



Commission for  
**Communications Regulation**

# **Universal Service Obligation Provision of access at a fixed location**

**Submissions to Consultation 16/31**

## **Submissions to Consultation**

**Reference:** ComReg 16/31s

**Version:** Final

**Date:** 29/07/2016

**An Coimisiún um Rialáil Cumarsáide  
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## Submissions Received from Respondents

Document No:	16/31s
Date:	29 July 2016

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# 1 ALTO

# alto

alternative operators in the communications market

**Consultation: Universal Service Requirements - Provision of Access at a Fixed Location - AFL, Response to Consultation, Further Consultation and Draft Decision - Ref: 16/31**

**Submission By ALTO**

Date: June 13<sup>th</sup> 2016

ALTO is pleased to respond to the Consultation: Universal Service Requirements – Provision of Access at a Fixed Location – AFL. Response to Consultation, Further Consultation and Draft Decision – Ref: 16/31.

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

### **Preliminary Remarks**

ALTO is concerned about the TERA inputs surrounding the proposal for service availability metrics, rather than the traditional Line Fault Index – LFI, and Event Based Fault Repair – EBFR, targets. ALTO members are concerned that TERA has taken diametrically opposed view of Service Level Agreements – SLAs, to the views shared by the industry.

ALTO submits that its is deeply concerning that Annex 3 of the ComReg consultation paper which supports Clause 7.3 of the Draft Decision, runs counter to the Draft Determination Issued by ComReg in the Towerhouse versus Eir dispute, taken by various ALTO members.

ALTO submits that the TERA position does not, and could not be said in any manner to act in the best interests of the end user/consumer.

ALTO notes that ComReg seeks to issue its Decision for the 1<sup>st</sup> July 2016. ALTO submits that such a short period must be insufficient to permit ComReg to properly consider the very serious matters and concerns that are replete throughout this consultation. ALTO submits that if these most sensitive and serious matters are rushed through, there is a risk of detriment to end users/consumers and the industry.

ALTO submits further, that ComReg must avoid classifying services to end users/consumers based on whether or not those end users/consumers are situated with an NBP intervention area, an area facilitated by Eir alone, or areas where ComReg deems competition to be adequate on an *ex ante* basis, or at a given point in time.

ALTO notes that the cost of the USO claims from Eir, the applicant, appear to be spiralling upwards, when Eir has very clearly and publicly undergone a massive cost reduction exercise. ALTO calls on ComReg to closely analyse this issue, by reference to the submissions for USO funding made, and to look in particular at organisational cost reduction activities as being applied to USO services. Such an assessment must, it is submitted, result in overall efficiency gains. In the event that no efficiency gains are apparent, then ComReg must undertake deeper inspection of the costs associated with USO and compare those costs with commercial operators.

ALTO has written to ComReg concerning various applications for USO funding, and in the last correspondence dated 5 February 2015, ALTO called for ComReg to expedite its work in respect of interminable USO funding claims from Eir. We said:

*“We request that ComReg sets out its intentions to consult on its assessment of Eircom’s USO funding applications and present industry with a prescribed schedule setting out the timing of any such consultations. ComReg will undoubtedly appreciate that given the material sums involved which stand at an aggregated of €25 million the industry, will need this information to properly plan for full engagement in any consultation process. ALTO looks forward to reviewing the updated and required amended work program and plan for consultation on funding applications that may be made by the USP in 2015.”*

A response was received to the above correspondence on 23 March 2015, which resulted in little or no action to resolve the funding issues. At the date of drafting, the exposure to industry in relation to outstanding USO funding runs to **€50.83m**. This is an unacceptable and indicative of a severe organisational inefficiency on ComReg's part. **See Appendix 1.**

ALTO submits that the current situation whereby a single Universal Service Provider – USP, maintains continued and deeply time lagged applications for funding is entirely inappropriate and at best unsustainable. This issue comes into acute focus when new entrant undertakings potentially at risk of having to contribute to any fund, where a burden is assessed on the national network can not simply and retrospectively open their accounts in order to facilitate an incongruent and untimely review of any relevant burdens that have the potential, subject to analysis, to be shared by industry.

We note ComReg's remarks at page 15 of the consultation document, but cannot accept them:

*“The assessment of universal service funding applications is a matter that is separate from the designation of a USP and it is not addressed in this consultation.”*

ALTO calls on ComReg (again – as it has since 2010), to remedy its temporal assessment of any USO and in doing so remove the persistent risk to the new entrant community of having to pay for something that it in effect, gets little or no benefit from. There is also a clear issue that the USO compensation seeker has failed to increase prices in line with the price cap allowances (at CPI-0) to the tune of **€45m** (cumulatively to the end of 2014), a matter also addressed in this response below.

ALTO's overall position on USO has been communicated to ComReg on numerous occasions at this juncture. ComReg must endeavour to bring regulatory certainty to national network and to competitors, when dealing with the issue of USO and indeed the issue of USP designation. It remains ALTO's view that there may come a time in the not distant future where no single USP will be designated or indeed be desirable, given the nature of the Irish Communications landscape and proper relevant market forces.

## **Response to Consultation Questions:**

**Q.1. Do you have any further submissions on our preliminary view that there is a continued need for an AFL USO for the period commencing 1 July 2016? Please give reasons to support your view.**

A. 1. ALTO agrees with ComReg's preliminary view that the USO should continue beyond 1 July 2016. No limitations should be placed on any other party wanting to become the USP or jointly operate such services.

## **Functional Internet Access – Report Section 5**

**Q. 2. Do you agree or disagree with our preliminary view that it is unlikely to be necessary to specify fast broadband FIA requirements inside the NBP intervention area but that it may be necessary in future to specify such obligations at locations outside the intervention area? Please give reasons to support your view.**

A. 2. ALTO does not agree with the ComReg preliminary view that it is unlikely to be necessary to specify fast broadband FIA requirements inside the NBP intervention area but that it may be necessary in future to specify such obligations outside of the intervention area.

### Intervention Area(s)

Should Eir decide to commercially choose what would have been the Intervention areas with the result of Eir providing services in one street and the NBP provider in another, such a situation would require ComReg to mandate the operator of the USO on a street-by-street basis rather than an area basis. This poses obvious problems.

### Outside Intervention Area(s)

Without USO there would be no provider of last resort to meet uneconomic requests to install services and the customer would ultimately lose out. It is also questionable, as a matter of law and regulation whether ComReg can permit such a scenario to arise.

**Note:** USO costs should logically reduce as a result of NBP intervention areas coming into existence. Successful tenderers would become natural USPs as a result (and as mentioned above).

**Q. 3. Do you agree it is not appropriate at this time, for July 2016, to decide whether or not to specify fast broadband FIA requirements at locations outside the intervention area? Please give reasons to support your view.**

A. 3. ALTO submits that there is an acute lack of detailed line performance information for current generation broadband outside of the intervention areas. ALTO calls on ComReg to conduct a detailed study to inform such a decision to enable the optimum route to such to be achieved – for example, will the answer be market driven or will it require permitted state aid?

While some urban areas are enjoying high speed broadband, there are still premises in urban areas that are not able to avail of high speed broadband and many others that fall between urban and the designated intervention areas that are still served by traditional broadband at much slower speeds. ALTO supports more research to achieve an informed and cost effective solution.

**Q. 4. In your opinion, when FIA is reviewed in the future how should the minimum data speed be determined? Do you have a view about what the speed should be? Please give reasons to support your view.**

A. 4. ALTO submits that there is insufficient information available in the Irish

market to take a competent view for the specific characteristic of Functional Internet Access. ComReg has not set out the various antecedents that would be expected in order to address this issue with any degree of accuracy, confidently, or competently for that matter.

**Q. 5. When do you think that we should revisit this issue? Please give reasons to support your view.**

A. 5. ALTO submits that ComReg should work with the DCENR to address customers with no broadband (current or next generation) as the priority for NBP. This would focus investment where it is required and avoid the expense of a costly interim solution. ALTO considers that ComReg should revisit this issue in approximately 2 years, from now, as by that time the NBP should be in deployment phase and decisions for the Intervention area will be set out.

**Q. 6. Do you agree that we should maintain the current FIA requirements for the time being? Please give reasons to support your view**

A. 6. ALTO agrees that the FIA should be maintained for the time being. ALTO members are aware that certain subscribers remain on dial-up FIA, those subscribers should be the highest priority for the NBP and ComReg.

## **Reasonable Access Requests – Report Section 6**

**Q. 7. Do you agree or disagree with the regulatory options for reasonable access requests as set above? Are there other options that we should consider? Please give reasons to support your view.**

A. 7. ALTO agrees with the regulatory options considered by ComReg, however we submit that the scenarios identified do not, at all, consider the potential problems that may arise due to wholesale issues.

1. ALTO agrees with maintaining the threshold for USO requests at €7000 for the reasons given in the consultation;
2. The proposed new approach that Eir will not have to meet requests for new lines will create a new dimension of issues at the wholesale layer, and this is unsatisfactory.
3. ALTO submits that ComReg consultation has not fully considered the regulatory options given the absence of wholesale considerations.

**Q. 8. What do you believe is the most appropriate factor(s) to define a reasonable request? Are there other factors which you believe we should consider when assessing what defines a reasonable request? Please give reasons to support your view**

A. 8. ALTO submits that this question has been framed in order to limit the answer as to what should be included. ALTO submits that in many ways, the answer can be unpredictable as every installation will be slightly different.

In our view the question should be what is unreasonable? The answer is simply that it is unreasonable to break the €7k threshold, unless the additional cost is funded by the customer.

**Q. 9. What is your view regarding how to assess if the alternative infrastructure is affordable? Please provide reasons to support your view.**

A. 9. ALTO submits that in the usual course, the customer will decide based on their need for the service and their ability to pay. However, with the loss of the telephony rebate scheme there is a clear risk that the price for service may be unaffordable to some. If ComReg look to a benchmark price and the relevant terms of service of Eir applicable, are the main considerations where Eir is obliged to supply. The market will pay certain prices, and drive demand and supply accordingly.

**Q. 10. Do you agree that indoor coverage is an important factor in assessing alternative connections and PATS? Please provide reasons to support your view.**

A. 10. ALTO submits that it is not reasonable to expect end users to have to go outside of the premises to receive and make telephone calls hence we would agree that the service should be provided to an appropriate quality within the actual premises. Furthermore, it is not reasonable for able people and some may question whether this meets the obligation of equivalence of access for people that may be unwell, with special requirements, or with a disability. We therefore agree that indoor coverage is an important factor in assessing alternative connections and PATs.

**Q. 11. Do you agree that where a threshold is set, only costs that can be attributed to the individual end-user should be measured and that the estimated cost of connecting an end-user should also be based on the least cost technology to provide the required service, irrespective of the technology the USP choose to utilise in practice? Please provide reasons to support your view.**

A. 11. ALTO agrees with ComReg's proposition.

**Q. 12. Do you agree that end-users should be entitled to adequate and regular information regarding their request for connection? Please provide reasons to support your view.**

A. 12. ALTO submits that all end-users should be kept informed of the progress of their request for connection so that their expectations are properly managed even if the request is to be rejected which we believe will increase rapidly with the proposed scheme.

## Quality of Service – ComReg Report Section 7

**Q. 13. Do you agree with the approach taken to estimate the predicted fault occurrence based on weather, line length and overhead percentage? Please provide reasons and evidence to support your view.**

A. 13. ALTO does not agree with the TERA three criteria for predicting the Line Fault Index – LFI.

While the components are clearly influential there are other criteria that should be included. For example, the level of investment within the access network in maintenance and new plant is important (could be linked to the ages of the poles, etc.). Eir has been the subject of economic studies looking at how some incumbents can be asset stripped and the continuing changing ownership at Eircom has led to periods where we believe underinvestment was made in the access network. Eir may claim a high proportion of new poles following the 2014 storm; however what percentage of these new poles were due to potential underinvestment in maintenance.

ALTO considers and strenuously submits that TERA should modify its model to test against maintenance investment levels on a regional basis. In many ways Clause 428 of the consultation highlights our point.

ALTO also submits that TERA should bench mark the network LFI against similar networks.

**Q. 14. Do you agree with the preliminary view that any sub-national targets should be in accordance with the 3 areas defined in the TERA reports? Please provide reasons and evidence to support your view.**

A. 14. ALTO agrees with ComReg’s preliminary view that any sub-national targets should be in accordance with the 3 areas defined (Eir only, NBP, and market driven infrastructure) as defined in the TERA reports.

ALTO agrees with the TERA analysis of the incentives to invest and to provide certain service levels is increased where there is competition. However as in our response to question 13 we consider this question support our view that investment has an impact on the LFI.

**Q. 15. Do you agree with the preliminary view that fault occurrence targets and repair targets should be combined to provide a service availability target? Please provide reasons and evidence to support your view.**

A. 15. ALTO considers this a most unhelpful and un-useful proposal and is to be found wanting for care for a/the key stakeholder in this debate, i.e., the end-user/customer.

There are two key parameters for the customer here:

1. The end-user/customer never wants his line to go faulty; and
2. If the line does go faulty it must be fixed quickly.

The problem with having a single availability figure is that it is not good at dealing with events – i.e., faults are events and must be managed as an event, i.e., a fix time of X period.

The industry has spent several years moving away from availability SLAs within the wholesale contracts given problems with Eir SLA working hour definition issues that creep in – it's also difficult to set meaningful SLA targets. While we can see what TERA are trying to do, we do not consider this approach end-user customer friendly and suggest we go back to LFI SLA per area and event based SLAs with an event base service credit regime. (Emphasis Added)

ALTO does not agree with the statements in 438 as irrespective of the using LFI and event based SLAs versus availability. The investment criteria can be developed in the same manner under both regimes.

**Q. 16. Do you agree with the preliminary view that a service availability target should be set nationally and sub nationally by area? Please provide reasons and evidence to support your view.**

A. 16. ALTO considers that the concept of availability should be dropped entirely. ALTO can see however, how the LFI and targets could be set on a sub-national basis given the type of network involved. However, ALTO considers that the event based repair SLAs should continue on a national basis.

**Q. 17. Do you agree with the preliminary view that the national service availability target should be 99.94% and the target for each sub-national area should be 99.86%? Please provide reasons and evidence to support your view. If not, what alternative availability targets do you believe are justified and why?**

A. 17. ALTO does not agree to use availability targets for the sub-areas for the reasons given in our response to Q15, above. ALTO can agree to varying LFI targets, but based upon the same event based repair targets nationally.

**Q. 18. Do you agree with the preliminary view that end-users that have service availability for >10 days should be automatically refunded? Please provide reasons and evidence to support your view.**

A. 18. ALTO submits that for business customers members could contract to a compensation scheme linked to the nature of the service within a fixed term contract. We would be concerned if this change caused us to have to re-open fixed term business contracts that have been negotiated, sometimes over many months. Where business customers and particularly larger customers are concerned, the negotiating strength is often held by the customer (and such arrangements are often outside the scope of USO discussions).

ALTO assumes that the question is addressing the situation where service has not been available for greater than 10 days and that the question contains a typo. We would like to understand from ComReg who is paying the €10 charge? For example, is Eir simply adding it to their annual claim for onerous burden in which case the €10 is ineffective as an incentive on Eir to maintain efficient network performance and which wastes considerable resource processing the payment to the end customer?

We consider further transparency as to how the €10 is funded and the operation of the process is required before an informed answer can be provided.

**Q. 19. Do you agree with the preliminary view that the connection targets levels that are in place are appropriate for sub national targets? Please provide reasons and evidence to support your view.**

A. 19. ALTO agrees with the ComReg's preliminary view that the connection target levels that are in place are appropriate for the sub-national targets as there is only little variance across the regions.

**Q. 20. Do you agree with the preliminary view that the measurement of connection targets at sub-national level is appropriate? Please provide reasons and evidence to support your view.**

A. 20. ALTO agrees with the ComReg preliminary view that the measurement of connection targets at sub-national level is appropriate.

**Q. 21. Do you agree with the preliminary view in respect of the measurement, publishing and auditing of the performance figures? Please provide reasons and evidence to support your view.**

A. 21. ALTO agrees agree with the ComReg preliminary view in respect of the

measurement, publishing and auditing of the performance figures as the transparency allows others to view the numbers and test them against the performance being experience.

**Q. 22. Do you agree with the preliminary view that the performance targets should be commenced from 1 July 2016? Please provide reasons and evidence to support your view.**

A. 22. ALTO agrees with ComReg's preliminary view that the performance targets should commence from 1 July 2016. Even if Eir cannot automate the results initially, the data should be there and these sorts of figures could easily be generated manually until the automation is in place, i.e., we no longer buy the argument of months of delay due to systems development as this is a post processing activity.

**Q. 23. Do you agree with the preliminary view that the necessity for a review of the performance targets should be examined in 2 years? Please provide reasons and evidence to support your view.**

A. 23. ALTO agrees with the ComReg preliminary view that the necessity for a review of the performance targets should be examined in 2 years. In time we should be aware of whether the changes are working and hopefully the NBP will be in the deployment phase so that changes can be monitored more closely.

#### **Affordability – ComReg Report Section 8**

**Q. 24. Do you agree with our preliminary view that the obligation to maintain geographically averaged prices should be maintained? Please provide reasons to support your view.**

A. 24. ALTO agrees with ComReg's preliminary view that the obligation to maintain

geographically averaged prices should be maintained. The digital divide is already a serious national issue and not to maintain geographically averaged prices would raise further political issues given it would be the rural areas that are most likely to see the higher charges.

**Q. 25. Do you agree or disagree with our preliminary view that at this time a requirement to offer Social Tariffs should not be introduced? Please give reasons and/or evidence to support your view.**

A. 25. ALTO agrees with the ComReg's preliminary view that at this time a requirement to offer Social Tariffs should not be introduced as prices of telephone services have fallen in real terms over many years and we would agree with ComReg that packages offered commercially ensure all customers can access voice services at affordable prices.

#### **Control of Expenditure – ComReg Report Section 9**

**Q. 26. Do you agree or disagree with our preliminary view that the USP should be required to continue to provide its Disconnections Policy? Please give reasons to support your view.**

A. 26. ALTO agrees with the ComReg's preliminary view that the USP should be required to continue to provide its Disconnections Policy for the reasons provided by ComReg such as to prevent misuse of the service through fraud or deliberate non-payment of bills.

**Q. 27. Do you agree or disagree with our preliminary view that the USP should be required to continue to provide a Phase Payment Plan for connection fees? Please give reasons to support your view**

A. 27. ALTO agrees with the ComReg's preliminary view that the USP should be

required to continue to provide a Phased Payment Plan for connection fees to assist the customer manage the hurdle of a large one of cost.

**Q. 28. Do you agree or disagree with our preliminary view in respect of the terms and conditions of contract? Please provide reasons to support your view.**

A. 28. ALTO agrees with the ComReg's preliminary view in respect of the terms and conditions of contract as such is a mandatory requirement of the USO and Users rights European and Irish legislation and certain conditions are helpful for these types of service.

#### **Designation of Universal Service Provider(s) – Report Section 10**

**Q. 29. Do you agree with our proposal to designate a USP to deliver AFL USO for a period of 5 years, with a review to take place after 5 years or sooner if circumstances justify it? Please give evidence and reasons to support your view.**

A. 29. ALTO agrees with ComReg's proposal to designate the USP to deliver AFL USO for a period of 5 years, with a review to take place after 5 years or sooner if circumstances justify it. Given the potential changes to the market that NBP and evolving technologies may bring, it would seem sensible to be able to stimulate a review only if countervailing circumstances justify it.

**Q. 30. Do you agree with our proposal that the USO designation should be applied to the geographic area of the entire State? Are there other factors which should be considered by us in this regard? Please give evidence and reasons to support your view.**

A. 30. ALTO agrees with the ComReg's proposal that the USO designation should

be applied to the geographic area of the entire State, as even in highly populated urban areas with competition it may still not be possible to achieve commercial supply in some instances.

**Q. 31. Do you agree with our preliminary view that the most appropriate approach is to designate Eir as the USP from 1 July 2016? Please give evidence and reasons to support your view.**

A. 31. ALTO agrees with ComReg's preliminary view that the most appropriate approach is to designate Eir as the USP from 1 July 2016. The reason for this view is they are the only operator with ubiquitous access throughout the State for voice services. No other operator would reasonably be able to duplicate this essential facility in a reasonable timeframe to support the AFL service. ComReg's own analysis gives significant weight to this proposition.

**Q. 32. Are there other factors or options which should be considered by ComReg in making a designation in respect of a USP? Please give evidence and reasons to support your view.**

A. 32. ALTO submits that the following factors need to be considered in ComReg in making a designation in respect of a USP:

1. As can be seen under paragraph 3 below the cost of the USO appears to be spiralling when reviewing the costs claimed by Eir over recent years. This would appear inconsistent with the cost reduction initiatives within Eir that have hit the press from time to time and the fact that the country has been in recession for most of this period causing low levels of new housing development.
2. The consultation lacks any discussion of cost reduction through new innovation and leads to questions to whether the charges are those of an efficient operator.

ALTO submits that far greater transparency is required from both Eir and ComReg, as to whether there is value for money in the services provided, and what efforts are being made to reduce these costs.

3. ALTO members remain concerned as to the complete lack of transparency surrounding the Performance Improvement Plans that were agreed between ComReg and Eir and this raises questions as to whether the correct options were taken in recent years as a key stakeholder – i.e., the industry was effectively excluded from the negotiations relating to those plans.

### **Eir USO retrospective funding claims - €50.83m**

1. For the year 2010 to 2011 Eir made a retrospective USO funding application to ComReg in the sum of €9.95m<sup>1</sup>;
2. For the year 2011 to 2012 Eir made a retrospective USO funding application to ComReg in the sum of €7.26m<sup>2</sup>;
3. For the year 2012 to 2013 Eir made a retrospective USO funding application to ComReg in the sum of €7.95m<sup>3</sup>;
4. For the year 2013 to 2014 Eir made a retrospective USO funding application to ComReg in the sum of €11.3m<sup>4</sup>; and
5. For the year 2013 to 2014 Eir made a retrospective USO funding application to ComReg in the sum of €11.3m<sup>5</sup>.

**Total claimed: €50.83m**

ALTO remains of the opinion that there is no unfair burden on Eir acting as USP, in

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<sup>1</sup> ComReg Document Reference 14/93

<sup>2</sup> ComReg Document Reference 14/117

<sup>3</sup> ComReg Document Reference 14/117

<sup>4</sup> ComReg Document Reference 15/32

<sup>5</sup> ComReg Document Reference 16/37

any year outstanding above, given the market share maintained by Eir in the circumstances and as identified within the consultation paper as being 70%.<sup>6</sup>

Since September 2009 alone, based on CPI data from the Central Statistics Office, Eir could have increased retail line rental prices by as much as 5.42%. As can be seen from a cursory assessment that this would have translated into additional revenue to Eir in excess of **€45m** since that time and would have contributed an additional €12.3m in 2013 – 2014 alone.

ALTO submits that given the magnitude of the revenue opportunities passed over by Eir (including through promotions for non-USO services) over the last several years for commercial/other reasons and how fundamental the decision not to avail of those opportunities are to the matter of USO cost recovery and funding, there would appear to be no basis for entertaining any application for such funding, at least as it relates to the service of AFL.

**Q. 33. Do you agree or disagree with our draft assessment of the impact of the proposed options? Please set out reasons for your answer.**

A. 33. ALTO agrees that the draft assessment provides a relatively succinct account of the ComReg preliminary views and our views to the draft assessment aligns to our responses to the various questions in this consultation.

**Q. 34. Do you have any comments or suggestions on our draft Decision Instrument? Please set out your answer in detail.**

A. 34. ALTO submits the following remarks:

1. In relation to draft Decision Instrument Clause 7.2, ALTO considers the Service availability requirements to be wholly backward step taking the industry back some 10 years. Industry has worked tirelessly over the last years to move to event based SLAs as they are very clear and simple and

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<sup>6</sup> Decision D12/14 (Document No. 14/89).

are not undermined by complex definitions. That Clause is unacceptable in its current form.

2. In relation to draft Decision Instrument Clause 7.3, ALTO members are significantly concerned that the proposals within Annex 3, which supports this Draft Decision appear to be opposite to the draft determination issued by ComReg Compliance team on the 20 May 2016 (Towerhouse dispute) which has moved from a system of allowing some fault not being resolved and the target still being met, to raising all the targets to 100%. ALTO cannot agree to the adoption of this approach, as it would conflict entirely with the industry by supporting the determination to the Service Assurance Dispute. It is unbelievable that ComReg have chosen to adopt such a deeply flawed and conflicted position.
3. In relation to draft Decision Instrument Clause 7.4, ALTO submits that there is insufficient information from ComReg as to who is actually funding this 10 Euros. If Eir subsequently claim this as an unfair burden and the industry is forced to pay such, then is a highly inefficient practice and should be dropped.

**ALTO**

**13<sup>th</sup> June 2016**

**See Appendix 1**

Letter from ALTO to ComReg re. USO dated 5 February 2015;

Letter from ComReg to ALTO in reply dated 23 March 2015.

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## **2 BT**

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

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

**Issue 1 – 13<sup>th</sup> June 2016**

### **1.0 Introduction**

1. We support many of the preliminary views of ComReg including that the Access at a Fixed Location (AFL) Universal Service Offering (USO) should continue. However there are certain aspects of ComReg's proposals where we have serious concerns as summarised below:
  
2. We consider the USO service assurance proposal whilst an analytical proposal fails to consider the end user experience. The approach is counter to the direction of industry SLA discussions with Eir and indeed ComReg with its recent draft Determination in the Towerhouse vs. Eir dispute (ComReg Doc. 16/40) which sees Eir moving to 100% event based SLAs for WLR and LLU service assurance rather than availability – something we welcome. There are numerous well known problems with availability targets some of which are below:
  - a. Individual customers will be lost in the averaging of availabilities of lines hence repair times are likely to increase for some whilst the average targets are still achieved.
  - b. The ability of Eir to combine LFI and repair times causes confusion to end users as to what will be the target fix times. Faults are characterised as events and event based SLAs are thus the optimum solution.
  - c. The Line Fault Index is a more structural measurement and will reflect the type of area, the level of maintenance etc. This should remain as the measure for the number of line faults.
  - d. It would provide more accurate information to maintain LFIs on a sub-national basis and repair times on a national basis.
  - e. Other than the 10 day penalty there appears to be no other penalties (service credits) suggesting repair times in Ireland under these ComReg USO are heading for 10 days. I.e. without service credits what incentive is there to meet the targets.

For the above reasons we believe the TERA view for availability does not act in the best interests of the end user or the industry and is a significant retrograde step. It is also disappointing that the proposals do not appear to take account of the huge efforts by operators over recent years to move to modernise Eir's SLAs.

