



An Coimisiún um
Rialáil Cumarsáide
Commission for
Communications Regulation

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

NON-CONFIDENTIAL

Consultation and draft Decision

Reference: ComReg 21/51

Version: Final

Date: 27/05/2021

An Coimisiún um Rialáil Cumarsáide
Commission for Communications Regulation

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

Legal Disclaimer

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

NON-CONFIDENTIAL

Content

Section	Page
1 Background	7
2 Executive Summary	9
2.1 ComReg's Statutory Mandate to Ensure the Provision of the Universal Services in the State.....	9
2.2 The Code.....	9
2.3 Broadband - the NBP, Commercial Rollout and Universal Service.	11
2.4 Access and voice services at a fixed location ("AFL") during the transition Period.....	12
2.5 Universal Service Costing and Funding.....	14
2.6 Considerations for this Consultation.....	15
2.7 ComReg's Preliminary views.....	17
2.8 Submissions to this Consultation.....	19
3 AFL related market developments	20
3.1 Supply side market summary.....	20
3.1.1 Relevant supply side trends.....	20
3.1.1.1 Rollout of Next Generation broadband networks.....	21
3.1.1.2 Supply Side Trends from an AFL Perspective.....	24
3.1.1.3 eir's network modernisation plans.....	25
3.1.2 Changes in the FACO markets.....	26
3.2 Demand side market summary.....	29
3.2.1 Relevant demand side trends.....	29
3.2.1.1 Competition in the retail fixed telephony service market.....	29
3.2.1.2 Frequency of making calls.....	32
3.2.1.3 Standalone fixed voice landline ownership.....	34
3.2.1.4 Mobile networks and services.....	36
3.2.1.5 The decline in the size of the standalone retail fixed telephony service market.....	38
4 The need for an AFL USO	43
4.1 ComReg's statutory obligations.....	43
4.2 Reasonableness of requests.....	45

4.2.1 Nature and number of requests	45
4.2.2 Reasonableness of requests (reasonable access requests).....	51
4.2.2.1 Counterfactual scenario (2018 – 2020 analysis of eir’s data)...	54
4.3 Voice, facsimile and Functional Internet Access (FIA).....	58
4.4 Affordability and control of expenditure measures	62
4.4.1 Affordability	62
4.4.1.1 Geographical Averaging.....	62
4.4.1.2 Retail price cap (RPC).....	65
4.4.1.3 Tariff options	68
4.4.2 Control of expenditure.....	69
4.4.2.1 Disconnections.....	70
4.4.2.2 Phased Payment of Connection Fees.....	70
4.4.2.3 Terms and Conditions	71
4.4.3 Quality of Service (QoS)	72
4.5 The need for AFL USO post 30 June 2021	72
5 Expressions of interest	74
5.1 Proposed assessment methodology and selection criteria	74
5.2 Costing of the USO.....	77
6 Designation of Universal Service Provider(s)	79
6.1 Geographical scope	81
6.2 Duration of any designation	81
6.3 Designation of USP(s)	82
7 Draft Decision Instrument	83
8 Draft Regulatory Impact Assessment (“RIA”)	85
8.1 Introduction	85
8.2 Step 1 – Describe the policy issue and identify the objectives.....	87
8.3 Step 2 - Identify and Describe the Regulatory Options	88
8.3.1 Option 1: Maintain an AFL USO Obligation	88
8.3.1.1 Functional internet access.....	89
8.3.1.2 Reasonableness of requests.....	90
8.3.1.3 Affordability including GAP.....	91
8.3.1.4 Control of expenditure	91
8.3.2 Option 2: Remove the AFL USO Obligation.....	92

8.4	Steps 3 and 4 – Determine the impacts on stakeholders and competition	92
8.5	Step 5 – Assess the impacts and choose the best option.....	99
9	Next Steps	105
10	Annex: 1 Legal Basis	106
11	Annex: 2 The Code	109
12	Annex: 3 Decision Instrument D05/16	116

NON-CONFIDENTIAL

Figures

Page

Figure 1: Upstream fixed access call origination and downstream retail fixed telephony service	27
Figure 2 : Lines, access paths and subscriptions	30
Figure 3: Fixed narrowband access paths, fixed narrowband access and Managed VoIP subscriptions	31
Figure 4: Retail Fixed Telephony Service Traffic and Revenues, Q3 2016 – Q4 2020 (Base Q3 2016 = 100)	31
Figure 5: Residential and Business Retail Fixed Telephony Service Minutes, Q3 2016 – Q4 2020.....	32
Figure 6: Retail Fixed Telephony Service Market Shares by Subscription, Q4 2016 – Q4 2020	34
Figure 7: Total subscriptions to RFTS Q4 2020	38
Figure 8: Single, double, triple, and quadruple play subscriptions	39
Figure 9: Standalone fixed voice access requests (<i>*including requests from other service providers</i>) [xREDACTEDx].....	47
Figure 10: Total – 2018 – 2020 new reasonable access requests [xREDACTEDx].....	48
Figure 11: Total reasonable access requests received by eir – 2018-2020 (rejected by end user or undertakings) [xREDACTEDx].....	49
Figure 12: eir standalone fixed voice – new and in-situ connections – 2018- 2020 [xREDACTEDx].....	50
Figure 13: eir standalone fixed voice new FCS connections – 2018 – 2020 [xREDACTEDx].....	51
Figure 14: New connection by threshold levels 2019-2020 [xREDACTEDx].....	54
Figure 15: Reasonable access requests (standalone fixed voice) – eir connection costs [xREDACTEDx].....	56

1 Background

- 1 The Commission for Communications Regulation (“**ComReg**”) is the independent regulator for the electronic communications sector in Ireland. ComReg was established by section 6 of the Communications Regulation Act 2002 (the “Act of 2002”).
- 2 Our key statutory objectives are to:
 - i. Promote competition.
 - ii. Contribute to the development of the internal market.
 - iii. Promote the interests of users of electronic communications services (“**ECS**”) in Ireland, as well as within the European Union.
- 3 We are responsible for the regulation of the Irish electronic communications sector, in accordance with national and EU legislation.
- 4 One of our functions is to ensure that basic electronic communications services at a fixed location are provided to end-users. Currently, this is ensured by placing a universal service obligation (“**USO**”) on Eircom Limited (“**eir**”).
- 5 The current USO requirements mean that eir is obliged to:
 - meet reasonable access requests for access to a connection and voice services at a fixed location (“**AFL**”),
 - continue to meet needs of existing USO customers;
 - apply geographically averaged pricing (“**GAP**”), as an affordability measure;
 - ensure that quality targets in terms of connections and availability are met
- 6 eir’s current USO remains in force until 30 June 2021, unless amended by ComReg.
- 7 There are a number of significant changes and developments underway including the rollout of the national broadband plan (“**NBP**”) and a new legislative framework known as the European Electronic Communications Code (“the Code”). The Code is being transposed into national law by the Department for Environment, Climate and Communications (“**DECC**”).

- 8 Considering the current market and legislative context, ComReg is required to consider whether an AFL USO is required post June 2021, and if so, for how long, what the appropriate obligations should be, and who should be the USP.
- 9 This consultation document sets out ComReg's preliminary views on these matters and the associated rationale.
- 10 ComReg invites expressions of interest from any undertaking who wishes to be considered to be designated.
- 11 ComReg invites the views of stakeholders to this consultation.
- 12 ComReg will consider the submissions received and we will subsequently make and issue a Decision on the matter, with the consent of the Minister as appropriate.

NON-CONFIDENTIAL

2 Executive Summary

2.1 ComReg's Statutory Mandate to Ensure the Provision of the Universal Services in the State

- 13 ComReg has a statutory mandate to ensure that all reasonable requests to access at a fixed location for a connection and voice services, whether standalone or in a bundle are met by at least one undertaking.
- 14 This mandate derives from EU Legislation, and the Universal Service Regulations 2011 (the "Universal Service **Regulations 2011**")¹. We are cognisant that the European Electronic Communications Code ("**The Code**")² will replace the Regulations upon transposition into Irish law. The Code sets out requirements in respect of universal service to ensure that minimum services are provided at an affordable price and appropriate quality to end-users.

2.2 The Code

- 15 The European Electronic Communications Code (EECC Directive (EU) 2018/1972) ("**The Code**") entered into force on 20th December 2018, with a transposition deadline of 21 December 2020. The Department of Environment, Climate and Communications ("**DECC**") is responsible for the transposition of the Code into national law, and this is ongoing. DECC has also signalled its intention to issue a public consultation on the transposition text³, which will transpose the EECC Directive (EU) 2018/1972 into national law.
- 16 ComReg has liaised with DECC in relation to the transposition of the Universal Service Provisions of the Code, and ComReg understands that the definition of adequate broadband (ABB) and the procedure for the imposition of affordability measures will be progressed following transposition. It is anticipated that ComReg will have a role in implementing a USO(s), if appropriate.

¹ The European Communities (Electronic Communications Networks and Services) (Universal Service and Users' Rights) Regulations 2011.

² The European Electronic Communications Code - EECC Directive (EU) 2018/1972.

³ [gov.ie](http://www.gov.ie) - [European Electronic Communications Code \(EECC\) \(www.gov.ie\)](http://www.gov.ie).

- 17 In the interim, the 2011 Universal Service and Users' Rights Regulations, SI 337 of 2011 made pursuant to section 3 of the European Communities Act 1972 ("the 1972 Act") remain valid and in force. We are cognisant of the need for the 2011 Regulations to be interpreted to align with the Code, and other relevant national and EU legislation. In this regard, we note the requirement under the Code for Member States to ensure access to an available adequate broadband internet access service ("**ABB IAS**") and voice communications services at a fixed location at the quality specified in their territories, including the underlying connection, at a fixed location.
- 18 As set out above, the Code requires Member States to ensure that ABB IAS is available through the provision of a USO where this need cannot be ensured under normal commercial circumstances or by other potential public policy tools.
- 19 Separately, the National Broadband Plan ("**NBP**") is the government's initiative to deliver high speed broadband services to all premises in Ireland. This will be delivered through investment by commercial enterprises coupled with intervention by the State in those parts of the country where private companies have no plans to invest.
- 20 Upon completion of rollout of the NBP State intervention it is anticipated that all premises in "the Intervention Area" will have access to high speed broadband. This coupled with commercial roll out by operators is expected to reach an overwhelming majority of premises. In this context the need for a Universal Service Obligation (USO) to provide an adequate broadband connection and service will be assessed following transposition.
- 21 In respect of voice at a fixed location, ComReg expects that as broadband continues to roll out, affordable voice offers (standalone or in a bundle) will be made available to end users on a commercial basis. Where affordable fixed voice access and services are not provided commercially, a USO may be required.
- 22 Notwithstanding the anticipated new legislation, European and national legislation still requires ComReg to ensure that reasonable requests for access to basic services including voice service at a fixed location, either standalone or in a bundle are met by at least one undertaking.
- 23 ComReg must continue to ensure that this is right is safeguarded.

2.3 Broadband - the NBP, Commercial Rollout and Universal Service

- 24 ComReg recognises that over time, the NBP rollout coupled with committed commercial rollouts will bring high speed broadband to the majority of premises in Ireland.
- 25 The scope of the new universal service is defined by the Code. Under the Code, any intervention to provide access to adequate broadband internet access service is only appropriate if there is an unserved need where the market fails to deliver (under normal commercial circumstances), and it cannot be ensured using other public policy tools.
- 26 A universal service for adequate broadband internet access service will therefore act as a safety net ensuring that all Irish citizens will have access to ABB IAS.
- 27 The committed investment by commercial enterprises coupled with intervention by the State via the National Broadband Plan⁴ should, once the NBP Intervention is completed, ensure that high speed broadband and voice services are delivered to all premises in Ireland. At that time, the need for a Universal Service Obligation (USO) to provide adequate broadband connection and service will be assessed following transposition.
- 28 ComReg anticipates however that these commercial and State deployments will not be completed within the next 12 – 24 months.
- 29 In addition to ABB IAS, the Code also requires that end-users continue to have the right to access a voice only service should they wish. The rollout of high-speed broadband should also facilitate the provision of broadband based fixed voice services (VOB/VoIP) either standalone or in a bundle on a commercial basis. However, if this is not the case, USO(s) may be required to ensure that voice communication services, including standalone voice, are provided at an affordable price.
- 30 Consideration is to be given to providing for a USO for broadband regime in the context of transposing and implementing the Code, which would include a role for ComReg in implementing a USO, if appropriate. On this basis, ComReg will liaise with DECC to seek information on the rollout of the NBP and on the completion of the committed commercial deployments, and the definition of ABB IAS following transposition.

⁴ In those parts of the country where private companies have no plans to invest.

- 31 These details will be used by ComReg as key inputs in the performance of its role in respect of any potential need for a USO, where ABB IAS cannot be ensured under normal commercial circumstances or through other public policy tools.
- 32 In respect of voice at fixed location, ComReg expects that as broadband continues to roll out, affordable voice offers (standalone or in a bundle) will be made available to end users on a commercial basis. Where affordable fixed voice access and services are not provided commercially, a USO may be required.

2.4 Access and voice services at a fixed location (“AFL”) during the transition Period

- 33 In circumstances where the Code has not yet been transposed into national law, ComReg must continue to rely on the Universal Service Regulations 2011 interpreted in accordance with the provisions of the Code. In this regard, and having regard to the ongoing transition to high speed broadband networks, ComReg’s focus, during the transition period, and in this consultation is to continue to ensure that voice services at a fixed location are provided in accordance with its obligations to ensure such services under the Universal Service Regulations 2011⁵ and under the Code⁶.
- 34 This consultation concerns the basic right of end-users to have access to a minimum set of telecommunications services, and to the legal obligation to ensure, that all reasonable requests for connection at a fixed location to the public communications network and/or for the provision of a publicly available telephone service over the connection, are met by at least one undertaking⁷.
- 35 The Universal Service Regulations 2011 places primary responsibility on ComReg, ECS regulator for Ireland, to safeguard and ensure the provision of a minimum set of telecommunications services in the State. We may designate an undertaking, or undertakings, to satisfy any reasonable request to provide, at a fixed location, a connection to the public communications network (“PCN”) and a publicly available telephone service over the network connection that allows for originating and receiving of national and international calls.

⁵ Regulation 3 of the Universal Service Regulations 2011.

⁶ Article 84 of the Code.

⁷ Regulation 7 of the Universal Service Regulations 2011 and Article 86 of the Code.

- 36 Following transposition, adequate broadband IAS may be specified and consideration given to the need for associated requirements, however, under the Universal Service Regulations 2011, the connection must be capable of supporting voice, facsimile and data communications at data rates that are sufficient to permit functional internet access ("**FIA**").⁸
- 37 We may also impose requirements on a designated undertaking in respect of quality of service, affordability, control of expenditure, terms and conditions and Quality of Service ("**QoS**"). The current QoS requirements are set out in a separate Decision⁹.
- 38 Where we designate an undertaking to comply with any such requirements, we refer to the designated undertaking as the universal service provider ("**USP**"). We refer to the requirements imposed on a USP as the universal service obligation ("**USO**").
- 39 During the transition period when alternative networks are being deployed, our objective is to ensure that reasonable requests for access at a fixed location are met, but without requiring unnecessary investment in the USP's legacy copper network and without inhibiting the retirement of that network, once an alternative is available.
- 40 The current QoS regime set out in D02/19¹⁰ is also coming to an end on 30 June 2021. Accordingly, ComReg intends to consider the future requirements for an associated AFL USO QoS. ComReg considers that QoS is an important aspect of AFL, accordingly ComReg is of the view it is important that the QoS performance is maintained. Therefore, at this time, ComReg will continue to monitor QoS performance for any designated undertaking and ComReg will continue to publish QoS trends. ComReg will shortly commence a review on QoS as may be appropriate.

⁸ Regulation 3 of the Universal Service Regulations 2011 and Article 84 of the Code.

⁹ Universal Service Requirements - Provision of access at a fixed location (AFL) - Quality of Service (QoS), Document No. D02/19.

¹⁰ Universal Service Requirements Provision of access at a fixed location (AFL) Quality of Service (QoS).

2.5 Universal Service Costing and Funding

- 41 The provision of a universal service may result in the USP(s) providing designated services at a net cost. The Universal Service Regulations 2011 allow a USP to seek funding for the net costs of meeting the USO, however, funding will only be permitted if it is determined by ComReg that the net cost may represent an unfair burden on the USP. To the extent that it does represent an unfair burden, the net cost of the USO shall be apportioned among providers of electronic communications networks and services.
- 42 Any designation method(s) we adopt must ensure that the obligations are provided in a cost-effective manner and may be used as a means of determining the net cost of the universal service obligation. In this regard, Decision D04/11 sets out how the net cost for all USOs, will be calculated and how the existence of an unfair burden will be determined. In the event a net cost is deemed to be an unfair burden, the requirement for a sharing mechanism is then triggered.
- 43 We have completed our assessment and determination of each of eir's applications for funding for the 2010 - 2015 periods. Our determinations were that there were positive net costs for the 2010-2015 periods and that these positive net costs did not represent an unfair burden to eir.
- 44 We have issued a consultation document in respect of eir's 2015-2016 USO funding application.
- 45 ComReg has received no funding applications from eir for financial years 2016-2017; 2017-2018; 2018-2019 and 2019-2020.
- 46 eir has notified ComReg of its intention to reserve its position in respect of any further funding applications that become due before the pending appeal of ComReg's assessments of unfair burden in each of ComReg 's individual 2010-2015 USO funding application decisions ("the Appeal") in the Commercial Court (including the reference to the Court of Justice of the European Union ("CJEU")), is determined.

- 47 ComReg has issued an Information Notice ¹¹ setting out its position in this regard. ComReg has also issued an Information Notice ¹² in relation to the decision of the Commercial Division of the High Court to refer a question concerning the unfair burden assessment to the Court of Justice of the European Union (the “CJEU”) for a preliminary ruling pursuant to Article 267 of the Treaty on the Functioning of the European Union,

2.6 Considerations for this Consultation

- 48 We have considered the following in this consultation and in forming our preliminary views;

- ComReg’s mandate
- The legislative context
- Market trends and developments
 - Demand and supply side market trends including, information received from eir and other fixed voice service providers
 - Eir’s network strategy – including FTTX, MSAN deployment and copper switch off
 - The rollout of the National Broadband Plan and commercial deployments
- Information from eir regarding the implementation of the current AFL USO.

- 49 In summary, the supply side market trends indicate that there is:

- Increasing rollout of next generation broadband networks which can be capable of supporting managed Voice over Internet Protocol (‘VoIP’) based telephony services; and
- changes in the competitive dynamics in wholesale fixed access and call origination (‘FACO’) markets.

- 50 In summary, the demand side market trends illustrate that:

¹¹ ComReg Information Notice “Universal Service Fund applications 2018-2019 and 2019 – 2020”, Document No. 21/44.

¹² ComReg Information Notice “ Universal Service Funding Applications – 2010 – 2015 Appeal”, Document No. 21/50.

- the main service providers supplying customers in the retail fixed telephony service markets in Ireland are eir, Virgin Media, Vodafone, Sky and Pure Telecom and several other smaller service providers.
- There has been a gradual decline in retail fixed telephony service subscriptions, and traffic. However, as indicated in Eurobarometer data¹³, a (declining) majority of households (55%) continue to retain a fixed landline.
- The number of managed VoIP subscriptions continues to rise with an associated increase in traffic (i.e. number of minutes).
- Consumer usage patterns indicate a general and ongoing decline in the use of standalone fixed telephony service, as well as increased usage of broadband, of mobile telephony, and of bundled products. Purchasing retail fixed telephony service as part of a bundle is increasing in popularity amongst consumers.
- There remains a cohort of end-users who continue to use standalone fixed voice services, and a small number of new end-users who are seeking access to networks for standalone retail fixed telephony services.
- End users who primarily value retail fixed telephony service are relatively more 'voice-centric' and may have less choice of service provider. This is largely due to the shift away from standalone retail fixed telephony service provided service providers over fixed narrowband access networks, and towards retail fixed telephony service delivered as part of a bundle over next generation broadband.

51 Further details are set out in chapter 3.

52 The data from eir, as the current USP, indicates that there continues to be a demand for requests under the USO and that these requests do not impose disproportionate burden on eir. The information shows that:

- the number of new standalone retail fixed telephony connection requests are decreasing year on year
- the majority of new connection requests are being met using in-situ connections
- the number of new connections using fixed cellular connections is very small
- the number of existing connections under the USO are decreasing but a significant cohort remain.

¹³ Eurobarometer edition 462: E-Communications and Digital Single Market (July 2018) at <https://publications.europa.eu/en/publication-detail/-/publication/57889a55-8fb6-11e8-8bc1-01aa75ed71a1/language-en>, p.31.

- 53 There continues to be a demand for retail fixed telephony services generally and in accordance with the current USO, which absent a designation may not be guaranteed by market forces alone, particularly while new networks are still in the process of rollout.
- 54 During this transition period it is important that ComReg upholds its duty to ensure that the AFL USO continues to meet this cohort of end-users' basic telephony needs, at an affordable price and appropriate quality, throughout the State where they may not be met commercially by the market.

2.7 ComReg's Preliminary views

- 55 As consumer needs evolve and the market and the legislative framework transitions, ComReg's objective is to find the most appropriate approach to ensure that AFL is available to consumers throughout Ireland.
- 56 Our overall objective is to ensure that there is a *provider of last resort* for basic electronic communications services within the State, and to fulfil our statutory mandate under the Regulations.
- 57 Because of this, we consider that any justification for the **complete** withdrawal of the existing USOs would need to be undisputed. For this to occur, there would need to be a guarantee that AFL USO services would be delivered commercially in the future, at an affordable price, appropriate quality, and standalone (if required) throughout the State. However, there can, for example, be no guarantee that uneconomic customers would be provided with basic telecommunications services under normal market conditions without an AFL USO being imposed.
- 58 On a case by case basis, where the market is delivering the required services, the *provider of last resort*, the USP, does not have to provide the services under a USO.
- 59 As set out in the following paper, ComReg has formed the following preliminary views:
- While the market has evolved since the last designation, the level of change is not sufficient to negate the need for an AFL USO. Therefore, ComReg is of the preliminary view that there is a continued need for an AFL USO(s) for Ireland post 30 June 2021 (Chapter 4).
 - ComReg considers that QoS is an important aspect of AFL, accordingly ComReg is of the view it is important that the QoS performance is maintained. Therefore, at this time, ComReg will continue to monitor QoS performance for any designated undertaking

and ComReg will continue to publish QoS trends. ComReg will shortly commence a review on QoS as may be appropriate.

- ComReg is considering maintaining the AFL USO and designation for a maximum period of 24 months considering the transition. However, ComReg proposes to keep under review any AFL USO and designation in light of transposition and changes in the market. Accordingly, we propose to commence a review where

- (i) changes in market conditions and technological developments are such that ComReg deems it appropriate to do so, or

(ii) 6 months after DECC has concluded the transposition of the Code into national law,

whichever is the earlier.

On foot of this review, we will decide if we need to commence a new consultation process in relation to AFL USO in the State and we will publish an information notice regarding this.

- Furthermore, ComReg is of the view that any individual elements of the USO could be reviewed within this proposed designation period if the circumstances justify it (for example price increases may create affordability issues arising with connection/ rental or the costs of calls or other circumstances, or issues may arise in relation to disconnections policy or reasonable access request or thresholds).
- We are inviting expressions of interest from undertakings for this proposed designation. However, in the absence of expressions of interest, it is ComReg's preliminary view to continue eir's current designation as USP for AFL for a period of 24 months, unless amended to ensure there is a USP for the provision of AFL USO during the transition period. (Chapter 5).
- Although particular obligations to be placed on any USP(s) for the provision of the AFL USO could differ in different geographic areas, we propose that any AFL USO designation should cover the entire State. (Chapter 6).
- We are of the preliminary view that the scope and obligations currently in place should be retained. (Chapter 7).

2.8 Submissions to this Consultation

- 60 We are inviting expressions of interest from undertakings for the proposed designation. Should any expression of interest be received, ComReg will consider it. In this case, ComReg may need to extend the current designation to allow time for it to be considered.
- 61 We are inviting stakeholders' views on this consultation by 24 June 2021.

NON-CONFIDENTIAL

3 AFL related market developments

62 This chapter provides an overview of AFL related market developments. This analysis informs ComReg's preliminary views on whether there is a continued need to sustain an AFL USO, for the whole of the State, after 30 June 2021 and the nature of any AFL USO.

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

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

3.1 Supply side market summary

3.1.1 Relevant supply side trends

65 There are a range of suppliers and infrastructure networks in Ireland. Several types of infrastructure are, in principle, capable of providing AFL. Operators have been investing in infrastructure over the last number of years, and this investment looks set to continue. However, as the different infrastructures have different coverage, the competitive conditions with respect to AFL vary across the country.

66 The key supply side trends are:

- Increasing rollout of next generation broadband networks which can be capable of supporting managed Voice over Internet Protocol ('VoIP') based telephony services; and
- changes in the competitive dynamics in wholesale fixed access and call origination ('FACO') markets

67 The supply side focus, from an AFL perspective, is primarily to ensure:

- the continued availability and continuity of service for the current installed base of standalone fixed voice service end-users(should they continue to choose it) while ensuring the capability is in place to enable end-users who are seeking a new connection and a standalone fixed voice service to obtain it; and
- a minimum data rate of 28.8kbit/s

68 This can be achieved through the availability of the relevant wholesale component products to service providers, where required.

