



An Coimisiún um
Rialáil Cumarsáide
Commission for
Communications Regulation

Universal Service Requirements Provision of voice only connections and voice communications services at a fixed location (VFL USO)

NON-CONFIDENTIAL

Consultation and draft Decision

Reference: ComReg 23/02

Version: Final

Date: 10/01/2023

An Coimisiún um Rialáil Cumarsáide
Commission for Communications Regulation

1 Lárcheantar na nDugaí, Sráid na nGildeanna, BÁC 1, Éire, D01 E4X0.
One Dockland Central, Guild Street, Dublin 1, Ireland, D01 E4X0.
Teil | Tel +353 1 804 9600 Suíomh | Web www.comreg.ie

Additional Information

All responses to this consultation should be clearly marked: "Reference: Submission re ComReg 23/02 as indicated above, and sent by post, facsimile, e-mail or online at www.comreg.ie (current consultations), to arrive on or before 5pm on 21 February 2023, to:

Retail Division

Commission for Communications Regulation

One Dockland Central,
Guild Street,
Dublin 1, Ireland,
D01 E4X0
Ph.: +353-1-8049600 Fax: +353-1-804 9680 Email:

retailconsult@comreg.ie

Please note ComReg will publish all respondents' submissions with the Response to this Consultation, subject to the provisions of ComReg's guidelines on the treatment of confidential information – ComReg 05/24.

Legal Disclaimer

This Consultation and draft Decision is not a binding legal document and also does not contain legal, commercial, financial, technical, or other advice. The Commission for Communications Regulation is not bound by it, nor does it necessarily set out the Commission's final or definitive position on particular matters. To the extent that there might be any inconsistency between the contents of this document and the due exercise by it of its functions and powers, and the carrying out by it of its duties and the achievement of relevant objectives under law, such contents are without prejudice to the legal position of the Commission for Communications Regulation. Inappropriate reliance ought not therefore to be placed on the contents of this document.

Content

Section	Page
1 Background	7
2 Executive Summary	9
2.1 ComReg's statutory mandate to ensure the provision of the universal services in the State	9
2.2 Digital Connectivity Strategy (National Broadband Plan: commercial rollout and universal service)	9
2.3 Definition of adequate broadband ('ABB IAS')	10
2.4 Provision of affordable universal service	11
2.5 Control of expenditure	11
2.6 Considerations for this Consultation	12
2.6.1 Availability of universal service and designation	13
2.7 ComReg's Preliminary views	14
2.8 Universal Service Costing and Funding	15
2.9 Submissions to this Consultation	15
3 Universal service-related market developments	16
3.1 Supply side market summary	16
3.1.1 Relevant supply side trends	16
3.1.1.1 Rollout of Next Generation broadband networks	17
3.1.1.2 Supply Side Trends from voice only connections and voice communications services VFL Perspective	20
3.1.1.3 eir's network modernisation plans	21
3.1.2 Changes in the FACO markets	23
3.2 Demand side market summary	26
3.2.1 Relevant demand side trends	26
3.2.1.1 Competition in the retail fixed telephony service market	26
3.2.1.2 Landline ownership	31
3.2.1.3 Wireless and Mobile networks and services	32
3.2.1.4 The decline in the size of the standalone retail fixed telephony service market	34
4 The need for a VFL services USO	39
4.1 ComReg's statutory obligations	39

4.2 Counterfactual (no voice only connections and/or voice communications services universal service obligations).....	41
4.2.1 Quality of service (voice), terms and conditions and reasonableness of requests.....	42
4.2.1.1 Quality of service.....	42
4.2.1.2 Terms and conditions.....	44
4.2.1.3 Affordability of USO.....	44
4.2.1.4 Reasonable access requests – current designation.....	45
4.2.1.5 Counterfactual – no VFL USO (reasonable access requests)..	46
4.2.1.6 Reasonableness of requests (existing connections) – VFL USO assessment Q4 2020 – Q2 2022	49
4.2.1.7 Reasonableness of requests (new connections) – VFL USO assessment Q4 2020 – Q2 2022	51
4.2.1.8 Reasonableness of requests – ComReg’s assessment and preliminary views	57
4.2.2 Voice only connection.....	61
4.3 Control of expenditure measures.....	62
4.3.1 Control of expenditure.....	63
4.3.1.1 Itemised billing.....	63
4.3.1.2 Selective barring for outgoing calls or premium SMS or MMS free of charge	63
4.3.1.3 Phased payment of connection fees	64
4.3.1.4 Non-payment of bills.....	64
4.4 The need for a VFL services USO post 30 June 2023.....	65
5 Expressions of interest	67
5.1 Proposed assessment methodology and selection criteria	67
6 Designation of Universal Service Provider	71
6.1 Legislative basis	71
6.2 Designation of USP	72
6.3 Geographical scope.....	73
6.4 Duration of any designations	73
6.5 Costing of the USO.....	74
7 Draft Decision Instrument	76
8 Draft Regulatory Impact Assessment (‘RIA’)	86

8.1	Introduction	86
8.2	Step 1 – Describe the policy issue and identify the objectives	87
8.3	Step 2 - Identify and Describe the Regulatory Options	88
8.3.1	Option 1: Impose a VFL Services USO	88
8.3.1.1	Reasonableness of requests	89
8.3.1.2	Control of expenditure	92
8.3.2	Option 2: No VFL services USO	93
8.4	Steps 3 and 4 – Determine the impacts on stakeholders and competition	94
8.5	Step 5 – Assess the impacts and choose the best option	100
9	Next Steps	104
	Annex 1: Legal Basis SI 333 of 2011	105
	Annex 2: The EECC	106
	Annex 3: S.I. 444 of 2022 Part 9 – Universal Service Obligations	114
	Annex 5: Quality of Service Standards	123

NON-CONFIDENTIAL

Figures

	Page
Figure 1: Upstream fixed access call origination and downstream retail fixed telephony service	23
Figure 2 : Lines, access paths and subscriptions	27
Figure 3: Fixed narrowband access paths, fixed narrowband access and Managed VoIP subscriptions	28
Figure 4: Retail Fixed Telephony Service Traffic and Revenues, Q4 2020 – Q2 2022 (Base Q2 2020 = 100)	29
Figure 5: Residential and Business Retail Fixed Telephony Service Minutes, Q4 2020 – Q2 2022.....	30
Figure 6: Retail Fixed Telephony Service Market Shares by Subscription, Q4 2016 – Q4 2020	31
Figure 7: Total subscriptions to RFTS Q2 2022	35
Figure 8: Single, double, triple, and quadruple play subscriptions	35
Figure 9: Volume of standalone RFTS subscriptions Q4 2020 - Q2 2022.....	36
Figure 10: Volume of Standalone RFTS Subscriptions Q4 2020 – Q2 2022.....	50
Figure 11: eir standalone fixed voice – total new connections 2020 – Q2 2022 [✂ REDACTED ✂]	53
Figure 12: eir standalone fixed voice - new and in situ copper connections 2020 – Q2 2022 [✂ REDACTED ✂].....	53
Figure 13: eir standalone fixed voice new FCS connections 2020 - Q2 2022 [✂ REDACTED ✂].....	54
Figure 14: Reasonable access requests (standalone fixed voice) - eir connection costs [✂ REDACTED ✂].....	57
Figure 15: Reasonable access requests – existing connections	60
Figure 16: reasonable access requests – new connections	61

1 Background

- 1 The Commission for Communications Regulation (“**ComReg**”) is the independent regulator for the electronic communications sector in Ireland. ComReg was established by section 6 of the Communications Regulation Act 2002 (the “Act of 2002”).
- 2 Our key statutory objectives are to:
 - i. Promote competition.
 - ii. Contribute to the development of the internal market.
 - iii. Promote the interests of users of electronic communications services (“**ECS**”) in both Ireland and the European Union.
- 3 We are responsible for the regulation of the Irish electronic communications sector, in accordance with national and EU legislation.
- 4 One of our functions is to ensure that basic electronic communications services at a fixed location are provided to end-users. Currently, this is ensured by placing a universal service obligation (“**USO**”) on Eircom Limited (“**eir**”).
- 5 The current USO requirements¹ mean that eir is obliged to:
 - meet reasonable access requests for access to a connection and voice services at a fixed location (“**AFL**”);²
 - continue to meet needs of existing USO customers; and
 - apply geographically averaged pricing (“**GAP**”), as an affordability measure.
- 6 eir’s current AFL USO remains in force until 30 June 2023, unless amended by ComReg.

¹ ComReg D09/21, Document No. 21/112R, ‘Universal Service Requirements: Provision of Access at a Fixed Location (AFL USO)’, 05 November 2021, available at: https://www.comreg.ie/?dln_download=universal-service-requirements-provision-of-access-at-a-fixed-location-afl-uso-response-to-consultation-and-decision-2

² Under the new legislative framework, the reference is to voice only connections and voice communications services at a fixed location (“**VFL**”).

- 7 There is a new legislative framework known as the European Electronic Communications Code (“the Code”). The Code is being transposed into national law by the Department for Environment, Climate and Communications (“DECC”).
- 8 S.I. 444 of 2022 444/2022 - European Union (Electronic Communications Code) Regulations 2022³ has been published but at the date of publication of this Consultation, has yet to be commenced and the associated Bill is also awaiting enactment (“new legislative framework”).
- 9 ComReg anticipates that S.I. 444 of 2022 will commence in Q1 2023.
- 10 When commenced, S.I. 444 of 2022 sets out requirements in respect of universal service. The main elements are:
- definition of adequate broadband
 - provision of affordable universal service
 - quality of service (voice), terms and conditions, reasonableness
 - voice only connections and voice communications services at a fixed location⁴ (**VFL services**)⁵
 - control of expenditure
 - availability of universal service and designation.
- 11 Under the new legislative framework, ComReg’s role in respect of certain aspects of universal service is contingent on the Minister⁶: (i) defining adequate broadband; (ii) specifying associated quality standards; and (iii) requiring ComReg to impose affordability measures.
- 12 In the circumstances and in light of the fact that the current AFL USO is due to expire in June 2023, this consultation is limited to universal service for voice only communications at a fixed location.

³ [S.I. No. 444/2022 - European Union \(Electronic Communications Code\) Regulations 2022 \(irishstatutebook.ie\)](https://www.irishstatutebook.ie/eli/2022/si/444/2022)

⁴ Referred to in Regulations 70(1)(b) and 70(4) of S.I. 444 of 2022.

⁵ “VFL” means the Voice only Connection and Voice Communications Services referred to in Regulations 70(1)(b) and 70(4) (of S.I. 444 of 2022

⁶ Minister for the Environment, Climate and Communications.

2 Executive Summary

2.1 ComReg's statutory mandate to ensure the provision of the universal services in the State

- 13 In keeping with Regulation 12 of the Framework Regulations⁷ ComReg is consulting on VFL services USO. Regulation 101 of SI 444 of 2022 is the equivalent Regulation to Regulation 12 of the Framework Regulations and requires ComReg to consult on proposed new measures. For the avoidance of doubt, ComReg is consulting on proposed measures on basis of Regulations as published in SI 444 of 2022 and will make a Decision after SI 444 of 2022 commences. For the avoidance of doubt, the measures as proposed in this consultation are subject to the relevant Regulations referenced (Regulations 70, 72, and 101), being commenced unchanged at the time they are being imposed by a Decision of ComReg, from the published SI 444 of 2022. ComReg anticipates that SI 444 of 2022 will commence in Q1 2023.
- 14 Regulation 72(1) sets out that where ComReg establishes, taking into account the results, where available, of the geographical survey conducted in accordance with Regulation 100 and any additional evidence it deems necessary, that the availability at a fixed location of adequate broadband or of voice communications services cannot be ensured under normal commercial circumstances in the State or different parts of it, and the Minister is of the opinion that other potential public policy tools cannot ensure access to adequate broadband or to voice communications services in the State or any part of it as identified by ComReg, then ComReg may make a designation to impose appropriate universal service obligations to meet all reasonable requests by those end-users for accessing such services.

2.2 Digital Connectivity Strategy (National Broadband Plan: commercial rollout and universal service)

- 15 The Digital Connectivity Strategy for Ireland⁸ is the government's strategy focussed on the enablement of the telecommunication infrastructure and services that deliver digital connectivity.
- 16 The strategy will be achieved through:

⁷ S.I. No. 333/2011 - European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2011.

⁸ DECC (2022), 'The Digital Connectivity Strategy for Ireland', 08 December 2022, available at: [gov.ie - Digital Connectivity Strategy \(www.gov.ie\)](http://gov.ie - Digital Connectivity Strategy (www.gov.ie))

- the implementation of the National Broadband Plan;
- commercial investment in Gigabit services;
- implementation of the National cyber–Security Strategy;
- ensuring that international connectivity infrastructure to and from Ireland is resilient, diverse and robust;
- the commencement of the Communications Regulation Amendment Bill; and
- the implementation of the actions of the Mobile Phone and Broadband Taskforce.

17 The National Broadband Plan (**‘NBP’**) is the government’s initiative to deliver high speed broadband services to all premises in Ireland. This will be delivered through investment by commercial enterprises coupled with intervention by the State in those parts of the country where private companies have no plans to invest.

18 Upon completion of rollout of the NBP State intervention it is anticipated that all premises in “the Intervention Area” will have access to high speed (Gigabit) broadband.

19 ComReg expects that as broadband continues to roll out, affordable voice communications services offers (standalone or in a bundle) will be made available to end-users⁹ on a commercial basis.

2.3 Definition of adequate broadband (**‘ABB IAS’**)

20 Regulation 70(2) sets out that the Minister shall define adequate broadband and specify the associated quality standards (and that the Minister may consult with ComReg beforehand).

21 Regulation 70(2)(b) sets out that the Minister shall review the quality not later than 5 years after defining adequate broadband and in each 5-year period thereafter.

22 Adequate broadband (**‘ABB’**), set out in S.I. 444 of 2022, now replaces functional internet access (FIA), set out in S.I. 337 of 2011. Facsimile is not carried forward in S.I. 444 of 2022.

⁹ All reference to end-users in this document applies the definition set out in Regulation 70(1), which includes a “consumer, microenterprise, small enterprise, medium-sized enterprise or not-for-profit organisation”.

23 At this time the Minister has not defined ABB and the associated quality standards.

24 Accordingly, ABB USO and any associated quality standards do not form part of this consultation.

2.4 Provision of affordable universal service

25 Under Regulation 71(1) ComReg shall monitor retail prices for ABB and voice communications services, and regularly report to the Minister. Regulation 71(2) sets out that the Minister may require the Regulator to impose measures¹⁰ to be complied with by relevant undertakings to ensure affordability, where the Minister considers retail prices to be unaffordable or likely to be unaffordable. Under Regulation 71(3) ComReg may impose such measures where required by the Minister.

26 On commencement of S.I. 444, ComReg will have an obligation to report to the Minister on retail prices for ABB and voice communications services and the Minister may require that ComReg impose measures to be complied with by relevant undertakings, to ensure affordability for consumers of voice communications services at least at a fixed location.

27 Accordingly, provision of affordability measures in respect of universal service does not form part of this consultation.

2.5 Control of expenditure

28 Regulation 74(2)(a) sets out that a designated undertaking (in accordance with Regulation 72(3)) shall provide specific facilities and services for the purposes of ensuring that consumers can monitor and control expenditure, as applicable. The specific facilities and services are:

- itemised billing
- selective call barring for outgoing calls or premium SMS or MMS
- pe-payment systems
- phased payment of connection fees
- non-payment of bills
- tariff advice

¹⁰ Measures may include: (i) special tariff options; or (ii) common tariffs (including geographically averaged pricing).

- cost control
 - facility to deactivate third party billing.
- 29 Tariff advice and the facility to deactivate third party billing are new control of expenditure measures.
- 30 ComReg has set out its initial policy considerations and views on best tariff advice in its Regulatory Guidance on Title III¹¹ and in its strategy statement¹², and will consider if further intervention is needed to ensure the objectives of the Code are met.
- 31 Regulation 74(2)(b) requires a designated undertaking (designated under Regulation 72(3)) to put in place a system to avoid unwarranted disconnection of voice communications services, with regard to consumers referred to in Regulation 71, including an appropriate mechanism to check continued interest in using the service.

2.6 Considerations for this Consultation

- 32 The subject matter of this consultation is:
- reasonableness of requests for VFL services;
 - availability of universal service and designation;
 - quality of service (voice), terms and conditions; and
 - control of expenditure¹³
- 33 As consumer needs evolve and the market transitions, ComReg's objective is to find the most appropriate approach to ensure that VFL services are available to consumers throughout Ireland.
- 34 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 VFL services would be delivered commercially in the future, throughout the State.

¹¹ ComReg Document No. 20/111R, 'Regulatory Guidance on Title III: End-User Rights of the European Electronic Communications Code', 23 December 2020, available at: <https://www.comreg.ie/media/2020/12/ComReg20111R.pdf>

¹² ComReg (2020), 'Electronic Communications Strategy Statement: 2021 to 2023', pg. 51, available at: [ComReg-ECS-Strategy-Statement-English-Dec-7-Final-Web-1.pdf](#)

¹³ Excluding tariff advice and facility to deactivate third party billing.

- 35 However, there can, for example, be no guarantee that uneconomic customers would be provided with voice only connections and voice communications services under normal market conditions, without VFL services USO being imposed.
- 36 On a case-by-case basis, where the market is delivering the required services, the provider of last resort, the USP, does not have to provide services under a USO.

2.6.1 Availability of universal service and designation

- 37 Regulation 72(1) places primary responsibility on ComReg, to safeguard and ensure the availability at a fixed location of voice communications services, where they cannot be ensured under normal commercial circumstances in the State or different parts of it, and where the Minister is of the opinion that other potential public policy tools cannot ensure access to voice communications in the State or any part of it as identified by ComReg, ComReg may then make a designation to impose appropriate universal service obligations to meet all reasonable requests by those end-users for accessing such services.
- 38 Regulation 72(3) sets out that ComReg may designate:
- one or more undertakings to guarantee the availability at a fixed location of either or both of the services referred to in paragraph (1), at the quality specified in Regulation 70, throughout the State, or
 - different undertakings or sets of undertakings, to ensure the availability of such services at a fixed location or to cover different parts of the State.
- 39 Regulation 72(4) sets out that ComReg shall use an efficient, objective, transparent and non-discriminatory designation mechanism whereby no undertaking is in principle excluded from being designated. The designation methods adopted shall ensure that the services are provided in a cost-effective manner and may be used as a means of determining the net cost of the universal service obligation in accordance with Regulation 75.
- 40 On commencement of S.I. 444, where ComReg establishes that availability at a fixed location of voice communications services cannot be assured under normal commercial circumstances in the State, ComReg will seek the opinion of the Minister on whether other potential public policy tools can ensure access to voice communications in the State.
- 41 Our overall objective is to ensure that there is a *provider of last resort* for basic electronic communications services within the State, and to fulfil our statutory mandate under the Regulations.

2.7 ComReg's Preliminary views

42 ComReg has considered the following in forming its preliminary views in this consultation:

- ComReg's mandate in the context of the new legislative framework (S.I. 444 of 2022);
- market trends and developments;
 - demand and supply side trends (including information received from eir and other fixed voice service providers)
 - eir's network strategy (including FTTx, MSAN deployment and copper switch off)
 - the rollout of the NBP and commercial deployments
- information from eir regarding the implementation of the current AFL USO.

43 ComReg has formed the following preliminary views:

- a VFL services USO is required post 30 June 2023 for a maximum designation period of 5 years, unless amended. ComReg proposes to keep under review any designation and VFL services USO in light of changes in the market, or 6 months after the Minister has defined adequate broadband.
- the current specifications for reasonable access requests for new connections (as set out in D09/21, Decision Instrument Section 5) should be re-imposed;
- the specifications for reasonable access requests for existing connections (as set out in D09/21, Decision Instrument Section 5) should be altered to take account of alternative infrastructure and equivalent services where they exist;
- quality of service of VFL services is to be monitored and published;
- no requirements for terms and conditions to be imposed;
- absent any expressions of interest, the current USP, eir, is best placed to be the USP for VFL services USO, post 30 June 2023.

2.8 Universal Service Costing and Funding

- 44 The provision of a universal service may result in the USP providing designated services at a net cost. Both the Code and S.I. 444 of 2022 allow a USP to seek funding for the net costs of meeting the USO, however, funding will only be permitted if it is determined by ComReg that the net cost may represent an unfair burden on the USP. To the extent that it does represent an unfair burden, the net cost of the USO shall be apportioned among providers of electronic communications networks and services.
- 45 Any designation method(s) we adopt must ensure that the obligations are provided in a cost-effective manner and may be used as a means of determining the net cost of the universal service obligation in accordance with Regulation 75. In this regard, Decision D04/11 sets out how the net cost for all USOs, will be calculated. In the event a net cost is deemed to be an unfair burden, the requirement for a sharing mechanism is then triggered.
- 46 Further information on the current status of eir's funding applications for the years 2010/11 – 2014/15 and for 2015/16 is available in Section 6.5.

2.9 Submissions to this Consultation

- 47 We are inviting expressions of interest from undertakings for the proposed VFL services USO designation. Should any expressions of interest be received, ComReg will consider them.
- 48 We are inviting stakeholders' views on this consultation by 21 February 2023.

3 Universal service-related market developments

49 This chapter provides an overview of universal service-related market developments. This analysis informs ComReg's preliminary views on whether there is a need for a VFL services USO, for the whole of the State, after 30 June 2023, and the nature of any such VFL services USO.

50 It examines the relevant market trends, both on the supply and demand side, the competitive dynamic, and the Government's NBP initiative.

51 Set out below is a summary of the key supply side and demand side trends that are of relevance to VFL services USO.

3.1 Supply side market summary

3.1.1 Relevant supply side trends

52 There are a range of suppliers and infrastructure networks in Ireland. Several types of infrastructure are, in principle, capable of providing VFL services.

53 Operators have been investing in infrastructure over the last number of years, and this investment looks set to continue. However, as the different infrastructures have different coverage, the competitive conditions with respect to VFL services vary across the country.

54 The key supply side trends are:

- increasing rollout of next generation broadband networks which are capable of supporting managed Voice over Internet Protocol ('VoIP') based telephony services; and
- changes in the competitive dynamics in wholesale fixed access and call origination ('FACO') markets, and the withdrawal of regulatory obligations from these markets, subject to the implementation of sunset periods.

55 The supply side focus, from a VFL services perspective, is primarily to ensure:

- the continued availability and continuity of service, for the current installed base, of a VFL service for end-users (should they continue to require it); while

- ensuring the capability is in place to enable end-users who are seeking VFL services, to obtain them.

56 This can be achieved by service providers through the available relevant wholesale component products, where required.

3.1.1.1 Rollout of Next Generation broadband networks

57 eir is currently rolling out its FTTx networks, with 2 million premises passed by eir FTTx as of Q3 2022.¹⁴ Based on eir data, 88% of the estimated 2.3 million premises in the State are passed by eir FTTx, which is capable of delivering managed VoIP.¹⁵ eir's initial FTTx network rollout plans included 300,000 rural premises which were originally part of the NBP Intervention Area. In April 2017, these 300,000 premises were removed from the Intervention Area following commitments made by eir to DECC¹⁶ to provide premises in rural Ireland with access to high-speed broadband.

58 Subsequently, eir added another 40,000 premises to these initial 300,000 premises (the 'Rural 340k'). This programme was completed in 2019.¹⁷

59 SIRO¹⁸ is rolling out a wholesale only FTTP network which aims to pass 770,000 homes and businesses in Ireland¹⁹. The second phase of its rollout will double its footprint to 770,000 homes and businesses to 154 towns across Ireland by 2026.²⁰

60 Virgin Media has a DOCSIS 3.1 CATV network with a footprint concentrated in urban areas around Dublin, Galway, Limerick, and Cork. It is geographically limited to locations where higher populations and premises densities have made the rollout of a CATV network economically viable.

¹⁴ Source:

https://www.eir.ie/opencms/export/sites/default/.content/pdf/IR/presentations/2022_2023/eir_Q3-22_results_presentation.pdf, pg. 7.

¹⁵ Source:

https://www.eir.ie/opencms/export/sites/default/.content/pdf/IR/presentations/2022_2023/eir_Q3-22_results_presentation.pdf, pg. 7.

¹⁶ 2017 300K Commitment Agreement (between DECC and eir).
<https://www.gov.ie/en/publication/c1b0c9-national-broadband-plan/>

¹⁷ <https://www.openeir.ie/high-speed-fibre-makes-the-rejuvenation-of-rural-towns-and-villages-tangible/>

¹⁸ SIRO is a joint venture between ESB and Vodafone.

