



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

# Universal Service Requirements Provision of access at a fixed location (AFL USO): Interim Designation

## Response to Consultation and Decision

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

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# Content

Section	Page
<b>1. AFL USO Interim Designation</b>	<b>4</b>
1.1 Background .....	4
1.2 AFL USO extant Consultation .....	4
1.3 Summary of this Decision – Interim Designation.....	6
1.4 eir’s Submission, ComReg’s view and position .....	8
1.5 Process and timing.....	9
1.5.1 eir’s submission.....	9
1.5.2 ComReg’s Response .....	10
1.6 eir’s Submission – the forthcoming expiration of the current designation of eir as USP with AFL USO .....	13
1.7 ComReg’s Response .....	14
1.7.1 The impact of eir’s extension request.....	16
1.7.2 Net cost.....	18
1.8 eir’s Submission – ComReg’s preliminary views in the AFL USO extant Consultation that AFL USO is still required.....	20
1.9 ComReg’s response – ComReg’s preliminary views in the AFL USO extant Consultation that AFL USO is still required .....	20
1.10 eir’s Submission – to avoid potential consumer harms arising from any potential lacuna period between the end of the current designation period (30 June 2021) and ComReg making a final decision on the future of the need for AFL USO .....	22
1.11 ComReg’s Submission – to avoid potential consumer harms arising from any potential lacuna period between the end of the current designation period (30 June 2021) and ComReg making a final decision on the future of the need for AFL USO	22
1.12 eir’s Submission – allow ComReg to fully consider stakeholders responses to the AFL USO extant Consultation .....	23
1.13 ComReg’s Response – allow ComReg to fully consider stakeholders responses to the AFL USO extant Consultation .....	23
1.14 eir’s Submission - 13d(1) QoS Reporting .....	24
1.15 ComReg’s Response – 13d(1) QoS Reporting .....	24

2. Decision Instrument	26
3. Legal Basis	28
4. Regulatory Impact Assessment	32
1.16 .....	32
4.1 Introduction .....	32
4.2 Step 1 – Describe the policy issue and identify the objectives .....	35
4.3 Step 2 - Identify and Describe the Regulatory Options .....	36
4.3.1 Option 1: Maintain an Interim AFL USO Obligation.....	36
4.3.1.1 Functional internet access .....	37
4.3.1.2 Reasonableness of requests .....	37
4.3.1.3 Affordability including GAP .....	38
4.3.1.4 Control of expenditure .....	39
4.3.2 Option 2:- vary the duration of the interim designation.....	40
4.3.3 Option 3: Do not imposed an interim Designation .....	40
4.4 Steps 3 and 4 – Determine the impacts on stakeholders and competition.....	41
4.5 Step 5 – Assess the impacts and choose the best option .....	48

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# 1. AFL USO Interim Designation

## 1.1 Background

- 1 The Universal Service Regulations<sup>1</sup> provide that a designated undertaking shall satisfy:
  - any reasonable request to provide at a fixed location a connection to the public communications network;
  - any reasonable request for the provision of a publicly available telephone service over the network connection referred to at paragraph 1 that allows for the originating and receiving of national and international calls;
  - A designated undertaking that provides a connection to the public communications network shall ensure that the connection is capable of supporting voice, facsimile and data communications at data rates that are sufficient to permit functional Internet access, having regard to the data rates that are sufficient to permit functional Internet access.
- 2 In July 2016, pursuant to Decision D05/16, ComReg designated Eircom Limited (“eir”) as the Universal Service Provider (“USP”) for access at a fixed location (“AFL USO”) for a period of five years, from 29 July 2016, which designation remains in full force and effect until 30 June 2021, unless amended by ComReg (“current designation”).
- 3 Considering the forthcoming expiration of the current designation, ComReg has undertaken a detailed review of AFL USO to ascertain the continued need for an AFL USO beyond 30 June 2021 and has issued a consultation “Universal Service Requirements, Provision of access at a fixed location (AFL USO) Consultation and draft Decision” (“AFL USO extant Consultation”)<sup>2</sup>.

## 1.2 AFL USO extant Consultation

- 4 In its AFL USO extant Consultation, ComReg formed the following preliminary views:

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<sup>1</sup> Regulation 3 of the European Communities (Electronic Communications Networks and Services) (Universal Service and Users’ Rights) Regulations 2011, S.I. 337 of 2011 (“Universal Service Regulations”).

<sup>2</sup> ComReg Document No.21/51 (“AFL USO extant Consultation”).

- 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 need for an AFL USO(s) for Ireland, post 30 June 2021.
  - 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 from Universal Service Regulations 2011 to the forthcoming transposition of the EECC.
  - However, ComReg proposes to keep under review any AFL USO and designation in light of the transposition of the EECC 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.
- 5 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.
- 6 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).
- 7 ComReg invited 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 (“until transposition of the Code has occurred”).

- 8 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.
- 9 ComReg is of the preliminary view, in the extant Consultation, that the scope and obligations currently in place in respect of AFL USO (D05/16) should be retained for an interim period beyond 30 June 2021. eir's current designation as USP with AFL USO is due to expire on 30 June 2021 and ComReg has published its AFL USO extant Consultation where it has set out the preliminary views that AFL USO needs to be maintained beyond 30 June 2021.
- 10 The deadline for submission of Consultation responses was 24 June 2021. The consultation period is now closed and ComReg has received four responses which it is currently considering. ComReg is cognisant that it needs time to fully consider the responses to the AFL USO extant Consultation.
- 11 No expressions of interest have been received in response to the AFL USO extant Consultation.