3.1.1.1 Rollout of Next Generation broadband networks

- 69 eir is currently rolling out its FTTx networks, with 1.9 million premises passed by eir FTTx, as of March 2020.¹⁴ Based on eir data, more than 80% of the 2.4 million premises in the State are passed by eir FTTx which is capable of delivering managed VoIP.¹⁵ eir's initial FTTx network rollout plans included 300,000 rural premises which were originally part of the National Broadband Plan Intervention Area and which, in April 2017 were removed from the Intervention Area following commitments made by eir to DECC¹⁶ to provide premises in rural Ireland with access to high speed broadband.
- 70 Subsequently, eir added another 40,000 premises to these initial 300,000 premises (the 'Rural 340k'). This programme has now been completed.¹⁷ As of Q3 2019, 339,711 of these premises were passed as part of the Rural 340k which eir agreed to roll FTTP out to, outside of the scope of the NBP.
- 71 SIRO¹⁸ is rolling out a wholesale only FTTP network which aims to pass 450,000 premises in 51 towns nationwide. SIRO has concentrated its network rollout in areas of higher population density. As of Q4 2020, SIRO has passed 360,000 premises.¹⁹
- 72 Virgin Media has a DOCSIS 3.1 CATV network with a footprint concentrated in urban areas around Dublin, Galway, Limerick, and Cork. It is geographically limited to locations where higher population and premises densities has made the rollout of a CATV network economically viable. As of Q4 2020, Virgin Media's fibre broadband network passed 946,500 premises.²⁰ Virgin Media is providing fixed telephony service (self-supply) by means of Managed VoB. It does not sell standalone retail fixed telephony service.

¹⁴ Source: FACO consultation "Retail Access to the Public Telephone Network at a Fixed Location for Residential and Non-Residential Customers, Wholesale Fixed Access and Call Origination" Consultation and draft Decision, published 17 June 2020, p 82.

¹⁵ Source: FACO consultation "Retail Access to the Public Telephone Network at a Fixed Location for Residential and Non-Residential Customers, Wholesale Fixed Access and Call Origination" Consultation and draft Decision, published 17 June 2020, p 82.

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

¹⁷ As of May 2021, these are the most recently-available data. See
<https://www.gov.ie/en/publication/c1b0c9-national-broadband-plan/>.

¹⁸ SIRO is a joint venture between ESB and Vodafone.

¹⁹ ESB Annual Report 2020, at p.13. Available online at https://esb.ie/docs/default-source/investor-relations-documents/esb-annual-financial-results-2020.pdf?sfvrsn=12f907f0_2.

²⁰ Liberty Global Q4 2020 Preliminary Results, page 23, <https://www.libertyglobal.com/wp-content/uploads/2021/02/Virgin-Media-Fixed-Income-Q4-2020-Release.pdf>.

- 73 Coverage on a national basis has not been achieved by alternative networks as it is more viable to roll out in densely populated areas. The commercial incentive to invest in such networks is not based on the capacity to earn revenues on the supply of standalone retail fixed telephony service. It appears that other providers are unlikely to replicate eir's ubiquitous fixed narrowband access (copper) network.
- 74 The National Broadband Plan ('**NBP**') is the government's initiative to deliver high speed broadband services to all premises in Ireland. This will be delivered through investment by commercial enterprises coupled with intervention by the State in the IA, that is, those parts of the State where private companies have no plans to invest. The Department of Environment, Climate, and Communications ('**DECC**') is co-ordinating this State-led initiative.
- 75 The State intervention area includes²¹:
- 537,596 premises
 - 1.1 million people
 - Over 54,000 farms
 - 44,000 non-farm businesses
 - 679 schools
- 76 A key principle of the NBP is to support and stimulate commercial investment. Since the publication of the NBP in 2012, the commercial telecommunications sector has invested over €2.75 billion. This was spent primarily on upgrading and modernising networks which support the provision of high-speed broadband and mobile telecommunications services. Significant additional investment is expected over the coming years.²²
- 77 The NBP and commercial investment has the potential to meet the needs of basic voice telephony. It may well be that standalone fixed voice can and will be provided using infrastructure and associated services which have been fully deployed under the NBP. A Managed VoIP service over a high-speed quality network could satisfy end user requirements for standalone fixed voice service at an affordable price.

²¹ [gov.ie](http://www.gov.ie) - National Broadband Plan (www.gov.ie).

²² [gov.ie](http://www.gov.ie) - National Broadband Plan (www.gov.ie).

- 78 It will bring high speed broadband to 23% of Ireland's population, (69% of national total of farms) over a number of years. It is anticipated that the network will involve a total of 140,000km of fibre cable and over 1.5 million poles from networks throughout the country with over 15,000 kilometres of underground duct networks for fibre cable²³.
- 79 According to DECC, it was anticipated that 133,000 homes will be passed in first two years, with 70-100,000 per year thereafter.²⁴ It's a seven-year build programme to complete²⁵, however NBI has stated that they are looking at opportunities to build faster.²⁶
- 80 The DECC website²⁷ provides an overview of the total number of premises per county that are in the commercial area (blue) and the State's intervention area (amber).²⁸.
- 81 According to DECC²⁹, as of May 2020, 74,000+ premises had been surveyed and 136,000+ premises progressing through or completed detail design. 500+ premises are available for connection in Carrigaline and Cavan deployment areas and increasing daily. 35 Retail service providers have signed contracts with NBI to deliver services once the network is built. There are 113 broadband connection point sites live, plus 31 schools. NBI will be surveying premises in all 26 counties in 2021. Fibre network build works will be initiated in all 26 counties in 2021.

²³ DECC presentation – “Delivering the National Broadband Plan, May 2019”. [National Broadband Plan](#).

²⁴ [gov.ie - National Broadband Plan \(www.gov.ie\)](#) <https://s3-eu-west-1.amazonaws.com/govieassets/8694/14f5f349cd9d4168a96f8350834fce19.pdf>.

²⁵ <https://www.dccae.gov.ie/en-ie/communications/topics/Broadband/national-broadband-plan/Pages/NationalBroadband-Plan.aspx> <https://nbi.ie/news/latest/2020/05/18/first-phase-of-national-broadband-plan-nbp-well-underway/>.

²⁶ <https://nbi.ie/news/latest/2020/12/10/acceleration-of-national-broadband-plan-will-deliver-connectivity-to-700-primary-schools-by-end-2022/>.

²⁷ [gov.ie - National Broadband Plan Map \(www.gov.ie\)](#).

²⁸ [gov.ie - National Broadband Plan Map \(www.gov.ie\)](#).

²⁹ <https://www.dccae.gov.ie/en-ie/communications/topics/Broadband/national-broadband-plan/Pages/NationalBroadband-Plan.aspx> <https://nbi.ie/news/latest/2020/05/18/first-phase-of-national-broadband-plan-nbp-well-underway/>.

3.1.1.2 Supply Side Trends from an AFL Perspective

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

- 87 Next generation broadband networks potentially eliminate the need for service providers to maintain separate voice and data networks and potentially permit cost savings through economies of scope³⁰ where both voice and data are provided over a single broadband network.
- 88 There remains a sizeable but declining number of standalone retail fixed telephony service subscriptions. The vast majority of these are provided over fixed narrowband access (copper) network, which remains the predominant form of retail fixed telephony service for households and businesses.
- 89 The lack of ubiquity of next generation networks (i.e. Virgin Media, SIRO and NBP), and the level of investment that would be required to replicate a network capable of offering retail fixed telephony service, such as eir's ubiquitous network reflects the continued importance of fixed narrowband access (copper) network (within at least the next 24 months). As next generation broadband is not yet available nationally it affects the ability to support managed VoIP in all locations. This indicates that next generation networks cannot yet be relied on to ensure the full availability of and AFL standalone retail fixed telephony service nationally, in the short to medium term.

3.1.1.3 eir's network modernisation plans

- 90 Accordingly, ComReg has also considered eir's network modernisation plans.
- 91 In 2016 eir³¹ stated in correspondence with ComReg its intention to decommission its legacy fixed narrowband access network (hereafter, 'copper switch-off'), although no timelines were put forward or agreed for this process.

³⁰ ComReg's QKDR defines 'Voice over Broadband' as "IP-based services that facilitate voice calls to and/or from the PSTN over a broadband connection. With this service, the customer may either have broadband access from an ISP and acquire voice over broadband services from a separate entity or have both broadband and voice over broadband services bundled together by the same supplier. Voice services bundled with digital TV services and delivered over digital cable TV networks should also be recorded here." The QKDR furthermore requests service providers to provide data on Managed VoB, SIP Trunking and IP connections equivalent to ISDN (i.e. Hosted PBX). Accordingly, the expression 'Voice over Broadband' used in the QKDR equates to the expression 'Managed VoIP' used in this Consultation.

³¹ eir letter (Richard Moat) to ComReg dated 21 July 2016.

- 92 In November 2019³² eir presented preliminary proposals to industry to modernise its PSTN network by means of Multi-Service Access Nodes, or 'MSAN(s)', due to the phasing out of vendor support for legacy PSTN switching equipment. eir intends that, from an end user perspective, the transition to MSANs will be seamless, and will be implemented between 2020 and 2023. Technically, the MSAN replaces the Remote Subscriber Unit ('RSU') in the exchange, and the end user is connected to the MSAN for retail fixed telephony service. The use of MSAN technology should prolong the serviceable life of the fixed narrowband access (copper) network, and products provided over that network, which would otherwise be rendered obsolete as vendor support withdraws for the PSTN switching equipment. The modernisation may result in a reduction in the number of points of interconnection, as legacy RSUs and core switches are removed from the network (subject to ComReg approval). This proposal, if adopted, could have the effect of extending any timeline for copper switch-off.
- 93 In March 2021, eir published a white paper on its website³³ entitled "Copper switch-off: Leaving a legacy for the Future". ComReg looks forward to engaging with eir and other stakeholders on this important matter and has issued an Information Notice in this respect and will consult publicly in due course.³⁴
- 94 ComReg is of the preliminary view (based on the available information) that the proposed MSAN deployment and possible mandatory migration from the copper network to fibre networks will not have any material impact on the provision of retail fixed telephony service to existing and new customers within at least the next 24 months.

3.1.2 Changes in the FACO markets

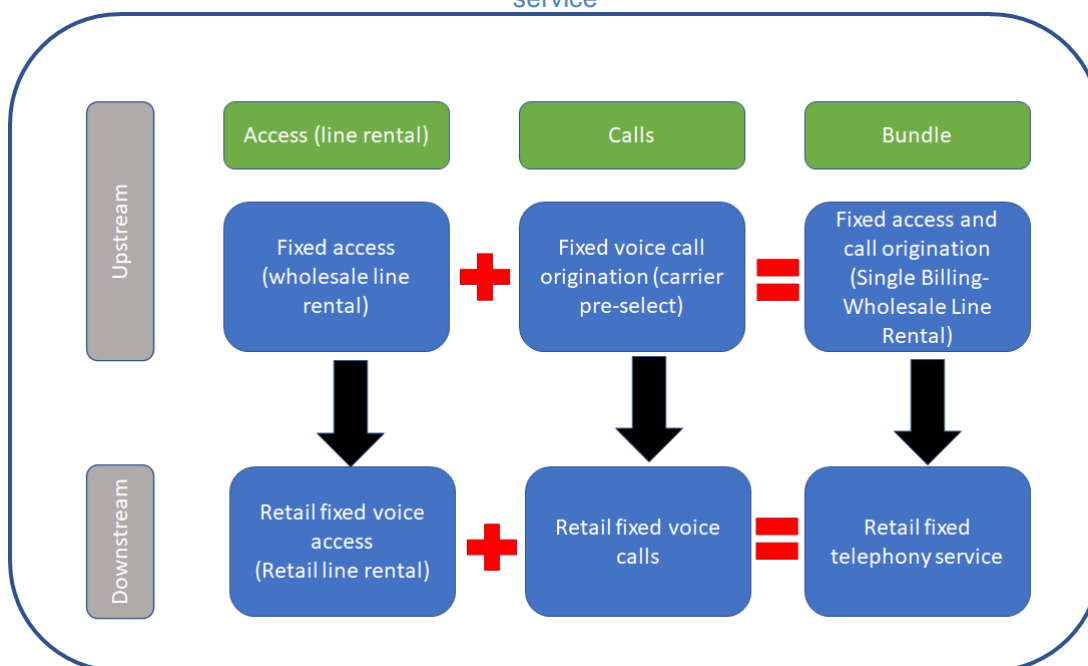
- 95 The relationship between the supply side wholesale inputs and how they are used in the delivery of retail fixed voice access ('RFVA') and retail fixed voice calls ('RFVC') – together, retail fixed telephony service ('RFTS') - is illustrated in Figure 1 below.

³² eir presented proposals at the Industry Product Development Workshop on 13 November 2019.

³³ https://www.openeir.ie/wp-content/uploads/2021/03/White-paper_Leaving-a-Legacy.pdf.

³⁴ <https://www.comreg.ie/publication-download/information-notice-copper-switch-off-correspondence>.

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



- 96 Fixed voice call origination ('FVCO') is a wholesale component product which switches, routes, and conveys a voice call up to a designated point of handover on a network. The FVCO wholesale component product is supplied over a fixed access path commonly described as wholesale line rental ('WLR'). The bundled provision of the wholesale component products of fixed voice call origination with a fixed access path is referred to as FACO.
- 97 FACO is an upstream input into the downstream provision of a retail connection and fixed voice service to end users. The purchase of the wholesale component products of FACO, transit and fixed voice call termination (FVCT) enables access seekers, who do not operate their own network, to offer a retail connection and fixed voice service to end users.
- 98 FACO is therefore a key wholesale component product which facilitates service providers to provide a retail connection and fixed voice service to end users, either directly on their own networks, or by renting access to third party wholesale component products. eir is currently the largest supplier of FACO and the only service provider with a ubiquitous fixed narrowband access network (i.e. current generation technology network including PSTN or ISDN copper access paths).

- 99 In its analysis of the FACO markets³⁵ ComReg considered several factors impacting competition, including the increasing rollout of next generation broadband which is capable of enabling the provision of wholesale and/or retail managed voice over Internet protocol³⁶.
- 100 Having considered the range of factors ComReg has proposed to define two separate FACO markets, namely an urban FACO market and a regional FACO market and has proposed to only regulate the regional FACO market. This detailed analysis is set out in FACO consultation “Retail Access to the Public Telephone Network at a Fixed Location for Residential and Non-Residential Customers, Wholesale Fixed Access and Call Origination” Consultation and draft Decision, published 17 June 2020 with a decision on this expected over the coming months.

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

³⁵ FACO consultation “Retail Access to the Public Telephone Network at a Fixed Location for Residential and Non-Residential Customers, Wholesale Fixed Access and Call Origination” Consultation and draft Decision, published 17 June 2020.

³⁶ ComReg’s QKDR defines ‘Voice over Broadband’ as “IP-based services that facilitate voice calls to and/or from the PSTN over a broadband connection. With this service, the customer may either have broadband access from an ISP and acquire voice over broadband services from a separate entity or have both broadband and voice over broadband services bundled together by the same supplier. Voice services bundled with digital TV services and delivered over digital cable TV networks should also be recorded here.” The QKDR furthermore requests SPs to provide data on Managed VoB, SIP Trunking and IP connections equivalent to ISDN (i.e. Hosted PBX). Accordingly, the expression ‘Voice over Broadband’ used in the QKDR equates to the expression ‘Managed VoIP’ used in this Consultation.

3.2 Demand side market summary

3.2.1 Relevant demand side trends

101 The key demand side trends are:

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

3.2.1.1 Competition in the retail fixed telephony service market

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

103 Retail fixed telephony service is predominantly provided over fixed narrowband access (copper) network, however, the provision of managed VoIP over next generation broadband networks has increased since the last AFL review.

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

105 Virgin Media has offered a managed VoB service since 2006 (add-on to its broadband and pay-TV offerings). eir offers a managed VoB service (eir Broadband Talk)³⁷ and a Managed VoIP service (eir SIP Voice)³⁸ to eligible residential and business customers connected to its FTTx network. Vodafone and Sky offer a managed VoB home phone service in certain geographic areas (i.e. based on wholesale inputs from eir and SIRO). Digiweb and Imagine offer managed VoB services over fixed wireless access networks. Magnet and Digiweb both offer managed VoB (own FTTx networks and based on wholesale inputs from eir and SIRO). Blueface offers a VoB service which relies on its customers having an existing broadband connection supplied by a third party.

³⁷ For further details, please see <https://www.eir.ie/eirbroadbandtalk/>.

³⁸ For further details, please see <https://business.eir.ie/sipvoice/>.

- 106 Household Retail fixed telephony service penetration has declined by 15.3% (between Q3 2016 – Q4 2020). Consumer usage patterns indicate a general and ongoing decline in the use of retail fixed telephony service, as well as increased usage of broadband, of mobile telephony, and of bundled products.
- 107 Retail fixed telephony service may be measured in terms of the number of access paths³⁹, lines or subscriptions⁴⁰. The overall number of access paths is likely to exceed the overall number of lines, which itself is likely to exceed the overall number of subscriptions. The number of subscriptions is therefore an accurate reflection of the number of customers, while the number of access paths reflects the number of access connections. ComReg’s QKDRs indicate that the total number of fixed network access paths (i.e. PSTN and ISDN) has declined from just over 1.8 million in Q1 2016 to just under 1.1 million in Q4 2020. Over the same period, alternative technologies have experienced growth. Managed VoB has been the fastest growing platform, with subscription numbers increasing by approximately 32% to 523,988.
- 108 Figure 2 sets out the number of access paths per individual line varies, depending on the type of product purchased). at fixed locations.

Figure 2 : Lines, access paths and subscriptions

Product	Lines	Access paths (voice channels)	Minimum Subscription Required
PSTN	1	1	1
ISDN Basic	1	2	1
ISDN Fractional	1	15	1
ISDN Primary	1	30/31 ⁷⁵	1
Managed VoIP	1	Dependent on VoIP product design	1
SIP Trunking	1 ⁷⁶	Dependent on VoIP product design	1
Hosted PBX	1	Dependent on VoIP product design	1

- 109 Figure 3 disaggregates fixed narrowband access (copper) paths as at Q4 2020. It also sets out the percentage change in the number of managed VoIP subscriptions over the same period. It shows that the number of subscriptions provided over fixed narrowband access (copper) paths declined by 25%, and that the number of managed VoIP subscriptions increased by 36%, between Q1 2016 and Q4 2020.

³⁹ Are not synonymous with access lines as, for example, in the case of ISDN paths and or channels, more than one path may be provided via a single ISDN line.

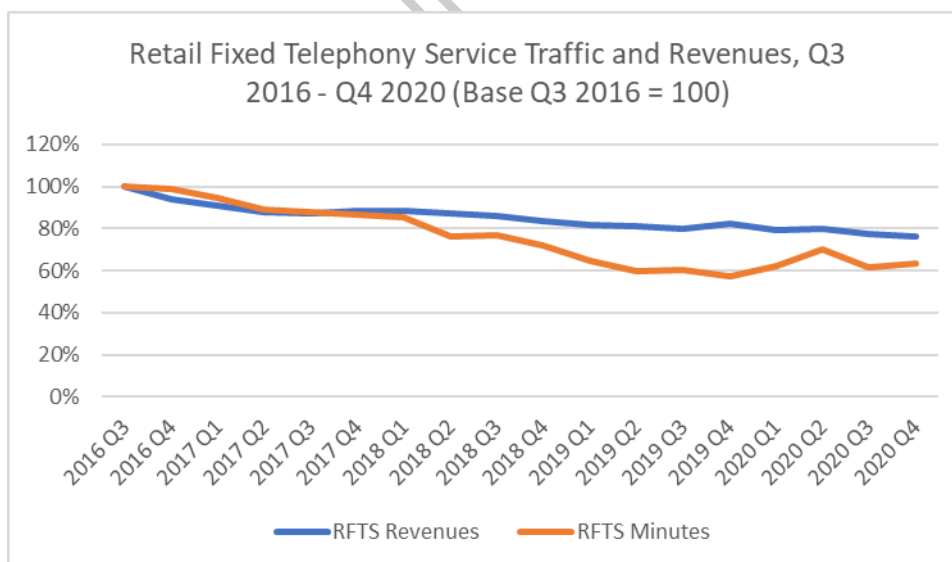
⁴⁰ A subscription involves periodic payment for a single or multiple (bundled) services.

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

	Q1 2016	Q4 2020	% change, Q1 2016 – Q4 2020
PSTN	1,158,021	870,385	-25%
ISDN Basic	121,442	86,662	-29%
ISDN Fractional	52,640	33,808	-36%
ISDN Primary	160,560	101,370	-37%
Total ISDN	334,642	221,840	-34%
Total PSTN & ISDN Access Paths	1,492,663	1,092,225	-27%
Fixed narrowband access retail fixed telephony service subscriptions	1,064,316	803,012	-25%
VoIP subscriptions	384,477	523,988	36%
Total retail fixed telephony service subscriptions	1,448,793	1,327,000	-8%

110 There has been a persistent decline in retail fixed telephony traffic. Figure 4 shows that, from Q3 2016 to Q4 2020 (source: ComReg’s QKDR, revenues attributable to RFTS traffic⁴¹ (blue line) have fallen by 24%, while traffic minutes (red line) have fallen by 37%.

Figure 4: Retail Fixed Telephony Service Traffic and Revenues, Q3 2016 – Q4 2020 (Base Q3 2016 = 100)

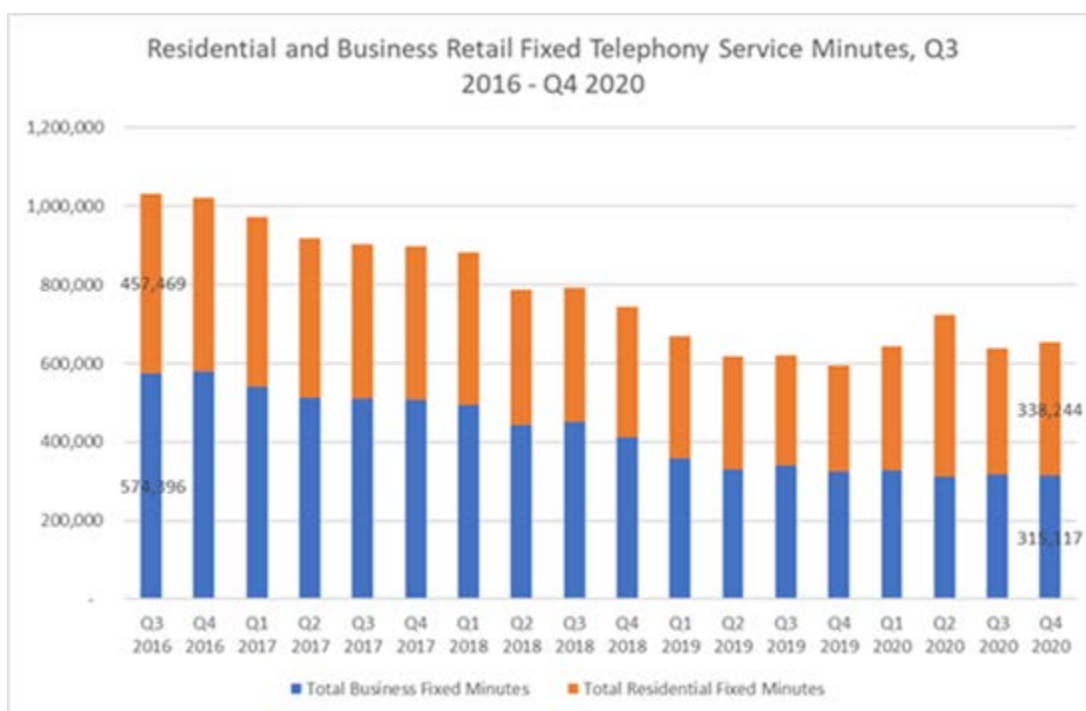


111 This demonstrates that the retail fixed telephony service market continues to reduce in size, measured by traffic and revenues.

⁴¹ These revenues include retail revenue generated by the direct and indirect provision of retail fixed telephony service, such as PSTN voice services and dial-up Internet services. This category also includes revenues from VoB services.

- 112 Figure 5 below illustrates the breakdown of retail fixed telephony service by residential and business end users. The trend since Q3 2016 suggests that residential fixed voice minutes have dropped by 26% while business fixed voice minutes have fallen by 45%.

Figure 5: Residential and Business Retail Fixed Telephony Service Minutes, Q3 2016 – Q4 2020



3.2.1.2 Frequency of making calls

- 113 ComReg’s market research on the residential and SME fixed voice markets⁴² examined the frequency of making and receiving calls.
- 114 The daily frequency of residential consumers making landline calls stands at 37% and is higher among those in rural (50%) and sub-urban (45%) areas. The daily frequency of residential consumers receiving landline calls stands at 39% and is higher among those in rural (52%) and sub-urban (48%) areas.