3. As per our response to question 32, why are the costs of the USO claims from Eir spiralling when Eircom has undergone publicised cost reduction exercises, the Examinership in 2012 is reported in the press to have reduced Eir's debt by circa 2 Billion Euro and the recession meant a low number of new houses built thus lowering USO provisioning demand. The spiralling claims are an urgent cause for concern and explanation. We do not consider the industry should be paying for any Eir decision to underinvest in its network in previous years. We are also concerned as to why Eir did not apply the opportunity provided through regulation to address the additional costs with modest price rises.
4. Further information is needed as to what cost reduction activities are being applied to the USO services – or is the USO ring fenced from being efficient. What incentives are there to reduce the USO cost? Cost reduction is a key trait of the telecoms sector and again it seems odd that the USO claims from Eir prices are spiralling. Please see table 1 within our response at question 32.
5. We note that ComReg is seeking to issue its Decision for the 1<sup>st</sup> July 2016, which only provides ComReg with a few weeks to resolve some complex issues. We are concerned that the matter is being rushed with a serious risk of detriment to end users and the industry.

## 2.0 Response to detailed questions

**Q1. Do you have any further submissions on our preliminary view that there is a continued need for an AFL USO for the period commencing 1 July 2016? Please give reasons to support your view.**

A1. We agree with ComReg's preliminary view that the USO should continue beyond 1 July 2016.

### Functional Internet Access – Report Section 5

**Q3. Do you agree it is not appropriate at this time, for July 2016, to decide whether or not to specify fast broadband FIA requirements at locations outside the intervention area? Please give reasons to support your view.**

A.3 There is a lack of detailed information for current generation broadband outside of the intervention area and a first step should be for ComReg to conduct a detailed study to inform such a decision to enable the optimum route to such to be achieved – for example would a market driven solution suffice or will it require state aid. Whilst many urban areas are enjoying high speed broadband there are still premises for one reason or another in urban areas not able to avail of high speed broadband and many others that fall between urban and the intervention areas that are still served by traditional broadband possibly at much slower rates. Hence we would support more research to achieve an informed and cost effective solution.

**Q4. In your opinion, when FIA is reviewed in the future how should the minimum data speed be determined? Do you have a view about what the speed should be? Please give reasons to support your view.**

A.4 In our opinion there is insufficient information available in the Irish market to take a competent view for the specific characteristic of Functional Internet Access. To make such an assessment we would at least need to know the following:

1. What applications must be supported by functional internet access? I.e. should it only support voice, e-mail access and connection to information type sites or should it be able to carry one Standard Deviation TV channel (i.e. circa 2 to 3Mbit/s).
2. We do not have ubiquitous broadband access in Ireland and judging by the press such will not happen to 2020/21. Hence in the interim FIA appears to be the highest data speed that can be reliably achieved over dial-up internet until that time.
3. What would be the cost and who would fund?
4. Please see our response to question 5.

**Q5 When do you think that we should revisit this issue? Please give reasons to support your view.**

A.5 Our view is ComReg should work with the DCENR to address customers with no broadband (current or next generation) as the priority for NBP. This would focus investment where it is required and avoid the expense of costly interim solutions. We consider ComReg should revisit this issue in approximately two years as by that time the NBP should hopefully be in deployment and decisions for the Intervention area will be set, as well as a clearer direction being available from Europe.

**Q6. Do you agree that we should maintain the current FIA requirements for the time being? Please give reasons to support your view.**

A.6 As the environment stands in Ireland with the plans for NBP we agree that the current FIA should be maintained for the time being, however as in our answer to A.5 customer's limited to the current dial-up FIA should be the highest priority for the NBP.

### Reasonable Access Requests – Report Section 6

**Q7. Do you agree or disagree with the regulatory options for reasonable access requests as set above? Are there other options that we should consider? Please give reasons to support your view.**

A7 We are concerned that ComReg also need to consider the potential wholesale issues that may arise:

1. The proposed new approach that Eir will not have to meet requests for new lines also creates a new dimension of issues at the wholesale layer, some of which are familiar problems.
  - a. Consumers may not be aware that numerous providers use Eir wholesale local access and this may cause confusion in the retail space.
  - b. In the event that Eircom do not provide access as there is an alternative operator can ComReg confirm whether or not the other access provider

will be obligated to provide the service. There appears to be an assumption that NBP will provide, but what will be the obligation on another commercial operator, for example a Wireless Internet Service Provider (WISP) or SIRIO. How will the process work and avoid the customer running the gauntlet of service rejections.

- c. We are aware of difficulties over the years with the private provision of communication services within housing estates and the difficulty in achieving interconnect and working with such providers. ComReg are planning to launch a new fixed and mobile termination rate market review this year and we consider this should address the termination rate obligations on all operators to limit the ability for poor behaviours.

**Q10. Do you agree that indoor coverage is an important factor in assessing alternative connections and PATS? Please provide reasons to support your view.**

A.10 It is clearly not reasonable to expect end users to have to go outside of the premise to receive and make telephone calls hence we would agree that the service should be provided to an appropriate quality within the actual premise. This is not reasonable for able people and some may question whether this meets the obligation of equivalence of access for people that may be unwell or with a disability. We therefore agree that indoor coverage is an important factor in assessing alternative connections and PATs.

**Q12 Do you agree that end-users should be entitled to adequate and regular information regarding their request for connection? Please provide reasons to support your view.**

A.12 We believe all customers should be kept informed of the progress of their request for connection so that their expectations are managed, even if the request is to be rejected which we believe will increase rapidly with the proposed scheme.

**Quality of Service – ComReg Report Section 7**

**Q13. Do you agree with the approach taken to estimate the predicted fault occurrence based on weather, line length and overhead percentage? Please provide reasons and evidence to support your view.**

A13. We do not agree with the TERA three criteria for predicting the Line Fault Index. Whilst these components are clearly influential there are other criteria that should be included. For example the level of investment within the access network in maintenance and new plant is important (could be linked to the ages of the poles etc.). We therefore consider that TERA should modify the model to test against maintenance investment levels on a regional basis. In many ways clause 428 of the consultation highlights our point.

We also believe TERA should bench mark the network LFI against similar networks.

**Q14 Do you agree with the preliminary view that any sub-national targets should be in accordance with the 3 areas defined in the TERA reports? Please provide reasons and evidence to support your view.**

A.14 We agree with the preliminary view that any sub-national targets should be in accordance with the 3 areas defined (Eir only, NBP, and market driven infrastructure) as defined in the TERA reports. We agree with the Tera analysis of the incentives to invest and to provide certain service levels is increased where there is competition. However as in our response to question 13 we consider this question supports our view that investment has an impact on the LFI.

**Q15 Do you agree with the preliminary view that fault occurrence targets and repair targets should be combined to provide a service availability target? Please provide reasons and evidence to support your view.**

A.15 We consider this a most unhelpful proposal and which has forgotten a key stakeholder i.e. the customer. There are two key parameters for the customer here.

1. The customer does not want his line to go faulty.
2. If it goes faulty it must be fixed quickly.

The problem with having a single availability figure is this is not good at dealing with events – i.e. faults are events and must be managed as an event. I.e. a fix time of X days/hours. The industry in Ireland has spent several years moving Eir away from availability SLAs within the wholesale contracts given problems with managing such SLAs such as working hour definition issues. Whilst we can see what TERA are trying to do, we do not consider this approach end customer friendly and suggest we go back to LFI SLA per area and a national event based SLAs with an event base service credit regime.

We also do not agree with the statements in clause 438 as the investment criteria can be developed in the same way for both regimes irrespective of the using LFI/event based SLAs or availability.

**Q16 Do you agree with the preliminary view that a service availability target should be set nationally and sub nationally by area? Please provide reasons and evidence to support your view.**

A.16 We consider the concept of availability should be dropped, but we could see how the LFI and targets could be set on a sub-national basis given the type of network (rural overhead vs. urban underground). However, we consider the event based repair SLAs should continue on a national basis.

**Q17 Do you agree with the preliminary view that the national service availability target should be 99.94% and the target for each sub-national area should be 99.86%? Please provide reasons and evidence to support your view. If not, what alternative availability targets do you believe are justified and why?**

A17 We do not agree to using availability targets for the sub-areas for the reasons given in our response to Q15. We would agree to varying LFI targets but the same event based repair targets nationally.

**Q18. Do you agree with the preliminary view that end-users that have service availability for >10 days should be automatically refunded? Please provide reasons and evidence to support your view.**

A.18 Although most of our business deals would not be using USO type services, we would contract a compensation scheme linked to the nature of the service within a fixed term contract. We would be concerned if this USO change caused us to have to re-open fixed term business contracts that have been negotiated, sometimes over many months. Where business customers and particularly larger customers are concerned, the negotiating strength is often held by the customer.

We consider further transparency is required as to how the 10 day outage is funded before an informed answer can be provided.

**Q.19 Do you agree with the preliminary view that the connection targets levels that are in place are appropriate for sub national targets? Please provide reasons and evidence to support your view.**

A.19 We agree with the ComReg preliminary view that the connection target levels that are in place are appropriate for the sub national targets as there is only little variance across the regions.

**Q.20 Do you agree with the preliminary view that the measurement of connection targets at sub-national level is appropriate? Please provide reasons and evidence to support your view.**

A.20 We agree with the ComReg preliminary view that the measurement of connection targets at sub-national level is appropriate. There is a lot of truth in the saying 'what gets measured gets done' hence if targets are being set they must be measured.

**Q21. Do you agree with the preliminary view in respect of the measurement, publishing and auditing of the performance figures? Please provide reasons and evidence to support your view.**

A21. We agree with the ComReg preliminary view in respect of the measurement, publishing and auditing of the performance figures as the transparency allows others to view the numbers and test them against the performance being experience.

**Q22. Do you agree with the preliminary view that the performance targets should be commence from 1 July 2016? Please provide reasons and evidence to support your view.**

A.22 We agree with the ComReg preliminary view that the performance targets should be commence from 1 July 2016. Even if Eir cannot automate the results initially, the data should be available and these sorts of figures could easily be generated manually until the automation is in place. I.e. we no longer accept the argument of months of delay due to development as this is a post processing activity.

**Q23. Do you agree with the preliminary view that the necessity for a review of the performance targets should be examined in 2 years? Please provide reasons and evidence to support your view.**

A.23 We agree with the ComReg preliminary view that the necessity for a review of the performance targets should be examined in 2 years. In time we should be aware of whether the changes are working and hopefully the NBP will be in the deployment phase so that changes can be monitored more closely.

#### Affordability – ComReg Report Section 8

**Q24. Do you agree with our preliminary view that the obligation to maintain geographically averaged prices should be maintained? Please provide reasons to support your view.**

A.24 We agree with the ComReg preliminary view that the obligation to maintain geographically averaged prices should be maintained. The digital divide is already a serious national issue in Ireland and not to maintain geographically averaged prices would raise further political issues given it would be the rural areas that are most likely to see the higher charges.

**Q25. Do you agree or disagree with our preliminary view that at this time a requirement to offer Social Tariffs should not be introduced? Please give reasons and/or evidence to support your view.**

A.25. We agree with the ComReg preliminary view that at this time a requirement to offer Social Tariffs should not be introduced as prices of telephone services have fallen in real terms over many years and we would agree with ComReg that packages offered commercially ensure all customers can access voice services at affordable prices.

#### Control of Expenditure – ComReg Report Section 9.

**Q26. Do you agree or disagree with our preliminary view that the USP should be required to continue to provide its Disconnections Policy? Please give reasons to support your view.**

A.26 We agree with the ComReg preliminary view that the USP should be required to continue its Disconnections Policy for the reasons provided by ComReg such as to prevent misuse of the service through fraud or deliberate non-payment of bills.

**Q27. Do you agree or disagree with our preliminary view that the USP should be required to continue to provide a Phase Payment Plan for connection fees? Please give reasons to support your view**

A.27 We agree with the ComReg preliminary view that the USP should be required to continue to provide a Phased Payment Plan for connection fees to assist the customer manage the hurdle of a large one of cost.

**Q28. Do you agree or disagree with our preliminary view in respect of the terms and conditions of contract? Please provide reasons to support your view.**

A.28 We agree with the ComReg preliminary view in respect of the terms and conditions as a customer contract is a requirement of the USO and Users rights European and Irish legislation and certain conditions are helpful for these types of service.

### Designation of Universal Service Provider(s) – Report Section 10.

**Q29 Do you agree with our proposal to designate a USP to deliver AFL USO for a period of 5 years, with a review to take place after 5 years or sooner if circumstances justify it? Please give evidence and reasons to support your view.**

A29 We agree with the ComReg proposal to designate the USP to deliver AFL USO for a period of 5 years, with a review to take place after 5 years or sooner if circumstances justify it. Given the potential changes to the market that NBP and evolving technologies bring.

**Q30. Do you agree with our proposal that the USO designation should be applied to the geographic area of the entire State? Are there other factors which should be considered by us in this regard? Please give evidence and reasons to support your view.**

A.30 We agree with the ComReg proposal that the USO designation should be applied to the geographic area of the entire State as even in highly populated urban areas with competition it may still not be possible to achieve commercial supply in some instances.

**Q31. Do you agree with our preliminary view that the most appropriate approach is to designate Eir as the USP from 1 July 2016? Please give evidence and reasons to support your view.**

A.31 We agree with the ComReg preliminary view that the most appropriate approach is to designate Eir as the USP from 1 July 2016. The reason for this view is they are the only operator with ubiquitous access throughout the State for voice services. No other operator would reasonably be able to duplicate this essential facility in a reasonable timeframe to support the AFL service.

**Q32 Are there other factors or options which should be considered by ComReg in making a designation in respect of a USP? Please give evidence and reasons to support your view.**

A32 We consider the following factors need to be considered by ComReg in making a designation in respect of a USP.

1. As seen in table 1 below the cost of the USO appears to be spiralling when reviewing the costs claimed by Eir over recent years. This would appear inconsistent with the cost reduction initiatives within Eir that have appeared in the press from time to time and the fact that the country has been in recession for most of this period causing low levels of new housing development. We need to understand the justification for the significant increases in the claims.
2. The consultation lacks focus on cost reduction through new innovation and leads to questions to whether the charges are those of an efficient operator.

We therefore consider greater transparency is required from both Eir and ComReg as to whether there is value for money in the services provided, and what efforts are being made to reduce these costs.

Table 1 – Eir USO unfair burden claims

USO Year	ComReg Publication of the claim	Value Millions of Euro
2010 to 2011	14/93	9.95
2011 to 2012	14/117	7.26
2012 to 2013	14/117	7.95
2013 to 2014	15/32	11.3
2014 to 2015	16/37	14.67

**Q33. Do you agree or disagree with our draft assessment of the impact of the proposed options? Please set out reasons for your answer.**

A33. The draft assessment provides a succinct account of the ComReg preliminary views and our views to the draft assessment aligns to our responses to the various questions in this consultation.

**Q34 Do you have any comments or suggestions on our draft Decision Instrument? Please set out your answer in detail.**

A34. We would like to make the following additional comments.

1. Draft Decision clause 7.2. We consider the Service availability requirements to be a wholly retrograde step taking the Irish industry back years. The industry has worked over the last years to move to event based SLAs as they are clear and simple and are not confused by complex definitions.

**2. Draft Decision clause 7.3. We are most concerned that the proposals within Annex 3 which supports this draft decision appear opposite to the draft determination issued by ComReg Compliance team 20 May 2016 which has moved from a system of all faults being fixed within 2 days. For us to agree this approach would conflict the industry with supporting the determination to the Service Assurance Dispute. It is surprising and disappointing that another part of ComReg would take such a conflicted position.**

3 Draft Decision clause 7.4. There is insufficient information from ComReg as to who is actually funding this 10 Euros. If Eir subsequently claim this as an unfair burden and the industry is forced to pay such, then this is a highly inefficient practice and should be dropped.

End

*If you have enquires to the BT submission please contact [john.odwyer@bt.com](mailto:john.odwyer@bt.com).*

## **3 Eir**

**eir**

**Response to ComReg Consultation Paper:**

**Universal Service Requirements**

**Provision of Access at a Fixed Location**

**ComReg Document 16/31**



**13 June 2016**

**DOCUMENT CONTROL**

<b>Document name</b>	eir response to ComReg Consultation Paper 16/31
<b>Document Owner</b>	eir
<b>Status</b>	Non-Confidential

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



## Executive Summary

Eircom Limited (“eir”) has a number of fundamental objections to both the manner in which the Commission for Communications Regulation (“ComReg”) has conducted the consultation process for ‘Universal Service Requirements - Provision of Access at a Fixed Location’ (“USRs”) and to the proposals that ComReg now makes in respect of designating and regulating a Universal Service Provider (“USP”).

ComReg has conducted the consultation process in accordance with a timetable that is fundamentally flawed, inefficient and has significantly discriminated against eir and its interests. ComReg Consultation document 16/31 (“16/31”) was issued on 4 May 2016, just under two months before the current designation period expires, and the deadline for submissions is 13 June 2016, a mere thirteen working days before the expiry date of eir’s current Universal Service Obligation (“USO”) for Access at a Fixed Location (“AFL”) period. The severely truncated consultation timetable calls into question whether ComReg has and will fully and properly consider and evaluate the inputs and submissions arising from the consultation process. The unduly short timeframes have also nullified ComReg’s call for expressions of interest from other telecoms operators, which in turn increases the likelihood of eir being designated the AFL USP.

eir furthermore objects to the fact that ComReg sought expressions of interest in parallel with its consultation on the scope and nature of the USO requirements and to the absence of any call for expressions of interest in either of the two consultation documents preceding 16/31 (i.e. Consultation Documents 15/89 and 15/124). eir submits that both cumulatively and individually these features of the consultation process disproportionately infringe upon eir’s interests by significantly increasing the likelihood that eir would be designated the USO and constituted an inefficient designation mechanism which failed to adhere to the principles of objectivity, transparency and non-discrimination mandated by the Universal Service Regulations 2011 (S.I. 337 / 2011) (the “USR”) and the Universal Service Directive (Directive 2002/22/EC) (as amended by Directive 2009/136/EC and Regulation 2015/2120) (the “USD”).

The consultation process has also been tainted by ComReg’s failure to undertake a full review of the AFL USO as committed to in the settlement agreement entered into between eir and ComReg on 31 October 2014 (the “USO Settlement Agreement”) and to adequately consider whether it was proportionate and efficient to designate a USO for AFL in light of the current market conditions in the State, and particularly having regard to the imminent rollout of the NBP. The Regulatory Impact Assessment (“RIA”) that ComReg carried out is also significantly deficient due to its failure to engage in a quantitative analysis of the available regulatory options.

The final feature of the consultation process that eir takes issue with is that it was conducted against the background of ComReg’s refusal or failure to administer the financing regime provided for in Regulation 12 of the USR. ComReg’s refusal or failure to adjudicate upon eir’s last four applications for financing prevented eir from fully considering or making submissions to ComReg on the consequences that will flow from being re-designated the USP and had a significant chilling effect which likely discouraged other operators from expressing an interest in being designated the USP for the AFL USO. ComReg’s failure in this regard is further evidence of the discriminatory and inefficient manner in which the USO AFL consultation process has been conducted.

eir also submits that certain aspects of ComReg’s proposed regime for regulating the USP for AFL fails to accord with the principles and aims identified in the USR and USD and are without merit. eir’s core objection in this regard is that the USO AFL regime as proposed is defined to provide narrowband services and therefore it forces eir to invest in its legacy copper network or face persistent compliance issues, specifically in respect of the proposed Quality of Service (“QoS”) regime, and particularly in the NBP intervention area and the 300k FTTH extension roll-out area.



The regime is, therefore, contrary to ComReg's own stated strategy of ensuring rollout of high-speed broadband and, in providing for a service at 28.8 Kbps, it does not ensure Functional Internet Access ("FIA") as provided for in the USR and USD. ComReg compounds these failures by seeking to designate a USP for AFL for an unduly lengthy period of five years without including appropriate trigger clauses for a further review and a sunset clause.

ComReg's proposal is also flawed in the manner in which it purports to tweak two areas of the USO AFL regime: what constitutes a Reasonable Access Request ("RAR") and what QoS parameters must be adhered to. In respect of the RAR proposals, eir welcomes ComReg's move to expand reasonable access to take account of the availability of alternative networks and service providers while recognising the importance of mobile services. However, ComReg's proposal is unclear as to what alternatives are admissible and introduces unacceptable uncertainty as to the nature of the veto that ComReg or the End User can exercise. In this regard eir notes a significant discrepancy between the draft Decision Instrument and the body of 16/31 as to whether the End-User's veto can be overruled by ComReg.

ComReg's rationale for imposing revised QoS targets is flawed in a number of significant respects, including the absence of a robust framework for analysis, an inappropriate analysis of and flawed targets set for NBP areas, a lack of understanding as to how network maintenance is organised and planned, a vast underestimation of the costs of improving network QoS, the absence of any analysis on whether there are sufficient benefits to justify the USP's increased costs and a failure to appreciate that proposed changes to the net USO cost calculations mean that eir will unfairly be required to incur all of these costs without any assurance, absent a consideration of funding, of recompense. In a similar vein ComReg's analysis concerning whether it should maintain Geographic Averaged Prices ("GAP") is simplistic and significantly flawed in that it fails to analyse the cost of maintaining the GAP regime and to weigh these costs against purported benefits. Finally, eir notes that ComReg's proposed proposal that eir as the USP be required to give customer refunds for service unavailability is suggested without giving any reason or explanation identifying the legal basis for such a measure. Finally, and the draft Decision Instrument which seeks to implement ComReg's proposed USO AFL measures is defective in a number of respects.



## Response to the Consultation Questions

**1. Do you have any further submissions on our preliminary view that there is a continued need for an AFL USO for the period commencing 1 July 2016? Please give reasons to support your view.**

eir fundamentally disagrees with ComReg's view that there is a continued need for an AFL USP for the period commencing 1 July 2016. eir is of the view that ComReg has failed to establish that an AFL USP continues to be required by end-users in Ireland and failed in this respect to have due consideration to the services availed of by the majority of end-users in Ireland. The purpose of the universal service is to prevent social exclusion by ensuring that citizens in rural and remote areas or low-income households have affordable access to basic and essential telecoms services. We do not accept in this respect that it remains necessary to have access to a fixed voice, narrowband, access connection in order to participate fully in society in Ireland, having regard to the electronic communications services that are demanded and consumed by the majority of users in Ireland today and as evidenced by the State's NBP initiative. ComReg, however, as explained in further detail below, has failed to give any consideration to this issue and reached its conclusion that there is a continued need for an AFL USP using a flawed and circular rationale which reflects its misunderstanding of the requirements of the Universal Service Directive and Regulations.

Significant discretion is awarded to the Member States under the Universal Service Directive as regards their approach to universal service. Article 3(2) thus provides that it is for Member States to "*determine the most efficient and appropriate approach for ensuring the implementation of universal service, whilst respecting the principles of objectivity, transparency, non-discrimination and proportionality*", constrained only by an obligation to "*seek to minimise market distortions, in particular the provision of services at prices or subject to other terms and conditions which depart from normal commercial conditions, whilst safeguarding the public interest.*" Insofar as the AFL obligation is concerned, this discretion manifests itself in two aspects. First, there is no obligation to impose an AFL USO: Article 8(1) of the Universal Service Directive is clear that this is an option for Member States, designating a USO required to meet requests for AFL is not a requirement.<sup>1</sup> Regulation 7 of the Universal Service Regulations similarly does not require ComReg to designate a USP in charge of the AFL USO. Instead, Regulation 7(1) provides that "*The Regulator may designate one or more undertakings, for such period as may be specified by the Regulator, to comply with an obligation or requirement referred to in Regulation 3, 4(1)(a) or (b), an obligation or term or condition referred to in Regulation 5 or 6 and, where applicable, a requirement under Regulation 8(2), so that the whole of the State may be covered.*"

Second, Member States are not required to ensure that all requests for connection at a fixed location are met. Rather, Member States are required, under Article 4(1) of the Universal Service Directive, to ensure that "*all reasonable requests for connection at a fixed location to a public communications network are met by at least one undertaking*" (eir's emphasis). eir does not

<sup>1</sup> Article 8(1) provides that "*Member States may designate one or more undertakings to guarantee the provision of universal service as identified in Articles 4, 5, 6 and 7 and, where applicable, Article 9(2) so that the whole of the national territory can be covered. Member States may designate different undertakings or sets of undertakings to provide different elements of universal service and / or to cover different parts of the national territory.*"



believe that any, or sufficient, consideration has been given by ComReg to whether it is necessary to ensure by way of a USO that all *reasonable* requests for connection at a fixed location" in Ireland are met, having regard to their characteristics and the initiatives already underway, in particular the NBP. The following issues are not properly considered by ComReg:

- The purpose of a USO is to ensure the provision of the basic set of telecoms services including where provision of such access is not economic in order to avoid market failure leading to social exclusion.
- Contrary to what ComReg appears to believe, neither the Directive nor the Regulations mandate the provision of narrowband, fixed voice, services. Instead, connections must be, in accordance with Article 4(2) of the Universal Service Directive, "*capable of supporting voice, facsimile and data communications at data rates that are sufficient to permit functional Internet access, taking into account prevailing technologies used by the majority of subscribers and technological feasibility*". Having admitted that the definition of FIA it adopted in 2005 no longer in fact allows functional internet access, ComReg cannot make a finding that it is necessary to require eir to meet, in fact (as explained further in response to Question 6), all requests for a connection to the PSTN in circumstances where it is clear that the connections concerned will not be capable of supporting FIA.
- In determining whether all reasonable requests for connection at a fixed location permitting actual functional internet access are already met, regard should be had to the communications services that are consumed by End Users in Ireland, the risk of social exclusion arising from being unable to have fixed access and the cost and proportionality of mandating an AFL USP in these prevailing circumstances.