¹⁹ ESB (2021), '2021 Annual Report & Financial Statements', pg. 12, available at:
<https://esbarchives.ie/wp-content/uploads/2022/06/ESB-Annual-Results-2021.pdf>

²⁰ [SIRO Network Expansion to 154 Towns Across Ireland - Gigabit Broadband](#)

- 61 As of Q3 2022, Virgin Media's largely cable broadband network passed 961,900 homes.²¹ It has also announced a network deal with SIRO to buy wholesale access to SIRO's network. Through this access Virgin is expanding its service footprint to 70% of all Ireland premises.²² Virgin Media is providing fixed telephony service (self-supply) by means of Managed VoB. It does not sell standalone retail fixed telephony service.
- 62 Coverage on a national basis has not yet been achieved by alternative networks as it is generally more viable to roll out in densely populated areas. The commercial incentive to invest in such networks is not based on the capacity to earn revenues on the supply of standalone retail fixed telephony service.
- 63 It appears that other alternative network providers are unlikely to replicate eir's ubiquitous fixed narrowband access (copper) network.
- 64 The NBP is the government's initiative to deliver high speed broadband services to all premises in Ireland. This will be delivered through investment by commercial enterprises coupled with intervention by the State in the Intervention Area ('IA'), that is, those parts of the State where private companies have no plans to invest. The Department of Environment, Climate, and Communications ('DECC') is co-ordinating this State-led initiative.
- 65 The State intervention area includes²³:
- almost 560,000 premises
 - 1.1 million people
 - Over 54,000 farms
 - 44,000 non-farm businesses
 - 679 schools

²¹ Liberty Global plc (2022), 'Virgin Media Ireland Reports Preliminary Q3 2022 Results', pg. 4, available at: <https://www.libertyglobal.com/wp-content/uploads/2022/11/Virgin-Media-Ireland-Fixed-Income-Q3-2022-Release.pdf>

²² Liberty Global plc (2022), 'Virgin Media Ireland Reports Preliminary Q3 2022 Results', pg. 2, available at: <https://www.libertyglobal.com/wp-content/uploads/2022/11/Virgin-Media-Ireland-Fixed-Income-Q3-2022-Release.pdf>

²³ <https://www.gov.ie/en/publication/c1b0c9-national-broadband-plan/>

- 66 A key principle of the NBP is to support and stimulate commercial investment. Since the publication of the NBP in 2012, the commercial telecommunications sector has invested over €2.75 billion. This was spent primarily on upgrading and modernising networks which support the provision of high-speed broadband and mobile telecommunications services. Significant additional investment is expected over the coming years²⁴. Of the 2.4 million premises in Ireland, 77% can access commercially available high speed broadband services of more than 30 Mbps.²⁵
- 67 The NBP and commercial investment have the potential to meet the needs of basic voice communications services. It may be the case that VFL services can and will be provided using Alternative Infrastructure and associated services, which have been fully deployed under the NBP.
- 68 A Managed VoIP service over a high-speed quality network could satisfy end-user requirements for VFL services.
- 69 The NBP will bring high speed broadband to 23% of Ireland's population, and 69% of Ireland's farms, over a number of years. It is anticipated that the network will involve: 140,000 km of fibre cable; over 1.5 million poles from networks throughout the country; and over 15,000 km of underground duct networks for fibre cable.²⁶
- 70 DECC has worked with NBI to agree an Updated Interim Remedial Plan (UIRP) which recalibrates the targets for 2022 to take account of the knock-on effects of the Covid-19 pandemic, and other delays to the NBP. The revised target is 102,000 premises passed by the end of January 2023 (cumulative) against an original contracted target of just over 200,000. The focus is to continue to build momentum in the build program, catching up on the delays experienced due to Covid-19 and planning for acceleration.
- 71 NBI is planning to have over 200,000 premises passed with build commenced at the end of 2022. In 2012, 30% of Irish premises had access to high-speed broadband. Today, this is 77% (over 1.8 million premises) and is forecast to be 95% by 2025 through delivery of the NBP.
- 72 The DECC website²⁷ provides an overview of the total number of premises per county that are in the commercial area (blue) and the State's intervention area (amber).²⁸

²⁴ [gov.ie - National Broadband Plan \(www.gov.ie\)](http://www.gov.ie).

²⁵ [gov.ie - National Broadband Plan \(www.gov.ie\)](http://www.gov.ie).

²⁶ DECC (2019) presentation: "Delivering the National Broadband Plan, May 2019", www.s3-eu-west-1.amazonaws.com/govieassets/8694/14f5f349cd9d4168a96f8350834fce19.pdf

²⁷ [gov.ie - National Broadband Plan Map \(www.gov.ie\)](http://www.gov.ie)

²⁸ [gov.ie - National Broadband Plan Map \(www.gov.ie\)](http://www.gov.ie). As of November 2022.

3.1.1.2 Supply Side Trends from voice only connections and voice communications services VFL Perspective

- 73 Managed VoIP (specifically, managed VoB) is delivered over next generation broadband, either on a wholesale or on a retail basis.
- 74 Managed VoIP routes internet protocol ('IP') based phone calls over next generation broadband data networks, as opposed to a fixed narrowband access (copper) network. Managed VoIP services can only be provided at premises that are connected to, or passed by, wholesale next generation broadband, which provides a fixed access component of sufficient speed and bandwidth to deliver managed VoIP by the relevant service providers.
- 75 Higher populations and premises densities are primarily driving the commercial rollout locations of these next generation broadband networks rollout which makes them economically viable. This indicates that in locations of higher population and premises density there will have more competition at the wholesale level, and potentially at the retail level. However, in areas of lower population and premises density there is likely to be little or no competition at the wholesale level, and potentially at the retail level.
- 76 The supply side focus, from a VFL services perspective, is primarily to ensure the continued availability and continuity of service for the existing installed base of VFL services end-users (should they continue to choose it), while ensuring the capability is in place to enable end-users who are seeking VFL services, to obtain them.
- 77 Accordingly, existing VFL services end-users located in higher population and higher premises density areas may ultimately have a greater choice of service providers, where they wish to migrate to a bundle which includes fixed voice communications services, or where an alternative service provider is actively selling VFL services.
- 78 However, for existing VFL services end-users located in lower density areas may have very limited, or no alternative retail service providers. Equally, a limited number of end-users seeking new connections at these locations may have trouble in obtaining voice only connections (absent of a VFL services USO).
- 79 Service providers are unlikely to adapt an existing network to offer VFL services. Bundles including a connection, broadband and voice only communications services will generally generate higher margins for service providers.

- 80 Next generation broadband networks may eliminate the need for service providers to maintain separate voice and data networks. They potentially facilitate economies of scope²⁹ and cost savings, where both voice and data are provided over a single broadband network.
- 81 There remains a sizeable but declining number of standalone retail fixed telephony service subscriptions. The vast majority of these are provided over fixed narrowband access (copper) network, which remains the predominant form of retail fixed telephony service for households and businesses.
- 82 The lack of ubiquity of next generation networks (i.e., Virgin Media, SIRO and NBP), and the level of investment that would be required to replicate a network capable of offering retail fixed telephony service (such as eir's ubiquitous network) reflects the diminishing but continued importance of fixed narrowband access (copper) network, prior to copper switch off.
- 83 The lack of national availability of next generation broadband impacts the ability to support managed VoIP at all locations. Accordingly, next generation networks cannot yet be relied on to ensure the full availability of VFL services nationally, in the short to medium term.

3.1.1.3 eir's network modernisation plans

- 84 ComReg has also considered eir's network modernisation plans.
- 85 In 2016 eir stated³⁰ in correspondence with ComReg its intention to decommission its legacy fixed narrowband access network (hereafter, 'copper switch-off'). No timelines were put forward or agreed for this process.
- 86 In November 2019 eir³¹ presented preliminary proposals to industry to modernise its PSTN network by means of Multi-Service Access Nodes ('MSAN(s)'), due to the phasing out of vendor support for legacy PSTN switching equipment. eir intends that, from an end user perspective, the transition to MSANs will be seamless and will be implemented [X ██████████ ██████████ X].

²⁹ ComReg's QKDR defines 'Voice over Broadband' as "IP-based services that facilitate voice calls to and/or from the PSTN over a broadband connection. With this service, the customer may either have broadband access from an ISP and acquire voice over broadband services from a separate entity or have both broadband and voice over broadband services bundled together by the same supplier. Voice services bundled with digital TV services and delivered over digital cable TV networks should also be recorded here." The QKDR furthermore requests service providers to provide data on Managed VoB, SIP Trunking and IP connections equivalent to ISDN (i.e., Hosted PBX). Accordingly, the expression 'Voice over Broadband' used in the QKDR equates to the expression 'Managed VoIP' used in this Consultation.

³⁰ eir letter (Richard Moat) to ComReg dated 21 July 2016.

³¹ eir presented proposals at the Industry Product Development Workshop on 13 November 2019.

- 87 Technically, the MSAN replaces the Remote Subscriber Unit ('RSU') in the exchange, and the end user is connected to the MSAN for retail fixed telephony service. The use of MSAN technology should prolong the serviceable life of the fixed narrowband access (copper) network, and products provided over that network, which would otherwise be rendered obsolete as vendor support withdraws for the PSTN switching equipment. The modernisation may result in a reduction in the number of points of interconnection, as legacy RSUs and core switches are removed from the network, subject to ComReg approval. This proposal has the effect of extending the timeline for copper switch-off.
- 88 As of October 2022, eir has replaced circa [REDACTED] %³² of its RSUs with MSANs, and an associated [REDACTED] %³³ plain old telephony ('POTS') lines.
- 89 In March 2021, eir published a white paper on its website³⁴ entitled "Copper switch-off: Leaving a legacy for the Future". ComReg looks forward to engaging with eir and other stakeholders on this important matter and has:
- (i) issued an Information Notice³⁵ in this respect; and
 - (ii) consulted publicly on the matter in the consultation document "Framework for the Migration from Legacy Infrastructure to Modern Infrastructure".³⁶
- 90 ComReg is of the preliminary view (based on the available information) that the proposed MSAN deployment and possible mandatory migration from the copper network to fibre networks, should not have any adverse material impact on the provision of VFL services to existing and new customers, within the next 5 years.

³² [REDACTED].

³³ [REDACTED].

³⁴ https://www.openeir.ie/wp-content/uploads/2021/03/White-paper_Leaving-a-Legacy.pdf

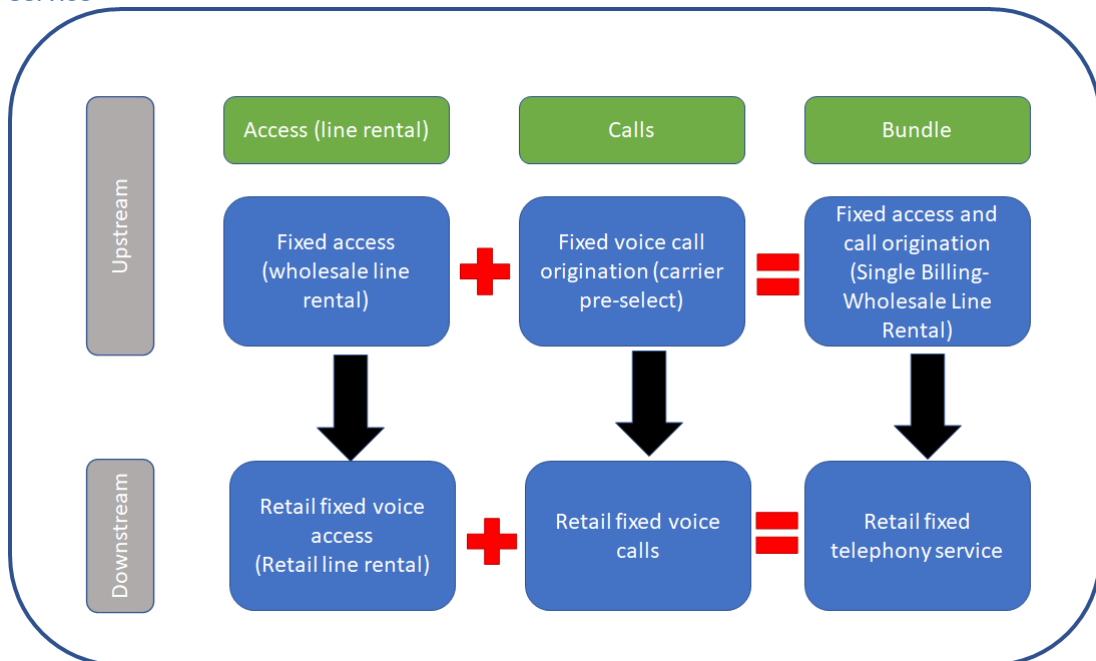
³⁵ ComReg Document No. 21/35, 'Information Notice: ComReg – Eircom Correspondence on Copper Switch Off', 09 April 2021, available at: <https://www.comreg.ie/publication-download/information-notice-copper-switch-off-correspondence>

³⁶ ComReg Document No. 22/13R, 'Consultation: Framework for the Migration from Legacy Infrastructure to Modern Infrastructure', 25 March 2022, available at: <https://www.comreg.ie/media/2022/04/ComReg-2213R.pdf>

3.1.2 Changes in the FACO markets

91 The relationship between the supply side wholesale inputs and how they are used in the delivery of retail fixed voice access ('**RFVA**') and retail fixed voice calls ('**RFVC**') – together, retail fixed telephony service ('**RFTS**') - is illustrated in Figure 1 below.

Figure 1: Upstream fixed access call origination and downstream retail fixed telephony service



92 Fixed voice call origination ('**FVCO**') is a wholesale component product which switches, routes, and conveys a voice call up to a designated point of handover on a network. The FVCO wholesale component product is supplied over a fixed access path commonly described as wholesale line rental ('**WLR**'). The bundled provision of the wholesale component products of fixed voice call origination with a fixed access path is referred to as FACO.

93 FACO is an upstream input into the downstream provision of a retail connection and fixed voice service to end-users. The purchase of the wholesale component products of FACO, transit, and fixed voice call termination ('**FVCT**') enables access seekers, who do not operate their own network, to offer a retail connection and fixed voice service to end users.

94 FACO is a wholesale component product which facilitates service providers to provide a retail voice communications service to end-users, either directly on their own networks, or by renting access to third party wholesale component products. eir is currently the largest supplier of FACO and the only service provider with a ubiquitous fixed narrowband access network (i.e., current generation technology network including PSTN or ISDN copper access paths).

- 95 In its analyses of the RFTS and FACO markets³⁷ ComReg considered several factors impacting competition, including the increasing rollout of next generation broadband, which is capable of enabling the provision of wholesale and/or retail managed voice over IP³⁸.
- 96 ComReg's recent decision³⁹ concluded that the continued ex ante regulation of the retail fixed voice telephony service market is no longer warranted, as there is insufficient evidence that eir continues to have Significant Market Power ('SMP') on those markets (including on the basis of any regulation of the FACO and other markets).
- 97 The evidence available to ComReg shows that the retail fixed voice telephony service market has moved towards a situation of effective competition over time. In this respect, there is evidence of existing competition in the retail fixed voice telephony market, particularly having regard to the persistent decline in eir's market share across the market, as end-users migrate to purchasing retail fixed voice telephony service in a bundle with other services.
- 98 Furthermore, the barriers to entry and expansion in this market is, on a forward-looking basis, not likely to be high.
- 99 Accordingly, and subject to the implementation of sunset periods, ComReg has withdrawn existing obligations from the relevant FACO markets.
- 100 An 18-month sunset period⁴⁰ will apply in respect of existing ISDN FRA PRA and PSTN SB-WLR products, and a 9-month sunset period will apply to new ISDN FRA PRA and PSTN SB-WLR products. eir is required to maintain the existing supply of access to FACO products, services, and facilities (e.g., SB-WLR orders already supplied to Access Seekers) at no more than existing prices.

³⁷ ComReg Document No. 20/46 'Retail Access to the Public Telephone Network at a Fixed Location for Residential and Non-Residential Customers - Wholesale Fixed Access and Call Origination', 17 June 2020, available at: <https://www.comreg.ie/media/2020/06/ComReg-2046.pdf>

³⁸ ComReg's QKDR defines 'Voice over Broadband' as "IP-based services that facilitate voice calls to and/or from the PSTN over a broadband connection. With this service, the customer may either have broadband access from an ISP and acquire voice over broadband services from a separate entity or have both broadband and voice over broadband services bundled together by the same supplier. Voice services bundled with digital TV services and delivered over digital cable TV networks should also be recorded here." The QKDR furthermore requests SPs to provide data on Managed VoB, SIP Trunking and IP connections equivalent to ISDN (i.e., Hosted PBX). Accordingly, the expression 'Voice over Broadband' used in the QKDR equates to the expression 'Managed VoIP' used in this Consultation.

³⁹ ComReg D05/22, Document No. 22/50, 'Retail Access to the Public Telephone Network at a Fixed Location for Residential and Non-Residential Customers - Wholesale Fixed Access and Call Origination', 29 June 2022, available at: <https://www.comreg.ie/media/2022/06/ComReg-2250.pdf>

⁴⁰ delivered over PSTN, ISDN FRA and PRA.

- 101 With respect to new supply of ISDN FRA PRA and PSTN SB-WLR products',⁴¹ services, and facilities, a separate 9-month sunset period applies. This will run in parallel with the 18-month sunset period described above.⁴²
- 102 There are currently a small number of retail service providers who use the wholesale SB-WLR component product to deliver retail VFL services to their existing retail customers.
- 103 The end of the SB-WLR sunset period may result in consumers who are currently commercially availing of VFL services, no longer being able to do so. This could result in an increase in the number of requesters seeking VFL services through universal service.

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

⁴¹ e.g., SB-WLR orders received

⁴² ComReg D05/22, Document No. 22/50, 'Retail Access to the Public Telephone Network at a Fixed Location for Residential and Non-Residential Customers - Wholesale Fixed Access and Call Origination', 29 June 2022, available at: <https://www.comreg.ie/media/2022/06/ComReg-2250.pdf>

3.2 Demand side market summary

3.2.1 Relevant demand side trends

104 The key demand side trends are:

- evidence of competition in the retail fixed telephony service market, including having regard to the sunset and ultimate removal of any upstream wholesale regulation (i.e., the continued decline in eir's market share); and
- the decline in the size of the standalone retail fixed telephony service market (i.e., end-users' migration to bundles)

3.2.1.1 Competition in the retail fixed telephony service market

105 The main service providers operating in the retail fixed telephony service market in Ireland are eir, Virgin Media, Vodafone, Sky, Imagine Telecommunications, Pure Telecom, and several other smaller service providers.

106 Retail fixed telephony service is predominantly provided over fixed narrowband access (copper) network.

107 The provision of managed VoIP over next generation broadband networks has increased since the last AFL review.

108 A number of retail service providers provide a managed VoB-based retail fixed telephony service (over CATV or FTTx). This is typically as part of a bundle (e.g., with broadband, TV, or mobile telephony).

109 Virgin Media has offered a managed VoB service since 2006 (as an add-on to its broadband and pay-tv offerings).

110 eir offers a managed VoB service (eir Broadband Talk)⁴³ and a Managed VoIP service (eir SIP Voice)⁴⁴ to eligible residential and business customers connected to its FTTx network.

111 Vodafone and Sky offer a managed VoB home phone service in certain geographic areas (i.e., based on wholesale inputs from eir and SIRO).

⁴³ For further details, please see <https://www.eir.ie/eirbroadbandtalk/>

⁴⁴ For further details, please see <https://business.eir.ie/sipvoice/>

- 112 Digiweb and Imagine offer managed VoB services over fixed wireless access networks. Magnet and Digiweb both offer managed VoB (own FTTx networks and based on wholesale inputs from eir and SIRO).
- 113 Blueface offers a VoB service which relies on its customers having an existing broadband connection supplied by a third party.
- 114 Household retail fixed telephony service penetration has declined from 72% to 64% (between Q4 2020 – Q2 2022). Consumer usage patterns indicate a general and ongoing decline in the use of retail fixed telephony service, with increased usage of broadband, of mobile telephony, and of bundled products.
- 115 Household broadband penetration has increased from 72% to 73%, and per capita mobile telephony penetration has increased from 105% to 108% (between Q4 2020 and Q2 2022).
- 116 Retail fixed telephony service may be measured in terms of the number of access paths⁴⁵, lines, or subscriptions⁴⁶. The overall number of access paths is likely to exceed the overall number of lines. The number of lines will generally exceed the overall number of subscriptions. The number of subscriptions is therefore an accurate reflection of the number of customers, while the number of access paths reflects the number of access connections.
- 117 The number of access paths per individual line varies depending on the type of product purchased) at fixed locations (Figure 2).⁴⁷

Figure 2 : Lines, access paths and subscriptions

Product	Lines	Access paths (voice channels)	Minimum Subscription Required
PSTN	1	1	1
ISDN Basic	1	2	1
ISDN Fractional	1	15	1
ISDN Primary	1	30/31	1
Managed VoIP	1	Dependent on VoIP product design	1
SIP Trunking	1	Dependent on VoIP product design	1
Hosted PBX	1	Dependent on VoIP product design	1

- 118 ComReg’s QKDR indicates that the total number of fixed network access paths (i.e., PSTN and ISDN) has declined by 19% (i.e., just over 1.09 million) from Q4 2020 to Q2 2022 (i.e., just under 0.89 million).

⁴⁵ Are not synonymous with access lines as, for example in the case of ISDN paths and or channels, more than one path may be provided via a single ISDN line.

⁴⁶ A subscription involves periodic payment for a single or multiple (bundled) services.

⁴⁷ Source: ComReg Quarterly Key Data Report.

- 119 Over the same period, alternative technologies have experienced growth. Managed VoB has been the fastest growing platform, with subscription numbers increasing by approximately 8%, from 524,484 to 568,016.
- 120 Figure 3 disaggregates fixed narrowband access (copper) paths as at Q2 2022. It also sets out the percentage change in the number of managed VoIP subscriptions over the same period.
- 121 It shows that the number of subscriptions provided over fixed narrowband access (copper) paths (PSTN) declined by 17%, and that the number of managed VoIP subscriptions increased by 8%, between Q4 2020 and Q2 2022.

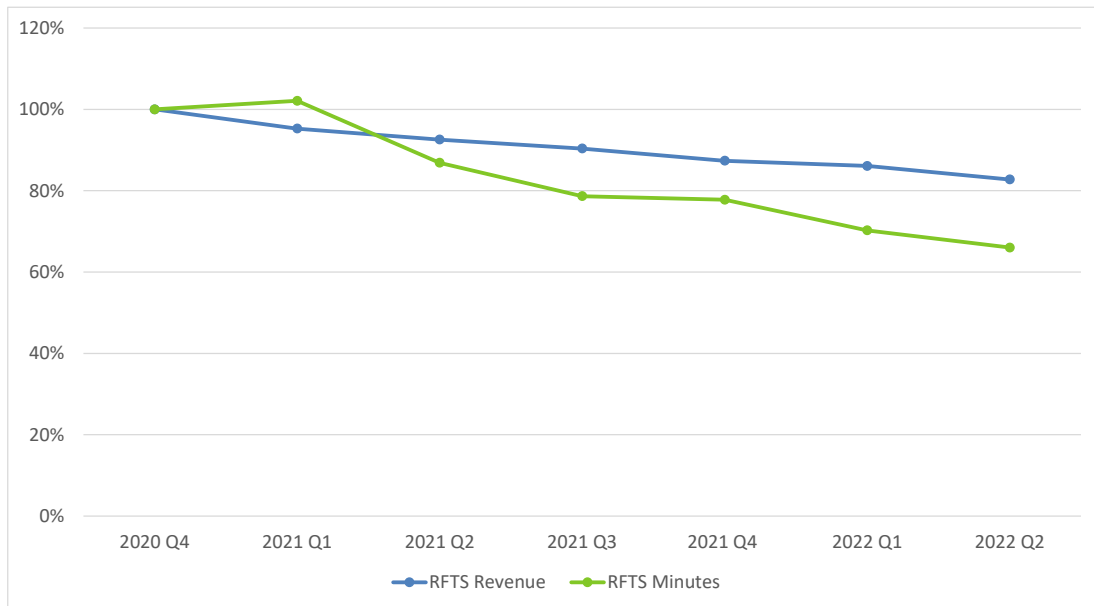
Figure 3: Fixed narrowband access paths, fixed narrowband access and Managed VoIP subscriptions

	Q4 2020	Q2 2022	% change, Q4 2020 - Q2 2022
PSTN	870,385	726,480	-17%
ISDN Basic	86,662	75,246	-13%
ISDN Fractional	33,808	26,400	-22%
ISDN Primary	101,370	60,570	-40%
Total ISDN	221,840	162,216	-27%
Total PSTN & ISDN Access Paths	1,094,517	888,696	-19%
Fixed narrowband access retail fixed telephony service subscriptions	1,092,225	888,696	-19%
VoIP subscriptions	524,484	568,016	8%
Total retail fixed telephony service subscriptions	1,351,715	1,257,278	-7%

- 122 There has been a persistent decline in retail fixed telephony traffic.
- 123 Figure 4 shows that, from Q4 2020 to Q2 2022, revenues attributable to RFTS traffic⁴⁸ (blue line) have fallen by 17%, while traffic minutes (orange line) have fallen by 34%.

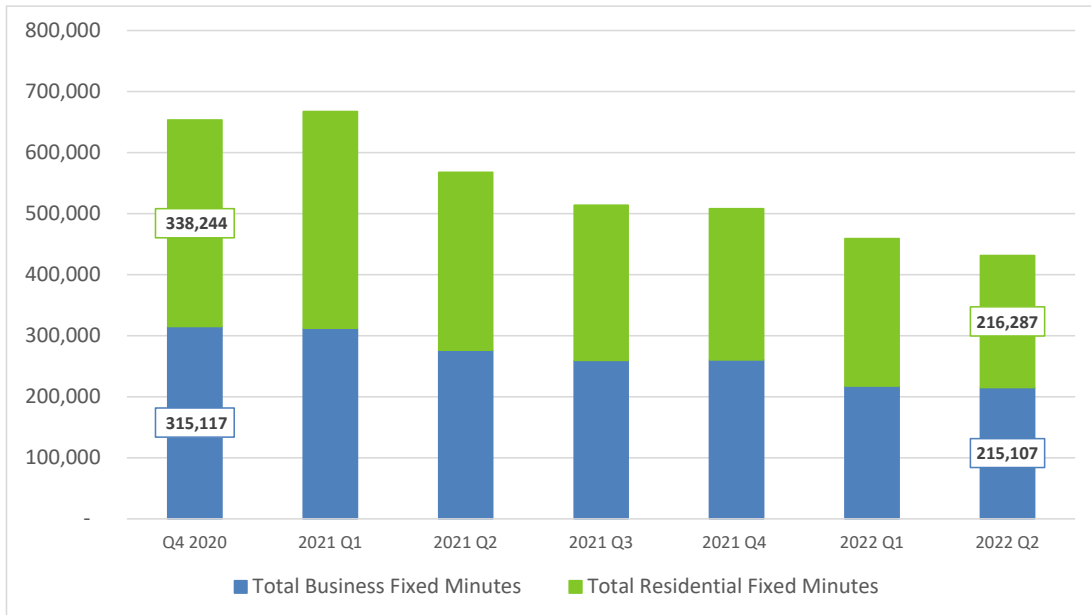
⁴⁸ These revenues include retail revenue generated by the direct and indirect provision of retail fixed telephony service, such as PSTN voice services and dial-up Internet services. This category also includes revenues from VoB services.

Figure 4: Retail Fixed Telephony Service Traffic and Revenues, Q4 2020 – Q2 2022 (Base Q2 2020 = 100)



- 124 This demonstrates that the retail fixed telephony service market continues to reduce in size, measured by traffic and revenues.
- 125 Figure 5 below illustrates the breakdown of retail fixed telephony service by residential and business end users. The data indicates that residential fixed voice minutes have decreased by 39% between Q4 2020 and Q2 2022, from 354,871 to 216,287. Similarly, business fixed voice minutes have decreased by just under 32% in the same period, from 312,257 to 215,107.

