



Commission for  
**Communications Regulation**

## Decision Notice and Response to Consultation

### **Universal Service Requirements**

**Provision of access at a fixed location – connections to public telephone network and provision of functional Internet access**

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## **1 Foreword**

One of ComReg’s objectives is to address areas where improvements can be made in the provision of services to end-users. This response to consultation and decision relates to aspects of the Universal Service Obligation concerning requests for connections to the public telephone network and the suitability of telephone lines for functional Internet access. Universal Service is really all about social inclusion, allowing people in marginal areas or circumstances to avail of basic telecoms services that most of us take for granted.

The decision follows a public consultation which attracted twenty-six submissions. The Commissioners are grateful to all respondents for taking the time to submit their views. All views expressed in the course of the consultation have been considered by the Commissioners before reaching our decision and are discussed at the appropriate section in this document.

An issue that was prominent in the responses related to the availability of Broadband. As was noted in the consultation paper, the legislation relating to the Universal Service Obligation does not allow for the setting of an obligation for the provision of Broadband. Outside the scope of the Universal service Obligation, ComReg has taken a number of steps to contribute towards achieving the national priority regarding the wider availability of Broadband including facilitating competition in the provision of Broadband services through the encouragement of wireless technology.

**Mike Byrne**  
**Commissioner**

## 2 Executive Summary

ComReg document 05/17 entitled “Universal Service Requirements Provision of access at a fixed location – connections to public telephone network and provision of functional Internet access” contained a number of proposals relating to requirements and guidelines in the related areas of providing connections to the public telephone network and the data carrying capability of such connections for functional Internet access.

ComReg sought views on the proposals prior to reaching its decision on the appropriate action to take. This Decision Notice and Response to Consultation follows a review and consideration of the views expressed - submissions and comments were received and are published in an associated document 05/70s.

In relation to the measures on reasonableness of request, the process adopted by eircom has been characterised by frequent complaints to ComReg that the approach adopted by the USP amounted in effect to a refusal to meet a request. With a lack of transparency regarding the criteria which eircom use to assess the reasonableness of a request, such complaints are not unexpected. ComReg believes that the threshold proposed of €7,000 is both reasonable and proportionate. In arriving at this decision, ComReg has sought to strike a balance between the interests of the majority of consumers to keep prices low with the needs of those applicants, often in remote locations, to get a connection.

ComReg considers that the requirements and guidelines will provide end-users with improved levels of clarity and information when requests for connections to the fixed-line network are being dealt with and will also address issues relating to the data carrying capability of such connections.

Overall, the measures encompass the following;

### Request for Connections

- The USP (Universal Service Provider<sup>1</sup>) will be required to consider all requests for connections as reasonable if the expenditure involved in meeting the request is less than €7,000 and the cost to the applicant shall not exceed the standard connection charge (currently €121.93 VAT inclusive);
- Requests for connections which involve expenditure in excess of €7,000 are to be considered reasonable if applicant agrees to pay standard connection charge plus incremental costs above €7,000;
- The USP will be required to take the utmost account of ComReg guidelines when dealing with requests for connections including:
  - provision of information to applicants in respect of requests for connection and;
  - the publication of supply times and the setting of performance targets

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<sup>1</sup> In ComReg Decision Notice D17/03, 25 July '03; eircom was designated as the USP (for a period of 3 years) for the provision of telephone connections, directory services and payphones throughout the State.

- The USP will also be required, under Regulation 10 of the Universal Service Regulations, to publish information on its performance in meeting requests for connection.

### **Functional Internet Access**

- The USP will be required to adopt 28.8kbit/s as a reasonable minimum data rate for functional Internet access;
- The USP will be required to take the utmost account of ComReg guidelines when planning network build, providing individual connections to the network and when responding to requests to address service quality including:
  - Meeting targets for the minimum number of telephone lines capable of meeting or exceeding the reasonable minimum data rate of 28.8kbits/s;
  - Facilitating users who have legitimate doubts about the data capability of their telephone line and establishing procedures to diagnose individual lines, and;
  - Where a user's telephone line is not capable of achieving the specified data rate, the USP is to use all reasonable endeavours to ensure compliance, following a request by the user.

In arriving at this decision on the setting of a target minimum data rate, the Commission was mindful of the priority attached to meeting the national objectives in terms of Broadband availability and the resources needed to achieve this.

As required by the Regulations, the consent of the Minister for Communications, Marine and Natural Resources has been obtained in respect of the requirements to be complied with by the USP as set out in this document.

The effective date of this decision is 7 October i.e. 30 days from the date of publication.

### 3 Introduction

As stated in the Consultation Paper, under the Universal Service Regulations<sup>2</sup>, eircom, as the USP is required to satisfy any reasonable request to provide a connection to the public telephone network and access to publicly available telephone services at any fixed location within the State. It is a requirement that the connection provided is capable of allowing telephone calls, facsimile and data communications at data rates sufficient to permit functional Internet access and the European Directive<sup>3</sup> makes clear that the requirement is limited to a single narrowband connection.

The Universal Service Regulations also provide that ComReg, with the consent of the Minister for Communications, Marine and Natural Resources, may specify requirements to be complied with by the designated USP in relation to, *inter alia*, the reasonableness of requests for connection and access and functional Internet access. ComReg consulted on a number of requirements and guidelines in these two areas to obtain views from interested parties prior to making final decisions on the matter. It is envisaged that the guidelines which ComReg is proposing will assist both consumers and the USP.