It is apparent from ComReg 16/31 that ComReg has not considered these matters and thereby has entirely failed to consider whether it was necessary and proportionate to impose a USO for AFL in Ireland. In particular, while the TERA Report 2 highlights the discretion given to Member States as regards what constitute "reasonable requests for access",<sup>2</sup> ComReg interprets the Member States' obligation to ensure that reasonable requests for access at a fixed location are met as establishing a 'universal right' (paragraph 118):

*There is a continued demand for standalone fixed voice telephony. Reasonable requests for this must be satisfied by at least one undertaking. We must consider whether the AFL would be delivered absent a USO and we must ensure that the universal right is delivered to end-users in Ireland.*

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

Furthermore, not only is there no such "universal right" but in considering whether this "universal right" would be "delivered to End Users" absent a USO and concluding that it would not, ComReg, following TERA, uses reasoning that is entirely circular. As explained by TERA, "*it cannot be ruled out that for the coming years, absent any AFL USOs, the necessary requirements regarding AFL*

<sup>2</sup> See section 3, p. 26: "According to the Universal Service Directive, all reasonable requests for connection at a fixed location to a public communications network shall be met. It is however up to each Member State to define what a reasonable request is."



as set out in the Universal Service Directive (transposed in Ireland as the Universal Service Regulations) would not be met. The counterfactual assessment showed that, in TERA Consultants' view, there is a continued need for an AFL USO in Ireland, having regard to the RAT component, the FIA component, the QoS component and the GAP component.” In other words, the market will not deliver the fixed narrowband voice access over copper that it would not have delivered in the past absent the AFL USO. Having regard to the economics of the copper network, the replacement of copper technology by Next Generation Access and the forthcoming roll-out of the NBP, this conclusion is nothing but entirely expected. However it says nothing of whether a USP designed for the present and the future, not the past, remains necessary and proportionate, and in which form.

We note the following:

ComReg and TERA have provided no evidence that access at a fixed location is required in order to avoid social exclusion and in particular they have provided no evidence that any such requirement is not met by mobile services so that, in fact, all reasonable requests for a connection are already met. A number of other Member States have chosen to not impose a USO for AFL on this basis, including Germany, Estonia, Luxembourg, Poland and Romania.

It is true that Member States may not impose as a USO the provision of mobile services. However this does not in any way mean that the universal service may not be met by mobile services such that there is no need for a USO AFL. This is a matter which appears to have been either ignored or misunderstood by ComReg.

TERA suggests that 4.6% of households would not be served in the absence of a USO AFL. First, this figure is unreliable because it is based on out-of-date market research conducted by ComReg four years ago. Second, it is an extrapolation arrived at by TERA on the basis of one of the reasons provided for not having a fixed line, namely the 86% of respondents who identified the use of a mobile phone as such a reason, while ignoring other reasons that were presented in the questionnaire. These other reasons overlap with the use of mobiles, including VoIP and social media services. It is incorrect to assume that 13% of those that do not have a fixed phone do not have an alternative available to them for the following reasons:

- 9% of respondents neither agreed nor disagreed with the statement that “I use my mobile phone and don't need a fixed line phone” making it incorrect to apply the 87% or indeed the 13% that is derived from this, to the population of non-users of landlines.
- 76% of respondents identified an alternative such as VoIP or social media as their reason for not having a fixed phone.

In the table 1 below we have provided eir's market tracking data<sup>3</sup> which includes data gathered as recently as March 2016. This indicates that just 0.5% of households have neither a fixed nor a mobile phone. Notably it also shows a higher reliance on mobile phones in rural areas than in urban areas. This is consistent with analysis of the propensity to use a mobile phone for the majority of voice calls where there is a choice to use a fixed line or a mobile (which we term “Mobile Loyal”). 51% of the rural base are Mobile Loyal, while urban customers are broadly in line with the total at 46%.

<sup>3</sup> Red C with data rolled up for the Oct '15 - Mar '16 period to ensure robustness

**Table 1**

	<b>Total Households</b>	<b>Urban Virgin</b>	<b>Urban Non Virgin</b>	<b>Rural</b>
Homephone only (no mobile)	2.5%	1.9%	2.6%	3.5%
Mobile only (no homephone)	40.0%	35.7%	42.5%	46.1%
Homephone and Mobile	57.0%	61.8%	54.5%	49.9%
Neither	0.5%	0.6%	0.4%	0.5%

This is with a backdrop of a significant and continuous decline in the number of lines that are deemed to fall under the existing USO obligations as depicted by Figure 1

**Figure 1**

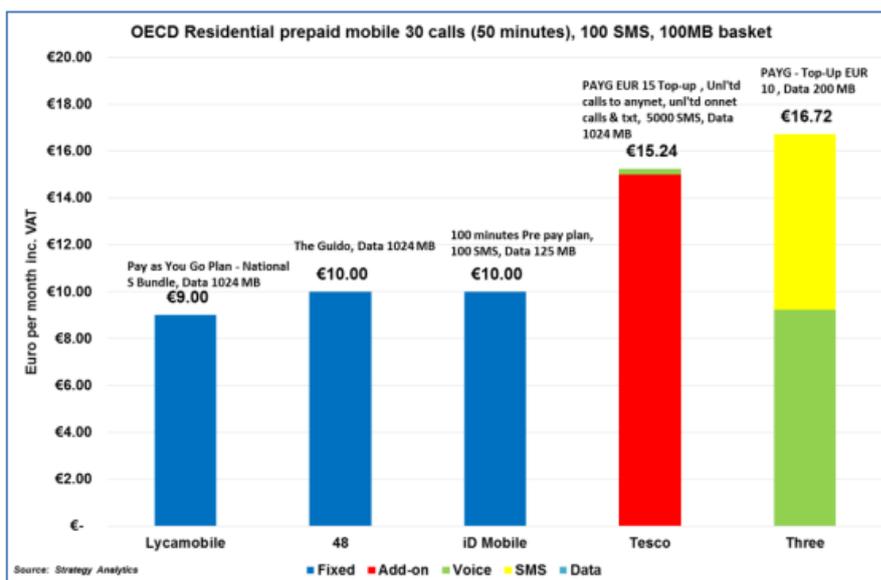
This suggests that ComReg's concern about indoor coverage in rural areas is misplaced. More generally, it calls into serious question the rationale for maintaining in place the AFL USO as there does not appear to be any basis for the proposition that the AFL USO is necessary to avoid social exclusion in Ireland where social inclusion is now achieved through both fixed and mobile access. This is particularly the case as mobile access is much more likely to provide truly functional internet access than a copper line supporting 28.8 kbps, which will not, as expressly admitted by ComReg.

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

Data published in ComReg's quarterly report show that a mobile service is available to low-end users at just over a third of the cost of line-rental alone. Line rental of €25.78 (inc VAT) per month only allows an end-user to receive incoming calls<sup>4</sup>. In contrast, the cheapest prepay subscription according to the OECD analysis in Figure 2 would provide 50 minutes of outbound calls, 100 SMS messages and 100MB of data for just €9 (inc VAT) per month. The equivalent usage with a basic line rental and calls plan would cost €29.38. The prepaid mobile solution accordingly costs less than a third of the cost of the basic copper line alternative while providing the added benefit of internet access that is actually functional, coupled with an allowance of 100 SMS messages.

<sup>4</sup> The Vulnerable User Scheme price plan offered by eir does include a call value allowance as part of a line rental fee on a par with basic line rental, however this is nullified if usage increases above a low threshold. This threshold varies, and is at its lowest in the case of peak usage and calls to mobiles.

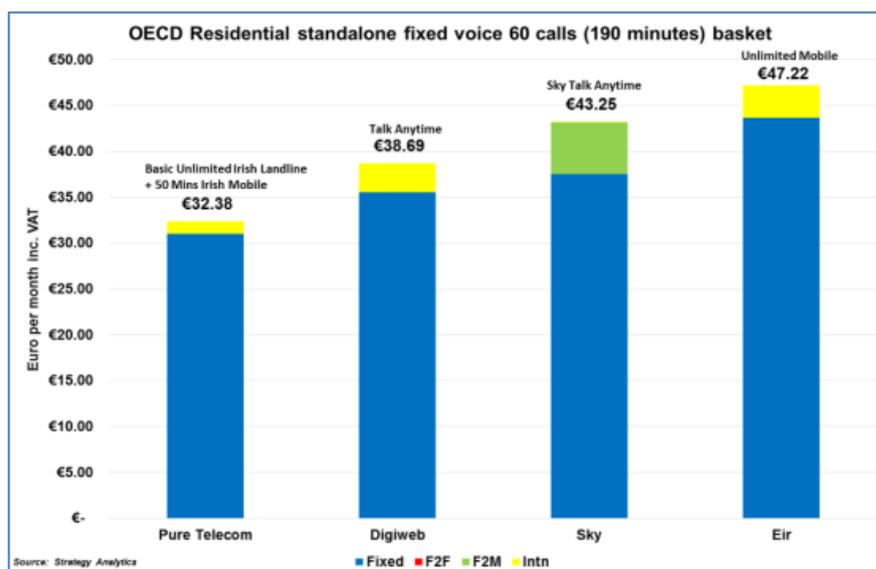
Figure 2



Source – ComReg Quarterly Report Q4 2015

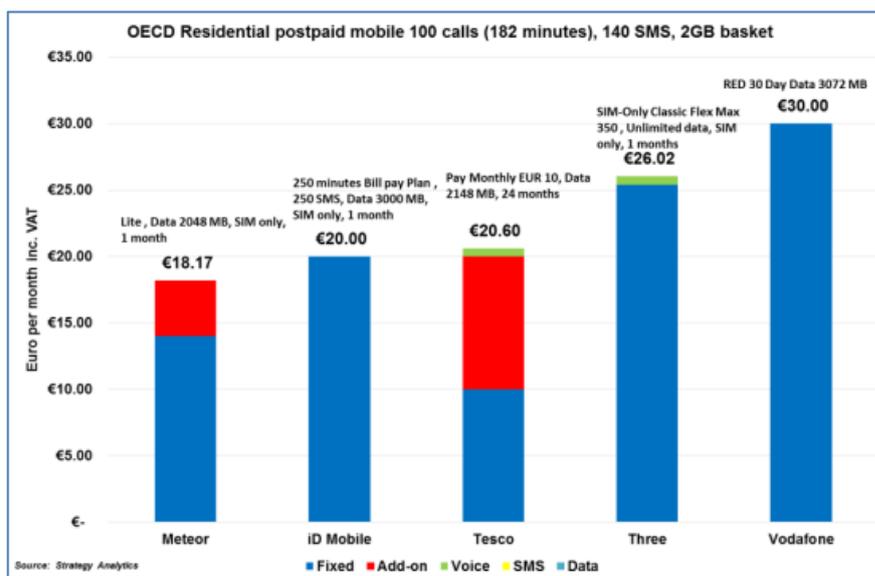
This is also the case with higher usage baskets. In the case of usage in excess of 180 minutes per month, comparing various mobile service providers and various fixed service providers, the cheapest landline offering cost €32.38 per month (Figure 3), the cheapest mobile offering €18.17 per month (Figure 4). In this instance, a fixed-line solution would be almost 80% dearer than the mobile solution and provides only voice services. The mobile solution would deliver an equivalent voice allowance along with 2GB of actually functional internet access plus 140 SMS messages per month. Notable in this instance is the fact that the dearest mobile offering under analysis is more affordable than the cheapest landline offering.

Figure 3



Source – ComReg Quarterly Report Q4 2015

Figure 4



Source – ComReg Quarterly Report Q4 2015

Mobile price plans deliver inclusive data at speeds well in excess of 28.8Kbps even on 2G (contrary to TERA/ComReg's assumption) and SMS allowances at a lower bundled cost than that of basic fixed line rental.

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

eir notes further that any concerns on the part of ComReg that mobile coverage is insufficient is not evidenced, properly or at all. In particular, ComReg carried out little or no research or analysis into the level of demand or the fixed locations at which demand could not be served immediately either through existing fixed or mobile service availability. eir noted in its response to ComReg 15/89 by way of example that *"in respect of mobile coverage, TERA present the coverage maps of each operator individually. It would be directly relevant to this review to combine the coverage of all the mobile operators to identify the extent of white zones (areas without mobile coverage) across the State"*. No such analysis has been carried out. Instead any reference to mobile coverage has now been relegated to a footnote on page 109 of ComReg 16/31 which states *"See for Mobile operators' website which show indoor and outdoor coverages and the difference between the two types of coverage is sometimes significant."* No attempt has been made to identify areas that might not be covered in respect of indoor service, by any of the mobile operators, nor is there any mapping of these areas against other infrastructure that provide AFL.

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



**2. Do you agree or disagree with our preliminary view that it is unlikely to be necessary to specify fast broadband FIA requirements inside the NBP intervention area but that it may be necessary in future to specify such obligations at locations outside the intervention area? Please give reasons to support your view.**

Please see the response to question 6.

**3. Do you agree it is not appropriate at this time, for July 2016, to decide whether or not to specify fast broadband FIA requirements at locations outside the intervention area? Please give reasons to support your view.**

Please see the response to question 6.

**4. In your opinion, when FIA is reviewed in the future how should the minimum data speed be determined? Do you have a view about what the speed should be? Please give reasons to support your view.**

Please see the response to question 6.

**5. When do you think that we should revisit this issue? Please give reasons to support your view.**

Please see the response to question 6.

**6. Do you agree that we should maintain the current FIA requirements for the time being? Please give reasons to support your view**

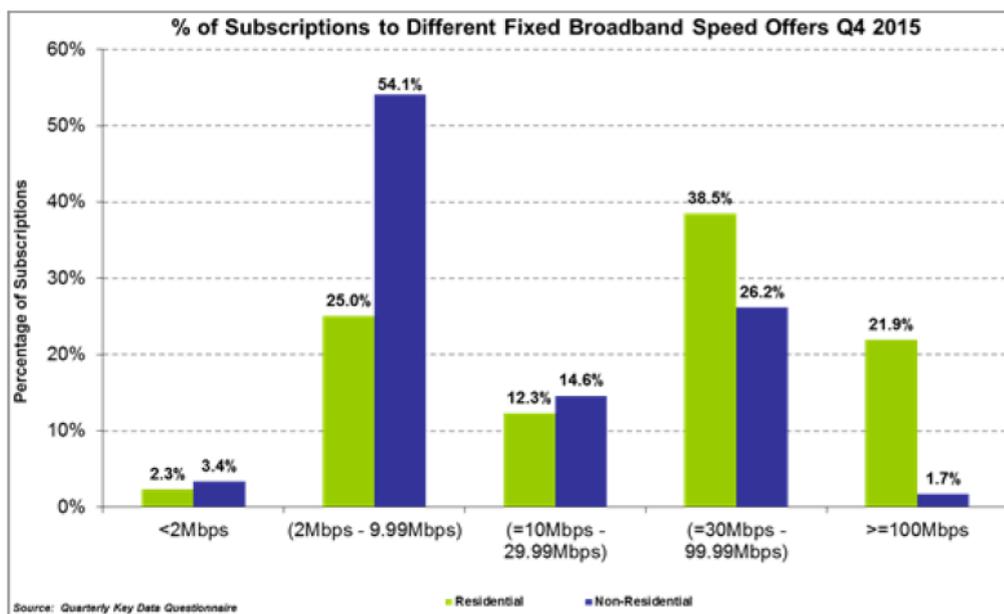
In considering the matter of Functional Internet Access, it is essential to have regard to the requirements of the Universal Service Directive, in particular, the requirement under Article 3 that Member States “*determine the most efficient and appropriate approach for ensuring the implementation of universal service, whilst respecting the principles of objectivity, transparency, non-discrimination and proportionality*” and “*seek to minimise market distortions*” and the requirement under Article 4 (and Regulation 7 of the Universal Service Regulations) that Member States (in Ireland, ComReg) “*ensure that all reasonable requests for connection at a fixed location to a public communications network are met by at least one undertaking.*” Importantly in this context, it is an express requirement that this connection is “*capable of supporting voice, facsimile and data communications at data rates that are sufficient to permit functional Internet access, taking into account prevailing technologies used by the majority of subscribers and technological feasibility*”. Member States are also required to “*ensure that all reasonable requests for the provision of a publicly available telephone service over the network connection referred to in paragraph 1 that allows for originating and receiving national and international calls are met by at least one undertaking.*”

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

First, ComReg notes, and eir agrees, that internet access at 28.8Kbps, which ComReg proposes to mandate, is of little value and is indeed not functional. eir in particular agrees that “*What FIA should be depends on what data speeds are necessary for commonly used applications to function*”

correctly. Commonly used applications today include e-mail, web browsing, phone calls, watching videos, gaming, working from home, uploading content to social media, and online shopping. It is also necessary to take account of the possible presence of more than one simultaneous internet user at a fixed location.” eir also agrees with ComReg’s conclusion “access at dial-up speeds cannot be regarded as functional and many users have needs that could be met only by speeds considerably faster than basic broadband”. Minimum data speeds for functional Internet access, determined from the minimum data requirements of the most popular / widely used Internet services, are around 2-4Mbps, in order to meet existing requirements for media streaming. According to ComReg, the vast majority of users (more than 97.7% of consumers) get internet access at speeds higher than 2Mb/s. 2Mb/s is 70 times faster than 28.8Kb/s and 28.8 Kb/s does not in any way approach "basic broadband" (see Figure 5).

**Figure 5**



Having found that a connection offering 28.8 Kbps does not allow for FIA, there is simply no legal basis which allows ComReg to require eir to provide connections at a level that does not allow for functional internet access and we do not believe that the Minister, including in light of his view that 30 Mbps is required in Ireland in the context of the NBP, could reasonably give his consent to ComReg making such a determination. As explained in response to Question 1, there is no need to impose a USO in this respect having regard to the services available to End Users in Ireland. But in any event, if ComReg wrongly decides to impose a USO, it cannot impose an obligation that eir ensures that 94% of all connections provide data rates of 28.8 Kbps.

At paragraph 185, ComReg expresses its concerns that “users who currently use basic broadband [sic], should not have the service withdrawn pending the availability of higher speed services.” For the avoidance of doubt, removing the current FIA requirement would not result in users availing of "basic broadband" having their services withdrawn. 28.8Kb/s is not broadband, as acknowledged by ComReg. But more fundamentally perhaps, ComReg is misinterpreting what universal service is about, as set out in the Universal Service Directive and Regulations. In particular, contrary to what ComReg appears to suggest, there is no entitlement, and there can be no obligation, to maintain in place a service simply because a number, including a "certain cohort" (para 144), of users avail of the services. The requirement under Article 4 is to ensure that all reasonable requests for connections supporting functional internet access are met. This requirement cannot in any way be interpreted to allow ComReg to require eir to preserve a dial up internet service, for the few



remaining users because this service does not in fact allow functional internet access. ComReg appears to be seeking to perpetuate defunct services. This is not what the USO is about and what ComReg is legally permitted to require from a USP.

The practical effect of maintaining eir's current obligation in respect of FIA is that we will have an obligation to report on whether 94% of lines are capable of 28.8Kb/s on a quarterly basis. ComReg is aware that the current monitoring mechanism no longer works as it relies on sampling dial-up calls, the volume of which are now too low to allow a meaningful assessment of compliance. This means that, were ComReg to maintain the current FIA requirement (which eir does not believe ComReg may lawfully do), no meaningful assessment of compliance could be carried out as it would be entirely disproportionate and unreasonable and wasteful of eir's scarce resources to develop and maintain a new testing and reporting mechanism for a requirement that is not legal no longer serves any practical purpose.

The only choices open to ComReg are either to remove the existing FIA requirement or, having determined the data rates which are necessary for functional internet access for the period commencing on 1 July 2016, consider, in accordance with Article 3 of the Universal Service Directive, what is the most efficient, appropriate and proportionate approach for ensuring the implementation of universal service including functional internet access at appropriate speeds,<sup>5</sup> taking into account the need to avoid potential market distortions (particularly in NBP areas) and the cost – and potential funding – of the universal service.

eir acknowledges that ComReg has made some attempt to analyse the implications for the AFL USO of the roll-out of broadband aspects and the State intervention underway to bring superfast broadband to underserved areas in Ireland. In fact, it is clear from ComReg 16/31 that ComReg's preferred approach may have been to require the USP to "*continue to provide connections capable of basic broadband (i.e., at speeds of 1 Mb/s or higher) to premises where it had once been available*". Regardless of the merits of this option, it is highly regrettable that the basis for its rejection is, in a nutshell, that ComReg does not have enough time to consider and implement it.

eir notes that it has pressed many times for a thorough review of the scope of the USO as its USO obligations have been simply rolled over for some years, precisely for the purpose of allowing ComReg sufficient time to consider all relevant issues and options. eir and ComReg agreed a settlement of a High Court appeal on the basis, inter alia, of ComReg's commitment to conduct such an analysis. ComReg again has failed to discharge its obligations and it cannot make eir as the USP bear the consequences for its delay. As explained above, there are only two options in respect of the data rates which the USP may be required to provide. As ComReg is not in the position, to specify what constitutes FIA (one of two options), it can do nothing but remove all requirements as regards FIA (the other option) as current requirements are clearly unsuitable to achieve FIA and will result in market distortions and inefficient infrastructure investment.

eir furthermore fundamentally disagrees with the approach followed by ComReg in considering the coexistence of an AFL USO and the NBP roll-out. Under Article 3 of the Universal Service Directive, Member States are to determine the most efficient and appropriate approach for ensuring the implementation of universal service, whilst respecting the principles of objectivity, transparency, non-discrimination and proportionality, and seeking to minimise market distortions. There can be no doubt that the State intervention underway in the form of the NBP will ensure that all requests for connection at a fixed location to a public communications network are met by the

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<sup>5</sup> eir notes in this regard the 2009 changes to the USO recognising that functional internet access may well require a broadband connection. See Directive 2009/136/EC of the European Parliament and of the Council of 25 November 2009 amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services, in particular Recital 5 of that Directive.



NBP provider as the purpose of the NBP is precisely to deliver broadband access to all premises within the intervention area. The intervention area is by definition one which is not currently commercially viable. In eir's view, it is not only "*unlikely to be necessary to specify fast broadband FIA requirements inside the NBP intervention area*" but it is in fact very difficult to see how it can even be envisaged that this could be necessary. Similarly, the areas outside the intervention area are by definition outside the intervention area because market forces will deliver high speed broadband internet access in the near future.

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

Of particular concern to eir are the conditions that ComReg envisaged should be met before eir as the USP would be relieved from its obligation to provide a (legacy) network connection as well as ComReg's approach to the matter of the continued provision of voice services.

eir understands ComReg's proposals on reasonable requests ought to meet to mean that ComReg will not require eir to roll out infrastructure where alternatives exist, including if another operator wins one or both of the NBP lots, provided however that "*connections or PATS at a fixed location [are] already being delivered, at an affordable price, as a result of the rollout of the NBP, during the proposed 5 year period.*"

eir is of the firm view that there is simply no basis under the Universal Service Directive and Regulations for ComReg to impose such conditions. Where alternative, including NBP, infrastructure exists, then clearly requests for connections are capable of being met by an operator and it is difficult to see why a USO requiring eir to roll-out a legacy network could be necessary, efficient and proportionate in these circumstances. eir notes further in this context that the provision of PATS under the USO since 2011 is no longer an obligation that exists independently of the obligation to meet reasonable requests for connection at a fixed location. Since the amendments to the Universal Service Directive in 2009, an obligation to meet reasonable requests for PATS can only be imposed in respect of the connections which are the subject of the USO. Where requests for connections can be met using alternative infrastructure, there is simply no basis to require eir or another provider to roll out infrastructure in order to meet a request for PATS. The only obligation which may be imposed is an obligation to provide PATS over the required connection. Whether this would be appropriate will depend on how reasonable such requests are including having regard to the matters set out in our response to Question 1. Indeed, the NBP rules propose to prohibit the supply of a narrowband internet access service during the roll-out phase and the NBP provider is not subject to any obligation to offer a standalone voice (over broadband) service.

Nor can the price at which services are made available on alternative infrastructure be relevant to the matter of deciding whether another provider should roll out duplicate, legacy infrastructure. If an issue of affordability arises, then there are a number of measures that ComReg may take under the Universal Service Regulations, including in particular the development of tariff options and packages.

Against this background, ComReg's proposals that eir continues, to be obliged to roll-out a legacy network even in the presence of alternative network roll-out allowing for true functional internet access, so as to avoid *"imposing cost and inconvenience on [end users] as a result of having to change provider"* (para 562), is devoid of any common sense and promote entirely inefficient duplication of infrastructure. This is not only contrary to the objectives being pursued by the regulatory framework but also the legal scheme set out in Article 4 of the Universal Service Directive and Regulation 7 of the Universal Service Regulations. In particular, it is entirely contrary to those requirements to require the roll-out of infrastructure that ComReg acknowledges does not support functional internet access for the sole purpose of ensuring the continued availability of PATS. eir submits that such requests for PATS are simply unreasonable even if ComReg had the power to impose such obligation.

In this context, eir is of the view that ComReg's conclusion that *"it is not appropriate to choose an NBP successful bidder instead of Eir, in the next 5 years, to act at the provider as last resort for end-users reasonable requests given the likely construction of the NBP contract"* (para 578) reflects a reasoning that is particularly unbalanced to the detriment of eir. In effect, ComReg is of the view that eir must maintain its copper network in the NBP area for the next 5 years in part so as not to inconvenience end-users and in part so as not to interfere with the NBP roll-out. It is difficult to see how this does not discriminate against eir and impedes its ability to improve service quality for end-users through the roll-out of access fibre networks, by forcing eir to maintain and invest in outdated network technology.

In its latest strategy statement<sup>6</sup>, ComReg recognises the complementary role that the NBP will play in meeting un-served broadband needs, in stating that *"significant challenges lie ahead for the sector, a point acknowledged by consultation respondents. Bringing high speed broadband services to all areas of the country is a key challenge, given our rural demographic. During the 2014-16 strategy period, ComReg will be mindful of the needs of Ireland's rural population. Regulatory measures such as Universal Service Obligations, alongside Government initiatives, in particular the Government's commitment to a major telecommunications network build-out to rural Ireland, should have a positive impact."*

ComReg has also stated its commitment to ensuring efficient investment. In this respect ComReg has stated that *"There is more intense competition in densely populated areas than in rural areas. This is particularly the case at deeper levels of infrastructure investment. ComReg wishes to promote competition in all parts of the market, but recognises that some consumers will not benefit from as great a degree of competition – and their interests may need additional protection. A key challenge for ComReg, therefore, is maximising consumer benefits from infrastructure competition in more densely populated areas, and protecting the interests of consumers in areas where competition is not established."* ComReg's aims and indeed the specific obligations under the USO regulatory framework place a responsibility on ComReg to avoid duplication in rural areas, not just with the NBP but also with in other areas with both mobile infrastructure and coverage. eir believes that the proposals in ComReg 16/31 cannot be reconciled with these aims and objectives.

ComReg's strategy statement also recognises that the market is responding to the growing demand for fixed and wireless broadband while delivering the ever increasing speeds required to support the applications that businesses and consumers are using and acknowledges that *"commercial investment in high-speed networks has accelerated and ComReg's goals will be served if this continues"*. This confirms that ComReg can best address the key challenge of "enabling continued investment in high-speed broadband" by limiting its intervention in respect of

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<sup>6</sup> Strategy Statement for Electronic Communications 2014-16 - [ComReg 14/75](#)



USO AFL, thereby avoiding inefficient investment and allowing, eir, the proposed USP to continue to respond to market demand.