Figure 5: Residential and Business Retail Fixed Telephony Service Minutes, Q4 2020 – Q2 2022



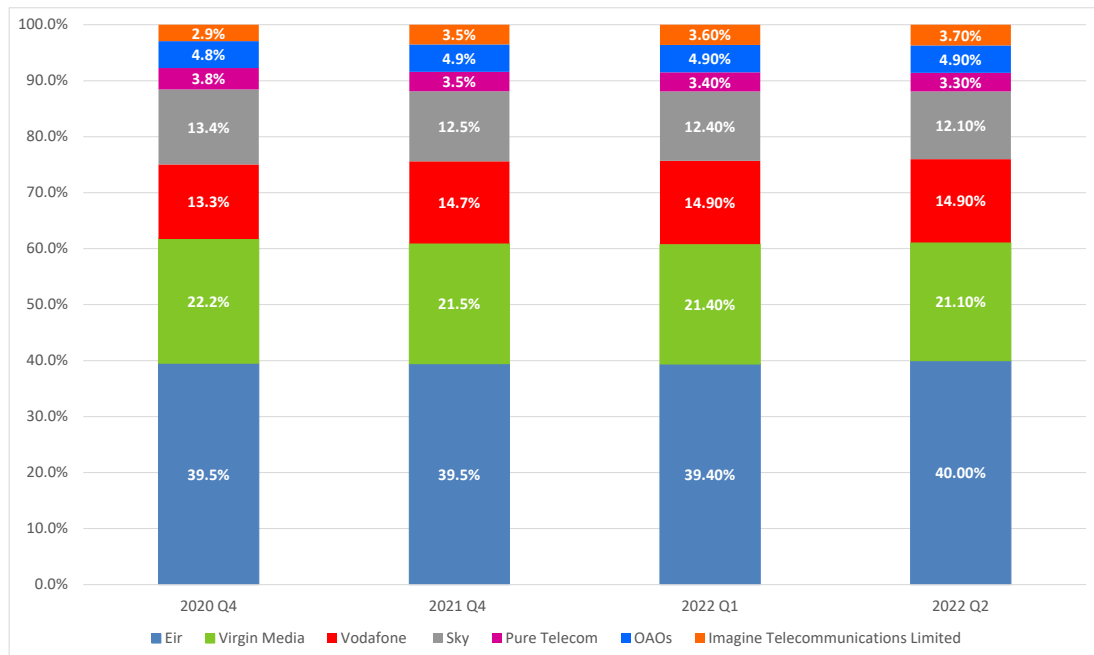
126 Market shares measured by RFTS subscriptions are presented in Figure 6 below.

127 Over the period Q4 2020 to Q2 2022 eir's share has increased from 39.5% to 40% while Virgin Media's has decreased from 22.2% to 21.1%.

128 Vodafone's share has increased from 13.3% to 14.9% while Sky's share has decreased from 13.4% to 12.1%.

129 Other changes over this period include a decrease in Pure Telecom's share from 3.8% to 3.3%, an increase in Imagine Telecommunication's share from 2.9% to 3.7%, and an increase in the market share of OAOs from 4.8% to 4.9%.

Figure 6: Retail Fixed Telephony Service Market Shares by Subscription, Q4 2016 – Q4 2020



3.2.1.2 Landline ownership

- 130 ComReg’s 2022 Mobile Consumer Experience Survey⁴⁹ shows that landline ownership has dropped significantly from 52% in 2019 to 39% in 2022, with a tendency to greater landline ownership in Munster, amongst farmers and across the older age cohorts.
- 131 Of those who do not have a landline, only 2 in 5 had a landline previously and, unsurprisingly, the survey results show that the likelihood of having had a landline increases with age.
- 132 For the vast majority, landlines became redundant with the proliferation of mobile phones. Of those who had previously had a landline but cancelled it, 82% did so because they don’t need a landline, as they have a mobile phone.
- 133 Among those with both landline and mobile, almost 1 in 3 reported that they need the landline for their broadband connection, while a quarter stated that making calls from a landline is cheaper. This has reduced from 30% in 2019.⁵⁰
- 134 There is evidence that mobile phones are replacing landlines for those who never had a landline, as 4 in 5 of this cohort indicated they use their mobile instead.

⁴⁹ ComReg, Mobile Consumer Experience survey (2022), ComReg document 22/83, available at: <https://www.comreg.ie/media/2022/10/ComReg2283.pdf>

⁵⁰ ComReg, Mobile Consumer Experience survey (2022), ComReg document 22/83, available at: <https://www.comreg.ie/media/2022/10/ComReg2283.pdf>

- 135 The research found that the key reason for decreases in landline ownership is displacement by the mobile phone, likely due to the growth in smartphones and accessible plans. 80% noted they simply don't need a landline and opt to use mobiles instead.
- 136 It also found that the key reason for retaining a landline is to support the broadband service/connection to Wi-Fi, with 31% of respondents indicating this as their reason for having a landline.
- 137 However, there remains significant but declining cohort of end-users who continue to exercise their right to VFL services. This is set out in section 3.2.1.4.
- 138 Customer experience of voice services delivered over VoIP is generally not very different from those delivered over PSTN/fixed voice access.
- 139 ComReg notes that some ancillary services such as monitored home alarm and medical alarm service may not work in the same manner over VoIP. Where this occurs, this may represent a barrier to switching for a small cohort of customers.

3.2.1.3 Wireless and Mobile networks and services

- 140 Wireless infrastructures have the capability to provide a voice only connection and voice communications services VFL USO (including 3G and 4G mobile networks). Fixed wireless access networks⁵¹ may also deliver managed voice over broadband (VoB), where speeds permit sufficient bandwidth and quality. It is more commonly associated with the provision of certain broadband services. Several fixed service providers provide broadband and retail fixed voice communications services over fixed wireless access networks in Ireland, the largest two being Digiweb⁵² and Imagine.⁵³
- 141 Different mobile infrastructures have different coverage capabilities. The significant mobile coverage is outdoor. Indoor mobile coverage is not ubiquitous, and often varies substantially depending on technology, network operator, handset capabilities and the premises' building materials. Technical solutions are available that can mitigate some of these issues. ComReg's mobile coverage map shows predicted outdoor mobile coverage.⁵⁴

⁵¹ A fixed wireless access network service is a telecommunications service provided over a point-to-multi-point wireless connection between a radio base station (typically located on a mast/tower) and a fixed aerial or device located at the end user's household or premises.

⁵² https://digiweb.ie/product/metro-freedom-broadband/#tab-additional_information.

⁵³ <https://www.imagine.ie/broadband-questions-answers/>.

⁵⁴ www.comreg.ie/coveragemap.

- 142 In the context of VFL services, ComReg notes the judgment of the European Court of Justice ('**ECJ**') on 11th June 2015 (in relation to a request for a preliminary ruling by the Belgian courts)⁵⁵ states that the term "at fixed location" should be understood as meaning the opposite to "mobile". The judgement considered what constitutes a universal service, rather than what technology is capable of providing a universal service.
- 143 ComReg's view is that the ECJ's statement "*that AFL means the opposite to mobile*" is not inconsistent with ComReg's position that VFL is not a mobile service, however the obligation to provide VFL 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.
- 144 Mobile usage and services are a factor when considering the future demand for voice communications services at a fixed location.
- 145 ComReg's 2022 Mobile Consumer Experience survey showed that while users experience service problems in both urban and rural locations, difficulties are more apparent in rural location.
- 146 Such difficulties include loss of signal in specific rooms and in the entire home. The level of daily experiences of loss of voice/text signal throughout entire home and in specific rooms remains high at 45% and 46% respectively.⁵⁶ Loss of signal (or no/poor signal/coverage) throughout the home for voice call and texts was highest in rural samples.⁵⁷
- 147 The survey also showed that dropped calls in a specific part of the house appear to still be an issue in 2022 (13% in both 2019 and 2022 Mobile Consumer Experience Surveys), although quality of reception on a call (15% v. 9%) and the inability to connect a call remain significant issues.⁵⁸
- 148 Incidence of use at various locations remains relatively comparable with 2019 and 2022 levels, but a decrease in 'every day' use 'inside my home' is noted longer term.

⁵⁵ Case C-1/14 - Request for a preliminary ruling in the proceedings Base Company NV and Mobistar NV v Ministerraad, 11th June 2015.

⁵⁶ ComReg, Mobile Consumer Experience survey (2022), ComReg document 22/83, pg. 53, available at: <https://www.comreg.ie/media/2022/10/ComReg2283.pdf>

⁵⁷ ComReg, Mobile Consumer Experience survey (2022), ComReg document 22/83, pg. 53, available at: <https://www.comreg.ie/media/2022/10/ComReg2283.pdf>

⁵⁸ ComReg, Mobile Consumer Experience survey (2022), ComReg document 22/83, pg. 88, available at: <https://www.comreg.ie/media/2022/10/ComReg2283.pdf>

- 149 37% reported that in the last month, they have experienced loss of signal when using call / text functions on mobile networks, while 32% have experienced loss of signal when using data. Those in very rural areas note higher incidences of disruptions.
- 150 In the case of voice calls/texts, almost 2 in 3 of those who have experienced a loss of signal did so in a specific part of the home, while half have experienced a loss of signal throughout the home.
- 151 Over 50% experience daily issues in relation to voice calls/texts in their home or in a specific part of their home. Those in rural areas are impacted more, with 62% of rural dwellers noting daily issues in a part of their home.
- 152 Mobile penetration has remained stable in recent years and ComReg's 2022 Mobile Customer Experience survey indicates that 98% of all adults 18+ in Ireland have a mobile phone.
- 153 ComReg's market research notes that despite the high number of mobile subscriptions, end users continue to retain retail fixed telephony services indicating that consumers continue to require and use fixed voice services.

3.2.1.4 The decline in the size of the standalone retail fixed telephony service market

- 154 Few service providers now sell standalone retail fixed telephony service.
- 155 Only eir and Pure Telecom actively offer standalone retail fixed telephony service. This is generally only available over fixed narrowband access (copper) network.
- 156 Figure 7 gives a breakdown of total retail fixed telephony service subscriptions by subscription type as at Q2 2022. This illustrates that just over 15% of subscriptions are standalone fixed voice only. Just under 85% of retail fixed telephony service subscriptions are bundled with at least one other service. The most common bundle combination is a retail fixed telephony service with fixed broadband which accounts for just over 41%⁵⁹ of subscriptions with a retail fixed telephony service component. The vast majority of these are provided over next generation broadband.

⁵⁹ Rounded to the nearest 1%.

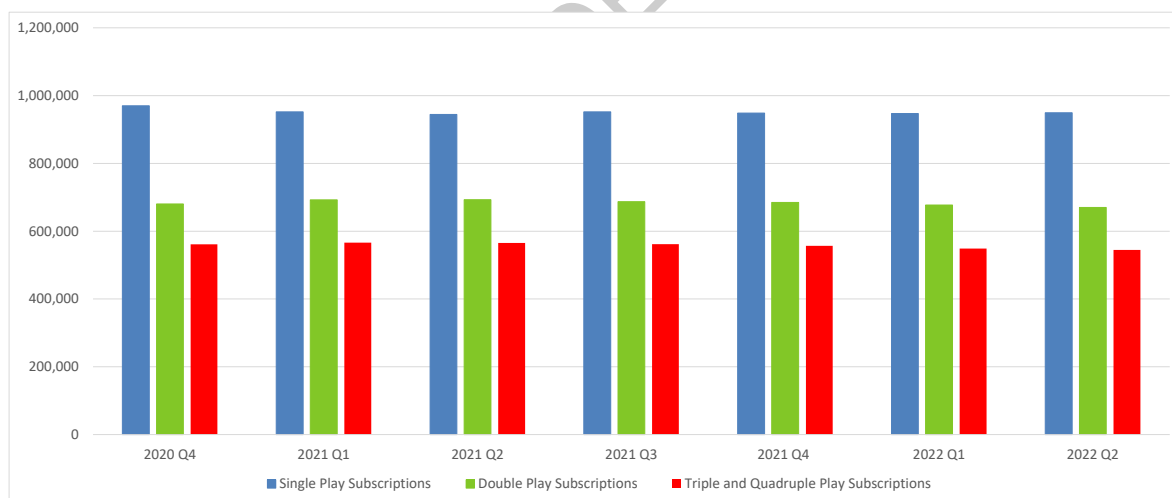
Figure 7: Total subscriptions to RFTS Q2 2022

Subscription type	Subscriptions - Q4 2020	% Total	Subscriptions - Q2 2022	% Total
Standalone retail fixed telephony service	226,489	17%	191,202	15.2%
Retail fixed telephony service and TV	4,893	<1%	3,691	<1%
Retail fixed telephony service and broadband	558,855	41%	516,781	40%
Retail fixed telephony service and mobile voice	5,457	<1%	5,496	<1%
Retail fixed telephony service, broadband, TV	395,443	29%	363,673	28%
Retail fixed telephony service, mobile voice, broadband	98,166	7%	111,696	9%
Retail fixed telephony service, mobile voice, TV	120	<1%	86	<1%
Retail fixed telephony service, broadband, TV, mobile voice	62,292	5%	64,653	5%
Total retail fixed telephony service subscriptions	1,351,715	100%	1,257,278	100%

157 Between Q4 2020 and Q2 2022 (Figure 8) there has been:

- a decrease of 2.13% in the number of single play subscriptions;
- a decrease of 1.53% in the number of double play subscriptions; and
- a decrease of 2.96% in the number of triple or quadruple play.

Figure 8: Single, double, triple, and quadruple play subscriptions

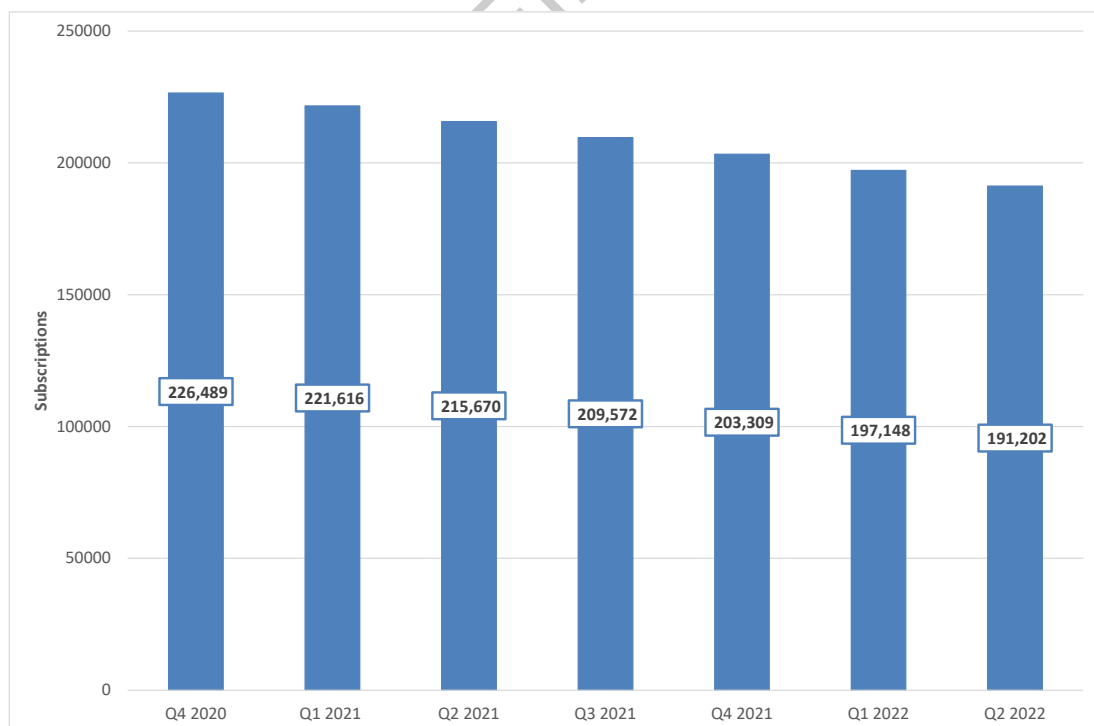


158 Other service providers may continue to offer a voice only connection and voice communications services at a fixed location on a legacy basis to existing customers.

159 Service providers generally prefer to offer bundled products, as end-users may be 'stickier' and less likely to switch to alternative service providers, where the transaction costs involved in doing so, are greater. Furthermore, the margin that a service provider earns on a bundle may be driven by an anchor product in the bundle.

- 160 Vodafone, Virgin Media, and Sky do not offer a standalone retail fixed telephony service product. Between them the four service providers (eir, Vodafone, Virgin Media, and Sky), offer just one standalone retail fixed telephony service product, but 25 bundles (combinations and variations of broadband, retail fixed telephony service products, TV and mobile).
- 161 Accordingly, end users with a preference for bundled purchases have greater switching opportunities than end users with a preference for standalone retail fixed telephony service.
- 162 There remains a sizeable but declining number of standalone retail fixed telephony service subscriptions, shown in Figure 9.
- 163 Between Q4 2020 and Q2 2022 the number of standalone RFTS subscriptions has declined by circa 16%, from 226,489 to 191,202, which remains a significant number of subscribers. The vast majority of these are provided over fixed narrowband access (copper) network, which remains the predominant form of retail fixed telephony service for households and businesses, which reflects the continued importance of fixed narrowband access (copper) network.

Figure 9: Volume of standalone RFTS subscriptions Q4 2020 - Q2 2022



- 164 The demand for standalone retail fixed telephony service is likely to persist where:

- end-users continue to choose to purchase retail fixed telephony service on a standalone basis, despite the availability of next generation broadband services. These end users are unlikely to value a broadband based bundle which includes retail fixed telephony service; or
- next generation services are not currently available to all end-users. These end-users do not have the choice to purchase bundled retail fixed telephony service with broadband. Some of these end-users may switch to a bundle when next generation services become available, while others may remain on their standalone retail fixed telephony service.

165 ComReg notes that eir group results, Q3 2022⁶⁰, shows that from a household view, 13% of its customers still have a single play voice only service.

166 While it would be possible for alternative service providers to provide standalone retail fixed telephony service over broadband, to date, this type of product has only been made available to businesses. Many service providers have instead focused on meeting the substantial demand from households and businesses with product bundles.

167 Service providers are only capable of providing managed VoIP at premises that are connected to or passed by next generation broadband which provides a fixed access component of sufficient speed and bandwidth to deliver managed VoIP.

168 For end-users who cannot purchase broadband, or who have a preference for standalone retail fixed telephony service, the requirement to purchase broadband in order to have retail fixed telephony service (provided by means of managed VoIP) may be a barrier on end-users switching away from standalone retail fixed telephony service provided by means of fixed narrowband access (copper) network.

169 It is likely that, as next generation broadband becomes more available, and a proportion of standalone retail fixed telephony service customers switch to bundles comprising (at least) retail fixed telephony service and broadband, the cohort of standalone retail fixed telephony service customers will decline over time.

⁶⁰ eir (2022), 'eir Group Results: for the third quarter ended 30 September 2022', 15 November 2022, available at: https://www.eir.ie/opencms/export/sites/default/.content/pdf/IR/presentations/2022_2023/eir_Q3-22_results_presentation.pdf

- 170 Accordingly, the focus of voice only connections and voice communications services VFL is to ensure the continued availability and continuity of service for the current installed base of voice only connections and voice communications services end-users, should they choose to continue using this service. There is a sizeable but declining number, as stated in paragraph 162.
- 171 It also ensures that the capability is in place to enable end-users who are seeking a new voice only connection and voice communications services (smaller numbers) to obtain it.

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

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.

NON-CONFIDENTIAL

4 The need for a VFL services USO

172 This chapter considers the need for a VFL services USO, in the context of the market trends and evolution, identified in Chapter 3, and data in respect of eir's implementation of the current fixed voice AFL USO, and ComReg's statutory objectives.

173 ComReg has noted earlier:

- growing attractiveness and take up of bundled services, leading to decreased fixed voice only subscriptions;
- decreasing but continued use of traditional fixed voice communications services;
- continuing decline in retail PSTN retail voice traffic; and
- increasing use of VoIP services.

174 This chapter assesses:

- the counterfactual - voice only connections and voice communications services, absent any VFL USO, to inform ComReg's preliminary views on whether there is a need for voice only connections and voice communications services VFL USO, post 30 June 2023.

175 It considers the following elements of any VFL services USO:

- quality of service, terms and conditions, and reasonableness of requests; and
- control of expenditure.

4.1 ComReg's statutory obligations

176 Universal service is designed to ensure that end-users shall have any reasonable request for the provision of voice only connections and voice communication services at a fixed location satisfied by a USO, where they cannot be assured under normal commercial circumstances, or through other potential public policy tools.

177 Regulation 70(3)(b) states that ComReg may, with the consent of the Minister, specify requirements to be complied with by an undertaking in relation to the reasonableness of requests for voice only connections at a fixed location.

- 178 Regulation 70(3)(ii) sets out, with reference to Regulation 70(1), that reasonable requests for voice only connection at a fixed location applies to consumers, microenterprises, small enterprises, medium-sized enterprises, or not-for-profit organisations.
- 179 Accordingly, for ease of reading all reference to end-users in the context of reasonable access requests for connection at a fixed location in this document applies to the definition set out in Regulation 70(1).
- 180 Regulation 70(4) states that where a consumer, enterprise, or organisation so requests, the connection shall be limited to support voice communications services.
- 181 Regulation 74(2)(a) sets out that a designated undertaking shall provide specific facilities and services for the purposes of ensuring that consumers can monitor and control expenditure, as applicable. The specific facilities and services are:
- itemised billing
 - selective call barring for outgoing calls or premium SMS or MMS
 - pe-payment systems
 - phased payment of connection fees
 - non-payment of bills
 - tariff advice
 - cost control
 - facility to deactivate third party billing.
- 182 Tariff advice and the facility to deactivate third party billing are new control of expenditure measures.

- 183 ComReg has set out its initial policy considerations and views on best tariff advice in its Regulatory Guidance on Title III⁶¹ and in its strategy statement⁶², and will consider if further intervention is needed to ensure the objectives of the Code are met.
- 184 Regulation 74(2)(b) requires a designated undertaking (designated under Regulation 72(3)) to put in place a system to avoid unwarranted disconnection of voice communications services, with regard to consumers referred to in Regulation 71, including an appropriate mechanism to check continued interest in using the service.
- 185 Because of this ComReg considers that any justification for the complete withdrawal of voice only connections and voice communications services VFL USO would need to be undisputed. There would need to be a guarantee that access at a fixed location voice only connections and voice communications services would be delivered in the future, throughout the State.
- 186 The current AFL USO designation will expire on 30 June 2023. ComReg has commenced a review and is now consulting on what, if any obligation, may be applicable in this regard, post June 2023.
- 187 ComReg's objective is to find the most appropriate approach to ensure that access at a fixed location voice only connections and communications services are available to end-users throughout Ireland, if and where, they are not met commercially by the market, or through other potential public policy tools.

4.2 Counterfactual (no voice only connections and/or voice communications services universal service obligations)

- 188 The following section examines the counterfactual - voice only connections and voice communications services, absent any VFL USO, including:
- quality of service (voice), terms and conditions, and reasonableness of requests; and
 - control of expenditure.

⁶¹ ComReg Document No. 20/111R, 'Regulatory Guidance on Title III: End-User Rights of the European Electronic Communications Code', 23 December 2020, available at: <https://www.comreg.ie/media/2020/12/ComReg20111R.pdf>

⁶² ComReg (2020), 'Electronic Communications Strategy Statement: 2021 to 2023', pg. 51, available at: [ComReg-ECS-Strategy-Statement-English-Dec-7-Final-Web-1.pdf](#)

189 ComReg issued 13D(1) Information Requests to eir to inform its preliminary views.

4.2.1 Quality of service (voice), terms and conditions and reasonableness of requests

4.2.1.1 Quality of service

190 ComReg considers that QoS is an important aspect of a voice only connections and voice communications services VFL. It is important that the current QoS standards are maintained.

191 [REDACTED]

192 [REDACTED]

193 [REDACTED]

194 [REDACTED]

195 eir's quality of service performance has generally been maintained during the current AFL USO designation period (see Annex 5), absent of a separate and discrete AFL USO QoS designation. ComReg understands from statements made by Eircom that Eircom's QoS performance will be maintained at a similar level to that delivered by Eircom heretofore in the context of the QoS targets previously in place under ComReg D02/19.

63 [REDACTED]
64 [REDACTED]

- 196 ComReg's Information Notice (ComReg Document No. 22/81) sets out eir's performance in relation to eir's Quality of Service Performance Data for Q2 2022, and for the period 1 July 2021 – 30 June 2022.⁶⁵
- 197 Regulation 70(3)(a)⁶⁶ sets out that ComReg may impose requirements on a designated undertaking in respect of quality of service ('QoS') standards to be provided, and terms and conditions, and, with the consent of the Minister, the reasonableness of requests upon which voice only connections at a fixed location and voice communications services are to be provided.
- 198 ComReg has considered both eir's past performance and eir's statements in respect of service quality standards. ComReg is of the preliminary view that there is no requirement to set voice only connections and voice communications services, quality service standards, at this time.
- 199 ComReg is proposing to continue to monitor any designated USP's QoS performance on an ongoing basis using its statutory information gathering powers to obtain information, as ComReg considers necessary (including reports, processes, and plans) to carry out its functions, during any future VFL services USO designation period.
- 200 ComReg is of the preliminary view that it should continue to publish QoS trends. ComReg is of the preliminary view that it may separately, from time to time, request other relevant reports from any designated USP.
- 201 ComReg's overall aim is to ensure that end-users receive universal services at an appropriate quality, for example in relation to outages, repairs, and installations, which may not be provided, absent a QoS USO.
- 202 ComReg may separately commence a review in respect of establishing mandated VFL USO QoS standards, during any proposed designation period, where ComReg is of the view that eir's actual QoS performance outputs have deteriorated or are likely to deteriorate to an inappropriate level.
- 203 There may be other circumstances which arise where ComReg deems it appropriate to intervene. ComReg cannot fetter its discretion.
- 204 Any consideration of a regulatory measure in relation to QoS standards will follow normal consultation procedures with related rights for stakeholders.

