



An Coimisiún um  
**Rialáil Cumarsáide**  
Commission for  
**Communications Regulation**

## Universal Service

# Establishing that fixed voice communications services cannot be ensured commercially in the State

### ComReg Decision

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**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](http://www.comreg.ie)

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# 1 Executive Summary

- 1 The Commission for Communications Regulation (“ComReg”) is the independent regulator for the electronic communications sector in Ireland. In exercising its functions, ComReg has the objective to promote the interests of users within the Community and in that regard ComReg has an obligation to take all reasonable measures to ensure that all users have access to a universal service<sup>1</sup>.
- 2 The universal service obligation (“USO”) on Eircom Limited (“eir”) to, amongst other things, meet reasonable requests for access to a connection and voice services at a fixed location (“AFL”) expired on 30 June 2023<sup>2</sup>.
- 3 On 10 January 2023 ComReg issued a consultation document titled “Universal Service Requirements Provision of voice only connections and voice communications services at a fixed location (VFL USO)” (“Consultation 23/02”). Consultation 23/02 sought views on proposals in relation to the imposition of a fixed voice USO post 30 June 2023.
- 4 On 20 June 2023 ComReg issued a further consultation titled “Universal Service, Provision of voice only connections and voice communications services at a fixed location, Response to Consultation, Further Consultation and Draft Decision” (“Further Consultation 23/55”).
- 5 In Further Consultation 23/55 ComReg responded to submissions to Consultation 23/02 and set out its preliminary view that availability at a fixed location of voice communications services cannot be ensured under normal commercial circumstances in the State. ComReg also consulted on its revised preliminary views and the revised draft decision instrument.

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<sup>1</sup> Section 12(2)(c)(i) of the Communications Regulation Act 2002, as amended (“the Act of 2002”).

<sup>2</sup> “Universal Service Requirements Provision of Access at a Fixed Location (AFL USO)”, Response to Consultation and Decision ComReg 21/112R, D09/21 (“ComReg D09/21”).

- 6 Regulation 72(1) of the European Union (Electronic Communications Code) Regulations 2022 (“the Code Regulations” and “Regulation 72(1)”) states: “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”.
- 7 The Code Regulations define “voice communications service” as “a publicly available electronic communications service for originating and receiving, directly or indirectly, national or national and international calls through a number or numbers in a national or international numbering plan”.
- 8 Regulation 72(1) has three distinct steps:
- **Step 1:** ComReg establishes whether the availability at a fixed location of adequate broadband or of voice communications services can or cannot be ensured under normal commercial circumstances in the State or different parts of it;
  - **Step 2:** The Minister for the Environment, Climate and Communications (“the Minister”) forms the opinion as to whether other potential public policy tools can or cannot ensure access to voice communications services in the State or any part of it as identified by ComReg; and
  - **Step 3:** ComReg may make a designation to impose appropriate universal service obligations to meet all reasonable requests by those end-users for accessing voice communications services (contingent upon the Ministerial opinion at step 2).
- 9 This document relates solely to Step 1, establishing whether availability at a fixed location of voice communications services can be ensured commercially in the State or different parts of it (in accordance with Regulation 72(1) of the Code Regulations) and sets out ComReg’s decision in relation to establishing this aspect only.
- 10 ComReg has taken into account:
- Voice communications services in a bundle (containing voice and broadband)
  - Voice only connections and voice communications services; and

- The underlying technologies (including network rollouts) and their commercial service availability to deliver voice communications services at a fixed location

- 11 Having considered responses to Consultation 23/02, responses to Further Consultation 23/55, and the evidence summarised in this document, ComReg has established that the availability at a fixed location of voice communications services cannot be ensured under normal commercial circumstances in the State.
- 12 ComReg has communicated this decision to the Minister and requested the opinion of the Minister as to whether other potential public policy tools can or cannot ensure access to voice communications services in the State (“the Opinion of the Minister”).
- 13 Depending on the Opinion of the Minister, ComReg may issue a separate response to Consultation and Decision on the other preliminary views consulted on in Further Consultation 23/55.

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## 2 Introduction

- 14 ComReg is the independent regulator for the electronic communications sector in Ireland. ComReg was established by section 6 of the Act of 2002. ComReg is responsible for the regulation of the Irish electronic communications sector in accordance with national and EU legislation.
- 15 In exercising its functions, ComReg has the objective to promote of the interests of users within the European Communities and in that regard ComReg has an obligation to take all reasonable measures to ensure that all users have access to a universal service<sup>3</sup>.
- 16 At the date of publication of Consultation 23/02 and Further Consultation 23/55 there was a USO on eir to, amongst other things, meet reasonable requests for AFL. The AFL USO designation expired on 30 June 2023<sup>4</sup>.

### 2.1 Consultation 23/02

- 17 On 10 January 2023 ComReg issued Consultation 23/02. The background to Consultation 23/02 is set out in full in that document. Amongst other things, Consultation 23/02 sought views on proposals in relation to the imposition of a fixed voice USO post 30 June 2023.
- 18 Consultation 23/02 consulted on a proposal to make a decision under the Code Regulations, a statutory instrument which had, at that time, been published, but not yet been commenced. The Code Regulations are part of the transposition of Directive (EU) 2018/1972 which established the European Electronic Communications Code<sup>5</sup> ("the Code") a comprehensive set of new and revised rules for the telecoms sector. In Consultation 23/02, it was set out that ComReg anticipated that the Code Regulations would commence in Q1 2023.
- 19 In Consultation 23/02 ComReg formed several preliminary views in relation to the availability at a fixed location of voice communication services, including, subject to the Minister's opinion in relation to potential public policy tools, that a universal service for voice communications services (including voice only connection) at a fixed location ("VFL services") USO was required post June 2023.

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<sup>3</sup> Section 12(2)(c)(i) of the Act of 2002.

<sup>4</sup> ComReg D09/21.

<sup>5</sup> Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (Recast).

- 20 ComReg in forming its preliminary views in Consultation 23/02 considered, amongst other things, the following:
- the new legislative framework (the Code Regulations);
  - market trends and developments, including;
    - 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); and
    - the rollout of the National Broadband Plan ("NBP") and commercial deployments; and
  - information from eir regarding the implementation of the then current AFL USO.
- 21 ComReg received four submissions to Consultation 23/02 (from Alternative operators in the communications market ("ALTO"), eir, National Broadband Ireland ("NBI"), and Virgin Media Ireland Limited ("Virgin Media")) and these submissions are published in ComReg Document No. 23/02s.