**7. Do you agree or disagree with the regulatory options for reasonable access requests as set above? Are there other options that we should consider? Please give reasons to support your view.**

Please see the response to question 11.

**8. What do you believe is the most appropriate factor(s) to define a reasonable request? Are there other factors which you believe we should consider when assessing what defines a reasonable request? Please give reasons to support your view.**

Please see the response to question 11.

**9. What is your view regarding how to assess if the alternative infrastructure is affordable? Please provide reasons to support your view.**

Please see the response to question 11.

**10. Do you agree that indoor coverage is an important factor in assessing alternative connections and PATS? Please provide reasons to support your view. 67**

Please see the response to question 11.

**11. Do you agree that where a threshold is set, only costs that can be attributed to the individual end-user should be measured and that the estimated cost of connecting an end-user should also be based on the least cost technology to provide the required service, irrespective of the technology the USP choose to utilise in practice? Please provide reasons to support your view.**

In addition to the existing monetary threshold of €7,000, (which, ComReg itself acknowledges is far in excess of other member states that apply such a limit), ComReg proposes to extend the analysis of reasonableness to address requests for access at a fixed location to situations where one or more alternative services are available to the access seeker. ComReg has set out a decision tree in Figure 4 of ComReg 16/31, which it proposes for use in determining whether or not the USP would be required to provide a connection. While eir welcomes ComReg's acknowledgment of alternatives which goes beyond previous AFL USO Decisions, the proposed approach side steps the proper assessment of the need for AFL USO and instead attempts to shift the onus of identifying where there may be a continued need for an AFL USO, from ComReg onto the USP.

In respect of the RAR ComReg proposes a regime which would allow eir to consider the availability of Alternative Network(s) which may be fixed or wireless provided the service meets Minimum Indoor Availability.

***“Alternative Network”*** means the physical and other infrastructure and technology of an Undertaking other than a Designated USP, which is capable at the time a request is made by an End-User to the Undertaking, of providing the End-User with a reliable, properly and fully functioning Connection and PATS at a Fixed Location, using any suitable technology or technologies, including for example, fixed line technology, or wireless technology, or both;



**“Minimum Indoor Availability”** means availability to the End-User that is functionally and technically equivalent to fixed technology that is provided at a Fixed Location;

eir may propose an Alternative Network if it is acceptable to the end-user (Decision 5.5.b.) and to ComReg’s satisfaction. If the end-user vetoes the Alternative Network the eir must supply a connection (per Decision 5.6) if the cost to do so is less than €7k.

The USP should be the provider of last resort (as acknowledged by ComReg e.g. 198<sup>7</sup>) with intervention targeted solely at those premises where no alternative exists.

At 270 ComReg notes TERA 2 recommendation that there could be exemptions if the AFL can be met ‘by a broadly comparable service’. In TERA’s view (which ComReg accepts):

- *The USP has no obligation to meet the request for connection if it demonstrates that another infrastructure is present and is capable of providing voice services and Internet access with sufficient level of QoS and at affordable prices as described in section 1. It could be a private fixed infrastructure or a fixed wireless access provided by 3G or 4G networks. In the case of the mobile solution, the USP has to have evidence that the indoor coverage is guaranteed to an equivalent standard as a fixed connection or that the customer is agreeable to the solution.*
- *Another exception could be the presence and availability of a 2G mobile network or FCS technology which could be used to connect an end-user; however, it would not be able to provide functional internet access. Therefore, this technology could be used for the USO connection only under the condition that the end-user confirmed it did not need the Internet connection. It would be subject to the same RAT, as set in the sections 3.3 and 3.4.*

It is not clear from ComReg’s consideration of RAR in chapter 6 whether a mobile solution on its own is sufficient or if it has to be a ‘fixed wireless access’. However ComReg appears to adopt a firmer position in Chapter 10 on designation: “581 We consider that the current mobile services, without enhancement and equipment to cater for access at a fixed location, would not currently deliver access at a fixed location. Whereas several wireless technologies are available, some of them (such as 3G) already have a wide coverage and growing deployment of 4G and/or advanced LTE is envisaged, indoor quality of service of mobile networks can be sometimes very poor. As a consequence, while a mobile operator may indicate that it covers a given area, end-users may not always be able have access to mobile services inside and throughout their home or business.” Before suggesting there is more flexibility in a somewhat circular manner. “582 However, mobile services can in principle be considered as alternative ways to meeting the functional requirements of AFL and we have incorporated this in our proposed reasonable request criteria, as set out in Section 6.”

According to the second exception, 2G or FCS, could be used but only if the end-user confirms they do not want an internet connection is of concern, particularly in areas where eir intends to rollout fibre access. Essentially the obligation is saying that eir must provide a copper connection to provide 28.8Kbps even if the NBP will provide a solution within the next few years. This does not support efficient investment and leaves eir with a very short period over which to recover the copper investment.

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<sup>7</sup> Although not acknowledged as a material consideration at 553 “We are of the view that a designation for the entire State does not create any additional burden on the Designated USP(s), compared to the designation being only for precise geographical areas or end-user locations where a provider of last resort is required. The net effect of the obligations is exactly the same, but our proposal provides greater certainty for all interested parties.”



We would contend that the RAR does not give sufficient flexibility because:

- The customer right to veto alternatives creates at the very least a costly administrative process and potentially undermines the suggested flexibility.
- It leaves eir exposed to under recovery of costs in the NBP area if a copper connection must be provided to support 28.8Kbps in advance of NBP rollout.
- ComReg has not specified / pre-approved a list of acceptable technologies or what mobile signal strength would satisfy MIA.
- It is not clear that a pure mobile service would suffice. Mobile is an acceptable functional substitute for a voice service and given the massive change that will be brought about by the NBP should, at least, be allowed as a transitional solution. It is notable that 40% of households nationally (46.1% in rural areas) are already mobile only.
- The alternative must be 'affordable'. However ComReg has not specified how that should be tested.

In our view the proposal is too vague for an interested parties to consider whether it is practical to operate or will afford any degree of flexibility to the USP.

The reasonable access request regime as proposed under 16/31 is unclear and ambiguous in a number of key respects while also being unduly burdensome on eir.

It is ambiguous because ComReg does not specify or pre-approve a list of acceptable technologies or an indication of the level of mobile signal strength would satisfy minimum indoor availability. It does not state whether a pure wireless alternative is acceptable or whether it has to mimic a fixed line service as the current FCS does. ComReg's proposals also lack any specifications with respect to how the affordable requirement would operate. ComReg should clearly acknowledge that a mobile service is acceptable to provide access to narrowband services at a fixed location. We note this is already the case in some Member States.

The proposed regime is unduly burdensome on eir because it proposes that the End User would always have a right of veto against any alternative network that eir may identify. If the End User were to exercise this veto eir would be obliged to supply the connection at no additional cost to the End User once the cost of doing so is not higher than €7,000. As outlined below the cost of providing the connection will rarely be higher than €7,000 and therefore that the customer's right of veto will nearly always be determinative. Also, the veto which features in the draft decision would appear to apply even to the current FCS solution. This is contrary to ComReg suggestion that its proposals offer eir greater flexibility and nor is it compatible with the FIA obligation whereby eir currently has the flexibility that up to 6% of lines do not have to be capable of supporting 28.8Kbps.

The intended regime fails to recognise that the USO for AFL should only be obliged to supply a connection where there is no affordable alternative network available that is of a reasonable quality.

**12. Do you agree that end-users should be entitled to adequate and regular information regarding their request for connection? Please provide reasons to support your view.**

eir currently provides such information and regardless of and separate to USO obligations is looking at ways of improving it, to support enhanced provisioning.

## QoS

TERA's consideration of QoS is vitiated by:

- a lack of a robust framework for analysis;
- inappropriate analysis of NBP areas and definition of sub-national areas;
- a conceptually flawed way of setting targets for the NBP areas;
- a lack of understanding of how network maintenance is organised and planned;
- a vast underestimation of the costs of improving network QoS;
- no analysis of the benefits that would be required to justify the increased costs on economic efficiency grounds;
- a lack of appreciation that ComReg's and TERA's changes to the net USO cost calculations mean that eir will unfairly be required to incur all of these costs without recompense.

These fundamental problems lead to conclusions and targets that are not sufficiently based on fact or logic and should be discarded.

### **Framework for considering QoS targets**

The most fundamental problem with the TERA analysis is that it does not apply an appropriate and robust framework to assessing the appropriate level of QoS.

The appropriate economic framework that should be applied is a cost benefit analysis i.e. TERA should have considered carefully the costs imposed by such a policy and the likely benefits. TERA's analysis makes an attempt at quantifying the costs of the policy, which as explained below vastly underestimates the actual costs that would be imposed on eir, but does not consider the benefits. It is simply inconceivable that the benefits can be so large.

If ComReg and its advisors consider that there are wider social policy objectives that should be met, eir recognises that ComReg may determine that QoS improvement should be made, even if the costs of implementing such a policy exceed the benefits and so the policy is economically inefficient. However, if this is the case:

- ComReg and its advisors need to address the issue directly so it is clear that this is a social policy decision; and
- ComReg and its advisors need to carefully justify the social policy decision, including specific reasoning that addresses the issue of quality of service.



Moreover, it cannot be proportionate for such a social policy to be implemented if the costs are borne only by one operator, eir. In practice, this is the case since ComReg has effectively taken a decision (which is highly iniquitous in eir's view) that eir should bear all the USO costs.

### Inappropriate analysis of the NBP areas

The Government has taken a decision to overbuild the eir copper network in the NBP areas. If either eir is not successful in the NBP tender or, in the alternative, the eir infrastructure (duct, poles, etc.) is not used to provide the NBP, eir has significant concerns that this will lead to a productively inefficient outcome i.e. it will lead to greater costs being incurred to provide a service than is necessary. Productive inefficiency should be a primary concern for Government and regulators because it is a first degree welfare loss i.e. all the increase in costs represent a direct loss to societal welfare.

Moreover, as eir explained clearly in its response to Consultation 15/89, *"It clearly cannot be viable to operate a commercial copper network and a semi-commercial NBP network in parallel in areas recognised as being non-commercial."* To reiterate, these are areas where it does not make commercial sense to roll out one advanced network without State aid (even with complete freedom to set prices and by capturing all the available demand in that area). It therefore makes even less sense to invest in such a network where the available consumer demand must be split with the NBP network and where eir's prices would be constrained both by cost orientation imposed by regulation and by the successful NBP bidder's prices. In eir's view, any other conclusion is pure fantasy. If ComReg/TERA are determined to assume that eir may continue to provide services in the NBP areas they must explain very clearly how this makes economic sense, providing clear evidence rather than flawed logic.<sup>8</sup>

eir would be expected to exit network provision in some or all of the NBP areas that it does not win, subject to completing its current 300,000 rural premises rollout and any constraints that impede eir from doing this, or impose greater costs on eir in those areas, need to be very carefully considered. This is particularly the case if ComReg persists with its (unreasonable and unjust) policy of not sharing the USO costs with the wider industry.

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

Whilst TERA correctly identifies that the focus of the NBP is on providing "enhanced capabilities", this is irrelevant from a productive efficiency perspective. The correct productive efficiency question is "what is the least cost way for this service to be provided?" That is very obviously for the NBP

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<sup>8</sup> We note that TERA now refers to the uncertainty in the outcome, although it insists that "the cases envisaged in the Phase 1 TERA report are possible" footnote 49 on page 49 of the TERA report.



network to take on the USO and provide these services, rather than for eir to be forced to invest many millions of Euro to continue to provide a USO based on outdated and overbuilt infrastructure. The NBP will have all the technical capabilities of doing this, as well as providing more enhanced services. It is economically illiterate for ComReg and its advisors to force such an outcome.

TERA states that it is not clear that retail prices for universal services will be affordable or have the requisite QoS. The Government (advised by ComReg) is proposing higher QoS targets for the intervention area (based on the deployment of new infrastructure rather than maintaining a legacy access network). Thus, it beggars belief that this should be used as a reason for imposing a productively inefficient outcome and for forcing eir to bear all the costs of this choice. It is simply unacceptable.

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

### Costs

It is not possible to target network maintenance improvements only to NBP areas. In our response to the August consultation we explained the reasons behind the differences in repair times between different area types, namely the different nature of the network (% of overhead cables), geography (distances in rural areas are greater) and climate (wind and rain). We explained that, in fact, we invest relatively far more in maintenance of our rural infrastructure than our urban infrastructure as shown by the greater number of staff per line.

TERA has simply ignored that analysis. In response to our submission TERA makes the statement that:

*“While these points are all correct, the key point remains that if eir wished to achieve similar level of QoS in each of the identified areas or more locally, it could allocate even more staff outside market-driven fixed network competition areas. Contrary to the fault occurrence rate, for which eir cannot easily change the share of overhead versus underground infrastructure as well as cannot easily change line length and cannot influence weather events, eir can allocate staff differently across areas with a view to improving repair times in greater affected areas.”* [our emphasis]

As a question of fact, it is certainly the case that eir could increase the overall number of maintenance staff. eir would be very limited in how it could target them more in some areas, such as more rural areas compared to dense urban areas (such a Dublin). However, it is emphatically not the case that eir can easily target efforts to, say, the areas that are defined as NBP as opposed to other rural areas which are classified as eir-only ones. TERA’s analysis shows a fundamental misunderstanding of how network maintenance is efficiently organised and how these functions can be designed geographically. It also shows a misunderstanding of the NBP intervention area, which is not comprised of discrete blocks of premises. In many cases it is just premises which are

longer distances from individual exchanges. This means that within a 20 km distance there will be NBP and non- NMP premises.

TERA's analysis of repair team resourcing concentrates of the volume of trouble tickets cleared to line codes and compares this to the number of staff in each area. In reality the repair teams are dimensioned to deal with all field dispatches irrespective of the ultimate clear code used.

As can be seen from Figure 6 there are significant differences in the ratio of line fault reports to other reports across the sub-national areas. Many non-line clear codes require field dispatch. The average number of reports handled per staff member per day across all the repair service teams is similar at ~3 per day.

### Figure 6



TERA derives a “faults to be removed figure” figure by comparing the “predicted LFI” and the average actual faults over the last 5 years in the NBP areas. This vastly underestimates the actual effort required to hit the targets because: (i) it does not take the variance in faults and LFI between years; and (ii) it assumes that effort can be targeted only on the NBP areas.

As TERA recognises the main drivers of faults are beyond eir's control. The drivers include the only two explanatory factors considered by TERA in its correlation analysis – the % of overhead cables<sup>9</sup> and the weather.

Clearly the weather varies from year to year. As can be seen in the data in 2013/14 the LFI was significantly higher because of the winter storms. eir assumes that ComReg/TERA accept that it has no power to change the weather.

TERA's correlations analysis and the targets it set are based on data from the 5 year average. However, to avoid or reduce penalties in years where the weather is worse than normal eir has to significantly over specify its spending on network maintenance i.e. eir needs to plan to have very significantly more network staff to deal with the network problems left by bad weather than are normally needed. With the number of network staff required to hit the targets there would be an even greater reduction in the number of faults than has been assumed by TERA and, consequently, the cost would be even greater.

As explained above, it is not possible for eir to focus its efforts on increasing network maintenance activity on the NBP areas. Therefore, to hit the targets proposed by TERA for the NBP areas eir needs to invest significantly more. This will have an impact on the NBP areas as well leading, again, to a greater number of faults removed than is assumed by TERA, again with a consequently greater increase in costs.

<sup>9</sup> The length of cables is taken into account in the dependent variable.



Cost per fault is higher than calculated by TERA. TERA has calculated the investment per fault at €2,935.<sup>10</sup> However this value is a national average, TERA also states that the cost to remove faults in rural, for example NBP areas, is 60% higher than urban<sup>11</sup>.

This is clearly an inappropriate figure to use. TERA has not taken into account that the cost of decreasing fault rates beyond current levels will require increases in cost as the number of faults decrease. eir organises its network maintenance to get the best consumer outcome from the invested resources and reducing the faults rates further will require additional effort and cost.

### Funding

In eir's view it is highly unjust for ComReg to impose these USO costs on eir alone.

In this regard, it is important to recognise that ComReg has imposed methodology changes to the USO net cost calculations which mean that the net costs of USO are likely to be recurrently underestimated:

- (i) ComReg has required eir to allocate fault repair costs based on the allocation of staff to their service areas to ensure that the USO net cost model is aligned with TERA's Copper Access Model.<sup>12</sup> This requirement was conceptually unjustified given that an efficient allocation of staff cannot foresee with complete certitude the level of fault incidence that actually occurs in any area at any given year. Given this, the relative occurrence of faults by exchange area, which is what eir used in its funding claims, provided a more robust cost<sup>13</sup> allocator. In fact, at the time of the review of the funding application for FY2009/10, ComReg and its consultants TERA were of the view that the using the relative number of faults was a reasonable proxy for the geographic spread of repair costs and did not see "consistency with the CAM" as a requirement
- (ii) The imposed change in methodology effectively cancels the recovery of costs over the level of what ComReg deems to be efficient. In case of exceptional and random weather events, such as those experienced in the winter of 2014, eir would allocate staff to deal with the high level of faults but would not be allowed to reflect the additional cost of these areas in its cost model.

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<sup>10</sup> see footnote 53 of the TERA April 2016 report on page 62

<sup>11</sup> Frist TERA Report page 83.

<sup>12</sup> It should also be noted that this means that ComReg and TERA should have known about the limitations in increasing the number of maintenance staff for NBP areas – staff are not organised in this way.

<sup>13</sup> If conservative because rural faults take longer to repair



- (iii) ComReg stated, " could allocate even more staff outside market-driven...areas"
- (iv) Given that random and exceptional weather events are more likely to occur in rural or lower line density areas and that these areas tend to be uneconomic, not allowing the actual level of repair costs to be reflected in these areas results in the net cost being underestimated.
- (v) Therefore, when ComReg states that eir, " could allocate even more staff outside market-driven...areas" , it seems to be unaware of the inconsistency it has imposed in the recovery of such costs, which itself recognises,

eir made clear that the net cost model should reflect where staff repair faults and not where they are primarily based, but this was not accepted by ComReg. This principle is more relevant if geographic fault targets are imposed on eir and as a consequence there is a need to over-specify the network maintenance function.

Therefore it is paramount that ComReg apply a consistency approach between, on one hand, seeking to see increased performance in underperforming rural areas, and on the other, the incentives available in a funding mechanism, which should be expectable by a USP.

**13. Do you agree with the approach taken to estimate the predicted fault occurrence based on weather, line length and overhead percentage? Please provide reasons and evidence to support your view.**

TERA's analysis to derive the fault rate targets is conceptually flawed and shows a fundamental misunderstanding of statistical analysis.

In our understanding, the TERA analysis does the following:

- (vi) It divides the country into three areas based on measures of rainfall and wind speed. The range of metrics used to define the different weather type areas is imposed exogenously by TERA.
  - The weather parameters used consist of count data generally regarded as less statistically useful than continuous data which is available for both wind and rain.
  - The association of the weather stations by county is somewhat arbitrary. At a minimum TERA could have associated areas with their closest weather station.



- (vii) It derives (very basic) statistical relationships/correlation between faults per 100 lines per Km and the % of overhead cables for each of these weather type areas. In doing so it aggregates MDFs into “deciles”.
- (viii) It assumes that this statistical relationship/correlation provides some sort of fundamental relationship between faults per 100 lines per Km and the % of overhead cables, which should apply to all MDFs (in each weather type area). All other factors explaining difference between MDFs should be ignored.
- (ix) It applies that same relationship at the individual MDF level (working out the number faults depending on the number of lines per Km and % of overhead cables in each MDF).
- (x) It aggregates up the individual MDFs into the three area categories defined by degree of competition: competitive/market driven, NBP, eir only.

There is nothing predictive about this at all. The same MDFs are used in every step, albeit in step (ii) they are aggregated into deciles.

By aggregating into deciles a significant amount of information is lost and the analysis will appear to show a higher correlation ( $R^2$ ) than would otherwise be the case. What this step effectively does is to reduce the extent to which the outcome (faults per 100 lines per Km) at the MDF level appears to vary with factors other than the % of overhead cabling and weather type. Thus, the analysis artificially appears to show that these metrics (which TERA has assumed should be the only factors considered) explain more of the outcome than they actually do.

To summarise, the TERA analysis uses the MDFs to derive a relationship, applies that relationship back to the individual MDFs and then aggregates these. It is essentially a recut of the same numbers, albeit some information is lost in step (ii) which explains why the TERA “predicted” figures are different from the actual averages.

All that TERA have done in step (iii) is to ignore the other factors that explain why different MDFs have different fault rates. They have then fitted the faults per 100 lines per Km at the MDF decile level to the assumed relationship. Thus, TERA’s analysis derives fitted values rather than “predicted” values.

Moreover, as can be seen from the graphs that TERA present on page 61 of the report, there are large differences between the fitted outcomes (as represented by the lines) and the actual outcomes. In addition, and of high importance, there appears to be a clear pattern in the residuals (the difference between the fitted outcome and the actual outcome) – for weather types 1 and 2 the fitted values are: below actual values for low % of overhead cables; above the actual value type for a medium % of overhead cables; and below the actual values for a higher % of overhead cables. This shows that the basic model is missing key explanatory variables. The combination of using MDF deciles and the missing variables certainly explains the differences between TERA’s

“predicted LFI” at the area type level and the actual 5 year average i.e. those differences are not to do with anything fundamental but, rather, are due to errors in the analysis and the limited explanatory power of the model.

Even if TERA were to find data for those missing explanatory variables and include them and to use MDF level analysis (rather than deciles) all the analysis would show is fitted (“predicted”) values closer to the actual values. This is why we consider there is nothing predictive about this model at all. The analysis is purely descriptive but, due to errors in the analysis and missing variables, does not fit the data well and thus has derived fitted (“predicted”) values which are different from the actual averages.

There is no sensible basis for using the fitted values that TERA has derived. There is nothing predictive about them at all and the analysis itself is fundamentally flawed. That ComReg is planning to regulate eir, imposing tens of millions of Euro in cost, on the basis of such a flawed analysis is highly concerning.

**14. Do you agree with the preliminary view that any sub-national targets should be in accordance with the 3 areas defined in the TERA reports? Please provide reasons and evidence to support your view.**

The following summary descriptions of the three areas demonstrate that the attempt to clash MDF with the 3 defined areas results in a mishmash of the three within individual Open eir MDF regions.

#### **Competed Areas**

- Competed areas are defined by the existence of an alternative access network provider. It includes very urban city areas and larger provincial towns.
- A majority of the population have a choice of providers.

#### **However contrary to TERAs definitions**

- Alternative fixed networks do not extend to all urban areas so some fixed customers in so called competed areas would be eir Only.
- The rural hinterland around provincial towns are part of the NBP.

#### **eir Only Areas**

- eir Only defined by the choice made by other service providers not to invest and less significant NBP population coverage.
- Typically these are smaller provincial towns where the urban population within vDSL range is greater than the rural population outside of vDSL coverage.
- As there is no alternative fixed network, all urban premises are served by eir Only.

#### **However contrary to TERAs definitions**

- No alternative network, so all urban End-Users are eir Only.
- The rural hinterland around provincial towns are part of the NBP.

#### **NBP Areas**

- NBP is defined by very small or no urban settlement and a more significant rural population. These are a collection of the most rural areas.
- Mostly rural hinterlands that are part of the NBP.

#### **However contrary to TERAs definitions**

- There are no alternative fixed networks. Where vDSL is available customers are eir Only.

We demonstrate this further by taking examples of MDFs that would be defined under the proposed segregation as eir Only areas, Competed areas and NBP areas below. In each case we have demonstrated that each of the 3 examples contain geographic locations that actually fall under eir Only, Competed and NBP.



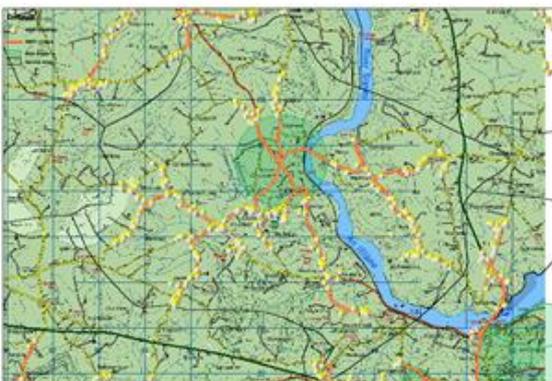
### Competed example (Summerhill Dublin)

- City / very urban
- eir network
- Expect Virgin Media to be widely available.
- May be some areas with eir-only
- No NBP



### Competed example (Ballina, Mayo)

- Provincial town
- eir network
- Expect Virgin Media to be widely available in the urban area.
- May be some eir-only areas
- Rural hinterland is covered by NBP



### NBP example (Killurin, Wexford)

- Rural with no significant urban settlement.
- eir network.
- eir only close to exchange vDSL service reach.
- Beyond vDSL reach is covered by NBP.



### eir Only example (Dingle, Kerry)

- Rural with urban / small town settlement.
- eir network.
- eir only within urban / town.
- Rural hinterland is covered by NBP.

**15. Do you agree with the preliminary view that fault occurrence targets and repair targets should be combined to provide a service availability target? Please provide reasons and evidence to support your view.**

The combination of the targets presents a façade of flexibility. In reality eir would be forced to invest. If eir were to attempt not to invest, it would face an exponential increase in line faults. This would be compounded by the fact that the bulk of these faults would manifest during adverse weather conditions. Such conditions prevail during the winter-months; therefore eir would be forced to increase staff numbers across its maintenance crews far beyond the current efficient level in order to address the growing level of faults that occur in winter months in particular.

Following the extreme winter storms of 2013/2014 we witnessed a growth in faults over subsequent months as a result of the impact of the storms on the underlying integrity of the network. This inevitably impacted on QOS measures throughout the year. A decision not to invest would have a similar effect, which would compound year on year as the network is hit by further adverse weather events.

eir is planning to retire its copper network and this demands a managed wind-down of investment and the near term retirement of copper lines. ComReg's proposed continuation of stringent QOS targets and USO access criteria which are biased to the degree of imposing a copper solution would have the effect of forcing eir to inefficiently prolong the operation of the copper network, with an escalating fault rate and the choice of inefficiently high staff numbers or somewhat less costly yet highly inefficient network investment in order to keep pace with QOS requirements.

**16. Do you agree with the preliminary view that a service availability target should be set nationally and sub nationally by area? Please provide reasons and evidence to support your view.**

Please see the response to question 17.