⁴²

www.comreg.ie/publication/2019-residential-market-research
www.comreg.ie/publication/2019-sme-market-research.

and

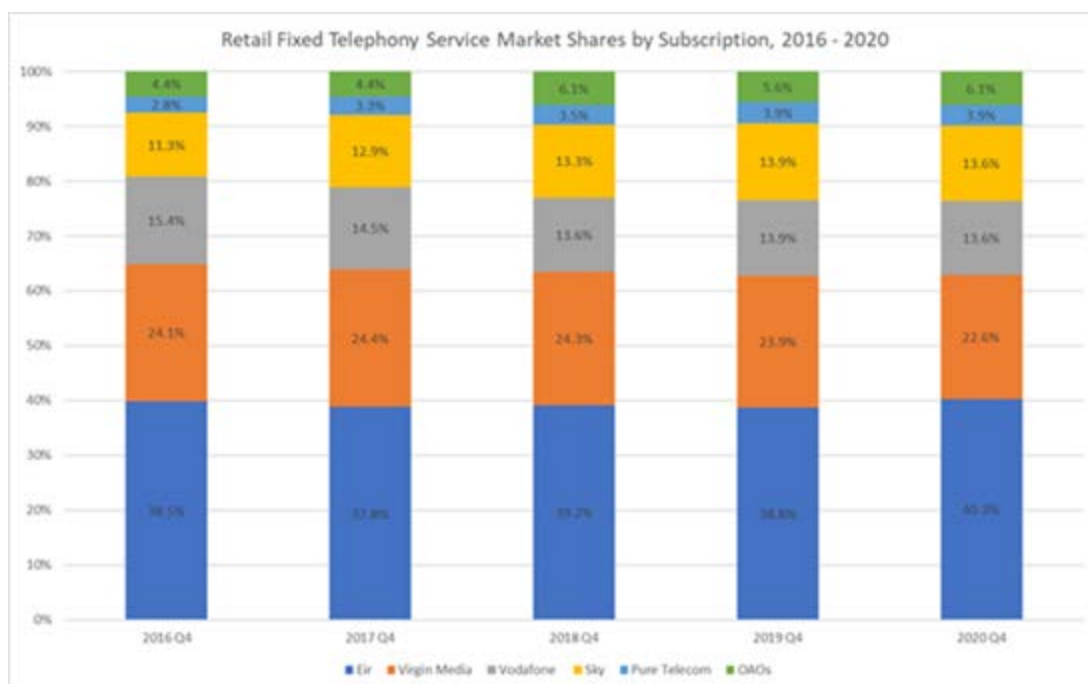
- 115 The daily frequency of SMEs making landline calls stands at 85% and is highest amongst small⁴³ companies (93%) located in Dublin (91%). In 3 in 4 SME businesses, employees very frequently use landline phones to receive calls. Larger companies and those based in Dublin (perhaps due to higher volume of calls) report a higher frequency of receiving calls on fixed landline phones. 1 in 4 businesses use Skype⁴⁴/Internet based voice applications. The use of such applications is more common among medium⁴⁵ sized companies and those based in Dublin.
- 116 The landline is used more often by SMEs for calls to other fixed lines (66%) and to international numbers (45%) than mobile and skype, WhatsApp, Facetime etc.
- 117 Market shares by subscription are presented in Figure 6 below. Over the period Q4 2016 to Q4 2020 eir's share has increased from 38.5% to 40.3% while Virgin Media has fallen from 24.1% to 22.6%. Vodafone's share has decreased from 15.4% to 13.6%, while Sky's share has increased from 11.3% to 13.6% as of Q4 2020. Other changes over this period include an increase for Pure Telecom from 2.8% to 3.9% and an increase in the market share of OAOs from 4.4% to 6.1%.

⁴³ Small business = 11-50 employees.

⁴⁴ Unmanaged VoIP.

⁴⁵ Medium business = 50-249 employees.

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



3.2.1.3 Standalone fixed voice landline ownership

118 ComReg’s market research also examined standalone fixed landline ownership. It identified that almost half (49%) of residential consumers have a landline, with more than 1 in 5 of these (23%) having a standalone fixed landline⁴⁶ service.

119 The primary reasons cited by residential consumers for having a standalone fixed landline is to be able to use it in case of emergencies (45%), followed by keeping the status quo of always having had a landline (34%). 11% of these landline users report a likelihood of switching service provider in the next 12 months. This is higher among those in urban areas (18%) and those under 35 (22%). 9% cite they are likely to give up their landline in the next 12 months. This is significantly more likely among those in urban areas (16%) and those aged under 35 (28%).

⁴⁶ Standalone landline consumers are landline owners who have no other bundle, split purchasers and inert fixed landline owners. Split purchasers are those with a standalone landline service, but also have a separate bundle which does not include a landline. Inert landline owners are standalone landline owners that do not use their fixed landline service.

- 120 3 in 5 businesses have been with their current fixed landline provider for over 3 years. For 2 in 5 businesses, it has been over 3 years since they last switched providers for their fixed landline telephone. The main reason for maintaining a fixed landline service by businesses is that this service is important to the day to day functioning of their business. In addition, for 2 in 3, having a single point of contact phone number for their business is also important.
- 121 50% of telecoms decision makers surveyed do not pay for a landline telephone, rising to 61% among those who are under 35. Those who pay for and use the landline telephone are much more likely to be in the 55+ age group. 12% of those surveyed are classified as being standalone landline consumers. This cohort is higher among those aged 55+ and those living in suburban (15%) or rural (14%) areas. The profile of fixed landline owners is biased significantly towards those aged 65+ and those from C2DE class⁴⁷.
- 122 Almost half (49%) of all surveyed telecom decision-makers have a landline, with more than 1 in 5 of these (23%) having a standalone line.⁴⁸ Those who pay for and use a landline telephone are much more likely to be aged 55+.
- 123 12% of those surveyed are classified as being standalone landline customers. This is higher amongst those aged 55+ and those living in sub-urban or rural areas. The profile of fixed landline owners is biased significantly toward those aged 65+, and those from C2CE class.
- 124 eir holds a strong lead in share among those with fixed landline not in a bundle. This is driven by strength seen in rural and sub-urban areas as well as those aged 55+.
- 125 Active landline owners are more likely to own a TV, while fixed broadband ownership is more likely among non-active landline owners.
- 126 The research identified that over 3 in 4 of the businesses surveyed report having an actively used fixed landline telephone service. This prevalence is higher among small and medium sized companies and those based in Munster. Businesses located in Leinster (excluding Dublin) are more likely to say that they do not have this service. 2 in 5 businesses report having more than 1 actively used fixed landline telephone. The incidence is much higher among small and medium sized companies and those based in Dublin.

⁴⁷ <https://www.cso.ie/en/releasesandpublications/ep/p-cp7md/p7md/p7seal/>.

⁴⁸ Landline owners with no other bundle, split purchasers and inert landline owners. Split purchasers are those with a standalone landline service, but also have a bundle that does not include a fixed landline. Inert landline owners are standalone landline owners that do not use their fixed landline service.

- 127 Over half of those businesses with more than one fixed landline service have 2-3 fixed landline telephones, with 1 in 5 claiming to have more than 5 fixed landline telephones. Medium sized companies are much more likely (62%) to have 5+ fixed landlines. Just under a quarter of businesses report only having mobile service and no fixed landline for their business. These are more likely to be micro sized companies, those based in the Leinster (excluding Dublin) and those in health and the education sectors. 31% of those with fixed landline service report this to be a standalone service. 66% of businesses with fixed landline and additional types of telecommunications services have bundles. However, less than 1 in 3 businesses with fixed landline purchase other telecommunications services that are not bundled with their landline service.
- 128 The research found that 1 in 4 SME decision makers prefer PSTN voice services. Over half of businesses with fixed line telephone say they do not know what their preference would be in relation to various voice services. 1 in 5 businesses report a lack of knowledge /awareness as the reason they have not switched from traditional fixed landline phone to VoIP services. Those based in Connaught and Ulster are more likely to stay since they are happy with what they have and do not feel the need to switch to VoIP.
- 129 Customer experience of voice services delivered over VoIP is generally not very different from those delivered over PSTN/fixed voice access. ComReg notes that some ancillary services such as monitored home alarm and medical alarm service may not work in the same manner over VoIP. Where this occurs, this may represent a barrier to switching for a small cohort of customers.

3.2.1.4 Mobile networks and services

- 130 Wireless infrastructures have the capability to provide AFL USO (including 3G and 4G mobile networks). Fixed wireless access networks⁴⁹ may also deliver managed voice over broadband (VoB), where speeds permit sufficient bandwidth and quality. It is more commonly associated with the provision of certain broadband services. Several fixed service providers provide broadband and retail fixed voice service over fixed wireless access networks in Ireland, the largest two being Digiweb⁵⁰ and Imagine.⁵¹

⁴⁹ A fixed wireless access network service is a telecommunications service provided over a point-to-multi-point wireless connection between a radio base station (typically located on a mast/tower) and a fixed aerial or device located at the end user's household or premises.

⁵⁰ https://digiweb.ie/product/metro-freedom-broadband/#tab-additional_information

⁵¹ <https://www.imagine.ie/broadband-questions-answers/>.

- 131 Different mobile infrastructures have different coverage capabilities. The significant mobile coverage is outdoor. Indoor mobile coverage is not ubiquitous, and often varies substantially depending on technology, network operator, handset capabilities and the premises' building materials. Technical solutions are available that can mitigate some of these issues. ComReg's mobile coverage map shows predicted outdoor mobile coverage.⁵²
- 132 In the context of AFL, ComReg notes the judgment of the European Court of Justice ('ECJ') on 11th June 2015 (in relation to a request for a preliminary ruling by the Belgian courts)⁵³ states that the term "at fixed location" should be understood as meaning the opposite to "mobile". The judgement considered what constitutes a universal service, rather than what technology is capable of providing a universal service.
- 133 ComReg's view is that the ECJ's statement "*that AFL means the opposite to mobile*" is not inconsistent with ComReg's position that AFL is not a mobile service, however the obligation to provide AFL does not have to be provided using a specific technology. In accordance with the principle of technology neutrality, wireless technology can be used as part of the solution to deliver access at a fixed location for USO.
- 134 Mobile usage and services are a factor when considering the future demand for voice at a fixed location. ComReg's 2019 Mobile Consumer Experience survey showed that while users experience service problems in both urban and rural locations, difficulties are more apparent in rural location. Difficulties include loss of signal in specific rooms and in the entire home. The level of daily experiences of loss of voice/text signal throughout entire home and in specific rooms remains high at 48% and 59% respectively.⁵⁴ Loss of signal (or no/poor signal/coverage) throughout the home for voice call and texts was highest in rural samples.⁵⁵ The survey also showed that dropped calls in a specific part of the house appear to be more of an issue in 2019 (13% v. 10% compared to the 2017 Mobile Consumer Experience for all of the time), although quality of reception on a call (15% v. 9%) and the inability to connect a call remain significant issues.⁵⁶

⁵² www.comreg.ie/coveragemap.

⁵³ Case C-1/14 - Request for a preliminary ruling in the proceedings Base Company NV and Mobistar NV v Ministerraad, 11th June 2015.

⁵⁴ Slide 77 of ComReg Mobile Consumer Experience survey.

⁵⁵ Slide 78 of ComReg Mobile Consumer Experience survey.

⁵⁶ Slide 88 of ComReg Mobile Consumer Experience survey.

- 135 Mobile penetration has remained stable in recent years and ComReg’s 2019 Mobile Customer Experience survey indicates that 98% of all adults 18+ in Ireland have a mobile phone. ComReg’s market research notes that despite the high number of mobile subscriptions, end users continue to retain retail fixed telephony services indicating that consumers continue to require and use fixed voice services.

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

- 136 Only eir and Pure Telecom actively offer standalone retail fixed telephony service. This is generally only available over fixed narrowband access (copper) network. Other service providers may continue to offer it on a legacy basis to existing customers. Vodafone, Virgin Media, or Sky do not offer a standalone retail fixed telephony service product.
- 137 Service providers may prefer to offer bundled products, as end users may be ‘stickier’ and less likely to switch to alternative service providers, where the transaction costs involved in doing so, are greater. Furthermore, the margin that a service provider earns on a bundle may be driven by an anchor product in the bundle. Few service providers now sell standalone retail fixed telephony service.
- 138 Figure 7 gives a breakdown of total retail fixed telephony service subscriptions by subscription type as at Q4 2020. This illustrates that 17% of subscriptions are standalone fixed voice only. 83% of retail fixed telephony service subscriptions are bundled with at least one other service. The most common bundle combinations are a retail fixed telephony service and fixed broadband which accounts for 83%⁵⁷ of subscriptions with a retail fixed telephony service component. The vast majority of these are provided over next generation broadband.

Figure 7: Total subscriptions to RFTS Q4 2020

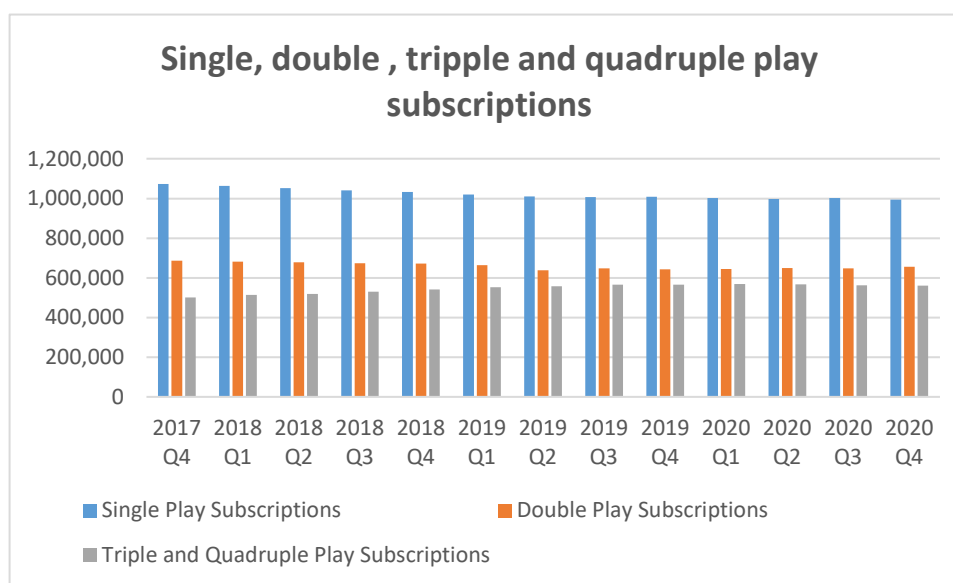
Subscription type	Subscriptions - Q4 2020	% Total ⁵⁵
Standalone retail fixed telephony service	226,489	17%
Retail fixed telephony service and TV	4,983	<1%
Retail fixed telephony service and broadband	534,140	40%
Retail fixed telephony service and mobile voice	5,457	<1%
Retail fixed telephony service, broadband, TV	395,443	30%
Retail fixed telephony service, mobile voice, broadband	98,166	7%
Retail fixed telephony service, mobile voice, TV	120	<1%
Retail fixed telephony service, broadband, TV, mobile voice	62,292	5%
Total retail fixed telephony service subscriptions	1,327,000	100%

⁵⁷ Rounded to the nearest 1%.

139 Between Q4 2017 and Q4 2020 (Figure 8), there has been:

- a decrease of 7.38% in the number of single play subscriptions;
- a decrease of 4.44% in the number of double play subscriptions; and
- an increase of 12.09% in the number of triple or quadruple play.

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



140 Other service providers may continue to offer standalone voice at a fixed location on a legacy basis to existing customers. Vodafone, Virgin Media, or Sky do not offer a standalone retail fixed telephony service product. Between them the five service providers (eir, Vodafone, Virgin Media, and Sky), offer just five standalone retail fixed telephony service products, but 16 bundled broadband and retail fixed telephony service products. Accordingly, end users with a preference for bundled purchases have greater switching opportunities than end users with a preference for standalone retail fixed telephony service.

141 A similar trend is mirrored in the ComReg Residential Market Research⁵⁸, which showed that, of those respondents with a fixed landline as part of a bundle of services, the majority (56%) had a bundle of at least fixed landline and broadband, while just 5% had a quad-play bundle.

142 It examined, amongst other things, the incidence of owning a bundle, the type of bundle and the important product in the bundle.

⁵⁸ www.comreg.ie/publication/2019-residential-market-research and www.comreg.ie/publication/2019-sme-market-research.

- 143 The research found that bundles are most held with eir (32%), followed by Virgin Media (26%) and Sky (21%). eir is more likely to have bundles among those aged 55+ (40%), while under 35s are more likely to choose either Virgin Media (28%) or Sky (26%).
- 144 In the residential market 52% of telecommunications decision makers have more than one product in a bundle. This is higher in urban (57%) than sub-urban (44%) or rural (40%) areas and particularly among those who are paying for a landline but don't have phone plugged in. 92% of bundles contain fixed broadband with 65% including TV and 56% including fixed landline. Mobile phone and mobile broadband are less likely components of a bundle at 24% and 6% respectively. There are a small proportion of standalone landline users who also have a separate bundle. This is most likely to be fixed broadband and TV. More than half (52%) of bundle owners have a dual play bundle, while more than 1 in 3 (37%) have a triple play bundle.
- 145 Quad play accounts for only 5% of residential bundle owners. For 64% of those with a bundle, broadband is deemed to be the most important product. This is particularly the case among under 35 age group while older customers are more likely than average to consider the fixed landline and TV most important.
- 146 In the SME market most businesses bundle fixed landline and broadband services. Medium⁵⁹ sized businesses were more likely to (i) purchase mobile phone and broadband services and (ii) to purchase them in a bundle. 3 in 4 businesses have a bundle that included fixed landline and broadband services. 1 in 10 have mobile phone included alongside fixed landline and broadband, while only 5% report having 4 services (fixed landline, fixed and mobile broadband and mobile phone) in their bundle. Medium size companies are more likely to have more services as part of their bundle. Just under 9 in 10 businesses report purchasing line rental and calls from the same provider. Less than 10% say they purchase these services from separate providers.
- 147 50% of telecommunications decision makers who have more than one product, have a bundle – this is higher in urban areas and particularly among those who are paying for landline but don't have phone plugged in. 56% of bundles include a telephone. For 64% of those with a bundle, broadband is deemed to be the most important product. This is particularly the case among under 35s, while older customers are more likely than average to consider landline and TV most important.
- 148 Among those without a landline currently only 2% suggest that they are likely to consider getting one in the next 12 months.

⁵⁹ Medium sized businesses = 50-249 employees.

- 149 There remains a sizeable but declining number of standalone retail fixed telephony service subscriptions. The vast majority of these are provided over fixed narrowband access (copper) network, which remains the predominant form of retail fixed telephony service for households and businesses, reflects the continued importance of fixed narrowband access (copper) network.
- 150 The demand for standalone retail fixed telephony service is likely to persist where:
- end users continue to choose to purchase retail fixed telephony service on a standalone basis, despite the available of next generation broadband services. These end users are unlikely to value a broadband based bundle which includes retail fixed telephony service; or
 - next generation services are not currently available to end users. These end users do not have the choice to purchase bundled retail fixed telephony service with broadband. Some of these end users might switch to a bundle when next generation services become available, while others may remain on their standalone retail fixed telephony service.
- 151 While it would be possible for alternative service providers to provide standalone retail fixed telephony service over broadband, to date this type of product has only been made available to businesses. Many service providers have instead focused on meeting the substantial demand from households and businesses for product bundles.
- 152 Service providers are only capable of providing managed VoIP at premises that are connected to or passed by next generation broadband which provides a fixed access component of sufficient speed and bandwidth to deliver managed VoIP.
- 153 Where end users who cannot purchase broadband, or who have a preference for standalone retail fixed telephony service, the requirement to purchase broadband in order to have retail fixed telephony service (provided by means of managed VoIP) is likely to be barrier on end users switching away from standalone retail fixed telephony service provided by means of fixed narrowband access (copper) network.
- 154 It is likely that, as next generation broadband becomes more available, and a proportion of standalone retail fixed telephony service customers switch to bundles comprising (at least) retail fixed telephony service and broadband, the cohort of standalone retail fixed telephony service customers will decline over time.

- 155 Accordingly the focus of AFL in the short term is to ensure the continued availability and continuity of service for the current installed base of standalone fixed voice service end-users, should they choose to continue (sizeable but declining number), while also ensuring the capability is in place to enable end-users who are seeking a new connection and a standalone fixed voice service (smaller numbers) to obtain it.

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

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

NON-CONFIDENTIAL

4 The need for an AFL USO

156 This chapter considers AFL in the context of the market trends and evolution, identified in Chapter 2, and data in respect of eir's implementation of the current USO. Our analysis of the need for an AFL USO takes account of these market trends and ComReg's statutory objectives.

157 ComReg has noted:

- Growing attractiveness and take up of bundled services leading to increased fixed voice subscriptions;
- A decline in retail PSTN retail voice traffic;
- Declining use of narrowband internet services;
- Increased use of VoIP services; and
- Decreasing but continued use of traditional fixed voice services.

158 This chapter assesses the counterfactual (no AFL USO) to inform ComReg's preliminary views on whether there is a need for an AFL USO, post 30 June 2021.

159 It considers the following elements of AFL:

- reasonableness of requests;
- functional internet access (FIA);
- affordability;
- control of expenditure; and
- terms and conditions of service.

4.1 ComReg's statutory obligations

160 Universal service is designed to ensure that end-users, shall have any reasonable request for the provision of connection at a fixed location to a public communications network satisfied, which allows for originating and receiving of national and international calls. The connection shall be capable of supporting (i) voice (ii) facsimile; and (iii) data communication rates that are sufficient to permit functional Internet access, having regard to the prevailing technologies used by the majority of subscribers and to technological feasibility. The connection and service must be affordable.

- 161 Regulation 3 (5) of the Universal Service Regulations 2011⁶⁰ gives ComReg the power (with the consent of the Minister) to specify the requirements to be complied with in respect of (i) functional internet access (ii) the reasonableness of requests and (iii) the terms and conditions under which they will be provided.
- 162 Regulation 8 of the of the Universal Service Regulations 2011⁶¹ places an obligation on ComReg to monitor the evolution and level of retail tariffs in relation to national consumer prices and income.
- 163 Regulation 8 states that ComReg may, in light of national conditions specify, with the consent of the Minister, requirements to be complied with for the purpose of ensuring that consumers are provided with tariff options or packages which depart from those provided under normal commercial conditions, to ensure that those on low incomes or with special social needs are not prevented from accessing the network.
- 164 ComReg may, with the consent of the Minister, require designated undertaking(s) to apply common tariffs including geographical averaging throughout the State.
- 165 Furthermore, terms and conditions shall be established in such a way that the subscriber is not obliged to pay for facilities or services which are not necessary or not required in respect of the services requested.
- 166 Universal service is a safety net to ensure that a set of at least the minimum services is available to all end-users and at an affordable price, where the risk of social exclusion arising from the lack of such access prevents citizens from full social and economic participation in society.
- 167 Because of this, ComReg considers that any justification for the complete withdrawal of the existing USO would need to be undisputed. There would need to be a guarantee that AFL USO services would be delivered in the future, at an affordable price and quality, throughout the State.

⁶⁰ S.I. 337 of 2011 European Communities (Electronic Communications Networks and Services) (Universal Service and Users' Rights) Regulations 2011.

⁶¹ S.I. 337 of 2011 European Communities (Electronic Communications Networks and Services) (Universal Service and Users' Rights) Regulations 2011.

- 168 The current AFL USO designation⁶² will expire on 30 June 2021. On 8 January 2021, ComReg issued an Information Notice⁶³ informing stakeholders that it planned to commence a review of universal service voice access at a fixed location and to issue a public consultation on what, if any obligation, will be applicable in this regard post June 2021.
- 169 ComReg's objective is to find the most appropriate approach to ensure that AFL is available to end-users throughout Ireland, if and where it is not met commercially by the market.

4.2 Reasonableness of requests

- 170 ComReg recognises that the number of standalone fixed voice end-users continues to decline, as end-users migrate to bundled product offerings. However, there remains a cohort of end-users for whom AFL remains relevant.
- 171 Accordingly, it is important to explore the composition of this cohort of end-users. We consider if it is predominantly composed of end-users who acquired a service some time ago, or if there is also a small cohort of end-users making new AFL service requests.
- 172 The considerations are: (i) the nature and number of these requests (ii) whether they are reasonable and (iii) whether these requests would be met, absent of AFL USO.

4.2.1 Nature and number of requests

- 173 eir is the only service provider with a ubiquitous current generation technology network⁶⁴. eir, Virgin Media (self-supply), Vodafone, Sky and Pure Telecom account for 94.2% of total retail fixed telephony service subscriptions, as of Q4 2020⁶⁵. Vodafone, Sky and Pure Telecom purchase wholesale component products from eir to enable them to provide retail fixed voice telephony services.

⁶² Access at a Fixed Location D05/16. Based on European Communities (Electronic Communications Networks and Services (Universal Service and Users' Rights) Regulations 2011 S.I. 337.

⁶³ Universal Service Access at a fixed location, Information Notice 21/01.

⁶⁴ Copper network including PSTN or ISDN copper access paths.

⁶⁵ ComReg Quarterly Key Data Report.