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<sup>2</sup> Regulation 3 of the European Communities (Electronic Communications Networks and Services)(Universal Services and Users' Rights) Regulations 2003 – S.I. No. 308 of 2003

<sup>3</sup> Recital 8 of Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 (Universal Service Directive)

## 4 Consultation Issues

### 4.1 Factors in establishing a threshold

The consultation paper noted that there was recognition that a pre-defined monetary threshold was an appropriate factor in assessing the reasonableness of a request to be met for the standard connection charge. However, ComReg stated that the cost of provision could not be the sole factor in determining the level of such a threshold; other issues such as general consumer interest should also be accorded a high degree of importance.

The consultation paper posed the following question

**Q.1. Do you agree with the considerations which ComReg has outlined in connection with the setting of a threshold? Please state why. If you disagree please give reasons. If there are any other considerations which should be taken into account by ComReg in setting a threshold, please provide your reasoning.**

#### 4.1.1 Respondents' Views

Responses to this issue varied, with a number of submissions expressing the opinion that there should be no threshold; that all requests for service, irrespective of the costs involved should be met for the standard connection fee. This opinion was partly based on the view that the standard connection charge and line rental would provide sufficient income to meet the costs of connections.

In response to this issue, eircom considered that Mobile Network Operators should offer an equivalent universal service and, if this proves more costly than the current USO provision by eircom, should contribute financially to the cost of USO. The company also considered that it should have the flexibility to determine how to serve the request for access with the most cost-effective technological solution. Eircom also suggested that it be afforded “limited essential facility status” on a similar basis as other utilities. However this issue is entirely outside the scope of this paper and could only be addressed by way of primary legislation.

No submission challenged the degree of importance afforded to the general consumer interest but industry respondents called for an appropriate balance between the need to satisfy consumer expectations, and minimising any cost burden which may fall on the USP.

#### 4.1.2 ComReg Position

While ComReg is mindful to promote the consumer interest within the electronic communication market, both the EU Directive and the national Regulations make clear, through the qualification that requests be “reasonable”, that the entitlement to universal services is not absolute. The proposition that all requests should be met for the standard connection charge irrespective of actual costs involved would, in ComReg’s view, fail to properly balance the interests of the majority of consumers in keeping costs down, and the needs of applicants in remote areas.



The scope of the USO is to provide access at a fixed location. The manner in which this is achieved is not prescribed and the principle of technological neutrality allows eircom as the designated USP to choose the optimum method of providing access and service. The requirement is for all elements of the USO i.e. capability for voice, fax and data services to be provided. There may be situations where, because of the geographic features of a location, the provision of all elements of the USO could only be made available to applicants at a cost above the threshold. In such circumstances, if the applicant, in view of this cost decides not to request all elements of the USO in seeking access or connection, ComReg would wish to see all such reasonable requests being met. Accordingly ComReg would consider it reasonable for the USP to provide a voice only service e.g. a wireless voice service without data delivery features should this meet the needs of the applicant.

The current USO designation runs for a period of three years to July 2006. Mobile network operators have not been designated as having a Universal Service Obligation. Such a possibility was reviewed as part of the public consultation process carried out prior to the USO designation in July 2003. It is also worth noting that the European Commission in its recent paper on the review of the scope of Universal Service<sup>4</sup> did not recommend inclusion of access to mobile communications as part of the USO. The procedure for any financial contribution to finance the cost of Universal Service Provision is set out in the Universal Service Regulations, and the eircom view regarding a financial contribution by mobile network operators does not appear to be consistent with these.

The use of a threshold to assess the reasonableness of requests for connection and access at a standard connection charge was established in 2003 when the USO was imposed. Based on the considerations in the first paragraph of this section, ComReg does not consider that it would be appropriate to depart from the general principles as outlined.

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<sup>4</sup> See

[http://europa.eu.int/information\\_society/topics/ecom/doc/useful\\_information/library/comunic\\_reports/universal\\_service/com\\_2005\\_203\\_en.pdf](http://europa.eu.int/information_society/topics/ecom/doc/useful_information/library/comunic_reports/universal_service/com_2005_203_en.pdf) and  
[http://europa.eu.int/information\\_society/topics/ecom/doc/useful\\_information/library/commiss\\_serv\\_doc/sec\\_2005\\_660\\_staff\\_working\\_document.pdf](http://europa.eu.int/information_society/topics/ecom/doc/useful_information/library/commiss_serv_doc/sec_2005_660_staff_working_document.pdf)

## 4.2 Level of Threshold

The consultation paper posed the following question

**Q.2. Do you consider that in order to provision a connection to the eircom network a €7,000 threshold is reasonable in the context of the Universal Service Obligation regarding the provision of access at a fixed location? If you disagree, please propose an alternative along with your reasoning.**

### 4.2.1 Respondents' Views

A number of respondents felt that they were unable to comment on the threshold value without having access to the confidential information that eircom had submitted to ComReg.

In its submission, eircom stated that it believes that the ComReg proposal did not appear to be based on detailed cost calculations and was excessive and disproportionate. It stated that based on the current price for LLU (Local Loop Unbundling) of €14.65 it would take it almost 40 years to recover the €7,000. However eircom also acknowledge that the threshold should exceed the commercial level as determined by the company but did not propose an alternative amount which it would regard as acceptable.

### 4.2.2 ComReg response

ComReg notes respondents' views regarding the non disclosure of confidential information, but is obliged to observe legislative provisions and agreed procedures regarding such information. ComReg is satisfied that the consultation paper contained an adequate level of detail to illustrate the concepts, methods and objectives, whilst respecting the confidentiality of certain elements of submissions by eircom.