**17. Do you agree with the preliminary view that the national service availability target should be 99.94% and the target for each sub-national area should be 99.86%? Please provide reasons and evidence to support your view. If not, what alternative availability targets do you believe are justified and why?**

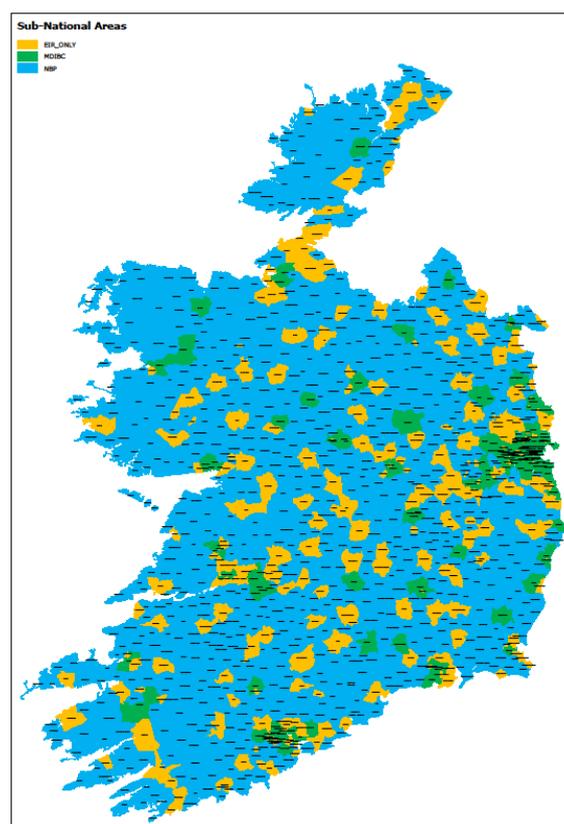
Without prejudice to eir's objections to the continued imposition of QOS targets and in particular the proposed sub-national targets on the basis that they cannot be considered to be objectively

justified or proportionate, crucially the formula used is mathematically incorrect. The speed of repair measured in terms of working days whereas the formulae used by TERA calculate based on an assumption that speed of repair is measured in calendar days. This is an elementary misunderstanding of the metrics.

Given the diminishing relevance of USO to the extent that the expected incidence of End Users needing a provider of last resort has become so remote that ComReg is unable to identify who or where they might reside, while the targets apply across all copper lines in all areas including competed areas. Without prejudice to the disproportionate proposal to continue to impose QOS targets, eir objects strongly to the proposal to further specify the proposed targets on a national and sub-national basis.

As outlined above, it is logistically not possible for an efficient operator to target its network repair resources in the way that TERA has proposed, therefore an improvement in performance in NBP areas can only be achieved by improving performance in all 3 of the areas defined by TERA.

We have presented a map of the Open eir service team areas alongside a map of the sub-national areas defined by TERA which demonstrates the degree to which individual service teams are serving all three of the defined sub-national areas.



The map on the left shows Open eir's service team geographic distribution. Most teams cover exchanges in 2 or 3 of the sub-national categories. All faults are treated equally. However arrival patterns in rural areas have greater variability than in underground / urban. Therefore high fault arrivals volumes during weather events have a greater impact on rural speed of repair metrics.

Even if MDFs happened to coincide with the three areas which have been defined by TERA, the analysis would need to consider the way in which eir has efficiently organised its network maintenance crews at a geographic level that is less granular than the MDF level and that is not

strictly tied to MDF locations. Sub-national areas are defined by TERA at exchange level and are based on the existence of other operator networks, whereas repair resourcing in Open eir is dimensioned to match network fault levels experienced on the Open eir network to geographically distributed service team resources.

Open eir repair Field Force is organised by work stack areas. These work stack areas are built up to make a workload for a typical sized team. The boundaries are a grouping of our exchanges. The field technician resources are assigned to the work stacks to meet the demand in the work stack. This then equalises service in each work stack.

Service level will be more weather impacted in the rural areas and this is why we have a mobile resource to equalise the service. The faults flow through our works management system to Technicians assigned to the work stack. As there is no logical relationship between the work stack boundaries and the NBP areas it is not possible to target specific areas. In fact our systems, methods and practices have always been to treat all faults in an equal manner so the equality of service is afforded to all customers.

In summary, segregation by MDF fails to isolate each of the areas which TERA has attempted to define. This is largely due to the fact that the Competed, NBP and eir Only areas while fitting neatly under a their requisite titles for the purpose of discussion, are in fact dispersed and interspersed randomly across the country and do not neatly map to eir's MDFs.

Figure 7 presents our estimated availability measurements from June 2011 to date. This highlights two key issues.

### Figure 7



It demonstrates that the network availability performance is not consistent across the 3 areas defined by TERA while also showing that overall performance in respect of availability varies from year to year and particularly during and in the aftermath of the extreme storms of 2014. A common cause for both is weather. Combined with the fact that eir only and NBP areas have a higher proportion of over-ground infrastructure which makes these areas more vulnerable to the elements and extreme weather events, these areas typically suffer the brunt of severe weather. The annual variation in performance can also be directly attributed to extreme weather events.

- Due to existence of random weather events eir would have to plan to exceed the target each year in order to compensate for those years in which unforeseen weather events make it impossible for eir as an efficient operator to achieve the targets. In our analysis we have applied a parameter of 1 in every 4 years bringing weather such random extreme weather events. Therefore we would have to exceed the target 80% of the time and exceed it sufficiently to compensate for the remaining 20% of the time that the target would be missed.
  - Investment levels that achieve average availability performance equal to the targets will result in targets being missed in 1 of every 2 years. To achieve a better confidence of hitting the target more often more investment is required to achieve average performance that is better than targets.
- TERA has not allowed for the fact that under normal conditions, the copper network is subject to continuous deterioration which has typically represented a  $\frac{1}{2}$ % per annum dis-improvement on fault performance. Additional investment is required to counter this.



- Any investment undertaken will impact all USO retail and wholesale lines. Therefore to reduce the USO fault occurrence a larger investment targeting all lines is required. The line fault split is roughly 40% USO/60% non-USO.
- Additional investment will continue to be required across all areas to support network repair.
- The cost per line of rural network maintenance is significantly higher than urban line maintenance. TERA in its first report estimated rural lines to incur costs that are 60% higher than urban lines however this has been overlooked in TERA's second report and ComReg 16/31.

We have analysed the actual percentage availability that would actually have to be achieved in every 4 out of 5 years in order to meet the targets proposed by TERA/ComReg for each of the 3 defined areas. We take the mean rolling average up to 70 months previous and the availability for the last 12 months to April 2016. We then adjust for the fact that the data is not normally distributed and from this we derive the mean rolling average percentage that would actually have to be achieved. This is summarised for each area as follows:

✂

In its second report TERA has presented a cost of €8.6m to eir over a five-year period<sup>14</sup> in achieving the proposed availability target in the NBP area. This massively underestimates the cost that eir would incur in meeting the 99.86 NBP sub-national target. eir has projected the cost would amount to €2m as set out in Table 2.

Table 2 - Estimated Investment Requirements

✂

### **QOS Focus is inappropriate for end of life Copper Network**

ComReg has not provided a sound basis to justify the proposed quality of service regime. At a time when the copper network is being retired, the QOS regime should be relaxed or removed however through the introduction of sub-national areas in ComReg's proposed QOS regime, ComReg would in effect be imposing significant additional investment costs on eir to improve the performance of the legacy copper network specifically in rural/NBP areas.

The proposed QOS regime relies on the assumption that eir will maintain a legacy narrowband copper network in parallel with next generation networks that are designed to deliver high speed broadband whether state subsidised (as will be the case in NBP areas) or otherwise. Irrespective of the NBP tender outcome eir Retail will seek to migrate customers to the new fibre network. We expect other retail service providers to migrate customers to the new fibre network.

### **QOS is being justified on the strength of false assumptions about investment incentives**

The overall rural fibre rollout project will require investments of hundreds of millions of Euro and this investment will be spread throughout the country, encompassing all three areas that have

<sup>14</sup> Page 62 of the Second TERA report.

been defined by ComReg (eir Only, Competed and NBP). Contrary to the assumptions adopted by Tera and ComReg, eir is investing and will continue to invest heavily in all three areas with a large portion of this investment going to the so called NBP areas. Table 3 gives a forecast of the relative breakdown of this investment between the 3 proposed sub-national areas. Contrary to the suggestion that eir is not investing sufficiently in NBP areas and would not invest in these areas, a substantial portion of the currently planned investment is designate for NBP areas.

**Table 3.**



**18. Do you agree with the preliminary view that end-users that have service availability for >10 days should be automatically refunded? Please provide reasons and evidence to support your view.**

eir does not agree. The question asks respondents whether they agree with ComReg’s preliminary view, however nowhere in the consultation document has ComReg offered any reasoning as to its preliminary view. In Chapter 9 (para. 522) ComReg states that “Apart from the automatic refunds for service issues contemplated in section 7 we have not identified any specific terms and conditions that should be specified on the USP, however it will keep this aspect under review.” However the only explanation for ComReg’s proposal is at para 441 which suggests that ComReg's preliminary view as set out in Question 18 is "to protect individual end-users" with no explanation as to why this is necessary. The one other reference to refunds in chapter 7 is a column in the figure titled “cost to remove faults minus savings in future faults and customer refunds”. No explanation whatsoever is provided as to how the figure in this column has been calculated.

It is incumbent upon ComReg, in accordance with its obligation under Regulation 12(3) of the Framework Regulations 2011 "*to give the reasons for [a proposed measure], including information as to which of the Regulator’s statutory powers gives rise to the measure*". While ComReg has suggested, albeit somewhat indirectly at para 522, that it proposes to rely on Regulation 3(5) of the Universal Service Regulations (according to which, with the consent of the Minister, ComReg may for the purpose of the universal service impose specific terms and conditions), ComReg has provided no explanation as why it believes it can be used to impose an obligation to provide refunds as a USO. Furthermore, and most importantly, ComReg, despite its clear obligation to do so, has offered no explanation whatsoever why such a new obligation to refund is necessary, and why it ought to be a universal service obligation.

As a specific obligation on the USP, the cost associated with an obligation to refund would be part of the costs of meeting the USO which are to be included in the calculation of the net costs of the universal service, in accordance with Regulation 11 of the USR, for the purpose of a funding request. However, ComReg appears to have given no consideration, and certainly shared none, of the implications of such an obligation on the cost of the provision of the universal service and the competitive disadvantage that such an obligation would bring on the USP.

**19. Do you agree with the preliminary view that the connection targets levels that are in place are appropriate for sub national targets? Please provide reasons and evidence to support your view.**

ComReg/TERA have conducted no analysis of connection targets but conclude the existing targets continue to be fit for purpose. As we have demonstrated in the case of the proposed availability target, ComReg is proposing to maintain a suite of QOS parameters on the basis of a USO obligation that is justified by a tiny portion of End Users. Without prejudice to eir's objections to the continuation of QOS parameters generally, we should also point out that some metrics are no longer reflective of eir's working practices and reporting systems. This applies in particular to connection targets for 'By agreed date' orders which have become obsolete.

'By agreed date' orders are InSitu (prewired) connections which can be connected electronically, but the completion of the order has been delayed to an alternative Due Date by request of the customer. The USO states that where a customer requests a date with eir for the connection of a line, the performance target is set at 94.2% of connections to be completed by such an agreed date.

These order types are particular to our legacy billing and provisioning system (known as TIS). They have declined sharply in volume since 2014 (see Figure 8) due to the increased popularity of multi-play offerings including voice, broadband and TV services. Multi-play offerings are supported on our new billing and provisioning system (known as Springboard) which is not required or dimensioned to differentiate between order types due to the fact that all orders are scheduled.

**Figure 8**



eir projects that agreed date orders will decline to low single figures or possibly zero by the end of 2016. As the volumes are now extremely low and continuing to decrease we consider them too low to justify a separate class of orders. If ComReg ultimately decides to maintain connection QOS measures despite our objection to these in principle, these orders should be included with other orders under the in-Situ order category 'By Date of Request'.

Separately the measurement for all QOS metrics for connections would need to be adjusted to align with other QOS measurements by calculating performance on the basis of working days as opposed to calendar days, for consistency and to avoid confusion both administratively and for End Users.

**20. Do you agree with the preliminary view that the measurement of connection targets at sub-national level is appropriate? Please provide reasons and evidence to support your view.**

No we do not agree. The regional analysis is entirely flawed as highlighted above in our preceding responses.



**21. Do you agree with the preliminary view in respect of the measurement, publishing and auditing of the performance figures? Please provide reasons and evidence to support your view.**

The following is without prejudice to eir's position that the performance obligations cannot be justified. If a performance regime is maintained then auditing of the figures may be considered. However as this is a cost imposed on the USP by virtue of it being designated USP the associated costs should be allowable for the purpose of calculating the net cost. ComReg must confirm this to be the case.

**22. Do you agree with the preliminary view that the performance targets should be commence from 1 July 2016? Please provide reasons and evidence to support your view.**

As highlighted above it is eir's firm position that performance targets should not commence.

**23. Do you agree with the preliminary view that the necessity for a review of the performance targets should be examined in 2 years? Please provide reasons and evidence to support your view.**

As highlighted above it is eir's firm position that performance targets should not commence.

**24. Do you agree with our preliminary view that the obligation to maintain geographically averaged prices should be maintained? Please provide reasons to support your view.**

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

The overall framework purportedly applied by TERA, considering the costs and benefits of maintaining a GAP obligation is appropriate. However, TERA has addressed the issue in a cursory manner, and did not undertake meaningful analysis to reach its conclusion that the GAP obligation should be retained. In eir's view, it is simply unacceptable to maintain an obligation on eir that has a material impact on our ability to compete, without taking due care to consider the issue.

A proper approach would consider carefully:

- What are the benefits of maintaining an obligation?
- What are the costs of that obligation?
- Do the costs outweigh the benefits? If not, are there any alternative, less stringent obligations that could be imposed?

## **THE BENEFITS OF MAINTAINING THE GAP OBLIGATION**

The concern expressed in the TERA report is that by geographic de-averaging of retail prices eir would be able to increase retail prices in rural areas, whilst decreasing them in urban areas. This is because the price cap on retail line rental applies a formula that weighs different line rental products. If some prices go down, this means that other prices could increase<sup>15</sup>.

<sup>15</sup> Described in ComReg D03/07

TERA has stated that “*Maintaining the GAP obligation will protect end-user welfare in rural areas and areas where competition for voice access is not fully effective while ensuring workable competition is sustained in rural as well as urban areas. On the basis of the above analysis, we consider that maintaining GAP will result in an overall net welfare benefit, benefiting both competition and end-users. Having regard to the analysis set out above and in the TERA reports, we are of the preliminary view that the GAP obligation should be maintained for AFL services.*”

TERA’s analysis of the constraints on eir is superficial. It has not undertaken appropriate analysis of competition for basic retail line rental and voice service that would allow it to address the specific questions that its report raises. In essence the key benefit is that GAP will prevent increases for some users, however, GAP also prevents reductions to some users, which is a dis-benefit for end-users, and should be avoided. The GAP obligation is therefore disproportionate. If ComReg wants to prevent increases for users of voice only services it should do exactly that, and not prevent reductions.

There are three sources of constraints on eir:

- A. End-users switching to alternative providers using SB-WLR;
  - B. End-users switching to mobile; and
  - C. End-users switching to alternative providers using their own fixed infrastructure e.g. fixed-wireless providers.
- A. TERA itself states that “*The price constraint imposed by cost-oriented SB-WLR would probably outweigh the one imposed by the GAP as OAOs purchasing cost-oriented SB-WLR will probably be in a position to launch retail offers below the current GAP level*<sup>16</sup>.” Thus, on TERA’s own analysis, in the face of a cost-orientated SB-WLR (which has now been introduced under ComReg D03/16) there would appear to very limited (if any) risk of a material detriment to consumers on standalone voice in rural areas from removing the GAP.

There are several alternative standalone voice providers including Pure, Imagine, ACM and IFA Telecom and these have prices similar or better than eir in many cases<sup>17</sup>.

From July 2016 the price of SB-WLR will decrease from €18.02 to €15.91. This means that the standalone voice providers have plenty of scope to reduce prices. In the context, it is simply inconceivable that eir could profitably increase prices.

- B. This is in addition to the fact that many rural households (over 46%) have expressed a preference for mobile as their first line technology for the delivery of voice services.

Thus, a balanced analysis of the different constraints on eir, would conclude that these are increasing and the risk of any price increases is low. Consequently there is no justification to maintain the GAP obligation.

In attempting to provide adequate justification for retaining GAP, TERA has strayed beyond the scope of USO objectives in suggesting as an argument in favour of its retention is that it “Ensures equal treatment of all the customers”<sup>18</sup>. According to the directive and the regulations, the

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<sup>16</sup> TERA 2 report, page 42.

<sup>17</sup> See callcosts.ie

<sup>18</sup> Table 9 of the TERA 2 report

objective of USO in respect of pricing is to ensure affordability in cases where this may not be delivered by market forces. The test for affordability cannot reasonably be based on the relative price of services in rural areas as compared to urban areas, notwithstanding the evidence that eir has put forward to demonstrate that the removal of GAP would enable it to reduce prices to customers in rural areas.

A strict interpretation of GAP is that prices must be the same in all geographic services in the state. It does not impose a non-discrimination obligation or prohibit undue preference. In fact, such requirements were specifically removed by D12/14 and it is misleading and disingenuous of TERA to suggest they can be reintroduced by retaining GAP. So GAP may require all consumers are offered the same price everywhere in the state, and that all business users are offered the same price everywhere in the state, but there is not obligation under GAP the a business user in location X must pay the same as a consumer in location X. Rather, each of the End Users in location X must pay the same as their corresponding end-user in location Y. We are very concerned that TERA's evident lack of understanding of what GAP actually is has causes them to completely misrepresent the benefits and costs.

As regards the benefits of maintaining the GAP obligation, TERA concludes that “...*absent any GAP USO and, despite some existing constraints on the level of retail line rental price given the existing retail price cap, it cannot be ruled out that eir may wish to increase prices in specific areas, such as areas with no wireless coverage to the detriment of consumers.*”<sup>19</sup> [emphasis added]

It is clear from TERA's April 2016 report that they identify as valid the risk that eir may seek to increase its prices in specific areas based on the fact that ‘...it cannot be ruled out...’. ComReg, by accepting TERA's reasoning and conclusions on this issue, are failing to act in accordance with and apply the principles of proportionality, efficiency, objectivity and non-discrimination as mandated in the USR and the USD (as amended). It is entirely unsatisfactory and not in accordance with these guiding principles that TERA and ComReg should accept and have regard to risks when designing the USP's obligations by applying the entirely unsatisfactory threshold that a risk ‘...cannot be ruled out...’. If TERA and ComReg had applied a proper and appropriate standard for filtering out risks that lacked a sufficient foundation in reliable research and data (e.g. ‘real and appreciable risk’) it is clear that the risk should have been disregarded.

The statement that “it cannot be ruled out” that prices may increase is a very weak conclusion. Full information is never available and decisions are made in an uncertain environment, though we consider TERA to have been very selective in its information gathering and review of same. In any case, it is not appropriate to use this to effectively apply an extreme precautionary principle, and to state that obligations on eir should be maintained on this basis.

Even if one accepts that there is a risk of excessive increases by eir on rural consumers, and that this risk needs to be addressed, then the option of maintaining GAP should be tested against alternative mechanisms to achieve the required aim. There are many such alternatives that ComReg has failed to consider:

- ComReg could amend the retail price cap by imposing a sub-basket of rural/non-LEA residential users.
- ComReg could impose a maximum rural tariff for residential users to maintain affordability

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<sup>19</sup> TERA 2 report, page 42. See also the TERA 1 report, page 70 “*As a consequence, it cannot be excluded (but impossible to check as no data on price sensitivity is available per geographic areas) that Eircom would have incentives to increase the retail line rental in some areas or for particular sets of end users.*” [emphasis added]



- ComReg could define a special social tariff, such as the vulnerable user scheme, and require that eir make it available to residential users in defined areas

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

## THE COSTS OF MAINTAINING THE GAP OBLIGATION

The TERA analysis recognises that there is a competitive distortion from retaining the GAP obligation, stating that “*the USP may not be able to be competitive in urban areas*”<sup>20</sup>. TERA attempts to downplay the concerns by emphasising that the constraints only apply to standalone voice products and, they say, there is limited competition for such products. However, TERA has not undertaken any analysis to quantify the extent of the competitive impact on eir. These competitive distortions would be much reduced or non-existent if the alternatives suggested above were imposed.

The impact is much more significant than TERA recognises. The GAP obligation applies for all universal services products, including both consumer and business retail line rental products.

For example, eir Business (like eir Consumer) considers that its competitors already take advantage of the GAP constraint on it (that business users everywhere must be offered the same price) and this will be exacerbated in the face of the reduction in SB-WLR prices, which others will use to compete more aggressively. Without a removal of the GAP eir will be unable to compete fairly. If GAP is removed, under the new retail margin squeeze tests for line rental, eir would be able to drop its retail prices to compete, but may be constrained from doing so because the USO requires the lower prices to be applied to all customers of a specific type in all locations.

- ✂
- eir’s market intelligence is that there are already other operators with retail line rental prices significantly lower.

It is in the interests of customers that eir is able to compete fairly as end-users can avail themselves of lower priced products.

Examples of the impact on eir Business are as follows:

- ✂
- ✂

## WHETHER THE COSTS OUTWEIGH THE BENEFITS, AND IF NOT ARE THERE OTHER MORE APPROPRIATE OBLIGATIONS

As discussed above, TERA has undertaken a simplistic and flawed analysis of the benefits of maintaining the GAP, and has not undertaken any material analysis of the costs of maintaining the GAP.

<sup>20</sup> TERA 2 report, Table 9 page 42.



Given this, eir cannot understand how TERA is able to conclude that the GAP should be maintained. It has not done the requisite analysis to draw such a conclusion.

As described above, correctly analysed, TERA would see that there are significant constraints on eir that impede it from increasing retail prices in rural areas. ✂

Therefore, in eir's view, there is a clear case for removing the GAP obligation.

eir considers that the sole claimed benefit of GAP –prevention of rural line rental increases for residential users can be better achieved by other measures which are less distortive in the market.

**25. Do you agree or disagree with our preliminary view that at this time a requirement to offer Social Tariffs should not be introduced? Please give reasons and/or evidence to support your view.**

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

**26. Do you agree or disagree with our preliminary view that the USP should be required to continue to provide its Disconnections Policy? Please give reasons to support your view.**

eir does not agree. The USO in this regard is otiose and represents duplicated regulation. As ComReg observes in section 9.2 all operators are required to publish their Disconnection Policy and ComReg has previously, correctly, concluded that the USP's Disconnection Policy does not need to be more detailed.

ComReg appears to rely on the flawed conclusions of TERA. *"512 The Second TERA Report found that it cannot be excluded that the current Disconnection Policy would not be maintained by eir in the absence of an AFL USO. It also found that maintaining the existing obligation would prevent social exclusion and should be maintained given its importance for end-users and low implementation costs for the USP."* How can TERA conclude that eir or another entity designated to be USP would not maintain a Disconnection Policy when all operators already have an obligation to do so. This is illogical. There is simply no justification for maintaining this obligation.

**27. Do you agree or disagree with our preliminary view that the USP should be required to continue to provide a Phase Payment Plan for connection fees? Please give reasons to support your view**

eir does not agree. The obligation is otiose as acknowledged by ComReg market practice is such that there are no connection charges. This has been the case for many years. We also question ComReg's reasoning for maintaining this obligation which appears to be linked in ComReg's view to disconnection policy. ComReg states in section 9.3, one of its considerations regarding phased payment for connection fees as: *"516 The First TERA Report concluded that in the absence of the AFL USO there is a risk that services such as eir's disconnection policy, would not be maintained by eir. In addition the Second TERA Report recommended the existing obligation should be maintained given its importance for end-users and low implementation costs for the USP."* We do not see the linkage and would be grateful if ComReg could clarify its reasoning.



**28. Do you agree or disagree with our preliminary view in respect of the terms and conditions of contract? Please provide reasons to support your view.**

eir agrees with ComReg's view that there is no justification for the imposition of any special contract terms and conditions applicable to contracts between end-users and the USP(s).

**29. Do you agree with our proposal to designate a USP to deliver AFL USO for a period of 5 years, with a review to take place after 5 years or sooner if circumstances justify it? Please give evidence and reasons to support your view.**

Strictly without prejudice to eir's objection to the proposed USO designation, eir disagrees with the proposed designation period. eir is of the view that ComReg's proposal for a five year designation period is unduly lengthy, particularly in the absence of a commitment to promptly address eir's current and outstanding applications for USO funding and the failure by ComReg to address the matter of funding as part of the designation process. As such, a designation period of five years, even with the potential for an Interim review, is unduly lengthy and burdensome on eir.

eir notes in this regard that despite its commitment in 2014 to consider the future of the USO prior to any re-designation of a USP, ComReg in essence is doing little else than proposing to maintain the existing regime, albeit with some tweaks. ComReg justifies its approach by the fact that "*there are very significant uncertainties*" (paragraph 540). ComReg notes that the final outcome of the NBP procurement process is unclear and suggests that its impact on the future of the AFL USO cannot yet be known. ComReg also refers to the uncertain timeline of the European Commission's review of the universal service framework.

It is striking that these reasons are very similar to the reasons advanced in the past by ComReg to roll-over eir's USO and USP designation. eir does not believe that it is acceptable that after all these years ComReg still has not undertaken a proper review or established a fit for purpose regime. In this regard, eir finds it difficult to reconcile ComReg's position with its statutory duties under the Communications Regulation Act and the Framework Regulations. While there are some unknowns as regards the outcome of the NBP process, the objective that State intervention is pursuing is very clear and there is no reason why this cannot be taken into account by ComReg in devising a USO regime that acknowledges that the NBP and the USO ultimately have the same purpose, namely to ensure that citizens in Ireland have access to the communications services that they require irrespective of their location or their means. ComReg's persistence in refusing to consider the implications of high speed broadband for the continued need of an obligation to provide access to a narrowband connection is simply impossible to understand, as is its belief that narrowband roll-out may still be required were the NBP provider not providing traditional voice access. This is simply not consistent with the provisions of the Universal Directive (including Recitals 5 and 15) and Regulations and the requirement on Member States to ensure the universal service using the most efficient and appropriate approach.

For these reasons, eir does not believe that the regime proposed by ComReg is sufficiently flexible and appropriate to deal with the significant market changes that are underway. Furthermore, given ComReg's serious difficulties to date in keeping with proposed timelines for the review of USO (or indeed SMP) obligations (as the timing of the present consultation shows), it is necessary, in order to ensure the fair treatment of eir, that automatic review mechanisms are built-in within ComReg's decision, as follows:

- Trigger clauses built into the Decision such that reviews will commence immediately following the outcome of the NBP process and/or the adoption of a new / amending Directive by the EU impacting the USO regime.