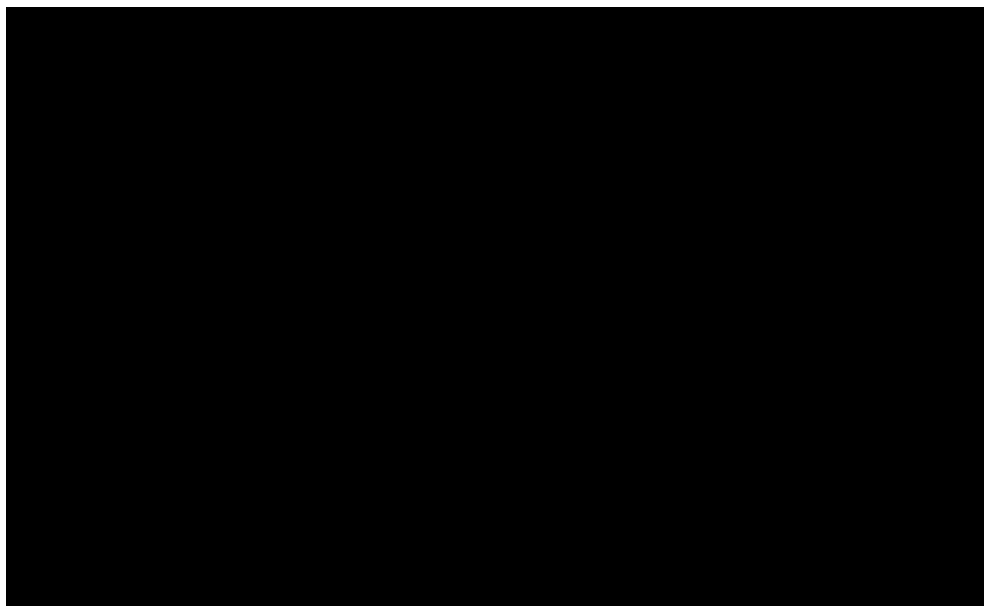
- 174 In accordance with the principle of technological neutrality, universal service obligations may be fulfilled using a range of technologies (copper/ fibre/fixed wireless)). It is the universal service provider who selects the underlying technology used to fulfil such a request. eir has stated⁶⁶ to ComReg that it fulfils its current universal service obligations (including reasonable access request (RAR)) using its current generation technology network.
- 175 Under the current AFL USO designation all requests for Existing Connections⁶⁷ and /or PATS to be provided over Existing Connections are reasonable and the USP shall continue to satisfy them. Accordingly, where there is a connection at a primary location or residence, the request is deemed reasonable and eir, as the USP must continue to fulfil it, so long as the customer requires it.
- 176 To assess the impact of the current designation obligations on the USP ComReg issued a 13D information request⁶⁸ to all retail standalone fixed voice service providers, requesting the number of:
- new connection requests received
 - new connection requests rejected (service provider/ end-user)
 - new in-situ connections
 - new connections (non in-situ)
- for the period 2018 – 2020.
- 177 Figure 9 illustrates the number of standalone fixed voice requests received by eir between 2018 and 2020 (including those received from other service providers where they resell eir’s infrastructure). This illustrates that the total number of standalone fixed connection requests received by eir between 2018- 2020 is low with a year on year decline in the number of standalone fixed access requests.

⁶⁶ eir’s response to Universal Service Requirements Provision of access at a fixed location (AFL) Quality of Service (QoS). Document No. 18/120, and eir’s 13d response of 12 February 2021 [§§].

⁶⁷ Existing Connection” means any Connection that is not a New Connection; and New Connection” means a Connection at any primary location or residence that has never been connected to the PCN (fixed), Decision Instrument D05/16.

⁶⁸ 21 December 2020.

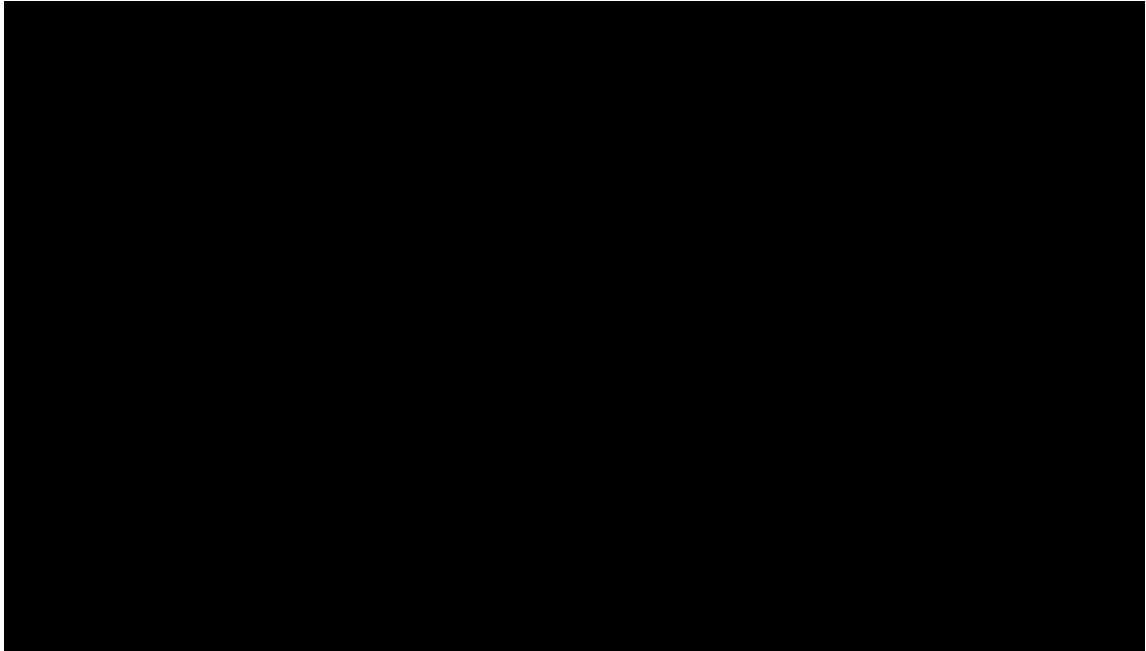
Figure 9: Standalone fixed voice access requests (**including requests from other service providers*) [REDACTED]



178 Figure 10 illustrates the number of standalone fixed voice requests received by eir by technology type (copper/FCS). The number of FCS requests is extremely low.

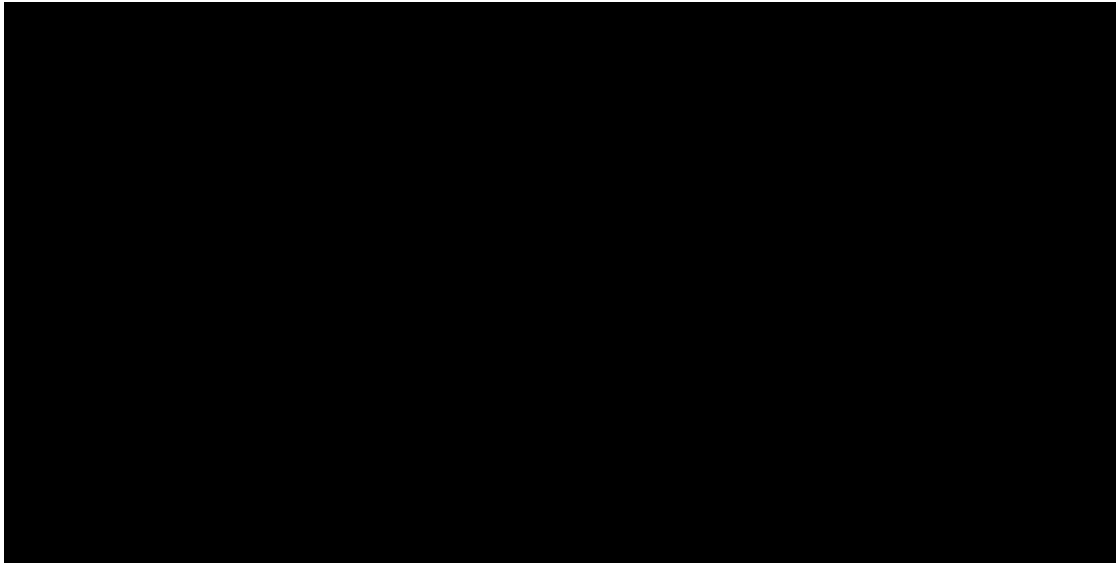
NON-CONFIDENTIAL

Figure 10: Total – 2018 – 2020 new reasonable access requests [REDACTED]



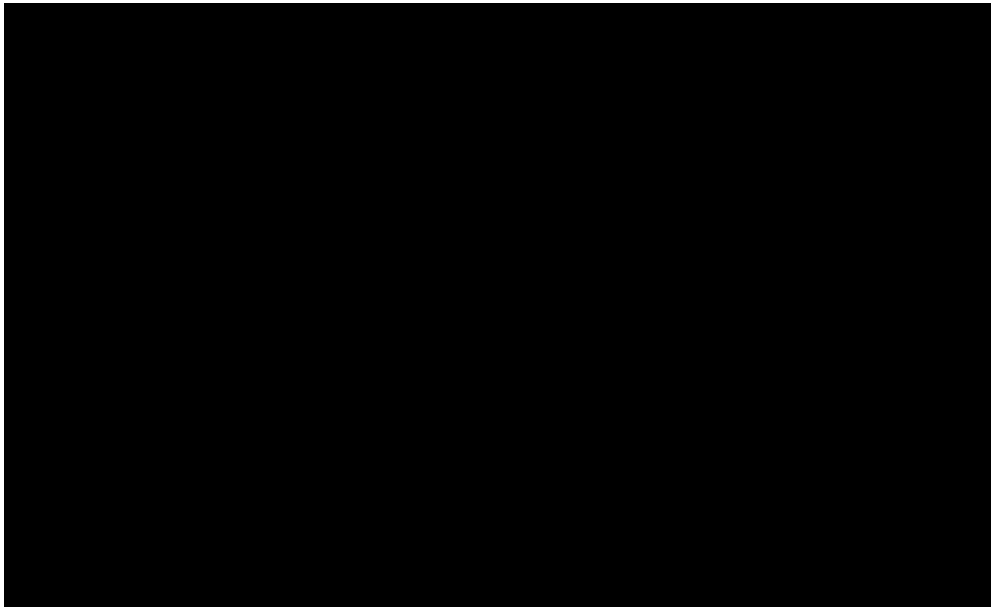
179 In cases where there is no in-situ infrastructure available eir may choose to offer service providers and end-users a fixed cellular service (FCS) connection. On occasion, service providers or customers, who order a standalone fixed line access connection, may have rejected the connection offered, based on the underlying technology offered. Figure 11 sets out the number of standalone fixed line access connections rejected by technology type, prior to installation, between 2018 – 2020. This illustrates that the number of standalone fixed line access connections rejected by either service providers or customers remains extremely low.

Figure 11: Total reasonable access requests received by eir – 2018-2020 (rejected by end user or undertakings) [REDACTED]



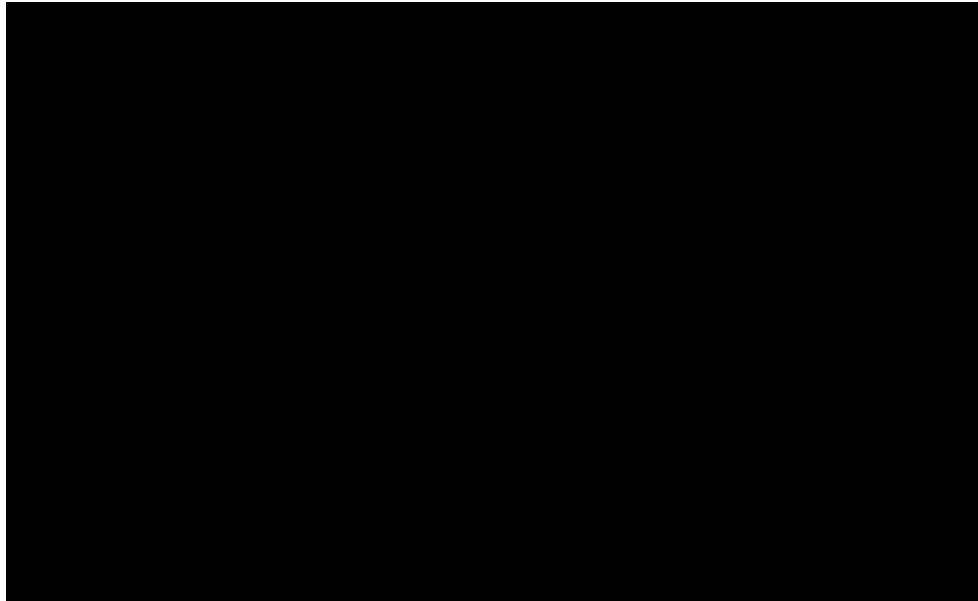
- 180 As stated earlier, Vodafone, Sky and Pure Telecom purchase wholesale component products from eir to provide retail fixed telephony services. Accordingly, they are heavily reliant on the continued availability of eir's wholesale component products. eir earns the regulated weighted cost of capital (WACC) on these wholesale component products. Virgin Media self-supply.
- 181 The 13D information requests sought the breakdown between in-situ and new connections from all retail standalone fixed operators. This information was not available from all operators; however, it was available for the four largest service providers (eir, Vodafone, Sky and Pure Telecom).
- 182 ComReg has examined whether new access requests between 2018 and 2020 have been met through existing infrastructure or whether they have required the deployment of new infrastructure
- 183 These retail service providers have quite different profiles. eir are meeting the vast majority [REDACTED] % of new connection requests through existing infrastructure. Less than [REDACTED] % of eir's new connections require the deployment of new infrastructure. This clearly demonstrates that the incremental effort and cost of connection to eir is minimal.
- 184 Figure 12 illustrates the split of total new connection types between in-situ and new connections. This varies by operator, with eir having the highest percentage of in-situ (copper) connections.

Figure 12: eir standalone fixed voice – new and in-situ connections – 2018- 2020
[REDACTED]



- 185 The number of eir new standalone fixed voice connections using the current generation network between 2018 - 2020 is small and has declined year on year. New standalone fixed voice connections represented a very small percentage ([REDACTED] %) of the total standalone fixed voice subscriptions in Q4 2018 and have reduced to [REDACTED] % and represent a very small percentage ([REDACTED] %) of the total standalone fixed voice connections, as of Q4 2020.
- 186 The number of eir new standalone fixed voice connections provided over FCS is very small and declining as illustrated in Figure 13.

Figure 13: eir standalone fixed voice new FCS connections – 2018 – 2020
[REDACTED]



187 The information provided by eir shows that the number of new voice only connections decreased by under 40% ([REDACTED]%) between 2019 and 2020.

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

4.2.2 Reasonableness of requests (reasonable access requests)

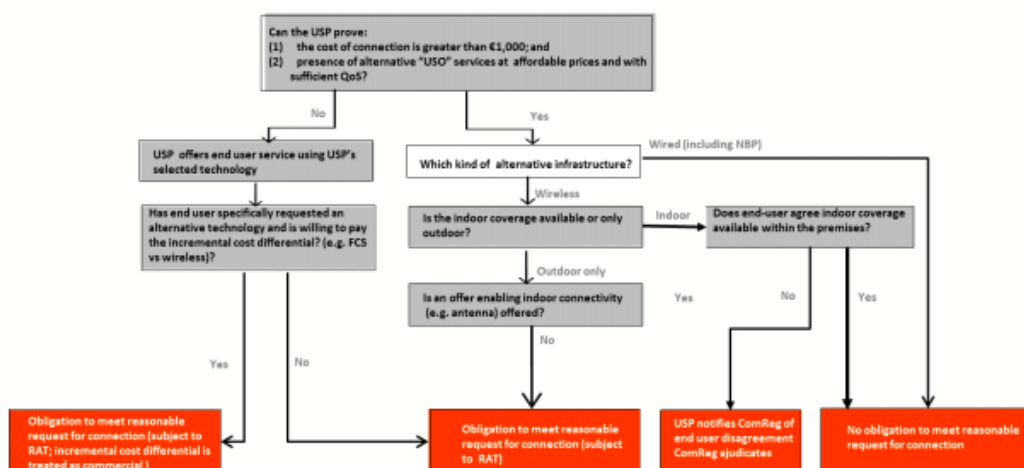
189 The prevailing universal service reasonable access request specification sets out what constitutes a reasonable access request. It takes into consideration:

- pre-existing infrastructure;
- whether one or more operators can fulfil the request;
- a monetary threshold;
- a standard connection fee; and
- parameters a customer is required to make the relevant contribution towards the connection cost.

190 Decision D05/16⁶⁹ modified the definition of “reasonable access request” and introduced new reasonable access thresholds (to take account of the presence of Alternative Infrastructures in particular, and monetary thresholds) as follows:

- i. If a request by an end-user for AFL USO requires expenditure by the USP **not exceeding €1,000** for the USP to satisfy that request, it shall be a reasonable request, and the USP shall satisfy that request.
- ii. If a request by an end-user for AFL USO requires expenditure by the USP that **exceeds €1,000** for the USP to satisfy that request and, there exists at the time of the request Alternative Infrastructure in the geographic location of the end-user that can provide equivalent AFL USO (in terms of affordability, quality and standalone PATS) to that of the USP, the USP shall not be required to satisfy that request.
- iii. The approach in (ii) shall however be **subject to an exception**: if the designated USP confirms that the Alternative Infrastructure is mobile, but the end-user does not agree that this will provide an equivalent service to that currently prevailing for AFL USO (including Minimum Indoor Coverage) the designated USP must promptly notify us of this fact, with relevant supporting information. ComReg will then adjudicate on whether the request is reasonable or not.
- iv. If a request by an end-user for AFL USO requires expenditure by the USP that **exceeds €1,000 but that does not exceed €7,000** for the USP to satisfy and, there is at the time of the request no Alternative Infrastructure in the geographic location of the requesting person that can provide equivalent AFL USO (in terms of affordability, quality and standalone PATS) to that of the USP, it shall be a reasonable request, and the USP shall satisfy that request. If the expenditure required by the designated USP **exceeds €7,000** and the end-user agrees to pay the amount more than €7,000, then the USP shall satisfy that request.

⁶⁹ Universal Service Requirements Provision of Access at a Fixed Location (AFL USO) Decision D16/65, Document No. 16/65.

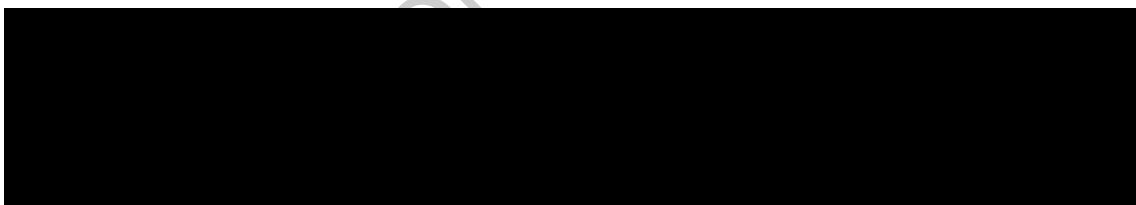


- 191 In the case of iii above, if the technology identified by the designated USP can and will provide an equivalent service to that prevailing for AFL USO, but the end-user requests an alternative technology, and is willing to pay for the additional costs, the USP must provide it (if technically feasible). In these circumstances, such a request is reasonable, and the designated USP must satisfy it.
- 192 It is intended to lessen eir's obligations as the USP to satisfy end-user requests for USO AFL in those parts of the State where there is Alternative Infrastructure/service providers and supports a transition by eir to being the provider of 'last resort'.
- 193 Where there is an alternative infrastructure at a fixed location, which is of sufficient quality, and provided at an affordable price, the need may be met by an alternative ECS provider.
- 194 If the designated USP confirms that the Alternative Infrastructure is mobile, and the end-user does not agree that this will provide an equivalent service to that currently prevailing for AFL USO (including Minimum Indoor Coverage). ComReg will then adjudicate on whether the request is reasonable or not. This is to ensure that there is transparency and accountability by the designated USP in how it satisfies requests. This is consistent with one of our statutory objectives, which is to promote the interests of end-users.
- 195 This relaxed the obligation, so that the USP only must provide a new connection in cases where there are no suitable alternative infrastructures and services present, should prevent inefficient infrastructure duplication, and therefore, mean lower costs to provide AFL USO.

4.2.2.1 Counterfactual scenario (2018 – 2020 analysis of eir's data)

- 196 As outlined earlier there are currently 3 service providers actively selling standalone retail fixed voice telephony service.
- 197 ComReg has considered whether there is a requirement for an AFL USO in respect of reasonable requests and whether there is evidence to support any amendment or alteration to the current process for defining the reasonableness of requests and the associated thresholds.
- 198 eir has previously advised ComReg during its engagement to define the process statement (set out at section 5.10 the Decision Instrument⁷⁰) that it did not envisage that it would progress beyond step i as it envisaged that all requests could be met at step i⁷¹.
- 199 At the time of the Decision ComReg was of the view that over time, the number of customers impacted by these thresholds, would change as inflation and other factors alter the amount of infrastructure that may be provided for a given amount of money.
- 200 As part of the 13D information request ComReg sought information on the breakdown of the connection costs by reference to the threshold levels set out in the Decision Instrument (Figure 14).

Figure 14: New connection by threshold levels 2019-2020 [REDACTED]



- 201 There are three threshold levels associated with the provision of a new universal service connection:
- Less than €1,000
 - €1,101 - €7,000

⁷⁰ D05/16.

⁷¹ eir letter 30 September 2016 Ref: AFL USO Draft Process Statement [REDACTED]

[REDACTED] and eir letter 18 November 2016 Ref: AFL USO Draft Process Statement [REDACTED]

- €7,001 and beyond

202 ComReg has considered whether it would be appropriate to amend the prevailing threshold levels considering the market evidence. To inform its review of the current thresholds associated with reason access requests ComReg also sought information from eir (as the current USP) in relation to the cost of new universal service standalone fixed voice reasonable access connections (broken out by the following cost bands: (i) 0>€1,000; (ii) €1,000 - €7,000; and (iii) over €7,000⁷²) in respect of 2019 and 2020.

203 Figure 15 shows that the vast majority ([< [REDACTED] >]%) of new eir connections in 2019 cost less than €1,000 and a small number ([< [REDACTED] >]%) of new connections cost between €1,001 and €7,000, with a very small number ([< [REDACTED] >]%) costing over €7,000 to connect⁷³.

204 The vast majority ([< [REDACTED] >]%) of new eir connections in 2020 cost less than €1,000 and a small number ([< [REDACTED] >]%) of new connections cost between €1,001 and €7,000, with an extremely small number ([< [REDACTED] >]%) costing over €7,001 to connect.

205 It clearly demonstrates that most of universal service standalone fixed voice connections are:

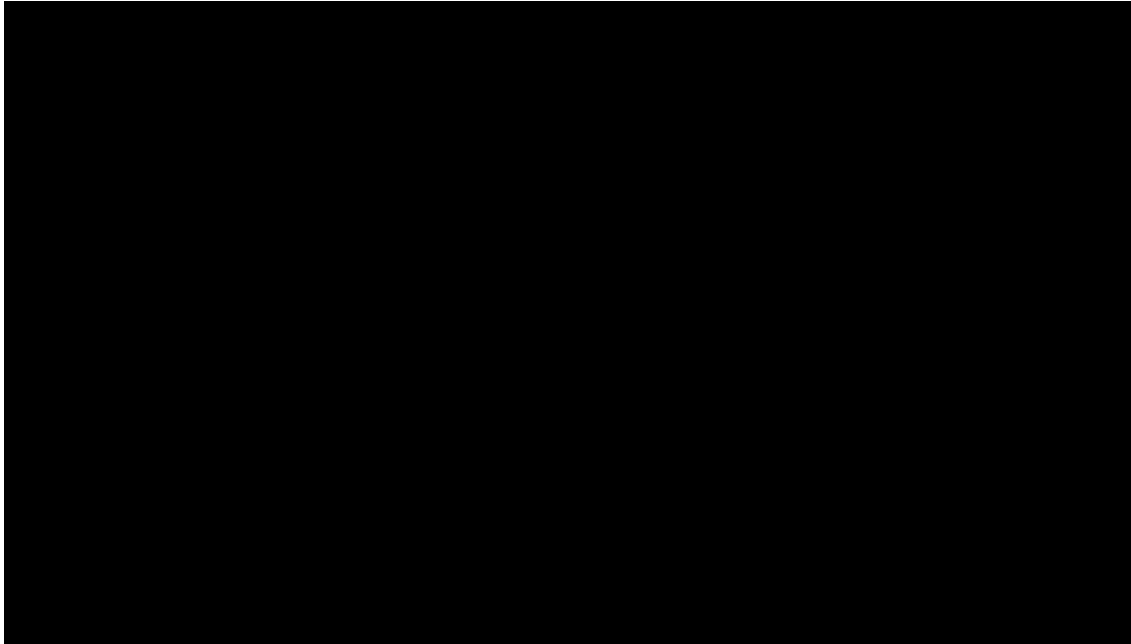
- provided using in-situ copper technology;
- connected at a cost of under €1,000 (the majority ([< [REDACTED] >] %⁷⁴) of new connections).
- a very small minority of new connections exceed €7,000.

⁷² As set out in Universal service Requirements Access at a Fixed Location Decision D05/16, Document No. 16/65 decision number.

⁷³ Costs over €7,000 are paid by the end-user.

⁷⁴ Average for 2019-2020.