### **1.3 Summary of this Decision – Interim Designation**

- 12 ComReg set out its preliminary view in ComReg 21/66, that the current designation (ComReg D05/16) should continue in order to allow ComReg to fully consider the responses to AFL USO extant Consultation while protecting the interests of end-users.
- 13 ComReg's preliminary view that the USO needs to be maintained beyond 30 June 2021 was set out in the AFL USO extant Consultation, which supports the need for an AFL USO post 30 June 2021.
- 14 In Consultation ComReg 21/66, ComReg sought stakeholders' views on its proposal for an interim designation of eir as the USP for AFL USO for the period 1<sup>st</sup> of July 2021 to 30<sup>th</sup> October 2021 or, until the date that ComReg makes a final decision on the future need for a designation of a USP for AFL USO (the extant Consultation), whichever is the earlier.
- 15 ComReg asked respondents whether they agreed with ComReg's preliminary views on the interim designation and to provide reasons to support their views.
- 16 ComReg received one response, from Eircom Limited ("eir"), to ComReg Consultation 21/66.

- 17 ComReg has now carefully considered the response it has received to this Consultation. Chapter 2 sets out details of the submission, ComReg views and its position.
- 18 ComReg has decided that the current designation (ComReg D05/16) should continue in advance of ComReg being able to fully consider the responses to AFL USO extant Consultation. ComReg's preliminary view that the USO needs to be maintained beyond 30 June 2021 has been set out in the AFL USO extant Consultation, which supports the need for an AFL USO post 30 June 2021.
- 19 In reaching its Decision ComReg has taken into account the following;
- eir's submission to ComReg Consultation 21/66,
  - ComReg's preliminary views and reasoning, data set out in the Consultation 21/66 and the Extant consultation. ComReg's preliminary view in the AFL USO extant Consultation is that an AFL USO is still required beyond June 2020,
  - ComReg's requirement to fully consider the submissions of respondents to the AFL USO extant consultation,
  - the forthcoming expiration of the current designation of eir as USP with AFL USO,
  - ComReg's regulatory obligation to protect the interests of end-users and the requirement to ensure that universal service requirements are met by at least one undertaking,
  - the need to avoid potential consumer harms arising from any potential lacuna period between the end of the current designation period (30 June 2021) and ComReg making a final decision on the future of the need for AFL USO.
- 20 ComReg has decided that it needs to maintain the current AFL USO (D05/16) set out in Section 12 of Decision Instrument (D05/16) for an interim period of a maximum of 4 months. In the circumstances, ComReg considers that it is necessary to maintain the current AFL USO designation on eir, until the 30th day of October 2021 or until the date on which ComReg has made a final decision on the future need for a designation of a USP for AFL USO, having considered the responses to the AFL USO extant Consultation, whichever is the earlier. This means that the interim designation will be in place no longer than is necessary and only until ComReg has made a final decision on the extant Consultation.

- 21 ComReg is of the view that it is not appropriate to vary the existing obligations during the interim designation period, while it is considering submissions from stakeholders which make proposals in this respect in the context of the AFL USO extant Consultation.
- 22 This decision means that eir as the USP will be required to continue to implement the existing obligations for a further maximum of 4 months.
- 23 The current Quality of Service (“QoS”) regime set out in ComReg Document No. D02/19<sup>3</sup> 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.
- 24 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.
- 25 ComReg may separately, from time to time, request other relevant reports.

## 1.4 eir’s Submission, ComReg’s view and position

- 26 ComReg notes that eir does not agree with its preliminary view to maintain the current AFL USO designation by way of an interim designation.
- 27 ComReg has carefully considered eir’s submission. ComReg has categorised eir’s response into the following headings:-
- Process and timing

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<sup>3</sup> [Universal Service Requirements – Provision of access at a fixed location \(AFL\) – Quality of Service \(QoS\) | Commission for Communications Regulation \(comreg.ie\)](#)



- the forthcoming expiration of the current designation of eir as USP with AFL USO
- ComReg's preliminary views in the AFL USO extant Consultation that AFL USO is still required
- the avoidance of potential consumer harms arising from any potential lacuna period between the end of the current designation period (30 June 2021) and ComReg making a final decision on the future of the need for AFL USO
- allowing ComReg to fully consider stakeholders responses to the AFL USO extant Consultation, and 13d(1) QoS Information Requests.

28 This chapter deals with each matter in turn, setting out the issues raised by eir, and ComReg's response and position to those issues.

## 1.5 Process and timing

### 1.5.1 eir's submission

29 ComReg notes eir's submission that: *"... the severely truncated consultation timetable, calls into question whether ComReg has and will fully and properly consider and evaluate the inputs and submissions arising from the consultation process. It would seem that the outcome of this so-called consultation process must be a foregone conclusion"*.

30 As set out above, ComReg does not accept the statements made by eir in relation to its consultation process, in particular, the statement that the outcome of the consultation process must be a forgone conclusion. ComReg is fully aware of its obligations in making its final decision and the need, amongst other things, to be proportionate and to fully consider and evaluate the interests of all stakeholders.

31 ComReg also notes that eir further criticises ComReg timing of the current consultation, which *"... it says is questionable, one week in advance of the expiry of the current designation and that ComReg's AFL USO review process is entirely flawed and illegal, ComReg planned its consultation with less than a day to fully consider Responses... ComReg's mismanagement of the process appears to be either a continued administrative oversight by ComReg and/or a cynical attempt is being made to circumvent fair regulatory process acting disproportionately against eir's interest."*

- 32 eir states: “... we note in eir’s response to ComReg 21/51 ComReg has had ample time to plan a proper and timely review of the AFL USO.”