- Sunset clauses built into the Decision such that reviews must be completed by a particular date, failing which the obligations lapse.

**30. Do you agree with our proposal that the USO designation should be applied to the geographic area of the entire State? Are there other factors which should be considered by us in this regard? Please give evidence and reasons to support your view.**

No. As highlighted above there can be no justification for a blanket designation across the State in the manner proposed by ComReg.

As mentioned in response to Question 1, eir notes that ComReg's consideration of the extent of the need for USO AFL, it has carried out little or no research or analysis into the level of demand or the fixed locations at which demand could not be served immediately either through existing fixed or mobile service availability. eir stated in its response to ComReg 15/89 by way of example that "*in respect of mobile coverage, TERA present the coverage maps of each operator individually. It would be directly relevant to this review to combine the coverage of all the mobile operators to identify the extent of white zones (areas without mobile coverage) across the State*". No such analysis has been carried out. Instead any reference to mobile coverage has now been relegated to a footnote on page 109 of ComReg 16/31 which states "*See for Mobile operators' website which show indoor and outdoor coverages and the difference between the two types of coverage is sometimes significant.*" No attempt has been made to identify areas that might not be covered in respect of indoor service, by any of the mobile operators, nor is there any mapping of these areas against other infrastructure that provide AFL.

Such a mapping exercise would demonstrate that any potential USO AFL needs may arise in small geographic pockets. As eir stated in response to ComReg 15/89, if there is a continued need for an AFL USO, any subsequent designation cannot be for the entire State.

**31. Do you agree with our preliminary view that the most appropriate approach is to designate eir as the USP from 1 July 2016? Please give evidence and reasons to support your view.**

ComReg has conducted the current consultation process in a manner that is inconsistent with the requirements of the Universal Service Directive and Regulations and that has prejudiced eir.

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

More particularly, by issuing this consultation on 4 May 2016 with a submission deadline of 13 June 2016, ComReg has nullified the provisions which permit other providers to register expressions of interest in being designated the USO for AFL on the basis that the periods in

question simply would not allow another provider to put in place the structures and framework required to discharge the USO for AFL. ComReg's failure in this respect has in turn has increased the likelihood that the USO for AFL and the associated financial burden will once again be assigned to eir.

If ComReg were to be sincere in seeking expressions of interest it would need to have afforded any candidates sufficient time; (a) in advance of ComReg's draft decision and designation to allow potential candidates to determine whether they want to make an expression of interest and (b) after ComReg's designation to ensure that the successful candidates are able to put in place necessary structures and frameworks to ensure that they will be able to discharge the obligation in question. In this respect ComReg Consultation Document 13/119 ("13/119") in respect of Public Pay Telephones may be an appropriate comparator. In that instance the designation period ended on 30 June 2014, the consultation document was issued on 19 December 2013 and submissions were to be received by 7 February 2014. In this instance the timelines were extremely tight and likely to be dissuasive to any potential candidates.

ComReg also sought last-minute expressions of interest in Consultation Document 14/48<sup>21</sup> ("14/48"). This consultation was published on 16 May 2014, allowing just 4 weeks for any candidate to respond and just 6 weeks before ComReg was required to issue a new USP designation. ComReg itself acknowledged that timelines were unreasonably short. ComReg proceeded to re-designate eir (then eircom) while continuing in part 2 of 14/48 to seek views on the future of USO along with expressions of interest in fulfilling the AFL USO requirements following the 18 month re-designation of eir.

It is particularly noteworthy that ComReg has sought expressions of interest in parallel with consultations on the scope and nature of USO requirements. This acts as a further disincentive to any potential candidates who are presented with the invidious position of being invited to volunteer to fulfil an undefined and potentially unfunded obligation. ComReg did not publish any further requests for expressions of interest until now, having omitted to seek expressions of interest in the two USO AFL consultation documents 15/89 and 15/124.

Having set out more time for the review by ComReg of any expressions of interest received in the second part of consultation 14/48, ComReg has now reverted to severely limiting the period within which it can review submissions received from interested parties in ComReg 16/31 to just 17 days (and just 13 business days). ComReg will not be able to properly and thoroughly consider the submissions received from interested parties in advance of reaching a final binding decision on which provider should be designated the USO for AFL.

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

In summary -

- ComReg subjects consideration of other providers to their expressing an interest. There is no reason for such an approach especially in the context of the NBP rollout.
- The period that ComReg has allowed between the release of 16/31 and the proposed commencement of the new designation period is too short to allow operators to indicate an expression of interest in being designated the USO for AFL as it allows insufficient time for

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<sup>21</sup> Universal Service – Scope and Designation of Access at a fixed location ComReg 14/48



candidates to consider their ability to meet the requirements and the merits of putting themselves forward;

- The seventeen day period that ComReg has allowed between the deadline for submissions on 16/31 and the proposed commencement of the new designation period is too short to allow operators indicate an expression of interest in being designated the USO for AFL as it does not permit interested operators to put in place the necessary framework such that services would be ready for launch on July 1 2016;
- ComReg failed to seek expressions of interest in being designated the USO for AFL in the two consultation documents preceding 16/31, which further prevented the request for expressions of interest in 16/31 from having any genuine effect;
- If ComReg had properly managed and carried out the consultation process they would have enabled other operators to register expressions of interest in being designated the USO for AFL;
- The periods that ComReg permitted parties to reply to a request for expressions of interest in respect of 13/119 and part 2 of 14/48 should have been adhered to in the current circumstances; and
- The seventeen day period between the deadline for submissions in respect of 16/31 and the date on which the new designation period is intended to begin will not allow ComReg sufficient time to consider and have regard to the operators' submissions.

**32. Are there other factors or options which should be considered by ComReg in making a designation in respect of a USP? Please give evidence and reasons to support your view.**

ComReg's failure to decide on Funding Applications distorts the nature of eir's USO Obligation.

ComReg has entirely neglected its duty to establish and administer the sharing mechanism outlined in Regulation 12 of the USR. Regulation 12 provides:

- Where the Regulator, on the basis of the net cost calculation referred to in Regulation 11, finds that the net cost of meeting an obligation under Regulation 3, 4, 5, 6, 8 or 9 represents an unfair burden on an undertaking it shall apportion the net cost of the universal service obligation among providers of electronic communications networks and services.
- The Regulator shall 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 11, of the obligations provided for in Regulation 3, 4, 5, 6, 8 or 9 may be financed.
- A sharing mechanism established under paragraph (2) shall respect the principles of transparency, least market distortion, non-discrimination and proportionality in accordance with the principles of Schedule 2, Part B. The Regulator may choose 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 Regulation 26.

ComReg's failure to decide upon eir's funding applications for 2010 to 2015 breaches the 'principles of transparency, least market distortion, non-discrimination and proportionality' by creating ambiguity for eir in respect of its financial obligations and by discouraging other operators from expressing interest in being a USP.

- ComReg has without good reason failed to adjudicate upon eir's applications for funding;
- In failing to reach a decision on these applications ComReg has not adhered to the 'principles of transparency, least market distortion, non-discrimination and proportionality' identified in the USR;

ComReg's failure to adjudicate upon the funding applications creates uncertainty for eir which impacts upon its finances and ability to plan its expenditure into the future. The value of the outstanding funding applications for four years of €51 million ~~€~~;

- ComReg's failure to adjudicate upon the funding applications acts as a significant disincentive for other operators to engage with the call for expressions of interest; and
- The uncertainty created by ComReg's failure to reach a decision on the funding applications and the chilling effect that this failure has on other operators who may otherwise have made an expression of interest means that ComReg should not proceed to designate eir as the USO or indeed any USP until the funding issue has been addressed.

The oldest of the 5 outstanding applications was submitted on 1st September 2014 using the modelling recommendations that followed the detailed review of the previous FY09/10 application. It was nearly 6 months after that before ComReg engaged in a workshop to go through clarifications on the application. There has since followed a lengthy and protracted process of engagement which is still on-going. We have responded reasonably to all of ComReg's requests with the explicit aim of finalising them and hope that ComReg will very soon be in a position to move to the next stage and form a view on whether the net cost constitutes an unfair burden. In order to restore some balance to the relationship any USP Designation should include an acknowledgement that ComReg will properly consider and issue a Decision on an Application for Funding within 6 months of receipt.

<b>33. Do you agree or disagree with our draft assessment of the impact of the proposed options? Please set out reasons for your answer.</b>
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eir does not agree with ComReg's so-called Regulatory Impact Assessment (RIA). The RIA chapter starts off reasonably positively with ComReg appearing to accept criticisms of its draft RIA in 15/89.

*"604 We note the varying views of respondents, in particular in relation to the costs of the USO. As set out in Section 8 of Consultation 15/89 that if we decide that there is a continued need for any AFL USOs in the whole or parts of the State, we would consult further on which undertaking(s) should be designated with the AFL USO and the scope of each of the various obligations to be placed on the USP(s) for the provision of the AFL USO.*

*605 Therefore in the RIA contained in Consultation 15/89 the specifics in terms of the potential impact on the USP(s) of providing the AFL USO could not be quantified as the impact would be determined by the specific obligations which may be imposed on the USP(s) should an AFL USO be deemed to be required. It also noted that the imposition of an AFL USO and the designation of a USP in this regard, in itself will not necessarily have a large impact on industry or end-users in the absence of ComReg specifying the various conditions to be attached to any designation. The*



*individual obligations which sit alongside any such designation will determine what the impact of designation might be. Hence the RIA contained in Consultation 15/89 outlined, at a high level, how the two options ((a) to impose and AFL USO and (b) not to impose an AFL USO) would impact on interested parties and chose the most appropriate means of achieving its aims.”*

ComReg acknowledges that it had not quantified the impacts because obligations had not been specified. In this consultation, 16/31, ComReg has specified the proposed obligations yet, once again has failed to attempt to quantify the impacts.

ComReg seems to know what a RIA should be:

*“607 A RIA is an analysis of the likely effect of a proposed new regulation or regulatory change. It helps identify regulatory options, and should indicate whether or not a proposed regulation is likely to have the desired impact. The RIA should also in certain cases suggest whether regulation is or is not appropriate. The RIA is a structured approach to the development of policy, and analyses the probable impact of regulatory options on different interested parties.*

*608 Our approach to RIA is set out in the Guidelines published in August 2007, in ComReg Document No. 07/56 & 07/56a. In conducting this RIA, we take account of the RIA Guidelines, 104 adopted under the Government’s Better Regulation programme.*

*609 A RIA should enable us to determine the impact of any regulatory change or new regulation, and should assess the alternatives to regulation- such as no intervention, self-regulation or performance based regulation amongst others. RIA’s aim to identify areas where regulation can be reduced.*

*610 A RIA should identify the impact of the various options on stakeholders, on competition and on end-users and also the key risks associated with each option. RIA’s therefore increase transparency of decision making and ensures the best possible outcome for stakeholders, end-users and competition.”*

But this is not what is produced under the heading of RIA.

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

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

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

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

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



- The TERA reports rely on market research data from 2012;
- ComReg’s consultation document clearly indicates a strong reliance on the TERA reports, their findings and recommendations;
- The 2012 market research data is now four years out of date, and given the rapidly evolving nature of the telecommunications market it is not safe to rely on this research;
- As outlined in response to question 1, TERA has misinterpreted the 2012 research with the result that the conclusions that it draws from the research are in-accurate;
- ComReg has ignored a fundamental principle of best practice for RIAs, that being the evaluation of regulatory options based on quantitative analysis and criteria;
- In fact the RIA conducted by ComReg is entirely lacking in any quantitative analysis and criteria for assessing whether the option chosen represents an efficient solution that balances the costs and benefits.

ComReg makes decisions with no quantitative analysis e.g. *“488 Maintaining the GAP obligation will protect end-user welfare in rural areas and areas where competition for voice access is not fully effective while ensuring workable competition is sustained in rural as well as urban areas. On the basis of the above analysis, we consider that maintaining GAP will result in an overall net welfare benefit, benefiting both competition and end-users. Having regard to the analysis set out above and in the TERA reports, we are of the preliminary view that the GAP obligation should be maintained for AFL services.”* The ‘analysis above’ is a qualitative discussion.

The opinionated / self-serving approach can be seen throughout Chapter 11 which sets out ComReg’s Regulatory Impact Assessment (RIA). The absence of any attempt by ComReg to quantify the costs and benefits of its proposals renders the RIA meaningless.

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

As highlighted above, eir does not consider ComReg’s proposal to maintain the USO to be objectively justified. If the USO is to be maintained as a precautionary measure then the attendant obligations need to be radically changed. As such the following changes to the proposed Decision Instrument are required. The changes are presented in the order that the relevant text appears in the draft Decision Instrument.

The definition of **“Alternative Network”** refers to *“providing the End-User with a reliable, properly and fully functioning Connection and PATS at a Fixed Location”*. This is too vague. ComReg must clearly specify what constitutes each of ‘reliable, properly and fully functioning’.

The definition of **“Connection”** is incorrect where it states *“(except that in relation to facsimile, regard may be had to the prevailing technologies used by the majority of End-Users and to technological feasibility)”*. Regulation 3(3) USR is clear that ‘regard to the prevailing technologies used by the majority of subscribers and to technological feasibility’ applies to all listed elements and is not limited to facsimile.

We note that **“FCS”** is defined but the term is not used in the Decision Instrument.

The term “**Good Industry Practice**” is defined. How will ComReg measure the USPs performance against this definition?. The practice is presumably that of a provider of universal services and there is no Irish comparable.

The definition of “**Minimum Indoor Availability**” “*means availability to the End-User that is functionally and technically equivalent to fixed technology that is provided at a Fixed Location*”. For this definition to be meaningful to inform USP decision making ComReg must clearly specify what constitutes ‘functionally and technically equivalent’. For example in the case of a wireless technology does a minimum signal strength have to be attained in the hallway or elsewhere in the house? What is the minimum signal strength?

A new **paragraph 3.4** should be inserted stating “*ComReg will consider and issue a Decision in respect of any application for funding with 6 months of receipt*”.

**Paragraph 5.2** must be deleted as there is no justification for FIA obligations to be maintained (our reasons are set out in the responses to previous questions).

**Paragraph 5.3** must be deleted as there is no justification for quality of service performance targets to be maintained (our reasons are set out in the responses to previous questions).

**Paragraph 5.5** must be amended to align with the proposed approach that is being consulted on. The draft Decision Instrument, at paragraphs 5.5 to 5.8, addresses the ‘**Reasonableness of Requests**’. There are a couple of points arising from the wording of this section that need to be addressed.

The first issue which arises is an apparent contradiction between the draft Decision Instrument and the body of 16/31 as to whether both End Users and ComReg have a veto capable of rejecting an Alternative Network proposed by the USP. The wording of the draft Decision Instrument addresses the USP’s entitlement to refer to an Alternative Network which meets certain criteria when assessing the reasonableness of a request, and specifically in respect of the End Users’ and ComReg’s role it provides (paragraph 5.5):

*“A request by an End-User to the Designated USP for a Connection and PATS at a Fixed Location shall be presumed to be a reasonable request. However, the Designated USP may consider an End-User’s request not to be a reasonable one, if at the time the request is made, there exists an Alternative Network, at the Fixed Location to which the request relates and if the Designated USP can demonstrate to the End-User’s and to ComReg’s satisfaction that the criteria in (a) and (b) apply and that they are met.”*

This wording clearly states that in order for the USP to propose a valid Alternative Network and rebut the presumption that the request is reasonable both the End-User and ComReg must accept that the Alternative Network meets the identified criteria. This conclusion is further supported by paragraph 5.6 which provides:

*If the Designated USP does not demonstrate to the End-User and to ComReg’s satisfaction that the criteria in Section 5.5 are met, then the following shall apply.”*

The wording of the draft Decision Instrument therefore leaves little ambiguity; the end-user has an unfettered veto on the USP’s proposed alternative network (subject to the expenditure ceiling of €7,000). However, the body of the consultation document proposes a significantly different regime. It states that the end-user will have a veto but that this veto can be overturned by ComReg (paragraph 341):



*“We propose that any new request for connection should be assessed by the USP using a two-step approach. The first step would determine whether the USP could be granted an exemption from providing the connection where it can prove the presence of an affordable, alternative infrastructure, with sufficient QoS (including indoor coverage). Agreement from the individual requesting the connection would need to be recorded, failing which ComReg’s consent would be required before the USP could deem the request unreasonable.”*

This two-step regime would appear on first glance, and subject to how ComReg exercises its discretion, to be significantly fairer on the USP in that it does not allow the end-user an unfettered veto. Therefore eir can only presume that ComReg has mistakenly worded the draft Decision Instrument to allow the end-user an unfettered veto. eir submits, without prejudice, that if ComReg does introduce a reasonableness of request framework that at the very least the veto must be structured as proposed in the body of 16/31 and not as proposed in the draft Decision Instrument as currently framed. It is extremely concerning that such critical errors have been made in this consultation process. In any event eir would submit that ‘reasonable’, ‘unreasonable’ and ‘request’ are each terms the courts are able to construe in an objective manner and there should be no subjective element.

**5.6.c.** For the purposes of the estimate of expenditure referred to in Section 5.6 (a) and (b), the Designated USP shall base its estimate on the least cost technology that can be employed by the Designated USP (using Good Industry Practice) and the cost of providing the Connection to the Fixed Location (by means of an overhead connection, where possible). This estimate shall include only those costs which can be attributed to the requesting End-User.

eir believes **Paragraph 5.6 d.** must be deleted as there is no justification for FIA obligations to be maintained (our reasons are set out in the responses to previous questions).

**Paragraph 5.7** must be deleted as there is no justification for quality of service performance targets to be maintained (our reasons are set out in the responses to previous questions).

**Paragraph 5.8 c.** must be deleted as there is no justification for quality of service performance targets to be maintained (our reasons are set out in the responses to previous questions).

**Paragraph 5.8 d.** must be deleted as it imposes an unnecessary restriction on eir’s technological options and is inconsistent with the USO which is narrowband in nature. eir, in the interest of meeting the requirement to use least cost technology, should not be restricted from using carrier systems. It is incorrect for ComReg to seek to restrict such use “*in order to prevent the occurrence of problems with the roll-out of broadband*”. Carrier systems are capable of meeting the specification of Access at a Fixed Location (including FIA at 28.8Kbps to the extent that such is considered relevant. As noted by ComReg in the consultation document the NBP is intended to address broadband deficiencies.

**Section 6 (paragraphs 6.1 to 6.7)** must be deleted as there is no justification for FIA obligations to be maintained (our reasons are set out in the responses to previous questions). It should also be noted that it is highly questionable that eir should be obliged to put in place measuring and monitoring mechanisms and changes to work practices (**paragraphs 6.2 to 6.5**) creating cost and administrative overhead to assess a defunct requirement that does not deliver a functional internet access.

**Paragraphs 7.1 to 7.3 and 7.5 to 7.7** must be deleted as there is no justification for quality of service performance targets to be maintained (our reasons are set out in the responses to previous questions).



**Paragraph 7.4** must be deleted because ComReg has not properly considered the proposal and there is no clear legal basis for the imposition of such an obligation. If such an obligation could be justified by ComReg the obligation should clearly state that the USP may include the associated costs incurred in its applications for funding. It should also be noted that eir's systems and process operate on a working day basis, not a calendar day basis. It is not reasonable to require eir to amend its standard practices, practices which ComReg should be familiar with

**Paragraphs 8.1 to 8.3 and 8.5** must be deleted as there is no justification for quality of service performance targets or FIA obligations to be maintained (our reasons are set out in the responses to previous questions). We would also note that if an audit requirement is imposed, the USP must be allowed to include the cost of the audit in its applications for funding.

**Paragraph 9.1** must be deleted as ComReg has not properly considered the costs and benefits of the proposed GAP obligation and consequently the obligation cannot be implemented given the risk of distorting competition contrary to the principles of the USD (our reasons are set out in the responses to previous questions).

We also note that Comreg has proposed alternative text regarding the GAP obligation compared to previous Decisions. ComReg has not provided any explanation for proposing these changes and it is not clear what the implications are for the USP. Is ComReg proposing a change in approach?

**Paragraph 9.2** must be deleted because the proposed obligations are otiose (our reasons are set out in the responses to previous questions).

**Paragraph 12.1** must be amended so that the designation period is no longer than two years (our reasons are set out in the responses to previous questions).

#### **Conditional Revocation of Decision No. 09/05 and No. 02/08**

We note that in **paragraphs 6.7 and 7.7** ComReg seeks to introduce a mechanism to preserve revoked Decisions if the current Decision is challenged. eir's position is that ComReg's attempts to revoke Decision 09/05 and Decision 02/08 on conditions wherein it may come back into force on the occurrence of certain events is not valid.

eir contends that when a Decision is revoked it ceases to have legal effect and it loses its standing. Once a decision is revoked it cannot regain its binding nature simply on the basis that proceedings have been *commenced* seeking to challenge the current Decision. Furthermore, it is not clear how the three decisions would operate in tandem if the current Decision was not suspended pending the outcome of the challenge and it is not clear whether Decision No. 09/05 and No. 02/08 would remain in effect after a challenge and until ComReg passes a further Decision again revoking Decision No. 09/05 and No. 02/08. Paragraphs 6.7 and 7.7 should, therefore, be removed from the Decision Instrument entirely.

## **4 Sky**



Sky response to:

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

***Q1. Do you have any further submissions on our preliminary view that there is a continued need for an AFL USO for the period commencing 1 July 2016? Please give reasons to support your view.***

Sky agrees with ComReg's preliminary view that there is continued need for an AFL USO for the period commencing 1 July 2016 for the reasons outlined in paragraphs 118 to 127 of the consultation.

***Q.2. Do you agree or disagree with our preliminary view that it is unlikely to be necessary to specify fast broadband FIA requirements inside the NBP intervention area but that it may be necessary in future to specify such obligations at locations outside the intervention area? Please give reasons to support your view.***

Sky agrees that it is not necessary to specify fast broadband FIA requirements inside the NBP in the event that the NBP is delivered within the currently envisaged timeframe by the Government of circa 2020/21. Sky also consider ComReg's proposal that ensuring universal availability of affordable higher speed broadband outside the NBP intervention area may require regulatory intervention. Based on public statements by the current USP, it is intent on rolling out high speed broadband to areas currently designated as being within the intervention area. If they are to proceed with and deliver on this plan, these areas may be removed from the current intervention plan. If this were to happen we are likely to have high speed broadband delivered in these areas by a monopoly infrastructure provider that faces little wholesale or retail regulatory constraints and in particular with respect to the principle of affordability. For example, if currently designated intervention area premises were to be removed from the NBP, connection charges in these areas could be a multiple of those that will pertain within the intervention area. This is because while the DCENR (or an appropriately delegated authority) can influence or even control prices within the intervention area it will have no jurisdiction in this regard outside it and thus ComReg intervention may well be merited.

***Q.3 Do you agree it is not appropriate at this time, for July 2016, to decide whether or not to specify fast broadband FIA requirements at locations outside the intervention area? Please give reasons to support your view.***

We agree with ComReg's proposal in this regard. We consider it to be prudent to reconsider these issues within 18 months, as proposed, when a clearer picture on NBP begins to emerge.

***Q4. In your opinion, when FIA is reviewed in the future how should the minimum data speed be determined? Do you have a view about what the speed should be? Please give reasons to support your view.***

We consider that ComReg should take account of the European Digital Agenda's target of a minimum speed of 30Mbps as a starting point. However, this target should be assessed against developments in the market since it was originally put in place e.g. busy hour traffic growth and

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forecasts of same, end user device capability, technological developments etc. Such an exercise should inform whether the 30Mbps remains appropriate or whether greater ambition in this regard should be considered e.g. future proof options.

***Q.5 When do you think that we should revisit this issue? Please give reasons to support your view.***

Sky consider that ComReg should keep the issue under constant review taking account of developments in the market and in particular with respect to NBP.

***Q. 6 Do you agree that we should maintain the current FIA requirements for the time being? Please give reasons to support your view.***

Sky considers that option 2 ought to be the preferred and appropriate option. Eircom Ltd (“Eircom”) are essentially protected from excessive costs by ComReg’s proposal to derogate from the requirement where these are excessive. Sky considers a 28.8kbps product cannot provide functional broadband service so maintaining the existing FIA requirement is essentially a decision to preclude the provision of basic broadband as part of the USO process.

***Q. 7 Do you agree or disagree with the regulatory options for reasonable access requests as set above? Are there other options that we should consider? Please give reasons to support your view.***

While there is some merit in ComReg’s proposal, as it is currently framed Sky are concerned that the 2 step process outlined will be open to abuse. Eircom will have an incentive to refuse access in all cases where the connection cost threshold is such that it would generate a medium term net cost to Eircom. There is no prescribed timeframe/process in which Eircom is required to “prove” appropriate alternative infrastructure exists or how oversight of this process is to be conducted or who is the ultimate arbitrator in determining whether or not relevant criteria are met. These significant gaps could lead to an exponential increase in customer dissatisfaction (in particular where Eircom are commercially incentivised to refuse access/promote the position alternative infrastructure is deemed to be sufficient). It could see a significant increase in ComReg’s workload and lead other unforeseen difficulties through a process that may require significant consumer engagement.

As such Sky considers these are concerns/issues ComReg could consider (and consult on) over the next 18 months but in the meantime it is more appropriate to maintain the current predictable standard of a Reasonable Access Threshold (“RAT”). If ComReg is still minded to implement some form of alternative infrastructure test before such a review/consultation, Sky would propose one possible solution to alleviating the concerns identified would be to have a 3 stage test with two levels of RAT considered whereby  $RAT1 < RAT2$  and  $RAT2$  is equal to the current proposal of €7000. This option would have a reduced RAT for the first part of the three-step test (RAT1). If the cost of connection were  $<RAT1$  (e.g. €700 to €2000 threshold identified by TERA), then the request must be met and step 2 and 3 of the process are ignored. If the cost of connection is  $>RAT1$  then proceed to steps 2 and 3 which would be the same as those already outlined as the preferred approach by Comreg. The extra step could actually lead to a significant reduction in customer dissatisfaction and reduce a potentially significant workload on both ComReg and Eir from an administrative perspective.



***Q.8 What do you believe is the most appropriate factor(s) to define a reasonable request? Are there other factors which you believe we should consider when assessing what defines a reasonable request? Please give reasons to support your view.***

Sky considers the factors outlined by ComReg are relevant. Where end users have no alternative to the USP then a request ought to be deemed reasonable if under the current RAT.

***Q.9 What is your view regarding how to assess if the alternative infrastructure is affordable? Please provide reasons to support your view.***

It is not clear if 'affordability' here is being considered in the context of the customer or the USP. If it is the former it should be deemed unaffordable if cost of connection and on-going recurring charges are materially greater than the geographically average price as provided by the AFL USP. Alternative infrastructure should be deemed affordable by the USP if it can be provided for a cost less than the RAT (whether that is RAT1 or RAT2 as proposed by Sky above).