## 2.2 Further Consultation 23/55

- 22 Having considered the submissions to Consultation 23/02, ComReg remained of the preliminary view that there was a continued need for a VFL services USO and revised its preliminary views and draft decision instrument. On 20 June 2023 ComReg published Further Consultation 23/55, which consulted on revised preliminary views and a revised draft decision instrument.
- 23 ComReg in forming its preliminary views in Further Consultation 23/55 considered, amongst other things, the following matters which were raised by respondents in response to Consultation 23/02 and which are additional to those considered in Consultation 23/02:
- importance of mobile services;
  - over-the-top ("OTT") services;
  - fibre deployments (a market in transition);
  - economic uncertainty; and
  - variety of wholesale voice over internet protocol ("VoIP") product offerings.

- 24 ComReg outlined in detail the basis for its preliminary view that availability at a fixed location of voice communications services cannot be ensured under normal commercial circumstances in the State. In particular in Chapter 4 of Further Consultation 23/55 ComReg set out:
- the status of the Geographical Survey<sup>6</sup>;
  - why standard mobile services do not provide voice communications services at a fixed location (i.e., in the context of USO);
  - a consideration of OTTs and VoIP services and whether they could ensure the provision of VFL services under normal commercial circumstances; and
  - a summary of the additional evidence ComReg deems necessary to establish whether the availability at a fixed location of voice communications services can or cannot be ensured under normal commercial circumstances.
- 25 ComReg received two submissions to Further Consultation 23/55 (from eir and Pure Telecom Limited (“Pure Telecom”)) and these submissions are published in ComReg Document No. 25/55s
- 26 Having considered the submissions to Consultations 23/02 and Further Consultation 23/55 and the additional evidence it deems necessary (as outlined in this document) ComReg has established that availability at a fixed location of voice communications services cannot be ensured under normal commercial circumstances in the State or different parts of it.
- 27 ComReg has communicated this decision to the Minister and requested the Opinion of the Minister.

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<sup>6</sup> Regulation 100(1) of S.I. 444 of 2022 obliges ComReg to conduct a geographical survey (“Geographical Survey”).

### 3 Establishing whether fixed voice communications services can be ensured commercially in the State

28 Regulation 72(1) of the Code Regulations<sup>7</sup> sets out that ComReg must “establish[es] 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...”.

29 Regulation 72(1) has three distinct steps:

- **Step 1:** ComReg establishes whether the availability at a fixed location of adequate broadband or of voice communications services can or cannot be ensured under normal commercial circumstances in the State or different parts of it;
- **Step 2:** The Minister forms the opinion as to whether other potential public policy tools can or cannot ensure access to voice communications services in the State or any part of it; and
- **Step 3:** ComReg may make a designation to impose appropriate universal service obligations to meet all reasonable requests by those end-users for accessing voice communications services (contingent upon the Ministerial opinion at step 2).

30 This document is focused exclusively on Step 1.

31 This chapter:

- sets out the status of the Geographical Survey;
- summarises the additional evidence ComReg deems necessary to establish whether the availability at a fixed location of voice communications services can or cannot be ensured under normal commercial circumstances.

32 When seeking to establish whether availability at a fixed location of voice communications services can or cannot be ensured commercially in the State, ComReg has taken into account:

- voice communications services in a bundle (containing voice and broadband);
- voice only connections and voice communications services<sup>8</sup>; and
- the underlying technologies (including network rollouts) and their commercial service availability to deliver voice communication services.

33 This chapter then sets out why, having taken that information into account, ComReg has established that availability at a fixed location of voice communications services cannot be ensured under normal commercial circumstances in the State or different parts of it.

### 3.1 Geographical Survey

34 Regulation 100(1) of the Code Regulations obliges ComReg to conduct a Geographical Survey of the reach of electronic communications networks capable of delivering broadband (“broadband networks”) by 21 December 2023 and to update it at least every three years thereafter.

35 In May 2022 ComReg published an Information Notice<sup>9</sup> to indicate to undertakings providing electronic communications networks and services ComReg’s intentions with respect to Geographical Surveys. It set out, amongst other things:

- the information to be obtained for the Geographical Survey can be used by ComReg (and other competent authorities as appropriate) for several of its other functions, including those relating to market analysis, for defining coverage obligations attached to rights of use for radio spectrum and for verifying availability of services falling within the universal service obligations;
- that ComReg will utilise the existing data collection processes and systems currently used to gather data, as appropriate; and

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<sup>8</sup> ComReg when assessing whether availability at a fixed location of voice communications services can or cannot be ensured commercially in the State has taken into account Regulation 70 “Affordable universal service” and in particular Regulation 70(4) which provides that “Where a consumer, enterprise or organisation so requests, the connection referred to in paragraph (1)(b) shall be limited to support voice communications services.” Recital 216 of the Code also provides “Consumers should not be obliged to access services they do not want, and it should therefore be possible for eligible consumers to restrict, on request, the affordable universal service to voice communications services.”

<sup>9</sup> “Conduct of Geographic Surveys under Article 22 of the European Electronic Communications Code”, Information Notice, Reference ComReg 22/37, 11 May 2022.

- the broad timelines envisaged for conducting the Geographical Survey, in particular, that it is envisaged that the first Geographical Survey will be completed by November 2023, in accordance with the obligation to complete same by 21 December 2023.

36 The Geographical Survey captures details of the reach and performance of broadband networks. It is important to note that network reach and performance do not necessarily ensure the availability of retail services under normal commercial circumstances.

37 ComReg already collects a range of data from operators for regulatory purposes, including that which is relevant for the conduct of the Geographical Survey. Where available and relevant, ComReg has taken this data into account in the context of additional evidence.

## 3.2 Additional evidence

38 In assessing whether the availability at a fixed location of voice communications services can or cannot be ensured under normal commercial circumstances in the State or different parts of it, ComReg has taken into account the following additional evidence which it deems necessary:

- relevant market trends and developments as summarised in Consultation 23/02, Further Consultation 23/55, and this document, including eir's network strategy and the rollout of the NBP and commercial developments;
- updated voice only connection and voice communications services data (QKDR);
- section 13D(1)<sup>10</sup> Information requirements ("Information Requirements") and associated responses; and
- relevant responses received to Consultation 23/02 and Further Consultation 23/55.

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<sup>10</sup> Section 13D (1) of the Act of 2002.