## 1.5.2 ComReg’s Response

- 33 ComReg has fully considered eir’s response that it does not agree with ComReg’s preliminary view to maintain the current AFL USO designation and the views expressed in respect of procedural matters.
- 34 In response to the views expressed by eir as regards the issuing of the interim consultation, ComReg has taken account of the interests of eir and other stakeholders by allowing further time to consider all responses to the extant consultation proposals prior to making its decision. However, ComReg is still required to meet its obligations to ensure a USO is in place where necessary to protect the interests of end-users. ComReg’s decision making must be proportionate and consider the interests of all stakeholders.
- 35 ComReg can now confirm that no expressions of interest to be the designated AFL USP have been received in response to the AFL USO extant Consultation.
- 36 ComReg does not accept the statements made by eir in relation to the Consultation process, including the timetable for the publication of the consultation, the deadline for the responses and the time to fully evaluate and consider the responses to make a final decision on the merits.
- 37 eir appears to be criticising ComReg’s justification for the proposed interim designation, inter alia, ComReg’s acknowledgement that it needs time to fully consider the responses to AFL USP extant Consultation (21/51)<sup>4</sup>. ComReg is meeting its obligations to fully and fairly consider all the relevant information available before making a reasoned decision.
- 38 As eir is already aware, ComReg did commence its review of AFL USO in 2020. As part of its review, ComReg issued a Section 13D Statutory Information Requirement to fixed voice operators, including eir on 21 December 2021, seeking information to inform its view in the AFL USO extant Consultation.

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<sup>4</sup> Universal Service Requirements Provision of access (AFL USO) ComReg Document No.21/51.

- 39 As set out in section 3.2.1 below eir applied for an extension of the deadline for the provision of the required information. ComReg granted the extension, noting to eir: *“In light of the additional time required by eir, it is important for eir to note that this may have an impact on ComReg’s own Consultation process and ComReg will need to consider what implications the additional time, required by eir, will have for the AFL USO fixed voice consultation process”*. While ComReg is not subject to a statutory timetable to carry out its functions, as is suggested by eir, ComReg however was obliged to wait until 31 March 2021 for the majority of the requested data from eir, which it required as part of its review, and eir was fully alive to the potential consequences to ComReg’s consultation process, of ComReg granting the requested extension to eir. Full details of the engagement with eir and the impact of the extension request on the consultation process is set out at section 3.2.1 of this document.
- 40 ComReg is satisfied that it has at all times acted in accordance with its obligations in respect of consultation and transparency pursuant to Regulation 12 of the European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2011 (the “Framework Regulations”) which require ComReg, before taking a measure, to publish the text of the proposed measure, give the reasons for it, including information as to which of the Regulator’s statutory powers gives rise to the measure, and specify the period within which the submission relating the proposal may be made by interested parties.
- 41 Regulation 12(4) of the Framework Regulations provides the Regulator, having considered any representations received under paragraph (3), may take the measure with or without amendment and the Regulator in accordance with Regulation 12(5) of the Framework Regulations shall publish its consultation procedures.
- 42 ComReg has published its consultation procedures<sup>5</sup> (“ComReg Consultation Procedures”) and ComReg has implemented its procedures. In circumstances, where ComReg is being criticised for failing to plan and manage its consultation process, attempting to circumvent fair regulatory process acting disproportionately against eir’s interests and failing to ensure the timelines are fair and appropriate, ComReg would note that its own Consultation procedures provides, *“These procedures are a general statement of the applicable principles. There may be circumstances where ComReg will be required to depart from these procedures, for example, including but not limited to, specific legislative requirements or where there is an urgent need to implement certain measures”* [emphasis added].

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<sup>5</sup> Information Notice on ComReg Consultation Procedures, Document No. 11/34a.

43 ComReg’s Consultation procedures expressly provide that “certain legislation under which ComReg operates identifies particular measures for which advance consultation is mandatory. The extent to which additional measures may be consulted upon will be decided on a case-by-case basis. In making such decisions ComReg will consider a number of factors including the number of parties who may be affected, whether points of principle are involved as opposed to detailed implementation of an existing measure, and the relative cost impact of the measure on users or operators.

44 ComReg notes that at Section 2.3 of the Procedure, entitled “Submissions” the procedures provide in relation to the duration of consultation “Normally, the period of time allowed for interested parties to respond to a consultation will be four weeks, but this may vary in certain cases due to:

- the urgency of the matter;
- the complexity of the issues addressed;
- the stakeholders who might be most likely to wish to respond to the document;
- other documents that might be addressed to the same interested parties (and therefore the total effort required to respond);
- any statutory timing requirements; or
- the mobilisation of resources to deal with the issues raised.

45 Where ComReg proposes a shorter period of time than four weeks for responding to a consultation, ComReg will give reasons for doing so.

46 Section 2.3.2 provides for Submission of comments:

*“ComReg will at all times seek to ensure that all of its consultations are as open, transparent, fair and complete as possible, and ComReg will take proper consideration of all submissions that are received”.*

47 Section 2.3.3 provides for Consideration of comments:

*“The purpose of public consultations is to allow ComReg to consider the views of interested parties in the context of reaching a decision on particular matters. All views will be considered, and account taken of the merits of views expressed”.*

48 Section 2.4 provides for Responses:

*“ComReg will publish a response to each consultation, providing a general review of submissions received on the matter being consulted upon. Where appropriate, a Decision Notice will be issued, setting out the decision(s) taken following the consultation, together with a review of submissions and ComReg’s reasons for any decision”.*

- 49 eir is critical of ComReg’s time to fully consider responses and make a final decision as to the merits.
- 50 ComReg is satisfied that it has conducted and carried out Consultation 21/51 in accordance with all its obligations including under the Framework Regulations and the ComReg Consultation Procedures. ComReg published the text of the proposed measure, provided the reasons for it, including the information as to which of its statutory powers gives rise to the measure and specified the period within which submissions regarding the proposal may be made by interested parties.
- 51 There has been one respondent to the consultation, eir submitted its response and ComReg has fully considered the views expressed by eir in this response to Consultation. While ComReg notes that the date for the expiration of the current designation of eir as USP with AFL USO, is 30<sup>th</sup> June 21, one day after the receipt by it of the responses to the Consultation, ComReg rejects eir’s submission that the final decision by it is a “forgone conclusion”. ComReg has carefully considered all matters raised by eir in its response, ComReg notes the time for expiration of the current designation is imminent, however, ComReg is fully aware of its obligations to consider all views, and to take account of the merits of views expressed.