Prior to publishing the consultation paper, ComReg considered in detail all available data, including an eircom submission, regarding the level of threshold. The consultation proposed that when setting a threshold, the cost of the connection, while a very important consideration, was not the only one. The general welfare of consumers was also important. Also of significance was the fact that the average cost of providing all lines is already reflected in standard charges. ComReg therefore anticipated that any requirement for incremental charges should impact upon very few applicants. Having considered all responses, ComReg remains of the view that these remain pertinent observations.

ComReg's analysis indicates that applications involving excess charges would rarely occur. ComReg estimates, based on data available for the period 2003-2004 that somewhere in the region of 0.13% of the total number of applications received for service would exceed the threshold of €7,000. ComReg considers therefore that the threshold is a good balance between the interests of the majority of consumers in keeping costs down, and the needs of applicants in remote areas.

Based on the range of factors relevant to the issue, ComReg's decision is that the €7,000 threshold is fair and reasonable, proportionate and justified. In particular, when viewed against total demand for connections and the projected operational life of each connection, ComReg believes that the threshold will allow the capital cost of provisioning to be recouped along with a reasonable rate of return on the investment within commercially acceptable norms.

In assessing an appropriate level for a threshold, ComReg sought to ensure that only in exceptional cases would consumers have to pay charges over and above the standard connection charge. ComReg's analysis of the costs of eircom's local access network demonstrated that overall eircom fully recovers its costs (including a return on capital). If eircom were to be allowed to charge additional fees for a significant number of connections there could be a risk of over recovery of costs. This is because the calculations underlying the price of LLU referred to by eircom (€14.65 per month) reflects the recovery of eircom's current cost of building the access network in aggregate. In considering actual costs on an individual line basis, there would be over-recovery on some lines, and under-recovery on others but in aggregate all costs will be recovered. It is clear therefore; that eircom's claim of a 40- year payback is not relevant when the above is taken into account. In fact, one could argue that no limit is reasonable since the cost of the access network is already fully recovered. However ComReg accepts that some threshold is acceptable because it is possible that some extreme cases might not be fully reflected in the data sample which underlies the LLU cost model.

In order to determine the value of the threshold ComReg took as its reference point the average capital cost of providing a line in a very rural area according to the models underpinning the price of LLU. It then applied a multiple to this value to ensure that only the most exceptional cases which would not have been captured in the sample data underpinning our analysis of local network costs, would have to pay additional fees.

### 4.3 Measurement of Costs of Providing a Connection

The consultation paper stated ComReg's views that, in assessing the cost of a connection, only those costs that can be attributed to the individual customer should be measured. Consequently infrastructure that is used currently, or in the future, for the provision of service to other customers should be excluded from the calculation of connection cost. The estimated cost of connecting a customer should also be based on the least cost technology to provide the required service, irrespective of the technology eircom choose to utilise in practice.

The consultation paper posed the following question;

**Q.3. Do you agree with measurement of the connection costs as proposed by ComReg? Please specify any alternative measurement and outline your reasoning.**

#### 4.3.1 Respondents' Views

Apart from respondents opposed to a threshold for standard connection charges, most respondents agreed with the principles which ComReg had outlined in Consultation Paper 05/17. However, one respondent questioned whether these principles could be implemented and considered that the principle of a threshold could represent a strong disincentive for eircom to build out its network in an efficient way.

Views were also expressed that individual applicants would not be in a position to verify that only the incremental costs of providing them with a connection was included in the cost estimate, in the absence of access to information on future network expansion.

Another respondent stated that the threshold figure should be reviewed regularly, for example on an annual basis.

One respondent considered that it would be unreasonable to require eircom to implement technologies that it does not generally supply merely to meet a small number of exceptional cases and suggested therefore that the cost calculation should be based on the least cost technology that could reasonably be employed. Another respondent considered that there could be circumstances where the least cost technology might not be suitable.

eircom stated that it agreed with the principles and will review each case on an individual basis.

#### 4.3.2 *ComReg response*

ComReg welcomes the support given to the proposals regarding the measurement of connection costs. ComReg anticipates that the least cost option technology available would be utilised when providing a connection provided that the connection is capable of allowing access to all elements of telephony services – voice, fax and data.

ComReg does not believe that it is necessary to make special provision for communication with applicants regarding future network expansion. The existing procedures, combined with increased transparency regarding the cost of providing service are adequate. However, if an applicant believes that the cost estimate for providing access is excessive, this can be subjected to eircom's complaint handling process. If the applicant remains dissatisfied, the matter may then be referred to ComReg for review. In considering such referrals, ComReg will have regard to network planning within a reasonable period.

ComReg's also proposes to review the threshold on a regular basis.

#### 4.4 Timescales for meeting requests

The consultation paper proposed the setting of performance targets, against which actual performance may be measured concerning eircom's performance in relation to the USO. The paper noted that there may be *force majeure* events or circumstances beyond eircom's control which may result in some requests not being met within acceptable timeframes. The paper also proposed that eircom publish statistics, on a quarterly basis on their website, on how they have met the performance targets.

The consultation paper posed the following question;

**Q. 4. What are your views regarding the setting of performance targets for meeting requests for connection**

##### 4.4.1 Respondents' Views

It was widely agreed that the setting of performance targets would be a welcome development. A number of respondents were concerned that the performance targets appeared to be too light while some considered that targets should be subject to financial penalties should they not be met.