### 3.2.1 Relevant market trends and developments

39 ComReg outlined in Consultation 23/02<sup>11</sup> and Further Consultation 23/55<sup>12</sup> the relevant market trends and developments. ComReg has taken these into account in conjunction with all related responses to these consultations. In particular, ComReg has taken into account the following:

- demands 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;
- importance of mobile services;
- OTT services;
- fibre deployments (a market in transition);
- economic uncertainty; and
- lack of wholesale VoIP product offerings.

### 3.2.2 Updated voice only connection and voice communication services data

40 ComReg in Further Consultation 23/55<sup>13</sup> updated the voice communications services information obtained from ComReg's QKDR data collection processes and systems, as set out in Consultation 23/02. ComReg has taken this information into account in this context. In particular, ComReg has taken into account:

- the total number of low-level retail fixed telephony services access lines and subscribers (both commercial and universal service);
- the number of standalone RFTS subscribers; and
- the geographical location of the low-level retail fixed telephony services access lines and subscribers.

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<sup>11</sup> See, in particular, Chapter 3.

<sup>12</sup> See, in particular, Section 4.4.

<sup>13</sup> See, in particular, Section 4.4.1.

### 3.2.3 Information Requirements and associated responses

41 Following consideration of responses to Consultation 23/02, ComReg, using its statutory information gathering powers, issued several information requirements to eir and Pure Telecom to clarify aspects of their respective technical and operational capability, and willingness, to commercially meet requests by end-users to access fixed voice communications services. These responses, full details of the engagement and the key facts established are summarised in Further Consultation 23/55<sup>14</sup>.

### 3.3 Relevant responses to Consultation 23/02 and Further Consultation 23/55

42 At Sections 4.5 and 4.6 of Further Consultation 23/55, the responses to Consultation 23/02, in respect of the need for a VFL USO are summarised and ComReg's response is set out. These sections are repeated in Chapter 4 of this document.

43 Question 1 of Further Consultation 23/55 asked respondents whether they agreed or disagreed with ComReg's preliminary view that availability at a fixed location of voice communications services cannot be ensured under normal commercial circumstances in the State. Responses to this question and ComReg's consideration of and response thereto are set out at Chapter 4 of this document.

### 3.4 Voice communications services

44 ComReg recognises the changing nature of electronic communications services and, in particular, the transition away from voice communications services to broadband-based services. It is anticipated that the number of end-users using voice communications services at a fixed location, provided over a voice only connection (standalone) will decrease over time as alternative networks are deployed, and end-users are migrated to modern alternatives and bundled services.

45 The voice communications services market is mature and in decline, with many retail service providers choosing to exclusively sell bundled product offerings, which may be financially more attractive, while making end-users "stickier".

46 End-users generally have a contractual entitlement to receive a service as opposed to an entitlement to service delivered using a specific technology (unless the terms and conditions of a service explicitly states the underlying technology that will be used to provide a service).

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<sup>14</sup> See, in particular, Section 4.4.2 and Annex 1.

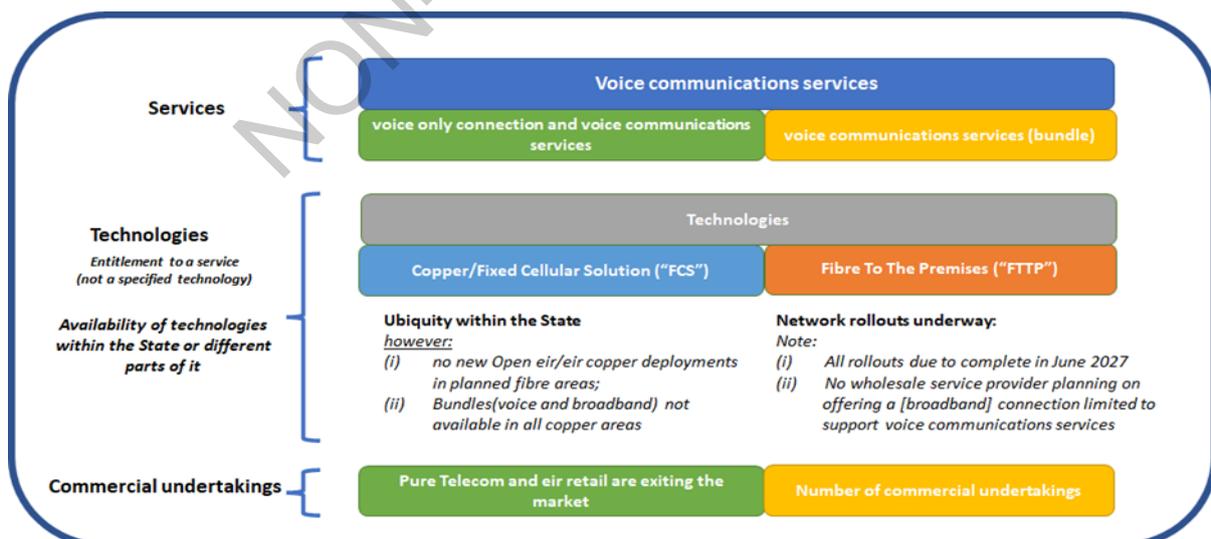
47 The Code Regulations define “voice communications service” as “a publicly available electronic communications service for originating and receiving, directly or indirectly, national or national and international calls through a number or numbers in a national or international numbering plan”.

48 ComReg when assessing whether availability at a fixed location of voice communications services can or cannot be ensured commercially in the State has taken into account Regulation 70 “Affordable universal service” and in particular Regulation 70(4) which provides that “Where a consumer, enterprise or organisation so requests, the connection referred to in paragraph (1)(b) shall be limited to support voice communications services.” Recital 216 of the Code also provides “Consumers should not be obliged to access services they do not want and it should therefore be possible for eligible consumers to restrict, on request, the affordable universal service to voice communications services.”