***Q.10 Do you agree that indoor coverage is an important factor in assessing alternative connections and PATS? Please provide reasons to support your view.***

Sky agrees that indoor coverage is an important factor in assessing alternative connections. Poor indoor coverage has implications for practical use of the service in numerous scenarios to have to go outdoors in order to have connectivity to a network. (e.g. sick or elderly, working out of home office, receiving calls in all scenarios etc).

***Q11. Do you agree that where a threshold is set, only costs that can be attributed to the individual end-user should be measured and that the estimated cost of connecting an end-user should also be based on the least cost technology to provide the required service, irrespective of the technology the USP choose to utilise in practice? Please provide reasons to support your view.***

Sky agree with ComReg's position on this based on the reasons outlined.

***Q.12 Do you agree that end-users should be entitled to adequate and regular information regarding their request for connection? Please provide reasons to support your view.***

Sky considers that end-users should be entitled to adequate and regular information regarding their request for connection in the interests of maintaining a transparent process and ensuring consumers are fairly treated in terms of receiving a minimum standard of service.

*Before responding to questions 13-23 Sky would note that it does not consider that much of the redacted material from section 7 of the consultation (that pertains mainly to the work carried out by TERA) ought to be confidential. Sky consider the public interest in knowing Eir's repair performance in the NBP outweighs any claim on confidentiality the USP and SMP operator in these areas considers itself entitled to. The extent to which an operator might gain a commercial advantage over Eircom in these areas where there is no competing infrastructure appears to be spurious and as such retaining confidentiality is contrary to the principles of transparency (as it applies to both Eircom and ComReg) as enshrined in the regulatory framework. If it is ComReg's preliminary view that it ought to apply sub-national QoS targets on the USP it will surely have to publish both the targets and the USP's eventual performance against these following implementation of the same. As such there can be no case for*

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redacting the current performance that may otherwise assist respondents in making more considered response to the consultation equipped with better information.

**Q.13 Do you agree with the approach taken to estimate the predicted fault occurrence based on weather, line length and overhead percentage? Please provide reasons and evidence to support your view.**

Any approach to this matter necessarily has some degree of subjectivity/arbitrariness attached to it. For example the age of infrastructure on the regulatory asset base (e.g. average age of telecom poles in the area) may be a relevant variable worth considering in estimating predicted fault occurrence in uncompetitive/NBP areas i.e. the older the poles the more likely faults are to occur independent of line length, weather etc. However, the Sky considers the general approach taken by TERA to be sensible and grounded in sound reasoning but it is important that a Line Fault Index and repair performance metrics are maintained separately under the proposal.

**Q.14. Do you agree with the preliminary view that any sub-national targets should be in accordance with the 3 areas defined in the TERA reports? Please provide reasons and evidence to support your view.**

Sky considers the sub-national targets should be in accordance with the 3 areas defined in the TERA report for the reasons outlined by TERA. It is clear that notwithstanding regional differences in factors like over-ground versus underground cabling, line length etc. that Eircom has clearly neglected investment in NBP areas due to the lack of competitive pressure. As such their under-performance in these areas merits special attention through QoS based targets in order to protect consumers in these areas.

**Q.15 Do you agree with the preliminary view that fault occurrence targets and repair targets should be combined to provide a service availability target? Please provide reasons and evidence to support your view.**

Sky has serious reservations about this proposal not least because of the implied extremely lax fault occurrence rate in TERA's proposal of 99.86% availability. It is not clear why ComReg has not published the input data used to derive this figure. Maintaining an average repair rate of **1.6 days** implies a fault occurrence of **31 per 100 lines** at an availability rate of **99.86%**<sup>1</sup>. This represents a significant move in the wrong direction and is remarkably lacking in ambition by comparison to D02/08 which anticipated a LFI of **12.5 by 2012**. Four years on ComReg appear to accept the reasonableness of QoS target degradation by Eircom. In Sky's view no justification has been offered for this retrograde step. The draft decision gives no explanation other than noting that "on a subnational basis...99.86%...would appear more appropriate [than 99.4%<sup>2</sup>]".

A further concern pertains to uncertainty about Eircom's future ownership model. It is a matter of public record that Eircom pulled plans to IPO the business at the last minute in 2014 but indicated that these plans were simply on hold and that it would possibly go this route (or a trade sale)

<sup>1</sup> It should be noted that even if LFI was held at 14.5, this would imply an average repair rate of 3.5 days – which also represents significant degrading of service from existing levels. As such a significantly poorer performance overall is deemed acceptable based on this performance regardless of what combination of LFI and fault repair rate are assumed.

<sup>2</sup> The 99.4% figure is based on a LFI of 14.5, again considerable degraded from the level that ought to have been achieved by 2012.



again in the next couple of years. If so, then there is an obvious attraction in trying to meet an availability target on the repair rate<sup>3</sup> side of the equation. It presents the best opportunity for Eircom's short term gain on your balance sheet even if the long term health of the network may be compromised due to lack of capital investment. Eircom's short to medium term ownership/sale ambitions are therefore a relevant consideration for ComReg in determining whether or not they introduce a QoS target based on availability or its individual components. Sky consider there are compelling reasons to maintain QoS targets based on the individual components in order to promote a positive customer experience on both the occurrence and repair of faults.

**Q.16 Do you agree with the preliminary view that a service availability target should be set nationally and sub nationally by area? Please provide reasons and evidence to support your view.**

Sky considers that service availability target should not be set in preference to a QoS against the individual components of the service availability target (see response to Q15). Irrespective of ComReg's ultimate determination on this point we consider it appropriate that targets are set on a sub-national basis for reasons in favour of this as outlined in the consultation.

**Q. 17 Do you agree with the preliminary view that the national service availability target should be 99.94% and the target for each sub-national area should be 99.86%? Please provide reasons and evidence to support your view. If not, what alternative availability targets do you believe are justified and why?**

Sky considers that service availability target should not be set in preference to a QoS against the individual components of the service availability target (see response to Q15). In the event that ComReg ultimately determine it is still minded to go with a service availability target then at a minimum it should be based on the prevailing average repair rate and at least a LFI equivalent to the level Eircom was supposed to have achieved by 2012:

$$\frac{1 - \frac{12.5\% \times 1.6}{365}}{1} = 99.95\%$$

This would give a service availability QoS target of 99.5%. Based on the components of the equation we can see this is not an overly ambitious target given that (a) the current repair rate is being used and (b) a LFI that was supposed to be achieved several years ago is being proposed. Sky consider 99.95% should be minimum service availability target based sought.

**Q.18 Do you agree with the preliminary view that end-users that have service availability for >10 days should be automatically refunded? Please provide reasons and evidence to support your view**

Sky's policy is to credit customers who have been without service and so consider it reasonable that Eircom is required to adopt the same policy. However, it is important that any such refunding is not offset by Eircom claiming a higher USO net cost against such costs. In failing to achieve 100% repairs in 10 days Eircom is failing its USO targets so it should not benefit from having the

<sup>3</sup> A function that has been out-sourced by Eircom



forgone revenue recovered through the net cost calculation and possible subsequent claim for a USF. ComReg needs to be mindful of such vagaries when assessing Eircom's purported net USO costs as well.

**Q. 19 Do you agree with the preliminary view that the connection targets levels that are in place are appropriate for sub national targets? Please provide reasons and evidence to support your view.**

Sky considers that current connection targets are not ambitious enough. In the last 12-18 months, Eircom working together with industry has developed key new ordering types (e.g. Failed Provisioning (FP)<sup>4</sup> and Combined Order (LNB)) that has dramatically improved the manner in which appointments for connections are being done. Connections relying on appointments have therefore seen substantial productivity gains that ought to be reflected in the provisioning targets.

It should be further noted that since Eir has now contracted out its provisioning and repair work to KN Networks, it ought to have greater flexibility in increasing and reducing the size of the necessary field force at relatively short notice. Eircom did not have this level of staffing flexibility in the field when D02/08 was implemented, yet proposed provisioning targets reflect no ambition to improve on those targets.

The efficiencies gained due new order type development and outsourcing of its field force management has allowed Eir to achieve significantly better than 80% for connections (excluding in-situ). Even in Q1 2015 when Eircom's general performance was poor (e.g. repair timelines), it managed to achieved greater than 80% connections for in-situ lines. In Q2 it achieved in excess of 90%. Therefore it would seem reasonable to increase the 2 week target from 80% to at least 85%.

ComReg ought to take account of Eircom's most recent performance and developments in the market referred to above before simply rubber stamping outdated performance targets to be applied going forward.

**Q. 20 Do you agree with the preliminary view that the measurement of connection targets at sub-national level is appropriate? Please provide reasons and evidence to support your view.**

Sky consider it is appropriate to measure connection charges on a sub-national basis for the reasons outlined by ComReg and for the same reasons it is appropriate with respect to fault repair.

**Q. 21. Do you agree with the preliminary view in respect of the measurement, publishing and auditing of the performance figures? Please provide reasons and evidence to support your view**

Sky have no objection to continuing the current auditing and publishing process. However, as outlined above, we consider that fault repair performance and line fault index targets should continue to apply and be reported on.

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<sup>4</sup> Although FP is a separate to the Provide order types used to inform USO provisioning targets, a better FP performance should also result in efficiencies being achieved across the provisioning estate.



**Q. 22 Do you agree with the preliminary view that the performance targets should be commence from 1 July 2016? Please provide reasons and evidence to support your view.**

Sky agree the new performance targets should commence from 1 July.

**Q. 23 Do you agree with the preliminary view that the necessity for a review of the performance targets should be examined in 2 years? Please provide reasons and evidence to support your view.**

If the performance targets are as unambitious as is currently outlined (i.e. less than or equal to what Eircom was supposed to have achieved 4 years ago), then a review in 12 months would be appropriate. In particular, if ComReg decide to continue the Service Availability proposal it will be necessary to review how this is working before 2 years have passed.

**Q.24 Do you agree with our preliminary view that the obligation to maintain geographically averaged prices should be maintained? Please provide reasons to support your view.**

Sky considers the case for GAP is finely balanced and conclusions ComReg has arrived at appear to be reasonable based on the arguments presented.

**Q.25 Do you agree or disagree with our preliminary view that at this time a requirement to offer Social Tariffs should not be introduced? Please give reasons and/or evidence to support your view.**

Sky agrees with this analysis as presented by ComReg.

**Q.26 Do you agree or disagree with our preliminary view that the USP should be required to continue to provide its Disconnections Policy? Please give reasons to support your view.**

Sky agrees with the ComReg preliminary view on Disconnection policy i.e. that no specific policy should be mandated by obligations on the USP.

**Q. 27 Do you agree or disagree with our preliminary view that the USP should be required to continue to provide a Phase Payment Plan for connection fees? Please give reasons to support your view**

Sky agrees that no change to the current process is warranted at this time.

**Q.28 Do you agree or disagree with our preliminary view in respect of the terms and conditions of contract? Please provide reasons to support your view**

Sky agrees with the preliminary view as outlined by ComReg for the reasons stated therein.

**Q. 29 Do you agree with our proposal to designate a USP to deliver AFL USO for a period of 5 years, with a review to take place after 5 years or sooner if circumstances justify it? Please give evidence and reasons to support your view.**



The approach proposed by ComReg appears sensible given the flexibility outlined therein depending on whether circumstances justify it.

**Q. 30 Do you agree with our proposal that the USO designation should be applied to the geographic area of the entire State? Are there other factors which should be considered by us in this regard? Please give evidence and reasons to support your view.**

Sky agrees with the preliminary view as outlined by ComReg for the reasons stated therein.

**Q. 31 Do you agree with our preliminary view that the most appropriate approach is to designate Eir as the USP from 1 July 2016? Please give evidence and reasons to support your view.**

Sky considers it makes sense to designate Eir as the USP from 1 July 2016, otherwise certain customers may not have access to AFL services from that date until such time as a USP is designated.

**Q. 32 Are there other factors or options which should be considered by ComReg in making a designation in respect of a USP? Please give evidence and reasons to support your view**

Sky considers it has made all points relevant to USP in response to the previous questions.

**Q. 33 Do you agree or disagree with our draft assessment of the impact of the proposed options? Please set out reasons for your answer.**

Sky broadly agrees with ComReg's impact assessment save for the analysis on QoS. Sky considers that moving to a service availability target understates the risk to consumers across the entire country due to the investment flexibility it affords the USP. We further consider that ComReg has not taken account of Eircom's ownership model or future ambitions in this regard in terms of how those investment decisions will be impacted. As such an "efficient investment decision" may not be "efficient" in a broad economic sense but may be "efficient" from an accounting perspective in terms of generating shareholder value. The optimal outcome for shareholders does not necessarily translate into the optimal outcome for consumers and ComReg's proposed Service Availability target is heavily skewed in favour of affording shareholders flexibility at the expense of the consumer.

Furthermore the proposed Service availability targets are extremely lax on a sub-national basis. Sky has already pointed out that 99.86% service availability target in a region where average repair times are equal to 1.6 days implies a Line Fault Index of 31 per 100 lines. This outcome would reflect a very poor customer service level that does not appear to be acknowledged in the RIA. ComReg merely notes "In some areas, end-users may experience more regular faults and longer repair times". Sky consider this to be significant understatement of the actual risk associated with this level of relaxation of targets.

**Q. 34 Do you have any comments or suggestions on our draft Decision Instrument? Please set out your answer in detail.**

Sky has no comments on the draft Decision Instrument.

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**13 June 2016**

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## **Virgin Media response to:**

*Universal Service Requirements*

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

*Response to Consultation, Further Consultation and Draft Decision*

*ComReg 16/31*

13 June 2016

## Summary

Virgin Media Ireland Limited (**'Virgin Media'**) welcomes the opportunity to respond to ComReg's Consultation (**'the Consultation'**) on the Universal Service Obligation (**'USO'**), and the provision of access at a fixed location (**'AFL'**) (**'ComReg 16/31'**).

Virgin Media has responded to ComReg's specific questions in the subsequent sections. The main themes of this response are as follows:

- 1. There are likely to be very few, if any, end-users remaining that do not have access to basic electronic communications services ('ECS').** Most end-users already have access to these services either on a commercial basis from existing fixed or mobile service providers, or will gain access shortly through the Government's National Broadband Plan (**'NBP'**)
- 2. The FIA USO was intended to ensure the availability of basic ECS to end-users, not to guarantee the provision of high-speed broadband to all end-users.** The cost of rolling out high-speed broadband to uneconomic customers is inordinately higher than the cost incurred by the USP to provide a basic ECS. The limited role of the Universal Service Regulations was, in this regard, implicitly recognised by the European Commission in publishing the *State Aid Guidelines*<sup>1</sup>, and then by the Department of Communications, Energy and Natural Resources (**'DCENR'**) in developing the NBP.
- 3. Ubiquitous high-speed broadband availability has already been guaranteed through the NBP.** The DCENR's analysis found that 70% of households would be provided with high-speed broadband on a commercial basis by the end of 2016. The remaining 30%, which accounts for 757,000 addresses, represents the target for the intervention under the NBP.<sup>2</sup> The NBP therefore ensures that high-speed broadband will be universally available. On that basis a USO, and particularly a Functional Internet Access (**'FIA'**) obligation, would not be required.
- 4. Eir's USP designation should not apply within the NBP intervention area.** Having two broadband funding mechanisms applied at the same location could lead to inefficient and costly duplication of subsidised networks, and could undermine infrastructure competition between non-subsidised telecoms networks.<sup>3</sup>
- 5. ComReg's assessment of uneconomic end-users lacks transparency.** This means that interested parties, including those potentially required to fund the USO levy, are unable to assess Eir's calculation of net costs associated with the USO.
- 6. The costs of providing services to end-users that have access to alternative infrastructure should be excluded from the USO funding assessment.** ComReg, rather than Eir, should determine whether alternative infrastructure is available. This assessment could draw on ComReg's own data, as well as maps that have been produced by the DCENR for the purpose of its NBP.
- 7. Any USO designation made in this decision should be reviewed by 2019 at the latest.** ComReg's review period should account for the significant developments that are taking place in the marketplace.
- 8. ComReg's Regulatory Impact Assessment ('RIA') is inadequate.** ComReg's RIA speculates on benefits that would apparently accrue from the imposition of a USO, yet makes no attempt to actually quantify the benefits, or for that matter to measure the costs associated with a USO.

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<sup>1</sup> EU Guidelines for the application of State aid rules in relation to the rapid deployment of broadband networks (2013/C 25/01) page 1.

<sup>2</sup> Department of Communications, Energy & Natural Resources. National Broadband Plan. Connecting Communities. Ireland's Broadband Intervention Strategy Updated - December 2015, page 10.

<sup>3</sup> See Virgin Media's response to question 2 below.

## Introduction

The purpose of the USO is to guarantee the right of end-users to benefit from basic ECS that would otherwise not be delivered by the market at an affordable price. Historically, ECS was understood to include a basic telephone service, facsimile, and a 28Kb/s internet connection.

Virgin Media notes that the telecommunications sector is undergoing fundamental change. End-users who were previously limited to a household telephone landline, now have access to a range of technologies and products including mobile devices, broadband, and over-the-top services for personal and business communication. In this evolving market place, very few consumers rely on fixed line telephony, facsimile, or dial-up internet, and many end users choose not to have a fixed line telephone at all.<sup>4</sup>

The widespread deployment of mobile networks and fixed broadband networks is reducing the number of end-users who, absent some form of intervention, would not be able to access ECS.

At the same time, access to high speed broadband has become increasingly important. The cost of rolling out fibre broadband to uneconomic customers is inordinately higher than those associated with providing basic ECS, and this has led to gaps in the availability of high-speed broadband in many Member States, including in Ireland. The European Commission ('EC') in its State Aid Guidelines recognised that new funding measures (additional to the industry-funded USO) would be required to fill this gap:<sup>5</sup>

*To achieve the objective of access to Internet speeds of above 30 Mbps it is estimated that up to EUR 60 billion of investment would be necessary and up to EUR 270 billion for at least 50 % of households to take up Internet connections above 100 Mbps. Such investments shall primarily come from commercial investors. **However, the DAE objectives cannot be reached without the support of public funds. For this reason, the DAE calls on Member States to use 'public financing in line with EU competition and State aid rules' in order to meet the coverage, speed and take-up targets defined in EU2020.***

In line with the EC's Guidelines, The DCENR initiated the NBP as a means of ensuring universal access to high-speed broadband in Ireland. This publicly financed competitive tender process is well underway, with the DCENR expected to award the NBP contract/s in 2017.

It is in this context that ComReg, and respondents to this consultation, are required to consider the role of the USO going forward. It would be perverse to designate a USO provider to supply connectivity on a subsidised basis to areas that could be met on a commercial basis, or are already being met by the Government's NBP. Therefore ComReg must ensure that the Universal Service Obligations do not interfere with the provision of commercial services, or intersect with the NBP intervention area.

Virgin Media welcomes ComReg's acknowledgement in this consultation that alternative platforms should be taken into account by Eir when reviewing requests for access under the USO. In this response, Virgin Media will argue that it should be ComReg, rather than Eir, that determines which end-users are within range of alternative infrastructure. Virgin Media will also suggest an approach

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<sup>4</sup> ComReg's ICT Survey from November 2015 found that more than 30% of households have a mobile telephone but no landline.

<sup>5</sup> European Union Guidelines for the application of State aid rules in relation to the rapid deployment of broadband networks (2013/C 25/01) Page 1.

that ComReg could use to assess the availability of alternative infrastructure, which would involve using infrastructure maps that are already available to ComReg (including DCENR's NBP maps).

Virgin Media notes that under the USO funding mechanism, net costs associated with servicing uneconomic customers may be apportioned across all users of electronic communications networks ('ECN') and ECS in Ireland. Therefore any over-estimate of USO net cost and unfair burden could result in inefficient wealth-transfers from all users, and competing suppliers, to the universal service provider(s) (USP(s) – currently Eir). Virgin Media notes that this could be detrimental to end-users in two ways. First, the over-estimated costs could be recovered from consumers through higher retail prices, and secondly, the USP'(s) competitors could be placed at a competitive disadvantage since they will face higher costs. For this reason, ComReg should take measures to ensure that the net costs are measured correctly.

Virgin Media is also concerned with ComReg's failure to assess previous Eir USO funding applications. Virgin Media notes that there are currently four applications for USO funding that have not been assessed by ComReg dating back to 2010. These represent significant regulatory uncertainty (and potential financial liabilities) for all operators. For these reasons, ComReg should prioritise the assessment of these Eir applications. Given Virgin Media's views expressed throughout this response, we expect that ComReg would find no unfair burden arising from provision of the USO by Eir in relation to the outstanding USO funding applications.

Virgin Media has responded to ComReg's specific questions below.

## Response to ComReg questions

### 1. Do you have any further submissions on our preliminary view that there is a continued need for an AFL USO for the period commencing 1 July 2016?

The purpose of the AFL USO is to deliver affordable voice, facsimile and data communications at data rates that are sufficient to permit functional internet access to households that could not, absent of Universal Service Obligations, avail of these services.

Virgin Media considers that there are likely to be only a small number of households that fall within this bracket because:

- **Eir would offer an affordable basic telephony service anyway.** Eir faces low marginal costs on its fixed copper network. It is therefore unlikely that Eir, or any operator, would choose not to supply customers that are connected to, or located near, its existing network.
- **Competing mobile networks offer near-ubiquitous coverage and mobile penetration stands at 97%.<sup>6</sup>** This is in a market where nearly a third of households have chosen to replace their landline with a mobile phone.<sup>7</sup>
- **The Government's National Broadband Plan (NBP)** will service households that are not economically viable.

The AFL USO should be scaled back to reflect these factors. The following table summarises Virgin Media's view in relation to the diminishing role of the USO in the period 2016 to 2021. From 2021, there is unlikely to be any continued need for a USO.

Existing Universal Service Obligations	Virgin Media's view	
	<i>Is there a continued need for this obligation?</i>	<i>Under what conditions?</i>
The obligation to satisfy any reasonable request to provide at a fixed location, <i>connections to the public telephone network</i> capable of:		The obligation should <u>not</u> include facsimile communications or broadband.  The obligation should only apply when:
<ul style="list-style-type: none"> <li>• allowing end-users to make and receive local, national and international telephone calls</li> </ul>	Yes	<ul style="list-style-type: none"> <li>• the premises is uneconomic</li> <li>• an alternative connection is not available</li> </ul>
<ul style="list-style-type: none"> <li>• facsimile communications</li> </ul>	No	An alternative connection includes any functional fixed or mobile connection over which an affordable telephone service is available at the premises. This could include services provided over FWA or affordable satellite connections.  <b>The obligation should not apply within the NBP intervention area, or where</b>
<ul style="list-style-type: none"> <li>• data communications at data rates that are sufficient to permit FIA</li> </ul>	No	

<sup>6</sup> ComReg ICT survey November 2015

<sup>7</sup> Ibid.

		<b>mobile services are accessible inside the premises.</b>
The obligation to meet quality of service performance targets for the AFL USO	Yes	As above.
The obligation to apply measures to ensure affordability of tariffs imposed for AFL, including GAP, i.e. where telephone charges (including line rental) are the same for all end-users irrespective of their geographical location	Yes	This obligation should only apply to standalone telephone services.

In relation to determining whether an end-user or premises is uneconomic, ComReg notes in paragraph 122 that:

*We have good evidence that there are fixed voice end-users that Eir would not serve if it were not required by regulation to serve.*

Yet ComReg does not actually produce any evidence. Instead, ComReg references the statement with a footnote saying that:

*Eir's USO funding applications indicate that this is the case.*

As Virgin Media noted in its response to ComReg 15/89, ComReg needs to independently assess the economic viability of individual end-users, rather than relying on Eir's unsupported opinion. The assessment should, of course, be fully transparent.

**2. Do you agree or disagree with our preliminary view that it is unlikely to be necessary to specify fast broadband FIA requirements inside the NBP intervention area but that it may be necessary in future to specify such obligations at locations outside the intervention area?**

First, ComReg should take note that the State Aid Guidelines impose restrictions around the interaction between State Aid and a USO. Specifically, the State Aid Guidelines state that:<sup>8</sup>

*...if an operator designated with an universal service obligation (USO) receives public service compensation, no additional State aid can be granted to finance the same network.*

In any case, Virgin Media considers that there is no need to specify FIA requirements inside or outside of the NBP intervention area because:

- *FIA is already being delivered by a combination of all providers' fixed and mobile networks*
- *Specifying USO for broadband provision could undermine competition and incentives to invest.*

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<sup>8</sup> EU Guidelines for the application of State aid rules in relation to the rapid deployment of broadband networks (2013/C 25/01). Footnote 61, page 11

*Within NBP intervention area:* a broadband USO could undermine the NBP competitive tender process by creating an uneven playing field.

*Outside of the NBP intervention area:* A broadband USO could discourage commercial investment by other operators in broadband infrastructure (since they risk having to compete with a subsidised provider).

- *Ubiquitous broadband availability has already been guaranteed through the NBP*

The Government's NBP will see the deployment of broadband to all uneconomic premises in Ireland. The Government has undertaken a mapping exercise to identify uneconomic end-users. The extensive mapping exercise carried out by the Department of Communications, Energy & Natural Resources ('DCENR') revealed that 70% of addresses in Ireland will have access to high speed broadband on a commercial basis by the end of 2016. The balance of 30%, approximately 757,000 addresses, represents the target for the State intervention.<sup>9</sup>

Assuming that the Government has correctly identified the uneconomic premises, then the NBP would appear to supersede any requirement for a FIA USO obligation. Virgin Media is concerned that USO and NBP applied simultaneously would amount to overlapping broadband subsidies. Application of a second potential mechanism to address the same policy agenda is superfluous and would represent inefficient allocation of public funds.

**3. Do you agree it is not appropriate at this time, for July 2016, to decide whether or not to specify fast broadband FIA requirements at locations outside the intervention area?**

For the reasons explained in response to question 2, Virgin Media considers that the FIA USO should be withdrawn, rather than being extended to include broadband

**4. In your opinion, when FIA is reviewed in the future how should the minimum data speed be determined? Do you have a view about what the speed should be?**

For the reasons noted in response to question 2, Virgin Media considers that the FIA USO should be withdrawn, rather than being extended to include broadband

Virgin Media also strongly disagrees with ComReg's inference in paragraph 173 that the FIA obligation should be engineered to support over-the-top commercial streaming services such as Netflix. Virgin Media notes that the purpose of the USO should be to enable activities with high social and economic externalities and network effects. Since end-users are already well serviced by DTT and Ireland has one of the highest penetrations of pay TV services in Europe, there is no obvious social or economic justification for engineering the FIA obligation to cater for the provision of streaming services.