Figure 15: Reasonable access requests (standalone fixed voice) – eir connection costs
[<REDACTED>]



- 206 To date ComReg has not been notified of any case where eir, as the designated USP, has confirmed that the Alternative Infrastructure is mobile, and the end-user has not agreed that this will provide an equivalent service to that currently prevailing for AFL USO (including Minimum Indoor Coverage).
- 207 In the counterfactual (i.e. there was no AFL USO) the thresholds for determining whether a request for connection is reasonable would no longer be of relevance, and the decision to provide a connection would be at eir's sole discretion.
- 208 In the counterfactual, eir, acting as a profit-maximising operator, is likely to try to maximise profits by comparing the cost of connecting an end-user with its estimated future revenues, before deciding whether to connect the end-user.
- 209 Furthermore, existing customers who are considered by eir as uneconomic, may also be at risk of being disconnected. This aspect is also considered under the affordability section of this consultation document.
- 210 eir might also choose to propose mobile services to connect some or all these end-users. Notwithstanding that mobile services are not access at a fixed location, there is a risk that indoor coverage could be problematic, which could result in several end-users remaining unserved.

- 211 Indoor and outdoor coverage levels can often vary substantially. Mobile coverage may deteriorate indoors (compared to outdoors), below acceptable levels (depending on the location, technology, and the network operator).
- 212 Other factors also impact indoor mobile performance, including handset capabilities and building materials. In some cases, there may be technical solutions available that may mitigate these issues.
- 213 ComReg acknowledges eir's previous statements on [REDACTED] [REDACTED] how it would meet its current reasonable access requests. Notwithstanding this, ComReg is of the preliminary view that it is appropriate to retain the current reasonable access requests process to continue to provide eir with flexibility on how it would meet reasonable access requests.
- 214 In terms of existing connections required to be provided by eir under USO, eir does not have to maintain a national narrowband network to deliver AFL USO. End users may self-select to migrate to access at a fixed location and voice service delivered via other technologies over time (which may or may not be delivered by their current service provider). Where this migration is not end-user led, existing connections may be migrated by eir to alternative infrastructures, where eir can use or purchase wholesale access to Alternative Infrastructures (its own or others, including as a result of the NBP) and associated services necessary to deliver service, provided that the access at a fixed location and voice service alternative infrastructures remain affordable.
- 215 Absent an AFL USO ComReg is of the preliminary view that it cannot ensure that:
- end-users, shall have any reasonable request for the provision and maintenance of connection at a fixed location to a public communications network satisfied, and which allows for originating and receiving of national and international calls; or that
 - the connection shall be capable of supporting (i) voice (ii) facsimile; and (iii) data communication rates that are sufficient to permit functional Internet access, having regard to the prevailing technologies used by the majority of subscribers and to technological feasibility; or that
 - the connection and service will be affordable.

216 Having considered the number of new connections in previous financial years, ComReg is of the preliminary view that it remains reasonable that:

- where there was ever a connection at a primary location or residence, the request is deemed reasonable the USP must fulfil it, should the end-user request it.
- below a cost of €1,000 the USP should be required to fulfil the request for connection.
- even in the “greater than €1,000” connection cost range, most new connections are provisioned with an in-situ copper path. The use of FCS solution remains very limited.

217 Accordingly, ComReg is of the preliminary view that the current reasonable access request definitions, process, and associated thresholds remain relevant and appropriate to assess the reasonableness of requests at this time and remain relevant for the proposed designation period

218 Having considered the existing connections provided under the AFL USO, ComReg considers that this cohort is decreasing in size and eir can continue to provide service via their own network (new networks where appropriate) and services or via wholesale inputs from other providers as networks are rolled out.

219 Accordingly, ComReg is of the preliminary view that it remains reasonable that eir continue to satisfy the USO for ‘Existing Connections’.

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

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

4.3 Voice, facsimile and Functional Internet Access (FIA)

220 The Universal Service Regulations require ComReg to ensure that end-users throughout Ireland have access to an electronic communications network and that the connection is capable of supporting (a) voice (b) facsimile and (c) data communication at data rates that are sufficient to permit functional internet access (FIA) having regard to the prevailing technologies used by the majority of subscribers and to technological feasibility.

- 221 The National Broadband Plan (NBP) is the government's initiative to deliver high speed broadband services to all premises in Ireland. This will be delivered through investment by commercial enterprises coupled with intervention by the State in those parts of the country where private companies have no plans to invest. The Department of Environment, Climate, and Communications ("DECC") is co-ordinating this State-led initiative.
- 222 As set out earlier, ComReg considers that any justification for the complete withdrawal of the existing USO would need to be undisputed. There would need to be guarantees that AFL USO services would be delivered in the future, at an affordable price, and standalone (if necessary) throughout the State.
- 223 ComReg's Decision D05/16 maintained the prevailing status quo in respect of FIA, as the NBP tender process had not completed at that time. ComReg did not specify what functional internet access is. ComReg decided to specify as a requirement on the USP, that the data rate must not be less than 28.8 kbit/s⁷⁵, as a reasonable minimum data rate. It also set an associated target that 94% of installed telephone connections must be capable of supporting a minimum data rate of 28.8kbits/s. ComReg emphasised that this is a minimum data rate and that it does not preclude eir from offering data rates that are faster than this.
- 224 ComReg acknowledges that there has been significant progress and that
- end-users can obtain and exceed functional internet access (both narrowband and broadband)
 - nationally in areas that are served commercially, or
 - via the national broadband plan (broadband) on a phased basis in line with the rollout, and within with NBP area once completed.
- 225 Furthermore, ComReg is cognisant that pursuant to the Code the Member State (Ireland) shall ensure that all consumers and other relevant end users have access at an affordable price to an available adequate broadband internet access service.⁷⁶
-

⁷⁶ Article 84 of the Code.

- 226 ComReg has liaised with DECC in relation to the transposition of the Universal Service Provisions of the Code, and ComReg understands that the definition of adequate broadband internet access service and the procedure for the imposition of associated affordability measures will be progressed following transposition. It is anticipated that ComReg will have a role in implementing a USO(s), if appropriate.
- 227 Upon completion of rollout of the NBP State intervention it is anticipated that all premises in “the Intervention Area” will have access to high speed broadband. This coupled with commercial roll out by operators is expected to reach the overwhelming majority of premises. In this context the need for a Universal Service Obligation (USO) to provide an adequate broadband connection and service will be assessed following transposition.
- 228 Consideration is to be given to providing for a USO for broadband regime in the context of transposing and implementing the Code, which would include a role for ComReg in implementing a USO, if appropriate. On this basis, ComReg will liaise with DECC to seek information on the rollout of the NBP and on the completion of the committed commercial deployments, and the definition of ABB IAS following transposition.
- 229 These details will be used by ComReg as key inputs in the performance of its role, in respect of any potential need for a USO, where ABB IAS cannot be ensured under normal commercial circumstances or through other public policy tools.
- 230 Accordingly, it would be inappropriate for ComReg to intervene in the market at this time.
- 231 However, notwithstanding that the market is evolving and high speed networks are being deployed, ComReg is concerned that absent an obligation for a minimum data rate then there is a risk that this minimum data rate would not be provided to a small cohort who are dependent on it for basic data needs.
- 232 ComReg is concerned that, although the number of narrowband subscribers has decreased, as commercial rollouts continue and the high capacity NBP infrastructure is being rolled out, there may be unacceptable short term implications for some end-users if the AFL USO is withdrawn, prior to the completion of the NBP rollout.
- 233 Therefore, notwithstanding the anticipated new legislation, European and national legislation still requires that ComReg ensures that reasonable requests for access to basic services particularly voice service at a fixed location are met by at least one undertaking.
- 234 Accordingly, ComReg is of the preliminary view that:

- the retention of the current minimum data rate of not less than 28.8kbit/s is the most appropriate option considering the aforementioned; and
- that it remains inappropriate currently to use USO FIA requirements as a mechanism to guarantee access to broadband connections.

235 This would ensure that ComReg's statutory obligations are met without inhibiting the commercial freedom of operators (including the USP) to offer data rates above 28.8kbit/s.

236 [REDACTED] [REDACTED]. ComReg recognises that the nature of how eir measures the capability of its retail line working line base to support a minimum data rate of 28.8kbit/s using, amongst other things, LTS (remote line test system), continues to evolve. ComReg is of the preliminary view that the current obligation should continue to apply to 94% of the USP's retail working line base. ComReg will consider any further details on this measurement which may be relevant in considering the percentage.

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

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

4.4 Affordability and control of expenditure measures

- 237 Regulation 8 states that ComReg may, in light of national conditions specify, with the consent of the Minister, requirements to be complied with for the purpose of ensuring that consumers are provided with tariff options or packages which depart from those provided under normal commercial conditions, to ensure that those on low incomes or with special social needs are not prevented from accessing the network.
- 238 ComReg may, with the consent of the Minister, require designated undertaking(s) to apply common tariffs including geographical averaging throughout the State.
- 239 Furthermore, terms and conditions shall be established in such a way that the subscriber is not obliged to pay for facilities or services which are not necessary or not required in respect of the services requested.
- 240 Regulation 9 states that ComReg may specify the provision of specific facilities and services, such as (i) itemised billing (ii) selective barring for outgoing calls or premium SMS or MMS (free of charge) (iii) pre-payment systems (iv) phased payment for connection fees (v) non-payment of bills (vi) tariff advice and (vii) cost control.
- 241 Furthermore, terms and conditions shall be established in such a way that the subscriber is not obliged to pay for facilities or services which are not necessary or not required in respect of the services requested.
- 242 ComReg now assesses the counterfactual (i.e. no AFL USO) to inform ComReg's preliminary views on whether there is a need for tariff options or packages; common tariffs including geographical averaging throughout the State; and terms and conditions such that a subscriber is not obliged to pay for facilities or services which are not necessary or not required in respect of the services requested, post 30 June 2021.

4.4.1 Affordability

4.4.1.1 Geographical Averaging

- 243 Geographical averaging of prices (GAP) is a mechanism to ensure that services are available at the same price to all subscribers throughout the State, irrespective of their geographic location. In a universal service context, it has the ability when applied to restrict a USP's commercial pricing freedom and its ability to apply differential pricing (e.g. based on geography etc.)
- 244 ComReg is considering whether to maintain or remove the obligation to provide GAP. The options are set out below.

- 245 Decision D05/16 imposed a GAP obligation in relation to the designated services in accordance with Regulation 3, namely, a connection and PATS service (For the avoidance of doubt, this does not apply to bundled products).
- 246 eir as the designated USP is currently required to apply geographical averaging to its prices (GAP) throughout the State for AFL.
- 247 The cost of providing services to end-users, especially a connection (access) can, in principle, vary considerably between remote rural and high-density urban locations. Where prices (especially connection and line rental) are averaged, there is a possibility that the high cost of connecting some end-users (e.g. rural, and low usage end-users in more urban areas), may create a net cost for the USP. Essentially, these end-users may have a high cost of connection to the network and/or who do not make sufficient use of the service to provide the USP with sufficient revenue to cover the associated connection and ongoing service costs). Accordingly, this cohort of end-users may be cross subsidised by another cohort end-users (whose cost to connect is lower and/or who's usage is higher (generating higher revenues for the USP)). Even if the provision of access and usage is profitable, on average, some level of net cost may be incurred by the USP.
- 248 Furthermore, ComReg's proposals to remove the retail price cap in the standalone low-level retail fixed telephony service market mean that the retail price cap remedy is likely to be removed, and this view is reflective of the views expressed by it in the FACO Consultation (published in June 2020). Please refer to section 4.4.3 for further information in respect of the retail price cap.
- 249 In the counterfactual scenario, ComReg considers the possible commercial constraints on eir's retail connection and line rental prices and what, if any incentives, eir may have to increase the price of either or both.
- 250 eir could choose to increase the prices in areas where it faces little or no competition and where end-users and existing customers have few if any alternatives available to them. This could arise where eir wishes to (i) optimise its revenues or where it (ii) actively seeks to migrate customers to alternative technologies through targeted pricing disincentives.
- 251 ComReg notes that a very small number of service providers are actively selling standalone fixed voice service. Accordingly, there is limited competition. This means that there are fewer alternatives to those customers who only wish to avail of a standalone offering. The ComReg market research also indicates that there is a level of inertia and potential loss aversion within this cohort of customers, which is open to potential exploitation.

- 252 eir's standalone retail fixed call access costs €25.78 per month (with retail fixed calls costs on a per minute basis), while eir's basic standalone publicly available telephone service (PATS) is €39.99 including line rental and (unlimited off-peak local and national) calls.
- 253 In the context of affordability, any impact on end-users is likely to vary, depending on where they are located, and the pricing strategy pursued by those operators active in the standalone fixed voice market.
- 254 End users, who are voice-centric (i.e. primarily value fixed voice telephony service) may have less choice of service providers. This is largely due to the shift away from standalone retail fixed voice service provided over fixed narrowband access networks, and towards retail fixed voice service delivered as part of a bundle over next generation broadband.
- 255 Virgin Media does not sell standalone retail fixed voice service. Virgin Media customers can purchase bundled retail fixed voice service as an add-on to their broadband or TV service at an entry level cost of €59 per month for broadband and retail fixed telephony service. Proportionately fixed voice customers appear to be paying more in relative terms for the services that they receive.
- 256 ComReg has considered whether retaining the GAP obligation would create market distortions and whether the balance of these risks requires that the GAP obligation be maintained.
- 257 Based on the aforementioned information ComReg is of the preliminary view that, in the future, absent of a retail price cap, and where eir is designated as the USP, GAP be would be required to ensure that universal service remains affordable for end-users.
- 258 ComReg is of the preliminary view that maintaining GAP will result in an overall net welfare benefit. This proposed obligation relates to the designated services in accordance with Regulation 3, namely, a connection and PATS service (For the avoidance of doubt, this does not apply to bundled products).
- 259 Accordingly, ComReg is of the preliminary view that geographical average should be retained to ensure that the standalone fixed voice cohort of customers are protected from price increases where they may have limited choice of service providers and who have not yet chosen to migrate to a bundle. These customers are unlikely to have an alternative to easily switch to should eir increase the retail line rental price or fixed telephony prices in general.

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

4.4.1.2 Retail price cap (RPC)

- 260 The retail price cap is a remedy imposed on eir following its designation as an operator with significant market power (SMP) on the FACO markets.⁷⁷ It only applies to eir's pricing of retail PSTN and ISDN BRA.
- 261 The FACO consultation published in June 2020 set out ComReg's proposal to remove the retail price cap in the standalone low-level retail fixed telephony service market, effective as at the date that ComReg's final FACO Market Review Decision takes effect. No sunset period is proposed.
- 262 To date, eir has not maximised the pricing flexibility afforded to it under the retail price cap. This may have been informed by eir's obligation, as the USP, to offer geographically averaged pricing.
- 263 RPC and GAP may have had the combined effect of constraining any price increases to the maximum that would be borne by its customers located in competitive areas, as it is current restricted from offering differential pricing based on geographical location or other criteria.
- 264 A question arises as to whether, in the future, absent of a retail price cap(should that arise), and where eir is designated as the USP, would GAP be sufficient to ensure that universal service remains affordable for end-users?
- 265 Any impact on consumers is likely to vary depending on the area within which they are located, and the pricing strategy pursued by operators.
- 266 ComReg's market research demonstrates that existing standalone fixed voice customers are price sensitive.11% are confident that they would change behaviour considering a €4 increase in the cost of a landline, with a further 28% suggesting that they may change behaviour.
- 267 Of those indicating that they would change behaviour, 32% suggest they would cancel their subscription, and a further 28% indicate they would make fewer calls on their home phone.

⁷⁷ imposed under the 2014 RFVA Decision.

- 268 26% of those who bundle their landline and pay for line rental and calls together indicate that they would (6%) or maybe (20%) change behaviour. Of those indicating they would change behaviour due to a price increase, 31% would stay with their current provider and downgrade to a cheaper bundle, while a further 28% would start shopping around by looking at alternatives.
- 269 56% of those using landlines pay for inclusive minutes, with 23% paying for calls on a per minute basis. However, paying per minutes is more likely to be found among urban users, those aged below 35, and those with standalone landline. 17% of those surveyed are unaware of how they pay for calls. 65% of those who have inclusive minutes for calls have unlimited minutes to national fixed landlines, and 45% have unlimited minutes for calls to mobile phones.
- 270 When asked to report their typical landline bill, on average those with standalone landline are paying slightly more than €57. This figure is slightly higher among those in rural areas and lower among those in urban locations, as outlined below.

	Location		
	Rural (n=76)	Sub-Urban (n=99)	Urban (n=35*)
Up to €20	1%	0	3%
Between €21 and €30	3%	2%	9%
Between €31 and €40	8%	13%	15%
Between €41 and €50	36%	35%	19%
Between €51 and €60	19%	15%	26%
Between €61 and €70	13%	23%	6%
Between €71 and €80	6%	3%	8%
Between €81 and €160	14%	8%	9%
Don't know	1%	1%	4%
MEAN	€60.48	€55.64	€54.36

- 271 The bill for those with landline in a bundle is on average a further €15 higher than that recorded among Standalone Landline consumers at €72. Those in rural areas are paying slightly more, but the real discrepancy is found in terms of age, where those over 55+ are on average paying €7 more than average, while those under 35 are paying over €10 less.

	Location			Age		
	Rural (n=139)	Sub-Urban (n=176)	Urban (n=101)	18-34 (n=58)	35-54 (n=161)	55+ (n=197)
Up to €30	1%	4%	1%	0	3%	1%
Between €31 and €40	4%	3%	3%	1%	3%	5%
Between €41 and €50	16%	12%	11%	22%	13%	8%
Between €51 and €60	20%	23%	25%	33%	27%	16%
Between €61 and €70	13%	12%	19%	23%	14%	15%
Between €71 and €80	14%	11%	9%	5%	10%	14%
Between €81 and €90	6%	8%	9%	1%	8%	12%
Between €91 and €100	5%	10%	9%	5%	10%	8%
Between €101 and €200	19%	15%	10%	4%	11%	18%
Don't Know	3%	1%	3%	6%	1%	3%
MEAN SCORE	€74.35	€72.44	€71.82	€61.89	€70.22	€79.39

- 272 17% of landline customers rely on assistance to either understand or pay their landline bill. This is more likely among those in urban areas and aged under 35. When probed 33%-37% say that they are unable to answer regarding the cost of making calls, due to having unlimited minutes depending on call type. However, even excluding these, the proportion who know the exact, or approximate costs of calls is substantially lower than those who don't know or are not sure.
- 273 End-users' price sensitivity and competition combine to somewhat constrain eir's ability to increase the line rental and connection prices, particularly for end-users who take up bundled voice – increasing demand and supply of bundled offers nationally.
- 274 In February 2020⁷⁸ eir approached ComReg presenting it with a set of potential draft voluntary offer⁷⁹ which set out amongst other things that, on the retail fixed voice access markets, it would voluntarily commit to a specific series of maximum monthly charges for standalone PSTN and standalone ISDN BRA lines, as well as committing not to engage in tying behaviour.

⁷⁸ Presentation by Eir to ComReg on 13 February 2020. A non-confidential version of the proposed voluntary commitments (the 'Commitments') made by Eircom to ComReg in February 2020 is published in ComReg Document 20/46c.

⁷⁹ These Commitments were without prejudice to views that Eir would provide in response to the matters which are the subject of the FACO Consultation (Document No. 20/46).

- 275 ComReg will continue to closely monitor the price of fixed voice services and may intervene in the context of AFL USO, as appropriate, where fixed voice services are at risk of becoming unaffordable.

4.4.1.3 Tariff options

- 276 Tariff options or packages which generally fall within two broad categories: (i) discounts and reductions for end-users who are entitled to claim the social tariffs; or (ii) a special package.
- 277 Decision D05/16 does not impose tariff options.
- 278 The current public policy intervention is the telephone support allowance scheme⁸⁰ which is the responsibility of Department of Social Protection. This is a weekly payment for people who live alone and are already in receipt of certain other social welfare payments. It assists the cost of communications and or home security solutions. The allowance is paid automatically to people who are in receipt of one of a number qualifying payments⁸¹ and both the Living Alone Allowance and Fuel Allowance.
- 279 ComReg is cognisant that upon transposition of the Code the Member State shall ensure that all consumers have access at an affordable price to an available adequate broadband internet access service and to voice communications services at the quality specified in their territories, including the underlying connection, at a fixed location.
- 280 ComReg understands that the Code requires the Member State to define adequate broadband internet access service in the context of a USO for broadband. That consideration will be addressed as required following transposition of the Code.
- 281 In the interim, the Universal Service Regulations 2011 remain valid and in force and we are cognisant of the need for the 2011 Regulations to be read in accordance with the Code, and other relevant national and EU legislation. Accordingly, it would be inappropriate for ComReg to intervene in the market at this time.

⁸⁰ [gov.ie](http://www.gov.ie) - Telephone Support Allowance (www.gov.ie).

⁸¹ [State Pension \(Contributory\) and State Pension \(Non-contributory\); Widow's, Widower's or Surviving Civil Partner's \(Contributory\) Pension; Invalidity Pension; Disability Allowance Blind Pension; Incapacity Supplement; Deserted Wife's Benefit; Widow's, Widower's or Surviving Civil Partner's \(Contributory\) Pension under the Occupational Injuries Scheme.](#)

282 ComReg is of the preliminary view in the light of the proposed GAP for the voice only access and services and in the context of the transposition of the Code, ComReg will not consider the imposition of tariff measures at this time.

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

4.4.2 Control of expenditure

283 Regulation 9 of the Universal Service Regulations 2011 provides that ComReg may specify the provision of specific facilities and services, such as (i) itemised billing (ii) selective barring for outgoing calls or premium SMS or MMS (free of charge) (iii) pre-payment systems (iv) phased payment for connection fees (v) non-payment of bills (vi) tariff advice and (vii) cost control; and that terms and conditions shall be established in such a way that the subscriber is not obliged to pay for facilities or services which are not necessary or not required in respect of the services requested.

284 Universal service is not only about enabling end-users to be connected to a fixed telephone network. It is also important that all end-users who wish to remain connected to the fixed network can do so.

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

286 Many operators offer itemised billing as part of their core commercial service offerings.

287 Their disconnection policies are published and should be proportionate and non-discriminatory to cover non-payment of bills. They generally provide due warning of any consequent service interruption or disconnection to cover non-payment prior to any such action. As part of the Code of Practice for Complaint Handling there is an obligation on all operators to publish their Disconnection Policies.

288 Decision D05/16 maintains control of expenditure measures for services within the scope of AFL USO, namely:

- Obligations in respect of disconnections and non-payment of bills; and
- Obligations in respect of phased payment for connection fees.

4.4.2.1 Disconnections

- 289 In the context of universal service, the USP's Disconnection Policy, and the associated number of disconnections, has an impact on the number of people connected to the fixed network. The level of disconnections may indicate the effectiveness of the existing measures. Universal service is not truly universal if many people are left without access to a telephone. We recognise however, that some disconnections may also result for other reasons, such as fraud or the deliberate non-payment of bills.
- 290 The current USP's Disconnection Policy⁸² includes notification measures for end-users who fall into payment arrears. This policy should have a positive effect by reducing the number of end-users that may have been otherwise disconnected from the network.
- 291 The Disconnection Policy should provide that, if an end-user does not pay a bill by the account due date, the USP may restrict an end-user's ability to make and receive calls except to emergency services and that the USP will endeavour to contact an end-user to remind them that a bill is overdue.
- 292 As outlined earlier, all ECS service providers already have an obligation to have and publish a Code of Practice for Complaint Handling⁸³.
- 293 Accordingly, ComReg is of the preliminary view that the inclusion of this requirement, post 30 June 2021 would present no additional obligations, where a universal service obligation and designation are imposed.
- 294 However, ComReg will analyse available disconnection data and consider if any issues arise in relation to the current USP's Disconnections Policy.

4.4.2.2 Phased Payment of Connection Fees

- 295 One of the key aims of the universal service is to ensure that end-users can get access to a connection and telephony services (reasonable requests) with option of a the phased connection fee to ensures that end-users are not prohibited from connection to the network arising from an inability to pay the total connection charge in one payment.
- 296 Many service providers offer phased payment of connection fees on a commercial basis.

⁸² www.eir.ie/support/billing/what-happens-if-i-dont-pay-my-bill/#:~:text=Disconnection%20policy,-It%20is%20our&text=This%20normally%20allows%20a%20period,that%20your%20bill%20is%20overdue.

⁸³ Electronic Communications Complaints Handling Code of Practice - Response to Consultation and Decision, Decision D04/17; Document No.17/62.

- 297 In recent years eir, as the USP, has implemented a series of connection promotions whereby connection charges were set to €0. Therefore, no end-user needed to rely on the phased payment plan. This provides end-users with a tangible benefit where seeing connection to the network and has low implementation costs for the USP (where (i) connection fees are set to €0 and where (ii) the vast majority (circa [X ■ X] %) of new connections⁸⁴ are in-situ connections.
- 298 Absence of either an AFL USO or the obligation on service providers to publish a Code of Practice for Complaint Handling there is a risk that a phased payment of connection fees, might not be maintained.
- 299 ComReg is of the preliminary view that the existing obligation should be maintained, given its importance for end-users (helping to prevent social exclusion) and low implementation costs for the USP.

4.4.2.3 Terms and Conditions

- 300 We have considered if it is necessary to prescribe any terms and conditions which should be offered or should not be permitted by the USP.
- 301 As set out above, the Code entered into force on 20th December 2018, with a transposition deadline of 21 December 2020.
- 302 Regulation 3 (5) of the 2011 Universal Service Regulations 2011 remain valid and in force. We are cognisant of the need for the 2011 Regulations to be interpreted to align with the Code, and other relevant national and EU legislation
- 303 ComReg is of the preliminary view in the context of the transposition of the Code that it will not consider special terms and conditions at this time.
- 304 However, ComReg may consider subsequently if there are any end-user issues which may benefit from specific terms and conditions.

