at a fixed location are met. Rather, Member States are required, under Article 4(1) of the Universal Service Directive, to ensure that "*all reasonable requests for connection at a fixed location to a public communications network are met by at least one undertaking*" (eir's emphasis). eir does not believe that any, or sufficient, consideration has been given by ComReg to whether it is necessary to ensure by way of a USO that all reasonable requests for connection at a fixed location in Ireland are met, having regard to their characteristics and the initiatives already underway, in particular the NBP.

73. There is no universal right to standalone fixed voice telephony, as ComReg contends. The Directive requires Member States to ensure that all reasonable requests for connections at a fixed location are met, and to ensure that all reasonable requests for the provision of a publicly available telephone service over that network connection that allows for originating and receiving national and international calls are met. It is not an obligation to ensure that any continued demand for fixed voice telephony is met, as a matter of universal right.

74. ComReg states its objective is there is a provider of last resort within the State and "*57 Because of this, we consider that any justification for the complete withdrawal of the existing USOs would need to be undisputed. For this to occur, there would need to be a guarantee that AFL USO services would be delivered commercially in the future, at an affordable price, appropriate quality, and standalone (if required) throughout the State. However, there can, for example, be no guarantee that uneconomic customers would be provided with basic telecommunications services under normal market conditions without an AFL USO being imposed.*" It is unacceptable that ComReg would seek to justify the continued imposition of a USO by setting such a high bar that is entirely speculative as to how the market might evolve. The major flaw in ComReg's assessment is its failure to consider mobile and to

consider the current market conditions i.e. three large networks/providers offering practically unlimited voice/text and Data for less than €15 per month.

75. Furthermore, eir fundamentally disagrees with the approach followed by ComReg in considering the coexistence of an AFL USO and the NBP roll-out. Under Article 3 of the Universal Service Directive, Member States are to determine the most efficient and appropriate approach for ensuring the implementation of universal service, whilst respecting the principles of objectivity, transparency, non-discrimination and proportionality, and seeking to minimise market distortions. There can be no doubt that the State intervention underway in the form of the NBP will ensure that all requests for connection at a fixed location to a public communications network are met by the NBP provider as the purpose of the NBP is precisely to deliver broadband access to all premises within the intervention area. The intervention area is by definition one which is not currently commercially viable. In eir's view, it is not only unlikely to be necessary to specify fast broadband FIA requirements inside the NBP intervention area but it is in fact very difficult to see how it can even be envisaged that this could be necessary. Similarly, the areas outside the intervention area are by definition outside the intervention area because market forces will deliver high speed broadband internet access in the near future. If an AFL USO can be justified then it should be withdrawn progressively and dynamically as the NBP rolls out to reduce the risk of unnecessary investment in the legacy copper network in the NBP IA.

Q. 13 Do you wish to express an interest in being a USP for any future provision of AFL under the USO?

76. No, eir does not wish to express an interest in being a USP however that discretion appears to have been taken away from eir. eir has demonstrated that the net cost was in the region of €10m per annum in previous years (up to 2015/16). ComReg's interpretation of unfair burden means that a private operator must fund the AFL USO from its own resources. An unjustified extension of the AFL USO would likely result in a net cost to eir and its shareholders in excess of €20m.

77. ComReg has conducted the current consultation process in a manner that is inconsistent with the requirements of the Universal Service Directive and Regulations and that has prejudiced eir. eir objects to the fact that ComReg sought expressions of interest in parallel with its consultation on the scope and nature of the USO requirements. The proposed expression of interest scheme is merely a pretence. eir submits that both cumulatively and individually these features of the consultation process disproportionately infringe upon eir's interests by significantly increasing the likelihood that eir would be designated the USO. This constitutes an inefficient designation mechanism which fails to adhere to the principles of objectivity, transparency and non-discrimination mandated by the Universal Service Regulations 2011 (S.I. 337 / 2011) (the "USR") and the Universal Service Directive (Directive 2002/22/EC) (as amended by Directive 2009/136/EC and Regulation 2015/2120) (the "USD").