## **1.6 eir’s Submission – the forthcoming expiration of the**

## current designation of eir as USP with AFL USO

52 eir in its response to Question 1 has stated that: “... [ComReg’s] first factor mentioned is “the forthcoming expiration of the current designation of eir as USP with AFL USO”. This is not a justification for an interim designation. The fact that ComReg by its own action or inaction is very late with its review is not a justification to impose regulatory obligations. The justification is of ComReg’s own making and was entirely avoidable. It is extremely concerning that this is in ComReg’s reasoning a justifying factor for its proposed decision. ComReg’s negligence will carry with it an associated net cost of at least €3 million<sup>6</sup> for the interim designation period.”

53 eir states that: “... ComReg by its own action or inaction is very late with its review...”.

### 1.7 ComReg’s Response

54 the forthcoming expiration of the current designation of eir as USP with AFL USO ComReg notes that eir does not agree with ComReg’s preliminary view that it is appropriate to maintain the current AFL USO designation by way of an interim designation.

55 In Consultation 21/51 ComReg set out its preliminary views that:

- the current designation (ComReg D05/16) should continue in advance of ComReg being able to fully consider the responses to AFL USO extant Consultation, and
- that the USO needs to be maintained beyond 30 June 2021 as previously set out in the AFL USO extant Consultation, which supports the need for an AFL USO post 30 June 2021.

56 In its subsequent Consultation 21/66, ComReg was of the preliminary view, having regard to:

- the forthcoming expiration of the current designation of eir as USP with AFL USO,
- ComReg’s preliminary views in the AFL USO extant Consultation that AFL USO is still required,

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<sup>6</sup> Based on pro rata of annual net cost that eir has previously established was in the region of €10m for previous years.

- the need to avoid potential consumer harms arising from any potential lacuna period between the end of the current designation period (30 June 2021) and ComReg making a final decision on the future of the need for AFL USO,
- the need to allow ComReg to fully consider stakeholders responses to the AFL USO extant Consultation,

that it needed to maintain the current AFL USO (D05/16) set out in Section 12 of Decision Instrument (D05/16) for an interim period of a maximum of 4 months. In the circumstances, ComReg considers that it is necessary to maintain the current AFL USO designation on eir, until the 30<sup>th</sup> day of October 2021 or until the date on which ComReg has made a final decision on the future need for a designation of a USP for AFL USO, having considered the responses to the AFL USO extant Consultation, whichever is the earlier.

- 57 ComReg disagrees with eir's view set out in its response to consultation 21/66 that: "... *the forthcoming expiration of the current designation of eir as USP with AFL USO*". [This] is not a justification for an interim designation...". ComReg has clearly set out the associated rationale for this preliminary view in Consultation 21/51 which it has referenced in Consultation 21/66, as the justification for the interim designation.
- 58 ComReg disagrees with eir's statement that: "... *That the fact that ComReg by its own action or inaction is very late with its review is not a justification to impose regulatory obligation. The justification is of ComReg's own making and was entirely avoidable...*".
- 59 ComReg was cognisant of the date for the transposition of the EECC and ComReg's consultation process timeline aligned with this planned date. The most recent update from the Department states that it is currently preparing primary legislation<sup>7</sup>.

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<sup>7</sup> [gov.ie](http://www.gov.ie) - European Electronic Communications Code (EECC) ([www.gov.ie](http://www.gov.ie))

## 1.7.1 The impact of eir’s extension request

- 60 In December 2020, ComReg issued a 13D(1) information request to all fixed voice operators, including eir, setting out ComReg’s *“intention to consult on AFL USO fixed voice to examine the availability (including reasonable access requests) and the affordability (where appropriate), of fixed voice services and whether any form of regulatory intervention is required (including, as relevant, determining which undertaking(s) will be required to provide this), to ensure that a set of at least the minimum services is available to all end users and at an affordable price to consumers, where a risk of social exclusion arising from the lack of such access prevents citizens from full social and economic participation in society”* ; and seeking relevant information *“(i) on the counterfactual scenario<sup>8</sup> (ii) access<sup>9</sup> (iii) affordability and (iv) other relevant customer surveys and/or market research reports”*. ComReg sought responses by 12 February 2021.
- 61 In January 2021<sup>10</sup> eir wrote to ComReg seeking an extension until 31 March 2021 for the provision of a sub-set of the requested data due to IT matters stating that: [REDACTED]
- 62 ComReg signalled to eir in February 2021 that *“this may have an impact on ComReg’s own Consultation process and ComReg will need to consider what implications the additional time, required by eir, will have for the AFL USO fixed voice consultation process”*.

<sup>8</sup> Only applicable to eir, as the current USP.

<sup>9</sup> (the number of new retail fixed voice only connections (by type) installed by eir between 1 January 2018-31 December 2020, by calendar year.

<sup>10</sup> 19 January 2021.



63 eir responded on 12 February 2021 disagreeing stating [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

64

[REDACTED]

[REDACTED] eir submitted the majority of requested data on 31 March 2021.

65 ComReg in its response to eir of 19 March 2021 stated that: *“Implications for an extension on ComReg’s own Consultation process - ComReg notes the statements made by eir with regard to these matters and ComReg does not accept eir’s statements. ComReg will consider the information requested from eir upon receipt of same and will proceed accordingly”*.

66 This data was required from the USP in order for ComReg to prepare the consultation. Therefore, ComReg granted eir an extension of over 5<sup>11</sup> weeks (elapsed time of over 10 weeks in total<sup>12</sup>).