Virgin Media notes that the over-provisioning of speed or other technical specification under a USO has significant implications for the cost, and therefore the impact on the market and on existing broadband consumers.

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<sup>9</sup> Department of Communications, Energy & Natural Resources. National Broadband Plan. Connecting Communities. Ireland's Broadband Intervention Strategy Updated - December 2015, page 10.

**5. When do you think that ComReg should revisit this issue?**

The issue should only be revisited if the NBP fails to provide an adequate safety net for guaranteeing universal access. For example, if end-users outside of the NBP intervention area are not able to access basic services. Until that time, the NBP must be given the opportunity to deliver on its intended purpose.

**6. Do you agree that we should maintain the current FIA requirements for the time being?**

Virgin Media considers that continuation of the obligation is not justifiable.

As discussed in response to Q2, there is a risk that having two broadband funding mechanisms applied simultaneously could lead to inefficient and costly duplication of subsidised networks. This is particularly a concern due to the high cost of providing broadband connectivity in uneconomic areas.

Virgin Media reiterates that a broadband USO could undermine the NBP competitive tender process by creating an uneven playing field. In particular, the USP could potentially benefit from receiving funding under the USO for infrastructure that can be used to compete for the NBP contract. Conversely, other NBP bidders may, in preparing their respective tenders, have to account for the risk that, having won the right to provide broadband in the intervention area, the USP could build competing infrastructure within the Intervention Area and apply for funding under the USO for that infrastructure.

**7. Do you agree or disagree with the regulatory options for reasonable access requests as set above? Are there other options that we should consider?**

See below.

**8. What do you believe is the most appropriate factor(s) to define a reasonable request? Are there other factors which you believe we should consider when assessing what defines a reasonable request?**

The most appropriate factors to define a reasonable request are:

- *Is there an alternative infrastructure available?*

ComReg's proposed approach allows Eir to seek an exemption from meeting access requests when alternative infrastructure is available. The approach authorises Eir to effectively determine where the boundary of the USO intervention area lies. This means that Eir could feasibly meet a request for access despite the availability of alternative infrastructure, then deem that end-user to be uneconomic and apply for funding for the associated capital costs under the USO.

Not only should Eir be *exempted* from meeting the access request when alternative infrastructure is available, but any costs associated with connecting premises where alternative infrastructure is available should be excluded from any USO funding application. ComReg, rather than Eir, should determine which end-users are within range of alternative infrastructure. This could be done transparently using coverage maps for fixed and mobile networks, including the DCENR's NBP maps. Once ComReg has established that an end-user

will be connected to the NBP infrastructure, or any other alternative infrastructure, USO funding cannot be provided in relation to the provision of connectivity or services to that end-user.

- *What is a reasonable access threshold?*

ComReg has proposed that the reasonable access threshold should remain at €7000. This threshold highlights the high cost burden placed on all telecommunications users associated with the USO, and the importance of availing of alternative infrastructure where possible.

## **9. What is your view regarding how to assess whether the alternative infrastructure is affordable?**

Virgin Media considers that Eir's monthly retail line rental charge is no longer a suitable measuring stick for what would represent an affordable alternative.

According to ComReg's 2015 ICT survey, only 13% of Irish households purchase a landline on a standalone basis. Another 57% of households purchase a landline as part of a bundle with broadband and other products. For those customers, the landline is typically provided at no additional cost to the broadband product, or for a minimal additional charge. Given the complexity of this product-market, the price of a basic landline does not offer a suitable indicator of what consumers can afford. Rather, the price of a bundle of ECS may be a better indicator of what is considered to be affordable by end-users.

The high take-up and use of mobile services suggests that mobile services are also considered by end users to be an affordable form of ECS. The landline now represents only a small portion of spend on a households telephone services. According to ComReg data, fixed voice calls only represent 26% of total voice call traffic in Ireland,<sup>10</sup> and 30% of Irish households do not even have a landline at home.<sup>11</sup>

On the other hand 97% of consumers have a mobile phone<sup>12</sup>, and 74% of total voice call traffic in Ireland is now mobile traffic.<sup>13</sup> Mobile phones are also increasingly used to connect to the internet and other online services, with 75% of consumers reporting that they use a smartphone.<sup>14</sup>

## **10. Do you agree that indoor coverage is an important factor in assessing alternative connections and PATS?**

Yes – though indoor connectivity issues should not be used, as a priori, to exclude mobile services. Clearly in many scenarios, a mobile connection provides an adequate indoor connection to support a basic electronic communications service.

## **11. Do you agree that where a threshold is set, only costs that can be attributed to the individual end-user should be measured and that the estimated cost of connecting an end-user should also be based on the least cost technology to provide the required service, irrespective of the technology the USP choose to utilise in practice?**

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<sup>10</sup> ComReg Quarterly Report Q4 2015

<sup>11</sup> ComReg ICT Survey November 2015

<sup>12</sup> ComReg's ICT Survey November 2015

<sup>13</sup> ComReg Quarterly Report Q4 2015

<sup>14</sup> According to Google's [Consumer Barometer for Ireland](#)

Yes. The cost should reflect that of the least-cost solution (for the avoidance of doubt, including mobile networks). Any USO funding should only include efficiently incurred costs.

**12. Do you agree that end-users should be entitled to adequate and regular information regarding their request for connection?**

Yes. A communications process should be approved by ComReg.

**13. Do you agree with the approach taken to estimate the predicted fault occurrence based on weather, line length and overhead percentage?**

No comment.

**14. Do you agree with the preliminary view that any sub-national targets should be in accordance with the 3 areas defined in the TERA reports?**

Virgin Media notes that, when setting fault occurrence and repair targets, ComReg should be mindful that onerous performance targets can have significant implications for the cost of the USO, and therefore on the impact on the market and on existing broadband consumers. A reasonable approach therefore should be taken when setting targets, which may require ComReg to account for geographic or other variations that could impact on the USP's ability to meet specified targets.

**15. Do you agree with the preliminary view that fault occurrence targets and repair targets should be combined to provide a service availability target?**

No comment.

**16. Do you agree with the preliminary view that a service availability target should be set nationally and sub nationally by area?**

Virgin Media notes that, in setting service availability targets, ComReg should be mindful that onerous service availability targets can have significant implications for the cost of the USO, and therefore on the impact on the market and on existing broadband consumers.

A reasonable approach therefore should be taken by ComReg when setting service availability targets, which balances the customer impact against the cost burden associated with the specific target.

**17. Do you agree with the preliminary view that the national service availability target should be 99.94% and the target for each sub-national area should be 99.86%? Please provide reasons and evidence to support your view. If not, what alternative availability targets do you believe are justified and why?**

See answer to question 16.

**18. Do you agree with the preliminary view that end-users that have service availability for >10 days should be automatically refunded?**

See answer to question 16.

**19. Do you agree with the preliminary view that the connection targets levels that are in place are appropriate for sub national targets?**

Virgin Media notes that, in setting connection targets, ComReg should be mindful that onerous targets can have significant implications for the cost of the USO, and therefore on the impact on the market and on existing broadband consumers.

A reasonable approach therefore should be taken by ComReg when setting targets, which balances the customer impact against the cost burden associated with the specific target.

**20. Do you agree with the preliminary view that the measurement of connection targets at sub-national level is appropriate?**

See response to question 19.

**21. Do you agree with the preliminary view in respect of the measurement, publishing and auditing of the performance figures?**

Virgin Media notes that, when designing a performance measurement and auditing process, ComReg should be mindful that onerous processes can have significant implications for the cost of the USO, and therefore on the impact on the market and on existing broadband consumers.

A reasonable approach therefore should be taken by ComReg when deciding on these processes, which balance the customer impact against the cost burden associated with each approach.

**22. Do you agree with the preliminary view that the performance targets should be commence from 1 July 2016?**

Virgin Media considers that the performance targets should not apply until after a new decision has been published by ComReg, and the application date should allow time for the USP to implement required system changes.

**23. Do you agree with the preliminary view that the necessity for a review of the performance targets should be examined in 2 years?**

No comment

**24. Do you agree with our preliminary view that the obligation to maintain geographically averaged prices should be maintained?**

Virgin Media agrees with the proposed obligation in relation to maintenance of geographically averaged prices, but considers that this obligation should only apply to standalone fixed telephone services. As previously noted, this obligation should only apply at locations where an affordable alternative service is not available.

**25. Do you agree or disagree with our preliminary view that at this time a requirement to offer Social Tariffs should not be introduced?**

Virgin Media agrees that a social tariff should not be introduced at this time.

**26. Do you agree or disagree with our preliminary view that the USP should be required to continue to provide its Disconnections Policy?**

No comment.

**27. Do you agree or disagree with our preliminary view that the USP should be required to continue to provide a Phase Payment Plan for connection fees?**

No comment.

**28. Do you agree or disagree with our preliminary view in respect of the terms and conditions of contract?**

No comment.

**29. Do you agree with our proposal to designate a USP to deliver AFL USO for a period of 5 years, with a review to take place after 5 years or sooner if circumstances justify it?**

ComReg should undertake regular reviews to account for:

1. **Changes in the way in which basic electronic communication services are provided over time** that can affect the underlying costs associated with providing services.<sup>15</sup>
2. **New network deployments could eliminate the need for a USO.** The deployment of commercially-funded mobile and fibre infrastructure, and the NBP funded network, may extend to households for which Eir has applied for USO funding.<sup>16</sup> Clearly the USO should be tapered back in cases where commercial services and state-aided networks are meeting the basic needs of consumers. As previously noted, Virgin Media notes that the DCENR anticipates awarding the NBP contracts to successful bidders by the end of 2017.

In deciding on the duration and scope of the USP designation, ComReg should be mindful that Universal Service Obligations can undermine incentives for other operators to invest in broadband infrastructure.

With these considerations in mind, the designation should not exceed five years, and should be reviewed after three years.

**30. Do you agree with our proposal that the USO designation should be applied to the geographic area of the entire State? Are there other factors which should be considered by us in this regard?**

For the reasons explained in response to question 2, the USO designation should not apply within the NBP intervention area.

**31. Do you agree with our preliminary view that the most appropriate approach is to designate Eir as the USP from 1 July 2016?**

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<sup>15</sup> Talk is Cheaper: The cost of telecommunications has fallen worldwide 17 May 2011, Economist. Available online at <http://www.economist.com/blogs/dailychart/2011/05/telecommunications>

<sup>16</sup> For example, SIRO have announced plans to deploy FTTH networks to 500,000 households outside of the footprint of UPC Ireland's network on a phased basis ( <http://siro.ie/roll-out/> ). Similarly, mobile network operators are extending the coverage of LTE networks.

Yes, but this designation should not apply within the NBP intervention area.

**32. Are there other factors or options which should be considered by ComReg in making a designation in respect of a USP?**

No.

**33. Do you agree or disagree with our draft assessment of the impact of the proposed options?**

ComReg's Regulatory Impact Assessment speculates on benefits that would supposedly accrue from the imposition of a USO, yet makes no attempt to actually quantify either the benefits, or for that matter to measure the costs associated with the Universal Service Obligations.

Without a detailed examination of the actual costs and benefits, it is difficult to compare the options presented by ComReg. Failure to fully account for these costs within a RIA could ultimately result in ComReg over-specifying the USO, at the expense of all end-users.

ComReg should keep in mind when carrying out its RIA that the purpose of the USO should be to enable activities with high social and economic externalities and network effects, rather than to arbitrarily transfer wealth between different groups of end-users.

A good starting point for a quantitative assessment would be to look at the costs that are reported by Eir in relation to the USO, and to obtain cost estimates made by the DCENR in relation to the provision of broadband in the intervention area. Each of the proposals made by ComReg in this consultation has cost implications, which need to be quantified and then balanced against the social and economic benefits that accrue.

ComReg should keep in mind that amending the USO to include broadband would significantly increase the cost-burden on the USP.

The Government's planned investment in the NBP offer an example of the potential scale of these costs. The Government has initially earmarked a stimulus package of €275 million which has been as part of its five year Capital Plan for the NBP.<sup>17</sup> This will ultimately be recovered from tax-payers at a cost equivalent to €166 per household.

This provides some insight into the scale of the initial capital investment costs that could be imposed on end-users if the FIA was re-specified to include broadband on a national basis. These costs, when passed onto end-users, could potentially drive marginal customers out of the market, thereby undermining ComReg's initial objective to promote the uptake of basic telecommunications services.

Virgin Media considers that, given the scale of the impacts that arise from the proposed USO, a comprehensive quantitative assessment of the options by ComReg is required. Specific attention should be given to Eir's claims relating to non-economic customers in economic areas.

**34. Do you have any comments or suggestions on our draft Decision Instrument?**

Nothing further to add.

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<sup>17</sup> Department of Communications, Energy & Natural Resources. National Broadband Plan. Connecting Communities. Ireland's Broadband Intervention Strategy Updated - December 2015, page 26.

## **6 Vodafone**



# **Vodafone Response to Consultation: Universal Service Requirements - Provision of Access at a Fixed Location – AFL, Response to Consultation, Further Consultation and Draft Decision - Ref: 16/31**

## **13<sup>th</sup> June 2016**

### **Introduction**

Vodafone welcomes the Consultation: Universal Service Requirements – Provision of Access at a Fixed Location – AFL. Response to Consultation, Further Consultation and Draft Decision – Ref: 16/31 and would make a number of preliminary comments in relation to the issues raised in the document and market issues related to USO.

### **Market Developments & growth of VOIP**

Vodafone notes the discussion in 15/89 and in the current consultation on the potential growth of VoIP as substitutes for fixed services. There is an expectation that fixed voice services will decline to be replaced by standalone broadband complemented with VoIP services. However recent wholesale price increases by open eir have undermined the ability of operators, other than eir, to roll out VoIP. The price of standalone broadband wholesale has increased 30% since June 2015. The effect of these price increases means there will be more reliance on POTs based voice services for the time to come as the business case for VOIP is not seriously undermined. A further consequence of this pricing is the continued dominance of eir in the provision of AFL in Ireland.

Vodafone would ask ComReg in their final decision on USO to recognise the impact of the wholesale price increases made by eir in reconfirming their dominance in retail fixed voice services.

### **Quality of Service**

Vodafone make a number of comments in relation to the questions on quality of service. Vodafone believe ComReg should not pursue proposals for service availability metrics, rather than the traditional Line Fault Index – LFI, and Event Based Fault Repair – EBFR, targets. We equally have difficulty with proposals in the draft decision which undermine the work completed on the SLA dispute. Specifically, Annex 3 of the ComReg consultation paper which supports Clause 7.3 of the Draft Decision, runs counter to the Draft Determination Issued by ComReg in the Towerhouse versus Eir dispute, taken by various ALTO members.



## **USO Designation & Funding**

Vodafone notes that ComReg seeks to issue its Decision for the 1st July 2016. Vodafone restates its view from other USO consultations that such a short period must be insufficient to permit ComReg to properly consider the very serious matters and concerns that are replete throughout this consultation.

Vodafone notes that the cost of the USO claims from Eir, appear to be spiralling upwards, when Eir has very clearly and publicly undergone a massive cost reduction exercise. Vodafone have written to ComReg on USO funding and our letter remains unacknowledged and unresponded. ComReg must endeavour to bring regulatory certainty when dealing with the issue of USO and indeed the issue of USP designation.

For the avoidance of doubt Vodafone do not accept that eir have a net cost or an unfair burden as the USP and would expect ComReg to support that view when they have assess the costs submitted by eir.



Response to Consultation Questions:

**Q.1. Do you have any further submissions on our preliminary view that there is a continued need for an AFL USO for the period commencing 1 July 2016? Please give reasons to support your view.**

Vodafone agrees with ComReg's preliminary view that the USO should continue beyond 1 July 2016. No limitations should be placed on any other party wanting to become the USP or jointly operate such services.

**Q. 2. Do you agree or disagree with our preliminary view that it is unlikely to be necessary to specify fast broadband FIA requirements inside the NBP intervention area but that it may be necessary in future to specify such obligations at locations outside the intervention area? Please give reasons to support your view.**

Vodafone does not agree with the ComReg preliminary view that it is unlikely to be necessary to specify fast broadband FIA requirements inside the NBP intervention area but that it may be necessary in future to specify such obligations outside of the intervention area. It is unclear what the take up of in the intervention area will be and there may be a number of people who for whatever reason do not subscribe to the services.

**Q. 3. Do you agree it is not appropriate at this time, for July 2016, to decide whether or not to specify fast broadband FIA requirements at locations outside the intervention area? Please give reasons to support your view.**

Vodafone believes there is a lack of detailed line performance information for current generation broadband outside of the intervention areas. While some urban areas are enjoying high speed broadband, there are still premises in urban areas that are not able to avail of high speed broadband and many others that fall between urban and the designated intervention areas that are still served by traditional broadband at much slower speeds.



**Q. 4. In your opinion, when FIA is reviewed in the future how should the minimum data speed be determined? Do you have a view about what the speed should be? Please give reasons to support your view.**

Vodafone believes there is insufficient information available in the Irish market to take a full view in FIA. The concept of FIA was developed at a time when broadband was not available and it is reasonable to assume that with broadband more broadly available the concept of FIA is redundant.

It is also too early to review whether broadband should be added to the USO AFL designation at some point in the future.

**Q. 5. When do you think that we should revisit this issue? Please give reasons to support your view.**

Vodafone believe that ComReg should await the outcome of the review of USO in the EU due in 2016 and following the conclusion of the NBP before revisiting the FIA concept

**Q. 6. Do you agree that we should maintain the current FIA requirements for the time being? Please give reasons to support your view**

Vodafone agrees that the FIA should be maintained for the time being.

**Q. 7. Do you agree or disagree with the regulatory options for reasonable access requests as set above? Are there other options that we should consider? Please give reasons to support your view.**

Vodafone agrees with the regulatory options considered by ComReg.

**Q. 8. What do you believe is the most appropriate factor(s) to define a reasonable request? Are there other factors which you believe we should consider when assessing what defines a reasonable request? Please give reasons to support your view**

Vodafone supports the views discussed by ComReg on the processes which need to be addressed to agree a reasonable request.

**Q. 9. What is your view regarding how to assess if the alternative infrastructure is affordable? Please provide reasons to support your view.**

Vodafone believe there are a number of alternative infrastructures available that satisfy the basic USO requirements. Mobile plans exist which offer decent mobile voice services to 99.7% of the population and



are affordable. Customers will decide based on their need for the service and their ability to pay. However, with the loss of the telephony rebate scheme there is a clear risk that the price for service may be unaffordable to some.. The market will pay certain prices, and drive demand and supply accordingly.

**Q. 10. Do you agree that indoor coverage is an important factor in assessing alternative connections and PATS? Please provide reasons to support your view.**

Vodafone agree indoor coverage is an important factor. In terms of mobile telephony, devices and additional equipment are available to boost indoor signals. Customers need to consider the functionality and affordability in terms of framing a reasonable request.

**Q. 11. Do you agree that where a threshold is set, only costs that can be attributed to the individual end-user should be measured and that the estimated cost of connecting an end-user should also be based on the least cost technology to provide the required service, irrespective of the technology the USP choose to utilise in practice? Please provide reasons to support your view.**

Vodafone believes whatever costs attributed to provide the USO service should be included.

**Q. 12. Do you agree that end-users should be entitled to adequate and regular information regarding their request for connection? Please provide reasons to support your view.**

Vodafone agrees that all end-users should be kept informed of the progress of their request for connection so that their expectations are properly managed. Our view is that customers should receive a committed date for their connection request and this date should not be changed due to resourcing issues within the USP.

**Q. 13. Do you agree with the approach taken to estimate the predicted fault occurrence based on weather, line length and overhead percentage? Please provide reasons and evidence to support your view.**

Vodafone disagrees with the approach taken by ComReg and TERA to the Line Fault Index – LFI.

The criteria do not take account of the level of investment within the access network. Eir has been reducing resources from fault repair to the bizarre outcome that staff dealing with the provision of services for wholesale customers were re-allocated to fault repair last winter during what eir call 'Storm mode'.

Eir wholesale make returns well in excess of other incumbents and have reduced capex to ensure the financials are attractive for new investors. This scenario is not in line with a commitment to provide decent response to faults.



Vodafone is seriously concerned at the performance of the eir network and believe ComReg cannot assess performance or progress without some form of benchmarking in setting fault targets.

**Q. 14. Do you agree with the preliminary view that any sub-national targets should be in accordance with the 3 areas defined in the TERA reports? Please provide reasons and evidence to support your view.**

Vodafone agrees with ComReg's preliminary view that any sub-national targets should be in accordance with the 3 areas defined (Eir only, NBP, and market driven infrastructure) as defined in the TERA reports.

**Q. 15. Do you agree with the preliminary view that fault occurrence targets and repair targets should be combined to provide a service availability target? Please provide reasons and evidence to support your view.**

Vodafone disagrees with this proposal, it does not add any value as eir need to be measured on fault occurrence and repair separately.

Vodafone believes this is a retrograde step as industry has spent several years moving away from availability SLAs within the wholesale contracts given problems with Eir SLA working hour definition issues that creep in – it's also difficult to set meaningful SLA targets.

**Q. 16. Do you agree with the preliminary view that a service availability target should be set nationally and sub nationally by area? Please provide reasons and evidence to support your view.**

Vodafone are of the view that this concept is misjudged and should not be pursued.

**Q. 17. Do you agree with the preliminary view that the national service availability target should be 99.94% and the target for each sub-national area should be 99.86%? Please provide reasons and evidence to support your view. If not, what alternative availability targets do you believe are justified and why?**

Vodafone does not disagree with the service availability target proposed by ComReg and consider the the use of service availability as a measure is flawed.

**Q. 18. Do you agree with the preliminary view that end-users that have service availability for >10 days should be automatically refunded? Please provide reasons and evidence to support your view.**

Vodafone would have concerns that for enterprise customers that such refund mechanisms may impact existing contracts – ComReg need to detail how this provision would work and who would pay.



**Q. 19. Do you agree with the preliminary view that the connection targets levels that are in place are appropriate for sub national targets? Please provide reasons and evidence to support your view.**

Vodafone agrees with this view.

**Q. 20. Do you agree with the preliminary view that the measurement of connection targets at sub-national level is appropriate? Please provide reasons and evidence to support your view.**

Vodafone agrees with this view.

**Q. 21. Do you agree with the preliminary view in respect of the measurement, publishing and auditing of the performance figures? Please provide reasons and evidence to support your view.**

Vodafone agrees with this view.

**Q. 22. Do you agree with the preliminary view that the performance targets should be commenced from 1 July 2016? Please provide reasons and evidence to support your view.**

Vodafone agrees with this view.

**Q. 23. Do you agree with the preliminary view that the necessity for a review of the performance targets should be examined in 2 years? Please provide reasons and evidence to support your view.**

Vodafone agrees with this view.

**Q. 24. Do you agree with our preliminary view that the obligation to maintain geographically averaged prices should be maintained? Please provide reasons to support your view.**

Vodafone agrees with this view.

**Q. 25. Do you agree or disagree with our preliminary view that at this time a requirement to offer Social Tariffs should not be introduced? Please give reasons and/or evidence to support your view.**

Vodafone agrees with this view.

**Q. 26. Do you agree or disagree with our preliminary view that the USP should be required to continue to provide its Disconnections Policy? Please give reasons to support your view.**

Vodafone agrees with this view.



**Q. 27. Do you agree or disagree with our preliminary view that the USP should be required to continue to provide a Phase Payment Plan for connection fees? Please give reasons to support your view**

Vodafone agrees with this view.

**Q. 28. Do you agree or disagree with our preliminary view in respect of the terms and conditions of contract? Please provide reasons to support your view.**

Vodafone agrees with this view.

**Q. 29. Do you agree with our proposal to designate a USP to deliver AFL USO for a period of 5 years, with a review to take place after 5 years or sooner if circumstances justify it? Please give evidence and reasons to support your view.**

Vodafone agrees with the designation. However the awarding of the USP for 5 years given the changes expected in the market needs to be reviewed. ComReg should commit to review USO again following the awarding of the NBP and if the scope of USO changes as a result of the review in the EU or USO or the outcome of the Digital Single Market. ComReg need to have a clear trigger defined to review the designation as opposed to an open undefined review.

**Q. 30. Do you agree with our proposal that the USO designation should be applied to the geographic area of the entire State? Are there other factors which should be considered by us in this regard? Please give evidence and reasons to support your view.**

Vodafone agrees with this view

**Q. 31. Do you agree with our preliminary view that the most appropriate approach is to designate Eir as the USP from 1 July 2016? Please give evidence and reasons to support your view.**

Vodafone agrees with the designation however Vodafone have major concerns at the short period yet again that are given to consultation on USO. It is impossible to accept that ComReg can take into account all of the comments and views and still decide on designation in two weeks. It is welcome that the designation is for 5 years (subject to review as outlined above) which gives some certainty for industry.



**Q. 32. Are there other factors or options which should be considered by ComReg in making a designation in respect of a USP? Please give evidence and reasons to support your view.**

Vodafone has serious concerns that 5 years of USO applications for funding remain outstanding and represent a serious overhang on all operators in the market. ComReg have not been transparent in how they have approached this issue. For the avoidance of doubt Vodafone fundamentally disagree that either there is a net cost or that it represents an unfair burden. It is of great concern that Eir continue to apply for funding, with the total funding requested in excess of €50ml. It defies belief in a modern regulatory regime that such uncertainty would be allowed to continue.

There is a huge inconsistency where the cost of the USO appears to be spiralling when reviewing the costs claimed by Eir over recent years compared to the cost reduction initiatives within Eir that have hit the press from time to time and the fact that the country has been in recession for most of this period causing low levels of new housing development. Equally investment in the network is not increasing and operators face 'Storm Mode' from November to February 2016 which reflects the poor network. It should be noted that other utilities (eg ESB, An Post) do not seem to have the same deterioration in service during winter times.

**Q. 33. Do you agree or disagree with our draft assessment of the impact of the proposed options? Please set out reasons for your answer.**

Vodafone agrees with the assessment

**Q. 34. Do you have any comments or suggestions on our draft Decision Instrument? Please set out your answer in detail.**

Vodafone disagrees with clause 7.2 on the basis of comments made above to other answers

In relation to draft Decision Instrument Clause 7.3, Vodafone are concerned that the proposals within Annex 3, which supports this Draft Decision appear to be opposite to the draft determination issued by ComReg Compliance team on the 20 May 2016 which has moved from a system of allowing some fault not being resolved and the target still being met, to raising all the targets to 100%.

Vodafone cannot agree to the adoption of this approach, as it would conflict entirely with the industry by supporting the determination to the Service Assurance Dispute. It is unbelievable that ComReg have chosen to adopt such a deeply flawed and conflicted position.