78. Regulation 7(3) of the Universal Service Regulations requires ComReg to "*adopt an efficient, objective, transparent and non-discriminatory designation mechanism whereby no undertaking is in principle excluded from being designated*." Furthermore, Recital 14 of the Universal Service Directive suggests that Member States take into account the ability and the willingness of undertakings to accept all or part of the USO. It suggests that USO are allocated to operators demonstrating the most cost effective means of delivering access and services, including by competitive or comparative selection procedures. The process followed by ComReg is in this respect entirely defective. Far from ensuring that no undertaking is in principle excluded, the process followed by ComReg ensures that no undertaking other than eir may de facto be designated. In fact, ComReg makes it a pre-condition that they express an interest. eir believes that it is entirely discriminatory of it as eir has never expressed a willingness of discharging the USO in circumstances where the net cost of the USO has remained unshared to date.

79. More particularly, by issuing this consultation on 27 May 2021 with a submission deadline of 24 June 2021, ComReg has nullified the provisions which permit other providers to register expressions of interest in being designated the USO for AFL on the basis that the periods in question simply would not allow another provider to put in place the structures and framework required to discharge the USO for AFL. ComReg's failure in this respect has in turn increased the likelihood that the USO for AFL and the associated financial burden will once again be assigned to eir.

80. If ComReg were to be sincere in seeking expressions of interest it would need to have afforded any candidates sufficient time; (a) in advance of ComReg's draft decision and designation to allow potential candidates to determine whether they want to make an expression of interest and (b) after ComReg's designation to ensure that the successful candidates are able to put in place necessary structures and frameworks to ensure that they will be able to discharge the obligation in question.

81. Unfortunately history is repeating itself as evidenced by the two previous designation consultations (ComReg 16/31 and ComReg 14/48) both of which were issued in May in advance of a 30 June expiry of the existing USO. It seems bizarre that yet again ComReg has chosen to follow an almost equivalently flawed administrative process. The unduly short timeframes have nullified ComReg's call for expressions of interest from other telecoms operators, which in turn increases the likelihood of eir being designated the AFL USP.

82. ComReg has been aware of the expiry date of the current designation for 5 years and has had adequate time to plan and undertake a proper review in a fair and non-discriminatory manner. The fact that history is repeating itself in this unfair manner suggests that poor management of administrative processes is institutionalised within ComReg, or worse, a cynical attempt is being made to circumvent fair regulatory process acting disproportionately against eir's interest.

83. It is particularly noteworthy that ComReg has sought expressions of interest in parallel with consultations on the scope and nature of USO requirements but also in the absence of any details on what obligations will be imposed in respect of QoS. This acts as a further disincentive to any potential candidates who are presented with the invidious position of being invited to volunteer to fulfil an undefined and potentially unfunded obligation. ComReg has failed to provide any clarity to interested parties on how a potential net cost would be calculated. ComReg states at paragraph 329 that if designated, interested parties "*would be entitled to make applications for USO funding, in accordance with ComReg Decision*

D04/11". However the principles in D04/11 are clearly set in the context of services provided over a copper network which would appear to preclude interested parties to make an application using alternative technologies that may be more efficient. This further demonstrates that ComReg is not running a fair designation process.

84. These instances of prejudice constitute breaches of the principles set out in Regulation 7(3) of the Universal Service Regulations.

85. The 4 working day period that ComReg has allowed between the deadline for submissions to this consultation and the proposed commencement of the new designation period is too short to allow operators indicate an expression of interest in being designated the USO for AFL as it does not permit interested operators to put in place the necessary framework such that services would be ready for launch on July 1 2021. The period will not allow ComReg sufficient time to consider and have regard to the operators' submissions.

86. It should also be noted that ComReg's proposed process to consider expressions of interest is little more than a thin veneer of a procurement process. ComReg lists out 9 categories that must be completed in respect of an expression of interest. Paragraph 322 states "*A minimum standard of 80 points for each of the categories must be achieved for an expression of interest to be valid. If a* ***valid*** *Expression of Interest meets the minimum standard of 80 points in each category, as determined by ComReg,* ***it will be an expression of interest which meets the minimum standard****. If a* ***valid*** *expression of interest, as determined by ComReg, does not meet the minimum standard of 80 in each category, as determined by ComReg, it will be considered* ***an expression of interest which does not meet the minimum standard****.*" Whilst it is normal to have a scoring system within a procurement exercise, interested parties are usually given sufficient information to understand what the minimum standard to be achieved an acceptable score. ComReg has not done this creating further ambiguity for any interested party and thereby discouraging participation.