<sup>11</sup> 19 February 2021 – 31 March 2021.

<sup>12</sup> 21 December 2020 – 31 March 2021.



- 75 This most recent application is currently being assessed by ComReg. ComReg's preliminary views in respect of this application are set out in consultation 21/17. ComReg preliminary view was to make a downward adjustment of €6,402,089 to the net cost (after intangible benefits).
- 76 eir may apply for funding for the net cost of meeting the USO obligation 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.
- 77 eir's obligations include the requirement to have the relevant USO direct net cost models underpinning eir's USO funding applications to ComReg as a whole, including all calculations, data, spreadsheets, the model summary and the individual net cost models (Area, Customer, Payphone, Directories, and Disabled End Users' Services) in place. The responsibility for the development of a new Customer Model based on the 2016 Copper Access Model resides with the USP, eir, in particular, where it seeks to exercise its right to submit USO funding applications.<sup>16</sup>
- 78 ComReg has considered whether a shorter interim designation period would be appropriate. However, as the period proposed is of a maximum of 4 months and because length of the interim designation is dependent on the timing of the AFL USO extant Consultation decision, ComReg is of the view that this is a dynamic and proportionate measure to protect the interests of end-users while minimising any impact on industry stakeholders.

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<sup>16</sup> [Universal Service Fund Application 2015-2016 | Commission for Communications Regulation \(comreg.ie\)](#).

## 1.8 eir's Submission – ComReg's preliminary views in the AFL USO extant Consultation that AFL USO is still required

- 79 eir has stated that: *“The second factor mentioned by ComReg is “ComReg’s preliminary views in the AFL USO extant Consultation that AFL USO is still required”. The extant consultation, ComReg 21/55, is simply that, a consultation. It is not regulatory policy that is settled. The whole concept of a consultation process is for the regulator to conduct its business transparently, to fully consider the views of interested parties, to reach informed decisions. ComReg cannot at this point in time rely on draft conclusions that are subject to a lawful consultation process and draft conclusions in a separate consultation that relies on justification to impose the AFL USO designation for a further period that has not yet concluded. This is an invalid self- perpetuating circular justification which does not validate ComReg’s proposed decision making.”*

## 1.9 ComReg's response – ComReg's preliminary views in the AFL USO extant Consultation that AFL USO is still required

- 80 ComReg's preliminary views in the AFL USO extant Consultation are that AFL USO is still required. ComReg note's eir's statement that: *“... the extant consultation, ComReg 21/55, is simply that, a consultation”*. The extant consultation sets out ComReg's preliminary views based on the rationale set out therein. ComReg does not claim that the regulatory policy is settled. In its AFL USO extant Consultation, ComReg states that it has formed the preliminary views as set out in paragraphs 4 to 9 of this document.
- 81 ComReg has conducted its extant consultation 21/51 and consultation 21/66 on AFL USO post 30 June 2021 in a transparent manner. ComReg has specifically sought the views of interested parties on both the extant and an interim designation consultations. No party has sought an extension request in respect of either consultation or in respect of the expression of interest deadlines.
- 82 ComReg has specifically sought interested parties views on an interim designation consultation, to allow ComReg to fully consider stakeholders responses to the AFL USO extant Consultation, and to allow it to reach informed decisions.

- 83 ComReg disagrees with eir’s assertion that: “... *ComReg cannot at this point in time rely on draft conclusions that are subject to a lawful consultation process and draft conclusions in a separate consultation that relies on justification to impose the AFL USO designation for a further period that has not yet concluded...*”.
- 84 ComReg has clearly set out the associated rationale for this preliminary view in Consultation 21/51 which it has referenced in Consultation 21/66, as the justification for the interim designation.
- 85 This interim designation is proposed to allow ComReg to fully consider stakeholders responses to the AFL USO extant Consultation, and to allow it to reach informed decisions. This will provide for a transparent, considered, and lawful decision in respect of the extant Consultation. Accordingly, ComReg refutes eir’s assertion that: “... *This is an invalid self-perpetuating circular justification which does not validate ComReg’s proposed decision making*”, as the reasoning and rationale set out the basis for its preliminary views in the extant consultation 20/51.
- 86 ComReg notes that: [eir] “... *refers to its response to ComReg 21/51 in terms of its views on ComReg’s preliminary views on the AFL USO*”.
- 87 When ComReg has fully considered the responses received to this extant Consultation, ComReg will issue a decision.

## **1.10 eir's Submission – to avoid potential consumer harms arising from any potential lacuna period between the end of the current designation period (30 June 2021) and ComReg making a final decision on the future of the need for AFL USO**

- 88 eir stated that: *“The third statement by ComReg is that an interim designation is needed “to avoid potential consumer harms arising from any potential lacuna period between the end of the current designation period (30 June 2021) and ComReg making a final decision on the future of the need for AFL USO”. As eir notes in its response to ComReg 21/51 there is no justification to continue to impose an AFL USO. ComReg has failed to demonstrate that there is potential harm arising if the AFL USO is discontinued. ComReg cannot simply state something is so without adducing any evidence. In many respects this is essentially predicated on the same circularity as the second factor and is not a valid justification for the proposed interim designation. eir also notes that the lacuna is entirely of ComReg’s own making and cannot subsequently be relied upon as justification for the imposition of material and market distorting regulatory obligations.”*

## **1.11 ComReg's Submission – to avoid potential consumer harms arising from any potential lacuna period between the end of the current designation period (30 June 2021) and ComReg making a final decision on the future of the need for AFL USO**

- 89 ComReg notes eir's statement that: *“... As eir notes in its response to ComReg 21/51 there is no justification to continue to impose an AFL USO. ComReg has failed to demonstrate that there is potential harm arising if the AFL USO is discontinued. ComReg cannot simply state something is so without adducing any evidence”*.
- 90 ComReg disagrees with eir's assertion that ComReg has failed to demonstrate that there is potential harm arising if the AFL USO is discontinued. As set out earlier, the extant consultation sets out ComReg's preliminary views based on the rationale set out therein. ComReg will fully consider stakeholders responses to the AFL USO extant Consultation and will respond in due course, to eir's assertions in respect of ComReg 21/51 as part of its response to consultation and decision document.