⁶⁵ ComReg Document No. 22/81, 'Universal Service Requirements – Provision of Access at a Fixed Location (AFL) by Eircom Limited -Quality of Service Performance Data Q2 2022 (1 April – 30 June) & Annual 2021/2022 (1 July 2021 – 30 June 2022) Information Notice', 30 September 2022, available at: <https://www.comreg.ie/publication/universal-service-requirements-provision-of-access-at-a-fixed-location-afl-by-eircom-limited-quality-of-service-performance-data-q2-2022-1-april-30-june-annual-2021-2022-1>

⁶⁶ S.I. 444 of 2022 European Union (Electronic Communications Code) Regulations 2022.

4.2.1.2 Terms and conditions

- 205 All service providers are required by law⁶⁷ to set out their term and conditions in their commercial contracts with end-users.
- 206 The introduction of the contract summary template for consumers provides consumers with further clarity on the key contractual elements of the relevant services.
- 207 Regulation 70(3)(a) sets out that ComReg may specify requirements to be complied with by an undertaking providing voice communication services, including the terms and conditions upon which the connection at a fixed location is to be provided.
- 208 ComReg is of the preliminary view that there is no requirement to specify specific terms in relation to Universal Service at this time.

4.2.1.3 Affordability of USO

- 209 Regulation 71(3) sets out that, ComReg, where required by the Minister, may impose measures requiring **relevant undertakings** to:
- (i) offer consumers with a low income or special social needs tariff options or packages different from those provided under normal commercial conditions; or
 - (ii) apply common tariffs including geographical averaging throughout the State, in light of national conditions.
- 210 On commencement of S.I. 444, ComReg will have an obligation to report to the Minister on retail prices for ABB and voice communications services and the Minister may require that ComReg impose measures to be complied with by relevant undertakings, to ensure affordability for consumers of voice communications services at least at a fixed location.
- 211 Accordingly, the provision of affordability measures in respect of universal service does not form part of this consultation.

⁶⁷ Regulation 5, 7 or 10 of the European Union (Consumer Information, Cancellation and Other Rights) Regulations 2013 (S.I. No. 484 of 2013); S.I. 444 of 2022, Regulations 104 and 105.

4.2.1.4 Reasonable access requests – current designation

- 212 Universal service operates in accordance with the principle of technological neutrality, meaning that the universal service obligations may be fulfilled using a range of technologies (copper/fibre/fixed wireless). It is the universal service provider who selects the underlying technology used to fulfil such a request.
- 213 While eir, as the current USP, must continue to satisfy a request for an existing connection, it is open to eir to use any technology to do so. The requirement in respect of existing connections does not stipulate that that this must be provided using copper and does not preclude eir from offering fibre-based services, if they so wish, to continue to provide the connection.
- 214 Under the current AFL USO designation⁶⁸ the existing connections and/or PATS obligations remain. All existing connections and/or PATS (whether active or not), are deemed to be reasonable and should continue to be supplied (including in-situ connections).
- 215 The USP has an obligation to supply new reasonable access requests and/or PATS where there is no alternative infrastructure and equivalent service available. The further tests and thresholds in the reasonable access request criteria remain unchanged.
- 216 The definition of “Equivalent Service” includes voice and broadband services supplied in a bundle, providing the bundle meets certain criteria in respect of new connections. A “Bundle” definition⁶⁹ was added.
- 217 Where an Equivalent Service is not affordable, or of equivalent minimum indoor availability, or affordable, or the end-user requests a standalone PATS, such access requests are deemed as reasonable and must be satisfied by the USP, using the least cost technology. The least cost technology is likely be a Fixed Cellular Solution (FCS) where there is no in-situ connection.
- 218 The intention is to lessen eir’s obligation as the USP to continue to satisfy end-user requests for AFL USO in those parts of the State where there is Alternative Infrastructure and an Equivalent Service, and to support a transition by eir to being the provider of ‘last resort’.

⁶⁸ ComReg D09/21, Document No. 21/112R, ‘Universal Service Requirements: Provision of Access at a Fixed Location (AFL USO)’, 05 November 2021, available at: https://www.comreg.ie/?dln_download=universal-service-requirements-provision-of-access-at-a-fixed-location-afl-uso-response-to-consultation-and-decision-2

⁶⁹ “bundle” means grouping a fixed voice service and a fixed broadband service as a package.

- 219 Where there is an alternative infrastructure at a fixed location, which is of sufficient quality, and provided at an affordable price, the need may be met by an alternative ECS provider.
- 220 Where the designated USP confirms that the Alternative Infrastructure is mobile, and the end-user does not agree that this will provide an equivalent service to that currently prevailing for AFL USO (including Minimum Indoor Coverage). ComReg will then adjudicate on whether the request is reasonable or not. This is to ensure that there is transparency and accountability by the designated USP in how it satisfies requests. This is consistent with one of our statutory objectives, which is to promote the interests of end-users.
- 221 This relaxed the obligation, so that the USP must only provide a new connection in cases where there are no suitable alternative infrastructures and services present.
- 222 Accordingly, this should prevent inefficient infrastructure duplication, and therefore, mean lower costs to provide AFL USO.
- 223 eir does not have to maintain a national narrowband network to deliver AFL USO existing connections.
- 224 End users may choose to migrate to access at a fixed location and voice service delivered via other technologies over time (which may or may not be delivered by their current service provider).

4.2.1.5 Counterfactual – no VFL USO (reasonable access requests)

- 225 As set out in chapter 3, retail fixed telephony service is predominantly provided over the fixed narrowband access (copper) network. However, the provision of managed VoIP over next generation broadband networks has increased between Q4 2020 – Q2 2022.
- 226 The most common eir wholesale component product used to provide retail fixed telephony service subscriptions is single billing through wholesale line rental (SB-WLR).
- 227 Vodafone, Sky and Pure Telecom purchase wholesale component products from eir to provide retail fixed telephony services. Accordingly, they are heavily reliant on the continued availability of eir's wholesale component products. eir earns the regulated weighted cost of capital (WACC) on these wholesale component products. Virgin Media self-supply.

- 228 ComReg's recent decision (D05/22)⁷⁰ concluded that the continued ex ante regulation of the retail fixed voice telephony service market was no longer required.
- 229 In D05/22⁷¹ ComReg set out sunset periods to be implemented to give reasonable and sufficient notice to Access Seekers purchasing FACO products, services, and facilities.
- 230 As set out in section 3.1.2, an 18-month sunset period⁷² will apply in respect of existing ISDN FRA PRA and PSTN SB-WLR products. It is required to maintain the existing supply of access to FACO products, services, and facilities (e.g., SB-WLR orders already supplied to Access Seekers) at no more than existing prices.
- 231 With respect to new supply of FACO products⁷³, services and facilities, a separate 9-month sunset period applies. This will run in parallel with the 18-month sunset period described above, in respect of existing ISDN FRA PRA and PSTN SB-WLR products.⁷⁴
- 232 There is a risk that end-users who are currently commercially served, may not be in the future where the underlying wholesale component products are no longer available, and/or there is no commercial migration path for existing end-users. This could result in a higher number of existing end-users seeking access to voice only connections and voice communications services under universal service.
- 233 [X] [REDACTED]
- [REDACTED]
- [REDACTED]

⁷⁰ ComReg D05/22, Document No. 22/50, 'Retail Access to the Public Telephone Network at a Fixed Location for Residential and Non-Residential Customers - Wholesale Fixed Access and Call Origination', 29 June 2022, available at: <https://www.comreg.ie/media/2022/06/ComReg-2250.pdf>

⁷¹ ComReg D05/22, Document No. 22/50, 'Retail Access to the Public Telephone Network at a Fixed Location for Residential and Non-Residential Customers - Wholesale Fixed Access and Call Origination', 29 June 2022, available at: <https://www.comreg.ie/media/2022/06/ComReg-2250.pdf>

⁷² delivered over PSTN, ISDN FRA and PRA.

⁷³ e.g., SB-WLR orders received

⁷⁴ ComReg D05/22, Document No. 22/50, 'Retail Access to the Public Telephone Network at a Fixed Location for Residential and Non-Residential Customers - Wholesale Fixed Access and Call Origination', 29 June 2022, available at: <https://www.comreg.ie/media/2022/06/ComReg-2250.pdf>

234

§<].

235 ComReg is of the preliminary view that there is a low risk that end-users who are currently commercially served, may not be in the near future.

236 To assess the counterfactual (no reasonable access requests) ComReg, using its statutory powers,⁷⁵ also sought the information from the current USP on voice only connections and voice communications services post 30 June 2023, and in particular:

- its commercial intention or any plans (or any proposed change in intention or plans) for fixed voice communications services customers post 1 July 2023, including:
 - whether it will continue serve its existing fixed voice only communications services customers - nationally, and sub-nationally with specific reference to customers in sub-national areas 1, 2 and 3.
 - whether it has any intended or planned changes to the status quo, in terms of the technology used to serve existing customers.
- whether it will continue to accept and fulfil orders for, and connect, all new fixed voice only connection requests - nationally, and with specific reference to sub-national areas 1, 2 and 3.
 - whether it has any intended or planned changes to the status quo in terms of technology used to serve new customers.
- whether eir has identified end-users (broken out by: 1) consumers; and 2) end-users (who are microenterprises, small and medium-sized enterprises, and not-for-profit organisations) who eir will not connect?

⁷⁵ 13d Informaiton Request, 23 November 2022.

- where eir has identified end-users that it will not connect, ComReg has asked that it set out the associated rationale for eir's approach towards these end-users, broken out by 1) consumers, and 2) end users.

237 In relation to whether eir will continue to serve its existing fixed voice only communications services customers (nationally, and sub-national areas 1, 2 and 3), eir stated: [REDACTED] [REDACTED] [REDACTED].

238 eir also stated the following with regards to any intended or planned changes to the technology it uses to serve its existing fixed voice only communications services customers: [REDACTED] [REDACTED] [REDACTED].

239 In relation to whether eir will continue to accept and fulfil orders for, and connect, all new fixed voice only connection requests (nationally and in sub-national areas 1, 2, and 3, eir stated that: [REDACTED] [REDACTED] [REDACTED].

240 ComReg has considered and is relying upon eir's statements made in its response⁷⁶ to ComReg's 13(D)(1) information request. These statements support ComReg's reasoning for its preliminary views.

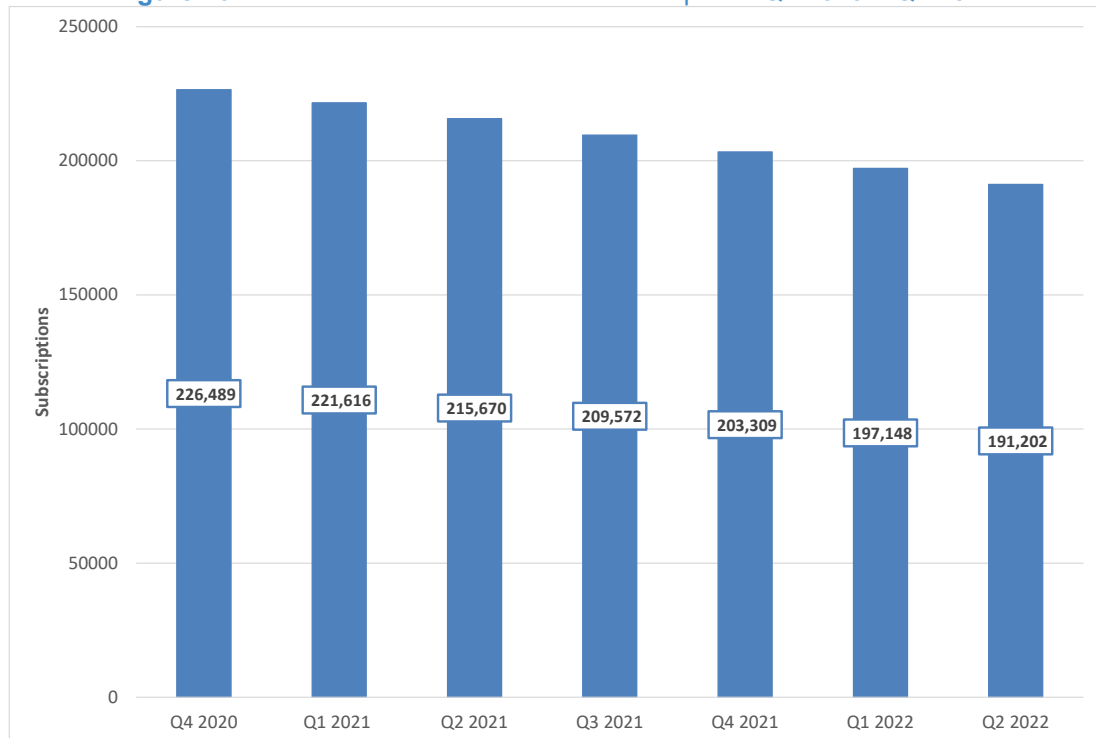
4.2.1.6 Reasonableness of requests (existing connections) – VFL USO assessment Q4 2020 – Q2 2022⁷⁷

241 As explained in section 3.2.1.4, the overall number of standalone RFTS subscriptions declined by circa 16% between Q4 2020 – Q4 2021, from 226,489 to 191,202 (Figure 10).

⁷⁶ eir 13D response dated 02 December 2022.

⁷⁷ Note the current designation D09/21 Universal Service Requirements Provision of Access at a Fixed Location (AFL USO) came into effect on 31/10/2021.

Figure 10: Volume of Standalone RFTS Subscriptions Q4 2020 – Q2 2022



- 242 The distribution of total retail fixed telephony service subscriptions has remained relatively constant across the retail service providers between Q4 2020 and Q2 2022.
- 243 Some consumers are migrating from standalone fixed voice to commercial bundles (dual; triple; quad-play) and in a minority of cases ceasing their fixed voice services completely.
- 244 While the number of standalone retail fixed voice telephony subscriptions is declining year on year, the number remains significant.
- 245 As set out earlier, ComReg has analysed the distribution of the current installed standalone fixed voice base (subscriptions) across urban and rural exchanges. Circa [redacted] % of this installed base is located within the urban area⁷⁸ footprint. Circa [redacted] % of this installed base is located within the rural area footprint.

⁷⁸ “Urban” and “Rural” areas as defined in ComReg (2022), Market Reviews: Retail Access to the Public Telephone Network at a Fixed Location for Residential and Non-Residential Customers – Wholesale Fixed Access and Call Origination, Decision D05/22, Document No. 22/50. Available at: <https://www.comreg.ie/publication/response-to-consultation-and-decision-retail-fixed-telephony-services-and-wholesale-fixed-access-and-call-origination-markets>

- 246 For standalone fixed voice consumers located in urban areas, there is more likely to be alternative operators that are capable of providing consumers with an equivalent service, most likely using FTTx networks. Standalone fixed voice consumers located in rural areas are less likely to have equivalent services available from alternative operators.
- 247 Standalone fixed voice consumers located in urban areas, are now more likely to have Equivalent Services available on Alternative Infrastructure. These services are most likely to be based on FTTx networks.
- 248 Standalone fixed voice consumers located in rural areas are less likely to have equivalent services available from alternative operators. Accordingly, these fixed voice consumers are more likely to rely on the USP for continued access to voice only connections and voice communications services.
- 249 ComReg is cognisant that the existing AFL USO connections may co-exist with Alternative Infrastructures with Equivalent Services available. The Alternative Infrastructures with Equivalent Services may have the ability to meet pre-existing, and new requests, on a commercial basis.
- 250 Accordingly, this is a key input into ComReg's consideration of whether existing voice only connections and voice communications services remain reasonable, in the context of any VFL universal service considerations.

4.2.1.7 Reasonableness of requests (new connections) – VFL USO assessment Q4 2020 – Q2 2022⁷⁹

- 251 This section assesses the data underpinning the new connections delivered (including the costs incurred and the associated threshold level) over the period Q4 2020 – Q2 2022.
- 252 The technology used to meet reasonable access requests (at new premises) by the USP is not prescribed. The principle of technological neutrality allows the USP to choose the optimum method of meeting reasonable access requests.
- 253 These requests must be satisfied using the least cost technology. The least cost technology for new connections is likely to be a Fixed Cellular Solution (FCS), where there is no in-situ connection.

⁷⁹ Note the current designation D09/21 Universal Service Requirements Provision of Access at a Fixed Location (AFL USO) maintained Decision D05/16.

254 To assess the impact of the current designation obligations on the USP, ComReg issued a 13(D)(1) information request to eir, the current USP, asking for:

- the number of new retail fixed voice only connections installed by eir from 1 January 2021 to 31 March 2022 inclusive, by calendar year, or part thereof, broken out by:
 - connection type⁸⁰, including but not limited to, copper, fibre (FTTH/FTTC), and FCS, nationally, and sub-nationally⁸¹;
 - in situ or new connection;
 - customer location⁸² (nationally, and sub-nationally); and
 - the cost of each of these new connections, split by technology used (under €7,000 / over €7,000).

255 eir's response set out the number of new retail fixed voice only connections installed. This shows that the total number of new connections in 2020 was less than [REDACTED]; in 2021 just over [REDACTED]; and at Q2 2022 just over [REDACTED].

256 This illustrates that the total number of new standalone fixed voice connection requests received by eir between 2020-2022⁸³ is very low. There is a year-on-year decline in the number of standalone fixed access requests. Between Q4 2020 to Q2 2022, the number of new connection requests received by eir decreased by circa [REDACTED] %.

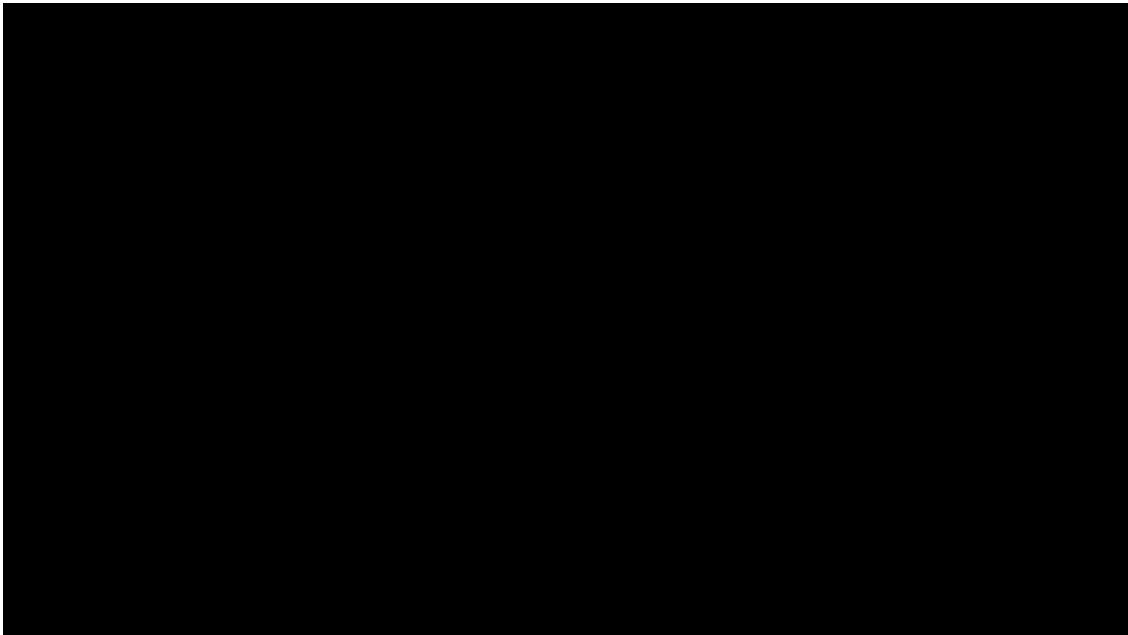
⁸⁰ i.e., pair gain system (carriers)

⁸¹ With specific reference to sub-national areas 1, 2 and 3 as defined and set out in D02/19

⁸² By Eircode or ARD ID (where Eircode is not available)

⁸³ Up to Q2 2022.

Figure 11: eir standalone fixed voice – total new connections 2020 – Q2 2022 [REDACTED]



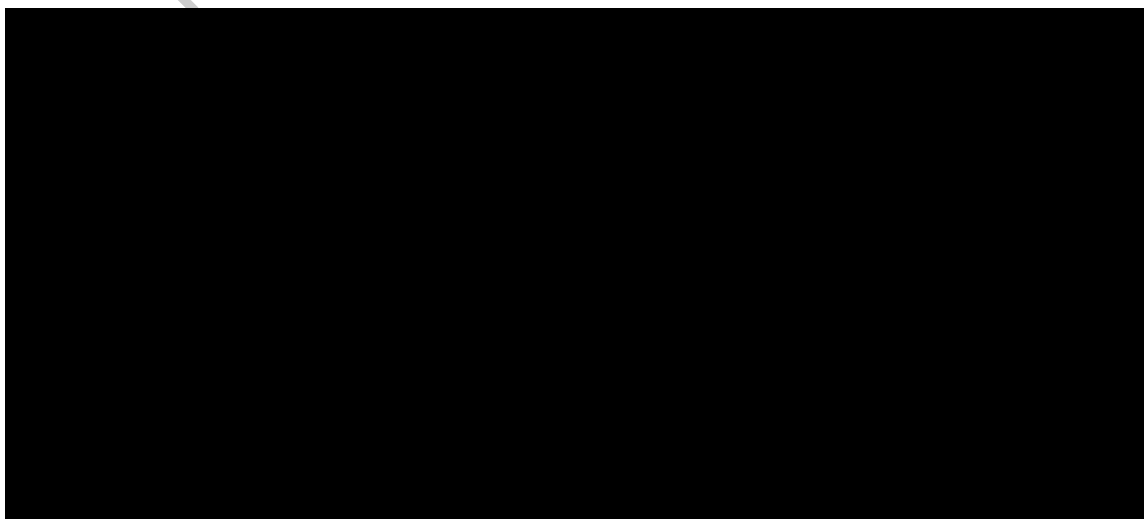
257 This is indicative of a declining market demand for new standalone fixed voice connections.

258 ComReg has examined eir's response to identify which underlying technologies are being used by eir to meet new retail fixed voice only access connection requests between 2020 and Q2 2022.

eir's response set out the number of new connections installed by technology type (copper, fibre, FCS). [REDACTED]

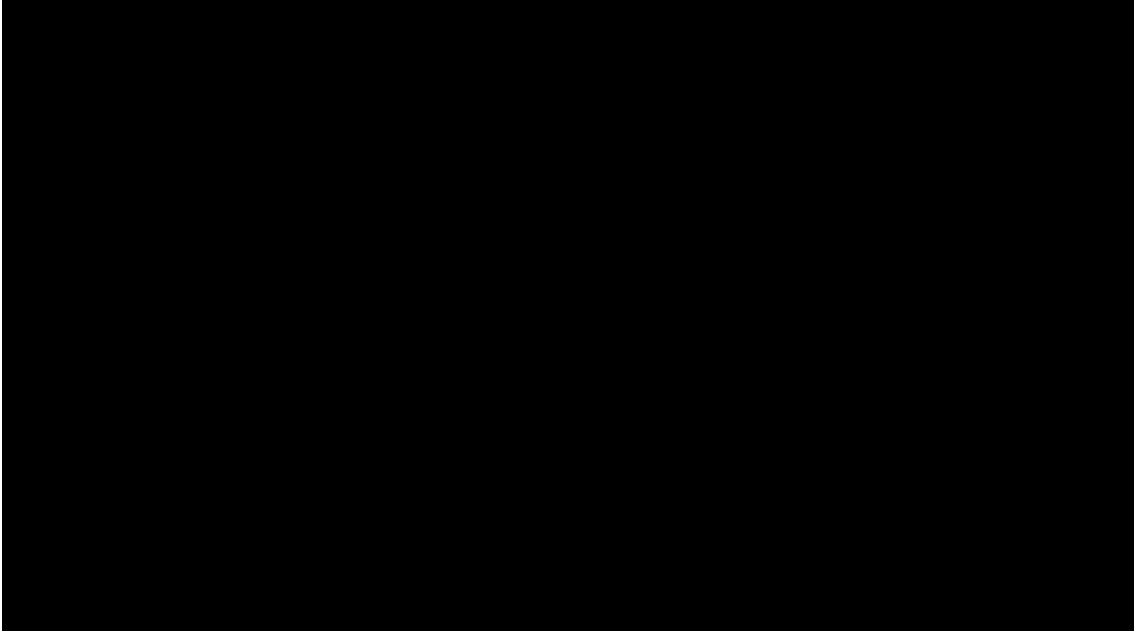
[REDACTED]

Figure 12: eir standalone fixed voice - new and in situ copper connections 2020 – Q2 2022 [REDACTED]



259 eir's response highlighted that the majority of new retail fixed voice only access connections between 2020 and Q2 2022 were fulfilled using copper technology with an extremely small number being fulfilled using FCS (as shown in Figure 13).

Figure 13: eir standalone fixed voice new FCS connections 2020 - Q2 2022 [REDACTED]



260 The number of eir new standalone fixed voice connections fulfilled using FCS is very small. Only [REDACTED] connections were fulfilled using FCS in 2021, and even less in Q1 and Q2 of 2022, during which only [REDACTED] connections were fulfilled using FCS.

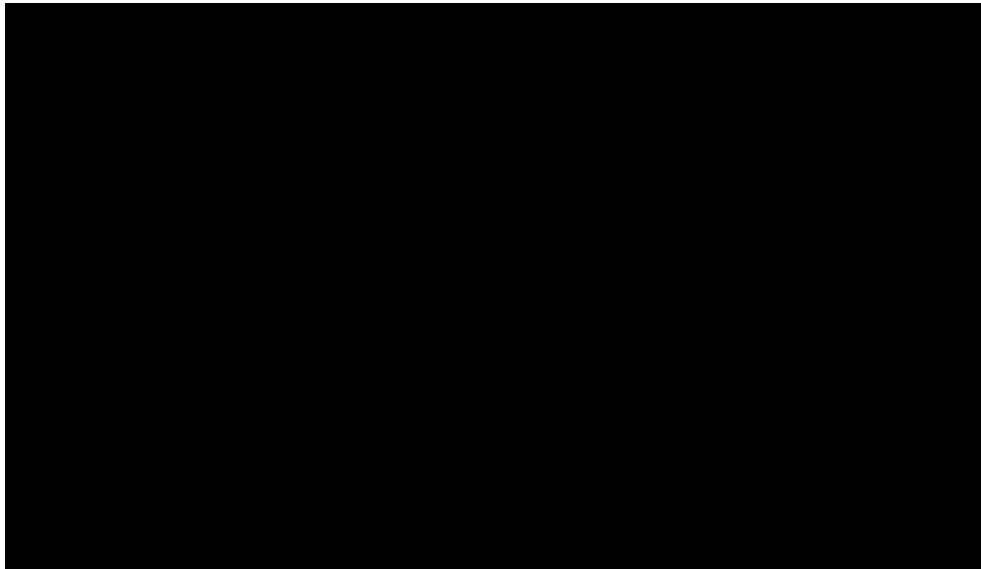
261 ComReg has also examined whether new access connections between 2020 and Q2 2022 have been met through existing infrastructure (in-situ connections) or whether they have required the deployment of new infrastructure (copper/FCS).