87. If ComReg had properly managed and carried out the consultation process they would have enabled other operators to register expressions of interest in being designated the USO for AFL.

Q. 14 Do you agree with ComReg's preliminary view that, in the absence of receiving any expressions of interest, that the current USP, eir, is best placed to continue to be the USP for AFL, in light of the preliminary proposal for an initial designation period of eighteen months – two years?

88. eir does not agree for all the reasons set out in this response.

Q. 15 Do you agree or disagree with ComReg's preliminary view that geographical scope of any proposed designation should be the whole of the State?

89. eir does not agree. To the extent that an AFL USO can be justified it should be targeted at areas with poor mobile coverage and / or progressively removed in the NBP IA as premises are passed by the new network.

Q. 16 Do you agree or disagree with ComReg's preliminary view that the designation period should be for a period 24 months unless amended?

90. eir notes that the Code, when transposed, will require Member States to consider the availability of Affordable Broadband services. Against that backdrop a designation period of 24 months (if an AFL USO can be justified) should provide sufficient time for a review of Affordable Broadband services to be conducted as this will inform the availability of voice services.

91. However eir considers that ComReg could better use the next 24 months by allowing the sun to set on the outdated voice oriented AFL, thereby freeing up its somewhat disorganised resources to focus on properly considering whether a new data oriented regime will be required.

Q. 17 Do you have any comments or suggestions on the draft Decision Instrument?

92. eir has no comments on the draft Decision Instrument.

Q. 18 Do you agree or disagree with ComReg's draft regulatory impact assessment of the impact of the proposed options? Are there other impacts or details that should be included?

93. The Regulatory Impact Assessment ("RIA") that ComReg presents under this heading is significantly deficient due to its failure to engage in a quantitative analysis of the available regulatory options. The RIA is a qualitative exercise on the part of ComReg which simply repeats many sections of the preceding sections of the consultation paper.

94. The revised guidelines concerning RIAs from the Department of the Taoiseach emphasises the importance of conducting a quantitative analysis (para. 4.13):

"*Once the options have been outlined, the costs, benefits and impacts of these options should be identified and analysed. It is important that all impacts are analysed to some extent as well as just merely identified. Where possible monetise cost and benefits (i.e. place a monetary value on them). Where monetisation is not possible, costs and benefits should be quantified (expressed numerically e.g. number/proportion of lives saved, reduction in traffic volumes etc). The level of analysis undertaken should be proportionate to the significance of the proposal*."

95. The need to carry out a full quantitative analysis is supported by the principles of efficiency and objectivity identified in Regulation 7 of the USR which are stated to guide ComReg selection of a USP:

"*In designating an undertaking under paragraph (1), the Regulator shall adopt an efficient, objective, transparent and non-discriminatory designation mechanism whereby no undertaking is in principle excluded from being designated*."

96. The RIA in its current format fails to meet the requirements of efficiency and objectivity identified. In light of the above:

97. ComReg has ignored a fundamental principle of best practice for RIAs, that being, the evaluation of regulatory options based on quantitative analysis and criteria.

98. In fact the RIA conducted by ComReg is entirely lacking in any quantitative analysis and criteria for assessing whether the option chosen represents an efficient solution that balances the costs and benefits.

99. The opinionated / self-serving approach can be seen throughout Chapter 8 which sets out ComReg's Regulatory Impact Assessment (RIA). The absence of any attempt by ComReg to quantify the costs and benefits of its proposals renders the RIA meaningless.

Response to Public Consultation on ComReg Document 21/51 entitled "Universal Service Requirements Provision of access at a fixed location (AFL USO)"

24 June 2021

Sky welcomes the opportunity to response to this public consultation and we have set out our views below under each of questions posed in ComReg Document 21/51

Q. 1 In your opinion are there other relevant factors in relation to supply side trends which ComReg should consider in the context of AFL USO?