### 3.5 Analysis

49 ComReg has considered whether the availability at a fixed location of voice communications services can be ensured under normal commercial circumstances and has taken into account:

- Voice communications services in a bundle (containing voice and broadband)
- Voice only connections and voice communications services; and
- The underlying technologies (including network rollouts) and their commercial service availability to deliver voice communications services at a fixed location



- 50 ComReg has taken into consideration the availability of the potential different underlying technologies and the associated commercial service availability that may be capable of delivering fixed voice communications services (e.g., copper, mobile, Fixed Wireless Access (“FWA”), fibre, copper, and Satellite).
- 51 Imagine currently has an FWA product which is sold in a bundle (broadband and voice i.e., not limited to voice only connection and voice communications services). This offering is available at a sub-set of locations within the State.
- 52 eir has used FCS at a small number of locations to provide a fixed voice communications service. No other retail service providers currently provide a fixed voice communications service using mobile infrastructure e.g., using an FCS type service.
- 53 A number of retail service providers currently provide a managed voice over broadband (“VoB”) based retail fixed telephony service (as outlined at paragraphs 108 to 113 of Consultation 23/02). These are provided as part of a bundle and not as a fixed voice only connection and voice communications service. No service providers are currently offering, or appear to have plans to offer, wholesale or retail broadband product(s) that are limited to supporting voice communications services. In addition, service providers are only capable of providing managed VoB 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 the service and this network is not yet nationwide.<sup>15</sup>
- 54 To date, narrowband access (predominantly copper) has been used to provide existing voice only connections and voice communications services (where not sold in a bundle). As indicated in Further Consultation 23/55 the total number of standalone Low Level-Retail Fixed Telephony Service subscriptions has decreased by just over 21% between Q4 2020 and Q4 2022, from 226, 489 to 178,588<sup>16</sup>.
- 55 A number of retail service providers are currently providing voice communications services over voice only connections, including eir, Vodafone, Pure Telecom, Digiweb, Virgin Media, Sky, and others. At the time of publication of Further Consultation 23/55, the majority of these providers were providing on a legacy basis<sup>17</sup> and there were only two undertakings who were actively selling new voice only connections and voice communications services in the State (Pure Telecom (a reseller of wholesale services) and eir retail). It is noted that:

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<sup>15</sup> eir aims to pass 1.9 million premises with fibre by the end of 2026; SIRO aims to pass 770,000 premises, and it is scheduled to complete the deployment by the end of 2024; and the deployment of the NBP network is scheduled to complete in late 2026/early 2027.

<sup>16</sup> See paragraph 86 of Further Consultation 23/55

<sup>17</sup> See paragraph 86 of Further Consultation 23/55.

- eir is a vertically integrated company (operating as both a wholesale undertaking and a retail service provider).
- Pure Telecom is a re-seller of both commercial and regulated wholesale component products, it does not own or operate its own network; it has retail sales and marketing functions and retail provisioning and billing systems. Pure Telecom is reliant on other wholesale undertakings (from whom it purchases commercial and regulated component products) for the delivery of its retail product offerings.
- no undertaking other than eir currently provides voice only connection and voice communications services

56 eir Retail intends to stop selling new fixed voice only connections after 30 June 2023 (although it has indicated that eir retail and Open eir will continue to support existing voice only connection and voice communications services customers and that Open eir will [REDACTED] <sup>18</sup>.  
[REDACTED] <sup>19</sup>.

57 ComReg understands that Open eir, at locations where it has plans to, or is currently rolling out fibre network, will not deploy any new (non-in-situ) copper network to deliver new connections. Open eir has an existing FCS service. eir has also advised ComReg that it plans to withdraw FCS<sup>20</sup>, however there is no committed date for its withdrawal, and no [REDACTED] <sup>21</sup>.

58 In response to Further Consultation 23/55 Pure Telecom indicated that its position has altered. Pure Telecom now states that:

- it has taken the decision to “withdraw from offering consumers a new voice only connection at a fixed location”; and
- it will “continue to service and support all existing voice only connections going forward”.

59 This means that both undertakings who, at the time of publication of Further Consultation 23/55, were selling voice only connection and voice communications services at a fixed location in the State are now planning to cease selling these services. This demonstrates both the declining nature of the market and that commercial statements are subject to change.

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<sup>18</sup> eir 13D response of 02 December 2022.

<sup>19</sup> eir 13D response of 1 August 2023.

<sup>20</sup> Paragraph 27 of eir’s response to Consultation 23/02.

<sup>21</sup> eir 13D response of 06 April 2023.

60 ComReg has taken into account eir's statement that it will continue to serve its existing voice only customers, absent any universal service designation. ComReg notes that circumstances could change leading to commercial decisions which could alter this position.

### **3.5.1 Voice communications services in a bundle (containing voice and broadband) at a fixed location**

61 In Consultation 23/55 ComReg recognises that the majority of new end-users, when offered a choice of a bundle (containing voice and broadband), at the same price as that of a fixed voice only connection and voice communications services, are highly likely to opt for the bundled offer.

62 ComReg has consistently stated that there is nothing currently to prevent any service providers from approaching their existing voice only connections and voice communications customers and seeking to up-sell them to a commercial bundle.

63 ComReg is of the view that where end-users avail of the option to purchase a fixed bundle containing a voice communications service, they are commercially served.

64 In relation to voice communications services provided in a bundle, ComReg notes:

- Imagine currently has an FWA product which is sold in a bundle (broadband and voice). This offering is available at a sub-set of locations within the State.
- A number of retail service providers currently provide a managed voice over broadband ("VoB") based retail fixed telephony service (as outlined at paragraphs 108 to 113 of Consultation 23/02). However, these service providers are only capable of providing managed VoB at premises as part of a bundle that are connected to or passed by next generation broadband. These networks provide a fixed access component of sufficient speed and bandwidth to deliver the service; these networks are not yet nationwide.<sup>22</sup> ComReg notes that while fibre network rollouts are underway, the targeted completion date for all fibre networks is currently June 2027.

### **3.5.2 Voice communications services provided over voice only connections at a fixed location**

65 In relation to voice communications services provided over voice only connections, ComReg notes:

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<sup>22</sup> eir aims to pass 1.9 million premises with fibre by the end of 2026; SIRO aims to pass 770,000 premises, and it is scheduled to complete the deployment by the end of 2024; and the deployment of the NBP network is scheduled to complete in late 2026/early 2027.

- (1) While there are a number of retail service providers currently providing voice communications services over a voice only connection at a fixed location on a legacy basis, there are only two undertakings actively selling fixed voice only connection and voice communications services in the State and both intend to cease to sell this product;
- (2) There are currently no voice communications services over a voice only connection at a fixed location retail offer over FWA anywhere in the State.
- (3) No voice communications services over a voice only connection at a fixed location retail VoB product exists currently. Even if one did, next generation broadband networks capable of providing managed VoB are not yet nationwide.
- (4) The market for fixed voice communications services over a voice only connection is in decline.
- (5) No undertakings are currently offering, or appear to have plans to offer, a wholesale or a retail broadband product that is limited to supporting voice communications services over a voice only connection at a fixed location.
- (6) When the two remaining undertakings selling fixed voice communications services over a voice only connection in the State cease to sell this product (as they have indicated is their intention), there will be no service provider offering to serve new fixed voice communications services customers over a voice only connection on a commercial basis. This is of relevance to both existing and new fixed voice communications services customers. While existing fixed voice communications services over a voice only connection customers are currently being served commercially<sup>23</sup> on a legacy basis, this could change, and the current retail service providers could decide to cease to serve these customers. There is still demand for new voice communications services over a voice only connection customers, although it is recognised that the number of such connections is very small annually and continues to decrease year on year<sup>24</sup>.