- 91 ComReg has finalised its regulatory impact assessment in respect of the interim designation and this is set out in chapter 5.
- 92 ComReg disagrees with eir’s assertion that: “... *the lacuna is entirely of ComReg’s own making and cannot subsequently be relied upon as justification for the imposition of material and market distorting regulatory obligations*”.
- 93 As set out earlier, the delay<sup>17</sup> in the provision of data by eir in response to an Information request issued by ComReg in December 2020 is a significant contributory factor to the delayed consultation process, as this information, pertaining to the USP was critical to the analysis of the operation of the universal service and the preliminary views contained in the consultation.
- 94 ComReg must carry out its regulatory obligations to ensure a universal service where necessary and its consultation on an interim designation was to ensure that end-users interests are protected while at the same time allowing time to consider stakeholders submissions to the extant consultation.

### **1.12 eir’s Submission – allow ComReg to fully consider stakeholders responses to the AFL USO extant Consultation**

- 95 eir state that: “*The fourth factor mentioned is the need to “allow ComReg to fully consider stakeholders responses to the AFL USO extant Consultation. As highlighted in respect of the third factor mentioned, ComReg’s failure to manage a fair and timely review either through deliberate action or inaction is not a valid justification.*”

### **1.13 ComReg’s Response – allow ComReg to fully consider stakeholders responses to the AFL USO extant Consultation**

- 96 ComReg notes eir’s statement that: “... ComReg’s failure to manage a fair and timely review either through deliberate action or inaction is not a valid justification”.

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<sup>17</sup> Full response received by ComReg on 31 March 2021.

- 97 ComReg disagrees with eir's assertion. As set out earlier, the delay<sup>18</sup> in the provision of data by eir in response to an Information request issued by ComReg in December 2020 is a significant contributory factor to the timing of the AFL USO extant Consultation.
- 98 The information requested on AFL USO fixed voice examining the availability (including reasonable access requests) and the affordability (where appropriate), of fixed voice services and in particular, seeking relevant information (i) on the counterfactual scenario<sup>19</sup> (ii) access<sup>20</sup> (iii) affordability and (iv) other relevant customer surveys and/or market research reports, pertaining to the USP is a critical factor in the assessment of the relevant information sought by ComReg.
- 99 ComReg has set out the impact of granting eir's extension request in section 3.2.1 and in light of this ComReg does not agree with eir's assertions.
- 100 Accordingly, ComReg categorically rejects eir's assertion that ComReg failed to through deliberate action or inaction to manage a fair and timely review.

#### 1.14 eir's Submission - 13d(1) QoS Reporting

- 101 eir stated that: *"... eir does not believe that the powers granted to it under S13D were ever intended to create a reporting regime in support of USO or SMP obligations. The reporting regime is a cost associated with the substantive obligations which has to be considered in the context of the merits of the substantive obligations — which ComReg have clearly failed to do. Absent a new Decision justifying the establishment of a USO QoS regime and its design, ComReg cannot use S13D in the manner contemplated"*.

#### 1.15 ComReg's Response – 13d(1) QoS Reporting

- 102 ComReg fundamentally disagrees with eir's statements and is of the view that ComReg have the relevant powers to issue a 13D information request in conducting its functions as set out in the Communications Regulation Act 2002 (as amended).

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<sup>18</sup> Full response received by ComReg on 31 March 2021.

<sup>19</sup> Only applicable to eir, as the current USP.

<sup>20</sup> The number of new retail fixed voice only connections (by type) installed by eir between 1 January 2018-31 December 2020, by calendar year.



- 103 ComReg notes, amongst other things, the matters set out in eir's response in relation to ComReg's powers to require and report on QoS information and eir's obligation to provide it. For the avoidance of doubt, ComReg wishes to make it clear that it does not accept the statements made by eir. eir submits—*“eir does not believe that the powers granted to it under S13D were ever intended to create a reporting regime in support of USO or SMP obligations. The reporting regime is a cost associated with the substantive obligations which has to be considered in the context of the merits of the substantive obligations — which ComReg have clearly failed to do. Absent a new Decision justifying the establishment of a USO QoS regime and its design, ComReg cannot use S13D in the manner contemplated”*.
- 104 ComReg would refer eir to the wording of S13D(1) of the Communications Regulation Act, 2002 (as amended) (“the Act”) with regard to its statutory powers to require the information. As eir is aware, ComReg pursuant to S13D(1) of, may at any time, by notice in writing, require an undertaking to provide it with such written information as it considers necessary to enable it to carry out its functions. Section B of the Statutory Information Requirement generally sets out the basis upon which ComReg requires the Information to carry out its functions under Section 10 and Section 12 of the Act indicating the need for the information for ComReg to exercise its general functions generally under the Act and more particularly ComReg requires the information for the purposes set out at Section B 1, 2 and 3. There is no limitation or curtailment of the use by ComReg of its Statutory information gathering powers in the exercise of its functions, in the manner suggested by eir.
- 105 Accordingly, ComReg rejects eir's assertion that: *“... Absent a new Decision justifying the establishment of a USO QoS regime and its design, ComReg cannot use S13D in the manner contemplated”*.
- 106 ComReg considers that QoS is an important aspect of AFL USO and that reporting on QoS performance is maintained. ComReg intends to shortly commence a review of QoS as stated in ComReg 21/51.
- 107 ComReg considers this information to be necessary to carry out its functions in relation to QoS (with respect to continuing to publish QoS trends and to informing any future review of QoS). ComReg has the power to issue a 13D(i) in such a manner, contrary to eir's assertion.