We agree that Next Generation networks (paragraph 89) cannot yet be relied upon to support VoIP in all locations. However, splitting regulating of FACO into Urban and Rural will run the risk that certain Urban customers will not be able to avail of a fixed service and these customers should be catered for in the decision.

Q. 2 Do you agree or disagree with ComReg's review of the relevant demand trends?

Paragraph 139 does not take account of availability of copper on placing an order. Large volumes of orders are rejected as FCS Only or Fibre Planned areas (where. in these cases, customers cannot avail of a standalone talk service (unless they accept FCS)). This trend has increased substantially over the last couple of years and as such could account for the decrease in standalone subscriptions.

Q. 3 In your opinion are there other relevant factors in relation to demand trends which ComReg should consider?

In the case of Fibre only areas, there is effectively no VoIP only wholesale product available. Consideration should be given to creating a product(s) with specific profiles and pricing that fulfil the requirements of USO but don't necessarily require a broadband service to be the anchor service.

Q. 4 Do you agree or disagree with ComReg's preliminary view that there is no requirement to amend the current reasonable access requests process?

We disagree with the current process. We do not believe that FCS is a viable alternative to copper and customers do not get the opportunity to invoke the reasonable access requests process in the first instance.

Q. 5 Do you agree or disagree with ComReg's preliminary view that there is no requirement to amend the threshold levels applicable to reasonable access requests?

We believe there is a mismatch between the thresholds applied for PSTN and LLU. In addition, we believe that LLU operators could potentially obtain a copper service more easily that a PSTN only Operator. The PSTN process should align with the LLU process.

Q. 6 Do you agree or disagree with ComReg's preliminary view to retain the minimum data rate of 28.8kbit/s?

We agree with this threshold in paragraph 236 but it should apply to 94% of retail working copper lines and exclude active FTTH lines.

Q. 7 Do you agree or disagree with ComReg's preliminary view that it remains inappropriate to use USO FIA requirements as a mechanism to guarantee access to broadband connections during this transition period?

We agree with ComReg's view.

Q. 8 Do you agree or disagree with ComReg's preliminary view that there is a need to maintain GAP post 30 June 2021?

We think that Comreg's preliminary views are reasonable.

Q. 9 Do you agree or disagree with ComReg's preliminary view to not introduce tariff options?

We agree with ComReg's view given the current scheme provided by the Dept of Social Protection.

Q. 10 Do you agree or disagree with ComReg's preliminary views on control of expenditure measures?

We think that Comreg's preliminary views are reasonable.

Q. 11 Do you agree or disagree with ComReg's preliminary views to continue to monitor QoS performance for any designated undertaking and to continue to publish QoS trends.

We agree with ComReg's that ComReg should continue with the existing QoS regime as set out in D02/19.

Q. 12 Do you agree or disagree with ComReg's preliminary view that there is a continued need for an AFL USO, post 30 June 2021?

We agree with this view particularly in a State that will be predominantly Fibre only and where copper may be retired. The AFL USO will need to consider the impacts through this lens.

Q. 13 Do you wish to express an interest in being a USP for any future provision of AFL under the USO?

No, we do not have the necessary infrastructure to fulfil this obligation.

Q. 14 Do you agree with ComReg's preliminary view that, in the absence of receiving any expressions of interest, that the current USP, eir, is best placed to continue to be the USP for AFL, in light of the preliminary proposal for an initial designation period of eighteen months – two years?

We agree with ComReg's view that in the absence of an alternative that eir should continue with the USO obligations.

Q. 15 Do you agree or disagree with ComReg's preliminary view that geographical scope of any proposed designation should be the whole of the State?

We agree with ComReg's view.

Q. 16 Do you agree or disagree with ComReg's preliminary view that the designation period should be for a period 24 months unless amended?

We agree with ComReg's view but Comreg should be cognisant of the eir Whitepaper and potential distortion this may cause in the market and retain an option to amend the USO accordingly.

Q. 17 Do you have any comments or suggestions on the draft Decision Instrument?

No comment.

Q. 18 Do you agree or disagree with ComReg's draft regulatory impact assessment of the impact of the proposed options? Are there other impacts or details that should be included?

No comment.

End.