66 No other undertakings currently provide voice only connection and voice communications service using mobile infrastructure (e.g. using an FCS type service).

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<sup>23</sup> Both eir and Pure Telecom have made statements regarding continuing to serve their "voice communications services over a voice only connection customers.

<sup>24</sup> See Figures 9, 10, 11 and 12 of Further Consultation 23/55.

67 In its paper “Copper Switch-off: Leaving a legacy for the Future”<sup>25</sup>, eir has signalled its intention to have a rolling programme where services provided over the legacy copper network will be withdrawn on a progressive basis.

68 ComReg is not in a position to state whether or not a premises currently served by a copper network will be served by new fibre network(s) as forecasted “Fibre To The Premises” (“FTTP”) roll-out information is not currently available<sup>26</sup>.

69 There is a possibility that neither new voice only connections and voice communications services nor new voice communications services in a bundle will be available for those outside the geographic reach of fibre networks during this transition period.

70 ComReg notes that no undertakings are currently offering, or appear to have plans to offer, wholesale or retail broadband product(s) that are limited to supporting voice only connections and voice communications services. ComReg notes that this is a commercial decision by network providers as opposed to a technical limitation of their fibre networks.

71 If such products were available, both existing and new fixed voice only connection and voice communications services end-users would potentially be commercially served, where the fibre network rollouts are completed.

## 3.6 Conclusion

72 ComReg has considered whether it is possible to identify discrete parts of the State in which the availability of voice communications services at a fixed location could be ensured under normal commercial circumstances. ComReg has considered this in terms of voice communications services over voice only connections and in terms of bundled services including voice communications services:

- As outlined above, both service providers who were, at the time of publication of Further Consultation 23/55, selling retail fixed voice communications services over voice only connections in the State are planning on stopping selling to new customers. When that occurs there will be no service provider offering fixed voice only connections and voice communications services to new customers in any part of the State.

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<sup>25</sup> Updated available at [Microsoft Word - Whitepaper Leaving a Legacy.docx \(openeir.ie\)](#)

<sup>26</sup> Other than NBI contractual obligations.

- As outlined above, the majority of bundled voice products are dependent on fibre networks. The geographic coverage of these network rollouts is constantly changing, meaning that it is not possible to identify a specific geographic location/region which may or may not be commercially served (as only valid at a specific point in time). ComReg notes that while fibre network rollouts are underway the targeted completion date for all fibre networks is currently June 2027.

73 Therefore, ComReg is unable to identify parts of the State where the availability at a fixed location of voice communications services could be ensured under normal commercial circumstances.

74 For the reasons summarised above, ComReg has established that the availability at a fixed location of voice communications services cannot be ensured under normal commercial circumstances in the State.

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## 4 Relevant responses to Consultation 23/02 and Further Consultation 23/55

### 4.1 Submissions to Consultation 23/02

75 ComReg received four submissions to Consultation 23/02 from ALTO, eir, NBI, and Virgin Media) and these submissions are published in ComReg Document No. 23/55s.

### 4.2 Consultation 23/02 – question 1

76 At section 3.1 of Consultation 23/02 ComReg provided a supply-side market summary and outlined in detail the relevant factors in relation to supply side trends which it had considered in the context of the proposed VFL USO. ComReg proceeded to ask the following question: “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.”

#### 4.2.1 Respondents’ views

77 Responses to this question were received from ALTO, eir, NBI and Virgin Media.

78 ALTO states that: “One very significant issue to new entrant and alternative operators is the lack of a variety of wholesale VoIP product offerings which might could [sic] accommodate the range of possible market entry strategies – this issue has been highlighted to ComReg previously by ALTO. Ireland has remained at the rear of developments in this area for some time and ComReg should seek to remediate the position possibly within wholesale markets.”

79 ALTO also states that: “ComReg should not overestimate the position of Virgin Media in the context of the supply side trends, a cautious approach to announcements and DOCSIS network for voice should be adopted and maintained” and adds that: “...At a time of great economic uncertainty, caused by a build-up of factors from Brexit, Covid-19, the war in Ukraine and now the cost of money with inflation and increased interest rates, there is uncertainty as to how much companies will be able to deliver on their intended investments.”

80 ALTO concludes by agreeing with ComReg’s conclusion at paragraph 83.

- 81 eir states that: “ComReg has failed to acknowledge the important role of mobile services both on the supply and demand sides, repeating the mistakes of the previous USO review. This is all the more surprising in light of the focus of attention on mobile telephony services (MTS) by the European Commission in its Withdrawal Decision requiring ComReg to withdraw the 2021 Draft Decision on the Market Review of Retail Access to the Public Telephone Network at a Fixed Location.”
- 82 eir states that: “The market is already delivering social inclusion through both fixed and mobile voice services however Mobile services are the most affordable”, and that: “Mobile networks already provide connections at locations that cannot reasonably be reached by fixed networks.”
- 83 eir contends that “ComReg has chosen to set aside the significance of mobile telephony despite clear evidence of the substitutability of mobile for fixed voice service and the fact that eir’s mobile network has been the obligation to take all reasonable measures to ensure that all users have access to a universal service fulfilling USO requests for connections at locations that are not service by any fixed network”, and further states that: “FCS has been rendered obsolete by developments in the market for mobile repeaters and ComReg own initiative in the licensing of mobile phone repeaters to enhance indoor coverage”, and that: “ComReg has repeated the same mistakes in this USO review as it adopted in its initial vetoed review of the RFTS and FACO markets.”
- 84 NBI states that: “the market presence of 4G and 5G mobile networks should be..... included in any consideration of relevant supply-side trends in the context of the requirement for a VFL services USO. Likewise, the increasing popularity and usage of OTT services, which include an element of voice over broadband, mean that such services are also relevant and worthy of consideration from a supply-side and/or demand side point of view”.
- 85 NBI concludes by stating that: “In considering the future need for a VFL services USO, it would be advisable to factor in the significant supply-side and/ or demand side impact of these OTT services.”
- 86 Virgin Media states that: “ComReg’s conclusion at paragraph 83 is correct that these networks [Virgin Media and SIRO] cannot yet be relied on to ensure the full availability of VFL services nationally.”