## 2. Decision Instrument

### 1. STATUTORY FUNCTIONS AND POWERS

- 1.1. This Decision and Decision Instrument is hereby made by The Commission for Communications Regulation (“ComReg”) established under Communications Regulation Act 2002 ( as amended”) (“the Act”), section 6 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 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”);
  - 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. 21/66; and
  - vi. Having had regard to the analysis and reasoning set out in ComReg Document No. 21/66, ComReg Document No. 21/71, and Decision D05/21 (which shall, where the context admits or requires, be construed together with this Decision Instrument).

### 2. APPLICATION SCOPE AND DURATION

- 2.1. This Decision Instrument amends Section 12.1 of ComReg Decision Universal Service Requirements Provision of access at a fixed location (AFL USO) D05/16 by substituting “30th October 2021 or until the date that ComReg makes a final decision on the future need for a designation of a USP for AFL USO, whichever is the earlier” for “30<sup>th</sup> June 2021, unless amended by ComReg”.

**3. EFFECTIVE DATE:**

- 3.1. This Decision and Decision Instrument is effective from 1/7/2021 (“the Effective Date”).

ROBERT MOURIK  
**COMMISSIONER, THE COMMISSION FOR COMMUNICATIONS  
REGULATION**

Made on this the 30 day of June 2021

NON-CONFIDENTIAL

### 3. 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)

NOI

## 4. Regulatory Impact Assessment

### 4.1 Introduction

- 108 The analysis presented sets out ComReg’s regulatory impact assessment (“RIA”). ComReg’s preliminary assessment of the likely effect on stakeholders in respect of the extant Consultation proposal was set out in that document.
- 109 ComReg’s consultation on an interim Designation (21/66) considered the preliminary views and draft impact assessment in the AFL USO extant Consultation.
- 110 Having considered the submission from eir in respect of the interim designation, ComReg’s RIA sets out ComReg’s assessment of the likely effect upon stakeholders and competition of the interim designation.
- 111 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.
- 112 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.
- 113 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.
- 114 These details will be used by ComReg as key inputs in the performance of it 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.



- 115 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.
- 116 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.
- 117 The purpose of the draft RIA in the AFL USO extant Consultation was 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. 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 during the interim designation period.
- 118 That draft RIA sets out our 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.
- 119 This RIA relates to the interim designation which is a period of a maximum of 4 months.
- 120 The 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) for an interim period,
  - The duration of that interim period, 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 interim designation.

- 121 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.
- 122 ComReg’s aim in conducting this RIA is to ensure that its proposals are appropriate, proportionate, and justified considering the analysis conducted, its objectives, and the principle of proportionality.
- 123 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.
- 124 ComReg’s approach to the RIA follows the RIA Guidelines (published in August 2007<sup>21</sup> and considers the “Better Regulation” programme<sup>22</sup> 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.
- 125 ComReg is now conducting its 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.<sup>23</sup>

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<sup>21</sup> ComReg Document No. 07/56 and 07/56a.

<sup>22</sup> 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).

<sup>23</sup> 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.

## 4.2 Step 1 – Describe the policy issue and identify the objectives

- 126 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 in this Decision is to ensure consumers continue to have access to AFL in the future until the end of the interim designation period, as relevant, to ensure end-user rights are upheld.
- 127 Air is designated as the USP for AFL for the period from July 2016 to 30 June 2021. For the reasons set out in the AFL USO extant Consultation 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.
- 128 ComReg 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.
- 129 ComReg has consulted on this matter in the AFL USO extant Consultation. However, ComReg needs further time to fully consider the responses to that consultation and ComReg is of the view that an AFL USO is necessary to protect end-users during this short interim period.
- 130 Absent an interim Designation, with associated obligations on the USP, 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.
- 131 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.
- 132 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 at this time.

## 4.3 Step 2 - Identify and Describe the Regulatory Options

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

### 4.3.1 Option 1: Maintain an Interim AFL USO Obligation

134 ComReg is considering the impact of maintaining an AFL USO throughout the State, post 30 June 2021. If an AFL USO is maintained in the interim, 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.

135 In the context of the preliminary view in the AFL USO extant Consultation 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.

136 No expressions of interest have been received.

137 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.

138 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.

139 If it is decided that an AFL USO continues to be required post the interim designation period, 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.

140 ComReg notes that eir and other respondents have made submissions to the AFL USO extant Consultation in respect of variation of obligations. ComReg is considering the submissions.

141 eir has not made any submission regarding variation of obligations for the interim designation in its associated submission.

142 eir has claimed that the obligations for the interim period will cause it to incur a net cost – this is dealt with in section 1.7.2.

143 If requiring an AFL USO in the interim period the various aspects of the USO which are currently prescribed also need to be considered, namely:

143.1 Functional Internet Access

143.2 Reasonableness of requests

143.3 Affordability including GAP

143.4 Control of expenditure.

#### 4.3.1.1 Functional internet access

144 There are two options available to ComReg.

##### Option 1 – maintain the status quo

145 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 have this capability. 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

146 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.

#### 4.3.1.2 Reasonableness of requests

147 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.

148 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**

- 149 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**

- 150 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 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**

- 151 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**

- 152 The current trends in data from eir as the USP, indicate that maintaining the current approach based on 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.

#### **4.3.1.3 Affordability including GAP**

- 153 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**

- 154 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**

155 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

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

157 These options are set out below.

#### **Option 1: Maintain GAP obligation**

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

#### **Option 2: Remove GAP obligation**

159 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.

160 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.