262 The number of eir new standalone fixed voice connections (i.e., non-in-situ) using the current generation network between 2018 - 2022⁸⁴ is small. New standalone fixed voice connections (non-in-situ) represented a very small percentage ([REDACTED] %) of the total standalone fixed voice subscriptions in 2020. This percentage has declined even further ([REDACTED] %), as of Q2 2022.

⁸⁴ Up to Q2 2022.

- 271 ComReg is of the preliminary view that it is appropriate to re-impose the reasonable access request threshold, as specified in D09/21, in light of eir's 13D response in relation to the number of access requests which exceeded the €7,000 threshold (Q1 2021 – Q2 2022). ComReg's preliminary view will ensure that consumers' reasonable access requests are protected, and in particular, those consumers for whom the cost of connection may exceed €7,000. Absent this threshold, such customers could have to pay higher connection fees to access VFL services.
- 272 ComReg is of the preliminary view that this is a reasonable and proportionate approach. eir has the ability to recover costs at the wholesale network level. ComReg also notes that the threshold is only an issue for non-standard connections that require significant investment in infrastructure (ducts and poles) that have long asset lives and can be used to provide copper or fibre-based services.
- 273 This clearly demonstrates that most of new standalone fixed voice connections are:
- provided using copper technology;
 - the current threshold remains appropriate.
- 274 Accordingly, ComReg is of the preliminary view that the reasonable access request for new connections, including the threshold, is working and remains appropriate.

Figure 14: Reasonable access requests (standalone fixed voice) - eir connection costs [REDACTED]



- 275 In the counterfactual (i.e., there is no VFL services USO) the thresholds for determining whether a request for connection is reasonable would no longer be of relevance, and the decision to provide a connection would be at eir's sole discretion.
- 276 Also in the counterfactual, eir, acting as a profit-maximising operator, is likely to try to maximise profits by comparing the cost of connecting an end-user with its estimated future revenues, before deciding whether to connect the end-user.
- 277 eir might also choose to propose mobile services to connect some or all these end-users. Notwithstanding that mobile services are not access at a fixed location, there is a risk that indoor coverage could be problematic, which could result in several end-users remaining unserved.
- 278 Indoor and outdoor coverage levels can often vary substantially. Mobile coverage may deteriorate indoors (compared to outdoors), below acceptable levels (depending on the location, technology, and the network operator).
- 279 Other factors also impact indoor mobile performance, including handset capabilities and building materials. In some cases, there may be technical solutions available that may mitigate these issues.

4.2.1.8 Reasonableness of requests – ComReg's assessment and preliminary views

- 280 ComReg is cognisant that existing VFL USO connections may now co-exist with Alternative Infrastructures with Equivalent Services available.

- 281 ComReg recognises that as end-users migrate to bundled product offerings, the number of voice communications services end-users continues to decline. However, there remains a cohort of existing end-users for whom voice only connections and voice communications services remain relevant.
- 282 We now assess existing end-users who requested a service some time ago, and new access requests from a small cohort of end-users for new voice only connections and new voice communications services.

The considerations are:

- (i) existing connections (end-users) and whether these requests continue to be reasonable, and what, if anything, might need to change
 - (ii) new connections (end-users) and whether these requests are reasonable, and what, if anything, might need to change (e.g., threshold level)
- 283 ComReg is cognisant of copper switch off which is likely to commence within this proposed designation period.
- 284 ComReg has issued a consultation on this entitled “Framework for the Migration from Legacy Infrastructure to Modern Infrastructure”.⁸⁶ This sets out ComReg’s preliminary views on a framework that is organised around transition phases allowing for progressive migration and withdrawal of obligations.
- 285 A key requirement of the proposed Framework is that transition may only begin where premises concerned have access to Modern Infrastructure by way of Alternative Comparable Products (ACPs) on eir’s modern infrastructure or fibre-based services on NBI’s network. An ACP:
- (a) has at least equivalent features and performance as the legacy-based service;
 - (b) is delivered to the location of legacy-based service NTU, in the end-user’s premises, at the FTTH standard connection charge;
 - (c) has at least service equivalence in terms of service delivery, service assurance, service availability, Service Level Agreements (**‘SLAs’**) and Key Performance Indicators (**‘KPIs’**);

⁸⁶ ComReg Document No. 22/13R, ‘Consultation: Framework for the Migration from Legacy Infrastructure to Modern Infrastructure’, 25 March 2022, available at: <https://www.comreg.ie/media/2022/04/ComReg-2213R.pdf>

(d) has at least service equivalence in terms of Quality of Service ('QoS'); and
(e) is of a comparable price to the legacy-based service it is mapped to.

286 This section now considers what specifications may be appropriate to the continued reasonableness of existing connections:

- for end-users who have pre-existing connections and voice communications services; and
- whether existing voice only connections and voice communications services continue to remain reasonable requests.

287 ComReg is of the preliminary view that all requests for Existing Voice only Connections and/or Voice Communications Services are reasonable and the USP shall continue to satisfy them, where:

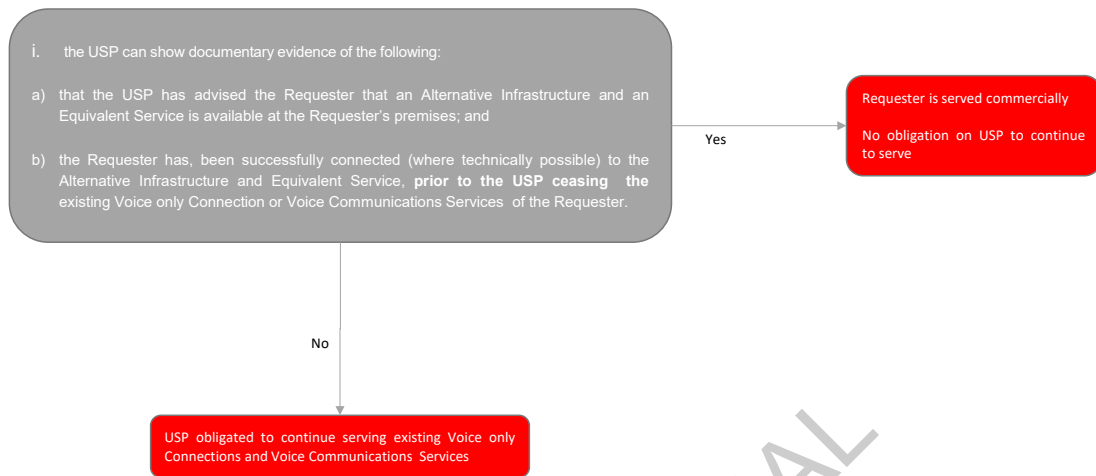
- there is no Alternative Infrastructure and no Equivalent Service available; or
- the USP has advised the Requester, that an Alternative Infrastructure and an Equivalent Service is available at their premises, and within 3 months of doing so the Requester, has provided documentary evidence to the USP that the Alternative Infrastructure provider has declined to serve the Requester, with an Equivalent Service; or
- the USP has advised the Requester, that an Alternative Infrastructure and an Equivalent Service is available at their premises, and the Requester has exercised their rights to a Voice only Connection and Voice Communications Service by continuing to avail of the service.

288 ComReg is of the preliminary view that an existing Voice Only Connection and/or Voice Communications Services at a Fixed Location is no longer reasonable and the USP need not continue to satisfy it, if:

- the USP can show documentary evidence of the following:
 - a) that the USP has advised the Requester, that an Alternative Infrastructure and Equivalent Service is available at their premises; and
 - b) the Requester has been successfully connected (where technically possible) to the Alternative Infrastructure and Equivalent Service, prior to the USP ceasing the existing Voice only Connection or Voice Communications Services of the Requester.

289 The proposed reasonable access request process for existing connections is shown in Figure 15.

Figure 15: Reasonable access requests – existing connections



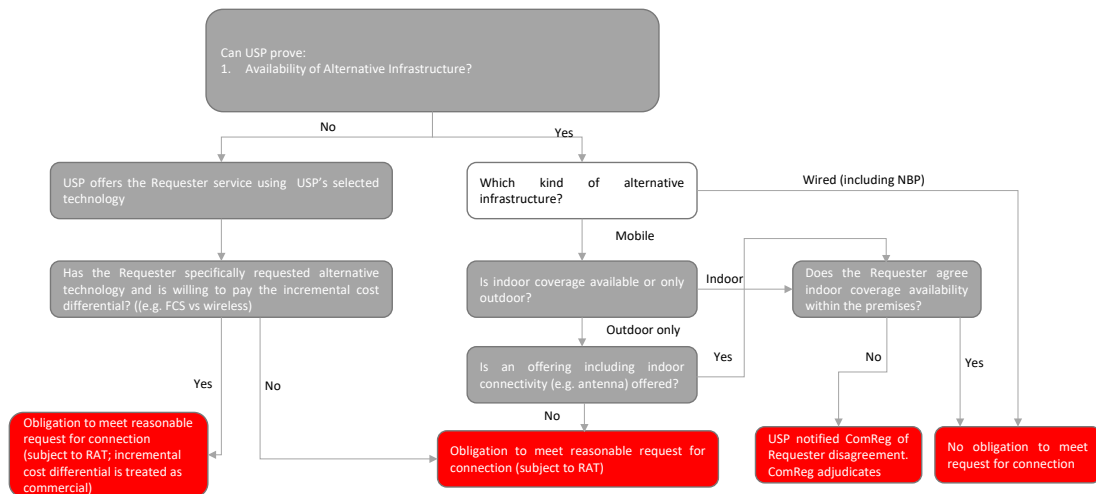
290 ComReg is of the preliminary view that there is a need to recognise the existence of Alternative Infrastructure, with an Equivalent Service, in respect of existing connections. ComReg is of the preliminary view that the proposed new requirements to be complied with by a designated undertaking, in relation to the reasonableness of existing connections, now recognise and address this situation, providing the USP with the capability to ensure that existing connections are met commercially as appropriate.

291 This recognises that the VFL USO for existing connections and services is only necessary where there is no Alternative Infrastructure with an Equivalent Service. It means that existing voice only customers (connections and services) would no longer be USO in certain circumstances. This may minimise any cost associated with a VFL USO.

292 ComReg is of the preliminary view, based on the analysis set out in section 4.2.1.7, that the reasonable access request for new connections, including the threshold, is working and remains appropriate.

293 The proposed reasonable access request process for new connections is shown in Figure 15.

Figure 16: reasonable access requests – new connections



4.2.2 Voice only connection

- 294 Regulation 70(4) states that where a consumer, enterprise, or organisation so requests, the connection shall be limited to support voice communications services.
- 295 For the avoidance of doubt, ComReg considers that an end-user who has an existing Voice only Connection or Voice Communications Services can continue to avail of them unless they choose to avail of an Alternative Infrastructure with an Available Equivalent Service.

- Q. 4 Do you agree or disagree with ComReg's preliminary view that there is a requirement to impose new specifications for reasonable access requests for existing end-users? Please give reasons for your answer.
- Q. 5 Do you agree or disagree with ComReg's preliminary view that there is a requirement to re-impose threshold level applicable to new reasonable access requests, as set out in D09/21? Please give reasons for your answer.

4.3 Control of expenditure measures

- 296 Regulation 74(1) states that a designated undertaking (Regulation 72(3)) shall, where it provides facilities and services additional to voice communications services, establish terms and conditions for the provision of such additional facilities and services in such a way that the end-user is not obliged to pay for facilities or services which are not necessary or not required for the service requested.
- 297 Regulation 74(2)(a) sets out that a designated undertaking shall provide specific facilities and services for the purposes of ensuring that consumers can monitor and control expenditure, as applicable. The specific facilities and services are:
- itemised billing
 - selective call barring for outgoing calls or premium SMS or MMS
 - pre-payment systems
 - phased payment of connection fees
 - non-payment of bills
 - tariff advice
 - cost control
 - facility to deactivate third party billing.
- 298 Tariff advice and the facility to deactivate third party billing are new control of expenditure measures.
- 299 ComReg has set out its initial policy considerations and views on best tariff advice in its Regulatory Guidance on Title III⁸⁷ and in its strategy statement⁸⁸, and will consider if further intervention is needed to ensure the objectives of the Code are met.

⁸⁷ ComReg Document No. 20/111R, 'Regulatory Guidance on Title III: End-User Rights of the European Electronic Communications Code', 23 December 2020, available at: <https://www.comreg.ie/media/2020/12/ComReg20111R.pdf>

⁸⁸ ComReg (2020), 'Electronic Communications Strategy Statement: 2021 to 2023', pg. 51, available at: [ComReg-ECS-Strategy-Statement-English-Dec-7-Final-Web-1.pdf](#)

300 Regulation 74(2)(b) requires a designated undertaking (designated under Regulation 72(3)) to put in place a system to avoid unwarranted disconnection of voice communications services, with regard to consumers referred to in Regulation 71, including an appropriate mechanism to check continued interest in using the service.

301 ComReg now assesses the counterfactual (i.e., no VFL services USO) to inform ComReg's preliminary views on whether there is a need for additional measures to monitor and control expenditure, post 30 June 2023.

4.3.1 Control of expenditure

302 Regulation 74(2) states that a designated undertaking shall: (a) for the purpose of ensuring that consumers can monitor and control expenditure, provide specific facilities; put in place a system to avoid unwarranted disconnection of voice communications services with regard to consumers (referred to in Regulation 71), including an appropriate mechanism to check continued interest in using the service.

4.3.1.1 Itemised billing

303 Universal service is not only about enabling end-users to be connected to voice communications services. It is also important that all end-users who wish to remain connected to the fixed voice communications services can do so.

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

305 Many operators offer itemised billing as part of their core commercial service offerings, in addition to regulatory obligations imposed under the General Authorisation⁸⁹.

306 Their disconnection policies are published and should be proportionate and non-discriminatory to cover non-payment of bills. They generally provide due warning of any consequent service interruption or disconnection to cover non-payment prior to any such action.

4.3.1.2 Selective barring for outgoing calls or premium SMS or MMS free of charge

307 ComReg Decision D03/18 sets out obligations on relevant undertakings to provide these services free of charge.

⁸⁹ European Communities (Electronic Communications Networks and Services) (Authorisation) Regulations 2011 (S.I. No. 335 of 2011)

4.3.1.3 Phased payment of connection fees

- 308 One of the key aims of the universal service is to ensure that end-users can get access to a voice connection and voice communications services (reasonable requests) with option of a phased connection fee to ensure that end-users are not prohibited from connection to the network arising from an inability to pay the total connection charge in one payment.
- 309 Many undertakings offer phased payment of connection fees on a commercial basis.
- 310 In recent years eir, as the USP, has implemented a series of connection promotions whereby connection charges were set to €0. Therefore, no end-user needed to rely on the phased payment plan for standard connection charges. However, some end-users may rely on the phased payment plan where connection charges exceed the standard connection charge and the USP seeks to recover the cost beyond the €7,000 threshold set out in the reasonable access request process..
- 311 Absent a VFL services USO, there is a risk that a phased payment of connection fees, might not be maintained.
- 312 Regulation 74(2)(a) requires an undertaking designated in accordance with Regulation 72(3) to offer phased payment of connection fees to allow consumers pay for connection to the public electronic communications network on the basis of payments phased over time, for the purposes of ensuring that consumers can monitor and control expenditure.

4.3.1.4 Non-payment of bills

- 313 End users should receive due warning of any consequent service interruption or disconnection beforehand, and any service disruption should be confined to the service concerned. Disconnection for non-payment of bills should take place only after due warning is given to the end user. This may include a period of limited service prior to disconnection.
- 314 ComReg is of the view that a published disconnection policy may be an effective, proportionate and non-discriminatory approach to cover non-payment of bills issued by undertakings.
- 315 In the context of universal service, the USP's Disconnection Policy, and the associated number of disconnections, has an impact on the number of people connected to the fixed network. The level of disconnections may indicate the effectiveness of the existing measures.

- 316 Universal service is not truly universal if many people are left without access to a voice only connection and/or voice communications services. We recognise however, that some disconnections may also result for other reasons, such as fraud or the deliberate non-payment of bills.
- 317 The current USP's Disconnection Policy⁹⁰ includes notification measures for end-users who fall into payment arrears. This policy should have a positive effect by reducing the number of end-users that may have been otherwise disconnected from the network.
- 318 The current USP's Disconnection Policy provide that, if an end-user does not pay a bill by the account due date, the USP may restrict an end-user's ability to make and receive calls except to emergency services and that the USP will endeavour to contact an end-user to remind them that a bill is overdue.
- 319 ComReg will keep under review the aforementioned control of expenditure measures placed on the designated undertaking to ensure that: (i) consumers can monitor and control expenditure; and (ii) a system to avoid unwarranted disconnections of voice communications services with regard to consumers, including an appropriate mechanism to check continued interest in using the service is in place.
- 320 Where ComReg considers that the provision of these specific facilities and services are insufficient to ensure that consumers can monitor and control expenditure, or ComReg otherwise considers there is a need to further intervene, ComReg may intervene to specify measures.

Q. 6 Do you agree or disagree with ComReg's approach to control of expenditure measures? Please provide reasons for your answers.

4.4 The need for a VFL services USO post 30 June 2023

- 321 The universal service ensures the provision of basic telecommunication services throughout the State, particularly in areas of the State (such as rural or sparsely populated areas) where the market might otherwise not deliver these services. Thus, the universal service contributes to social and economic inclusiveness and cohesiveness in society. It is ComReg's duty to ensure that the VFL services USO continues to meet end-users' reasonable requests for VFL services, if they are not already being met by the market.

⁹⁰ [Support | What Happens if I do not Pay my Bill? \(eir.ie\)](https://www.eir.ie/support/what-happens-if-i-do-not-pay-my-bill)

- 322 It is important to note that apart from the VFL services USO, there is currently no other mechanism, programme or scheme in place to ensure that the basic telephony at a fixed location, set out in S.I. 444, is provided to everyone that requires it and who cannot obtain it under normal market conditions.
- 323 ComReg is of the preliminary view that there is a continued need for a VFL services USO, post 30 June 2023.

Q. 7 Do you agree or disagree with ComReg's preliminary view that there is a continued need for a VFL services USO, post 30 June 2023? Please provide reasons for your answers.

NON-CONFIDENTIAL

5 Expressions of interest

- 324 In accordance with Regulation 72(4), ComReg, in designating an undertaking shall use an efficient, objective, transparent, and non-discriminatory designation mechanism whereby no undertaking is in principle excluded from being designated to provide a voice only connection and voice communications services, at the quality specified, in all or part of the State.
- 325 In this respect, ComReg invites undertakings to express an interest in being a USP for the provision of VFL services under the USO, as relevant.
- 326 In the context of alternative technologies and further efficiencies, it is evident that other operators in Ireland may be able and willing to provide all or part of the VFL services USO, in all or part of the State, and may be able to do so at a lower cost. ComReg is mindful that the designation method(s) adopted must ensure that any VFL services USOs are provided in a cost-effective manner and may be used as a means of determining any net cost of providing VFL services under USOs.
- 327 It should be feasible for an undertaking to scope out its own case for becoming a USP for provision of VFL services under USO on the basis of its operator specific information, amongst others, its own network, use of technology and information as to consumer profiling and or demand.
- 328 Undertakings are now requested to consider their interest in being a USP for provision of VFL services, or otherwise, and specifically how an undertaking might ensure the effective and efficient provision of VFL services.
- 329 ComReg will carefully consider any submission that it receives from interested parties for the provision of VFL services throughout the State, or a defined territory within the State.

5.1 Proposed assessment methodology and selection criteria

- 330 To ensure that ComReg adopts an efficient, objective, transparent and non-discriminatory designation mechanism⁹¹ it has identified the information it requires and the process to be followed upon receipt of such information. ComReg will undertake to provide updates to both stakeholders and those undertakings that submit expressions of interest, as necessary, throughout the process.

⁹¹ In accordance with Regulation 7(3) of the Universal Service Regulations.

331 Any expression of interest should clearly demonstrate the undertaking's ability and willingness to provide VFL services USO. Accordingly, to enable ComReg to conduct a full and proper assessment of expressions of interest, and any expression of interest to become the USP in relation to provision of VFL services under USO should be accompanied by the following minimum information requirements (i) – (xi) below :

- i. it has identified the information it requires, and the process to be followed, upon receipt of such information. ComReg will undertake to provide updates to both stakeholders and those providers that submit expressions of interest as necessary, throughout the process. An outline of technical competence and expertise in providing VFL services;
- ii. An overview of how the proposed obligation(s), as detailed in section 4 of this consultation, will be fulfilled, including a full description as to how the VFL services USO, and all it entails, will be provided.
- iii. Details of the infrastructure(s) planned to be used to deliver the VFL services USO.
- iv. An overview of the proposed steps and timing required to implement the solution, to include an overview of the proposed transition plan.
- v. Details of the proposed investment to be undertaken to implement VFL services USO and associated source of funds.
- vi. Details of proposed customer contract terms and relevant retail prices.
- vii. Details of indicative costs to provide each element of the service concerned.
- viii. An overview of how a level of service will be maintained, in terms of fault occurrence/availability of service to consumers and other relevant quality measures and what quality of services standards will be met and how.
- ix. An overview of procedures and timelines for connection, fault management, the provision of information to consumers and the handling of complaints; and
- x. A letter from the CEO confirming the undertaking's legitimate interest in becoming a USP for VFL services, and confirming agreement that the accompanying information, which is required to be submitted, (i-x above), has been appropriately prepared and is accurate.

- 332 It is likely that expressions of interest will contain either commercially sensitive and/or confidential information. Therefore, each expression of interest should be marked as appropriate to allow ComReg to deal with such information in accordance with its Confidentiality Guidelines.⁹²
- 333 If all the required information, as set out above, is submitted then the expression of interest will be considered valid. If all the required information as set out above, is not included in an expression of interest, the expression of interest will be considered invalid and will be rejected without further consideration.
- 334 **Valid** expressions of interest will then be assessed to ascertain whether the undertaking's proposal meets the minimum standard of what ComReg considers a potential USP should achieve. ComReg is setting a weighting of 100 points for each of the categories (i-ix) of information, set out in the paragraph above.
- 335 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**.
- 336 ComReg will inform service providers who have expressed an interest as to whether they have submitted a **valid** expression of interest, and subsequently, if the **valid** expression of interest is an **expression of interest which meets the minimum standard**.
- 337 Having regard to the above, if there are any expressions of interest received which meet the minimum standard in each category, as set out above ((i) – (x)). ComReg may, as appropriate then seek to instigate a competitive selection procedure for the provision of the VFL services USO, which would consider responses from this consultation.
- 338 Where expressions of interest are received, ComReg will carefully assess each expressions of interest received, and identify valid expressions of interest which meet the minimum standard.

⁹² ComReg Document No. 05/24, 'Guidelines on the treatment of confidential information', 23 March 2005.

339 ComReg may consult, where appropriate, on whether the current AFL USO designation should be extended to enable facilitate a smooth transition period for the current USP to any new USP, where appropriate.

340 ComReg is of the preliminary view that, absent of:

- receiving any expressions of interest; or
- the availability of an Alternative Infrastructure provider with Equivalent Service, that is willing to serve end-users commercially;

that the current USP, eir, may best placed to be the USP for a VFL services USO post 30 June 2023.

341 ComReg is of this preliminary view, for the reasons detailed including ubiquity, experience and capability, efficiency and least cost, for any designation period, where required post 30 June 2023.

Q. 8 Do you wish to express an interest in being a USP for any future provision of voice only connections and voice communications services VFL under the USO? Please set out your reasons and any other information you deem relevant.

Q. 9 ComReg is of the preliminary view that, absent of: (i) receiving any expressions of interest, or (ii) the availability of an Alternative Infrastructure provider with an Equivalent Service, that is willing to serve end-users commercially; that the current USP, eir, may be best placed to be the USP for voice only connections and voice communications services post 30 June 2023. Please provide reasons for your answer.

6 Designation of Universal Service Provider

6.1 Legislative basis

342 Regulation 72(1) places primary responsibility on ComReg, as the ECS regulator for Ireland, to safeguard and ensure the availability at a fixed location of voice communications services, where they cannot be ensured under normal commercial circumstances in the State or different parts of it, and where the Minister is of the opinion that other potential public policy tools cannot ensure access to voice communications in the State or any part of it as identified by ComReg, ComReg may then make a designation to impose appropriate universal service obligations to meet all reasonable requests by those end-users for accessing such services.

343 Regulation 72(3) sets out that ComReg may designate:

- one or more undertakings to guarantee the availability at a fixed location of either or both of the services referred to in paragraph (1), at the quality specified in Regulation 70, throughout the State, or
- different undertakings or sets of undertakings, to ensure the availability of such services at a fixed location or to cover different parts of the State.

344 Regulation 72(4) sets out that ComReg shall use an efficient, objective, transparent and non-discriminatory designation mechanism whereby no undertaking is in principle excluded from being designated. The designation methods adopted shall ensure that the services are provided in a cost-effective manner and may be used as a means of determining the net cost of the universal service obligation in accordance with Regulation 75.

345 Accordingly, one of our functions is to determine the need for, and scope of, the USOs for the Irish market and to decide which undertaking(s), if any, should be designated as the USP(s) for a VFL services USO(s).

346 ComReg expects that as broadband continues to roll out, affordable voice offers (standalone or in a bundle) will be made available to end users on a commercial basis. Where VFL services are not provided commercially, a VFL services USO may be required.