## 4.2.2 ComReg’s response – question 1

- 87 Chapter 3 of Further Consultation 23/55 addresses the following matters which were raised by respondents which are additional to those considered in Consultation 23/02, in particular;

- Importance of mobile services;

- Over-the-top (“OTT”) services;
- Fibre deployments (a market in transition);
- Economic uncertainty; and
- Variety of wholesale VoIP product offerings.

88 Chapter 4 of Further Consultation 23/55 addresses eir’s comments in relation to the FACO Decision and its arguments in relation to mobile providing “social inclusion”.

## 4.3 Consultation 23/02 – question 2

89 At section 3.2 of Consultation 23/02 ComReg provided a demand-side market summary and outlined in detail the relevant factors in relation to supply side trends which it had considered in the context of the proposed VFL USO. ComReg then asked question 2, “Do you agree or disagree with ComReg’s review of the relevant demand trends? Please give reasons to support your view”, the responses to which are considered below.

### 4.3.1 Respondents’ views

90 Responses to this question were received from ALTO, eir, NBI and Virgin Media.

91 ALTO states that: “ALTO agrees with ComReg’s review of the relevant demand trends. ALTO caveats its agreement by highlighting the limited range of wholesale VoIP offerings in the market. Assuming that VoIP or SIP services are more widely available than they are, can be an issue in the presentation of ComReg’s analysis.”

92 eir states that: “... the exercise of a right to VFL does not go hand in hand with the retention of a fixed or indeed a fixed PSTN connection. ComReg should not confuse inertia with the absence of an alternative VFL solution given mobile call volumes and near ubiquitous mobile phone ownership”, and that: “ComReg has not given any consideration to the fact that end-users might be migrated to modern alternatives. Instead ComReg is attempting to limit the options under consideration to re-impose the former USO.”

- 93 eir states that: “ComReg fails to take account of the important fact that broadband has become the anchor product in fixed bundles and voice is typically bundled by default or offered at little extra cost and this results in a significant portion of voice connections having little or no usage. Therefore, it is misleading for ComReg to make sweeping statements about fixed voice service being “required”, and that: “ComReg’s analysis of the demand for VFL is also over simplified as it focuses solely on the demand for standalone VFL and bundles. ComReg does not consider the fact that it does not have visibility of the number of households served by an unbundled VFL and unbundled mobile.”
- 94 NBI expresses the view that “ComReg’s analysis of the main demand trends make sense and are supported by the data it has presented.” In addition, NBI states that: “...NBI welcomes ComReg’s recognition in the consultation that, for the purposes of assessing if an end-user has access to an equivalent service, a bundled offering that includes a managed VoIP service constitutes an equivalent service. This means that, as fibre deployment advances, both within the NBP IA and commercially elsewhere, the requirement for a VFL services USO provided on a standalone basis, either over the legacy network or by other means (such as a fixed cellular solution), should be lessened.”
- 95 Virgin Media states that: “Virgin Media agrees with ComReg’s review of the relevant demand trends. It is however always critical to look at what the market failure is and to see if it could be addressed by other means.”

### 4.3.2 ComReg’s response – question 2

- 96 There is general agreement with ComReg’s analysis of the main demand trends.
- 97 Section 3 of Further Consultation 23/55 addresses matters which were raised by respondents in their responses to question 2 which are additional to those considered in Consultation 23/02, in particular;
- Importance of mobile services;
  - Over-the-top (“OTT”) services;
  - Fibre deployments (a market in transition);
  - Economic uncertainty; and
  - Variety of wholesale VoIP product offerings.

## 4.4 Consultation 23/02 – question 3

98 Following section 3.3 of Consultation 23/02 ComReg then asked question 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”, the responses to which are considered below.

### 4.4.1 Respondents’ views – question 3

99 Responses to this question were received from ALTO, eir, NBI and Virgin Media.

100 ALTO states that: “ALTO submits that there appears to be a limited range of wholesale VoIP offerings in fibre only areas. Therefore, a product with specific profiles and pricing that fulfil the requirements of USO but don’t necessarily require a broadband service to be the anchor service should be considered fully by ComReg. This level of detailed analysis is not clear from the demand trends as presented in the consultation paper.”

101 eir states that: “ComReg must give due consideration to the importance of mobile services. ComReg has chosen to set aside the significance of mobile telephony despite clear evidence of the substitutability of mobile for fixed voice service and the fact that eir’s mobile network (as the USPs network but not necessarily the only mobile networks available) has been the bearer for connections at locations that are not served by any fixed network”, and that: “The growth in mobile coverage and market penetration along with the decline in fixed voice only connections as evidence by ComReg in this consultation make an overwhelming case in favour of mobile ensuring the universal availability of VFL absent any USO. In the case of less remote locations and urban areas ComReg cannot discount the importance of bundles (including broadband bundles that incorporate a VFL element).”

102 eir states that: “ComReg also need to take account of the significance of Over-The-Top (OTT) services which are beginning to displace both fixed and mobile voice services. ComReg has demonstrated its awareness of this in its proposed strategy for 2023-2025 where ComReg observes “While ECS play a fundamental role, OTTs offer a range of services to consumers to enable them to communicate, work, learn and be entertained””, and that: “Some OTT providers offer fixed geographic phone numbers with prices starting from as little as €7.01 per month and with inclusive national, mobile, and international calls for just €15 per month. Therefore, the market delivers complementary access and OTT call offerings that can be combined into an affordable solution for VFL.”

103 NBI states that: “...three further factors are relevant from a demand perspective. These are as follows:

- Extensive full-fibre deployment is displacing legacy fixed networks;
- Withdrawal of copper-based legacy voice services is now approaching;
- Demand for OTT services is contributing to ongoing decline in fixed voice services”,

and that: “... ComReg’s view that a bundled offering which includes a managed VoIP service constitutes an equivalent service for USO purposes should mean that access requests are facilitated via fibre connections either commercially or on the NBP network. NBI considers this to be an appropriate, effective, and proportionate approach.”

104 NBI states that: “...it would make sense to give explicit recognition in its analysis to this important demand factor, which is indicative of the ongoing transformation of electronic communications services, with traditional voice telephony service provided over the legacy network now largely confined to the margins.”

105 Virgin Media states that: “... Virgin Media recognises the role of USO in supporting social inclusion and welcomes the focus on closing the gap between availability and take up of services to address a clear market failure. The goal of USO under the EECC is to avoid the risk of social exclusion, which prevents citizens from full social and economic participation in society, through a lack of access to electronic communications services. This should be an important consideration for ComReg when reviewing demand trends.”