Eircom welcomed the proposals, and stated that they will work with ComReg to determine how best to proceed on publication of statistics. The company also noted the recognition that *force majeure* events and circumstances beyond eircom's control can affect the meeting of targets.

##### 4.4.2 ComReg response

The performance targets for meeting requests for connection are intended as a yardstick against which the USP's performance can be measured. ComReg has decided that this is a reasonable approach having regard to its objectives set out in Section 12 of the Communications Act 2002: to ensure that all users have access to a universal service while ensuring that measures taken by it are proportionate having regard to the objectives.

ComReg recognises that meeting the timescales should not cause undue pressure on eircom. ComReg would expect that the targets will be exceeded in most cases and that the vast majority of requests would be completed within an eight week period. ComReg would not consider it unreasonable for longer periods to be involved where requests involve connections in some situations such as where there are difficulties or delays in obtaining wayleaves access for infrastructural works etc. However, ComReg would consider that such longer periods would be the exception and reporting against indicative targets will increase transparency on performance in meeting the Universal Service Obligation.

ComReg has considered making performance targets mandatory but without the possibility of penalties in the event of failure to comply, such mandatory targets would be meaningless. It should be noted that while the obligation to provide access to the network is a requirement of the Regulations, there is no provision in the Regulations for penalties in the event of a breach.

## 4.5 Communications with Customers

In the consultation paper, ComReg proposed that eircom adopt procedures to ensure that applicants are kept informed of the situation regarding the status of their application.

The consultation paper posed the following question;

**Q. 5. What are your views on information to be provided to the customer; should these issues be addressed in some other way? If so state what other options you consider appropriate and your reasons and justifications for them**

### 4.5.1 Respondents' Views

All respondents who addressed this question endorsed the principle that applicants be kept informed. Views expressed included issues such as communications being automatic and that an applicant should not have to make an enquiry to be informed of changes. It was also suggested that monthly updates be provided in writing and with realistic delivery dates.

eircom stated that it will ensure that the requirements of consumers are adequately met in the design and implementation of the communication.

### 4.5.2 ComReg response

ComReg expects that all applicants will be provided with adequate and regular information regarding progress in addressing requests for service. This is particularly appropriate in the minority of cases where additional surveys may need to be undertaken before a connection can be provided. Additionally, where such a survey is conducted, it is essential that the applicant is able to make an informed decision on whether they wish eircom to proceed with the request for connection. In such cases, it is essential that the end-user is informed of any additional costs where eircom deem that fulfilment of the request will be subject to additional infrastructural works which exceed the proposed €7,000 threshold level.

Adequate information on the details of proposed work to be undertaken along with costings, must be provided in such circumstances. ComReg also considers that it is reasonable that communications with applicants should be in writing where requested by the applicant. It is also appropriate that eircom inform all applicants of its Code of Practice for Complaint Handling in relation to disputes which may arise, e.g., a dispute as to the estimated cost or the forecast timeframe for meeting the request for connection.



#### 4.6 Minimum Data rate for Functional Internet Access

In the consultation paper, ComReg noted that the main consumer issue on functional Internet access related to the availability of Broadband, but that under current legislation the provision of Broadband is not part of the Universal Service Obligation. The European Commission also recently noted in its paper on the review of the scope of Universal Service (referenced earlier) that at the present time, the conditions for including Broadband services within the scope of universal service (as set out in the Directive) are not fulfilled.

Additionally, ComReg is mindful that the setting of a target minimum data rate should not be a cause for a diversion of capital investment away from the Government-supported priority of Broadband enablement.

Against this background, ComReg considered that a data rate of 28.8kbit/s should be regarded as the minimum target data rate for functional Internet access which the vast majority of telephone subscribers should obtain.

The consultation paper posed the following question;

**Q.6. What are your views on a reasonable minimum data rate of 28.8 kbit/s being set as a minimum target speed?**

##### 4.6.1 Respondents' views

Eircom broadly supported ComReg's proposals, but a number of other respondents disagreed.

While respondents welcomed the proposal to set a minimum data rate for FIA, a number stated views that the minimum acceptable would be lines capable of Broadband (DSL) delivery. Typically, such a rate would be 512 kbit/s; far greater than the ComReg proposal of 28.8 kbit/s. Alternative views also suggested rates of 36 kbit/s and 33.6 kbit/s.

A number of respondents highlighted the issue of peripheral equipment potentially obstructing the ability of a dial-up connection to achieve the expected dial-up connection download speed. As stated in the ComReg consultation paper 05/17, the capabilities of the end user's modem, wiring and PC may potentially have an adverse effect. It was stated by a number of respondents that they believe the grounding of a target FIA speed is an unrealistic focus as this is in fact a moving target, which is likely to change over time due to technological and infrastructural advances. Some respondents were of the view therefore that a mandated data rate was not appropriate.

A number of respondents suggested that minimum standards for line quality should be introduced, with such standards based on ‘Signal: Noise Ratio’ (SNR)<sup>5</sup>; one respondent suggested that an acceptable SNR level would be 30dB. Another respondent commented that SNR levels are used by the US Federal Communications Commission<sup>6</sup>, and that adequate cabling must be introduced, at no cost to consumers in order to comply with an acceptable SNR level.

#### 4.6.2 *ComReg response*

Having considered all responses ComReg’s view is that a minimum data rate for functional Internet access should be a target speed and not mandatory.