#### **4.3.1.4 Control of expenditure**

161 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**

162 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**

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

164 ComReg is of the view that it is not appropriate to vary the obligations during the interim period, while it is considering submissions which make proposals in this respect in the context of the AFL USO Extant Consultation.

### 4.3.2 Option 2:- vary the duration of the interim designation

- 165 ComReg proposed that the duration of the interim period be a maximum of 4 months for the period 1<sup>st</sup> of July 2021 to 30<sup>th</sup> October 2021 or, until the date that ComReg makes a final decision on the future need for a designation of a USP for AFL USO (the AFL USO extant Consultation), whichever is the earlier. However as the period proposed is of a maximum of 4 months and because length of the interim designation is dependent on the timing of the extant Consultation decision, ComReg is of the view that this is a dynamic and proportionate measure to protect the interests of end-users while minimising any impact on industry stakeholders.

### 4.3.3 Option 3: Do not imposed an interim Designation

- 166 ComReg has considered the impact of not placing any obligation to provide AFL during the interim period. If this option was pursued no operator would be obliged to provide AFL including connections to a public communications network and related components during the interim period. There is a risk that more geographically remote, or unprofitable end-users may not be adequately served at all or at an affordable price.
- 167 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-uses who are distributed nationally. There is a risk that some end-users may not be adequately served
- 168 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 during the interim period, some, or even all services and related components may not be provided to certain end-users.
- 169 ComReg is of the view that in order to balance the needs of end-users and impacts on industry stakeholder the interim Designation is warranted for the required period for a maximum of 4 months.



#### **4.4 Steps 3 and 4 – Determine the impacts on stakeholders and competition**

- 170 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 assesses the impact of regulatory options on different stakeholders and competition, set out in the Tables below.

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Measure proposed	Impact on Industry		Impact on end-user	
	Costs	Benefits	Costs	Benefits
<p><b>Option 1 - Maintain an AFL USO for a maximum of 4 month for the entire State</b></p> <p><b>Option 2 - Maintain an AFL USO for a shorter maximum period</b></p>	<p>USP may incur costs for the provision of the USO during the interim period. ComReg has considered eir's statement in its submission regarding the estimated costs for the interim period. ComReg has considered a shorter period. The decision provides for a dynamic period.</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 against any short term changes in approach by USP while the submissions regarding the future are being considered</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
<p><b>Option 3:</b>                      Remove AFL USO post 30 June 2021 pending decision by ComReg on the future</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>

	Measure proposed	Impact on Industry		Impact on end-user	
		Costs	Benefits	Costs	Benefits
FIA	<p><b>Option 1:</b> 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><b>Option 2: Require the continuance of basic broadband connections</b></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	<b>Option 1: Increase the threshold levels</b>	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.
	<b>Option 2: Decrease the threshold levels</b>	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.
	<b>Option 3: Maintain the current threshold levels</b>	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
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	<b>Option 1: Maintain obligations</b>	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.
	<b>Option 2: Decrease the threshold levels</b>	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.
	<b>Option 3: Maintain the current threshold levels</b>	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.

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## 4.5 Step 5 – Assess the impacts and choose the best option

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

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

173 Market trends show that a decreasing cohort of end-users continue to rely on AFL USO. However, absent an AFL USO, ComReg is of the 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

resulting in end-user detriment during the interim period.

174 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).

175 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.

176 The committed investment by commercial enterprises coupled with intervention by the State via the National Broadband Plan<sup>24</sup> 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.

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<sup>24</sup> in those parts of the country where private companies have no plans to invest.



- 177 Accordingly, ComReg is of view that it cannot be assured that, absent an AFL USO, services would be delivered commercially during the interim period throughout the State. Accordingly, removing AFL USO (Option 3) at this time during the interim period would appear to be premature. ComReg is therefore of the view that there is a continued need for an AFL USO throughout the State, post 30 June 2021 for the interim period.
- 178 Having reached the 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 regarding:
- reasonableness of requests,
  - functional internet access (FIA),
  - affordability,
  - control of expenditure, and
  - terms and conditions of service.
- 179 The next elements to be addressed are the form that any AFL USO might take.
- 180 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. The data demonstrated that:
- 180.1 Many of the new connection requests are being met by the current USP using existing infrastructure
- 180.2 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.
- 181 ComReg is of the view that it is not appropriate to vary the existing obligations during the interim period, while it is considering submissions which make proposals in this respect in the context of the AFL USO Extant Consultation.

- 182 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.
- 183 Based on the evidence, ComReg is of the 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 at this time.
- 184 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/s<sup>25</sup>, 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.
- 185 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.
- 186 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.
- 187 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.
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- 188 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.
- 189 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.
- 190 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.
- 191 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.
- 192 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.
- 193 These details will be used by ComReg as key inputs in the performance of it 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.
- 194 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.
- 195 Accordingly, ComReg is of the 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,

for the interim period.

- 196 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.
- 197 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.
- 198 This becomes increasingly important, absent of a retail price cap.
- 199 ComReg is of the 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).
- 200 Accordingly, ComReg is of the 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.
- 201 All ECS service providers already have an obligation to have and publish a Code of Practice for Complaint Handling<sup>26</sup> which includes its disconnection policy.
- 202 Accordingly, ComReg is of the view that the inclusion of this requirement, post 30 June 2021 for an interim period would present no additional obligations, where a universal service obligation and designation are imposed.
- 203 Many service providers offer phased payment of connection fees on a commercial basis.

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<sup>26</sup> Electronic Communications Complaints Handling Code of Practice - Response to Consultation and Decision, Decision D04/17; Document No.17/62.

- 204 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 of new connections<sup>27</sup> are in-situ connections.
- 205 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.
- 206 ComReg is of the 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.
- 207 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.
- 208 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.
- 209 ComReg is of the view that it would be inappropriate for ComReg to intervene in the market as this time.

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<sup>27</sup> Period 2018- 2020.