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

⁸⁴ Period 2018- 2020.

4.4.3 Quality of Service (QoS)

- 305 Regulation 10 of the Universal Service Regulations 2011, “Quality of service of designated undertakings” allows ComReg to specify requirements to be complied with by the USP in relation to the quality of service performance metrics (“QoS performance targets”) of certain USOs that it delivers to end-users.
- 306 The current QoS regime set out in D02/19⁸⁵ is coming to an end on 30 June 2021. Accordingly, ComReg intends to continue to monitor USP adherence with QoS while it considers the future requirements for an associated AFL USO QoS. ComReg considers that QoS is an important aspect of AFL, accordingly ComReg is of the view it is important that the QoS performance is maintained. Therefore, at this time, ComReg will continue to monitor QoS performance for any designated undertaking and ComReg will continue to publish QoS trends. ComReg will shortly commence a review on QoS as may be appropriate.
- 307 ComReg will issue Information Requests (in accordance with Section 13D(1) of the communications Regulation Act 2002 (as amended)) requiring the USP to provide to ComReg such information, including reports as ComReg considers necessary to carry out its functions. ComReg will rely on its statutory information gathering powers to obtain the necessary information during the relevant designation period, at this time.
- 308 ComReg may separately, from time to time, request other relevant reports.

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

4.5 The need for AFL USO post 30 June 2021

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

⁸⁵ Universal Service Requirements Provision of access at a fixed location (AFL) Quality of Service (QoS).

- 310 It is important to note that apart from the AFL USO, there is currently no other mechanism, programme or scheme in place to ensure that the basic telephony at a fixed location, set out in the Universal Service Regulations, is provided to everyone that requires it and who cannot obtain it under normal market conditions.
- 311 ComReg is of the preliminary view that there is a continued need for an AFL USO, post 30 June 2021.

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

NON-CONFIDENTIAL

5 Expressions of interest

- 312 In accordance with the Regulations, no undertaking should be excluded from being designated to provide all or part of the universal service, in all or part of the State. In this respect, ComReg invites undertakings to express an interest in being a USP for the provision of AFL under the USO as relevant.
- 313 In the context of alternative technologies and further efficiencies, it is evident that other operators in Ireland may be able and willing to provide all or part of the AFL universal service, in all or part of the State, and may be able to do so at a lower cost. ComReg is mindful that the designation method(s) adopted must ensure that any AFL USOs are provided in a cost-effective manner and may be used as a means of determining any net cost of providing AFL under USOs.
- 314 It should be feasible for an undertaking to scope out its own case for becoming a USP for provision of AFL under USO on the basis of its operator specific information, amongst others, its own network, use of technology and information as to consumer profiling and or demand.
- 315 Undertakings are now requested to consider their interest in being a USP for provision of AFL, or otherwise, and specifically how an undertaking might ensure the effective and efficient provision of AFL (both connection and voice services over connection AFL).
- 316 ComReg will carefully consider any submission that it receives from interested parties for the provision of access at a fixed location throughout the State, or a defined territory within the State for a period of 24 months, unless amended.

5.1 Proposed assessment methodology and selection criteria

- 317 To ensure that ComReg adopts an efficient, objective, transparent and non-discriminatory designation mechanism⁸⁶ it has identified the information it requires and the process to be followed upon receipt of such information. ComReg will undertake to provide updates to both stakeholders and those providers that submit expressions of interest as necessary, throughout the process.

⁸⁶ In accordance with Regulation 7(3) of the Universal Service Regulations.

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

- i. it has identified the information it requires, and the process to be followed, upon receipt of such information. ComReg will undertake to provide updates to both stakeholders and those providers that submit expressions of interest as necessary, throughout the process. An outline of technical competence and expertise in providing access at a fixed location (AF);
- ii. An overview of how the proposed obligation(s), as detailed in section 5 of this consultation, will be fulfilled, including a full description as to how the service and all it entails, will be provided.
- iii. Details of the infrastructure(s) planned to be used to deliver the AFL USO.
- iv. An overview of the proposed steps and timing required to implement the solution, to include an overview of the proposed transition plan.
- v. Details of the proposed investment to be undertaken to implement the AFL USO and associated source of funds.
- vi. Details of proposed customer contract terms and relevant retail prices.
- vii. Details of indicative costs to provide each element of the service concerned.
- viii. An overview of how a guaranteed level of service will be maintained, in terms of fault occurrence/availability of service to consumers and other relevant quality measures and what quality of services targets will be met and how.
- ix. An overview of procedures and timelines for connection, fault management, the provision of information to consumers and the handling of complaints; and
- x. A letter from the CEO confirming the undertaking's legitimate interest in becoming a USP for AFL and confirming agreement that the accompanying information, which is required to be submitted, (i-x above), has been appropriately prepared and is accurate.

- 319 It is likely that expressions of interest will contain either commercially sensitive and/or confidential information. Therefore, each expression of interest should be marked as appropriate to allow ComReg to deal with such information in accordance with its Confidentiality Guidelines.⁸⁷
- 320 If all the required information, as set out above, is submitted then the expression of interest will be considered valid. If all the required information as set out above, is not included in an expression of interest, the expression of interest will be considered invalid and will be rejected without further consideration.
- 321 **Valid** expressions of interest will then be assessed to ascertain whether the undertaking's proposal meets the minimum standard of what ComReg considers a potential USP should achieve. ComReg is setting a weighting of 100 points for each of the categories (i-ix) of information, set out in the paragraph above.
- 322 A minimum standard of 80 points for each of the categories must be achieved for an expression of interest to be valid. If a **valid** Expression of Interest meets the minimum standard of 80 points in each category, as determined by ComReg, it will be **an expression of interest which meets the minimum standard**. If a **valid** expression of interest, as determined by ComReg, does not meet the minimum standard of 80 in each category, as determined by ComReg, it will be considered **an expression of interest which does not meet the minimum standard**.
- 323 ComReg will inform service providers who have expressed an interest as to whether they have submitted a **valid** expression of interest, and subsequently, if the **valid** expression of interest is an **expression of interest which meets the minimum standard**.
- 324 Having regard to the above, if there are any expressions of interest received which meet the minimum standard in each category, as set out above (75 (i) – (x)). ComReg may, as appropriate then seek to instigate a competitive selection procedure for the provision of the universal service concerning AFL, which would consider responses from this consultation.
- 325 Where expressions of interest are received, ComReg will carefully assess each expressions of interest received, and identify valid expressions of interest which meet the minimum standard. ComReg may consult on whether to extend the current AFL USO designation to enable facilitate a smooth transition period for the current USP to the new USP.

⁸⁷ ComReg Document No. 05/24 Guidelines on the treatment of confidential information, dated 23 March 2005.

- 326 ComReg is of the preliminary view that, in the absence of receiving any expressions of interest, that the current USP, eir, is best placed to continue to be the USP for AFL, for the reasons detailed including ubiquity, experience and capability, for any short designation period, where required post 30 June 2021.

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

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

5.2 Costing of the USO

- 327 eir, as the current designated USP may submit applications for USO funding. eir submitted applications for Universal Service Funding (USF) in respect of 2010-2011, 2011-2012, 2012-2013, 2013-2014, and 2014-2015 in accordance with D04/11, which ComReg subsequently assessed. After the assessment and consultation process, ComReg determined in respect of each of these applications that did not impose an unfair burden on eir, in accordance with the assessment principles and methodologies, set out in D04/11. On July 2019, eir lodged an appeal against each of these decisions, this appeal is currently ongoing. ComReg will continue its work on USF including the assessment of other applications for funding it receives from the USP, as relevant, and the establishment of the principles for a universal service fund sharing mechanism.
- 328 As it is designated until 30 June 2021, eir may make applications for USO funding, should it choose to do so in respect of its financial periods 2016-2017, 2017-2018, 2018-2019, and 2019-2020. ComReg has issued Information Notices in respect of this⁸⁸.
- 329 Similarly, should an operator be designated as a USP, it would be entitled to make applications for USO funding, in accordance with ComReg Decision D04/11.

⁸⁸ eir's 2016-2017 Universal Service Funding Application Information Notice 18/76, and Universal Service Fund Applications 2018-2019 and 2019-2020, Information Notice 21/44.

- 330 In accordance with Regulation 11 of the Universal Service Regulations any USP must apply for funding if they wish to receive funding for the net cost of meeting the obligation and the process for this is set out in ComReg D04/11.
- 331 The period for submission of expressions of interest runs for a period of 4 weeks from 27 May 2021 until 24 June 2021. No late Expressions of Interest will be accepted.

NON-CONFIDENTIAL

6 Designation of Universal Service Provider(s)

- 332 The European Electronic Communications Code (EECC Directive (EU) 2018/1972) (“The Code”) entered into force on 20th December 2018, with a transposition deadline of 21 December 2020. The Department of Environment, Climate and Communications (“DECC”) is responsible for the transposition of the Code into national law, and this is ongoing. DECC has also signalled its intention to issue a public consultation on the transposition text, which will transpose the EECC Directive (EU) 2018/1972 into national law.
- 333 In respect of voice at fixed location, ComReg expects that as broadband continues to roll out, affordable voice offers (standalone or in a bundle) will be made available to end users on a commercial basis. Where affordable fixed voice access and services are not provided commercially, a USO may be required.
- 334 During this transition period, our objective is to ensure that reasonable requests for access at a fixed location are met.
- 335 One of our functions is to determine the need for, and scope of, the USOs for the Irish market and to decide which undertaking(s), if any, should be designated as the USP(s) for USO(s).
- 336 The current Universal Service Regulations⁸⁹ place primary responsibility on us as the independent ECS regulator for Ireland, to safeguard and ensure the provision of a minimum set of telecommunications services in the State. We may designate an undertaking, or undertakings, to satisfy any reasonable request to provide, at a fixed location, a connection to the public communications network (“**PCN**”) and a publicly available telephone service over the network connection that allows for originating and receiving of national and international calls. The connection must be capable of supporting voice, facsimile and data communications at data rates that are sufficient to permit functional internet access (“**FIA**”). In this consultation and draft decision, we refer to this collectively as access at a fixed location (“**AFL USO**”). We may also impose requirements on a designated undertaking as regards quality of service, affordability, and control of expenditure

⁸⁹ The European Communities (Electronic Communications Networks and Services) (Universal Service and Users’ Rights) Regulations 2011 (S.I. No. 337 of 2011) (the “Universal Service Regulations”).

- 337 The Universal Service Regulations require that ComReg must ensure that end-users throughout Ireland have access to an electronic communications network and voice services at a fixed location and these components must be affordable and delivered to a specified quality.
- 338 ComReg's objective is to find the most appropriate approach to ensure that AFL is available to consumers throughout Ireland. ComReg aims to ensure that the services provided continue to meet consumers' needs, particularly if they are not already met by the market.
- 339 The current AFL USO designation⁹⁰ will expire on 30 June 2021. On 8 January 2021 ComReg issued an Information Notice⁹¹ informing stakeholders that it planned to commence a review of universal service voice access at a fixed location and to issue a public consultation on what, if any obligation, will be applicable in this regard post 24 June 2021.
- 340 ComReg is of the preliminary view (based on the analysis set out in previous chapters) that there is a continued need for some form of AFL USO in the State post 30 June 2021. Accordingly, we are of the preliminary view of the need to designate one, or more, undertakings to guarantee the provision of the universal services so that the whole of the State is covered⁹².
- 341 ComReg envisages that it will need to reconsider any AFL USO and designation after the transposition of European Electronic Communications Code (EECC Directive (EU) 2018/1972) into national law to take into account the new national legislation and any other relevant market and technological developments at that time.
- 342 ComReg is considering maintaining the AFL USO and designation for a maximum period of 24 months considering the transition and ComReg is seeking stakeholders' views on whether this is the most appropriate period. However, ComReg proposes to keep under review any AFL USO and designation in light of transposition and changes in the market. Accordingly, we propose:
- to commence a review, (i) where changes in market conditions and technological developments are such that ComReg deems it appropriate to do so, or

⁹⁰ Access at a Fixed Location D05/16. Based on European Communities (Electronic Communications Networks and Services (Universal Service and Users' Rights) Regulations 2011 S.I. 337.

⁹¹ Universal Service Access at a fixed location, Information Notice 21/01.

⁹² Regulation 7(1) of the Universal Service Regulations.

(ii) 6 months after DECC has concluded the transposition of the Code into national law,

- whichever is the earlier It is also conceivable that any individual elements of the USO could be reviewed within this designation period if the circumstances justified it (e.g. price increases which may create affordability issues arising where connection/ rental or the costs of calling).

6.1 Geographical scope

343 End-users who require AFL USO to be delivered by the designed USP are dispersed throughout the State.

344 Therefore, to protect all end-users throughout the State and to ensure that any end-user in the State who requires the protections of universal service to get access to a public telephone network at a fixed location and a telephony service, ComReg is of the preliminary view that any designation must be for the whole of the State.

345 We are of the preliminary view that any associated obligations are designed in in such a manner that no obligation to satisfy requests for access and a telephone service crystallises on the USP unless the end-user has no suitable alternative. If, there is no need for any AFL USO, then no requests would need to be satisfied by USP as the provider as last resort.

6.2 Duration of any designation

346 As set out earlier, ComReg envisages that it will need to reconsider any AFL USO and designation after the transposition of European Electronic Communications Code (EECC Directive (EU) 2018/1972) into national law to take into account the new national legislation and any other relevant market and technological developments at that time.

347 Considering this, and the anticipated transposition of European Electronic Communications Code (EECC Directive (EU) 2018/1972) into national law, ComReg is of the preliminary view that the maximum designation period should be 24 months.

348 ComReg is of the preliminary view to maintain the AFL USO and designation for a maximum period of 24 months considering the transition and ComReg is seeking stakeholders' views on whether this is the most appropriate period. However, ComReg proposes to keep under review any AFL USO and designation considering transposition and changes in the market. Accordingly, we propose

- to commence a review, (i) where changes in market conditions and technological developments are such that ComReg deems it appropriate to do so, or

(ii) 6 months after DECC has concluded the transposition of the Code into national law,

whichever is the earlier. It is also conceivable that any individual elements of the USO could be reviewed within this designation period if the circumstances justified it (e.g. price increases which may create affordability issues arising where connection/ rental or the costs of calling).

6.3 Designation of USP(s)

349 In accordance with the Regulations, no undertaking should be excluded from being designated to provide all or part of the universal service, in all or part of the State. In this respect, ComReg invites undertakings in chapter 5 to express an interest in being a USP for the provision of AFL under the USO as relevant.

350 Where expressions of interest are received, ComReg will carefully assess each expressions of interest received, and identify valid expressions of interest which meet the minimum standard. ComReg may consult on whether to extend the current AFL USO designation to enable facilitate a smooth transition period for the current USP to the new USP.

351 As set out in chapter 5 ComReg is of the preliminary view that, in the absence of receiving any expressions of interest, that the current USP, eir, is best placed to continue to be the USP for AFL, for the reasons detailed including ubiquity, experience and capability, for a designation period of –24 months, unless amended, where required post 30 June 2021.

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

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

7 Draft Decision Instrument

1. STATUTORY FUNCTIONS AND POWERS

- 1.1. This consultation and draft Decision and draft Decision Instrument is hereby made by The Commission for Communications Regulation established under section 6 of the Act (“ComReg”) for the purposes of imposing obligations, requirements, and specifications for the provision of the universal services in the State.
- 1.2. This consultation and draft Decision and draft Decision Instrument is made:
- i. Pursuant to and having regard to the functions and objectives of ComReg set out in sections 10 and 12 of the Communications Regulation Act 2002 (as amended) (“the Act”) and Regulations 12, 13 and 16 of the European Communities (Electronic) Communications Networks and Services) (Framework) Regulations 2011;
 - ii. Pursuant to the functions and powers conferred upon ComReg by Regulations 3, 7, 8, 9, and 10 of the European Communities (Electronic Communications Networks and Services) (Universal Service and Users’ Rights) Regulations 2011;
 - iii. Having regard to The European Electronic Communications Code – EECC Directive (EU) 2018/1972 (“the Code”); and Directive 2009/136/EC;
 - iv. Having pursuant to section 13 of the Act, complied with the Ministerial Policy Directions where applicable;
 - v. Having had regard to the views of interested parties, including Undertakings and the submissions they made in response to ComReg Document No. 21/51; and
 - vi. Having had regard to the analysis and reasoning set out in ComReg Document No. XX/XX, and Decision • (which shall, where the context admits or requires, be construed together with this Decision Instrument).

2. APPLICATION AND SCOPE

- 2.1. This Decision Instrument amends Section 12.1 of ComReg Decision D05/16 Universal Service Requirements Provision of access at a fixed location (AFL USO) D05/16 by substituting “30 June 2021” for “xx/xx/23”.
- 2.2. For the avoidance of doubt ComReg Decision “ComReg Response to Consultation and Decision Provision of access at a fixed location (AFL USO)” (D05/16) remains in full force and effect until xx/xx/23, unless amended by ComReg.

3. EFFECTIVE DATE, AND DURATION AND REVIEW:

- 3.1. This Decision and Decision Instrument is effective from 30/6/2021 (“the Effective Date”).

GARRETT BLANEY

**CHAIRPERSON THE COMMISSION FOR COMMUNICATIONS
REGULATION**

Made on this the **XX** day of **XX 202X**

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

NON-CONFIDENTIAL

8 Draft Regulatory Impact Assessment ("RIA")

8.1 Introduction

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

353 ComReg has liaised with DECC in relation to the transposition of the Universal Service Provisions of the Code, and ComReg understands that the definition of adequate broadband (ABB IAS) and the procedure for the imposition of affordability measures will be progressed following transposition. It is anticipated that ComReg will have a role in implementing a USO(s), if appropriate.

354 In the interim, the 2011 Universal Service and Users' Rights Regulations, S.I. 337 of 2011 made pursuant to section 3 of the European Communities Act 1972 ("the 1972 Act") remain valid and in force. We are cognisant of the need for the 2011 Regulations to be interpreted be in alignment with the Code, and other relevant national and EU legislation. In this regard, we note the requirement under the Code for Member States to ensure access to an available adequate broadband internet access service and voice communications services at a fixed location at the quality specified in their territories, including the underlying connection, at a fixed location.

355 Consideration is to be given to providing for a USO for broadband regime in the context of transposing and implementing the Code, which would include a role for ComReg in implementing a USO, if appropriate. On this basis, ComReg will liaise with DECC to seek information on the rollout of the NBP and on the completion of the committed commercial deployments, and the definition of ABB IAS following transposition.

356 These details will be used by ComReg as key inputs in the performance of its role, in respect of any potential need for a USO, where ABB IAS cannot be ensured under normal commercial circumstances or through other public policy tools.

- 357 In respect of voice at fixed location, ComReg expects that as broadband continues to roll out, affordable voice offers (standalone or in a bundle) will be made available to end users on a commercial basis. Where affordable fixed voice access and services are not provided commercially, a USO may be required.
- 358 ComReg understands that the Code requires the Member State to define adequate broadband internet access service in the context of a USO for broadband. That consideration will be addressed as required following transposition of the Code. Accordingly, it would be inappropriate for ComReg to intervene in the market at this time.
- 359 The purpose the draft RIA is to help identify whether ComReg's proposed regulatory approach is likely to have the desired impact in terms of promotion of the interests of end-users and protecting end-user welfare in respect of AFL USO. With this consultation, ComReg is seeking to fulfil its statutory objective, inter alia, to ensure that the universal service is delivered. Absent a USO, there is no guarantee that reasonable requests for AFL would be fulfilled at an affordable price.
- 360 It sets out our preliminary view of the potential impact of designating a USP(s) for the provision of AFL and the imposition on a USP(s) of the proposed elements associated with AFL USO, notably, the obligation to provide reasonable access to AFL USO services, obligation of GAP, to ensure lines are capable of FIA and control of expenditure measures.
- 361 The draft RIA helps to consider the various regulatory options available to ComReg in respect of:
- The requirement for an AFL USO (the need to designate an undertaking as USP for the provision of AFL USO following the end of the current designation) and;
 - The need for, and scope of, each of the obligations (reasonable access request, FIA, affordability, and control of expenditure) associated with any such AFL USO designation.
- 362 Pursuant to the Communications Regulation Acts 2002 to 2011, as amended, ComReg's key statutory objectives in relation to the provision of electronic communications services ("ECS") are to (i) promote competition, (ii) contribute to the development of the internal market, and (iii) promote the interests of users in Ireland, as well as within the European Union.

- 363 ComReg’s aim in conducting this draft RIA is to ensure that its proposals are appropriate, proportionate, and justified considering the analysis conducted, its objectives, and the principle of proportionality.
- 364 In selecting an appropriate regulatory approach, ComReg sets out the key policy issues and objectives below, an assessment of potential regulatory options and their respective impacts on stakeholders and competition.
- 365 ComReg’s approach to the draft RIA follows the RIA Guidelines (published in August 2007⁹³ and considers the “Better Regulation” programme⁹⁴ and international best practice. Section 13(1) of the Act of 2002 requires ComReg to comply with Ministerial Directions. In this regard, Ministerial Policy Direction 6 February 2003 requires, that, before deciding to impose regulatory obligations on undertakings, ComReg shall conduct a RIA in accordance with European and international best practice and in accordance with measures that may be adopted under the “Better Regulation” programme.
- 366 ComReg is now conducting its draft RIA having regard to the Regulations and its obligations under and Section 13(1) of the Act which requires ComReg to comply with Ministerial Policy Directions.⁹⁵

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

- 367 ComReg is reviewing the continued need, if any, for an AFL USO in the State, post 30 June 2021. In this regard, ComReg’s objective is to ensure consumers continue to have access to AFL in the future, as relevant, to ensure end-user rights are upheld.
- 368 eir is designated as the USP for AFL for the period from July 2016 to 30 June 2021. For the reasons set out in previous chapters ComReg is of the preliminary view that there will likely be a continued need for an AFL USO throughout the State, for a period of 24 months, post 30 June 2021.

⁹³ ComReg Document No. 07/56 and 07/56a.

⁹⁴ Department of the Taoiseach, “Regulating Better”, January 2004. See also “Revised RIA Guidelines: How to conduct a Regulatory Impact Analysis”, June 2009, [http://www.taoiseach.gov.ie/eng/Publications/Publications 2011/Revised RIA Guidelines June 2009.pdf](http://www.taoiseach.gov.ie/eng/Publications/Publications%2011/Revised%20RIA%20Guidelines%20June%202009.pdf).

⁹⁵ Ministerial Policy Direction made by the Minister of Communications, Marine and Natural Resources on 21 February 2003. It requires that, before deciding to impose regulatory obligations on undertakings, we must conduct a RIA in accordance with European and international best practice and otherwise in accordance with measures that may be adopted under the “Better Regulation” programme.

- 369 ComReg is of the preliminary view that it must ensure that the universal service for AFL is implemented appropriately as necessary, and that any future provision of an AFL USO needs to continue to evolve appropriately and align with end-users' changing needs and market developments.
- 370 ComReg is of the preliminary view that an AFL USO is necessary to protect end-users. There is a risk that all end-users who require access at a fixed location may not be provided with, or may not continue to be provided with, such a service, at all, or at an affordable price, absent an AFL USO, with associated obligations on the USP(s). In this respect, ComReg's aim is to ensure that all end-users and customers who require a connection at a fixed location and services over that connection can get them at an affordable price.
- 371 ComReg is concerned that, although the number of narrowband subscribers has decreased, as commercial rollouts continue and the high capacity NBP infrastructure has begun to be rolled out, there may be unacceptable short term implications for some end-users if the AFL USO is withdrawn, prior to the completion of the NBP and commercial rollout.

8.3 Step 2 - Identify and Describe the Regulatory Options

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

8.3.1 Option 1: Maintain an AFL USO Obligation

- 373 ComReg is considering the impact of maintaining an AFL USO throughout the State, post 30 June 2021. If an AFL USO is maintained, it would ensure that all end-users, regardless of their geographic location would be reasonably entitled to a connection at a fixed location, at an affordable price.
- 374 In the context of the preliminary view that an AFL USO continues to be required, ComReg is considering which undertaking(s) should be designated with the AFL USO, and the scope of each of the various components of the AFL USO, to determine whether these obligations remain necessary.
- 375 It is important to note that apart from the AFL USO, there is currently no other mechanism, programme or scheme in place to ensure that the basic telephony at a fixed location, set out in the Universal Service Regulations, is provided to everyone that requires it and cannot obtain it under normal market conditions.

- 376 As technology and competition develops, and as end users' needs evolve, it is ComReg's duty to ensure that the AFL USO continues to meet end-users' basic telephony needs, where they may not be met commercially by the market.
- 377 If it is decided that an AFL USO continues to be required, ComReg may decide to designate a single USP for the entire State. Alternatively, different operators (undertakings), or sets of operators, can be designated to provide different elements of the universal service, and/or to cover different parts of the State.
- 378 Therefore, if requiring an AFL USO the various aspects of the USO which are currently prescribed also need to be considered, namely:
- Functional Internet Access
 - Reasonableness of requests
 - Affordability including GAP
 - Control of expenditure.

8.3.1.1 Functional internet access

- 379 There are two options available to ComReg.