This applies only to narrowband Internet connections and establishes a reasonable minimum data speed which end-users could expect the USP to provide. In arriving at this decision on the setting of a target minimum data rate, the Commission was mindful of the priority attached to meeting the national objectives in terms of Broadband availability and the resources needed to achieve this.

ComReg’s view is that some respondents’ suggestion to mandate a more rapid DSL rollout programme or the introduction of directions to increase the percentage of homes that are DSL-enabled, cannot be considered as these are outside the remit of the Regulations which relate to the provision of a single narrowband connection only.

Having examined the submissions received from respondents regarding functional Internet access, ComReg is of the opinion that it is appropriate to set a minimum set of standards for a typical consumer line. Where the performance of a line is disputed, then performance should be measured using the appropriate International Telecommunications Union standards including but not limited to; ITU-T, G113, 120, 712, Q551 and 552. ComReg intends that arrangements for line testing and measurement methods will be discussed and agreed with the USP and published subsequently for the information of end users.

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<sup>5</sup> Telephone lines conduct noise; both thermal noise and environmental noise. Noise is represented as a ‘Signal: Noise Ratio’ (SNR) or the ratio of the strength (energy) of the signal to the strength (energy) of the noise.

<sup>6</sup> <http://www.fcc.gov/>

#### **4.7 Performance Targets for enabling FIA**

In the consultation paper, ComReg stated that it believed that it was not appropriate to impose a requirement to enable all lines to achieve the minimum data rate as the necessary investment would be likely to divert resources away from other productive capital works, in particular the plans for Broadband roll out. However, ComReg stated that eircom should publicly report on the numbers of lines which do not support the target data rate and that there should be a general target which eircom should strive to meet.

The consultation paper posed the following question;

**Q.7. What are your views regarding non-binding performance targets for the overall network in respect of minimum data rates?**

##### *4.7.1 Respondents' views*

A number of respondents made various comments regarding ComReg's recognition of the Government's aim of the wider availability of Broadband as a national priority. There was a positive reaction to ComReg's plan for the publication of compliant/non-compliant lines as it was thought that this would increase transparency for customers. In general respondents regarded the roll-out of Broadband throughout the State to be an important objective.

It was commented by a number of respondents that non-binding targets are meaningless as they will be unenforceable. It was widely suggested that targets should be binding and enforceable.

It was also claimed that the target line improvement rate, as proposed by ComReg, is very slow. However, the proposal that priority should be given to customers who complain about their line quality as they obviously expect and require an improvement was welcomed. In general, the concept of regular reporting on targets was a welcome initiative.

eircom cited practical difficulties in measuring all telephone lines and suggested that reporting should be based on the measurement of representative samples of lines rather than an audit of all the lines in the network.

It was suggested that the introduction of geographical USO targets would ease administration of the USO for the USP. Such a geographical approach could see geographical areas being targeted over the next number of years for full compliance with performance targets.

##### *4.7.2 ComReg response*

It is ComReg's intention that the proposition of non-binding targets should be seen as an effective yardstick against which the performance in upgrading the network can be assessed by end-users and ComReg alike. ComReg is also concerned that a

fair balance be struck between ensuring as many lines as possible are capable of achieving the proposed FIA rate, particularly for those customers who want Internet access, against the possible diversion of investment funds away from the DSL enablement programme.

ComReg considers that a target of 94% of lines being capable of FIA compliance by June 2006 is a reasonable and useful performance target. This will ensure that the vast majority of lines within the State will be capable of achieving the FIA rate. However, there may be instances where, despite eircom using all reasonable endeavours, it will not be possible to achieve the target data rate of 28.8 kbit/s.

ComReg considers that a suitable methodology to assess overall compliance would be to sample and measure lines on a random geographic and loop length basis. Where an individual subscriber makes a complaint about non-compliance with the target data speed, the line should be assessed and tested in accordance with the agreed methodology.

While the suggestion of setting performance requirements on a regional basis has much to commend it in terms of a focussed programme of network upgrade, a negative aspect could be an emphasis on investment being concentrated on narrowband capabilities at the expense of Broadband enablement.

## 4.8 Carrier System Equipment

In the consultation paper, ComReg indicated that where carrier systems are inhibiting line capabilities, such devices should be removed. It was also indicated that any future reliance on carrier systems should only be contemplated in a limited number of cases and only after a full evaluation of the future potential of the line capability.

The consultation paper posed the following question;

**Q.8. What are your views on the use of Carrier Systems Equipment? Should their future use be limited in the interest of DSL deployment? What should the position be where limiting new deployment might result in an applicant for service having to pay excess charges or in delaying the provision of a telephone line?**

### 4.8.1 Respondents' views

Overall, a number of respondents agreed that any action to limit the use of carrier systems (especially those older technology systems) would be welcomed. A number of submissions claimed that modern carrier systems can support DSL.

One respondent queried the need to raise the issue of carriers in the context of the USO consultation unless there was a perceived barrier to achieving USO requirements.

eircom stated that it did not believe that the use of carriers should be a regulated matter; the deployment of carriers was based on sound commercial, economic and network reasoning. It was claimed that the imposition of limits on carriers would result in an additional financial burden on the USP, and that meeting the USO already imposed such a financial burden. The company also stated that it agrees that carriers should only be deployed in a responsible manner and that it was committed to reducing dependency on carrier technology so as to facilitate further Broadband roll-out.

eircom also stated that it was committed to employing the most cost-effective solution for the provision of access. Where this may involve the deployment of a digital carrier (which will support a data speed consistent with functional Internet access), eircom will provide the customer with all relevant facts on and the implications of the nature of the access provision.