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

348 ComReg's objective is to find the most appropriate approach to ensure that VFL services are available to consumers throughout Ireland, based on reasonable requests. ComReg aims to ensure that VFL services currently provided continue to meet consumers' needs, particularly if they are not already met by the market.

349 The current AFL USO designation⁹³ will expire on 30 June 2023.

6.2 Designation of USP

350 ComReg is of the preliminary view (based on the analysis set out in previous chapters) that there is a need for some form of VFL services USO in the State, post 30 June 2023.

351 Accordingly, we are of the preliminary view that there is a need to designate an undertaking to guarantee the provision of VFL services, under the universal services regulations so that the whole of the State is covered⁹⁴.

352 In accordance with Regulation 72(4), no undertaking should be excluded from being designated to provide all or part of the universal service, in all or part of the State. In this respect, ComReg invites undertakings in chapter 5 to express an interest in being a USP for the provision of VFL services under the USO as relevant.

353 Where expressions of interest are received, ComReg will carefully assess each expressions of interest received, and identify valid expressions of interest which meet the minimum standard.

354 ComReg may consult on whether to extend the current AFL USO designation to enable facilitate a smooth transition period for the current USP to the new USP(s), if any.

355 This consultation document recognises the existence of Alternative Infrastructure and Equivalent Service.

356 Existing VFL services consumers currently can buy commercial bundled service offerings from undertakings, other than the USP.

357 ComReg is of the preliminary view that, absent of:

⁹³ ComReg D09/21, Document No. 21/112R, 'Universal Service Requirements: Provision of Access at a Fixed Location (AFL USO)', 05 November 2021, available at: https://www.comreg.ie/?dln_download=universal-service-requirements-provision-of-access-at-a-fixed-location-afl-uso-response-to-consultation-and-decision-2

⁹⁴ S.I. No. 444 of 2022 European Union (Electronic Communications Code) Regulations 2022.

- receiving any expressions of interest; or
- the availability of an Alternative Infrastructure provider with Equivalent Service, that is willing to serve end-users commercially;

that the current USP, eir, may best placed to be the USP for voice only connections and voice communications services VFL USO, post 30 June 2023.

6.3 Geographical scope

358 ComReg expects that as broadband continues to roll out, affordable voice communications services (standalone or in a bundle) will be made available to end-users on a commercial basis.

359 ComReg notes that end-users who may make reasonable requests for voice only connections and voice communications services are dispersed throughout the State.

360 Accordingly, ComReg is of the preliminary view that any designations must cover the whole of the State. This is required to ensure that any end-user in the State who requires the protections of universal service, to obtain a voice only connection and voice communications services, may do so.

361 We are of the preliminary view that the proposed voice only connections and voice communications service obligations will only crystallise for the USP, where end-users have no suitable commercial alternatives.

362 Accordingly, while any designations may be for the whole of the State, obligations will only crystallise at identified discrete end-user locations, that are not served commercially.

6.4 Duration of any designations

363 ComReg is of the preliminary view that it is appropriate to impose voice only connections and voice communications services VFL USO, for a maximum period of 5 years.

- However, ComReg proposes to keep under review any a voice only connection and voice communications services VFL USO and designation in light changes in the market. Accordingly, we propose to commence a review:
 - i. where changes in market conditions and technological developments are such that ComReg deems it appropriate to do so, or

- ii. 6 months after the Minister has concluded the definition of adequate broadband IAS and associated quality of service standards

- whichever is the earlier.

364 ComReg is seeking stakeholders' views on whether this is the most appropriate period.

6.5 Costing of the USO

365 eir, as the current designated USP, may submit applications for USO funding. eir submitted applications for Universal Service Funding (USF) in respect of 2010-2011, 2011-2012, 2012-2013, 2013-2014, and 2014-2015 in accordance with D04/11, which ComReg subsequently assessed.

366 After the assessment and consultation process, ComReg determined that there were positive net costs for the 2010-2015 periods and that these positive net costs did not represent an unfair burden to eir. In July 2019, eir lodged an appeal against each of these decisions. This appeal is currently ongoing. ComReg will continue its work on USF including the assessment of other applications for funding it receives from the USP, as relevant, and the establishment of the principles for a universal service fund sharing mechanism.

367 We have issued a consultation document in respect of eir's 2015-2016 USO funding application.

368 ComReg has received no funding applications from eir for financial years 2016-2017; 2017-2018; 2018-2019; 2019-2020; and 2020-2021.

369 eir has notified ComReg of its intention to reserve its position in respect of any further funding applications that become due before the pending appeal of ComReg's assessments of unfair burden in each of ComReg's individual 2010-2015 USO funding application decisions ("the Appeal") in the Commercial Court (including the reference to the Court of Justice of the European Union ('**CJEU**')), is determined.

370 As it is designated until 30 June 2023, eir may make applications for USO funding, should it choose to do so, in respect of its financial periods 2016-2017, 2017-2018, 2018-2019, 2019-2020, and 2020-2021. ComReg has issued Information Notices in respect of this.⁹⁵

⁹⁵ ComReg Document No. 18/76, 'eir's 2016-2017 Universal Service Funding Application', 24 August 2018, available at: https://www.comreg.ie/media/dlm_uploads/2018/08/ComReg-1876R.pdf; ComReg Document No. 21/44, 'Universal Service Fund Applications 2018-2019

- 371 Similarly, should an operator be designated as a USP, it would be entitled to make applications for USO funding, in accordance with ComReg Decision D04/11.
- 372 In accordance with Regulation 11 of the Universal Service Regulations and Regulation 75 of S.I. 444 of 2022, any USP must apply for funding if they wish to receive funding for the net cost of meeting the obligation. The process for this is set out in ComReg D04/11.
- 373 The period for submission of expressions of interest runs for a period of 6 weeks from 10 January 2023 until 21 February 2023. No late Expressions of Interest will be accepted.

Q. 10 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.

Q. 11 Do you agree or disagree with ComReg's preliminary view that the designation period should be for a maximum period 5 years, unless otherwise amended?

and 2019-2020', 04 May 2021, available at: <https://www.comreg.ie/media/2021/05/ComReg-2144-1.pdf>; and ComReg Document No. 22/33, 'Universal Service Fund Application 2020-2021', 04 May 2022, available at: <https://www.comreg.ie/publication/universal-service-fund-applications-2018-2019-and-2019-2020>.

7 Draft Decision Instrument

Please note: That in accordance with Regulation 12 of the European Communities (Electronic Communications Networks and Services) (Framework Regulations) 2011 (“the Framework Regulations”) ComReg is statutorily obliged to consult on any new measure proposed to be taken. Regulation 101 of the European Union (Electronic Communications Code) Regulations 2022, SI No. 444 of 2022, is the equivalent provision to Regulation 12 of the Framework Regulations and continues the obligation for ComReg to consult. The Electronic Communications Code Regulations have yet, at the time of publication of this Consultation, to be commenced. For the purpose of this Consultation, references to both the Framework Regulations and to the Electronic Communications Code Regulations have been included.

Please also note that the measures as proposed by ComReg in this Consultation are subject to the relevant Regulations of SI 444 of 2022 (i.e., Regulation 101, Regulation 70, Regulation 72, Regulation 74, Regulation 75, Regulation 76 and Regulation 77) being commenced unchanged from the published SI, at the time measure is imposed by Decision of ComReg.

1. STATUTORY FUNCTIONS AND POWERS

- 1.1. This Decision and Decision Instrument is hereby made by ComReg for the purposes of imposing obligations, requirements, and specifications for the provision of the universal services in the State.
- 1.2. This Decision and Decision Instrument is made:
 - i. Pursuant to and having regard to the functions and objectives of ComReg set out in sections 10 and 12 of the Communications Regulation Act 2002 as amended (“the Act”) and Regulation 12, 13 and 16 of the Framework Regulations;
 - ii. Pursuant to and having regard to the functions and powers conferred upon ComReg by Regulation 70, 72 and 74 of the European Union (Electronic Communications Code) Regulations (“S.I. No. 444 of 2022”)
 - iii. Having regard to the functions and powers conferred upon ComReg by Regulation 75, 76 and 77 of the European Union (Electronic Communications Code) Regulations (“S.I. No. 444 of 2022”)
 - iv. Pursuant to and having regard to Directive 2018/1972 of the European Parliament and of the Council of 11 December 2018⁹⁶

⁹⁶ OJ No. L 321, 17.12.2018, p. 36

establishing the European Electronic Communications Code (Recast),

- v. Having pursuant to section 13 of the Act, complied with the Ministerial Policy Directions where applicable;
- vi. Having had regard to the views of interested parties, including Undertakings and the submissions they made in response to ComReg Document No 23/02.
- vii. Having had regard to the analysis and reasoning set out in ComReg Document No. XX/XX, and Decision DXX/XX (which shall, where the context admits or requires, be construed together with this Decision Instrument).

2. DEFINITIONS AND INTERPRETATION

- 2.1. In this Decision Instrument, terms used are as defined in S.I. 444 of 2022 unless the context otherwise admits or requires.
- 2.2. References to European legislation, primary legislation or secondary legislation shall be construed as references to that legislation as amended from time to time.
- 2.3. Words in the singular form shall be construed to include the plural and vice versa, unless the context otherwise admits or requires.
- 2.4. A reference to a section, clause or schedule, is a reference to a section, clause or schedule of this Decision Instrument unless the context otherwise admits or requires.
- 2.5. Examples shall not be construed to limit, expressly or by implication, the matters they illustrate.

“Alternative Infrastructure” means the network of an Undertaking, other than the fixed network of the USP, which at the time a request is made by a Requester to the USP for a voice only Connection and/or Voice Communications Services, is able to provide an Equivalent Service to the Requester;

“Bundle” means grouping a voice only Connection and Voice Communications Services and fixed broadband service as a package;

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

“Connection” means a connection within the meaning of Regulation 70(1) and Regulation 70(4) of the S.I. 444 of 2022, at a primary location or residence. A Connection includes a New Connection and/or an Existing Connection as the context admits or requires;

“Decision Instrument” means this decision instrument which is made pursuant to *inter alia* Regulations 70, 72, and 74 of S.I. 444 of 2022;

“Department” means the Department for Communications, Climate, and Communications;

“EECC Directive (EU) 2018/1972” means Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (Recast).

“Durable Medium” has the same meaning as it has in the Consumer Rights Act 2022.

“Effective Date” means the date specified in Section 9.1 of this Decision Instrument;

“Eir” means Eircom Limited and its subsidiaries and any related companies, and any Undertaking which it owns or controls, and any Undertaking which owns or controls Eircom Limited and its successors and assigns. For the purposes of this Decision Instrument the terms “subsidiary” and “related company” shall have the meanings ascribed to them by the Companies Act 2014;

“Equivalent Service” means a voice only Connection and Voice Communications Services or Bundle which is equivalent to that prevailing for VFL provided by the USP, with respect to quality of service, Minimum Indoor Availability, and affordability;

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

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

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

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

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

“Ministerial Policy Directions” means the policy directions made by Dermot Ahern TD, then Minister for Communications, Marine and Natural Resources, pursuant to Section 13 of the Communications Regulation Act 2002 (as amended), dated 21 February 2003 and 26 March 2004;

“New Connection” means a Connection at any primary location or residence, or premises that has never been connected to the ECN (fixed);

“PECN” means an electronic communications network used wholly or mainly for the provision of publicly available electronic communications services which support the transfer of information between network termination points.

Requester means a consumer, microenterprise, small enterprise, medium-sized enterprise, or not for profit organisation who is requesting a New Connection or who has an Existing Connection.

“Requester Premises” means the Requester’s primary location or residence;

“State” means Ireland;

“USP” means the Undertaking, designated by ComReg pursuant to Regulation 72(3) of S.I. 444 of 2022 and this Decision Instrument. The USP, for the purposes of this Decision Instrument and the S.I. 444 of 2022, is specified in Section 4;

“VFL” means the Voice only Connection and Voice Communications Services referred to in Regulations 70(1)(b) and Regulation 70(4) of S.I. 444 of 2022.

3. APPLICATION AND SCOPE

- 3.1. This Decision Instrument designates the USP(s) specified in Section 4 from the Effective Date, for the purpose of complying with the obligations in this Decision Instrument.
- 3.2. This Decision Instrument is legally binding upon and legally enforceable against the USP from the Effective Date.

4. THE USP AND GEOGRAPHICAL SCOPE

- 4.1. Eir is hereby designated as the USP for the purpose of complying with the obligations in this Decision Instrument.
- 4.2. The geographical scope of the obligations imposed on the USP by this Decision Instrument is the entire State.

5. VOICE ONLY CONNECTIONS, VOICE COMMUNICATIONS SERVICES, AND REASONABLENESS OF REQUESTS

VOICE ONLY CONNECTIONS

- 5.1. The USP shall satisfy any reasonable request (as described in this Section 5) by a Requester for access to a Voice Only Connection at the charge(s) published by the USP.

VOICE COMMUNICATIONS SERVICES

- 5.2. The USPs shall satisfy any reasonable request (as described in this Section 5) by a Requester, for voice communications services that allow for originating and receiving, directly or indirectly, national and international calls through a number or numbers in a national or international numbering plan (referred to in Part 1 and Part 10 of S.I. 444 of 2022).

REASONABLENESS OF REQUESTS

Existing Voice only Connections and/or Voice Communications Services

Note: for the purposes of Section 5.3 and Section 5.4 all references to Alternative Infrastructure means an Alternative Infrastructure (other than the USP's)

- 5.3. All requests for Existing Voice only Connections and/or Voice Communications Services at a Fixed Location are reasonable and the USP shall continue to satisfy them, where:
 - i. there is no Alternative Infrastructure and no Equivalent Service available; or
 - ii. the USP has advised the Requester, that an Alternative Infrastructure and an Equivalent Service is available at their premises, and within 3 months of doing so the Requester, has provided documentary evidence to the USP that the Alternative Infrastructure provider has declined to serve the Requester, with an Equivalent Service; or

- iii. the USP has advised the Requester, that an Alternative Infrastructure and an Equivalent Service is available at their premises, and the Requester has exercised their rights to a Voice only Connection and Voice Communications Service by continuing to avail of the service.
- 5.4. An existing Voice only Connection and/or Voice Communications Services at a Fixed Location is no longer reasonable, and the USP need not continue to satisfy it, if :
- i. the USP can show documentary evidence of the following:
 - a) that the USP has advised the Requester that an Alternative Infrastructure and an Equivalent Service is available at the Requester's premises; and
 - b) the Requester has, been successfully connected (where technically possible) to the Alternative Infrastructure and Equivalent Service, **prior to the USP ceasing the** existing Voice only Connection or Voice Communications Services of the Requester.

New Voice only Connections and/or Voice Communications Services

Requests for New Voice only Connections and/or Voice Communications Services where there is Alternative Infrastructure and an Equivalent Service

- 5.5. A request by a Requester for a new Voice only Connection and/or Voice Communications Services at a Fixed Location is not reasonable, and the USP need not satisfy it, if:
- i. there is Alternative Infrastructure serving the Requester's premises and an Equivalent Service is available from the USP or
 - ii. the USP can show evidence that an Alternative Infrastructure and an Equivalent Service is available, save for the provisions of 5.6 and 5.7.
- 5.6. If the Alternative Infrastructure is a mobile network and the Requester communicates their opinion to the USP in a Durable Medium, that it does not, or will not provide an Equivalent Service, then the following shall apply:
- i. the USP shall notify ComReg in writing, no later than two weeks after the USP has received said communication from the Requester; and

- ii. ComReg will adjudicate as soon as possible on whether or not the request for a voice only Connection and/or Voice Communications Services is reasonable, having regard to all of the relevant circumstances, the views of the Requester and the USP and the provisions of this Decision Instrument, in particular this Section 5.
 - iii. If the Requester and the USP have agreed that the Alternative Infrastructure proposed by the USP can and will provide an Equivalent Service, and the Requester requests a different technology, which is technically feasible, to satisfy their request for a Voice only Connection and/or Voice Communications Services, that request is reasonable and the USP shall satisfy it, if the Requester has agreed to pay the incremental costs for the different technology.
- 5.7. A request by a Requester for a new Voice only Connection and/or Voice Communications at a Fixed Location is reasonable, where:
- i. an Equivalent Service is not available; or
 - ii. the Requester has exercised their rights by requesting a Voice only Connection and Voice Communications Service ; and/or
 - iii. the Alternative Infrastructure is the USP's (subject to 5.6 above);
- in which case the USP shall satisfy it.

Requests for New Voice Only Connections where there is no Alternative Infrastructure

- 5.8. If at the time of the request by a Requester to the USP for a new Voice only Connection and/or Voice Communications Services there is:
- i. no Alternative Infrastructure serving the Requester's Premises; and
 - ii. the USP estimates reasonably that the cost of satisfying it will not exceed
€7,000 (excluding V.A.T.)
- that request is reasonable and the USP shall satisfy it.
- 5.9. If at the time of the request by Requester to the USP for a new Voice only Connection and/or Voice Communication Service there is:
- i. no Alternative Infrastructure serving the Requester's Premises; and
 - ii. the USP estimates reasonably that the cost of satisfying it will exceed €7,000 (excluding V.A.T.); and
 - iii. the Requester has agreed to pay the costs that exceed €7,000 (inclusive of V.A.T.)
- that request is reasonable and the USP shall satisfy it.

Records:

- 5.10. The USPs shall maintain the following records in a written form:
- i. all requests made to it by Requester for voice only Connections and/or Voice Communications Services
 - ii. the Requester's documentary evidence demonstrating that the Alternative Infrastructure provider has declined to serve the USP's existing Requester, with an Equivalent Service;

for **2 years** from the date that the request was first made, or the documentary evidence was received. These records shall contain the following information:

- a) the name of the Requester;
- b) the address and Eircode of the Requester ;
- c) the date of the Requester's request;
- d) what the Requester requested;
- e) the USP's reasons as to how it has complied with Section 5; and
- f) the USP's reasons as to whether (and how) a voice only Connection or Voice Communications Service which uses mobile technology ensures Minimum Indoor Availability.

Obligation to create and retain records for new Voice only Connections and Voice Communications Services:

- 5.11. The USP shall create and retain the following written records (in respect of all requests for new Voice only Connection and/or Voice Communications Service) :
- i. a breakdown of the costs, and suitability of, the alternative technologies (including the optimal cost technology available) chosen by the USP to satisfy reasonable requests for Voice only Connection and Voice Communications Service VFL by Requesters;
 - ii. the USP's reasons for why a particular alternative technology was chosen by the USP to satisfy reasonable requests for Voice only Connection and Voice Communications Service VFL by Requesters;
 - iii. adequate information on works proposed by the USP to satisfy requests by Requesters for Voice only Connection and Voice Communications Service VFL;
 - iv. evidence that the information in 5.11 iii (above) has been provided to the Requester.

- v. all evidence of Alternative technology chosen by the USP to satisfy reasonable requests for Voice only Connection and Voice Communications Service VFL by Requester use of the Minimum Indoor Availability and that the Requester has agreed to the alternative technology chosen by the USP;
- vi. details of the Alternative Infrastructure for the purposes of Section 5 and the Requester's agreement that the Alternative Infrastructure will satisfy their request for the provision of Voice only Connection and Voice Communications Service VFL by the USP;
- vii. demonstrating that the voice only Connection and Voice Communications Service provided by an Alternative Infrastructure will offer a tariff package or packages which are broadly in line with those prices offered by USP for voice only Connection and/or Voice Communications Service.

Cost Estimates

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

6. REPORTING

- 6.1. The USP shall on a quarterly basis, within 2 months of the end of the previous quarter, provide ComReg with a report in written form together with associated records created and maintained in accordance with its obligations in Section 5.

- 6.2. For the avoidance of doubt, the first quarter referred to at 6.1 is a calendar quarter, or part thereof, from the effective date of this Decision Instrument.

7. STATUTORY POWERS NOT AFFECTED

- 7.1. Nothing in this Decision Instrument shall operate to limit ComReg in the exercise and performance of its statutory powers or the duties conferred on it under any primary or secondary legislation in force prior to or after the Effective Date of this Decision Instrument.

8. MAINTENANCE OF OBLIGATIONS AND SEVERANCE

- 8.1. If any Section(s), Clause(s) or provision(s), or portion(s) contained in this Decision Instrument is found to be invalid or prohibited by the Constitution, by any other law or judged by a court to be unlawful, void or unenforceable, then that Section(s), Clause(s) or provision(s), or portion(s) thereof shall, to the extent required, be severed from this Decision Instrument, and rendered ineffective, but as far as possible without modifying the remaining Section(s), Clause(s) or provision(s), or portion(s) thereof and shall not in any way affect the validity or enforcement of this Decision Instrument or other Decision Instruments.

9. EFFECTIVE DATE, DURATION, AND REVIEW

- 9.1. This Decision and Decision Instrument is fully effective from 1 July 2023 and shall remain in full force and effect until June 30th, 2028, unless amended by ComReg.

ROBERT MOURIK

CHAIRPERSON

THE COMMISSION FOR COMMUNICATIONS REGULATION

Q. 12 Do you have any comments or suggestions on the draft Decision Instrument? Please set out your answer in detail.

8 Draft Regulatory Impact Assessment ('RIA')

8.1 Introduction

374 The analysis presented sets out ComReg's draft regulatory impact assessment ('**RIA**'). It sets out ComReg's preliminary assessment of the likely effect upon stakeholders and competition, of a need, if appropriate, for a VFL services USO designation, and the various forms that this may take.

375 The purpose the draft RIA is to help identify whether ComReg's proposed regulatory approach is likely to have the desired impact in terms of ensuring the availability of VFL services in the State, or different parts of it. With this consultation, ComReg is seeking to fulfil its statutory objective, inter alia, to ensure that the universal service is available. Absent a VFL services USO, there is no guarantee that reasonable requests for VFL services would be fulfilled.

376 It sets out our preliminary view of the potential impact of designating a USP for the provision of VFL services and the imposition on a USP of the following proposed elements associated with a VFL services USO:

- the obligation to provide reasonable access to VFL services; and
- control of expenditure measures.

377 The draft RIA helps to consider the various regulatory options available to ComReg in respect of:

- The requirement for a VFL services USO (the need to designate an undertaking as USP for the provision of VFL services following the end of the current AFL designation) and;
- The need for, and scope of, each of the obligations (reasonable access requests and control of expenditure) associated with any such VFL services USO designation.

378 Pursuant to the Communications Regulation Acts 2002 to 2011, as amended, ComReg's key statutory objectives in relation to the provision of electronic communications services ('**ECS**') are to (i) promote competition, (ii) contribute to the development of the internal market, and (iii) promote the interests of users in Ireland and the European Union.

- 379 ComReg’s aim in conducting this draft RIA is to ensure that its proposals are appropriate, proportionate, and justified considering the analysis conducted, its objectives, and the principle of proportionality.
- 380 In selecting an appropriate regulatory approach, ComReg sets out the key policy issues and objectives below, an assessment of potential regulatory options and their respective impacts on stakeholders and competition.
- 381 ComReg’s approach to the draft RIA follows the RIA Guidelines (published in August 2007⁹⁷) and considers the “Better Regulation” programme⁹⁸ and international best practice. Section 13(1) of the Act of 2002 requires ComReg to comply with Ministerial Directions. In this regard, Ministerial Policy Direction 6 February 2003 requires, that, before deciding to impose regulatory obligations on undertakings, ComReg shall conduct a RIA in accordance with European and international best practice and in accordance with measures that may be adopted under the “Better Regulation” programme.
- 382 In the following section ComReg conducts its draft RIA having regard to the Regulations and its obligations under and Section 13(1) of the Act which requires ComReg to comply with Ministerial Policy Directions.⁹⁹

8.2 Step 1 – Describe the policy issue and identify the objectives

- 383 ComReg is reviewing the continued need, if any, for VFL services USO in the State, post 30 June 2023. In this regard, ComReg’s objective is to ensure consumers continue to have access to VFL services in the future, as relevant, to ensure end-user rights are upheld.
- 384eir is currently designated as the USP for AFL until 30 June 2023. For the reasons set out in previous chapters, ComReg is of the preliminary view that there will likely be a continued need for a VFL services USO throughout the State, for a maximum period of 5 years, post 30 June 2023.

⁹⁷ ComReg Document No. 07/56 and 07/56a.

⁹⁸ Department of the Taoiseach, “Regulating Better”, January 2004. See also “Revised RIA Guidelines: How to conduct a Regulatory Impact Analysis”, June 2009, [http://www.taoiseach.gov.ie/eng/Publications/Publications 2011/Revised RIA Guidelines June 2009.pdf](http://www.taoiseach.gov.ie/eng/Publications/Publications%2011/Revised%20RIA%20Guidelines%202009.pdf).

⁹⁹ Ministerial Policy Direction made by the Minister of Communications, Marine and Natural Resources on 21 February 2003. It requires that, before deciding to impose regulatory obligations on undertakings, we must conduct a RIA in accordance with European and international best practice and otherwise in accordance with measures that may be adopted under the “Better Regulation” programme.

- 385 ComReg is of the preliminary view that it would commence a review 6 months after the Minister has defined adequate broadband and would decide whether or not to commence a new consultation process in relation to VFL services USO in the State, and publish an information notice regarding this.
- 386 ComReg is of the preliminary view that it must ensure that the VFL services USO is implemented appropriately as necessary, and that any future provision of VFL services needs to continue to evolve appropriately and align with end-users' changing needs and market developments.
- 387 ComReg is of the preliminary view that a VFL services USO is necessary to protect end-users. There is a risk that all end-users who require access at a fixed location may not be provided with, or may not continue to be provided with, such a service, at all, absent a VFL services USO, with associated obligations on the USP(s). In this respect, ComReg's aim is to ensure that all end-users who require a VFL service can continue to get it.
- 388 ComReg is concerned that, although the number of narrowband subscribers has decreased, as commercial rollouts continue and the high capacity NBP infrastructure has begun to be rolled out, there may be unacceptable short-term implications for some end-users if the VFL services USO is withdrawn, prior to the completion of the NBP and commercial rollout.

8.3 Step 2 - Identify and Describe the Regulatory Options

- 389 ComReg has identified the following regulatory options which may be adopted to meet the objectives set out above.