Option 1 – maintain the status quo

- 380 This option maintains the existing data rate of 28.8kbit/s and associated target. 94% of all lines must be capable of supporting this minimum data rate. This would mean most connections which currently are capable of FIA, continue to be capable. This approach might risk allowing the USP flexibility within the targets to replace some copper lines with FCS.

Option 2 – require the continuance of basic broadband connections

- 381 This option would 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. It would require the USP to repair any faults, but it would not require the USP to ensure there was no degradation in speed at all.

8.3.1.2 Reasonableness of requests

- 382 The scope of the USO is to provide access at a fixed location. How this is achieved is not prescribed. The principle of technological neutrality allows the USP to choose the optimum method of providing access and services. Currently the pre-existence of the USP(s) infrastructure which can provide service, the availability of alternative infrastructure, and the associated costs, are taken into consideration when assessing the reasonableness of requests.
- 383 The options considered are (i) whether to amend the current threshold levels (ii) whether to retain the obligation to provide service at a premises where there previously was a connection.

Option 1: Amend the current threshold levels

- 384 A monetary threshold may be considered as a relevant factor in determining whether a request for connection is reasonable or not. If a threshold is implemented, then it could be increased, decreased, or maintained at the current levels.

Option 1a: increase the threshold level

- 385 An increase in the threshold level could incorporate a very small number of customers who fall outside the current threshold. Given the size of this cohort (see chapter 3), the question of the proportionality of such an approach arises. End-users who need access at a fixed location are guaranteed a connection once they are willing to pay any costs over the threshold.

Option 1b: reduce the threshold level

- 386 Reducing the threshold below the current levels would result in some end-users paying more for a connection, however it could potentially reduce the net cost to the USP.

Option 2: maintain the current obligation

- 387 The current trends in data from eir as the USP, indicate that maintaining the current approach based the pre-existence of the USP(s) infrastructure which can provide service, the availability of alternative infrastructure, and the associated costs, would not be expected to result in many additional high cost connections to the network, therefore not leading to significant detriment to either industry or end-users.

8.3.1.3 Affordability including GAP

388 The Universal Service Regulations provide that we may specify special tariff options or packages which depart from those provided under normal commercial conditions to ensure that those on low incomes or with special social needs are not prevented from accessing the network. Therefore, we have the two following options available.

Option 1: Impose an obligation to provide special tariffs

389 To date ComReg have not mandated the provision of special tariffs. Under this option ComReg considers whether to impose an obligation to provide special tariff options to protect vulnerable end-users.

Option 2: Do not impose an obligation to provide special tariffs

390 We may decide not to impose additional obligations in respect of special tariff plans. The presence of a safeguard of geographical averaging of prices of the connection and basic telephone line rental, and other price offers in the retail market currently, may be sufficient to ensure affordability

391 With respect to GAP, we may maintain or remove the obligation to provide GAP.

392 These options are set out below.

Option 1: Maintain GAP obligation

393 Maintaining GAP ensures end-users have access to broadly affordable price, however it may lead to competitive distortion.

Option 2: Remove GAP obligation

394 if the GAP obligation is removed, this would allow the USP greater pricing flexibility and the ability to differentiate between end-users and areas in respect of its basic voice telephony services prices.

395 Absent a GAP obligation, it is likely that those who would be most (negatively) affected are those located in more rural or NBP areas during the rollout phase, as well as high cost customers in more urban areas. Removal of the GAP would not achieve the objective of social inclusiveness.

8.3.1.4 Control of expenditure

396 The Universal Service Regulations also provide for several measures with respect to control of expenditure. We may decide to impose obligations in this respect.

Option 1: Impose Obligations

397 We may impose obligations on the USP in respect of a Disconnection Policy and Phased Payment for connection fees and Terms and Conditions of contract. Therefore, we can amend or maintain these obligations at this time.

Option 2: Do not impose Obligations

398 We may decide not to impose obligations for some or all existing measures.

8.3.2 Option 2: Remove the AFL USO Obligation

399 ComReg is also considering the impact of not placing any obligation to provide AFL. If this approach is adopted, no operator would be obliged to provide AFL including connections to a public communications network and related components that ensure affordability and quality. There is a risk that more geographically remote, or unprofitable end-users may not be adequately served, at an affordable price.

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

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

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

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

Measure proposed	Impact on Industry		Impact on end-user	
<p>Option 1 - Maintain an AFL USO for a maximum of 24 month for the entire State</p>	Costs	Benefits	Costs	Benefits
	<p>USP may incur costs for the provision of the USO.</p> <p>USO costs will be dependent on the specific obligations proposed.</p> <p>Where: (i) a net cost of universal service is claimed by USP(s) and; (ii) an unfair burden is determined, providers of ECS may be required to contribute to a sharing mechanism to fund universal service.</p>	<p>Obligation only crystallises when an end-user requests service</p> <p>USP(s) may accrue benefits such as: (i) enhanced brand recognition, (ii) life cycle benefit (iii) ubiquity (iv) and marketing - associated within being the USDP(s)</p> <p>Universal service is technology neutral providing USP(s) greater flexibility in how obligations are met.</p>	<p>Mitigates the risk of differential pricing - although proportionally AFL customers may be paying more for standalone services than those purchasing bundled services</p>	<p>Protects the existing cohort of AFL customers - continuity of service.</p> <p>Ensures the ability to obtain a new connection (reasonable request) for new consumers - ensure no social exclusion on the basis of access.</p> <p>Provides a level of protection against price increases (GAP)</p> <p>This ensures continuity of provision of the universal services and certainty at this point in time. End-users may benefit in terms of QoS, connection charges, availability of connections capable of FIA etc., depending on the specific obligations imposed</p>

	Measure proposed	Impact on Industry		Impact on end-user	
		Costs	Benefits	Costs	Benefits
FIA	<p>Option 1: Maintain current 28.8kbit/s rate</p>	<p>USP may not always be able to deploy the lowest cost technology due to FIA targets.</p> <p>There may be a net cost for the provision of uneconomic connections.</p>	<p>Further investment in broadband is not required - no additional financial impact on the net cost claimed</p> <p>Minimum data requirement does not preclude USP from offering higher data rates.</p>	<p>Some end-users may not have a line capable of FIA. (28.8 kbit/s is unsuitable for current internet usage)</p>	<p>End-users who currently have and use a line capable of FIA will not lose their ability to access the internet pending the availability of higher speed services.</p> <p>Mitigates the risk that some end users may lose basic access to internet if existing copper connections were to be replaced with FCS.</p>
	<p>Option 2: Require the continuance of basic broadband connections</p>	<p>Some level of network upgrades/extensions required in certain instances.</p> <p>Interim/temporary solutions may be required, while alternative networks are being rollout out.</p>	<p>Potential of share the access costs between two services (FIA/ voice only services)</p>	<p>Small potential increase in charges where there are proven increased costs incurred by the USP.</p>	<p>Mitigates the risk that some end-users may lose basic access if existing copper connections were to be replaced with FCS.</p> <p>Protects existing users (dial up).</p>

NON-CC

	Measure proposed	Impact on Industry		Impact on end-user	
		Costs	Benefits	Costs	Benefits
Reasonable access thresholds	<p>Option 1: Increase the threshold levels</p>	<p>May increase the cost to connect a universal service connection to the USP. May increase the net cost of the USO.</p>	<p>Positive network externalities - End-users who have no alternatives can connect to the network.</p>	<p>The cost of connection may decrease for end-users. May make connection to the network more affordable.</p>	<p>Those end users for which there is no alternative would still be reasonably guaranteed a connection, possibly subject to a higher cost threshold. Majority of end-users can access a network at standard connection charges which is affordable and has sufficient quality, mitigating social exclusion.</p>
	<p>Option 2: Decrease the threshold levels</p>	<p>May decrease the cost to connect a universal service connection to the USP. May decrease the net cost of the USO.</p>	<p>Lessens the impact of the potential cost of meeting any USO obligations.</p>	<p>The cost of connection may increase for end-users. May make connection to the network less affordable for end-users.</p>	<p>Those end users for which there is no alternative would still be reasonably guaranteed a connection, possibly subject to a lower cost threshold. Some end-users can access a network at standard connection charges which is affordable and has sufficient quality, which may not fully mitigate the risk of social exclusion.</p>
	<p>Option 3: Maintain the current threshold levels</p>	<p>Retains the status quo.</p>	<p>Well understood by service providers and consumers. Evidence shows it is effective and proportionate.</p>	<p>The cost of connection is likely to remain the for end-users.</p>	<p>Those end users for which there is no alternative would still be reasonably guaranteed a connection, possibly subject to a cost threshold. Majority of end-users can access a network at standard connection charges which is affordable and has sufficient quality, mitigating social exclusion.</p>

NON-C

	Measure proposed	Impact on Industry		Impact on end-user	
		Costs	Benefits	Costs	Benefits
Affordability including GAP	Option 1: Introduce special tariffs	USP(s) may claim net cost due to the provision of special Tariffs All undertakings required to contribute where an unfair burden is found.			A cohort of consumers may benefit from the availability of reduced tariffs. Potential to increase social inclusion.
	Option 2: Retain the status quo - no special tariff obligations		USP and other providers can offer tariff schemes which are suitable for vulnerable consumers or low users.		Consumers continue to be able to avail of commercially offered tariff schemes.
	Option 1: Maintain GAP		Relates to a connection and PATS service, services only where not in a bundle. Overall net welfare benefit, benefiting competition to the benefit of consumers.	Lower cost urban end users may pay prices higher than those which may be applicable if the obligation was removed	Lessens the risk of price increase for connection and line rental; in particular for high cost consumers in rural areas and areas where there is limited competition for voice access and service. Affordable universal voice service ensures social inclusion. Maintaining GAP safeguards competition while protecting end-user welfare - thus will result in an overall net welfare benefit, benefiting both competition and end-users.
	Option 2: Remove GAP	Potentially reduces the costs (facilitates differential pricing by areas etc).	This would allow the USP greater pricing flexibility and the ability to differentiate between end users and areas in respect of its basic voice telephony services prices. The USP would have ability and incentive to set lower prices in more competitive (primarily urban) areas to meet competition from alternative operators.	Risk that this would cause an adverse effect, rural areas may have to pay higher line rental fees when using a telephone than those in densely populated areas . End-users would not be protected against a risk of unjustified line rental and connection price increases, absent RPC.	Urban end-users may benefit from reduced prices.

	Measure proposed	Impact on Industry		Impact on end-user	
		Costs	Benefits	Costs	Benefits
Control of expenditure	Option 1: Maintain obligations	May increase the cost to connect a universal service connection to the USP. May increase the net cost of the USO.	Positive network externalities - End-users who have no alternatives can connect to the network.	The cost of connection may decrease for end-users. May make connection to the network more affordable.	Those end users for which there is no alternative would still be reasonably guaranteed a connection, possibly subject to a higher cost threshold. Majority of end-users can access a network at standard connection charges which is affordable and has sufficient quality, mitigating social exclusion.
	Option 2: Decrease the threshold levels	May decrease the cost to connect a universal service connection to the USP. May decrease the net cost of the USO.	Lessens the impact of the potential cost of meeting any USO obligations.	The cost of connection may increase for end users. May make connection to the network less affordable for end-users.	Those end users for which there is no alternative would still be reasonably guaranteed a connection, possibly subject to a lower cost threshold. Some end-users can access a network at standard connection charges which is affordable and has sufficient quality, which may not fully mitigate the risk of social exclusion.
	Option 3: Maintain the current threshold levels	Retains the status quo.	Well understood by service providers and consumers. Evidence shows it is effective and proportionate.	The cost of connection is likely to remain the for end-users.	Those end users for which there is no alternative would still be reasonably guaranteed a connection, possibly subject to a cost threshold. Majority of end-users can access a network at standard connection charges which is affordable and has sufficient quality, mitigating social exclusion.

NON-C

Measure proposed	Impact on Industry		Impact on end-user	
	Costs	Benefits	Costs	Benefits
<p>Option 2: Remove AFL USO post 31 June 2021</p>	<p>Possible reduction in the number of customers connected to the network.</p> <p>Possible higher cost to serve- per customer.</p> <p>No possible contribution to the costs of serving unprofitable customers (profitability unknown at point of connecton to the network)</p>	<p>No costs incurred associated with the provision of the USO.</p> <p>No net cost claim.</p> <p>Commercial freedom re customers and retail pricing.</p> <p>Retain only profitable customers.</p>	<p>Basic telephony service may not be delivered to all end-users by any undertaking.</p> <p>Basic telephony service may not be delivered and an affordable price or acceptable quality.</p> <p>End-users may suffer, for example, through less favourable terms and conditions and/or service levels, due to the absence of a universal service obligation and competition.</p> <p>Some end-users may not be able to get a connection to the network and some existing connections and services may be discontinued.</p> <p>Availability, affordability and quality of basic telephony service may deteriorate for end-users</p>	<p>Competition in urban areas may intensify</p> <p>Possibility of differential pricing resulting in cheaper prices in more competitive areas</p>

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

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

404 The first consideration is whether there is a need for an AFL USO, post 30 June 2021.

405 Market trends (chapter 3) show that a decreasing cohort of end-users continue to rely on AFL USO. However, absent an AFL USO, ComReg is of the preliminary view that there is a high risk this cohort of end-users might:

- not be connected to the network pending rollout of new networks; or
- not remain connected to the network; and that
- there is a risk that services would become increasingly unaffordable and/or of decreasing quality

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

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

408 The committed investment by commercial enterprises coupled with intervention by the State via the National Broadband Plan⁹⁶ should, once the NBP Intervention is completed, ensure that high speed broadband and voice services are delivered to all premises in Ireland. In this context the need for a Universal Service Obligation (USO) to provide an adequate broadband connection and service will be assessed following transposition. ComReg anticipates however that these commercial and State deployments will not be completed within the next 12 – 24 months' time.

409 Accordingly, ComReg is of the preliminary view that it cannot be assured that, absent an AFL USO, services would be delivered commercially (now and in the future) at an affordable price and appropriate quality, throughout the State. Accordingly, removing AFL USO (Option 2) at this time would appear to be premature. ComReg is therefore of the preliminary view that there is a continued need for an AFL USO throughout the State, post 30 June 2021.

⁹⁶ in those parts of the country where private companies have no plans to invest.

410 Having reached the preliminary view that there is a need for an AFL USO, post 30 June 2021, the next consideration is the relevant AFL elements, the most appropriate form they might take, and identification of the best option:

- reasonableness of requests
- functional internet access (FIA)
- affordability
- control of expenditure; and
- terms and conditions of service.

the next elements to be addressed are the form that any AFL USO might take.

411 ComReg recognises that the number of standalone fixed voice end-users continues to decline, as end-users migrate to bundled product offerings. However, there remains a cohort of end-users for whom AFL remains relevant. Chapter 3 explored the composition of this cohort of end-users and whether it was predominantly composed of existing customers or new end-users. This identified that the vast majority (circa [X%]) of this cohort are existing customers with an ever-decreasing number of new connection requests. The data also demonstrated that:

- Many of the new connection requests are being met by the current USP using existing infrastructure
- The current threshold levels are working:
 - end-users are not being denied service based on cost thresholds
 - majority of new connections are provided at a cost of less than €1,000 to the usp
 - reasonable access request and associated threshold levels are working and continue to be appropriate to meet the current and likely future reasonable access requests.

412 The USO is only required to provide a new connection in cases where there are no suitable alternative infrastructures and services present. This should prevent inefficient infrastructure duplication, and therefore, mean lower costs to provide AFL USO.

413 Based on the evidence, ComReg is of the preliminary view that the current reasonableness of requests approach continues to be appropriate in is achieving what originally intended and that there is no objective basis upon which to amend or alter the current reasonableness of requests and associated thresholds.

- .
- 414 ComReg's Decision D05/16 maintained the prevailing status quo in respect of FIA, as the NBP tender process had not completed at that time. ComReg did not specify what functional internet access is. ComReg decided to specify as a requirement on the USP, that the data rate must not be less than 28.8 kbit/s⁹⁷, as a reasonable minimum data rate. It also set an associated target that 94% of installed telephone lines must be capable of supporting a minimum data rate of 28.8kbits/s. ComReg emphasised that this is a minimum data rate and that it does not preclude eir from offering data rates that are faster than this.
- 415 ComReg acknowledges that there has been significant progress and that:
- end-users can obtain functional internet access (both narrowband and broadband) nationally in areas that are served commercially, or
 - via the national broadband plan (broadband) on a phased basis in line with the rollout, and within with NBP area once completed.
- 416 Furthermore, ComReg is cognisant that upon transposition of the EECC Directive (EU) 2018/1972 the Member State (Ireland) shall ensure that all consumers and other relevant end-users have access at an affordable price to an available adequate broadband internet access service.
- 417 ComReg has liaised with DECC in relation to the transposition of the Universal Service Provisions of the Code, and ComReg understands that the definition of adequate broadband internet access service and the procedure for the imposition of affordability measures will be progressed following transposition. It is anticipated that ComReg will have a role in implementing a USO(s), if appropriate.
- 418 In the interim, the 2011 Universal Service and Users' Rights Regulations, SI 337 of 2011 made pursuant to section 3 of the European Communities Act 1972 ("the 1972 Act") remain valid and in force. We are cognisant of the need for the 2011 Regulations to be interpreted be in alignment with the Code, and other relevant national and EU legislation. In this regard, we note the requirement under the Code for Member States to ensure access to an available adequate broadband internet access service and voice communications services at a fixed location at the quality specified in their territories, including the underlying connection, at a fixed location.
-

- 419 As set out above, the Code requires Member States to ensure that ABB IAS is available through the provision of a USO where this need cannot be ensured under normal commercial circumstances or other potential public policy tools.
- 420 Separately, the National Broadband Plan (NBP) is the government's initiative to deliver high speed broadband services to all premises in Ireland. This will be delivered through investment by commercial enterprises coupled with intervention by the State in those parts of the country where private companies have no plans to invest.
- 421 Upon completion of rollout of the NBP State intervention it is anticipated that all premises in "the Intervention Area" will have access to high speed broadband. This coupled with commercial roll out by operators is expected to reach the overwhelming majority of premises. In this context the need for a Universal Service Obligation (USO) to provide an adequate broadband connection and service will be assessed following transposition.
- 422 Consideration is to be given to providing for a USO for broadband regime in the context of transposing and implementing the Code, which would include a role for ComReg in implementing a USO, if appropriate. On this basis, ComReg will liaise with DECC to seek information on the rollout of the NBP and on the completion of the committed commercial deployments, and the definition of ABB IAS following transposition.
- 423 These details will be used by ComReg as key inputs in the performance of its role, in respect of any potential need for a USO, where ABB IAS cannot be ensured under normal commercial circumstances or through other public policy tools.
- 424 In respect of voice at fixed location, ComReg expects that as broadband continues to roll out, affordable voice offers (standalone or in a bundle) will be made available to end users on a commercial basis. Where affordable fixed voice access and services are not provided commercially, a USO may be required.
- 425 Accordingly, ComReg is of the preliminary view that:
- the retention of the current minimum data rate of not less than 28.8kbit/s is the most appropriate option considering the aforementioned; and
 - that it remains inappropriate currently to use USO FIA requirements as a mechanism to guarantee access to broadband connections.
- 426 This would ensure that ComReg's statutory obligations are met without inhibiting the commercial freedom of operators (including the USP) to offer data rates above 28.8kbit/s.

- 427 ComReg acknowledge that, a universal service could play a role in the future in ensuring an available adequate broadband internet access service in areas which remain unserved by commercial operators and which are not covered by NBP State intervention. ComReg has considered whether retaining the GAP obligation would create market distortions and whether the balance of these risks requires that the GAP obligation be maintained.
- 428 This becomes increasingly important, absent of a retail price cap (discussed in Chapter 4 of the document).
- 429 ComReg is of the preliminary view that maintaining GAP will result in an overall net welfare benefit, benefiting both competition and end-users. This proposed obligation relates to the designated services in accordance with Regulation 3, namely, a connection and PATS service (For the avoidance of doubt, this does not apply to bundled products).
- 430 Accordingly, ComReg is of the preliminary view that geographical average should be retained to ensure that the standalone fixed voice cohort of customers are protected from price increases where they may have limited choice of service providers and who have not yet chosen to migrate to a bundle. These customers are unlikely to have an alternative to easily switch to should eir increase the retail line rental price or fixed telephony prices in general.
- 431 As set out at chapter 4 all ECS service providers already have an obligation to have and publish a Code of Practice for Complaint Handling⁹⁸ which includes its disconnection policy.
- 432 Accordingly, ComReg is of the preliminary view that the inclusion of this requirement, post 30 June 2021 would present no additional obligations, where a universal service obligation and designation are imposed.
- 433 Many service providers offer phased payment of connection fees on a commercial basis.
- 434 In recent years eir, as the USP, has implemented a series of connection promotion whereby connection charges were set to €0. Therefore, no end-user needed to rely on the phased payment plan. This provides end-users with a tangible benefit where seeing connection to the network and has low implementation costs for the USP (where (i) connection fees are set to €0 and where (ii) the vast majority (circa [x ■ x] %) of new connections⁹⁹ are in-situ connections.

⁹⁸ Electronic Communications Complaints Handling Code of Practice - Response to Consultation and Decision, Decision D04/17; Document No.17/62.

⁹⁹ Period 2018- 2020.

- 435 Absence of either an AFL USO or the obligation on service providers to publish a Code of Practice for Complaint Handling there is a risk that a phased payment of connection fees, might not be maintained.
- 436 ComReg is of the preliminary view that the existing obligation should be maintained, given its importance for end-users (helping to prevent social exclusion) and low implementation costs for the USP.
- 437 The European Electronic Communications Code (EECC Directive (EU) 2018/1972) (“The Code”) entered into force on 20th December 2018, with a transposition deadline of 21 December 2020. The Department of Environment, Climate and Communications (“DECC”) is responsible for the transposition of the Code into national law, and this is ongoing. DECC has also signalled its intention to issue a public consultation on the transposition text, which will transpose the EECC Directive (EU) 2018/1972 into national law.
- 438 In the interim, the 2011 Universal Service and Users’ Rights Regulations, SI 337 of 2011 made pursuant to section 3 of the European Communities Act 1972 (“the 1972 Act”) remain valid and in force. We are cognisant of the need for the 2011 Regulations to be interpreted be in alignment with the Code, and other relevant national and EU legislation.
- 439 ComReg is of the preliminary view that it would be inappropriate for ComReg to intervene in the market as this time.

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

9 Next Steps

- 440 The timeframe for receipt of submissions to this consultation paper is 5pm on 24 June 2021 during which time ComReg welcomes written responses on any of the issues raised in this consultation document. It is requested that comments within submissions reference the relevant question numbers from this consultation document.
- 441 To promote further openness and transparency, ComReg will publish all respondents' submissions to this consultation, subject to the provisions of ComReg's Guidelines on the Treatment of Confidential Information – ComReg 05/24.
- 442 Respondents are requested to clearly identify confidential material and provide a confidential and non-confidential version of its responses.
- 443 Respondents are also requested to provide any electronic submissions in an unprotected format so that they can be appended into ComReg's submissions document for electronic publication.

NON-CONFIDENTIAL

10 Annex: 1 Legal Basis

Regulation 3 of the European Communities (Electronic Communications Network and Services) (Universal Service and Users' Rights) Regulations 2011 ("USO Regulations") states:

3. (1) A designated undertaking shall satisfy any reasonable request to provide at a fixed location connection to a public communications network.
 - (2) A designated undertaking shall satisfy any reasonable request for the provision of a publicly available telephone service over the network connection referred to in paragraph (1) that allows for originating and receiving of national and international calls.
 - (3) A designated undertaking that provides a connection to the public communications network shall ensure that the connection is capable of supporting— (a) voice, (b) facsimile, and (c) data communications at data rates that are sufficient to permit functional Internet access, having regard to the prevailing technologies used by the majority of subscribers and to technological feasibility.
 - (4) Where a designated undertaking denies any reasonable request made under paragraph (1) or (2) it shall inform the person making the request of his or her right to pursue the dispute resolution procedures referred to in Regulation 27.
 - (5) The Regulator may, with the consent of the Minister, for the purpose of the services referred to in this Regulation, specify requirements to be complied with by a designated undertaking in relation to— (a) functional Internet access, having regard to prevailing technologies used by the majority of subscribers in the State and to technological feasibility, (b) the reasonableness of requests for connection at a fixed location to a public communications network under paragraph (1) and the provision of a publicly available telephone service that allows for the originating and receiving of national and international calls referred to in paragraph (2), or (c) the terms and conditions upon which connection at a fixed location to a public communications network referred to in paragraph (1) and the provision of a publicly available telephone service over such a network connection that allows for the originating and receiving of national and international calls referred to in paragraph (2) shall be provided.
 - (6) A designated undertaking that fails to comply with the requirements of paragraph (1), (2), (3) or (4) commits an offence.

Regulation 7 of the European Communities (Electronic Communications Network and Services) (Universal Service and Users' Rights) Regulations 2011 ("USO Regulations") states:

7. (1) 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.
- (2) The Regulator may designate different undertakings or sets of undertakings to comply with one or more of the obligations, requirements or terms or conditions referred to in paragraph (1) or to cover different parts of the State.
- (3) 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 designation methods adopted shall ensure that the obligations referred to in paragraph (1) are provided in a cost effective manner and may be used as a means of determining the net cost of the universal service obligation in accordance with Regulation 11.
- (4) Where an undertaking designated in accordance with paragraph (1) intends to dispose of a substantial part or all of its local access network assets to a separate legal entity under different ownership, it shall notify the Regulator at the time of the decision to dispose or 6 months prior to the transaction whichever is the earlier date. Such notification shall include details as to the effect of the intended transaction on the provision of access at a fixed location under Regulation 3(1) and of telephone services under Regulation 3(2). The Regulator may impose, amend or withdraw specific obligations on the separate legal entity.