### 4.8.2 ComReg response

It is generally accepted that the use of carrier systems can inhibit the ability of a phone line to provide DSL-quality data transfer. In the context of the Universal Service Obligation where the obligation relates only to functional Internet access, ComReg is not proposing a prohibition on the use of carrier systems; this is merely a guideline. However, ComReg would regard the continued use of carrier systems as problematic when viewed against the national aims of general availability of

Broadband, and should only be used in exceptional circumstances. However where the use of a carrier system results in non-compliance with the target data rate, correction will require either its removal or replacement by a digital system.

ComReg regards it as desirable to avoid the use of Carrier Systems for new connections. This is in anticipation that the subscriber (or future subscriber) may subsequently seek Broadband access and the presence of a Carrier System may pose technical difficulties.

ComReg welcomes eircom's statement that it is committed to employing the most cost-effective solution for the fulfilment of reasonable requests for access, and will provide the customer with all relevant facts on the nature of the access provision.

In respect of the claim that there is a financial burden arising from the provision of the USO, this has not to date been substantiated; A clearly defined methodology is set out in the Regulations whereby the USP is entitled to make a request for the establishment of a USO fund should it choose to do so.

## 4.9 FIA Guidelines

ComReg proposed guidelines to support the rights of consumers who require a telephone connection capable of functional Internet access. The guidelines should be taken into account by eircom and ComReg indicated that it would have regard to these when examining complaints where a user alleges that their telephone line is not capable of FIA.

Issues addressed by the draft guidelines include having regard to the overall target for the total number of telephone lines capable of the target data rate of 28.8 kbit/s, procedures for measuring the capability of individual lines, the provision of a statement to subscribers of line capability; where the capability of the line is below the FIA target rate, the use of all reasonable endeavours to remedy the situation.

The consultation paper posed the following question;

**Q.9. What are your views on the guidelines to apply in connection with functional Internet access? Are there other issues which should be specifically addressed by the guidelines?**

### 4.9.1 Respondents' views

A number of respondents expressed views that the provisions of the guidelines should be mandatory. One respondent stated that this was largely a consumer issue which should be addressed via the customer contract. It was also suggested that there should be an escalation process introduced in the event that a line does not meet the prescribed FIA capability. Another respondent stated that if such guidelines are drafted, they should be written in clear, unambiguous language.

One respondent stated that phone line faults can be intermittent in nature; therefore the line may test positive and negative on separate days due to external influences such as the weather.

It was suggested by one respondent that a standard check list of items should be established that may assist in identifying common problems that may occur for users and their Internet Service Provider. eircom suggested the development and publication of a set of FAQs outlining steps to be taken by customers to maximise their dial up performance.

eircom stated that their primary duty was to their customers, and that they were aware of the need to offer a high level of customer service to end users. However, it also stated that a trade-off existed between the provision of access, against scarce resources for investment. In this context, it itemised a number of areas where ComReg's proposals would be difficult or costly to implement. Accordingly it considered that the proposed deadline of 30 June 2005 to have procedures in place to measure individual lines and to provide information to subscribers was not realistic. It proposed instead that it would have its processes and procedures defined by that date (along with a realistic implementation schedule).

#### 4.9.2 ComReg response

For the reasons outlined earlier, ComReg is not proposing that the target data rate be a mandatory requirement for all telephone lines. However, ComReg would refer (as stated earlier) to the legislative basis for the Universal Service Obligation where it is stated that; “*any connection ... shall be capable of allowing end-users to make and receive ...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*”.

The guidelines therefore are intended to provide guidance on the factors which ComReg will take into account in assessing, in respect of an individual complaint, whether the requirements of the Regulations have been met by eircom as the USP.

A key issue in whether or not there has been compliance is a transparent measurement methodology. The investigation of complaints will involve a financial cost to the USP and an important consideration is therefore to seek to minimise the number of complaints. For this reason, it was suggested that consumers could be required to conduct self-tests before eircom should be required to incur expenditure in assessing an individual line.

Where external inhibiting factors outside eircom’s control have an effect on data speed, it would be unreasonable to expect eircom to meet the cost of investigating these. The development of a ‘self test’ should address this issue along with the incidents of intermittent line faults.

ComReg accepts that the development and implementation of procedures to address the subject matter of the guidelines can be complex. ComReg’s priority is to see that reasonable consumer requirements are met and will consider whether eircom’s proposals, adequately address these. As discussed in Section 4.6.2, ComReg intends that arrangements for line testing and measurement methods will be agreed with the USP and published subsequently for the information of end users.



#### **4.10 Proposed Text of Requirements and Guidelines**

The consultation paper posed the following question;

**Q.10. What are your views on the text of the draft requirements and the draft guidelines. Are there other issues which should be specifically addressed or issues which should be expanded upon? Please provide suggested alternative text?**

##### *4.10.1 Respondent's views*

Responses to earlier sections addressed the draft text of the requirements and the guidelines.

One respondent proposed amendments to the draft text consistent with the views which it had offered in relation to other sections of the consultation paper.

##### *4.10.2 ComReg response*

The texts of the requirements and guidelines have been amended to improve the clarity of the measures.

## **5 Other submission material**

### **5.1.1 New developments**

One respondent suggested that the USP should be required to undertake all network provisioning in advance of a new development being built. It was suggested that eircom should source all required infrastructure and contractors at the first instance where they are informed of intention to develop a site.