8.3.1 Option 1: Impose a VFL Services USO

- 390 In this scenario ComReg considers the impact of imposing a new VFL services USO throughout the State, post 30 June 2023.
- 391 Where a new VFL services USO is imposed, it would ensure that all end-users' reasonable access requests for fixed Voice only Connection and or Voice Communications Services, regardless of their geographic location would be met where other potential public policy tools cannot ensure access to these services in the State.
- 392 ComReg is considering which undertaking could be designated with the VFL services USO, and the scope of the various components, to determine which obligations might be necessary.

- 393 It is important to note that apart from the VFL services USO, there is currently no other mechanism, programme or scheme in place to ensure that VFL services (including reasonable access requests), set out in the S.I. 444 of 2022, are provided to end-users who require it and cannot obtain it under normal market conditions, or through potential public policy tools.
- 394 As technology and competition develops, and as end users' needs evolve, it is ComReg's duty to ensure that end-users' reasonable access requests for VFL services are met, where they may not be met commercially by the market.
- 395 Under this scenario ComReg could designate a single USP for the entire State. Alternatively, different operators (undertakings), could be designated to provide different elements of the universal service, and/or to cover different parts of the State.
- 396 Therefore, in considering this scenario (i.e., imposing a VFL services USO), the various aspects of the USO would need to be considered, namely:
- Reasonableness of Requests; and
 - Control of expenditure.

8.3.1.1 Reasonableness of requests

- 397 The scope of the USO is ensure that the availability at a fixed location of a Voice only Connection and or Voice Communications Services to meet all reasonable requests by end-users for access such services, where they are not provided commercially or other potential public policy tools.
- 398 How this is achieved is not prescribed. The principle of technological neutrality allows the USP to choose the optimum method of providing fixed access and services. Currently the pre-existence of the USP's infrastructure which may provide service, the availability of alternative infrastructure, and the associated costs, are taken into consideration when assessing the reasonableness of new requests.
- 399 The definition of Equivalent Service now includes a 'bundle'. This definition is a relevant factor when assessing whether an Alternative Infrastructure can provide an Equivalent Service to the Requester. The inclusion of a 'bundle' in the definition of 'Equivalent Service' has directly affected the number of Requesters which come within the remit of reasonable access request process.
- 400 The options now considered are:

- for existing connections:
 - i) whether to specify new requirements to be complied with by the USP(s) in relation to requests for existing VFL services; or
 - ii) impose requirements similar to the current requirements for requests for existing VFL services (impose the status quo).
- for new connections:
 - i) whether to impose requirements similar to the current requirements for requests for new VFL services (impose the status quo); or
 - ii) whether to specify new requirements to be complied with by the USP(s) in relation to requests for new VFL services.

A. Existing Connections

Option 1: Specify new requirements to be complied with by the USP(s) in relation to requests for existing VFL services

401 ComReg may specify new requirements regarding the reasonableness of requests for existing VFL services, which take into account the existence of Alternative Infrastructure with an Equivalent Service (as set out in chapter 4).

402 The new requirements in respect of existing connections would mean that requests for existing VFL services at a fixed location continue to be reasonable where:

- there is no Alternative Infrastructure and no Equivalent Service available; or
- where there is an Alternative Infrastructure and an Equivalent Service available to the USP's existing Requester; and the Requester provides the USP with documentary evidence within a 3-month time period demonstrating that the Alternative Infrastructure provider has declined to commercially serve the USP's existing Requester, with an Equivalent Service; or
- the USP's existing Requester has exercised their right to continue to avail of their VFL services.

403 Requests for existing VFL services are no longer reasonable, and the USP need not continue to satisfy them, if:

- the USP can show evidence that an Alternative Infrastructure and an Equivalent Service is available to the Requester from an Alternative Infrastructure provider; and:
- The USP shall show evidence of the following:
 - i) the USP has advised its Requester, that an Alternative Infrastructure and Equivalent Service is available at their premises; and
 - ii) the USP's existing Requester, has been successfully connected to the Alternative Infrastructure and Equivalent Service, prior to the ceasing of the USP's existing VFL service.

404 This scenario recognises that the VFL services USO for existing connections and services is only necessary where there is no Alternative Infrastructure with and Equivalent Service available. Its means that existing voice only customers (connections and services) potentially would no longer be served through the USO, in certain circumstances. This would minimise any cost associated with a VFL services USO.

Option 2: Impose obligations similar to the current requirements for requests for existing VFL services (impose the status quo)

405 Under this option, ComReg would not specify new requirements for existing VFL services, and would impose requirements similar to the current requirements, for existing connections.

406 Accordingly, all existing requests for VFL services would remain reasonable, and the USP(s) would continue to satisfy them, regardless of the existence of Alternative Infrastructure with Equivalent Service.

B. New connections

Option 1: Impose requirements similar to the current requirements for requests for new VFL services (impose the status quo)

407 ComReg may impose similar requirements to the current requirements (as set out in D09/21) regarding the reasonableness of requests for new VFL services, which take into account of Alternative Infrastructure, including the cost thresholds.

408 ComReg could consider imposing requirements in respect of new connections where a request for a new VFL service is not deemed reasonable, and the USP need not satisfy it if:

- there is Alternative Infrastructure serving the Requester's premises and an Equivalent Service is available from the USP or

the USP can show evidence that an Alternative Infrastructure and an Equivalent Service is available

If the Alternative Infrastructure is a mobile network the Requester must agree that the mobile network will provide an Equivalent Service.

409 A request for a new VFL service are reasonable, and the USP shall satisfy it, where:

- an Equivalent Service is not available; or
- requester rights are exercised to request a voice only Connection and Voice Communications Service; and/or
- the Alternative Infrastructure is the USP's;

410 ComReg may also re-impose the current the current threshold level (€7,000) for new connections, considering market evidence.

Option 2: Specify new requirements to be complied with by the USP(s) in relation to requests for new VFL services

411 Under this option ComReg would specify new requirements for new VFL service requests.

412 This could involve imposing a new threshold level and or RAR process.

413 ComReg would also consider the appropriateness of the current threshold level (€7,000) and whether there would be a need to impose a new threshold, considering market evidence.

414 ComReg has considered the appropriateness of the current requirements (as set out in D09/21) regarding the reasonableness of requests for new VFL services, in light of market conditions. This has been set out in section 4.2.1.7.

8.3.1.2 Control of expenditure

415 Regulation 74(2)(a) sets out that a designated undertaking shall provide specific facilities and services (set out in Part A of Schedule 5) for the purposes of ensuring that consumers can monitor and control expenditure, as applicable.

416 Regulation 74(5) sets out that ComReg may waive any requirement imposed in accordance with 74(2), in relation to all or any part of the State, if it is satisfied that the relevant facility or service is widely available in, or in any part of, the State.

417 ComReg may decide not to waive any of the requirements on the USP under Regulation 74(2)(a), or it may decide to waive any or some of these requirements.

Option 1: Do not waive requirements on USP in accordance Regulation 74(2)(a)

418 In this scenario, ComReg decides not to waive the requirements on the USP, in accordance with Regulation 74(2)(a).

419 ComReg understands that the majority of service providers have made a commercial decision to provide the majority of the facilities and services set out in Part A of Schedule 5. Accordingly, ComReg is of the preliminary view that there is no need to intervene at this time.

420 ComReg proposes to monitor the situation carefully and may intervene, where there may be a requirement to do so.

Option 2: Waive requirements on USP in accordance Regulation 74(2)(a)

421 In this scenario ComReg decides, in accordance with Regulation 74(5), to waive the requirements on the USP, in accordance with Regulation 74(2)(a).

8.3.2 Option 2: No VFL services USO

422 In this option ComReg considers the impact of not imposing VFL services USO. If this approach is adopted, no operator would be obliged to provide a VFL service and related components. There is a risk that more geographically remote, or unprofitable end-users, may not be adequately served.

423 Absent any VFL services USO, there may be a risk that the market would not deliver these services to some areas of the State (such as rural or sparsely populated areas) and/or to less economic end-users who are distributed nationally. There is a risk that some end-users may not be adequately served.

- 424 The current AFL USO with respect to the reasonableness of connection requests, and control of expenditure obligations would no longer apply. In this scenario there is a risk that the level of service currently enjoyed by end-users would no longer be guaranteed. There is a risk that left to the operation of market forces alone, some, or all services and related components may not be provided to certain end-users.

8.4 Steps 3 and 4 – Determine the impacts on stakeholders and competition

- 425 Having regard to the need to safeguard and ensure the provision of a minimum set of telecommunications services in the State, and that as yet the complete withdrawal of the USO cannot be undisputed, the draft RIA assess the impact of regulatory options on different stakeholders and competition, set out in the tables below.

NON-CONFIDENTIAL

Universal Service - Voice only connections and voice communications services at a fixed location (VFL services) - Consultation and Draft Decision
ComReg 23/02

Measure proposed	Impact on Industry		Impact on end-user	
	Costs	Benefits	Costs	Benefits
<p>Option 1 - Impose an AFL USO for a maximum of 5 years for the entire State</p>	<p>USP may incur costs for the provision of the USO</p> <p><i>USO costs will be dependent on the specific obligations proposed in respect of those customers it would not have served, absent an AFL USO (de minimus)</i></p> <p>where: (i) a net cost of universal service is claimed by USP(s) and; (ii) an unfair burden is determined, providers of ECS may be required to contribute to a sharing mechanism to fund universal service.</p> <p>Cost is dependent only on those customers who would not be commercially serviced and have no alternative for VFL.</p> <p>As obligation is dynamic the obligation will decrease over the period as other alternative infrastructures and equivalent services are rolled out over the period.</p>	<p>Obligation only materialises when an end-user requests service (which is not met commercially)</p> <p>USP(s) may accrue benefits such as: (i) enhanced brand recognition, (ii) life cycle benefit (iii) ubiquity (iv) and marketing - associated within being the USP(s)</p> <p>Universal service is technology neutral providing USP(s) greater flexibility in how obligations are met.</p> <p>Obligation is dynamic and therefore will adjust to market conditions and consumers' needs.</p>	<p>Customers may seek to move to bundled service in light of AFL customers may be paying more for cost of standalone services that those purchasing bundled services</p>	<p>Protects the existing cohort of VFL services end-users - ensuring continuity of service (where they choose not to migrate to other bundled services).</p> <p>Ensures the ability to obtain a new connection (reasonable request) for new end-users, and ensures no exclusion on the basis of access.</p> <p>This ensures continuity of provision of the universal services and certainty at this point in time. End-users may benefit in terms of connection charges, and control of expenditure.</p>

Universal Service - Voice only connections and voice communications services at a fixed location (VFL services) - Consultation and Draft Decision
ComReg 23/02

Measure proposed	Impact on Industry		Impact on end-user	
	Costs	Benefits	Costs	Benefits
<p>Option 2: Do not impose a VFL USO post 30 June 2023</p>	<p>Possible reduction in the number of customers connected to the network including those who wish to remain connected.</p> <p>Possible higher 'cost to serve' per customer.</p> <p>No possible contribution to the costs of serving unprofitable customers (profitability unknown at point of connection to the network - <i>established on an ex-post basis</i>)</p>	<p>No costs incurred associated with the provision of the USO.</p> <p>No net cost claim.</p> <p>Commercial freedom regarding customers and retail pricing.</p> <p>Retain only profitable customers.</p>	<p>Basic quality fixed voice only connection and voice communications services may not be delivered to all end-users by any undertaking.</p> <p>End-users may suffer, for example, through less favourable terms and conditions and/or service levels, due to the absence of a universal service obligation and competition.</p> <p>Some end-users may not be able to get a connection to the network and some existing connections and services may be discontinued.</p>	<p>Competition in urban areas may intensify or those consumers located there.</p>

NON-

Universal Service - Voice only connections and voice communications services at a fixed location (VFL services) - Consultation and Draft Decision
ComReg 23/02

	Measure proposed	Impact on Industry		Impact on end-user	
		Costs	Benefits	Costs	Benefits
Reasonable access requests: <u>existing</u> connections	<p>Option 1: Impose new RAR specifications for existing connections</p>	<p>May decrease the cost to the USP of retaining unnecessary connections (i.e., previously existing universal services connections which are now met commercially).</p> <p>May decrease the net cost of the USO, for which the USP is entitled to apply for funding.</p>	<p>Lessens the impact of the potential cost of meeting any USO obligations: <i>will only be in respect of those customers the USP would not have served, absent an AFL USO where there is no alternative infrastructure and equivalent service or where the customer wishes to retain voice only connection and communications services (de minimus) .</i></p> <p><i>Approach is more deregulatory and dynamic: allows for Alternative Infrastructure with an Equivalent Service to serve existing standalone voice connections.</i></p>	cost neutral	<p>Recognises trend that end-users needs more likley to be met commercially - and more likely to have greater choice of service providers.</p> <p>End-users may be able to get more services for the same price (or less), from an Equivalent service on Alternative Infrastructure (i.e. switching from standalone voice to a bundle)</p>
	<p>Option 2: Impose the current specifications for existing connections</p>	<p>Is also dynamic and allows USP to use different technology : <i>will only be in respect of those customers it would not have served, absent an AFL USO (de minimus) .</i></p>	<p>End-user requests can be met commercially</p> <p><i>dynamic - evolving as market evolves</i></p>	cost neutral	<p>Recognises trend that end-users needs more likel+F21y to be met commercially - and more likely to have greater choice of service provider as the market evolves.</p>

Universal Service - Voice only connections and voice communications services at a fixed location (VFL services) - Consultation and Draft Decision
ComReg 23/02

	Measure proposed	Impact on Industry		Impact on end-user	
		Costs	Benefits	Costs	Benefits
Reasonable access requests: <u>new</u> connections	<p>Option 1: Impose RAR specifications for new connections</p>	<p>Is dynamic as only applies in certain circumstances, in particular where there are alternatives</p> <p>This approach minimises the obligation on the USP as the provider of last resort.</p>	<p>Lessens the impact of the potential cost of meeting any USO obligations: will only be in respect of those customers the USP would not have served, absent an VFL USO where there is no alternative infrastructure and service or where the customer wishes to retain voice only (de minimus)</p> <p>Approach is more deregulatory and dynamic: allows for Alternative Infrastructure with an Equivalent Service to serve new standalone voice connections.</p>	<p>cost neutral</p>	<p>Recognises that end-users needs more likely to be met commercially - and more likely to have greater choice of service providers.</p> <p>End-users may be able to get more services for the same price (or less), from an Equivalent service on Alternative Infrastructure (i.e. switching from standalone voice to a bundle)</p>
	<p>Option 2: Do not impose any RAR obligations for new connections</p>	<p>No net cost for new connections</p> <p>Risk of new connections not being satisfied.</p>	<p>No net cost for new connections.</p>	<p>Does not provide certainty for USO customers.</p> <p>Risk of new connections requests not being satisfied or being more expensive for end-users or being forced to purchase services not required</p>	<p>Where end-users' needs can be met commercially - consumers more likely to have greater choice of service providers as market evolves.</p>

NON

Universal Service - Voice only connections and voice communications services at a fixed location (VFL services) - Consultation and Draft Decision
ComReg 23/02

	Measure proposed	Impact on Industry		Impact on end-user	
		Costs	Benefits	Costs	Benefits
Control of expenditure	Option 1: Do not waive requirements on USP in accordance Regulation 74(2)(a)	USP is obligated to provide the facilities and services set out in Part A of Schedule 5.	No additional benefits.	No additional costs.	End-users will have access to the facilities and services set out in Part A of Schedule 5, ensuring end-users can monitor and control expenditure.
	Option 2: Waive requirements on USP in accordance Regulation 74(2)(a)	No additional costs.	USP would have the commercial freedom to not offer the facilities and services set out in Part A of Schedule 5.	End-users may not benefit from the facilities and services set out in Part A of Schedule 5, should the USP choose not to offer them. This may result in some end-user's experiencing difficulty in controlling their expenditure.	No additional benefits. End-users may still receive these facilities and services should the USP choose to continue to offer them.

NON-CONFIDENTIAL

8.5 Step 5 – Assess the impacts and choose the best option

426 ComReg has identified and considered the regulatory options to meet its objectives.

427 The first consideration is whether there is a need for a voice communications services VFL USO, post 30 June 2023.

428 Market trends (chapter 3) show that a decreasing cohort of end-users continue to rely on voice only connections and communications services VFL USO. However, absent a voice only connections and voice communications service VFL USO, ComReg is of the preliminary view that there is a risk this cohort of end-users might:

- not be connected to the network pending rollout of new networks; or
- not remain connected to the network; and that

429 Left to the operation of market forces alone, fixed voice communications service providers would have the commercial freedom to: reject connection requests; increase connection and line rental prices; degrade the quality of the services; to drive service provider desired customer behaviours (e.g., migration to bundles or to other technology platforms).

430 The evidence supporting a complete withdrawal of voice only connections and voice communications services USO would need to be undisputed. There are a small number of fixed voice service providers currently active in the retail market. Accordingly, the options available to voice-centric end-users are diminishing over time, unless they are willing to migrate to bundles.

431 In this context the need for a Universal Service Obligation (USO) to provide an adequate broadband connection and service will be assessed once adequate broadband has been defined by the Minister.

432 ComReg anticipates that the State deployment will be completed in 2026. Commercial deployments should be completed within the next 3 – 5 years and ComReg anticipates that copper switch off will have commenced.

433 Accordingly, ComReg is of the preliminary view that it cannot be assured that, absent a voice communications services VFL USO, these services would be delivered commercially (now and in the future) throughout the State. Accordingly, removing AFL USO (Option 2) at this time would appear to be premature. ComReg is therefore of the preliminary view that there is a continued need for an VFL USO throughout the State, post 30 June 2023.

434 Having reached the preliminary view that there is a need for voice only connections and voice communications services VFL USO, post 30 June 2023, the next consideration is the relevant voice only connections and voice communications services VFL elements, the most appropriate form they might take, and identification of the best option:

- reasonableness of requests; and
- control of expenditure.

435 ComReg recognises that the number of voice communication services end-users continues to decline, as end-users migrate to bundled product offerings. However, there remains a cohort of end-users for whom voice only communications services VFL remains relevant. Chapter 3 explored the composition of this cohort of end-users and whether it was predominantly composed of existing customers or new end-users. This identified that circa [redacted]% of this cohort are existing customers with an ever-decreasing number of new voice only connection requests. The data also demonstrated that:

- many of the new connection requests are either being met commercially by Alternative Infrastructure and Equivalent Service or by the current USP using existing infrastructure
- the current threshold level is working:
 - end-users are not being denied service based on cost threshold
 - [redacted]
 - new reasonable access requests and associated threshold levels are working and continue to be appropriate to meet the current and likely future new reasonable access requests.
 - A significant percentage of existing connections are now served by Alternative Infrastructure with Equivalent Services, providing a commercial alternative (which may be a bundle) to these end-users.

436 Currently the USP is only required to provide a new connection in cases where there are no suitable alternative infrastructures and services present. This should prevent inefficient infrastructure duplication, and therefore, lower costs to provide a voice communications services VFL USO.

- 437 Based on the evidence, ComReg is of the preliminary view that the current reasonableness of requests approach for new voice only connections and voice communications services continues to be appropriate. It is achieving what was intended. There is no objective basis upon which to impose new specifications relating to the reasonableness of requests and associated threshold for new voice only connections and voice communications services.
- 438 ComReg is of the preliminary view that a fixed location voice only connection and voice communications services USO is required to continue to provide existing connections in cases where there are no suitable alternative infrastructures and services present, or whether the alternative infrastructure provider with an equivalent service has declined to serve the USP's existing voice only connection and voice communications services end-users.
- 439 ComReg acknowledges that there has been significant progress and that end-users can obtain voice communications services:
- via both narrowband and broadband, nationally, in areas that are served commercially, or
 - via the NBP (broadband) on a phased basis in line with the rollout, and within with NBP area once completed.
- 440 Based on the evidence, ComReg is of the preliminary view that a new reasonableness of requests approach in respect of existing connection and voice communications services should be imposed to recognise the existence of Alternative Infrastructure with Equivalent Service continues.
- 441 This is a deregulatory approach and provides greater opportunities for end-users to be served commercially, while reducing the cost to provide voice only connections and voice communications services VFL USO.
- 442 As set out at chapter 4 all ESC service providers already have an obligation to have and publish a Code of Practice for Complaint Handling¹⁰⁰.
- 443 Accordingly, ComReg is of the preliminary view that the inclusion of this requirement, post 30 June 2023 would present no additional obligations, where a universal service obligation and designation are imposed.
- 444 Many service providers offer phased payment of connection fees on a commercial basis.

¹⁰⁰ Electronic Communications Complaints Handling Code of Practice - Response to Consultation and Decision, Decision D04/17; Document No.17/62.

- 445 In recent years eir, as the USP, has implemented a series of connection promotions whereby connection charges were set to €0. Therefore, no end-user needed to rely on the phased payment plan. This provides end-users with a tangible benefit where seeing connection to the network has low implementation costs for the USP (where (i) connection fees are set to €0 and where (ii) [X █████ X]<] % of new connections¹⁰¹ are in-situ connections.
- 446 Absent a VFL services USO, there is a risk that a phased payment of connection fees, might not be maintained.
- 447 Regulation 74(2)(a) requires an undertaking designated in accordance with Regulation 72(3) to offer phased payment of connection fees to allow consumers pay for connection to the public electronic communications network on the basis of payments phased over time, for the purposes of ensuring that consumers can monitor and control expenditure.
- 448 ComReg is of the preliminary view that the existing obligation should be re-imposed, given its importance for end-users and low implementation costs for the USP.

Q. 13 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.

¹⁰¹ Period Q1 2021 -Q2 2022.

9 Next Steps

- 449 The timeframe for receipt of submissions to this consultation paper is 5pm on 21 February 2023 during which time ComReg welcomes written responses on any of the issues raised in this consultation document. It is requested that comments within submissions reference the relevant question numbers from this consultation document.
- 450 To promote further openness and transparency, ComReg will publish all respondents' submissions to this consultation, subject to the provisions of ComReg's Guidelines on the Treatment of Confidential Information – ComReg 05/24.
- 451 Respondents are requested to clearly identify confidential material and provide a confidential and non-confidential version of its responses.
- 452 Respondents are also requested to provide any electronic submissions in an unprotected format so that they can be appended into ComReg's submissions document for electronic publication.

NON-CONFIDENTIAL

Annex 1: Legal Basis SI 333 of 2011

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

Consultation and transparency mechanism

12. (1) In this Regulation and Regulation 13, “measure” means a decision, designation, determination, requirement, specification or other act of an equivalent effect made by the Regulator under the Specific Regulations, other than a determination under Regulation 31 or 32, a notification under Regulation 37 or a notification or requirement under Regulation 16 of the Authorisation Regulations, Regulation 19 of the Access Regulations, Regulation 31 of the Universal Service Regulations and Regulation 31 of the Privacy and Electronic Communications Regulations.

(2) Except in cases falling within Regulation 13(8), where the Regulator intends to take a measure in accordance with the Specific Regulations or intends to provide for restrictions in accordance with Regulation 17(3) and (5), which have a significant impact on a relevant market, the Regulator shall observe the procedures referred to in paragraphs (3) and (4).

(3) Before taking a measure under paragraph (2) the Regulator shall publish the text of the proposed measure, give the reasons for it, including information as to which of the Regulator’s statutory powers gives rise to the measure, and specify the period within which submissions relating to the proposal may be made by interested parties.

(4) The Regulator, having considered any representations received under paragraph (3), may take the measure with or without amendment.

(5) The Regulator shall publish its consultation procedures and shall establish a single information point through which all current consultations can be accessed.

(6) The Regulator shall, subject to the protection of the confidentiality of any information which it considers to be confidential, make the results of any consultation under this Regulation publicly available.

Annex 2: The EECC

PART II

SERVICES

TITLE I

UNIVERSAL SERVICE OBLIGATIONS

Article 84

Affordable universal service

1. Member States shall ensure that all consumers in their territories have access at an affordable price, in light of specific national conditions, to an available adequate broadband internet access service and to voice communications services at the quality specified in their territories, including the underlying connection, at a fixed location.
2. In addition, Member States may also ensure the affordability of the services referred to in paragraph 1 that are not provided at a fixed location where they consider this to be necessary to ensure consumers' full social and economic participation in society.
3. Each Member State shall, in light of national conditions and the minimum bandwidth enjoyed by the majority of consumers within the territory of that Member State and taking into account the BEREC report on best practices, define the adequate broadband internet access service for the purposes of paragraph 1 with a view to ensuring the bandwidth necessary for social and economic participation in society. The adequate broadband internet access service shall be capable of delivering the bandwidth necessary for supporting at least the minimum set of services set out in Annex V.

By 21 June 2020, BEREC shall, in order to contribute towards a consistent application of this Article, after consulting stakeholders and in close cooperation with the Commission, taking into account available Commission (Eurostat) data, draw up a report on Member States' best practices to support the defining of adequate broadband internet access service pursuant to the first subparagraph. That report shall be updated

regularly to reflect technological advances and changes in consumer usage patterns.

4. When a consumer so requests, the connection referred to in paragraph 1 and, where applicable, in paragraph 2 may be limited to support voice communications services.
5. Member States may extend the scope of application of this Article to end-users that are microenterprises and small and medium-sized enterprises and not-for-profit organisations.

Article 85

Provision of affordable universal service

1. National regulatory authorities in coordination with other competent authorities shall monitor the evolution and level of retail prices of the services referred to in Article 84(1) available on the market, in particular in relation to national prices and national consumer income.
2. Where Member States establish that, in light of national conditions, retail prices for the services referred to in Article 84(1) are not affordable, because consumers with a low income or special social needs are prevented from accessing such services, they shall take measures to ensure affordability for such consumers of adequate broadband internet access service and voice communications services at least at a fixed location. To that end, Member States may ensure that support is provided to such consumers for communication purposes or require providers of such services to offer to those consumers tariff options or packages different from those provided under normal commercial conditions, or both. For that purpose, Member States may require such providers to apply common tariffs, including geographic averaging, throughout the territory. In exceptional circumstances, in particular where the imposition of obligations under the second subparagraph of this paragraph on all providers would result in a demonstrated excessive administrative or financial burden for providers or the Member State, a Member State may, on an exceptional basis, decide to impose the obligation to offer those specific tariff options or packages only on designated undertakings. Article 86 shall apply to such designations mutatis mutandis. Where a Member State

designates undertakings, it shall ensure that all consumers with a low-income or special social needs benefit from a choice of undertakings offering tariff options addressing their needs, unless ensuring such choice is impossible or would create an excessive additional organisational or financial burden. Member States shall ensure that consumers entitled to such tariff options or packages have a right to conclude a contract either with a provider of the services referred to in Article 84(1), or with an undertaking designated in accordance with this paragraph, and that their number remains available to them for an adequate period and unwarranted disconnection of the service is avoided.