#### 4.4.2 ComReg’s response – question 3

106 Chapter 3 of Further Consultation 23/55 addresses matters which were raised by respondents in their responses to question 3 which are additional to those considered in Consultation 23/02, in particular;

- Importance of mobile services;
- Over-the-top (“OTT”) services;
- Fibre deployments (a market in transition);
- Economic uncertainty; and
- Variety of wholesale VoIP product offerings.

## 4.5 Further Consultation 23/55

107 ComReg received two responses (from eir and Pure Telecom<sup>27</sup>) to Further Consultation 23/55. Question 1 of Further Consultation 23/55 related to the decision made in this document (i.e. that the availability at a fixed location of voice communications services cannot be ensured under normal commercial circumstances) and it is responses to this question that are summarised and responded to below.

## 4.6 Further Consultation 23/55 – Question 1

108 In Chapter 4, ComReg set out the status of the Geographical Survey; why standard mobile services cannot provide voice communications services at a fixed location (i.e., in the context of USO) and a consideration of OTTs and VoIP services. It also summarised the additional evidence ComReg deems necessary to establish whether the availability at a fixed location of voice communications services cannot be ensured under normal commercial circumstances.

109 ComReg, having considered all of the evidence outlined in Chapter 4 of Further Consultation 23/55 indicated that it was of the preliminary view that availability at a fixed location of voice communications services cannot be ensured under normal commercial circumstances.

110 ComReg asked the following question: “Do you agree or disagree with ComReg’s preliminary view that availability at a fixed location of voice communications services cannot be ensured under normal commercial circumstances in the State.”

### 4.6.1 Respondent’s views

111 A response to this question was received from eir. Aspects of Pure Telecom’s response were relevant to this question.

112 eir states that it disagrees with ComReg’s view that the availability at a fixed location of voice communications services cannot be ensured under normal commercial circumstances in the State. eir cites the following three key reasons for its disagreement:

- “ComReg has provided no evidence to support its view. ComReg’s “rationale and reasoning” are merely isolated statements without the required supporting analysis or cogent reasoning to support ComReg’s positions and draft decisions.”

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<sup>27</sup> It is noted that the response from Pure Telecom did not directly answer any of the questions posed.

- “ComReg has rushed its analysis, creating a policy silo which results in uncertainty for the market. It has not conducted a full analysis of the market, including the realities of the market such as the focus on delivering fibre as set out in the digital connectivity strategy. ComReg has failed to consider the changing consumer behaviours regarding the use of voice only which are declining at pace and requirement for a USO designation. ComReg’s “analysis” regarding the decline of fixed voice is in a very abstract and commentary way which fails to actually analyse these numbers in the context of a USO designation”; and
- “ComReg overlooks and dismissed the use of mobile telephony and therefore fails to consider the USO designation in a technologically neutral way.”

113 Pure Telecom in its response states that it has “taken the decision to withdraw from offering consumers a new voice only connection at a fixed location”. Pure Telecom also made the following statements:

- “Going forward, Pure Telecom will only offer consumer voice services as part of a bundle alongside a broadband connection which may be via POTs, or a standalone service accompanied by SIP, depending on the customer's requirements and the technology or infrastructure available”.
- “Our sales and marketing, IT (including billing) and provisioning resources will now be focussed on Pure Telecom’s broadband and bundled offerings to new customers. We will continue to service and support all existing voice only connections going forward”; and
- “Please note that Pure Telecom has observed a significant decline in the requirement for new voice only services in the consumer market”.

## 4.6.2 ComReg’s response

114 ComReg has not failed to provide “adequate evidence” to support its view in relation to the need for a USO, as contended by eir. ComReg’s reasons for its decision in this regard are set in two lengthy and detailed chapters (Chapter 4 of Consultation 23/02 and Chapter 4 of Further Consultation 23/55). The “reasons” cited by eir and criticised as “merely isolated statements” are from the conclusion paragraph of Chapter 4 and represent a summary of the extensive justification given by ComReg. eir does not engage with the substance of the chapters referenced.

- 115 eir states that “[<img alt="redacted" data-bbox="308 95 878 133"/>]”. This is not accurate. ComReg has taken this position into account, indeed it references it extensively in Further Consultation 23/55 and again in Section 3.4 of this document.
- 116 ComReg’s obligation is to establish whether “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” (Regulation 72(1)). In considering this, ComReg has taken into account eir’s statements and that they could change.
- 117 eir states that “eir notes ComReg’s focus on FCS as an acceptable technology for VFL USO. It is, therefore, unclear, and inconsistent on ComReg’s part, how one wireless technology such as mobile telephony cannot replace another wireless technology [FCS] in instances for VFL USO where both rely on the same mobile technology infrastructure and the only difference is the terminal infrastructure used.”
- 118 ComReg’s position is clearly, consistently, and extensively set out in Further Consultation 23/55. In particular, in Section 4.2 titled “Mobile cannot provide fixed voice communications services”. ComReg reiterates the following statements, which deal with this issue:
- “A standard mobile telephony service does not and cannot provide a voice communications service at a fixed location. In many circumstances a mobile telephony service is a close substitute for a voice communications service at a fixed location, however it is not a voice communications service at a fixed location”.
  - “..mobile services are not fixed services. eir’s references to “mobile” in general terms in its submission often conflate mobile infrastructure (which ComReg fully accepts has the capability of providing the underlying connection for VFL services USO as it does currently using FCS) and standard mobile subscriptions (which are incapable of providing a fixed voice service).
- 119 This distinction between fixed and mobile voice communications services in the context of universal service is reflected throughout the provisions of the Code relating to universal service, with multiple references to “at a fixed location”. In particular, in Article 84(2) of the Code which provides “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.” If mobile and fixed services were the same (as eir contend), there would be no need for the Code to make this distinction.