Regulation 8 of the European Communities (Electronic Communications Network and Services) (Universal Service and Users' Rights) Regulations 2011 ("USO Regulations") states

- (1) The Regulator shall monitor the evolution and level of retail tariffs of the services identified in Regulations 3, 4, 5 and 6, in particular in relation to national consumer prices and income, as either provided by designated undertakings or available on the market if no undertakings are designated in relation to those services.
- (2) The Regulator may, in light of national conditions, specify, with the consent of the Minister, requirements to be complied with by a designated undertaking for the purpose of ensuring that such undertaking provides to consumers tariff options or packages which depart from those provided under normal commercial conditions, in particular, to ensure that those on low incomes or with special social needs are not prevented from accessing the network referred to in Regulation 3(1) or from using the services identified in Regulations 3(2), 4, 5 and 6 as falling under the universal service obligations and provided by designated undertakings.

- (3) The Regulator may, with the consent of the Minister, require an undertaking designated by the Regulator under Regulation 7 to apply common tariffs including geographical averaging throughout the State, in the light of national conditions.
- (4) The conditions of any scheme to provide special tariff options, common tariffs, including geographical averaging, shall be fully transparent and shall be published and applied in accordance with the principle of non-discrimination. The Regulator may require, where it considers a scheme does not comply with this paragraph, that the scheme be modified or withdrawn.
- (5) A designated undertaking that fails to comply with a requirement imposed under paragraph (2), (3) or (4) commits an offence.
- (6) In proceedings for an offence under paragraph (5) it is a defence to establish that—
 - (a) reasonable steps were taken to comply with the relevant requirement, or
 - (b) it was not possible to comply with the relevant requirement.

Regulation 9 of the European Communities (Electronic Communications Network and Services) (Universal Service and Users' Rights) Regulations 2011 ("USO Regulations") states

- (1) A designated undertaking shall, where it provides facilities and services additional to those referred to in Regulations 3, 4, 5, 6 and 8(2), establish terms and conditions for the provision of such additional facilities and services in such a way that the subscriber is not obliged to pay for facilities or services which are not necessary or not required for the service requested by him or her.
- (2) A designated undertaking shall, for the purpose of ensuring that subscribers can monitor and control expenditure and avoid unwarranted disconnection of service, provide the specific facilities and services set out in Schedule 1, Part A.
- (3) The Regulator may waive any requirement imposed under paragraph (2) in relation to all or any part of the State if it is satisfied that the relevant facility or service is widely available in, or in any part of, the State.
- (4) A designated undertaking that fails to comply with the requirements of paragraph (1) or (2) commits an offence
- (5) In proceedings for an offence under paragraph (4) it is a defence to establish that—
 - (a) reasonable steps were taken to comply with the relevant requirement,
or
 - (b) it was not possible to comply with the relevant requirement.

(6)

11 Annex: 2 The Code

PART III

SERVICES

TITLE I

UNIVERSAL SERVICE OBLIGATIONS

Article 84

Affordable universal service

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

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

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

Article 85

Provision of affordable universal service

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

undertaking designated in accordance with this paragraph, and that their number remains available to them for an adequate period and unwarranted disconnection of the service is avoided.

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

Article 86

Availability of universal service

1. Where a Member State has established, taking into account the results, where available, of the geographical survey conducted in accordance with Article 22(1), and any additional evidence where necessary, that the availability at a fixed location of an adequate broadband internet access service as defined in accordance with Article 84(3) and of voice communications services cannot be ensured under normal commercial circumstances or through other potential public policy tools in its national territory or different parts thereof, it may impose appropriate universal service obligations to meet all reasonable requests by end-users for accessing those services in the relevant parts of its territory.

2. Member States shall determine the most efficient and appropriate approach for ensuring the availability at a fixed location of an adequate broadband internet access service as defined in accordance with Article 84(3) and of voice communications services, whilst respecting the principles of objectivity, transparency, non-discrimination and proportionality. Member States shall seek to minimise market distortions, in particular the provision of services at prices or subject to other terms and conditions which depart from normal commercial conditions, whilst safeguarding the public interest.
3. In particular, where Member States decide to impose obligations to ensure for end-users the availability at a fixed location of an adequate broadband internet access service as defined in accordance with Article 84(3) and of voice communications services, they may designate one or more undertakings to guarantee such availability throughout the national territory. Member States may designate different undertakings or sets of undertakings to provide an adequate broadband internet access service and voice communications services at a fixed location or to cover different parts of the national territory.
4. When Member States designate undertakings in part or all of the national territory to ensure availability of services in accordance with paragraph 3 of this Article, they shall use an efficient, objective, transparent and non-discriminatory designation mechanism, whereby no undertaking is a priori excluded from being designated. Such designation methods shall ensure that an adequate broadband internet access service and voice communications services at a fixed location are provided in a cost-effective manner and may be used as a means of determining the net cost of the universal service obligations in accordance with Article 89
5. When an undertaking designated in accordance with paragraph 3 of this Article intends to dispose of a substantial part or all of its local access network assets to a separate legal entity under different ownership, it shall inform the national regulatory or other competent authority in advance and in a timely manner, in order to allow that authority to assess the effect of the intended transaction on the provision at a fixed location of an adequate broadband internet access service as defined in accordance with Article 84(3) and of voice communications services. The national regulatory or other competent authority may impose, amend or withdraw specific obligations in accordance with Article 13(2).

Article 87

Status of the existing universal service

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

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

Article 88

Control of expenditure

1. Member States shall ensure that, in providing facilities and services additional to those referred to in Article 84, providers of an adequate broadband internet access service and of voice communications services in accordance with Articles 84 to 87 establish terms and conditions in such a way that the end-user is not obliged to pay for facilities or services which are not necessary or not required for the service requested.
2. Member States shall ensure that the providers of an adequate broadband internet access service and of voice communications services referred to in Article 84 that provide services pursuant to Article 85 offer the specific facilities and services set out in Part A of Annex VI as applicable, in order that consumers can monitor and control expenditure. Member States shall ensure that such providers put in place a system to avoid unwarranted disconnection of voice communications services or of an adequate broadband internet access service with regard to consumers as referred to in Article 85, including an appropriate mechanism to check continued interest in using the service.

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

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

Article 89

Cost of universal service obligations

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

For that purpose, national regulatory authorities shall:

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

Article 90

Financing of universal service obligations

1. Where, on the basis of the net cost calculation referred to in Article 89, national regulatory authorities find that a provider is subject to an unfair burden, Member States shall, upon request from the provider concerned, decide to do one or both of the following:
 - a) introduce a mechanism to compensate that provider for the determined net costs under transparent conditions from public funds;

- b) share the net cost of universal service obligations between providers of electronic communications networks and services.
2. Where the net cost is shared in accordance with point (b) of paragraph 1 of this Article, Member States shall establish a sharing mechanism administered by the national regulatory authority or a body independent from the beneficiaries under the supervision of the national regulatory authority. Only the net cost, as determined in accordance with Article 89, of the obligations laid down in Articles 84 to 87 may be financed.

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

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

NON-CONFIDENTIAL

12 Annex: 3 Decision Instrument D05/16

1. STATUTORY FUNCTIONS AND POWERS

1.1. This Decision and Decision Instrument is hereby made by ComReg for the purposes of imposing obligations, requirements, and specifications for the provision of the universal services in the State.

1.2. This Decision and Decision Instrument is made:

- i. Pursuant to and having regard to the functions and objectives of ComReg set out in sections 10 and 12 of the Act and Regulations 12, 13 and 16 of the Framework Regulations;
- ii. Pursuant to the functions and powers conferred upon ComReg by Regulations 3, 7, 8, 9, and 10 of the Universal Service Regulations;
- iii. Having regard to Directive 2002/21/EC, Directive 2002/22/EC, and Directive 2009/136/EC;
- iv. Having pursuant to section 13 of the Act, complied with the Ministerial Policy Directions where applicable;
- v. Having had regard to the views of interested parties, including Undertakings and the submissions they made in response to ComReg Document No. 14/48, ComReg Document No. 15/89, ComReg Document No. 15/124; and ComReg Document No. 16/ 31; and
- vi. Having had regard to the analysis and reasoning set out in ComReg Document No. 15/89, ComReg Document No. 16/ 31, and Decision • (which shall, where the context admits or requires, be construed together with this Decision Instrument).

2. DEFINITIONS AND INTERPRETATION

2.1. In this Decision Instrument, unless the context otherwise admits or requires, the following terms shall have the following meanings:

“**Act**” means the Communications Regulation Act 2002 (as amended);

“**AFL**” means the connection and services referred to in Regulation 3 (1) - (3) of the Universal Service Regulations;

“**Alternative Infrastructure**” means the network of an Undertaking, other than the fixed network of the USP, which at the time a request is made by an

End-User to the USP for a Connection and/or PATS, is able to provide an Equivalent Service to the End-User;

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

“**Connection**” means a connection within the meaning of Regulation 3 (1) of the Universal Service Regulations, at a primary location or residence. A Connection includes a New Connection and/or an Existing Connection as the context admits or requires;

“**Decision Instrument**” means this decision instrument which is made pursuant to *inter alia* Regulations 3, 7, 8, 9, and 10 of the Universal Service Regulations;

“**Department**” means the Department for Communications, Climate Action and Environment;

“**Directive 2002/21/EC**” means Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) (as amended);

“**Directive 2002/22/EC**” means Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive) (as amended);

“**Directive 2009/136/EC**” means 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, Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector and Regulation (EC) No 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws;

“**Durable Medium**” means any medium (including paper, or e-mail or audio recording) that enables a person to store information addressed personally to them, in a way accessible for future reference, for a period of time adequate for the purposes of the information, and which enables the reproduction of the stored information in unaltered form;

“**ECN**” means electronic communications network, which has the same meaning as it has in Regulation 2 of the Framework Regulations;

“Effective Date” means the date specified in Section 12.1 of this Decision Instrument;

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

“End-User” has the same meaning as it has in Regulation 2 of the Framework Regulations;

“End User Premises” means the End-User’s primary location or residence;

“Equivalent Service” means a Connection and a standalone PATS which is equivalent to that prevailing for AFL provided by the USP, with respect to quality of service, Minimum Indoor Availability, and affordability;

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

“FIA” means functional internet access as referred to in Regulation 3 (3) (c) of the Universal Service Regulations;

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

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

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

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

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

“New Connection” means a Connection at any primary location or residence

that has never been connected to the PCN (fixed);

“**PATS**” means a publicly available telephone service which has the same meaning as it has in Regulation 2 of the Universal Service Regulations;

“**PCN**” means public communications network, which is has in Regulation 2 of the Framework Regulations;

“**State**” means Ireland;

“**Undertaking**” has the same meaning as it has in Regulation 2 of the Framework Regulations;

“**Universal Service Regulations**” means the European Communities (Electronic Communications Networks and Services) (Universal Service and Users’ Rights) Regulations 2011; and

“**USP**” means the Undertaking, designated by ComReg pursuant to Regulation 7 of the Universal Service Regulations and this Decision Instrument. The USP, for the purposes of this Decision Instrument and the Universal Service Regulations, is specified in Section 4;

- 1.1 References to “Decision Instrument”, “Schedule”, “Section”, and “Decision” mean respectively: references to this Decision Instrument, a Schedule or Section of this Decision Instrument, and ComReg Decision 05/16.
- 1.2 References to European Union legislation or to Irish primary or secondary legislation shall be construed as references to that legislation as amended from time to time.
- 1.3 Other terms, words, or phrases used in this Decision Instrument shall have the same meaning as they have in the Framework Regulations and the Universal Service Regulations, unless the context admits or requires.
- 1.4 Words in the singular form shall be construed to include the plural and vice versa, unless the context otherwise admits or requires.
- 1.5 Examples shall not be construed to limit, expressly or by implication, the matters they illustrate.

2. APPLICATION AND SCOPE

- 2.1 This Decision Instrument designates the USP(s) specified in Section 4 from the Effective Date, for the purpose of complying with the obligations in this Decision Instrument.

2.2 This Decision Instrument is legally binding upon and legally enforceable against the USP from the Effective Date, subject to Section 12.

3. THE USP AND GEOGRAPHICAL SCOPE

3.1 Eir is hereby designated as the USP for the purpose of complying with the obligations in this Decision Instrument.

3.2 The geographical scope of the obligations imposed on the USP by this Decision Instrument is the entire State.

4. CONNECTIONS, PATS, AND REASONABLENESS OF REQUESTS

CONNECTIONS

4.1 The USP shall satisfy any reasonable request (as described in this Section 5) by an End-User for a Connection at the charge(s) published by the USP.

PATS

4.2 The USP shall satisfy any reasonable request (as described in this Section 5) by an End-User for a standalone PATS that allows for originating and receiving of national and international calls, at the charge(s) published by the USP, over the connection to the public communications network referred to paragraph 5.1.

REASONABLENESS OF REQUESTS

Existing Connections and/or PATS

4.3 All requests for Existing Connections and /or PATS to be provided over Existing Connections are reasonable and the USP shall continue to satisfy them.

New Connections and/or PATS

Requests for New Connections and/or PATS where cost will not exceed €1,000

4.4 A request by an End-User for a New Connection and/or PATS at a Fixed Location is reasonable and the USP shall satisfy it, if the USP estimates reasonably that the cost of satisfying it will not exceed €1,000 (excluding V.A.T.).

Requests for New Connections and/or PATS where there is Alternative Infrastructure

- 4.5 A request by an End-User for a New Connection and/or PATS at a Fixed Location is not reasonable, and the USP need not satisfy it, if there is Alternative Infrastructure serving the End-User premises, and if the USP estimates reasonably that the cost of satisfying the request will exceed €1,000 (excluding V.A.T.), save for the provisions of 5.6.
- 4.6 If the Alternative Infrastructure is a mobile network and the End-User communicates their opinion to the USP in a Durable Medium, that it does not, or will not provide an Equivalent Service, then the following shall apply:
- i. the USP shall notify ComReg in writing, no later than two weeks after the USP has received the said communication from the End-User; and
 - ii. ComReg will adjudicate as soon as possible on whether or not the request for a Connection and/or PATS is reasonable, having regard to the all of the relevant circumstances, the views of the End-User and the USP and the provisions of this Decision Instrument, in particular this Section 5.
 - iii. If the End-User and the USP have agreed that the Alternative Infrastructure proposed by the USP can and will provide an Equivalent Service, and the End-User requests a different technology, which is technically feasible, to satisfy their request for a Connection and/or PATS, that request is reasonable and the USP shall satisfy it, if the End-User has agreed to pay the incremental costs for the different technology

Requests for New Connections where there is no Alternative Infrastructure

- 4.7 If at the time of the request by an End-User to the USP for a New Connection and/or PATS there is:
- i. no Alternative Infrastructure serving the End-User Premises; and
 - ii. the USP estimates reasonably that the cost of satisfying it will not exceed €7,000 (excluding V.A.T.)
- that request is reasonable and the USP shall satisfy it.
- 4.8 If at the time of the request by an End-User to the USP for a New Connection and/or PATS there is:
- i. no Alternative Infrastructure serving the End-User Premises; and
 - ii. the USP estimates reasonably that the cost of satisfying it will exceed €7,000 (excluding V.A.T.); and

- iii. the End-User has agreed to pay the costs that exceed €7,000 (inclusive of V.A.T.)

that request is reasonable and the USP shall satisfy it.

Records of Connections and/or PATS

4.9 The USP shall maintain records in a written form, of all requests made to it by End-Users for Connections and/or PATS, for **2 years** from the date that the request was first made. These records shall contain the following information:

- i. the name of the End-User;
- ii. the address and Eircode of the End-User;
- iii. the date of the End-User's request;
- iv. what the End-User requested;
- v. the USP's reasons as to how it has complied with Section 5; and
- vi. the USP's reasons as to whether or not (and how) a Connection or PATS which uses wireless technology ensures Minimum Indoor Availability.

Processes

4.10 The USP shall, no later than **2 months** from the Effective Date, submit to ComReg a draft written statement setting out the USP's proposals in relation to the following (the "Draft Process Statement"):

- i. the USP's breakdown of the costs of, and suitability of, the alternative technologies (including the optimal cost technology available) chosen by the USP to satisfy reasonable requests for AFL by End-Users; having regard to the USP's quality of service targets specified in ComReg Decision D02/08;
- ii. the USP's reasons for why a particular alternative technology was chosen by the USP to satisfy reasonable requests for AFL by End-Users;
- iii. the creation and maintenance by the USP of written records in relation to the matters referred to in (i), (ii), and (iii) ;
- iv. adequate information on works proposed by the USP to satisfy requests by End-Users for AFL (which information shall be provided in writing to End-Users);
- v. the creation and maintenance by the USP of written records to evidence that any alternative technology chosen by the USP to satisfy reasonable requests for AFL by End-Users use of the Minimum Indoor Availability

and that the End-User has agreed to the alternative technology chosen by the USP;

- vi. the creation and maintenance by the USP of written records containing details of the Alternative Infrastructure for the purposes of Section 5 and the End-User's agreement that the Alternative Infrastructure will satisfy their request for the provision of AFL by the USP;
 - vii. the creation and maintenance by the USP of written records to demonstrate that the Connection and PATS provided by an Alternative Infrastructure will offer a tariff package or packages which are broadly in line with those prices offered by USP for Connection and/or PATS; and
 - viii. a draft code of practice for handling complaints by End-Users in relation to requests for AFL (which code of practice shall be made available in a Durable Medium to End-Users).
- 4.11 Upon receipt of the Draft Process Statement, ComReg may either approve it and notify the USP of this, or may disapprove it, with summary reasons therefor, in which case ComReg may require the USP to promptly re-submit a revised Draft Process Statement(s). Upon receipt of a revised Draft Process Statement, ComReg may either approve it or to disapprove it with reasons and notify the USP, Once ComReg approves a revised Draft Process it shall take effect as final (the "Process Statement").
- 4.12 The USP shall comply with the Process Statement in all respects.

Cost Estimates

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

result in a Connection not achieving a minimum data rate of 28.8 kilobits per second (“kbit/s”).

5. PERFORMANCE TARGETS RELATED TO FIA

- 5.1 Pursuant to Regulation 3 (5) (a) of the Universal Service Regulations, the USP shall ensure that **94%** of Connections achieve a minimum data rate of **28.8 kbit/s** for internet access.
- 5.2 The USP shall, no later than **1 month** from the Effective Date, submit to ComReg a draft written statement setting out the USP’s proposals on how to report on its compliance with Section 6.1 (the “Draft Reporting Proposal”). Upon receipt of this Draft Reporting Proposal, ComReg may either approve it and notify the USP of this, or may disapprove it, with summary reasons therefor, in which case ComReg may require the USP to promptly re-submit a revised Draft Reporting Proposal. Upon receipt of a revised Draft Reporting Proposal(s), ComReg may either approve it or disapprove it. Once ComReg approves a revised Draft Reporting Proposal it shall become final (the “Report Process”).
- 5.3 The USP shall comply with the Report Process in all respects.
- 5.4 The USP shall, on a quarterly basis, within **2 months** of the end of the previous quarter, provide ComReg with written reports on the USP’s performance in relation to Sections 6.1 generated by the Reporting Process referred to in Section 6.2. The USP shall publish these reports in such a manner and format as ComReg may specify.
- 5.5 The USP shall, upon the request of any End-User who raises a query or a concern in a Durable Medium about their Connection capability, provide them with a written statement confirming its internet access data rate. If on receipt of this written statement, the End-User still has a query or concern the USP may require the End-User to conduct reasonable self-tests, prior to the USP assessing and testing the internet access data rate.
- 5.6 The USP shall use all reasonable endeavours, in accordance with Good Industry Practice, to remedy performance problems with a Connection, where its internet access data rate does not achieve a minimum data rate of 28.8 kbit/s.

- 5.7 In accordance with Regulation 10 (6) of the Universal Service Regulations, the USP shall arrange an independent audit, (which shall be paid for by the USP) of the performance data provided to ComReg pursuant to Section 6.3.

6. REPORTING

- 6.1 The USP shall on a quarterly basis, within **2 months** of the end of the previous quarter, provide ComReg with a report in written form, in relation to its compliance with its obligations in Section 5 and 6.

- 6.2 For the purpose of its obligations in Sections 5 and 6, the performance of the USP shall be determined by reference to the information normally set out in ComReg information notices, published every quarter and usually entitled "*Provision of Universal Service by Eircom Limited - Performance Indicators*", or as ComReg may publish in another manner or format from time to time.

7. OBLIGATIONS OF THE USP: GEOGRAPHICALLY AVERAGED PRICING AND CONTROL OF EXPENDITURE

Geographically Averaged Pricing

- 7.1 In accordance with Regulation 8 (3) of the Universal Service Regulations, the USP shall apply geographically averaged prices throughout the State for the Connections and PATS referred to in this Decision Instrument.

Control of Expenditure

- 7.2 The USP shall:
- i. maintain and publish a scheme to allow for the phased payment of Connection fees; and
 - ii. maintain and publish its disconnection policy in relation to the non-payment of bills.

8. REVOCATION AND SAVER

- 8.1 ComReg Decision No. D09/05 is hereby revoked.

- 8.2 ComReg Decision No. D02/08 shall continue in force until the earlier of:

- i. 31 December 2016; or

- ii. the date upon which a decision by ComReg on the USP's quality of service obligations related to the provision of AFL becomes fully operative.

9. STATUTORY POWERS NOT AFFECTED

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

10. MAINTENANCE OF OBLIGATIONS AND SEVERANCE

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

11. EFFECTIVE DATE, DURATION, AND REVIEW

- 12.1 Subject to Section 12.2, this Decision and Decision Instrument is fully effective from 29 July 2016 and shall remain in full force and effect until 30 June 2021, unless amended by ComReg.
- 12.2 Sections 5.5 – 5.8 shall come into operation immediately upon the Process Statement taking effect in accordance with Section 5.11.
- 12.3 ComReg will commence a review 3 months after the Department has concluded the National Broadband Plan contract award process and decide whether or not to commence a new consultation process in relation to AFL USO in the State and publish an information notice regarding this.

JEREMY GODFREY

CHAIRPERSON

THE COMMISSION FOR COMMUNICATIONS REGULATION

Made on this the 29 day of July 2016

Questions

Section	Page
Q. 1 In your opinion are there other relevant factors in relation to supply side trends which ComReg should consider in the context of AFL USO? Please give reasons to support your view.....	28
Q. 2 Do you agree or disagree with ComReg’s review of the relevant demand trends? Please give reasons to support your view.....	42
Q. 3 In your opinion are there other relevant factors in relation to demand trends which ComReg should consider? Please give reasons to support your view.....	42
Q. 4 Do you agree or disagree with ComReg’s preliminary view that there is no requirement to amend the current reasonable access requests process? Please give reasons for your answer.....	58
Q. 5 Do you agree or disagree with ComReg’s preliminary view that there is no requirement to amend the threshold levels applicable to reasonable access requests? Please give reasons for your answer.	58
Q. 6 Do you agree or disagree with ComReg’s preliminary view to retain the minimum data rate of 28.8kbit/s? Please give reasons for your answers.	61
Q. 7 Do you agree or disagree with ComReg’s preliminary view that it remains inappropriate to use USO FIA requirements as a mechanism to guarantee access to broadband connections during this transition period? Please give reasons for your answers.....	61
Q. 8 Do you agree or disagree with ComReg’s preliminary view that there is a need to maintain GAP post 30 June 2021? Please provide reasons for your answer...	65
Q. 9 Do you agree or disagree with ComReg’s preliminary view to not introduce tariff options? Please provide reasons for your answer.....	69
Q. 10 Do you agree or disagree with ComReg’s preliminary views on control of expenditure measures? Please provide reasons for your answers.....	71
Q. 11 Do you agree or disagree with ComReg’s preliminary views to continue to monitor QoS performance for any designated undertaking and to continue to publish QoS trends. Please provide reasons for your answers.....	72
Q. 12 Do you agree or disagree with ComReg’s preliminary view that there is a continued need for an AFL USO, post 30 June 2021? Please provide reasons for your answers.....	73
Q. 13 Do you wish to express an interest in being a USP for any future provision of AFL under the USO? Please set out your reasons and any other information you deem relevant..	77

- Q. 14 Do you agree with ComReg’s preliminary view that, in the absence of receiving any expressions of interest, that the current USP, eir, is best placed to continue to be the USP for AFL, in light of the preliminary proposal for an initial designation period of eighteen months – two years? Please provide reasons for your answer. 77
- Q. 15 Do you agree or disagree with ComReg’s preliminary view that geographical scope of any proposed designation should be the whole of the State? Please set out reasons for your answer..... 82
- Q. 16 Do you agree or disagree with ComReg’s preliminary view that the designation period should be for a period 24 months unless amended? 82
- Q. 17 Do you have any comments or suggestions on the draft Decision Instrument? Please set out your answer in detail..... 84
- Q. 18 Do you agree or disagree with ComReg’s draft regulatory impact assessment of the impact of the proposed options? Are there other impacts or details that should be included? Please set out reasons for your answer..... 104

NON-CONFIDENTIAL