The issue of network provisioning in relation to building developments is not part of the Universal Service Regulations and therefore outside the remit of this Consultation. However, ComReg notes the suggestion.

### **5.1.2 Broadband**

The proposals contained in the consultation paper concern a single, narrowband Internet connection in line with the provisions of the EU and National legislation. Issues such as the availability of ISDN and DSL could not be considered as there is no such remit under the applicable legislation.

However, the consultation resulted in a number of responses which proposed mandatory measures to ensure that DSL roll-out was either progressed quickly or that DSL should become an immediate obligation on the USP.

Submissions received covered suggestions such as the need to accelerate Broadband roll-out and lower subscription costs. Respondents also raised issues such as the lack of availability of Broadband in rural areas, the apparent high monthly line rental (in relation to the Broadband availability), and the number of carriers on lines (inhibiting Broadband enablement).

## 6 Appendix A – Legislation

### **Extracts from the Universal Service Regulations**

Regulations 3(1), 3(2) and 3(4) of the European Communities (Electronic Communications Networks and Services) (Universal Service and Users' Rights) Regulations 2003 provide:

#### **Reasonable Request for Connections to the public telephone network.**

*3.(1) A designated undertaking shall satisfy any reasonable request to provide at a fixed location-*

- (a) connections to the public telephone network, and*
- (b) access to publicly available telephone services.*

*3.(2) Any connection provided by a designated undertaking shall be capable of allowing end-users to make and receive -*

- (a) local, national and international telephone calls,*
- (b) facsimile communications, and*
- (c) data communications at data rates that are sufficient to permit functional Internet access,*

*3.(4) The Regulator may, with the consent of the Minister, for the purposes of the services referred to in this Regulation, specify requirements to be complied with by a designated undertaking in relation to –*

- (a) functional Internet access, having regard to prevailing technologies used by the majority of subscribers and to technological feasibility,*
- (b) the reasonableness of requests for connection at a fixed location to the public telephone network and for access to publicly available telephone services at a fixed location pursuant to paragraph (1),*

## **7 Appendix B – Regulatory Impact Assessment (RIA)**

The purpose of this RIA is to consider the benefits and costs of the proposed measures and their impact on stakeholders who may be affected by the proposals. For this purpose, the relevant stakeholders are;

- Consumers
- The USP (eircom)
- The overall telecommunications industry

### **Consumers**

ComReg believes that the proposals will be a positive addition for those consumers who request a connection and who desire access to all elements of a publicly available telephone service including Internet access. The aim of Universal Service is to ensure social inclusion; allowing people who might otherwise not be able to secure access on a commercial basis to avail of a basic level of telecoms services which the majority of users can avail of. This has traditionally meant the provision of voice telephony and related services (e.g. fax). However, as the Internet becomes socially more important, basic internet access now forms part of the USO.

The proposals when implemented will lead to an increase in the number of people who obtain access to a publicly available telephone service by ensuring that fewer applicants have their requests for services delayed or postponed. This will lead to wider access to communications services and information which should confer significant social benefits to Irish consumers and to the country at large.

The obligations and guidelines will also provide greater clarity in terms of legitimate expectations for applicants. It has been ComReg's experience to-date that a number of consumers lodge formal complaints with both the USP and ComReg (in instances where the consumer is not satisfied with the USP's response) regarding both requests for service and line quality for Internet access. ComReg therefore expects that the proposed measures will generate benefits by increasing certainty and ultimately reducing the number of complaints.

### **The USP (eircom)**

In relation to the requirements regarding requests for connection, ComReg notes that existing eircom charges for wholesale and retail access are set to recover the cost of the access network in aggregate. The threshold, in fact, acts as a safeguard for eircom against exceptional cases where the cost of providing a connection might not be reflected in the sample data which underpins the analysis of local network costs.

ComReg also expects that the requirements and guidelines should enable eircom to increase levels of customer satisfaction due to the clearer obligations, timelines and provision of information to consumers proposed.

Finally, ComReg believes that in discharging its USO obligations effectively, eircom can generate a positive reputation with consumers which will be of benefit to it in terms of its commercial activities.

## **The Overall Electronic Communications Industry**

As the proposals only relate to requirements to be met by eircom as the USP, the potential impact on Other Authorised Operators (OAOs) will mainly be indirect. ComReg is satisfied that the proposals are likely not to result in a net cost which would represent an unfair burden. Consequently, the possibility of a request for funding in accordance with Regulation 11 of the USO Regulations is likely not to arise.

The proposals will result in improved efficiency in the fulfilment of connection requests, improved data rates for Internet access and a clear set of procedures for line testing. These improvements will provide a better opportunity for OAOs to offer competing services to consumers. This will generate benefits for them and, ultimately, their customers.

## **Alternative Measures**

ComReg also considered the regulatory impact of two alternative measures;

1. Having no threshold; i.e. all requests to be provided with a telephone connection and service for the standard connection charge.
2. Not imposing any requirements regarding a reasonable request for connection.

Option (1) would provide connections to all applicants for no additional cost to them; the additional benefit would be minimal as only a relatively small number of people would be affected, in absolute terms. However, it would have a negative effect on incentives, as it would enable owners of homes which are difficult to provide service to, avoid paying the appropriate economic cost even when they have the full capability to pay. Furthermore, the requirement on eircom to meet the extra cost in such circumstances would lead to an increase in standard connection charges which would apply to all.