- 120 In relation to eir's contention that ComReg's analysis is rushed, ComReg points to the fact that it has undertaken two lengthy and thorough consultations in relation to this issue over a period of almost a year. ComReg notes that eir has on occasion criticised ComReg for its inaction in this regard (at paragraphs 8 and 9 of its response to Further Consultation 23/22). ComReg notes that the USO designation expired on 30 June 2023 and the new legislative framework came into effect on 9 June 2023. ComReg considers that it has approached its analysis in this regard at an appropriate and considered pace, and that this analysis was not rushed, as alleged.
- 121 ComReg does not agree that its analysis is "not complete" as contended. eir identifies areas of ComReg's analysis where it agrees with the facts presented by ComReg but disagrees with how ComReg has relied upon this evidence. The fact that eir does not agree with ComReg's analysis does not mean that it is "not complete". ComReg is tasked with applying the test as to whether "availability at a fixed location of voice communications services cannot be ensured under normal commercial circumstances in the State ". ComReg is not making a "policy decision" as to whether it is necessary to promote fixed services or not.
- 122 eir then proceeds to make an argument that ComReg can wait until the Minister has defined adequate broadband as "ComReg has not evidenced that normal service would not be in place" and cites eir's pledge to continue to serve its existing voice communications services end-users absent any designation. This argument appears to boil down to an assertion that ComReg can wait as eir has pledged to continue to serve these customers commercially. ComReg's obligation is to establish whether 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 if it so establishes and depending on the Minister's Opinion, ComReg may intervene. eir's position that there is only an obligation on ComReg to intervene if ComReg can show "that normal service would not be in place" is not consistent with the requirements of the Code Regulations.
- 123 eir criticises ComReg for "not considering the entire evidence base" and gives the example of "overlook[ing] the fact that Virgin Media has already deployed fibre networks by referencing 'prospective fibre deployment being planned by Virgin Media'".
- 124 ComReg in Consultation 23/02 paragraphs 60 and 61 addresses Virgin Media's network replacement and extension plans. ComReg notes that Virgin Media's fibre rollout is primarily focused on upgrading Virgin Media's existing network (which is predominantly located in the urban areas). Virgin Media are also extending their network reach through wholesale agreements with wholesale fibre network providers.

- 125 eir criticises ComReg’s Further Consultation 23/55 as being “built on an assumption of a need for voice only fixed USP designation, when all the evidence is pointing to a redundancy of fixed voice only services”. eir alleges that the evidence compiled by ComReg is being used to address the question as to whether fixed voice services can be ensured under normal commercial circumstances and not, whether or not, such services are redundant. ComReg considers that it is acting in accordance with its legislative obligations in this regard.
- 126 ComReg has reviewed and considered the experiences of other European regulators. However, it must apply the law to the specific set of circumstances in Ireland, which it has done.
- 127 eir then elaborates on its position that “ComReg overlooks and dismissed the use of mobile telephony and therefore fails to consider the USO designation in a technologically neutral way.”
- 128 At Section 3.1 of Further Consultation 23/55 ComReg detailed the importance of mobile services within its discussion of retail voice communications service market developments. ComReg at section 4.2 of Further Consultation 23/55 outlines in detail why mobile cannot provide fixed communications services, which demonstrates that eir’s assertion is unfounded. In response to eir’s assertion that “ComReg has continued to overlook mobile telephony as a lower cost solution that already prevents the risk of social exclusion, a basis for the implementation of USO” ComReg reiterates its statement that “...ComReg is not analysing if ‘the market is delivering social inclusion’ it is assessing whether the specific service (fixed voice communications services) can be ‘ensured under normal commercial circumstances’”. This is what Regulation 72(1) of S.I. 444 of 2022 requires ComReg to establish prior to a USP designation.” (emphasis added).
- 129 In relation to the points eir makes in relation to the Minister’s opinion under Regulation 72(1) of the Code Regulations, ComReg is aware of and has taken full account of the fact that ComReg’s role in respect of certain aspects of universal service is contingent on the Minister taking certain actions, including forming 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. ComReg will inform the Minister and will await the opinion of the Minister as to whether other potential public policy tools can or cannot ensure access to voice communications services in the State or any part of it as identified by ComReg.

- 130 ComReg notes Pure Telecom's response to Further Consultation 23/55 which states that it has taken the decision to cease selling new voice communications services connections. This decision means that both undertakings who were at the time of publication of Further Consultation 23/55 selling voice communications in the State are now planning to cease, or have ceased, selling these services. This change demonstrates both the declining nature of the market and that commercial statements are subject to change. This development provides further evidence for ComReg's determination that the availability at a fixed location of voice communications services cannot be ensured under normal commercial circumstances in the State.

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## 5 Decision Instrument

### 1. STATUTORY FUNCTIONS AND POWERS

- 1.1. This Decision and Decision Instrument is hereby made by the Commission for Communications Regulation (“ComReg”) for the purposes of establishing that the availability at a fixed location of voice communications services cannot be ensured under normal commercial circumstances in the State in accordance with Regulation 72(1) of the European Union (Electronic Communications Code) Regulations 2022 (“the Code Regulations”).
- 1.2. This Decision and Decision Instrument is made:
- i. Pursuant to Regulation 72(1) of the Code Regulations;
  - ii. Having regard to the tasks, functions, and objectives of ComReg set out in sections 10 and 12 of the Communications Regulation Act 2002, as amended (“the Act”) and Regulations 4 and 5 of the Code Regulations;
  - iii. Having regard to the functions and powers conferred upon ComReg by Regulation 72 and Regulation 70 (in particular, Regulation 70(4)) of the Code Regulations;
  - iv. Pursuant to and having regard to Directive 2018/1972 of the European Parliament and of the Council of 11 December 2018<sup>28</sup> 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 consulted pursuant to Regulation 101 of the Code Regulations;
  - vii. Having had regard to the submissions made by interested parties in response to ComReg Document No 23/02 and ComReg Document No. 23/55; and
  - viii. Having had regard to the analysis and reasoning set out in ComReg Document No. 23/02, ComReg Document No. 23/55, and this decision document (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;
- i. terms used are as defined in the Code Regulations unless the context otherwise admits or requires;

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<sup>28</sup> OJ No. L 321, 17.12.2018, p. 36

- ii. references to European legislation, primary legislation or secondary legislation shall be construed as references to that legislation as amended from time to time;
- iii. words in the singular form shall be construed to include the plural and vice versa, unless the context otherwise admits or requires;
- iv. 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; and
- v. examples shall not be construed to limit, expressly or by implication, the matters they illustrate.

2.2. In this Decision Instrument;

**“Decision Instrument”** means this decision instrument;

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

**“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.

### 3. **DECISION**

- 3.1. Having taken into account the matters outlined in ComReg Document No. 23/02, ComReg Document No. 23/55, and this decision document, ComReg has established that the availability at a fixed location of voice communications services cannot be ensured under normal commercial circumstances in the State.

### 4. **STATUTORY POWERS NOT AFFECTED**

- 4.1. 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.

### 5. **EFFECTIVE DATE**

- 5.1. This Decision and Decision Instrument is effective from 12 December 2023 and shall remain in full force and effect unless amended by ComReg.

**ROBERT MOURIK**

**CHAIRPERSON**

**THE COMMISSION FOR COMMUNICATIONS REGULATION**

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