3. Member States shall ensure that undertakings which provide tariff options or packages to consumers with a low income or special social needs pursuant to paragraph 2 keep the national regulatory and other competent authorities informed of the details of such offers. National regulatory authorities in coordination with other competent authorities shall ensure that the conditions under which undertakings provide tariff options or packages pursuant to paragraph 2 are fully transparent and are published and applied in accordance with the principle of non-discrimination. National regulatory authorities in coordination with other competent authorities may require such tariff options or packages to be modified or withdrawn.
4. Member States shall ensure, in light of national conditions, that support is provided, as appropriate, to consumers with disabilities, and that other specific measures are taken, where appropriate, with a view to ensuring that related terminal equipment, and specific equipment and specific services that enhance equivalent access, including where necessary total conversation services and relay services, are available and affordable.
5. . When applying this Article, Member States shall seek to minimise market distortions.
6. Member States may extend the scope of application of this Article to end-users that are microenterprises and small and medium-sized enterprises and not-for-profit organisations.

Article 86

Availability of universal service

1. Where a Member State has established, taking into account the results, where available, of the geographical survey conducted in accordance with Article 22(1), and any additional evidence where necessary, that the availability at a fixed location of an adequate broadband internet access service as defined in accordance with Article 84(3) and of voice communications services cannot be ensured under normal commercial circumstances or through other potential public policy tools in its national territory or different parts thereof, it may impose appropriate universal service obligations to meet all reasonable requests by end-users for accessing those services in the relevant parts of its territory.
2. Member States shall determine the most efficient and appropriate approach for ensuring the availability at a fixed location of an adequate broadband internet access service as defined in accordance with Article 84(3) and of voice communications services, whilst respecting the principles of objectivity, transparency, non-discrimination and proportionality. Member States shall 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.
3. In particular, where Member States decide to impose obligations to ensure for end-users the availability at a fixed location of an adequate broadband internet access service as defined in accordance with Article 84(3) and of voice communications services, they may designate one or more undertakings to guarantee such availability throughout the national territory. Member States may designate different undertakings or sets of undertakings to provide an adequate broadband internet access service and voice communications services at a fixed location or to cover different parts of the national territory.
4. When Member States designate undertakings in part or all of the national territory to ensure availability of services in accordance with paragraph 3 of this Article, they shall use an efficient, objective, transparent and non-discriminatory designation mechanism, whereby no undertaking is a priori excluded from being designated. Such designation methods shall ensure that an adequate broadband internet access service and voice communications services at a fixed location are provided in a cost-effective manner and may be used as a means of

determining the net cost of the universal service obligations in accordance with Article 89

5. When an undertaking designated in accordance with paragraph 3 of this Article intends to dispose of a substantial part or all of its local access network assets to a separate legal entity under different ownership, it shall inform the national regulatory or other competent authority in advance and in a timely manner, in order to allow that authority to assess the effect of the intended transaction on the provision at a fixed location of an adequate broadband internet access service as defined in accordance with Article 84(3) and of voice communications services. The national regulatory or other competent authority may impose, amend or withdraw specific obligations in accordance with Article 13(2).

Article 87

Status of the existing universal service

1. Member States may continue to ensure the availability or affordability of other services than adequate broadband internet access service as defined in accordance with Article 84(3) and voice communications services at a fixed location that were in force on 20 December 2018, if the need for such services is established in light of national circumstances. When Member States designate undertakings in part or all of the national territory for the provision of those services, Article 86 shall apply. Financing of those obligations shall comply with Article 90.

Member States shall review the obligations imposed pursuant to this Article by 21 December 2021, and every three years thereafter.

Article 88

Control of expenditure

1. Member States shall ensure that, in providing facilities and services additional to those referred to in Article 84, providers of an adequate broadband internet access service and of voice communications services in accordance with Articles 84 to 87 establish terms and conditions in such a way that the end-user

is not obliged to pay for facilities or services which are not necessary or not required for the service requested.

2. Member States shall ensure that the providers of an adequate broadband internet access service and of voice communications services referred to in Article 84 that provide services pursuant to Article 85 offer the specific facilities and services set out in Part A of Annex VI as applicable, in order that consumers can monitor and control expenditure. Member States shall ensure that such providers put in place a system to avoid unwarranted disconnection of voice communications services or of an adequate broadband internet access service with regard to consumers as referred to in Article 85, including an appropriate mechanism to check continued interest in using the service.

Member States may extend the scope of application of this paragraph to end-users that are microenterprises and small and medium-sized enterprises and not-for-profit organisations.

3. Each Member State shall ensure that the competent authority is able to waive the requirements of paragraph 2 in all or part of its national territory if the competent authority is satisfied that the facility is widely available.

Article 89

Cost of universal service obligations

- a. Where national regulatory authorities consider that the provision of an adequate broadband internet access service as defined in accordance with Article 84(3) and of voice communications services as set out in Articles 84, 85 and 86 or the continuation of the existing universal service as set out in Article 87 may represent an unfair burden on providers of such services that request compensation, national regulatory authorities shall calculate the net costs of such provision.

For that purpose, national regulatory authorities shall:

- a. calculate the net cost of the universal service obligations, taking into account any market benefit which accrues to a provider of an adequate broadband internet access service as defined in accordance with Article 84(3) and voice communications services as set out in Articles 84, 85 and 86 or the continuation of the existing universal service as set out in Article 87, in accordance with Annex VII; or
 - b. make use of the net costs of providing universal service identified by a designation mechanism in accordance with Article 86(4).
- b. The accounts and other information serving as the basis for the calculation of the net cost of universal service obligations under point (a) of the second subparagraph of paragraph 1 shall be audited or verified by the national regulatory authority or a body independent of the relevant parties and approved by the national regulatory authority. The results of the cost calculation and the conclusions of the audit shall be publicly available.

Article 90

Financing of universal service obligations

1. Where, on the basis of the net cost calculation referred to in Article 89, national regulatory authorities find that a provider is subject to an unfair burden, Member States shall, upon request from the provider concerned, decide to do one or both of the following:
 - a) introduce a mechanism to compensate that provider for the determined net costs under transparent conditions from public funds;
 - b) share the net cost of universal service obligations between providers of electronic communications networks and services.
2. Where the net cost is shared in accordance with point (b) of paragraph 1 of this Article, Member States shall establish a sharing mechanism administered by the national regulatory authority or a body independent from the beneficiaries under the supervision of the national regulatory authority. Only the net cost, as determined in accordance with Article 89, of the obligations laid down in Articles 84 to 87 may be financed.

The sharing mechanism shall respect the principles of transparency, least market distortion, non-discrimination and proportionality, in accordance with the principles set out in Part B of Annex VII. Member States may choose not to require contributions from undertakings the national turnover of which is less than a set limit.

Any charges related to the sharing of the cost of universal service obligations shall be unbundled and identified separately for each undertaking. Such charges shall not be imposed on, or collected from, undertakings that are not providing services in the territory of the Member State that has established the sharing mechanism.

NON-CONFIDENTIAL

Annex 3:

S.I. 444 of 2022 Part 9 – Universal Service Obligations

Part 9 UNIVERSAL SERVICE OBLIGATIONS

Definition (Part 9)

69. In this Part “adequate broadband” means the adequate broadband internet access service defined by the Minister under Regulation 70(2)

Affordable universal service

Designation

70. (1) An undertaking designated as having a universal service obligation in accordance with Regulation 72(3) shall, as appropriate to the specific obligation for which it has been designated, satisfy any reasonable request by a consumer, microenterprise, small enterprise, medium-sized enterprise or not-for-profit organisation for access, in the case of the service the subject of the designation, to either or both —

(a) adequate broadband, in accordance with paragraph (2), made available to the consumer, or

(b) a voice communications service at the quality specified by the Regulator, including the underlying connection, at a fixed location.

Definition of adequate broadband

(2) (a) The Minister shall —

(i) define adequate broadband for the purpose of these Regulations in accordance with Article 84(3) of the Directive and shall publish any such definition in Iris Oifigiúil and in any other manner as he or she may think fit, and

(ii) specify the quality standards applicable to adequate broadband.

Before making a definition of adequate broadband or specifying the quality standards applicable to it, the Minister may consult with the Regulator.

(b) The Minister shall review the quality not later than 5 years after defining adequate broadband and in each 5-year period thereafter.

Quality of service (voice), terms and conditions, reasonableness

(3) The Regulator may —

(a) specify requirements to be complied with by an undertaking providing voice communication services in accordance with paragraph (1), including the quality standards to be provided and the terms and conditions upon which the connection at a fixed location is to be provided, and

(b) with the consent of the Minister, specify requirements to be complied with by an undertaking providing —

(i) adequate broadband in accordance with paragraph (1), regarding the terms and conditions upon which the connection at a fixed location is to be provided, and

(ii) adequate broadband or voice communications service in accordance with paragraph (1) in relation to the reasonableness of requests for connection at a fixed location to these services. Voice only connection (4) Where a consumer, enterprise or organisation so requests, the connection referred to in paragraph (1)(b) shall be limited to support voice communications services.

Provision of affordable universal service

71. (1) The Regulator shall regularly monitor the evolution and level of retail prices of adequate broadband and of voice communications services, in particular in relation to national consumer prices and income (including affordability for consumers) and shall report to the Minister on a regular basis on these matters or when requested by the Minister to do so.

(2) Where the Minister considers that retail prices for adequate broadband or for voice communications services are not affordable or are likely to become unaffordable, because consumers with a low income or special social needs may be prevented from accessing such services, the Minister may require the Regulator, in light of conditions in the State, to impose measures to be complied with by relevant undertakings to ensure affordability for such consumers of adequate broadband or voice communications services at least at a fixed location.

(3) The Regulator may, where required by the Minister under paragraph (2), impose measures requiring relevant undertakings to — (a) offer to consumers with a low income or special social needs tariff options or packages different from those provided under normal commercial conditions, or (b) apply common tariffs including geographical averaging throughout the State, in the light of national conditions.

(4) Where the Regulator considers that any of the services referred to in paragraph (2) have become affordable it may request the Minister to allow it to withdraw any requirement under that paragraph.

(5) In exceptional circumstances, where the Regulator considers that the imposition of measures referred to in paragraph (2) on all providers would result in a demonstrated excessive administrative or financial burden for providers of the service, the Regulator may decide to impose the obligation to offer those specific tariff options or packages to consumers with a low income or special social needs, only on such undertakings designated by the Regulator. Regulation 72 shall apply to such designations *mutatis mutandis*.

(6) Where the Regulator designates undertakings in accordance with paragraph (5), it shall ensure that all consumers with a low-income or special social needs benefit from a choice of undertakings offering tariff options addressing their needs, unless ensuring such choice is impossible or would create an excessive additional organisational or financial burden.

(7) Consumers entitled to the tariff options or packages referred to in paragraph (3) or (5) have a right to conclude a contract either with a provider of adequate broadband or a provider of voice communications services or with an undertaking designated in accordance with paragraph (5), and such providers and undertakings shall ensure that consumers' numbers remain available to them for an adequate period and unwarranted disconnection of their service is avoided.

(8) Undertakings which provide tariff options or packages to consumers with a low income or special social needs pursuant to paragraph (3) or (5) shall keep the Regulator informed of the details of such offers. The Regulator may specify requirements with regard to the timing and format of the provision of information to it in accordance with this paragraph.

(9) The conditions of any scheme to provide special tariff options or packages, common tariffs, including geographical averaging, shall be fully transparent and shall be published and applied in accordance with the principle of non-discrimination. The Regulator may require, where it considers a scheme does not comply with this paragraph, that the scheme be modified or withdrawn.

(10) The Regulator shall, with regard to consumers with disabilities and in consultation with the Minister, take appropriate measures with a view to ensuring that related terminal equipment, and specific equipment and specific services that enhance equivalent access, including where necessary total conversation services and relay services, are available and affordable.

(11) The Minister and the Regulator shall seek to minimise market distortions when acting pursuant to this Regulation.

(12) An undertaking that fails to comply with —

(a) a measure referred to in paragraph (2) or (10), or

(b) an obligation or requirement imposed under paragraph (5), (8) or (9),

commits an offence and is liable on summary conviction to a class A fine.

(13) In proceedings for an offence under paragraph (12) it is a defence for the undertaking charged to show that it took all reasonable steps and exercised due diligence to avoid committing the offence.

Availability of universal service and designation

72. (1) Where the Regulator establishes, taking into account the results, where available, of the geographical survey conducted in accordance with Regulation 100 and any additional evidence it deems necessary, that the availability at a fixed location of adequate broadband or of voice communications services cannot be ensured under normal commercial circumstances in the State or different parts of it, and the Minister is of the opinion that other potential public policy tools cannot ensure access to adequate broadband or to voice communications services in the State or any part of it as identified by the Regulator, then the Regulator may make a designation under paragraph (3) to impose appropriate universal service obligations to meet all reasonable requests by those end-users for accessing such services.

(2) The Minister, in forming his or her opinion under paragraph (1) shall have regard to Article 86(2) of the Directive.

(3) The Regulator may designate for such period as it may determine —

(a) one or more undertakings to guarantee the availability at a fixed location of either or both of the services referred to in paragraph (1), at the quality specified in Regulation 70, throughout the State, or (b) different undertakings or sets of undertakings, to ensure the availability of such services at a fixed location or to cover different parts of the State.

(4) In designating an undertaking under paragraph (3), the Regulator shall use an efficient, objective, transparent and non-discriminatory designation mechanism whereby no undertaking is in principle excluded from being designated. The designation methods adopted shall ensure that the services referred to in paragraph (1) are provided in a cost-effective manner and may be used as a means of determining the net cost of the universal service obligation in accordance with Regulation 75

(5) Where an undertaking designated in accordance with paragraph (3) intends to dispose of a substantial part or all of its local access network assets to a separate legal entity under different ownership, it shall inform the Regulator at the time of the decision to dispose or 6 months prior to the transaction whichever is the earlier date in order to allow the Regulator to assess the effect of the intended transaction on the provision at a fixed location of the services referred to in paragraph (1). Such notification shall include details as to the effect of the intended transaction on either or both of the services referred to in paragraph (1). The Regulator may impose, amend or withdraw specific obligations on the separate legal entity.

(6) An undertaking that fails to inform the Regulator in accordance with paragraph (5) commits an offence and is liable on summary conviction to a class A fine.

(7) In proceedings for an offence under paragraph (6) it is a defence for the undertaking charged to show that it took all reasonable steps and exercised due diligence to avoid committing the offence.

Status of existing universal service

73. (1) The Regulator may continue to ensure the availability or affordability of services other than the adequate broadband internet access service as defined in accordance with Regulation 70(2) or voice communications services at a fixed location that were in force on 20 December 2018, if the need for such services is established in light of circumstances in the State.

(2) The Regulator, with the consent of the Minister, may designate an undertaking to provide the services referred to in paragraph (1) in the State or part of the State.

(3) Any designation made by the Regulator for the purposes of paragraph (2) shall comply with Regulation 72. Financing of those obligations shall comply with Regulation 76.

(4) The Regulator shall review the status of universal service obligations referred to in paragraph (1) within three months after the commencement of these Regulations and every three years thereafter.

Control of expenditure

74. (1) An undertaking designated in accordance with Regulation 72(3) or 73(2) shall, where it provides facilities and services additional to adequate broadband or voice communications services as set out in Regulations 70, 71 and 72 or the continuation of the existing universal service as set out in Regulation 73, establish terms and conditions for the provision of such additional facilities and services in such a way that the end-user is not obliged to pay for facilities or services which are not necessary or not required for the service requested.

(2) An undertaking designated in accordance with Regulation 72(3) shall (a) for the purpose of ensuring that consumers can monitor and control expenditure, provide the specific facilities and services set out in Part A of Schedule 5 as applicable, and (b) put in place a system to avoid unwarranted disconnection of voice communications services or of adequate broadband with regard to consumers referred to in Regulation 71, including an appropriate mechanism to check continued interest in using the service.

(3) Without prejudice to Regulation 97(1), the Regulator may specify the requirements of the specific facilities and services referred to in paragraph (2)(a) and the system and mechanism referred to in paragraph (2)(b).

(4) Paragraph (1) shall also apply to end-users that are microenterprises and small and medium-sized enterprises and not-for-profit organisations.

(5) The Regulator may waive any requirement imposed under paragraph (2) in relation to all or any part of the State if it is satisfied that the relevant facility or service is widely available in, or in any part of, the State.

(6) A designated undertaking that fails to comply with the requirements of paragraph (1) or (2) commits an offence and is liable on summary conviction to a class A fine.

(7) In proceedings for an offence under paragraph (6) it is a defence for the undertaking charged to show that it took all reasonable steps and exercised due diligence to avoid committing the offence. Cost of universal service obligations 75.

(1) Where, following a request for compensation from a provider, the Regulator considers that the provision of a universal service obligation may represent an unfair burden on the provider, the Regulator shall, in accordance with paragraph (3), calculate the net costs of such provision.

(2) A request under paragraph (1) shall be accompanied by such supporting information as may be reasonably required by the Regulator for the purpose of paragraph

(3). The data may be based on such period as may be specified by the Regulator. (3) The Regulator shall calculate the net costs of its provision based on —

(a) the net costs, taking into account any market benefit which accrues to a provider designated for —

(i) the provision of a universal service obligation, or

(ii) the continuation of the existing universal service as set out in Regulation 73, in accordance with Schedule 6, or (b) where applicable, the net costs identified by a designation method in accordance with Regulation 72(4).

(4) The Regulator shall, on the basis of such information, including information supplied under paragraph (2), as it considers sufficient to enable a determination under this Regulation to be made, determine whether an obligation referred to in paragraph (1) represents an unfair burden on the undertaking concerned.

(5) The Regulator shall ensure that the principles for net cost calculation, including the details of methodology to be used are publicly available.

(6) Where the Regulator makes a determination under this Regulation it shall notify the undertaking concerned of that determination together with the reasons for the determination as soon as reasonably practicable after the determination is made.

(7) The accuracy of the accounts or other information, serving as the basis for the calculation of the net cost of an obligation, shall be audited or verified, as appropriate, by the Regulator or by a body approved of by the Regulator and independent of the undertaking concerned.

(8) The Regulator shall make publicly available the results of the cost calculations and the conclusions of any audit or verification undertaken under this Regulation.

(9) A designated undertaking that fails to comply with the requirements of paragraph (2) commits an offence and is liable on summary conviction to a class A fine.

(10) In proceedings for an offence under paragraph (9) it is a defence for the undertaking charged to show that it took all reasonable steps and exercised due diligence to avoid committing the offence.

Financing of universal service obligations and transparency

76. (1) Where the Regulator, on the basis of the net cost calculation referred to in Regulation 75, finds that the net cost of meeting an obligation under Regulations 70 to 73 represents an unfair burden on an undertaking it shall, unless the Minister intends to introduce a mechanism to compensate the undertaking for the determined net costs under transparent conditions from public funds, establish a sharing mechanism administered by it or by a body independent from the designated undertakings, which body shall be under the supervision of the Regulator. Only the net cost, as determined in accordance with Regulation 75, of the obligations provided for in Regulations 70 to 73 may be financed.

(2) Any sharing mechanism established under paragraph (1) shall respect the principles of transparency, least market distortion, non-discrimination and proportionality in accordance with the principles of Part B of Schedule 6. The Regulator may decide not to require contributions from undertakings whose audited national turnover is less than such amount as may, from time to time, be specified by the Regulator, having regard to any views expressed to it under any consultations carried out in accordance with Regulations 101 and 102, as appropriate.

(3) Any charges related to the sharing of the cost of a universal service obligation shall be unbundled and identified separately for each undertaking.

(4) The Regulator shall not under this Regulation, impose on, or collect from, an undertaking that is not providing services within the State, any charge.

(5) The Regulator shall notify each undertaking required to share the cost of a universal service obligation of that undertaking's obligation to contribute to such cost including the amount, manner and timing of payments to be made.

(6) An undertaking which has been notified of its obligation to contribute an amount specified by the Regulator under paragraph (5) shall pay that amount in the time and manner specified by the Regulator.

(7) Any amount payable to the Regulator under this Regulation that remains unpaid may be recovered by the Regulator as a simple contract debt in any court of competent jurisdiction and any such amount shall include interest at the rate per annum standing specified for the time being in section 26 of the Debtors (Ireland) Act 1840 on the amount or part of it remaining unpaid in respect of the period between the date when such amount or part of it fell due and the date of payment of such amount or part.

(8) The Regulator shall, subject to the protection of the confidentiality of any information which it considers confidential, publish an annual report setting out the calculated net cost of universal service obligations, identifying the contributions made by all the undertakings involved and identifying any market benefits that may have accrued to any undertaking designated by the Regulator under Regulation 71, 72 or 73.

(9) The Regulator shall, subject to the Freedom of Information Act 2014, accept as confidential any information provided under these Regulations by an undertaking providing electronic communications networks or services expressed by it to be confidential, except where the Regulator has good reason to consider otherwise.

(10) The Regulator shall publish and make publicly available all information in relation to the principles used for cost sharing, including the details of the mechanism used.

(11) An undertaking that fails to comply with the requirements of paragraph (6) commits an offence and is liable on summary conviction to a class A fine.

Annex 5: Quality of Service Standards

	Annual Targets	National			Sub-National Area 1 - MDIBC			Sub-National Area 2 - NBP			Sub-National Area 3 - Eir Only		
		2018/19	2019/20	2020/21	2018/19	2019/20	2020/21	2018/19	2019/20	2020/21	2018/19	2019/20	2020/21
In Situ Connections Completed (%)													
Within 24 hours of request	80%	85.7%	84.3%	91.0%	83.7%	83.6%	90.4%	87.3%	86.8%	91.9%	86.3%	80.6%	90.6%
Within 2 weeks of request	99.8%	99.3%	99.8%	99.3%	99.1%	99.8%	98.9%	99.7%	99.7%	99.6%	98.6%	99.8%	99.8%
Within 2 months of request	100%	99.8%	100.0%	99.9%	99.6%	99.9%	100.0%	100.0%	100.0%	99.7%	100.0%	100.0%	100.0%
All Other Connections Completed(%)													
Within 2 weeks of request	80%	94.2%	94.5%	94.1%	93.6%	93.5%	95.2%	94.8%	95.9%	92.3%	95.2%	95.4%	93.1%
Within 4 weeks of request	85%	99.0%	98.6%	97.8%	98.9%	98.2%	98.6%	98.9%	98.9%	97.0%	99.3%	99.1%	96.7%
Within 8 weeks of request	90%	99.9%	99.8%	99.0%	100.0%	99.9%	99.5%	99.7%	99.7%	99.1%	99.9%	99.8%	97.8%
Within 13 weeks of request	95%	100.0%	99.9%	99.6%	100.0%	100.0%	99.7%	99.8%	99.9%	99.6%	100.0%	100.0%	99.4%
Within 26 weeks of request	100%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	99.9%
All Other Fault Repairs (%)													
Within 2 working days	80%	81.3%	79.3%	81.5%	85.7%	83.9%	84.1%	79.1%	77.2%	79.9%	81.2%	79.2%	82.0%
Within 4 working days	95%	92.8%	92.2%	93.5%	94.2%	94.2%	94.7%	92.0%	91.2%	92.8%	93.2%	92.7%	93.6%
Within 5 working days	99.8%	95.3%	95.0%	95.9%	96.0%	96.1%	96.5%	94.9%	94.4%	95.6%	95.5%	95.2%	96.0%
Within 10 working days	100%	98.6%	98.6%	98.8%	98.5%	98.8%	98.7%	98.7%	98.6%	98.8%	98.6%	98.5%	98.9%
Direct Access PSTN Fault Occurrence													
Line faults per 100 lines	12.5	10.7	10.7	10.1	5.8	5.5	5.7	20.5	20.9	18.8	9.2	9.3	9
Service Availability													
National Service Availability	0.237	0.17849	0.18437	0.16462	-	-	-	-	-	-	-	-	-
Sub-national Service Availability	0.607	-	-	-	0.08948	0.08658	0.08866	0.35405	0.37515	0.31489	0.15251	0.15918	0.14458

Section

Page

Q. 1 In your opinion are there other relevant factors in relation to supply side trends which ComReg should consider in the context of a VFL services USO? Please give reasons to support your view.	25
Q. 2 Do you agree or disagree with ComReg’s review of the relevant demand trends? Please give reasons to support your view.....	38
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.	38
Q. 4 Do you agree or disagree with ComReg’s preliminary view that there is a requirement to impose new specifications for reasonable access requests for existing end-users? Please give reasons for your answer.....	61
Q. 5 Do you agree or disagree with ComReg’s preliminary view that there is a requirement to re-impose threshold level applicable to new reasonable access requests, as set out in D09/21? Please give reasons for your answer.....	61
Q. 6 Do you agree or disagree with ComReg’s approach to control of expenditure measures? Please provide reasons for your answers.....	65
Q. 7 Do you agree or disagree with ComReg’s preliminary view that there is a continued need for a VFL services USO, post 30 June 2023? Please provide reasons for your answers.....	66
Q. 8 Do you wish to express an interest in being a USP for any future provision of voice only connections and voice communications services VFL under the USO? Please set out your reasons and any other information you deem relevant.....	70
Q. 9 ComReg is of the preliminary view that, absent of: (i) receiving any expressions of interest, or (ii) the availability of an Alternative Infrastructure provider with an Equivalent Service, that is willing to serve end-users commercially; that the current USP, eir, may be best placed to be the USP for voice only connections and voice communications services post 30 June 2023. Please provide reasons for your answer.....	70
Q. 10 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.....	75
Q. 11 Do you agree or disagree with ComReg’s preliminary view that the designation period should be for a maximum period 5 years, unless otherwise amended?	75
Q. 12 Do you have any comments or suggestions on the draft Decision Instrument? Please set out your answer in detail.	85
Q. 13 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.....	103