Option (2) would mean that the *status quo* would remain, as outlined in the Consultation Paper (ComReg Document 05/17) - end users have contacted ComReg alleging inordinate delays in providing connections to the telephone network or what they believe is a refusal to meet the request through a failure to provide information as to when the connection will be provided. ComReg is of the opinion that such a situation, which has been alleged by many consumers, is neither sustainable nor acceptable.

Having considered a variety of options, ComReg believes that its proposals will generate the greatest possible set of net benefits available.

## **8 Appendix C –Decision**

In accordance with the provisions of Regulation 3(4) of the Universal Service and Users' Rights Regulations and with the consent of the Minister for Communications, Marine and Natural Resources, ComReg hereby specifies the following requirements to be complied with by the designated undertaking in relation to the reasonableness of requests for connection at a fixed location to the public telephone network and for access to publicly available telephone services at a fixed location and in relation to functional Internet access;

The effective date of this decision is 7 October i.e. 30 days from the date of publication.

### **Requirements in relation to requests for connection at a fixed location to the public telephone network and for access to publicly available telephone services at a fixed location**

The Universal Service Provider is required to treat all requests for connection at a fixed location to the public telephone network and for access to publicly available telephone services at a fixed location as reasonable if the estimated expenditure involved in meeting the request is not greater than €7,000 and in which case the cost to the applicant shall be the standard connection charge.

The Universal Service Provider is required to treat all requests for connection at a fixed location to the public telephone network and for access to publicly available telephone services at a fixed location as reasonable if the estimated expenditure involved in meeting the request is greater than €7,000 and the applicant agrees to the payment of the standard connection charge plus the amount by which the estimated expenditure exceeds €7,000.

The Universal Service Provider when estimating the expenditure involved shall base that estimate on the least cost technology that could reasonably be employed by the Universal Service Provider and shall only include costs which can be attributed to the individual applicant.

The Universal Service Provider shall use all reasonable endeavours to ensure that all connections to the publicly available telephone network are capable of a reasonable minimum data rate no lower than 28.8 kbit/s.

The Universal Service Provider is required to take the utmost account of ComReg guidelines when dealing with requests for connection to the public telephone network and for access to publicly available telephone services.

**Guidelines in relation to requests for connection at a fixed location to the public telephone network and for access to publicly available telephone services at a fixed location**

The Universal Service Provider shall meet all requests for connections as promptly as possible and shall inform all individual applicants of the timeframe within which the request shall be met.

If it is not possible to inform an applicant of the timeframe for meeting the request because a survey is required, the applicant shall be informed of the timescale within which a survey will be carried out.

The Universal Service Provider shall adopt procedures to ensure that all applicants can receive or access information on the progress of their request for service.

The Universal Service Provider shall have regard to the overall performance targets for connections as follows:

- 60% of all requests to be met within 4 weeks of request
- 80% of all requests to be met within 8 weeks of request
- 90% of all requests to be met within 13 weeks of request
- 95% of all requests to be met within 26 weeks of request
- 100% of all requests to be met within 52 weeks of request.

The Universal Service Provider shall publish details on a quarterly basis of its record in relation to the overall performance target for connections in a format to be specified by ComReg.

The Universal Service Provider shall inform applicants how it is intended to meet the request.

The Universal Service Provider shall under all normal circumstances avoid the use of carrier systems on new connections to avoid potential problems in the roll out of Broadband. The Universal Service Provider shall only use carrier systems after a full evaluation of the future potential of the line capability and having taken into account the views of the applicant for service, and all other potentially affected customers.

The Universal Service Provider shall inform all applicants of its Code of Practice for Complaint Handling in relation to disputes which may arise in connection with a request for connection.

### **Guidelines in relation to Functional Internet Access**

The Universal Service Provider shall have regard to the overall targets for total installed telephone lines capable of a reasonable minimum data rate of 28.8kbit/s or better as follows:

- 31 December 2005 – 93.5%
- 30 June 2006 – 94%

The Universal Service Provider shall provide ComReg with regular reports on its performance in relation to the above target and shall publish such details in a format to be specified by ComReg.

The Universal Service Provider shall provide a written statement stating the data carrying capability of a telephone line in response to any subscriber who has serious doubts as to the line capability. The Universal Service Provider may require the subscriber to conduct reasonable self-tests prior to it assessing the line.

The Universal Service Provider shall propose procedures to measure individual lines and to provide information to subscribers no later than 4 weeks after the effective date of this Decision.

The Universal Service Provider shall use all reasonable endeavours, including the removal of carrier systems equipment, to address individual lines where the capability is found to be below the reasonable minimum data rate of 28.8 kbit/s.



## 9 Appendix D – List of Respondents

Submissions were received in respect of the consultation from the following persons, organisations and service providers;

- Gerard Begley
- Cian Boland
- Liam Breslin
- Tom Butler
- Chorus Communication Ltd.
- Niamh Clune
- Peter Edwards
- Eircom plc.
- Ireland Offline
- E. Kelly
- Oisín Mac Fhearaí
- Andrew McCarthy
- Peter McCormack
- Tony McGinley
- Michael McLaughlin
- Kathryn Marsh
- Michael Megan
- Alexis Molina
- Ciaran Moynihan
- Gerry Mulgrew
- Damien Mulley
- Office of the Director of Consumer Affairs (ODCA)
- Clifford O'Neill
- C. Squires
- John Timmons
- Vodafone Ltd.
- Eamonn Wallace